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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF G AND A (CARE ORDER: FREEING ORDER: PARENTS WITH A LEARNING DISABILITY)

GILLEN J

[1] Nothing in this case should be reported which would serve to identify the children who are the subject of this matter or their family.

[2] In this case a Health and Social Services Trust which I do not propose to name ("the Trust") seeks two orders in relation to two children whom I shall identify as G (now 2 years of age) and A (now one year old). P and T are the respective mother and father of these children and I shall give the letter "X" to identify the family name. In the first instance the Trust seeks a Care Order pursuant to Article 50 of the Children Order (NI) 1995 ("the 1995 Order") and in the second place, if I grant the application under the 1995 Order ,a Freeing Order pursuant to Article 18 of the Adoption Order (NI) 1987 ("the 1987 Order"). Parental consent is withheld in the latter instance.

Background

[3] The general background in this case, much of which is undisputed, was set out in the bundles bundle . I can summarise the position as follows:

P was born in 1972. T was born in 1976. Dr McPherson, Consultant Psychiatrist, has advised the guardian ad litem that both have a severe mental handicap and that this is not a factor that is amenable to change. P's father was murdered in 1972. She was raised solely thereafter by her mother who found her daughter increasingly difficult to manage once she entered her teenage years. In the main this was due to P spending long periods away from home and her involvement with Y who was violent and abusive. During September 1991 when she was 19 years of age she was referred to Social Services by the RUC due to her injuries following a physical assault by her then partner Y. Social Services found it difficult to maintain contact with

her due to her transitory lifestyle and failure to attend appointments with her social worker. In 1992 a rift occurred between P and her family arising out of the murder of her brother which led to her being warned by the police about the risks to her own life. Notwithstanding this she apparently continued to keep in contact with her boyfriend and despite police advice moved about in the area close to the district where she was under threat. On 6 January 1993 at a multidisciplinary case conference it was agreed that the grounds existed for her admission to hospital for assessment under the provisions of the Mental Health (NI) Order 1986. The grounds were her severe mental handicap and her inappropriate behaviour in the context of what appeared to be a real threat to her life and her continued agitation and aggression. Whilst in a hostel she had threatened to kill herself or harm her baby. After the birth of the first child S, she was discharged back to Muckamore Abbey Hospital in February 1993. The baby was made a ward of court, placed with foster parents and subsequently adopted. She remained under the care of mental health experts until her discharge into the community again in 1997. During her time in Muckamore Abbey she formed a relationship with T and became engaged to him during 1997. After her discharge from the hospital she missed him a great deal and found the move very unsettling and difficult. There were several areas in which she perceived that she had suffered losses in that she found the environment more restrictive with less freedom together with a feeling that she had fewer friends than she had enjoyed in hospital. Despite daily phone calls and visits every 3 or 4 weeks with T, she continued to miss him. Her mood remained low and in November 1997 she threatened self harm. Consequently she returned to Muckamore Abbey Hospital. In September 1998 the Mental Health Review Tribunal discharged her from guardianship and she remained in Muckamore as a voluntary patient. There followed a lengthy period of planning and preparation for a joint community discharge. Considerable work was undertaken with P and T to address issues identified by the multidisciplinary team to enable a successful discharge. This involved both individual and joint work. Work continued with Relate on relationship issues and incentive plans. Efforts were made to identify and agree with P and T suitable models of accommodation and support for discharge. Throughout her time in Muckamore Abbey Hospital, P had no contact with her mother. This relationship was re-established in September 2003 when P asked for support with her forthcoming birth. After their discharge from Muckamore Abbey Hospital in 2000, P and T moved to DPR, a supported living project for people with learning difficulties. Over the years they had consistently expressed a desire to have a child. In late 2001/2002 they became increasingly adamant that they wished to proceed with having a baby. In February 2002 they agreed to take a virtual baby as more frequently used with teenagers to give them insight into caring for a baby. When they went to collect the baby they decided to take a baby each. After two days the babies were returned although they should have been kept for a week. Staff at DPR project observed that they had not supported each other at the time.

[4] The Trust was informed of P's pregnancy in April 2003 and commenced multi-agency preparations in order to provide a support package to the couple when their baby was born. Prior to G's birth a support package was developed between social services and DPR with Mr and Mrs X's involvement to ensure they were supported in caring for G. This support package consisted of midwifery, Surestart and health visiting provision. Staff at DPR were given their role as supporters and monitors of Mr and Mrs X's childcare and their links with social services were established. T's background information was made available by Mr SC social worker. The Trust case however was that once G was born, Mr and Mrs X's attitude was that they did not need professionals in their lives. Difficulties with regards to their cooperation and ability to take advice, in the opinion of the Trust, placed G in a situation where her needs were not being adequately met and an Emergency Protection Order was sought and granted on 12 December 2004 with subsequent Interim Care Orders with G being placed in foster care. The events that led up to that included the following:

(a) In June 2003 (prior to the marriage of the couple on 25 June 2003), at an initial child protection case conference it was decided that the unborn baby's name would be added to the Child Protection Register on the category "potential neglect" upon its birth. The Family Centre work was commenced to assess the couple's parenting abilities. On 12 August 2003 during the course of a professional discussion at Knocknashinna Family Centre a plan was established in order to design the work in a "user friendly way". Dr McPherson, Consultant Psychiatrist, Muckamore Hospital gave advice regarding Mr and Mrs X's learning styles and invited Family Centre staff to contact hospital staff to gain an insight into how to pace the work and access appropriate resource material. Dr McPherson agreed to discuss this with Mr and Mrs X and get their permission. In October 2003 a social worker from the Trust met with Surestart staff to coordinate support available to Mr and Mrs X. A health visitor, a midwife from Surestart and a social worker provided training to DPR staff to support the couple whilst ensuring that they were the main carers for the infant. At that stage Mr and Mrs X seemed to be engaging well.

(b) On 25 November 2003 G was born.

(c) On 2 December 2003, Mrs X and G were discharged from hospital and the Trust alleged that Mrs X had become very preoccupied with her discharge and was unwilling to remain in hospital as had been planned for 10 days to establish a feeding routine. It was the Trust case that this was yet another instance of Mrs X refusing to cooperate with Trust and to avail of assistance. On 3 December 2003 family and childcare together with a maternity social worker visited Mr and Mrs X's flat and reminded the couple of the need to have their parenting of G monitored. Mr X allegedly became angry and said he would be "taking them out of here" and at one point Mrs X asked could

she go and live with her mother. Mrs W, P's mother, requested two members of DPR staff to make visits to the couple's home to avoid any misunderstanding. At this point DPR staff were reporting their concerns about gaining access to Mr and Mrs X's flat to monitor G's feeding. DPR project management expressed their anxieties to the Trust about managing the child's care if access was denied.

(d) On 9 December 2003 DPR staff reported to a Trust social worker that Mrs X had been asleep on the settee in her flat with G in her arms at 1.00am. Previously that evening DPR staff had observed Mr and Mrs X with G in a bar in the local town. DPR staff challenged Mr and Mrs X on the appropriateness of this situation but the couple reported they had not been drinking.

(e) On 10 December 2003 a core group meeting of the Trust was held when concern was expressed about Mr X's statement that he would "take them out of there". DPR staff expressed concern about G's slow feeding even though different sized teats had been tried. The group felt that health professionals and Mrs W may have been giving contradictory advice. The monitoring of feeds was not always possible as Mr and Mrs X would not contact DPR staff prior to feeds and monitoring sheets were not filled in by Mr and Mrs X despite requests to do so. The group on that occasion discussed the possible merits of a feeding assessment for G in hospital if this situation did not improve. Issues were addressed with Mr and Mrs X regarding monitoring, feeding and supervision of G. The couple stated that they did not agree with social services and asked "why is it always about G?" and why did social services not "butt their noses out". The Trust case was that this was a further example of Mr and Mrs X exhibiting antagonism towards social services and refusing to accept any help or assistance with G. On 10 December 2003, Dr Small a General Practitioner was contacted by Mrs X at 5.35pm requesting an appointment as she felt G was constipated. Advice was given to Mrs X and to DPR via a follow-up telephone call from Dr Small. Later that evening Mr and Mrs X arrived in a distressed state at the DPR with G wrapped in a blanket stating that during a telephone call Mrs W had stated that Mr X "was in and out of bars all day and every day and sleeping all the time". Mrs X complained that her whole family had disowned her because of this. The following day DPR staff arrived at Mr and Mrs X's flat to support them in carrying out Dr Small's advice regarding G's constipation. However they found the sterilizer was dirty with "murky whitish" water in it. When this was pointed out to Mrs X, she stated it was "okay". DPR project staff intervened and cleaned both the bottles and sterilizer unit.

(f) On 11 December 2003 DPR reported that Mr and Mrs X were not working as a team and Mrs X had stated Mr X was "no help". Arguments had ensued between the couple but were defused by DPR staff. Mrs W arrived during a DPR staff visit and another argument started between her and Mr X. Social services were contacted by DPR staff and social workers

arrived. Concern was raised over G's slow weight gain and the possibility of a feeding assessment was discussed. Following this on 12 December 2003 a health visitor advised that the child should be seen by Dr Small. Mr and Mrs X, G and Mrs W attended the surgery but Mrs W refused to allow the child to be registered with that doctor as she felt the registration form had not been adequately explained to Mr and Mrs X. As a result of concerns regarding G's slow weight gain and Mrs X's previous telephone call to Dr Small, the couple were offered temporary registration by Dr Small to allow G to be examined. Mrs W refused that and no examination was performed. So concerned was Dr Small that she contacted social services. DPR staff on that occasion observed Mr and Mrs X on their return from the surgery placing G in Mrs W's car and taking with them a bag a clothes. When asked where they were going they stated "Belfast" and left with the Mrs W. Accordingly this triggered an Emergency Protection Order application and a Recovery Order which was sought and granted in respect of G at Newtownards Court. Unknown to the Trust, the child was in fact taken to the Mater Hospital. There the Accident and Emergency doctor was suspicious on speaking to Mrs W as he felt G's parents "were in the background". He contacted Dr Small for background information and was advised to arrange for G to be taken to the Royal Belfast Hospital for Sick Children. Two social workers attended at the hospital and on explaining their Emergency Protection Order and Recovery Order application they were both physically assaulted by Mrs X and verbally threatened by Mr X. One of those witnesses Ms McE gave evidence before me and I believed her account of what happened. The child was removed to foster care the next day by the social worker without incident.

(g) On 15 December 2003 the Emergency Protection Order was renewed at the Family Proceedings Court.

(h) On 22 December 2003 at a LAC review, it was decided that G's care plan would be for her to remain in foster care and the Trust would make further applications for Interim Care Orders to facilitate a specialist residential assessment of Mr and Mrs X's ability to adequately care for G.

(i) On 22 December 2003 an Interim Care Order was granted in respect of G at the Family Proceedings Court. Supervised contact was agreed on a daily basis for one hour.

(j) On 13 January 2004 a First Review Child Protection Case Conference was held and it was decided that G's name was to be retained on the Child Protection Register.

(k) On 10 March 2004 the family commenced a parenting assessment in the Family Care Unit Peterborough, England with fortnightly visits by the Trust and adult services social worker. The Trust had chosen this facility as better able to facilitate a couple with learning disabilities than anywhere else in

Northern Ireland. That assessment became a matter of some controversy during the course of this case and I will refer further to it during the course of my analysis of the witnesses in this case. It was the Trust case that the Peterborough unit recommended G's removal due to a deterioration in the assessment on 8 June 2004 and on 10 June 2004 G was removed from the Family Care Unit and returned to foster carers. I reiterate however that this conclusion is a matter of some dispute in this case.

(l) Between July and October 2004, subsequent to the receipt of the report from Peterborough and a report from Dr Roy Bailie, Clinical Psychologist who assessed the couple (and which is referred to in detail in my analysis of the witnesses who came before me), the Trust sought to source a service which would provide the 24 hour cover to parents and child and which had been recommended in the course of these reports. It was the Trust evidence that an extensive search was carried out throughout the United Kingdom and leading authorities on special parenting were contacted. However it was found that no such service was available.

(m) On 20 September 2004 an initial child protection case conference was convened in respect of A. A decision was made that Mr and Mrs X's unborn baby (Mrs X was then pregnant) would have its name placed on the Child Protection Register at birth under the category of "potential neglect". The Trust would make an application to the Family Proceedings Court to place the child in foster care until decisions regarding longer term plans could be made.

(n) On 6 October 2004 at a LAC review dealing with G, Mr and Mrs were informed of the decision to change G's care plan to permanency via adoption.

(o) On 13 November 2004 A was born.

(p) On 18 November 2004 an Interim Care Order was granted in respect of A and the child was removed from the Royal Victoria Hospital to join her sister in foster care.

(q) On 25 November 2004 the Trust permanency panel endorsed G and A's care plans to be permanency via adoption.

(r) 10 December 2004 at A's LAC review the Trust proposed a care plan of permanency via adoption and this was explained according to the Trust to Mr and Mrs X.

I pause to observe that this cluster of events from September 2004 was the matter of dispute during the course of this case on the basis that the Trust had breached regulations governing the conduct and sequence of such a

procedure and I shall turn to it in some more detail when analysing the evidence of the witnesses.

(s) On 2 March 2005 a court granted the Trust's application to have G and A's blood taken to allow screening. Mr and Mrs X had refused to allow their blood to be screened. On 22 March 2005 blood samples taken from G and her sister A did permit screening to take place by Dr Fiona Stewart. These bloods were subsequently forwarded to Signature Genetic in the USA to have a fine definition screen which it was hoped would ascertain the likelihood of G and A having an inherited learning disability. I pause to observe that a final report from Dr Stewart on this matter concluded that whilst there was no obvious genetic abnormality identified in either of the children, this result did not exclude the possibility of their having learning problems and especially whilst they are young their developments need to be carefully assessed. Subsequently it has now been discovered that G does suffer from a learning disability.

(t) On 24 March 2005 the Joint Adoption Panel endorsed the Trust's care plan. The panel concluded that it was in accord with the Trust proposal that adoption was in G and A's best interests.

(u) On 28 April 2005 the Operations Manager from the Trust was advised by the Chairperson of the Adoption Panel that the panel recommended that adoption was in the best interests of G and A.

(v) On 1 June 2005 at a LAC review it was discussed with Mr and Mrs X and Mrs W that the adoption panel had endorsed the Trust's proposal that G and A's needs would be best met by permanency via adoption and that applications were to be brought pursuant to Article 18 of the 1987 Order to free them for adoption.

(w) On 5 July 2005 the Trust decision-maker in this matter, a principal social worker, wrote to Mr and Mrs X informing them of this decision.

(x) On 20 July 2005 the Guardian ad Litem Ms Brenda Sheeran reported to the Trust that during a conversation with Family Care in Peterborough, Ms Jinks had informed her that they might revise their previous findings in relation to their assessment of Mr and Mrs X. This was apparently due to Mr X being on medication during his time in the Family Care which may have compromised his parenting capacity and therefore the assessment. Ms Jinks felt that basically the couple had done little wrong in the assessment. I observe at this stage however that I was subsequently provided with a copy medical report from Dr Curran who was satisfied that the medication given to Mr X would have had no such impact on him.

(y) On 1 August 2005 Patricia Donnelly, Consultant Clinical Psychologist, produced a report outlining an assessment of G and A under joint instruction by the solicitors on behalf of the Guardian ad Litem and the Trust's solicitors. I shall deal with this report in the course of my analysis of the evidence given before me.

(z) On 19 August 2005 there was a meeting convened between the decision-maker in the Trust, Ms B (social worker with the Trust and whose evidence I shall analyse), ED (senior practitioner in the Trust) and Ms McE (social worker whose evidence I shall also analyse) to discuss information provided by the Guardian ad Litem regarding her conversation with Ms Jinks of Family Care in Peterborough. The decision was taken that no further assessments of Mr and Mrs X would be necessary.

(aa) On 24 August 2005 Ms B and Ms McE met with Mr and Mrs X and Mrs X's mother to discuss their children and the Trust position in light of the report from Mrs Donnelly. Ms B explained that as this new information had been made available this would be placed before the adoption panel for further consideration. According to the Trust Ms X stated according to the Trust that in spite of Mrs Donnelly's report neither she nor Mr X or her children had learning disabilities. (This refrain echoed similar comments made to Dr Bailie).

(bb) 8 September 2005 the Joint Adoption Panel considered the additional information from Patricia Donnelly and the Family Care Unit and re-endorsed the Trust's proposal that adoption was in G and A's best interest. On 8 September 2005 G was assessed at Down Lisburn Trust Child Assessment Clinic and it was calculated that G was functioning at 14 months rather than her chronological age of 21 months.

(cc) On 21 September 2005 Mr and Mrs X were informed of the Adoption Panel's recommendation by Ms B and Ms McE.

(dd) On 23 September 2005 Mr C the Trust decision-maker wrote to Mr and Mrs X explaining that the Trust remained of the view that adoption was in their children's best interests. On 28 September 2005 hand Ms McE hand delivered the agency decision-maker's letter to Mr and Mrs X.

(ee) It was the Trust's case that consideration was given to the maternal grandmother Mrs W in this case to care for A full-time. However this woman made it clear that she was unable to make such a commitment and could not identify any extended family member available to do so.

Preliminary Matters

[5] Learning Disability

In this case both respondents suffer from a serious learning disability. In the course of the case I had the benefit of reading the following documentation dealing with mental health and learning disability:

(a) Review of Mental Health and Learning Disability (Northern Ireland) "Equal Lives: Review of Policy and Services for People with a Learning Disability in Northern Ireland" September 2005.

(b) "Parents with Learning Difficulties: Child Protection and the Courts". This is a report to the Nuffield Foundation on grant No SPF/00151/G written by Tim Booth and Wendy Booth.

(c) A number of very informative documents headed "Supported Parenting for Mothers and Fathers with Learning Difficulties" helpfully supplied to me by a witness from Mencap. This witness had been present throughout the hearing to assist the respondents in the understanding of this case. She also gave evidence in general terms about the role of Mencap and whilst there is no need for me to refer further to her evidence the Court was very grateful for her input into this case.

(d) "Finding the Right Support" from Bristol University's Norah Fry Research Centre funded and published by the Baring Foundation 2006.This was a research paper based on web based questionnaires, telephone interviews and site visits. It includes experience and responses from Northern Ireland. It also includes examination of cases where some learning disabled children were parented by learning disabled parents. I postponed judgment in this case for some time to allow the parties to consider this report which I learned was due to be published in May 2006. All the parties to this case made written submissions to me on this important document after the case had finished. A reading of these documents leads me to set out a number of matters which I feel must be taken into account by courts when determining cases such as this involving parents with a learning disability particularly where they parent children who also have a learning disability.

> (1) An increasing number of adults with learning difficulties are becoming parents. The Baring Foundation report records that whilst there are no precise figures on the number of parents with learning difficulties in the population, the most recent statistics come from the First National Survey of Adults with Learning Difficulties in England, where one in fifteen of the adults interviewed had children. Whatever the figure it is generally recognised that their number is steadily rising and that they represent a sizable population whose special needs

require to be adequately addressed. The Baring Foundation report refers to national policy in England and Scotland committing government to "supporting parents with learning disabilities in order to help them, wherever possible, to ensure their children gain maximum life chance benefits." Nonetheless the courts must be aware that surveys show that parents with learning disabilities are apparently more likely than other parents to have their children removed them and permanently placed outside the family home. In multidisciplinary jurisdiction such as the Family Division, it is important that the court is aware of such reports at least for the purposes of comment. It is important to appreciate these currents because the Children Order (Northern Ireland) 1995 places an emphasis on supporting the family so that children can remain with them and obligations under disability discrimination legislation make public services accessible to disabled people (including parents with learning difficulties). Moreover the advent of the Human Rights Act 1998 plays an important role in highlighting the need to ensure the rights of such parents under Articles 6 and 8 of the European Convention of Human Rights and Fundamental Freedoms ("the Convention").

(2) People with a learning disability are individuals first and foremost and each has a right to be treated as an equal citizen. Government policy emphasises the importance of people with a learning disability being supported to be fully engaged playing a role in civic society and their ability to exercise their rights and responsibilities needs to be strengthened. They are valued citizens and must be enabled to use mainstream services and be fully included in the life of the community as far as possible. The courts must reflect this and recognise their need for individual support and the necessity to remove barriers to inclusion that create disadvantage and discrimination. To that extent courts must take all steps possible to ensure that people with a learning disability are able to actively participate in decisions affecting their lives. They must be supported in ways that take account of their individual needs and to help them to be as independent as possible.

(3) It is important that a court approaches these cases with a recognition of the possible barriers to the provision of appropriate support to parents including negative or stereotypical attitudes about parents with learning difficulties possibly on the part of staff in some Trusts or services. An extract from the Baring Foundation report provides a cautionary warning:

> "For example, it was felt that some staff in services whose primary focus was not learning difficulties (eg in children and

> family teams) did not fully understand the impact of having learning difficulties on individual parents' lives; had fixed ideas about what would happen to the children of parents with learning difficulties and wanted an outcome that did not involve any risks (which might mean them being placed away from their family); expected parents with learning difficulties to be `perfect parents' and had extremely high expectations of them. Different professionals often had different concepts of parenting against which parents were assessed. Parents' disengagement with services, because they felt that staff had a negative view of them and `wanted to take their children away' was also an issue, as were referrals to support services which were too late to be of optimum use to the family – often because workers lacked awareness of parents' learning difficulties or because parents had not previously been known to services".

(4) This court fully accepts that parents with learning difficulties can often be "good enough" parents when provided with the ongoing emotional and practical support they need. The concept of "parenting with support" must underpin the way in which the courts and professionals approach wherever possible parents with learning difficulties. The extended family can be a valuable source of support to parents and their children and the courts must anxiously scrutinize the possibilities of assistance from the extended family. Moreover the court must also view multi-agency working as critical if parents are to be supported effectively. Courts should carefully examine the approach of Trusts to ensure this is being done in appropriate cases. In particular judges must make absolutely certain that parents with learning difficulties are not at risk of having their parental responsibilities terminated on the basis of evidence that would not hold up against normal parents. Their competences must not be judged against stricter criteria or harsher standards than other parents. Courts must be acutely aware of the distinction between direct and indirect discrimination and how this might be relevant to the treatment of parents with learning difficulties in care proceedings. In particular careful consideration must be given to the assessment phase by a Trust and in the application of the threshold test.

(5) Parents must be advised by social workers about their legal rights, where to obtain advice, how to find a solicitor and what help might be available to them once a decision has been taken to pursue a care application. Too narrow a focus must not be placed exclusively on the child's welfare with an accompanying failure to address parents' needs arising from their disability which might impact adversely on their parenting capacity. Parents with learning disabilities should be advised of the possibility of using an advocate during their case eg from the Trust itself or from Mencap and clear explanations and easy to understand information about the process and the roles of the different professionals involved must be disclosed to them periodically. Written information should be provided to such parents to enable them to consider these matters at leisure and with their advocate or advisers. Moreover Trusts should give careful consideration to providing child protection training to staff working in services for adults with learning disabilities. Similarly those in children's services need training about adults with learning disabilities. In other words there is a strong case to be made for new guidelines to be drawn up for such services working together with a joint training programme. I endorse entirely the views of the Guardian ad Litem in this case when she responded to the "Finding the Right Support" paper by stating:

> "As far as I am aware there are no `family teams' in the Trusts designated to support parents with a learning disability. In my opinion this would be a positive development. The research also suggests that a learning disability specialist could be designated to work within family and childcare teams and a child protection specialist could be designated to work within learning disability teams. If such professionals were to be placed in the Trusts in Northern Ireland they could be involved in drawing up a protocol for joint working, developing guidelines, developing expertise in research, awareness of resources and stimulating positive practice. They could also assist in developing a province-wide forum that could build links between the Trusts, the voluntary sector and the national and international learning disability community."

(6) The court must also take steps to ensure there are no barriers to justice within the process itself. Judges and magistrates must recognise that parents with learning disabilities need extra time with solicitors so that everything can be carefully explained to them. Advocates can play a vital role in supporting parents with learning difficulties particularly when they are involved in child protection or judicial processes. In the current case, the court periodically stopped (approximately after each hour), to allow the Mencap representative to explain to the parents what was happening and to ensure that an appropriate attention span was not being exceeded. The process necessarily has to be slowed down to give such parents a better chance to understand and participate. This approach should be echoed throughout the whole system including LAC reviews. All parts of the Family justice system should take care as to the language and vocabulary that is utilised. In this case I was concerned that some of the letters written by the Trust may not have been understood by these parents although it was clear to me that exhortations had been given to the parents to obtain the assistance of their solicitors (which in fact was done). In terms therefore the courts must be careful to ensure that the supposed inability of parents to change might itself be an artefact of professionals ineffectiveness in engaging with the parents in appropriate terms. Courts must not rush to judge, but must gather all the evidence within a reasonable time before making a determination. Steps must be taken to ensure that parents have a meaningful and informed access to reports, time to discuss the reports and an opportunity to put forward their own views. Not only should the hearing involve special measures, including a break in sessions, but it might also include permission that parents need not enter the court until they are required if they so wish. Moreover the judges should be scrupulous to ensure that an opportunity is given to parents with learning disabilities to indicate to the court that something is occurring which is beyond their comprehension and that measures must be taken to deal with that. Steps should also be taken throughout the process to ensure that parents with learning disabilities are not overwhelmed by unnecessarily large numbers of persons being present at meetings or hearings .

(7) Children of parents with learning difficulties often do not enter the child protection system as the result of abuse by their parents. More regularly the prevailing concerns centre on a perceived risk of neglect, both as the result of the parents' intellectual impairments, and the impact of the social and economic deprivation commonly faced by adults with learning difficulties. It is in this context that a shift must be made from the old assumption that adults with learning difficulties could not parent to a process of questioning why appropriate levels of support are not provided to them so that they can parent successfully

and why their children should often be taken into care. At its simplest, this means a court carefully inquiring as to what support is needed to enable parents to show whether or not they can become good enough parents rather than automatically assuming that they are destined to fail. The concept of "parenting with support" must move from the margins to the mainstream in court determinations.

(8) Courts must ensure that careful consideration is given to ensuring that any decision or judgment is fully explained to such parents .In this case I caused a copy of the judgment to be provided to the parties at least one day before I handed it down to facilitate it being explained in detail before the attendance at court where confusion and consternation could be caused by a lengthy judgment being read which the parents could not follow at the time .

In considering this case, and the rights of the parents under Articles 6 and 8 of the EC, I have endeavoured to follow these principles.

WITNESSES

Ms B

[6] This witness was the Assistant Principal Social Worker with the Trust. She had been promoted to this position in 2003 upon the promotion of Mr McC who had formerly been in that position.

[7] In the course of her reports to the court, examination in chief and cross-examination the following points emerged:

(1) The LAC of 6 October 2004. This was chaired by this witness and this was the occasion where the Trust took the decision to change its plan to one of permanency outside the family for G. This LAC had occurred in the aftermath of the report from Peterborough. Ms B indicated that she was aware of a conflict arising on the one hand from the reports from Peterborough which seemed to suggest that the couple had had to be removed from the assessment in June 2004 and on the other hand the reports that came through to the Guardian ad Litem to the effect that Ms Jinks who was in charge of the report at Peterborough now felt that a 24 hour/7 day per week service for Mr and Mrs X could be sustained.

(2) During the course of the summer of 2004 Ms McE a social worker with the Trust had been attempting to find suitable accommodation for G and the forthcoming child with her parents. The essential problem that arose was that accommodation had to be found for these parents who were suffering from a disability but who also needed to have assistance in looking after their

children. A facility at Camphill in Northern Ireland declined the possibility. The second possibility was now Prospect. The Trust had consulted with Mr Bothwell from Prospect whose evidence I shall later analyse. At this time the couple were living at DRP, the mother was pregnant, and disagreements were clearly surfacing with the personnel at DRP. Mr X felt that DRP were infringing his privacy. The task facing the Trust therefore was whether a facility could obtained to provide 24 hour service/7 days a week ("24/7"), whether the increased supervision necessary after leaving the supervision currently provided at DRP could be found, and whether such increased supervision was now feasible given the difficulties that had been thrown up at DRP. The essential dilemma was that whilst the couple wished to remain independent, much of their independence had to be sacrificed if they were to live in a family unit together with the children. There already had been a great deal of difficulty with DRP staff gaining access to the home as a product of this conflict.

(3) The witness accepted that Prospect still felt there was a possibility that the matter could be accommodated albeit that this was a new venture in Northern Ireland. There was no precedent for 24 hour care for parents themselves who are under disability and who needed great help with children. In terms it required staff who not only had a high level of knowledge of disability with adults, but also childcare. The witness illustrated the difficulty by indicating that they were currently providing 24 hour care for a young person of 16 who had a disability of this kind. The practical problems of getting 24 /7 cover even on a short-term basis was proving extremely complex even in circumstances where this young man, unlike P and T, worked with staff and was cooperative. The witness's evidence was that the Trust simply could not do it long-term because the cover required was not obtainable. Overnight stays, holiday cover, weekend cover were all proving insuperable. For this couple it would require a rota of at least four people to cover the 168 hours per week given that individual social workers only work 37½ hours per week.

(4) Ms B in any event indicated that the physical implausibility of being able to obtain that staff was overwhelmed by other issues. In the first place, there was a lack of consistent engagement between the couple and professionals. Although from time to time they did make efforts, for example with Mrs McE, when conflict arose, the relationship broke down and this therefore made it very difficult to bring people on board who would carry out work with them. Secondly there would be difficulty in any event in the conflict between the two disciplines ie adult disability working for the adults and childcare for the children. Inevitably conflict would arise between the two disciplines. Thirdly, the concern was that children would form attachments with such permanent social workers. If conflict arose between the carers and the parents the children would become confused.

(5) The witness emphasised that when rehabilitation is not a possibility, the Trust inevitably looks to the family network to see if they can fill the gap. In this case the Trust had made inquiries of Mrs W, the mother of P to see if she could assist but Mrs W made it clear that the level of care required could not be provided by her.

(6) The witness also contacted another Trust in Northern Ireland which, it had been suggested through counsel on behalf of the respondents in the course of the hearing, could have provided such round the clock service. Having spoken to the Director of Childcare Services and the Assistant Director of Adult Disability Services, it was made clear that this Trust was not only unable to meet this request but was unaware of any such services in existence throughout the UK.

(7) During the course of this hearing, by a document dated 21 January 2006, the parents signed an undertaking drawn up by their own solicitor as to their future behaviour in relation to cooperation with the Trust. The document reads as follows where relevant and having been anonymised by me:

> "P and T (the parents) are the natural parents of G and A (the children) presently in foster care and in respect of whom interim Care Orders have been made on the application the Trust.
>
> The parents are anxious and highly motivated to have the opportunity to demonstrate that, with appropriate assistance, they are capable of parenting the children.
>
> In order that the parents may be given such an opportunity they solemnly undertake as follows:
>
> 1. they acknowledge and accept that in the past they have not at times fully cooperated with social workers and other staff, whether in Northern Ireland or in Peterborough nor have they fully accepted and acted on advice given in relation to parenting and other matters;
>
> 2. they will, if given the opportunity, use their very best efforts to conscientiously accept, obey and act upon directions and advice given by or on behalf of the Trust, its servants and agents and all personnel who

have lawful authority to give directions and advice;

3. they will, to the best of their ability, fully co-operate and behave in a friendly way avoiding arguments and controversy and any unseemly behaviour which could affect relationships with staff;

4. if given such an opportunity to prove their parenting abilities, the parents accept and acknowledge that deliberate or persistent breaches of these undertakings may lead to the suspension of any arrangements put in place to enable the parents to demonstrate and prove their parenting abilities;

5. the parents acknowledge that the terms of these undertakings have been fully explained to them by their legal advisors and that they fully understand the meaning and import of them."

[8] The witness had considered this undertaking with her senior social worker but indicated her position had not been changed. Her evidence was she had looked at a number of contact sheets prior to coming to court in light of this new document and had formed the opinion that the attitude of the parents in fact had not changed in substance notwithstanding the undertaking. She gave three instances:

(a) In recent days but subsequent to the undertaking the Trust had wished to reduce, for a period of 6 weeks, contact between the parents and G by ½ hour/1 hour to facilitate the child attending some play and development sessions. Currently contact is 3 times per week for a total of 7 hours being split between a 3 hour session and two 2 hour sessions. The parents had refused to accommodate this insisting that the contact must continue as directed.

(b) A second instance arose when a Child Healthcare Assistant had suffered a severe migraine headache and wished to reduce a contact session from 2 hours to 1 hour. Mrs X had shouted at the worker and refused to reduce the hours even though the worker was physically sick.

(c) More recently, in the last week, they had lost a travel warrant and had become very angry with social workers when reimbursement for the money they had expended on travel was not forthwith made available to them.

It was the evidence of this witness that these 3 instances indicated that there had been no improvement whatsoever in the measure of cooperation which was required in this case.

[9] The witness highlighted the apparent conflict in information that had emanated from the Peterborough assessment between March and June 2004. It was the Trust conclusion that when Peterborough first gave the assessment, the records did not seem to tally with the conclusions reached. It seemed clear from the records at Peterborough that there were occasions when the assessment was breaking down and was clearly going to end. This seemed to contrast with the recommendation that the children could be returned on a basis of 24/7 care . Information also came from the unit through the Guardian ad Litem to the effect that the assessment need not have ended. It was the Trust's view that these comments did not reflect what had actually happened during the course of the assessment and that Peterborough were now more positive than had formerly been the case. However the witness emphasised that the Trust had not ruled out 24/7 care at that time and had made extensive efforts to ascertain if it was possible throughout the UK. I observe at this stage that the Trust failure to find such a facility echoed the opinion of all the other relevant witnesses in this case, including the evidence from Prospect in England, that such a facility does not exist to provide the dual assistance which was required for both parents and children with learning disabilities. I am satisfied that Ms McE did make the following approaches for the Trust.

(a) Aidan Murray, Assistant Director of another Board who was unable to provide suggestions.

(b) Camphill at Glencraig where visits were made. On 6 August 2004 they stated that they felt that they were unable to provide the lifelong commitment that the family require.

(c) Sue McGraw considered to be an expert in this field based in Truro in Scotland indicated that only referrals in that area would be considered.

(d) Tim and Wendy Booth again considered to be experts in the area.

(e) Sue Collins who felt that the family needed local services and to uproot them would be difficult.

(f) Dr Roy Bailie (see his evidence hereafter).

(g) Challenge who have no facilities for children.

(h) Gabriel Abraham who had been involved in a project which had closed in 2002 due to lack of funding.

(i) St Michael's Fellowship, London.

(j) Positive Futures.

(k) Mencap .

(l) Mervyn Bothwell from Prospect. This is a Christian charity and a voluntary organisation which works with people with learning disabilities. Mr Bothwell undertook to look at the situation.

[10] In dealing with these matters the Ms B stated that this was a clear indication of how the Trust had considered in great detail the right to family life of Mr and Mrs X and had given every opportunity to them to live as a family. Not only had they sent them to Peterborough because PACT and Thorndale in Northern Ireland did not have input from learning disability teams for assessments, and employed the services of an adult disability social worker but they had made the inquiries throughout the United Kingdom. Ms McE had spent the summer looking at these possibilities. In considering this evidence and that of the other social workers I was particularly conscious of the risks to which I have adverted at pages 11 and 12 of this judgment but I was fully satisfied that no stricter criteria had been applied here than would have been the case for parents without a learning disability. On the contrary I was convinced that this was a witness committed to a team effort to find a solution for them if at all possible .

Ms LM

[11] This is a senior worker in the Adoption and Permanency Services with this Trust. She is in regular contact with the Chairperson of the Joint Adoption Panels and she recalled a number of conversations concerning a placement for G and A. It is the aim of the Trust to place the two of them together if they are freed for adoption. In the course of her evidence, the following matters emerged:

(1) There are difficulties in placing these two children. The reasons are:

    (a) G has delay in her development and there is potential in the case of A.

    (b) The birth parents are opposed to adoption.

(c) G does require to be constantly watched and she has no sense of danger or how she could hurt herself or her sister.

(d) All couples applying to adopt are made aware of the associated risks. There has been a couple identified in this instance from a private agency and they have been made fully aware of the difficulties. This couple have shown great interest in adopting these two children and the Trust is convinced that they have potential. They are already approved adopters.

(e) This witness started working to find a placement for these two children after the decision-maker from the Trust reaffirmed the decision to apply to the court in order to free these children for adoption in September 2005. The original decision had of course been taken in March 2005. Regular meetings had taken place about the children and the process. Prior to October 2005 there were no specific couples they had in mind but a vigorous search for such appropriate couples commenced only in September 2005. There were no couples on the Trust list who would meet the needs of these children and hence a private agency was pursued. Already this couple have shown such interest that additional information for them has been supplied from key people such as the general practitioner, and the learning disability officers. They are also seeking out training for such children.

(f) This witness had experience of placing children over 20 years experience including those with extra needs e.g. children suffering from foetal alcohol abuse and even children where there were concerns but no positive diagnosis. In her experience breakdown after placing such children is very small. She did recall breakdowns occurring in one year but in that year one of the children was much older than these children and had been subjected to serious sexual abuse and attachment difficulties. It was her experience that adopters prepared to take on such children were very committed and hence the breakdown was very small.

(g) In terms of post adoption contact this couple would work towards such contact although at the moment the parents are totally opposed to adoption. Hopefully the birth parents would agree to take some counselling. Birth counselling still remains available to them and indeed this witness has a worker in mind who could engage them. Post adoption contact was hoped to be in the range of once/twice per year on a direct basis provided the parents showed the ability to overcome their opposition and

promote the placement. Needless to say if they undermined or sabotaged the placement that would be disastrous.

I found this a very impressive witness and at the end of her evidence I was satisfied that it was likely these children would be placed for adoption if I made the decision to free them for adoption.

Ms J

[12] This witness was a support worker for Mr X given his learning disability. She described how despite seven years in a hospital ward in Muckamore, he had made progress in terms of practical skills since coming back into the community. He had made however less progress when difficult situations had arisen which he had not encountered. Mr Edmondson, who appeared on behalf of Mr and Mrs X with Mr Donaldson, took this witness through T's progress from 1996 outlining a series of reports which had referred to his gathering independence over the years. Problems had arisen when it was made clear in November 2002 that the couple were considering having a child. The witness said this was an issue of concern given the historical information about how this couple coped with difficulties. They were told that they would require a high level of support and that the probable outcome of them having a child would be that a care order would be sought by the Trust. The couple were very angry about this and their co-operation diminished even further with the Trust social workers after this information had been communicated.

[13] Dealing with the possibility of 24/7 support for those with learning disabilities (both parents and children) this witness indicated that she was unaware of any such facility being available. She did refer to Prospects as an alternative and the discussions that took place with Mr Bothwell from that project. When the matter had been raised with Mr Bothwell he had thought that the difficulties of inappropriate accommodation were surmountable though there would be more significant difficulties with staff working with children and this couple. Prospects had experience of providing assistance into the home for people with learning difficulties but not with their children. Nonetheless at that stage when they spoke to Prospects Mr Bothwell had been optimistic that they could look at the issue. She described Prospects as a voluntary organisation with a Christian ethic who provide services to people with learning difficulties. They provide support services. A small house in a residential unit is the normal approach.

[14] This witness gave evidence that Mr X has a learning disability. He receives services because of this. However in October 2003 when this witness visited him he said that Mrs W had told him he did not have a disability and did not need medication. It was clear to the witness that T and P take a lot of advice from Mrs W and that she seriously impacted upon their beliefs.

[15] Turning to the period when T and P were with DRP, the witness indicated that on 30 October 2005 they left this project because they felt vulnerable about their safety. Part of the agreement of the tenancy with the DRP was that they would accept support of the staff. They had in fact refused offers of practical support in breach of the tenancy agreement. They moved to the town nearby and agreed to accept help which was offered in the form of a package set up by the Trust. When the package was not in place Mrs W provided support. The move had been contrary to the advice of the Trust. The couple entered the Prospects Project and enjoyed 21 hours of support. This was in the form of emotional support and guidance and help with correspondence, and emergency services. They declined support on financial matters though Mrs W offered help in this area. The maximum they would accept was the 21 hours. Initially they did have problems in this community largely due to a drinking den nearby. Over three to four weeks there were three incidents when Mrs X was assaulted by some other women. Prospects felt it was not safe for them to remain. They were offered alternative property in another area nearby.

[16] During the period with Prospects, the project informed the Trust that there were difficulties supporting them because they presented with budgeting difficulties. More recently the couple had said that they had not enough money for food or credit on their mobile. Mr X had difficulties about alcohol and he was at times aggressive and threatening to staff. The witness recorded that this was a similar pattern in Peterborough where after settling in they tended to push boundaries and were not as receptive as at the start. It was her view that even if they accepted court sanctions initially, they would keep coming back to court.

[17] Turning to the topic of Peterborough, this witness said that Peterborough had some experience with people with learning difficulty but she did not get the impression that they had worked with people like T and P. Both she and the senior social worker offered to help with a skilled worker to speak to Ms Jinks at Peterborough but this was refused by Ms Jinks.

[18] In cross-examination the witness was challenged as to the accuracy of notes arising out of the LAC of October 2004 when the decision had been taken to change the care plan to one of permanence. I pause to observe at this stage that I have no doubt that the notes of this LAC were inadequate and on the witness's own admission did not contain all the salient points arising therefrom. If parents are to be fully involved in the process of decision-making, not only must their views be catered for, but notes of such meetings must be carefully and comprehensively kept so that they can be circulated to all parties. This is particularly so in the case of parents with learning disabilities who may wish time to reflect on what is being said at those meetings, and have it explained to them. This can only be done if the notes

are comprehensive. A meeting of the professionals involved in this process had met on 19 August 2004. The parents had not been invited to this meeting. I fully accept that there may well be occasions when the parents cannot be brought to such meetings particularly when confidentiality may be of the essence. Nonetheless it is important that in the aftermath of such meetings, particularly where parents have not been invited to them, they are circulated with an appropriately worded note or record. This did not happen in this case. Ms B assured me that new procedures have now been invoked which would ensure that better note-taking takes place at LACs and also that parties will be circulated with appropriate notes from professional meetings from which parents are from time to time excluded. She did assure me however, and I accept, that the contents of the professional meeting were discussed at the LAC of October 2004 and therefore I am convinced that in this particular instance the parents did not suffer any prejudice. Looking at the matter in the round, I am satisfied that the Article 6 and Article 8 rights of the couple under the Convention were protected by the comprehensive discussion on 6 October 2004.

[19] It was suggested by Mr Edmondson on behalf of the parents, that decisions had been made at the meeting of 19 August 2004 which represented a fait accompli for the subsequent LAC of October 2004. Particularly he drew attention to a note of the meeting of August 2004 which recorded that there had been an agreement to the effect that if Prospect proved to be suitable, then there would be twin tracking approach. If however Prospect proved not appropriate, then the Trust would move onto adoption. I accept the view expressed by the witness that this was simply an instance where the possible options were being looked at and agreed but that no decision had been taken one way or another. I watched this witness carefully during the course of her cross-examination and I was satisfied that she was telling the truth about this matter. Having read the LAC notes, it seemed to me that all matters were on the table for discussion and that there was nothing that led me to believe that the Trust had approached this LAC with a closed mind. Moreover this had to been seen as part of the overall process. This Trust had taken very considerable steps to look at the possibility of rehabilitation. Not only had the Trust set up and financed a trip to Peterborough in order to assess this couple, (having decided that the normal assessment centres in Northern Ireland at PACT and Thorndale were insufficient), but thereafter they had spared no effort to seek out a facility anywhere in the UK which would meet the needs of the couple and their children. I am satisfied therefore that standing back and looking at the process as whole, the Trust had involved this couple in the decision-making process on a thorough and ongoing basis. It is against that background that I believe completely the evidence of Ms B that no decision had been made when the professionals had been together in August and that they still approached the LAC of October 2004 intent on listening to the views of the parents.

[20] In relation to the child A, Mr Edmondson elicited from the witness that the procedure for dealing with children leading up to the matter being referred to an adoption panel was as follows. First, a proposal for adoption is mooted at a LAC review. Thereafter the matter is considered by a permanency panel who would take steps to check out that all the planning for the child was appropriate. Next the matter is referred to the adoption panel for a recommendation. It emerged however that in the case of A, whilst there had been an initial case conference before the child was born on 20 September 2004 (A was born on 13 November 2004), the matter had been considered by the permanency panel on 25 November 2004 before a LAC was held on 10 December 2004. The question therefore again arose as to whether or not the parents had been involved in the decision-making process sufficiently with reference to A. Nonetheless once again I think it is necessary to stand back and look at this matter in the round and at the process overall. There already had been lengthy discussions about both children and the steps that could be taken to obviate the difficulties. Historical concerns had been comprehensively considered and assessed and the Trust has formed a clear view, having spoken not only to these parents but the maternal grandmother, that it simply was not feasible to rehabilitate the couple with either child much less both of them. Consequently it is my view that whilst it would most certainly have been procedurally proper and preferable that the LAC review of 10 December 2004 should have occurred before the permanency panel, it did not prejudice the opportunity given to these parents to involve themselves in the process and put their views forward.

[21] Counsel also raised the failure to advert to Article 8 of the European Convention of Human Rights and Fundamental Freedoms. Ms B conceded that it had not been specifically mentioned by name but the process had most certainly addressed the rights of each of these children and the parents to a family life. It was her view that throughout the whole process the rights of the child and of the whole family have been fully explored and identified albeit not specifically mentioned by name. The process in this case of course pre-dated the decision of the Court of Appeal in AR v Homefirst Trust and I accept the account of the witness that processes have now been changed.

Dr Donnelly

[22] Dr Donnelly is a Clinical Psychologist whose area of expertise is in family and childcare. She prepared a report on 31 July 2005 having been jointly instructed by the guardian ad litem and the solicitors on behalf of the Trust. Her assessment was of the relationship between the parents and each of the children, the nature, quality and level of attachment between each parent and each of the children, identification of the children's attachment needs, an opinion as to positive and negative factors in relation to the contact that each of the children had with each parent and to identify the nature and

quality of the inter-sibling bond and relationship that existed between the children. In addition she was to make an assessment as to the appropriateness of adoption as opposed to other care arrangements in meeting each of the children's needs. If the children were to be freed for adoption, she was to comment on the issue of future direct/in-direct post adoption contact. In the course of her report, her examination in chief and her cross-examination, the following matters emerged:

(1) It was clear that this is a witness who had many years experience with children and families. I found her a measured and reflective witness who had clearly invested a great deal of informed thought into this case. In short I found her an extremely impressive witness.

(2) She had observed lengthy contact visits between G and A and their parents on two occasions, observed both children in their placement with foster carers and undertaken an interview with both parents in their own home. She had also reviewed validated literature from peer reviewed sources in respect of factors which influence child development and parenting and particularly in identifying those factors most likely to affect vulnerability or resilience in children.

(3) In looking at fostering and adoption in childhood , she recognised that it is undisputed that a sense of permanency is essential for the healthy development of a child. For most children this will be with their immediate or extended family of origin but for a minority of children who cannot be rehabilitated at home or placed with relatives, their needs for permanency must be met elsewhere. This may be necessary to protect the child and facilitate long term development. Long term fostering is the preferred option in some cases, for example, where the child is clear he does not wish to be adopted, the child is strongly attached to his foster carers for whom a move would not be in their best interests, the child has a high level of continuous family involvement such as a strong attachment to a parent or sibling and frequent contact, where there is some hope of eventual rehabilitation to the birth parent, where the child, especially an older child, and his carers wish to get to know each other better or in the case of an older child where there is a real risk of placement breakdown. On the other hand there is extensive opinion, based on research findings, that a child's permanency needs can be best met through adoption should family placement fail and rehabilitation of the child to the family of origin not be viable. It has been identified that adoption:

(a) Provides a permanent and secure arrangement outside public care.

(b) Facilitates life-long commitment to the child as few adoptions break down.

(c) Is the most "normal" circumstance outside the family of origin and reduces the child's sense of difference.

(d) Has significantly lower rates of maladjustment than those in long term foster care.

Moreover in adulthood, adopted children have a stronger sense of self worth and function more adequately at the personal, social and economic level than those fostered. It was Dr Donnelly's view that in the absence of rehabilitation to the family, adoption was the best solution for the long term care of these children. It would offer stability, security, life long commitment and the most normal circumstance outside the family of origin for these children. Such a lifelong commitment would be essential for a child with special needs such as G. Her conclusion was strengthened by the fact that ,based on her view of contact, she considered that G had a negligible attachment to either her mother or her father and that A had not yet established any primary attachments.

(4) The witness emphasised that Mr and Mrs X had many good points. These included:

(a) That they had made a significant achievement in extricating themselves from the institution at Muckamore and had been motivated to make progress thereafter. She acknowledged that many of the contact sessions with the children had gone very well having read the contact note.

(b) They were learning and were making efforts to improve.

(c) They were respectful of her when interviewing them. They appeared to like her.

(5) On the other hand Dr Donnelly made it clear that she felt that the couple had been respectful to her and liked her because she was asking their views. It was clear to her than when the role changed ie when others were offering advice or acting authoritatively, then there was a complete change in attitude.

(6) Dr Donnelly's view was that these parents placed much more emphasis on the needs of G who was the older and more difficult of the children. On three occasions during the first contact session both parents had walked out of the room for different reasons (getting food, going to the toilet, leaving out nappies, running after G, going outside for a smoke break) leaving A unattended lying on the floor. When G's behaviour was most active both parents were noted to attempt to work with her and A was left

sitting or lying by herself. This was but one illustration of Dr Donnelly's conclusion that whilst this couple did not deliberately ignore A they were at times so consumed by G's behaviour, which was certainly more difficult, that they were unaware of what was happening with A. Dr Donnelly saw this as an example of this couple being able to focus on one thing only and failing to recognise that the other child requires attention. She concluded that this couple are alert to dangers that they know about, but what profoundly concerned her was that they are not pro-active. Whilst they are able to learn from experience of what has happened to them, they are not able to think or act ahead. Herein lies the real danger to the children in her opinion. In analysing this evidence I reminded myself of the literature to which I have referred to at pages 9-14 of this judgment but I was satisfied that this witness was applying the appropriate criteria to this couple

(7) It was her view that since G has clearly developmental delay, she is not only harder to handle but requires active supervision to avoid danger to her or to the environment. She agreed with the conclusions of SC, that G will undoubtedly become even more challenging as she gets older. Dr Donnelly reported that in her view with an older child with special needs, such as G, there would likely be difficulties in managing the behaviour on an ongoing basis. In a three hour contact period it was difficult for Mr and Mrs X to sustain safe levels of attention. She made the obvious comment that these contact sessions are hugely artificial and that the usual tasks of family living such as cleaning, cooking, washing, shopping etc are absent which all have to be managed in parallel with childcare demands. It was her view that Mr and Mrs X could not carry out such parental responsibilities safely in the full time care of their daughters however well motivated they might be.

(8) The records available from social work contact and the family care unit in Peterborough together with her own conclusions led Dr Donnelly to believe that Mr and Mrs X would find it very difficult to accept advice on an ongoing basis particularly as they see themselves as best placed to understand their daughters' needs. This is more likely to increase the couple's stress levels to which they have previously shown vulnerability. For the children, while they remain very young, any attempt to provide 24 hour support would undoubtedly act to protect their interests as long as they were not exposed to the conflict between their parents and social support workers. However as they grow older these relationships might be confusing and potentially undermine their confidence in their parent's ability to care for them. It was Dr Donnelly's view in terms that Mr and Mrs X would not accept the necessary level of support in any event.

(9) The witness conceded that she would have recommended the Trust to at least test out the couple with one child in June 2004 in the community. However with hindsight, now that the children are older, it has become obvious that G has developmental delay (which was not known in June

2004) and that there is an additional child namely A, she believed that the "tipping point" has now arrived and in her opinion they should not be given any further opportunity to be tested in the community. She indicated that if she even felt there was a 25% chance of success it would be worthwhile but it was not her view that that was the case.

[23] In cross-examination when questioned about the report from Peterborough of Ms Jinks, Dr Donnelly recorded that it was concerning to her that despite the many observations and concerns expressed in the progress reports from the family care unit at Peterborough, these did not appear to be reflected in the final recommendations to the court. In particular she pointed to the relevance of their observations from group work, one to one work and from their supervision of childcare tasks where they had identified difficulties for Mr and Mrs X accepting advice or interference in their lives and their desire for independence. Her conclusion was that once all the threats about the need for changed behaviour had been removed and the staff focus relaxed, then the needs of this couple would prioritise themselves alongside a renewed disengagement with staff. Dr Donnelly felt that this was inconsistent with an expectation that Mr and Mrs X would accept the intrusion of 24 hour support on a sustained basis as was recommended in the final report from the family care unit at Peterborough. Whilst not criticising Ms Jinks, the witness did make the point that she was not a learning disability professional and often those who are not experienced in this area over-react to high motivation .

Dr Roy Bailie

[24] Dr Bailie is a Chartered Clinical Psychologist and Child and Adolescent Forensic Psychologist. He has been in professional practice for over 20 years.

[25] I pause at this stage to comment that Dr Bailie gave his evidence by way of live television link from a court in Milton Keynes. Not only did this facilitate Dr Bailie, and enabled us to afford him a specific window of opportunity to give evidence without having to travel to Northern Ireland, but it saved a great deal of expense on the public purse and worked extremely efficiency. I strongly encourage the use of live television link in such circumstances and use of this method of giving evidence should become more regular in the family proceedings courts.

[26] In the course of a report dated 9 June 2004, his examination in chief and cross-examination the following matters emerged:

(1) Dr Bailie had been instructed by DRP to prepare a clinical psychology report on Mr and Mrs X. He interviewed them at Marcus House which was at the family centre in Peterborough.

(2) Although Mr X asserted to Dr Bailie that he does not have a learning disability, tests on Mr X reveals that he had an overall full scale IQ of 63. This places him in the extremely low range of cognitive functioning when compared with his age group. An estimated 99% of the general population would score higher on this index of IQ. He has therefore a significant, consistent and extensive set of impairments in his cognitive functioning. In particular he would have marked difficulties in verbal and non-verbal reasoning and in prioritising and comprehending what others say and mean. It was Dr Bailie's view that these intrinsic cognitive difficulties present great difficulties if he was parenting on his own. Two illustrations suffice. Ms Jinks, Case Work Manager to the family in the unit, informed Dr Bailie that T was often pre-occupied with talking about violence, and watches violent films and videos. Dr Bailie saw an instance of this when, during the interview, he had commenced to swing G back and forth vigorously making machine gun noises as he did saying G was "an M16" gun. He did not appreciate that she should not be swung in this manner. He had to be asked to give the child back by his wife. This incident left Dr Bailie questioning T's awareness of G's safety needs and his role in protecting her. Secondly, Ms Jinks told Dr Bailie that she had doubts about T's abilities. As an example, she told him of one occasion when T had to be shown how to use a thermometer to test for the safe temperature of the water, as he did not know hold to tell it from using his elbow or hands. After T used the thermometer he apparently got the idea of how to use it. However he thought and believed that because the temperature of the water was now at a safe level, since he used the thermometer, any future bath water would be at a safe temperature for G. This difficulty is clearly compounded by the fact that T asserted that he did not have a learning disability and did not consider he required help from the services of the learning disability team.

(3) Mrs X had an overall IQ score of 64. This score places here in the extremely low range of cognitive functioning when compared with her age group. An estimated 99% of the general population would score higher on this index of IQ. The main observation made about this was that her results show she had a significant, consistent and extensive set of impairments in her cognitive functioning. In particular she would have marked difficulties in verbal and non-verbal reasoning, prioritising and comprehending what others say and mean. Dr Bailie said that her parenting difficulties would be compounded if her husband did not support her and she had to do the majority of tasks herself.

(4) Dr Bailie emphasised that at the time he prepared his report, the couple had only one child, and he was unaware that that child had a learning disability.

(5) The results of the psychological testing showed quite clearly to Dr Bailie that Mrs and Mrs X would both be likely to need assistance in the parenting of G and any other children they parent, both as infants and as they grow and develop and as their emotional and cognitive needs become more complex. He went on to add in his report:

> "There is also the possibility that, even though Mr and Mrs X are devoted and loving parents, which I consider them to be, they run a small risk of 'unwitting neglect', of G, as they would for any other child they might parent."

(6) Dr Bailie dilated to a great extent on these comments in the course of his evidence. In this context he made the following points:

(a) Whilst he accepted that these parents could learn, they could not deal with "figuring out" or anticipating new problems in the future. If situations are replicated to that which they have been shown in the past, they could handle the matter, but if a new situation arises, then the problems are manifest. A real issue here is lack of insight. He emphasised that at times parents have to think ahead rather than simply remember an experience that has happened in the past. He illustrated this by saying that if they were in a restaurant, they could well both go up to the counter to get food leaving a child alone with hot liquid. He agreed with the examples given by Dr Donnelly of where they could be so consumed with G, that they could leave the other child dangerously unattended. A modelling approach on lessons given, could not possibly come up with all the possible risks that occur in daily living. This is where the real danger would lie.

(b) The fact that they do care for the children sadly does not imply that they have sufficient ability to provide the level of care required. Children make more cognitive demands than they are able to meet. It was his view that there was a significant risk of there being situations likely to arise where they could not "figure out" the dangers. These concerns are strengthened by the fact that G has a learning difficulty and that there are two children now involved. It was his view that in the case of Mr and Mrs X, their background mental history made the possibility of depression occurring with the extra demands. He summarised this situation in para. 12.7 of his report by stating:

> "However, in my opinion, they would be inclined to fail in their ability to problem-solve and assist their children in solving problems of everyday living for themselves."

(c) Turing to the question of practical assistance to help them to be considered "good enough parents" he was unaware of any facility which could provide in these circumstances 24 /7 assistance. He considered they would need circumstances parallel to another family living with them whose purpose would be to assist Mr and Mrs X. Over the last 20 years, he was unaware of any such facility in England, Wales or Northern Ireland. Help from extended families can at times help to provide solutions, but it was clear in this case that Mrs X's mother was not available on a 24 /7 basis and there was no other extended family to assist. Relying on professional help alone therefore makes the matter much more difficult.

(d) Even if such 24 /7 help was available, it would need sustained compliance by Mr and Mrs X.

(e) Further, the practicality of providing 24 /7 assistance had serious implications for ordinary family life. Children must form an identify like other children and with a large number of people running the household this would present great difficulty and confusion.

(f) Dr Bailie concluded that he agreed with Dr Donnelly that in the long terms difficulties would also increase. He therefore adopted the view of Dr Donnelly that these parents could not carry out tasks safely for these children.

[27] I find Dr Bailie to be a very impressive witness who had taken great care in the preparation of his report and evidence before the court. He was clearly very troubled by the prospect of Mr and Mrs X caring for these children and I was satisfied that he had taken everything into account that could be said in their favour recognising the limitations under which they have to live out their lives. His concerns about the safety of these children have made3 a very material impact on my judgment when coupled with the views of Dr Donnelly. As in the case of Dr Donnelly I considered the risks set out in the literature previously mentioned in this judgment but I was satisfied that this witness was not comparing this couple to the "perfect couple" but was appropriately aware of the dangers they present to these children .

Sandra Jinks

[28] Ms Jinks was the Family Care Social Worker with Peterborough Diocese Family Care known as Family Care. Family Care is a voluntary organisation which provides self-contained accommodation at Marcus House in Peterborough for young families with babies and toddlers or children up to the age of 5 years who are at risk of neglect or abuse. Each flat is equipped with internal telephone to enable residents and staff to liaise speedily. Experienced staff train the residents in general parenting and general life skills together with observing their abilities within these areas. Each resident is expected to care for their own children with help, support and advice from staff when needed.

[29] The Trust in this case had contacted Peterborough to consider engaging in an assessment of T and P. The witness indicated that an effort is made to try and make it as close as possible to living in the community. There is constant supervision initially but they hope to withdraw that as time goes on. There is a 12 week assessment plan initially with full supervision, then partial supervision and eventually hopefully minimal supervision. The plan is to have a period of testing in the community with intensive package of support to see if they can maintain the level of parenting. The 12 week course is the usual length. "We usually make a conclusion as to whether they can work with help in the community or if there is no chance of this." She had come to Northern Ireland for a preliminary meeting with T and P and having met them she felt that they could benefit from this period in Peterborough. She was optimistic she could do something for them. She had known about their previous history and felt they had done remarkably well since coming out of the mental institution at Muckamore. She described them as having "baggage from the past" and their aim was to help.

[30] The first review period was up until April 2004 having commenced on 8 March 2004. It concluded that in the main T and P attended to the task of feeding G well and they were generally responsive to G's needs. They were regarded as warm and loving parents with a close and supportive relationship. They did note that P found it difficult at times particularly if she did not agree or felt she had been criticised but after having a bit of space to consider she usually re-engaged with staff and tried hard to understand the topics which she generally did. T was also sensitive to criticism but showed he could work his way through this with a sense of humour at times. A number of problems had surfaced. T was going out with other residents rather than working with staff at time when such work was planned and arranged. On some evenings the parents' socialising with other residents became more important than G's routine. T ceased taking his medication. They did not give anything to G except her milk. It was felt necessary for P to focus more on G when carrying out a childcare task and not to try to talk to the staff about other issues. T's drinking and socialising with other residents

became a problem. They were a bit hit and miss in the weaning process. During this period an incident did occur when the parents felt that G had a high temperature. Staff discussed the matter and examined the child and felt there was no need for her to go to hospital. The parents were advised to remove her clothing and wash her down with a cool flannel. Both parents refused to follow the staff's advice insisting there was something seriously wrong with G. Mr X became verbally aggressive with the staff waving his arms around, saying "It's our baby and we'll do what we think is right for her." The duty officer had to be called to speak to both parents individually giving similar advice to staff, again the advice being refused. They asked to leave Marcus House demanding a taxi to go to the hospital. Staff advised that accident and emergency department on a Saturday night at the hospital would not be a good environment for G and insisted they went to a walk-in centre. The parents finally agreed. Having seen a doctor there, he gave the same advice as staff. It was subsequently explained to them that if this sort of incident happened again then serious discussions would have to take place with social services about the termination of the placement. In this context the witness indicated that one of the themes of their stay is that they interpret advice as a criticism. I note at this stage that this is a concern which has been raised by the adult disability social worker with whom they work amongst others.

[31] The next report from Ms Jinks was for the assessment period April 2004 to 10 June 2004. This report had been made three weeks after the assessment period had ended. This report evidenced in the main good child care and focus with the parents working better with the staff. A review meeting was held on 6 May 2004 when it was agreed that it was now time to stand back slightly and assess Mr and Mrs X from a distance to see whether both parents were able to keep G to her routine while simultaneously organising and being in charge of their own activities and day. An extension of two weeks was agreed to the finishing date of 24 May 2004 as it was felt that more time would be needed to help Mr and Mrs X consolidate and absorb any new concerns that might arise as a result of the new plan. There had been problems including T having too much to drink and a concern that P needed to put G's needs before her own by staying in the flat and caring for her. Once the extension was given, the parents initially demonstrated a commitment to this plan and showed their ability to follow it. However their own needs to go out into town daily for increasing periods of time became the priority. The parents were taking G's feeds out with them but occasional solid meals appear to have been missed. Both parents were generally keeping to bathing G every other night but this was getting later and later fitting in around their return from town. If T had a drink then he would go to bed leaving P to care for G including carrying a heavy bath. On other occasions P left him under the influence of alcohol caring for G so that she could socialise. Staff's attempt to remind P and T of the need to keep G to her routine were often met with hostility particularly from T. The report stated at para. 8.36:

"(P) showed she was skilful at manipulating staff's support and twisting around different staff comments to suit themselves and to explain their actions.

Mr and Mrs X were particularly angry and confrontational when Mr X was questioned as to how much he had to drink on 15 May 2004 and whether he was capable of caring for G. Both said they had G's best interest at heart but in fact neither had, only staff.

Mr X continued to stay in bed some mornings and would ignore both Mrs X's and staff requests to get up and care for G and or help Mrs X. This was particularly concerning considering Mrs X's pregnancy and ill health. The invasion of G's space and the rough handling of G in the creche on 24 May 2004 by Mrs X was something that staff had not witnessed from Mrs X before or since.

Mr and Mrs X demonstrated their ability to behave in a deceptive and elusive way as evidenced in many of the recordings and observations within the report dated 28 May 2004. Mr and Mrs X insisted that the DRP were totally responsible for the fact that they had been telephoning them requesting more money. The more DRP gave them the more they spent and then the more they demanded against stressing to DRP that it would affect their assessment if they were seen to be out of money.

This situation became apparent to Family Care only after all supervision and restrictions had been removed. This demonstrated that when left to their own devices and if money was not a barrier, Mr and Mrs X would revert to the style of behaviour and lifestyle, G would have to fit in around this, possibly including staying up through the night and then sleeping through the morning, going out in town, spending beyond their budget and visiting the pub/beer gardens, park etc, throughout the afternoon and evening. Eating out, socialising and spending money being the focus for each day.

> The only thing that could stop this spiral was the threat of losing G and Mrs X's mother coming to the review meeting. This is a pattern that has presented itself on various occasions throughout the assessment which must suggest that neither parent has internalised G's need for stability, continuity, consistency of care and a good childcare outline.
>
> Family Care were unaware that the DRP were 'topping up' Mr and Mrs X's weekly income and had been to the value of £500 since the family arrived……"

[32] As a result of this situation, Family Care recommended starting the assessment again for consideration to be given to the family remaining for the duration of Mrs X's pregnancy and until after the birth of their baby. It was felt that Family Care would then be in a good position to support and assess Mr and Mrs X in their parenting skills with two children. This witness stressed that at the time that their reports had been made, only one child was available and they were unaware that G suffers from a learning disability. It was the witness's evidence that at a professional meeting with Mr McConville, the Service Manger form the Trust and Ms McE, G's, Social Worker, and Ms J, Mr X's adult Social Worker and staff from the Family Care Unit in Peterborough, Mr McConville informed them that there were court proceedings at that time (these were being heard by Mr Magill RM at the Family proceedings court) and that the court was dealing with one child at a time and so would not deal with both G and the new baby. Mr McConville had informed Ms Jinks that the two week extension would not be increased and that the court now needed some indication about assessment. Family Care informed the meeting that in their opinion Mr and Mrs X could not consistently meet G's needs without a high level of support that would need to be in place for the foreseeable future.

[33] The precise circumstances in which the assessment thereafter terminated was somewhat confused. The evidence of Ms Jinks was that events occurred on 7, 8, and 9 June 2004 which led to G's removal on 10 June 2004. This arose because in the early hours of 7 June 2004 Mr and Mrs X considered that G was very hot. Staff gave various advices to her to cool the child down eg take some of her clothes off and sponge her down but staff recorded that they did not feel that either parent understood why certain things required to be done with the child. The note of the incident records that staff felt that if they had not been there G would have been taken to hospital as both parents' anxieties were very high. The following day, after both parents claimed they had been up all night, P rang staff to stay that T was in bed and would not get up to help her with the child. Further advice was given to P by staff to ensure the child was kept cool during this very hot

period of weather. The parents insisted however in the afternoon of 8 July of taking the child to a doctor. Staff advised them to take plenty of water for the child and to be careful about milk which would soon become unfit to drink in the heat. They disappeared with the child for the rest of the day without making contact with the centre. In the later evening Mrs W rang to inform them that the family were at a hospital. When they did return in the evening, they again called staff in the early hours of the morning when G was awake and fretful. The parents were clearly very confused about what advice they had received from the hospital and they were argumentative over the issue of medication being dispensed despite staff assuring them on the matter. Clearly the parents were stressed because staff were not totally agreeing with them over the child's condition and medication requirements. Arguments continued that day with P again refusing to accept staff advice. As a result of these incidents and concerns Family Care informed social services and the family that they would now be put back onto full supervision and only go out with an escort while the situation and assessment could be considered. After due consideration and discussions at senior levels, Family Care informed social services thereafter that Mr and Mrs X's assessment would now be concluded and for arrangements to be made in the planned way for the family to return to Northern Ireland. The reason for this decision at that stage was that in Family Care's opinion they now had enough advice from all of the assessment areas to be able to make informed conclusions and recommendations. Arrangements were then made for the return to Northern Ireland.

[34] Ms Jinks gave evidence that it was her view at that stage that they had not done "that much wrong" and at that time she felt that the degree of supervision could be reviewed as time went on.

[35] She had contacted the guardian ad litem on 21 June 2005 indicating that she felt it was now time to take the next step ie testing in the community. With the benefit of hindsight at that stage she informed the guardian ad litem that she thought the situation had not been as negative as she had perceived at the time. Although the situation had presented a picture of concern, in the cold light of day she felt that Mr and Mrs X had not done much wrong . She thought at that stage that it was unfair to call it a breakdown of the placement. She thought that essentially Family Care had done as much as they could for Mr and Mrs X and that they had brought the placement to an end as it needed to be tested in the community. In her view at that stage if the parents were going to fail in the community it would soon be known. The placement should be as normal as possible she felt with increasing contact gradually, testing it out and building it up. At that stage she compared the needs of Mr and Mrs X to physically disabled parents. She felt that Mr and Mrs X did learn quickly and the issue with them was to reinforce the learning so that it was maintained.

[36] In evidence before me however, whilst reiterating, that she did feel they could have been tested in the community with support, it was now her view that the new information before her – the learning disability of G and the birth of the new child – had caused the risk to go up considerably and she did not believe that they should now be tested in the community. She was also unaware of the psychological assessments that had taken place. It was now her view that Mr and Mrs X would not be able to work with professionals and with the two children.

[37] In cross-examination by Ms McGrenera on behalf of the guardian ad litem, her attention was drawn to the contents of Dr Baillie's and Dr Donnelly's report as to the various frailties in the parental makeup. She concluded that in her opinion whilst 24 hour full time supervision would be laudable, she felt it was unachievable because in her experience such a provision simply did not exist. She agreed with Dr Donnelly's conclusion that these parents simply could not carry out parental responsibilities with full time care of their children. She also accepted the conclusion of Dr Bailie that they would fail in their ability to problem solve and have difficulty in taking on new information especially with G in the new circumstances where this child had no appreciation of danger.

[38] I believe that Ms Jinks was a sincere and genuine witness who was doing her best in the circumstances. I consider that she genuinely did believe that with the information at hand in June 2004 testing this couple in the community was a real option. Equally so, I consider that once she was armed with the up to date information which she had not in her possession at the time, her view has now changed. She is clearly of the view that the risk had gone up considerably in her own words and that testing of this couple in the community is no longer an option in view of the continuing concerns voiced by such experts as Dr Bailie and Ms Donnelly.

SC

[39] This witness was a social worker with the Trust and in particular was an approved social worker under the Mental Health (Northern Ireland) Order 1986. He had been employed as a social worker in the learning disability programme since April 1996. He had been assigned to Mrs X for ten years. He described how the Trust has a grading system depending on the degree of care required. The highest grade was A which required daily or weekly contact and a high degree of complexity and risk. P was regarded as being in category A. There had been a complex liaison of support from social workers. He described her own vulnerabilities which had been set out earlier in this judgment. In terms she has a severe mental handicap. His report of September 2004 outlined in detail her previous history. He referred to the previous child which she had given birth to in January 1993 who had been

made a ward of court, placed with foster parents and subsequently adopted. He highlighted also her vulnerability in the community and illustrated this, for example, with incidents in April 2002 when a male member of staff then providing services for her had sexually abused her when she and T were living at DRP. That member of staff had been suspended and subsequently dismissed. Moreover when living there she had been assaulted by neighbours living in the opposite flat. Police intervention had been required. This witness also accepted a number of strengths which she had. Over the previous tea years he had seen his role as advising and supporting her. He praised the efforts that she had successfully made to reintegrate herself and her husband after their discharge from Muckamore Hospital. He recorded how she took pride in keeping her house clean and tidy and had substantial self-help skills. It was largely emotive support that she received from him. She had shown determination to obtain gold medals in the special Olympics and also some NVQ's. She had trained 3-4 hours per day daily for the swimming Olympics. That revealed to him commitment, dedication and consistency. However he recognised that if she likes the advice that she is given she will follow it but if she does not like it then there is a real problem. Relationships with social services had clearly deteriorated after November 2002 when concerns had been raised about their decision to have a baby. He described the wheels of co-operation really falling off and how the couple looked negatively at the working relationship. However that lack of co-operation was also present in his view when working with the employees of the DRP. When Mr and Mrs X had returned to Northern Ireland on 12 June 2004 after discharge from Peterborough initially they were pleased to be back and were co-operative with the staff from DRP. Staff noted however that they did not appear to have realistic expectations for the future and were again, in my view characteristically unhappy when advised that DRP project could not provide the intensive support that would be required if G were to be returned to their care. A lack of engagement according to the witness with structured support became quickly apparent. They both declined to attend any form of day care. Practical support was also rejected albeit they did avail of emotional support on a regular basis. Relationships with staff in DRP deteriorated rapidly once Mr X was advised not to visit a bungalow also supported by staff from DRP. This advice was offered in an attempt to safeguard Mr X from placing himself in a situation where he would be open to allegations should he continue to visit a vulnerable female tenant in the bungalow without staff being present. Both Mr and Mrs X continued to visit the bungalow in spite of the advice. On 25 June 2004, when the witness had contacted Mrs X on her mobile phone in an attempt to re-arrange a visit which she had not attended, she became very agitated and clearly stated she did not wish for any further social work contact. Relationships with DRP continued to deteriorate. Mr X became increasingly abusive and threatening to staff. A decision was taken on 22 July 2004 to again suspend support services and provide only weekly contact at the project's office. A care management review was held on 29 July 2004 when Mr and Mrs X were asked to consider their support needs which

were offered at 25 hours support per week with two members of staff. This was conditional upon their being able to accept such support without further abusive or threatening behaviour. Mr and Mrs X met with the general manager of DRP and the local management on 30 July 2004 but again declined the offer of structured support. It had been explained to Mr and Mrs X that their continued refusal of structured support could jeopardise their placement in their flat. Following the rejection of support the general manager again advised them verbally and in writing that they were in breach of their agreement with DRP and their placement may have to be terminated. On 7 September 2004, they again continued to decline planned and structured support. This resistance to advice, guidance and support sadly is a theme coursing throughout the entire evidence in this case and I accept entirely the concerns expressed by this witness. At times both parties can be very focused upon their own needs and wishes which can lead to conflict and dispute with others. Where there is conflict or disagreement P does not always deal with this appropriately. She can quickly become extremely defensive, evasive, tearful or abusive and threatening . The witness indicated that at times this can occur over a sustained period and, if supported by Mr X or others, can prove to be very difficult to resolve.

[40] It was disappointing to hear this witness relate that since 2003, P's mother whilst acting as a powerful advocate on behalf of her daughter, has demonstrated an inability at times to understand her daughter's limitations. She has stated she does not believe her daughter has a learning disability and has rejected explanations in relation to Mrs X's lack of insight into risky situations or relationships as being part of her learning disability. Mr and Mrs X of course deny that they have a learning disability which can create very real difficulties.

[41] An illustration of the difficulties which arise as a result of their refusal to accept this position (encouraged by Mrs W) according to the witness arose when Mr and Mrs X were moved from the supported project with DRP to being supported by Prospects in another town. At that stage Mr and Mrs X had requested they be moved from their flat with DRP on the grounds that they no longer felt comfortable living in that town and their working relationships with staff in DRP were so difficult they no longer wished to be supported by them. Despite repeated requests at that stage, Mr and Mrs X would not allow social work reports to be submitted to the Housing Executive in support of their housing application for a change of venue. Later in the process they allowed a letter with only basic information to be submitted by Ms J in August 2005. This lack of clarity within the Housing Executive did not allow them to take into account Mr and Mrs X's vulnerabilities when offering accommodation in the new town. Similarly, as both social workers were not able to liaise with the Housing Executive due to the limitations imposed on their involvement by Mr and Mrs X, an opportunity was lost which may have identified potential difficulties with a flat opposite and

allowed consideration of the appropriateness of a move there. In the event a number of untoward incidents occurred placing the couple in conflict with members of the local community. I accepted the evidence of this witness in this regard and it illustrated to me the danger that arises as a result of the intransigence of Mr and Mrs X and their abject refusal to accept advice. It also illustrates their lack of insight into the dangers that arise in community living. This witness summarised the weaknesses exhibited by Mr and Mrs X as follows:

(a) Mrs X is unaware of her own capabilities.

(b) She is resistant to advice when it is not to her liking.

(c) She is very focused on her own needs leading to conflict with others.

(d) She has great difficulty with resolving conflict situations.

[42] Turning to the Peterborough experience and report, this witness made a number of points:

(a) Family Care in Peterborough had not been prepared to accept his offer of information sharing.

(b) He felt that Peterborough had perhaps failed to recognise that although Mr and Mrs X initially tried their best to work and co-operate, over time, there is always an escalating lack of co-operation and they become concerned about the intrusion on their privacy. It was his view that their rejection of that level of intrusion which was necessary leads to a level of expressed emotion and conflict which is not good for children to witness. The degree of supervision which this couple require in his view, the real difficulty as experienced by Family Care in relation to Mr and Mrs X's failure to act upon advice and work with staff echoes the large body of historical evidence of breakdown in working relationships and failure to accept advice, support and guidance evident with social workers and DRP.

(c) It was his view that Peterborough failed to recognise that not only is there a problem with the willingness of Mr and Mrs X to work with staff and act on advice, but this reflects a significant loss in autonomy and privacy which they reject and which has been evident throughout their period since discharge from Muckamore. This evidence is a failure to prioritise G's needs above their own. Their great desire to live independently in his view asking a great deal of them given this background.

The witness indicated that it was disappointing and in his view a significant oversight in the process of information gathering for assessment that family care in Peterborough had not accepted the offer of the background

information on Mr and Mrs X including that coming from DRP and social workers from adult services. This would have enabled staff in Peterborough to gain a better cultural understanding together with a better knowledge of the particular issues involved in direct work with Mr and Mrs X.

[43] This witness gave his evidence in an unostentatious manner and struck me as a caring balanced care who had the best interests of Mrs X at heart but who sadly felt constrained and duty bound to draw her frailties to the attention of the court. I was satisfied that his evidence was the product of independent thought and carefully considered.

Ms McE

[44] This witness was a social worker with the Trust. Both she and Ms B did have a background and some specific experience of working with adults with learning disabilities and children's services. Essentially her role was a key worker and case coordinator to the family. In the context of the allegations made in this case it is also significant that she has a Masters Degree in Equal Opportunities. I share the view of the Guardian ad Litem that such a level of expertise in this witness would, in her experience, be rare in the social work practice context in Northern Ireland. As a member of the family, child and care team, she combined with the learning disability staff to discuss the circumstances of Mr and Mrs X prior to the couple attempting to conceive .Thereafter she was part of the family child and care team which managed this case through multidisciplinary meetings such as core group meetings, child protection case conferences and LAC reviews in order to provide services and support for the couple and their baby in the community. Her evidence was interrupted during its course for a period of a month (as was that of Mr Bothwell the next witness) because I directed that further inquiries be made into the possibility of 24 hour support on a 7 day week basis being afforded to this couple. I regarded it as extremely important that the courts should have at its disposal all possible evidence touching upon the provision of such services here in Northern Ireland and in particular as would be available even in England for this couple.

[45] In the course of this witness's evidence in chief and cross-examination the following matters emerged:

(1) Her evidence touched on the LACs concerning G, A and the adoption panel recommendations concerning A to which I have already adverted during the course of my analysis of the evidence of Ms J found at pages 17-19 of this judgment. Her evidence added nothing to the criticisms of the system that I found had then operated within this Trust but did not change the overall view that I formed as to the lack of prejudice to P and T of any potential breach of their Article 8 rights under the Convention.

(2) This witness emphasised the search that had gone on by this Trust for services that could be provided 24 /7.

(3) She was closely cross-examined as to correspondence passing between the Trust and Mr Bothwell, the Locality Manager of Prospects. In view of my conclusion which I shall advert to later in this judgment that Prospects could not realistically have supported in 2004, and could not now support, this couple with two children in view of the learning disabilities, the issues raised xxx certain of their potency. However insofar as they may be relevant to the attitude of the Trust in September 2004 to the potential for this couple being accommodated in the community I shall touch upon the issues. It is clear that the Trust was communicating with Prospects as to the possibilities of support being offered to this family. A letter of 16 September 2004 from Mr Bothwell to this witness was couched in the following terms:

> "Further to our telephone conversation previously this week I can confirm that on the basis of information I have read so far there is nothing that has changed my opinion that Prospects would not be able to support this family assuming that appropriate staff can be recruited.
>
> An initial budget suggests that £879 per (adult) person would be required – ie a total weekly expenditure of £1,758. This cost to Social Services would be reduced if supporting people's monies were received; also the budget reflects 24 hour support (includes sleep in staff) which may be reduced if the couple were given some independence."

On that letter, penned in handwriting, and dated 4 January 2006, was a further note from Mr Bothwell which recorded as follows:

> "Maria, the thrust of what I was saying was that Prospects could, given the right structures and resources, support this family based on the info I had. It was in late 2005 that we began to support this couple* we would have issues and concerns around supporting T and P now; to support the couple and children would require a fresh review now.
>
> Trust this is helpful.

* - Max of 21 hours per week budgeted".

[46] Ms McE was closely cross-examined as to why she had contacted Mr Bothwell in the wake of this hearing on 4 January 2006. I watched her carefully during her cross-examination on this matter and I was satisfied with her explanation that she had simply wanted to clarify what he had meant. She had telephoned him on 4 January 2006 to ascertain this. Mr Bothwell's evidence was that he was asked to remove the word "not" and whilst Ms McE did not accept this, I am satisfied that whether this happened or not was of no moment in the context of this case because I was completely satisfied that she was simply trying to clarify the thrust of what he had said.

[47] On 11 October 2004 Mr Bothwell had again written to Ms McE couched in the following terms:

> "Following our telephone conversation this morning I would like to clarify Prospects' position re the X family.
>
> In order to support this family suitable housing would have to be identified and appropriate staffing put in place. Whilst the former probably should not pose major problems the latter would be more difficult as there would be concerns about our ability to recruit, not just numbers, but also appropriately skilled staff. To be able to commence to deliver a quality service to this family would probably involve a period of months from now and there are no guarantees of success vis a vis recruitment.
>
> If you and others feel that it would still be appropriate to support this family in the knowledge of the above then please do contact me or if you wish to provide support for T and P on their own, then again, please contact me."

[48] It was the witness's evidence that before the letter of 11 October 2004 arrived, a LAC meeting had taken place and the decision was taken to change G's care plan to permanency via adoption.

[49] This witness was cross-examined as to the circumstances in which the couple had moved location from under the aegis of DRP. There clearly had been problems with neighbours and allegations of abuse of alcohol against these parents. Those matters in the reports that refer to rumours, I dismissed entirely from my consideration. However it was clear that there was a high

level of conflict with the staff team in DRP and sadly I came to the conclusion that the disputes with the staff were characteristic of the inability of this couple to take advice, seeing advice as amounting to criticism.

[50] This witness, in cross-examination by Ms McGrenera adumbrated the following concerns about 24 hour/7 day service:

(a) Whilst initially there might be cooperation, she was satisfied that as it went on these parents would find it increasingly difficult to tolerate that intrusion and conflict with staff teams would clearly deteriorate to a point where it would be no longer sustainable.

(b) These problems would all be exacerbated if the grandmother withdrew assistance.

(c) There would be a turnover of staff required to meet their needs in order to safeguard the interests of these children and these parents could not cope with such staff.

(d) The Trust were satisfied that there was simply no facility available to keep this family together as a unit given the degree of extra services required.

(e) The witness readily accepted the efforts this couple had made. They had been discharged from Muckamore, had lived in the community, P had achieved gold medals for her determination in industry and swimming, they had cooperated with Dr Bailie and to some degree with Prospects. However she countered these points by pointing out that though there might be periods of good cooperation, they fairly quickly degenerated into conflict.

(f) This witness was cross-examined closely about her knowledge of the research on persons with learning disability. She was clearly not acquainted with these research documents to any great degree, had not referred to them in her report and was somewhat critical of the Booth report on the basis that she felt that Professor Booth highlighted issues but did not provide specific solutions. Without being unduly critical of Ms McE, I did feel at times that she did reflect the Baring foundation concern that staff in services whose primary focus was not learning difficulties may not fully understand the impact of having learning difficulties on individual parent's lives. It is important that Trusts dealing with parents with learning disabilities, make certain that those who are dealing intimately with them, whilst not experts on learning disability, do have at least a passing acquaintance with the main literature as it has developed. Any defect in this regard however was in my view completely balanced by the unstinting efforts made by this Trust to find appropriate accommodation for this couple and I am satisfied that the complete lack of facilities available or services at hand dilutes any problem caused by a lack of close awareness of the literature in the case of this

witness. In particular she had spoken to Professor Booth who had told her that nothing was available 24/7 in his opinion. She had also contacted the disability parents network as to the availability of domiciliary services which clearly do not have the extent of provision for those with learning disability that presently exist in England. In particular this witness was closely cross-examined about the availability of 24 hour care for those with physical disability and I considered that there was strength in her reply that in those cases there would be cooperation with those providing the assistance whereas in this case there was a track record of lack of cooperation, an inability to absorb advice, and a clear danger of conflict in the presence of the children with the number of staff required coming and going.

[51] I conclude my assessment of this witness by recording that whilst I consider that this Trust should review its training policies in regard to parents with learning disabilities in line with my suggestions at pages 9-14 of this judgment , this witness faced trenchant cross-examination with fortitude . I was completely satisfied that she was not only honest but sincere in all the efforts that she made to meet what was for her a very difficult situation in dealing with these parents suffering from learning disability to the extent that is apparent in this case. I do not believe that she approached the matter with a closed mind as evidenced by the extensive and wide-ranging efforts that were made to find accommodation/facilities that would be able to provide the necessary services for this couple.

Mr Bothwell

[52] This witness is now the Assistant Director for Prospects. This organisation provides support for adults with learning disability internationally and throughout the UK. It ranges from services on a 24 hour/7 day per week basis to the kind of package support provided for this couple. The 24 hour service would involve care around the clock unless they were able to go to a day centre. They have a number of schemes where staff sleep in or stay awake during the night or alternatively where somebody is provided close by. This couple received their support. Prospects provided staffing to go in to provide support them although they can do their own cooking, washing, cleaning etc. The role of Prospects is to provide support in terms of finance/housing/daytime care/budgeting/support and advice. A maximum of 21 hours per week funded by the Trust was available but only 13 is what Prospect deliver because this is as much as this couple feel is needed.

[53] He went on to add that if they were required to provide support for the whole family including the children they would have to do something completely different from what they do now. In other words they would require skilled staff or qualified social working staff as opposed to what they currently provide which is unskilled staff. He referred to the exchange of

correspondence to which I have already adverted in the evidence of Ms McE and he found nothing sinister whatsoever about the telephone call which had resulted in the memo written on the letter in January 2006.

[54] Dealing with this couple, he sympathised with the difficulty that they had in moving house. He recalled one occasion where they had proved uncooperative with staff.

[55] He was satisfied that Ms McE had been trying to see if a package could be put together for this family. Originally Prospects had indicated that they could do the whole package ie recruit and take on childcare people as well as provide their own unskilled help for the adults. However he made it absolutely clear that their position is now changed, and that they could not commit to do that now. Their assistance is not provided when children are involved. The maximum staffing they could provide would be 21 hours full-time. Dealing with his earlier correspondence of 11 October 2004, he made it clear that he was saying that in theory it might work but it posed a challenge which they had never faced before. At this point in his evidence he referred to certain instances in Bridgewater in Somerset and Burnham – on – Sea where there were a group of people with learning difficulties which he felt might have 24 hour/7 day per week care.

[56] At this point in his evidence I felt that he was so unclear about what other provisions are provided in the rest of England that I adjourned the matter in order for a fuller exploration to be made as to what services Prospect provided elsewhere in the United Kingdom. It seemed logical to me that if the kind of services required by this couple were provided in England then there was little reason why they could not be provided in Northern Ireland. Accordingly I adjourned his evidence so that further inquiries could be made by himself, the other parties and indeed by the Guardian ad Litem Agency.

[57] When he returned some weeks later, he dealt with two situations which had been earlier mentioned namely at Bridgewater and at Burnham-on-Sea. It was quite clear that these two circumstances were different from the present case. In the situation in Bridgewater, a mother of 30 with a cognitive impairment with a boy of 6 with a learning disability lives in a two bedroom self-contained flat. The mother has 20 hours support per week. Staff is allocated to her. Prospects support her to be a parent and relate closely with dedicated child support workers. There is in England a 24 hour family and childcare facility for the mother to telephone and draw on for assistance in England which does not exist in Northern Ireland. In the Burnham-on-Sea example, the mother is 23 with a learning disability but the child involved is above average intelligence. They live in self-contained flat. 30 hours staff provision is at hand. This is a short-term arrangement and the child had already started to parent the mother. The problem was however

that the boy started to bond with the Prospect carers and accordingly he is now going forward for adoption. This contrasted with the situation in Bridgewater where the mother was able to keep ahead of the child.

[58] Mr Bothwell said there was clearly a difference between these circumstances and the situation with P and T and the overall situation in Northern Ireland. In particular he assumed that there was cooperation from the parents in both the instances he described. He recorded that whilst there were 25 staff with Prospects in Northern Ireland, two of them have social work training. No one has childcare training.

[59] I was satisfied that this witness had been unable to provide facilities for the 24 hour care that would be necessary in this case with a full team of adult workers for the parents and childcare workers for G with her learning disability. I was also satisfied that there was no precedent for such cover anywhere else in the United Kingdom.

P

[60] In the course of a statement she had made for the purpose of this hearing, her examination-in-chief in cross-examination the following matters emerged in my view:

(i) This woman's learning disability was evident throughout the course of her evidence. I recognise that this mother has positive qualities and I could not fail to be impressed by the manner in which she described how she had overcome a number of difficulties in her life. I am satisfied that she is a loving mother who would not wilfully cause any harm or distress to her children if she could avoid it. She has a strong commitment to the children within her own limitations. She has never, and would never, do anything deliberately to harm them.

(ii) Sadly however the doubts I had harboured about her capacity to prevent harm being caused to these children mounted as her evidence unfolded. She had no option but to admit that she had had serious disagreements and problems with those who had attempted to help her during the course of her life with the children. She admitted not getting on well with the DRP staff, with the general practitioner Dr Small, with the health visitor, and with social services in general. She admitted failing to co-operate with social services because she did not trust them particularly after she had been told that her children would be removed. Although she indicated that her desire to have the children back would lead to her co-operating with socials services in the future (and my attention was drawn to the written undertaking she had given in this matter) I was left bereft of any

evidence whatsoever that this was likely to happen. Indeed her description of the incident with the social worker W K, scarcely ten days after the undertaking had been signed, where she had shouted at this young woman who was clearly unwell and suffering from a migraine, made it clear to me that the undertaking had not registered with any real significance. Her only answer was that she was doing it for a bit of "craic". The same pattern emerged when asked to explain why she had not stayed in hospital ten days after G was born. Again the characteristic objection to authority or advice emerged despite the evident risk to the child in leaving early from hospital.

(iii) She had no answer or explanation for a number of concerning incidents that were put to her. These included her denial that T had ever been drinking in Peterborough, , that T only exhibited the violence depicted on the videos when he was on his own despite again clear evidence to the contrary, and that she had ever gone off socialising and left G in the care of T when he had drink taken. A further illustration of this was her denial of the incident of 9 December 2003 when night staff at DRP had entered the couples flat at 1.00 am and found P and T asleep on their two separate settees. P had G cradled in her arms. During the evening Mr and Mrs X phoned to say they had to buy G food and were leaving the flat. However Christine McClean from DRP observed them with G in a public house approximately 30 minutes later. T sat at the bar with what appeared to be a pint of beer with a pram and his wife beside. When contacted by telephone and asked to return to the flat due to the inappropriateness of having G in a smoky bar, T denied drinking and P stated that she had "only went in to use the toilet". Later that day, when staff from DRP had persuaded the couple to see a GP about the concerns of the child's poor feeding, T had been verbally threatening to DRP staff on the way home stating he would report them and contact a solicitor. These matters were put to the witness and it was clear to me that she still did not see the serious import of them. Her response was that Christine McClean was picking on the two of them and that it was the staff who started the arguments. Similarly when confronted with her refusal to fix a time to meet the health visitor, she said it was only a joke. The same pattern emerged when she was questioned about the problems in Peterborough. She justified T's failure to assist her and his persistent remaining in bed on the basis that he had not been taking his medication notwithstanding the clear evidence before me in court from Dr Curran's report that this had nothing to do with his behaviour. It was another example of a failure to have insight into the problems that confront them.

(iv) I was also satisfied from her answers that Ms McC had clearly discussed with her the question of the permanency panel and the prospect of adoption of A both before and after the birth of this child. It had also been discussed at the first court hearing shortly after A's birth when she had a lawyer representing her. I got the clear impression that this woman did not genuinely believe that the thrust of what the Trust had in mind for A had

been kept from her and on a number of occasions she indicated that she simply wasn't taking everything in that was said to her.

[61] In conclusion therefore I was left with a clear impression that Dr Donnelly and Dr Bailie were completely correct in opining that this couple simply do not have insight in dangers that would arise for either or both of these children and that they have still a very clear inbuilt rejection of and antagonisms to social services rendering advice to them. I looked carefully for any sign of sincere change in attitude which would herald a new start but sadly I could find none.

T

[62] T also had made a statement in this case, gave evidence and was cross-examined. It was clear from his evidence that the IQ assessed by Dr Bailie played a very prominent feature in his life. Despite the wealth of evidence of his excessive drinking at Peterborough and on other occasions, he insisted that he never drank more than one or two pints of beer. He was also adamant that he loved the children and I believed him when he said this. Sadly however the capacity to care for these children was self-evidently not there. He did admit that when he was in Peterborough he sometimes worked with the services there and sometimes he did not. He argued that it would be different if the children were returned to him but I saw no indication that would lead me to conclude this was a realistic prospect. The problem that had been caused 10 days after the undertaking given to this court with the social workers et al were yet further examples of where, even after a solemn undertaking had been given to the court, he and his wife were simply unable to bring themselves to co-operate. Sensitively, counsel did not take very much time cross-examining this man, but his presence in the witness box albeit for a short time was sufficient to underline the preliminary conclusions I had formed to the effect that this man's capacity to look after these children is materially lacking.

Guardian ad litem – Ms Sheeran

[63] The guardian ad litem had been appointed on 6 January 2004 and, having been unavailable due to illness for a period, had been re-appointed on 17 January 2005. Her reports of 19 January 2004 and 19 December 2005 were before me. In addition, dealing with the issue of Prospects and Mr Bothwell, she had made a further report of 16 March 2006 (with a preliminary draft of 15 March 2006).

[64] In the course of her reports, her examination in chief and her cross-examination the following matters emerged:

(i) The guardian recommended that the court grant the care orders and thereafter grant an order freeing both children for adoption.

Contact

(ii) In terms of contact post a freeing order and subsequently an adoption order, it was her view that direct contact needed to be considered in the context of whether the parents were in a position to support any placement. That decision about contact should therefore be in her view a considered response. The adoptive parents attitudes was also an important variable. It was her view that direct contact 2/3 times per year was a reasonable aim but it would depend on the ability of the birth parents to engage with counselling to promote the placement. In her view it was too soon to make a judgment call on this matter. She agreed that it was essential to select adopters who favoured post adoption contact whilst at the same time recognising that too much contact was de-stablishing for adopters.

The respondents' undertaking to effect change

(iii) In the light of the written undertaking given to the court, the guardian ad litem had met with the respondents on 15 February 2006. It was still the guardian ad litem's view that whilst initially they might be co-operative, she was not optimistic that they could sustain this co-operation to ensure the emotional stability and wellbeing of the children. It was her view that the learning disabilities, the problems with cognitive functions, and the intellectual deficits all combined with the personal histories to prevent them having developed the skills to co-operate which are so necessary for the future welfare of the children.

The consequences of the court refusing a freeing order

(iv) It was the guardian's view that the result of this would be that the children would remain in the care system (G already having been in the care system for two years and A for one year). She had concerns whether in such circumstances a placement could be found for both. In her view an adoptive placement for the children together would be easier to find than fostering placements. In other words it might not be possible to get long term foster placements together. The notion of splitting the children was very unpalatable. They had never been apart and they have a good relationship together. G is more significant to A than the other way around. She fully endorsed Dr Donnelly's view that the children should be placed together.

Further opportunity to reassess the parents

(v) It was the witness's view that the opportunity for reassessment should only be countenanced if there was evidence of a clear change demonstrated in the attitudes of this couple. It was her opinion that was not the situation. Bringing the children back with the couple for reassessment would also result in disruption of their current situation and further protraction of the case which was not in their interests. It was her view that if there was further breakdown, these children could not deal with such a situation and would be emotionally damaged. Stability was now very important for them. Delay was not in their interests.

The guardian ad litem's experience

(vi) This guardian said that she had 3 experiences of mothers with learning disability and children. In the first case the placement had failed because of lack of support for the mother. The second child had been cared for as a joint enterprise between mother and grandmother but that had also broken down. In the third case the child had lived independently with the mother and that had broken down with very difficult consequences for the child. I pause to observe however that courts should be slow to place too much reliance on the past histories of parents with learning disability suffering difficulties with placements of their children. Time has moved on and I believe that the system, including social services and the courts, must be more receptive wherever possible to the possibility of parents with learning difficulties maintaining their children with them with appropriate care and help. Each case must stand on its own and I therefore paid little attention to the history outlined by the guardian ad litem of previous experiences. The guardian ad litem did draw my attention to the review of mental health and learning disabilities in the document referred to at paragraph 5(a) this judgment . Chapter 6 of that report dealing with accommodation recorded that less than 3 percent of people with a learning disability live with parties or spouse. The highest percentage live in a nursing home. The review recognises that parenting is a growth area but did not appear to set out many recommendations of how this is to dealt with. In terms there are three sentences referring to parenting. Whilst I welcome references to this report, I view it in the context of the gathering awareness of the needs of parents with disability and an increasingly enlightened attitude towards them.

The guardian's meetings with Ms Jinks from Peterborough

(vii) The guardian was in regular contact with Ms Jinks at Peterborough and received review reports. Subsequent to the termination of the placement, she had a conversation with Ms Jinks on 21 June 2005. It was Ms Jinks view that the respondent couple should commence with 24/7 support which should be reviewed as time went on and might be reduced as matters

improved. At that stage however she was unaware that G was herself suffering from learning disability. Ms Jinks had expressed a view to her that matters were a little better than the couple had been given credit for. The guardian cautioned however that it is easy for a person such as Ms Jinks to identify with this couple and with hindsight one year later to say things had "not been so bad". The cost of this exercise had been £2,300 per week and therefore there was an expectation on the part of Ms Jinks that the exercise would have been worth it. Whilst Ms Jinks had said it was unfair to call the ending of the assessment a breakdown, it was the guardian's clear view that this had occurred. This witness had been to Peterborough in April 2004 and had seen the couple there. She had formed a clear opinion that there were difficulties about lack of co-operation and that the couple had rejected advice, been argumentative and had difficulties with childcare routines. She recognised that coming from their background it was difficult for them to re-adjust to institution life again. She recognised that Ms Jinks was upbeat about how they had performed, and had thought that the centre having done as much as it could, they should now be tested in the community. The witness emphasised that she felt that because Ms Jinks had become close to the couple, she had put the matter in more generous terms than was justified. The guardian emphasised that whilst the couple had made progress, she shared the view of Dr Bailie that there was a small but significant risk of unwitting neglect occurring. G had been parented almost entirely by the system and no harm had come to her. The difficulties for the couple and those who had tried to help them have become a pattern and it was the witness's view that conflict was likely to occur. Although Ms Jinks had indicated that it should be tested in the community, she was unaware of any placement where there could be support 24 hours per day 7 days per week for both parents and children.

Discussions with Mr Bothwell of Prospect

(viii) The witness indicated that she had also read the correspondence from Mr Bothwell and had the same concerns as Ms McEvoy about the ambiguity of its terms. When the witness had spoken to Mr Bothwell on 31 May 2005, it did not appear to her to be a pragmatic possibility for the couple and the children to be cared for by Prospect. Mr Bothwell had expressed concern about the couple's ability to sustain the assistance given. Subsequent to my adjourning the case on 24 February 2006 for further consideration of what was available to support the parents with a learning disability from Prospect in England and Northern Ireland, the guardian attended a meeting jointly with the Trust and Ms Roberts a senior employee from Prospect in England. She discussed with Ms Roberts two cases in England where Prospect had supported parents with a learning disability. Ms Roberts had indicated that these two incidents were pragmatic responses to emergency situations. They involved mothers with a mild learning disability both of whom were co-operate and keen to receive support. In neither case was 24 hour supervision

provided nor was there any sharing of parental responsibility for the child. One of the two children involved did not have a learning disability and this placement broke down in distressing circumstances. The other placement is still ongoing. It was the view of Ms Roberts that 24 hour help lines are essential ingredients. In England these are available with Prospect's own national and local on-call service, helpline involving the community learning disability team, childcare duty system, health visitor, 24 hours helpline and GP and national health service direct. An effective multi-disciplinary team was also essential in her opinion as are experienced immature learning disability staff trained in child protection. Ms Roberts had indicated that whilst she would not rule out categorically ever supporting another parent with a learning disability, she did not foresee a situation where she would make a considered decision to set such a placement up. She advised the complexity of the work meant that the level of commitment required from staff was significant particularly from an organisation whose primary focus is the adult. Mr Bothwell also confirmed the two cases that existed with Prospect in England were emergency situations, that this was not a service that Prospect's envisages developing and indeed he said that it was forbidden by their constitution to become involved with children. Their future priorities were likely to be resettlement, supported housing and the development of respite care services for family carers. Prospect would also provide services to Mr and Mrs X as individuals with a learning disability. In order to protect their staff and avoid confusion over roles and responsibilities Prospect staff would not be permitted to be in Mr and Mrs X's home whilst the children were present. The witness then went on to make contact with Ms Groats, the Operational Director of Prospects in England. She emphasised that Prospects is an organisation for adults with a learning disability whose constitution forbids them becoming involved with children. The organisation has no interest in becoming involved in this area of work. Neither staff nor management have experience, skills or qualifications to work with children. Ms Groats endorsed the position of Mr Bothwell that learning disability staff would only be there when the children were not.

[65] The guardian ad litem had also consulted further with the Trust. In relation to developing its own service on its own premises the Trust were concerned that an approach to the Board would be required to secure funding for staff team and premises. Likely costings had not been detailed or their timescales indicated and it was the view of the person to whom she spoke that this could take up to 18 months at a conservative estimate. The Trust estimated that such an arrangement would require at least 182 hours – that is five full time staff and additional temporary cover if they were to provide 24/7 care for the children. The Trust had significant concerns in relation to recruitment and retention of suitably qualified and experienced staff. In particular such a level of support would depend on the couple's ability to co-operate with services. Mr and Mrs X had been inconsistent in co-operating in the past and they construe advice as criticism. It was felt by the Trust that

this level of help would be intrusive to the parents by impinging on issues of privacy, choice, independence and self determination with the potential to undermine their parenting role. The fact of the matter is that such a project would mean the children being retained in the public are system with their parents supported by multiple carers in a changing staff group. It was the view of the Trust that this would lead to a lack of stability in the children's lives, be detrimental to health attachments and impact on their long term emotional wellbeing.

[66] The guardian had then discussed the matter with Mr and Mrs X. Mrs X had indicated that she wished to be able to use her benefits to employ workers who would come into the house. This conscientious guardian ad litem then spoke to a range of individuals in relation to the possibility of direct payments. She contacted the Council for Independent Living and ascertained that essential direct payments are a way for people with disabilities (including learning disability and mental health issues) to access monies the Trust would have spent on their support needs and to use the money to buy in their own services. Having discussed the matter with SC (previous witness) he had advised that to date neither of the potential funding Trusts for Mr and Mrs X had been approached to provide this service nor, in his experience, had it been provided to other like parents. He was concerned that the 24 hour/7 day per week recommendation was a care need of the children and as much to do with supervision as support. He did not think that direct payments were ever formulated to deal with this aspect. In any event he felt that the provision of 24 hour 7 day per week qualified learning disability and social service staff would be extremely to find let alone fund. The witness then spoke to Ms Birch, the Team Manager of Plymouth City Council Learning Disability, Parenting Supporting Team, who confirmed they had previously considered the use of direct payments but had focused on two difficulties. First , the difficulties of recruiting and retaining workers training in learning disability, child development and child protection – she thought this was the greatest challenge to be faced in this area of work particularly when the need is assessed as being long term. Secondly, although equally importantly, she was concerned about the potential position of staff employed by parents in this arrangement. They would be in the family home as employees of the parents but also have to carry out a monitoring and child protection role. In the view of Ms Birch this shifted the dynamics of the relationship and was likely to impact on the safety and wellbeing of the children. Ms Birch had advised that her team are only able to offer a maximum of two hours twice weekly. She thought the provision of 24 hour/7 day per week care for the children of learning disabled parents was an impossible task and akin to institutional care. She said that she had previous experience of putting two nannies into a family for six months and stated she would not repeat this strategy as in her opinion it had seriously undermined the child's attachment.

[67] The guardian summed up her approach by making three points:

(i) In her view the recommendation to provide 24 hour/7 day per week long term support service from staff qualified in both learning disability and child protection is unachievable. The issues of staff recruitment and retention appear to be endemic to the social work profession at this point in time and these difficulties are exasperated by the dual training/experience requirement that was stipulated by the family care in Peterborough and endorsed in expert evidence. Such difficulties are like to lead to high staff turnover with significant implications for the children's sense of stability and security and thus jeopardise their ability to form health relationships that are the basis of long term emotional development and wellbeing.

(ii) Mr and Mrs X reject the need for parenting support and remain resistant to any perceived interference in their lives or desire for independence. They do not appear to have the capacity to enhance and sustain their ability to co-operate and work with support services.

(iii) There are concerns in relation to the impact of 24 hour/7 day care for these children. The impact may be likened to being retained and raised within the public care system. Multiple carers and a changing staff group would be supporting their parents. This could lead to a lack of stability and security in the children's lives and be detrimental through their ability to form healthy attachments with all that means for their long term emotional wellbeing.

[68] This witness distinguished between help for people with physical disabilities and Mr and Mrs X. Those with physical disabilities are able to co-operate, develop an emotional relationship with the children and understand what is happening. In any event the idea of support parenting for those with a physical disability is in its infancy and no research yet has been entered into the long term arrangements for the children.

[69] This witness was challenged by Mr Donaldson as to an apparent discrepancy between her preliminary report of 15 March 2006 and her report of 16 March. The early report had recorded her saying:

> "However if Mr and Mrs X were able to work co-operatively, openly and honestly with social work staff, appropriate supports and monitoring arrangements could have been put in place, the possibility of success would be enhanced if the need for this level of support could be seen to diminish over time."

In her subsequent report she said this did not appear in her final report and she indicated that her final report was a product of her further consideration and final conclusions. Her earlier statement had been set in a context were she did not want to make recommendations about learning difficulties in general. She had been commenting about the inadequacy of current piece-meal provision of services and the need for a strategic vision to deliver high qualify effective services in general terms to meet the needs of the growing numbers of children whose parents have learning disabilities.

[70] In the particular circumstances of Mr and Mrs X, they had been provided with a version of 24 hour supervision with DRP and this had clearly not worked. It was the witness's view that co-operation was a core issue in this case and it clearly is not forthcoming in the case of Mr and Mrs X. The witness was challenged over her statement that "this is one of the most difficult cases I have had" and that "It was a finely balanced decision." However she was adamant that she was clear in her recommendation that these children should be taken into care and that a freeing order should be made. Indeed subsequent to the written submissions in this case having been put forward, the guardian ad litem caused me to reconvene an oral hearing because she felt that the submissions from the respondents had misinterpreted what she had said and she wished to make it abundantly clear that her recommendation was unequivocal and firm.

[71] I believe that this guardian ad litem has acted extremely conscientiously throughout this case and her report is the product of a great deal of industry and considerable thought. She has self-evidently wrestled with the problems in this case and I am convinced that her recommendation to this court is not only unequivocal but has been produced after much angst over the plight of this couple and their children.

Conclusions

[72] (i) I remind myself of what I said in Re T (Freeing Without Consent: Refusal to Dispense with Agreement Over the Parent NIFAM 6 (unreported, 11 February 2004):

> "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 re-uniting natural parent and child."

(ii) I recognise 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 an enjoyment amount to a interference with the right to such protection by Article 8 of the European Convention of Human Rights and Fundamental Freedoms ("the Convention"). I also recognise 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 re-uniting the natural parent and the child wherever possible.(see R v Finland (App No 34141/96) ECHR).

(iii) I have derived great assistance from three recent cases in the Court of Appeal in Northern Ireland namely AR v Homefirst Community Trust [2005] NICA 8, Homefirst Community Health and Social Services Trust and SN [2005] NICA 14, and Down Lisburn Health and Social Services Trust and H and R (unreported, 22 November 2005). In AR v Homefirst Community Trust 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 should 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 I 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."

At para. 90 the LCJ continued:

> "In all the great volume of written material generated by the Trust in this case we have been unable to find a single reference to Article 8. If the Trust had addressed the issue of Mrs R's Convention rights (as certainly should have been done) there would surely have been some mention of this in the papers. We are driven to the conclusion that the Trust did not consider the question of the appellant's Article 8 rights at any stage. … For the reasons that we have already given, we have concluded that the appellant's Article 8 rights were infringed. The Trust procedures were therefore not efficacious to protect her Convention rights. Quite apart from the consideration, however, we consider that it is a virtually impossible task to ensure protection of these rights without explicit recognition that these rights were engaged. Where a decision maker has failed to recognise that the Convention rights of those affected by the decision taken are engaged, it will be difficult to establish that there has not been an infringement of those rights. As this court recently said in Re Jennifer Connor's Application [2004] NICA 45, such cases will be confined to those where no outcome other than the course decided upon could be contemplated."

[73] Equally so, I recognise that Yousef v The Netherlands [2003] 1 FLR 210 at 221, para. 73, the ECtHR stated:

> "The court reiterates that in judicial decisions were 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 interest of the child must prevail."

[74] Moreover, the decision in AR, has to be considered in light of the recent House of Lords decision in R (On the Application of Begum (by her litigation friend, Rahman) v Head Teacher and The Governor of Denbight High School [2006] UKHL 15. In that case the issue was whether a child, Shebina Begum, had been excluded from her school in breach of Article 9 of the European Convention (ie the right to manifest her religion or beliefs) because she had been refused permission to wear a long coat like garment known as a jilhab. Overturning the decision of the Court of Appeal which had upheld her right, the House of Lords considered that the approach of that court was mistaken procedurally. The Court of Appeal had set down a procedure that should have been adopted by the school in approaching the decision-making process in order to afford due respect to the interests safeguarded to the individual by Article 9 of the Convention. Lord Bingham of Cornhill in Begum said at paragraph 29:

> "The focus at Strasbourg is not and never has been on whether a challenged decision or action is a product of a defective decision-making process, but on whether, in the case under consideration, the applicant's Convention rights have been violated. In considering the exercise of discretion by a national authority, the court may consider whether the applicant had a fair opportunity to put her case and challenge an adverse decision …. . But the House has been referred to no case in which the Strasbourg Court has found a violation of Convention Rights on the strength of failure by a national authority to follow the sort of reasoning process laid down by the Court of Appeal. This pragmatic approach is fully reflected in the 1998 Act. The unlawfulness proscribed by section 6(1) is acting in a way which is incompatible with the Convention Right, not relying on a defective process of reasoning, and action may be brought under section 7(1) only by a person who is a victim of an unlawful act".

At paragraph 31 Lord Bingham went on to say:

"I consider that the Court of Appeal's approach would introduce a. 'a new formalism' and b. 'a recipe for judicialisation on an unprecedented scale'. The Court of Appeal decision-making prescription will be admirable guidance to a lower court or legal tribunal, but cannot be required of a Head Teacher and Governors, even with a solicitor to help them. If, in such a case, it appears that such a body has conscientiously paid attention to all human rights considerations, no doubt the challenger's task will be harder. But what matters in any case is the practical outcome, not the quality of the decision-making process that has led to it".

[75] Lord Hoffmann picked up the same theme when at paragraph 68 he said:

> "But Article 9 is concerned with substance, not procedure. It confers no right to have a decision made in any particular way. What matters is the result. Was the right to manifest a religious belief restricted in a way which is not justified under Article 9.2? The fact that the decision maker is allowed an area of judgment in opposing requirements which may have the effect of restricting the right does not entitle a court to say that a justifiable and proportionate restriction should be struck down because the decision maker does not approach the question in a structured way in which a judgment might have done. Head Teachers and Governors cannot be expected to make such decisions with text books on Human Rights law at their elbows. The most that can be said is that the way in which the school approached the problem may help to persuade a judge that its answers fell within the area of judgment accorded to it by law".

[76] I therefore venture to suggest that the court should not be too prescriptive as to the manner in which Article 8 Rights are considered but rather the emphasis should be on whether or not, looking at the process as a whole, the Article 8 Rights have been sufficiently addressed and protected.

[77] I refer again to the matters which I have set out at pages 9 to 14 of this judgment concerning the approach of the court to parents with learning disabilities. I have revisited these concerns several times during my consideration of this case .

[78] The making of a Care Order involves a two-stage process. First, I must consider whether or not the criteria for making a Care Order ("the threshold criteria") have been satisfied. In my view there is a likelihood of both of these children suffering significant harm if they remain in the care of their parents for the following reasons:

(i) I accept entirely the evidence of Dr Donnelly and Dr Bailie which is to the effect that there is a significant risk of unwitting neglect occurring to both of these children because of their lack of insight into the dangers that exist for them. They simply do not have the ability to think ahead rather than simply remember an experience that has happened in the past. I found the illustrations given by both these experts of dangers that could lie in the wake of these children to be positively chilling. They are not alert to the dangers that exist in the home and elsewhere for two such young children. They are unable to anticipate the risks that lie in the wake of young children.

(ii) I believe that in light of the dangers mentioned above, the learning disability evident with G and the need for A's long-term welfare, it would be necessary to provide services on a 24 hour basis, 7 days per week for this couple and their children. I do not believe that support of any lesser degree could provide sufficient protection for the dangers to these children. I have been persuaded by the wealth of evidence in this matter, and the numerous attempts made by the Trust to investigate the possibility of such provision, that it is not possible in the Northern Ireland context to provide such support for this couple and their children . The support necessary, therefore, to afford the necessary protection for these children is manifestly not available.

(iii) Even if the support to this degree was available, I am satisfied that Mr and Mrs X would not co-operate or comply to the degree necessary. I share entirely the view of the Guardian ad Litem that Mr and Mrs X reject the need for parenting support and remain resistant to any perceived interference in their lives or desire for independence. The very fact that they do not accept that they have a learning disability is a crucial matter in itself. They do not appear to have the capacity to enhance and sustain their ability to co-operate and work with support services. There has been ample evidence of this during the course of this case.

(iv) In any event, I am certain that even if the support was available, and even if Mr and Mrs X could learn to comply, the impact on these children of multiple carers and a changing staff group supporting their parents, would also inevitably lead to a lack of stability and security in the lives of these children and be detrimental to their ability to form health attachments with their primary carers.

[79] In coming to these conclusions I am conscious of the evidence given by Ms Jinks from Peterborough. I was not satisfied that her evidence was

sufficient to dissuade me from these conclusions and indeed on the contrary her current belief is that whatever may have been the situation in the past, there is now no possibility of 24 hours, 7 days per week care and she does not believe that any purpose would be served by further testing in the community. I found, however, much more impressive the evidence of Doctors Bailie and Donnelly and the impressive evidence of the social workers, both from the Family Care Unit and particularly the Learning Disability Unit who have spent literally years working with this couple.

[80] Having been satisfied, therefore, that the threshold criteria is fulfilled for the reasons I have mentioned, I must then ask whether the Care Order should be made in light of the Care Plan, the Welfare Checklist in Article 3(3) of the 1995 Order, the No Order Principle enshrined in Article 3(5) of the 1995 Order, together with consideration of the range of possible orders including any order under Article 8 (Residence, Contact and others orders with respect to children). The Care Plan in this case is for adoption. I consider that this is an appropriate Care Plan and that only adoption would meet the needs of these children. Turning to the Welfare Checklist, the authorities make it clear that there is no need to slavishly rehearse in the judgment every matter on the welfare checklist or to state the weight that has to be attached to each provided ,as I have done in this case , the Court has considered them It is sufficient if the judge has regard to all the factors and allocates to each of them such weight as he considers each deserves. (See In re H and C – Appeal against Residence Order (2005) NICA 55, 15 December 2005.) I have considered each sub article of Article (3) of the 1995 Order in relation to each child. Both children are too young for this court to ascertain their wishes and feelings. However, bearing in mind their physical and emotional educational needs, it is quite clear to me that both of these children need carers who can understand and work with their needs and deal appropriately with the range of professional support services that, in particular, G will require and that A may come to share. A change in circumstances from the present place where they are and rehabilitating the children to Mr and Mrs X would require such an extensive package of monitoring and supports to be in place that the present security and sense of attachment which they have to their current carers would be endangered and lost. I consider that these children are both at risk of suffering for the reasons I have already set out when dealing with the threshold criteria. Neither of these parents in my opinion is capable of meeting the needs of either of these children individually or collectively. I have not the slightest doubt that both these parents love these children dearly and have no intention of causing them harm. They are caring and loving parents but unfortunately they simply do not have the capacity to provide safety for them without the degree of help and assistance which I feel they are unable to accept or comply with. It is clear that the mother of Mrs X is not in a position to afford long term assistance to them to the degree necessary. The history of their lack of co-operation with social services, DRP, and Peterborough to some extent coupled with their desire to have independence

would prevent them being capable of meeting the needs of these children. I have read the undertakings which they have given to the court but their behaviour within ten days of that undertaking to another social worker who had been unwell was indicative of the lack of real change that exists. I am satisfied that there is no facility available which could provide the degree of care necessary in Northern Ireland particularly bearing in mind there is the dual factor of parents with a learning disability and at least one child with such a disability. Sadly I believe that neither of these parents is aware of their own lack of capacity and that they are focused on their own needs which lends itself to conflict with those who attempt to give assistance. The historical non-co-operation with professionals is therefore a key factor in my conclusions. They simply cannot come to terms with the fact that whilst they may wish to remain independent, much of their independence would be required to be sacrificed if they were to live in a family unit with the children. The intrusion on their privacy would inevitably lead to conflict which would be detrimental to these children.

[81] I have considered whether or not less draconian powers which are available to me might not be utilised in this case. In particular I have considered the possibility of a supervision order. Sadly I have concluded that only the measure of parental responsibility which is vested in the Trust with a care order would be sufficient to meet the needs of these children. There is no presumption that I should not make an order unless I consider that doing so would be better for the children than making no order at all. However having considered Article 3(5) of the 1995 Order, I have come to the conclusion that it would be better for these children to make a care order than to make no order at all.

[82] I have afforded these parents the opportunity to address me on the question of contact pursuant to Article 53(11) and I shall return to the subject later in this judgment .

[83] I have considered the rights of these parents under Article 6 and 8 of the Convention. I shall deal with their involvement in the decision-making process in somewhat more detail later on in this judgment, but I am satisfied at this stage that a care order would be a proportionate response to a legitimate aim namely that of ensuring the well being of these children.

[84] I have therefore come to the conclusion that a care order is an appropriate and proper order in each instance.

[85] The statutory provisions governing applications to free for adoption are to be found in the Adoption Order (Northern Ireland) 1987. Article 9 sets out the duty to promote the welfare of the child as follows:

"In deciding any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall:

(a) Have regard to all the circumstances, full consideration being given to;

(i) the need to be satisfied that adoption or adoption by a particular person or person will be in the best interests of the child;

(ii) the need to safeguard and promote the welfare of the child throughout her childhood; and

(iii) the importance of providing the child with a stable and harmonious home."

[86] In this case I have taken into account all the circumstances that I have set out earlier. Neglect, even unwitting neglect, can and is extremely serious. It can erode children's wellbeing at many levels as the guardian ad litem has said, and have a very significant impact on their life chances. It can also present seriously potential risks to children. The lack of anticipatory ability and insight of this couple in this regard is crucial. I can envisage numerous situations where dangers to these children could lie in the wake of their lack of insight. It is impossible to predict what future circumstances would hold and I do not consider it is feasible in light of the expert evidence I have heard to train this couple to meet every eventuality with these two children especially where one of them at least is suffering from a learning disability herself. The balance between risks and protective factors is different at different stages in children's lives and risk is heightened for the younger more vulnerable children. As children get older and push behavioural boundaries as Dr Donnelly has said, adults with a learning disability may find the parenting task even harder due to the challenge of trying to negotiate under stress. It is my view that only adoption can safeguard and promote the welfare of these children throughout their childhood and provide them with a stable and harmonious home. The family network cannot fill the gap in this instance because Mrs W has made it clear that the level of care could not be provided by her. As I have already indicated, there is no facility available which could meet the deficits in this case. I have come to the conclusion that the views of Dr Donnelly (expressed by me at page 25 of this judgment) on adoption are correct and that the advantages of adoption to these children far outweigh any possibilities of long term foster care.

[87] Having come to the conclusion therefore that the Trust have satisfied me on the balance of probabilities that Article 9 points towards adoption, I then turn to the question of whether these respondents are withholding their consent to adoption unreasonably. Both parents currently have parental responsibility and therefore each of these is entitled to argue that they wish to withhold their consent. The Trust must satisfy me that withholding of their consent is unreasonable. The leading authority on the meaning of this ground and the tests that the court should apply is to be found in Re W (1971) 2 AER 49. During the course of the leading opinion, Lord Hailsham said:

> "The test is whether at the time of the hearing the consent is being withheld unreasonably. As Lord Denning MR said in Re L;
>
> > 'In considering the matter I quite agree that –
> >
> > (i) the question of whether she is unreasonably withholding her consent is to be judged at the date of the hearing; and
> >
> > (ii) the welfare of the child is not the sole consideration; and
> >
> > (iii) the one question is whether she is unreasonably withholding her consent.
> >
> > But I must say that in considering whether she has been reasonable or unreasonable we must take into account the welfare of the child. A reasonable mother surely gives great weight to what is better for the child. Her anguish of mind is quite understandable; but still it may be unreasonable for her to withhold consent. We must look and see whether it is reasonable or unreasonable according to what a reasonable woman in her place would do in all the circumstances of the case."

More recent authorities including Re C (a minor) (adoption: parental agreement, contact) (1993) 2 FLR 260 have suggested that the test may be approached by the judge asking himself whether having regard to the

evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appears sufficiently strong to justify overriding the views and interests of the objecting parent. (see also Down Lisburn Health and Social Services Trust and H & R (supra) Nicholson LJ at page 30 et seq). I have come to the conclusion in this instance that these parents are unreasonably withholding their consent for the following reasons:

(i) By implication it was argued on behalf of these parents that they embraced a legitimate sense of grievance because they had not been sufficiently involved in the decision-making process. I have already outlined the principles of law that govern consideration of Article 8 under the Convention. As I have detailed at pages 22-24 of this judgment, I consider that this Trust did fail to follow the proper procedure and that the LAC review of 10 December 2004 should have occurred before the permanency panel met. Nonetheless, I am conscious that the approach should not be a purely procedural one but that I must ask whether or not the Convention rights of these applicants have been violated. There is no doubt that there is a procedural right within Article 8 as evidenced in a number of decisions in the European Court of Human Rights which include Elsholz v Germany (2000) 2 FLR 486, Sahin v Germany; Sommerfeld v Germany; Hoffman v Germany (2002) 1 FLR 119, Hoppe v Germany (2003) 1 FLR 284 and Sahin v Germany (2003) 2 FLR 671. Nonetheless I consider that the decision-making process must be seen as a whole and the question asked whether the parents had been involved in the decision-making process as a whole to a degree sufficient to provide them with the requisite protection of their interests. If they have not, there will have been a failure to respect their family life and the interference resulting from the decision will not be capable of being regarded as "necessary" within the meaning of Article 8. (see Re M (care: challenging decisions by local authority) (2001) 2 FLR 1300). I have come to the conclusion for the reasons set out earlier in my judgment that this couple have been given ample opportunity to make their views clear both concerning G and A. In particular Mr and Mrs X knew from the application for an emergency protection order in relation to A that the Trust plan was permanency by way of adoption. They must also have been aware that there was really no distinction between the arguments put forward for G being put forward for adoption and the case being put forward for the adoption of A. The circumstances were exactly the same and the reasoning virtually indistinguishable. I believe that this is a case where no outcome other than the course decided upon could have been contemplated in any event. (see AR v Homefirst Community Trust (2005) NICA at para. 90).

(ii) I am satisfied that this Trust has not stereotyped this couple and has approached them as individuals. I reject entirely the suggestion that this Trust was locked into or driven by stereotypical and negative perceptions of learning disabled parents generally as charged by counsel on behalf of the respondents. I am satisfied that the efforts made to find alternative facilities

for this couple were unstinting and comprehensive . The provision of learning disability officers to assist this couple, the suggestion of advocates to represent them, and the constant presence of their learning disability as an issue convinces me that this Trust has measured up appropriately to the rigorous tests which I have outlined the Trust should be subjected to when dealing with parents with learning disability. I have borne carefully in mind the danger that higher hurdles might have been set by this Trust than would otherwise have been the case if this couple did not have a learning disability. I reject that proposition. I am absolutely satisfied that every single avenue has been explored by this Trust in order to ascertain some means of rehabilitating these children with them. They have been represented by a solicitor throughout the material part of these proceedings. I find no barrier set to impede them achieving justice within the process. They have been identified as being towards the more severe end of the spectrum of learning disability and have been given appropriate assistance in my view. The evidence was that this Trust has under its care a significant number of parents with various degrees of learning disability and indeed these parents are either living with their extended family where they are still in a position to care for their children or are living semi-independently with a package of support. In other words this Trust is no stranger to this difficult situation. I therefore reject the notion that this couple have any legitimate sense of grievance in the way they have been treated because of their learning disability.

(iii) I consider that the reasonable parent would recognise that not only are there no facilities available in Northern Ireland which could accommodate the 24 hour/7 day protection they need but that they are incapable of complying with such a service even if it was available.

(iv) I consider that reasonable parents would recognise that the impact upon these children, particularly where one of them as a learning disability, of facing changing staff with multiple carers in a situation where there were also carers dealing with adults in the household would be gravely injurious to their welfare . I share entirely the view of the guardian ad litem that this could lead to a lack of stability and security in their lives and be detrimental to their ability to form healthy attachments to primary carers. Confusion would be rife with them particularly where, as I am certain the case would be, there was regular conflict between Mr and Mrs X and the helpers/carers.

[88] I am satisfied that freeing these children for adoption would be a proportionate response to the legitimate aim of ensuring their wellbeing in the future. I have therefore taken into account fully their rights under Article 8 and Article 6 of the Convention. I believe there may well have been a plausible argument that testing in the community could have taken place at the termination of the Peterborough assessment as suggested by Ms Jinks. But circumstances have now fundamentally changed. With the benefit of

hindsight everyone is now aware that G has a learning disability (which was not known at that stage) and of course there is another child. I do not believe that this would have changed matters in any way and with the events that have thereafter unfolded I believe it would have been an exercise doomed to failure.

[89] In particular in coming to this decision I am conscious that the reasonableness of their refusal to consent is to be judged at the time of the hearing and accordingly I am now doing so. I have taken into account all the circumstances of the case which I have outlined. I recognise that whilst the welfare of the children must be taken into account it is not the sole or necessary paramount criterion. I have applied an objective test in this case taking into account the subjective views of these parents and the allegation that they have a justifiable sense of grievance. I consider the approach of this Trust has been one of patient indulgence and unremitting effort. I have recognised that the test is reasonableness and nothing else. I have been wary not to substitute my own view for that of the reasonable parent. I understand that the question in any case is whether a parental veto comes within the band of reasonable decisions and not whether it is right or mistaken. Not every reasonable exercise of judgment is right and not every mistake in exercise of judgment is unreasonable. (see Re M (a minor) 1997 EWCA Civ 2766). However in this case I conclude that there is no reasonable decision which would justify the withholding of consent.

[90] I am satisfied in this case that the children are in the care of the Adoption Agency being subject to a care order. I am also satisfied that it is likely that these children will be placed for adoption with their present carers. Both parents have been given an opportunity to make the appropriate declaration pursuant to Article 17(5) of the 1987 Order.

[91] I believe that the guardian ad litem has approached the question of contact in the aftermath of the freeing application and post adoption contact in the appropriate way. The right time to consider what kind of contact natural parents are to have to children being adopted is on the occasion adoption is under consideration (see Down Lisburn Health and Social Services Trust and H & R (2005) NICA 47(2) Campbell LJ at para 22. However so far as contact in the interim between the freeing order and the granting of the adoption order is concerned, I consider that the position must be flexible depending on how the parents react to the order I have made. The children must be provided with the opportunity to develop their capacity to build attachments with their current carers without that placement being undermined. Hopefully this can translate into direct contact 2 to 3 times per year but I believe that the flexibility of the no order principle in this regard is vital. Matters must be assessed as events unfold.

[92] I therefore make an order freeing these two children for adoption.