

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF S (CARE ORDER: CARE PLAN: CONTACT)

GILLEN J

[1] I direct that there should be no identification of the name of the child in this case or the names of either of the parents or any other person or body that may lead to the identification of this family.

[2] In order to preserve the anonymity of the parties in this case, I shall identify the child who is the subject of these applications as S, the mother as Y and the father as X.

[3] The first application made before me by X was pursuant to Article 20 of the Adoption (NI) Order 1987 to revoke a freeing order granted on 9 June 2003 in respect of S. I acceded to this application. I have already given my reasons for this at the hearing and I do not propose to reiterate those in the course of this judgment as they are not relevant to the issues now before me. Following the revocation, a Trust which I do not propose to name ("the Trust") applies for a care order under Article 50 of the Children (Northern Ireland) Order 1995 (hereinafter "the 1995 Order") in respect of S. If successful, the Trust also seek an order pursuant to Article 53(4) of the 1995 Order to the effect that the court should make an order authorising the Trust to refuse to allow contact between the child and the mother.

[4] I should state at the outset of this case that the real issues before me were essentially twofold:

First, the measure of contact which should be afforded to X in the event of me making a care order. Y had not engaged in this process at all and had not appeared at this court despite being served with the papers. X recognised that he could not care for this child, had agreed the threshold criteria and

made no submissions with reference to the evidence grounding the care order proceedings other than on the matter of contact.

Background

[5] Given the nature of the issues in this case, and the confined nature of dispute between the parties, it is sufficient to give a brief outline of the background material and the facts which are relevant to the care order application. A full care order was granted in respect of the child on 27 June 2002 with the care plan of adoption via a freeing order. She was made the subject of a freeing order on 9 June 2003. Prospective adoptive carers had initially made an application to adopt S but had withdrawn that application in June 2004. Thereafter a further placement was not forthcoming and hence the revocation of the freeing order.

[6] This child is now seven years of age and has experienced considerable instability in terms of her care in her life to date. The essential problem surrounding her parents and their inability to provide consistent care for her arose as a result of alcohol abuse. She has to date experienced at least eight changes in care arrangement and much instability due to her parents abuse of alcohol and consequent chaotic lifestyle. She has been assessed as suffering from foetal alcohol syndrome and the consequences of this were outlined by Dr Stewart consultant in medical genetics as far back as September 1999. From January 2001 neighbours and the foster carer at that time had expressed concerns about her sexualised behaviour. Careful investigation of this aspect by Dr Alice Swan had concluded inter alia:

"There is no conclusive evidence that she was sexually abused within her own home or neighbourhood. However there is a concern that she was sexually abused within her home or neighbourhood. Some of her sexualised behaviour is typical of a child who is engaged in such behaviour as a comfort. Other aspects of her behaviour are typical of a child who has lived in an environment with poor boundaries."

Some of S's experience of the care system has served to compound the difficulties she experienced in respect of her emotional and social development.

[7] S's mother was an extremely volatile person and over recent months has been admitted to Hydebank prison on a number of occasions. She has exhibited limited involvement with the Trust in relation to S and does not attend any of the looked after children reviews. She has informed the Trust that she is not seeking any contact with S. She refused to meet the guardian ad litem.

[8] The father S over the past number of years has experienced significant health difficulties including diabetes, chronic pancreatitis and liver damage. He experiences considerable pain and receives an injection every two months to manage this pain. He acknowledges his difficulties with alcohol to the guardian ad litem although stating that he has maintained sobriety now for the past 2½ years and is closely involved with Alcoholic Anonymous. He told the guardian ad litem that he is no longer in a relationship with the mother although he maintains contact with her and offers support at times. He accepted that he was not in a position to care for S. He was keen however that he should be permitted to have contact with her.

[9] The history of contact has been a sad and disturbing one. S has had no contact with any member of her birth family since August 2003. The Trust had indicated that contact would be considered following S's placement with her prospective adoptive carers. However the prospective adopters at that stage were not in favour of S having contact with her birth parents and this did not proceed. Following the breakdown of this placement and the continued uncertainty regarding S's long term situation it was felt by the Trust that to reintroduce contact with her birth parents would now after this period of time be in her best interests. It was the Trust's view that dependent on S's response to life story work the issue of contact would gradually be approached with her with a view to possibly reintroducing her father via indirect and then direct contact. The Trust now accepts that the likelihood of identifying a suitable prospect placement for S in terms of adoption is now unlikely but it is hoped that her current carers will agree to a long term fostering arrangement with the child. These carers have recently expressed such an interest. They informed the guardian ad litem in the last two weeks that they have not yet come to a definite decision and wish to speak to their link social worker before finalising their conclusions. The guardian ad litem records that this is therefore a delicate time in terms of the long term plans for S. The guardian obviously harbours concerns over the implications of this couple deciding not to pursue long term fostering. This child has experienced a high level of disruption and instability in her young life and a further change now could have serious consequences.

[10] I pause to observe at this stage that I was extremely concerned with the fact that this father has not now had contact for in or about three years. It seemed to me that the Trust had allowed a momentum of procrastination to be generated in this case. It had now somewhat belatedly come to the conclusion that contact with the birth father should be provided but the timescale should be further postponed until there was certainty as to the child's placement so as to avoid the child having to confront the reintroduction to her father at a time when her placement was still insecure.

[11] The making of a care order involves a two stage process. First, the court must consider whether or not the criteria for making a care order (generally referred to as “threshold criteria”) have been satisfied. In this case the father had agreed with the Trust certain threshold criteria which I found also to be proved against the mother. The threshold criteria established were as follows:

- “(i) Both parents have displayed a lifestyle characterised by instability and alcohol addiction.
- (ii) The mother’s current situation as characterised by alcohol abuse and criminal behaviour.
- (iii) The mother has expressed a wish not to be involved in the child’s life either by caring for her or by having contact with her.
- (iv) The father has consistently stated that he is unable to provide a home for the child.”

[12] Thereafter, once the threshold criteria have been satisfied, the court must then consider whether a care order should be made in light of the care plan, the welfare checklist in Article 3(3) of the Order, the no-order principle enshrined in Article 3(5) of the 1995 Order, together with consideration of the range of possible orders including any order under Article 8 (residence, contact and other orders with respect to children). It is also particularly relevant in this case to record that Article 53(11) states as follows:

- “(11) Before making a care order with respect to any child the court shall -
 - (a) consider the arrangement which the authority has made, or proposes to make, for affording any person contact with a child to whom this Article applies; and
 - (b) invite the parties to the proceedings to comment on those arrangements.”

This highlights the importance of the consideration of contact by the court before any care order is made.

The care plan

[13] The care plan in the context of planning for contact was a crucial element in this case. It is therefore necessary for me to outline extracts from the care plan as presented before me. In the trial bundle the care plan was set out in a number of disparate areas. The relevant extracts, suitably anonymised were as follows:

“Care Plan

Re S

... arrangements for contact

... in relation to the issue of contact between S and her birth parents it has been noted in previous reports that Professor Tresiliotis had previously suggested that contact take place three times per year. However since the Freeing Order was granted in June 2003, S has had no contact with her parents. Contact was not achieved as the prospective adopters had some reservations about direct contact due to their own insecurities and a feeling of competition plus they were also very concerned about S's birth parents' failure to protect her in the past. At that time (the Trust) believed that achieving a permanent placement in respect of S was of greater importance than face to face contact. When it was explained that direct contact would not be pursued, S's birth parents are accepting of this at the time. However the birth parents have continued to have indirect contact through the form of verbal updates from S's social worker and they have also received updated photographs. Both of S's birth parents were grateful to receive information re S.

Whilst X has reported that he wishes to resume contact with S he also states that he wants what is best for her. X is also keen that the indirect contact continues in the form of regular updates from social services.

...

Following Professor Tresiliotis's report (06.01.06) the Trust will give full consideration to the issue of contact and are committed to trying to move on this issue in respect of X."

[14] If this had been the extent of the care plan, I would have considered that it was inappropriately inchoate. However further indications of the care plan were found elsewhere relevant to this issue.

[15] In a document headed "Addendum Court Reports in Respect of S" prepared for today's hearing there was a further heading "Trust's Plans in Relation to Life Story Work and Contact." The following relevant suitably anonymised extract appeared:

"With regards to the issue of contact CO, Social Worker, LMcC, Senior Social Worker and JS, Social Worker, met with Oonagh Nugent on 25 January 2006 in order to discuss a way forward in relation to this issue. At this meeting one of the decisions made was that the foster carer should begin to keep a diary of S's behaviours and moods so that when one to one work begins with her a log can be kept of how she presents prior to, during and after the sessions as this will enable social services to assess S's ability to cope with the concept of future contact with her father.

CO, Social Worker and JS, Social Worker, plan to further consult with Oonagh Nugent in relation to how contact between S and her father can be progressed and what preparatory work needs completed with S prior to re-establishing contact. The outlined plan below will be discussed further during this meeting.

The Trust plan to look at the issue of contact in stages, with each stage being renewed prior to moving on to the next.

During the first stage the Life Story Book will be used to assess her level of understanding and knowledge in relation to her birth family, in particular to X. Discussion will take place with S about her birth father in order to ascertain her wishes and feelings in relation to the issue of contact. What forms the next stage takes will be

dependent on the outcome of this piece of work and wishes and feelings if identified of S. For example during the next stage X may be asked to write a letter to S (as recommended by Professor Tresiliotis). X will be guided and supported by social work staff in relation to the content of the letter. This letter can be shared with S. Following this letter contact and/or telephone contact may be set up between S and X before direct face to face contact is established. Also a video of X may be shown to S prior to direct contact. Whether direct contact is progressed will depend on S's reaction to this and her wishes at this point. If it is not possible to progress to direct contact then a meeting will be convened with all relevant parties to discuss the reasons for this and a way forward."

[16] A further document again headed "Addendum Court Report in respect of S" for the present hearing recorded as follows (suitably anonymised):

"Timescales in relation to the issue of contact

As recommended by Professor Tresiliotis X will be asked to write a letter to S. X will be guided and supported by social work staff in relation to the content of this letter. This letter can then be shared with S. Following a further conversation with Oonagh Nugent on 27 February 2006, JS, Social Worker, plans to meet with X within the next four weeks to complete this letter. As outlined in my previous reports dated 6 February 2006 and 16 February 2006, JS, Social Worker, permanency team, is currently working towards completing a life story book in respect of S. It is anticipated that this piece of work will be completed by 14 April 2006. On completion the life story book will be used with S to assess her level of understanding and knowledge in relation to her birth family, in particular to X. Discussion will take place with S about her birth father in order to ascertain her wishes and feelings in relation to the issue of contact. This work would be undertaken by CO, Social Worker, in liaison with JS, Social Worker and Oonagh Nugent, Clinical Psychologist. It is hoped that this one to one work will be completed with S by the end of June 2006."

[17] Ms McC, the Senior Social Worker for the adoption and permanency services team gave evidence before me. Her evidence on contact was largely along the lines of the care plan save that it emerged during the course of her evidence that it was not intended that the letter/video would be introduced to S until the placement with the present carers had been finalised and this was not anticipated to take place before June after they had been suitably assessed. It was her view that direct contact, whilst clearly appropriate, must be at a time when it was appropriate and safe for the child. She felt that S needed to get the message where she was going to be permanently staying and develop appropriate attachments with her permanent carers before she could face the added complication of meeting her birth father after such a long time. While she accepted that some energy could be introduced into the process with the letter and video and life story work being completed fairly quickly, nonetheless it did emerge that she did not feel that they should be presented to S until the steps I have already set out had occurred. In essence until S was firmly established in her permanent home that step should not be taken in her view.

[18] Professor Tresiliotis gave evidence before me and he took entirely the contrary view. He felt that prolongation of the process postponing contact between father and daughter was simply not justified. He drew a clear distinction between the purpose of life story work (which he felt should have been completed a long time ago) and contact. He felt what is necessary now is that the child should be immediately introduced to the recollection of her father irrespective of the development of the life story work. The child should be reassured that the father is now recovered from his alcoholism, that he always loved her, that he had always wanted contact with her and that perhaps she might consider seeing him now. He emphasised that this was not the introduction of a stranger because the child should remember having seen him, albeit three years ago, on a regular basis. Once the subject of the introduction of the father had been made by the social worker of the father, then there should be a letter introduced leading towards contact. He felt that contact should be orchestrated by a neutral person since in his opinion the Trust seem to have exhibited a problem accepting the concept of inclusiveness in their childcare work to date in the context of contact. Professor Tresiliotis felt that the therapist might be a good start. He emphasised that far from undermining the placement, this father could be used to help stabilise the placement. If he was to lend approval to the placement then the child would have further reassurance. He recognised that this child does suffer developmental delay. However, the witness drew attention to a recent survey by a British and American team which emphasised that notwithstanding bad experiences of children in the past, after the age of 3 or 4 years of age they move into new experiences and new issues. Whilst the previous trauma with the parents was significant and S was, in his description, "a very mixed up child", nonetheless he felt that

contact with the father should not become a casualty of the past. In his opinion there was no evidence whatsoever that introducing children to their parents would ever harm the child in the absence of the father or mother deliberately attempting to undermine or destabilise the placement. He found it incredible that the life story work had not yet been completed after all this time. He emphasised the importance of contact with the birth father since the child will grow up to know that she has not been rejected, that her parents loved her and that the present placement has his approval. If the child senses that social worker or foster carers are refusing to talk about her parents, then the child can grow to distrust those social workers or foster carers in this context.

[19] The guardian ad litem also gave evidence in this case. In her view there was essentially a via media between the two previous witnesses. She considered that there was no reason why the child cannot be introduced by conversations with her social worker or therapist to a gentle exploration of contact with her father. She felt this preliminary exploration should be engaged fairly soon to see how that progresses. On the other hand she was very conscious that there was a danger that this child might not react well. She instanced a previous occasion when the child had been undergoing therapy and had reacted extremely badly to it. Accordingly she urged caution. It was her view that the care plan was insufficiently cogent to justify a care order at this stage and that the matter should be adjourned under the aegis of an interim care order to allow the Trust to develop the care plan somewhat more with a phased introduction of the concept of contact and thereafter, if the reaction was good the introduction of a letter/video leading on hopefully to direct contact. However she also felt that it was crucial that this be processed at the child's speed and that the optimum situation would be that it would happen eventually in the context where the child already had a secure home. Consequently she felt that some time should be allowed for the current carers to form a clear determination as to whether they were going to keep this child on a long term fostering basis. She indicated that the doubts surfacing with the current carers arose because of their concerns that they might not be able to handle this child when she grew a little older and was perhaps subject to predatory males or even ordinary boy/girl relationships. It was the guardian's view that this couple should be reassured about this matter and introduced to the possibility of counselling on the issue. This in itself could take some time and it was important that this couple be not rushed into the decision which would of course have dramatic consequences for S. It was her concern that S might react badly to the father's introduction at a time when this uncertainty was occurring although a progressive parallel approach could allow the court to view the matter incrementally and ensure that appropriate steps were being taken.

The law in relation to care plans

[20] This court has greatly been assisted by the fact that the House of Lords has comparatively recently authoritatively visited the question of care plans in the context of a care order and the degree to which such plans must be appropriately choate and certain before the court is entitled to make such an order or alternatively to embrace an interim care order until certainty is achieved. In S (Minors) (Care Order: Implementation of Care Plan), Re W (Minors) (Care Order: Adequacy of Care Plan) [2002] UKHL 10 [2002] 1 FLR 815 (“Re S and W”), the House of Lords made clear that interim care orders were not intended to be used as a means by which the court might continue to exercise a supervisory role over the local authority in cases in which it was in the best interests of a child that a care order should be made. Lord Nicholls said at para. 28:

“The Children Act 1989, embodying what I have described as a cardinal principle, represents the assessment made by Parliament of the division of responsibility which would best promote the interest of children within the overall care system. The court operates as the gateway into care and makes the necessary care order when the threshold conditions are satisfied and the court considers a care order would be in the best interest of the child. This is the responsibility of the court. Thereafter the court has no continuing role in relation to the care order. Then it is the responsibility of the local authority to decide how the child should be cared for.”

At p. 92 his Lordship continued:

“When the local authority formulates a care plan in connection with an application for the care order, there are bound to be uncertainties. Even the basic shape of the future life of the child may be far from clear. Over the last ten years problems have arisen about how far courts should go in attempting to resolve these uncertainties before making a care order and passing responsibility to the local authority. Once a final care order is made, the resolution of the uncertainties will be a matter for the authority, not the court.

(93) In terms of legal principle one type of uncertainty is straightforward. This is the case where the uncertainty needs to be resolved before the court can decide whether it is in the best interests of the child to make a care order at all. ...

(94) More difficult, as a matter of legal principle, are cases where it is obvious that the care order is in the best interests of the child but the immediate way ahead is unsatisfactorily obscure. These cases exemplify a problem or a tension inherent in the scheme of the Children Act 1989. What should the judge do when a care order is clearly in the best interests of the child but the judge does not approve of the care plan? ...

(95) In this context there are sometimes uncertainties whose nature is such that they are unsuitable for immediate resolution in whole or in part, by the court in the course of disposing of the care order application. The uncertainty may be of such a character that it can, and should, be resolved so far as possible before the court proceeds to make the care order. Then a limited period of "planned and purposeful" delay can readily be justified as the sensible and practicable way to deal with an existing problem ...

...

(97) Frequently the case is on the other side of this somewhat imprecise line. Frequently the uncertainties involved in a care plan will have to be worked out after a care order has been made and while the plan is being implemented. This was so in the case which is the locus classicus on this subject: Re J (Minors) (Care: Care Plan) [1994] 1 FLR 253. There the care plan envisaged placing the children in short term foster placements for up to a year. Then a final decision would be made on whether to place the children permanently away from the mother. Rehabilitation was not ruled out if the mother showed herself amenable to treatment. Wall J said, at 265a:

'.. there are cases (of which this is one) in which the action which requires to be taken in the interests of children necessarily involves steps into the unknown .. provided the court is satisfied that the local authority is alert to the difficulties which may arise in the

execution of the care plan, the function of the court is not to seek to oversee the plan but to entrust its execution to the local authority.'

In that case the uncertain outcome of the treatment was a matter to be worked out after a care order was made, not before. ...

(98) These are all instances of cases where important issues of uncertainty were known to exist before a care order was made. Quite apart from known uncertainties, an element of future uncertainty is necessarily inherent in the very nature of a care plan. .. these are matters for decision by the local authority, if and when they arise. A local authority must always respond appropriately to changes, of varying degrees of predictability, which from time to time are bound to occur after a care order has been made and while the care plan is being implemented. No care plan can ever be regarded as set in stone.

(99) Despite all the inevitable uncertainties, when deciding whether to make a care order the court should necessarily have before it a care plan which is sufficiently firm and particularised for all concerned to have a reasonably clear picture of the likely way ahead for the child for the foreseeable future. The degree of firmness to be expected, as well as the amount of detail in the plan, will vary from case to case depending on how the local authority can foresee what would be best for the child at that time. This is necessarily so. But making a care order is always a serious interference in the lives of the child and his parents."

[21] I make no apologies for quoting in extenso from this important authority. It has guided my approach to this case.

[22] Mr Long QC, who appeared on behalf of the guardian ad litem, also helpfully drew my attention to a decision of Wall J (as he then was) in Re J (Minors: Care: Care Plan) [1994] 1 FLR 253 and 259 where the court discussed a list of factors that should apply in a care plan. In that case, the court dealt in some detail with the concept of a care plan indicating that in England and Wales it should accord, so far as is reasonably possible with "the Children Act 1989 Guidance and Regulations Volume 3." In Northern Ireland the 1995

Order also has guidance attached to it and therefore I do not set out the matters listed in para. 262 of the English guidance and regulations as a prescriptive guide to care plans in Northern Ireland but nonetheless it is useful to record what might be regarded as a useful guide for care plans drawn up by authorities within the jurisdiction. Wall J said at p. 256 et seq as follows:

“The report of Manchester City Council v F, note does not reproduce para. 2.62 of Vol. 3 of the Guidance and Regulations. In the hope, therefore, that the criteria therein will become better known in the profession, I propose to read the matters listed in para. 2.62 in their entirety into this judgment. Whilst it is recognised in that paragraph that there is no prescribed format for the childcare plan, the plan should be recorded in writing and contain the child’s and his family’s social history and the following key elements – and they are then listed:

‘The child’s identified needs (including needs arising from race, cultural, religion or language, special education or health needs).’

Next:

‘How these needs might be met;
Aim of plan and timescale;
The proposed placement (type and details);
Other services to be provided to child and/or family either by the local authority or other agencies;
Arrangements for contact and reunification;
[my italics]
Support in placement;
Likely duration of placement in the accommodation;
Contingency plan, if placement breaks down;
Arrangements for ending the placement (if made under voluntary arrangements);
Who is to be responsible for implementing the plan (specific tasks of overall planning);

Specific detail of the parents' role in day to day arrangements;
The extent to which the wishes and views of the child, his parents and anyone with sufficient interest in the child (including representatives of other agencies) have been obtained and acted upon and the reason supporting this or explanations of why wishes/views have not been discounted;
Arrangements for input by parents, the child and others into the ongoing decision-making process;
Arrangements for notifying the responsible authority of disagreements or making representations;
Arrangements for health care (including consent to examination and treatment);
Arrangements for education; and
Dates of reviews'."

[23] I encourage this and other Trusts to consider this as useful background in the preparation of care plans in the future.

[24] I must bear in mind that whilst the paramount interest of the child in this case must be to the forefront of the court's mind, the court must also bear in mind in relation to the natural father's views, his right to respect for family life under Art. 8 of the European Convention on Human Rights and Fundamental Freedoms ("the Convention"), the relevant part of which provides:

"(1) Everyone has the right to respect for his family life ...

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health or morals or for the protection of the rights and freedoms of others."

Conclusions

(25) During the course of this hearing, I voiced my concerns that this Trust had delayed far too long in effecting an appropriate strategy whereby direct contact between birth father and child could be

reintroduced. I share entirely the views of Professor Tresiliotis that the delay in drawing up the necessary life story work to enable the child to remain familiar with her family origins has been inexplicably postponed in terms of completion. He emphasised the imperative of children knowing about their birth family and the necessity of engendering an atmosphere where children could freely and openly talk about their birth parents. Hopefully through this avenue they can be assured that they were loved and not rejected by those parents. Professor Tresiliotis emphasised that if the child senses that the social worker or foster carer does not wish to talk about her birth parents, then that child will lose an element of trust in both. It is absolutely crucial that this life story work is completed as soon as possible with this child. This reluctance to complete this work echoes the general failure to date to evolve a definite plan for contact. I sympathise with Mr Ferris QC, who appeared on behalf of the father in this case, when he protested that it was only during cross-examination that it emerged that the Trust did not intend re-introducing this child to the concept of direct contact with her father until the question of her long term foster parents had been finally resolved after the appropriate couple had been assessed. In terms of the process, contact would be indefinitely delayed given that there was still a measure of uncertainty as to whether the present carers would become the child's long term foster carers. I am satisfied that the momentum of procrastination in this case must be halted. Ms Keegan, who appeared on behalf of the Trust, urged on me that this was a case where the uncertainty of the contact detail was a matter to be worked out after the care order was made and, given the commitment of the Trust to reintroduce direct contact between father and daughter in the context of a certain plan for long term foster care, the overall care plan was sufficiently coherent to justify a care order being made. I remain unpersuaded that that is the situation.

- (26) On the contrary, I accept the argument deployed by Mr Long to the effect that this care plan in terms of contact is too opaque. I do not approve a care plan which is predicated on the notion that contact in terms of letters or videos from the father cannot be initiated with the child until long term foster carers have been ascertained.
- (27) I am more impressed by the suggestion of the guardian ad litem that this process can be initiated at a much earlier stage by introducing the topic in conversations with the child, assessing a reaction and thereafter making incremental advances in terms of contact through letter and video concurrent with an assessment of the reaction of the child. This process should be concurrent with the assessment of the long term foster carers. Obviously if the child

reacts badly to this incremental approach, then the process can be stopped. It may well be that the Trust fears that this is all too much for a child to take on board until the child's final care arrangements have been settled but that is not necessarily the case. Everything will depend on how the child reacts to this incremental approach.

- (28) I am not satisfied that this plan has been sufficiently thought out or is sufficiently certain to justify my approving of the care plan at this stage. I believe that this uncertainty about contact is of such a character and is of such significance that it can, and should, be resolved so far as possible before the court proceeds to make the care order. Moreover whilst the interests of the child are paramount in this case, I must take into account the Article 8 rights of this father under the Convention to respect for his family life. To justify further postponement of the implementation of those rights, the court has to consider whether in the light of the case as a whole the reasons adduced to justify this measure were relevant and sufficient for the purposes of para. 2 of Article 8. In Hasse v Germany [2005] 3 FCR 666 the European Court of Human Rights said at para. 86:

“In determining whether the suspension of access was ‘necessary in a democratic society’, the court has to consider whether in the light of the case as a whole, the reason adduced to justify this measure were relevant and sufficient for the purposes of para. 2 of Article 8. Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind ...

(88) Article 8 requires that a fair balance must be struck between the interests of the child and those of the parent and, in striking such a balance, particular importance must be attached in the best interests of the child which, depending on their nature and seriousness, may override those of the parents. In particular the parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development.”

I am not satisfied that the reasons adduced in this case for further postponing the commencement of the contact process are justified.

- (29) For the removal of doubt, I should indicate that when I considered the welfare checklist in Article 3(3) of the 1995 Order, and having applied each of the sub-articles to his case, (in particular the lack of capability of meeting the needs of this child of each of her parents), I am satisfied that such a

consideration favoured the making of a care order. I am also satisfied that had the care plan been more coherent, the range of powers available to this court to ensure the care of this child would have been inadequate to ensure her interests were appropriately looked after other than by a care order. But whilst it is obvious to me that a care order is in the best interests of the child the immediate way ahead is unsatisfactorily obscure given the problem about contact.

(30) I have come to the conclusion therefore that this matter should be adjourned to enable the Trust to reconsider the care plan in light of the comments made by the guardian ad litem and in those circumstances it is within my powers to make an interim care order given the circumstances which I have outlined. The purpose of an interim care order is to enable the court to safeguard the welfare of the child until such time as a court is in a position to decide whether or not it is in the best interests of the child to make a care order with an acceptable care plan. When that time arrives it depends on the circumstances of the case and is a matter for my judgment. I wish to make it absolutely clear it is not my intention to use an interim care order as a means by which the court may continue to exercise a supervisory role over this Trust but simply to enable a more coherent and acceptable care plan to be drawn up in the context of contact. I shall make the interim care order for four weeks from today and I shall review the matter on that date. I trust that by that time the approach suggested by the guardian ad litem will have been adopted by this Trust and that one week before the hearing, a further report will have been filed by this Trust addressing the issue that have concerned me.

(31) Article 53(4) of the 1995 Order

The Trust made a further application in this case pursuant to Article 53(4) of the 1995 Order to the effect that the court should make an order authorising the authority to refuse to allow contact between the child and the child's mother. The relevant evidence in this regard was given by Ms SO, a Social Worker assigned to the care of this child. She described three meetings with the mother in October and November 2005, the middle meeting of 27 October having occurred in a prison in Northern Ireland. The mother indicated that she did not wish to have any input or contact with the child in the future. Her last contact had been June 2003. The social worker had found the mother difficult to engage. She has been given updates on the child but made it clear that she did not wish to have any contact in the future. The Trust believe that she has ongoing problems with alcohol but refuses to engage with the Trust and in essence wishes to have no further part to play with this child.

(32) Ms Keegan argued that under Article 53(1) of the 1995 Order "the Trust shall (subject to the provision of this Article) allow the child reasonable

contact with his parents". Accordingly in the absence of an order of the nature which is now sought the Trust would be under a mandatory obligation to allow reasonable contact in circumstances where the mother simply did not want it and where in any event due to her chaotic lifestyle and alcohol abuse, contact would not be in the interest of the child.

(33) Mr Long argued that this order was unnecessary in circumstances where this mother was not seeking contact and that such an order, amounting as it does to a serious interference with Article 8 rights to a family life, should not be embarked upon unless there is a live issue.

(34) The authorities on this matter make it clear that such an order should only be made where matters are so exceptional and the risks so severe that contact must be stopped. (See A v M and Walsall Metropolitan Borough Council [1993] 2 FLR 244.) In the context of Article 8 of the Convention, severing ties between a child and parent could only be justified in very exceptional circumstances. The grave and exceptional nature of such an order is such that no party other than the local authority or child may apply to the court for an order refusing contact between the child and another person. Where it is necessary to safeguard or promote a child's welfare, such orders need to be made to allow the Trust to refuse contact that would otherwise be required by the basis of the "reasonable contact" duty under Art 53(1). I believe that these orders should not be made lightly and that the gravity of their nature is such that they should only be made in circumstances which are exceptional by virtue of the fact that the risk to the child is so severe that contact must be stopped. In Re S (care: parental contact) 2005 1 FLR 469, Thorpe LJ cited with approval the words of Simon Brown LJ in Re T and Anor (minors) (termination of contact: discharge of order) (1997) 1 WLR 393 where he said:

"With the aid of that passage one reaches this position: a S34(4) order (*the comparable order under the 1989 Children Act*) should not be made merely against the possibility that circumstances may change in such a way as to make termination of contact desirable."

(35) In the circumstances where this mother is not seeking contact, and when contact has not been availed of for such a long time, I do not believe that the risk to the child is sufficiently severe to merit such an order being made. In my view to make an order in this case would create an unwelcome precedent and constitute too lax an approach to such a serious intrusion on Article 8 rights. I therefore refuse the application. The duty on the Trust under Article 53(1) is only such to require it to allow reasonable contact and if the mother refuses to consider that possibility then I am satisfied that the Trust will have fulfilled its duty. Needless to say if the mother should change her mind and

wish to avail of contact, then the Trust will need to reassess its position at that time and nothing that I have said in this judgment will in any way inhibit the Trust renewing this application in the light of the circumstances that then prevail.