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(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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IN THE MATTER OF W AND M (BREACH OF ARTICLE 8 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS: FREEING FOR ADOPTION ORDER)

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GILLEN J

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

[2] The applicant in this case is a community health and social services trust which I do not propose to identity ("the Trust"). The children who are the subject of the applications are W, aged 10, and M, aged 9. S is the mother of the children and J is the father. A fit person order under the provisions of the Children and Young Persons Act was made in respect of each child on 13 March 1996 and the children have resided in foster care since then, initially with Mr and Mrs MC and since Mr MC died, with Mrs MC alone.

[3] The Trust application is for an order pursuant to Article 18 of the 1987 Adoption (Northern Ireland) Order ("the 1987 Order") freeing W and M for adoption without parental consent. The parents, at the outset of this case, withdrew applications for contact with the children.

Background

[4] The background to this case is largely not in dispute. It was well set out in the report of LW social worker from the Trust in a report of 23 January 2004 and the salient background factors are as follows:

(i) J and S met in 1992. W was born in early 1994. On 7 October 1994 a caller at social services advised that the couple were drunk and that one of them had dropped W (then eight months old) resulting in an injury to his head. When located, both parents were significantly drunk and were very

abusive to the social worker and police who visited. They agreed to W being medically examined and subsequently admitted to care on a voluntary basis. W was then placed with his current foster carer and his name placed on the Child Protection Register.

(ii) There have been a number of attempts to reunify these children with their parents. In 1994 in an attempt to have W returned to their care, the couple agreed to attend the community addiction team and complete a comprehensive assessment. It became apparent quite quickly that both parents had difficulties with alcohol and were unable to manage their money or prioritise essentials. Concerns also centred on S's bonding with her baby and her ability to understand the needs of the child.

A referral was made to Brook Green Family Centre and work began in May 1995. Both parents attendance and motivation were high and following a LAC review on 28 June 1995 a decision was made to return W home.

On 6 July 1995 allegations surfaced against J of sexual abuse by him of a daughter of a previous partner. The child would have been seven years old at that stage. However he denied all these allegations and no prosecutions ensued.

Work at Brook Green Family Centre continued and began to focus on S's ability to be a protective parent.

(iii) M was born in October 1995 and following this there was a swift deterioration in the home circumstances. There were concerns about lack of hygiene, ongoing alcohol abuse and that the children were regularly being cared for by unsuitable carers. Concerns were also growing that S could not be seen as a protective parent as she could not put the children's needs and safety before J.

(iv) On 15 January 1996 S left the children in the care of a man who was drunk. The children were taken to a social services office and they were found to be cold, hungry and soaking with urine. J later arrived at the office, drunk. He damaged a staff car, assaulted a social worker and tried to push him downstairs.

(v) A place of safety order was sought. The children were placed in foster care with their current carers and fit person orders were granted on 15 March 1996.

(vi) J and S were keen to recommence work at the Family Centre and seek help for their alcohol misuse but these good intentions did not materialise into positive action.

(vii) Between April and September 1996, there were reports of both parents abusing alcohol. However, they continued to blame the social worker for their difficulties and accepted no responsibility for the events leading to the children's admission to care.

(viii) In January 1997 a decision was taken to consider re-assessment. With the introduction of a new social worker conflict with social services had lessened. J was admitted to Northlands and managed to refrain from alcohol for a number of months. Staff reported that although compliant J had had no insight into his alcohol abuse or any real conviction to change. Since 1997 J has had several admissions to the Ross Thompson Unit but on discharge has only been able to refrain from alcohol for a few weeks. In August 2003 he spent three weeks in Hollywell Hospital and requested counselling to help deal with his early life experiences. The Trust report of that date concludes:

> "While J's intention are good, these attempts to deal with his alcohol abuse have not brought about any sustained change. He continues to consume on an almost daily basis."

Trust plans for W and M

[5] The issue of adoption had been discussed as far back as 1997 by the Trust. At that stage LAC review minutes record that there were "too many positives in this case to pursue adoption". The social worker at the time felt that children's links with their family of origin were too great to consider adoption. However, by November 1998 there had been a further deterioration in the home situation and a decision was made to cease the re-assessment and that a return home was no longer feasible.

[6] Mrs MC stated a commitment to the placement but was pursuing permanence for two older foster children and wanted to deal with this first before legalising the situation with W and M. In October 2001 Mrs MC expressed a wish to pursue a residence order in respect of the children but with the parents consent. Despite a lot of work with the parents both are unwilling to consent. Mrs MC then lodged an application for a residence order and the first hearing took place 23 October 2002. At a LAC review on 28 November 2002, Mrs MC advised that she would prefer to pursue adoption. On 15 January 2003 the Trust made a decision to approach the Adoption Panel regarding this and the approval of Mrs MC as an adoptive carer. On 4 June 2003 the Adoption Panel recommended adoption as being in the best interests of the children. The Trust then proceeded to institute freeing order proceedings. The circumstances leading up to this are a matter of controversy in this case and I will return to it subsequently.

Contact

[7] Following the children's admission to care in January 1996, supervised contact took place for one hour per week at social services premises. On the whole according to social services, visits went well although on occasions J did not turn up due to alcohol abuse. In September 1996 contact was reduced to fortnightly, following the decision that the children would be remaining in long term care. Between January 1997 and November 1998 visits were increased again to weekly following an approved home situation and to facilitate re-assessment. At this stage extended family members became interested in contact and the main venue for contact became the parents home. In November 1998 re-assessment stopped and contact was once again reduced albeit with the parents reluctant agreement to fortnightly visits. For the next four years (until September 2002) visits occurred largely without incident. S was always well prepared for contact and J's level of alcohol abuse dictated his presence and his level of participation. The children had grown up with this regular arrangement and never really questioned it although social workers and family support workers who supervised visits often commented that despite the frequency of visits there was no evidence of the children's relationship with their parents deepening. At a number of LAC reviews the level of contact was discussed as being high in comparison to other children in the long term, but because of the parents refusal to consider a reduction and because neither of the children were complaining, the Trust continued to facilitate it. Mrs MC has also been supportive of contact and never sought to undermine it in any way. Since 2002, according to the Trust, the quality of contact has gradually deteriorated and there have been a number of incidents that have been of concern, particularly the increasing number of visits where J had been present with alcohol taken and behaved in an aggressive and inappropriate way. This led to the children reconsidering and questioning their participation in such regular visits.

[8] On 17 September 2002 J was not at home during the beginning stages of the visits. He arrived home unexpectedly visibly drunk, unkempt and shouting aggressively at the social worker. The children were distressed and tearful at his behaviour and the visit had to be cut short. W said he did not want to go back to the parents house and asked the social worker never to leave him there alone. Mrs MC reported that W had disturbed sleep for a number of nights following the incident. He did not attend the next visit on 2 October 2002 but agreed to return on 16 October 2002 because his parents had promised him a birthday party for M. Following that incident the social worker met with J and M to agree rules and outline the Trust's expectations if visits were to continue at their home. Although there were a number of reports in the following months of couple drinking heavily, this did not impinge on contact arrangements. Nevertheless the children remained apprehensive about attending in case they would encounter any further aggressive outbursts from their father.

[9] On 11 March 2003 S rang the office advising that J had taken an overdose – she herself had been drinking. The next visit had to be postponed against the parents wishes. On 6 May 2003 J again threatened to overdose and, following a report from neighbours, the contact on 8 May 2003 was cancelled. Both parents were very angry at this decision and S contacted the social worker threatening to kill herself if she did not bring the children out that afternoon. Following all these occasions, the parents would ring to apologise for their behaviour and look to have contact reinstated.

[10] The situation settled again well during the summer and J spent three weeks in Hollywell Hospital for a further attempt to deal with his alcohol problems. By mid-October 2003 there was evidence of him misusing alcohol again.

[11] On 30 October 2003 both children refused to visit their parents. M claimed the visits were too frequent, too boring and admitted to being teased in school about his parents alcohol abuse. He also said he had sought advice from his older foster sister about her experiences of ending contact with her parents. Over the next few weeks a social worker met with the children on a number of occasions to elicit their views on contact. This was a difficult period for W in particular as he battled with a number of issues relating to his identity. He refused contact on a number of occasions and M then refused to attend without her brother.

[12] The social worker was aware at this stage that J and S had been drinking throughout December 2003 but both were looking forward to contact with the children before Christmas. Both children agreed to attend a visit on 18 December 2003 but a few hours before the visit, S contacted the social worker asking her not to bring the children to the house because J was drunk and requested that the social worker collect her at the end of the road. The children were disappointed not to get their usual Christmas visit or receive any presents. Before returning home the children asked to visit their aunt who also lived in the area. During the visit, J arrived at the house drunk and aggressive attempting to speak with the children. Although the social workers and the children left promptly, W was upset and said he would not be going back to the parents home. No further visits have been arranged to date.

[13] The Trust decided to reduce contact because of the serious deterioration in the parents lifestyle over the previous 6 to 12 months, in response to the children's wishes insofar as they were stating the contact levels were too high, and in line with their thinking about permanency for these children in the long term. Contact was thus reduced from fortnightly to one visit approximately every two months. After December 2003 contact was proposed for February 2004, April 2004 and June 2004. On 7 February 2004

contact did take place and in line with the children's wishes and what the Trust considered safest it took place at a Pizza Hut in the local town to celebrate the birthdays of W and J. Although the visit did go well prior to the visit commencing both children were anxious. A further visit took place on 6 April 2004 when the children were on their Easter break from school. Although J did not present as drunk on this occasion, his behaviour was loud and animated. Both children commented on this and said that he "smelt of beer". He was warned about his use of bad language on a number of occasions. It was becoming more noticeable that the children did not like to be left even for a few minutes with either parent and sought the reassurance of the social worker presence. A final visit took place on 10 June 2004 but thereafter the children declined to attend for contact in August 2004, October 2004 and December 2004. Signs of the children questioning contact had therefore surfaced after the particularly difficult and frightening visit for them in September 2002. The Trust evidence was that Mrs MC reported that between July 2004 and November 2004, when W had no direct contact with his parents, the child had experienced his most settled period for the last three years. It is the Trust's view that W's below average ability makes it more difficult for him to fully grasp the issues and verbalise his feelings in response to the situation. M had expressed the view that whilst she enjoyed the outing she had little desire to see her parents on a regular basis. She indicated her understanding of her parents wishes to see her and therefore she had conceded to send cards, letters and so on for their benefit.

[14] The Trust's case is that W and M have been looked after since January 1996 and adoption has been mentioned as far back as 1997. The Trust finally ruled out rehabilitation in November 1998 and long term fostering of W and M was secured with Mrs MC who had already been caring for them since their admission into care. In 1998 Mrs MC stated her commitment to the children but was not in a position to apply to adopt them because she was pursuing permanence for two older foster children and wanted to deal with them first. Due to many unforeseen circumstances it was not until October 2001 that these older children were settled and Mrs MC was in a position to give full consideration to the legal status of W and M. Initially she and her son decided to apply for a residence order. When the consent of S and J was not forthcoming the application was lodged in October 2002. By 28 November 2002 she indicated she wished to be considered as an adoptive carer for W and M.

The Adoption process

[15] What happened thereafter became a matter of crucial importance in this case. The salient developments were as follows:

(i) At a LAC review on 28 November 2002, Mrs MC had indicated she wished to be considered as an adoptive carer. That LAC was then adjourned

to allow the option to be explored more fully with the carer and for advice to be sought from Ms PC, the adoption development office for the Trust.

(ii) At a meeting on 10 December 2002, PC recommended that consideration should be given to adoption for W and M and this decision was confirmed at a reconvened LAC review on 15 January 2003. Sadly no further LAC review occurred until 19 November 2003 notwithstanding that such reviews are to occur every six months. At that meeting, it is recorded:

> "Mrs K (social worker) apologised to S for the delayed LAC review taking place today which originally had been scheduled to take place in April 2003."

In the meantime, the Trust made a proposal to the local Adoption Panel that the children should be adopted. That adoption panel met in June 2003 and recommended that adoption was in W and M's best interests and approved Mrs MC as an adoptive carer. As is the conventional approach the parents were not invited to the Adoption Panel and were not invited to make representations to it.

Thereafter a series of e-mails which were produced to me outlined the approach taken by the Trust upon receiving the recommendation from the Adoption Panel. An e-mail of 5 June 2003 from WP (Assistant Director of the Trust who had sat on the Adoption Panel) to JL , Director of the Trust read as follows:

> "At the panel on 4-6.03 the following recommendations were made re the children. Adoption was recommended as being in their interests. The recommended legal route is by freeing without consent. The children were recommended as being eligible for adoption allowances because this is a sibling placement and because of the length of time in the home as a foster placement. A financial assessment of Mrs MC was still needed. ….. Would you please confirm the Trust decision in this case to the above staff. Thanks. W."

An e-mail of 5 June 2003, again from WP, and timed 13.02 hours to JL recorded as follows:

> "On the 4/6/03 Mrs MC was approved as adoptive parent for W and M who have been fostered by her for 7+ years. As there was no blood pressure

> recorded on her medical report, Mrs K was requested to follow this up and advise the panel. Thanks. W.
>
> J, could you confirm approval to S so that she can formally write to the couple on the Trust's behalf. Thanks. W."

A replying e-mail from JL, to the social workers and copied to WP, and timed 13.05 hours read as follows:

> "Further to the Adoption Panel of 4/6/03, I am writing to confirm the Trust decision that adoption is in the best interests of the above children and that the recommended route is by freeing without consent. Please progress in this instance the Trust also agrees that adoption allowances may be payable – subject to a financial assessment. JL."

By e-mail dated 25 June 2003 from AG (social worker) to HK (social worker) the e-mail said:

> "H, …. You should have already received this from W. We don't have to hold a specific LAC. J can confirm the decision in letter form which W has asked him to do."

The first time any written indication was given to J and S that the decision had been taken to confirm the recommendation of the Adoption Panel, was by way of letter of 21 January 2004 ie. in excess of seven months from the date when the decision had been taken.

Regulatory and statutory framework

(1) The Review of Children's Regulations (Northern Ireland) 1996 , where relevant, provide as follows:-

> "….
>
> Review of Children's Cases
>
> (2) Each responsible authority shall review in accordance with these Regulations the case of each child while he is being looked after or provided with accommodation by it.
>
> Time when case is to be reviewed.

(3)(i) Each case is first to be reviewed within two weeks of the date upon which the child begins to be looked after or provided with accommodation by a responsible authority.

(2) The second review shall be carried out not more three months after the first and thereafter subsequent reviews shall be carried out at intervals of not more than six months after the date of the previous review. …..

Application of the Regulations to short periods.

(11)(ii) Regulation 3 shall not apply to a case to which this regulation applies, but instead –

(a) Each such case is first to reviewed within three months of the beginning of the first of the short periods;

(b) If the case continues, the second review shall be carried no more than six months after the first; and

(c) Thereafter, if the case continues, subsequent reviews shall be carried out not more than six months after the date of the previous review."

[16] It is quite clear in this case that insofar as there was no LAC review between January 2003 and 19 November 2003, there had been a breach of these Regulations.

(2) The Adoption Agency Regulations (Northern Ireland) 1989 (hereinafter called "The 1989 Regulations".

Where relevant the Regulations provide as follows:

"9-(1) Subject to paragraph (2), an adoption agency shall refer its proposal to place a particular child for adoption with a perspective adopter, which it considers may be appropriate, together with a written report containing its observations on the proposal and any information relevant to the proposed placement, to its Adoption Panel.

….

Adoption Panel Functions

10-(1) Subject to paragraphs (2) and (3), an Adoption Panel shall consider the case of every child, prospective adopter and proposed placement referred to by an adoption agency and shall make one or more of the recommendations to the agency, as the case may be, as to –

(a) whether adoption is in the best interests of a child and, if the panel recommends that it is, whether an application under Article 17 or 18 (freeing child for adoption with or without parental agreement) should be made to free the child for adoption …

…

Adoption agency decisions and notifications

11-(1) An adoption agency shall make a decision on a matter referred to in Regulation 10(1)(a) … only after taking into account the recommendation of the Adoption Panel made by virtue of that Regulation on such matters.

(2) As soon as possible after making such a decision the adoption agency shall, as the case may be, notify in writing –

(a) the parents of the child, including the father of a illegitimate child where the agency considers this to be in the child's interests, or the guardian of the child, if their whereabouts are known to the agency, of its decision as to whether it considers adoption to be in the best interests of the child;

(b) the persons to be notified under subparagraph (a), if it considers adoption to be in the best interests of the child, of its decision as to whether an application under Article 17 or 18 (freeing child for adoption with or without

parental agreement, should be made to free the child for adoption);

(c) the prospective adopter of its decision as to whether it considers him to be suitable to be an adoptive parent; and

(d) the prospective adopter of his decision that he would be suitable as such for a particular child."

[17] The importance of compliance with these Regulations was dealt with by me in a case of Re J (care order: adoption agencies: adjournment: Adoption Agencies Regulations) (Northern Ireland) 1989 2002 NI Fam 26, a judgment which was handed down on 14 October 2002. In the course of that judgment, which had dealt with a breach of these Regulations, I said at page 17:

> "I have no doubt that it is imperative that this Trust review its procedures in this area so as to ensure that not only are only the regulatory steps observed but that a proper decision-making forum is set up for a decision under Regulation 11 with appropriate records and memoranda together with appropriate involvement of the parents in the process. Indeed, whilst it was not argued before me, I pause to observe that Trusts should review all areas of decision-making within child care procedures and proceedings in light of Article 8 of the ECHR … including decisions about initiating care, adoption, freeing procedures and perhaps even recommendations by adoption panels which are made without parental involvement notwithstanding those recommendations steer the Trust's decision-making on those issues. Any such area which effectively excludes parents from effective or any participation deserves scrutiny."

It was recognised by Mr Toner QC, acting on behalf of the Trust accepted that in this instance the Trust as a decision-maker did not consult with her or involve the first or second respondent prior to making a decision following on from the Adoption Panel. It is also accepted that the appropriate correspondence with the respondents was not initiated as soon as possible in compliance with Regulation 11.

(3) Article 8 of the European Convention on Human Rights and Fundamental Freedoms

[18] Article 8 provides:

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority when the exercise of this right except as is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of crime and disorder, for the protection of health or morals or for the protection of the rights and freedoms of others."

[19] Both the Trust and the court are constituted public authorities for the purpose of this section.

[20] In AR and Homefirst Community Trust (2005) NICA 8 the Court of Appeal in Northern Ireland addressed the issue of Article 8 in the context of care order proceedings. At page 11 the court adopted the approach of the House of Lords in Re S (minors) (care order implementation of care plan): Re W (minors) (care order: adequacy of care plan) (2002) 1 FLR per Lord Nicholls at paragraph 99:

> "Although Article 8 contains no explicit procedural requirements, the decision-making process leading to a care order must be fair and such as to afford due respect to the interests safeguarded by Article 8."

I pause to observe that I consider this applies equally to an application under Article 18 of the Adoption Order (Northern Ireland) 1987 where a Trust seeks to free a child for adoption.

[21] At page 28 of AR and Homefirst Community Trust (supra) Kerr LCJ said at paragraph 90:

> "For the reasons that we have already given, we have concluded that the appellant's article 8 rights were infringed. The trust's procedures were therefore not efficacious to protect her convention rights. Quite apart from that consideration, however, we consider that it is a virtually impossible task to ensure

> protection of these rights without explicit recognition that these rights were engaged. Where a decision maker has failed to recognise that the convention rights of those affected by the decision taken are engaged, it will be difficult to establish that there has not been an infringement of those rights. As this court recently said in *Re Jennifer Connor's application* [2004] NICA 45, such cases will be confined to those where no outcome other than the course decided upon could be contemplated."

(4) The Adoption Order (NI) 1987

[22] Article 9 of this Order provides as follows where relevant:

> "In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall –
>
> (a) Have regard to all the circumstances, full consideration being given to –
>
> (i) The need to be satisfied that adoption, or adoption by a particular person or 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; …"

Application of the statutory framework and legal principles to the facts of this case

(1) I am satisfied that there has self-evidently been a breach of Article 11 by this Trust. The attention given by this Trust to the obligation under Regulation 11 of the Adoption Agency Regulations (NI) 1989 was perfunctory if not derisory. The swiftness with which JL, the Director of Social Services, as evidenced by the e-mails before me evinced a wholly unacceptable approach to the grave nature of these Regulations reflected an attitude of merely rubber stamping the Adoption Panel's recommendations without appropriate involvement of the parents in that decision-making process. This approach is all the more surprising in light of the fact that a few months

before this was done a decision from this court, namely Re J had criticised precisely this kind of approach amongst Trusts. Moreover the failure to recognise the importance of writing "as soon as possible" after making such a decision to the parents is again indicative of the all too casual approach adopted in this instance to compliance with the Regulations.

(2) I am satisfied that these breaches, set against the background where the parents had not been invited to a LAC within six months of the LAC of January 2003, constitute a clear infringement of the respondents' Article 8 rights. Not only was there an absence of any reference to their Article 8 rights, but there was a chilling absence of even lip service to such rights at a very senior level in this Trust. I am assured by Mr Toner QC that new procedures and practices have been adopted which will ensure in future that the decision-makers will invite parents to meet with them or to make written submission to them prior to the decision being made and that compliance with these Regulations will be more rigorously enforced. Whilst that is laudable, however late, it does nonetheless not avail the Trust in this instance.

(3) Mr Toner QC argued that notwithstanding the breach of these Regulations and any breach of Article 8 of the ECHR, this court should nonetheless refuse to afford these parents the remedy of dismissal of this application by the Trust. He argued that whatever other remedy may be open to these parents, I should not dismiss this application given the obligation on the court under Article 9 of the Adoption Order to regard the welfare of the children "as the most important consideration". He drew my attention to Yousef v The Netherlands (2003) 1 FLR 2010 at para. 73 where the court stated:

> "73. The court reiterates that in judicial decisions where the rights under Article 8 of the parents and those of the child are at stake, the child's rights must be the paramount consideration. If any balancing of interest is necessary, the interests of the child must prevail."

He argued that these parents have not acted responsibly in respect of their parental responsibilities or indeed in respect of contact over a number of years and they appear to have only a limited recognition of the effects that their actions have had on these children.

Counsel drew my attention to the report of Professor Treseliotis, a distinguished child and adolescent psychiatrist with a very impressive curriculum vitae. In his report of 2 January 2005 that expert had advised that the children should be freed for adoption stating at page 26 of his 46 page report:

> "I have no doubt that the proposed adoption would be in children's bests interests and more importantly the children want it. They know no other family and all their attachments are to their carer and her family."

At page 25 he commented on the quality of contact between the children and their birth parents as follows:

> "Contact on the whole used to go well, but was largely spoiled by the father's presentation of himself, which at times upset the children, far more W than M. As also said earlier W had a more ambivalent relationship with his father ….. as both wanting his father to be there but also being rather scared of him. What very likely tilted the balance towards refusal eventually to attend contact was the anxiety of being removed from their carer and returned to their parents, along with the poor image they formed over time mainly of their father. Added to this has been, in my view, the generated excitement and anxiety about the court proceedings and the expectation that 'adoption' would bring something new. As we found out from one of our studies a kind of build up takes place and for a time dominates the child's thinking. In the absence of underlying meaningful emotional links the children did not appear to feel that they had much to lose from not attending contact, except perhaps presents and sweets."

The Trust's evidence would have echoed the view of Professor Treseliotis. Mr Toner produced an unchallenged statement on behalf of the Trust to the effect that if I was to refuse this application to free these children for adoption, the children will be very disappointed. However, whilst it might occasion some upset beyond disappointment the Trust social workers felt that it could be managed with appropriate explanations and that no longer term damage would ensue. The guardian ad litem also shared the view of Professor Treseliotis and that of the Trust. Ms Jordan on behalf of the guardian argued that whilst there had been a breach of Article 8, the remedy of refusal of the application would be disproportionate to the nature of the breach in this instance. The court should concentrate on the rights of the children as well as the rights of the parents in looking at the issue of proportionality. Mr Toner in effect argued in addition that this was one of those rare instances where the court should consider that no outcome other than the course decided upon by the decision-maker in this case, namely to decide that an application for freeing for adoption should be instituted, could

be contemplated. In substance therefore there had been no material infringement of the Article 8 or, at worst, some remedy other than refusal of the Trust application should be considered.

[23] Whilst I have carefully considered the views of the Trust and of the guardian ad litem, I have come to the conclusion that I must reject them in this instance. I am satisfied that there has been a flagrant breach of the Regulations to which I have earlier adverted and a breach of the Article 8 rights of these parents. Freeing a child to be adopted is one of the most draconian remedies known to the law and must never be entertained lightly by any public authority or decision-making body. Whilst Article 8 contains no explicit procedural requirements, the decision-making process must be such as to ensure that the views and interests of parents are made known to and duly taken into account by a Trust and that they are able to exercise in due time any remedies available to them. Whilst it is necessary to look at the decision-making process as a whole, in my view in this instance the views of these parents were completely ignored at what was a crucial stage, namely the decision to implement the recommendation of the Adoption Panel. If, for example, the parents had argued that long term foster care was the preferred option as opposed to adoption then, notwithstanding the advices of Professor Treseliotis which were manifest several months later, I cannot rule out the effect that such an argument might have made on the decision-maker had the parents been afforded the opportunity to introduce such an argument. This has been the de facto position for several years before Mrs MC decided to explore the adoption avenue. I recognise that the Trust argument is that, on the facts presented by Mr Toner QC, it is inevitable that this course would be approved by the Trust. Accordingly once the recommendation from the Adoption Panel arrived JL recognised the inevitable and made the decision forthwith. Moreover counsel submits that the welfare of the children and their rights to family life must overarch the rights of these parents. I cannot accept this analysis where there has been no recognition, either express or implied, of the Convention rights of those affected by the decision particularly where the decision appears to have been taken within an extraordinarily short time of the Panel recommendation being received. On the face of it, I see no evidence that any plausible consideration was given to the possibility of counter arguments by the parents before the decision was taken. Trusts must recognise that even at the eleventh hour, both parents must be afforded the opportunity to rethink their approach and articulate their Article 8 rights perhaps in a manner that was not hitherto contemplated. I pause to observe that this is not the first time in recent months that I have encountered a rush to judgment on the part of public authorities once the Adoption Panel has made its recommendation and it is a practice that must be addressed as a matter of some urgency. I reiterate that I find the breach of the rights in this case to be flagrant and the courts must make clear that such breaches of Article 8 of the European Convention on Human Rights will not be tolerated. Although I am assured that steps have been taken now to

ensure that this Trust will afford compliance to Convention rights in the future, it is clear to me that employees at all levels in this Trust require training in the fundamental impact that the Convention has on the type of decision that was to be made in this instance. The public interest requires that all Trusts throughout Northern Ireland grasp this concept.

[24] Whilst I recognise the obligation on me to treat the welfare of these children as the most important consideration, nonetheless that is not the only factor to be taken into account and the Article 8 rights of these parents also have to be considered. I have therefore come to the conclusion in this case that in view of these infringements, I must refuse the Trust application. That of course does not prevent this Trust revisiting its decision-making process and mounting a further application if and when they have complied with their obligations under the European Convention on Human Rights and the Regulations governing such applications.

[25] I pause to deal briefly with two other matters that were raised before me but which are unnecessary to finally determine in order to arrive at a decision in this case. First, it was argued that before any final decision was taken in this case to implement the recommendation of the Adoption Panel, a LAC should have been held. I consider that a wide discretion is given to the Trust to take appropriate steps to involve parents in the decision-making process and that no artificial limits should be placed on a Trust in any individual case. Therefore in this instance a LAC prior to making the decision was not a prerequisite so long as some process was initiated to involve the parents therein.

[26] Secondly, Ms Walsh QC who appeared on behalf of the first named respondent with Ms Callaghan, argued that the absence of the right to make representations to the Adoption Panel prior to its recommendation under the Adoption Agency's Regulations constituted a breach of Convention rights under Article 6 and Article 8. Since this is a matter than may surface in the near future in similar cases I should perhaps outline my views on the issue albeit it is not necessary that I make a determination on this matter in order to arrive at a decision in this present case. In R v Wokingham District Council ex parte J (1999) 2 FLR 1136 where a similar application was made in England before the introduction of the Human Rights Act 1998, Collins J concluded that whilst it was desirable that an Adoption Panel should allow short written representations from parents, such an approach was not essential to the fairness of the entire adoption procedure. This was because the panel was not deciding final questions affecting the mother's rights. It was merely making a recommendation that the court be given the opportunity to decide such final questions. Where a decision was only one step in a sequence of measures which might, but would not necessarily, culminate in final decisions affecting the parties rights and duties there may be no obligation to hear representations. Fairness required that the mother had the opportunity

to present her case before a final decision was made, but that would happen in the course of the adoption proceedings. Notwithstanding the fact that this case was decided prior to the introduction of the Human Rights Act 1998, I believe the reasoning still holds good. There is clear authority for the proposition that the guarantees in Article 6(1) applied to the determination of civil rights and obligations if they are directly decisive of private law rights. Public law matters are not excluded from being "civil rights and obligations" if they are directly decisive of private law rights. I do not believe that the recommendations of an Adoption Panel are decisive, they being purely recommendations. I conclude therefore that whilst it may be desirable that an Adoption Panel should allow representations from parents in some form, that does not mean that there is a breach of the European Convention on Human Rights or a failure to measure up to the standards of fairness if it fails to do so. In this case I note that the Trust did produce the parents' views and wishes before the Adoption Panel and to that extent their representations were received in any event. Accordingly had I been obliged to decide the case on this basis, I would have rejected the submission of Ms Walsh QC in this regard.