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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE: L and O (CARE ORDER)

GILLEN J

[1] This judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and adult members of the family must be strictly preserved.

[2] This is an application by a Health and Social Services Trust which I do not propose to identify ("the Trust") initially for Care Orders pursuant to Article 50 of the Children (Northern Ireland) Order 1995 ("the 1995 Order") in respect of two children namely L born 8 September 2000 and O born 16 July 2003. If successful in these applications, the Trust then seeks to make an application for an order pursuant to Article 18 of the 1987 Adoption (Northern Ireland) Order ("the 1987 Order") freeing both children for adoption in the absence of parental consent.

Background

[3] To preserve the anonymity of the mother and father of these two children, A will the mother and B will be the father. There are five other children of the family namely S (now 19 who resides at home with A and B), E who is now 16 and resides partly with the parents and part of the time at Woodland Residential Centre, D who is now 15 and resides in the a residential centre, L1 who is now 12 and resides with a maternal uncle and aunt and S1 who is now 10 and resides with a maternal aunt and uncle. E, D, L1 and S1 have been received into care pursuant to Care Orders made at a Family Centre on 6 September 2004.

[4] There have been historic concerns about the family stretching back to 1996. Ms Simpson who appeared on behalf of the Trust had drawn up a very helpful schedule of intervention stretching back to 1996 commencing with concerns about a broken arm sustained by S and bruising sustained by E against a background where B had consumed alcohol. Moreover a schedule of alcohol abuse had been also drawn up for me by the Trust in which I find a series of allegations of excessive drinking on the part of A and B over the years. On 6 March 1996 a Child Protection Case Conference had voiced concerns and E was placed on a child protection register of confirmed physical abuse and S, D, L1 and S1 were placed on the register under potential physical abuse. These children were deregistered on 20 December 1996 although social services continued to provide assistance until 1999. On 14 November 2001, as a result of concerns about home conditions, and lack of proper parenting, a case conference for child protection placed S, D, E, L1 and S1 on the Child Protection Register under the heading of potential neglect and L under the heading of suspected neglect. The concerns persisted. At a case review conference on 5 February 2003 it was decided that the names of the children would be retained on the register. At this time S, D, E and L were under the heading of physical neglect and L and S1 and the unborn child O were under the heading of potential neglect. It was the Trust case that no improvement occurred and by 2 May 2003 the Trust decided to issue care proceedings. Shortly thereafter, information was shared by two of the children concerning domestic violence on the part of B against A. An emergency planning meeting met on 16 May 2003 and Emergency Protection Orders were obtained for all children with exception of S and of course O who had not yet been born. A Family Centre thereafter carried out extensive work and Ms G looked at the family as a whole and the dynamics within. Her conclusion was that whilst A and B did not intend harm to the children, they had no insight into their responsibilities for them. That report also concluded that L had no attachment to her parents and there was no evidence that the parents were able to ensure that her needs could be adequately met. On the day of O's birth 16 July 2003 an Emergency Protection Order was granted concerning him and the child was removed into care.

[5] It is against this background that it is relevant to note the threshold criteria which the judge in the Family Care Centre found on 6 September 2004. I will record these as they have been given to me in handwritten form by counsel:

> "1. D and L1 have not been afforded the opportunity to fully engage in their education. This is evidenced by the high rate of absenteeism and monitoring, whereby it was evident that the parents relied upon the oldest four siblings to remain at home from school in order to assist with

caring for younger siblings. There has been poor school attendance in relation to S, D, L1 and S.

2. Gross neglect of the oldest five children in particular in relation to the children's personal hygiene, health and dental care and the supervision of the said children. (This element had not been agreed by the parents but was found by the judge).

3. The parent's failure to provide basic comforts for the five oldest children ie heating, bed and seating in relation to the home.

4. Evidence of inconsistent parenting practices and failure to supervise which resulted in D and E becoming involved in anti-social behaviour, which the parents failed to intervene (sic) or attempt to control or contain.

5. Parents accept the children were subjected to a number of house moves which were unplanned and involved on each occasion abandonment by them of many basic household furnishings.

6. On occasions, abuse of alcohol by B to the detriment of the family.

7. Evidence that the oldest four children were being required to undertake child care responsibilities beyond their capacity which inevitably led to accidental injury (this was not agreed by the parents but was made a finding by the judge)."

It is noteworthy that numbers 1,3,4,5 and 6 were conceded by A and B.

The Evidence

[6] Prof Triseliotis ("Prof T") is a distinguished academic from the University of Edinburgh who has researched and taught for many years on children separated from birth families and who have spent most or all of their childhood in substitute care. He has authored, co-authored and edited two dozen books on issues mainly concerned with separated children. He has regularly appeared in the courts in Northern Ireland dealing with issues of

attachment, the quality of contact and the benefits of long term foster care and adoption. In the course of a report dated 24 June 2005, during his examination-in-chief and cross-examination in this court the following points, inter alia, emerged from his evidence:

(i) His remit was to ascertain the attachment needs of L and O, to offer an opinion on the quality of the current contact between the children and their parents, to indicate whether in the event of the court granting a care order the needs of the children would best be served by being placed in long term foster care or by way of adoption and whether, in the event of a freeing order being granted, the needs of the children will be best served by maintaining parent contact and inter-sibling contact post freeing and post adoption.

(ii) He observed three contact sessions between the parents and L and O.

(iii) Dealing with the relationship between L and her father, he described this as a very ambivalent relationship in which L came across as a very insecure child with a number of problems, with no core identity or security. He felt it would be a long time before she could feel secure as a child. He observed that the father most of the time appeared to be affectionate and attempted to stimulate her, but at other times he over-stimulated her and upset her. B did not seem to get the message when he was being over attentive and to stop treating her in this way. The mother mainly played with O but her few interactions with L had more quality about them and L responded to her by demonstrating a little more affection to her compared to her father.

(iv) Prof T described O as a sociable child who was happy to be at contact but he did not like to be physically engaged. The mother spent more time with him trying to be affectionate but any attempt to engender affection evoked a strong avoidance element on the part of O. No close attachments were apparent between mother and O and he treated her more like a familiar figure whilst keeping her at arms length. This is understandable as O has never been parented by his mother or father having been removed to a foster carer when only one week old.

(v) So far as the siblings were concerned, L1, S, E, D and S1 also attended. It was Prof T's conclusion that these children exhibited a high level of allegiance to the concept of a family as a whole rather than to specific individuals. It was his view that they were all very well prepared for the session and as an example if anyone tried to fall out of step, someone would give them disapproving glances. E "looked daggers at D" when he thought he was about to say something unacceptable and he asked him to stop it. L did something similar in relation to S. The main interaction was with S1 and D, much less S, and hardly any at all with L who took no part.

(vi) In June 2004 the foster carer of L and O was a Ms S, a single female woman who lived with a younger sister and also undertook childminding. Prof T described the situation as follows:

> "O arrived at the foster home when he was only a week old whilst L was then two. L, the foster carer told me, was a joyless child when she arrived. In addition she would not easily relate or allow herself to be cuddled or comforted. There is a period when she would also kick and bite her carer. It was only gradually, the carer continued, that L was taught to accept comforting and affection. It was her view that before coming to her L had not sufficiently attached to anyone. Since then she had come a long way, she added, but she still has some way to go. For some time now she has been more receptive and enjoys all the attention and love given to her and she can reciprocate. …….. The process of building a relationship with L had been slow, she told me, but she thinks her closeness has developed and is continuing to do so. It is for this reason that she hoped the children's transfer happens soon, and before the relationship becomes even closer. …..
>
> The carer reported that O arrived when only a few days old and the process of relating and attaching to him had been much easier. She described him as a happy child who related very well to herself, her sister and to the other two children she is minding. She is aware that O was very close to her, closer than L, and he will cuddle up to her. …. She was equally optimistic that he would make a good move to a new family where he could be offered continuity of care."

[7] I pause to observe at this stage that Prof T recorded at page 22 of his report:

> "The carer was certain that there was no possibility of keeping the children as their long term foster carer. When the children arrived they were meant to stay only for a few weeks and it is now some two years and they are still here. She cannot make a long term commitment because she is young and single and hopes one day to start her own family."

That became an important issue in the case because it was put to Prof T that on the morning of the hearing, this carer had telephoned the birth parents to confirm that she had now changed her mind and was prepared to keep the children long term. That fact in itself required this case to be adjourned during mid-hearing in order for it to be investigated and tested. Prof T had quite understandably been acting on the supposition that this carer was not available. Indeed he specifically stated that had she been prepared to look after these children on a long term basis right throughout their childhood it is one of the factors that would have pressed him towards long term foster care rather than adoption. Indeed he said that so far as the current carers are concerned, if they were prepared to commit themselves to long term foster care for the whole of the children's childhood, and if, as he understood, this would take some of the antagonism away from the part of the parents and allow them to give permission to the children to stay with this carer, he would favour that over adoption notwithstanding the obvious advantages of adoption which he went on to outline in the case. Underlining however his concerns that the original carer was not in a position to commit herself he went on to add at page 24:

> "This is not one of those cases where good arguments could be advanced for maintaining the status quo in the event of the children not returning home. The foster carer was very explicit that as much as she loves the children she could not make a long term commitment. In her view it was imperative that a more permanent solution is found soon and before the children and herself get even closer to each other."

Prof T's conclusions were therefore as follows:

(i) L was a very insecure child with no firm attachments to any single person even though she appeared to be getting closer to her then foster carer all the time. There was still a long way to go before she could come to feel properly secure and develop a sense of belonging.

(ii) O seems firmly attached to his foster carer and because of this he came across as much more secure than L, more settled and more content.

(iii) Whilst he had no doubt that the mother cared for L and loved her very much, the affection displayed by L to her mother was sporadic and did not convey consistency, a sign of weak attachment. O recognises his mother as a very familiar figure in his life but he generally resists or avoids attempts on her part to be affectionate to him. During contact there were hardly any demonstrations on his part of attachment behaviour to his mother. Similarly although Prof T was equally certain that the father loved L, the attachment to him was weak and ambivalent. Although O recognises him, there is no

evidence of significant attachments between them. On the other hand at that time Prof T was satisfied that L had significant attachments to her carer which were developing gradually. O seemed very well attached to his carer.

(iv) In his report, Prof T had concluded "if a care order were granted it is my view that these children's long term interests would best be served by a permanent placement preferably in the form of adoption rather than long term foster care." Commenting on his research he concluded:

> "Without detracting from the devotion shown to the children by many long term foster carers, adoptive parents bring a different commitment to the task and this appears to lead to a greater closeness between parent and child and to the fostering of a greater sense of belonging in the child. Above all it appears to enhance self-esteem and to reduce feelings of loss and rejection. Had the foster carer declared a commitment to look the children until they reached adulthood and beyond a good case could have been made for the maintaining of the status quo but this is not the case. …. As already reported both parents are vehemently opposed to the idea of adoption, their preference being the return of the children to their care or go for long term foster care."

[8] It is right to say however that during the course of his cross-examination it was drawn to his attention that the current carers, although preferring adoption, would be prepared to accept the children in long term foster care. Prof T indicated that the optimum approach in this case would be for both children to remain with this carer in long term foster care during their childhood years. They should both be together in the same home. Hopefully by virtue of long term foster care rather than adoption the birth parents would "give them permission" to do this and the current acrimony would disappear. L in particular would benefit from a continued birth family input. The problem with adoption would be that the father and mother would be vehemently opposed to it. The father had told Prof T that if the children were adopted he would kill himself as he could not live without them and these were threats that Prof T felt should be taken seriously. Although pressed in cross-examination that the parents were in fact opposed to the children being with the current carer because they are in north Belfast and they preferred the original carer, Prof T in my opinion remained of the view that the optimum situation could still be achieved by allowing some time to pass after the care order when the parents might accommodate themselves to the new situation and bring about the optimum approach adumbrated by him.

[9] Turning to the question of contact if these children were subject to a care order and an adoption/alternative long term foster care situation, Prof T was of the view that he considered there should be four direct contact sessions per year. One of these should involve only the siblings, another should involve siblings and parents and the remaining two should be reserved for the parents and L and O. Each session should last 90 minutes. This witness emphasised that the purpose of direct contact in such circumstances would be to maintain genealogical identity and preserve the links between parents and children and between siblings. Contact can also help to reduce feelings of loss and rejection which are almost inevitable with adoption or other permanent forms of substitute parenting such as long term foster care. When contact is properly carried out, it appears to pose no threat to a new adoptive or long term foster care placement. However equally so it is important that for direct contact to work the parents, and other birth relatives, must come to accept and support the adoption or long term foster care without any qualifications or reservations. There is no place for undermining the adopters or long term foster carers for that matter. His example of this would be urging the children to call them "mum" and "dad" or saying to them that they are their real parents and not the adopters. The need for direct contact was particularly pressing in this case in the case of L who has some attachments to her mother albeit not strong. Her attachments to her father are weaker than to her mother and very ambivalent. However both parents are well embedded in L's consciousness and because also of her age discontinuing direct contact could leave her feeling very rejected. This would be particularly dismissing if her older siblings would be seeing their parents frequently. In the case of O there are no significant attachments between his parents and himself but obviously if the two children were placed together it would be impossible for one to see the parents regularly and the other not to. Accordingly the two of them should be treated similarly. In terms of confining the contact directly to four sessions per year, Prof T emphasised that direct contact is not meant to a form of shared parenting. One of the reasons why adoptive parents bring a greater commitment to the task than long term foster carers indeed is the sense of being in control of the situation and that their family boundaries are kept almost in tact. The children also need to settle down for good and come to organise their lives around their new family without too many distractions. L desperately needs to develop roots and O needs to continue the great start given to him by his foster carer. Prof T added the rider that if long term foster care became the plan, contact might increase up to six times per year. The main reason for more contact suggested in the term of long term foster care is because of its unpredictability or what might happen to the children after that. This applies particularly in the case of L who is a very vulnerable, insecure and largely unattached child. In spite of what the foster carers have achieved, L has no core identity and no strong sense of belonging to anyone. She badly needs a permanent home where she can come to feel she belongs.

There is no suggestion that L and O should be separated as they have a very close relationship.

[10] I pause to observe at this stage that the course of this trial was interrupted after the evidence of Professor Tresiliotis for some substantial time to permit investigations of the categoric allegation made by A and B that they had received a telephone call from the original foster carer Ms S indicating that she was now prepared to care for the children on a long term basis notwithstanding the evidence unequivocally given by Professor Tresiliotis. Approximately one week later, after investigations had been made, I was informed that the Trust and the guardian ad litem had both spoken to Ms S who denied that she had ever made such an assertion. On the contrary this woman indicated that she had been told that the judge had said that the children could be returned to her, that the birth parents had asked her not to reveal to the Trust that they had contacted her, and that both A and B continued to contact her on a frequent basis despite requests that they should not do so. This carer indicated that she was afraid to go to her local shop in the event that she would meet A and B. As I will indicate when I come to deal with the evidence of A I fear that deficits in intellectual capacity, too easily lead these parents to allow their fertile imagination to overwhelm what they know to be the truth. Sadly this was but one example where I determined that they were deliberately attempting to frustrate the proper hearing of this case and to influence the court with assertions that were palpably untrue albeit I recognise that the unacceptability of their behaviour must be leavened to some extent by their intellectual deficits. I am concerned however that this behaviour may have soured a potential foster carer for the future and therefore I feel it is appropriate that she should be told that I have been told about these matters and am very sympathetic indeed to her concerns.

Dr McDonald

[11] Dr McDonald is a consultant clinical psychologist and had prepared three reports dated 10 August 2003, 9 March 2004 and 10 March 2004. In addition he gave evidence before me. In the course of those reports, his evidence-in-chief and cross-examination, the following points emerged:

(i) He had addressed motivational issues in relation to A and B's parenting capacity.

(ii) He had concluded that A presented with significant limitations of intellectual ability in terms of powers of reasoning, judgment and stratagems in life all of which were compounded by intrinsic character deficits. Overall she is in the intellectually lowest 4% of the population and exhibits marked dependency on B. In terms of a relationship with B, she emphasised the positive aspects but denied any negative areas. In particular she said that

there were no problems with the relationship and she denied any violence, asserting that B was good with the children and her. This was markedly at variance with the documents in the case and the evidence before me. Dr McDonald considered she exhibited a high tolerance to a fractious setting with B and the relationship with him was very important to her. She clearly felt that she needed to be seen by him in an excessively favourable light. Thus for example she denied that he consumed excessive alcohol or that it interfered with his parenting. Dr McDonald considered that she exhibited a profound lack of insight into concerns surrounding the upbringing of her children. This led her to trivialise matters such as the black eye which E had obtained as a result of being struck by his father in 2004.

(iii) Turning to B, he also was of very limited intellectual efficiency being overall in the lowest 3% of the general population in terms of intellectual ability. These significant intellectual limitations, whilst not constituting a mental handicap, impacted on his ability to provide adequate parenting. Both A and B need an excessive level of support. B showed an inability to maintain attentional control in his meetings with Dr McDonald shifting cognitively from topic to topic introducing personal irrelevancies when discussing care of the children. He had no self-reflection of the seriousness of the welfare issues in this case. In an attempt to elicit more information Dr McDonald had carried out a formal structured programme geared to heighten their awareness as to the validity of concerns and to ensure their acceptance. During 12-15 hours of individual motivational discussion, he concluded that there were still no indicators suggesting that they had developed any insight into the issues of concern. It was his conclusion that there was a poor prognosis regarding the involvement of B in any educational work shop that would sufficiently enhance his personal capabilities or improve his parental efficiency. He has a scattered personality, is self-referential and in terms feels there is no call whatsoever for any welfare involvement in his care of the family. Whilst Dr McDonald acknowledged in cross-examination that is had been on several courses with reference to pre-vocational training skills, this had no effect on his intrinsic deficits in terms of parenting, especially with children of tender years. A is a dependent vulnerable lady who requires direction and care to enhance her own quality of life. Her motivational capacity is limited due to her inability to give validity to concerns regarding her historic parenting practices. These have necessitated the involvement of social services within her life since 1996.

[12] In cross-examination Dr McDonald was challenged with the fact that there has been no residential assessment of A and B in the context of L or O and indeed that O has never been parented by A and B. Dr McDonald's response was that children should never be exposed to the types of experience to which these older children had been subjected to – lack of physical care, poor schooling, poor hygiene, a damaging emotional and physical environment and a chaotic family home.

[13] It was put to the witness that A and B have made sufficient progress over the last year or thereabouts which has enabled them now to share parenting with E (who spends a number of days with his parents and part of the time in a residential centre) together with the fact that D is also afforded a high level of contact. High levels of support are offered to the parents by the staff of the residence who have reported that A and B are open to support and advice in relation to the care of E. The response from Dr McDonald was that E has a moderate learning disability and would require regular monitoring. In the absence of this he would have great concerns. It is fundamental to appreciate he said that L and O are much younger children than E and D (16 and 15 respectively). L and O have different needs, are of very tender years, and need solidity in their care regime with appropriate adults and carers giving appropriate regard to their needs and life setting. E and D display an ability to self-protect in a way that L and O clearly cannot. E and D, with the assistance of professional staff have developed protection skills which thus enables them to return to the residential home or seek assistance from staff if the home situation proves difficult. An illustration of the continuing difficulty is that on 26 September 2005 resident staff at the home reported a telephone call with B when he appeared to be under the influence of alcohol.

[14] I indicate at this stage that I found both Professor Tresiliotis and Dr McDonald to be extremely convincing and cogent witnesses who gave their evidence in a measured and considered fashion armed with a wealth of professional knowledge and experience. Professor Tresiliotis could not have known of the development that did occur subsequent to his giving evidence and to which I will turn in the course of this judgment, whereby it became clear that the current carers now no longer are prepared to countenance long term foster care and will only retain these children in the context of adoption. Similarly he was unaware of the extent of the wounding allegations of child abuse which both A and B continue to make against them in the context of O and to which I shall turn shortly.

Anita Birney ("AB")

[15] This witnesses was a social worker with the Trust.

[16] I observe at this stage that during a break in the course of this witness's evidence, Ms Dinsmore QC, who appeared on behalf of A and B, raised a further allegation brought forward by these parents to the effect that they had photographs in their possession suggesting that O had sustained very substantial bruising to his legs whilst in the care of the present carers which had been brought to the attention of social work staff at a contact meeting at the beginning of October and that this matter required further investigation. Once again this case was interrupted and halted by me in order to afford an

opportunity for these matters to be investigated. I shall deal with these further allegations in the course of this judgment.

[17] As is the conventional approach in family law cases, this witness had prepared a number of reports, adopted certain other reports by social work staff, gave evidence before me and was cross-examined. In the course of her evidence, as a result of the further allegations made, she made a further report dated 4 November 2005 with an appendix from Dr Alison Livingstone dated 4 November 2005. In the course of those reports, her examination-in-chief and cross-examination the following matters emerged:

(i) The Trust shared the view of Dr McDonald that these parents had no insight into the nature of the care required by these children.

(ii) History of intervention

There had been a very long history of intervention on the part of the Trust with this family dating back to 1996. AB produced a schedule of intervention which included the following:

> "May 1996–November 1996: A engaged in a parenting skills group at a Family Centre. B refused to attend.
>
> September-August 1998: E, D and S availed of after school group.
>
> February 1997-May 1998: A attended monthly parents support group.
>
> December 2001-March 2002: A attended a parenting group at a Family Centre.
>
> April 2002-August 2002: A and B re-referred to Family Centre following child protection registration and assessed need in relation to ongoing concerns re parenting capacity. B refused to attend.
>
> Report from social worker at Family Centre.
>
> February 2001: E, D, L1 and S were referred to Extern which provided the children with twice weekly after school activities and regular weekend residential progress. A report was received from Extern.
>
> Ongoing extensive involvement from Family Aid, prior to the children's removal from their parents'

> care. The service was increased from 12 hours in response to deteriorating home conditions. A report was received from Family Aid.
>
> There was ongoing intervention from health visitors.
>
> Financial aid and purchase of items such as clothing for the children, heating oil, electrical items etc."

The older children were admitted to care under an emergency protection order. Consequently it was felt that if O remained with the parents, she was likely to be exposed to significant harm.

(iii) E and D

The witness indicated that E does now stay overnight four nights per week with A and B. D avails of contact on two overnights with A and B. Both these children are in residential care and are engaged in work about protection skills and heightening awareness of their own protection including how to deal with E's drinking. There has been an increase in the residential staff support on the occasions E stays overnight. There is telephonic contact and checks with the home on these occasions. This shared care arrangement does not indicate a change in capacity but it demonstrates that E and D are better able to manage their home situation. The high level of support from residential and field work staff means that these stays are carefully monitored and reviewed. The witness was adamant that given the young ages of L and O, they are not old enough to self-protect. This is in contrast to E and D who are 15 and 16 respectively. In any event there have been problems with these stays. The manager of the residential placement asserts that D is not attending education when at home. Moreover on 26 September 2005, when a problem had arisen about E returning home on a particular occasion, residential staff spoke to B on the mobile telephone and were satisfied that his speech was slurred and that he had consumed alcohol. B has continued to present problems, having threatened foster carers on 30 April 2004.

Adoption as opposed to long term foster care

[18] AB asserted that the Trust prefer adoption over long term foster care in relation to these children. The witness was of the view that it would provide a greater sense of security for the children, and research shows better outcomes with education L in particular has no core attachment and needs to develop roots. Accordingly it was felt that adoption was best for the security of these children. Moreover research has shown that long term foster care creates problems because children resent continued social work involvement. It was put to the witness that since the older children are not subject to adoption, L and O will be made to feel different. His response was that long

term foster care would not give the same sense of security and there was a high risk of breakdown. Contact could help to continue family links even with adoption. The witness was concerned that whilst Professor Tresiliotis had indicated that long term foster care would be the optimum if the parents could accept it, these parents are absolutely opposed to the present placement. On 17 October when the matter had been discussed with A, she had told the witness that whilst she had no specific concerns about the care with the present carers (which had commenced in June 2005), she had wanted the placement to be in the local area where they lived. She had indicated that in no circumstances would she agree to adoption and was clearly unable to support the present placement in any circumstances. The fact of the matter is that these parents are unaccepting of the circumstances of admission to care of these children and whilst they have moved to a bigger and better house, their lack of insight continues despite the intervention which has been a feature for a number of years. AB fully accepted that A loves the children very much and that she is a significant person in the lives of the children.

[19] AB highlighted in this context the recent attempt by A and B to persuade the court that the previous carer was allegedly in a position to keep the children despite the clear evidence to the Trust to the contrary and which had necessitated a change to the current carers in June 2005. Subsequently to the allegation made in this court on 3 October 2005 that she was in a position to resume care, this carer had adamantly denied to social workers that this was so. She told them that nine phone calls had been made by A and B to her, despite being told that she wanted no more calls. This woman was now nervous about meeting A and B and their reaction to her. The children had settled well with their new carers although L's behaviour had deteriorated in October subsequent to contact with A and B having soiled herself in the bath and becoming non-compliant and moody.

Contact

[20] A number of problems had arisen in the course of contact with the current carers. L had disclosed to them that A had indicated that she would be returning to the care of A and B. Whilst there was nothing in the contact sheets to verify this, the foster carers were adamant that L had reported this to them. In the initial stages of contact, A corrected the child for referring to the current carers as mummy and daddy although she subsequently gave a commitment to the Trust not to do this. On 23 July 2005 B had behaved in a very aggressive manner during contact with the children, shouting at social work staff e.g. "Hi who are you? You're nobody". That night the foster carers had indicated that L was very quiet and enuresis had been a factor. On 30 July 2005, during contact, A queried why O had no vest on and was not wearing clothes that she had bought him. She also appeared to check him for marks and pulled his clothing to do so. She again asserted to L "You have only one mummy and daddy" pointing to B beside her. The social worker

indicated to the birth parents that L was told that she has two mummies and daddies, A and B and foster parents. A was annoyed by this and kept saying it wasn't right. The social worker reported that both parents became very angry and abruptly responded to L about this matter. On this occasion B sat beside L, asked her what had happened to her fingers and called A over. L kept saying "the bath ……". B asked the social worker what she was going to do about L's fingers as they were red and sore. The social worker had looked at her hand, and the top of her fingers on her right hand were a bit red. Both parents were demanding medical attention immediately. The social worker felt it did not require immediate attention as L was using her hands and showed no sign of discomfort. She informed the parents that she would check this matter out with the foster parents. This was not accepted by either A or B. A sought out a member of staff at the Family Centre where the contact was taking place and asked for medical attention. Both parents were complaining about social services saying that they tell lies etc. Both A and B made derogatory remarks about food which had been provided by Trust staff and when A was changing O, she complained about his clothes and at one time she stated they "made him look like a fucking tramp". Towards the end of the contact, B became agitated and began to verbally abuse social services and their staff accusing them of being ineffective in regards to carrying out their duties. Both of the staff who supervised this contact reported that due to the verbal abuse that they were subjected in front of the children, they would not be prepared to facilitate any further contact if B was in attendance. On 1 August 2005 the carers reported that they were concerned about contact possibly being unsettling for L and O. They were very unhappy about A and B reinforcing to L that they are not her mummy and daddy. L had been suffering enuresis since moving to the new placement. Incidents of wetting have occurred on various nights but always happen on nights following contact. Accordingly the Trust came to the conclusion at a Looked After Children's Review on 2 August 2005, that B should not avail of any further direct contact at that stage since he was clearly unable to support L and O's permanent placement and enable them to attach to new carers. He had used contact as a means for undermining the placement and criticising Trust staff. When an opportunity was afforded to him to meet with staff to discuss the care plan, he had not availed of this.

[21] The witness asserted that following the court hearing on 3 October 2005 B had indicated through his solicitors that he would be prepared to meet in the solicitor's office with social workers to discuss contact. However he refused to accept the concerns of 30 July and said these reports were untrue. This witness and another social worker attended at the meeting but B indicated he would not agree to engage with the Trust and demanded to know if the two social workers would agree to contact. In view of his refusal to take onboard its concerns the Trust could not agree to this.

[22] It was the Trust proposal that in the future if a freeing order was made, A should have contact twice per year, there should be sibling contact once per year and there should be sibling/birth mother meeting a further once per year.

History of injuries to O whilst in the care of current foster carers

[23] This became a major issue in the case. The primary aspect, albeit in a context of other complaints arose out of the photographs which were produced to the court during the course of this hearing. These were contained in the course of two albums produced to me described as bundle A (containing 20 photographs) and bundle B (containing 39 photographs). Photographs of the alleged injuries relevant to this allegation was contained in bundle A. Bundle B, according to the witness, contains photographs taken by A and siblings on 10 September 2005. Photograph no 1 in this album showed the child wearing cream trousers and a white t-shirt. In the photographs in bundle A, containing the alleged bruising, he is clearly wearing dark blue jeans and a white t-shirt in some of the photographs but not obviously the dark blue jeans in the suspect photographs. Although the affidavit from A indicated that these photographs had been taken on 1 October, Ms Dinsmore QC at the commencement of the resumed hearing informed me that her instructions now were that A could not be certain it was 1 October and that it was simply one of the Saturdays of contact. On the other hand the affidavit had clearly indicated that it was the social worker IQ to whom complaint had been made and she had only supervised on 1 October and before that 15/18 August. It is important to appreciate at this stage that there was subsequently evidence by IQ that absolutely no mention of bruising of this kind had ever been made to her. It is not without significance that the evidence also was that on 1 October the Social Services staff had witnessed photographs being taken of a large teddy bear as represented in photograph 15 of bundle A where the child is wearing the dark blue jeans. The Social Services evidence was that the trousers shown for example in photograph 4 (which was one of the photographs showing alleged bruising) did exhibit trousers similar to those which had been bought by A for his birthday on 16 July. However the evidence from the Social Services was that O had not worn these trousers since 24 September 2003 when he had caused some grease or oil to be spilt on them and had not worn them since that date. The case was also made that in photograph no 2, there is a cream trainer exhibited which is quite different to the trainer exhibited by A in photograph no 13 which had been taken on 1 October 2005. Accordingly the witness questioned whether or not the photographs in Album nos 2-5 were in fact O at all. She indicated her concern that if this bruising had occurred it was not reported to the Trust, was not noticed by the foster carers and IQ was absolutely adamant that she had never been given this information about bruising. The witness indicated that on other occasions eg when there was nappy rash, A had been very

proactive about complaining. A related to this court that on the evening of 27 October she had had the photographs developed and was nearly sure "she had told the social worker."

[24] I consider it relevant at this stage to interject and deal with the evidence of IQ. This witness was a Family Support Worker with the Trust since October 2004. She is mainly involved in supervising contact visits. She supervised the regular Wednesday and Saturday contacts involving O and L with A and B. She dealt with a series of incidents which I shall return to later. In particular she said:

(a) On 20 July 2005 A asked L "what happened to O's head". L said "he fell at my house." The witness gave evidence she could not recall any bump on O's head at this time.

(b) On 27 July 2005 she recorded that on the occasion of L telling A that her foster carer had bought her a necklace saying "my mummy ___ bought this", A told L that she had only one mummy and that was her. When the child replied that she did have a mummy ____ (referring to the foster carer), the witness intervened to indicate to A that this was her contact time with the children and it was not the time to be raising this issue.

(c) On 13 August 2005, she again supervised Saturday contact and indicated that no bruising had been pointed out to her on O by A.

(d) On 18 August 2005 she again supervised L and O but once again no bruising was pointed out to her by A. On this occasion A was upset with L and stated that she was not coming back to contact in the presence of L. The witness asked A not to speak like this in front of the children and that this was neither the time nor the place.

(e) On the subject of the contact of 1 October 2005 the witness asserted that this was the only contact that took place at the beginning of October. She recalled that A had a disposable camera and she took a large selection of various family photographs of L and O with her older siblings. At the beginning of the following week she prepared a very detailed note of this contact. I have read that note (which was typed up after the court hearing on 28 October) and I am satisfied that it is so detailed that it contains all the relevant salient information of events at that contact. It is not only lengthy, but has a number of detailed time references together with detailed minutiae of all activities that day. This witness was absolutely adamant that she was not referred to any bruising of the nature depicted in bundle A photographs 2, 3 and 4 and that A had not brought her attention to such bruising. Moreover she was satisfied that the child had been wearing the blue trousers in the photographs taken on that day and that the trousers had not been changed so that they could not have become the lighter trousers depicted in

the photographs A, 2, 3 and 4. She was cross-examined about the note which she had made which had been shredded after the typed up version now before me had been made. The witness was adamant that the photographs that she had seen taken were those contained in bundle A. She was not there when the photographs contained in bundle B had been taken. Hence she was able to say that when the photographs were taken on 1 October 2005 and contained in bundle A the child was wearing blue jeans.

[25] I pause to observe that I found IQ to be a thoroughly credible, careful and convincing witness. I watched her carefully during the course of her evidence. I was satisfied that she was a caring and concerned observer who would most certainly have recalled seeing any bruising of the nature depicted in photographs A, 2, 3 and 4 and would most certainly have done something about this had it been drawn to her attention. Accordingly I was absolutely convinced having heard her evidence that not only had she not been shown this bruising on 1 October 2005, but she would most certainly have observed bruising of the kind described therein had the child been so marked on that day. I do not believe that if this child had had the bruising described by A and B, that they would not have reported to IQ. I am therefore satisfied that there was no such bruising on this child's legs on 1 October 2005.

[26] In this context therefore I return to the evidence of AB who had visited the current carers in the aftermath of the allegations arising out of the photographs:

The concerns of the current carers

In the wake of the fresh allegations and the photographs, the Trust decided that a protocol investigation was necessary to ensure that the child was not at risk in her current care position. AB and a senior social worker/team leader Miss G visited O and the carers. The witness described the carers as being "shocked and concerned" re the allegations. The carers could not recall O having significant bruising on his leg at any time since his placement with him. They recalled in the August period O having hit his leg against the patio step when L had pushed him (the carers had reported this to AB at the time). The carers acknowledged O having sustained small bruising at various times from normal toddler falls but nothing that would have given them cause for concern. AB and Miss G looked at O's legs and there was no bruising on his legs. The child appeared content, happy and affectionate towards his carers.

The Trust then spoke to IQ and Ms O'C who also had supervised contact on 1 October 2005. Notice was taken of the fact that the photographs of the child with the large teddy bear which were clearly taken on 1 October 2005 according to the witnesses reveal O wearing dark blue jeans and a light blue t-shirt whereas the photographs of the alleged bruising show him wearing different clothing.

[27] On 2 November 2005 AB again visited O and his carers. The carers were shown the photographs allegedly of O's legs with the bruising. The carers felt that if O had had this extent of bruising they would have noticed and would have recalled it.

[28] On the same date, O received a full medical with Dr Livingstone – Paediatrician at a local area hospital. Dr Livingstone's report is before me. She indicates that there are a number of possible causes for the bruising including accidental injury, non accidental injury or blood disorder. Dr Livingstone stated that she could not make any definite diagnosis with reference to the cause without having seen the child at the time of the injury and having an explanation for the cause.

[29] The Trust then interviewed L on 2 November 2005. She did not make any disclosures that would indicate any concerns. On the contrary she spoke positively about her foster parents and her current lifestyle, indicating she "loved it". That child was also given a full paediatric medical assessment by Dr Livingstone.

[30] A and B were then invited to speak to AB regarding the interview with her daughter on 3 November 2005. They declined to take up the appointment.

[31] This witness also gave evidence that O had been placed with his current carers on 17 July 2005 and since this time had been visited regularly by AB. Other social workers and a health visitor have also visited the placement and have seen O there. No concerns in relation to the placement have ever been identified by any professionals. The witness observed that O had settled in well in this home, he was affectionate towards both his carers and had begun to refer to them as mummy and daddy. She had observed O to be relaxed in the home and had not been concerned in relation to the care afforded to him.

[32] The current carers were described by the witnesses as being distraught in regard to the allegations that had been made in relation to them. They have now felt very vulnerable and given that A and B were clearly opposed to them caring for their children, they were no longer prepared to continue caring under a long-term fostering arrangement. They also felt that because A and B are not supporting the placement they could not agree to direct post adoption contact between the birth parents and L and O. They felt they could still be supportive of sibling contact provided the birth parents were not placing any undue influence on the children to disrupt the placement and this contact was appropriately managed. The carers have requested a respite placement for L and O due to the stress and uncertainty of the current circumstances unless the matter is resolved in court. The carers were fearful

that A and B would continue to make allegations about their care of the children and felt that this could jeopardise the potential long-term placement. The witness indicated that she considered the carers were now clearly under immense pressure and the Trust was fearful that further delay in these proceedings was likely to lead to the breakdown of the placement. The consequence of this would be that L and O would have to move again and there was concern that the impact of this would seriously damage their emotional well-being.

Other incidents of injuries to O

[33] There was a history of complaints by A and B about injuries to L. These are referred to in a number of places including the statement of A of 31 October 2005. At paragraph 6, 7, and 8 of that statement A had made the following allegations;

> "6. O has suffered two bad injuries since his move into the current placement. Once he had to attend the Accident and Emergency Department at the Mater Hospital and according to professional advices a few days later, he had to be attended by an out of hours emergency doctor.
>
> 7. Initially it was recorded that O had hit his head during a contact visit, which simply was not the case. AC eventually clarified that my son had allegedly fallen at the foster carers home and hit his head on a tiled floor. He was taken to the Mater hospital and treated there. I append hereto a photo that I took at a Saturday contact of his head with a large bump and bruise endorsed with the initials MK1.
>
> 8. The following Tuesday I received a telephone call from AB saying that O was alleged to have fallen again and hit his head again. He was alleged to have banged his head against the gate and the foster carers had to bring him to have paper stitches put into his head because of a head wound. I was told that he was unwell as a result and therefore would not be attending contact the next day. I began to get really worried. Thereafter I noticed both children would regularly attend at contact with marks and bruising."

[34] This witness AB dealt with these allegations. She drew my attention to the following reports of social workers on these matters since the child O has been in the care of the current foster carers:

1. Of the allegation of 20 July 2005 that the child had marks on his head, IQ could recall absolutely no injury.

2. Of the incidents of 30 July 2005 a careful note had been made of that contact session to which I have already adverted in the evidence of IQ. The foster carers had said that they were not sure how the girl had sustained some redness to the tip of her finger but the social workers had been adamant that it had not required any medical attention. The child was showing no signs of discomfort.

3. On 7 September 2005, a social worker AC had been present and had witnessed O falling down a doorstep. This had been a perfectly normal accident which occurs with toddlers and the child had been taken to the Mater Hospital to deal with the injury.

4. On 24 September, while visiting the carers parents, the child had stumbled against the gate and again had required some stitches.

5. On 7 November 2005, although there had been a safety bar on a child's seat, the child had pushed it off and fell from the chair. This injury had been discussed with LF a link support worker who liaised with the foster carers and accepted this explanation.

[35] The witness was adamant that she has looked at this placement very closely and remains unconvinced that there is any substance whatsoever to these allegations. These children are well settled and O especially is very affectionate to these foster carers calling them mummy and daddy. These allegations had been taken seriously, and were investigated and explored.

[36] I was convinced that this was a careful and concerned witness who took her duties extremely seriously with a genuine concern for the welfare of these children. I was satisfied that she had investigated all these allegations assiduously from a number of different sources and had been absolutely satisfied that any injuries which O had received whilst in the care of the current foster carers were the normal rough and tumble of a young boy's toddler experiences. I concluded that there was absolutely no evidence of abuse of this child. The evidence of how he has settled into the new home and the closeness of his links with the current carers were clear evidence that this child is not being abused in any way.

Contact

[37] Current contact is fixed at every Wednesday between 10.30am and 11.30am in North Belfast where the current carers live. On Saturday it is between 11.00am and 1.00pm in a town close to where the parents live. There have been a number of entries in the contact sheets which I have seen which indicate positive elements on the part of the parents in these contact instances. The Trust are very much in favour of contact but sadly the allegations which have now been made have now brought into question the whole issue of contact. B has not been attending contact since August in the circumstances I have outlined. A does not attend on Wednesday. B is not prepared to work with staff or support the placement and there are concerns about the conduct of A given the allegations that I have outlined. Prior to the allegation of October 2005, the Trust view was that there should be direct contact four times per year. The Trust recognise the strength of the point from Professor Tresiliotis that the benefits of contact for L particularly are very important and it would not be right to cut her off from her mother if at all possible. However the danger now is that if contact continues on a direct nature, these foster carers will withdraw and are not prepared to submit themselves to further allegations.

SG

[38] This was a senior social worker with the Trust. In the course of her evidence and cross-examination the following points emerged:

(i) The witness had spoken to the current carers the night before she gave evidence in this case about the placement and their views concerning the allegations that had been made. She described the couple as being anxious about their ability to continue caring for these children under the stress and strain of the allegations. The female carer was very tearful. The male carer had indicated that he was very angry at the allegations with no opportunity to defend himself. He was also angry that the child D had been subjected to this with photographs being taken without O knowing what was happening. In substance the carers had indicated that they did not know how long they could carry on in this way.

(ii) The Trust plan had contemplated post adoption contact in the event of the child being freed for adoption. The problem now was that the carers were adamant that if the children were to remain with them they could no longer lend themselves to direct contact either with the siblings or A and B. They felt that the birth parents were undermining the placement, that the older siblings were being put up by the parents to create further allegations and that in terms a freeing order accompanied by a contact order would lead to breakdown. The witness was very concerned that if the placement did break

down it would be necessary to move the children at least initially to a short term placement and that thereafter they might be hampered in finding a permanent placement for particularly L in light of her age. Whilst new carers would therefore have to be advised as to the problem with the birth parents, the Trust was still of the view that it is likely that they would find such people. Nonetheless they were extremely reluctant to contemplate the possibility of losing this particular placement.

(iii) When the court sat again on 11 November 2005, this witness indicated that AB had now again spoken to the female carer that very morning about contact. Her up-to-date view was that she still could not support direct contact at least in the near future with the birth parents although she could facilitate sibling contact in early December. The female carer however did indicate that in the event of L expressing manifestations of missing her mother, then they would facilitate such a contact. It was the SG's view that time should be allowed to pass to allow this matter to settle with a suspension of contact in the meantime. Work would thereafter have to be done with A and assurances obtained. It was clear that the main issue was the most recent allegation of October concerning the bruising to O's legs.

(iv) It was put this witness that any cessation of contact for L in particular would be detrimental to her. The witness recognised that there was the conflict between the desire to support contact as against the danger of losing a placement which was very conducive to the welfare of these children. The witness indicated that the Trust was perfectly ready to do extra work with A and B to try and rectify this situation.

(v) Ms McCullough, who acted on behalf of the guardian ad litem, put it firmly to this witness that the guardian's view was that continuity of contact with L was most certainly in her best interests and was in terms "an assessed need". Prior to the present crisis, both the Trust and the prospective adopters had been prepared to accept four direct contacts per annum, the carers having taken onboard the contact needs of the child and the views of Professor Tresiliotis. As to the intention of the Trust to stop sibling and parental contact immediately, it had reluctantly come to this conclusion having looked at the placement and listened to the voice of the carers.

(vi) The guardian ad litem's argument was that the present cessation of contact had been too rushed and too lacking in planning, fuelled by an unsuitable conversation to the previous evening over a mobile phone with the carers. The witness did not accept that good practice had been compromised and asserted that the Trust would work tirelessly to assist the carers in this present problem.

[39] I found this to be an impressive witness. I recognise immediately the problem that confronts the Trust who, whilst anxious to encourage contact,

are fearful of losing a very suitable placement for these two children. I have no doubt that they have carefully weighed up the issues and have come to a reasoned conclusion albeit it is one with which the guardian ad litem vehemently disagrees in terms of the contact.

A

[40] The mother in this case had already made three statements dated 31 October 2004, 27 September 2005 and 1 August 2005. In the course of those statements her evidence-in-chief and her cross-examination, the following matters emerged:

(i) It was very clear to me that Dr McDonald had summarised the position well when he opined that A presented with denial and minimisation of concerns regarding her parenting skills. Throughout her evidence she presented with a diminished capacity to understand the needs of these children and presented as someone who had an almost chilling dependency on B. Accordingly she voiced the unsustainable time and time again. She denied that school attendance of the children had been poor reasoning that viral infections, migraines, chicken pox were the real reasons for their lack of attendance. She emphatically denied that B ever took too much to drink or that drinking was a problem with him notwithstanding that he had three convictions for drunken driving. She steadfastly denied the allegations by E that he had witnessed acts of domestic violence against A by B, asserting that he was telling lies. She failed to recognise any merit whatsoever in Dr McDonald's assertion that she showed no insight. A blandly asserted that although she had been told by social services not to prevent L saying she had two mummies, she would continue to remonstrate with her for so doing. Her account of the exchange with Ms S the original carer was implausible and borne out of fantasy. She denied the assertion that she had telephoned this woman nine times, indicating that she had telephoned only once. She continued to assert that Ms S had said she would take the children back. In dealing with the incidents of alleged injuries of the child, she did not hesitate to challenge directly the evidence of all of those who took a different view from her. She still insisted that O had the very substantial bruising depicted in the photographs on 1 October although she now said she should not remember if she had told IQ or not. Of the incident of 30 July 2005, she still claimed that the child had blistered fingers with the skin hanging off her. She steadfastly denied that B was ever aggressive or that he swore or used obscene language in any occasion in the presence of the children notwithstanding the clear evidence of the social workers reports which were there. When asked for an explanation as to why she did not raise the question of the injuries and the photographs when this court first sat on 3 October when Professor Tresiliotis gave his evidence, or on 10 October

when the case was again listed for mention or on 25 October when it was further mentioned she was bereft of plausible excuse.

(ii) She asserted that she wanted L and O to come home again to her and that B would support her in bringing them up. If they could not home, she preferred long foster term foster care in her home town being strongly opposed to the present placement which she thought, albeit wrongly, was in north Belfast.

(iii) Whilst I have no doubt that this woman loves these children very much, I was chilled by the extent to which she failed to have any insight whatsoever into their needs or the damage, both emotional and physical, that she could cause to be occasioned to them whilst in her care.

The guardian ad litem

[41] Ms Girvan, the guardian ad litem in this case, had prepared four reports. In the course of those reports, her evidence-in-chief and her cross-examination, the following salient points emerged:

(i) She did favour the making of a care order in relation to both L and O.

(ii) She was satisfied that these children would be subjected to significant harm if they remained in the care of A and B.

(iii) She did support the application for the children to be freed for adoption.

(iv) She was in full agreement with the evidence of Dr McDonald and accepted that the prognosis for change on the part of A and B was very poor.

(v) In the case of O, she favoured adoption over long term foster care for the following reasons:

The child is very young and to date has no behavioural difficulties. He is content and has made the change to the current foster carers with total ease. He has very limited attachment to his parents.

(vi) She favoured adoption in the case of L for the following reasons:

(a) She still will have the benefit of ongoing contact.

(b) She is very young and that in itself points towards adoption.

(c) She in vulnerable, insecure and has no secure attachments. A permanent placement is necessary to recognise these deficits. She needs to be

settled in a permanent home where she can develop roots and where reparatory work can be undertaken to address the problems that have arisen out of her care history. The fact of the matter is that this child whilst in short term care had a total of seven respite placements. Three of these were to a maternal aunt and the other four to stranger foster carers and not always the same carers. She was in the care of Ms S from 16 May 2003 until 17 July 2005. Excellent progress was made within this placement and she derived benefit from the consistent care giving experience and appeared to be developing a lasting relationship with this carer. Sadly this placement could not continue. After she moved to her current carers on 17 July 2005, she was initially upset and for minor incidents cried for prolonged periods of time with instances of bedwetting. However this situation has improved. She has become more settled and appears to be relating to carers in a positive way. I am certain that this is a good harbinger for the future.

(vii) The guardian dealt in some detail with the objections of A and B to adoption. They had both told the guardian that their circumstances had changed since the reception of the children into care. They had moved house as directed by social services and had furnished and maintained this house to a good standard. They alleged that the area that they lived in has a good amenity for children such as schools, play parks and was in close proximity to social service offices which would allow them to monitor their position. They have a number of concerns about the children's placement. First that the carers do not have any children of their own and are not capable of looking after young children. Secondly, and most concerning the children were living in north Belfast. Both parents expressed concerns for their children's safety particularly in light of the recent civil unrest. They viewed Belfast as a dangerous and unacceptable place to rear children. B stated that under no circumstances did he want his children to continue living in Belfast and felt it was a grave injustice to move children from the country area into a city area. They were implacably opposed to adoption. The guardian also spoke to the other children of the family. Both E and D were opposed to adoption as where S and L1.

(viii) On the vexed question of contact, the guardian provided a detailed analysis of the issues. Since the children's transfer of foster placement in July 2005, the Trust has attempted to facilitate twice weekly contact to parents and weekly to siblings. B has not attended contact since 23 July 2005. The guardian agreed with the Trust proposal that if a care order were granted in respect of each child contact with the parents and siblings would be gradually reduced to once per month. A further reduction would occur if they were to be freed for adoption resulting in contact eventually of four times per annum, twice with the birth parents, once with the siblings and once with the birth family together. At the time the guardian last reported, the current carers were willing to facilitate direct contact. The guardian described this couple as having an appreciation of the difficulties for the parents associated in losing

their children particularly when they were opposed to the care plan. It was the guardian's view that L's memory and relationship with her natural family were more significant than O's. Whilst recognising that children have different contact needs, she did not believe that it was in their interests, given that they are placed together, to distinguish between them as this could cause confusion and possible feelings of rejection. At that time there was a mutual enjoyment of contact between the subject children and their five older siblings. There was no evidence to date to suggest that the older children would attempt to undermine the children's placement. The guardian ad litem suggested that in the future consideration should be given to a combination of face to face contact, telephone contact, exchange of photographs and videos, letters and cards with the mix changing over time as the children developed in terms of the sibling contact. However the guardian ad litem emphasised the need for careful planning support and guidance of a social worker for both adopters and birth parents in terms of contact. She felt that planning was necessary with face to face contact with birth parents if this was to succeed in fulfilling its purpose. It was the guardian's view that the best way forward was to adhere to the original care plan should a care order be granted with a gradual reduction in contact. It was her view that suspension of contact between the natural parents and L would leave the child bewildered. The last four weeks have been extremely difficult for these carers she recognised. A crisis has been caused due to the allegations and the stress attached thereto. On the one hand it is vital that the placement is not disrupted but that must be carefully balanced against the long term needs of L. It is crucial that the carers are approached and the matter discussed with them in a proper way with the Trust affording appropriate support, reassurance and more monitoring of the contact so that they can be protected if these allegations are untrue. In turn the child should do some work with Ms SC in the Family Centre to explain to her why she is not currently seeing her birth mother and father. The guardian ad litem was concerned that it was not enough for the present carers to say that if L does demonstrate concern about not seeing her mother they will re-establish contact. The fact of the matter is that L does not have the capacity to tell them directly that she misses seeing her birth parents. She had only mentioned missing her former carer after a period of four months with her present carers. All in all the guardian was very keen to ensure that everybody, including the carers, looked at this matter from the children's point of view. To precipitatively end contact after 2½ years of contact is poor practice and not in the children's best interests. The case must be child led and not adult led.

Conclusions

[42] (i) I commence my deliberations by recognising the draconian nature of the legislation which is now being invoked by the Trust in both applications. It is difficult to imagine any piece of legislation potentially more invasive in

that which enables a court to break irrevocably the bond between parent and child and to take steps irretrievably inconsistent with the aim of reuniting natural parent and child. I appreciate fully that the mutual enjoyment by parent and child of each others company constitute a fundamental element of family life and that domestic measures hindering such enjoyment do amount to a interference with the right to such protection by Article 8 of the European Convention of Human Rights and Fundamental Freedoms. I also recognise that taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit and that any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child wherever possible.

(ii) I have derived great assistance from two recent cases in the Court of Appeal in Northern Ireland namely AR v Homefirst Community Trust (2005) NICA 8 and Homefirst Community Health and Social Services Trust and SN (2005) NICA 14. In the former case, Kerr LCJ stated in the course of that judgment:

> "It is unsurprising that research into the subject discloses that it is desirable that permanent arrangements be made for a child as soon as possible. Uncertainty as to his future, even for a very young child, can be deeply unsettling. Changes to daily routine will have an impact on a child's need to feel secure as to who his carers are. It is not difficult to imagine how disturbing it must be for a child to be taken from a caring environment and placed with someone who is unfamiliar to him. It is therefore entirely proper that this factor should have weighed heavily with the Trust and with the judge in deciding what was best for J. But, as we have said, this factor must not be isolated from other matters but should be taken into account in this difficult decision. It is important also to recognise that the long term welfare of a child can be affected by the knowledge that he has been taken from his natural parents, even if he discovers that this was against their will."

(iii) Equally so, I recognise that in Yousef v The Netherlands (2003) 1 FLR 210 at 221 para. 73, the ECtHR stated:

> "The court reiterates that in judicial decisions where the rights under Article 8 of the European Convention of Parents and those of a 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."

(iv) I am satisfied in this case that every effort has been made to involve both A and B in the decision-making process throughout and I could find no instance where they could plausible argue that they had been deprived of their right to be involved in the process and the decision-making issue.

[43] The making of a care order involves a two stage process. First, the court must consider whether or not the criteria for making a care order ("the threshold criteria") have been satisfied. As I have already outlined in the course of this judgment, a Family Care Centre has already determined that the threshold criteria has been met in relation to the older children E, D, L1 and S on 6 September 2004. I have set out the seven threshold that were found. I am informed by counsel that numbers 1,3,4,5 and 6 were agreed by the parents and that numbers 2 and 7 were found by the court. I am satisfied that these paragraphs are applicable in relation to the threshold criteria in the case of L and O. L lived at home with her parents and older siblings until emergency protection orders were obtained in relation to all children on 16 May 2003 resulting in the removal from their parents care. I am satisfied that there is no reason to distinguish the care that L received from those afforded to her older siblings. There was no evidence whatsoever before me that there had been any different care or attention afforded to L from that bestowed on her siblings. O was born eight weeks after L and her siblings were removed from the parents care. An emergency protection order in relation to O was granted on 16 July 2003. Consequently O has never resided in her parents care and was removed into foster care from hospital four days following his birth. The Trust had determined that it was unsafe for O to be discharged into his parents care due to the concerns that existed at that time. Moreover I was satisfied by the evidence of AB that extensive support and intervention had been offered to A and B from as early as 1996. As the expert evidence, in particular that of Dr McDonald, has shown, not only has this support and assistance been to no avail, but both A and B exhibited a distressing lack of insight into the concerns that exist. This may be partly due to the limitation of their intellectual capacity but I must view this matter in the context of the paramount interests of these children and I have seen no evidence of improvement in insight or parenting skills on the part of these parents. I share the view of Dr McDonald that neither parent has the capacity to change and that further work is unlikely to alter this situation. I have therefore come to the conclusion that the seven threshold criteria which I have already set out in paragraph 5 of this judgment represent threshold criteria in the case of O and L. In addition I have concluded that there are two additional criteria, namely the poor capacity of the birth parents to change and the likelihood of the material in these criteria impacting upon O are so likely that significant harm would be occasioned to this child if he remained in the care of his birth parents.

[44] The threshold criteria having been satisfied, the court must then consider whether a care order should be made in light of the care plan, the welfare checklist in Article 3(3) of the 1995 Order, the no order principle enshrined in Article 3(5), the need to avoid delay, the consideration of the range of possible orders including any order under Article 8 of the 1995 Order and finally the need to ensure that any breach of Article 8 of the European Convention on Human Rights and Fundamental Freedom is a proportionate response to a legitimate aim. Finally before making any care order, a court must have afforded the parents the opportunity to make representations on contact.

[45] Turning to the care plan, I am satisfied that the placement of each of these children into an adoptive family is an appropriate plan. Later in this judgment I shall set out my precise reasons for considering that adoption is an appropriate care plan rather than long term foster care.

[46] I have reviewed the welfare checklist in Article 3(3) of the Order. I do not consider that it is necessary to slavishly rehearse all of the criteria save to say that I have considered each one of them in turn. The ascertainable wishes and feelings of these children cannot be obtained given their age. In terms of their emotional physical and educational needs, they are obviously totally dependent children reliant on those around them and will benefit from having a safe harmonious environment with those who will love and care for them. I am satisfied that both these children are at risk of suffering significant harm if exposed to the deficits of A and B to which I have referred in dealing with the threshold criteria and in the course of the evidence before me. I am satisfied that neither parent has the capacity or capability to meet either of these children's needs or to care for them. They have failed to avail adequately of appropriate support which has been on offer for several years. In the course of her evidence before me, A continued to deny that the Trust was justified in the removal of the children from their care notwithstanding the findings of the Family Care Centre Court. There was plenty of evidence before me that the older children had been tasked with caring for the younger children, that B abused alcohol to an excessive degree, that the children's school attendance had been extremely poor that the children had been involved in stealing when in their parents care that there was poor hygiene and a chaotic and damaging lifestyle. I find no evidence that either of these parents can effect change. I do not believe that they could even begin the process until they recognise the deficits in the past. It was significant that Professor Tresiliotis indicated that they did not accept there was anything wrong with their parenting and still could not understand why the children had to be removed from their care. Before me A indicated that she would continue to tell L not to call her current carers mummy and daddy notwithstanding being warned about this on several occasions by the social services. She continues to deny that there were any difficulties with B in the

course of their marriage or that school attendance represented any problem. Even today D's attendance at education has deteriorated during the period that she has been residing with A and B. I accept entirely the views of Dr McDonald that the prognosis for change here is very poor and lack of insight is the core problem for the future. I am satisfied that there is no other option available to the court in these proceedings other than a care order. The no order principle would permit these parents to resume parental responsibility for both these children and this would be against their best interests. A supervision order would be inadequate to afford the Trust the necessary independence of parental responsibility leaving, as it would, a degree of parental responsibility with parents who in my view are incapable of exercising it. Whilst I recognise that the care order should be a last resort, I am satisfied that in this case it is a proportionate response to the legitimate aim of ensuring the well being of these children and to secure them in their present surroundings and present carers. Accordingly I am satisfied that I have taken into account the rights of these parents under Article 8 of the European Convention on Human Rights and Fundamental Freedoms but having balanced them against the Article 8 rights of the children, I have come to the conclusion that a care order is a proportionate response.

[47] Finally I have addressed the issue of contact in some detail and I will outline my views on it later in the course of this judgment.

[48] I therefore conclude that a care order is an appropriate step in the case of each of these children.

[49] I now consider the application by the Trust to free both of these children for adoption.

[50] The statutory provisions governing such applications are to be found in the Adoption Order (Northern Ireland) 1987 (hereinafter called "the 1987 Order"). Article 9 sets out the duty to promote the welfare of the child as follows:

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

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

[51] In this case I have taken into account all the circumstances that I have set out earlier in this matter. I am satisfied that L demonstrates weak attachments to her mother to her father. She is an insecure child with no core identity or growing attachments to anyone. She does however have a strong attachment to her current primary carers. O is a young child who clearly needs appropriate safety and protection and should not be separated from L. Their needs are both currently being met by carers who I believe, from the reports before me, are a sensible loving and responsible couple. It is argued on behalf of the birth parents, that Professor Tresiliotis has indicated that the optimum outcome for L and O would be long term foster care if the foster carers agreed they could look after the children on a long term basis regardless of their legal status and if the respondent parents were able to accept the placement eventually. L's needs are somewhat different from O's and the birth family is well entrenched in her consciousness. The entire birth family does have a strong sense of its own identity and each sibling endorses the parents position that L and O should not be permanently separated from them by way of adoption. I have had the advantage of reading all the papers in this case, I have heard the witnesses and in particular I have observed A. I am also conscious that there have been developments in the attitude of the current carers since Professor Tresiliotis gave his evidence. I regard the opportunity I have been given to obtain a general feel for this case as a critical ingredient in arriving at an appropriate decision. I have come to the conclusion that the behaviour of A and B recently embarking on a prolonged campaign of allegations of abuse against the current carers culminating in the most allegations of October 2005, are testament to the implacable hostility of these parents to their children being removed. I am absolutely satisfied that they manufactured suggestions that the original primary carer Ms S was prepared to take the children back. It is my view that these birth parents have no set boundaries to the lengths to which they are prepared to go to achieve their own ends. I am satisfied that their stance has been to undermine the current placement wherever possible. I suspect they only accepted the placement with Ms S because they never intended this to be a long term placement. I consider therefore that long term foster care would be subject to regular and sustained undermining by these parents and that they would engender a sense of insecurity and impermanence in the minds of these children. Accordingly I do not believe that Professor Tresiliotis' aim of reconciling them to a placement particularly this one could be achieved and that they will continue to attempt to undermine the placement if afforded the

encouragement of an opportunity to so do. Already their approach to this case has served to unsettle the current carers and prospective adopters to the extent that there is a danger of the placement now being lost. I believe there is a real and genuine danger that this will continue to be the situation irrespective of where these children are placed particularly if they are in long term foster care which in itself embraces an element of impermanence. I therefore have come to the conclusion that adoption is in the best interests of each of these children. In coming to my conclusion I have taken into account the right of the child to belong to a family a principle which underpins not only Article 8 of the European Convention of Human Rights and Fundamental Freedoms but also the United Nations Convention for the Rights of the Child. Both these children are at an age where it is crucial that they be afforded the opportunity to experience permanent and positive family relationships. I also consider there is merit in the view put forward by the Trust that long term fostering care results in a child being reviewed by social services departments on a regular basis as well as monitoring of the placement by statutory visits on a monthly basis. Children find the continuing State intervention in their life intrusive over the lengthy period that would continue in this instance. It would potentially devalue the authority of the carer's exercise of parental control in this instance leave the door open for the birth parents to undermine the situation. I conclude therefore that adoption is in the best interests of each of these children.

[52] Having come to the conclusion therefore that Article 9 of the 1987 Order has been complied with by the Trust, I must now determine whether either or both of these respondents is or are withholding their consent to adoption unreasonably. Both parents currently have parental responsibility and therefore each of them is entitled to argue that they wish to withhold their consent. The Trust must satisfy me on the balance of probabilities that the withholding of their agreement is unreasonable. The leading authority on the meaning of this ground and the tests that the court should apply is found in Re W (1971) 2 AER 49. During the course of the leading opinion Lord Hailsham described the test in this way:

> "The test is reasonableness and nothing else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness in the context of the totality of the circumstances."

[53] More recent authorities have suggested that the test may be approached by the judge asking himself whether having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appears sufficiently strong to justify overriding the views and interests of the objecting parent. I consider that the principles dealing these applications are well set out in their component parts

in Re W and helpfully adverted to in the leading text book of Hershman and McFarlane Section H at paragraph 124 as follows:

> "(i) The reasonableness of the parents refusal to consent is to be judged at the time of hearing. Accordingly I am doing that now.
>
> (ii) I must take into account all the circumstances of the case. I have already outlined the circumstances that operate in this case.
>
> (iii) I recognise that whilst the welfare of the child must be taken into account it is not the sole or necessarily paramount criterion.
>
> (iv) I must apply an objective test. Could a reasonable parent in the position of A and B withhold consent.
>
> (v) I recognise the test as reasonableness and nothing else.
>
> (vi) I must be wary not to substitute my own view for that of the reasonable parent. Not every reasonable exercise of judgment is right and not every mistake and exercise of judgment is unreasonable (see Re M (a minor) 1997 EWCA Civ 2766 (19 November 1997))."

[54] The basis upon which these parents withholding consent is as follows:

(i) They wish the children should be returned to their own care. I have already found that this is not a plausible proposition.

(ii) At one stage it was strongly argued to the guardian ad litem that the placement in north Belfast was itself objectionable due to the danger of the area. This did not seem to hold a very strong place in the evidence of A before me or indeed in the course of the cross-examination. In any event I am told that the placement is not in fact in north Belfast. I have already indicated that I feel that contact should take place closer to the home of the birth parents. I am not satisfied that there is any reason to believe that the location of the placement constitutes a valid reason for objecting to adoption.

(iii) A major issue in this case surrounded the suggestion that the current carers did not provide an appropriate or safe measure of parenting for these children. I reject entirely any suggestion that the current carers have

provided anything other than loving responsible and appropriate care for these children. Whilst there have been a number of injuries to O, I was completely satisfied on the evidence before me that those injuries which had been sustained were the product of the normal rough and tumble life of a young male toddler who will be subject to mishaps as any child will be. The evidence of the social worker AB on these matters was utterly convincing and I accept it in full.

[55] I shall now deal in some detail with the allegations of bruising allegedly witnessed by A and B and photographed by them on 1 October 2005. I found A's evidence in this regard completely unconvincing for the following reasons:

(i) Had bruising to the degree exhibited in these photographs been evident, I have absolutely no doubt that A and B would have not only clearly recollected with horror the day on which it had occurred, but they would have spared no effort in exciting the interest of all social workers present at the earliest possible moment. Moreover I have no doubt that they would have drawn this to the attention of their lawyers and the court at the earliest moment possible. On the contrary however, not only was A uncertain as to when this had happened (Ms Dinsmore at the outset of the case indicated that A was unable to pin down the date, albeit A was rather more certain in evidence before me) but A in evidence said that she could not be certain that she had told IQ. I was completely convinced by the evidence of IQ before me that she was never told of any such injuries. I am certain that had such injuries been present on 1 October 2005 IQ would have been told and I am equally certain that she would have recalled this. She would have made a very thorough note of it together with the institution of an investigation. The absence of all these matters persuades me that these bruises simply were not present on this child on 1 October 2005 or on any occasion when IQ was there. I am also absolutely certain that if any social worker had had these photographs drawn to their attention, not only would a record have been made but that steps would have been taken to investigate it. The deafening silence on this matter is eloquent testament in my view to the abject failure of A and B to have ever drawn this to the attention of any social worker and this in itself persuades me that their allegation is flawed.

(ii) The photographs of the alleged injuries are wholly incongruous with the other photographs taken on 1 October 2005. First, I believe the evidence of IQ that the clothing exhibited in the photographs of the alleged injuries on the boy are different from those that he was wearing on 1 October 2005. IQ particularly remembered these photographs because of the teddy bear exhibited therein. I also accept the evidence of IQ that O's clothes were never changed during this contact visit so that the opportunity to change from the dark blue jeans to the lighter coloured trousers exhibited in the alleged bruised photographs simply did not arise.

(iii) I am also very suspicious of the fact that the photographs seem of a very different nature from those contained in the rest of the collection. They are darker, infinitely less clear and quite out of keeping with the remaining photographs.

(iv) It is inconceivable in my view that if this bruising had been observed on 1 October 2005, A and B would not have immediately drawn this to the attention of their lawyers and to the court at the earliest possible moment. The delay in having the photographs developed in itself is curious. This of course ties in with the failure of A to raise the matter with AB the social worker at their meeting on 17 October 2005. The only matter of concern raised on this occasion about the carers was their placement in Belfast. In short I find it inconceivable that if this bruising had been noticed on the date concerned, the sittings of this court on 3 October 2005, 10 October 2005 and 25 October 2005 would not have been appraised of this issue. Finally, I would not have the slightest doubt that if the picture of the current carers which I have divined from the papers before me and the witnesses is correct, namely that they are careful, caring and loving foster parents, they would most certainly have seen these bruises. I accept entirely their denial that they ever saw such bruising.

[56] I have come to the conclusion therefore that however these photographs emerged and at whatever time they were taken, there is absolutely no credible or plausible evidence before me to substantiate the claim that this bruising was sustained to O whilst in the care of the present foster carers. I acquit them entirely of any suggestion that such injuries were caused in their care on the evidence now before me.

[57] I have therefore come to the conclusion that there is no basis whatsoever on the evidence before me that these current carers do not provide a wholly satisfactory level of parenting for these children. Accordingly the allegations made by A and B do not constitute a reasonable basis for withholding consent.

[58] I am conscious of the Article 8 rights pursuant to the European Convention on Human Rights of each of these parents. I am satisfied that appropriate weight has been given by this Trust to these rights. In AR v Homefirst Community Trust (2005) NICA 8 at para 78 Kerr LCJ said:

> "The removal of a child from his parents is recognised in Strasbourg jurisprudence and in domestic law as a draconian measure, to be undertaken only in the most compelling of circumstances. In particular the state authorities must explore alternative measures to avoid such a drastic course. Only where it can be

> demonstrated that no other option is feasible will such a choice be justified."

I am satisfied in this case that the circumstances are compelling and that the alternative measures have been considered but are inappropriate. I am aware that a Trust should work so far as possible to support and eventually to reunite a family unless the risks are so high that the child's welfare requires alternative family care. I am satisfied that this is one of those circumstances. In terms I am satisfied of the necessity for interference with the parents rights under Article 8 of the Convention to enjoy a family life with these children and that an order freeing these children for adoption is a proportionate response to a legitimate namely the need to secure the welfare of each of them

[59] I am satisfied that these children are in the care of an adoption agency having been made subject to a care order. I am also satisfied that it is likely that these children will be placed for adoption with their present carers. The Trust evidence is to the effect that both parties have been offered the opportunity to make the appropriate declaration pursuant to Article 17(5) of the 1997 Order.

[60] Finally, I turn to the question of contact. Ms Simpson who appeared on behalf of the Trust, drew my attention to the recent authority of R (a child) (2005) EWCA Civ .1128 in the Court of Appeal in England. This was a case which surrounded the issue of the desire of a half sister to remain in contact with her sibling post-adoption. The area of dispute was the amount and nature of that contact. At paragraph 6 of that judgment Wall LJ said:

> "In the ultimate analysis I pointed out that we would be talking about L's welfare and I pointed to the fact, which I shall return to during the course of this judgment, that a court at first instance is unlikely to impose an order for contact, even were K to be successful, against the wishes of adoptive parents. There was a very delicate balance to be struck, which required a great deal of thought and selflessness on the part of all parties. The key relationship was plainly that between L and her adoptive parents, but everyone agreed that the relationship between L and K was itself important and ideally there should be agreement between the parties about the contact between the two half sisters."

[61] The judge continued at paragraphs 48 and 49:

> "48. We were shown Section 1 of the new Act (which is due in force later this year) which

> demonstrates the clear change of thinking there has been since 1976, when the Act was initially enacted and which demonstrates that the court will now need to take into account and consider the relationship the child had with members of the natural family, and the likelihood of that relationship continuing and the value of the relationship to the child.
>
> 49. So contact is more common, but nonetheless the jurisprudence I think is clear. The imposition on prospective adopters of orders for contact with which they are not in agreement is extremely, and remains extremely, unusual."

[62] Accordingly I think that the prospective adopters in this case, the foster carers, have a right to have their views clearly brought before me and I have taken them very much into account. On the other hand I must recognise that in matters of contact, the paramount interest must remain that of the children. I have been impressed by the evidence of Professor Tresiliotis who has indicated that there is an assessed need for this child L to have contact with her birth mother at least. All efforts must be made to accommodate this need. I of course appreciate that the allegations, which I have determined to be unfounded on the evidence before me, create enormous difficulties, pressures and stress for the present carers. Their concerns must be taken into account. Equally so they must also appreciate that the process has to be child driven and there is expert evidence to the effect that L could potentially be damaged if she does not have any contact whatsoever with her birth mother in the future. I feel certain that when the dust has settled, and the Trust have had an opportunity to speak in depth with these carers about the matter, they will come to appreciate the fundamental importance to L of attempting to establish direct contact with her birth parents in general and her birth mother in particular together with the siblings. This matter should be, if possible, approached on an agreed basis despite the acrimony which has now clearly arisen. This campaign of allegation has to stop. To that end it seems to me that a reasonable approach is to institute contact between mother and child (and father and child if the conditions below are fulfilled) on the basis that:

(a) The contact is supervised by social workers.

(b) The parents have agreed not to carry out a body search of either children at contact visits unless prior permission is obtained in writing from a social worker.

(c) They must not photograph the children unless prior permission is obtained from a social worker in writing.

(d) They must not tell either of the children that they do not have two mums and dads.

(e) They do not abuse social workers at the contact sessions.

[63] These are only suggestions as to the basis for contact and it may be that further conditions will be considered appropriate. I also am of the view that it is necessary for A and B to engage in counselling with the Trust and any expert they make available in order to ensure that these contact sessions are meaningful and appropriate. However I consider that once the agreement is drawn up, hopefully very quickly, then contact could be commenced certainly with the birth mother and children within a very short time - the sooner the better. Obviously if breaches of these conditions occur, and the monitoring will ensure that such breaches are picked up, then contact will have to be re-assessed. Due to the uncertainty of the matter, I do not think that there should be an order about contact, but it should be left to the discretion of the Trust as matters unfold. However I am in agreement with the current proposals that it should be reduced initially to monthly, then gradually to every two months and eventually to four times per year as outlined by the Trust. This should be a gradual reduction. I am of course not permitted to make any ruling about post-adoption contact until the adoption has occurred and these views that I express are simply tentative opinions pending the adoption.

[64] In all the circumstances therefore I have come to the conclusion that these children should be freed for adoption.