

Ref: Master 42

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

Delivered: 14/12/06

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
FAMILY DIVISION  
OFFICE OF CARE AND PROTECTION

IN THE MATTER OF E AND M (ARTICLE 53(2) APPLICATION BY TRUST  
TO REDUCE CONTACT: CARE PLAN: LONG TERM FOSTER CARE)

Between

North & West Belfast Health & Social Services Trust

Applicant

And

I McA & MS

Respondents

E, a child

and

M, a child

Respondent Children

Master Wells

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

[2] This is an application brought by North and West Belfast H&SS Trust (hereinafter called 'the Trust') to vary contact pursuant to Article 53(2) of The

Children (NI) Order 1995 (hereinafter called 'the Order'). The C1 application was filed on 2 August 2005.

[3] E is aged 11 years 11 months and M is aged 10 years and 1 month. They were initially placed in care on 15 January 1998 and were both made the subject of full Care Orders before Belfast Family Proceedings Court on 2 March 1998. The Trust after assessment having decided against reunification to birth parents, made application on 25 January 1999 to seek orders to free the children for adoption. These applications were refused by Higgins J on 2 February 2001 - see judgment Ref: HIGF3274. At the conclusion of this hearing the Judge made a Contact Order (Article 53) allowing the parents to have contact with the children for a period of two hours once per week. Consideration was to be given to the introduction of unsupervised contact, particularly for the father (MS).

[4] The Trust subsequently made an application to vary the contact arrangements in respect of the father whilst he was in prison, and on 18 June 2001 Higgins J varied the Contact Order, ordering that direct contact between the children and their father be suspended whilst he was in prison and that he should have 'indirect telephone contact' only, once per week, each Friday between 2.30pm and 3.00pm.

[5] The children have experienced significant placement changes since they were initially placed in care - the Guardian ad litem's report states that E has experienced 8 foster placements along with a number of respite placements, and is presently in a Children's Home awaiting a specialist foster

placement. The Guardian further reports that M has experienced 8 foster placements and a number of respite placements. His current carers have been assessed as permanent long term foster carers and for him it is hoped that this placement shall sustain throughout his childhood.

E and M initially resided in the same foster placement but in 2002 the shared placement broke down and E was placed separately.

[6] Each child has been assessed as having special needs. E has been diagnosed as suffering from Attention Deficit Hyperactivity Disorder (ADHD); she also has a Severe Attachment Disorder. E is under the care of Dr Richard Wilson, Consultant Child and Adolescent Psychiatrist, and she is in receipt of medication for her medical condition.

M has been diagnosed as suffering from Aspergers Syndrome, but is not in receipt of medication. He attends mainstream primary school and is now in P5. He has been under the care of Dr Christine Lavery. MS is concerned that he has not received information from the Trust regarding M's condition and that the condition may have implications for contact. MS stated that he was only made aware that his son suffered from Aspergers Syndrome when Sally Wassell, expert witness, was observing contact on 13 July 2006, and she suggested to MS that he should not seek to hug or lift M to offer him comfort or affection. The Trust's C1 application filed on 2 August 2005 refers to each child's health.

When Mrs Lesley Anne Parks, Senior Practitioner gave her evidence she indicated that in early 2005 – after some lengthy assessments – M was first

diagnosed with Aspergers Syndrome, and that she had advised MS of this during a prison vision in February 2005.

[7] The Trust is seeking an order to vary the Contact Order made on 2 February 2001 to reduce the frequency of contact. The current duration of contact is 1hr 30 mins per week between the children and their parents together; E also has weekly phone contact with her father. The parents have been separated for some considerable time. The Trust proposes to allow each parent separate contact with the children due to hostilities which can arise between the estranged parents during contact sessions. The Trust further proposes to change the venue for contact, and to allow the contact to be activity based, albeit loosely supervised. The Trust's proposal for direct contact is on a 5 weekly cycle, as follows:

Week 1: M and E to have contact with their mother (I McA), activity based for two hours duration though this is flexible depending upon the activity. Contact will be supervised or supported by or on behalf of the Trust.  
No contact with MS;

Week 2: M and E to have contact with MS, activity based for two hours duration though this is flexible depending upon the activity. Contact will be supervised or supported by or on behalf of the Trust. No contact with I McA.

Week 3: E to have contact with I McA, activity based for two hours duration though this is flexible depending upon the activity. Contact will be supervised or supported by or on behalf of the Trust. No contact with MS;

Week 4: M to have contact with I McA, activity based for two hours duration though this is flexible depending upon the activity. Contact will be supervised or supported by or on behalf of the Trust. No contact with MS.

Week 5: E to have contact with MS, activity based for two hours duration though this is flexible depending upon the activity. Contact will be supervised or supported by or on behalf of the Trust. No contact with I McA.

[8] The Trust, in its Core issues, cited 5 reasons why contact should be reduced:

1. Contact has not been focused or child centred;
2. It is in the children's best interests to reduce contact to provide stability and security;
3. The children have made repeated complaints about contact, stating dissatisfaction about the quality of contact;
4. The quality of contact would be improved by the parents not attending contact together, given the particular difficulties in their relationship;
5. Contact is adversely affected by MS' occasional tempestuous relationship with the Trust.

[9] Further, the Trust reports indicate that contact has been affected by parental acrimony during contact and in front of the children. Also, MS has displayed non-engagement at contact - by arriving late; taking mobile phone calls during contact; not attending the shop with the children and their mother during contact, and so missing a large portion of contact time; concerns in respect of the father's chastisement of the children during contact;

the children's reaction to poor quality contact, and finally the need for reassurance from their carers.

[10] The mother ultimately consented to the Trust's proposal, which it is supported by the Guardian ad litem, and Ms Sally Wassell, expert witness. The father is consenting to contact taking place separately; however he is objecting to any reduction of frequency of contact and in fact he wishes to have contact frequency increased from one to two sessions per week lasting one and a half hours per sessions

[11] The Trust evidence in the case is contained within three reports prepared by Mrs Lesley-Ann Parks (nee Dunlop) - 12 August 2005; 2 September 2005 and 20 October 2006, together with a report prepared by Mrs Sandra Beetson, Contact Services Manager dated 2 September 2005.

The mother obtained a report from Sally Wassell, Consultant and Trainor in Child Care; the Trust asked this expert additional questions in respect of contact between the children and their father. This report is dated 15 September 2006. The mother filed an Affidavit sworn on 7 October 2005 and a Statement dated 6 October 2006; the father filed a Statement dated 30 October 2006. The Guardian ad litem filed a report dated 2 November 2006. I do not propose to reiterate the written evidence.

[12] The Care Plan for each child is permanency away from home via long term foster care. The last assessment of MS was 2002/03. The Trust has stated that contact needs to secure each child's care plan and placement, and that the parents should support the children in their respective placements.

It is hoped that E will be placed in a specialist foster placement in January 2007, following assessment of prospective specialist foster carers to meet E's needs. The Trust stressed the importance of E being afforded every support with transition to her new proposed long term placement so that she may have the best possible opportunity to settle and make secure attachments in the placement. Contact arrangements for E will have to be reviewed in light of this anticipated move.

[13] Ms Sally Wassell, expert witness, gave evidence via video link. She stated that she did not think increased contact would give a clear message to either child – for E at this time of anticipated change, and for MS, who needs clarity and consistency in his placement.

Sally Wassell was asked about her interview with E, who initially indicated to the Trust that she wished for the current contact arrangements to remain unchanged. Subsequently E expressed a different view, by indicating acceptance to the Trust's proposed reduction and change of arrangements. Sally Wassell indicated her difficulties with ascertaining E's true wishes and feelings in one interview, when E does not know her, and felt that E's views expressed to both the Social Worker and the Guardian ad litem who she knows, would more accurately reflect her views. Also E is a young person who has profound problems; therefore Sally Wassell is guarded about accepting what E immediately stated to her. Sally Wassell felt that E needs a process of discussion. Sally Wassell said that E's expressed wish may not reflect her needs; Sally Wassell accepts that E has a strong attachment to her

father – strong in some sense, but she could not rely on her father for a fundamental sense of security.

Sally Wassell agreed with the proposed change of venue for contact between E and her father. She also stated in her oral evidence that she felt that this contact should be supervised, especially as MS does not accept that the placements for the children are designed to be permanent placements away from ‘home’. Sally Wassell felt that contact, albeit supervised, occurring outside Belfast Family Centre, could be on a more relaxed basis.

[14] In response to being asked why contact had to be supervised, Sally Wassell commented:

- Certain aspects of MS’s interaction with M can give rise to concern staff are currently available in the Family Centre should any difficulty arise during contact. Therefore if contact is to take place outside of the Family Centre, it should be supervised.

- Also, MS was domineering of M at least twice during Sally Wassell’s observations of contact.

- Further, MS can avail of advice and support in respect of contact, which he says he would like to receive, if a supervisor is in attendance.

[15] In Ms Wassell’s reports she gives numerous other reasons to justify why contact between M and MS should be supervised e.g. page 22

- “• The quality of contact between the children and their father overall appears to vary significantly
- Whereas, on occasion, contact can go well, on other occasions there is marked conflict between M and his father and this interferes with the potential benefits which might accrue to both children.



- At times, not only M, but also E has been distressed by the negative aspects of father's interaction with M, and also by his hostility towards mother and the contact centre staff.
- M's allegations about negative treatment from his father and his fear of him would suggest that contact is not currently reliably in M's best interests.
- For example, in the past when there has been conflict between father and son, M has returned to his placement and soiled himself and demonstrated other signs of acute anxiety. "

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- "• M's relationship with his father, however, would appear to be much more clearly ambivalent.
- This is far from a secure attachment relationship in which M demonstrates, avoidance and anxiety, particularly in relation to how contact will proceed on each occasion.
  - He was able to indicate to me that he was fearful and anxious of his father's reaction to him and particularly nervous of criticism and blame by MS."

Further in respect of E, Ms Wassell commented:

- "• Although E demonstrates a strong loyalty to her father, I would not assess this relationship as a secure attachment relationship.
- E would appear to have largely insecure patterns of attachment to adults, demonstrating highly indiscriminate attachment behaviour in her current and previous placements.
  - She was worryingly highly avoidant of closeness and intimacy in previous foster placements and her interest in seeing her family members would appear to be driven as much by a sense of family loyalty and search for identity, as by a close secure attachment link.
  - This does not deny the importance of the significance of E's relationship with her father and her potential to benefit from his continuing interests, affection and concern."

[16] Sally Wassell was asked about when she understood MS had been informed of M having Aspergers Syndrome; Sally Wassell said that Social Services advised her that MS was informed about M's condition when he was in prison, and that there appeared from Social Services records to have been

difficulties with MS co-operating sufficiently with Social Services to afford them the opportunity to discuss this medical issue with him in detail.

Sally Wassell felt that frequency of contact was not as important as quality of contact, particularly when the child is in a permanent placement. Timing and frequency need to meet the plan to support the child in the permanent foster placement.

Sally Wassell expressed her great concern that MS still does not accept that the children's care plans are permanency away from home, five years after the plans for permanency away from the family home were approved by the High Court.

[17] Sally Wassell was asked about MS' intention to seek custody (residence) within the next year; Sally Wassell replied that it was very important for MS to promote E settling in a permanent placement, especially as she already has attachment difficulties. E needs time to establish a relationship with her proposed new permanent carers. In order to consider rehabilitation to MS' care, he would need to undertake a great deal of work. Sally Wassell did not think it would be fair of MS to hold E in limbo, pending the outcome of such assessments. It is very important for contact to reflect harmony with the child's care plan and placement. The frequency of contact to support the children's placements should be at a lower level rather than increased frequency.

[18] Sally Wassell was referred to page 15 of Sandra Beeston's report which referred to difficulties displayed by I McA in managing the children during

contact from time to time, and was asked if she was aware of any similar difficulties with MS managing contact? In response, Sally Wassell mentioned the contact session which took place on 21 April, and M's upset following this contact centre. Also, MS's difficulties regarding the attendance at the local shop with the children during contact sessions.

[19] Sally Wassell was asked that if E did not form attachments with her new carers' and contact with her father was reduced, would this not leave her with no attachments? Sally Wassell replied that it was not a question of attachment with father or with carers; rather E needs a relationship with secure carers, who are skilled, capable carers. E needs to know her father supports her new placement.

Sally Wassell described the type of work which she felt MS must undertake and successfully complete before he may succeed in having contact increased. She felt he must co-operate and collaborate in in-depth discussions with Social Services, to include why M's condition in part exhibits itself in terms of his needs in respect of contact. MS must develop strategies for dealing with M's behaviours, especially his physical contact with M. Thought must be given to ways by which MS can demonstrate his trust and affection for M and E during contact sessions. MS must make himself available to do this work with the Trust, and also to consider his attitude to Social Services. Sally Wassell recounted evidence of MS being disdainful in his attitude to the Trust, and his disregard of the Trust's ability to set any limits on him. He is particularly unhappy with the work at the Family Centre, and he regards

Social Services as interfering with his right to contact. Sally Wassell felt he has a very, very long way to go.

Sally Wassell said that some contact sessions can be very positive, and on other occasions contact is affected by conflict. M is an anxious child. He worries in advance of contact with his father least the contact session will be difficult. Despite these possible difficulties, M reports that he still wishes to have contact with his father provided it is supervised. This child needs predictability.

Sally Wassell regards telephone contact as a form of direct contact, not as indirect contact; and it is more difficult to supervise. Telephone contact between E and her father can give this child confusing messages if her father is adamant to seek residence, and is not supporting E in her permanent placement. Sally Wassell suggested it would be helpful for the children to receive occasional cards, not just on birthdays and at Christmas, so long as such indirect contact does not affect the children's placements and securities.

[20] Mrs Lesley-Anne Parks, Senior Practitioner was asked why the Trust has not progressed reunification. Mrs Parks advised that at a LAC Review on 19 February 2002 MS inquired about being re-assessed as the children's carer. Mrs Parks explained that the Trust tried to make contact with MS thereafter, and eventually spoke with him in June 2002. An assessment was carried out by the Children's Resource Team; this finished in June 2003. The outcome recommended that further work needed to be carried out to include a further psychological assessment; a residential assessment, and an attachment

assessment. Mrs Parks advised that MS did not advance the work recommended by the Children's Resource Team.

Mrs Parks stated that when she met MS in Maghaberry Prison on 2 February 2005 his issues then related to contact; he stated at that time that he wished to have separate contact from I McA and he wished to have this contact at his home. A change of venue was discussed namely from Thorndale to Belfast Family Centre - the former supervised contact, whereas the latter monitored contact. Mrs Parks described an incident which took place during contact on 21 April 2005 when things became quite heated in the children's presence. E then decided to remain with her mother for contact session, whereas M proceeded with the contact session with his father and grandfather. When M returned from this contact session he was very upset and 'white as a ghost'. He described to his respite carer his concern that he thought his father was going to take him away. M then said he did not want to have contact with MS on his own, unless E or I McA were also present.

[21] Mrs Parks was asked what she had told MS about M's medical condition. Mrs Parks advised that on 2 February 2005, during a prison visit, she had explained to MS the advice given to the Trust by Dr Christine Lavery, namely that persons who suffer from Aspergers Syndrome may have social problems, and difficulty understanding situations or processing information. Mrs Parks advised that at that time the Trust itself was still learning how Aspergers affected M. He now has a mental health social worker, appointed in July 2006. Mrs Parks said there is a waiting list for Child and Adolescent

Mental Health Services. So far, no work has been offered to the parents to explain the implications of this condition for M, however appointments have been made with them to discuss plans for explaining this condition. M has now been referred to Dr Bothwell's clinic to consider his behaviour. Mrs Parks acknowledged that MS has asked the Trust for information, and she advised that the Trust does plan to talk to both parents regarding M's condition.

[22] Mrs Parks was asked about Dr Wilson attending E's LAC Review on 19 October 2006; the Minutes of this Review are not yet available. MS appears to understand that Dr Wilson, though he only attended the Review for the short time, regarded E's time spent in her current placement as her most stable. It is not clear if Dr Wilson is aware of the nature of the Children's Home, namely to assist in the assessment of a child for purposes of matching that child with a suitable specialist foster placement; the scheme is organised by Barnardos and there is an upper age limit of 13 years for young people in this specialist children's home.

[23] Mrs Parks was asked about E's attitude to frequency of contact with her father, and how she initially indicated that she did not want contact to change. She then indicated her acceptance of the Trust's proposals and she informed the Guardian ad litem that she thought the proposals sounded 'ok'. Mrs Parks said that E does not like change, and that she has indicated a number of family members who she would like to have contact with.

M has told Social Services that he wishes to have his contact with his father reduced.

Mrs Parks advised, when asked, that there would be sibling contact in addition to the proposals for contact with each parent.

[24] Mrs Beetson, Contact Services Manager was asked about her assessment of both parents carried out in 2005. She indicated that at the conclusion of this assessment whilst the quality of contact with I McA improved, it did not improve with MS. Mrs Beetson commented that MS did not avail of the opportunities during contact to go to the shop with the children and I McA, therefore he missed out on up to 30 minutes contact per session with the children. Mrs Beetson said that she never witnessed MS physically chastise the children, though she said staff in the Centre only monitor contact, rather than supervise it. She did state that MS does use verbal chastisement and bribery.

MS advised the Court of his love for his two children. MS referred to lack of information being provided to him by the Trust in respect of M's 'disease', despite his requests. He stated that he made a request for information in July 2006. In April 2006 he asked if M could have contact with his sister. He explained the importance for him of working in partnership with the Trust, and that this must be 'a two way street'. MS said he had done his best to work with the Trust, and he described his frustrations in this regard. He claimed that it was Sally Wassell who first informed him of M's condition when he went to lift M during the observed contact session.

[25] MS was asked about the plan of long term placements for both children; he said he would prefer the children to be rehabilitated. He stated that the only stable thing for E is her contact, and where she is residing at the moment in the children's home.

MS was asked about his plans to ask the Trust to reassess him; he replied that after Christmas, in 2007, he would 'get the ball rolling'.

When asked about his views of the Trust's proposal to reduce contact, he recalled how, five years ago he went to Court and got contact increased from fortnightly to once per week. He also said he did not like the area where contact presently takes place, thus he does not go out to the local shop with the children during contact. MS said that M changes his mind about his wishes in respect of frequency of contact.

MS was asked if he encounters difficulties during his contact with M; he acknowledged that he did, and that he awaits help from the Trust. MS said he has good contact with E, and that she phones him once per week, sometimes twice per week. Sometimes MS phones her.

MS states that he has never hampered any placement. He said that he wishes his children to be happy.

MS does not feel that a reduction of contact at the moment would harm the children in any way. He feels, having heard comments made by Dr Wilson, that as E suffers from ADHD she needs stability in her life, and routine.



[26] Counsel on behalf of the Trust asked MS about his meeting in Antrim after 13 July 2006 to discuss M's condition. He was also referred to the Trust's contact application dated 2 August 2005 which contains details of each child's health. MS stated that he has not been to the library or to a GP for information about Aspergers Syndrome and that he awaits information from the Trust. He claims the Trust does have his address. MS did not accept that the Trust has struggled to contact him or to reach him by phone. He was asked about using his mobile phone during contact sessions; MS said this happened three times. One of the calls received was from the children's grandfather, and he gave the phone to the children to speak to their grandfather. He claims to have made one outgoing call to ask about a taxi.

[27] MS was asked for his response to the Social Worker's evidence in respect of the impact upon the children of increasing contact. MS referred to Dr Wilson's comment in respect of E, and that he had intended for this to be mentioned in his Statement.

MS was asked for his response to the Trust's proposition that M is in fear of him, and that M did not wish to have contact with just MS present. In response MS said he did not know anything about Aspergers.

MS was asked about his methods of disciplining the children, and M's comments that his father takes more sweets off him, to discipline him, than he takes off E. MS responded that E had ADHD, therefore she is 'more naughty' and he therefore has to talk more to E.

MS was asked about M's wish expressed to the Guardian ad litem, namely not to have as much contact with his father. MS stated that M will say different things every day, and he queried if this might be due to M suffering from Aspergers Syndrome. MS was asked about his proposed timeframe for seeking to be re-assessed, to which he responded, 'at earliest after Christmas'. He acknowledged that he would have to do work with Social Services. MS said he would not share his wish to engage in this work with the children, as that would only be 'building them up to pull the wool from under them'.

[28] The Guardian ad litem, in her oral evidence to the Court, was asked why she felt contact should be reduced. She replied that the care plan was not rehabilitation to the birth parents. M is in a long term foster care placement, and long term foster carers have been identified for E. The level of contact must be linked to the children's care plans for long term placements. Secondly, the children are aware of the Trust's application and the Trust's proposals. The Guardian said that both children are broadly in agreement with the Trust's proposal to reduce contact. The Guardian, thirdly, reiterated what Social Services have stated, namely that increased contact would be confusing for the children, and hinder them from settling in their placements. The Guardian pointed out that MS has missed nine contact sessions since he was last discharged from prison on or about April 2005. She felt that his expectation that he will actually attend contact twice per week is unrealistic.

When asked about M's views, the Guardian commented that there have been three different assessments regarding the appropriate level of contact – by the Trust, by Sally Wassell, and by the Guardian ad litem. She does not feel M has changed his mind regarding his expressed view of monthly contact with his father. The Guardian ad litem has heard M state that he wishes to have someone present when he has contact with his father. Further, the Guardian has spoken to M's carers about his reactions after contact, and prior to contact. M said he wanted to see his mother more. The Guardian felt that MS needs to understand about Aspergers Syndrome, and there then needs to be an assessment to consider if such knowledge results in an improvement in the quality of contact.

The Guardian felt that E is more settled now than last year, and that at paragraph 5.39 of her report she recommended that contact with E must be reviewed following her move to her new foster placement, in accordance with LAC regulations and timescales. The Guardian was asked what would happen if E's placement fails, or if she does not attach to her new carers. In response the Guardian said that with support from E's parents, she could settle, and she needs to settle. The Guardian ad litem feels that E accepts the current contact arrangement, and the Trust's proposed arrangements. The Guardian ad litem stressed the importance of the quality of contact, and that E needs permanency and security in her living arrangements.

The Guardian ad litem felt that M is put under strain by the present contact sessions. She confirmed she had not observed MS physically chastise

M. The Guardian ad litem explained M's note to the Court Appendix I of her Report to mean that he wants to see more of his mother than of his father or E. Appendix II means that M perceives that his father and E hurt and annoy him. The Guardian ad litem did observe E hitting M.

[29] Mrs Parks, in her first report concludes that contact must be seen as a positive experience for the child and not seen to undermine the placement or destabilise the child's ability to attach to carers other than his/her birth family. Mrs Parks further states:

"given the current level of contact, the children are exposed to the negative aspect of contact on a weekly basis. This serves to undermine and jeopardise any sense of stability and security, which the children may experience, and compromises their ability to settle and form attachments within their placement. This expressly contradicts the purpose of contact and compromises the paramourcy of the children".

At page 4 of Mrs Parks final report she states that:

"given the level of conflict and unpredictability associated with contact the children are negatively influenced by contact. The current structure of weekly contact does not afford M and E the opportunity to settle within their placements as they can both experience a 'build up' and 'release' prior to and following contact."

At page 5 of that report Mrs Parks comments in respect of current contact:

"There has been a continued inconsistency in the quality of contact. Difficulties during contact visits are more prevalent between M and MS, whilst there have been some periods of appropriate adult/child interaction with the parents engaging the children in play, this has been through the direction or

encouragement by staff. However on occasions M has felt threatened by his father.

On 27<sup>th</sup> October 2005, M advised his carer that he had been hit on the back of his head by his father, as MS had blamed him for throwing a stone whilst in the playground of the contact centre. E had advised Children's House that on the same occasion she was blamed for throwing stones and was told by her father not to come to contact the following week.

Mrs Parks attempted to address this incident with MS who denied he hit M."

M reported a further incident on 6 April 2006 of his father bending his fingers back during play.

[30] The Trust helpfully referred to a number of published articles to justify its decision to seek an Order to reduce the frequency of contact between the children and their parents, to include Slade A 2002: "A Guide to Best Practice in Supervised Child Contact", which states that "In all contact applications, the child's welfare, rather than the parents rights to see the child is the paramount consideration." Other articles were referred to at the conclusion of the Trust's report dated 20 October 2006.

#### Decision

[31] Having considered all matters I have allowed the Trust's Article 53(2) application and ordered the Contact Order made on 2<sup>nd</sup> February 2001 shall be varied in accordance with the Trust's application namely, contact shall be arranged on a five weekly cycle as follows:

- (a) Week 1 M and E shall have contact with the I McA activity based for two hours duration, though flexible depending upon the activity; supervised or supported by or on behalf of the Trust as is deemed necessary;

Week 2 M and E shall have contact with MS; activity based for two hours duration, though flexible depending upon the activity; supervised or supported by or on behalf of the Trust as is deemed necessary;

Week 3 E shall have contact with I McA; activity based for two hours duration, though flexible depending upon the activity; supervised or supported by or on behalf of the Trust as is deemed necessary;

Week 4 M shall have contact with I McA; activity based for two hours duration, though flexible depending upon the activity; supervised or supported by or on behalf of the Trust as is deemed necessary;

Week 5 E shall have contact with MS; activity based for two hours duration, though flexible depending upon the activity; supervised or supported by or on behalf of the Trust as is deemed necessary;

In addition, E shall have one telephone contact per week with MS, for up to 10 minutes in duration, to be monitored by or on behalf of the Trust; day and time to be arranged by the Trust.

#### Statutory Obligations

[32] The Court is mindful of the statutory obligations contained within Article 53(1):

“Where a child is in the care of an authority, the authority shall (subject to the provisions of this Article) allow the child reasonable contact with –

(a) his parents...”

This highlights the Trust’s statutory and positive obligation to permit reasonable contact between a child who is in the care of the Trust and his parents (and others).

[33] This accords with the Trust's further obligations pursuant to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); namely the right to respect for private and family life, home and correspondence. I recognised and took into account both parent's rights in this regard, and in particular each child's rights - in the context of this family, and these children's respective care plans. I also recognised that this right is qualified, and the Trust may only interfere with the parents and the children's Article 8 rights if they have legal authority to do so, the interference is necessary in a democratic society in order to achieve one of the aims within that Article, and is proportionate to that aim. I believe the Trust has given due regard to its obligations under both domestic and international legislation, and has additionally and ultimately made decisions regarding the children's contact with their birth parents which is in each child's best interest at this time. The proposed contact regime is clear. The children will understand it. It meets their needs and it accords with their respective care plans.

Further, I am satisfied that the contact arrangements accord with the UN Convention on the Rights of a Child (UNCRC), in particular:

Article 3 - I am satisfied that the Trust's decision regarding reduction of contact has been taken with the children's best interests having been considered.

Article 9 - the contact arrangements proposed by the Trust enable each child to maintain personal relations and direct contact with both parents on a regular basis, in accordance with the best interests of each child.

Article 12 - M was afforded his opportunity to express his views to the Court via the Trust and in particular via the Guardian ad litem. M's written comments illustrating his thoughts regarding contact with his sister, birth mother and father. The Guardian facilitated and translated M's written thoughts, which were very helpful. E was given the opportunity to speak to me in person, which she availed of, at the end of the proceedings when I had given my decision. E attended Court after school with her residential Social Worker, her key Social Worker and the Guardian ad litem. No lawyers nor parents were present. In addition, E obtained support throughout the proceedings via Social Services, and the Guardian ad litem.

#### Case Law

[34] I am satisfied that the reduction of contact and the revised arrangements, whereby the children will now have separate contact with their mother and their father, allows reasonable contact, within the meaning described in *Re P (Minors) (Contact with Children in Care)* 1993 2 FLR 156. The proposed contact allows the parents and the children to enjoy a better quality of contact, reflected in the arrangements for contact to be activity based, with only modest supervision or support by the Trust as is deemed necessary, to include the venue for contact on any particular occasion.



In Re B (Minors) (Care: Contact: Local Authority's Plans) (1993) 1 FLR

543, Butler-Sloss LJ (as she then was) commented:

“...the issue of contact often depends on whether contact would frustrate long-term plans for the child in a substitute home...The presumption of contact, which has to be for the benefit of the child, has always to be balanced against the long term welfare of the child, particularly where he will live in the future. Contact must not be allowed to destabilise or endanger the arrangements for the child and in many cases the plans for the child will be decisive of the contact application.”

#### Delay

[35] I am very concerned that this Article 53(2) application has been in the Court arena for 15 months. The case had initially been scheduled for hearing on 22 November 2005. There has been delay, caused by the amount of time to secure an independent expert witness engaged by the First Respondent, I McA. Legal Services Commission refused to pay the fees of the initial expert appointed, and another expert then had to be appointed. Delays caused by seeking funding for payment of experts can be reduced if the Legal Services Commission are presented at an early stage, preferably before leave of the Court is sought, with a written estimate of the proposed expert's costs together with a draft letter of instruction.

The First Respondent's application, dated 18 October 2005, to seek leave to engage an expert, was filed on 26 October 2005; the court had ordered on 16 September 2005 that any application for an expert witness must be filed on or before 7 October 2005. The presentation of the estimate of this expert's fees to the Legal Services Commission did not take place until after the Court

had granted leave on 16 November 2005 pursuant to Rules 4.24 and 4.19 of the Family Proceedings Rules (NI) 1996. The initial expert was to report by 27 January 2006. The Trust subsequently sought leave to join in the appointment of the expert and to ask questions in respect of the father's contact with the children.

The expert's report became available on 20 September 2006, 8 months after the initial date directed for the expert's report to be filed.

Article 179(14)

[36] At the conclusion of this case the Trust sought an Article 179(14) Order pursuant to a C2 application dated 11 November 2006, "to impose a restriction on future proceedings with respect to MS". The Trust's application was not restricted only to further Article 53 applications, and was not for a specified period. The reason why the Trust prudently sought such a restriction was not because MS is vexatious or even a persistent litigant. Indeed any applications which the second Respondent has made have clearly been founded upon his love for his two children. Rather, during the course of these proceedings MS gave evidence that he would like increased contact with E and M; further he expressed his clear intention, next year, to seek to have the children returned to his care. His partner is expecting their child next year.

[37] The Trust's reasons for seeking an Article 179(14) Order is because of the delicate, crucial and indeed exceptional state of both E and M's respective care plans at this stage, for a variety of reasons which have been alluded to

above. In addition to the evidence contained within the Trust's C2 application, the Trust also filed a letter dated 13 November 2006 from Sally Wassell containing brief 'comments' to support the Trust's proposed restriction. I do not propose to reiterate any of the comments made by this expert in this letter; I am conscious that no leave was given for this letter to be filed and the parties did not have an opportunity to cross examine Ms Wassell regarding her 'comments'.

[38] The Trust does not seek this application to violate any of the father's rights, particularly his Article 6 ECHR right to a fair trial. In this regard I refer to the Trust's letter dated 20 November 2006 wherein Donna Coyle APSW sets out the assessment opportunities which the Trust will offer the Second Respondent should he seek to engage and carry out necessary assessments in order for rehabilitation to be reconsidered. The Trust has clearly not closed opportunities for reunification; rather they simply ask that the Court is proactive in monitoring the merits of any further application by the father at the onset in order to decide if leave should be given to him to commence any such application.

[39] In considering the Trust's C2 application pursuant to Article 179(14) of the Order I have considered the guidelines given by the Court of Appeal in England set out in the case of *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* (1999) 2FLR 573, and also *Re F (Children) Restriction on Application* (2005) EWCA Civ 499. In addition I have considered In the *Matter of L and LI (Article 179(14) of The Children (NI) Order 1995, GILF4105*

delivered on 13 February 2004 wherein at page 3 Gillen J recites the 11 points of the guidelines given in Re P.

[40] Each child's Care Plan is at a crucial stage at this time – see comments above. It is the facts specific to these children's respective care plans at this time, particularly their individual placements and placement plans, which make the position exceptional.

[41] The Second Respondent has been provided with an opportunity to be re-assessed, should he earnestly wish to pursue reunification, as set out in Donna Coyle APSW's letter dated 20 November 2006. He will not be prejudiced in terms of funding these assessments, as the Trust has indicated that it will fund same.

[42] Ultimately, I allowed the Trust's Article 179(14) application for a period of one year in respect of MS. During that year MS is not prohibited from filing a bona fide application, rather, he simply has to seek the leave of the Court first, thus his Article 6 rights have not been denied.

### Conclusion

[43] In this case for E and M's Care Plans to succeed at this particular time it is vital that they must be given the opportunity to settle and attach in their respective placements, and indeed for E to prepare herself for her new specialist long term placement to commence early next year. The current level of contact, for different reasons for each child is not meeting their needs at this time, and unless reduced could have serious repercussions. I have no

doubt that a reduction of contact is both necessary and proportionate for E and M.