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IN THE FAMILY CARE CENTRE SITTING IN BELFAST

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

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v

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His Honour Judge Kinney

1. In an appeal from the Family Proceedings Court (FPC) to the Family Care Centre (FCC) a preliminary issue has arisen which requires determination. The mother in this case issued an application on 24 May 2016 seeking to relocate to London with the children of the family. On 24 March 2017 the FPC gave judgement refusing the mother's application. The mother appealed and a transcript of the judgement was made available. The appellant asked the FCC to hear the matter de novo. Subsequently skeleton arguments were lodged and submissions made on the appropriate manner in which appeals from the FPC to the FCC should be heard.

2. The right of appeal is contained in Article 166 of the Children (Northern Ireland) Order 1995 (the 1995 Order). This provides as follows;

> **166.**—(1) Subject to any express provisions to the contrary made by or under this Order, an appeal shall lie to the High Court against—
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> (a) the making by a county court of any order under this Order; or
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> (b) any refusal by a county court to make such an order,
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> as if the decision had been made in the exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 and the appeal were brought under Article 60 of that Order.

(2) An appeal shall not lie to the High Court under paragraph (1)—

(a) on an appeal from a court of summary jurisdiction; or

(b)where the county court is a divorce county court exercising jurisdiction under the Matrimonial Causes (Northern Ireland) Order 1978 in the same proceedings.

(3) Subject to any express provisions to the contrary made by or under this Order, an appeal shall lie to the county court against—

(a) the making by a court of summary jurisdiction of any order under this Order; or

(b) any refusal by a court of summary jurisdiction to make such an order.

3. It can be seen therefore that Article 166 governs both appeals from the FCC to the High Court and also appeals from the FPC to the FCC. There is no guidance as to the appropriate manner in which an appeal should be conducted.

4. Article 166 (1) governs appeals to the High Court. It is set in very similar terms to the provisions of appeal from the FPC to the FCC. There is however a rider to the form of the appeal that lies from the FCC to the High Court

> "as if the decision had been made in the exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 and the appeal were brought under article 60 of that Order."

5. Article 60 of the 1980 Order provides

> "(1) Any party dissatisfied with any decree of the County Court made in the exercise of the jurisdiction conferred by Part III may appeal from that decree to the High Court.
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> (2) the decision of the High Court on an appeal under this article, shall, except as provided by article 62, be final."

6. The Family Proceedings Rules (Northern Ireland) 1996 set out the rules governing the procedure for such an appeal. The provisions deal with the process of filing and serving documents but do not deal with the way in which an appeal should be conducted.

7. A similar issue arose in the context of appeals from the FCC to the High Court and was considered by Gillen J in the case of McG v McC [2002] NIFam 10.

Gillen J considered in some detail the practice in England and Wales. He stated

> "It is quite clear that in England and Wales on an appeal from a Magistrates Court to the High Court, the appeal is governed by the principles set out in G v G [1985] FLR 894. This case is authority for the proposition that the High Court will not interfere unless the decision was plainly wrong or the magistrates erred in law or in principle. In Re CB (A minor) (Parental Responsibility Order) [1993] 1 FLR 920 at 924c Waite J said;
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> (a) "The magistrates are also the primary court of discretion; no appeal can be entertained against any decision they make within the scope of the numerous statutory discretions committed to them by the Children Act 1989, unless such decision can be demonstrated to have been made under a mistake of law, or in disregard of principle, or under a misapprehension of fact, or to have involved taking into account irrelevant matters, or omitting from account matters which ought to have been considered, or to have been plainly wrong – i.e. outside the generous ambit within which a reasonable disagreement is possible".
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> I will hereafter refer to these principles as "the principles set out in G v G."'"

8. Gillen J then went on to consider the practice in Northern Ireland. He referred to the comments of Higgins J in the case of Homefirst Community Health and Social Services Trust v SA [2001] NIJB 218. In that case the court was considering an appeal from the FCC against the making of an Interim Care Order. Dealing with the same question of the practice of the High Court in an appeal from the County Court Higgins J said;

> "Thus the hearing in the High Court of an appeal from the County Court to the High Court is to be treated in the same way as a civil appeal under Article 60 and Part III of the County Court (Northern Ireland) Order 1980. County Court appeals are in practice a rehearing with the onus on the plaintiff or applicant who proceeds first….Appeals in family law proceedings will not always require a full hearing with oral evidence. Whilst these appeals from the County Court are treated as having been brought under the County Court Order, the procedure to be adopted may vary from case to case. Thus in some cases a full hearing with oral

evidence will be required, in others the matter could proceed on the papers or a written judgement of the court below or both or a mixture of them. It will be for the court, after hearing any submissions made, to determine how the appeal should proceed. In this case the parties were agreed that the appeal could proceed on the papers and a written judgement".

9. Gillen J went on to say that he had the benefit of more extensive argument and he considered that the issue and the relevant authorities may not have been as fully aired in the past as on this occasion.

10. Gillen J considered the approach in England and Wales. Whilst he recognised that the approach was governed by different legislation he concluded that appeals to the High Court from the FCC should be approached in broadly the same manner as appeals in England and Wales. He set out in his judgement a number of reasons for coming to this conclusion. These may be summarised as follows

    a. There is nothing in the statutory framework which defines the basis on which appeals should be heard.

    b. There was nothing in the rules of procedure which persuaded Gillen J that there should be asymmetry between the approach in England and Wales and the approach in Northern Ireland. He referred to the view expressed by Lady Justice Butler-Sloss in Re W, Re A, Re B (Change of Name) [1999] 2 FLR 930 that there should be a common approach of appellate courts where at all possible.

    c. He referred to the experience of FCC judges and the availability of a full recording of all proceedings (albeit such recording was not happening in all cases). Gillen J commented

> "it seems to me highly incongruous that Magistrates, including Lay Magistrates, in England and Wales should have their decisions scrutinised under the principles in G v G, but that highly experienced County Court judges in Northern Ireland should have their decision subjected to a rehearing in circumstances where they have been obliged to set out in detail a reasoned judgement and where, if practicable, the whole proceedings may have been recorded."

d. Gillen J acknowledged that family law proceedings differ from other types of proceedings. Whilst this does not in itself justify a different approach with special rules it confirmed that the approach in G v G was appropriate. There is a strong inquisitorial element in family law cases and family law judges are invested with the discretion where there may be two or more possible decisions any of which a judge may make without being held to be wrong.

e. Gillen J recognised the desirability of putting an end to litigation in Children Order proceedings and referred to the no delay principle enshrined in the 1995 Order. Gillen J said

> "I consider therefore that it is necessary to ensure that any appeal which is heard is construed in such a way as to accord with the principle of reducing delay where possible. A de novo hearing in every instance would militate against this."

f. Gillen J did not consider that the absence of a record of proceedings by mechanical means was sufficient reason to have a rehearing de novo. He pointed out that it was open to the parties to seek a copy of the judges notes of the proceedings or to provide a copy of notes taken by a solicitor or counsel at the hearing and attempt to agree them.

g. Lastly Gillen J referred to the overriding objective and the principle that lengthy rehearings should be discouraged. He considered that a hearing based on the principles in G v G was more likely to accord with the principles set out in the overriding objective. He concluded

> "It is my view therefore that all appeals from a Family Care Centre to the High Court under Article 166 of the 1995 Order should be dealt with in precisely the same manner as appeals in England and Wales under Section 94 of the 1989 Act pursuant to the principles set out in G v G. Questions of fresh evidence, the calling of witnesses, and remittal in some circumstances to the Family Care Centre will be approached on an individual case sensitive basis relying on the plethora of authorities which have grown up in England and Wales in the wake of the 1989 Act."

11. The approach of Gillen J has been endorsed by the Court of Appeal in the case of SH v RD [2013] NICA 44 at para 24 where the Court said;

“Where an appellate court is reviewing the balance struck between several competing factors it should only intervene if the exercise of discretion or judgement is plainly wrong. The principle was stated by Lord Fraser in G v G [1985] FLR 894.

> "I entirely reject the contention that appeals in custody cases, or in other cases concerning the welfare of children, are subject to special rules of their own. The jurisdiction in such cases is one of great difficulty, as every judge who has had to exercise it must be aware. The main reason is that in most of these cases there is no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong, and the best that can be done is to find an answer that is reasonably satisfactory. It is comparatively seldom that the Court of Appeal, even if it would itself have preferred a different answer, can say that the judge's decision was wrong, and unless it can say so, it will leave his decision undisturbed."

The reasons for that approach were explained by Lord Hoffmann in Piglowska v Piglowski [1999] 2 FCR 481.

> "First, the appellate court must bear in mind the advantage which the first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge's evaluation of those facts. If I may quote what I said in Biogen Inc. v. Medeva Plc [1997] RPC 1:
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> > "The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance. . . of which time and language do not

> permit exact expression, but which may play an important part in the judge's overall evaluation."
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> The second point follows from the first. The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case but also of a reserved judgment based upon notes, such as was given by the District Judge. These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2). An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

The importance of adhering to that approach and respecting the discretion given by law to the trial judge was emphasised by Baroness Hale in Re J (a child) (FC) [2005] UKHL 40."

12. This was reinforced in another decision of the Court of Appeal, Re L (Relocation application) [2013] NICA 45 at para 27 where the court said;

> "We set out the legal principles in appeals and the determination of relocation cases in SH v RD [2013] NICA 44."

13. In E v L [2015] NIFam 3 O'Hara J said at paragraph 3;

> "In the normal course of events appeals from the Family Care Centre to the High Court are not heard by way of rehearing. However for various reasons an unusual amount of time has passed since the decision of the learned trial judge in May 2014 and the circumstances of both families had changed. In these circumstances I heard this appeal by way of rehearing. That is not the way in which they will be typically dealt with."

14. In N's (A Minor) Application (Relocation Appeal) [2015] NI Fam 12, delivered shortly after E v L, O'Hara J said at paragraph 4

"Appeals from the Family Care Centre are conducted on a confined basis for the reasons set out by Gillen J in McG v McC [2002] NI 283. What typically happens is that written submissions are presented. If it appears from those submissions that there are issues which need to be explored further that can be done by way of oral evidence or additional statements or reports being filed. That can happen in a number of scenarios but especially when it is contended that circumstances have changed in some truly important way since the decision of the lower court was reached.

15. There is therefore clarity on the manner in which an appeal from the FCC to the High Court shall be conducted, and indeed any appeal from the High Court to the Court of Appeal. The link in the chain that is missing is the appropriate manner in which an appeal from the FPC to the FCC should be conducted.

16. Gillen J in McG v McC made an obiter observation when he said

"There is no doubt that in Northern Ireland appeals from the Magistrates Court to the County Court are dealt with by way of a full rehearing."

17. It is unclear where Gillen J drew that conclusion from. It may have been an observation by counsel, as the court went on to confirm that Mr Long QC informed the court that the practice in the High Court on appeal from the FCC was not to have a full rehearing. Whatever may have been the practice apparent to the High Court in 2002, it is not and has not been the practice consistently in the FCC in recent years to conduct a full de novo rehearing in every appeal. However it is important that consistency and clarity is brought to the question of appeals from the FPC to the FCC.

18. The appellant in this case argued that whilst Gillen J established the correct procedure for conducting an appeal from the FCC to the High Court, appeals from the Magistrates Court to the County Court are dealt with by way of full rehearing. I was referred to Re C [2006] NIFam 9 where Lord Justice Nicholson stated at page 26

"An appeal from the Family Proceedings Court to the Family Care Centre is by way of a full rehearing."

19. I note however on reading the judgement that these comments were not obiter observations by the judge but rather a summary of the written submissions made on behalf of the Guardian ad Litem in that case and not a reflection of the Court's own view.

20. A number of other authorities were provided touching on the principles of the mode of appeals.

21. In Fair Employment Agency v Craigavon Borough Council [1980] 7 NIJB the Court of Appeal held that on an appeal from a decision of the Fair Employment Agency under the Fair Employment (Northern Ireland) Act the correct procedure, in the absence of a contrary indication in the act, was to rehear completely the aggrieved person's complaint.

22. I was also referred to the decision of Curran J in Belfast Corporation v Goldring and another [1954] NI 107. It was a Chancery action involving the decision of an arbitrator. Curran J cited an 1888 decision of the Superior Court in Ireland where it was said

> "One thing is perfectly plain – that in an appeal given by statute simpliciter, and without any limitation of the powers of the Court of Appeal, the Court must decide solely upon the evidence that is brought before it, as distinguished from the evidence that was brought before the court from which the appeal is taken, and that, as a general rule, subject to some exceptions… the evidence that has been given before the inferior tribunal is not even admissible before the Court of Appeal. That is well settled law."

23. Those comments, it seems to me, are of limited value as they are not cases brought under the 1995 Order and must be read in the light of the House of Lords decision in G v G, the Supreme Court decision of Re B (a child) [2013] UKSC 33 and the more recent High Court decision referred to earlier of McG v McC.

24. The respondent contends that the FCC has a discretion in the mode of appeal hearing. He refers principally to the decision of Gillen J in McG v McC and his endorsement of the principle set out by the House of Lords in G v G. The respondent quotes from the judgement at page 5 where it is stated;

> "In Re W, Re A, Re B (Change of Name) [1999] 2 FLR 930, the Court of Appeal discussed the basis upon which an appeal and the child case from a district judge should be heard by the circuit judge. Butler – Sloss LJ (as she then was) said at page 938e;
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> "In my judgement in the Children Act jurisdiction where the magistrates, district judges, circuit judges and High Court judges all have the same statutory jurisdiction on these issues, the approach of the appellate courts,

whether to High Court judges from magistrates, to circuit judge from district judge or to Court of Appeal from judges should be the same and on G v G principle is in cases where no further evidence adduced.""

25. The respondent refers to the reasons provided by Gillen J to underpin his decision and argues that those grounds apply equally to appeals from the FPC to the FCC. The respondent also sought to draw the distinction between proceedings in the family court as opposed to other types of hearing.

26. Appeals from the County Court to the High Court under Article 166 of the 1995 order are expressed to made as if the decision appealed from was an exercise of the jurisdiction conferred by Part III of the 1980 Order and the appeal was brought under article 60 of that Order. Ordinarily appeals under Part III of the 1980 order are made by way of full rehearing de novo, unless it appears to the contrary in the statute giving the right of appeal. Higgins J recognised this in his comments in the Home First case. He drew the distinction between such appeals and appeals in family law proceedings even though such a distinction is not made apparent in the governing legislation. He said;

> "It will be for the court, after hearing any submissions made, to determine how the appeal should proceed."

27. Gillen J in McG v McC had the benefit of further argument presented on the issue and arrived at the conclusion that appeals in family law proceedings to the High Court from the FCC should be approached in broadly the same manner as in England and Wales and adopted the principles set out in G v G. He also endorsed comments made by Lady Justice Butler-Sloss in Re W to the effect that the Children Act jurisdiction (and for that I read the Children Order jurisdiction) judges all have the same statutory jurisdiction and the approach of the appellate courts of whatever nature should be the same.

28. How does this fit within the statutory framework for appeals from the FPC to the FCC? The 1995 Order is silent as to mode of appeal. The Family Proceedings Rules (Northern Ireland) 1996 at rule 1.4 (1) state;

> “Subject to the provisions of these Rules and of any statutory provision, the Rules of the Court of Judicature (Northern Ireland) 1980 and the County Court Rules (Northern Ireland) 1981 other than CCR Order 25 rule 20 (which deals with a new hearing and re-hearing) shall apply with the necessary modifications to the commencement of family proceedings in,

and to the practice and procedure in family proceedings pending in, the High Court and a County Court respectively."

29. It is therefore clear that the rules recognise that some modifications to the regulatory procedure may be required in family proceedings.

30. Order 32 of the County Court Rules provides at Rule 1 as follows;

> "(1) This Rule shall apply, with any necessary modifications and subject to the provisions of the relevant enactment, to any appeal not otherwise provided for which under any enactment for the time being in force may lie to a County Court against any order, determination, award or other decision of a tribunal (in this Order referred to as an "order").
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> (2) Every such appeal (in this Order referred to as an "appeal") shall be by way of rehearing and where any question of fact is involved in an appeal, the evidence bearing on such question shall be given orally unless the judge, as respects that evidence or any part thereof, otherwise directs."

31. It is again apparent that this rule applies with any modifications that may be required and is expressly subject to the provisions of the relevant enactment, in this case the 1995 Order. It is also clear that the judge on appeal has a discretion as to how evidence shall be given.

32. When asked why should appeals from the FPC to the FCC be different to appeals from the FCC to the High Court, the appellant argues that the answer lies in this rule. She argues that the FCC is compelled to conduct a full rehearing de novo in every case.

33. I do not accept that argument. The rules of procedure recognise that they should not be elevated to a status which has the effect of overriding the essential principles of the relevant legislation. The rule also recognises that the appellate court retains a discretion as to how evidence on any factual matter is presented.

34. The fundamental principle of the 1995 Order is the paramountcy of the welfare of the child. The different nature of the task faced by a judge in determining cases involving children was discussed in G v G and endorsed by our Court of Appeal in SH V RD quoted at para 11 above. Included in that quote were Lord Hoffmann's comments in Piglowska v Piglowski. These were in turn referred to with approval by Lord Wilson in the Supreme Court case of B (a child) [2013] UKSC 33. Lord Wilson went on to say at paragraph 42 of that judgment;

"Lord Hoffmann's remarks apply all the more strongly to an appeal against a decision about the future of a child. In the *Biogen* case the issue was whether the subject of a claim to a patent was obvious and so did not amount to a patentable invention. Resolution of the issue required no regard to the future. The *Piglowska* case concerned financial remedies following divorce and the issue related to the weight which the district judge had given to the respective needs of the parties for accommodation. In his assessment of such needs there was no doubt an element of regard to the future. But it would have been as nothing in comparison with the need for a judge in a child case to look to the future. The function of the family judge in a child case transcends the need to decide issues of fact; and so his (or her) advantage over the appellate court transcends the conventional advantage of the fact-finder who has seen and heard the witnesses of fact. In a child case the judge develops a face-to-face, bench-to-witness-box, acquaintanceship with each of the candidates for the care of the child. Throughout their evidence his function is to ask himself not just "is this true?" or "is this sincere?" but "what does this evidence tell me about any future parenting of the child by this witness?" and, in a public law case, when always hoping to be able to answer his question negatively, to ask "are the local authority's concerns about the future parenting of the child by this witness justified?" The function demands a high degree of wisdom on the part of the family judge; focussed training; and the allowance to him by the justice system of time to reflect and to choose the optimum expression of the reasons for his decision. But the corollary is the difficulty of mounting a successful appeal against a judge's decision about the future arrangements for a child. In *In re B (A Minor) (Adoption: Natural Parent)* [2001] UKHL 70, [2002] 1 WLR 258, Lord Nicholls said:

> "16. ... There is no objectively certain answer on which of two or more possible courses is in the best interests of a child. In all save the most straightforward cases, there are competing factors, some pointing one way and some another. There is no means of demonstrating that one answer is clearly right and another clearly wrong. There are too many uncertainties involved in what, after all, is an attempt to peer into the future and assess the advantages and disadvantages which this or that course will or may have for the child.
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> ...

> 19...Cases relating to the welfare of children tend to be towards the edge of the spectrum where an appellate court is particularly reluctant to interfere with the judge's decision."

35. At para 59 Lord Neuberger said;

> "In the following paragraph of his judgment, para 42, Lord Wilson suggests that Lord Hoffmann's remarks apply "all the more strongly" to an appeal against a decision involving the future of a child, and that is supported by an observation of Lord Nicholls quoted at the end of the paragraph. I agree: in a case such as this, the court is concentrating its focus on future multi-factorial possibilities, as opposed to present or past questions, such as the present needs of divorcing spouses (as in *Piglowska*) or past likely opinions which would have been formed by skilled people as in (*Biogen*)."

36. He went on to say at para 86

> "There is, in my view, no reason why the Court of Appeal in a case such as this should not have followed the normal, almost invariable, approach of an appellate court in the United Kingdom on a first appeal, namely that of reviewing the trial judge's conclusion on the issue, rather than that of reconsidering the issue afresh for itself."

37. In the case of Re C (children) [2016] EWCA Civ 356 Lady Justice Black said of this comment at para 16;

> "Although, in this passage, Lord Neuberger was focusing particularly on the role of the appeal court when considering the proportionality of an order made by the first instance court, I see no reason why his comments should be confined to that situation."

38. It is also relevant to consider the role of the first instance court in family proceedings. There is almost inevitably a lengthy background and history to cases involving considerable case management and guidance from the court. There is a high degree of judicial continuity in the FPC and an intimate involvement by the court not just at final hearing but over the course of proceedings through intensive case management. This cannot be replicated on appeal. There is an inquisitorial approach informed by the court's knowledge

of the particular proceedings. The court develops what Dame Butler-Sloss in Re W describes as

> "the inestimable advantage of the feel of the case, denied as much to the circuit judge on appeal as to the Court of Appeal."

39. As Gillen J recognised in McG v McC, a fundamental principle under the 1995 Order is the no delay principle. This principle runs throughout the legislation in England and Wales and Northern Ireland for cases involving the welfare of children. In G v G Lord Fraser said

> "I would only add that, in cases dealing with the custody of children, the desirability of putting an end to litigation, which applies to all classes of cases, is particularly strong because the longer legal proceedings last, the more are the children, whose welfare is at stake, likely to be disturbed by the uncertainty."

40. The no delay principle does not sit easily with the requirement, if such be the case, for a rehearing de novo in every case. Delays will occur not just in the conclusion of the instant case but also those other cases which cannot proceed to conclusion because of a lack of court time otherwise devoted to extensive full rehearings. This is contrary to the principles set out in the 1995 Order. It also fails to recognise the particular difficulties in deciding cases involving the welfare of children. There is rarely only one right answer in such matters. A party should not be entitled to seek another bite of the cherry and challenge a decision simply on the basis that he or she did not like the decision of the first instance Court.

41. I am therefore satisfied that I am not constrained by any provisions of the County Court Rules as to the mode of appeal.

42. I have considered to the extent to which the mode of appeal engages Article 6 and Article 8 rights. In DMcA v A Health and Social Care Trust [2017 NICA 3 the Court of Appeal said

> [44] We commence with certain uncontroversial assertions of law. First, Article 6 does not guarantee a right to appeal. This right is only provided for in criminal cases in Article 2 of Protocol No. 7 to the Convention (See Re ES Application for Judicial Review [2008] NI 11 and JG's Application [2014] NI Fam 2).

[45] Secondly, when a State does provide in its domestic law for a right of appeal, those proceedings are covered by the guarantees in Article 6. The way in which the guarantees apply must however depend on the special features of such proceedings. Account must be taken of the entirety of the proceedings conducted in the domestic legal order, the functions in law and practice of the appellate body together with the powers and the manner in which the interests of the parties are presented and protected. In short there is no right under Article 6 to any particular kind of appeal or manner of dealing with appeals.

[46] The simple straightforward fact of the matter in each of these cases is that a hearing on the issue was given, there was no impediment to access to justice for such a hearing, the arguments were set out before the judge and in each case a reasoned decision was given. In short insofar as access to justice in this context is a structural issue, no impediments were placed in the way of either appellant. All of this is entirely Article 6 compliant."

43. In JG's Application [2014] NI Fam 2 Maguire J said

> "[22] Eighthly, the court will not neglect the convention rights of the parties. But in the context of appeal proceedings the convention rights of the parties will be a much less potent factor than they would be in the context of a first instance hearing. It is well settled that Article 6 does not require there to be an appeal hearing and the Article 8 rights of the parties, the court acknowledges, will have already been considered and assessed in the lower court in arriving at its conclusions."

44. I am satisfied that the appropriate test is of necessity and proportionality. That should be viewed in the context of the need to protect the interests of children. Taking into account the statutory imperative to avoid delay, I do not consider that a rehearing de novo in every appeal is necessary. Proportionality requires a balancing exercise. The advantage of a full rehearing on appeal is to an appellant who does not like the decision of the first instance court. Against this must be placed the disadvantages of the increased delay, additional costs and case management, the stress for all parties including the children the subject of the proceedings and the fact that the issues have already been aired as part of an inquisitorial process in the FPC. I am satisfied that a rehearing de novo in every case is not proportionate.

45. Gillen J in McG v McC recognised that the approach in England and Wales was governed by a different Act and different statutory rules and procedures. He nevertheless decided that appeals to the High Court from FCC in Northern Ireland should be approached in broadly the same manner as in England and Wales. In arriving at this conclusion Gillen J guided himself by several principles. Applying the same principles here I arrive at the same conclusions.

46. There is no basis for a different approach for appeals from the FPC to the FCC which would be unique in relation to the conduct of appeals for matters arising under the Children's Order or the Children's Act in the similar jurisdictions of England and Wales and Northern Ireland on the larger scale, and the FPC, FCC and High Court in Northern Ireland on the smaller scale. The courts carry out the same function applying the same principles and subject to the same overriding objective.

47. I am therefore satisfied that that an appeal from the FPC to the FCC should be conducted in exactly the same manner as appeals in children's cases in England and Wales and as appeals from the FCC to the High Court in Northern Ireland and pursuant to the principles set out in G v G.