

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF S AND C (CARE ORDER: FREEING FOR
ADOPTION)

GILLEN J

[1] Nothing must be reported concerning this case which would serve to identify the children or the family who are the subject of these proceedings.

Applications

In this case a Health and Social Services Trust which I do not propose to name ("the Trust") seeks the following relief:-

- (i) A Care Order pursuant to Article 50 of the Children (Northern Ireland) Order 1995 ("the 1995 Order") in relation to one child namely S born on 27 June 1998.
- (ii) An order to free S and C (born on 1 May 2001) without parental consent pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987 ("the 1987 Order").

The mother of each of these children is M. In the case of C, a Care Order was granted on 16 May 2005. Mr Long QC, who appeared on behalf of M, indicated at the outset that the mother was neither consenting nor objecting to the Freeing Order application. The father of C is C1 who has parental responsibility and has consented to this child being freed for adoption.

S is the subject of an Interim Care Order. Her father is S1. He does not have parental responsibility. The threshold criteria in this case were agreed by the parties on 16 May 2005.

[2] A third application is an application by the paternal grandparents of S for a Residence Order pursuant to the 1995 Order. Mr Ferris QC who appeared on behalf of the grandparents Mr and Mrs X indicated at the outset that he was not intending to pursue this application primarily because the natural mother M is opposed to it and the grandparents considered it to be unworkable. M has left Northern Ireland to recommence her relationship with C1. She was advised of the Looked After Children Review decisions by telephone. C1 has signed formal consent to the freeing of C. S1 has indicated he opposes the adoption of S unless she is placed with his parents. He has been updated by the Trust by telephone when he can be contacted but is not engaged in these proceedings.

Background

[3] Given the issues in this case, a sufficient reference to the general background is to be found in a recitation of the threshold criteria which were agreed in relation to these children as previously referred to by me. I have considered the papers and the evidence and I am satisfied that these criteria reflect the realities of the case. I have therefore concluded that the Trust have proved the threshold criteria in the following respect:-

“(i) The mother had displayed a history of poor parenting of S and C and in particular had not shown an ability to prioritise their needs over her own and to identify and attend to their emotional needs.

(ii) The mother had displayed limited insight and understanding in relation to concerns raised by professionals regarding her parenting.

(iii) The mother showed limited co-operation with statutory agencies.

(iv) The mother’s relationship with her partner was fragile and fraught with difficulties regarding issues of control, jealousy and reports of domestic violence.

(v) S was noted to suffer from developmental delay.

(vi) S had experienced a transient lifestyle with her care moving between her mother and her paternal grandparents.

(vii) C had experienced a transient lifestyle with her care moving between her mother, father and S's paternal grandparents.

(viii) S was displaying sexualised behaviours. (I pause to observe at this stage that these behaviours including masturbation, inappropriate touching of other children and dropping her trousers).

(ix) Issues of neglect within the family home arising from poor hygiene, poor safety and poor nutrition.

(x) The mother was involved in a relationship with a man who had been involved in the excessive use of mood altering substances and who had criminal convictions for violence, assault on police (1995 and 2000); disorderly behaviour (1992 and 1995) and arson (1990).

(xi) C1 had demonstrated a limited insight into concerns raised by professionals and limited understanding of the children's' needs including the impact of a negative environment on them.

(xii) The mother's relationship with C1 had been characterised by domestic violence."

[4] Accordingly, in the statement of core issues and skeleton arguments filed on behalf of Mr and Mrs X, they acknowledge that a care order was needed for S and it was desirable that she should be freed for adoption. It was their contention that they as paternal grandparents they were the most appropriate prospective adoptive parents for S. It was contended that no care order should be made where the care plan does not acknowledge, in the event of S being freed for adoption, that Mr and Mrs X were the most appropriate prospective adoptive parents. In essence that proved to be only the issue of real controversy in this case and it is to the factual issues in this matter that I shall devote the initial part of this judgment.

The Trust case on the issue of the suitability of Mr and Mrs X as adoptive parents

(1) It was the Trust's case that intensive work had been carried out with S and in particular following a Looked After Children Review ("LAC") of 6

May 2005 a decision had been made to increase the contact of S with the grandparents so that contact would now take place weekly at the home of Mr and Mrs. This had been monitored and a number of unsatisfactory aspects had arisen. Whilst Mr and Mrs X had successfully completed a full home study in respect of their competencies to parent, it was the Trust's view that in the context of a very difficult and complex child, their insight and expectations were inadequate and would adversely impact on their ability to manage the behaviours of S. Whilst Mr and Mrs X had shown an ability in theory to the family placement team during their assessment, this was not translated into practice as noted by the child's social workers and they had not demonstrated adequately an ability to prioritise S's needs.

(2) S is now 7 years of age and has been diagnosed by Dr Robson, a Child and Adolescent Psychologist, as suffering from an attachment disorder. On each move during her life (by January 2004 she had fourteen changes of care arrangement) the child demonstrated signs of emotional damage, including extremely disturbing sexualised behaviour to which I have adverted above. It is the Trust's view that a further move from her current carers would diminish the progress that is being achieved to date and would prompt a regression in her behaviour.

(3) The child's views are of importance. She, according to the Trust, has shown a clear wish to have a "mum" and "dad" and indeed of her own volition has referred to her current carers as such. She has stated unequivocally that she does not wish to reside with her grandparents, although she clearly loves them and wishes to have ongoing contact with them.

(4) As already outlined, it is Trust's case that S is a difficult and troubled child. The paternal grandparents have regular and daily commitments to other grandchildren. A previous placement of S's had broken down due to her jealousy of her sister C and indeed advice had been given that these siblings should not be placed together. The Trust are concerned that the presence of other children on a regular basis within a similar age group in a grandparent's home could prove difficult and result in even greater demanding behaviour from S who craves individual attention.

(5) The Trust have sought the views of other relevant persons. In particular it has been noted that the mother is and has consistently been opposed to the placement of S in the care of the paternal grandparents. The mother is the only person who has parental responsibility for S, currently sharing that with the Trust. There is clear hostility in the relationship between M and the paternal grandparents. This mother knows where the grandparents live and it anticipates troublesome confrontation in the future, which will not be to the benefit of S, if the child is placed with Mr and Mrs X. More importantly, it is the Trust's view that M will not reconcile herself to

such a placement and this would present an impediment to any prospect of direct contact in the future between mother and child. It is the Trust's case that this child needs stability and whilst at the moment direct contact between birth mother and child is not favoured by the Trust, in the future this might occur but the Trust feels this would not be possible if the child was placed with Mr and Mrs X. This child has suffered disrupted placements in the past and it is vital that this be avoided in the future. The present carers, who are a Mr and Mrs O, currently receive the approval of M. In this context M is seeking a final visit for both children, namely C and S and the Trust see this as important in the children receiving permission from M, their birth mother, to live. This would not be obtained if S is to reside with Mr and Mrs X.

(6) Whilst the Trust recognise the right of a child to grow up in her own family and the value of kinship, it is the Trust's view that this is but one aspect of the welfare decision and in this case there are clear reasons for placement outside the family. Whilst therefore the Trust has acknowledged the rights of the grandparents to a family life with S under Article 8 of the European Convention on Human Rights and Fundamental Freedoms, it is their view that intervention with this right is a proportionate response to a legitimate aim.

(7) The Trust believe that the grandparents' rights, and the welfare of this child, can be well protected by affording regular contact to the grandparents if this child is freed for adoption and is subsequently adopted by Mr and Mrs O. Post adoption contact is therefore recommended at a level of fortnightly visits with the potential for overnight contact to take place in the future if it is in S's best interests. That would certainly in the initial stages require monitoring and supervision to address the issues that have arisen to date until the adoption order is made at which time more definite proposals could be contemplated.

The case made on behalf of Mr and Mrs X

(1) Kinship is a crucial matter. This child should be brought up within her own family.

(2) Psychiatric reports carried out by Dr Pilkington in August 2004 indicated that the paternal grandparents were both perfectly adequate to look after this child.

(3) A report from Dr Robson in June 2004 had seemed to come down in favour of S being placed with the paternal grandparents and in February 2005 Dr Robson had indicated that she was still of the view that serious consideration should be given to placement with Mr and Mrs X who in her opinion were "good enough" parents.

(4) Whilst there had been allegations of impropriety made against the paternal grandfather by M in relation to S, and indeed contact with the grandfather had been stopped from May 2003, it resumed in May 2004 and has continued unabated albeit on a supervised basis.

(5) There were no significant contra indications to Mr and Mrs X being protective adopters.

(6) Adoption by Mr and Mrs X would allow for the possibility of a controlled, natural and informal reintroduction with the help of professional advice and guidance of S to her natural father S1.

(7) Any residual hostility of the mother to Mr and Mrs X would not cause pressure to the placement with them since it is not contemplated there would be post-adoption contact of a direct nature between mother and child.

(8) S is craving for one to one attention and her difficulty in sharing carers make the grandparents suitable adoptive parents with Mr X adopting a peripheral role and Mrs X playing the role of the primary carer. This is particularly relevant given the advent of a new born baby into the home of Mr and Mrs O.

(9) Mr Ferriss stressed the role of Article 8 of the European Convention and the right of the child to a family life within her own family as well as the family rights of Mr and Mrs X.

The evidence

[5] Ms S

Ms S was the assistant principal social worker and chairperson of the crucial Looked After Child Review dealing with this child in May 2005. It was her evidence that it was the role of the social worker and senior social worker to update her orally in all matters in this case. In the course of her evidence-in-chief and cross-examination the following points emerged:

(i) The Trust had been involved with the birth mother since 2000 and a number of assessments regarding her parenting capacity have been carried out. As is clear in the threshold criteria to which I have already adverted, she had been unable to prioritise the needs of her children over her own needs despite support being offered. As a result S had several episodes of being in care. Her first three care episodes occurred when she was seven months old, fifteen months old and three years four months old. On those occasions she had been placed with her paternal grandparents and spent approximately sixteen months of her life being cared by them. M had then made an allegation that S had alleged that she had been sexually abused by her

grandfather. S made allegations to foster carers that she was sexually abused her mother's then partner. S had previously displayed extremely disturbed sexual behaviour totally inappropriate for her age. The child had been referred to the NSPCC to complete therapeutic work. That work had been discontinued as staff at the NSPCC believed the child needed some stability in her home circumstances before engaging in the work.

In the wake of these allegations against the grandfather, the contact order which Mr and Mrs X had in respect of S (whereby they had overnight contact Friday and Saturday once every two weeks) was suspended from about May 2003 and Mr X prohibited contact. The Trust offered Mrs X supervised contact which she declined probably on the basis that she felt that to continue would have been disloyal to her husband. Trust staff had tried to encourage Mrs X to leave aside loyalty to Mr X and indicated that she was failing to recognise the stress and confusion being caused to the child. She was offered educational work at a family resource centre with reference to the dangers of grooming by a potential carer. However she was unable to accept this feeling that to avail of supervised contact would have acknowledged her husband's guilt. Accordingly she abstained from contact for about 5 months.

(ii) The witness reminded the court that this child had a number of health related difficulties. Her fine motor skills were delayed and she required speech therapy. An educational psychologist concluded that she was delayed in all aspects of her development. The witness was of the view that it was significant that the grandmother had been unable to accept the opportunity to participate in an assessment to determine her capacity to recognise potential risks of sexual abuse and protect S given the nature of the allegation made. It was her view that this was an example of Mrs X being unable to recognise the needs of the child and prioritise those needs over those of herself and her husband.

(iii) Between July 2003 and 25 July 2004 there were six more changes of care for this child. There were two short term placements, a third broke down because of the sexual behaviour she exhibited with another child, a fourth broke down because of sibling rivalry between her and C which was difficult to manage and a fifth arrangement again broke down because of similar damaging behaviour. In this context Dr Robson diagnosed this child as suffering from an attachment disorder which was the cause of her defiant and dysfunctional behaviour. Her sexualised behaviour from July 2002 was observed by a number of sources including in a school setting, by foster carers and indeed by her grandparents.

(iv) By January 2004 however Mr and Mrs X were expressing a wish to pursue adoption of this child, although the mother was strongly opposed to this. The Trust informed them accordingly that they would be assessed. The witness stressed that this couple were most certainly never ruled out because

of the previous allegation. Including a psychological assessment, which was positive, from Dr Pilkington in August 2004, this witness indicated that they had continued to assess them as potential adopters right up until June 2005.

(v) At a LAC review on 6 May 2005 Mr and Mrs X were invited to attend. This review recognised that both Mr and Mrs X and Mr and Mrs O wished to provide long-term placement for S and the review discussed the merits of demerits of placing S with either couple. By this time S was having fortnightly contact with Mr and Mrs X for two hours every Thursday. This was unsupervised and was facilitated outside of the family centre. S's care plan remained permanency via adoption and the matter had been listed for hearing on 16 May 2005. It was decided at that meeting that in order to progress matters, S's care plan would be postponed to facilitate increasing contact between S and her grandparents to determine the feasibility of managing future contact arrangements and to provide both couples with time to reach informed decisions in terms of offering long-term placement for S.

[6] Dealing with the child's wishes and feelings, the witness referred to a LAC of 27 June 2005 wherein it is recorded that Mrs O had advised a social worker had phoned the judge on her pretend phone and told him "my name is SX. I don't want to live with my mummy M. I don't want to live with my nanny. I want to live with my mummy and daddy." Mrs O added that S stated she would hide in Mrs O's mother's house so "the judge cannot find me". Mrs S had advised during contact that S displayed frustration at the judge for taking too long to decide. The social worker has spoken to S on a neutral venue following contact with her grandparents about her wishes and feelings and what she would tell the judge if she was speaking to him. The record records:

"S spoke very clearly and firmly to the social worker and advised 'I would tell him I don't want to live with my nanny. I want to live with my mummy and daddy'."

It was evident to the social worker that S needed to know as soon as possible where her permanent home would be. At that LAC, the mother M continued to object to the Trust care plan for S, (but did acknowledge how well S was doing in her placement with Mr and Mrs O) and felt that if S was to be adopted, she would like her to be adopted by her current carers ie Mr and Mrs O.

[7] It was the witness' evidence that S appeared to be at ease with the O family and accepts their boundaries and routines. There is no doubt also that she loves her grandparents but it is notable that her behaviour with Mr and Mrs O has now begun to settle. It was the witness' evidence that this child wants a decision soon. The witness also asserted, that having heard different

social workers over a period of six years, she was satisfied that S views her current placement as her home. On the basis of her 20 years experience in childcare this witness stated that she was satisfied that these are the genuine views of this 7 year old who, whilst loving her grandparents dearly, has decided to call her current carers mother and father is putting down some sense of roots with them.

[8] Turning to the LAC of 16 June 2005, which this witness chaired, and which Mr and Mrs X attended together with a support person. This LAC was to discuss the current contact arrangements and the impact of them on S. A social worker Miss C2 gave a report of how the child's behaviour had manifested itself over the six week period of contact with the grandparents in their home city.

[9] This witness stressed that she was aware that the grandparents did have rights under Article 8 of the ECHR and indeed specific references made to the Human Rights legislation in the note of this LAC. Miss S stressed that she was particularly conscious that they be given a right to participate and proper consideration be given to their views. She recognised that they did have a right to be considered and although Article 8 was not specifically referred to in the notes, she was adamant that these rights had been very much in her mind and she had referred to them. In addition, the factor of kinship and identity were discussed and regarded as an important part of the child's life.

[10] LAC also served to set out the areas of concern in relation to Mr and Mrs X at that stage. These included:

- (1) How Mr and Mrs X would manage any disruptive behaviour S would show.
- (2) S very clearly saw Mr and Mrs O as her mummy and daddy and Mr and Mrs X as her grandparents.
- (3) It was felt there would be more complexities in Mr and Mrs X facilitating contact between S and her mother given the ongoing animosity.
- (4) The potential for unplanned contact between S and her father was apparent if she was placed with Mr and Mrs X.
- (5) S's sibling C's wishes were also to be taken into consideration.
- (6) The mother's strong opposition to S being placed with Mr and Mrs X.
- (7) Risk of disruption to S's behaviour if she was subjected to another move.

(8) The implications of a move on S's progress educationally and in relation to her speech progress, friendships etc.

(9) The benefits of kinship were considered.

[11] Accordingly her recommendation was that the child be adopted by Mr and Mrs O with a high contact level with the grandparents. She was in favour of adoption because of the young age of the child, the sense of belonging which an adoption would give, the risk of breakdown in a long-term foster placement, the need for Social Services reviews which so many find inimicable, and the lack of sense of permanence or stability which would be lost if adoption was not carried out.

[12] In cross-examination by Mr Long QC on behalf of the mother, the witness added a number of further reasons why the Trust preference was for her remaining with Mr and Mrs O:

(a) In the six years that S had been involved with the Social Services, it was the witness' view that she now enjoyed the greatest stability of her life despite some continuing behaviour difficulties.

(b) This seven year old child was articulating genuinely that she wanted to stay with Mr and Mrs O.

(c) She was now well settled in Newry and had made friends there and regarded that area as her community.

(d) The mother was happy with the care the child was currently receiving and was happy for the child to remain in their care. This contrasted with the acrimony between the mother and Mr and Mrs X. The child did have a right to family life and a right to grow up with mother's approval. The current carers were able to share information with S about the mother's circumstances (there is indirect contact with the mother) and the need to exchange information between mother and daughter would be possible to a far greater degree than that which would occur if the child was with Mr and Mrs X.

(e) Since the child has had 14 different moves, she needs now a safe structured regime. The current carers have demonstrated their ability to respond well to the child's needs.

(f) It is important that her carers have an understanding of what S requires. She does require therapeutic input to be offered when in a permanent placement. Her carers need to facilitate therapy and implement advice given especially with regard to the sexual behaviour. It was a matter of grave concern to the witness that when Dr Robson explored with Mr and

Mrs X their understanding of this situation, they thought that within a matter of weeks the child could be a normal child again. Dr Robson clearly shares concerns about their insight into the problems that this child has.

(g) Mr and Mrs X had some difficulty working with agencies who are liable to criticise them. Consequently the witness was concerned about working in a therapeutic setting where the grandparents have a lack of insight into the real problem. The child herself would be challenging and needs to be dealt with in a very supportive way. S should not be in a placement with older children. Two placements have already broken down due to rivalry. Mr and Mrs X have a wide extended family and whilst the child would benefit with contact with cousins etc, it was felt that she could not cope with so many children in a situation where she desperately needs to be the centre of attention. Even though a new baby has come into the household of Mr and Mrs O, S is essentially the only child of the moment and she will "be the boss" even though there is a new baby. The impression of the witness was that the household of Mr and Mrs X involves a lot of coming and going which might be detrimental to the need to place S at the centre of attention. In particular in the household of Mr and Mrs X a young adult son D lives close by and the child disliked him and does not want him to be there. D called her "a silly wee bitch" and this has prompted acrimony between them.

(h) S had reported that Mrs X had indicated that she was going to see her father in England and that was going to be "a wee surprise from nanny". This caused grave concern to the Trust. The Trust feel that there is need for lengthy preparation for father and child before such a meeting could take place and they have concerns that the child would need to have this complex situation carefully managed ie to know that S is her father but that there is no positive relation there at the moment. It was felt that certainly in the past Mrs X had failed to have insight into this problem. Although Mr and Mrs X have said they are willing to avail of support, it has been difficult to engage them in recent weeks and therefore there are real concerns about the affect on S if her father S visited without appropriate management.

(i) The Trust also embraced substantive concerns that Mr and Mrs X had been concerned in the early life of this child prior to the substantial difficulties that were now arising. They had not had to respond or react to her very challenging behaviour. In the past when the child had pushed the boundaries the reaction of Mrs X had been "I'll tell (Mrs O) on you". The witness harboured doubts as to whether S's complex needs with ongoing therapy could be handled by Mr and Mrs X.

(j) All things being equal, the Trust would certainly be supportive of a kinship placement as a second option to returning the child to the birth parents. If the child had not exhibited behavioural problems especially sexualised behaviour, the Trust would have organised a gradual move

towards Mr and Mrs X. However this child, as Dr Robson has said, has an attachment disorder and will have difficulties into adolescence. The current carers are mindful of this and can act as a mother and father in this regard. The child clearly sees them as mother and father and sees Mrs X as nanny. She has already a sense of what is family life. The existing carers have shown that they are able to do this over the past 17 months and that they understand the child better qualitatively than Mr and Mrs X.

[13] In cross-examination by Mr Ferris QC on behalf of Mr and Mrs X he highlighted the delay that has occurred in this case. The witness agreed that during periods of instability with the mother during 2000/2001 the child had on a number of occasions been moved to stay with the grandparents. The allegation against the grandfather in May 2003 had not been substantiated. In March 2004 the Trust had then instructed Dr Robson to look a number of matters including the appropriateness of the child living with the grandparents. The Trust at that stage recognised rehabilitation to the birth mother was likely to be ruled out and it was necessary to find a permanent placement. Whilst the witness would not agree that it was likely it was going to be Mr and Mrs X, no other placement had been identified at that stage and it was normal to look at kinship placements in such circumstances. At that stage Dr Robson was not asked about Mr and Mrs O. Her report in June of 2004 was to the effect that serious consideration should be given to placing S with Mr and Mrs X. However the witness asserted that since the date of Dr Robson's first report, the child has put down roots and social workers have informed her that there have been difficulties in the wake of contact arrangements with Mr and Mrs X. It was felt that Dr Robson may not have been fully aware how problematic change might be. In the wake of the recent contact in Armagh the child has exhibited daytime and night time enuresis, defiant behaviour, physical sickness, and there have been incidents of questionable information being given in contact for example the mention of S1 the child's father, exhortation to the child not to call Mr and Mrs O mummy and daddy and the question of disruption has therefore arisen. Dr Robson has made it clear this child has an attachment disorder and her current behaviour is reflective of a child with such a disorder.

[14] On foot of the recommendation of Dr Robson, reports were obtained from Dr Pilkington, a Consultant Psychiatrist, on the suitability of Mr and Mrs X and he gave reports on 9 August 2004 and 9 October 2004 both of which were positive.

[15] A preliminary report by Miss YC as to the suitability of Mr and Mrs X was also commissioned before a LAC review of 8 November 2004. This constituted a home study. A thinking of the Trust according to the witness was that they were torn between on the one hand S remaining with current placements as against the disruption which would be caused by a change and

at the same time the need to assess Mr and Mrs X and their capacity to deal with the behaviour of the child and in particular the sexualised behaviour.

[16] The witness accepted that there had been delay in processing this whole matter and she had personally expressed concern about the delay as did the Guardian ad litem. Mr and Mrs O had also expressed a concern because it was becoming harder and harder for them to part with S if necessary. S has raised this question of delay with the programme manager. The Trust felt that they would acquire an addendum report from Dr Robson on disruption and movement. There was some confusion about the letter of instruction, some legal aid difficulties and that was delayed somewhat. The addendum report from Dr Robson came in February 2005. Her conclusions in the report of 2 March 2005 or that her view of June 2004 that serious consideration should be given to the possibility of placing S with her grandparents still held. She concluded:

“It is therefore my opinion that the grandparents cannot be ruled out at this stage as carers for S. Professional reports and the Trust’s preliminary assessment are positive and there would be advantages for S remaining with her birth family. I have identified areas of work required of Mr and Mrs X and the extent to which the couple are able to take on board these issues and work with the Trust will require to be monitored. In summary the areas to be addressed will:

1. Encouraging S to have a positive view of her mother and promoting contact either direct or indirect.
2. Exploring the significance of S1 in S’s life and managing the introduction.
3. Exploring the impact of S’s life experiences on her emotional well-being and behaviour.
4. Behaviour management and appropriate responses to the behaviours which S might present’.”

[17] Mr and Mrs X were invited to apply for an adoption assessment and this report was available for the LAC review of 6 May 2005. By the time the

LAC review came along, there was an indication that this study report was 75% complete and appeared to be confident that the couple present for approval.

[18] The witness indicated that at the LAC review of 6 May 2005, it was agreed by all present that a further delay would be purposeful to see how S would react to contact in the home town of Mr and Mrs X which was some distance away from where she was staying and it would be an opportunity to see how the child would cope with contact there and in the home of Mr and Mrs X. In this process was carried out, the child's reaction to contact was clearly adverse. Moreover, in light of the matters that have been already mentioned, this witness indicated that the Trust had gathering concern about the views being expressed by Mr and Mrs X in terms of their capacity to care for the particular difficulties of this child. She recognised that the choice was a particularly difficult one. However the child has increasingly expressed views that she wants to remain where she, and whilst the grandparents clearly love her, she is now in what this witness regarded as the most settled period of her life with Mr and Mrs O. The witness went on to say that she thinks the child has now rooted for the first time and she wants the status quo maintained. The witness graphically described this by saying the child does not want a fifteenth move. Social workers really know this child on a day to day basis having been involved with her in her home, in school and her world in general. It is their clear view that another move from Mr and Mrs O would be detrimental to her. The reality of the matter is that the child would now have to change school (it would not be practicable for her to be taken on a 40 mile round trip each day to her present school if she were with Mr and Mrs X), make new friends but whilst children can respond well to change, this is a particularly difficult and troubled child who needs stability in the view of the witness.

[19] Accordingly the final care plan drawn up after the LAC of June 2005 favoured the child staying with Mr and Mrs O. The witness indicated that the Trust have become convinced that their decision is the right one. In her view S's behaviour can be affected by uncertainty and her sense of uncertainty and confusion could be partly fuelled at the moment because she does not know where she is going and whether she has to be taken away from Mr and Mrs O.

[20] Mr Ferris questioned the witness as to whether Article 8 rights of Mr and Mrs X had been considered. This witness conceded that while she had a clear recollection of making reference to them in the LAC review of 6 May 2005, there is no record or reference to Article 8 such a report. I have already adverted to the reference in the minutes to Human Rights legislation but Article 8 is not specifically mentioned. I am conscious of the recent decision of the Court of Appeal in Northern Ireland namely AR v Homefirst Community Trust [2005] NICA where, inter alia, the court made it absolutely clear that as a general rule Article 8 rights must be expressly referred and that

the absence of express reference may lead the court to conclude that no reference has been made to them. I wish to make it clear in this case that whilst I deplore the failure to record specific references to Article 8, and this is something which this Trust should deal with at the highest level, I am satisfied that Miss S was telling me the truth when she said she had a clear recollection of referring to Article 8 rights of Mr and Mrs X. I am therefore satisfied that there was no breach of the Convention rights of Mr and Mrs X in this instance and that a careful weighing of such rights was entered into in this case. I found Miss S to be a forthright, honest and conscientious witness who was not afraid to criticise her own Trust for delay in this matter and I believed her completely on this subject of reference to Article 8 rights.

[21] In cross-examination by Miss Walsh on behalf of the Guardian ad litem, the witness expressed grave concern about the period between 13 May 2003 and 17 October 2003 when Mrs X had refused to avail of any contact with the child who then only 4 years 11 months because of the ongoing investigation into husband. This was a particularly traumatic period for the child when she had three placements and no contact with her parents. The witness felt that Mrs X had failed to prioritise the needs of the child over her husband and the Trust had expressly offered her contact with the child without Mr X. That was the period when the child needed family contact but was deprived of it. She also emphasised that Dr Robson had made it clear that work remained to be done with Mr and Mrs X. Miss Walsh further elicited the concerns of the witness about a suggestion emanating from S that Mrs X was going to arrange a surprise meeting with her father. As this was denied by Mrs X, it was curious that the child specifically mentioned it. Moreover she said that if further time was allowed for the grandparents to address these issues, this would result in continuing uncertainty for the child which she was certain would be damaging for her. It was a matter of concern that during 2003-2005 they had refused to avail of counselling with reference to the sexualised behaviour of the child and this was indicative of the lack of insight into the need to deal with the child's problems. The witness concluded by indicating that the behaviour of the child during the recent contact period - defiance, school deteriorating, severe enuresis - were all clear evidences of change in behaviour and this witness considered that great weight should be given to the voice of this child.

Ms S3

[22] Ms S3 is the Senior Social Worker who was responsible for the case management of C and S. She was a member of the permanency team which was established in April 2004. In the course of her evidence and cross-examination the following matters emerged:

1. Dealing with C, she confirmed that C1 had held responsibility for her and had formally consented to her being freed for adoption.

2. Both mother and father had addressed Article 17(5) of the Adoption Order and had indicated they did not want to be involved if the child is freed for adoption.

3. There is inter sibling contact between the two children organised by their current carers. There is an expectation of at least four times per annum and indeed probably more.

4. This witness confirmed much of what the previous witness had said. In particular he adverted to home study assessment on Mr and Mrs X or to assess them for foster parenting and as adoptive parents. By the time the LAC of 6 May 2005, the assessment was positive and was 70% complete. Those present at the LAC felt a further assessment of the child's specific needs of S was required. Except that the two very experienced social workers had met Mr and Mrs X ... fast-tracked the report. This was also clear in their own mind that Article 6 and Article 8 of the ECHR had been mentioned at the LAC of 6 May 2005 and that this witness in particular was mindful of the rights of Mr and Mrs X to a private life. The decision was made to reintroduce the child to the home town and the home of Mr and Mrs X in order to engage her reaction and how Mr and Mrs X would manage it. It was generally felt that it was purposeful delay. If the contact had been successful, it would have led to overnight placement. The fact of the matter is however that this did not happen. S did have contact difficulties with Mr and Mrs X, and the Trust had concern about the capacity of this couple to provide sufficient insight and level of understanding for the child's difficulties. The Trust did not conclude that they had properly understood S's concerns and they felt that minimum progress had made by this couple since November 2000 when the Trust became involved. It is this witness' view that S was being emotionally damaged by the delay and that she needs a positive decision one way or another.

5. ... the limited insight which Mr and Mrs X have manifested into the needs of this child. ... manifest no ill will towards the mother of this child and ... sense of identity of S that she has a positive view of her mother. The Trust simply do not accept that Mr and Mrs X have the capacity to do this.

6. S3 again stressed planning and preparation and explanation about ...'s father S before any introduction could take place. Mr and Mrs X plainly do not accept that view. They feel that she must have a bond with their father and will cope with their meeting. They fell that this is totally unrealistic, does not meet the emotional needs of S in relation to her father.

7. In cross-examination by Mr Long QC on behalf of the mother, the witness asserted that the Trust's views that the choice of adoptive parent had been confirmed by events since 16 June 2005. These events included:

(a) During the week of this hearing S had been on holiday in Cornwall with Mr and Mrs O, in the course of a telephone call Mrs X had asked S if she had been speaking to her daddy recently. This caused great confusion and concern with the child.

(b) Mr X has disengaged with the Trust.

(c) Mrs X is still reluctant to countenance S calling Mr and Mrs O mummy and daddy. She asserted that she had read some research to the effect that this was not good. This is despite the Trust encouraging Mrs X to go along with the child. The Trust's social workers are concerned that she insists on calling Mrs O by her Christian name and will not call her mummy O. The child was clearly very upset at being told by Mrs X that she has only one mum and one daddy and it was necessary indeed for a social worker to go out and reassure the child. Mr and Mrs O had been very upset at the distress occasioned to the child on this occasion. Some of this bodes ill as to whether or not Mr and Mrs X are prepared to act on the advice of social workers in the difficult matters that lie ahead.

(d) This witness confirmed that Article 8 rights of Mr and Mrs X had been specifically adverted to at 6 May 2005 and this served to underline the conclusions which I had drawn during the course of the evidence of Miss S in this regard.

(e) When it was put to this witness by Mr Ferris, that there was a record to the effect that social workers had witnessed a growth and development in Mr and Mrs X as a couple as they gained confidence with the social workers and learned to trust the process, whilst in the early stages Mr and Mrs X were the preferred couple, her concerns ... reservations about them. In the meantime I was satisfied that this witness was truthful in saying that she felt there was a need to deal with and exhaust the possibility of kinship whilst at the same time recognising the positives in remaining with Mr and Mrs O.

(f) This witness stressed a matter that I consider to be of some importance, in that the social workers were very close to this child and to the family unlike the social workers who were carrying out the assessment and who ... took more account of the needs of the child ... [DIFFICULT TO HEAR TAPE] Moreover the concerns about the qualities of Mr and Mrs X as carers would be echoed in the Guardian ad litem.

Ms C3

[24] This witness was a social worker employed with the Trust who, inter alia, had been engaged with the home study report of Mr and Mrs X. During

her examination in chief and her cross-examination the following points emerged:

1. In February 2005 a problem had arisen with Mr and Mrs X because they had been reluctant to collect the child from school even though the social workers had said it was much more natural for the child to be collected from school rather than delivered to their house.

2. The incident where the child had indicated that Mrs X had suggested a secret surprise over the summer with the attendance of her father, had led to the child sobbing/clinging to her foster carers and incurring sleep disturbance. Mr and Mrs X were unable to appreciate that there was a necessity to place supervision and contact with the father and that the problems of such a contact needed to be shared with the social workers. This they appeared unable to do.

3. The witness had discussed with Mr and Mrs X in April 2005 the child's complex needs, the attachment disorder, her inappropriate sexual knowledge and her challenging/demanding behaviour. Mrs X was adamant that these behavioural problems had not surfaced with them and she said that her attitude would be to ignore the behaviour. She felt that S was a normal child. The witness stressed that if it is thought that S is normal, then there will be an inability to deal with her problems. At the moment she needs two parents consistently to set boundaries for her and her carers need to be in tune with her complex needs. With the present carers, her sexualised behaviour has modified and she had discussed with her carers the sexual activities to which she had been exposed when living with her mother and partner. This is a regular pattern whereby children reveal over a period of time these matters to those to whom they have become emotionally bonded.

4. Dealing with the child's wishes and feelings, the witness said she had discussed on two occasions with the child her future. These occurred on 31 March 2005 and 2 June 2005. The child was well aware that the judge will make a decision and the witness was keen to ensure that she was not under any pressure. Throughout the period when she was having contact in Armagh, the child did indicate that she wanted to stay with her current carers on these two occasions. Post adoption contact between the mother and the child was a problem in the context of Mr and Mrs X. The mother is vehemently opposed to the child being with Mr and Mrs X and it was felt that she would present a risk to the placement perhaps making attempts to disrupt it by allegations and creation of difficulties.

5. Dealing with the LAC of 6 May 2005 this witness indicated that it was the view of the meeting that S deserved to have every aspect as mentioned by Dr Robson taken into account. It was decided that the natural way to test the

move to the grandparents was in this phased manner with gradual introduction to the city where the grandparents lived and to their home.

6. This witness indicated that in her view what has happened since that LAC has reaffirmed her views that the child should remain with her present carers. In particular the child has been upset about the refusal on the part of Mr and Mrs X to call her present carers mummy and daddy, there have been clear issues with Mrs X's failure manage S as a parent figure confining and restricting the amount of confectionary she is allowed to have and not giving in to her every whim. She also drew attention to an incident at the end of a contact when the child asked could she give the grandfather a kiss before going on holidays but Mrs X refused on the basis that she had some shopping to do. In the witness' opinion this evidenced a further lack of insight into the child's needs. Similarly whilst Mrs X felt that a change of school for the child would be upsetting she felt she would get used to it. She did not provide sufficient insight into the problem to consider that it might be best for the child to stay on in a school where she is settling down given her background.

7. This witness made it clear that she had interviewed Mr and Mrs X on 21 April 2005 in terms of a child's specific interview. She wanted to gauge their insight into their ability to care for S. This witness was the child's social worker and was there to assess S's individual needs. The witness found it significant that S had apparently not displayed the level of difficulties during the contact with grandparents as she had with the foster carers Mr and Mrs O. It was the witness' view that a child displays her true self in her most comfortable setting and that she has a therapeutic trust with her current carers Mr and Mrs O. This is a very emotionally damaged child and Mrs X has simply unrealistic expectations of how she will develop. Mr and Mrs X found discussion of the child's sexualised behaviour very difficult. During the period of contact in the summer months, they had indicated that everything was fine whereas in the aftermath of contact the child was clearly showing disturbed signs with manifestations of enuresis, sobbing and clinging to the current carers.

8. This witness favoured the child remaining with Mr and Mrs O for the following reasons:

(i) This child had been with the present carers for over 20 months. This witness believes that the child has now "laid her bags down and said she is staying". Ms C3 was adamant that if the child is now moved in her opinion it will set her back considerably.

(ii) The child had been firm and clear that she wants to stay with Mr and Mrs O. On 10 July 2005 she was firm to the extent that she wanted this witness to telephone the judge. The child has seen this witness with both sets of carers and has told her the precisely the option that she wishes. This has

been her consistent approach since this witness was involved and has made the point quite clear spontaneously on at least two occasions.

(iii) The witness had discussed with a Mr Boyce who is the Senior Practitioner in the Trust dealing with inter familial sexual abuse. Their joint fear was that if the child moves to the grandparents' home she may regress based on the evidence that already has occurred in between the contacts over the summer.

(iv) The child has made great progress with Mr and Mrs O. There has been vast improvement in her school, her speech impediment in the last year has improved as has her verbal comprehension and expression according to the school.

(v) The witness adopted the concerns of Dr Robson about the unrealistic expectations of Mrs X. They love the child but they feel their love will be enough and do not fully appreciate the nature of her difficulties.

(vi) The hostility of the mother is a significant factor. The mother will give the child permission to be with Mr and Mrs O and the witness regarded this as a very important factor. Whilst the mother has been inconsistent in her attitude to both sets of carers, her view now is that she will give permission for the child to live with Mr and Mrs O.

[25] During the course of this case I indicated that I would be anxious if possible to hear again in person from Dr Robson. I was not absolutely clear as to the thrust of what she was saying in her reports and I was also keen to ascertain what her up-to-date view was about the matter. I did have before me her reports of June 2004 and February 2005. In these reports and in the course of her examination in chief and cross-examination the following points emerged:

The Report of 17 June 2004

1. Dr Robson emphasised that this child had suffered 14 changes of placement. She was at the time of the first report (17 June 2004) 5 years of age and had not formed any healthy attachments. She was clearly a damaged child who did have and will continue to have difficulties throughout her childhood. No present attachments at that time were forming, she had suffered 5 years of difficulty in her first 5 years of life. She will therefore clearly be a challenging child well into her adolescence. Dealing with the attachment to the grandparents at that stage, Dr Robson concluded that there was a positive relationship with Mrs X. She had perhaps been the most positive influence over the child during her first five years. She had a positive attachment though not a secure attachment to the grandmother and even less so to the grandfather particularly since there had been no contact for a period

of time. At that stage there was no real alternative and Dr Robson had felt that serious consideration had to be given to the placement. Dr Robson adumbrated the benefits of the child remaining within the birth family namely that is where her identity is rooted, she inherits the character of her birth families, they have a common history and she is therefore accepted within the family of origin. This is clearly a first option if it can happen. However Dr Robson stressed that she did not have enough information as a number of assessments in depth and other issues had not yet been completed.

2. Moving to her second report of February 2005, Dr Robson had spoken to the foster carers and Mr and Mrs X. Positive factors in favour of Mr and Mrs X were that the child knew the grandmother and of course they were family members. However she also listed a number of negative factors at this stage. These included that the child had extremely challenging behaviour including sexualised behaviour and the present carers, namely Mr and Mrs O, were handling these very well. She had discerned that Mr and Mrs X had unrealistic expectations of the child feeling that she would settle within one week as a normal child and this was totally unrealistic. She felt at that stage that they were perhaps not able or ready to cope with the challenging behaviour. Secondly Dr Robson felt that Mr and Mrs X had not always acted in the best interests of the child. She instanced the gap during which Mrs X had refused to engage in contact at the time the allegations were hanging over the head of her husband. Thirdly, Mr and Mrs X clearly considered their son S to be a victim. They felt he had suffered by not being able to parent and they seem to accept that the fact that he was 5 years away was appropriate as he had not been able to parent the child. They displayed a very limited understanding of their son's role in the upbringing of S. Fourthly, Dr Robson was concerned that Mr and Mrs X had refused to collect the child from school at the request of the Trust because there was a question of inconvenience in terms of time and travel. She felt they had not prioritised S's interests.

3. Taken together these were significant concerns for Dr Robson. She insisted that she had not been saying in February 2005 that the child should be transferred but that Mr and Mrs X needed to be considered further.

4. Dr Robson had met the current carers Mr and Mrs O. She was satisfied that they had provided a high standard of care and provided for the needs of the child. This caused her concern now about removing S. They had been with this child now for almost two years and S was clearly forming attachments.

5. It was Dr Robson's conclusion that the best option for S now was to remain with Mr and Mrs O with frequent contact with her grandparents. It is important thing that S should know that Mr and Mrs X still care for her. Whilst therefore Dr Robson felt she could not recommend a move from the

present carers she was consoled by the fact that fortnightly contact with the grandparents would allow them to have an important role.

6. Dr Robson summarised her views for now recommending that the child stay with Mr and Mrs O as follows. In the first place she said that the child is very damaged and has many needs. Her adolescence will be quite stormy. The present carers can clearly deal with it. Dr Robson was not at all confident that Mr and Mrs X could. The fact of the matter is that when S is in her mid teens Mr X will be approaching 70. Mr and Mrs X could clearly parent the average child and to that extent their assessment was positive but there is a real risk of their parenting a child as difficult as S breaking down. Secondly, Dr Robson saw a real danger in the breaking of the attachment with Mr and Mrs O. The child has been with them for two years. She clearly wants to stay with them, and there are clear risks to breaking this link. The risk of placement with Mr and Mrs X is rife with danger of breakdown and that would constitute a huge rejection for the child leading her back into care. Dr Robson expressed particular concern about ... having formed attachment for two years ... Her main attachment is clearly with her current carers.

[26] In cross-examination by Mr Ferris QC on behalf of the grandparents, they arose as to whether or not a move from the home of Mr and Mrs O would be quite as traumatic as suggested by Dr Robson given that the child knows this is a possibility and also knows her grandparents well. In answer to this Dr Robson responded that the child does know that her future is uncertain, her past years have been very unstable, and it would be a very big impact if she moved again. Whilst she had stayed with them at a much younger age, I think her attachment to her grandparents is much weaker than that to Mr and Mrs O. It is conceded that she perhaps could more easily have made a move in October 2004 but now over one year later, that she now feels secure, it would be a very different picture. Whilst S's views clearly cannot sway the judgment, he is expressing positive views about remaining with Mr and Mrs O. Dr Robson stressed that S continues to present with behavioural difficulties and the strategies upgraded by Mr and Mrs O are clearly working. It is a positive matter that she can have tantrums with Mr and Mrs O knowing that they will still love her. I stress that this is a positive matter. On the contrary Mr and Mrs X tends to indulge the child and does not set the necessary boundaries indicating they do not want to deal with the difficulties. Dr Robson emphasised again it is simply unacceptable for Mrs X to venture the thought that the child will be normal within weeks or months whereas the truth of the matter is that this child's challenging behaviour will continue for up to 10 years.

[27] Dealing with the home survey report by the two social workers who have conducted this, Dr Robson stressed that their report did not seem to note the child's emotional difficulties they have not matched the difficulties that she presents with Mr and Mrs X and all in all Dr Robson insisted that these

workers were not as experienced with the child as the case social workers. They did not identify S's particular difficulties and they show certain naivety of this child. Not mentioning for example the breaking of the attachment with Mr and Mrs O and the effect that this would have on the child going to live with Mr and Mrs X. In short this report had not taken into account S's particular difficulties. Dr Robson stressed nothing could diminish the severity of the impact of the move for this child and it is readily conceded that the delay in this case on the part of the Trust may well have weighed against Mr and Mrs X, the paramount interests of the child now dictates that she has been too long with Mr and Mrs O to risk breaking that attachment. I found this witness to be extremely convincing and informed in this matter. Her evidence was both insightful and brimming with common sense. I found little in her evidence with which I could possibly disagree.

Mrs X

[28] In the course of statements before me and in her examination in chief and cross-examination the following matters emerged from the evidence of Mrs X:

1. She indicated that she had been looking after this child for a total of 17 months from 1999. She had stepped into her daughter's shoes when her daughter was unable to look after this child. She said S had been happy and contented with her.
2. Dealing with the issue as to why she had failed to register any contact with the child between May and November 2003, she indicated that she had spent several months trying to support her husband during this period.
3. She was adamant that during the recent period May - July, contact had been good with S. She insisted that S had said that she wanted to be with Mr and Mrs X as recently as last week. She insisted she was aware of the child's challenging behaviour and fully understands that she has problems. She will be prepared to accept advice from social workers. She insisted that having had a number of children and 13 grandchildren she was perfectly able to deal with any child. ... the grandchildren as part of a close family and she did not feel that she would have a problem dealing with S where so many other children were around.
4. Dealing with the sexual problems of the child, I noted that Mrs X said that she did not think the child would behave in a sexual manner to other children in her house.
5. On the issue of her son meeting the child, she denied ever having said this to S and she had no idea where S had gotten the notion that there was going to be a secret surprise for her meeting her father in the town. On the

subject of her son, she disagreed with the allegations that had been that he had participated in acts of domestic violence against the mother of the child. She did feel it would be possible for S to see her father and that she would be excited at the prospect. However the witness indicated that she did not see this in the near future.

6. Mrs X denied that she had ever told S not to call Mrs O her mummy and she could not explain why the child had alleged she had said this. However she did admit that when the child did require discipline from time to time she would say that she was going to tell (Mrs O). However she asserted she had no difficulty saying no to the child.

7. In answer to Ms Walsh QC on behalf of the Guardian ad litem, she denied that she would have any problems with the mother of the child if S was with her. She recognised she would have to work with the authorities and in the long run if contact was in the child's interests, she would agree to the mother coming to the house.

[29] I have no doubt that this witness was a loving grandmother who would wish the best for her granddaughter. However as I watched this witness and listened to what she had to say I increasingly came to the conclusion that Dr Robson and the social workers were correct to have fears that she had insufficient insight into the real problems of this child. She did not display before me any concrete recognition of the enormous problems that this child's behaviour will present or that she had any genuine understanding of the complexity of the challenge and the degree of assistance that she would require. She clearly is still unaware of the hurt and concern she could have caused this child by stopping contact for several months, and I am satisfied that she was less than genuine in expressing any concern about the child's father seeing her at any moment. I am also satisfied, having observed her closely, that she was being less than forthright with the court when she denied that she had questioned the child calling her present carer ("mummy") or that she had not indicated to the child that her father's imminent arrival would be a surprise. I was left with the clear impression that because she has been the grandmother of a large number of children, she feels that caring for S will fall into the same category as her care for the other children. Sadly I came to the conclusion she lacks the necessary insight and capability to deal with this child or to avail of the assistance which would be absolutely crucial in the forthcoming years.

The Guardian ad Litem

[30] This witness had prepared five reports and in addition gave evidence before me. In the course of those reports, his examination in chief and cross-examination the following matter emerged:

1. He was satisfied that freeing for adoption was in the best interests of C. Her father had left the country about 18 months ago but has signed his consent for the child to be freed for adoption.
2. The witness was satisfied it was in the best interests of S that the Care Order be made and the child be freed for adoption.
3. He recorded that his investigations revealed that S had fared extremely well with Mr and Mrs O and progress had been made. This was confirmed by her school and with his own eyes. This couple have proved they cope with S's difficulties and this is what distinguishes them from Mr and Mrs X. Returning to the school, his reports revealed that the child had made some real progress with reading, feeling of self esteem, drawing and writing. Mr and Mrs O ensure that her homework is done well and they promote her education.
4. The witness agreed that S has very complex needs and is an atypical child. Those who look after her need to be skilled and have a robustness about them given the challenges that she will present.
5. In cross-examination by Mr Ferris QC, he strongly asserted that he had taken into account the Article 8 rights of the grandparents. He emphasised that he was well aware of the right to family life for Mr and Mrs X. He also was satisfied that the Trust had taken this sufficiently into account.
6. The witness was critical of the delay in this matter he emphasised that the child did need to know where she was going to live and the sooner this was sorted out the better. His criticism of the Trust was in relation to the delay in dealing with S and not with the way in which they had dealt with Mr and Mrs X. He was satisfied that if S is to live with Mr and Mrs O she can continue to enjoy family life through contact including overnight contact with the grandparents. He stressed the difference between the right to family life of grandparents and that of parents. Whilst it is preferable that a child should remain within the family bond, the fact of the matter is that the child's mother was opposed to the child being with the grandparents. If post adoption contact was to develop, between mother and child, then the grandparents would present a difficulty to this.
7. The Guardian regarded as an important matter that S had communicated to the social worker that she wished to stay with Mr and Mrs O. He was satisfied that was expressing clear views on this matter.

CONCLUSIONS

- (1) I commence my deliberations by recognising the draconian nature of the legislation which is now being invoked by the Trust. I also recognised

that the mutual enjoyment by parent (and indeed grandparent) and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment do amount to an interference with the right to such protection under Article 8 of the European Convention of Human Rights and Fundamental Freedoms (ECHR). 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 reuniting the natural parent and the child wherever possible.

(2) Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the ECHR) confers the right to respect for private and family life potentially to be enjoyed by all family members. I am satisfied that "family life" within the meaning of Article 8 of the ECHR can include the relationship between grandparent and grandchild. The European Court of Human Rights in Bronda v Italy 40/1997/824/1030 concluded as follows at para 51:

"The court recalls that the mutual enjoyment by parent and child of each others company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8. That principle applies too in cases like the present one in which the court is concerned with the relations between a child and its grandparents, with whom it had lived for a time."

In Kutzner v Germany [2003] 1 FCR 249 the Human Court of European Rights dilated upon this principle at paragraph 61:

"Although the essential object of Article 8 is to protect the individual against arbitrary action by public authorities, there may in addition be positive obligations inherent in an effective 'respect' for family life. Thus, where the existence of a family tie has been established, the state must in principle act in a manner calculated to enable that tie to be developed and take measures that will enable parent and child to be reunited."

That same case is clear authority for the proposition that any interference with the right to respect for family life entails a violation of Article 8 unless it was "in accordance with the law", has an aim or aims that is or are legitimate

under Article 8(2) and are necessary in a democratic society for the aforesaid aims. The notion of necessity implies that the interference corresponds to a pressing social need and in particular that it is proportionate to the legitimate aim pursued.

(3) I reiterate what I have set out in an earlier case of Re C (Contact: Grandfather) (Unreported) GILF4095 where I indicated that I was conscious of a growing awareness of the important role of grandparents in the life of children particularly young children (see Re W (Contact: Application by Grandparents) [1997] 1 FLR 793. In Re G (a Child) (Care Proceedings: Placements for Adoption) Times 1 August 2005 the Court of Appeal in England restated the right of a child to grow up in her own family as a crucial factor in any public law case. There must be careful recognition of this right albeit the weight to be given to that right to be brought up in her own family must be placed in the context of the welfare of the child. However it is my view that the normal expectation is that children benefit from care from their own families. Where a court does not embrace that principle, it is necessary to explain in some detail why that principle has not been adhered. In this case I have given anxious scrutiny to this principle and I have revisited my thoughts on this matter over a not inconsiderable period of time before coming to a final conclusion.

(4) The court may make a Care Order if it is satisfied that the child has suffered or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the child, or is likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give him or her. This is the threshold criteria set out under the 1995 Order. I have no hesitation coming to the conclusion that the threshold criteria helpfully submitted by the Trust in my papers have been proved to my satisfaction and are both appropriate and comprehensive. For the removal of doubt I shall set out again those facts which found the threshold criteria as follows:

(i) The mother had displayed a history of poor parenting of S and C and in particular had not shown an ability to prioritise their needs over her own and to identify and attend to their emotional needs.

(ii) The mother had displayed limited insight and understanding in relation to concerns raised by professionals regarding her parenting.

(iii) The mother showed limited cooperation with statutory agencies.

(iv) The mother's relationship with her partner was fragile and fraught with difficulties regarding issues of control, jealousy and reports of domestic violence.

- (v) S was noted to suffer from Developmental Delay.
- (vi) S had experienced a transient lifestyle with her care moving between her mother and her paternal grandparents.
- (vii) C had experienced a transient lifestyle with her care moving between her mother, father and S's paternal grandparents.
- (viii) S was displaying sexualised behaviours.
- (ix) Issues of neglect within the family home arising from poor hygiene, poor safety and poor nutrition.
- (x) Their mother was involved in a relationship with a man who had been involved in the excessive use of mood altering substances and who had criminal convictions for violence, assault on the police (1995 and 2000), disorderly behaviour (1992 and 1995) and arson (1990).
- (xi) C1 had demonstrated limited insight in relation to concerns raised by the professionals and limited understanding of the children's needs including the impact of a negative environment on them.
- (xii) The mother's relationship with C1 had been characterised by domestic violence.

(5) The second stage of the process in considering whether or not a Care Order is appropriate involves an examination of the care plan and the welfare checklist set out in Article 3(3) of the 1995 Order. Whilst in their statement of core issues and skeleton argument filed on behalf of Mr and Mrs X, counsel on her behalf have acknowledged that a Care Order is needed for S, it is contended that no Care Order should be made where the care plan does not acknowledge in the event of S being freed for adoption, that Mr and Mrs X are the most appropriate prospective adoptive parents. The care plan before me clearly envisages permanence outside the family and in particular adoption by Mr and Mrs O. I have come to the conclusion that I must approve the care plan in this case and in particular I must indicate that I am satisfied that a care plan which envisages permanence for S with Mr and Mrs O is an appropriate care plan and that they are the most appropriate prospective adoptive parents. I have come to this conclusion for the following reasons:

- (i) This child is now 7 years of age and has been diagnosed as suffering from an attachment disorder. She has clearly had far too many moves during her young life and I believe as a direct consequence of this is manifesting disturbed behaviour including sexualised behaviour. It is clear from the evidence before me that, as Dr Robson has said, this child has now put down

roots with Mr and Mrs O and I believe that Dr Robson is absolutely correct in opining that yet a further move could precipitate irreparable damage for this child. In terms, to remove her from those to whom she is now attached and with whom she has put down roots would in my opinion constitute one move too many. I believe it would lead to a regression in her behaviour and the undoing of much of the good work that has been achieved by Mr and Mrs O. I believe that this factor alone, without all the other matters that I will mention below, would be sufficient to dissuade me from accepting the normal expectation that a child should remain within the family.

(ii) Although the grandparents in this case have completed successfully a full home study in respect of their competences to parent this child, this has to be seen in the context of a report which was geared mainly to them as adult parents. It did not take into account the unique difficulties of this child's personality. I cannot blind myself to the evidence of the social workers who have been responsible for this child and who have interviewed her, assessed her and looked after her interests now for some years. Apart altogether from the expert evidence of Dr Robson in this regard, who now maintains grave reservations about Mr and Mrs X, I believe that the weight of experience and expertise of these social workers constitute a very major plank in any assessment of what is in the best interests of this child. These social workers who give evidence before me and who have reported have stated that this child is likely to regress if taken away from her present carers.

(iii) These grandparents will still continue, according to the care plan, to play a highly significant role in the life of this child. Contact is anticipated to be fortnightly in the event of the child being freed for adoption and I believe that that will in itself maintain the familial link and kinship connections that are important to children of any age.

(iv) Whilst the grandparents had exhibited a theoretical ability to the family placement team I discerned a number of irreparable flaws in the practice of the care for this child. Mr and Mrs X love this child dearly and they have a wealth of experience in looking after seven children and a number of grandchildren. They have not experience however of looking after a child with these difficulties. It concerned me profoundly that they evidently did not recognise that this child will have challenging behaviour for many years to come including very challenging sexualised behaviour, and their belief that this will all resolve in a few weeks or months speaks volumes for their lack of genuine insight into what they are taking on. The truth of the matter is that they have not been exposed to this child's really bad behaviour whereas Mr and Mrs O have and have dealt appropriately with it. The failure on the part of Mrs X to recognise the dangers of a sudden visit from the child's father, her failure to attend contact of any kind with the child between 10 October 2003 at a time when the child was particularly vulnerable albeit Mrs X was anxious to protect the reputation of Mr X, the failure to allow the

child to refer to Mrs O as mummy, the lack of appreciation of the sexual menace that could attend upon visits of other younger children with S, their failure to set boundaries for the child in such mundane matters as the eating of confectionery and the failure to prevail of courses on sexualised behaviour are but instances of a genuine pattern of lack of insight and lack of capacity to deal with the problems that this child will inevitably throw up.

(v) I am conscious of the obligation under the 1995 Order to ascertain the wishes and feelings of the child concerned and of the content of Article 12 of the UN Convention of the Rights of the Child which provides that States shall assure to the child who is capable of forming his or her views the right to express those views freely and be provided the opportunity to be heard in any judicial proceedings affecting the child either directly through a representative or an appropriate body. Each child is a person with human dignity and not merely the object of a court dispute. A child's fundamental rights including the right to be heard, must be respected in all forums. On the other hand, a court must be wary not to give undue weight to the views of children and I must recognise that the paramount duty on the court under Article 3(1) of the 1995 Order is the welfare of the child. This child is only 7 years of age and therefore I must be particularly wary of any views that she expresses given her lack of maturity and tender years. Nonetheless I have taken into account albeit to a limited extent, the repetition by this child of her desire to remain with her present carers. Dr Robson considered that to be of significance as an indicator of the fact that she has laid down roots with Mr and Mrs O. The social workers who gave evidence in this regard impressed me with the strength of their assertion that these statements of a desire to remain with Mr and Mrs O as her mother and father had been made spontaneously and without prompting. It all tied in with a pattern of upset and regressive behaviour that had been manifest when this child had undergone home contact on a more concentrated level during the summer of this year with Mr and Mrs X following the LAC of May 2005. I am satisfied that this child did regress during this period and manifested instances of grave disturbance in the aftermath of these contact visits. I believe this reflect a fear on her part that matters are going to change. I believe there is strength in the case made by the Trust that these grandparents, loving though they are, have regular commitments to other grandchildren. At least one placement has previously broken down with S due to her jealousy of her sister C and thus advice was given that the siblings should not be placed together. Whilst there is a baby due in the O household, nonetheless the age gap is such that I am satisfied this child will get a one to one attention from Mr and Mrs O which is absolutely vital in the case of this child who craves individual attention.

(vi) I recognise that there has been delay in this case. This matter should have been resolved a very substantial time ago. Nonetheless I believe that at least some of the delay was purposeful and in particular the delay subsequent

to the LAC of June 2005 in order to test out how this child would react to staying with Mr and Mrs X in their home town and in their home was a profitable and I believe stance to adopt. I consider therefore that the Trust, although they have delayed, have erred in favour of the paramount interest of this child and I therefore believe that the grandparents cannot legitimately embrace a sense of grievance. Whilst Mr and Mrs X can point to the favourable reports in the initial instance of Dr Robson, the Family Placement Team, and Dr Pilkington, all of this has to be weighed against the dangers which would be occasioned to this child as a result of the disruption of another move.

(vii) In contrast Mr and Mrs O have satisfied the social workers who have visited the home where S is, Dr Robson and finally me, that they have worked extremely well to the benefit of this child and that she is making very clear progress with them. She clearly loves and trusts them to the extent that she can act out her characteristically bad behaviour as a measure of the trust and confidence she has in them. I have no doubt that the best prospect for the child's resolution of her challenging behaviour in the future years lies with her remaining with Mr and Mrs O.

(6) I pause to observe that I am satisfied that the care plan for C which also involves adoption is appropriate in her case. The background that I have set out in the threshold criteria is undisputed and in my opinion all points towards the need for this child to be adopted in the future as part of the care plan.

(7) Having approved of the care plan, I must now consider Article 3(3) of the 1995 Order. Rehabilitation with their parents is not considered a possibility by anyone in this case. My views are as follows on the welfare checklist:

(i) S has indicated her wish to be with Mr and Mrs O. C is too young to have her views taken into account.

(ii) So far as the physical, educational and emotional needs are concerned, I have no doubt that the development of these aspects requires protection from the dysfunctional behaviours of their mother at this stage. Their fathers have not played a role at all in this matter.

(iii) Both of these children have been living with foster carers for some time and in my opinion any change in those circumstances at this time leading to the return to the care of their mother or any other person (including the grandparents) is likely to bring about emotional, educational and developmental damage.

(iv) It will be clear from what I have said that I am absolutely satisfied that neither parent in either case is capable of meeting the needs of these children. For the reasons I have set out I do not believe there are any other people such as the grandparents who are capable of caring for these children.

(v) I have considered the range of powers available to the court under this order in these proceedings. In particular I have looked at the possibility of a Residence Order with the grandparents or a Supervision Order. I do not believe that any order less than a Care Order would afford sufficient parental responsibility to the Trust in either of these cases to protect these children.

(8) I recognise that a court shall not make an order unless I consider that doing so would be better for child than making no order at all. In this instance I have no doubt that making a Care Order would be better for each child than making no order at all in order to protect them appropriately.

(9) I am aware that the mutual enjoyment by parent and child of each other's company does constitute a fundamental element of family life and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 the ECHR. Any interference constitutes a violation of this article unless it is "in accordance with the law", pursues an aim or aims that are legitimate under Article 8(2) and can be regarded as "necessary in a democratic society". I consider that a Care Order is a proportionate response to the legitimate aim of protecting the welfare of each of these children. I do so in the knowledge that the interests of these children must be paramount in any consideration of competing rights. I have derived great assistance from two recent cases in the Court of Appeal in Northern Ireland namely AR v Homefirst Community Trust [2005] NICA 8 and Homefirst Community Trust and Social Services Trust v SN [2005] NICA 14. In AR v Homefirst Community Trust Kerr LCJ stated in the course of the judgment of the court:

"It is unsurprising that this research into the subject discloses that it is desirable that permanent arrangements be made for a child as soon as possible. Uncertainty as to his future, even for a very young child, can be deeply unsettling. Changes to daily routine will have an impact and a child needs 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 factors that should be taken into account in this difficult decision. It is important also to recognise that long-term welfare of a child can be affected by the knowledge that he has been taken from his natural parents (or indeed his grandparents/natural family) even if he discovers that was against their will.”

Nonetheless I have come to the conclusion that the Article 8 rights of all the parties including the grandparents in this matter have been specifically adverted to and considered. In particular I reiterate that I am satisfied of the truth of the evidence of the witnesses before me who said that the Article 8 rights of the grandparents were specifically adverted to, albeit not made in writing, at the LAC of May 2005. I make it clear that I watched these witnesses carefully and I was absolutely convinced they were telling me the truth about this. I therefore consider there has been no breach of the Article 6 or Article 8 rights of Mr and Mrs X in so far as it was submitted on their behalf that their Article 8 rights had never been considered.

(10) Finally, before making a Care Order, I must afford the parties the opportunity to make representations about contact. I have listened to the submissions in this matter. It is my view that the proposals for contact between grandparents and S should continue at fortnightly intervals. I hope that the grandparents will be able to bring themselves to play a full role in this despite their disappointment at the decision to which I have arrived. Contact between both children and their mother should be currently of an indirect nature although I hope that with the passage of time this can perhaps be looked at again provided the mother can play a positive role which will underline and undermine their current placements. I do not intend to make any order on the question of contact because the unfolding nature of the grandparents’ attitude towards S in the changed circumstances and of the mother towards both S and C will be important factors in how the Trust will deal with contact. Accordingly the Trust must be allowed the flexibility of the no order principle in relation to contact in order to assess the situation as it progresses. This also applies in relation to the father of S.

(11) In all of the circumstances therefore I consider it appropriate that a Care Order should be made in the case of each child.

(12) I turn then to consider the application under Article 18 of the Adoption (Northern Ireland) Order 1987 that each of these children be freed for adoption.

(13) The statutory provisions governing such an application are to be found in the Adoption Order (Northern Ireland) 1987 (hereinafter called “the 1987

Order"). 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 that adoption or adoption by a particular person or persons will be in the best interests of the child; and

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

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

(b) so far as is practicable for us to ascertain the wishes and feelings of the child regarding the decision and give due consideration to them having regard to his age and understanding."

(14) As I have indicated in this case other than the choice of the carer, no argument of any substance was put forward to the effect that adoption was not in the best interests of each of these children. In essence I am satisfied that in the case of both children, their mother has displayed such a lack of insight and understanding into their needs and welfare, and their lifestyles have been so transient with frequent moves accompanied by neglect within the family home to a completely unacceptable degree, that only adoption can safeguard and promote their welfare. The importance of providing both of these children with a stable and harmonious home is an absolute necessity in the case of each child. C is too young to have her views taken into account but, as I have indicated above, despite her tender years, I am satisfied that S has expressed a wish to stay with her current carers. In all the circumstances I am therefore persuaded that adoption is in the best interests of each of these children.

(15) Under Article 16 of the 1987 Order, an Adoption Order shall not be made in the case of each parent of the child unless the court is satisfied that

the agreement of the parent should be dispensed with. The Trust submit that the ground for doing so in this case in the relevant instance is Article 16(2)(b) namely that the parent is withholding her agreement unreasonably. S's mother is apparent within the terms of the 1987 Order and her consent must be dispensed with. The father does not have parental responsibility and accordingly his consent is not required. So far as C is concerned, M is also her mother and her consent requires to be dispensed with. Her father C2 does have parental responsibility, a Parental Responsibility Order having been made in his favour at a Family Proceedings Court on 12 August 2003. He however has consented to C being adopted. So far as M is concerned, I am told that in each instance neither consents nor objects but in those circumstances it is necessary for me to dispense with her consent.

(16) The leading authority on the test to be applied is initially that set out in Re W [1971] 2 AER 49 where Lord Hailsham set out the test as follows:

“It is clear that the test is unreasonableness and nothing else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness, and reasonableness in the context of the totality of the circumstances. But although welfare per se is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if and to the extent that a reasonable parent would take it into account, and it is decisive in those cases where a reasonable parent must regard it so.”

In Re D (an Infant) [1977] 1 AER 145 Lord Wilberforce set out the test in this way:

“What, in my understanding, is required is for the court to ask whether the question, actually made by the father in his individual circumstances, is, by an objective standard, reasonable or unreasonable. This involves considering how a father in the circumstances of the actual father, but (hypothetically) endowed with a mind and temperament capable of making reasonable decisions, would approach a complex question involving a judgment as to the present and as to the future and the probable impact of these on the child.”

(17) More recent authorities namely Re C (a Minor) (Adoption: Parental Agreement: Contact) [1993] 2 FLR 260 and Re F (Adoption: Freeing Order) [2000] 2 FLR 505 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 appear sufficiently strong to justify overriding the views and interests of the objecting parent. I consider that the principles dealing with these applications are set out their component parts in Re W (supra) and helpfully adverted in Hershman and McFarlane Section H at paragraph 124. They are as follows:

1. The reasonableness of the parent's refusal to consent is to be judged at the time of the hearing and accordingly I do that now.
2. I take into account all the circumstances of the case which I have set out.
3. I recognise that whilst the welfare of the child must be taken into account it is not the sole or necessarily paramount criterion.
4. I have applied an objective test. There is of course a subjective element in that the personal circumstances of each parent must be taken into account and the test must then be expressed as to whether the reasonable parent with all the characteristics of the objecting parent would consent. I take into account the personal circumstances of this mother but I have come to the conclusion that no such reasonable parent with her characteristics could withhold consent in the circumstances of this case.
5. I must be wary not to substitute my own view for that of the reasonable parent.
6. I recognise there is a band of reasonable decisions each of which may be reasonable in any given case. However, given the circumstances of this case, I do not consider that any reasonable decision could justify the withholding of consent.

(17) I am satisfied that the children are in the care of the adoption agency given the Care Orders that I have made and that each of these children is likely to be placed for adoption.

(18) I am also satisfied that under Article 17(5) of the 1987 Order, the relevant parents have been given the opportunity to make the usual statutory declaration.

(19) So far as the father of S is concerned, I am satisfied that he does not hold parental responsibility but that I am obliged to take his views into

account. I am satisfied that under Article 17(6) of the 1987 Order, he had no intention of applying for an order under Article 7(1) of the 1995 Order or a Residence Order under Article 10 of that Order or that if he did make such an application it would likely be refused.

(20) I have looked again at the European Convention on Human Rights and Fundamental Freedoms in the context of this application. I have taken into account the rights to family life under Article 8 of all the adult parties and weighed them carefully with the rights of these children to a family life. I have come to the conclusion that a Freeing Order, whilst constituting an interference with Article 8 rights of the adults, is a proportionate response to a legitimate aim namely the need to secure a permanent and harmonious home for each of these children. In doing so I recognise the draconian nature of the order which I am proposing to make and I have sought anxiously to discover if there is any alternative so that the presumption that wherever possible children should be rehabilitated with their natural parents should be met. However for the reasons I have outlined I consider that there is no alternative if I am to secure the well-being of these children now and in the future.

(21) I have looked at the question of contact. I recognise that I can make no final decision on the question of contact post adoption until these children have been adopted. However it may be appropriate to indicate that my views on contact remain precisely those which I have already outlined when making the Care Order. I consider that it is necessary in this case that the mother should have indirect contact with both children and that hopefully if circumstances improve the Trust may be in a position some time in the future to translate that into direct contact. However that must remain within the discretion of the Trust depending on how matters unfold. The father of S does not have parental responsibility, has never taken part in the proceedings before the court and does not appear to have had involvement in the child's life for some years. There should therefore be no contact with him. So far as C is concerned, her father does have parental responsibility and I believe that the issue of indirect contact with him should be kept open. However I stress that these matter cannot be finalised until the adoption hearing.

(22) Turning to the grandparents of S, I have no doubt that they should continue to have fortnightly direct contact with the child as this will be a very necessary link to the child's kinship aspects. I have no doubt that they have a very important role to play in the future life of this child and whilst they will clearly be disappointed with the decision I have come to, I hope that they will accommodate themselves to a worthwhile and invaluable contribution to this child's future as loving grandparents.

(23) Accordingly I order that these children both be freed for adoption.

(It is also important to appreciate that the views of the mother do have a role in this aspect. She is entitled to express views about the future placement of her child. More importantly I accept the evidence of Dr Robson that if she does give approval to the placement of this child, that in itself could be an important aspect for S herself. To know that her mother has approved of where she is could be an important factor in her future settlement. I do not believe this will happen if the child is with Mr and Mrs X. Moreover any possibility of future direct contact between mother and child will be immeasurably reduced if the child is to be with Mr and Mrs X given the level of evident conflict between the parties at this stage.)