

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

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF K AND S (ARTICLE 53 (2) APPLICATION TO
REDUCE CONTACT PENDING THE HEARING OF A FREEING ORDER)

Master Wells

[1] In any report of this case I direct that there should be no identification of the name of the children, the names of either parent or any other matter that may lead to the identification of the family who are the subject of this application.

[2] This is an application by a Health and Social Service Trust (“The Trust”) for authority to reduce contact pending the hearing of a Freeing application, there already having been two reductions of contact since the granting of the Care Order.

Background

[3] The relevant background to this case is as follows:

(i) Two children namely K (now 4 years 10 months of age) and S (now 3 years 7 months of age) are the subject of an application before this court by the Trust under Article 53(2) of The Children (NI) Order 1995 (“the Children Order”) to reduce contact, and a further application under Article 18 of the Adoption (Northern Ireland) Order 1987 (“the 1987 Order”).

(ii) Both children were taken into care on November 2003 in the aftermath of allegations of non-accidental injuries allegedly caused to S by her parents, M (mother) and P (father).

(iii) The children were made the subject of a care order on 13 December 2005. That order was appealed by P, which appeal was rejected by the Court of Appeal in Northern Ireland on 24 April 2006.

(iv) The children remained with foster carers, Mr and Mrs X until 10th July 2006 having been in that placement for approximately two and a half years. The care plan approved by the Court in December 2005 had envisaged permanence by way of adoption for these children.

(v) The present placement is intended to be the children's permanent placement either pursuant to the Article 18 application to free for adoption and a subsequent Adoption application, or by long term foster care. The present carers are dually approved and informally matched by the relevant Board Adoption Panel on 22 June 2006.

(vi) The trial judge at paragraph 45 of his judgment recognised that "the return of either child to either parent within any timescale conducive to their welfare was impossible", and the care plan proposing that the children be transferred to a permanent placement (away from the family) with a view to adoption was approved.

(vii) The care plan approved by the trial Judge is referred to in Cheryl Clarke's report dated 6 July 2006 at page 3, and in the Guardian ad litem's report paragraph No 57. The contact at December 2005 was twice per week. The trial Judge approved the Care Plan which proposed a reduction of contact to once per week after the making of the Care Order, and then to twice per month once the children were transferred to a new placement. Ms Clarke's report indicates that there was discussion between the Guardian ad litem and the Trust that the Care Plan be amended to reflect a further reduction to once per month post freeing, however the judgment stipulated that a further reduction beyond twice per month would be discussed at the next scheduled LAC review [12 January 2006] and if there were any disagreements in relation to contact that the matter should be brought back to Court. Paragraph 37 of the judgment refers.

(viii) In light of P's appeal, which was unsuccessful, the Trust's proposed care plan in respect of reducing contact could not start to be implemented until after the Appeal decision was delivered on 24 April 2006. Shortly after that contact was reduced from twice per week to once per week.

(ix) At the next Looked After Child review on 31 May 2006 the Trust decided that it was in the children's best interests to reduce contact to once per month, after the placement transfer and reduction to twice per month. The parents did not agree this decision, and hence the Trust lodged an Article 53(2) application dated 3 July 2006.

(x) Contact was further reduced from weekly to twice per month in July when the children were transferred to the dual approved carers. This was in accordance with the trial Judge's approval of the care plan.

(xi) At a further Looked After Review on 17 July 2006 the parents voiced their objection to contact being reduced to once per month pending the hearing of the freeing application.

[4] On 3 July 2006 the Trust filed an application for the reduction of contact between the children and each of their parents pursuant to Article 53(2) of the 1995 Order. The current application was to further reduce that contact to monthly occasions consequent upon the children moving to their planned permanent placement and in any event prior to September 2006 when it was anticipated K would commence school, Form C1 paragraph 12 refers.

[5] On 24 July 2006 the Trust filed Original Summons' for an order to free K and S for adoption (without parental consent) pursuant to Article 18 of the 1987 Order.

[6] On 7 August 2006 I gave first directions in both matters and, inter alia the Article 53(2) application was scheduled to be heard by me on 25 September 2006, and the Freeing Application scheduled to be heard by the assigned Judge on 29 January 2007. I further directed that any application with reference to an expert witness in either case should be filed on or before 31 August 2006. No such application was filed on or before 1 September 2006.

On 8 September 2006 I granted an extension of time limit for the Respondents to file such an application until 14 September 2006 and any such application would be heard on 15 September 2006 at 2pm. On 14 September 2006, an application was lodged by the Respondent mother (M) under the Rules in relation to Professor Triseliotis for both the Article 53 application and the freeing application.

[7] On 15 September 2006 at 2.45pm an application was filed by the Respondent father (P) to seek to engage Sally Wassell for the Article 53 application. At 2.30pm his Counsel filed 'written argument' on P's behalf. In light of the late filing of these pleadings, I adjourned both C2 applications for two different attachment experts until 22 September 2006, and gave each parent an extension of time for filing their respective Statements of Evidence for the Article 53(2) application. namely until 19 September 2006.

[8] On 22 September 2006 I refused to allow the Respondent's respective C2 applications and directed that the Trust's Article 53 application should proceed for hearing as directed on 25 September 2006 at 2pm. The father (P) filed a Notice of Appeal against this decision on 25 September 2006; the appeal was heard by the Judge that morning and he refused the appeal. The hearing of the Article 53 application proceeded on the afternoon of 25 September 2006.

The Trust's Case

[9] The Trust's written evidence is contained within two unsigned reports both prepared by Ms Cheryl Clarke, Social Worker and Mr Pat McDaid, Social Work Manager dated 6 July 2006 and 18 August 2006. Neither of these witnesses were presented by the Trust to give evidence, rather the Trust's witness was Mrs Valerie Devine, Social Work Manager, Adoption Unit. Page 4 of the first report stated that contact was then occurring twice per month, supervised for one hour for each parent, in a day centre setting. The Trust's Care Plan was known to all parties since the Care Proceedings; the freeing applications were filed and a date given for the hearing. Contact had been

reduced from twice weekly to weekly on or about the beginning of May 2006. Contact further reduced to twice fortnightly during July 2006 when the children moved to their dual approved carers.

[10] Page 4 of the Trust's first report refers to a Looked After Children's Review on 31 May 2006 when it was decided that a reduction in contact would be 'appropriate', however neither parent agreed to the proposal of a reduction to once per month.

[11] In the Trust's first report under 'wishes and feelings' at page 4 the Social Worker states that K has had no particularly negative experiences whilst having contact and he does not have any distress going to or leaving contact. 'K does particularly like contact with his father and has expressed pleasure in meeting his father'. S is said to very much take her cues from her older sibling K; 'S has had no negative experience in relation to contact and is used to the routine'.

[12] In relation to emotional well being, it is acknowledged that K is currently going through a huge emotional change at present, moving from a foster placement where he was very settled for over two and a half years, to his new carers on 10 July 2006. Before the move K underwent three sessions 'guided by' Dr L McLaughlin, Clinical Psychologist to prepare him for the move. K was reported to be very excited about his new home, but it was recognised that he had not yet felt the loss of his previous carers. Ms Clarke's first report stated that during this transition period there had been some other emotional issues in relation to attachment, and the emergence of some past trauma (page 5). The Social Worker commented that K may benefit from some individual work with a clinical psychologist in respect of these emotional issues. "If this past trauma is not dealt with now with professional support it may undermine the long-term placement in the future." The later Trust report states that K has now been referred to Dr McKinney. S has had individual work to try to minimise the trauma of the move for her.

[13] K was due to start Primary one in September 2006. The Trust had wished to effect the contact reduction prior to him commencing primary

school. In written arguments dated 22 September 2006 filed by P's Counsel, page 2 it states that K's commencement at primary school has been deferred until January 2007. This is supported by page 6 of the Trust's second report. K has been referred to Dr McKinney to address attachment needs as a priority, and education needs.

[14] At page 7 of the Trust's first report, Ms Clarke states that 'a high level of contact with his birth parents will only confuse K'. 'In order to avoid giving K mixed messages, it is important that the focus is kept closely on helping K to develop his relationships and attachments with his new family.' S does not talk about her birth parents unless K does.

The Trust state that both S and K's new placement is a great geographical distance from their birth parents, and in order to facilitate contact between the children and their birth parents the children will have to endure long and tiring journey's and disruption from placement at such a young age. This argument was rejected by M who, in her statement dated 19 September 2006 at paragraph 34 states that she is willing to travel closer to the children's new home so that they do not have long and tiring journey's. There are of course issues of confidentiality to consider.

[15] Ms Clarke's report at page 8 states that K has already questioned the reduction of his contact with his parents from weekly to twice per month. 'K however will need more individual work in relation to fully understanding the reduction of contact that has already taken place'.

The Social Worker acknowledged that S has not had the same relationship with her birth parents as K, and the impact of reduction in contact will be less significant for S.

[16] The Trust has achieved what would appear to be a very good match for the children in respect of the dual approved carers. There is no mention whatsoever in the Trust reports that they are not able to cope with the current frequency of contact, pending the outcome of the freeing application. The Trust's second report dated 18 August 2006 is similar in content to their first report, with some additional evidence. At page 2 it is stated: 'K has had no

particularly negative experiences whilst having contact with his parents and he does not display any anger, sadness or joy going to or leaving contact'. It is also stated that when contact was reduced K accepted the reduction, though the report reiterated that K has questioned the reduction.

Ms Clarke concludes that in her opinion, a high level of contact with his birth parents will make the work to help K settle in his new placement more difficult and confusing for K, though no evidence of K being unsettled was tendered, and neither Ms Clarke nor Mr McDaid were presented by the Trust to formally prove their two written Statements of Evidence. It is noted from the discovery that Ms Clarke was on leave on 25 September 2006 and this was known by the Trust since at least 27 August 2006.

In essence, the trust plan to further reduce contact prior to freeing is because this accords with the plan for permanency.

The Trust also feel a high level of contact 'will be possibly disruptive for K' when he is trying to establish a routine at his new school.

It is accepted that the Trust is trying to provide K with a clear message for permanency and security within his capacity as a four year old child.

Ms Clarke believes that the current level of contact does not allow S to settle. 'It is my opinion that the current level of contact is not only compounding this toddler's past trauma, and her move from her previous carers, and confusing her more'. No actual evidence to support this was given, and as stated above the author of these professional opinions was not called to substantiate her views.

[17] The contact sheet dated 20 June 2006 (page 246/247) mentions an incident when, after K had been introduced to the dual approved carers he excitedly described to his birth parents his new bedroom and 'the forest' to play in. He commented to M that he had two mummies and daddies. M was annoyed at this and stated 'I hope they're not filling your head with stuff already, as it's too soon and that it was a good job P didn't hear that - he would be really cross.'

[18] The latest contact session discovered is the session recorded by Roisin Lynch dated 19 September 2006; her notes are very detailed and record the session in an objective manner. It is clear that the children are bonding with their new carers, and that the birth parents are finding this transition very difficult. I have already commented on the contact sheets for 1 August 2006. I have not seen the contact sheets for 31 August 2006.

[19] A great deal of weight was placed by the Respondents upon a letter dated 2 June 2006 by Cheryl Clarke to Dr McLaughlin, Clinical Psychologist, in relation to both children (page 32 of the Bundle). Reference has been made to Dr McLaughlin's work in both Trust reports, and her guidance with K to prepare him for his move. The children's new carers met Dr L McLaughlin in preparation of their move for advice and support in respect of K in relation to emotional issues relating to attachment and the emergence of some past trauma (page 5 first report).

Dr A McKinney was also involved with the carers in respect of K's emotional development.

The letter from Ms Clarke was a referral to Dr McLaughlin for 'some support and advice in relation to the above named young children'. The referral firstly sought 'a couple of consultations' for the new carers to support them through the transition. Secondly, Ms Clarke asked to have some insight into how the proposed reduction of contact from once per week to twice per month, and then reduced to once per month, will impact on the children and how best to introduce the reduction. It is noted that this letter was sent just days after the Looked After Review on 31 May 2006 when the Trust confirmed the earlier decision to reduce contact from once per week to twice per month at the time of placement change, and to further reduce contact to once per month.

The LAC minutes for 12 January 2006, 31 May 2006 and 17 July 2006 are all disclosed. The crucial minutes are those of 31 May 2006 and 17 July 2006. Page 135 of the main discovery bundle, Minutes of S' LAC, 31 May 2006 refers to Dr McLaughlin meeting the children when a psychological

assessment of the children was deemed necessary. 'Participants agreed that Cheryl too would need support to manage this case through the transition period and it was agreed that she should consult with Dr L McLaughlin for advice on issues that may arise.' The comments in respect of Dr L McLaughlin are reiterated in the minutes of K's LAC Review of same date.

At the LAC on 17 July 2006 (Page 147, 154, 159/160 and 165/166 of Discovery) questions were raised about the necessity to engage Sally Wassell. See also page 34 and page 40 of discovery in additional bundle. (Ms Wassell was a joint independent expert engaged by both parents and Trust during the Care application.) The Trust decided to leave this decision to their Counsel.

[20] Following Ms Clarke's letter of 2 June 2006 to Dr L McLaughlin, Ms Clarke met Dr McLaughlin. Apparently Dr McLaughlin did not express a view on issues raised by Ms Clarke, as this psychologist's focus was to prepare the children for their move. Dr McLaughlin did not prepare a report. There were however a series of Placement transitions meetings – see pages 1-13 in Discovery Bundles lodged 22 August 2006, in particular page 12 of meeting held on 5 July 2006 when Ms Clarke advised that an attachment expert, Ms Sally Wassell was brought in last year, to assess the contact and her recommendation was 'no contact, post adoption'. The minute records 'Ms Devine stated that she would highlight to CSA, the wish for Sally Wassell to be returned to work again on this case and the seek her recommendations, re contact post adoption.' The issue of the necessity of this expert was again raised by the Trust at the LAC on 17 July 2006.

[21] Ms Smyth BL on behalf of the Trust, in her opening, gave a number of reasons why the Trust feels contact should be reduced to monthly:

- (i) the children's overwhelming need to develop attachments to their new carers;
- (ii) the frequency of contact and what happens during contact, to include the parents emotions, is confusing for the children, and gives them a mixed message;

- (iii) Ms Smyth BL explained that the Trust engaged Dr L McLaughlin to assist with the children's planned move. Dr McKinney was involved with the new carer, and to consider K's emotional needs.
- (iv) Ms Smyth BL commented that the parents missed 11 appointments with Social Services to talk about contact - this is set out at paragraph 9.15 of the Guardian ad litem's report.
- (v) Finally Ms Smyth BL claimed that the level of fortnightly contact was adverse to the children. Their over whelming need at the moment is to settle in their new placement, but this was compounded by the parents.

[22] Mrs Valerie Devine, Social Work Manager, Adoption Unit gave evidence in support of the Trust's application. Mrs Devine outlined her qualifications and expertise. Mrs Devine has been involved in this case since 2004. Mrs Devine explained that the main purpose of contact at this time is to permit the children to maintain contact with their parents, and recognition of the parents rights, at this time of placement change, and pending the hearing of a freeing application.

Mrs Devine explained that the parents have not come to terms with the permanency placement. The parents believe the children will return to their care. Mrs Devine referred to an article by Catherine Macaskill, which suggests that this attitude undermines the placement. It creates a level of confusion. Mrs Devine referred to page 28 of the small bundle, contact session on 19 September 2006 during which, at the end, P cried in front of the children.

P has not availed of Adoption Counselling, and M to date has indicated that she was not ready for counselling.

Mrs Devine referred to page 36 of Ms Sally Wassell's report dated 12 September 2005 prepared on a joint basis for the Care Proceedings (page 94 of Bundle) which referred to each parent's difficulty at that time in respect of maintaining direct contact. During the contact session on 19 September 2006 P's loss was evident to the children.

Mrs Devine was asked about the risks to K and S in delaying the reduction from now until the determination of freeing, listed on 29 January 2007. Mrs Devine said there was potential to undermine the placement. She said there was more than explicit messages; there was an atmosphere during contact. And this is at a crucial stage for the children developing attachments. It is like asking the children to do two things at the same time - prepare to work with them towards permanency, and on the other had to maintain twice monthly contact with the Birth Parents.

Mrs Devine was asked about the impact of the current level of contact upon the present carers - she said they were finding it particularly stressful. This is not contained within the Trust's reports or discovery. They have indicated their willingness to meet with P and M, however the parents have not availed of this opportunity.

Mrs Devine accepted that K reacts very positively to contact with his father. The new carers told the Trust that K had told them that P told K that people are trying to stop the contact. This is noted in the contact sheets.

Mrs Devine stated that K has less 'outbursts' during the week he does not have contact. This was not contained within the Trust reports.

[23] Mrs Devine was asked about the roles of Dr L McLaughlin and Dr A McKinney. Dr McLaughlin did not prepare a report however she met Cheryl Clarke, and attended the placement transition meetings.

Mrs Devine explained that the children's previous carers were going on holiday, and rather than place the children into respite, they were placed with their dually approved carers.

Dr McKinney's role is to assist the carers to develop strategies to cope with K's behaviour, particularly his dislike of certain issues. Dr McKinney wants the carers to understand the children's behaviours.

Ms Smyth BL asked Mrs Devine about Sally Wassell; Mrs Devine stated that the Trust did not feel it was necessary to re-engage her; though the Trust did give it consideration. The Trust however felt that there were no

change in circumstances since Mrs Wassell's report of September 2005. The Trust did not wish anything to cause further delay for the children.

[24] The hearing attempted to resume at 2.00 pm on 26 September 2006. At 2.05 pm counsel for P handed me an un-issued C2 dated 15 September 2006 headed 'In the matter of the Children (Northern Ireland) Order 1995' to seek leave to engage Sally Wassell to consider inter alia if it is in the children's best interests to have contact with their father reduced in the very near future from its present one hour fortnightly but prior to the determination on the Trust's applications for Freeing Orders. The application then goes on to mention Professor Triseliotis. The draft letter attached was addressed to Sally Wassell. I was informed that the C2 was for the freeing application.

It should be noted that a further C2 dated and issued on 26 September 2006 was also filed by P to seek leave to engage Professor Triseliotis. The title again is the 1995 Order, but this application appears to relate to the freeing application.

The Trust opposed this application and indeed any delay by engaging experts at that stage.

I inquired if an advanced hearing date on 4 December 2006 for freeing would facilitate the parties, so that freeing and the reduction of contact could be considered together. The Trust welcomed the proposal of an earlier date, and claimed that no expert was needed.

There was some discussion amongst the parties that the scheduled trial date of 29 January 2007 could not be met. The Court rose at 2.10pm and resumed at 2.30pm. It then emerged from the Guardian ad litem's Counsel that M had a planned caesarean (date not specified) and that Guardian was certainly in favour of an earlier trial date for the freeing.

[25] After all this activity, the Respondents then cross examined Mrs Devine. The questions focused on lack of assessment of the children in respect of their loss if there is a further reduction of contact with the birth parents. Mrs Devine stated that Dr McLaughlin was not asked to carry out an assessment of this.

Ms Callaghan BL on behalf of M referred to page 103 of the main discovery Bundle, namely the decision of K's LAC held on 17 July 2006. Paragraph 6 refers to the Trust seeking a report by Sally Wassell. Mrs Devine explained that this would be considered at the next LAC review, if felt necessary. At present, after considering Mrs Wassell's report of 15 September 2005, and the fact that there is no change in respect of the parents, therefore the Trust felt it was not necessary to re-engage Sally Wassell.

Mrs Callaghan BL indicated that her client is now willing to meet the new carers if this will help the children.

[25] Page 125 of the main discovery bundle which are the minutes from K's LAC on 12 January 2006 indicate that overall contact is positive for K and he looks forward to going. At page 135 of the discovery, namely Minutes from S's LAC on 31 May 2006, mention is made that the children have a 'major' relationship with their parents due to their weekly contact with them. Mrs Devine said that major was not a word she would use. It was accepted that for good portions of contact the quality of contact is good.

Ms Callaghan BL again rehearsed various references in the Bundle to the Trust considering re-engaging Sally Wassell as an expert in this case (page 118; page 147; page 165). At S' LAC on 17 July 2006 it is stated (page 147 discovery) 'Given the high degree of contact and the protracted procedure that has taken place there is a question raised as to whether or not Sally Wassell should be asked to give her views again on the children's situation'. Ms Callaghan BL suggested to Mrs Devine that the discovery shows that 'for substantial periods during contact, contact is positive'. The Trust accepted this, but also stated that on occasions contact is difficult for the parents, for instance reliance upon sweets and food during contact.

Page 171 of discovery is a supervised contact note of 14 September 2005 which depicted a very happy contact session for both children and parents. Mrs Devine was asked what was the purpose of contact. She advised that the purpose of contact for a child who had moved to a permanent placement is to provide that child with a sense of security. She

stated that regardless of positive interactions, contact is not able to provide security for these children in their placement. There is a great risk that contact might undermine the placement.

Page 53 of the supplemental bundle, is a Minute of the latest LAC on 17 July 2006 which states that there have been no significant effects upon the children since the reduction of contact to twice per month.

[27] Ms McGreenera QC rehearsed the reductions of contact from twice per week to once per week, to twice per month as at present, and now the proposed reduction to once per month. Ms McGreenera QC referred to the alteration to the Care Plan in December 2005 that it was only intended that during the change of placement should contact be reduced to fortnightly.

The parents are not in agreement to the further reduction to once per month so the Trust has brought the matter back to Court.

Mrs Devine accepted that these two children love their parents and they enjoy some aspects of contact. However Ms Sally Wassell and Mrs Loughrey NSPCC have highlighted concerns in respect of contact. Mrs McGreenera QC highlighted positive contact at pages 229, 232, 234, 238 and 239 of the discovery bundle.

Mrs McGreenera QC suggested the children have a strong bond with their parents. Mrs Devine did not accept this, though noted the bond between K and P. Mrs McGreenera QC noted page 112, 118 et al where mention was made of re-engaging Sally Wassell. The strong bond was mentioned at page 43 of the Care Order Judgment, and the previous Social Worker, Cathy Meenan also mentioned the strong bonds. Mrs Devine accepted that was the evidence provided to the Court at that time.

Mrs McGreenera QC suggested that this bond is still evident by looking at the contact sheets, particularly K's contact with P. Mrs Devine accepted that it is clear that a positive bond still exists. However K made few comments when contact was reduced from weekly to fortnightly.

[28] Mrs McGreenera QC asked if K was settling in well to his new placement (see page 8 of Guardian ad litem's report); Mrs Devine advised that he was.

Mrs McGreenera QC noted in the discovery a decision was made not to engage any more experts. Mrs Devine explained that this was Mr Pat McDaid's decision.

Mrs McGreenera QC referred to the Minute of the LAC on 17 July 2006 page 165 of discovery, when the Trust did give consideration to engaging Sally Wassell again.

Mrs McGreenera QC questioned why the Trust was not seeking advice as to the appropriateness of contact reduction, but rather was seeking tools to help the children understand the reduction. Mrs Devine stated that Dr McLaughlin does not see herself as an expert; her role is to enhance the work with the carers.

Mrs McGreenera QC asked why the Trust was moving head without an expert. Mrs Devine explained that Dr McLaughlin's role is to help with implementing the Trust's decision to reduce contact from twice per month to once per month if the court authorises this reduction. Mrs Devine explained these issues were put to Sally Wassell last year, and was adamant that there was no justification for instructing an expert again, as the Trust has the information upon which to base a decision.

Mrs McGreenera QC stated that it was disproportionate to base any professional view on the contact session of 19 September 2006 as this took place after a three week gap of contact as the Social Worker was on holiday. Mrs Devine replied that she felt the Trust has come to a balanced judgment. It is not simply a matter of looking at what the parents can do, but also what they cannot do that has the potential to harm the children.

[29] Mrs McGreenera QC referred to a letter dated 20 June 2006 from Cheryl Clarke to Valerie Devine, confirming that P wished to attend Adoption Counselling and would this be made available.

[30] Mrs McGreenera QC queried the veracity of the Trust's decision to seek to reduce contact prior to freeing. Mrs Devine explained that was why the Trust has made an Article 53(2) application, to test the veracity of that decision.

Guardian ad litem

[31] The Guardian ad litem supports the Trust's application to reduce contact from twice per month to once per month, supervised, one hour for each parent.

The Guardian does not accept that both children appear to enjoy meeting up with their parents, especially K [6.16]. The Guardian observed contact on 31 August 2006 for purpose of this application. A difficulty arose when K wanted P to bring him into an adjoining room where K's carer was sitting. P refused and suggested that K wait for the contact worker to return and bring him. This is set out in greater detail at page 11 of the Guardian's report.

Paragraph 8.7 of the Guardian's report recited her understanding of the timing of the contact application.

At 8.9 the Guardian refers to the latest LAC on 17 July 2006 when a decision was made that 'once per month contact to be proposed from freeing until adoption'.

The Guardian also records concerns, namely at 9.25 P told K that 'everyone was trying to stop their (K&S') contact with their parents'. Apparently K was told by P to keep this a secret. This clearly demonstrates that P does not accept the Care Plan. There is much evidence that M also does not accept the Care Plan.

The Guardian, at 10.5 and 10.6 highlights the importance for K and S to achieve security and stability throughout their childhood and to develop healthy primary attachment patterns with their new carers. This in essence is the aim of their Care Plan, and any contact arrangement should support this goal.

[32] The GAL feels that any negative messages alongside a high level of parental contact, is likely to confuse and compromise the children's capacity in this task.

The Guardian does note that contact appears to be an enjoyable experience for each child. However of late K presents as more unsettled after contact and can be very sulky/aggressive than during the week when there is no contact.

The Guardian ad litem stresses the importance of the contact reduction being properly planned and phased. She stated in evidence that K will need an awful lot of explanation why contact should be reduced.

The Guardian ad litem was sceptical of parties who change their evidence at the door of the Court. This was in relation to P availing of adoption counselling despite what he has said to the Trust, and similar by M.

The Guardian supported the parents availing of adoption counselling, and said that this is likely to trigger a lot of issues for each parent.

In conclusion to the Guardian ad litem stated that contact was secondary to the Care Plan. Contact must support the aim of the Care Plan, and help the children achieve their primary care attachment with their permanent carers.

The Guardian ad litem suggested that the parent's attitudes towards managing contact has changed since the children moved to their permanent placement. P is sadder at the end of contact. The Guardian feels that the transition period is over, and the children are now involved in the early stages of attaching to their permanent placements. She said that this period is crucial for the success of the children's placement.

The Respondents

The Respondents did not give oral evidence.

Submissions

Closing submissions were given by Counsel on 27 September 2006. The Trust is adamant that the frequency of fortnightly contact is impeding the process of the children settling into their new placement. The Trust refers to page 94 and 96 of the main bundle, and extracts from Sally Wassell's report date 15 September 2005, and concerns in particular if these parents do not support the care plan, which their parents do not. The Trust also referred to the two pieces of literature provided by Mrs Devine when in the witness box.

Counsel for P reiterated the necessity to afford P the opportunity to engage an expert, and suggested that Mrs Devine's evidence was 'suppositive' rather than evidential in respect of the impact of the reduction upon these children.

Reference was made to Gillen J's Appeal Judgment of 25 September 2005; that he might form a different view during the Article 53 hearing, as to whether or not an expert is necessary.

Ms Anyadike-Danes BL stated that it was wrong to introduce the reduction, with the permission of the Court, and then seek professional guidance to assist with implementing the Order; rather, guidance should be sought before seeking an order to reduce contact. The court must be slow to reduce in the absence of any expert evidence.

Decision

My decision in respect of the Trust's Article 53(2) application was given orally on 16 November 2006.

I reached my decision not to allow the Trust authority to further reduce contact at this time after a great deal of consideration of the evidence specific to this case at this time, to include:-

[33] A proliferation of applications filed by the parties at various stages during the course of the Article 53(2) application and indeed the Freeing application. In most if not all instances these applications were filed outside the timetable directed by the Court, and thus held in disregard the Court's

effort to case manage all issues to a fair and diligent conclusion without unnecessary delay. Many of the applications were filed with insufficient time to permit compliance with Rule 4.10(3) of the Family Proceedings Rules (Northern Ireland) 1996, and without any attempt being made to seek leave to abridge time for service. A number of the applications or key pleadings were filed at the beginning of or during a hearing.

[34] Most of these applications related to requests for leave to appoint a suitable expert to consider issues of contact and attachment in the context of these children's care plan. Sally Wassell having been appointed on a joint basis to provide expert evidence to the Court during the Care Proceedings.

[35] As stated above, the applications were not filed at an early stage, and as time moved on, by the time the applications were filed, dates were already scheduled for hearing the Article 53(2) application and the freeing applications. Leave was refused on 22 September 2006 and this was the subject of an appeal heard by Gillen J's on the morning of 25 September 2006. The Article 53(2) hearing provided for hearing as scheduled that afternoon, and concluded on 27 September 2006.

[36] The Trust's evidence consisted of two reports prepared by Cheryl Clarke and Pat McDaid; neither social worker was called to give evidence or to formally prove their reports. Indeed the Trust was aware for some time that Ms Clarke would be on vacation on 25 September 2006 and no application was made to seek an alternative date. This is significant in light of my comment at No 38 below. The Trust's only witness was Mrs Valerie Devine, Social Work Manager, Adoption Unit, who presented her evidence in a very professional and comprehensive manner; indeed she helpfully provided two articles to substantiate the Trust's application.

[37] The Trust's evidence was however, in my opinion, weakened by the numerous references within key Looked After Child Review Minutes as to whether the Trust intended to reengage Sally Wassell to assist the Trust with its decision making in respect of contact in this case. In its reports and LAC Minutes did recognise that this was a case where there had been a high level

of contact, namely twice per week, since the children were placed in care in November 2003. Contact was reduced to weekly following the outcome of the Appeal in April 2006, and then to twice per month in July 2006, prior to the children's move to dual approved carers in 10 July 2006.

[38] Furthermore, reference was made to requests for guidance on the issue of contact and other matters by Cheryl Clarke, Social Worker. Ms Clarke wrote to Dr Lyn McLaughlin on 2 June 2006 seeking her professional opinion in respect of inter alia, contact – paragraph 19 refers. No report was prepared by Dr McLaughlin, rather she met with Ms Clarke and attended a series of meetings to discuss the children's transition to the dual approved carers. The LAC Minutes of 31 May 2006 recognised that Ms Clarke should be provided with support to manage this case through the transition period, with Dr McLaughlin's guidance.

[39] This is a case where there are significant references both in the Trust and the Guardian ad litem's Reports requests to positive contact between the children and their parents, and a bond between them. It is recognised that the relationship between the parents and their children is not that of carers. The Trust has, appropriately I feel, ruled out reunification to the birth parents and has now lodged applications to free the children for adoption. It must also be said that there have been some difficulties during contact, to include when P became emotional and cried towards the end of a recent contact session when the children were still present.

[40] The parents do not appear to have accepted the care plan nor the need for contact to be further reduced. They have not availed of adoption counselling, though during this hearing each parent has now confirmed his/her willingness to avail of this and to engage with Social Services regarding appropriate contact at this time.

[41] The Trust moved swiftly to issue the freeing application following the Appeal on 24 April 2006 and the LAC on 31 May 2006. The freeing hearing was scheduled for 29 January 2007. The Respondents are concerned that the Article 53(2) application pre-empts the outcome of the freeing application,

and that any further reduction in contact should be determined at the freeing hearing. The Trust and Guardian both feel that the children's current placement is now their permanent placement, and if the freeing applications are not successful, the plan will be for the children to remain in their placement on a long term foster care basis. So however that contact is now in the context of the children having been placed in a permanent placement, and they must be allowed the opportunity to settle in this placement, and to develop attachments for their permanent carers. There is evidence that this attachment has started to develop, which is very positive.

[42] Following the hearing concluding on 27 November 2006 and prior to my decision given on 16 November 2006, P issued a Summons dated 16 October 2006 in the freeing application to seek to engage Professor Triseliotis. Leave was granted, as *inter alia* this did not cause any delay to the trial date then scheduled for 29 January 2007, and the Professor's report has been directed to be filed on or before 15 December 2006. Both M and the Guardian *ad litem* joined in this appointment.

[43] Further, the Trust issued a summons on 15 November 2006 in the freeing application, to seek leave to engage Sally Wassell, and also to vacate the trial date for 29 January 2007 due to M's date of confinement and arrangements for delivery. Leave was granted to the Trust, Ms Wassell is to report by 22 December 2006 and the revisited trial date is 19 February 2007. This application, filed some 5 months after the freeing application was lodged, does give an indication to the Trust's veracity of its own evidence on the highly contentious issue of contact in the context of this case and these children's care plans at this time. The application is noteworthy, as the Trust has been adamant throughout the Article 53(2) application that it did not require any further expert evidence or to re-engage Sally Wassell, despite what is recorded but numerous places within the LAC Minutes and the fact that Cheryl Clarke Social Worker clearly wrote to Dr McLaughlin seeking guidance on issues relevant to this application, but no written report was

provided and according to Mrs Devine, Dr McLaughlin does not see herself as an expert witness.

[44] The Trust has itself acknowledged that K has questioned reduction of contact from weekly to twice per fortnight, and he will require more professional help to enable him to fully understand the reduction of contact which has already taken place; there is then K's reaction to the proposed further reduction. This is at a time when contact has already been reduced twice this year, once in April and once in July; in addition the children have moved placement on 10 July 2006. This is a significant amount of change at this time, pending the hearing of the freeing and in light of the fact that all parties now are seeking expert evidence to assist with future contact and attachment issues. There is also some doubt placed on the veracity of the Trust's evidence for its Article 53(2) application for the reasons set out above.

[45] For all these reasons, and after much consideration, I decided that it would not be just or fair to authorise the Trust to further reduce contact at this stage, and that this matter could be considered in the context of the freeing application, when the Court and parties will all then have the benefit of the opinion of two expert witnesses. This will hopefully cast away all the concerns regarding the veracity of the Trust's evidence by its numerous referrals to further involvement by Sally Wassell in its LAC minutes. Also the letter by Cheryl Clarke to Dr McLaughlin to seek guidance on the contact issues.

[46] This is a case where there are no overwhelming concerns in respect of the children's continued contact with their birth parents at the rate of one hour per fortnight, supervised, pending the hearing of the scheduled freeing application, and the children are very fortunate to now be placed in a permanent placement with carers who appear sufficiently confident to ask the Trust to allow them to meet the birth parents.

[47] In reaching this decision, I have considered the Article 8 rights of all relevant parties concerned, and have ultimately made a decision which I feel is in the children's best interests at this time. My decision has to be

considered in the context of the facts in this particular case at this particular period of care planning for the children. The decision reflects all parties rights to a fair trial. I have ultimately balanced all these considerations but have regarded the children's welfare as paramount. My decision causes no delay to the scheduled trial. I have considered the welfare checklist in Article 3(3), and I have decided that it is in the best interests of these children at this time to make 'No Order' rather than to grant an Article 53(2) Order at this time.

I have considered the authorities cited by the Appeal Judge in his Judgment in respect of delay, namely *C v Solihull Metropolitan Borough Council* 1993 1 FLR 290. In particular, I have considered his authorities in respect of engagement of expert witnesses – *Re G (minors) (expert witnesses)* 1994 2 FLR 291, but would suggest that this case and the related freeing case have not been affected by delay in terms of the trial – but in giving early consideration to the necessity of appointing an expert. I am glad now that the bolts are in place for a timely and well prepared freeing application, and I am confident that the Court will have to its aid, sufficient expertise to enable the Judge to make informed decisions regarding future contact arrangements, whatever the outcome of the freeing applications.