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Application for a Care Order; The Children (NI) Order 1995; intervening applications for Residence Order, grounded upon allegations of negligence by Social Services in regard to an incident of physical abuse during placement; Art. 179 of The Children Order; the developmental approach to the provision of services for children – Art. 17; the principle of permanency planning for children; the importance for parents realising that their opportunity to make change is time-limited; the proper procedures in respect of applications for directions; The Magistrates' Courts (Children (NI) Order 1995) Rules (NI) 1996; whether it is appropriate to direct repeat of a parenting assessment when a change of disposition is asserted; the No Delay principle- Art. 3(2); whether the Court should intervene on contact arrangements under an interim Care Order; whether transfer to a Care Centre is appropriate – Art. 7 and Rule 5 of The Children (Allocation of Proceedings) Order (NI) 1996; the timing of such an application; whether it is appropriate to allow a further psychological assessment and report after one directed has been completed but unseen – Art. 51; application for third party disclosure; whether properly a matter for directions under Rule 15 of The Magistrates' Courts (Children (NI) Order Rules 1996; the issue of witness summonses – Art. 118 of The Magistrates' Courts (NI) Order 1981; whether evidence sought is material; whether to re-visit the threshold criteria at final hearing, upon finding that a Respondent's position had been materially misrepresented at threshold hearing; whether there should be reduction of parental contact following a Care Order.

A HEALTH & SOCIAL SERVICES TRUST Applicant R W (MOTHER) H M (FATHER) Respondents	Family Proceedings Court of East Tyrone at OMAGH County Court Division of FERMANAGH & TYRONE

Written Reasons of the Court
In The Matter of:
P M, a Boy, born 1st January 1990
G M, a Boy, born 20th November 1990
M M, a Boy, born 9th March 1996
E M, a Girl, born on 11th April 1997
C M, a Girl, born 19th September 1998

I have prepared this judgment in an anonymised form. Nothing must be published which might lead, either directly or indirectly, to the identification of the children or the parties involved in this case.

This is an application by a Health & Social Services Trust, which I shall not name (the Trust), whereby Care Orders are sought in respect of the 5 youngest children of the Respondents, R W and H M. The applications are vigorously opposed, in particular, by R W, who has desperately wished for the return of all five children to her care ever since they were removed on 9th May 2002.

Background Events

My first encounter with this case occurred at Omagh court on 31st October, when papers were filed, seeking urgent attention, whereby the mother sought return of the children to her care. H M supported his former common law wife in this, but, in default, sought a Residence order in his own favour, whereas M D, a sister of R W, likewise supported R W, but, in the event that the Court were not minded to grant relief as sought by either mother or father, sought leave to apply for a Residence Order herself.

I therefore set about preparing for Hearing by reading through two lengthy Reports, one of 60 pages, from Ms. J C and Ms V M, Social Workers, dated 18th February 2002 and the other, 75 pages long, dated 27th February 2002, from Mr. B, a Social Worker with a Family Centre. Together, these detailed the grim and disturbing history leading to the Trust's application for Interim Care Orders, the first having been granted on 9th May 2002.

I do not propose to recite in detail everything contained in these Reports. On the other hand, it is important, I think, to give some flavour here of just how bad things became when these children were being looked after by R W or H M and over what period of time. (Given that virtually none of it was ever seriously challenged by either Respondent, I have had regard to the evidence contained in each Report as a whole. Each was formally adopted in evidence taken at the Treshold Hearing on 5th December 2002.)

H M and R W had been known to Social Services for a number of years. Their's was a volatile relationship, with H M putting the entire family out on a number of occasions, forcing R W and the children to have to live in a number of placements over the years. The parties would reconcile; the cycle would run again.

R W moved back to Strabane (from Omagh) in August 1998 and stayed with H M. Due to yet more rows, she and the children moved from there to SATH Hostel in

August 1999. At this point, Ms. W approached the Family Centre, seeking placements for her three youngest children, M M, E M and C M.

A second referral arose in October 1999, with an elder daughter S M alleging that she had been physically assaulted by her father. She further alleged that her mother would leave her and her older sister to look after the younger children and would lash out physically, if unhappy with her behaviour. Child protection procedures were implemented and enquiries carried out. It is not at all clear that S M's allegations against her father were true, but it is notable that, when R W came to the Social Services office to confront S M, R W presented as volatile and refused any form of advice or guidance.

Another elder daughter, M M was interviewed on 7th October and corroborated her sister's allegations. P M and G M were seen on 20th October 1999 and confirmed that their mother physically chastised them, confirmed that S M and M M would look after the younger children, but refuted S M's allegations against their father. In what was an interesting note at that time, both boys said they would prefer to live with their father, but, with the threat of being thrown out into the street, they felt it was better to live in a Hostel.

Sometime in October 1999, a home visit was made to SATH Hostel. There was a total lack of hygienic care; the children were "dirty and unkempt". The Hostel had received numerous complaints regarding the older children. Residents reported them causing disturbance at the local shop, swimming pool and, on one particular occasion, harassing an older resident in the community. Staff reported the children as knowing no boundaries and of willfully destroying furniture in their rooms. In fact, they notched up £1000-worth of damage during their stay.

In what was to be a clear pattern, R W refuted all allegations, refusing to accept the concerns as valid and countering with the assertion that the community "had it in for her children because they were [M…….s]". Certainly, somebody seems to have had it in for the family; when R W moved on to another address she stated that she could not move in to the Estate where she had latterly lived due to paramilitary threats.

When Social Services visited the family at its new address, the place was in a mess, inside and out. Upstairs, the bedrooms smelt of something like stale urine and there were not enough beds for the children. On 1st November 1999, M M, E M and C M were referred to the Family Centre, due to concerns around the levels of R W's and H M's parenting and insight into the children's needs. On 24th January 2000 G M and P M were referred for assessment of their emotional needs.

On 8th May 2000, H M, Jnr., had to be interviewed by Police in relation to theft. No parent was available and H M, Jnr. received a caution. The incident involved theft of a shopping trolley full of food to the value of £213 from a supermarket in Omagh. R W had been in the store at the time, raising concerns about her involvement. H M, Jnr. had been involved in a similar incident previously, where the goods came to a

value of £233. The Juvenile Liaison Officer had concerns that R W was encouraging these activities.

On 7th September 2000 the local Convent reported three youngest M children, aged 7, 5 and 3, at the gates, unaccompanied, singing and asking for money. When interviewed by a Social Worker, R W denied it was her children, saying they were in bed at the time; the children repeated the same line. R W did not recognize the seriousness of the matter.

On 11th September 2000 (a few days later), while R W was at bingo, the children were seen begging outside. When addressed, R W strenuously denied the allegation, asserting that it was the Family Centre out to get her. For their part, P M and G M also denied the incident.

On 24th October 2000 there was a referral from the Family Centre about E M. She was described as "filthy". The staff could not bathe her because they did not have R W's consent. Faeces was noted on her shoes. When asked, she (E M) said it was her pooh. When later addressed about this, R W, true to pattern, strongly denied the report, asserting once again that it was the Family Centre out to get something on her. She refused to give permission for her child to be bathed and would not accept the staff's concerns.

On 6th November 2000 the RUC Care Unit reported that S M was frequenting the home of an elderly man whom police were investigating regarding a serious assault on a young female. Indeed, at this period of time, there were reports of M M, S M and T P M (another older son) all frequenting the home of another alleged sexual abuser. There was also an allegation that S M had kissed the man full on the lips for £5. The children were interviewed in R W's presence. They admitted frequenting the house and obtaining cigarettes and money. T P M said that he, sometimes accompanied by H M, Jnr., would wait outside while their sisters were in, collecting. R W failed to accept her role in the supervision of the children and the importance of knowing where they were.

Also in November 2000, R W called to the office with T P M about an allegation that he had sexually assaulted a primary school girl. R W said she could not believe this of T P M – but would if it were H M, Jnr. who was accused, she could. She showed no insight into the seriousness of the matter, nor the impact of what she was saying in front of her son.

Later, on a trip with Extern to another town, H M, Jnr, in turn, had inappropriately touched an eight-year-old girl in the pool. He denied it; his mother supported him. Over the first few months of 2001, there was particular concern about this boy's mental health. He was talking of suicidal inclinations and of hearing voices. (His parents said he was only winding Social Services up). On 15th March, he and another boy were reported as having plucked, burned and broken the necks of a number of pigeons. He denied it and neither of his parents would believe it. Both

parents viewed reports of paranoid behaviour on their son's part with skepticism and would not accept that their son was experiencing difficulty.

Trouble continued at this time, with regard to G M and P M. Staff at the Family Centre and elsewhere were threatened. P M poked a teaching assistant in the face. On another occasion, both were involved when a female teacher was struck several times in the stomach. By then, many parents were refusing to send their own children to the school because of the presence of the boys. Local businesses were refusing to let them into their stores, because of willful destruction of merchandise and harassment of both staff and customers. As so often, R W denied all this, saying they had cousins who looked like them.

And so on, through more instances of dangerous involvement with strangers, shoplifting concerns and, generally, the picture of a chaotic lifestyle for the children. Ultimately , at a Case Conference on 18th June 2001, it was affirmed that the children needed to be kept on the Child Protection Register and to seek foster care placements for the five youngest. Upon hearing that, R W left the meeting and, in effect, fled to the Republic that same afternoon. H M actively supported her in the venture by deflecting Social Service enquiries and suggesting his wife might have gone to England.

There is a particularly memorable passage in the Social Work Report, worth quoting in full, just to give a flavour of what then hit the Southern village of R.

> "The family settled in R area at … …. Terrace. On the 5th October 2001, a call was received at the Child Care Manager's Office from a concerned male neighbour of the … family. The neighbour reported that R… W… "left the family home in the morning and did not return to night-time, leaving the children on their own all day." It was reported that "the children run around the road with very little clothes on, with their nappies falling off." The neighbour also reported "that the children were not changed all day and the bigger children are up the town at all hours of the day and night, stealing from shops and running wild". The neighbour also reported that the "young fellows down the town say that the older … girls have been offering sex for £2 or £3". Another call was received to the Child Care Manager's office from a female concerned neighbour stating that the children were being left on their own. On the 17th October 2001, the Intake Duty Social Worker received a referral from Sgt M… D…, R… Garda Station stating that there were concerns regarding the … children. There were constant complaints to the Gardai in respect of the children. There were reports that R… W… was leaving the family home early in the morning and not returning to the evening. There was a report that the three-year-old was walking 400-500 yards to the shops on her own. A neighbour also reported that the three-year-old was seen going into the family home eating out of a bowl of dog food. Also the three-year-old was apparently asking neighbours for cigarettes. It was reported that one of the … children had seriously assaulted a neighbour's child…
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> "On the 23rd October 2001, the Social Worker met with Sgt D… in R…. Sgt D… informed the Guards had received constant reports in relation to the family.

> These included R… W… leaving the family home in the morning and not returning to 9.30 pm at night, the youngest children going to the shop on their own, being soaked wet, not wearing socks and their shoes falling off. There were complaints regarding the children going into other people's houses taking toys. Also there was a complaint of an eight year old neighbour being assaulted. The Gardai also received reports of one of the girls breaking slates behind the houses, complaints regarding the older children causing problems at school and the M… children throwing mud at a neighbour's house. It was also reported to the Gardai that when the family first moved into the area that M M had arranged a fight with a local girl. The Gardai turned up in the area to prevent this occurring. The Gardai had visited the home of a number of occasions but R W… was never available."

During her stay across the border, R W moved several times. By 13th November 2001 R W had the children back in Northern Ireland. During a home visit then, the house was found to be in a state of chaos, with a double mattress lying on the floor of the living room. Bags of clothes and other items littered the room, which was smelly with body odour.

By then, R W appeared to recognize that the Protection Plan would have to be addressed. She asked if the children could go stay with relatives and, to that end, gave names and addresses of both her family and H M relatives. A Review Case Conference on 30th November 2001 resolved upon applications for Care Orders and agreed that, while seeking foster placements, the Trust would assess the viability of family placements suggested by R W, who was so informed at a home visit on 21st December.

On 22nd January 2002, R W reported that H M had put her and the children out and she was once again homeless. Unfortunately, SATH Hostel would not offer accommodation, due to the previous damage and disruption, but accommodation was found in the another Estate, which I will refer to as Z Estate. The boys, G M, P M and M M, were showing signs of improvement, but the concern was about the capacity to sustain this; R W seemed able to attain such improvements periodically by threatening the children that they would be taken away by Social Workers in the alternative. E M was the subject of concern, particularly as regards sexualized behaviour. At subsequent visits to the family in January to discuss placements both parents presented as hostile, confident that the children would not be removed.

In February 2002, R W reported having gained accommodation at Z Park, through the Housing Executive. She declared it as her intention to take the five youngest children with her and leave the others with H M, who was intending to move to the another area of the same town. R W advised that she would not then be responsible for what the elder children got up to and that they would not be able to influence the younger siblings. H M, in contrast, was asserting that there would still be extensive sibling contact and that they would all remain a family.

At that stage, in February 2002, the Social Work Report detailed the extent to which each of the five youngest children had suffered harm, in consequence of the inadequate parenting from both mother and father.

P M had repeatedly missed Speech and Language Therapy appointments, despite concerns about his hearing. There had been no consistency in his health care, related to frequent moves. Only when under threat would R W make periodic efforts to address these matters. P M had been assessed as requiring special needs education. It had always been a concern and, by now, staff at H School (Special Education) felt they could no longer manage P M, due to his volatile and aggressive behaviour, notwithstanding all efforts to work with the family on this issue. It was noted that he was considered a danger to staff and children alike, prior to his move to the Republic and it was noted that he did not have a homework/school bag and there was no evidence of any parental guidance in the area of study and academic achievement. He was at the final stage, expulsion, but R W blithely dismissed all such concerns and maintained that P M was only standing up for himself.

There was no evidence of a truly close family, as R W would assert, and interaction between the children would often lead to aggression and violence. There was no obvious display of affection between P M and his mother. He was managed, if at all, by threats of Social Work intervention from R W and by resort to playing one child off against another. He was not receiving the particular level of attention required for one suffering from learning difficulties. P M was in an unstable family unit, where mother and father repeatedly parted and reunited. H M had an alcohol dependency for some time. P M was drifting towards criminal behaviour, banned from several stores for damaging merchandise and stealing. It was a dysfunctional family which was not meeting P M's needs. He was poorly presented, his clothing often torn and unsuitable, likely to compound social isolation. He was given no appropriate boundaries regarding his behaviour, without appropriate guidance and supervision and therefore at risk of significant harm. He was emotionally abused in being given inappropriate knowledge of proceedings, with R W addressing her own needs by according him a psycho-adult role and sharing information with him. His self-care skills were poor. There was concern about his ability to protect himself from harm, both within and outside the family. There seemed to be little if any awareness of his safety and protection needs.

G M's education needs were neglected, particularly as a result of so many moves and, in addition, his emotional needs were such that they took precedence at this time, in the view of his Primary School. He had unique health needs in areas of hearing speech and language which were not receiving proper attention. He had engaged in behaviour which exposed him to risk and his parents, though made aware of the situation, did little to help. The unsettled domestic life heightened the children's anxiety, insecurity and fear. The professionals involved concluded that G M had been exposed to significant harm and neglect and if unchecked could suffer harm which would be difficult for him to address in later life. He lacked parental guidance and supervision. His self-care skills were poor. He had engaged in high-risk behaviour and had been denied appropriate protection.

M M needed language therapy which was neglected due to his parents' failure to attend appointments. His education was challenged by three moves in seven months. The lack of appropriate boundaries presented him with a skewed and disjointed view of his world. He suffered in family and social relationships for over-reliance on older siblings in a chaotic and dysfunctional family. Poignantly, he was over-clingy toward his mother. He was emotionally abused. Where R W had discussions with Social Workers, in his presence, about the possibility of him being removed, he would become distressed . Rather than desist from such inappropriate tactics, R W sustained her son's distress, with a view to making her point. His self-care skills were poor and he had been denied the ability to feel safe and well cared for.

Finally, E M and C M had also suffered from a serious lack of attention to their individual health needs. It took a year, and institution of these proceedings, for R W to manage to produce a sample of C M's urine, required for attention to her medical condition. In the view of all professionals, there was little evidence that R W would be motivated to address her child's health care needs without the concerns of court proceedings. E M had not received her pre-school boosters due to multiple moves and R W's failure to register her with a GP in the area where she lived. On the education front, R W's hostile attitude toward professionals had made it impossible to present any in-depth work on C M's comprehension powers. Her learnt behaviours only served to inhibit C M's development and progress. E M also requires additional educational support which was not being provided by her parents and multiple moves also effected her education. The school intended to implement special needs support for her. R W dismisses this, asserting that E M is not in any need of such support. At school, there were concerns about inappropriate touching and related hygiene concerns. All this affected her ability to interact with peers and she also required constant attention. Both children rarely presented at the Family Centre in a hygienically acceptable state. Both have been exposed to their parents' emotional difficulties and concerns about Social Work intervention.

E M's sexualized behaviour was a cause for concern. It needed investigation. R W's unrealistic explanation for her daughter's propensity to touch her own genitalia was a concern and was thought to center around a fear on the mother's part that Social Services might feel her daughter has been sexually abused.

In this context, I divert for a moment from this synopsis to cite a passage from Department of Health (1999) *Children's Needs – Parenting Capacity: The Impact of Parental Mental Illness, Problem Alcohol and Drug Use, And Domestic Violence on Children's Development*, London: H.M.S.O., p. 4;

> Few of the studies explored parental problems in terms of gender and whether this differentially influenced social work intervention. What does become evident is that irrespective of which parent figure was presenting the problem, professionals involved in the child protection process directed their attention to working with mothers. For example, Farmer and Owen (1995) show that in

> some cases, despite prolonged domestic violence directed from a father figure to the mother and suspicions that the man was also physically abusive to the children, the child protection work focused solely on the mother. However, for many families the possibility of social workers engaging with the father figure was simply not possible because at the time of the child protection enquiry the men were no longer physically present. Cleaver and Freeman's (1995) survey of 583 child protection files found a quarter of children suspected of being abused were cared for by a lone mother.

Meanwhile, a shoplifting incident and the encouragement of the younger children by the older siblings to commit theft was simply unacceptable and the two girls, like others, were at risk of significant harm. Likewise, as with the other younger ones, failure to provide adequate parental supervision and guidance exposed the two youngest to significant harm, for want of appropriate boundaries. Multiple moves and shifts in care givers had only served to create instability and chaos for them.

Overall, the Social Work Report reasoned that P M and G M had suffered significant harm and that M M, E M and C M were then at risk. The parents had failed to meet their basic needs. They appear engrossed in their own needs and have not appreciated or accepted advice and direction given by all professionals.

From the Report made jointly by Mr. B and Miss K of the Family Centre if I cite just the following for the present;

> "During the time that the M… children attended … Family Centre , there have been serious problems in our relationship with R W…. Frequently R W… was not available for us to communicate concerns to her and when those concerns were communicated staff would be confronted with disagreement and on a number of occasions aggression. Moreover R W… would be prone to dismiss concerns by either denying them as in the case of hygiene or justifying as in the case of the older boys' violence. This difficulty in engaging R W… can be seen in her relationship with other agencies such as schools, social services and seriously diminishes the potential for engaging the children in any work that may have a positive affect on their development.
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> "There is no doubt that R W… loves her children but her mistrust of others has passed on to the children and their energies seem to be targeted at protecting their family status rather than engaging in the normal activities of children of their age. … Furthermore there would be a real sense among the staff that the children fear their mother … The influence that R W… exercises over her children is the most powerful force in their lives and it is very difficult to effect any change in the children unless R W… is willing to accept change …
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> "A high level of support services were provided and/or offered to the … family for a period of over 18 months. Despite this the level of concern about the children's overall well being persisted … Given the children's past experiences this [improvement from time to time] was difficult for them to sustain and the behaviour of G M and P M in particular had deteriorated to the extent that they were excluded from support services. Their behaviour outside the home also placed them at risk of falling into the criminal justice arena or the targets of local

> vigilantes. M M, E M and C M are at serious risk of following the developmental patterns of their older siblings especially as they are left in their care quite regularly. If the children do not receive appropriate care it is likely that their health will be impaired through inadequate feeding and sleeping routines as well as personal hygiene issues. It is also likely that they will not develop healthy self-esteem, self worth and self-confidence. Their educational potential will not be realized, they will not develop an appropriate sense of boundaries and self control and their belief systems and values will not change.
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> "In view of the concerns outlined in this report I fell that the only course likely to effect any positive change in the welfare of P M, G M, M M, E M and C M is to place them outside the family home. This will give the professionals working with the children the opportunity to work with them and may make R W more open to accepting the serious concerns that have been identified, thus creating a basis for change."

That, then, gives some flavour of the range and extent of the concerns with regard to each of these children and also of the serious neglect alleged against each parent which had occasioned the first Interim Care Orders on 9th May 2002.

That afternoon (31st October 2002), I sat at Omagh Courthouse to hear that set of three applications, one by R W, one by H M and one by an aunt, M D. All arose, essentially, from an incident on Monday, 28th October, at which point C M was seen to bear a large bruise on her back. R W's solicitor addressed me. She explained that, since Care proceedings had been instituted, M M, E M and C M had been placed with a paternal uncle, X, and his wife. P M and G M had moved first from an aunt to Harberton House and from there back to their father.

Up to Monday, 28th October 2002, R W had previously expressed concerns about signs of physical injury upon, I believe, all the 3 youngest children, but these were afforded no serious consideration, according to the solicitor, who saw fit to go so far as to characterize the Trust's level of concern on the subject as "abominable", more than once; something of a hostage to fortune, in all the circumstances. On Monday, C M's back was seen to be seriously bruised, but all three youngest subject children were returned to their uncle and aunt that day. They were examined next day. C M's injuries appeared to be non-accidental. R W did not know where the children were placed on Tuesday and Wednesday evening – or perhaps (my note is unclear) it was said that the children were known to have been placed with Trust foster carers on one of these days. R W feared that C M, and perhaps the others, were being placed separately.

In addition, there were allegations of sexual abuse under investigation and due a report on 7th November. R W was not aware of the identity of the alleged perpetrators. That information was needed in order to consider a transfer application. The allegations appeared to be of a sexual abuse character.

R W was seeking the return of the 3 youngest children to her care as "the lesser of 2 evils". There were 4 older children with her, T P M, S M, H M, Jnr. and M M.

The second Respondent supported his wife's application. However, in the event that she was unsuccessful, he sought to have the 3 children placed with him. The other two boys involved in these proceedings, G M and P M, were already with him. Where possible, the children should be kept together.

Likewise, in the event that the court was not minded to accede to the applications of either mother or father, another aunt, M D, sought leave to seek the have the children placed with her. She was not known to Social Services before.

The baseline contention was that, in light of the patent failure of Social Services, one of these alternative placements ought to be suitable. The safety of the children would thereby be better served. There was a very strong attachment between mother and the family, with no attachment issues, it was contended.

For the Trust, their solicitor characterized these applications as nothing other than an attempt to disrupt the placements. The court was referred to the history of the mother's conduct. It was pointed out that there had already been allegations of abuse which had then been retracted. There were outstanding allegations of sexual abuse (post-dating admission to care) under investigation in the appropriate manner.

C M had been medically examined in August and no injuries were found. All three children had been examined the previous day, Wednesday 30th October 2002, by Dr. K. C M's injury was found to have been non-accidental. She was moved to foster care. The two girls were to be placed together, M M on his own. It had not been possible to find a single placement for all three. All three were now with Trust-approved foster parents.

With regard to the aunt, M D was unaccepting of the Trust's concerns. One boy had previously been placed with her purely as an emergency, the inference being that she was not otherwise considered suitable. P M was previously found at her home after having absconded.

In addition to reading through those two primary Reports before hearing the applications that afternoon, I had also read the Update Social Worker Report dated 20th June 2002. The following passage appears in that Report;

> "The notion of M… D… (Aunt) as a possible carer for P… and G… M…. is no longer a viable option. This is based on the Social Worker's experience of Ms D…. Ms D… is not a suitable carer for any of the M… children, she has presented as hostile and threatening to Social Worker's involved in the case. Her behaviour in relation to the two older boys has been observed to be inappropriate and has only served to upset and cause the children anxiety. It is alleged that Ms D has threatened to spray acid on Ms M Social Worker's face and has made known that she is aware of Ms M's day routines whilst in the office. Ms W… strenuously denies her sister ever made any such threats. However given that Ms W… has also on occasion threatened to stab Ms C…,

> this obviously creates concerns for the safety of Social Work staff in working with this family. These matters have been passed on to senior management within the Trust and Strabane PSNI."

The children's solicitor,(instructed by the Guardian Ad Litem on their behalf), opposed all three applications. The children were properly the subject of Interim Care Orders for reasons which the Guardian supported. The solicitor also drew my attention to Art. 179 of the 1995 Order, which provides;

> *Effect and duration of orders, etc.*
> 179. – (1) The making of a residence order with respect to a child who is the subject of a care order discharges the care order.

I listened to all of this with, above all, a clear impression of overriding antipathy on the parents' part toward Social Services. Essentially, so far as the core event was concerned, it was a case of little C M having been severely struck whilst in the care of a couple, one of her wider family, actually nominated by R W as her preference to placement with Trust-approved foster parents. I was not told anything of who caused the injury, whether adult or child. Whilst there had been previous allegations by R W, they had been the subject of medical investigation and rebutted. As things turned out, on 28th October, clear evidence of physical abuse was seen – by both R W and the Social Worker. It was a considered decision by Social Services to return the children to the M-nominated carers that night, pending arrangements for medical examination next day. Upon it being then established that C M's injury was non-accidental, she, E M and M M were placed with approved carers. In the exigencies arising from these circumstances and the need to settle alternative arrangements urgently, the downside was that M M had to be placed separately. In summing up later, I was to determine that Social Services had acted appropriately in response to what they faced that day.

I had fresh in mind the extent of the prolonged neglect to which these children had been subjected by their parents; I had, for example, recollection of the account of dealings with the parents in January, 2002, when they presented as hostile towards Social Services plans and confident that the children would not be removed. Likewise, I had in mind Mr. B's account of R W as so dismissive and aggressive that it was ultimately found impossible to effect any change in the lives of the children without R W herself being prepared to be more open to accepting the serious concerns which had been identified.

To the extent that it had been hoped that to place the children outside the family home might force R W to recognize a need for change on her part, to start addressing the matter of her own failings and those of H M, that afternoon's presentation by their legal representative gave no basis for discerning any progress whatever in that respect. R W appeared just as hostile as ever, as incapable as ever of working with Social Services – as she would have to do to have any hope of achieving a return home for the children, or any of them.

What one witnessed was, in my view, an effort to convert an event which of itself could not meaningfully be described as the fault of Social Services into proof positive that to have children – whether just these or any children whatever was not clear – placed in care of approved foster carers was to expose them to such risk of physical, possibly sexual, abuse that it were better to leave them in the care of those already considered, by social work professionals, Child Protection panel members and Guardian, to have occasioned them significant, potentially permanent harm. And reference to the "lesser of two evils" might be taken to be serving notice upon the Court that such significant harm might well be expected to resume upon the children being returned home. Or perhaps it was to suggest that such a bad bruise on C M's back was significantly worse than the harm she had previously suffered from her parents, a proposition I would reject. The fact is that it was an incident seized upon as an opportunity to create maximum embarrassment for Social Services and to try to simply close down the care proceedings entirely.

To describe such an application as a non-starter would be an understatement. That it signaled that no work was being done with R W by her own advisors to get her, even now, to understand where she was going wrong, was depressing.

In short, all applications that afternoon were dismissed and the matter remained adjourned to 7th November 2002. In the interim, I had the opportunity to study the rest of an already voluminous file at more leisure and was greatly assisted by the detail contained in the notes of my immediate predecessor, Mr. McElholm, RM, as taken at the various previous Hearings.

Form C10 (Supplement For An Application For A Care Order) is dated 24th April 2002, as is the C2 (Application For An Order). The former lists Reasons for the application as follows;

- Father's alcohol abuse
- Mother's criminal behaviour
- Parent's volatile relationship
- Frequent house moves for mum and children resulting in instability
- Hygiene concerns
- Children's behavioural problems
- Over reliance on older children to provide care
- Difficulties in children's school attendance
- Lack of supervision of the children
- Failure to establish boundaries
- Failure to seek medical attention when appropriate
- Failure to ensure children's attendance at necessary medical appointments
- Poor dental hygiene
- Neglect of the children
- Children's aggressive behaviour
- Allegations of sexualized behaviour by T… and E…
- Lack of parental insight

At the first Hearing, on 9th May 2002, the Trust's solicitor explained that the family had returned from the Republic to Northern Ireland. An 8-week Interim Care Order was being sought. The Trust was liaising closely with the parents as regards this application. At the request of the parents the Trust have assessed various relatives as potential carers. The Looked After Children (LAC) review was due in the next 14 days. The Trust would propose to place the children with two sets of aunts and uncles when these are approved at the LAC review. The Trust plan was for a phased removal, staying with parents until removal to relatives.

It was intended that there be a psychological assessment of the mother regarding her level of functioning, for which her co-operation was sought (and was then affirmed). Then, parenting work would be undertaken at the Family Centre. The children would attend the Child and Family Team, with a Report in due course. This would focus on behavioural problems. The LAC review would finalise contact arrangements. There would be both sibling and parental contact, the details to be finalized. It was intended to provide an update Report in 8 weeks, whereupon it was proposed that further Reports and assessments be timetabled.

On R W's behalf, she "hotly" contested the application. She was worried about splitting up the children. She was also worried about issues surrounding inter-sibling contact. Essentially, Ms W felt she could cope "with a bit of help."

Having regard to the Reports before the Court and to all the foregoing, an Interim Care Order was granted until 27th June 2002.

The recorded suggestion that R W, as at May 2002, felt she could cope with just a little help is worthy of pause. To quote from *Children's Needs – Parenting Capacity* again (*Op. cit., p.* 4)

> Although many families cope adequately with their problems others, particularly those drawn into the child protection system, would benefit from the assistance of professional agencies to ensure that the hardships they are experiencing do not adversely affect the health and development of their children. Section 17 of the Children Act 1989 takes a developmental approach to the provision of services for children. It places a duty on Local Authorities to provide services under s17 when
>
> (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under part 111;
>
> (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
>
> (c) he is disabled.
>
> The Children Act 1989 is founded on the assumption that it is generally best for children to grow up within their own family and that most parents want to carry out their parental responsibilities autonomously. It also recognizes that it is normal for families to have problems from time to time and to turn to the

> State for help. At these times parents may have needs in their own right that impact on their children's well-being.

Going back to the Social Work Report of February 2002, and in conformity with the precepts just quoted (and replicated in Article 17 of The Children (Northern Ireland) Order 1995, not to mention the Trust's statutory obligations, the help previously made available to R W and the family unit, and spurned, as follows;

> Social Services attempts to work in partnership with Mr M… and Ms W… and attempts to sustain the children at home.
>
> Throughout the period detailed in this section the following services have been used in work with the M…/W… family:-
>
> 1. Family Centre has been involved with all five M… children and have assessed the children's development both behaviourally and socially, family and social relationship, presentation and emotional needs.
>
> 2. The Education Welfare Officer has also been involved in assessing the children's development educationally and liaised with the parents and Social Services.
>
> 3. The Health Visitor has attempted to work with the family re attendance at GP appointments, speech therapy, hearing clinic and hospital appointments.
>
> 4. Extern Youth Support has also been involved with the older childfren as well as the NIACRO Mentor Project who has been involved with H M in particular.
>
> 5. The Child and Family Team has also been involved with the family through consultations and advice given.
>
> 6. Barnardos Young People's Therapeutic Project have been involved through consultation and advice given.

These, then, are the ways in which the Trust has tried earnestly to support R W in keeping the family together. For it to be stated on her behalf on 9th May 2002 that she could cope with just a bit of help is merely to put on record her failure to recognize the extent of the help and support which had been made available.

When the matter came before the court again on 27th June, it was apparent that events had taken a decidedly more unpromising turn. There was of course already filed that Update Report from Social Services dated 20th June 2002.

At the outset of proceedings, it was noted that H M intended to issue a C1, seeking a Residence Order. It was directed that he should be joined as a party (having been merely a notice party), all relevant papers to be served on his solicitors.

It will be recalled that all the children were placed in foster care with relatives on 27th May 2002. P M and G M were placed with their paternal aunt, Ms S. M M, E M and C M were placed with their paternal uncle X and his wife.

Contact arrangements were agreed for twice a week for 1 1/2 hours each. One session would be between both parents and the five looked-after children, the other to be between these and also the rest of the children. All contact would be supervised by Social Services and there was to be no telephone contact as it was feared that this would unsettle the arrangements in its early stages. Initially, contact had been at Social Services offices, but was then moved to the Family Centre, which was deemed better suited.

Contact flagged up problems of boundary-setting and also dealing with challenging and attention-seeking behaviour from an early stage. Not only would R W seem to find the situation difficult to manage, but [more ominously] would question her children on their respective placements and physically examine them, requiring the younger children to explain any cuts or abrasions found.

Initial reports from carers were positive. However, on 14th June, Out of Hours Service was contacted by PSNI. P M had called at the Station to make allegations against his aunt, Ms S M. When seen by Social Services, P M said he did not want to go back to his aunt, but did want to stay with his mum's sister, M D, who had previously been assessed and deemed inappropriate. When quizzed about the allegations, P M laughed and said they were not true. R W later augmented these complaints, though, when quizzed, P M said that these additional allegations were also untrue. It took some effort to persuade Ms S M to agree to have P M back, given the seriousness of the allegations to which she had been exposed.

On 15th June, both P M and G M absconded from their aunt and were located in the vicinity of Z Park, where their mother lives. Aunt S had had enough. Fortunately, Aunt G, who already had the other three, agreed to take the two boys, just until Monday; she feared they would have a negative impact upon the younger clutch. Neither wished to return to Aunt S, though P M expressed a desire to move in with Aunt M D, which was "not an option" (see above). They had to be placed at a Youth Village for time out for 4 days and were then transferred to Harberton House.

In light of all this, the Trust were very concerned at the manner in which the placement of P M and G M had broken down. Untrue allegations had been made against Aunt S. Social Workers had been threatened by R W and her sister M D. The Trust was still looking to have the elder two boys returned to Aunt S. It was intended to make a referral to Dr. Gerry Cunningham, for psychological assessment of R W. It would not be a joint instruction and was simply to gauge the level at which to pitch parenting work. The Trust wanted the father to undergo parenting assessment as well.

With a view to timetabling, it was then proposed that the Parents' Statements on Threshold be lodged by 25th July, that the Guardian report on Threshold by 22nd

August and that the Threshold Hearing take place on 5th September. An Interim Care Order was granted until 25th July, when there would be an administrative renewal until 22nd August (unless anything arose in the meantime).

The mother was agreeable to this schedule. The father, who apparently had still to receive papers, neither consented nor objected. The Guardian, for his part, queried whether 5th September, rather than just the Threshold Hearing, might not instead serve as the date for hearing the full Order application. That point was deferred for mention on 25th July.

If one goes back, once again, to the initial Social Work Report of February, under the section entitled "Timescale", it is stated;

> The Trust would consider six months to be a reasonable period for both Ms W… and Mr. M… to achieve significant change and enable reintegration. Alongside this the Trust is mindful that both parents have failed to engage in programmes of work due to responding to crisis after crisis emerging within their family. This is due to the complexity of such a large family of ten children who each have their own needs and demands.
>
> The Trust is mindful of the necessity for children to have stability and consistency of care. This requires a sense of permanency and planning for the future.
>
> However, the very nature of this family and the complexities therein may lead to the situation that if there has been no sustained improvements and a consistency regarding progress, permanency planning will be addressed at an early stage.
>
> Any change in the child's Care Plan will be initiated by way of a Looked After Children Review.

That was by way of Wake Up call, in February 2002. The children were placed in foster care that same month. In June, then, the Guardian was raising the very legitimate issue as to whether the full Hearing ought not to be timetabled in September, which would have been 7 months on, where R W had shown little, if any, sign of change in the first 4 months. It is a point which becomes more significant as this saga unfolds that R W was on notice from the outset that she was being given 6 months within which to achieve significant change and to swing work toward reintegration, otherwise precepts of permanency planning would then direct that alternative long term care arrangements be initiated.

I ought perhaps to make the court's position quite clear in this regard and on the matter of permanency planning. I had occasion recently to attend a seminar in England on public family law matters. One module concerned concurrent planning, where one heard from Mr. Brian Clatworthy, the Director of Manchester Adoption Society. Of the several components to this innovation, one which was perhaps the

most telling was the redefining of success as early permanency (without multiple placements) rather than viewing family reunification as the sole measure of success.[1]

The new ethos involved finding a remarkable cadre of couples who were prepared to act as foster parents where it was their private wish, no doubt deeply held, to find a child they could adopt. They were already approved as adopters. Nonetheless, they would receive a child on the express basis that they would do everything they could, on their own part, to help get the child back to the family unit. There would be much greater contact with the birth parents than was conventional. If reintegration could be achieved within something like 6 or 9 months, the care parents would surrender the child. If not, permanency planning would kick in, reintegration, as an aim, would be abandoned, and adoption proceedings would be triggered, all in a timescale of something like 9 months. I will not dwell upon what all this demanded of these remarkable couples. What I want to highlight was Mr. Clatworthy's account of his message to the birth parents, at the outset of this process.

The birth parents would be told that they had a real and meaningful prospect of having the child returned. It was for them, though, to get down to it and work on their problems, from the outset. If they could do that, well and good. But if they should not grasp the importance of getting to work on their own problems – often drug or alcohol abuse – should they come to believe only at the end of the period of grace what they were told at the outset, should they then begin pleading that they now knew and were now ready to address their problems, it would be too late; permanency dictated that the Adoption Society proceed with a freeing application.

The legitimate expectations of birth parents do not override the right of each and every child to feel safe, nurtured and with a defined and recognized place in the world and in the affections of adults. Where intervention of the State, which properly begins some time back, escalates to Care proceedings, time is already running out for the birth parents. The children will have been through a period of insecurity and instability, even of significant harm; that much will have been tolerated for some time by Social Services, in a balancing exercise, while efforts are made to have the birth parents address their own problems and the concerns with regard to the safety and welfare of those children. The goal will have been to support, repair and consolidate the family unit in that phase. When matters have to come to Care proceedings, placement elsewhere, as an alternative way of securing the child's welfare, is already a live issue.

Permanency is then an active issue for the Court, from the outset of its considerations. Either the birth parent(s) can show the requisite capacity to change, or attention will move to alternative permanency planning. That means that the birth parent's argument that it is always worth one more effort to see if the child can be returned to the family unit will be discounted. It is a misconception to construe the role of the Court as somehow one of going back to the beginning and riding

[1] *Innovation in Care Planning for Children*; Katz and Clatworthy, [1999] Fam Law, 108

shotgun with Social Services, or coming in as referee between parent and Social Services, while efforts to determine whether it is really necessary to think about placing this child elsewhere at all are started all over again. The court, in fact, need only consider whether the threshold criteria existed at the time the children were removed from the birth parent(s), whether a Care Order is necessary and, if so, whether a satisfactory Care Plan has been formulated. Fundamentally, at that eleventh hour, it is not so much the Court which the parent(s) must persuade, but, as before, Social Services. Why Social Services? Because they are the relevant professionals, not lawyers.

This is not to say, of course, that the Court simply accepts the judgment of Social Services in such matters. The Court must be satisfied of the material facts and reach its own conclusions in light of its findings. However, the status properly afforded to the views of Social Service and other professionals means that a response from parents which confines itself to the proposition that it is wrong to remove children from their parents, and which fails to address effectively why persons acting in good faith should have found it necessary to take such a step (let alone allege bad faith), why the Court should have found it appropriate, by way of interim Care Orders, to endorse that unhappy exigency, is a response which is likely to prove of limited impact upon ensuing events.

Why should the court take such a robust view in respect of final pleading by a parent? For the sake of the children. Bluntly, they are more important. That is what it means to say that their welfare is paramount. Or, in Mr. Clatworthy's own words;

> It is made clear to all parties involved that there exist two plans: Plan A to get the child home but with Plan B (adoption) in reserve if this does not happen. The goal is timely permanence. In order for the child to be returned the birth parents have to work hard on the problems which necessitated the initiation of care proceedings. Similarly, the workers have to work hard to provide the necessary services in as short a time period as possible.
> Lawyers have raised the question concerning the effects of the new Human Rights legislation and the possible infringement of parents' rights. The references are nearly always to the infringements of the parents' rights. There is little attention to the child's rights. Security, trust and attachment are not only necessary for a child as he is growing up, but also lay the foundation for his development into an adult and, perhaps more importantly, a parent.[2]

The Hearing on Threshold

On 5th December 2002, the case was scheduled for a Hearing on the threshold criteria, each parent having lodged a Statement contesting that the criteria had been met. In the event, the court was informed by counsel for R W that her client conceded the criteria. The Trust thereupon proceeded to call both Ms. V M and Mr. B. Each adopted her and his initial Report, respectively, in the matter, each, in particular, adopting explicitly that portion of the Report which set out the grounds

[2] *The Goodman Team – Concurrent Planning;* Clatworthy, April [2001] Fam Law, 302.

for submitting that the threshold criteria were established. In response, counsel for R W again confirmed that threshold was agreed and waived cross-examination. In context, the Court took that to mean that R W had now conceded that those instances of significant harm as were detailed in each Report were now accepted by R W.

Least there be any doubt as to what was being intimated to the court, and to what purpose, counsel for R W then proceeded to seek a Direction that the parenting assessment of R W (then at Report stage) be started over again. Counsel asserted to the Court that her client was, as of that morning, a significantly "different person" and that it would not be fair to deny her the opportunity to be re-assessed. The Court was informed, in terms, that R W had dropped her former obstructive or unco-operative pattern of behaviour toward the Trust and, by her course of action that morning, had shown a remarkable change, whereby she now wished to co-operate in a process of working with Social Services toward having the children allowed home to her care. To the extent that the extant parenting assessment would not disclose that much, having been carried out before this change, justice required that R W be afforded this opportunity to have her new disposition and insight evaluated. It was suggested that this might take another 3 months.

I refused the application. This was partly because, notwithstanding counsel's assurance, I found it difficult to accept that someone with such a distinctive track as R W could have achieved quite the complete turnaround in one morning, flat. It also had something to do with what was entailed in a parenting assessment, observing, for example, the interaction between parent and child in some detail, with a view to establishing the quality and nature of that relationship and the parenting skills manifested. None of this was much affected by whether one was or was not in a co-operative frame of mind toward Social Services. More particularly, though, it was because the pace of proceedings was to be dictated by considerations of the children's welfare.

Article 3 of The Children (Northern Ireland) Order 1995 (the 1995 Order) provides;

> (2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

I do want to stress here, though, that it was represented to the Court on 5th December that R W had undergone a sea change in her attitude to Social Services and in her perception of the motivation of its personnel and, in particular, that she now recognized as fair and factual the grounds advanced to the Court by Ms. V M and Mr. B in support of a finding that the threshold criteria had been met, as at the time of Social Services initiating these proceedings.

It was not merely represented once to the Court, and all the other parties, without qualification, that R W had accepted the threshold criteria.

Application for Christmas Contact

A matter of days before the review hearing on 12th December (two, I think), a C2 application was filed on behalf of R W. Grounding an application that Christmas contact be then defined by the Court, it was stated, at para. 5;

> My 5 youngest children were taken into care on 9th May 2002. A threshold hearing was held on 5th December 2002 and I as the First Named Respondent *conceded the threshold criteria* and *pledged* to work with Social Services with a view to the rehabilitation of my family. (*My emphasis*)

In the event, I declined the application, taking the view that the minutiae of such contact, and the monitoring of what contact was feasible, on the ground, was for Social Services to determine, in accordance with the Interim Care Order.

At that same review, the case was timetabled for final hearing.

Assessment Reports by 13th January, 2003
Trust Final Report and Care Plans by 6th February.
Parents' Statements by 20th February.
Guardian Ad Litem Report by 27th February.
Final Hearing on 6th March, 2003.

Application for Transfer

A further C2 application, dated 29th January 2003, just ahead of the review next day, then arrived. This time, the application was for transfer of the proceedings to the High Court. A letter from the office of the solictor acting for the children, also dated 29th January, was faxed to the Clerk of Petty Sessions, protesting that the document had been received at only 11.00 am that morning and constituted "entirely insufficient notice", where that solicitor (who had been conducting the matter in person at all critical points) had appointments all day. The Guardian could not be available until 11.00 am. At hearing, I was struck by the fact that counsel for R W sought to answer this issue by pointing out that she had mentioned that intention to bring a transfer application to the Guardian personally the previous week. There was not the slightest apology for such lack of basic consideration, never mind Rules of Court.

It has been a hallmark of this case – and common practice in many others before Omagh and Dungannon Family Proceedings Courts – to deliver a Form C2 request to the Clerk with little or no notice, expecting the issue thereupon to be addressed at next review, as of right. The present culture allows the party concerned to avoid giving due notice to others of significant initiatives in respect of which such other parties are entitled to consider their position for a reasonable period in advance. This lax practice occasions unwarranted burdens upon busy court staff and, of course, means that the Bench is often expected to give a ruling at next review without any forewarning. Experience in the instance case, in particular, has made it apparent that these deficiencies in practice need to be addressed.

Relevant provisions of The Magistrates' Courts (Children (NI) Order 1995) Rules (Northern Ireland) 1996 are as follows;

Directions

15. - (1) In this rule 'party' includes the guardian ad litem and where a request or direction concerns a report under Article 4, the welfare officer.

(2) In any relevant proceedings the court may, subject to paragraph (4), give, vary or revoke directions for the conduct of the proceedings, including-

(a) the timetable for the proceedings;

(b) varying the time within which or by which an act is required, by these rules, to be done;

(c) the attendance of the child;

(d) the appointment of a guardian ad litem whether under Article 60 or otherwise, or of a solicitor under Article 60(3);

(e) the service of documents;

(f) the submission of evidence including experts' reports;

(g). the preparation of welfare reports under Article 4;

(h) the transfer of the proceedings to another court in accordance with the Allocation Order;

(i) consolidation with other proceedings;

and the clerk of petty sessions shall, on receipt of an application, or where proceedings have been transferred to his court, refer the application to the court to consider whether such directions need to be given.

(4) Directions under paragraph (2) may be given, varied or revoked either-

(a) of the court's own motion and having given the parties notice in Form C3 of the intention to do so and an opportunity to attend and be heard or to make written representations,

(b) on the written request in Form C2 of a party specifying the direction which is sought, filed and served on the other parties, or

(c) on the written request in Form C2 of a party specifying the direction which is sought, to which the other parties consent and which they or their representatives have signed.

(5) In an urgent case, the request under paragraph (4)(b) may, with the leave of the court, be made-

(a) orally,

(b) without notice to the parties, or

(c) both as in sub-paragraph (a) and as in sub-paragraph (b).

(6) On receipt of a request under paragraph (4)(b) the clerk of petty sessions shall fix a date for the hearing of the request and give not less than 2 days' notice in Form C3 to the parties of the date so fixed.

(7) On considering a request under paragraph (4)(c) the court shall either-

(a) grant the request, whereupon the clerk of petty sessions shall inform the parties of the decision, or

(b) fix a date for the hearing of the request, whereupon the clerk of petty sessions shall give not less than 2 days' notice in Form C3 to the parties of the date so fixed.

(8) A party may request, in accordance with paragraph 4(b) or (c), that an order be made under Article 11(3) or, if he is entitled to apply for such an order, under Article 57(1), and paragraphs (5), (6) and (71) shall apply accordingly.

(9) Where, in any relevant proceedings, the court has power to make an order of its own motion, the power to give directions under paragraph (2) shall apply.
(10) Directions of a court which are still in force immediately prior to the transfer of relevant proceedings to another court shall continue to apply following the transfer, subject to any changes of terminology which are required to apply those directions to the court to which the proceedings are transferred, unless varied or discharged by directions under paragraph (2).
(11) The court shall record the giving, variation or revocation of a direction under this rule in Form C18 and the clerk of petty sessions shall serve, as soon as practicable, a copy of the form on any party who was not present at the giving, variation or revocation.

Where all parties are agreed that a particular direction should be given, the proper course is to file a request in Form C2, signed by all parties. Unless, upon the matter being referred to it by the Clerk of Petty Sessions, the Court feels a hearing on the issue is required, the direction can then be given administratively. If it is not a consensual application, a request in Form C2 is filed and served by the moving party. The application does not come before the Court until the Clerk has given not less that 2 days notice to all parties in Form C3, all of whom are expected to attend the designated appointment for hearing of the request (which does not in any way have to be the date already fixed for next review of the proceedings).

The only exception to this procedural requirements is where the moving party has obtained leave of court, in "an urgent case". The mere fact that the moving party's representative has found it convenient to sidestep the Rules does not make the case urgent.

Para. 5 of that second, post "sea change", C2, dated 29th January 2003, read as follows;

The subject children were removed from my care on 9th May 2002 and have resided at various addresses since then. I conceded the Threshold Criteria *on some issues* in respect of the current proceedings on 5th December 2002 and am willing to work hard and engage with the relevant authorities to do whatever is necessary in order for Social Services to consider returning my children to me. However, despite my willingness *now* to comply with whatever work is deemed necessary, Social Services are reluctant to offer me the Parenting classes I have requested. My children are distraught at the separation and constantly state that they wish to come home again. Since in or around September 2002, it has emerged that my youngest children have made disturbing allegations of sexual abuse and despite investigations by PSNI and Social Services, I have not been kept informed of the nature and status of their enquiries, I believe my involvement with my children has been gradually eroded and marginalized and have recently been informed that the Trust are now proposing permanency planning in respect of the subject children.

Given the seriousness of this plan and the complex and sensitive issues involved, I would respectfully request that this matter be transferred to the High

Court, by way of the Family Care Centre forthwith. Furthermore, please find attached a provisional list of expert witnesses to be called on behalf of my case. It is estimated this case will take several days and that the High Court is the appropriate forum.

List of Witnesses

1. P W (brother of R W)
2. D (surname unknown) of Harberton House
3. P A (Harberton House)
4. B W, Social Services
5. Dr. K
6. All PSNI Officers involved in all relevant investigations.
7. Dr. Sandi Hutton, Consultant Paediatrician.
8. L K (Family Centre Staff)
9. J (surname unknown) Former Family Centre Staff.

(*My emphasis*).

The intriguing feature of this document is the significant way in which the account by counsel of R W's attitudes had changed, in a matter of weeks. For the first time, it was intimated that Threshold Criteria were conceded only on *some* issues. The version of unqualified concession had been used orally on 5th December to ground an impromptu application for a direction to re-start R W's parenting assessment (and the refusal was now being laid at the door of Social Services, rather than this Court). Whether or not linked to the fact that the attention was shifting from this Court to the High Court, it was now asserted that Threshold was conceded on 5th December on only some issues. That of course is quite wrong. Counsel had conceded the threshold criteria in response to the specific list of issues adduced in evidence by Social Services, without reservation or qualification.

Needless to say, if indeed R W was only conceding some of the criteria tendered in evidence by the two Trust witnesses, the only proper course for R W's counsel at the Haring on 5th December was to cross-examine those witnesses in respect of those grounds which remained in dispute. Of course, that would then have put the Curt in a position to evaluate independently the judgment of such counsel that her client was "a completely different person" that day and had, in terms, utterly changed her disposition toward Social Services.

More than that, it is patently obvious that the person on whose behalf it was being asserted on 5th December that there had been a complete change, that she was a "different person", was already back at sniping against Social Services, as evident in that first paragraph of that latest C2.

Article 7(1) of The Magistrates' Courts (Children (NI) Order 1995) Rules (Northern Ireland) 1996 SR 1996/323 provides;

Transfer of proceedings

> 7.- (1) Where in any relevant proceedings the court receives a request in writing from a party that the proceedings be transferred to a county court or the High Court in accordance with the Allocation Order the court shall issue an order or certificate in the appropriate form in Schedule 1 to these Rules granting or refusing the request.
> (2) A copy of the order or certificate issued under paragraph (1) shall be sent by the clerk of petty sessions-
> (a) to the parties,
> (b) to any guardian ad litem, and
> (c) to the chief clerk of the county court or the Master (Probate and Matrimonial) or the Master (Care and Protection) of the High Court as the case may be.

Rule 5 of The Children (Allocation of Proceedings) Order (Northern Ireland) 1996 SR 1996/300 further provides;

> *Transfer from a family proceedings court to a family care centre*
> 5. - (1) Subject to paragraph (2) and to Articles 6 and 7 a family proceedings court shall, upon application by a party or of its own motion, transfer to a family care centre proceedings of a kind mentioned in Article 3(1) where it considers that the proceedings are exceptionally grave, important or complex in particular-
> (a) because of complicated or conflicting evidence about the child's physical or moral well-being or about other matters relating to the child's welfare;
> (b) because of the number of parties;
> (c) because of a conflict of law with another jurisdiction;
> (d) because of some novel or difficult point of law; or
> (e) because of some question of general public interest.
> (2) The court shall only transfer proceedings in accordance with paragraph (1) where, having had regard to the principle set out in Article 3(2) of the 1995 Order, it considers it in the interests of the child to do so.

Valentine notes only that;

> In applications for a care order cases of complexity and cases of sexual or serious physical abuse should be transferred to the Family Care Centre: *Re E and M* [2001] 8 BNIL 42 (Higgins J)

I allowed the application to proceed on 30th January and I refused to transfer the case. H M, through his solicitor, asked it to be noted for the record that he supported the application. I accepted the submission made on behalf of Social Services that it was not appropriate to entertain such an application after the threshold criteria had been conceded by the applicant to this Court. The question of whether the complexity of the case, or the likely length of hearing, was something which warranted an application for transfer could have been, and ought to have been, considered on behalf of the Applicant before 5th December. And it was.

On 22nd August 2002 it was noted by Mr. McElholm, RM that, at a time when the female children had raised allegations of sexual abuse, it was possible that there would be an application for transer of the matter accordingly. Whereas, at initial review on 9th May 2002, the Guardian Ad Litem had suggested that 5th September

might be targeted as the date for hearing on threshold criteria, news of these developments on 22nd August and mention of a possible transfer application caused the learned Magistrate to list the matter for further review on 5th September, but expressly not for a hearing on threshold.

At review on 5th September, it was reported to the Court that both girls had been interviewed by the Police and interviews with the parents and the alleged abusers was planned to have been completed by the 13th. At that time, it was stated on behalf of Social Services that there would be full disclosure about the allegations shortly. The Trust's view was that the case should remain in the Family Proceedings Court at that stage. An Interim Care Order was sought for a further 4 weeks, by which time the Police investigation would be well advanced. The parents were not accused, so that the only issue on the threshold criteria was with regard to the protection of the children. The Trust hoped within 4 weeks to file an addendum to cover these allegations of sexual abuse and their relevance to the threshold criteria.

A full three months were to pass before that threshold hearing took place, although there had been further allusion to the possibility in the applications before me on 31st October, 2002. There was ample time for the applicant and her representatives to consider this aspect (of sexual abuse) and as to whether it was more appropriate for a superior court to deal with the matter. They are to be taken as having decided to let the matter pass. *Re E and M* [2001] 8 BNIL 42, which commended transfer in instances of sexual abuse, was not concerned with a tangential episode of the sort here raised by the girls.

That left two other substantive grounds for transfer raised in the C2 application. The first of these complained that, even though R W had conceded Threshold, was willing now to work hard and engage with Social Services, they were "reluctant" to offer her parenting classes.

This was in fact little more than a variation on the application raised before me on 5th December 2002, seeking to have R W's parenting assessment re-started. I had refused it. I considered this aspect of the transfer application a thinly-veiled device to have the matter moved to a superior court, in case one might there secure endorsement of the proposition that one step back several months, now that R W was, allegedly, a transformed person.

The remaining assertion was that the case would take several days, for which the High Court was the appropriate forum. But much was betrayed in the "provisional list of expert witnesses" to be called on R W's behalf. The first person cited in that list was no expert witness at all. Several others were Social Services personnel, the remainder physicians. It was impossible to scan that list without recalling the spirit of that set of applications which came before me on 31st October 2002. They seemed to have little to do with anything other than allegations as to how the children had been looked after in the past, while in the care of Social Services. However, if it should become apparent at hearing that the evidence of such witnesses was not material, it was nonetheless true that a lengthy hearing might still be involved.

Nevertheless, it seems to me wrong in principle to acquiesce in the hearing of threshold criteria in a Family Proceedings Court, which therefore, so to speak, becomes seized of the hearing, and then apply later for transfer on the grounds that the case is likely to be lengthy. That amounts to an application to halt a hearing and start again. It may be warranted on the facts of a particular case, but I saw nothing here which warranted the additional delay, in a matter already timetabled for hearing.

Application to Allow Second Psychological Assessment of R W

With time continuing to tick toward a final hearing, the next C2 application on R W's behalf came before the Court on 20th February, this time an application, dated 17th February, that she be allowed to retain her own expert for the purposes of a psychological assessment and to conduct an assessment on the issue of attachment, following on from that prepared by Dr. Gerry McDonald, Consultant Psychologist. Sect. 5 stated, in the final paragraphs;

> In the interests of justice and given the seriousness of the concerns therefore, I would ask that an independent expert of similar standing be appointed by my own instructing Solicitor to compile an independent report.
>
> A Direction of the Court would be beneficial for the purposes of legal aid.

It was of course implicit that to facilitate such an initiative would inevitably necessitate delaying the final hearing.

It was contended by counsel on R W's behalf that this was a case in which there was a deep level of attachment between her and her children. Notwithstanding the change in her attitudes, there had been a failure to re-institute (or repeat) a parenting assessment. Counsel did not know how long a psychological assessment might take from here – something between 6 weeks to 2 months, after authorisation from the Legal Aid Department. R W was pursuing a complaint against the Family Centre and Mr. B was not a psychologist. She had defeated the gambling addiction, which she would cite as the cause of her failure to attend properly to the needs of the children, but was not being given sufficient credit for that achievement.

The Trust's solicitor was of considerable assistance, in her analytical approach to this proposition. The Trust were "absolutely opposed" to this application. Proceedings had been pending since May 2002 and a hearing on threshold criteria had already taken place, on 5th December. It was her submission that the C2 was inadequate in that no proposed expert was identified, there was no curiculum vitae offered in respect of such expert and no effort made to indicate timescale. The Trust were opposed to an "attachment assessment". There was no indication whether the children were to be assessed and whether leave of court was sought. The matter of Mr. B's expertise could be dealt with in cross-examination. The Care Plan, on the other hand, was very clear and the needs of the children demanded that there be a hearing as soon as possible. The mother had been seen by Dr. Cunningham, a

forensic Clinical Psychologist, and that assessment had been carried out with her consent.

The Court was advised that the Guardian Ad Litem was "at one" with the Trust, in opposing the application. The issues were in fact about chronic neglect which had endured over a very long time.

I have already recited the terms of Article 3(2) of The Children (Northern Ireland) Order 1995. In this context, *Valentine* cites *Re W* [1999] 9 BNIL 40 in support of the proposition that certainty as to the settled placement of the child should be established as soon as possible:

Further, Article 51 provides;

> *Timetable for proceedings*
> 51. – (1) A court hearing an application for an order under this Part shall (in the light of any rules made by virtue of paragraph (2))-
> (a) draw up a timetable with a view to disposing of the application without delay; and
> (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.
> (2) Rules of court may-
> (a) specify periods within which specified steps must be taken in relation to such proceedings; and
> (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that they are disposed of without delay.

I wrote earlier of how it may be expected that the Trust, for its part, in taking a child into care by reason of concerns about the quality of parenting, is to be expected to afford the parents an opportunity to address those concerns and to set about obviating the causes, with the aid of all assistance which the Trust can make available. This reflects the universal view that, all else being equal, it is much better that a child be raised by its birth parents, or by one of them at least. On the other hand, it is equally accepted nowadays that permanency for a child, with minimum changes in placements, is also of very great importance for the child's proper development; so much so that there has to be a limit upon how much time one can afford parents to show a capacity to make (at least) significant in-roads upon the sources of concern. If, after a suitable period of time, it appears that no meaningful progress is being made with respect to getting the child back home (by reason of parental failings or inadequacies), then the principle of permanency overrides and the Trust moves on to seeking alternative, long term care arrangements. I understand that something between 6 and 9 months is generally regarded, in Social Work circles, as the kind of timescale which ought to be afforded such efforts to reunite the family, before shifting to alternatives, with a view to permanency.

Article 51 makes clear that the Court, for its part, is also under time constraints, having regard to the guiding principle, set out in Article 3, that any delay in

determining a question with respect to a child's upbringing is "… likely to prejudice the welfare of the child." Whilst each situation warrants careful consideration, the force of that statutory provision must not be underestimated.

With all this in mind, I refused this latest application. The proceedings were adjourned to 10th , 11th, 12th and 14th March 2003 at Omagh, for Hearing.

Application for Third Party Disclosure
Even then, yet another C2 application appeared on behalf of R W. This one, dated 26th February 2003, sought a Direction that leave be granted for PSNI photographs, taken of C M's injuries on 29th October 2002 to be released to the Court so that her legal representatives could view and assess them.

On the continuing elucidation of R W's new perspective upon the case, based upon a resolution to work with Social Services, Sect. 5 boldly set out;

> My daughter C… is the victim of sustained and brutal abuse at the hands of her foster carers. On 28th October 2002 during a supervised contact visit, I noticed and drew attention of Social Services staff, that my child was covered in heavy bruising. On 29th October 2002 PSNI took photographs of my child's injuries and it was concluded that they were non accidental. These photos will be used in pending criminal proceedings brought against her former foster carers. PSNI require a Direction of the Court before authorizing the release of these photos to my advisors.

It was faxed to the Court on 26th February under cover letter reading "We refer to the above matter and enclose herewith Form C2 for your attention." The application came before Mr. McElholm, RM at Court next day in my absence, whereupon he adjourned it to 6th March for my personal consideration. (The date for hearing had meanwhile been re-arranged for 11th March to facilitate counsel).

This application was presented by R W's solicitor, who contended that access to these photographs was "absolutely essential" to proper presentation of the case on behalf of her client. It was an interesting feature of the review that day that, while I was favoured with a set of representatives for the parties, the rest were then appearing before the learned Recorder of Londonderry in respect of an appeal against my refusal on 20th February to afford R W a further psychological assessment by an expert of her choice. (There had been no appeal brought against any of the other recent applications, including one for transfer). As with virtually all of these C2's, I enquired as to when it first occurred to someone that the proposition in question ought to be ventilated. I was told that it had followed from a consultation between counsel and R W in January 2003, being as soon as could be arranged after 5th December, but that her solicitor had been too busy with other work to mount sooner the application, as then directed by counsel. I need hardly say here that such an excuse could never be acceptable to a Court, most especially a Court convened to consider the welfare of children and governed by the No Delay principle.

This time, the Guardian Ad Litem's solicitor led the opposition. (He had not been given notice of R W's appeal in the Recorder's Court that morning, so I had fortuitously retained the benefit of his personal contribution). C M's injuries were not material to the issues in the case before this Court. The evidence was being sought by R W in pursuit of an allegation of Trust incompetence, whereas, the solicitor reminded me, I had considered the episode in question on 31st October 2002 and had found that the Trust had acted appropriately [in response to discovery of the injuries]. It was further contended that disclosure of the photographs could prejudice Police investigations. This Court, on the other hand, was concerned with the Care Plan on future arrangements for the children. Further, he pointed out, in terms, that he reserved his position as to whether a Magistrates' Court had any power to make the direction being sought, one of third party disclosure. I ruled that it did not and that such photographic evidence, in any event, was not material.

I had occasion to consider the subject of third party disclosure in the Magistrates' Court for the purposes of a written judgment in a case of P v Kelly & Ors. at Strabane and dated 21st March 2002. In essence, I ruled there that disclosure by a third party was provided for in s.51B of the Judicature (Northern Ireland) Act 1978, as inserted by s.66 of the Criminal Procedure and Investigations Act 1966, and applied to the Crown Court only. So far as Magistrates' Court be concerned, the process of securing evidence from a third party remained confined to causing a witness summons to be issued and served upon that party, requiring him the attend Court.

Indeed, so far as a matter before the Family Proceedings Court be concerned, it further seems to me now that an application to require a third party to disclose evidence to the Court in advance of hearing is not capable of coming within the terms of Rule 15(2), including Rule 15(2)(f) (the submission of evidence, including experts' reports) and therefore not properly a matter for Form C2. Any such direction, if made, would not be one made "… for the conduct of proceedings". Furthermore, no notice had been given to the Police, who were thereby being denied an opportunity to attend and be heard. (Chf. Rule 15(4)(a)).

Witness Summonses

When I returned to chambers at the end of the day's business, (by which time I had learnt that the pending appeal before the Recorder's Court had been adjourned to His Honour Judge McFarland the next day) I found, among other papers awaiting signature, 5 witness summonses for issue on behalf of R W. Basically, they were drawn from the List of Witnesses contained in R W's Form C2 dated 29th January 2003, seeking transfer of the proceedings. One was in respect of her brother, P W, with an address in the Republic of Ireland, two were in respect of physicians and the other two were in respect of Trust staff.

The issue of a witness summons is a matter for a justice of the peace. Art. 118 of The Magistrates' Court (Northern Ireland) Order 1981.

Summons to witness or warrant for his arrest

118. – (1) Where a justice of the peace is satisfied that any person is able to give material evidence or produce any document or thing before a magistrates' court, he may issue a summons directed to such person requiring him to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

A Resident Magistrate embraces within his functions that of a justice of the peace. Thus, Art. 3 of the 1981 Order provides;

Functions of resident magistrates and justices of the peace other than resident magistrates

3. – (1) A resident magistrate sitting alone may, as well as exercising any function which is conferred by any enactment upon a resident magistrate or upon a justice of the peace, exercise any function which under any enactment may be exercised by –

(a) two or more justices of the peace; or

(b) two or more resident magistrates.

It is well-settled that the decision as to whether a person is able to give material exercise must be reached with due consideration. (R v Derby Magistrates' Court, ex p B [1996] AC 487,[1995] 4 All ER 526). With that in mind, I asked that R W's solicitor, who was waiting outside to collect the papers, appear before me.

In the ensuing discussion, it was readily conceded that the application for a summons in respect of a person resident outside the jurisdiction could not proceed. As to the other witnesses, I was informed – as anticipated – that the evidence of all the witnesses would concern the detection and treatment of the injury sustained by C M in October 2002. Upon asking how this was material to the issues arising in these proceedings for a Care Order, it was explained that one sought to have the two physicians attend Court with notes and any reports on C M – and, indeed, M M and E M. They had found that all three had bruising and that C M's had been non-accidental. R W had been so advised by a Social Worker around 28th to 31st October last year. The witnesses were material to answer questions as to whether the bruising was indicative of a one-off assault on C M, or whether there was evidence of sustained assaults [as had already been alleged in the Form C2 upon which I had ruled earlier in the day, *qua* Resident Magistrate]. This was material to the issue as to whether the Social Worker had reacted appropriately to concerns expressed by R W as early as 5th July that year. Such evidence, it was submitted, was both essential and relevant.

When I asked just how all this might be concerned material to the Care Plan, it was contended that if, indeed, it should prove to be the case that the injuries had been incurred as a result of sustained abuse and that Social Services had failed to act properly, then this would reflect upon all the Reports and upon the conclusions.

I decided, upon some clerical details on the face of the documents being perfected, to issue these summonses. In essence, the decision turned upon whether I saw myself as acting in my capacity of justice of the peace or, in reality, as the Magistrate who had seisin of the case, intimately acquainted with the proceedings. I reasoned that, should such papers be put before any other justice of the peace and such an explanation offered, they would be issued. It may very well be that the need to be satisfied that a person is able to give material evidence or to produce any document or thing before a Magistrates' Court means that, whosoever the individual might be, and whatever his grasp of the case, he must, personally, be satisfied. Conversely, it cannot mean that he be satisfied only with the benefit of a detailed grasp of the case. The two physicians could undoubtedly produce documents, namely the childrens' medical records. Those were undoubtedly capable of being material to any range of issues which might arise at hearing. The Social Workers were certainly likely to be in a position to give evidence capable of being regarded, at hearing, as material. I therefore decided upon the cautious approach, so far as the functions of a justice of the peace were concerned.

Ultimately, with the appeal to the Care Centre (with respect to my refusal to direct a further psychological assessment by an expert of R W's choice) having been dismissed on 7th March, the matter finally came on for final Hearing on the 11th.

The Hearing

Miss K was the first witness called by the Trust. She co-authored the Report from the Family Centre with Mr. B and adopted their joint Report in respect of R W (the parenting assessment), dated 8th January 2003. The Report text explains that it arose from a request to the Family Centre from the Trust, as part of its Care Plan, that the Centre carry out an assessment of R W and H M's parenting capacity and potential to make change. R W, however, made it clear that she was seeking to the children returned to her sole care and that H M's role would be limited to providing care in emergencies. It had therefore been agreed to assess R W alone. Miss K had not carried out the direct observations at contact (that being done by Mr. B).

For present purposes, she highlighted that R W had shown a big change in attitude during assessment between June and September, 2002. In particular, she turned up for all assessments and engaged with her. In seeking to assess R W's parenting skills, care was taken to use simple, concrete terms. Nonetheless, R W consistently disagreed with most concerns, as had grounded the initial application for an interim Care Order, although she did concede that she was absent from the house sometimes. R W stated on a number of occasions that Social Services "had it in for" her and had thus constructed the allegations to get the children off her. She had a series of allegations against seemingly everyone else who was responsible for care of her children since then (page 9 of the Report). She admitted a gambling addiction on 21st June 2002, but retracted this on 28th June, when she saw the notes from the previous session.

R W had recourse on occasion to what was described as "back slang" when communicating to her children. This is a kind of dialect, or perhaps a distinct

language, of which there are apparently different varieties, as compared to, say, Glasgow, Birmingham or Manchester. After one session, R W reportedly spoke to her daughter M M in this language, but staff could not understand anything of it. Miss K herself heard no evidence of back slang being used but, then again, contact meetings were chaotic and noisy.

Page 15 of the joint Report detailed how R W refuted concerns.

R W gave indication of some understanding that children should be supervised; but what she said varied from what happened, as detailed at page 19 of the Report. She alleged that both P M and G M had been physically and sexually abused at Harberton House. Both Miss K and Mr. B wrote to the Trust about the allegation, though their understanding is that there has been no direct complaint. The Report, I may say, details how R W, at first, described herself as "worried sick" by allegations from the three youngest children that they had been sexually abused, of which she did not know the details. Then again, later, she said that only one child was making such allegations and that she did not believe that anything had happened. She was sure that, if anything had indeed happened, the children would have told her about it. She stated that Social Services had made up the allegations to justify keeping the children in care.

Miss K also highlighted page 27 and onward from the Report, for the purposes of her evidence to the Court. R W said she read to the children, but all, bar C M and M M, have had learning difficulties, the inference, as I understand it, being that this would not be likely if her mother did indeed read to them.

With respect to supervision, Miss K felt there was little interest paid to the children's needs, e.g., they did not have school bags. There was no encouragement to learning. R W minimized E M's learning difficulties. The Report (page 30), recorded that she did not apply for nursery places for the children in their pre-school years. She had limited understanding of the importance of play in overall development of a child. Her own experience of it was limited (as exhibited in her being unable to complete a jigsaw puzzle designed for children of C M's and E M's age ["How do you expect wains to do these jigsaws? I can't do them myself"]. This would make it difficult for her to meet the children's needs.

On matters of guidance and boundaries, as detailed at page 35 of the Report, R W minimized a lot of the delinquent behaviour. She claimed there were no difficulties when the children were at home (which assertion could not be reconciled with their behaviour outside). [Just one example from the Report: "P… and G…'s behaviour at local leisure center had been so extreme that they were barred from it. Ms. W…'s attitude to this was that the boys had been barred from the center for "messing""(p. 36)]. She seemed able to see how other kids were influenced by their carers, but did not seem able to see her own responsibility as a role model."]

R W had reinforced the misbehaviour by minimizing and denial. The children, like her, "gamble" on whether they get caught. This pattern was reinforced by the likes

of their mother driving illegally, despite numerous court appearances and fines, until she was sent to jail. The older kids were aware of this history.

Miss K did not believe that R W had given her children guidance and set boundaries. Whereas she says she will be at home, it is not considered likely that she would be there all the time. The extreme behaviour adopted by the children remained a deep concern. The many house moves had effects on both a sense of security and on education and health care.

The conclusions by Miss K and Mr. B were that R W loved her children and would do anything to get them back. Her perception as to why the children were in care had not really changed, save for the concession that she had been unavailable. She still minimized the lack of attention to health, but still used health problems on the part of the children as some justification for difficulties.

R W attributed malicious intent to others, especially Social Services. Concerns remained about her views on acceptable behaviour and her difficulties in setting boundaries. Miss K and Mr. B had concluded that there would need to be a psychological assessment on the issue of contact, but there was now a Report from Dr. Cunningham.

As detailed at p. 45 of the Report, Miss K felt that R W would say whatever she felt she had to, but would revert to former patterns if the children were returned to her.

In what was perhaps the most illuminating observation upon R W in the entire body of evidence, Miss K remarked that R W was very goal-focused. Her fixation was upon finishing the task, winning the game, rather than upon the process. If the children were allowed home, that would constitute the end of the game and the incentive to continue with the programme would cease to exist.

In other words, R W would feel it unfair if, on any basis, the game were halted before she had been afforded time to work out how to win it (a trait, I might add, to be found amongst some trial lawyers). Miss K advised that we were talking years and years, as to how long it would take to change R W's mind set. The witness felt that the children should not be returned to their mother's care, accordingly. It was not clear whether R W was satisfied with the Report. Before it could be discussed with her, she had made a complaint, so she was simply supplied with a copy.

When cross-examined by counsel for R W, Miss K agreed that H M had shown himself able to provide "good enough" parenting to the two boys, P M and G M. As regards the *possibility* that R W might change (sufficient to provide the same for the three youngest children), Miss K opinion was that it would not be worth the risk to test this out, given the timescale involved.

It was put to Miss K by R W's counsel that her client had accepted the threshold criteria at Hearing on 5th December 2002 [N.B.; that proposition was unqualified]. Miss K acknowledged as much, but added that this did not come as a surprise; R W

would do anything to get her kids back. The "change of heart", she added, may have been influenced by the fact that the threshold criteria had been met. She did not agree with counsel that the concession reflected a process of change on R W's part. Miss K believed that R W had disputed threshold up to that day.

Miss K was then referred to R W's first Statement on Threshold, dated 25th July 2002. It was acknowledged that at para. 1(i) R W conceded that there had been a want of dental care and that she also conceded her criminal convictions, at para. 1(b). However, Miss K's view was that these limited concessions simply did not address the enormity of the difficulties.

With reference to the notion of further parenting assessments, Miss K pointed out that this had been refused by the Court. Further, she could not undertake them, in light of R W's complaint about her behaviour at previous contact meetings, a complaint which Miss K vehemently denies.

The witness did concede that many moves were a pattern of the travelling community. These were not the *cause* of insecurity, but their impact was different in this context.

Miss K disputed that there was strong attachment, although mum was a strong role model. "Attachment" concerned how a child behaves in order to get attention. They are "insecure" attachments in this family because the children have to adapt their behaviour. Children are confident at times of stress if attachment is strong. It had been noted that C M and E M would go to their elder sisters S M and M M more than to their mother during contact visits. Their's was a closer attachment (although it was pointed out that the Family Centre had not been asked to assess these elder sisters as possible care-givers).

With reference to questions from counsel about the intention to reduce contact under the proposed Care Plan, Miss K said that the issue was one of balance. The kids placed great importance upon their relationship with M M and S M, but they have a greater need for security and consistency. The mother is a strong role model. Her potential for disrupting placement of the children, through her access afforded by contact, had to be borne in mind. "I do not think that frequent contact with mum is necessarily a good thing."

In succinct cross-examination by counsel for H M, Miss K agreed that he was doing "quite well". He seemed happy to accept support and guidance. There was no evidence of him causing "harm" to the current placements and was less of a risk in this respect than R W.

It was left to the children's solicitor to elicit some core factors emerging from the evidence of Miss K.

Local Social Services involvement with the family began in 1999 and again in June 2001 (following rows between R W and H M). The Trust had tried to assist the family without need of court intervention. This prove impractical, due to:

1. Limited insight;
2. A failure to recognize the seriousness of concerns; and
3. A failure to accept the advice of the professionals.

With reference to the suggestion that R W had undergone a "sea change" on 5th December 2002, the witness was asked to highlight a series of points from her Report, jointly with Mr. B, dated 8th January 2003.

Page 8/9 R W consistently disagreed and felt that the kids' behaviour had in fact got worse. She asserted that P M had a "short brain band" (page 10). She was not taking responsibility for the impact of her own behaviour on her son.

Page 11 She asserted that Social Workers would contradict her when she was imposing boundaries.

To return her children would remove the incentive to change.

Page 13 She did not see the misbehaviour of the children as wrong in themselves.

Page 14 She attributed the cause of the children being taken into care to the fact that she had just missed a few appointments.

Page 15 She maintained that the concerns about hygiene were unfounded. Excuses followed.

Page 16 She expected others to play the key role.

Page 18 She asserted the Social Services had made up the allegations of abuse in order to keep the children in care.

Page 25 detailed an incident of sheer aggression.

Page 28 She blamed the teacher for the fact that M M was not happy at school. She vehemently denied that the children did not have school bags.

Page 36 She asserted that the boys were just "messing" and rationalized that there was no evidence against H M, Jnr. about the shoplifting.

Page 42 Her attempts to attribute the children's dysfunctional behaviour on grounds of ill-health.

Page 44 The minimizing of concerns and blaming others were strong themes. In her Statement of July 2002, she disputed that the threshold criteria had been met.

The only "change" which was observed was that R W attempted to co-operate; i.e., she turned up. Turning up does not mean that she is capable of changing.

In re-examination by counsel for the Trust, Miss K said she did not believe that the real implications of the Trust's concerns had been internalized by R W – that she could understand them.

Mr. B, co-author with Miss K, was called next on the Trust's behalf. He adopted the Report dated 8th January 2003 in respect of R W. He was also sole author of a Report dated 10th January 2003 in respect of H M, which he also adopted.

As set out in the latter Report, the Family Centre was asked to complete an assessment of H M's capacity to parent his son G M after the breakdown of his placement with his paternal aunt and at Harberton House Children's Home. Later, P M's placement with his maternal uncle in the Republic broke down and he was then placed with his brother G M at their father's house. The Report on H M was therefore extended to make reference to P M as well.

With respect to R W, Mr. B explained how he found her parenting skills defective, on foot of observations carried out between June and October 2002. She tended to operate by way of directives; "Do this; do that", as opposed to "Why don't we…" The result was that the children's difficult behaviour would be exacerbated. The kids tended not to be noticed when they were doing something positive. R W might focus, for example, on a long game of draughts with one child, while others were acting up around her [the lady whose fixation was upon winning the game, and persisting with it until she worked out how to do so]. He referred also to a series of points elucidated further in the Report;

Page 20 There was a lot of unsafe play. The issue of going to the toilet was a major one. The quality of contact for the children was not good; was in fact "chaotic".

Page 14 Concerning the allegations of sabotage, the mobile phone was a key issue. Whenever it rang, she would take the call. There would be discussions with R W as to how she could best use contact opportunities. It was conceded, however, that the mobile phone was not mentioned in these. Mr. B, for his part, was not aware of "back slang" being used during contact sessions.

Page 21 The incident, whereby R W reinforced E M's misbehaviour by kissing her, leading C M to immediately engage in precisely the same dangerous behaviour of sliding on the floor with her foot inside a plastic bag.

Page 23 and onward set out the grounds for concluding that the children were not as close to R W as she would suggest. They were relaxed and spontaneous in the company of S M and M M, in particular, and also preferred their father's more relaxed approach. Of R W,

> Her directive and intrusive style of parenting appears to engender avoidance behaviours in the children … (page 24)

Again,

> Ms W…'s tendency to demand that the children act or react in a certain way has often resulted in them seeking out either their sisters or the supervising social work staff to alleviate the pressure on them. (page 24)

Or;

> Following the birth of M… M…'s baby daughter in September, Ms W… spent a significant amount of time during contact visits nursing her granddaughter and had been heard telling the children that this was her baby. C… aged 4 years appeared particularly affected by the baby's presence at contact visits. This is likely to be because she would have seen M… as her main carer and also it was likely that the child would look at the baby as having replaced her in her sister's and mother's affections. For example on 3rd October 2002, C… was extremely distressed when it came to leaving the centre after a contact visit at which the baby was present. Ms W…'s response to this was to arouse the child and the other children further by engaging in an aggressive argument with the supervising social worker outside the family centre. At one point she rang her solicitor on her mobile phone and shouted to C… to "tell the man why you are crying." On 29th October C… was found to have been the victim of significant physicial abuse while in the foster home of her paternal aunt and uncle. While C…'s treatment in the foster home may have been the main reason for her distress, Ms W…'s excessive reaction to the situation made it difficult to communicate with C… so as to find out the cause of her distress. Moreover on her return to the foster home, C… presented as happy and displayed no distress. In hindsight it would appear that C… has developed a strategy to try to "protect herself" from harm which involves suppressing her feelings when in proximity to those who (sic) she views as dangerous. It is unlikely that C… has developed this strategy since going into care but that it is a strategy that C… has developed through infancy and childhood. Research on attachment highlights that children develop strategies to achieve proximity to caregivers. If the caregiver is unresponsive or threatening they still try to achieve proximity while minimising the undesired responses i.e. rejection, aggression. Again, it is significant that C… goes to her older sisters more spontaneously than her mother.
>
> While Ms W… co-operated with Centre staff immediately following the incident referred to on 3 October, in trying to ensure the end of contact was less emotional, she does not agree that her relationship with her granddaughter is likely to cause anxiety to her other children. This demonstrates that while Ms W… states that she and the children are close, she does not appear to have the emotional awareness and empathy to see things from the children's perspective or to comfort the children when they are distressed. Rather she demonstrated that her hostility to social services overrode the children's needs for comfort and reassurance. (Pages 26/27)

When I read passages like that, I am reminded of the remark from R W's counsel on 20th February 2003 that Mr. B [or his co-author, Miss K, for that matter] was not a trained psychologist. Well, you do not have to have a psychologist's particular professional qualifications to see that the kind of behaviour patterns detailed in the

above are dysfunctional; it simply requires insight, maturity and common sense (and, in saying that, I do not intend to minimize the wealth of applied study which informs the approach of such as Mr. B and Miss K). The whole point of arranging supervised contact in these circumstances is to allow precisely those qualities to be brought to bear upon observation of the parties in action. The conclusion drawn in the Report by the authors strike me as fair, reasoned and probative. I very much hope that we are coming to the end of an era in which professional Social Workers of considerable experience are to be subjected to gratuitous treatment as some kind of well-intentioned amateurs whose opinions can be treated by lawyers in court as lacking adequate professional standing. Where they are of sufficient field experience, Social Workers are properly to be regarded as expert witnesses on matters of opinion which lie within their competence.

The children all showed that they had a limited understanding of play.

> The children have not learned to play or develop play skills comparable to other children of their own age and stage of development and generally revert to destructive behaviour when using play equipment. This is not limited to the younger children. It is also true of P… and G…'s play skills.

Mr. B pointed out that contact has to be for the benefit of the children. If it is not having the desired effect, that has to be addressed.

The recommendation in the Report was that the children be not returned to R W because she was assessed as unable to implement the necessary strategies in order to help her children meet their potential.

Under cross-examination on behalf of R W, the witness pointed out that in order to get to an actual parenting programme, the subject would have to accept the gravity of the concerns, which R W did not. What R W was doing was not sufficient to meet the needs of the children. The level of damage being done to them was so great as to be irreparable. Mr. B rejected the notion of further classes; attempts had previously been made (and failed) to engage R W. The children's needs have to come first and one was bound to ask: How long must this go on?, he posed rhetorically.

R W was pre-occupied with apprehensions that the children had been injured, saying that Social Services were aware of something but not telling her. She expressed concern from time to time, each dealt with. What happened to C M on 27th October, he said, was very distressing, but he and his colleagues had no idea that anything like this would happen.

It was put to Mr. B by R W's counsel that P M slept with a picture of her under his pillow. Mr. B responded that this did not necessarily mean that his was a positive, secure attachment to her. To the assertion that it indicated the boy was "grieving", Mr B characterized this as a very strong word. He missed his mother – it was not being suggested that P M did not have feelings for his parents. We had to bear in mind, he added, the times when his mother was not available to the children when

they needed her most. Children do love their parents; separation brings out such feelings, but one needs to address the quality of care provided. M M and S M had been the most consistent carers and the younger children would have been negatively influenced by those older siblings, who also took them to inappropriate places.

With respect to future contact, it has to be positive. It had to be reduced if it was not benefiting the children, building positive relationships with each other and bringing these into the outside world. Whether the entire family could benefit from assistance in this respect depended upon what one meant by assistance; but it would take a long, long time.

Mr. B also expressed the view that M M was losing out by being separated from his immediate siblings, C M and E M. He was however very quiet and there remained a degree of uncertainty as to whether he benefited from a separation from all the others. Resources had to be directed to help him understand and Mr. B trusted that social services covered this in their Care Plan.

In cross-examination by counsel for H M, the witness confirmed that the former attended the same contact sessions. He agreed that H M's parenting style was quite different in respect of all the children, although historically his role was secondary. From observations, and from what H M told him, his role was limited by R W's wishes. The children were more relaxed in his company and sought his attention.

G M and P M continued to live with H M. Their behaviour had improved and Mr. B believed that there were no subsequent anti-social reports about them. H M had been observed in contact sessions with the three youngest children alone and there were no concerns. They were relaxed in his presence. There were no plans to assess him separately, as regards his capacity to parent M M, C M or E M. H M was described as "gentle" in his interaction with the children and in chatting with them. The witness had seen nothing to suggest that contact was not of benefit.

At this point, counsel emphasised that H M did not envisage overnight care of those three children at this stage and that counsel would focus on the proposition that there be more contact between them and their father.

On the proposition put to him that it would be beneficial if M M were allowed to visit G M and P M at their father's house, Mr. B expressed concern about the effect of the elder boys, as in the past. M M, he added, could give as good as he got.

H M co-operated well and is coping well with the two boys. In addition, he has shown himself willing to accept assistance from professionals.

Under cross-examination by the children's solicitor, instructed by the Guardian Ad Litem, Mr. B confirmed that H M was capable of looking after the two older subject boys, P M and G M. He described H M as a learner parent, which I took him to intend as a positive observation; that he was willing to learn. However, Mr. B

cautioned again, as is emphasised in many places in his Report dated 10th January 2003, that H M's parenting ability would be severely tested by having care of both boys, now that P M had joined his brother. The witness felt that H M's hands were full, even with G M alone. Mr. B emphasised that the big concern was of the arrangements breaking down, if the three youngest children were added. Both Home Help and Family Aid were needed for support and guidance.

Turning to R W's presentation during assessment, Mr. B recounted that much of the interview sessions was taken up with her expressions of unhappiness. Much of the contact sessions were spent examining the children, searching for evidence of non-accidental injuries. Her issues with the Trust tended to override everything else. Where she could not control her children in one room, it was difficult to see how she could do so in a family house.

Between June 2001 and May 2002 attempts were made to have R W engage with Social Services. Since then, up to October 2002 Mr. B saw no evidence of a change in her capacity to look after the children. She continued to see all difficulties as made by others. Speaking generally, the mindset of a maladjusted individual must change before any level of help can make a difference.

Under re-examination on behalf of the Trust Mr. B conceded that there had been some limited change on R W's part, but it was not lasting. The change noted was very minimal. One could argue, he admitted, that this represented a start, but the question was how long it might take before true and enduring change was established. The needs of the children could not wait indefinitely. He was concerned about both the capacity to change and the capacity to sustain change, on R W's part.

The next witness called by the Trust was Dr. G I Cunningham. He was the co-author, along with Dr. Mairead Ni Eidhin, also a Clinical Psychologist, of a Report dated 4th March 2003, which he duly adopted, upon their psychological assessment of R W, on instructions of the Trust. They were briefed to evaluate the subject's ability and level of insight into parenting responsibilities and her capacity to discharge those responsibilities in an adequate and appropriate manner.

At the outset of the project he met the children separately, in the presence of two Social Workers, in order to evaluate the feasibility of doing some family work, with the unit as a whole. The proposition was not really viable. It what I found to be the other most telling insight in the evidence taken in these proceedings, he considered that each of the five children were extremely needy, perhaps the children most competitive for attention he had come across. As a result, they simply did not work as a group. Their respective individual needs were just too profound. The competition for "space" was "intense."

On the subject of the number of moves experienced by the subject children, Dr. Cunningham characterized these as a "bewildering array". Dr. Cunningham invited the Court to consider how it must have seemed from the children's point of view.

He reasoned that, in ordinary families, any house move is carefully considered, with such things as the potential impact on school arrangements factored in. Sometimes moves are necessary. Here, many seemed unplanned and there was no evidence of negotiating on these with the children.

To interpose here for my own part, I was not critically exercised by this specific aspect of the family history. Both parents originate from the travelling community. R W, in her evidence, was to describe herself plainly as a gypsy. I am cautious about bringing to bear upon this particular issue the values of what, in some respects, is a distinctly different culture. I recognize, of course, that frequent moves are potentially de-stabilising, but much turns upon the way in which they are explained or perceived within the particular family and its supporting cultural values. Conversely, whatever the cultural context, it is legitimate to examine how such moves were perceived by the children and the consequences the house moves had for these particular children and their sense of security.

Dr. Cunningham found that R W had a proclivity for not thinking things through, or for not following them through, as stated in his Report. There, he highlighted her failure to complete M M's sessions with the Child and Family Team members, as there were suggestions that the child was suffering from ADHD. R W pulled out when she decided that the team members were "winding her up." Her son P M was also referred, but his mother stopped getting appointments and did not follow this up. She had a history of driving offences. Her son H M, Jnr. is now on probation for stealing and breaking and entering, while her eldest son has a similar driving conviction to her.

Her Full Scale IQ was found to be "… within the extremely low range of ability", the bottom 2% of the population, said Dr. Cunningham in his evidence. She was also found to have very limited psychological resources to cope with demands. The Report stated that "… she is chronically overloaded with demands that she is unable to meet. Individuals with this degree of stress have a less than average ability to persevere in the face of obstacles, a limited tolerance for frustration and a propensity towards engaging in impulsive actions."

The tests indicated that she was purposefully avoiding self-focussing. The Report explains that this trait was frequently found in people with a poor sense of self-worth. Just to draw again from the Report itself at this point, it was there stated (page 2);

> Ms W… felt that Social services became actively involved with her family due to allegations of physical assault by her daughter S… pertaining to her father. Ms W… spoke about wanting her children back, not seeing enough of them and said if she had her time again she would be much stricter on them.

Taking all test findings together, the personality characteristics elucidated are relatively enduring traits. To change them would be a lengthy process, not easily

done. It might well be that only relatively modest changes could result. The amount of time required would be very great.

R W needed repeated statement of simple facts. She had a complex of limitations – low IQ, personality, history. It would be extremely difficult to achieve the type of change necessary to feel that the children would be safe in her care.

These particular children require highly skilled parenting. It had been "incredibly" difficult for staff at Harberton with respect to G M and P M. Their distress was more ingrained than merely what resulted from the separation from their parents. (I think it was at this point, in particular, that I interjected that it spoke highly of H M's achievement that he had managed to provide sustained care of those two boys where others had failed. This seemed to cause something of a rustle in the wings, whether of defensiveness or glee, depending upon one's seat.) In short, Dr. Cunningham could not recommend that the children be returned.

During cross-examination by counsel for R W, we got into a rather academic discussion as to the value of continuing contact with birth parents for children in long term fostering. It began with counsel asking Dr. Cunningham whether he had any suggestions which might enhance the quality of contact. He responded that R W's behaviour is of crucial importance, and whether the children are settled (in their placements).

I leapt in, armed only with the fruits of that recent training seminar, where one was also addressed by Dr. Danya Glaser, Consultant Child and Adolescent Psychiatrist. There, she had presented a paper entitled *Contact To Children Who Cannot Return Home.* On the matter of timing and frequency of such contact, Dr. Glaser advises social work professionals, quite plainly, that contact must be reduced after a full Care Order has been granted. Early contact thereafter was desirable if the birth parent was supportive of the placement, but should be delayed to allow for settling in if this were not the case. Such contact, once underway, should be sufficiently frequent to be meaningful and not too unusual or special, but sufficiently infrequent to allow for the new attachments to develop and to be sustainable by both the biological parents and the alternative carers.

Dr. Cunningham, though familiar with the thesis, was evidently ambivalent. His point was that, while contact was usually reduced after long term placement, there was in fact no empirical evidence to support the thesis that this course was the better one. (Dr. Glaser had also pointed out that there was no empirical evidence, either way, as to whether continuing contact did or did not disrupt placement). His view was that if it did not unsettle the child in his placement, contact was a good thing.

With regard to H M's achievement with the two older boys (which I believe was elicited during cross-examination on his behalf), Dr. Cunningham pointed out that the boy's own motivation was highly relevant to explain that turn of events. They positively wanted to live with their father. On the other hand, he did concede that H M must have some relevant skills.

In response to cross-examination by the children's solicitor, Dr. Cunningham confirmed that he had met with R W on 15th December 2002, 9th January 2003 and 24th February. In the context of an assertion that she had undergone a sea change in her attitudes on 5th December (at the hearing on threshold), the witness confirmed that R W still attributed all problems to Social Services. He reiterated, by reference, all which was set out in the Clinical Interview section of his Report. This was not indicative of someone who had gained genuine insight. She would make remarks like, "Social Services have put me through hell." She cited only issues of hygiene and dirty nappies as the reasons for Social Services intervention. She claimed that the children were never left unsupervised. Features elicited in his enquiry were;

1. An emphasis upon her own needs,
2. A failure to recognize the needs of the children – a feature he was at pains to stress, and
3. A refusal to accept advice.

He agreed that a role model would be very important for difficult children. R W's use of the mobile phone during contact sessions was reflective of her personality and priorities.

With respect to M M's placement, apart from his sisters, Dr. Cunningham again highlighted that each of these children had individual needs. Some children are best dealt with singly, although he pointed out that he was not in a position to assess the individual needs in these cases. However, these children were highly competitive for attention.

The next witness called by the Trust was Mr. B W, Social Worker. He was one of the persons listed a witness on behalf of R W and the Trust were simply making him available for questioning by her counsel. Such questioning was focused solely upon the events on 29th October 2002, when young C M was seen to bear an extensive bruise on her back. Counsel's questions went on for some minutes, covering how the injury was spotted and by whom, what action he took there and then and had covered the events up to the point when he had set out with some of the family to report to his more senior colleague before the children's solicitor make objection to the line of questioning, on the basis that the issue was not material to these proceedings. It was an attempt to divert them into an enquiry as to the professional conduct of Social Workers with respect to that episode. Whatever concerns R W had about that were amenable to investigation through complaint procedures; they did not bear upon the Care Plan. He also reminded me that this Court had ruled, on 31st October 2002, that Social Services had responded in an appropriate manner to the incident.

I upheld that objection. I pointed out that these Social Work personnel had their rights (with regard to specifying allegations being made against them, affording them appropriate legal representation and reasonable opportunity to prepare their case in response, trial before a suitable tribunal, and so forth). This was not the place

to subject those concerned to some kind of disciplinary enquiry. When I, in turn, alluded to the fact that I had already heard evidence on the subject and made a ruling, counsel relied upon her instructing solicitor in asserting that it had not been then established that C M's injuries were non-accidental. That was not factually correct, as I pointed out (see above). I ruled, in terms, that this Court would not entertain an investigation on issues respecting the professional conduct of the Social Workers in responding to reports or findings that C M had been subjected to non-accidental injuries while in the care of wider family members. Such issues were not material to the instant case.

We returned to the proceedings in hand with the evidence of Miss V M, a Social Worker with the Trust. She was co-author, along with Ms J C, of the initial Report, referred to at Hearing as Statement One, dated 18th February 2002, and of the update Report dated 20th June 2002, referred to as Statement Two. She was also the author of the Article 33 Report dated 12th August 2002, which grounded the application at that time for leave to have P M reside outside Northern Ireland with his maternal uncle and his wife. The witness also co-authored, with Ms V B, the Final Report and the Final Care Plans for each of the subject children. All of these she adopted for the purposes of her evidence. I have already drawn extensively from Statement One, as regards the events preceding first interim Care order dated 9th May 2002.

The children were placed in care on 27th May 2002. P M and G M were placed with their paternal aunt, Ms S M. M M, E M and C M were placed with their paternal uncle G M and his wife.

Contact arrangements were agreed for twice a week for 1 1/2 hours each session, one with both parents and the five subject children, the other having the other siblings attend as well. All contact sessions were to be supervised; there was to be no telephone contact, in view of concerns that this might unsettle the placements in its early stages.

Initially, reports from the foster carers were positive, but on 14th June 2002 P M made allegations against Ms S M about physical abuse. He later said the allegations were a joke; his motivation seemed to be that he wanted transferred to his aunt, M D, who had already been assessed as unsuitable. Later, R W had P M report on to the Social Worker an allegation that Ms S M locked him and his brother in their room if bad. Again, when this was addressed by the Social Worker with P M, he stated that he had lied. After all that Ms S M agreed to have P M back only with some reluctance, given the seriousness of the false allegations, but having regard to the children's welfare.

Following the breakdown of the placement with Ms. S M (previously detailed), the boys were placed in a Youth Village from 19th until 23rd June to enable other options to be explored.

They were moved to Harberton House on 23rd June, but the behaviour of the two boys there had become increasingly high-risk. They physically assaulted staff and other children. They made sexual allegations against male staff. Such allegations were found to be untrue and, indeed, both boys later retracted, admitting that no-one had assaulted them. This made it difficult for staff to work with them. They regularly absconded, placing themselves at risk. One other thing noted about them was that they appeared unaccustomed to any bedtime structure. On 5th September, however, the Court granted an application by the Trust for an Order under Article 33, allowing P M to be placed outside the jurisdiction with his maternal uncle, P D and his wife.

This situation, whereby care staff found it difficult to work with the family, has been something of a feature of the case; one will recall that the relations between R W and the Family Centre became difficult in light of formal complaints against staff made by her. Even the Guardian Ad Litem was put under pressure. In November 2002, following rejection of her application on 31st October, R W telephoned the Guardian Ad Litem Agency, demanding that the Guardian (appointed by the Court) be replaced because he (who had supported the Trust in opposing the applications on 31st October) was failing to protect the subject children's best interest. She threatened to go to the *News Of The World* on the matter if she was not afforded satisfaction. The Agency reported the incident to the Court and I caused a copy of the letter to be copied to all parties. Nothing more was heard of it.

While R W and H M appeared co-operative with the staff at Harberton House, they were not so during their contact with the children (at the Family Centre). R W regularly quizzed the children about their placements, querying any mark observed and would be confrontational with staff. Such behaviour had a negative impact upon the children, especially P M and G M and their placement at Harberton came under increasing pressure. By 2nd July 2002, after a Looked After Review was convened in respect of the two elder boys, it was agreed that an alternative family placement was needed as a matter of urgency. H M put himself forward for consideration.

At a Specific Issue Review on 29th July, Harberton House staff took the view that a residential placement was not suitable. The behaviour of the boys was deteriorating steadily and each were displaying disruptive, violent and even sexualized behaviour. R W suggested her brother, P D. He and his family had previously been partially assessed and had been considered to be potential carers at that time. A short holiday was arranged in August, P M with P D and his family, G M with his father.

P M's initial integration into his uncle home did not go smoothly and P D certainly felt that his sister, R W, was partially to blame, in getting the boy's hopes up about a placement with his father. At contact on 29th August, P M was chastised by his mother for misbehaving. On the way back, while being accompanied by two Social Workers, he tried to get out of the moving car. Upon arrival at his uncles, he refused to get out, saying he wanted to go back to Harberton House. He broke away and ran

off, being verbally abusive to his cousin who ran after him, causing her great distress. In fact, P M went and phoned his mother, who, to her credit, telephoned her brother and notified him of the boy's whereabouts, from whence he was finally got back to his uncle's.

Meanwhile, E M and C M had by now made allegations of a sexual nature, which were made the subject of Police investigation. The Trust was guided by the Police in not making the details of the allegations known to the birth parents, lest this proved detrimental to that investigation.

On 4th October 2002 P M refused to return to his placement, after attending an appointment in Londonderry. He ran away from Social Services staff. His sister was not at home when he made his way there and he was only found next morning, in a shed at his grandmother's house. This, it should be recalled, was a 12-year-old boy. On 5th and 6th October, he was placed with his aunt, M D, notwithstanding that she was deemed an unsuitable carer (for want of any alternative) and was placed with his father on 7th October. There, up to the Hearing in March 2003 he remained settled. He appeared in a Youth Court on a common assault charge, relating to his stay at Harberton.

G M had been placed, and well –settled, with his father from 5th August 2002. However, he had been suspended from school for a lengthy period, due to behavioural concerns. By final Hearing, he was attending a High School on Monday mornings (he had contact on Monday afternoons). The remainder of the week he attended Bayview House Assessment Unit, where he was helped address his behaviour and aggression. Reports from there were positive and G M apparently enjoyed attending. He likewise appeared at a Youth Court on a charge of common assault arising from his stay at Harberton House.

C M, E M and M M had been placed with a paternal uncle and aunt. They all went on holiday in England from 15th July 2002 to 1st August 2002. Shortly after that, C M made disclosure of historical sexual abuse which, at the time of Hearing, was the subject of Police investigation. As has already been detailed, everything fell apart upon discovery, on 28th October 2002, of bruising on C M's back. Both she and her carers initially gave a credible explanation about falling over a young member of the care family and it was decided to return her that evening. However, the medical examination arranged for next day established that she had suffered from serious, non-accidental, injury, also the subject of continuing Police investigation at the time of Hearing.

I continue to believe that there was little else to be reasonably expected of Social Services, in responding to discovery of the injury and in face of the initial explanation, taking account of the fact that a medical examination was arranged for the very next day. It was a development which understandably took people aback. The incident was never a basis for closing down care proceedings, given the abuse suffered by C M and the rest of the subject children while in R W's care. The campaign which R W sought to build upon it, through her legal representatives, was

at best opportunistic and at worst vindictive. It was also essentially diversionary. And in that respect the campaign simply begged the question as to whether R W was prepared to address the reasons why the children had been placed in care by the Court in the first place.

Following an inevitable period of disruption in consequence of the termination of placement on 29th October (immediately following the medical examination), C M and E M were moved to their current foster placement on 1st November, with regular foster parents, as opposed to any other nominees of R W. Both girls settled in quickly. C M was reported as affectionate towards her carers, referring to them as "mummy" and "daddy". In this respect, however, I bear in mind the opinion of Dr. Danya Glaser (see above) that it takes at least two years for a child to achieve full attachment with new carers. I simply make this observation in order to register that I have not proceeded in this matter on the basis that any of the three youngest subject children, in particular, are to be taken as having yet achieved a true sense of security, trust and self-esteem as characterises sound attachment.

As for E M, she also made a disclosure of historical sexual abuse after the holiday in England, a matter which is likewise under Police investigation. She likewise has settled in very well with her new carers, content and confident and, tellingly, I think, protective of her younger sister. By the same token she is doing quite well at school. Her carers describe her as a delightful little girl.

In the situation sprung upon Social Services on 29th October it was simply not possible to place M M with C M and E M. He was in fact placed with his current foster parent in the Derry area. There, he has managed very well and speaks fondly of his carer and his family, appearing confident and content. He enjoys a high standard of care there.

With regard to contact, the Final Report updated various aspects. The three youngest, for example, did not respond well to either parent. On 5th July, R W noted a bite mark on C M. This, I believe, formed the basis of the allegation made by R W's solicitor to the effect that R W had been reporting evidence of non-accidental injuries from July 2002. In fact, as explained in the Report, an investigation established that the bite was from another child in the placement. On 11th July, C M told staff that her sister E M had pushed her down a slide, causing a bruise. R W, who had noted the bruise during contact, was told what C M had said. On 14th October, after a contact session when staff notes showed that R W had paid a lot of attention to her grandchild, C M and E M appeared to be very upset afterwards. C M had wet the bed, while E M had resumed picking the skin off her nose.

There was an allegation by G M in the same month that staff at Harberton had touched him inappropriately. During investigations, he retracted that allegation, but it did appear that he was in the practice of putting his wardrobe against his room door at night. He said he was afraid, but was unable to say what he was afraid of. To me, that suggests that he was told to do this, but did not entirely understand why. In discussions, R W was told of this by the Senior Social Worker. R W held to

a belief that accidental touching may have happened and she did not want male staff restraining G M, or in his room. She was advised of the Complaint's Procedure, but never launched one. Nonetheless, she would raise the issue from time to time and had said at times that if the children were returned to her she would drop all allegations.

For my own part, I am satisfied that R W has defined complaint opportunities as ammunition in her campaign to have her children returned to her care. It is probable that all messages picked up from their mother have caused the children to feel that allegations are expected of them, almost as a matter of loyalty to their mother. This has had an unfortunate effect, not just in idle assertions, but also in undermining the capacity of each child to feel safe and also in dulling somewhat the response where evidence of mistreatment has arisen, as happened with C M.

In her evidence-in-chief, Miss V M amplified upon various matters contained in her Reports. With reference to the web of complaints, Miss V M is herself the subject of complaint from M D, on R W's behalf, for things Miss V M is alleged to have said and for decisions made.

There has been a marked improvement in P M's behaviour, since moving in with his father and brother. He would be quite different on contact mornings, challenging staff, or refusing to get off the bus. He does not like travel, which is why it was agreed that he would not go to school on contact days. Miss V M described him as quite manipulative in seeking to get what he wants.

Family aid is critical, in Miss V M's view, in helping the two boys at school, especially helping them with their homework. Miss V M would like H M to accept home help, to help teach the boys simple things like bringing their clothes down to the wash.

With M M, his placement with the wider family, up to discovery of C M's injury had been good. Dental and speech therapy had been arranged. The youngest children had been aware of disputes within the wider family – between their aunt and mother – but overall the placement was good. Since being placed separately from his sisters, M M had settled well. He sees himself as special. His present carer is on her own, with two older girls. He lives two miles away from C M and E M. Both care families are open to casual, informal, contact. The siblings therefore meet outside the set weekly contact. C M and E M's foster family have a caravan.

In speaking of developments since December 2002 (the hearing of threshold criteria), Miss Morrow recounted that she continued to work quite well with R W (quite significant, really, in view of the welter of complaints). However, the witness went on to report R W as saying that if the children were taken from her Miss V M would be killed or end up in hospital. R W had said that she did not care who would go to the grave – several people, Social Services staff, were listed as candidates. R W said she did not care who. Further, if she ended in Maghaberry, she expected to find the (named) perpetrator of the injury to CM and claimed she would finish her off. H M,

for his part, had asked on one occasion if she, Miss V M, knew about curses. R W had said she had put a curse upon her and on V B. The children were all present on this occasion (a Thursday) except H M, Jnr. H M was upset on that occasion. Miss V M spoke to one of the Social Services staff members, to make him aware of the threat against him.

Miss V M, who is a very experienced Social Worker in my view, took these threats seriously, so far as the safety of Trust staff were concerned. She did not believe that there had been any change in R W's thinking or lifestyle since the threshold hearing.

Since the two older subject boys have gone to H M he seems to be quite firm with them and they respond to him. The three youngest, however, do not. Miss V M would be very reluctant to move those three. They are very settled where they now are. She also felt that the placements would break down quite quickly if the three joined their father.

H M was reported as having said on occasion that G M was very good company. Miss V M felt that the two boys met his needs, to some extent, as well as he meeting their's.

In cross-examination by counsel for R W, Miss V M affirmed that the current placements were positive and, indeed, she now felt that M M was best in a placement on his own. There was an episode where, indeed, C M may well have been told by her carer that "good girls don't cry", but this had been dealt with by appropriate intervention. It was however another of those things upon which R W had alighted. The placements were particularly successful, in that the children were settled at school, as well as with the carers; that had not been the case with the uncle and aunt, so far as school had been concerned.

E M, with a loose tooth on 9th January 2003, for example, had expressed the wish to go "home" to her carers. She was still picking at her face to some extent, however. E M, in Miss V M's estimation, had most needs of all three youngest children. She had gravitated in the past toward her sister M M, who now had a baby of her own. She had now been referred to a Club, where she could receive particular support. Her carers receive support through the foster care scheme.

M M has been told that he will not be moving back with mummy. He has said that he wants to stay with his current carer.

The questions moved on to further contact arrangements. Miss V M gave her view that there would be no benefit in the enhanced level of contact continuing, twice a week. The children are allowed to have photographs of their parents and of others. For example, M M was supplied with a disposable camera by his carers on one contact visit, to take such photographs for himself. The children know that they have not been abandoned and that their mother loves them. Their names will not change. They will continue to see their mum and dad.

In cross-examination by counsel for H M, Miss V M pointed out that H M had played a secondary role in the care of all children. He had however shown himself willing to listen to advice. He needed a lot of support; she would speak to him two or three times each day. Arrangements with H M were now working well. The home was suitable, clean and tidy. The house was quite comfortable. He does the best he can. The home help was needed, though, to support him and to maintain the present position.

H M was focused on the children's welfare. At contact sessions, the youngest three would come to him, but would not respond to his guidance. Previously, the two elder subject boys would have tended to respond better, but R W would undermine them. H M needs a change of house. He had been proactive in this, which was good. He was looking for a house in the country. He perceives the children as being unlikely to get into trouble if placed in that environment.

The solicitor for the Guardian then led Miss V M through the key parts of her Final Reports. Both parents had failed to meet their children's basic needs. They had appeared engrossed in their own needs and had not appreciated nor accepted advice and direction given by all professionals. R W, in particular, would deny the concerns, minimize problems and would typically blame other people. The resolution on 18th June 2001 had caused her to remove take the children to the Republic.

Concerning any changes in R W's attitudes since the threshold hearing on 5th December 2002, R W abandoned the children over Christmas. She was reported missing to PSNI and on Christmas Day the three older children, who reside with her, had Christmas dinner in their father's home and remained with him until their mother returned.

On 2nd January 2003, R W informed staff at the contact session that her daughter S M was missing. She had been given £50 at Christmas to spend on clothes, but had spent it on drink instead. For this, she was grounded, but allowed out with her friends to celebrate New Year. She had not returned. R W was advised to report her missing to the police. Miss V M was not aware that this was ever done. Staff R W on 3rd January and were told that Susan had returned.

On 6th February 2003, H M, Jnr., aged 17, presented at Social Services Office, saying his mum had out him out and that he was homeless. At contact that day, R W confirmed that she had put him out; she was not having him back and Social Services could look after him until he was 18. In the event, she relented.

Miss V M's view was that R W had not changed with respect to parenting capacities. She had made no progress in these respect and the concerns remained. She continued to have difficulty managing her household and was inconsistent in her approach in dealing with challenging situations.

H M, on the other hand, did not have parental responsibility for any length of time in the past. As for the fact that the two boys had stayed with him and, essentially, out of trouble, it was important, in Miss V M's view, that the boys positively wanted to be there and that they knew their mother approved of them being there. The Home Help was still and issue. Such a person could monitor the situation and guide, if H M would agree to one being involved (which he was resisting).

It would be "totally wrong" that H M could look after the other three subject children. They were of different ages, had different needs and included different genders. There was a "strong probability" of breakdown in such a placement. P M was reasonably well settled with his father. Social Services had tried a family placement and had tried residential care. Social Services had little choice but to acquiesce, at the time, in his transfer to the care of his father.

G M was now attending a specialist educational institution, but it was of course desirable that he be returned to regular schooling when feasible.

The concerns about M M – hygiene, education, supervision, medical needs – had all been resolved in his current placement.

E M still presented with problems about face-picking. This signaled continuing emotional difficulties. Her skin would be clear at times, but then erupt again. It would take more time to resolve.

Turning to the matter of continuing contact, Miss V M referred to pages 13 *et sequi* in the Final Report, with reference to the problems which Ms R W, in particular, continued to present during contact, despite all efforts and guidance by Social Services. Because of inconsistencies in her approach, it had not proven possible to sustain change.

It will be recalled that Dr. Cunningham's had earlier advised the Court that there was no empirical evidence, as such, to show that to reduce contact with birth parents after an alternative, permanent placement achieved better outcomes. Miss V M responded by saying that it was the professional experience of the Trust, over many years, that to reduce contact as a part of permanency strategy did work to the best interests of the children.

Miss S M, Senior Social Worker, gave evidence next. She was the team leader, responsible for the case and had prepared the Care Plan for each subject child.

The prime issue of contention was the proposal to reduce contact, in the event that Care Orders were granted, stimulated in part by Dr. Cunningham's ambivalence in his evidence on the subject. Miss M agreed that continuing contact was important.

It should be noted at this juncture that the Looked After Children Review on 3rd February 2003 had agreed that adoption would not be pursued at this juncture; it was recognised that adoption would not be conducive to family, given that the

children belong to a large sibling group. (R W's solicitor had asserted to the Court at an intervening review since filing of the Final Report that this was not to be believed – that the true scheme was to put the children up for adoption. I must say that I found it extraordinary that such a serious allegation should be so blithely articulated, with nothing more than reflexive cynicism to ground it).

For Miss M's part, she would highlight the importance of considering in whose interests it was that continuing contact was contemplated. It had to be at a level which did not undermine placement. There needed to be parameters. Contact which was too extensive can cause anxieties. Excessive contact would undermine placements. It can disrupt education (P M and G M had each been adversely affected to date in this regard).

There were no plans for any further parenting assessment of R W. In light of Dr Cunningham's Report and otherwise, there had been sufficient information gathered already upon which to base decisions about the children's permanent care. There had of course been a degree of flexibility. In the case of P M, the Trust had simply been compelled to "buy into" his move back to his father and brother. It had not proven possible to provide a satisfactory alternative, notwithstanding reservations about H M's capacity to look after both boys in the long term.

One concern, in settling contact plans, was the fact that the two eldest, P M and G M, had the capacity to undermine the placements of the younger three. As for M M, E M and C M, they were very much a unit (notwithstanding M M's separation in placement). They benefited from frequent, informal contact between themselves.

Contact with S M and M M also posed issues about undermining placements. Equally, there were concerns about inappropriate attachments having been formed, whereby they had been placed in a parenting role in the past. There was also some risk of them exposing the youngest three, in particular, to inappropriate situations.

The persisting hope was that P M and G M would stay with their father; if they wanted to, they would.

Miss M sustained her position during cross-examination on behalf of R W. In particular, she defended the position on reducing contact after permanency plans were effected.

Under cross-examination on behalf of H M, Miss M contended that his proposal, to try out increased contact , was an unwarranted risk; the Trust took only an assessed risk. She could not see the point of increased contact, if re-unification was not planned. If the plan was long term fostering, an increase in contact would only be extremely confusing.

The Trust considered that it was not in the best interests of the 3 youngest children that they be placed in their father's care. In the event of Care Orders, the Plans

would be reviewed every 6 months, as is standard practice, against 26 points, including contact.

Experience and research suggests that increased contact in the context of permanency is not beneficial for the children, according to Miss M.

The 3 youngest do not respond hugely to H M. The Trust does not believe that contact in the home setting, with P M and G M, would benefit M M, E M or C M.

H M has shown a great level of commitment to P M and G M and has not sought to undermine the placement of the other three subject children.

Under cross-examination from the children's solicitor, Miss M pointed out that, since 1999, H M had evinced no willingness to take any of the three youngest children until the month prior to Hearing, in response to the Final Report and Care Plan. In his Threshold Statement of August 2002, his declared view was that they should be returned to their mother. The first time he asks to be considered as the care parent for them is just a couple of weeks ago.

Attachment grows stronger with time, the longer a placement goes on. To have extensive contact with the birth parents send out very mixed messages - where are they going to live today? This was especially difficult for the very young children, who thought (being led to expect) that the processes would be different.

R W had entirely undermined the placement of the three youngest with their uncle and aunt. If the Court affirmed Care, the concern is that this would give R W motive to attempt undermining of placements again. She is a very difficult character. Historically, she has worked hard to undermine things and to create problems. There is a very real concern that she would try to undermine the plans for permanency. The threats which have been made to Trust staff after court processes have added to the difficulties. Miss M has taken these threats very seriously on behalf of her staff.

At this point in Hearing, one reached the end of the Trust's case. A new twist came then, when counsel for R W asked to see me in chambers during recess, accompanied by the representatives of the other parties. I was then informed of an agreed view that R W would no be called to give evidence. To describe myself as taken aback by such a proposal, at that stage of proceedings, whether agreed or not, would be an understatement. There were two principal reasons why I would not countenance such a proposal.

First, the case on behalf of R W had been conducted, through cross-examination of the various Trust witnesses, on the basis of positive rebuttal of the case, positive counter-assertions as to R W's motivations and objectives, her disposition toward Trust personnel and in respect of a variety of factual material. It is fundamental to the ethics of professional advocacy that one does not advance positive rebuttal in

cross-examination unless one believes in good faith that one will be in a position to adduce evidence to back up what is being put to such witnesses. The Hearing is convened to determine the facts of the matters judicially. It does so by evidence, and evidence alone. The assertions of fact by an advocate, put to any witness in cross-examination, do not constitute evidence. Where an advocate actually anticipates for any reason, including simple feelings of compassion for the stress which the experience of giving evidence might entail for a witness, that her client will not be giving such evidence, she establishes her plan in that regard before embarking upon cross-examination. The court trusts professional advocates, conducting positive, even hostile, cross-examination before it, that they are observant of this basic cannon, rather than interrupt at every turn to check whether a witness is to be called. Where an advocate uses a phrase such as "R W will say ….", when putting a counter-proposition to a witness, that is in fact the discrete assurance to the court that there will indeed be evidence called to such effect in due course. It is important to remember that it is on that basis only that the court accords an advocate the privilege of putting potentially offensive, distressing or humiliating assertions to a person under cross-examination. The distress which may be occasioned to the hapless witness is warranted only within the forensic process of getting to the facts of the matter.

Although that first consideration was elementary in regard to proper conduct of cross-examination, the second was perhaps more fundamental to the court's function.

I had heard an immense amount, over a protracted period of time, in respect of the attitude and disposition of R W. In particular, on 5th December 2002, her counsel had informed the Court that R W, that day, had undergone a sea change in her attitudes, had become a "different person", in coming to the point where she had been able to concede the case against her in respect of the threshold criteria. On that explicit premise, an application had been advanced, seeking a re-assessment of R W's parenting skills, in the ostensibly confident expectation that this would reveal a substantially different person. An application to have the Court intervene directly in regard to arrangements for contact over Christmas was later launched on the same basis, to the effect that R W could now be relied upon, as perhaps never before, to co-operate with Social Services in all that was entailed. For some time in the intervening months, as reports of further maladjustive behaviour by R W came to my attention, I had the distinct feeling that her case was being advanced on a basis which might be considered to exploit the fact that the Court itself had not the opportunity to hear from R W, as her lawyers had done, and to form its own view as to her personality, capacities and disposition. There was therefore no question of me allowing the judicial process itself to be completed without hearing from R W. The Hearing continued accordingly.

R W began by conceding that she had failed to care properly for her children in the past. She attributed this to a gambling addiction and to consequent lack of supervision of them. She had a compulsion for slot machines since 1999 and would seek them out as soon as she got the younger children to school. She would either

get back home only at the end of school, or, on occasion, would have M M collect them. However, she was no longer gambling at all. She does not go to machines or bingo or anything of that nature. She gave as her reason the fact that she had lost the children over it. She conquered the addiction without help; she did it on her own.

After the children were taken into care, she had gone along with Social Services. She had gone to the parenting assessment because she was told by Social Services personnel that, if she did so, she would get her children back.

She had not accepted the concerns of Social Services before last December, but did do so now. She appreciated that the older subject boys were not running around anymore and was glad that H M now had them under control.

She admitted that she had threatened Social Services staff, but she did not mean any of it and the social workers knew perfectly well that she did not - a self-serving assertion I found entirely unimpressive. On the other hand, she had been telling Social Services since June 2002 that the children were being abused. They took the children off her because she had a gambling problem and then they put them instead with abusers. If they had taken her seriously such abuse would never have happened. She was angry that Social Services would not give her children back. She honestly believed that she had changed. (By this stage, any concerns that R W might not have been up to the strain of giving evidence had been completely dissipated. She had found her stride and was in full flow).

R W went on to admit that she had let the children get away with murder. She had asked the children to be good, to help her get them back. On the other hand, the boys had been leaving Harberton House for hours without her being informed. On one occasion, she was told on the telephone that one of them was to be seen in the garden, when he was in fact at Tesco's.

Social Services were not bothered about her children. She did not think it fair that contact was now to be reduced. P M, for example, was very close to her; there was a good attachment. With the three younger ones, "they" (Social Services) do not see rehabilitation as possible, but they are only going on Social Services' word. The kids are all over me during contact. They jump into the taxi to go home with me. Once, V M jumped in and said "Let's all go to the seaside". Another time Mr. McD said the same, but he did not; he took them back to Ms to be abused.

She had been expressing her concerns about the children's safety since last June. When the big bruise was found on C M, she was told by Social Services that she was not allowed to ask about it. E M was quiet and withdrawn. Her face is all picked off. R W was told it was because of seeing her. She had said it was a habit picked up after having chicken pox. It was terrible that M M was being separated from the rest.

R W said she would not continue to support the placements; the subject children should go with their father, if not with her. Nobody else could handle G M or P M.

She felt terrible about being refused another chance.

She would "continue" to co-operate with the Trust if she got another Social Worker. (Her brother P D said things to V M, passing confidential things – he had offered to tape the conversations. V M had told H M. H M had told her. She had been trying for a new Social Worker since day one).

They had taken her confidence from her.

Last Christmas Miss M reported her missing. I went to my mum's (who having moved to the Republic). Her children S M and T P M knew about it. She did not want H M to know because he would only tell Social Services. She knew that the older children would only be allowed to stay with their father in an emergency. So, she created an emergency. The children knew she was alright.

In cross-examination on behalf of the Trust, R W said she had never starved her children, never left them on their own (they were otherwise with S M). She had never beaten them. Her fault was that she did not control them. She would tell them they were grounded, then let them out in half an hour. She did not stick to the rules.

On the matter of shoplifting, of course she took H M, Jnr.'s side. Just as with teachers, she always took the children's side. Just because she took the children's side does not mean she agreed with their conduct, but she did not want to punish her children.

M M, E M and C M had each been subjected to physical abuse. She was willing to do all she could to get her children back. She could not give her children permission to live away from her long term. If Social Services wanted them, that was up to them.

She denied that she had threatened Social Services staff – it was only V M. It was during contact, but in a big room. V M knows she did not mean it. She never said that she would drop allegations if she got the children back. Did not concede that touching M M had been an accident – beyond saying that it might have been.

As to the fighting between H M and T P M, brothers do fight; that's not wrong.

Upon cross-examination on behalf of the Guardian Ad Litem, R W asserted that the house moves were not significant; she was a gypsy by background. She went to the Republic that time because Social Services wanted to take her children away.

The house was clean. Their criticisms about cleaning were not correct; the house was not dirty. The children were neither dirty nor unkempt. Things were just untidy. They did not find E M in a "filthy" condition on 24th October 2000. The

house was not in a state of chaos. As to the home visit in the Republic on 18th October 2001, the house was not untidy.

P M had language difficulties. G M does not have a hearing difficulty; M M does.

Social Services tell her P M has no problems. He just talks a bit babyish. And he has a gluey ear. She has never missed an appointment for P M. She never got notice of appointments. (She was illiterate).

She did not say that the Family Centre was out to get her. C M was potty trained. Why would she have a nappy on (re. her first Statement on Threshold of 25th July 2002)?

The children did miss school quite often. There were major difficulties in regard to their education.

Well, two things emerged clearly from such evidence. First, as regards my own ruling, it was patently obvious that R W was in no way bowed down or critically distressed by having to give evidence. The primary emotion exhibited throughout was anger, rather than distress; she was well up to giving her version. I am satisfied that she was, overall, glad to have had her say. Second, to the increasing confusion among all other lawyers, little of such evidence appeared consistent with the assertion, sustained by her representatives since 5th December 2002, that she was a changed person; that she had in fact accepted the threshold criteria. At this point, therefore, attention turned to double-checking just where R W actually stood with regard to the evidence on threshold tendered by Social Services the previous December.

I therefore set about establishing just what it was in Section 7 of Statement One by Ms. C and Ms. V M, dated 18th February 2002, tendered by Ms. V M on 5th December 2002 as the threshold criteria, was actually agreed by R W.

My first enquiry was as to whether R W understood the expression "threshold criteria". She did not.

I set out R W's responses to the various points made in that Section 7 in tabular form;

Section 7 Assertions	R W's Responses
It is apparent that they are not receiving the basic level of parenting from either parent.	Disagree
P M and G M's health, educational and developmental needs are not being met and they are deemed to be	Agreed

suffering significant harm in the area of neglect.	
M M, E M and C M are particularly at risk. Their health and developmental needs are seriously impaired due to neglect.	Agreed
Medical Care Neglect:-	
Failure to seek medical attention when necessary	Agreed
Failure to attend medical appointments	Agreed
Extremely poor dental hygiene	Agreed
The children's non attendance at medical appointments places them at risk of significant harm.	Agreed
Educational Neglect;	
Poor school attendance	Agreed
Poor attendance at Family Centre	Not agreed
Multiple moves to different schools	Not agreed
P M, G M and M M have suffered significant harm and … E M and C M are likely to suffer significant harm.	Not agreed
Physical Neglect;	
Very poor hygiene	Not agreed
Absence of routine	Agreed
Poor physical presentation	Not understood
All children are at risk of harm due to poor hygiene, poor routines and poor physical presentation.	Not agreed
Nutritional Neglect	
Poor diet	Not agreed
No regular mealtimes	Not agreed
Irregular eating habits	Not agreed
Environmental Neglect	
Concerns regarding supervision and boundary setting	Agreed
Inadequate parenting	Not agreed

Over reliance of older siblings to provide stability for the children	Not agreed
Frequent moves and inability to provide stability for the children	Agreed
The impact of homelessness	Agreed
Younger children sharing their mother's bed	Not agreed
Neglect of home environment	Not agreed
The inadequate supervision of the M… children has resulted in the children being exposed to situations of risk including criminalized behaviour and contact with a man under investigation for alleged sex offences.	Agreed
R W's parenting has not been adequate in terms of her provision of supervision and boundaries and also in her response to her children's inappropriate behaviour by denial, deflecting or colluding with the children.	Agreed
This… has caused significant harm to G M, P M and M M in terms of their social and educational development and results in the likelihood that E M and C M will suffer significant harm.	Not agreed
Stimulative Neglect:- Inadequate and inappropriate stimulation.	Do not Understand
Over reliance of older siblings to provide interaction and play	Not agreed.

One had finally arrived at a true picture of R W's position. Clearly, it would be inaccurate to describe it as one whereby she conceded the threshold criteria, as promoted by Social Services. At hearing, I indicated that, broadly, she appeared to agree with about 50% of such criteria. Her counsel was later to agree with that. She had not led her client through the points set out at Section 7 of Statement One when taking instructions. Instead, she went through the matters itemised at para. 12. of the Trust's C1, dated 24th April 2002[3] and would say that she also found her client to

[3] See page 13, above.

have affirmed around 50% of the bullet points there listed. Counsel felt she was entitled, by reference to the judgment of Gillen, J in the case of In the Matter of J (Threshold Criteria: Parental Concessions) , delivered on 28th June 2002, to treat this as affirmation of the threshold criteria, without qualification. I have to say that I consider such an interpretation of Gillen, J.'s judgment in that case to be misconceived. There, the learned judge was dealing with a situation whereby the Court was appraised of what was agreed in respect of the criteria and what was in dispute, more particularly by the child himself. The case was therefore about whether the Court should proceed to make a determination upon what remained in dispute (to the express knowledge of the Court) and, of so, by reference to what considerations. The basic point is that no material information was withheld from the Court; there was no question of denying the Court its proper function of determining whatever was in dispute, on facts, where the Court ruled it appropriate to do so.

What happened here, in contrast, was that counsel withheld from the Court that there were very significant areas which were not accepted by her client. Ironically, counsel exercised particular care in establishing due authority from her client, on 5th December 2002. At that stage, she had drafted a statement, witnessed by instructing solicitor, which stated; "In the circumstances, therefore, I accede to the Threshold Criteria", to which was added, before signature, "in part". That document emerged in the course of my enquiries at Hearing. That Note of Authority makes plain that counsel was in fact acting without authority when she proceeded to give an unqualified concession to Court on the day.

So far as the findings of the Court be concerned, R W displays a continuing failure to understand why she failed to provide "good enough" parenting to the subject children in several critical respects. In addition, I find that her concessions are essentially pragmatic, without affective significance. She stands defiant toward all professional intervention, focused only upon the premise that children should be with their parents and that any alternative is unjust and wrong. All this results, to a large extent, from an incapacity to understand the prime elements of such parenting, which probably results from her own history. I remain very much aware of her personal distress, but the proper focus of this enquiry is upon the best interests of the subject children. I am satisfied that R W is not capable, for a variety of reasons, of making the necessary changes in her attitudes, so as to provide a safe and nurturing environment for the subject children. Anticipating failure, she has proven herself unwilling to admit her failings. Instead, she had resorted to what are really rather pathetic efforts at intimidation or recriminations toward Social Services (the latter supported by her legal representatives), as though by damning them she could somehow secure the goal of recovering her children without further regard to her own, critical, failings.

The strategy adopted in this case, whereby it seemed to have been seriously calculated that, if one could only damn Social Services for their care of C M, in particular, one might then be able to show that all their conclusions, in respect of all the subject children, were unreliable, I can only describe as naive. The true issue was

as to whether, with R W having been shown to have failed to provide good enough parenting in the past, she could be shown to have sufficient capacity for change, and to have achieved enough of such change to warrant the return of the three youngest subject children to her care. R W was given all reasonable opportunity to show willing, from May 2002 onward, right up to the final Hearing, and failed to address those critical considerations.

H M then came to give evidence. There was, at the outset, the matter of recent developments. The day after one Court review, he had told V M that he had found a house in Z Estate (where R W lived) and that he proposed to move there, as a squat, that night. He did not actually intend to move. He calculated that V M would get on to the housing officer and get the house he really wanted, in the country, allocated to him. He went on to explain that he had waited a long time for a house in the country for the boys. There was really no question of him moving as threatened; the house in Z Estate had only two bedrooms and was quite unsuitable, never mind that he hoped that he might also have the three youngest subject children returned to his care.

He did not feel it necessary to have any kind of Home Help – that got him down, as though to suggest that he was unable to cope.

Under cross-examination on behalf of the Trust, H M asserted that he knew that Miss V did not want the children anywhere near their mother; he had only raised this notion of a squat in the Z Estate just to get her secure him a house in the country. He never told the boys they were moving. He told Miss V M on the Friday that it was on account of the boys that he decided not to move. He just wanted out of town, to avoid the chance meetings with R W when shopping, for example, so that he could not be accused of anything.

Under cross-examination on behalf of the Guardian Ad Litem, he conceded that he had told lies to Miss Morrow, though he added that "I'm not the only one to tell lies."

My perception of H M was of a mixed bag. I was clear that the various witnesses called on behalf of the Trust were unduly circumspect in their acknowledgement of the remarkable fact that he had proven able to provide, thus far, a stable and secure home environment for, first, P M and then G M. On any credible analysis, both boys were heading for specialist, secure accommodation within the care system, by reason of their determination to challenge all boundaries. It was, quite simply, a mercy for each of them that they had been prepared to settle down with their father and that he proved capable of meeting their needs. I fully accept the caveat which pointed out that this was, to a significant degree, because the boys found a placement which they personally supported. I am less attracted to the notion that it is meaningful to reason that G M, as the first placement, met some of his father's needs. As an analysis, that is considerably weakened by the fact that he also, successfully, received P M. Sometimes, life surprises us. In the final analysis, H M's achievement in successfully caring for both boys was a surprise. One can only hope that it

continues. H M, in my view, deserves full credit for all that he has done in order to make this possible. I hope that he may come to a different view, with respect to the offer of a Home Help; but the baseline is that both boys are now placed in the best position from which to grow to full maturity, in an environment which, in the round, represents a firm basis for hoping that they are past the worst of their experiences and may yet mature into fulfilled and stable adults. It is a real pleasure to acknowledge promising outcomes within any birth family setting, after such dispiriting antecedents

The idea of the three youngest joining their elder siblings, however, is an entirely different matter. First, I had the opportunity of evaluating H M at Hearing. I do not think that he has made a full peace with Social Services; rather, he has achieved a working relationship. That much is propitious; but he has to be taken as someone who remains wary of all professionals.

Secondly, he has shown himself willing to attempt to manipulate in a discreditable manner for short-term gains. Social Services are entitled to treat him with a degree of continuing caution.

Thirdly, his declared wish to receive the three youngest into his care is to be regarded as a reactive initiative, very late in the day. He has come to recognize that there is no prospect of them being returned to their mother and, in response, has only then put himself forward as an alternative carer. To that extent, it is a position which does not smack of conviction.

Fourth, there is the matter of inappropriate sexualized behaviour by the two youngest subject children, the two girls in the group. This is a father and mother who have held back both information and co-operation from Social Services, in defence of the family unit. Neither has been willing to disclose anything which might militate against re-unification. I for one would want a detailed report upon this issue before contemplating a placement of these two girls with their father. Let me be clear: I have formed no view. Nonetheless, the persistence and the extent of both sexualized behaviour and allegations of historic sexual abuse (of which I know nothing more whatever) lead me to the view that H M would have needed to have been expressly excluded from the ambit of such enquiry before such a placement could be contemplated.

Fifth, a reactive proposal that the three youngest move in with H M simply fails to address the dynamics entailed. I heard nothing to counteract the import of Trust evidence, to the effect that the two eldest boys would be a detrimental influence on the youngest three, that those three did not share a wish to be placed with their father, or a willingness to observe his disciplines - or that H M would be fully tested in looking after the elder two, without having three more with which to contend.

Sixth: a basic question: what was H M's priority when holding back on his proposal until he recognized that his former partner would not succeed in her own suit? He was focused on tactics, in seeking to oppose Social Services. He backed R W while

he thought she had a sporting chance and without addressing what, I believe, he knew quite well about R W's failings. On that basis, he sees it best that the children be with their mother, his own proposition as second best. H M, I think, would never regard the placement with himself as truly fair. That would, among other things, have consequences as to how he explained the situation to the children concerned.

I acknowledge the contention that this approach involves denying H M the chance to prove that it was feasible for him to look after all five subject children, now that he has raised the issue. I also acknowledge that R W would consider this the better alternative, should her own claims be rejected (as they must be). And I must also address the contention that to proceed accordingly would constitute a denial of the Convention right to family life, as such. It is my view that The Children Order, considered in full, is compliant with the European Convention. The only challenge, therefore, is to be clear that one is proceeding in accordance with the domestic legislation. In particular, I must be satisfied that I have treated the interest of the children as paramount, that I have treated the No Order principle as the starting point, and that I have approached a full Care order as the last resort.

Embedded within all that is the child's perception and experience of time. It may seem to be of limited consequence to H M that he should hold back on his proposal to take responsibility of the other subject children until a matter of weeks before final Hearing, getting on for a year since they were first placed outside their immediate family. I treat the timing as highly material, within the No Delay principle. One can never be entirely precise, but I do think there comes a time when the importance of permanence and stability for children overrides adult preoccupations. All that time is immense in the mind of a child.

I do not consider that M M, E M and C M have fully-formed attachments to their present carers – but they are well underway. To lift them out from their present environment, to expect them to re-orientate successively, on an experimental basis, is just too much. They are happy. They understand where they are; they have a sufficient understanding, for the time being, as to the Why. To ask that they be now told that, actually, their present placements are just a "maybe" holds risks of confusions, self-doubt, feelings of rejection or lack of worth, the consequences of which are simply not addressed at all in the adult proposition that one treat the issue as a running experiment – whether on account of Convention rights or otherwise.

The Guardian Ad Litem concluded the evidence. He duly adopted both his Reports. He recounted that E M and C M were each getting on well at school, although E M was repeating Primary One. She still scratches her face when worried. There was a marked improvement in hygiene. C M was <u>now</u> getting a good start in education. M M is doing very well. He is very settled. He is making some progress in education and there are no serious concerns at the carer's home. He tries at school; he does shout a bit (though not in a way which causes disruption) and he may have a hearing difficulty.

History showed that R W did not recognize P M's difficulties and would simply blame staff. She was unable to work with the Trust or to change. The Guardian was concerned that the children would suffer significant harm if returned to her care. She had not addressed the reasons for Social Services intervention and had therefore effected no change. The Guardian, in discussions with R W, discerned no disposition to change. With regard to the Trust's concerns, she could identify only the gambling addiction and other problems stemming from that. She would regularly deflect any enquiry into her own failings into problems with either the Trust or school personnel. She had no insight into the needs of the children, as opposed to her own. She did not recognize the Trust's concerns, nor the seriousness of such concerns.

G M and P M had shown a marked improvement. They had previously been quite disruptive. P M was now less so. G M seemed happy in the present educational arrangement and was working towards reintegration in a regular school.

H M deserved a lot of credit for these achievements. They are difficult boys to look after. Outside school hours, it is a full time job looking after these boys. The Guardian strongly recommended that H M accept all offers of support, including Home Help. It was no indictment of he level of parenting that he do so. Family Aid was already going in, in the form of an experienced parent-type figure whose main function was to prevent a breakdown in the care arrangements. There had to be 110% trust between H M and the Trust, in the Guardian's phrase, if there were no to be excessive reliance placed upon monitoring.

On the other hand, the Guardian's position was that to place the three younger children with their father would place too much strain upon H M's capacities. The age gap between the two sub-groups was highlighted. To effect such a combination could undermine not only M M, but also G M and P M (who had quite significant and distinct needs). It was the Guardian's belief that to add E M and C M would cause the placement to collapse quite quickly.

The Guardian was entirely supportive of the Trust's position, with regard to reducing contact with the birth parents, in the event of a Care Order being granted. A pattern of monthly contact supported long term fostering. Any more would be disruptive, preventing the children from settling and from recognizing that there was in fact a significant change in their situation. Anything less than monthly would erode the parental relationship. In any event, such contact had to be supervised. R W had sought to undermine placements in the past and the risk remained. On the other hand, the three youngest should have as much informal contact between themselves as possible.

Under cross-examination by counsel for R W, the Guardian conceded that he was surprised that R W had agreed the threshold criteria [note the latent premise]. It was a surprise that she admitted some shortcomings in her evidence to the Court. He conceded that there was a potential for some change, but not enough to warrant a return of the children at this stage without the (unacceptable) risk of further

significant harm. It was possible that she had the capacity to change significantly. He accepted that it was very difficult for R W to make the concessions she did in Court. As to the adequacy of present placements, the Guardian felt it would be much better if M M were placed with his sisters. He could not be sure that the present placements were adequate, but only in the sense that there could never be any absolute guarantees that children will not be harmed, either in any placements or at home; injuries do occur.

Under cross-examination by counsel for H M, the Guardian conceded that an M C calls regularly to provide educational aid and that there was also family aid. He did not suggest that there was resistance on H M's part to having people call in; he was not aware of anyone ever having had difficulty accessing either the home or the two boys, but H M maintained that he only needed help with regard to their education. There remained issues, such as cooking appropriate food for them. On the other hand, the Guardian conceded that he was not aware of any lapses or failings on H M's part.

When questions moved on to the idea of working toward having all five children placed with H M, the Guardian accepted that for children to be with a parent who can provide adequate care is better than to be placed with a third party. Likewise, he accepted that there was an element of unfairness in any decision to decline to have H M properly assessed at this stage as to whether he could provide adequate care for all five subject children. However, he contended that there was greater unfairness in destabilising the placements which had now been secured. To re-open the prospect of a move to their father for the three youngest would raise expectations that they might be going home to their daddy, whereas, quite likely in the Guardian's opinion, it would not work out. The Guardian maintained this view notwithstanding a concession that there was no concrete evidence that he could not cope with additional children and that he was not aware of H M (as opposed to R W) undermining placements in the past. There was a risk that R W would seek to use the two elder subject boys to undermine the placements for the other three. Her support for the placement of G M and P M with their father was as an alternative to placement with herself. The inference, as I understood it, was that, in contrast, R W did not see H M as the more appropriate parent to look after the three youngest.

Under cross-examination by counsel for the Trust, the Guardian advised that M M would require extensive support. For G M and P M, it is the boys' own motivation which sustains the placement with their father.

Findings

In Re J (Threshold Criteria – Parental Concessions), Gillen, J, in a judgment delivered on 25th September 2001, helpfully set out the approach of a Court in such cases as this;

> Whether or not the court does or does not make a Care Order depends on a two stage process. First the court must consider whether or not the criteria for making a Care Order had been satisfied ie the threshold criteria. Secondly, in

> the light of the care plan and after proper consideration of the matters contained in the welfare checklist in Article 3(3) of the Children (Northern Ireland) Order 1995, the court has to consider if it is proper to make a Care Order. Thus whilst the parties may be agreed as to the best way forward, there is still an overriding duty on the court to scrutinise the matters put forward for its consideration. I must also take into account Article 8 of the European Convention on Human Rights and Fundamental Freedoms (1950) to ensure that I have accorded the right to respect for family and private life and that the order that I make is proportionate to the legitimate aim of ensuring the paramount interests of the child.

The Threshold Criteria

On 5th December 2002 I determined judicially that the threshold criteria had been met in the instant case. I did so on the evidence adduced by Miss V M on foot of her Reports dated 18th February 2002 and, explicitly, its Section entitled "Significant Harm" and by Mr. M B on foot of his Report dated 27th February 2002. Such evidence was no disputed on behalf of either of the Respondents. In regard to subsequent developments concerning the position adopted by R W, I acknowledge the force of the contention that, this having been a finding of the Court it was not appropriate that the matter be re-opened when it was discovered at full Hearing that R W's concession had in fact been highly equivocal and that the true position, notwithstanding her counsel's representation to the Court, was that she disputed several of the core criteria which had been adduced on behalf of the Trust. Nevertheless, I do not think it necessary to take a stand on that point. R W, notwithstanding her counsel's application to the contrary, was given proper opportunity to give her evidence at Hearing.

I conducted a systematic enquiry to establish just what R W still disputed of the criteria and I deal here with those challenges.

1. *The children were not receiving the basic level of parenting from either parent.*
   It is quite obvious from all Reports that at the material time R W was denying the children basic parenting. She was not present to anything like the degree required. She admits herself that she was then addicted to gambling at slot machines and would absent herself from home on that account. She left the older daughters, M M and S M to provide such basic parenting as best they might.

   A dramatic example of what his entailed was illustrated by R W's conduct in fleeing with the children to the Republic in June 2001, when she heard the Case Conference decide to seek foster care placements for the five subject children. During her evidence, R W simply stated that she fled because Social Services were going to take her children away from her. What she does not address is the fact that she thereby exposed the children to even more appalling levels of neglect, risk and harm in the areas of basic diet, sexuality and outright criminality. That remains one of those elements which convinces me that R W sees a right on her part to care of her biological

children as unqualified. She simply does not understand that these children also have rights which an appropriate carer is obliged to meet. In a very real sense, I believe, R W's attitude is that her children may have been ill-treated, but at least they were being ill-treated by their own mother. It is well documented that she will get deeply outraged and protective in regard to any ill-treatment of them, or any one of them, by a third party, real, imagined, or contrived. In fact, she has convinced herself that any other person is quite *likely* to ill-treat them. But what she will not address is the fact that she herself ill-treated them, and each of them, throughout their lives, while they were in her care. She wants to lock all that away, to reduce the phenomenon to the fact that she had a gambling problem at the time. The fact, as R W would have it, that she has conquered her gambling dependency ("because I lost my kids over it") means, to her mind, that the only source of inadequate parenting in the past has been erased, so that there is no good reason why her children cannot safely be returned to her.

I conclude that R W's denial that she failed to provide basic parenting is symptomatic of her inability (and I do think it more a matter of inability, rather than wilfulness) to admit just how bad things were for her children while in her care. That remains the position, despite all the efforts which have been made since 21st August 1999, when she requested Family Centre placements for her three youngest.

2. *Poor attendance at Family Centre*

C M was admitted to the Family Centre day-care programme in January 2000, initially two days a week, increasing to 4 days in September 2000. She left in May 2001. Her attendance was not good at first, missing 8 days in February 2000. From there, her attendance did not cause concern except that the offer of a place for the children in the Family Centre summer programme in July/August 2000 was refused. The position was much the same with E M, who missed 6 days in February 2000.

The position with M M was significantly different. In his Report, Mr. B described the boy's initial attendance as unsatisfactory, both in day care and when he transferred to after-school in September 2000. Concerns about his attendance were addressed at a Child Protection Review on 4th December 2000. R W, for once, acted on these concerns and the boy's attendance improved.

G M seems not to have presented problems in attendance for his individual work in April/May 2000, but, like his siblings, the offer of a place on the summer programme was not taken up by R W, despite transport being provided. He attended the after-school club from September 2000 until 17th May 2001, by which point his "…disruptive, aggressive and violent behaviour necessitated termination of this service …." (Report of 27th February 2002, at p. 46).

The position was much the same for P M as for his brother, save that the former lasted at the after-school club until 30th June 2001.

3. *Multiple moves to different schools*
The evidence detailed to me in the Reports in respect of P M is that he initially attended B S Boys Primary School. His behaviour led to a situation where he was seen by staff and parents as a danger and was closed to being expelled when R W took him off to the Republic, in June 2001. R W refused to accept any criticism or concern about his behaviour. Following the move, P M spent a period at a Special School there.

His education was of course disrupted both by R W's flight in June and, indeed, by her return, in November 2001. He was then placed at a local Special Needs School, where his attendance was problematic, due to his behaviour. It is clear that the number of changes arose from R W's refusal to address P M's behavioural difficulties at school and by her action in removing P M on 18th June 2001, within hours of hearing of Social Services plans for fostering and without any consideration for the disruption in addressing his special educational needs.

G M also attended B S Primary (where there were concerns about his behaviour) before likewise being rushed across the border on 18th June 2001, returning in November. By the time of the initiation of Court proceedings, he was at a Primary; he did not do homework and his behaviour was managed. The emphasis was on his emotional needs, related to a dysfunctional family background, whereby academic performance was not the priority.

E M also experienced multiple moves for similar reasons, likewise affecting her formal education. There were unresolved concerns about her behaviour at school, primarily with respect to inappropriate touching of herself (dismissed by R W as merely a form of self-comfort). The intention, as at the outset of these proceedings, was to instigate special needs support for her.

4. *P M, G M and M M have suffered significant harm and … E M and C M are likely to suffer significant harm.*
When R W conceded in her evidence that Social Services were justified, at the time, in taking her children into care, she was in effect conceded precisely that they had each either suffered significant harm or were at risk of doing so. All the evidence before me underscores that much. I have detailed at the outset of this judgment just something of the vicissitudes through which the children had been put prior to May 2002. I am remain satisfied that significant harm was proven beyond any doubt.

5. *Very Poor Hygiene*

The evidence to the effect that the subject children were exposed to what at times was an appalling lack of personal hygiene is replete throughout initial Reports. Just by way of one example, which records both the obdurate and irresponsible behaviour on the part of R W and the significant harm resulting, I quote here from Mr. B's first Report, at page 18;

> - 6/11/00 Ms W… brought C… to day-care accompanied by a young woman who had been staying in the W…/M… household. Ms W… lifted C… up to a member of staff and asked her to smell C…'s clothes stating "do you smell pish off that wain's clothes?" When the staff member replied No, Ms W… responded with "How come youse bathe her and change her clothes every day and then phone me to say her clothes smell of pish?"
> - 13/11/00 C… came to day-care in a nappy that was so wet that it disintegrated when taken off. There was a strong smell of urine off C… and her vest was too small.
> - 14/11/00 Again C… came into day-care in a very wet nappy.
> - 23/11/00 C…'s hair was very sticky; she smelled of urine and her T-shirt and leggings were too small.

In her Statement of Evidence dated 25th July 2002, at para. e/, R W stated;

> With regard to hygiene concerns, as mentioned in the previous paragraph, despite being upset at present due to the children being taken away from me and the children expressing their fears and desires to be returned to my care, I am managing to keep the house in a clean and presentable manner and have taken pride in this achievement. Furthermore, I have told Social Services in the past that I would regularly wash the children's clothing and buy the children new underwear regularly and have shown them same. …
>
> Also it must be noted that of a recorded 52 attendances by C… at the family centre between January and May this year [i.e., 2002], staff reported concerns with regard to hygiene on only 8 occasions. Two of these recite merely that C…'s vest was not clean. It is notable that the Family Centre is run by Social Services.

That final remark I take to be intended for no other purpose than to suggest that Social Services or those at the Family Centre are engaged in either the exaggeration or outright fabrication of evidence. That is an assertion which I consider hardly worthy of comment. It only serves to document how intractable is R W's hostility toward both Social Services and the Family Centre and how incapable she is, therefore, of addressing their reasonable and serious concerns about her parenting. What is more, one has encountered a strange outlook indeed whereby to have concerns about hygiene noted by the professionals on only 8 occasions between January and May 2002 is somehow to be seen as proof that the issue is of no consequence. This is particularly impressive when it is borne in mind that C M, for

example, had been attending the Family Centre since January 2000 and R W, on any version, had still not been able to send her in clean by May 2002.

I consider R W's denial of her failings in respect of hygiene to be entirely unreasonable. More especially, it shows that she remains incapable of change in this regard.

6. *All children are at risk of harm due to poor hygiene, poor routines and poor physical presentation.*
Again, the evidence contained in initial Reports is compelling. For example, at page 33 of the initial Social Work Report by Ms V M and Ms C, it is stated;

> Throughout social work intervention with this family, P…'s presentation has been a cause of concern. He would often be seen in clothing in poor condition, dirty and unkempt and generally be described in a state of neglect. P… can invariably be seen without a coat despite wet and freezing conditions. His clothing would often be torn and unsuitable. As stated earlier, given the dysfunctional nature of the family, and inappropriate behaviour of both older siblings and parents, there is little evidence to support the notion of availability of appropriate positive role models.

7. *All children are at risk of harm due to poor hygiene, poor routines and poor physical presentation.*
I have found on the evidence that poor hygiene was a feature of the household. R W concedes poor routines. Of the significant harm which flows from poor presentation, the further remarks about P M, following on from the extract just quoted, make the matter plain.

> Given P…'s poor appearance and lack of acceptable cleanliness, there is the increased risk of P… experiencing social isolation and this has impacted on his behaviour.

8. *Nutritional Neglect - Poor diet; No regular mealtimes; Irregular eating habits.*
As before, amidst the wealth of material found in the various Reports which were submitted in evidence before me, I propose here only to recall the notorious passage as to how the children, especially the younger, were seen to behave across the border in 2001 while R W had removed them from the reach of Social Services in Northern Ireland. This included C M been seen going into the house and eating out of a bowl of dog food. In addition, the Principal at the National School, which M M, E M and G M attended, reported that "… from a clothing perspective the children presented as being neglected. He informed that they only sometimes had lunches."

9. *Environmental Neglect-*
Inadequate parenting;
Over reliance of older siblings to provide stability for the children;
Younger children sharing their mother's bed;

Neglect of home environment.

I have already dealt with the issue of inadequate parenting. As for over reliance upon older siblings to provide for the children, it was quite apparent, not just from the terms of the various Reports, but from the evidence taken before me, that C M, E M and M M showed all the signs of a strong attachment to their older sisters, S M and M M, to what on occasion was the exclusion of their birth parents. Even on the case advanced by R W, she admits that it was her practice for a prolonged period to absent herself from the home and to leave it to the likes of M M to collect the youngest from school while R W was off gambling. The Reports also make clear that it was one or other of the older children who would get the youngest ready in the morning, just as reports from school mention the older children hanging around and causing problems outside. Likewise, it was apparent that this over-reliance on the older children led to them being involved in inappropriate activities, as where M M used E M as an accessory in a shoplifting escapade.

That the younger children shared their mother's bed on occasion was not actually in question. I am not, however, satisfied that this, of itself, constitutes significant harm.

Conversely, neglect of the home environment is simply an obvious feature of the family history. For example (and it was not the worst), it is recorded at page 20 to 21 of the initial Social Work Report;

> On the 18th October 2001, Ms H… did a home visit to ….. Ms W… was not at home, M… M… (17 years) and S… M… were at home. Also present were C… and E… M…. M… M… informed that her mother had gone into ….. to visit their father but would be back shortly.
>
> The state of the family home was generally untidy with clothes lying on the floor, on top of the washing machine and beside the dryer. There was bread lying in the middle of the kitchen floor. E… looked as though she had just returned from school. Her hair looked unbrushed and her school jumper was soiled on the front. C… was dressed appropriately for the time of year.
>
> Both younger children were taken upstairs by S…. M… informed that M…, E… and G… attended at … National School in … and P… attended … Special School in …. Social Worker was informed that S… and T… P were currently not in school, as their mother could not secure them a place in the local technical school.

Or, consider the following passage from Mr. B's Report, at page 65 and 66;

> The fact that the two older girls M… and S… have often been left in charge of the children causes concern as does the fact that staff had

> considerable difficulty in contacting Ms W… on numerous occasions. Moreover Ms W… would appear to dismiss concerns about leaving the children with inappropriate persons. On 16/10/00 the minibus left the children home at 12.30 pm but there was no answer at either Ms W…'s or Mr M…'s house. On attempting to leave them off at their mother's house a second time, the door was opened by an older man who claimed to be the children's uncle. As staff had not been given permission to leave the children with this person, the children were brought back to the centre. At 1.30 pm Ms W… phoned the centre to enquire as to the whereabouts of her children. She arrived in the centre in a very hostile mood and said the centre staff had no right to decide whom her children could be left with. Ms W… would not agree that it was necessary for staff to be given advance warning before leaving children with somebody other than their parents or older siblings. She stated that the children would not be returning to the centre and was extremely hostile, shouting and accusing the centre manager of reporting her to social services and of being sickened when C…'s leg was alright. The centre manager asked her on two occasions not to shout in front of the children, C… was in her arms at this stage to which she shouted in reply that the manager "couldn't fucking tell her how to behave in front of her fucking wains". What concerned staff most was that C…, E… and H… were completely unperturbed by their mother's behaviour.

While some material clearly expands into other areas of real concern, this is the kind of thing which leads me to the conclusion that neglect of the home environment was chronic and harmful to both the care and protection of the subject children.

10. *This… [admitted, inadequate supervision of the children causing them to be exposed to criminalized behaviour and contact with a suspected sex offender, the admitted failure to provide proper boundaries and colluding with the children to deny or deflect concerns, among other things] has caused significant harm to G…, P… and M… in terms of their social and educational development and results in the likelihood that E… and C… will suffer significant harm.*

    That the obvious consequences of such pronounced and maladjusted behaviour is to occasion or threaten significant harm ought to be self-evident. That R W should continue to dispute as much merely testifies that she is not capable of recognising or understanding the true gravity of these concerns.

11. *Over-reliance upon older siblings to provide interaction and play.*
    There was ample evidence placed before me to the effect that the subject children - and most probably the rest of the siblings - simply never learnt appropriate and stimulating interaction and play from their mother. The oral evidence taken before me included accounts as to how the subject children were uncertain in play environment and could do little but trample and destroy play objects.

In summary, after hearing R W on the matter, I saw no reason to revise my earlier conclusion, in light of all the evidence that these children either had suffered

significant harm or were likely to suffer such harm, had they not been made the subject of care proceedings in May 2002.

The Care Plans
I have studied the Care Plan for each subject child, prepared by Ms V M and Ms V B. What follows is a summary.
1. **P M** (13 years)
P M is now placed with his father. He is well-settled and speaks fondly of H M. He has smartened up, in his physical appearance, and developing all the normal pre-occupations of his age in this respect. His dental health is receiving proper attention and work is in hand to increase his interaction with his peer group, particularly through the Extern Youth Programme. He has been assessed and found not to suffer from ADHD. He continues at a Special School, where his behaviour can still be challenging at times. He is now participating in more group activities, such as swimming and physical education. His attendance has been adversely affecting by the arrangement that he attend for contact on both Mondays and Thursday, but the Plan is that this be curtailed, by a phased reduction, down to once per week for a month, then once a month thereafter.

R W refuses to recognize the concerns about P M and would wish that all her children be returned to her care. However, there are no such plans for re-unification. H M has proven to be significantly more pragmatic and is willing to accept assistance in supporting the current placement. As with Plans for all the subject children, the arrangements will be reviewed every 6 months, in accordance with the Looked After Children's Review Procedures.

There are plans afoot to secure a Housing Executive transfer to the country and P M is very excited about the idea of moving out of town.

Contact
Both parents oppose the Plan for reduced contact, as part of the permanency arrangements. In this regard, I place my confidence in the professional judgment of Ms C and Ms V M, both experienced and professional Social Workers and entitled to be thereby acknowledged as having significant expertise in the field. I have also studied an article entitled *Contact and Openness in Permanent Placement*, kindly supplied to me at Hearing by the Guardian Ad Litem, who fully supported the Trust's position.

On the matter of empirical evidence, it is there stated;

> The cumulative evidence from research has been usefully collated and interpreted by Quinton *et al* (1997). They conclude that knowledge is limited due to the lack of systematic research focusing on the effects of contact on the outcomes of permanent placements

Nonetheless, the combined experience of practitioners in the field remains at present to the effect that a reduction of contact is a necessary part of permanent placement.

One should never be afraid to concede that such perceptions remain subject to empirical research. Here, as is so many other fields of human endeavour, human knowledge is prone to develop, in light of experience. What is regarded as good social work practice now is significantly different from what was accepted twenty years ago. Precisely the same can be said about other areas of social policy, such as aspects of legislation and caselaw. No doubt, things will be significantly different on some points in another twenty years. Children, however, cannot be left in a vacuum on the meantime. Apart from anything else, they may not be children by the time further empirical evidence – possibly – effects a revision of professional views in this matter of contact with birth parents. I must decide now, upon the evidence before me and the import of the expert opinion brought to bear, having regard at all times to the best interests of the children. I conclude that the Plan is to be endorsed in respect of the proposals for contact.

More than this, all further contact is to remain supervised at this time. I consider this precaution to be entirely justified, given R W proven capacity to undermine previous placements and her implacable opposition to the Care Plans. I am satisfied that she will do whatever she can to undermine the current placements in respect of the three youngest unless her contact is closely monitored. In this respect, I also have to say that H M, who maintains that these three youngest should rightly be placed in his care, if not that of their mother, also poses an uncertain degree of threat to current placements for those children. His conduct in respect of housing allocation last January shows that he remains capable of deception and manipulation when he puts his mind to it, given, in particular, that the dynamics between himself and Social Services may be found to change in light of the outcome to these present proceedings.

Finding
I consider this a suitable and appropriate Plan for P M. It is most heartening to hear how happy he is with his father. The critical difference between H M and R W in this respect is that the former has proven willing, even somewhat belatedly, to acknowledge the Trust's concerns, to co-operate with the professionals, even to actively seek their assistance on a frequent and daily basis, and to accept their guidance. The fact that P M's own preferences have a real part to play in making this latest placement work does not significantly derogate from the fact that H M has confounded expectations in his capacity to prioritise his son's needs, most especially since this remains a demanding child.

It is however not to be gainsaid that P M has shown himself able to frustrate all best-laid plans of the past and that the deeper challenges which he represents for any carer remain latent. I therefore agree with the Guardian Ad Litem in the view that the Trust needs to advance its contingency plans, should this placement break down for any reason. If it should do so, it is likely to be quickly. It may well be that this will entail residential care and possibly outside the Trust's area. Obviously, there remains the possibility of distressing, and potentially damaging, uncertainty in the aftermath of any further breakdown, should clear contingencies not be in place by then. Nonetheless, I do not think that the evident degree of vagueness on the point

warrants recourse to a further interim order. The Trust have advised that they will continue to seek a suitable alternative for the purposes of the contingency plan and I have no reason to doubt that.

2. **G M** (12 years).

G M is happy to remain with his father on a long term basis and, overall, has settled in relatively well. He also is developing a healthy and age-appropriate interest in his personal appearance and his dental problems, as with those of his older brother, are likewise being now addressed. There are problematic issues remaining in respect of his education, but it is hoped that in time he will be able to move back from the Behavioural Unit, which he attends from Tuesdays to Fridays, into mainstream education. Family Support help with his homework. He also attends for contact on both Mondays and Thursday, but the Plan is that this be curtailed, by a phased reduction, down to once per week for a month, then once a month thereafter.

In the Care Plan for G M, with respect to Parents' Wishes, it is stated; "Ms W… does not accept that there is any justification in any of her children being in the care system. Although she conceded the Trust's Threshold Criteria on 5th December 2002 Ms W… is convinced that Social Services concerns are unfounded and in some cases malicious. She would wish for her children to be returned to her care as quickly as possible."

That much was made very apparent at Hearing. There, it also emerged that her counsel's unqualified concession on threshold was without her client's authority. R W had in truth conceded only selected elements of the criteria on 5th December. Further, those concessions were purely pragmatic; R W did not accept affectively that what she was conceding justified the removal of the children from their mother.

Finding

I consider this a suitable and appropriate Plan for G M, subject to the points I have made concerning contingency planning.

3. **M M** (7 years)

M M is well-settled in his current placement, since moving there in November 2002. His general health seems good, although his GP has referred him to an ENT Consultant in respect of concerns about his hearing. Arrangements are also being made to have him attend speech therapy. He started at his present school in November 2002 as well. He seems to have settled well there and likes going. Should anything go wrong with his present placement, the Trust would seek an alternative carer. As with all the younger three subject children, there are no plans to return M M to either parent and contact is to be reduced to once per month in a staged process, save that informal contact between M M, E M and C M on a more frequent and casual basis is to be co-ordinated and supervised by their respective carers. The same provision for addressing this looked after child every 6 months apply.

Finding

I consider this a suitable and appropriate Plan for M M.

4. **E M** (almost 6 years).

E M has settled well in her current placement, with C M, and is reported to have coped well with the separation from M M. Her overall health is good, though speech therapy classes are being arranged for her. She enjoys school and her teacher describes her as a cheerful, friendly child. Her school work remains below average, but the Education and Library Board is carrying out an assessment and any identified needs will be addressed by the supply of required services. The same arrangements are proposed for E M in respect of contact as for M M.

Finding

I consider this a suitable and appropriate Plan for E M.

5. **C M** (4 years).

Much the same Plan is proposed for C M as for E M. C M has begun attending Nursery School on weekday mornings, which she is reported to enjoy. She also is on a waiting list for speech therapy. As with E M, she has established a good relationship with her carers.

Finding

I also consider this a suitable and appropriate Plan for C M.

The Case for Further Delay

It has been urged upon me strongly, on behalf of both R W and H M, that now is not the time to come to final conclusions in these proceedings.

On behalf of R W, it has been contended that, in effect, the parenting assessment carried out for present purposes should be set aside because on 5th December 2002 she underwent a sea change in conceding threshold for the first time and, as virtually a different persons, might be found to have real capacity to change, if re-assessed.

At Hearing, I found that submission to be misleading. It is quite apparent, not just from R W's conduct since 5th December, but in her evidence before the Court that she actually continues to deny much of the real concerns about her past parenting and is so deeply hostile to Social Services that I see no prospect of her effecting adequate change within the foreseeable future. Her tactic in addressing these proceedings has, it seems, concentrated upon an effort to divert the enquiry into the essentially extraneous issue as to whether the Trust could or should have done more to prevent the incident of non-accidental injury to little C M in October 2002. That, and an effort to have the Court hold back on a final determination until she tries again, and again, to secure findings that she has achieved good enough parenting skills, seeking to re-run parenting assessments and psychological assessments toward that end.

In H M's case, the contention has been that he has not been assessed with reference to whether he could provide adequate care for all five subject children and that it is

both unfair, and contrary to the Convention right to family life that these proceedings should be determined without that step having been taken.

I am satisfied, on the evidence provided by both Trust and Guardian, that there does not presently exist the basis for concluding that H M has the resources to take on the responsibility and challenges represented by the three youngest children. H M put himself forward as a potential carer for the youngest children only weeks before the final Hearing was due. I am satisfied that this represents more of a tactical adjustment by H M, after privately concluding that R W would not succeed in her endeavour to secure care of the three for herself. On the bare proposition that a child is best cared for by one or other birth parent, if feasible, he has then stepped up and formulated his 11th-hour application as the default parent. I recall here what I stated much earlier in this too lengthy judgment as to how parents need to understand that they have in fact only a matter of months within which to show necessary change and secure a return of a subject child to (either) parent, or to a suitable member of the wider family before current precepts on permanency planning command that one move on to place the children in an alternative, stable home environment. That is especially so for the younger children, if they are to succeed in an interrupted progress toward attachment.

I might also quote here the following passage from the judgment of Gillen, J in Re DJ&D (Freeing Order)(Unreported Judgment dated 25th September 2001);

> I have come to the conclusion that these children cannot be exposed to the risk of further uncertain attachments or sacrificed to the vague possibility that, contrary to a pattern that had been set over a number of years, A and R will somehow alter the dynamics of their lifestyle in the course of the next one to two years. They have had ample opportunity to manifest evidence of this change in the past and, without exception, they have failed to do so.
>
> The case was made on their behalf that M, who had also exhibited a past pattern of domestic violence, and alcohol abuse, had now been sufficiently rehabilitated so that the Trust had approved the return of two of the five half siblings to his care with likely approval by the Trust for a residence application for the three remaining half siblings. This argument fails to address the crucial difference in M's position namely that according to the evidence of the Trust, he had manifested over a lengthy period a proven ability to alter the dynamics of his lifestyle and to change. Sadly the converse has been the position in the case of R and A.
>
> I was also satisfied that the Trust have carried out their statutory duty to interview and assess other potential carers for the children including, an aunt namely Ms A. I am persuaded that these enquiries were of no avail in producing any prospect of an alternative potential carer within the extended family or elsewhere.

So very much of those remarks apply, *mutatis mutandis*, to the history in the instant case. In this case, however, with respect to H M's proposal, I reiterate that the evidence evinced cause for significant concern about little E M's sexualized behaviour and, indeed, about a discernible interest on the part of several of the

children in exploring quite inappropriate and dangerous situations with regard to sexual activity, including association with a suspected sex offender. None of this was fully explored before me. The root causes were not made apparent. A fuller investigation of this aspect is just one of the lines of enquiry which would be necessary, in the context of an application by the father for care of the three youngest, including two daughters. This merely goes to underscore that the further delays in permanency planning are contrary to the best interests of the children concerned.

The Welfare Checklist and Other Issues

I have considered throughout the welfare checklist in respect of each child, as set out in Art. 3(3) of The Children (Northern Ireland) Order 1995. I find that the Care Plan in each instance is one which best meets the needs of the child concerned. I have also considered whether it is appropriate to make no order at all and have concluded that to do so would constitute failure to protect these children from suffering significant harm. I have considered all possible orders at my disposal and believe that only Care Orders for the five subject children meet their needs and best interests.

By the same token, I have considered whether the granting of such orders would interfere with the Convention rights of both R W and H M under Article 8 thereof (private and family life). I find that orders which have that consequence are justified by reference to the best interests of the children and constitute a proportionate response in this case.

19th June 2003

John I. Meehan, RM