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Judgment: approved by the Court for handing down | *Delivered:* **29/06/2006**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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IN THE MATTER OF C AND S (FREEING FOR ADOPTION APPLICATION: WITHHOLDING CONSENT)

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GILLEN J

[1] I direct that nothing must be reported in this case which would serve to identify the children or the members of their family.

[2] This is an application by a Health and Social Services Trust which I do not propose to name ("the Trust") for an order pursuant to Article 18 of the 1987 Adoption (Northern Ireland) Order ("the 1987 Order") freeing two children whom I shall identify only by letter namely C now aged 6 and S aged 4. I shall identify the mother of the children as X and the father of the children as Y. Both parents have parental responsibility.

Background

[3] Very little of the background in this case was factually in dispute between the parties. That responsible attitude adopted by all counsel in this case permits me to summarise the relevant background information as follows:

(i) The other siblings in this family apart from C and S are as follows:

(a) J1, now aged 12 years, who is a half brother to C and S, is the subject of a care order and resides in long term foster care placement.

(b) S1, now 9 years of age, is a full sister of C and S and resides together with child J in a long standing foster placement.

(c) J2, now aged 8 years, is a full sister of C and S and resides in a long term foster care placement with S1.

(d) A, who is now 6 months old, resides with X and is registered on the child protection register. He is a full brother of C and S.

(ii) Care orders were granted in respect of J1, S1, J2, C and S on 16 November 2004 in the High Court of Justice in Northern Ireland. The parties agree that the threshold criteria at that time essentially were that X had been engaged in excessive abuse of alcohol and suffered from alcohol dependency. In addition the children had been exposed to domestic violence on the part of Y within an unstable and chaotic marital relationship, The brevity with which I can summarise these facts must not conceal the disruptive and dysfunctional upbringing of C and S whilst in the care primarily of their mother. A report from Dr Cassidy, Consultant Psychiatrist, (who gave evidence before me) dated 5 August 2003 described X's drinking history as follows:

> "She reported commencing drinking at 18 years of age. She reported a history of 3 years heavy drinking although she was initially referred to the Service 8 years ago. Her weekly consumption she estimated at 7.5 units of alcohol nightly (the recommended safe level of drinking for women is 14 units weekly). The date of her last alcohol consumption was one week previously. She had been attempting to reduce her intake of alcohol over the previous year. Her longest period of abstinence she reported as being 9 months in 2002. She had been previously assessed by the specialist addiction service and offered treatment in 1995 and 2001. She had also previously attended Cuan Mhuire, a therapeutic community for treatment of alcohol problems. She reported a family history of alcoholism in her father."

Describing the affects of addiction, Dr Cassidy continued:

> "She has not lost employment due to alcohol as she is a housewife and not working outside the home. She reported that she was informally separated from her husband due to his history of domestic violence. … She has 5 children aged between the age of 9 and 17 months. Social Services are currently involved due to child protection concerns. Mrs X

> reports that she was previously in the habit of drinking alcohol after her children retired to bed. …. The diagnosis was alcohol dependent syndrome. Regarding a treatment plan, Mrs X was offered counselling sessions at the addiction services clinic and was booked to attend our 5 day intensive group counselling programme as an in-patient in the addiction unit on 28 April 2003. It was also recommended that her GP prescribe antibuse. This is a tablet which is taken daily. If the patient consumes alcohol within 5 days of taking the tablet an antibuse reaction ensues with nausea, retching and palpitations, reddening of the skin and feelings of panic."

Reporting on her engagement with the treatment plan of Dr Cassidy recorded in that report:

> "29 May 2003 – attended late for the counselling session at clinic. Self-report of abstinence from alcohol. Also reported that she was continuing to take the antibuse medication. The patient agreed to attend the addiction unit support group on Wednesday if social services paid for a taxi.
>
> 30 June 2003 – attended counselling. Self-report of abstinence from alcohol over the previous 10 days. However in the weeks prior to this she reported that she had stopped taking antibuse and had relapsed which resulted in the children being taken into the care of social services. She reported that she had resumed taking daily antibuse alcohol. Next counselling is scheduled for August.
>
> 29 April 2003 – she did not attend the 5 day intensive group counselling programme as planned."

Turning to his summary and conclusion Dr Cassidy recorded as follows:

> "Regarding compliance with treatment, Mrs X has always had difficulty attending treatments and appointments either at our clinic or at the addiction clinic. The pattern to date has been incomplete engagement in treatment with a number of missed appointments and subsequent discharge from the

> service as a result. Mrs X has been offered the full range of specialist treatments provided by this service on this occasion of this referral and on the two previous occasions.
>
> Prognosis
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> It remains to be seen whether the pattern of incomplete engagement and difficulties availing of the services offered re-establishes itself. If the pattern re-establishes itself, the prognosis is poor."

(iii) There have been 3 failed attempts at rehabilitation of C and S to their mother's care. The failures had in each case been due to her excessive drinking. A survey of the placements history of these children is testimony to the disruptive effect that the dysfunctional family circumstances of X and Y – occasioned largely by excessive drinking and domestic violence – have caused to these children:

(a) The children lived in the care of their mother (and more intermittently their mother and father) from birth until in or about April 2002.

(b) April-June 2002 in foster care.

(c) June 2002 – 24 June 2003, parental care.

(d) 24 June 2003 – 18 December 2003, foster care.

(e) 18 December 2003 – 20 March 2004, parental care.

(f) 29 March 2004 – 5 April 2004, foster care.

(g) 5 April 2004 – 6 May 2004, parental care.

(h) 6 May 2004 – 27 April 2005, foster care.

(i) 27 April 2005 to date in a dual approved and potential adoptive foster placement.

(iv) An additional factor in this case is that A, the youngest child, is not the subject of care proceedings although his name has been registered on the child protection register. He remains at home with his mother without formal social services intervention. The evidence of the Trust is that this is predicated on the basis that X and Y no longer live together albeit their

relationship does continue. I was informed that Y is currently engaging in work at a family centre on domestic violence.

(v) So far as current contact with C and S is concerned, C and S have weekly contact with X, J1, S1 and J2 for two hours. S and C have monthly supervised contact with Y which has been occurring separately to X's contact.

(vi) Domestic violence has been a major factor in this relationship and as the evidence unfolded it became clear that there was no dispute as to the facts I have referred to at pages 14-18 of this judgment.

The Trust Case

[4] Mr Toner QC, who appeared on behalf of the Trust, with Ms Murphy, in the course of the helpful statements of core issues augmented by oral submissions summarised the Trust case as follows:

(i) Whilst the Trust accepted that X's personal circumstances have improved, the change has come too late for C and S.

(ii) He relied on the evidence of Professor Tresiliotis that adoption was in the best interests of these children and ought not to be denied where X's change for the better came so late in their lives.

(iii) Counsel submitted that the scale of the domestic violence was such that the failure by Y to realistically address the matter to date coupled with the denial by X as to its degree augured badly for the future well being of the children.

(iii) It was Mr Toner's case that the hypothetically reasonable parent would recognise the real and tangible benefits of adoption for C and S as being in their best interests.

(iv) That if a freeing order was granted, the Trust should engage in a phased post-freeing reduction in contact with X and Y and their siblings to once per month which would continue to be supervised by Trust staff. Post adoption contact, he submitted, should be one direct contact annually as part of a family contact in respect of both X and Y. In particular he urged that the views of the prospective adopters should be of great importance.

The Case on Behalf of the Respondent Mother X

[5] I record at this stage that Y attended the hearing although he was unrepresented. I did permit him to put questions to any witness.

[6] Ms Keegan, who appeared on behalf of X, in the course of a careful skeleton argument augmented by oral submissions, made the following case:

(i) The mother, having been diagnosed as having alcohol dependence syndrome, does not suffer from any mental illness and is living in the community separate from Y with a variety of supports from social services and others.

(ii) She has been abstinent from alcohol since May 2005. She relied heavily on the evidence of Dr Cassidy which I shall deal with in some detail in the course of this judgment.

(iii) It was urged on the court that the taking of a child into care should be regarded as a temporary measure to be discontinued as soon as circumstances permit. Any measures implementing that care must be consistent with the ultimate aim of reuniting the child with the natural parent and in her submission the minimum to be expected was that the authorities would examine the situation anew from time to time to see whether there had been any improvement in the family situation. It was her submission the Trust had not adequately considered the mother's improved circumstances post care order and that the Trust not made sustained efforts towards facilitating reunification. She relied in this context on AR v Homefirst Trust [2005] NICA 435.

(iv) Counsel argued that rehabilitation should be considered in light of the mother's improved situation. If rehabilitation was not considered viable, long term fostering would best meet the needs of these children given their situation and the fact that it would enable them to maintain the relationship with their mother and siblings and that all of the children's' care plans would be consistent one with the other.

(v) She submitted that the mother was not unreasonably withholding her consent given that she had maintained sobriety for one year, that she was parenting another child at home without any court intervention, that foster care had not been fully considered particularly when there was a care plan for the other siblings, and that ongoing direct contact was in the best interests of each child.

(vi) That X had a sense of grievance in relation to the decision making particularly regarding post adoption contact which had been decided between the Trust and the adoptive carers.

(vii) Alternatively she submitted that if a freeing order was made, it should be on the basis that post adoption contact should occur three to four times per year.

(viii) Counsel invoked Article 8 of the European Convention on Human Rights and Fundamental Freedoms ("the Convention").

The Submissions of the Guardian Ad Litem

[7] Mr McGuigan appeared on behalf of the guardian ad litem. In the course of this skeleton argument augmented by submissions at the hearing, he made the following case:

(i) He adopted the arguments advanced by Mr Toner on behalf of the Trust.

(ii) He submitted that adoption was in the best interests of the children pursuant to Article 9 of the 1987 Order. In particular he argued that the court ought to consider the number of placements in which the children had resided and the failed attempts to rehabilitate the children to their mother's care.

(iii) He questioned the prospects of X maintaining sobriety given the track record and failures in the past.

(iv) Counsel submitted that the mother was therefore unreasonably withholding her consent.

(v) He submitted that if a freeing order was made, arrangements for contact should not be prescriptive and should be progressed voluntarily with the consent of both carers and parents in a context which did not undermine the sense of stability for the children.

Evidence

Professor Tresiliotis

[8] Professor Tresiliotis is a distinguished consultant psychologist. He furnished a report on 14 March 2006 and added an addendum shortly before the commencement of this hearing. In the course of his reports, his examination in chief and cross-examination the following matters emerged:

(i) His remit was to consider the nature and degree of the attachment between C and S and their mother/father/elder siblings, to make recommendations concerning contact between the mother and father and the two children as well as inter-sibling contact. In his addendum report the remit was to comment on the issue of adoption against long term foster care. It was not his remit to consider the question of rehabilitation between parents and children.

(ii) He recorded that the mother made no attempt to deny or play down her previous lifestyle and its probable impact on C and S.

(iii) His overall conclusion drawn from the evaluation of the Trust's contact notes was that contact on the whole had been more positive than negative and C and S appeared to enjoy it. Not only did they value the affection and attention given by their parents but they would also reciprocate without being asked mainly on arriving and when leaving. The expression of spontaneous affection during contact however was limited. He thought X managed the contact session that he observed well considering the presence of five children. His overall view was that X had a reasonable relationship with C. The witness considered that the child displayed mixed feelings. C strongly identified with his carers and wished to be there. On the other hand whilst denying a closeness to his mother, he clearly demonstrated closeness to her in contact. It was the witness's view that this ambivalence could be related to his experiences at home given that the children had seen the excessive drinking and the domestic violence. Professor Tresiliotis recorded that he had rarely come across a 6 year old with such awareness of the circumstances that he was in and his future. The child tried to convince the witness that the present carer's family was where he wanted to make his roots and where he wanted to be. It was the witness's view that if he is told that he will not be permanently staying with them, he will be very disappointed but it is hard to tell if he would be emotionally damaged by a refusal of a freeing application. On the other hand it was the view of Professor Tresiliotis that this child has had a number of moves and that three efforts at rehabilitation have failed. In the view of the witness a fourth failure of rehabilitation would cause irreparable damage if he had to move to yet another foster carer. He is already a troubled child (although a sociable one) from the experiences of three/four changes of carer. Another failure would set him up with great problems for the future.

(iv) The witness recorded that research shows that if a child has not come home and been rehabilitated after one year, chances of future rehabilitation are substantially reduced. If the child does not come home after two years then chances of rehabilitation are virtually non-existent. He referred to a large study, funded by the Department of Health and Social Services in England and Wales, which revealed that where there have been failed rehabilitation efforts, the chances of return are very slim. Accordingly after a series of failures, there are great difficulties in rehabilitation. On the other hand he did recognise that this might reflect a number of underlying problems such as mental health, dysfunctional parents, and other inadequacies which simply do not resolve despite frequent attempts. In the case of alcohol however, provided the underlying cause of the alcoholism is addressed, matters can be resolved if the alcoholism ceases.

(v) Turning to S, he did not think that S had a meaningful relationship with his mother. During the contact session observed by the witness, the child sat on her knee for the first 15 minutes but there was no demonstration of affection as had been the case with C. For the rest of the time there was no more contact between him and his mother. He is clearly close to S1. He noted that the child had been taken from his mother when young and has had no opportunity to develop a relationship. C is older and of course some relationship did develop before he left home. S has weak memories of his family. In theory the fact that he has established very good attachment with his present carers does indicate that he would be able to form a new attachment with his mother if returned to her. One caveat to that is that he has had two to three previous carers and therefore his capacity to trust could be affected if he were to lose the present carers.

(vi) This witness had carried out a major study into why adoption can be preferable to long term foster care. He said that in the right case adoption is preferable because it provides emotional security and predictability that long term foster care does not provide. There is a different commitment in adoption with no opt-out clause. The adoptive parents have different expectations from the long term foster carers. Long term foster care does have its place in planning for children who cannot return to their birth families but this is not one of the instances in his view. Professor Tresiliotis concluded that these are very young children who should not be exposed to the continued uncertainties and unpredictabilities of long term foster care when they have the opportunity to be adopted by their existing carers. However had the current carers only wanted to act as long term foster carers he would still have supported maintaining the status quo. These boys are making good attachment to their carers and as far as one could obtain the wishes and preferences of such children, they are closely identifying with their carers and wish to stay there.

(vii) Discussing the carers and the children, Professor Tresiliotis noted, having spoken to them, that they wished to adopt these children and did not want long term foster care.

(viii) Turning to post adoption contact, he noted that his experience of cases in England is that the average number of occasions on which direct post adoption contact occurs between birth parents and adopted children is three to four times per year. One visit more or less is not relevant he said but what does matter is the quality of that contact. He recorded that all the studies state that post adoption contact can work but will fail when the visiting birth relative does not fully accept and actively support/encourage the placement. Any undermining of the placement causes great problems. He had concerns in this case that the mother loves the child and could give messages about returning home which could undermine the placement. Children do not like a fraught situation and conflict is damaging to them. It was Professor

Tresiliotis' view that in light of the possibility of the placement being undermined the mother should meet both children once per year and also the father separately would meet the children once per year. If this goes well, then the whole family could meet together. However the situation ought to be flexible depending on how matters evolve. The court should not be too prescriptive in the view of Professor Tresiliotis.

(ix) In cross-examination the witness indicated that the norm for local authorities in England and Wales (and indeed Northern Ireland) is that planning for permanence is put into place if the children have not been returned home within six months. Equally a care plan should tell the parents, preferably in writing, precisely what has to be done to secure rehabilitation. It was the witness's view that in this instance the probability of rehabilitation had to be high if the children were to be returned otherwise there would be a high risk for the children and it is more difficult to get parenting carers as children grow older. Moreover the decision in his view should be made within three months. He emphasised how difficult it was for the carers to be left in a state of uncertainty and in his view it was intolerable for them to be placed in such a situation.

(x) It was the witness's view that a contact order in the wake of a child being freed for adoption can become a new battleground. Whilst he acknowledged that birth parents should have a voice, the flexibility of the no-order principle in regards to direct contact is a preferable course. From studies in England it emerges that once contact starts to progress well, then sometimes more contact can be introduced, with less supervision. Everything depends on how the relationship progresses.

Dr Cassidy

[9] Dr Cassidy is a Consultant Psychiatrist. I have already adverted to the contents of a report of his of 2003 earlier in this judgment. In the course of his further reports, his examination in chief and cross-examination, the following points emerged:

(i) Touching upon the earlier report of 2003, he added that X does not have a mental illness which can in other cases add complications to treatment and provide additional problems. She does not have a personality disorder but she is immature and does have personality difficulties which include an inability to learn from experience.

(ii) The treatment for alcohol dependency is three-fold:

(a) Biological treatment which involves pharmacological treatment such as antabuse which is a tablet taken daily and causes a violent reaction if alcohol is taken with it.

(b) Psychological treatment. This involves motivational counselling, psychotherapy and education as to how to deal with the problem. This includes group approaches, for example, five day intensive group programme.

(c) The sociological approach. This involves attendance at self-help groups, for example, alcoholics anonymous, womens' groups dealing with alcoholics, encouragement and management by social services and involvement of family or other salient people in the life of the alcoholic .

(iii) In the past X clearly had difficulty engaging with addiction services and had lapsed into alcohol abuse. Her longest period of abstinence in the past was in 2002 namely 9 months.

(iv) Turning to his report of 1 November 2005 he recorded that she had been abstinent from alcohol since May 2005 when she became aware she was pregnant. He regarded this as an important factor in her abstinence. She attends support groups weekly at the addiction unit at the local hospital. She wished to recommence antabuse after delivery. She requested that Dr Cassidy's letter of support be communicated to the community midwife, her health centre, her obstetrician and her child and family social worker. Dr Cassidy was satisfied that this woman has been abstinent between May 2005 and May 2006. She is attending a support group regularly run by specialist addiction nurses as well as at AA. He felt that this approach was quite different from anything that has emerged over the last 10 years. The antabuse tablets are taken daily.

(v) He made the point that treatment does not rely on individual willpower. It is common to ask a relative or a spouse to ensure that the antabuse is taken daily and the presence of an observer greatly improves participation.

(vi) Dealing with his report of 27 April 2006 Dr Cassidy recorded that X has demonstrated a marked improvement in her co-operation with the addiction service since August 2005. Her motivation was enhanced by the pregnancy and birth of a health baby, the daily antibuse adjunctive therapy and the attentions of social services in monitoring the childcare situation. He felt that after approximately ten years intermittent involvement with the addiction service Ms X has considerable insight into alcoholism and the effects of it on individuals and family. He believed her ability to change and maintain abstinence had been demonstrated over the past 10 months since she became aware of her sixth pregnancy. He was satisfied that the ability to change had been augmented and sustained by the monitoring attentions of social services

and the assistance of the adjunctive therapy. If abstinence has continued for over one year, then the prognosis is generally better.

(vii) On the other hand he acknowledged that the motivation of ensuring that the children would not be returned to care, had not worked over the past 10 years. A major factor in her continuing abstinence will be external monitoring. The prognosis for change would deteriorate if that external monitoring disappeared. He also acknowledged that she would face a considerably increased stress level with two troubled boys being added to the family. That would proportionately also increase if some of the other children joined the family.

(viii) Dr Cassidy said that given the history of the past 10 years, he would be foolish not to be guarded in his prognosis. He indicated however that there was some degree of optimism in his view. He underlined 4 factors which were relevant. She had been motivated firstly by her pregnancy, secondly by the presence of social services, thirdly by the antabuse and fourthly by the presence of the addiction services. At first he indicated that his opinion was that it was a 50/50 chance of her returning to alcohol. For the first time this is an instance where she is consistent in that she has consistently engaged with bodies to address her alcoholism. Hopefully she can build on this. He emphasised that all the supports are now in place In his opinion if she is going to be able to do it, now is the opportune time with the baby providing the motivation for continuing to abstain. In cross-examination his position shifted slightly in that whilst he said that he thought it was likely that she will remain abstinent he conceded that the continued monitoring will be an important factor. With the current monitoring in place, he felt that the likelihood of abstinence was somewhat more than 50 percent. As time progresses and the level of monitoring deceases, in the mid-term and longer-term, then he felt that the chance reduced to 50 percent. He emphasised that in the next 3 months, where there is substantial monitoring, the likelihood was more than 50 percent that she would remain abstinent.

(ix) He acknowledged that her husband was a factor. He recognised there had been a chaotic and violent relationship in the past and that now he had been discharged from prison their relationship had resumed although they were not living together.

(x) Dr Cassidy concluded by saying that there was a reasonably substantial risk that she might return to alcohol abuse and there was a long way to go in her treatment. Certainly if the supports were withdrawn the risks would increase.

[10] I found Dr Cassidy an impressive and realistic witness. He has no illusions about the risks involved in the process of continued abstinence for this woman but I discerned a cautious note of optimism for her future

provided she is given appropriate support. I concluded that in the short term the prospects for remaining abstinent may be slightly more than 50/50 but that this would reduce if the support mechanisms were to be withdrawn.

Ms S

[11] This witness was a qualified social worker for 10 years and a senior social worker for the past 2 years with the permanency team. The functions of the permanency team operate where rehabilitation is no longer considered by the Trust to be an option in which event the three existing possibilities are kinship care, long term foster care and adoption.

[12] I wish to make clear at the outset that I found this witness to be engaging and sincere. She struck me as a dedicated social worker totally committed to achieving what is best for these children. Her evidence was candid and thoughtful. In so far as I disagree with some of her conclusions, that is no criticism of her and merely reflects a family justice system were there are few absolutes. In the course of the report which she had prepared, her examination in chief and cross-examination the following salient points emerged:

(i) These children have been with their present carers since April 2005. They are duly approved for long term foster care and adoption. If a freeing order is granted, it is likely that these carers will become the adoptive parents in due course. Everything I have heard about these carers persuades me that they are a paradigm of what loving, caring and responsible foster carers should be. I listened in admiration as this witness informed me how C and S had integrated well into the family, had progressed to an extent that C's primary school teacher had indicated she had never seen such progress in 6 to 9 months for a child, and I am not surprised that C has clearly expressed a view that he wants to stay in this placement and not move on. They have indicated that they are open to direct contact in a post adoption situation. They have assiduously attended looked after children meetings and they are open to meeting the birth parents. I have no doubt that they will be devastated if these children are to be rehabilitated to their birth parents. I accept entirely the views of Ms S that this couple could offer security and predictability to these children. I am anxious that my admiration for this couple should be conveyed to them. I pause to observe at this stage that although the conventional approach in freeing order cases in Northern Ireland is that foster carers and prospective adoptive parents do not become involved in the process at this stage, courts in certain circumstances should be prepared to entertain the possibility of such carers attending to hear the proceedings if they express a wish to do so. In this case it seemed to me that it could be plausibly argued that future relations between the birth parents and these foster carers could be assisted if the carers had the opportunity, if they so wish, to hear the evidence of the birth parents. This would not of

course require them to be physically in the same court if they did not wish to do so but could be facilitated by way of live television link with them present in a different building. Hence I invited the parties to consider this aspect in this case. In the event it was not considered appropriate by the birth parents in this instance but this is an approach that should not be dismissed in future cases.

I emphasise that this should not become the norm but courts should, in appropriate circumstances, consider the possibility having taken the views of all the parties including of course the birth parents.

(ii) This witness articulated the essential reasons why the Trust were opposed to rehabilitation, namely:

(a) The past history of this mother was one of broken expectations with three failures to abstain from alcohol. Between January and March 2004 when the children had been returned to her, she continued drinking albeit this had not been ascertained by social workers for some period. Between the care order being granted on 16 November 2004 and the application for a freeing order on 22 April 2005 she yet again continued to drink. It was only the pregnancy with A that had spurred her decision to abstain again. This witness drew my attention to LAC review of 10 October 2005 when the chairperson had clearly outlined to Ms X the Trust view that the five siblings were currently in three separate placements and that the Trust had afforded her numerous opportunities to parent the children. It was not in the children's interest in the view of the Trust to apply the "wait and see" approach given the history of persistent alcohol abuse, the domestic violence and the impact on the children. Ms X had previously stated she would abstain from alcohol if her children were returned to her but was unable to do so. In short therefore this witness indicated that the Trust felt it was all too late now.

(b) Abuse of alcohol was not the only issue. Domestic violence was a very prominent aspect of Trust concerns. In the course of cross-examination by counsel for the guardian ad litem, she drew my attention to the statement made by Ms X as recently as 22 February 2006 at para. 10 where she stated:

> "Domestic violence has not been a major feature at all and I can only recall one incident when my husband sat on top of me in front of the children. I did state on other occasions that I'd been hit but that was under the influence of drink and it was not accurate."

This of course contrasted with what she had told the LAC review on 26 December 2003 which records:

> "Ms X has indicated that possibly all of the children may have at some time witnessed domestic violence between herself and Mr Y. Ms X has stated that she was 'sometimes beaten black and blue by Mr Y,' J1 had reported that Ms X was thrown down the stairs by Mr Y. Ms X indicated that she found talking about her own life experiences had helped her to make connections in relation to the domestic violence. It was noted that previously Ms X would have taken all of the blame for the violence and also blamed her drinking for her husband's violence toward her. Ms X initially indicated that she is proceeding with a separation from Mr Y and had advised that Mr Y had resided in the family home at the time and social services requested him not to do so. Ms X has now indicated that they may reconcile in the future as she can remember the good times and indicated that the domestic violence was always connected to her drinking. However now she feels that he cannot cope with the children."

(iii) The Statement of Facts of the trust at para. 30 records:

> "On 6 February 2003 the mother self-reported to the Trust that she had consumed alcohol on 4 February and had been physically assaulted by the father, such incident being witnessed by C. She advised that she had contacted the police who had requested that the father leave the family home."

In the Statement of Facts relating to C, at para. 61, the following is noted:

> "On 23 August 2004, the Trust were advised by S, J1 and their foster carer that the mother had been intoxicated during a telephone contact the previous evening. Further during the conversation the mother told S1 that the father had assaulted her as apparently S1 had told him during a contact visit the previous week that her mother was pregnant."

A record of discussion at the child protection conference held 23 November 2005 attended by X and Y and a number of social workers and other multi-disciplinary agencies recorded:

> "Mr Y denied that he had ever hit his wife. Mr Y admitted that the had put Mrs X to the floor and held her on the ground on occasions because she was fighting with him. (A social worker) commented that the last incident of domestic violence was reported on Easter Sunday 2005 when Mrs X alleged that her husband had struck her on the stomach."

The witness also drew my attention to the report from Dr Barnardos based on five sessions which Barnardos had had with Mr Y since the work was first contracted on 2 December 2005. That report provided a brief summary of the work along with the views of the family resource centre and progress to date. The report recorded that Y had been referred to the centre because he had been accused by Ms X and the children of hitting her. Y was undertaking the work on domestic violence as part of a care plan to ascertain if there was evidence that Y can change and is thinking about how to treat Ms X. That report, dated 22 February 2006 includes the following references drawn to my attention by this witness:

> "Mr Y feels Mrs X's drinking 'was 99.9% of the problem.' His description of the relationship between him and X suggests that X would become very bad tempered and Y would have felt provoked by the verbal and physical attacks she would have made against him. However he has also spoken of how he didn't feel angry or confused etc in response to this situation because he felt that as a drinker X has a disease and it is not her fault that she behaves this way."

> "He has continued to be adamant that he has never hit or slapped her and that the extent of using physical force against her was when he tried to grab her by the waist and ended sitting on her to stop her from flailing her arms and legs around. He has spoken of how he would more frequently have left the house, returning to his own place to get some peace. Y has spoken of how when he would get out of the house the situation between him and X would not bother him anymore. … Throughout the work Y has denied ever hitting X and believes the children's statements about this show X's influences over them."

> "In terms of the impact on the children when prompted, Y acknowledged that the children would have heard more rows than usual because of the alcohol but felt that they had their 'escape route' because they were out at school. There is a sense from Y's responses that he has not been able to consider in what way the care of the children had been compromised by X's action or by his response of getting away to work or his own place to give his head peace."
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> "Y has been able to demonstrate that he would have a fair understanding of what constitutes domestic violence. From these discussions Y clearly thinks it is not acceptable for a man to hit his wife and leave a mark on her and that he should be ashamed of himself for injuring his wife. However there should be some concern that the distinction Y has made about a 'soft slap' not being considered by him to be domestic violence and felt you could 'forget about them.' He felt there was no intention to hurt her …….. in these situations."

The report continued:-

> "There have been times when there is a sense that Y is frustrated at being asked to do this work. He continues to feel he has not acted inappropriately towards X and continues to deny having ever hit her, despite allegations coming from the children. Y's position is that he does not acknowledge the areas of concern that have been identified by social services and holds a different view of what happened in this relationship with X. There is little indication that Y's view will change during future work as he has been consistent with his story to date."
>
> "Some of his beliefs about domestic violence would indicate that he feels that a certain degree of physical aggression and hitting without the intention to mark or hurt is in some cases acceptable and would not constitute violence. Yet he is adamant he has not slapped X in any way. Y has been able to show some insight into the impact of witnessing domestic violence on 6-7 year old children and the dilemmas

> they face in protecting themselves and protecting mummy. He has also talked about how children younger than this would not be impacted upon, but that for older children it can affect their behaviour in their adult relationships to."
>
> "His level of engagement in the work is limited by the position he has taken regarding the allegation of domestic violence that have been made about him. He is not accepting of the concerns raised by social services about the standard of care the children receive not being adequate or about their being incidents of domestic violence in the relationship between him and X."

The conclusion of the family centre was as follows:

> "a. Y is unlikely to progress any further than at present and it is our view that there would be little gained from trying to get Y to shift from the view that he has consistently held for some time.
> b. Y's level of engagement is limited given the position he has taken and we would be suggesting that the focus of future work would move in a different direction. It would be our suggestion that future work could look at couple work with X and Y to explore their patterns of communication and what needs to be different from the past for them to parent A."

Hence it was this witness's view that the twin problems of alcohol abuse and domestic violence were such that to take a risk of returning these children to Ms X would require the Trust to be certain that these matters have been addressed.

(iv) It was the witness's view that she was concerned about the ability of C and S to transfer their attachment from the current carers back to their parents. C did not want another move. He had set down roots with this family.

[13] The witness also acknowledged in cross-examination a number of positive features about this mother:

(i) It was clear from the health visitors report of February 2006, after she had made 7 unannounced visits to the home of X, that X was doing an "excellent job in caring for A since their discharge from hospital." It was

noted that her parenting skills are excellent in respect of caring for A and she had clearly not lapsed since A was born. This was not a woman who needed to go to family centre parenting skills courses and indeed her parenting skills were never in issue. She had considerable assistance at the moment. Sure Start came in every Monday, the health visitor makes weekly visits and a social worker visits during the week and at weekends. These are very often unannounced and there has been absolutely nothing to date to suggest that she has wavered in her commitment to stay off alcohol. However the witness did make the case that even in the past, with this degree of help, she had faltered and had returned to alcohol abuse.

(ii) In addition the birth mother currently receives help from her sister who is 18 and her mother who visits her occasionally although she is very ill at the moment.

(iii) She acknowledged that X had been under the stress of her mother's illness, her husband in prison and the constant monitoring but had remained sober and effective in caring for A.

(iv) It was also acknowledged that it was encouraging that Y had undertaken the domestic violence counselling.

(v) This witness accepted that that J1 (who has had 12 placements and is already in difficulty with his present placement), S1 and J2 may all be rehabilitated to their mother in the medium or long term and that it would be an incongruous situation whereby one would have the situation of three elder children in care with plans to return, one child at home and two in adoption. It was suggested that the Trust should be providing support for the family to avoid being split in this way and that the damage caused by severing these sibling bonds could be extensive. The witness acknowledged that this was a complex problem but her underlying principle was to ascertain what is best for each individual child. S1 and J2 were likely to remain in public care for some time although she admitted that she had never managed a case quite like this. She also acknowledged that the views of the older children on the adoption of S and C had not been canvassed and that the views of all members of this family should be taken into account. The witness however felt that there was a difference in age between the older children and C and S and they would have a greater ability for self-protective mechanisms if returned than the younger children.

Procedural Matters

[14] This witness was questioned about several of the LAC reviews which had occurred. The relevant issues that emerged were:

(a) 7 July 2005. This was a LAC review which occurred after the adoption panel had made a recommendation for adoption for C and S on 10 March 2005.

(b) I pause at this stage to rehearse the obligations on Trusts under the Adoption Agencies Regulations (Northern Ireland) 1989 (hereinafter called "the Regulations"). Where relevant the Regulations state as follows:

> "9-(1) subject to paragraph (2) an adoption agency shall refer its proposal to place a particular child for adoption with a prospective adopter, which it considered may be appropriate, together with a written report containing its observations on their proposal and any information relevant to the proposed placement to its adoption panel ..
>
> Adoption Panel Functions
>
> 10-(1) subject to paragraphs (2) and (3) an Adoption Panel shall consider the case of every child, prospective adoption and proposed placement referred to it by an adoption agency and shall make one or more recommendations to the agency, as the case may be, as to –
>
> (a) whether adoption is in the best interests of a child and if the panel recommends that it is, whether an application under Article 17 or 18 (Freeing Child for Adoption With or Without Parental Agreement) should be made to free the child for adoption …
>
> Adoption Agency Decisions and Notifications
>
> 11-(1) an Adoption Agency shall make a decision on a matter referred to in Regulation 10(1) (a) .. only after taking into account the recommendation of the Adoption Panel made by virtue of that Regulation on such matters.
>
> (2) as soon as possible after making such a decision the Adoption Agency shall, as the case may be, notify in writing -
>
> (a) the parents of the child, including the father of an illegitimate child where the Agency considers this

> to be in the child's interests or the guardian of the child …."

[15] Hence in this case the witness accepted that the recommendation of the Adoption Panel had been made, and the LAC of 7 October 2005 was, in her view "to review this recommendation". It was the intention of the Trust to have two separate reviews – one where the current foster carers would attend and another where the parents would attend. The review of 7 July 2005, which the foster carers attended, contains the following reference:

> "A separate review will be offered to S's parents to facilitate their involvement in the review process."

[16] X and Y had been unable to attend due to some transport difficulties. Sadly however this witness acknowledged that although she had searched in the file to see whether the intention to have the parents attend had been followed up at a separate review, this had not occurred. The purpose of the review would have been for them to contribute to the decision-making process and to be told the circumstances of the children in the placement. I was very concerned indeed that the clear undertaking to offer these parents an opportunity to engage in this review process had been either overlooked or forgotten. This witness, conscientiously, became aware that this had not taken place and arranged for their attendance in October 2005 to obtain their views. However in the interim the decision-maker on behalf of the Trust Mr McGrath wrote on 20 July 2005 (ie thirteen days after the LAC where the foster carers had attended) informing the parents of the decision. This letter was never produced.

(a) At each LAC to which the parents were invited, there was a parallel meeting with the foster carers. Ms Keegan criticised this on the basis that the foster carers were always the first to be invited (this occurred at the LACs of 7 July 2005, 7 October 2005 and again in April 2006). Counsel suggested that this was an indication that the views of the foster carers were being prioritised over the views of the parents. I pause to observe that I was not satisfied that this was the case. It may well have been a matter of pure logistics to ensure that carers and birth parents did not meet and to fit in with a timetable of members of the multi-disciplinary LAC Committee. Nonetheless it is something that the Trust should look at in the future to ensure that perceptions are not mistaken. Counsel went on to draw my attention to the fact that the LAC review of 7 October 2005 included a reference to a number of decisions which had been made in the absence of the views of the parents insofar as their meeting took place on 10 October 2005. Once again I am not convinced that this was a deliberate action on the part of the Trust so long as those decisions taken on 7 October 2005 were not irrevocable and were discussed with the parents in substance on 10 October 2005 before being actioned. However I consider it is important that the Trust

understand that perception is often as important as substance and that where these parallel meetings are to take place, decisions should only be made once both parties have had their opportunity to address the meeting.

Post adoption contact

[17] It was the witness's view that if these children were freed for adoption, meetings should be once per month between siblings and parents up until the adoption took place. Thereafter it was her view that they should occur twice per year with the family including A. A final visit should be accorded to the maternal grandmother. She acknowledged that the current supervised contact was on the whole positive. Post adoption contact she felt should be twice per year to avoid disruptive and intrusive interference with family life with the adoptive parents. She had spoken to the carers and this coincided with their views. The witness underlined that post adoption contact is not about fostering a relationship between birth parents and children but rather to provide links for the children to their past. She felt that there should be a high priority to listen to the carers views who are the gatekeeper in such circumstances. The birth parents need to accept this new concept and to work towards it. She was concerned that X and Y did not accept the care plan and that there was a danger they could undermine the placement. However these carers were open to direct contact and progress could be made for further contacts depending on how matters unfolded.

[18] Finally this witness, cross-examined by counsel for the guardian ad litem, acknowledged that as these children get older, they become less adoptable. She also pointed out that X and Y are apart due to the "duress" of the Trust's insistence and that they would rather be living together.

Recall of the Witness

[19] At the termination of the evidence in the case, it was submitted by Ms Murphy on behalf of the Trust that she had been taken by surprise by the argument of Ms Keegan to the effect that the parents had been insufficiently involved in the decision-making process and that the decision to move to free these children for adoption had been taken in the absence of highly relevant material ie the view of the parents. In those circumstances Ms Murphy asked that the Trust be permitted to call further evidence to deal with the apparent lacuna in their case. At this stage the Trust evidence had concluded and the parents and guardian ad litem had already given evidence. Whilst I was unsympathetic to the proposition – in my view Ms Keegan had made this argument clear throughout the case – nonetheless I considered that since the Family Division is a quasi inquisitorial system where the interests of the child are paramount, courts should be slow to allow procedural propriety to impede the real justice of the case emerging. Hence I decided to exercise my discretion to permit the Trust to call further evidence despite the objection of

Ms Keegan. Consequently the Trust recalled Ms S. The following points emerged in her examination and cross-examination on this net issue:

1. The relevant sequence of events leading to the decision were as follows:

(i) A meeting of the permanency planning team met on 17 January 2005. Such a meeting occurs where a child has been in care for more than 6 weeks. The purpose is to ensure consistency of approach and the avoidance of delay or drift. At this meeting rehabilitation of the children to the parents had been excluded as a possibility by the Trust.

(ii) The proposal that the children be freed for adoption was then presented to the adoption panel in March 2005.

(iii) Prior to that the care plan for adoption had been approved by the Family Proceedings Court on 16 November 2004. The two children had been moved to dual approved placements on 27 April 2005. The witness indicated that subsequent to the order of the court in November 2004 the Trust would have been open to rehabilitation, but there had been no significant change at all by January 2005. The witness drew my attention to Regulation 7(2) of the Adoption Agencies Regulations (NI) 1989. This makes provision for a form E which contains a number of matters to be submitted to the adoption panel including a written report outlining the Agency's observations on the matters referred to in the regulation. Regulation 9 requires the Trust to refer its proposal to place a particular child for adoption with a prospective adopter together with a written report containing its observations on the proposal and any information relevant to the proposed placement to the adoption panel. The witness was therefore adamant that all of this would have been in the possession of the decision-maker Mr Martin to whom I shall shortly turn.

(iv) She then referred again to the LAC meeting of 7 July 2005. The witness conceded that it would have contributed to a more transparent process if arrangements had been made for a further meeting for the mother to attend. However the note of the LAC that did occur records that those who were in attendance were informed that Ms X had recommenced attendance at an addiction service in Armagh and that she was no longer drinking albeit only two months had passed since this abstinence had commenced. Moreover the decision-maker would have been aware from a note made by Ms TA, another social worker, in April 2005 that C had asked why he could not stay with his mother because she was no longer drinking. The witness was satisfied that TA would have shared all this information with Mr McGrath particularly in light of the fact that X was expecting a baby and the pre-birth case conference would have required the prior approval of Mr McGrath. In terms therefore the witness was confident that Mr McGrath the decision-maker would have been made aware of all the circumstances before he took the decision on 20

July 2005 that the Trust would apply for a Freeing Order in relation to both children.

(v) It emerged during the evidence of this witness however that the Trust could not find or had not kept or had destroyed a copy of the notification in writing which ought to have been sent to the parents in this case pursuant to Regulation 11 of the Regulations. Ms Keegan indicated that X had no recollection of receiving the letter but the case was not being made that the mother was unaware of the decision that had been taken. Nonetheless there did not exist in the Trust records any note or memorandum to the effect that the decision-maker in the Trust had written to the parents pursuant to Regulation 11.

2. My conclusion was that this Trust had all too casual an approach to their obligations under 1989 Regulations at this time. Not only had it apparently overlooked the necessity of involving the parent in an alternative LAC subsequent to 7 July 2005, in itself in my view a major flaw in the decision-making process, but they had not even taken the trouble to keep a copy or record of the fact that there had been compliance with Regulation 11 of the Regulations. I considered that this lent weight to the proposition put by Ms Keegan to this witness that the Trust were really approaching this matter with a closed mind and that long before the LAC of July 2005, this Trust had decided that rehabilitation was inconceivable. Accordingly therefore involvement of this mother or father in the decision-making process became largely irrelevant. I was driven to conclude the failure of any of the social workers to recall that another LAC was to be set up for these parents before the decision was made and the failure to even keep a record or make a note of the decision-makers conclusion is sadly consistent with this proposition. This witness conscientiously arranged another LAC in October 2005 to which the mother was invited and did provide an opportunity to update her circumstances but sadly this was three months after the decision had been made and was largely about the decision-making process in the context of post adoption contact. This casual approach is no reflection on this witness but rather on those who were senior to her and at that time in July 2005 were responsible for the decision-making process.

The First Named Respondent X

[20] This was the mother of C and S. I was very impressed by this woman. She clearly has a flawed personality which has led to her addiction to alcohol for many years and she wilfully attempted to mislead me in the course of her evidence about the extent of the domestic violence that she has suffered. Nonetheless I believe anyone who had the benefit of observing her in the witness box could not have failed to be moved by the strength of her current resolve to abstain from alcohol and turn over a new leaf in the cause of these children. Her physical appearance bore testament to the change she has

brought about in herself and the strength of her current resolve coursed through the content of her evidence. I am satisfied that her attempts to mislead this court initially as to the extent of the domestic violence was borne out of a misguided belief that her quest before me to retrieve these children was hopeless if she admitted the extent of the domestic violence. During the course of her statements to the court, her examination in chief and her cross-examination the following matters emerged:

(i) She freely admitted her substantial drinking history and declared that "drink had taken everything away" from her. I fully appreciated that she could not stop without help and that now she was fully exploring the avenues of assistance. She described the regime that she currently follows and the assistance that she receives in these terms:

> Monday – Surestart representatives visit her between 10.30 and 12.30 in her home.
>
> Tuesday – a health visitor visits herself and the child A and spends about half an hour with them.
>
> Wednesday – she visits the addiction centre between 2.30 and 4.00 in the local town. She organises a childminder to look after A during this period.
>
> Thursday – a social worker visits her. The social worker can call at any time and is unannounced.
>
> Friday – she has contact with her children.
>
> Saturday – she is subject again to unannounced social work visits.

It seems to me therefore that this woman does avail of a substantial degree of support and that if she faltered at all in her endeavours to give up alcohol there is every prospect that this would be observed by one of these sources.

(ii) She also attends Dr Cassidy, where the giving of periodic blood tests, and the taking of antabuse are vital ingredients to prevent her returning to alcohol. In addition she is involved with Alcoholics Anonymous on a Monday evening and I have before me a letter from the local chairperson of the AA group confirming that she is making a very honest effort to maintain her sobriety and is becoming "a well liked and respected member of AA". She emphasised that she had been subjected to some stress in the course of the last year eg the birth of her child, her mother suffers from a terminal illness and the placement with the eldest child J had broken down. Her case was that she had made her way through these thickets without resorting to alcohol.

(iii) Initially when she gave evidence to me on the question of domestic violence she was untruthful. She attempted to minimise the extent of the history of violence perpetrated on her by Y and only when confronted by a searching cross-examination by Mr Toner QC on behalf of the Trust was she driven to admit the various instances in the past when she had made complaints to a number of social workers about the beatings she had received. I have already adverted to the history of these beatings at pages 14-18 of this judgment and by the end of her cross-examination I was satisfied that she had recognised and accepted publicly that they had occurred. She also conceded that at a LAC review on 10 October 2005, it had been recorded that C had voiced concerns about what would happen to the new baby if "mummy and daddy started drinking and fighting again". She realised that C had some insight into the unsafety in the home which occurred if fighting and drinking occurred even though he was only 6 years of age. She admitted that this child had witnessed much of her drinking although she was unsure to what extent he had been aware of the domestic violence. She indicated that in her view her drinking had precipitated some of the domestic violence because her husband took grave exception to her being drunk.

(iv) X acknowledged that the Social Services had been correct to take away the children at the time they did on 6 May 2004. She readily recognised that she already had been given three opportunities in the past to care for these children when they had been returned in June 2004, December 2003 and April 2004 but that their subsequent drinking had precipitated her removal from her.

(v) The witness manifested some antipathy to the current foster carers indicating that she believed that they were trying to turn the children against her and they wanted the two boys for themselves. I have not the slightest doubt that this is patently untrue but at the same time I must recognise that it is extremely difficult for a mother such as this to accommodate herself to the view that her children may be taken into care by this other loving couple.

(vi) X acknowledged that she ought to have made these changes at least two years ago. She claimed that she did not realise the seriousness of what would happen to the children. She lost her composure completely when it was put to her that C at one stage had said "it was horrible at home" and I was satisfied that this loss of composure was a genuine outpouring of this woman's grief and despair at what her behaviour had wrought on this child.

(vii) The witness was adamant that she would not return to drinking because she had now the strength of Dr Cassidy, friends in AA who would support her, and her use of the drug antabuse. She recognised that if rehabilitation avenues were opened up again, the other children who are now in care will want to come back to her. However her view was that with

support and help eg her sister-in-law and Social Services, she would be able to handle her whole family over time.

(viii) When she was confronted with the degree of domestic violence, which she had initially minimised, I questioned her as to her denial in front of me. I was satisfied with her assertion me that she had underplayed this deliberately in court because she feared that admissions of domestic violence would inevitably lead to the children being taken away from her. I was convinced that she was genuine in saying this and when, again having lost her composure, she asserted that if her husband resumed this behaviour she would leave him to protect the children I was satisfied that there was at least some chance that this might be true despite her failure to do so in the past. Currently her husband lives 45 minutes away from her although she accepted they were still in a relationship. She admitted that she was upset that he continues to deny domestic violence when speaking to Barnardos and indicated that if this continued she would given serious consideration to their relationship after the court.

(ix) She went into some detail about her assistance from AA. This is a closed group and she attends every Monday. She has a sponsor who assists her . .

Finally this woman handed into the court some drawings from the children referring to their love for her. These of course were typical children's drawings which most mothers have and treasure. However I was satisfied that this mother kept these as a monument to the underlying love which these children have for her and which I believe will serve as a constant reminder for her need for abstinence.

Y

[21] This was the father of S and C. I was much less impressed by this man that I was with his wife. I had observed him in court over the course of the hearing and his demeanour had not betrayed any indication of remorse or even concern as the history of domestic violence had unfolded before me. In the course of his evidence, and in sharp contrast to his previous performances with social workers and Barnardos over a lengthy period, he readily admitted to virtually every allegation of domestic violence that was put to him by counsel. He freely conceded that he had harmed the family because of the domestic violence he had visited upon his wife and accepted that the children had been affected by what had been going on in this area. In particular he recognised that C had seen enough of the fighting and drinking to be worried about the child A. He also acknowledged that not only would C have witnessed some of the shouting and quarrels in the household, but he imagined he would have seen some of the violence. Moreover he expressly accepted that on occasions he had not only struck his wife with his fists but

had kicked her. He stated he had denied all of this in past because he did not want people to know what had been going on in the house. He was now adamant that he would tell the truth about his behaviour and that he had not understood that matters would go as far as they now had with the court on the cusp of placing these children for adoption. He asserted however that he had not been violent to his wife since May of last year. It was his view that the violence had boiled over from her drinking. He now acknowledged that he only sees the children once per month in a supervised setting. It was his earnest belief however that S and C could be returned to his wife and that he himself would now have to work harder with Social Services. He recognised that he had a problem with power and control of women and that he would be fully committed to work with Barnardos about these issues. He readily accepted that his change of attitude could have been influenced to some extent by the fact that his wife had said the previous day that she was thinking of separating from him.

[22] I remain to be convinced that this man has had a damascene conversion. I fear that his change of attitude in the witness box was merely a recognition on his part, perhaps fuelled by overnight conversations with his wife, that further denial was hopeless in the face of the facts and his wife's evidence. Sadly I entertain the fear that this man may well be incorrigible and that the nature of his wife's future association with her children will be in direct proportion to her ability to keep her distance from him. Nonetheless, whilst I am much more pessimistic about this man's prospects for change, the possibility does remain that since these admissions by him are a matter of immutable record, this could provide the basis for some progress through further therapy particularly if he believes that he may lose not only his children but also his wife if he fails to change his violent ways. I emphasise however that I still entertain grave doubts about this man's ability to change and I am sure that the present prohibition of the Trust on him having anything other than supervised contact with the children should remain the position until they are in possession of concrete evidence through Barnardos or some other therapeutic counselling service that he has mended his behaviour or at least is making progress to do so.

Guardian ad Litem

[23] I found the guardian ad litem in this case to be a thoughtful and reflective witness. He gave his evidence in a measured manner and insofar as I have departed from his recommendations, this is no criticism of what I consider to have been a very conscientious effort on his part to deal with a very difficult case. I am bound by the authorities to set out my reasons for so deputing and I have set these reasons out later in my judgment. In the course of his reports, his examination in chief and cross-examination the following matters emerged:

(i) X and Rehabilitation

He accepted that this was the longest period in many years that X had been abstinent and that the baby A was thriving in her care. He was however conscious of the previous history and the failed attempts to rehabilitate the children. He accepted that the current phase is probably the most significant in terms of intensive monitoring of her behaviour and a relapse prevention policy.

In the past the return of all the children to her had been a significant challenge and had resulted in a breach of her abstinence. His concern was that the stress of the older chidren as well as C and S returning to her would trigger her drinking. It would add to additional pressures if all the children were to be returned.

He was simply not sure how these carers would react to the court refusing to make a freeing order. They have an expectation that they will be adopting these children. Not only would it be difficult to say how they would react in practice to the court refusing the order, but they would need help through the process. He asserted, and I accepted, that these are excellent committed people who will take all steps necessary to reassure the boys and try to do what is best for them. There is an element of emotional fragility in the whole process.

(ii) The Reaction of C

He said the boy's reaction to the refusal of a freeing order would be difficult to predict. There is likely to be a rise in the difficulty of his behaviour. S appears to have made the primary attachment to the placement. In his view it was too late now to reverse to rehabilitation. C regarded his current placement as his family and did not want to shift. He has a sense of lack of permanence and has now made friends in his current school. The pointed references in discussions with the guardian ad litem to the angry faces of his parents reflected on his past and in the view of the witness were relevant to the realisation on the part of C that domestic violence had occurred. C's priority is to secure himself within his current family in the opinion of the guardian ad litem. He would have to be prepared for any change in the process very carefully. He felt that at the moment the boy was scared to move. The guardian went on to say that the boy might interpret the refusal of a freeing order as a betrayal of his expectations as to the future because he thinks the home with his carers is where he is to live. He will find it difficult to accommodate himself to any change.

(iii) The Effect on the Other Siblings

Ms Keegan raised this point with the witness in her cross-examination. The guardian accepted that it was conceivable that there would be a sense of rejection felt by C and S if they were to be adopted and the other children were all to return home in the future. Nonetheless he felt that this would depend on how the information was conveyed to them and how secure their placement was. He accepted that it was always useful to establish the views of siblings although he was not sure just how crucial that was in this process. He indicated that he had taken the views of the other three children into account but he recognised that they did not agree with the process that was now unfolding.

(iv) The Changing Views of C

This witness accepted that the views of this boy have changed since he had been living with the carers for some time now. He still does make positive comments about his mother and he does have the ability to make the best of his own world. However the witness expressed the view that the current placement meets his needs his needs for security whilst at the same time recognising the benefits from contact. He accepted that C had regarded his mother as the most important person in the early stages of the placement and that he still calls her "mummy". On 3 June 2005 he had stated "if you're not drinking why can I not live at home with you" when speaking with mother. That comment appeared to the guardian to be spontaneous and the boy was clearly at that stage harbouring thoughts of returning to his mother.

(v) The LAC of 7 July 2005

This witness conceded in cross-examination that the failure to set up an additional appropriate LAC for these parents in July 2005 was not within the spirit of the needs of Article 8 of the Convention. However he still felt that in the ongoing discussions with X, her views had been taken into account by the Trust. She was aware of the unfolding process in his opinion. Whilst he recognised the argument that the Trust had set their mind on implementing the care plan inflexibly , he nonetheless felt that the Trust had listened to her comments against this.

(vi) Post Adoption Contact

The guardian felt it was too early to make a decision about post adoption contact at this stage. He felt that much would depend on how the parents accommodated themselves to such a decision if the court determined that that should be the outcome.

Conclusion

[24] I have determined in this case that I must refuse the application by the Trust at this time. That of course does not affect the continued implementation of the care order and the measure of parental responsibility which is vested in the Trust. I have come to this conclusion for the following reasons:

(i) I am conscious of what I said in Re T (Freeing Without Consent: Refusal to Dispense with Agreement of the Parent) NIFam 6 (Unreported) 11 Feb 04; 14:

> "I commence my deliberations on this issue by recognising the draconian nature of the legislation which is now being invoked by the Trust. It is difficult to imagine any piece of legislation potentially more invasive than that which enables a court to break irrevocably the bond between parent and child and to take steps irretrievably inconsistent with the aim of reuniting natural parent and child."

I am acutely conscious of the fact that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment do amount to an interference with the right to such protection by Article 8 of the European Convention of Human Rights and Fundamental Freedoms "the Convention" (see Johanson v Norway [1996] 23 EHRR 33). It is also crucial to appreciate that taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit and that any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child wherever possible.

I have also derived great assistance from two recent cases in the Court of Appeal in Northern Ireland namely AR v Homefirst Community Trust [2005] NICA 8 and Homefirst Health and Social Services Trust v SN [2005] NICA 14. In the former case, Kerr LCJ stated in the course of the judgment of the court;

> "It is unsurprising that research into the subject discloses that it is desirable that permanent arrangements be made for a child as soon as possible. Uncertainty as to his future, even for a very young child, can be deeply unsettling. Changes to daily routine will have an impact on a child's need to feel secure as to who his carers are. It is not difficult to imagine how disturbing it must be for a child to be taken from a caring environment and placed with someone who is

> unfamiliar to him. It is therefore entirely proper that this factor should have weighed heavily with the Trust and with the judge in deciding what was best for J. But, as we have said, this factor must not be isolated from other matters but should be taken into account in this difficult decision. It is important also to recognise that the long-term welfare of a child can be affected by the knowledge that he is being taken from his natural parents even if he discovers that this was against their will.
>
> So, while there may be many cases in which prompt decisions as to the placement of children are warranted, this is not inevitably or invariably the best course … We consider that in the present case there were sound reasons to postpone the decision as to where J should ultimately be placed. As the judge rightly observed, it might be many years before Mrs R could finally demonstrate that she had completely overcome her problems with alcohol and lack of insight but it does not inevitably follow that no delay in deciding what should become of J was warranted. There was already cause for optimism and with close supervision of it at least distinctly possible that Mrs R would have been able to care for her son … although a decision in J's future that would have allowed permanent arrangements to be made was desirable, this did not, in our opinion, outweigh the need to give Mrs R the chance to prove herself. Taking into account `the imperative demands' of the Convention in relation to her Article 8 rights, the need to have matters settled for J should not have been allowed to predominate to the extent that the mother's Convention rights could be disregarded".

I remind myself in this context that in Yousef v The Netherlands [2003] 1 FLR 210 at 221, para 73, the ECtHR stated:

> "The court reiterates that in judicial decisions where the rights under Article 8 of the European Convention of parents and those of a child are at stake, the child's rights must be the paramount

> consideration. If any balancing of interest is necessary, the interests of the child must prevail."

I have determined that this case that this Trust has failed to sufficiently keep abreast of the developments in the life of X. I have formed the melancholy conclusion that this Trust did reach a stage shortly after the care order had been obtained, where the collective mind of the Trust was closed to the notion of the possibility of rehabilitation in the wake of the history. Whilst I can understand why this view was arrived at, nonetheless Trusts must be ever mindful of the obligation to seek out rehabilitation wherever possible and that possibilities of redemption on the part of parents have to be frequently revisited. The all too casual approach evidenced by the failure to invite the parents to an alternative and important LAC in July 2005, which was a prelude to the final decision to seek a freeing order and the failure to keep a copy or record of the letter indicating the final decision, indicates to me that this Trust had given up seriously considering the possibility of rehabilitation to the point where they were in practice perfunctory in their consideration of the parents' views. I fear that the awesome nature of the step that they were contemplating had become lost in the context of a determination to follow through too rigidly a care plan which was not to be derailed even in the face of genuine and prolonged efforts by the mother to repair her drink addiction. I am aware that it is impermissible to isolate one alleged incident and use it as a basis for finding that there has been a breach of Convention rights (see Re V (Care: Pre Birth Actions) [2005] 1 FLR 627 but I do not think these were isolated incidents. Rather it represented a mindset of exclusion from the decision-making process and a failure to be sensitive to the Article 8 rights particularly of this mother.

I adopt the words of Sheil LJ in a dissenting judgment in Homefirst Community Health and Social Services Trust v SN in the matter of JN [2005] NICA 14 where at paragraph 29 the judge said:

> "If the Trust in the present case had been fully cognizant of SN's rights under Article 8 of the European Convention, this court considers that it should have given her a further opportunity to prove herself by undergoing the further therapeutic work in early 2003. That regrettably was not done thereby depriving her of the opportunity to prove that JN could be returned safely to her care. Having regard to the real progress which she had made in her life, despite not having the benefit of the further suggested therapeutic work, there was some real prospect that she might succeed in so doing, although that would take some time to establish."

I am much less optimistic about her husband, and, if their relationship continues, he may yet bring about a disastrous outcome. Nonetheless I am convinced that there is sufficient hope that this woman will maintain her separation from him until he has taken steps to effect a change in his belief structures about domestic violence. It may be that his admissions to this court, which are now a matter of record, will permit him to avail more meaningfully of the therapy and counselling which are so vital if he is to make progress in a manner compatible with the safety of these children.

(ii) This mother's parental skills have never been in issue. The papers are replete with references as to how well she has cared for A since his birth. The health visitor has described her as having carried out "an excellent job" with this child. Not only does she have insight into her problems but she has the capacity to parent to a high standard. She has faithfully observed the structures imposed on her by the Trust to ensure Y has not had unsupervised contact with A. I see no reason why she will not adhere to that approach in the future with other children until the Trust is satisfied that Y had made appropriate progress. The strength of the existing Care Order will afford the Trust a real opportunity to observe this aspect.

(iii) I am very conscious of the effect of domestic violence on children. Once violence has begun it is likely to be repeated with escalating severity. It can cause a sense of shame and powerlessness in the victims who often blame themselves and find it impossible to escape (see Hale LJ in Bond v Leicester CC times 23 November 2001). Children are irreparably damaged by seeing, hearing and being aware of it. I am satisfied that C has already been damaged by awareness of the violence of Y on X.

(iv) I have taken into account, as I am bound to do, the views of the guardian ad litem but I depart from his recommendations principally because I am persuaded that the prospects for rehabilitation of S and C with their parents are not yet spent. My further reasoning is set out in the conclusions section of this judgment.

However it is my view that there is an opportunity to break this spiral of violence in this instance. Already Y is living apart from X pending them taking appropriate steps to address his violent proclivity. I am satisfied that X now appreciates that unless Y does make progress in this field, the Trust will not permit the children to be exposed to him unsupervised and that she is now confronted with the choice of having her children or living with her husband unless he takes steps to change this approach. I have no doubt that this will continue to be the position if and when C and S resume living with her. As already indicated he has now as a matter of record admitted his violent past and there therefore is an opportunity for him to engage meaningfully with appropriate therapeutic services. There are sufficient

safeguards built into the current process to ensure that he cannot resume living with these children unnoticed until the appropriate steps have been taken by him. This area of the case has given me greatest difficulty principally because of my grave reservations about the sincerity of Y. But I must balance this against the positive duty on this court to facilitate , wherever possible, family reunification and recognise the rights of all the parties in this case under Article 8 of the Convention to a family life together. Is this history of violence sufficient to deflect me from the basic principle that the mutual enjoyment by a parent and child of each other's company constitutes a fundamental element of family life? To date this woman has maintained her sobriety and distance from Y whilst looking after A in a thoroughly responsible manner. I believe that compelling reasons would be necessary to interrupt the process of repair that is now in operation. Whilst there is unquestionably a significant risk of both alcohol and thereafter domestic violence exploding back into the life of this family, I think there is equally undeniably a chance that it will not. Adopting the reasoning of the Lord Chief Justice in AR v Homefirst Community Trust at paragraph 87, whilst that chance remains, these children should not remain away from her.

(v) I believe that a factor to be taken into account is the views of the other siblings. Although the Trust has perhaps been less than enthusiastic in ascertaining the views of J1, S1 and J2, I am satisfied that these children wish to return home and that it is highly likely that they are desirous of the full family being together again. I am mindful of the evidence that if C and S are returned to X, the pressure on her to take back the other three children will clearly mount. This in itself will be a stressful factor and will undoubtedly impose further pressure on her. Nonetheless it seems to me that the goal of possibly reuniting this entire family, together with the support that is clearly in place, is such a prize that the chance of failure is worth taking so long as the prospect for success is realistic. It is my view that the prospects are sufficiently realistic in the circumstances that I have outlined. I have sympathy with the point made by Ms Keegan that potentially it would be an unfortunate circumstance for C and S if they were to discover that their siblings had been returned home but they had been adopted. The view of the guardian ad litem is that much would depend on how rooted they had become with their current carers but nonetheless I remain unconvinced that there is not a real danger that in later years C and S could seriously come to question why they could not have returned with their other siblings to their family. These are unchartered waters in many respects and perhaps devoid of the appropriate research into such issues. Nonetheless commonsense dictates to me that this is a factor which I should at least take into account.

(vi) A matter which has caused me grave concern in this case is the ages of C and S. As Professor Tresiliotis pointed out, another failure of rehabilitation could be disastrous for these children particularly the elder child. As this child becomes older, the opportunities for adoption fade. I am also uncertain

as to the effect that my decision will have upon the current carers. I sincerely hope that they will recognise that this court is simply concluding that the opportunities for family reunification are not yet spent and that they will join in the efforts to provide one more opportunity for this family to be reunited. I have absolutely no doubt that the interests of the children are to the fore in their thinking and I am confident from what I have heard that they will throw their weight behind this renewed effort. I hope that they will be available as a safety net should this renewed approach fail. I am only too aware of the stress that this will place upon them and that they will be disappointed with this outcome. Nonetheless I am confident that they will recognise that the interests of these children must be paramount. I am also acutely conscious that both these children, particularly the elder child, will be disappointed at this outcome because they are already making attachments to their current carers. However I do not believe that the effect will go beyond that of disappointment and that these children will be able, if afforded the opportunity, to attach themselves again to their natural parents, given their young age.

(vii) As the evidence unfolded in this case, I became increasingly convinced that there is a very strong infrastructure of support in this case for X. Dr Cassidy struck me as a caring and careful clinician who was realistic in his appraisal of X. His presence in the ongoing development of this woman is a matter of great reassurance to me. In addition this Trust has been unstinting in its provision to this family and I am confident that the continuing presence of that help can be a major factor in the rehabilitation of this family. Moreover, the involvement of X in Alcoholic Anonymous and the assistance she obtains from her extended family will be further supports which may be crucial in the months that lie ahead.

(viii) I wish to make it absolutely clear that I am not creating any estoppel on the Trust returning to the court or renewing a fresh application to free these children if at any time in the short or medium term my hopes for a change in these parents prove unmerited. Two fundamental requisites obtain in this case. First, the mother must remain abstinent. Any faltering step in this regard should immediately trigger a review of the Trust thinking. Secondly, if this father is to play any meaningful role as a permanent feature with these children then he must show evidence of change through the medium of counselling or therapy. Once again if he refuses to do this, and any attempt is made to reintroduce his presence into the home on an unsupervised basis, the Trust would be well advised to review their attitude to this. I see no basis for the Care Order not continuing in place. However the Trust should reconsider a twin-track approach with rehabilitation now being carefully reconsidered and C and S having increasing contact with X by way of a phased reintroduction, including overnight stays, over the next 3-6 months. I am satisfied that this mother fully appreciates that full reunification of these children cannot happen overnight and that the process must be gradual not

only for the benefit of the children but also so that the Trust can supervise a phased reintroduction. I sincerely hope that the current carers will assist in this process because their role could be absolutely vital in the weeks that lie ahead pending further work being successfully carried out by Y with the appropriate services. His contact should continue to be supervised although as he progresses to the satisfaction of the Trust, the measures of supervision can and should be reduced.

(ix) Under Article 9 of the 1987 Order, in deciding any course of action in relation to the adoption of a child, a court shall regard the welfare of the child as the most important consideration. Having regard to all the circumstances full consideration must be given to the need to be satisfied that adoption will be in the best interests of the child, the need to safeguard and promote the welfare of the child throughout their childhood and the importance of providing the child with a stable and harmonious home. For the reasons I have set out in the earlier paragraphs, I am not satisfied at this stage that adoption would be in the best interests of either of these children and that the prospects for providing them with a stable and harmonious home still exist within the bosom of their birth family provided the progress that has been made in the last year continues. I understand the wishes and feelings of the children, particularly the elder child in this instance, and I have given due consideration to them having regard to their age and understanding. C does wish to stay with his present carers, but I must bear in mind the evidence of Professor Tresiliotis that he is ambivalent in his attitude to his mother and I am convinced that whilst the attachment to her is currently more tenuous than it ought to be, that can be repaired in the fullness of time. Whilst I therefore have taken their views into account, nonetheless their welfare in my view will be best protected if they can be reunified with their birth family.

(x) If I am wrong in the conclusion I have reached that adoption is not in their best interests, I nonetheless would have had then to turn to Article 16 of the 1987 Order to consider whether or not these parents, both of whom have parental responsibility, are unreasonably withholding their consent. The test is that set down by Lord Hailsham in Re W [1971] AC 682 where he said at 669(b):

> "The test is reasonableness and nothing else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness and reasonableness in the context of the totality of the circumstances. But, although welfare per se is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if, and to the extent that a reasonable

> parent would take it into account. It is decisive in those cases where a reasonable parent must so regard it."

In Homefirst Community Health and Social Services Trust v SN [2005] NICA 14 at paragraph 26 Sheil LJ said:

> "In many cases, and this is one of them, there is a tension between what is in the best interests of the child and the question of whether a parent is withholding his or her consent unreasonably. In Re F [2000] 2 FLR at 505 at 509 Thorpe LJ referred to the joint judgment of Steyn and Hoffman LJJ in the case of Re C (a minor) (Adoption: Parental Agreement: Contact) [1993] 2 FLR 260 at 272 where they stated:
>
> > `The characteristics of the notional responsible parent have been expounded on many occasions … The views of such a parent will not necessarily coincide with the judge's views as to what the child's welfare requires. As Lord Hailsham of St Marylebone LC said in Re W:
> >
> > > `Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.
> > >
> > > Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are other interests of herself and her family which she may legitimately take into account. All this is well settled by authority.'

In my view these parents, particularly X, are entitled to take into account the effort she has made to rehabilitate herself and the assistance which she currently has to maintain that progress. I have also concluded that there is evidence that the Trust has insufficiently taken this progress into account and has to some extent approached the latter months of this process with a mind insufficiently attuned to the prospects of reuniting these children with their parents.

[25] In these circumstances therefore I could not have concluded that these parents were unreasonably withholding their consent at this juncture. In short, given my conclusions that there are sound reasons for postponing any decision to free these children for adoption in order to permit these parents to avail of more time to prove that they are capable of caring for these children, the Trust have not satisfied me that they are unreasonably withholding their consent.

[26] I have therefore come to the conclusion that I must dismiss the Trust case in this instance.