Neutral Citation No: [2019] NIFam 19 | *Ref:* **McA11025**

Judgment: approved by the Court for handing down | *Delivered:* **24/07/2019**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION

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IN THE MATTER OF MASON (a Pseudonym)
(Freeing proceedings under the Adoption (NI) Order 1987)

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BETWEEN:

SOUTH EASTERN HEALTH AND SOCIAL CARE TRUST

Applicant:

and

M

Respondent:

_____

McAlinden J

Introduction

[1] By Summons dated 17 December 2012, the South Eastern Health and Social Care Trust ("the applicant") sought an order pursuant to the Adoption (Northern Ireland) Order 1987 ("the 1987 Order") that a child, who in this judgment shall be referred to as Mason, be freed for adoption in order that he could be adopted by his long term foster carers. His mother ("M") withheld her consent. That application and also an application for a care order in respect of Mason were in the list of the Rt. Hon. Sir Reg Weir ("the trial judge") who on 25 June 2013 made a care order and then deliberately delayed delivering judgment in relation to the application for a freeing order to determine whether the foster carers were as good as their word that though they would prefer to adopt Mason if possible they were committed to his long term foster care. In the event having noted that they were and continued to be as good as their word the judge went on to state that "as he had hoped everyone; mother, Trust, Guardian ad litem ("the Guardian") and foster carers agreed that Mason should permanently remain living with the foster family." At that stage, given that everyone agreed that Mason should reside permanently

with his foster family, the only issue before the judge was whether Mason should remain in long term foster care with his foster carers or be freed for adoption by them. In the event the judge in his judgment under citation [2018] NIFam 5 decided not to grant an order freeing Mason for adoption and by this means sought to secure that Mason should remain in long term foster care with his foster family. The Trust appealed against that order to the Court of Appeal and was supported in that appeal by Mason's Guardian. M was the respondent to the appeal.

[2] Mason's identity has been protected by the use of a pseudonym. He has a number of siblings and the identities of those other children have also been protected by the same means. Nothing may be published in relation to the proceedings or this judgment that might directly or indirectly lead to Mason's identification.

[3] On 13 December 2018 at the conclusion of the hearing before the Court of Appeal, the court allowed the appeal with reasons to follow, remitting the application for a freeing order to a different judge. The court also gave directions timetabling the remitted hearing which was to take place in February 2019. Stephens LJ delivered the written judgment of the Court of Appeal on 18 December 2018 under citation [2018] NICA 50, and he stated as follows:

> "[38] The judge stated that as everyone was agreed that Mason should permanently reside with his foster carers "there (was) no remaining consideration pertaining to Mason's welfare." We do not consider that to be accurate as an agreement as to the permanence of residence did not address or resolve the issue as to whether adoption or long-term foster care was in Mason's best interest. There was that remaining issue as to welfare about which there was a considerable volume of evidence. We consider that the judge failed to identify this issue in his judgment and as a consequence of having failed to do so that the issue was not resolved. It is not possible from the judgment to say whether the judge decided that one or other option was better than the other and if so by what degree or as to whether they were equally beneficial. Furthermore, as the issue was not identified in the judgment or resolved no reasons were given. Finally, the wishes and feelings of Mason should have been but were not considered in relation to whether adoption or long-term foster care was in his best interests. The issue as to Mason's wishes and feelings required analysis and if they were or were not to weigh heavily in relation to welfare then reasons ought to have been but were not given. For all these reasons the welfare issue as to whether adoption or foster care was in Mason's best interest was not addressed or resolved and

> no reasons were given. This in turn means that there was a serious procedural irregularity.
>
> [39] The notional objective parent in deciding whether to consent to adoption has to consider the welfare of Mason and has also to take into account his wishes and feelings. As the judge did not address or resolve the welfare issue as to adoption as opposed to long term foster care and did not consider the wishes and feelings of Mason as to those options we consider that the issue as to whether M was or was not unreasonably withholding consent was not appropriately addressed and also we consider this to be a serious procedural irregularity.
>
> [40] In order to address proportionality under Article 8 ECHR again consideration has to be given to the welfare of Mason in relation to the options of adoption and long-term foster care and as to Mason's wishes and feelings. Those matters should have been but were not considered in the proportionality assessment and we consider this to be a further serious procedural irregularity.
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> [41] For those reasons we allowed the appeal. We considered that the matter should be remitted to be heard by a different judge rather than determining the application ourselves. The issues are key issues. There will need to be an assessment of the witnesses and in particular M."

[4] The hearing of the matter before me commenced on 14 February, 2019 and continued on 20 February 2019, 20 March 2019, 22 March 2019, 25 March 2019, 26 March 2019, 2 April 2019, 3 April 2019, 5 April 2019, 7 May 2019, 16 May 2019, 17 May 2019 and concluding on 29 May 2019. During this hearing, I heard oral evidence from Ms Rainey the social worker in charge of the case, Ms Heatley, a social worker presently involved in the case, M, the mother of Mason, Sergeant Ashe, a serving PSNI Officer and Miss Armstrong, the Guardian ad Litem. I was also provided with, referred to and have considered the following documentation:

- Report of Dr Philip Moore dated 12 March 2011;
- Report of Professor Iwaniec dated 30 March 2011;
- Guardian's Report dated 24 June 2011;
- Applicant Trust's Report dated 5 September 2011;
- Guardian's Report dated 14 September 2011;
- Report of Dr Paterson dated 12 October 2011;
- Applicant Trust's Report dated 12 January 2012;

- Applicant Trust's Report dated 26 January 2012;
- Applicant Trust's Report dated 27 January 2012;
- Minutes of Experts' meeting dated 12 February 2012;
- Report of Dr Paterson dated 13 February 2012;
- Statement of the Respondent M dated 13 February 2012;
- Guardian's Report dated 28 February 2012;
- Applicant Trust's Report dated 12 March 2012;
- Report of Dr Paterson dated 29 May 2012;
- Statement of the Respondent M dated 21 June 2012;
- Draft Affidavit of the Respondent M drafted on some dated after 29 May 2012;
- Note of Dr Paterson dated 11 September 2012;
- Applicant Trust's Report dated 12 September 2012;
- Knocknashinna Family Centre report dated 25 October 2012;
- Report of Dr Paterson dated 3 November 2012;
- Applicant Trust's Report dated 5 November 2012;
- Knocknashinna Family Centre report for LAC review dated 29 November 2012;
- Applicant Trust's Report dated 10 December 2012;
- A2 Freeing Summons dated 17 December 2012;
- Applicant Trust's Report dated 17 December 2012;
- Guardian's Report dated 9 January 2013;
- Statement of the Respondent M dated 10 January 2013;
- Applicant Trust's Report dated 13 January 2013;
- Applicant Trust's Report dated 7 February 2013;
- Minutes of Professional Meeting dated 2 May 2013;
- Letter from Knocknashinna Family Centre to Family Intervention Team dated 14 May 2013;
- Report of Dr Paterson dated 20 May 2013;
- Affidavit of the Respondent M dated 20 May 2013;
- Guardian's Report dated 22 May 2013;
- Trust Report Laura Brannigan dated 23 May 2013;
- Report of Dr Paterson dated 12 June 2013;
- Adoption Panel Minutes dated 18 June 2013;
- Applicant Trust's care plan dated 21 June 2013;
- Applicant Trust's Report dated 21 June 2013;
- Statement of Facts dated 25 June 2013;
- Care Order dated 25 June 2013;
- Directions of Weir J to include Threshold found dated 25 June 2013;
- Notice of Appeal on behalf of the Appellant Trust dated 8 July 2013;
- Applicant Trust's Report dated 30 August 2013;
- Skeleton Argument of the Appellant Trust dated 6 September 2013;
- Skeleton Argument of the Respondent M dated 11 September 2013;
- Guardian's Report dated 20 September 2013;
- Directions of Weir J dated 23 September 2013;

- Applicant Trust's Report dated 30 September 2013;
- Affidavit of the Respondent M dated 10 January 2013;
- Applicant Trust's Report dated 3 October 2013;
- Applicant Trust's Report dated 27 May 2014;
- Guardian's Report dated 28 May 2014;
- Directions of Weir J dated 3 June 2014;
- Applicant Trust's Report dated 23 June 2015;
- Report of Professor Iwaniec dated 7 September 2015;
- Daily Log Sheet (Contract for Evan's DJ decks in William Street) dated 9 November 2015;
- William Street Assessment Unit Daily Log Sheets dated 9 November 2015;
- Contact Sheets dated 9 November 2015;
- Contact Record dated 10 November 2015;
- Contact Sheets dated 10 November 2015;
- Directions of Weir J dated 21 December 2015;
- Report of Dr Philip Moore dated 24 January 2016;
- Report of Dr Philip Moore dated 17 February 2016;
- Applicant Trust's Report dated 14 March 2016;
- Applicant Trust's Report dated 17 June 2016;
- Directions of Weir J dated 30 June 2016;
- Applicant Trust's Report dated 3 March 2017;
- Affidavit of the Respondent M dated 13 March 2017;
- Guardian's Report dated 29 March 2017;
- Directions of Weir J dated 4 April 2017;
- Judgment of Sir Reginald Weir delivered on 1 June 2018;
- Notice of Appeal dated 9 July 2018;
- Skeleton Argument on behalf of the Appellant Trust dated 26 November 2018;
- Judgment of the Court of Appeal dated 18 December 2018;
- Addendum Social Work Report from the Applicant Trust dated 18 January 2019;
- Report from the Guardian ad Litem dated 8 February 2019;
- Affidavit of Respondent M dated 8 February 2019;
- Report from Dr Gail Cameron, Consultant Paediatrician, provided to the court in February 2019;
- Skeleton Argument on behalf of Guardian dated 11 February 2019;
- Applicant Trust's Skeleton Argument dated 11 February 2019;
- Respondent's Skeleton Argument dated 12 February 2019;
- School Report dated February 2019;
- Report from the Guardian ad Litem dated 14 March 2019;
- Affidavit of Maureen Walsh dated 27 March 2019;
- Note relating to contact on 7 May 2019;
- Statutory Visit Record dated 7 May 2019;
- Freeing Discovery Bundle 1 comprising Contact Records between February 2017 and December 2018, LAC Review of Arrangements documentation dated 28 April 2017 and 20 April 2018, LAC 16 Plus Review Record dated 19

October 2018, Record of initial 16 Plus Review record dated 19 October 2018, Record of 16 Plus Review record dated 14 January 2019, photographs depicting layout of school playground taken after December 2018; Contact Sheet dated 2 July 2013, Assessment of Contact Records dated 11 July 2013 and Contact Sheet dated 17 July 2013 comprising of 211 pages;

- Freeing Discovery Bundle 2 comprising correspondence from Dr Gail Cameron dated 3 January 2019, Community Child Health Services Referral Form dated 8 February 2018, Correspondence from Dr Cameron dated 25 July 2018, Stage 3 Educational Psychology Report dated 17 May 2018, SET Connects Initial Consultation dated 16 March 2017, SET Connects Review Consultation Summary dated 6 December 2017, Correspondence from SET Connects dated 18 January 2018 comprising 33 pages;
- LAC Statutory Visit Record dated 12 April 2019;
- Contact Sheet dated 12 April 2019; and
- Bundle of Trust Discovery comprising LAC Review of Arrangements documentation, contact sheets, statutory visit records and e mails from May 2016 to April 2019 comprising 190 pages;

[5] Ms Moira Smyth QC and Mr Timothy Ritchie appeared on behalf of the applicant. Ms McGrenera QC and Ms Lyle appeared on behalf of the Guardian. Ms Dinsmore QC and Ms McKee appeared on behalf of M. The parties have benefited greatly from such skilled and conscientious representation and I am grateful to all for their assistance in this difficult and sensitive case.

Factual Background

[6] The factual background to this case is set out in the judgments of the trial judge at first instance and Stephens LJ who delivered the judgment of the Court of Appeal. In summary, the child Mason was made the subject of an interim care order on the day of his birth and was discharged from hospital directly to the care of foster carers. Those same foster carers have cared for him since his birth. The trial judge held that it was clear that Mason was very well looked after and was much loved by these foster carers. This undoubtedly remains the case up to the present time and there is nothing to indicate that this situation will change. The trial judge indicated in his judgment that the foster carers are quite comfortably off and are able to provide Mason with a stable and harmonious upbringing. The trial judge also noted that they have indicated from the outset that while they would prefer to adopt Mason, if possible, they are committed to his long term foster care should that be the outcome of these proceedings. There was evidence before the trial judge as to the occupations of the foster carers, as to their other children and in particular as to one child who was identified in the reports as "J" who was expressly referred to by Mason when expressing his wishes and feelings as to adoption. In delivering the judgment of the Court of Appeal, Stephens LJ was concerned about the risks of inadvertently publicly identifying the foster carers if the court were to set out further information or details in relation to the foster carers or the family. For that reason, the Court of Appeal refrained from doing so and in light of this guidance from the

Court of Appeal, I will similarly refrain from commenting on matters which may facilitate jigsaw identification of the foster carers, their family or the child who is the subject of these protracted proceedings, his siblings or his birth mother unless such details are the subject of dispute on matters relevant to the issues to be determined by the court.

[7] M has 5 children in relation to whom Stephens LJ set out brief details identifying them by the following pseudonyms:

a) Olivia, her eldest child born in August 1999;
b) Evan, born in July 2000;
c) Noah, born in January 2004;
d) Lena, born in July 2008; and
e) Mason, born in June 2011.

[8] HB, to whom M is not and has never been married, is believed to be Mason's father, but the trial judge found that he has taken little or no interest in Mason since his birth and has never sought contact direct or indirect nor engaged with social workers despite their best efforts in that regard. HB took no part in the proceedings before the trial judge, the Court of Appeal or this court and has indicated to the Trust that he has no interest in these proceedings. In any event, his parentage has not been reliably established because of the refusal by HB to provide a DNA sample.

[9] Since 2000 M has been known to Social Services following the birth of her second child, Evan, in July of that year when concerns were expressed by nursing professionals. M appeared reluctant to follow advice from doctors and health visitors and missed medical appointments while in the community. As a result, in October 2000 and again in April 2001, Evan was admitted to hospital with concerns that his medical needs were being neglected and that advice was not being followed. Evan gained more than 2 kgs in weight during that second hospital stay of about one month but M would not accept that any failure on her part to follow advice had contributed to Evan being significantly underweight. Evan was, therefore, discharged from hospital to foster carers with whom he made excellent progress.

[10] Also in June 2001, M asked the Trust to take her eldest child, Olivia, then aged 1¾ into care because she said she could not cope. M was then in a highly distressed state and complained that she was having relationship problems with the father of Olivia and Evan which involved substance misuse and domestic violence which had on occasions occurred in front of the children. Olivia was therefore placed with her father's parents and settled well until, within three months, M had quarrelled with those carers and asked that Olivia be removed from their care.

[11] Following a Child Protection Case Conference in November 2001, when various unsatisfactory aspects of parenting came to light, full care orders for both children were obtained. Attempts at a parental assessment by the Trust failed and Dr Bownes, Consultant Psychiatrist, assessed M and the father of Olivia and Evan in

November 2002 and concluded at that time that M's behaviour reflected a pronounced level of immaturity and that she was driven by her own needs and would use any means open to her to get what she wanted regardless of the harm it might cause to herself or others. He noted that neither M nor the father was willing or able to acknowledge any of the concerns regarding the children and he saw little evidence of capacity on the part of either to effect and sustain positive change. He did not advise the return of either child to the parents' care. In consequence, both Olivia and Evan continued in various rather ad hoc foster care arrangements until, because according to the Trust, M had made progress in the interim, Olivia was returned to her parents' care in May 2004 and Evan was returned in June 2005. Meanwhile, in January 2004, a third child, Noah, had been born to the couple. During the process of phasing the elder children back home it was recorded by the Trust that the home situation had greatly improved and M was following its advice and guidance. The full care orders remained in place with reviews under the LAC process.

[12] It is clear from the judgment of the Rt Hon Sir Reginald Weir that the above-noted improvements were short lived. Disharmony continued between the parents with allegations of substance misuse until they appeared to separate around the middle of 2006, although on-going conflict between them continued on and off into 2007. Conditions for the three children deteriorated and it was noted that Noah was suffering delayed speech. M did not co-operate with speech therapy and failed to bring Noah regularly to a nursery placement that the Trust had arranged. M moved house repeatedly between 2005 and 2007 and in June 2007, following her having taken an overdose of tablets, social workers found the two older children in bed wearing their school uniforms with the house in an unkempt state. In August 2007 a third party reported that the house was being frequented by strangers and that the children were dirty. There then followed an unsettled period with rows between M and neighbours culminating in a Child Protection Case Conference in December 2007 when a catalogue of concerns about the children's welfare was compiled from various housing, health and educational professionals. The children were however left in M's care while complaints continued to be received from various sources. In July 2008, a fourth child, Lena, was born to M.

[13] By October 2008 M had formed a new relationship with "G" and declared her intention of moving with him to Derry. The Trust asked Dr Bownes to assess the new couple to gauge their motivation and long-term plans following which they were allowed to move as they wished. However, by February 2009 M was back in the Trust's area having parted from G. She found a new home quickly and throughout 2009 matters appeared to progress tolerably well, although there were repeated complaints that she was engaging underage babysitters and allowing young people to drink in her home. M denied these allegations and would not co-operate with the Trust's endeavours to do some therapeutic work with the children. In December 2009, a Child Protection Case Conference decided that due to the absence of the therapeutic work and M's unwillingness to co-operate with it, the children should remain on the Child Protection Register. M at this time commenced

a short-lived relationship with another man "J" but would provide the Trust with no details concerning him.

[14] Throughout 2010 matters continued in a similar pattern of minor and not so minor crises and uncooperative behaviour on the part of M. The second child, Evan, who was by now in his tenth year, began to display emotional and behavioural problems both at school and at home. A referral was made to the community paediatrician who expressed concern about Evan's vulnerability and about attachment issues. M said that Evan was unmanageable but was unable or unwilling to see that therapeutic work might help him and wished him to be medicated. She missed appointments with him at the paediatric clinic.

[15] In May 2010, Noah, by then six, suffered a fall in circumstances that were somewhat unclear, fortunately without lasting effect. After he returned home, a social worker called at the house unannounced and found M absent and all four children in the care of the eldest child Olivia who was by then not quite 11. On 15 July 2010 Lena, by then just two, was brought to hospital with a limp. M could not say what had caused it but an x-ray revealed a healing fracture. Investigations revealed that Lena had, from 6 July 2010 been left in the care of a childminder while M had gone to Donegal on a holiday with the other children. The childminder said that on the morning of 7 July she had found Lena to be limping but was unable to contact M because apparently her mobile phone could not receive calls in Donegal. The childminder did not know M very well and had been paid £100 to keep Lena for a week. She had not brought Lena to the Accident and Emergency Department because she knew it would seem strange that she did not know the child's details. She did not hear anything from M until the day of her return from holiday.

[16] The Trust held a meeting at the hospital on 19 July 2010 as a result of which it was decided that the children were to reside with their maternal grandmother. A medical report from the Orthopaedic Consultant expressed the view that there had been a fracture of the fibula, probably at least 2 to 3 weeks old when the child presented, that it would have caused pain from the beginning and a limp probably of more than one week's duration. The unusual location of the injury suggested to the Consultant that it had resulted from a direct blow.

[17] On 1 September 2010, interim care orders were granted by Newtownards Family Proceedings Court in respect of Noah and Lena. It will be recalled that care orders had been granted in November 2001 in respect of Olivia and Evan and these had remained in force. All four children were removed from M's care and placed in foster care. A freeing order has been made in relation to Lena. None has since been returned to M except that relatively recently Olivia and Evan have decided to leave their foster placements and reside with M.

The proceedings before the Rt Hon Sir Reginald Weir

[18] These family issues initially came before the trial judge at somewhat different dates but by 2012 there were four sets of proceedings being:

(i) An application by the father of the two older children, Olivia and Evan, to have their care orders discharged. This application was ultimately not pursued.

(ii) An application by the Trust for full care orders in relation to the three younger children, Noah, Lena and Mason in circumstances where successive interim care orders were made beginning on 27 June 2011 in respect of Mason.

(iii) An application by the Trust to free Lena for adoption.

(iv) An application by the Trust to free Mason for adoption.

[19] Stephens LJ in delivering the judgment of the Court of Appeal noted that the trial judge in accordance with his conscientious practice directed that a great deal of work should be done with a view to encouraging contact between the siblings and their mother, grandparents and father or fathers. In addition, efforts were made to assess M's potential, firstly to understand the historic concerns of the Trust and secondly to alter her behaviour so as to demonstrate her ability to provide adequate parenting for the three younger children whom she wished to have in her care.

[20] The trial judge addressed the issue of placing Mason with M by directing a two-strand approach to her treatment and assessment which involved a Trust Family Centre on the one hand working in partnership with Dr Michael Paterson, Consultant Clinical Psychologist, providing intensive therapeutic input on the other. Reports on the work that each was carrying out were shared between the Family Centre and Dr Paterson as it progressed so that each was aware of how the other's strand was going. Dr Paterson provided treatment on no fewer than 35 occasions between August 2011 and May 2013 and reported on a total of six occasions as his work progressed. He provided a final report dated 12 June 2013. The trial judge set out how that report illustrated the "before and after" positions in relation to M in that for instance it stated that she had made excellent progress in a number of areas and that by and large she could meet Mason's needs at that time but that she would need continuous updating of information and on-going instruction. The conclusion of the report, in essence, was that after the therapeutic work M was motivated to parent Mason but would require input from someone of at least the level of a child support worker at each stage of Mason's development to ensure that she understood Mason's needs emotionally and psychologically. At each stage of Mason's development M would require a four-week intensive course and she would need guidance. There was no guarantee of success.

[21] On 25 June 2013 there was a hearing before the trial judge at which Dr Paterson gave evidence and was cross-examined by Counsel for the Trust and the Guardian. At the conclusion of that hearing the trial judge made the full care orders applied for, a course to which the judge stated that there was no objection of any substance. The only care plan in respect of Mason before the court was one for "Permanence via Adoption." Stephens LJ noted that ordinarily after a care order is made that would conclude the care proceedings but there appears to have been some confusion as to whether the trial judge did approve the care plan as he indicated that at that point the evidence had not satisfied him that M was unreasonably withholding her consent. The trial judge stated that on that basis and following discussion with Counsel he would adjourn the matter (which matter the Court of Appeal assumed was the application to free Mason for adoption) to enable a residential assessment at Thorndale to be arranged and, if that were successful, to see whether M could manage Mason at home. Stephens LJ in delivering the judgment of the Court of Appeal, indicated that the appellate court considered that at that stage the trial judge had in mind a care plan of rehabilitation of Mason to M, failing which long term foster care or adoption. No order was made directing an assessment at Thorndale but the Trust who was not willing to arrange such an assessment appealed to the Court of Appeal. However, given that no formal order had been made by the judge at first instance, the Court of Appeal remitted the matter back to the trial judge. In the event, no order was ever made directing a Thorndale assessment. The Court of Appeal did not consider it necessary to resolve the issue as to whether the trial judge did approve the care plan of permanence via adoption and if not what care plan was approved.

[22] A further hearing took place before the Rt Hon Sir Reginald Weir in October 2013 in relation to the freeing application. Prior to that hearing the minutes of a meeting of the Trust's Adoption Panel held on 18 June 2013 were disclosed. This meeting was some two weeks before the 25 June 2013 hearing. The minutes of that meeting were not disclosed prior to the hearing on 25 June 2013 but were available prior to the October 2013 hearing. The minutes reveal that at the meeting Mason's case had been discussed and the Court of Appeal specifically referred to the following summary of parts of the minutes set out in the judgment of the trial judge:

> "The chairperson asked why the child had come back to the Panel again and a social worker explained that it was due to the fact that Dr Paterson had carried out further work with M at the request of the judge *who had felt that she had made some kind of progress.* The chairperson referred to Dr Paterson's report noting that it was made quite clear that M had demonstrated progress but that it would not develop any further so there was no more work to be completed."
>
> "A Trust member observed that M had been through a lot of assessments throughout her dealings with the Trust.

> The principal practitioner responded saying that *Dr Paterson's last piece of work had been required by the judge otherwise it would not have been carried out*."
>
> "The chairperson questioned did the Trust hold a freeing order for the child as yet? *The senior social worker remarked that it was a formality that had to be completed.*" (emphases supplied)

[23] The Court of Appeal specifically noted that this summary is relevant to M's sense of grievance, particularly those parts to which it added emphasis. The Court of Appeal also observed that in relation to the accuracy of the summary, there were two senior social workers and two social workers present at the meeting and it might be more appropriate to have stated that "a senior social worker remarked …" rather than "the senior social worker remarked …."

[24] Judgment was not delivered after the October 2013 hearing but rather there was a period of delay by the trial judge in order to determine whether the foster carers were as good as their word. As stated above, the trial judge delivered his judgment on 1 June 2018.

[25] Between October 2013 and June 2018 there was no further oral evidence but further reports were submitted to the trial judge from the Guardian and the Trust together with an affidavit from M sworn on 13 April 2017. The Court of Appeal helpfully provided a summary of an important report prepared by the Guardian dated 29 March 2017. In that report, the Guardian stated that the passage of time has allowed for the opportunity to see in actual terms how long term foster care was working for Mason, whether or not it was adequately meeting his needs and how M had behaved in her interactions with Mason. The Guardian stated that Mason had become more aware of the fact that his care arrangements were constantly under scrutiny by professionals and that his placement status was different from child J another member of the foster carers' family. She considered that confusion was being caused to Mason and that on meeting him initially he had become more guarded. The Guardian recounted how she had been told by his foster carers that he was often more unsettled and anxious by his social worker visits.

[26] The Guardian also reported that Mason spontaneously said that he wanted to be adopted and that he wanted to use the surname of his foster carers. The Guardian stated that this is how he wishes to be known, that he believes that this will give him the security and certainty of belonging in a permanent way within the foster carers' family and will confirm him as a fully integrated member of their family. The Guardian referred to Mason's present emotional insecurity and that this had also been observed by the social workers. She reported on her conversation with Mason's teacher who had observed the negative emotional impact on Mason in and around the days of contact with M. The Guardian reported that she had been told by one of the foster carers about an incident at the end of October 2016 when M

in the presence of Mason had said it was her intention to "get all of her children back." The Guardian had met M on 14 March 2017 and she reported that M had informed her that she wanted Mason to remain in long term foster care so that eventually she can seek a discharge of the Care Order and that he can be returned to her care. The Guardian recounted how she had also been told by M that if the Trust was concerned about Mason's best interests then he would already be in her care and added that it remained her intention to secure the return of all of her children to her care.

[27] The Court of Appeal observed that those statements in March 2017, if accurately reported, occurred one month prior to M's affidavit of 13 April 2017 in which she stated that she was content for Mason to reside permanently with his foster carers. The Guardian in her report also stated that M's engagement with professionals was once again reported at times to be "hostile and aggressive." The Guardian concluded "on the basis of all of the information available that the disadvantages of adoption have decreased and the advantages of foster care have also decreased." Consequently, the Guardian was of the professional opinion that adoption is not only the "right" option for Mason, it is the "only" option to secure and protect Mason's needs and welfare now and throughout his life." She stated that such an outcome would be in accordance with Mason's wishes and feelings though it was a matter for the court to determine what weight should be attached to them.

[28] The Court of Appeal specifically noted that all the reports before the trial judge that had been prepared by the Trust and the Guardian were to the effect that adoption rather than long term foster care was in Mason's best interests.

[29] In giving his judgment in June, 2018, the Rt Hon Sir Reginald Weir held that "the welfare of the child has been admirably secured, practically since birth, by the consistent love and care afforded to him in his long term foster placement." He held that it is clear that Mason is very well looked after by them and much loved. The trial judge also stated that "there is no remaining consideration pertaining to the child's welfare – everyone agrees he could not be looked after better than he presently is and will continue to be." The trial judge having stated that "everyone; mother, appellant, Guardian and foster carers, agrees that the child can and should permanently remain living with the foster family," identified the only question outstanding as being the legal status within that family; long-term fostering or adoption?

[30] Consideration was then given by the trial judge as to whether M was unreasonably withholding her consent to adoption. The Court of Appeal concluded that the trial judge's reasons for deciding that the mother was not unreasonably withholding her agreement essentially related to a justifiable sense of grievance held by M and in summary were:

a) M was never afforded the opportunity to parent Mason notwithstanding all the difficult and protracted work that she undertook with Dr Paterson over a considerable period and very many sessions.

b) M was denied the opportunity to undertake a Thorndale assessment and, if it had succeeded, to parent Mason in the community with a modest level of professional support as Dr Paterson recommended.

c) The minute of the adoption panel meeting on 18 June 2013 demonstrated that the social workers misrepresented to the panel the extent of the positive changes M had made in her work with Dr Paterson and plainly regarded the granting of a freeing order as 'a formality that had to be completed.'

[31] The trial judge then posed the question "how can it be said that nothing else but freeing for adoption will do?" and the question "how can it be said after all her work and progress, that having been denied any opportunity to demonstrate her ability to parent the child, that the withholding of her consent to the child's adoption was "unreasonable"?" The trial judge answered these questions by stating that in his view the Trust had entirely failed to discharge the high legal standard required of it before "unreasonableness" could be found. The trial judge was not satisfied that M was unreasonably withholding her agreement and he refused the application.

Legal principles

[32] In determining the appeal brought by the Trust against this decision, the Court of Appeal helpfully summarised a number of important legal principles which clearly have to be at the forefront of my mind, the case having been remitted to me for rehearing.

[33] I must have regard to Article 9 of the 1987 Order which requires that in "deciding on any course of action in relation to the adoption of a child, a court … shall regard the welfare of the child as the most important consideration and shall have regard to all the circumstances full consideration being given," to amongst other matters, "the need to be satisfied that adoption … will be in the best interests of the child." This is the welfare principle under which the court is required to consider whether adoption is in the best interests of the child. Where the realistic proposals are long term foster care or adoption I am required to carry out a welfare analysis of both of these proposals in respect of the child Mason. The Court of Appeal was at pains to stress that this is not an option. It is a requirement that both proposals are validly considered on their own merits as they affect the particular child. The Court of Appeal also stated that there are important distinctions between long term foster care and adoption that impact on the welfare of a child. The two proposals cannot be equated in terms of what they offer by way of security for a child.

[34] Article 9(b) requires that in deciding on any course of action in relation to the adoption the court … shall "so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding." The Court of Appeal stated that it is a fundamental requirement in deciding on whether long term foster care or adoption is in the best interests of the child for the court to ascertain, listen to and give due consideration to the voice of the child. It is necessary for the court to give detailed consideration to the reports and conclusions of the Guardian as to Mason's wishes and feelings required. The Court of Appeal clearly stated that any determination of welfare as between the options of long-term foster care or adoption which did not give adequate consideration to the voice of the child is deficient.

[35] Articles 16(1)(b)(ii) and 16(2) provide that an adoption order shall not be made unless in the case of a parent the court is satisfied that he or she is withholding his or her agreement unreasonably. The Court of Appeal stated in the clearest of terms that in deciding that issue the court is required first to ascertain whether long term foster care or adoption is in the best interests of the child and also to listen to the voice of the child. An objective parent in deciding whether to consent would take into account, amongst other matters, what was in the best interests of the child and also take into account the wishes and feelings of the child.

[36] The Court of Appeal also provided a timely reminder that an adoption/freeing order and, indeed, a care order amount to an interference with family life, a right protected by Article 8 ECHR. An adoption/freeing order may be justified if aimed at protecting the "health or morals" and "the rights and freedoms" of the child. But such an order must also be "necessary in a democratic society". In *R and H v United Kingdom* [2011] 54 EHRR 28, [2011] 2 FLR 1236 at paragraph [81] the ECtHR stated that in "assessing whether the freeing order was a disproportionate interference with the applicants' Article 8 rights, the court must consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention." The court also recalled "that, while national authorities enjoy a wide margin of appreciation in deciding whether a child should be taken into care, stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life." The ECtHR went on to state that "such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed." The ECtHR then stated that:

> "for these reasons, measures which deprive biological parents of the parental responsibilities and authorise adoption should only be applied in *exceptional circumstances* and can only be justified if they are motivated by *an overriding requirement pertaining to the*

child's best interests …" (emphasis added by the Court of Appeal).

[37] The Court of Appeal emphasised that this passage makes it clear that in determining whether the interference is proportionate there has first to be a welfare assessment which, it stated, in this case would be a welfare assessment as to whether adoption or long term foster care is in the best interests of Mason. Absent such an assessment a court cannot form a view as to whether there is an overriding requirement pertaining to the child's best interests. Stephens LJ stated that an alternative way of emphasising the importance of carrying out the welfare consideration is that if the conclusion is that the child is equally well looked after in long term foster care or by virtue of adoption then there cannot be an overriding requirement pertaining to the child's best interests.

[38] The direction and guidance provided by the Court of Appeal brought a much-welcomed focus on the issues to be determined by this court. It was formally stated by Mrs Dinsmore QC, who has skilfully represented the mother M in this protracted case, that the mother M accepts that the child Mason would not now be restored to her care and that the only viable options were between the options of freeing for adoption and long term foster care, with Mason remaining with the child's present carers in either event. The mother M remains implacably opposed to an order freeing Mason for adoption because of what this means for her in terms of the complete extinguishment of her rights and responsibilities as a parent and the inevitable reduction in her contact with Mason and Mason's contact with his siblings. The mother M also passionately puts forward the case that her refusal to consent to freeing in this case cannot be considered as being an unreasonable stance, having regard to the lack of justification for the making of a Freeing Order and the manner in which the Trust has over the entire duration of these proceedings demonstrated a closed corporate mindset to this case and has treated the mother M in a grossly dismissive manner.

[39] Despite the narrowing of the issues to be determined by this court, the hearing of this matter still occupied the court during a significant number of days over a protracted period of time and although I will concentrate in the remainder of this judgment on the relative merits of freeing for adoption versus long term foster care and, if necessary, the issue of whether the mother M is unreasonably withholding her consent to freeing for adoption, I think it is worthwhile to set out in some detail by way of reminder, the facts and circumstances that have been deemed to satisfy the issue of threshold in this case. The Directions of the trial judge setting out the threshold criteria are dated 25th June 2013. No issue was taken in respect of these criteria and indeed at the rehearing of this matter, the mother M was at pains to demonstrate that she had insight into her shortcomings and had in fact written to her children admitting to and apologising for her failings. Therefore, by way of recap, I specifically note that the trial judge determined that the child Mason was likely to suffer significant harm and that such harm would be attributable to the care

likely to be given to him if a Care Order were not made, not being what it would be reasonable to expect a parent to give him.

(a) In July 2010 the mother left Lena in the care of a young woman while the mother went on a camping holiday with her other children. The mother failed to return when concern was highlighted about a limp noted in Lena's leg.

(b) Lena suffered a fractured left fibula which may have occurred whilst in the care of her mother. The fracture may not have been evident to any carer.

(c) The mother M took Noah to the hospital on 18th May 2010 following a fall by Noah on 17th May 2010 in which he sustained a black eye and a sore head.

(d) During a number of social services visits to the home and appointments with the mother Lena has been strapped in her buggy.

(e) The mother has failed to attend at a number of medical appointments for the children resulting in their discharge from medical services. It is evidenced too by the following:

(f) In 2007 Olivia was discharged from her dentist for non-attendance for 15 months. Olivia recently required adult teeth to be extracted and extensively treated for dental decay.

(g) Noah was referred to speech and language therapy in 2006 and the mother was unable to attend a number of appointments with Noah.

(h) Evan has experienced weight loss and malnutrition from an early age and this has been a consistent concern over many years. Evan also was discharged from his dentist and required 4 teeth to be extracted by reason of decay as a direct result of poor dental hygiene. The mother failed to attend some appointments with Dr Brown.

(i) The mother has an unsettled lifestyle resulting in the children having multiple moves from February 2000 to December 2007.

(j) The mother at times in the past has presented in an aggressive and abusive manner towards professionals and towards and in the presence of the children. This behaviour has been experienced by social services, health professionals and education officials.

(k) At times the mother has been unable to cope with the demanding, unpredictable and aggressive behaviour of Evan and at times does not

relate to him in the same way as her other children. The behaviour of Evan has resulted in referral to mental health services in the past and currently he requires urgent psychological assistance.

(l) The mother has in the past failed to engage in some of the services and assessment requests made by the Trust in respect of behaviour management and attachment issues.

[40] Having set out in some detail the history of this case I now turn to examine the evidence and submissions adduced and made during the numerous hearings before me which are pertinent to the issues which have to be determined by this court, namely: (a) what care plan serves the best interests of the child Mason; and (b) whether an order freeing the child Mason for adoption should be made.

[41] Before doing so, I again remind myself of the statutory background and the relevant legal principles to be applied in this case as discussed by Stephens LJ in *SEHSCT v M* [2018] NICA 50. I also have regard to the useful summary provided by Gillen LJ when delivering the judgment of the Court of Appeal in *X Health and Social Care Trust v W and E* [2015] EWCA 55, the relevant passages of which are set out below:

> "[4] Where relevant the provisions of the 1995 Order provide as follows in Article 50:
>
> '(2) A court may only make a Care … Order if it is satisfied –
>
> (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
>
> (b) that the harm, or likelihood of harm, is attributable to –
>
> (i) the care given to the child or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
> (ii) the child's being beyond parental control.'
>
> [5] The well-known "Welfare Checklist" is found in Article 3 which provides as follows:
>
> '(1) Where a court determines any question with respect to –

(a) the upbringing of a child … the child's welfare shall be the court's paramount consideration …

(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to –

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;

(g) the range of powers available to the court under this Order in the proceedings in question.

(4) The circumstances are that –

(a) the court is considering whether to make, vary or discharge an Article 8 Order and the making, variation or discharge of the Order is opposed by any party to the proceedings; or

(aa) the court is considering whether to make an order under Article 7; or

(b) the court is considering whether to make, vary or discharge an order under Part B.

(5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the Order or any of the Orders unless it considers that doing so would be better for the child than making no order at all.'

[6] Where relevant the provisions of the 1987 Order for freeing a child for adoption without the parents' consent is found in Article 18 as follows:

'(1) Where, on an application by an adoption agency, an authorised court is satisfied in a case of each parent or guardian of a child that his agreement to the making of an Adoption Order should be dispensed with on a ground specified in Article 16(2) the court shall make an Order declaring the child free for adoption.

(2) No application shall be made under paragraph (1) unless –

(a) the child is in the care of the adoption agency; and

(b) the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.'

[7] Article 9 provides, where relevant, as follows:

'In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall –

(a) have regard to all the circumstances, full consideration being given to –

(i) a need to be satisfied that adoption or adoption by a particular person or persons will be in the best interests of the child;

(ii) the need to safeguard and promote the welfare of the child throughout his childhood; and

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

(b) so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to that, having regard to his age and understanding.' "

[42] The first witness called on behalf of the Trust was Ms Rainey, the senior social worker presently involved in the case. She is the latest in a number of senior social workers involved in this protracted case. She adopted as her evidence the contents of the various social work reports set out in Section C of Trial Bundle 1 pages 261 to 553, Trial Bundle 2 pages 124 to 144 and the Trust Statement of Facts set out at pages 65 to 94 of Trial Bundle 1. This witness gave evidence about the poor working relationship between Social Services and M. It is not a positive relationship. Indeed, it is quite fractured. M does not attend the LAC reviews and has not done so since May 2015. Ms Rainey also opined that M is dismissive of concerns expressed by social workers and the foster carers. This is particularly so in respect of the impact of unauthorised contact on Mason's emotional wellbeing.

[43] In terms of the positives of the present arrangements for Mason, Ms Rainey stressed the quality of the relationship which the foster carers have developed with Mason. He regards their home as his home. It is the only home he has ever known. He regards himself as an active part of their family. He strongly identifies with his foster family and their farming lifestyle. All his physical and emotional needs are well met and Mason positively looks to his foster carers to meet those needs. He looks upon the foster carers' natural children as his brothers and sisters.

[44] Ms Rainey specifically referred to the "Balance Analysis" comparing long term foster care with adoption set out at pages 139 to 141 of Trial Bundle 2 which forms a central part of her report dated 18 January 2019 and the clear purport of her evidence in this respect was that the benefits of adoption significantly outnumber and outweigh the detriments attached to adoption, whereas the detriments attributed to long term foster care outnumber and outweigh the benefits attributed to long term foster care and the benefits of adoption are qualitatively much superior to the benefits attached to long term foster care. The court is bound to take careful cognizance of the comprehensive balance analysis conducted by Ms Rainey as set out in the section of the report referred to above. The headline theme which Ms Rainey was at pains to emphasise to the court was that with the passage of time in this case, it has become much clearer that the benefits of adoption for Mason far

outweigh those of long term foster care. Her evidence was to the effect that there is a clear need for adoption at this stage in an effort to provide much needed emotional security and a sense of belonging for Mason and to stymie the repeated attempts of M to undermine Mason's placement with his foster carers which have the effect of working against the development and maintenance of a normal secure and stable family life.

[45] According to Ms Rainey, adoption now presents the only option which positively fulfils Mason's deep emotional need to belong. He needs to have a sense of belonging to a loving and stable family, his forever family, as opposed to being well looked after in a caring arrangement which will formally come to an end when he reaches a certain age. The fulfilling of this emotional need to be part of a loving family is a key goal which in the context of this case can only be achieved by means of freeing for adoption.

[46] Ms Rainey addressed in detail the manner in which the Trust considered that M had persistently breached contact arrangements regardless of the negative impact this had demonstrably occasioned to Mason's psychological and emotional welfare. She referred to Addendum Trust Report dated 17 June 2016 contained in Trial Bundle 1 page 528, paragraph 4.6 which describes an incident which occurred on 26 November 2015. M called Mason (then in P1) over to the school playground fence, started talking to him and kissing him through the fence. Shortly after this, the child hit out at a P4 girl. He was described as being upset and confused when the teacher tried to talk to him about what had happened. Other children were asking him who the lady was and why he had two mums.

[47] Paragraph 4.7 of the same report details incidents which occurred on 7 June 2016 and 9 June 2016. On both these occasions M called Mason over to the school gates and proceeded to kiss and talk to him. The school firmly expressed the view to the Trust that this behaviour was unacceptable as far as the school was concerned and wished the Trust to act to prevent further distress to Mason. These encounters at school were also followed by a noted deterioration in Mason's behaviour in the foster home.

[48] Paragraph 4.9 set out at page 529 of Trial Bundle 1 graphically illustrates the approach adopted by M when challenged about these behaviours. She failed to consider the impact of her behaviour on Mason and considered that Mason was her son and she will kiss him and talk to him as she pleases. She further stated that no one was going to tell her what to do and she can see her son when she wants. Despite being spoken to by Social Services about this issue, on 10 June 2016, M and a male friend were observed sitting in the male friend's car outside Mason's school watching the sports day races. This behaviour graphically illustrates a trait which M could not help but demonstrate when she subsequently came to give evidence before me in this case. What became abundantly clear when M was giving her evidence is that for her this case is not about Mason and his needs and what is in his best interests. This case is about M and her needs and her burning desire to exercise some

form of proprietorial claim over this child and other children she has given birth to irrespective of whether that exercise by her of parental rights causes harm to this or her other children.

[49] Such unauthorised contacts at school did not cease there. Ms Rainey gave evidence that on 12 March 2018, M was observed approaching Mason at school during lunch break and was kissing him through the fence. After M left, Mason presented as aggressive to his peers, hitting out at a few for the remaining time of lunch, see Trust Report dated 18 January 2019, Trial Bundle 2, pages 128 and 129, paragraph 4.17. Referring to the same report at Trial Bundle 2 page 130, paragraph 4.24, Ms Rainey recounted how M had telephoned social work staff to inform them that on 25 September 2018, while collecting her prescription from her GP she had noticed Mason and his female foster carer across the road (they had not noticed her). She crossed the road and approached them. When advised about the unauthorised nature of this contact, M is reported to have stated that she did not care what the social worker had to say about this because there was no way she was going to ignore her son, adding that she was not a cold-hearted bitch. Ms Rainey described how M, despite having entered into a contract concerning contact with Mason and despite having been advised of the adverse impact unauthorised contact was having on Mason, was either totally dismissive of the Trust's concerns and/or lacked the insight or understanding to take on board those concerns and continued to persist with this harmful behaviour. This episode is also referred to in the contact record dated 25 September 2018 set out in the Freeing Discovery 1 bundle at page 52.

[50] The total lack of insight displayed by M into the emotional harm done to Mason by this unregulated and unauthorised contact is again graphically illustrated by the fact that it again occurred in proximity to the hearing of the appeal in this case on 12 December 2018. This incident is referred to in the Trust Report dated 18 January 2019, Trial Bundle 2, page 131, paragraph 4.29. On that occasion, M approached Mason again in the school playground but this contact was not witnessed at the time by any of the supervisors in the playground. When Mason was collected from school that afternoon he was noted to be visibly upset. He told his foster carer that M came to school today. He used a nickname to identify M which I shall not include in this judgment for fear of identifying M or Mason. His foster carer doubted what the child was saying because the school had not reported such an event. The child Mason was further upset that his foster carer doubted what he was saying.

[51] However, the occurrence of this event was actually confirmed during the Court of Appeal hearing on 13th December 2018. Thereafter, in an effort to reassure Mason, the foster carer had to sit him down and apologise for doubting his word and she had to reassure him that she did believe him. Ms Rainey's evidence was that it was damaging to the relationship between Mason and his foster carer for Mason to feel that he was not believed by this individual who played such a central part in his life. This is another example of M attempting to assert what she perceives to be her rights irrespective of the emotional impact on the child Mason.

[52] Ms Rainey also gave evidence about the negative emotional reaction Mason can suffer following episodes of authorised and supervised birth family contact. She describes how he suffers from night terrors around the time of such arranged contact. His behaviours are more defiant and he suffers an eruption of cold sores. She specifically referred to the Trust Report dated 18 January 2019, Trial Bundle 2, page 129, paragraph 4.19 which refers to an eruption of mouth ulcers following a sibling contact in April 2018 and paragraph 4.22 which refers to a protracted night terror after recent sibling contact.

[53] Ms Rainey also gave evidence about the persistent and repeated undermining comments made by M to Mason and his carers about his hair. This continues to cause grave upset to Mason. She referred in her evidence to this being one of the themes of contact in this case. She referred to the Trust report dated 17 June 2016 set out in Trial Bundle 1 at page 529, paragraph 4.11. On 3 June 2016, during a contact, M referred to Mason's hair as being ridiculous looking and proceeded to make negative comments to Mason about his hair throughout the contact. M was advised not to refer to Mason's hair and this stipulation was included in the contract relating to contact. However, Ms Rainey then referred to the Trust Report dated 18 January 2019 set out in Trial Bundle 2 at page 126, paragraph 4.6 when during a statutory visit on 3 July 2017, it was reported that Mason had broken out in a cold sore and was up all night after contact with nightmares. His foster carer reported that he was screaming, crying and pulling at his hair. His foster carer reported that Mason told her that M mentioned his hair. The foster carer reported that Mason will not respond to any form of discipline and it can take a few weeks for Mason to settle after contact.

[54] Ms Rainey also gave evidence that she is concerned that Noah, a birth sibling, is picking up on this theme and is making comments to Mason about his hair during contact. She referred to Trial Bundle 2, page 129, paragraph 4.19 which is the note relating to a statutory visit which occurred on 20 April 2018. On that occasion, it was reported that Mason availed of sibling contact the previous week but broke out in mouth ulcers thereafter. Mason's female foster carer reported that when she collected Mason from Noah's foster placement, Noah made a comment that Mason's hair was too long and needed cut. Ms Rainey give evidence that Noah has a close relationship with M even though he is presently in foster care. He turns 16 in January 2020 and has already indicated that he wishes to return to live with his mother. In essence, Ms Rainey is concerned that in an effort to please M, Noah will pick up on themes already developed by M and raise these with Mason, even though these are causing upset and emotional distress to Mason.

[55] Page 50 of the Freeing Discovery 1 bundle graphically details the difficulties experienced by Mason following sibling contact. This is a record of a statutory visit which took place on 31 August 2018. In essence, the foster carers recounted to social work staff how Mason developed terrible and frightening night terrors after a sibling contact and after informal contact with Noah. The development of these night terrors following birth family sibling contact is in marked contrast to Mason's

presentation to the social worker when she spoke to him that day. He was comfortable in the house. There was evidence of his toys throughout the house. Mason spoke very warmly about his foster family and the home. He spoke enthusiastically about the farm and joked about all the hard work he does. He took the social worker to see the family dog and spoke about his "cousins" who are the foster father's relatives living close by. Mason asked the social worker whether she would like to go down to see the cows and laughed when she told him she was frightened of them.

[56] Ms Rainey also gave evidence about the Trust's proposals for post-freeing and post-adoption contact between Mason and M and Mason and his birth siblings. The proposals are set out in Trust report dated 18 January 2019 in Trial Bundle 2, pages 142 to 144. Any post-freeing, post-adoption contact is dependent upon what is in Mason's best interests with a balance being struck between protecting and sustaining Mason's permanent placement and providing him with an opportunity for continued identity formation, the maintenance of a relationship with his birth family and the opportunity to develop information for his Life Story. Ms Rainey highlighted the Trust's concerns regarding M's inability and resistance to working constructively with the Trust which was having a direct and negative impact on Mason's psychological and emotional wellbeing. In relation to sibling contact, Ms Rainey referred to the fact that the two oldest children were now over the age of 16 and had returned to live with their mother and the third child Noah had expressed a firm intention to leave his foster carers' home and to return to live with his mother when he attains the age of 16. Ms Rainey indicated that these children demonstrate significant loyalty towards M and the Trust remains concerned that they have the potential to derail Mason's placement. Mason's contact with his other sibling, Lena, his sister who is adopted has also to be considered.

[57] Ms Rainey gave evidence that at a LAC review on 4 January 2019, the Trust agreed a phased reduction in contact between Mason and M to two supervised direct contacts per year, subject to strict conditions and with M being offered Next Steps Counselling and access to a contact worker who will keep her up to date with what is going on in Mason's life and will reinforce the dos and don'ts of contact. In relation to sibling contact, the Trust recommendation is that this be reduced over the next year or so to one time per year with a reduction in informal contact between Mason and Noah, especially if Noah leaves his foster carers' home to return to live with his mother at the age of 16. It is proposed that there be continued informal contact between Mason and Lena, his sister who is adopted which will allow them an opportunity to relate to each other given what will be their common status and having regard to their closeness in age. It is proposed to keep post adoption contact under annual review or more frequently if required in line with engagement and Mason's wishes and feelings as he matures. In relation to the issue of whether Mason would suffer emotionally as a result of this reduction in contact, Ms Rainey highlighted that between June 2018 and October 2018, M had no contact with Mason and Mason did not once ask to see M. No whole family contact is proposed primarily on the basis that recent experience has shown that independent adult

supervision is needed to prevent inappropriate conversations taking place during such contact and to counter M's efforts to undermine the various placements of her children. Ms Rainey gave evidence of the difficulties encountered in the run up to a recent family contact involving Mason with M commenting that Mason was her child, the other children were all her children and all were coming to the contact and all would be provided with photographs showing when they were part of the one family.

[58] Ms Rainey then dealt with other themes emerging from the Trust reports. One issue was the complaint by M that she has not been afforded her proper place by the Trust. She claims that her status as parent of Mason is not properly recognised by the Trust in that she is not kept appraised of key and important issues about Mason. A number of matters have been highlighted, namely the failure of the Trust to inform M about the identity of Mason's General Practitioner, the inability of M to obtain Mason's school reports and the failure to inform M about the diagnosis of ADHD which Mason received in 2018. The Trust's answers to these matters through the evidence of Ms Rainey are to the effect that all such matters are discussed at each LAC review and before each LAC review M's views are sought and following each LAC review, the minutes are sent to M. The difficulty is that M has chosen not to attend any LAC reviews from 2015 and if she chooses not to read the minutes of the LAC reviews, she will not be fully kept up to date in relation to such developments.

[59] Ms Rainey then referred to the Freeing Discovery 1 bundle at page 32 which is a contact record dated 1 February 2018. This contact was initiated by the Trust and was by way of a request to M to complete an out of jurisdiction consent form to enable Mason to go to Disneyland with his foster family. M complained about the fact that she had not been consulted before the holiday had been booked. She stated that she wanted to know everything about her son and wants to exercise control over how he gets his hair cut. She again refused to attend LAC reviews and was offered the opportunity to speak with social workers following the LAC reviews. This offer was rejected. M also complained about a lack of information being provided by Mason's school. The social worker offered to assist in this regard. M queried why she should want the social worker to contact the school on her behalf. She eventually agreed to the social worker providing her with an update from the school. It is clear from this record that the Trust informed M about Mason's referral to an ADHD clinic for an assessment regarding concerns about Mason's concentration and attention. She was also informed that Mason would be assessed by an educational psychologist and she responded by stating that Mason needed all the help he could get.

[60] Ms Rainey referred to the fact that M was supposed to have contact with Mason in August 2018 which would have been two months after the contact which had occurred at the time of Mason's birthday in late June 2018. However, attempts to make contact with M to try to arrange this contact in August 2018 failed. Ms Rainey stated that the Trust was subsequently informed by M that she was out of the country at the time and had changed her mobile. Social work staff were not

aware of the change of mobile and had called her old mobile and had left text messages on it. M's evidence on this point was that she had given her old mobile to her daughter and she had not been informed that any calls or texts from the Trust had been received on that phone. She stated in evidence that if such calls or texts had been directed to that mobile, she would have expected her daughter to have informed her about these. She stated that she had personally checked the phone and there were no missed calls or text messages on it. In essence, she positively disputed whether such calls or texts had been made to that phone by any social worker during the relevant period. She stated that the Trust records of the attempts made to contact her recorded that she was out of the country on 29 August 2018 whereas she only left on her holiday on 30 August 2018. I listened carefully to the evidence of M on this issue. The Trust called Ms Kathy Heatley the social worker who attempted to make contact with M in August 2018 to give evidence on this issue. Her evidence is set out at paragraph [85] below. Pages 45, 46 and 47 of the Freeing Discovery 1 bundle detail the efforts made by Ms Kathy Heatley to contact M on 1, 6 and 7 August 2018. Having heard and considered the evidence of M and the evidence of Kathy Heatley and having carefully considered all the documentation relating to this issue, I have no hesitation in accepting that the Trust did make every reasonable effort to get in touch with M about contact in August 2018 and that due to circumstances beyond the Trust's control, the August contact was not arranged. I accept that the Trust made every reasonable effort to contact M who had changed her phone and then went on holiday at the end of the month.

[61] The next contact between the Trust and M occurred on 25 September 2018 when M contacted the Trust following the unauthorised contact with Mason on that date. Mason's carer told M on that occasion that the Trust had been trying to get in touch with her. According to Ms Rainey, M's complaint at that time to the Trust was that the attempts made to contact her were not good enough and that she wanted a contact with Mason in September 2018 as she had missed one in August. This was not agreed to and M told the social worker that she would be contacting her Solicitor. What is very telling about this unauthorised contact which took place outside Mason's school is that this is the contact in which M has subsequently alleged she was first made aware that Mason was receiving medication for ADHD. If M had been concerned or annoyed at the time about not being provided with information about the diagnosis and treatment of ADHD, one would have expected M to have complained about the failure of the Trust to inform her about this important matter during the telephone call on 25 September 2018. Instead, the evidence of Kathy Heatley as backed up by the relevant documentation is that the subject matter of the complaint was the fact that M had missed a direct contact and she wished this to be made up in September 2018 and that she wished to be provided with a formal schedule of contact. There is no record of a complaint about a failure to provide information about the diagnosis and treatment of ADHD.

[62] Of note, the first record in the LAC documentation referring to a definitive diagnosis of ADHD as opposed to a referral for investigation is the record relating to the LAC review which took place on 19 October 2018 set out in the Freeing

Discovery 1 bundle at page 124. The bundle Freeing Discovery 2 at page 7 contains a record of a referral for investigation of this condition on 8 February 2018. Page 8 of the same bundle contains a record which refers to a clinic appointment on 25 July 2018. M's evidence in relation to when the issue of ADHD was first brought to her attention is set out at paragraph [98] of this judgment.

[63] Another theme explored by Ms Rainey in her evidence was the Trust's decision making and M's reaction to such decision making. She indicated to the court that at a LAC review in June 2013, the Trust finally ruled out reunification as a care plan for Mason and substituted a care plan for adoption. She referred the court to the Guardian's report dated 8 February 2019 in Trial Bundle 2 at pages 155 to 157, paragraphs 2.50 and 2.56 which set out the rationale behind the move away from rehabilitation to adoption. In essence, assessment at Thorndale was clearly identified as a potential third stage of an Agreed Assessment Plan formulated on 1 August 2012 which commenced with psychotherapeutic work carried out with M by Dr Paterson, Consultant Clinical Psychologist. The next stage included progressing to work with M at Knocknashinna Family Centre in collaboration with ongoing therapeutic work provided by Dr Paterson. These elements were then given practical application through the involvement of the Child Health Assistant and the PAMs Assessment Tool to carry out educative work on a feedback and assessment basis. A further element of the plan proposed the assessment of M's then partner to determine if he could provide sufficient positive support to M.

[64] This represented a very comprehensive and bespoke assessment plan that necessitated a number of professionals working in a very focused and collaborative way with M. It was only if sufficient progress was made with the above elements that further testing and assessment of M at Thorndale might have been considered appropriate. The Guardian's report highlights the fact that in June 2013, Dr Paterson stated that M had not acquired the degree of insight he had hoped, and there was no further work he could undertake with her. While he acknowledged that she had made significant progress in some areas "he was unable to help her gain any further insight" and "there will be limited ability to achieve this." The opinion of the Knocknashinna Family Centre in June 2013 was that M had not shown sufficient insight or capacity to complete the work at Knocknashinna and there was no additional work that this team could undertake with M. On the basis of all these matters, the Trust concluded that there had not been sufficient progress to warrant progressing to the third stage of the process – a residential assessment at Thorndale. Following the making of a Care Order in June 2013 in respect of Mason, the Trust's case is that M disengaged from the agreed contract in respect of contact and reverted to patterns of behaviour apparent prior to the psychotherapeutic work undertaken by Dr Paterson. Following the granting of the Care Order, M declined further work with Dr Paterson, despite it being made available to M and despite the Trust's offer to fund such additional work. In spite of having the benefits of a vast array of professional involvement, assessment and work to determine whether M could develop the necessary insight and understanding into the needs of her children and the capacity to prioritise those needs, this extensive work only appears to have

provided M with enhanced personal coping strategies in respect of lifestyle challenges and stressful situations. Even those benefits appear to have been eroded with the passage of time and M's engagement with professionals is once again reported at times to be "hostile and aggressive". Her primary motivation appears to be the promotion and pursuit of her own need to have the children returned to her care and to win her battle with Social Services.

[65] Ms Rainey explained the approach of the Trust following the hearing in June 2013 when the trial judge indicated that a Thorndale assessment should be considered. She referred to the fact that M had undergone thirty-five Trust funded therapy sessions with Dr Paterson. According to her, the purpose of this work with Dr Paterson was to explore whether M might be able to address any deficits in parenting abilities and develop adequate parenting behaviours. By June 2013 it had become apparent that M had not developed adequate insight (she had a limited ability to achieve insight) and that no further benefit could be achieved by continuing the work. M lacked the capacity to change and to sustain that change. Referring to the Guardian's report set out at page 155 of Trial Bundle 2, she explained the Trust's position by stating that despite all the work that had been carried out, M had not developed sufficient insight and capacity and, therefore, there was no further point in intervention. A Care Order had been made and the Freeing Order application had been adjourned by the judge with a recommendation that a residential assessment should take place. The Trust strongly disagreed with this recommendation. Mason was then at the crucial age of 2 years. It would have been a move into an unknown environment away from carers he had known from birth with a mother who was not fit to properly parent the child.

[66] However, it is clear that this pessimistic assessment of M's insight and capacity was not reflected in Dr Paterson's report dated 12 June 2013. The relevant passages are set out in Trial Bundle 1 at pages 233 and 234. This report makes reference to M making excellent progress in a number of areas. According to Dr Paterson, M had developed empathy for her children and he referred to the fact that she had written to her children accepting that she had made mistakes and apologising for these mistakes. Dr Paterson specifically noted that M could be empathetic for her son Mason and the empathy M was able to show was at a level for good enough parenting. In relation to the issue of selfishness, Dr Paterson was of the opinion that there was a marked shift in focus with M no longer putting her needs before those of her children. He also noted improvements in her self-confidence, her ability to manage her anger and her ability to work with the Trust. He considered that these changes were long-lasting. He was of the opinion that when he wrote his report, M had developed an adequate knowledge base in relation to parenting abilities and could at that time largely meet Mason's needs as they then stood. Crucially, he recommended that in order to enable M to continue to meet Mason's needs through his developmental years and adolescence, M would need continuous updating of information and ongoing instruction. For M to provide long-term care for Mason she would need continuing education at different stages of Mason's life and also one to one contact where there would be supervised

monitoring from someone with professional training and experience in working with children of different ages. In essence, M would require a full time child care assistant to enable her to properly parent Mason.

[67] Ms Rainey explained in her evidence that the Trust considered that this form of periodic education and mentoring coupled with one to one supervision and monitoring was experimental in the sense that there was no guarantee of success and in any event was impracticable and unachievable. This issue is one of the central issues in this case. On behalf of M it is forcefully argued that Dr Paterson, an experienced Consultant Clinical Psychologist who did engage in a prolonged course of therapeutic intervention with M did reach the conclusion in 2013 that M could parent Mason. The experienced trial judge recommended that she be given a trial at Thorndale. The Trust strongly disagreed. The assessment did not take place. M naturally feels a real sense of grievance as a result of being deprived of this opportunity to prove herself as a parent and I have taken full account of her evidence in respect of these issues which I summarise in paragraphs [87] and [88] of this judgment. I can fully understand why she would feel that way. But M's feelings and her understandable sense of grievance did not in 2013 or in 2018 and do not in 2019 present her with a trump card or an automatic veto on making progress towards what is the best outcome for Mason. Examining this matter as dispassionately as it is possible to do so, it is clear to me now and I believe it would have been clear to me in 2013 and in 2018 that when Dr Paterson provided his opinion in 2013 that M could parent Mason with intensive ongoing support, it was already far too late at that stage to engage in some form of speculative Thorndale assessment when to do so would involve uprooting a two year old from the only home he had known (and a most loving home at that) and placing him in a strange environment in an effort to assess whether M could parent him with intensive support. The ship had already well and truly sailed by then and the course to be steadily steered was one of permanence with the family then and now looking after Mason and not some speculative diversion into unknown and uncharted waters in Thorndale with a view to ascertaining whether M was capable of safely parenting Mason. I will return to consider the significance of this finding in a later part of this judgment.

[68] Another issue that was raised during Ms Rainey's evidence was the mindset of the Trust as demonstrated in the records of the Adoption Panel meeting which took place on 18 June 2013 as set out in Trial Bundle 1 at pages 444 to 446. The remark by a senior social worker that is recorded at page 445 that the obtaining of a freeing order was a formality has undoubtedly been seized upon by M as illustrating the formation of a closed and complacent corporate mindset on the part of the Trust when it came to considering whether adoption or long term foster care was the way forward in this case. Having regard to the words used in this minute, I can fully appreciate and understand M's views on this issue. However, my task is to not simply ascertain whether M's views might be understandable. Looking beyond this, I have to carefully examine the actions of the Trust at all times throughout this process in order to ascertain whether this minute was simply an ill-judged and

wholly inappropriate off the cuff comment by someone who should have known better or whether it did in fact represent the adoption by the Trust of a stance of long-standing, resolute and implacable opposition to M parenting or having any involvement in the parenting of Mason. The answer to that question is reasonably clear cut. The investment by the Trust in the intensive and prolonged therapeutic intervention by Dr Paterson and the fact that it was only in June 2013 that freeing for adoption was decided upon is entirely and utterly inconsistent with the adoption of a closed and complacent corporate mindset. I will return to consider the significance of this finding in a later part of this judgment.

[69] Ms Rainey was keen to emphasise that M has not made any positive progress from 2013 to the present date. Neither her empathy nor her insight has improved. She entered into an inappropriate relationship in the interim period and despite advice in relation to this issue she was dismissive of the impact this would or could have on her children. Ms Rainey was also keen to point out how Mason has positively progressed during the same period with the development and deepening of strong bonds and attachments with the foster family. She reiterated his need for these bonds and attachments to be cemented and for him to be provided with security and a sense of belonging, legally, emotionally and socially. She highlighted how M's ongoing involvement in Mason's life at the present level is causing negative emotional responses and insecurities. She also highlighted the difficulties which can occur when an adolescent is exiting the care system and the better educational attainments, the fewer mental health difficulties and the lesser chance of engagement in the criminal justice systems for those brought up outside the care system. These last issues provide some background and overall context but they are certainly not determinative in this case.

[70] Mrs Dinsmore QC in directing questions to Ms Rainey was keen to explore a number of key issues. She invited Ms Rainey to confirm that the foster carers were totally committed to Mason and would remain so irrespective of the decision of the court. Ms Rainey confirmed that at present the foster carers were absolutely committed to Mason but she was slightly circumspect about the future in that there were no guarantees and the foster carers' commitment might diminish in the future in the face of continued attempts by M to undermine the placement. Although it is impossible to accurately predict the future with any degree of certainty, having considered all the available evidence in respect of these two foster carers, I would be reasonably confident that they will remain committed to Mason through thick and thin, even if long term foster care was the option directed by the court. However, my concern is not with their resolve. My concern is with the uncertainty of what happens to Mason when as he approaches the age when a care order ordinarily ceases to have effect, he is left with a sense of not belonging to a family and a sense of insecurity at a vulnerable age. The comparison of the advantages and disadvantages of adoption versus long term foster care are not so much about the lack of any appreciable difference in the consistent commitment of the foster carers in either scenario. It is more about the significant and appreciable difference in

Mason's feelings of long-term security and belonging that may be engendered by the implementation of one or other of these long term care plans.

[71] In relation to M's sense of grievance at never being afforded an opportunity to parent Mason, Mrs Dinsmore QC pressed Ms Rainey to accept that it wasn't just the thirty five sessions of work that M had undertaken with Dr Paterson that had to be taken into account, it was all the work she had engaged in from the time of the Trust's first interventions in 2002. Mrs Dinsmore QC put to Ms Rainey that M had striven hard to develop parenting skills by engaging in all these various work streams but just when an expert had concluded that she should be given the opportunity to prove herself, the opportunity to do so was permanently removed from beyond her grasp. Ms Rainey's response was that a considerable period of time had elapsed between 2013 and 2018 and at no stage had M attempted to persuade the court to direct upon or reinforce its recommendation that a Thorndale assessment should occur. In essence, M may choose to cling onto a sense of grievance at not being given a Thorndale assessment but she did not take any positive steps after 2013 to pressure the Trust into providing such an assessment.

[72] In response to Mrs Dinsmore QC, Ms Rainey also referred to the experimental nature of the proposed Thorndale assessment and to the uprooting of the two-year-old Mason into an unknown and unfamiliar environment that the proposed assessment would have entailed, in circumstances where the chances of sustained success were small. These matters have already been discussed above. There is another matter which I consider is worthy of mention at this stage. Mrs Dinsmore QC, by raising the issue of the various work streams provided by the Trust from 2002 onwards, only serves to highlight the great and exceptional efforts made by the Trust in its attempts to equip M with the skills, empathy and insight needed to enable her to safely parent her children; efforts which ultimately did not bear meaningful results. These substantial and prolonged efforts clearly do not support any claim of a closed corporate mindset on the part of the Trust nor do they support any allegation that the Trust precipitously and unjustifiably changed course just when M had shown signs of meaningful progress.

[73] Mrs Dinsmore QC also sought to demonstrate that Mason's stated desire to belong to the foster carers' family had to be seen in the context of the mix of relationships that comprised the foster carers' family unit. The court obviously needs to be careful not to too particularly describe the makeup of the foster family for fear of jigsaw identification but it is possible to indicate that this foster family consists of biological offspring, an adopted child and children being cared for under various foster care arrangements, all of whom Mason regards as his siblings. The point which Mrs Dinsmore QC sought to stress was that having regard to this varied and diverse family makeup, Mason would not feel isolated or excluded if he were to remain an integral part of this family under long term foster care arrangements. She also compared the makeup of the foster care family with Mason's birth family where one of his birth siblings is now adopted and another is still the subject of a care order with a care plan of long-term foster care and the two older children were cared for

under foster care arrangements but have now returned to live with M. All this diversity means that Mason would not struggle with being categorised as being in foster care as opposed to being adopted.

[74] I am far from convinced that this is a strong point in Mrs Dinsmore's client's favour. Even though Mason is still quite young and any regard to his wishes and feelings must be tempered with the understanding that his declared wishes and feelings may be subject to significant change and development over the years to come, the present diverse foster family makeup has enabled him to appreciate, experience and observe family life from a number of different perspectives and from his immature appreciation of those different perspectives, he has firmly concluded that he wants to be adopted, that he wants to be a [foster family surname]. He, in his age limited manner, is aware of the differences between being subject to long term foster care and being adopted and he chooses adoption. He has his heart set on belonging, really belonging to this family and its farming lifestyle and this desire is at least to some extent informed by his exposure to the different relationships within the foster family set up. Even at this young age there is a clear hierarchy in Mason's concept of family. Mason's wishes and desires are presently encapsulated in paragraph 2.15 of the Guardian's report dated 8 February 2019 set out at page 151 of Trial Bundle 2. "…he will talk easily, openly and enthusiastically about his family life with the [foster family surname]. He avoids conversation about his birth family and he does not spontaneously mention them. In exploring with [Mason] whom he identifies as his family, it is firstly Mr and Mrs [foster family surname] and the members of that family who reside together. He identifies secondly the adult children of Mr and Mrs [foster family surname] who are married and have young children of their own. Finally, he identifies M and his siblings as his "other family"."

[75] This is not to say that Mason has not demonstrated signs of uncertainty and confusion as to his status and the roles of his foster carers and M in his life. The Trust report set out at Trial Bundle 2, page 125, at paragraph 4.2 refers to a statutory visit on 19 April 2017 when Mason was noted to be quite cheeky before going on contact. Mason had made his foster mother a Mother's Day card with photographs but then took the card and photographs off his foster mother and gave them to M. The social worker reported that Mason was very confused and his foster mother reported that he was grumpy and cheeky on return from contact.

[76] Mrs Dinsmore QC also sought to establish that M is fully committed to the care plan of long term foster care for Mason. She highlighted the fact that M had never made an unwarranted application to discharge any Care Orders made in respect of any of her other children. The one application she did make was clearly an appropriate application. Mrs Dinsmore QC also highlighted the fact that M has never approached the foster carers' home and she also informed the court that M would be content for the court to make an Order under Article 179(14) of the 1995 Order so that she could only proceed to make such a discharge application with the leave of the court. She sought to demonstrate that the unauthorised contacts complained of by the Trust were simply chance encounters which occurred when M

was on her way to or from her GP or the chemist to collect or have processed her regular prescriptions. Ms Rainey's response was that M's dismissive attitude to the guidance and support provided to her by the Trust and her meddlesome behaviour, her constant attempts to undermine this placement and her other children's placements and the regularity of the occurrence of unauthorised contacts which persist despite the drawing up of a contract to define the boundaries of appropriate contact were not consistent with M's recently adopted statements of intent.

[77] Mrs Dinsmore QC quite properly raised the issue of whether the diagnosis of ADHD in Mason's case could go either partly or entirely towards explaining Mason's behaviours which the Trust sought to attribute to distress arising out of birth family contacts. This resulted in an adjournment of the matter until 20 March 2019, to enable medical evidence to be obtained. This resulted in the production of a report jointly authored by two paediatricians Dr Cameron and Dr McPherson, set out at Trial Bundle 2, pages 168 to 170, a further report prepared by the Guardian set out at Trial Bundle 2, pages 171 to 176 and a report from Mason's school dated February 2019, set out at Trial Bundle 2, pages 177 to 187 which graphically illustrated from the school's perspective the amount of confusion and upset engendered in Mason's mind by the unauthorised appearances at the school by M.

[78] In relation to the medical evidence that was obtained it is clear from the same that in terms of the behaviours noted to occur around the time of birth family contact, there are a number of factors that should be taken into account "including emotional upset and distress alongside difficulties that may be attributed to ADHD, such as impulsivity … The underlying difficulties managing self-regulation may be impacted upon by situations that the child could or may find stressful … It is important for all children and young people to experience stability and security in their lives. Children with ADHD and social and emotional difficulties require understanding and support particularly in relation to emotional regulation and managing their feelings. Understanding of ADHD symptoms is required to help manage the challenges that children with difficulties with inattention and hyperactivity encounter in their daily lives at home and in school. It is highly important for [Mason], given these additional needs to experience a nurturing, stable and secure environment … [Mason] should reside in an environment that understands his social, emotional and behavioural needs and that provides him with optimal support and care."

[79] This objective expert medical evidence is highly significant. In essence, the underlying diagnosis of ADHD and mild learning difficulties renders Mason less well able to cope with situations of emotional stress and upset and as a result his need for emotional stability and security is all the more acute. This piece of evidence by itself would lead the court to firmly conclude that nothing less than the long term solution that provides Mason with the most stable and secure home environment will do in this particular case. I also note that the report from the Guardian dated 14 March 2019 set out at Trial Bundle 2, pages 171 to 176, at page 174 is quite categorical

in concluding that Mason's emotional presentation at times of contact is not linked to his diagnosis of ADHD.

[80] Mrs Dinsmore QC sought to demonstrate the positive nature and consistently good quality of the contact between M and Mason by reference to a number of excerpts from the contact records found in the Freeing Discovery 1 bundle. At page 1, the record dated 3 February 2017 contains the following entry: "I want to see mummy M every day." At page 9, a note of a statutory visit on 3 July 2017 records that Mason had a nice time with his mum a few weeks ago. At page 30, a note of a statutory visit on 20 December 2017 referred to a "Great time at contact…Enjoyed seeing [his adopted birth sibling] … Loved all his presents that he got off his family." During a statutory visit on 27 June 2018, (page 42) Mason was noted to enjoy contact, his favourite part was getting lots of presents and the sweets. He likes to play on the chalk board with his "mummy". He also said he liked seeing Noah. Mrs Dinsmore QC emphasised that Mason does not shy away from physical contact with M and openly displays physical affection to her. In the Freeing Discovery 1 bundle at page 56 (5 October 2018) it is recorded that Mason was really enjoying this stage of contact and that he engaged well with M. There are references to "hugs and kisses" and there is an acknowledgement that Mason was much calmer during this contact. It has to be remembered that the diagnosis of ADHD had been made by this stage and medication had been commenced. In relation to the issue of the quality of contact, Mrs Dinsmore QC invited Ms Rainey to accept that the supervised contact venues were not conducive to good quality contact given the austere settings of a Board Room and in relation to earlier episodes of missed contacts, Mrs Dinsmore QC invited Ms Rainey to acknowledge the fact that M had been ill with gynaecological issues in 2017 and this was accepted by Ms Rainey. In essence, Mrs Dinsmore QC was keen to demonstrate by reference to the contact records that in general M is a mother who has a meaningful relationship with Mason, her birth child and Mason does respond to her. She suggested to Ms Rainey that Mason had a real relationship with M his birth mother and he had a right to know and get to know his birth mother throughout his childhood.

[81] The Trust, through Ms Rainey, responded by bringing the court's attention to entries in the Trust's records that highlighted the upset displayed by Mason in the build up to and aftermath of contact sessions. For instance, the record relating to the statutory visit on 25 January 2018 after the Christmas contact (page 31b of Freeing Discovery 1 bundle) refers to Mason being unsettled after the Christmas contact when his behaviour deteriorated. He was destructive and was hiding things and was very disobedient. Ms Rainey also referred to the contents of the school report set out in Trial Bundle 2 at pages 177 to 187. This report does graphically describe the adverse impact of contact with M on Mason's emotional wellbeing but it has to be remembered that all of the contact referred to in the school report is unauthorised contact at or about the school. Ms Rainey also referred to a contact with the foster carer on 29 August 2018 that occurred following two episodes of sibling contact (page 48 of Freeing Discovery 1 bundle) that had recently taken place. Following these episodes of contact Mason had suffered night terrors. The foster carer's view

then was, and Ms Rainey's view when she gave her evidence was, that contact precipitated the night terrors.

[82] When questioned by Ms McGrenera QC on behalf of the Guardian, Ms Rainey also agreed with the Guardian's assessment of the quality of contact contained in her report dated 6 February 2015, see pages 124 and 125 of the bundle of Guardian's Reports at paragraph 5.2. She highlighted M's continuing capacity to undermine Mason's emotional security in subtle ways. At the previous Christmas contact M removed Mason from the contact centre to show him to her then boyfriend against contact guidelines. When Mason got new socks, instead of complimenting him on his new socks, M criticised the socks for being too big and said "maybe next time [foster carer] will buy you the proper size of socks." M also regularly corrected Mason when he referred to his foster carer as "mummy". Ms Rainey also referred to M's undermining behaviour during contact as described in the Guardian's Report dated 29 March 2017 at paragraphs 2.31 to 2.35, pages 138 and 139 of the bundle of Guardian's Reports. At the end of October 2016, M stated in Mason's presence that it was her intention to get all of her children back. Mason was anxious after this and required reassurance.

[83] Ms Rainey's evidence is that it remains M's goal to get all her children back. She has confirmed that she wishes Mason to remain in long term foster care so that he can retain her surname and eventually return to her care. Her language towards her children including Mason is always proprietorial, expressing ownership of them and emphasising her rights as their mother. Her two oldest children have now left their foster placements and have returned to live with her. Her third child has expressed a keen desire to return to live with her after he achieves the age of 16. Irrespective of whether the two eldest children have benefited from returning to live with M and this is to be doubted, what is very clear to the court is that three older children of M are in a very different situation from Mason and the other child who has already been adopted. The three older children were 12, 11 and 7 when they were removed from their mother's care. It is obvious that strong emotional bonds had already developed between mother and children. The other child that has now been adopted was removed from her mother's care at the age of 2 and Mason was removed from his mother's care at birth. In Mason's case, it is clear that he had not developed any form of attachment prior to his removal from his mother's care. The deep-rooted emotional attachments that he has developed from birth have developed between Mason and his foster carers and extended family.

[84] Ms Rainey gave evidence that as recently as January 2019, Mason's foster carer has stated that she has seen how M manages post-adoption contact in respect of her other child who is now adopted and how she treats and tries to intimidate the woman who has adopted that child and as a result Mason's foster carer would not feel comfortable supervising contact between M and Mason in a post-adoption context, see the Freeing Discovery 1 bundle at pages 176 and 177.

[85] The second Trust witness called to give evidence was Ms Kathy Heatley, a locum social worker who has been involved with Mason and M since April 2018. She is the sixth social worker who has been assigned to Mason's case since his birth. If Mason remains in the care system up until he is 16 it is inevitable that there will be a much greater number of social workers involved in his case with each one having to familiarise him or herself with the facts and circumstances of the case and get to know the personalities involved. Ms Heatley was questioned about her attempts to contact M in August 2018 and the subsequent telephone call with M on 25 September 2018. I have already dealt with these events at paragraph [60] and [61] above and M's evidence on these issues is set out in paragraph [98]. Ms Heatley was adamant that she made a number of attempts to contact M in early August 2018, and that when M eventually contacted her in late September 2018, it was for the purpose of trying to arrange an urgent contact. The subject of ADHD was not mentioned during this telephone encounter. When cross-examined by Mrs Dinsmore QC, this witness explained that she only became aware about M's complaint about not being informed about Mason's diagnosis when she was asked to attend court to give evidence in March 2019. M had not raised this issue with her at any earlier stage. Kathy Heatley was adamant that M did not raise this issue during the telephone call on 25 September 2018.

[86] Miss Armstrong, the Guardian ad Litem in this case was unable to give evidence after the Trust witnesses had completed their evidence and rather than adjourning the matter until such times as she was available, it was agreed by all the parties that M should give her evidence before Miss Armstrong and that M should be entitled to return to the witness box after Ms Armstrong had given her evidence if Ms Armstrong raised any issues which M had not had an opportunity to address when first giving evidence. M was then called to give evidence and she adopted the Affidavits and statements contained in Section D of Trial Bundle 1 and Trial Bundle 2, namely:

(a) statement dated 13 February 2012 TB1 554 to 564;
(b) statement dated 21 June 2012 TB1 565 to 575;
(c) Affidavit dated June 2012 TB1 576 to 582;
(d) statement dated 18 January 2013 TB1 583 to 589;
(e) Affidavit dated 20 May 2013 TB1 590 to 597;
(f) Affidavit dated 30 September 2013 TB1 598 to 607;
(g) Affidavit dated 13 March 2017 TB1 loose;
(h) Affidavit dated 13 April 2017 TB1 608 to 611;
(i) Affidavit dated 12 February 2019 TB2 13 to 33.

[87] M also wished to refer specifically to the letters she had written to her children by way of an apology to them in order to demonstrate her empathy towards her children. These letters have now been mislaid. They may have been read out in court before the trial judge. It was M's evidence that the letters were never passed on to her children but were kept in a drawer in a social services office. M informed the court that on the day she gave birth to Mason by caesarean section,

an interim care order was obtained. She described how she initially breastfed Mason but then he was taken off her and her contact with him was drastically limited. She described how she had made great progress with Dr Paterson. She described him as an amazing man who had helped her in so many different ways and gave her hope that she had a future with her children. M described how delighted she was when the trial judge suggested a residential assessment in June 2013. She described how a social worker named Laura Brannigan informed her the day after the trial judge's recommendation that an urgent referral was being made to Thorndale and as soon as a place became available, she would be going. She stated she had everything packed in anticipation. She then described how she was informed by her Solicitor that the Trust had decided to appeal the trial judge's decision to the Court of Appeal and how she felt gutted and angry. She did not understand why the Trust would do this and further reduce her time with Mason. One minute she was being told she was going to Thorndale and the next minute her Solicitor was telling her that the Trust was appealing the trial judge's decision. There is a record of a meeting between M and the Trust which was held on 9 July 2013 following the decision being taken to appeal the trial judge's recommendation. It is set out at page 192 of the bundle Freeing Discovery 1. It states: "[M] advised that she was aware of the appeal as she had been informed by her legal representative. [M] stated that in her opinion this decision had been made because she had "won and we (social services) had lost". She advised that social services had taken four of her children and that they were not going to take another, she added that while social services might win the small fights she will win "the war"…. [M] advised the APSW and the social worker that one day all of her children would come back to her and she would bring them down to the social services office and laugh in the social workers' faces."

[88] M then referred in her evidence to the contents of the minutes of the Trust's Adoption Panel Meeting on 18 June 2013 and she specifically referred to how the trial judge dealt with this matter in paragraphs [19] and [20] of his judgment delivered in 2018. It is clear that M firmly believes that the Trust has demonstrated a closed mindset to the issue of M parenting Mason and the trial judge's judgment lends support to that belief. In her evidence she stated that the Trust's refusal to comply with the recommendation of the judge made her feel "like a piece of dirt on their shoe … like they have always made me feel …. worthless …. they had a mindset firmly against me. Kathy Heatley is an exception." However, as I have indicated in paragraphs [67] and [68] above, the ill-judged and inappropriate words used in the minutes of the meeting of 18 June 2013, although regrettable and unfortunate, cannot now present M with an automatic veto in respect of making progress towards what is the best outcome for Mason.

[89] M then gave evidence about why she did not attend the LAC reviews relating to Mason. In essence, the Trust made her feel an inch tall. They talked over her. Decisions had been made before M even entered the building. M felt that it was pointless her attending these meetings. M also gave evidence about what a social worker called Maureen had said to her before she went into a LAC meeting on 29 November 2012. In essence, M alleged that the social worker in question said that

she was surprised M hadn't tried to kill herself and that her children would be better off without her. This had upset her greatly and had almost driven her to harm herself. Her evidence in relation to this incident was interrupted by the calling of another witness Sergeant Ashe who was required to attend court on foot of a Khana Subpoena to produce and prove documents relating to a missing person investigation initiated on 29 November 2012. It is clear that the PSNI became involved when social work staff reported at 3.20 p.m. on that date that they had concerns that M might harm herself as a result of being informed that her child was to be put up for adoption. M's house was searched and a note was found and a rope was noted to be attached to the rafters. The note stated: "Tell my kids I am so sorry. Just can't go on like this anymore. Sorry I love you all so much. You win Judith!!! Goodbye. Sorry Mum xxx. I have always loved you [Mason] xxxx." M subsequently returned home at 7.56 p.m. and was left in the care of a family member at 8.30 p.m.

[90] The Trust submitted an Affidavit sworn by Ms Maureen Walsh who is presently on maternity leave dated 27 March 2019 (Trial Bundle 2 pages 188 to 190) to address M's suggestion that she was the social worker who made inappropriate comments to her before the meeting on 29 November 2012 and also to verify the accuracy of a contact record relating to a contact which she did have with M on 1st February 2018. Thereafter, M was recalled to continue with her evidence and she immediately indicated that she was not saying that it was Ms Maureen Walsh who had made the comments to her but it was a social worker called Maureen. The Trust's case is that no other social workers named Maureen worked in that area at that time. The incident in question is described in paragraph 133 of the Trust's statement of facts contained in Trial Bundle 1. In essence, the Trust's case is that M upon being informed at a meeting on 29 November 2012 that the Care Plan was being changed to adoption and that her contact was going to be reduced, became very upset and left the meeting, informing those present that she was going to take her own life. Those present, including the Guardian, had been very concerned and had contacted the police.

[91] M's account initially was that the social worker said these upsetting things to her before the meeting and she subsequently left the meeting intending to harm herself. However, when it was pointed out to her that her Solicitor had been present at the meeting and she had not mentioned anything about what was allegedly said to her and to her Solicitor and that the Guardian Miss Armstrong was also at the meeting and had not noticed anything untoward until M had been informed about the change in Trust care planning, M then changed her evidence and stated that the social worker must have said the upsetting things to her as she was leaving the meeting and this explained why she had not reported the matter to her Solicitor during the meeting. It is clear that nothing in the PSNI documentation supports the case that a social worker called Maureen suggested that M should kill herself. When Ms McGrenera QC cross-examined M on behalf of the Guardian, she put it to M that the Guardian, who was present during the entirety of the meeting, noted that M was very confident and self-assured at the commencement of the meeting, which would not have been the case if such things had been said to her before the meeting. Miss

Armstrong, when giving her evidence was very clear that M had been in fine form coming into the meeting and it was the information that she received during the meeting that resulted in a distinct change in her mood. M explained this by reiterating that contrary to what she had initially stated, the comments must have been made to her as she was leaving the meeting.

[92] Despite being treated like this and despite never being given the opportunity to demonstrate that she could safely parent Mason, M was at pains to stress in her oral evidence which built upon the contents of her Affidavit dated 13 April 2017 which appears at Trial Bundle 1 at pages 608 and 609, that she accepts that Mason will remain with his present carers for the foreseeable future. Indeed, she accepts that he should remain in long term foster care with his present carers. She would not want him removed from their care at this stage. She simply wants to be involved in his life and to share parental responsibility with the Trust and foster carers. In order to demonstrate that she is not intent on undermining Mason's placement, she stated that she would never make an application to have the Care Order in respect of Mason discharged and she would willingly accept the court making an Order under Article 179(14) of the 1995 Order which would mean that the leave of the court would be required before any such application could be made. M freely admitted that she would not consent to a change of name because some day she hoped Mason would return to live with her but it would be his choice and if he wanted to remain and live on the farm then he could do so and he did not need to be adopted for this to occur.

[93] M gave evidence that her two eldest children were both back living with her and were both doing very well although when cross-examined by Ms Smyth QC on behalf of the Trust and Ms McGrenera QC on behalf of the Guardian and also when Miss Armstrong the Guardian gave evidence, it became apparent that both young persons had experienced difficulties following their return to live under their mother's roof. Her third child was now counting down the days until he could return to live with M. It would appear that he is under the impression that his mother will take him on an exotic holiday when he returns home but M was keen to stress that she had not put any pressure on any of her children to return to her care. She also stated that she had a good relationship with Lena, her daughter who was adopted. However, she accepted in cross-examination that she had very great difficulty accepting the court's decision in this regard. She stated that this child now wants to see M more often and that she now has a good relationship with Lena's adoptive mother although she accepted in cross-examination that she always wanted Lena to refer to her as mummy even though she was now adopted. In general M sought to demonstrate that her eldest two children were doing well since they returned to live with her and the Trust and Guardian gave evidence to the effect that the trajectories for both these young people were far from favourable. A significant amount of time was devoted in the hearing of this matter to issues relating to M's other children and her interactions with these children. I consider this evidence to be relevant but not of central importance in assisting me to determine the issues that I have to determine in respect of Mason. I, therefore, unless compelled to do so by

reason of its crucial relevance to an issue to be determined in this case, do not intend to comment at length on matters relating to M's other children.

[94] M also admitted that she wants Mason to refer to her as mummy and to regard his birth siblings as his family. She admitted that her goal and desire was for Mason to return to live with her and in the meanwhile to have regular contact with him, up to five times weekly. She denied that she ever did anything to undermine the security of Mason's placement although this assertion cannot be regarded as consistent with her behaviour on 31 October 2016 when she met Mason and his male carer at a Halloween bonfire and in front of Mason stated to the male carer that she was getting her children back, see paragraph 3.4 at page 542 of Trial Bundle 1. It is recorded that this had a very unsettling effect on Mason. M stated that she only mentioned Mason's hair after he had chopped at his hair with scissors. However, this evidence does not sit easily with the account contained in the Trust report set out in the paragraph at the bottom of page 134 of Trial Bundle 2: "[M] continues to demonstrate a theme of undermining the Trust's requests in relation to [Mason's] hair. During a contact held on 23.09.2016 [M] said [Mason] looked like a girl. The following morning after this contact [Mason] had cold sores and was unsettled in school." This incident is also described in Trial Bundle 1 at page 542, paragraph 3.3 where it is recorded that M told Mason that "you could put it up in a ponytail." M also told the social worker that Mason was at the wrong school because he was from a catholic background. Mason was very upset and told his carer that M had told him that he had to move school and he did not want to do this.

[95] It was put to M that her behaviour was such that she was eventually required to sign a contract on 30 November 2016, the terms of which are set out at paragraph 3.5 of page 543 of Trial Bundle 1. The provisions included a prohibition on M commenting to Mason on the length of his hair and telling him that he was at the wrong school. At that meeting M stated that Mason's carer was against her because she wants her child. There is little by way of evidence to suggest compliance with this contract. The bundle Freeing Discovery 1, page 8 records how M asked Mason on 16 June 2017 whether on the next visit he would like her to take him and get his hair cut short. Page 10 of the same bundle sets out the information obtained during a statutory visit on 3 July 2017. Following the contact on 16 June 2017, Mason developed a cold sore and was up all night having nightmares. He was screaming and crying and pulling at his hair and saying that M had talked about his hair.

[96] M asserted that any photographs of the children's early years that have been provided by her to Lena and Mason were provided at the request of the children to give them some knowledge of their background and this was not in an attempt to undermine their placements. In relation to episodes of unauthorised contact, M stated that these were entirely accidental and resulted from the fact that she regularly had to attend her GP surgery which was adjacent to Mason's school. She referred to the fact that during the relevant period she would have attended her GP on 260 occasions yet there were only 5 or 6 occasions when she encountered Mason and, on those occasions, she was hardly going to ignore her child. She stated that

during these accidental encounters Mason initiates the contact. As an example of how she doesn't initiate contact, she described how she had been sitting in a car on 20 February 2019 when Mason and his carer walked past the car. M ducked down so the child wouldn't see her. She then telephoned Kathy Heatley the social worker to tell her she had done this. M is firmly of the view that irrespective of whether Mason is in long term foster care or is adopted, she is always going to see and bump into him. She is not going to ignore her child, nor is she going to tell her other children not to see Mason.

[97] M's account of her encounters with Mason at or about his school are in stark contrast to the accounts contained in the Trust documentation, see for example the account set out in paragraph 4.6 of page 528 of Trial Bundle 1. According to the school, M called Mason over to the fence and started talking to him and kissing him through the fence. Mason was upset and confused and other children asked him why he had two mums. Other examples of M calling Mason over to the school gates on 7 June 2016 and 9 July 2016 are described in paragraph 4.7 of the same page. In her evidence M denied calling Mason over and stated that the staff would be prepared to lie about this because Mason's carer worked at the school. On this issue, I simply do not believe M. I accept that she deliberately presented herself at the school at times when Mason would be in the playground and deliberately called him over and started kissing him in public, regardless of the unsettling impact this had on the child. This behaviour was repeated as recently as 12 March 2018 (Trial Bundle 2 pages 179 and 184) and 12 December 2018 (Trial Bundle 2 pages 131, 186 and 187). M point blankly refuses to accept that this behaviour causes any distress or upset to Mason. In her mind Mason is upset because he wishes to see her and his birth siblings more often and is prevented from doing so.

[98] M also described how she discovered that her son Mason had been diagnosed as suffering from ADHD. She stated that sometime during the summer of 2018, probably after Mason's birthday, she bumped into Mason's carer in a pizza restaurant and was informed by the carer that Mason was being assessed for ADHD. M gave evidence that she then contacted a social worker the following morning and enquired about this development and was informed that the assessment was yet to take place. I make two observations at this stage. Firstly, the Trust has no record of any call being made to any social work staff by M following an encounter with Mason's carer in a pizza restaurant or any record relating to a discussion with M about Mason's diagnosis of ADHD during the summer of 2018. Secondly, M never gave any account of this encounter and subsequent telephone call in any of the numerous Affidavits or statements of evidence filed by her. Irrespective of whether an encounter or discussion did or did not occur in a pizza restaurant between M and Mason's carer, I am not satisfied that M subsequently reported the contents of this or any discussion to the Trust. M's evidence was that after she was informed by the social worker that the assessment was yet to take place, she was not told anything else about the diagnosis of ADHD until she bumped into Mason and his carer outside the school on 25 September, 2018 and was told during this encounter that Mason had commenced medication for ADHD. Afterwards, she immediately

telephoned the social worker Kathy Heatley to find out why she hadn't been told about this important development. M was adamant in her evidence that this call was to discuss this medical issue and not primarily about contact, although contact was mentioned. M does not accept that any social worker attempted to contact her by phone or by text in August 2018 to arrange contact. I have already set out the evidence provided by Ms Rainey and Ms Heatley in relation to these issues at paragraphs [60], [61] and [85]. I have already stated that I accept the evidence of Ms Rainey and Ms Heatley on these issues.

[99] In her evidence M complained that she did not receive any regular updates re Mason's medical needs. She does not know who Mason's GP's is or where the practice is based. She does not receive requests for consent to Mason's medical treatment. She does not receive any medical reports or other similar information concerning Mason. She does not receive school reports and has not received any response from the school in relation to her request for such information. M also complained that Mason's carer had a schedule of contact, but she had not been provided with such a schedule. Page 41 of the bundle Freeing Discovery 1 contains a record of a telephone contact between M and the Trust in June 2018 during which the contact which took place on 27 June 2018 was arranged. This record indicates that the Trust offered to provide M with weekly updates in respect of Mason. This offer was rejected. M in her evidence denied that such an offer was made to her and rejected by her. In any event, as is clear from paragraphs [58] to [61] above, information is provided to M by the Trust both before and after the LAC review meetings. However, it is clear that in respect of the diagnosis of ADHD, although information was provided to her directly by the Trust in February 2018, more could and should have been done by the Trust to alert M to this diagnosis and the treatment for same.

[100] M complained that contact was now a total failure and that the Trust had set her up to fail in respect of contact. In essence, M's complaint was that contact is usually arranged for inappropriate venues such as the board room of a local hospital and that it is impossible to engage in good quality contact in such a setting despite her very best efforts to make these contacts enjoyable for Mason. She had been offered one contact in another more distant contact centre but she had been unable to avail of this offer due to car trouble. M complained that she was excluded from any involvement in decision making as to how Mason is to be brought up. For instance, she does not wish Mason to attend Orange parades and wants to be consulted about Mason's holidays before they were booked. For M, the recognition of her status as a parent means everything. In a very telling passage of her evidence she stated that she had five caesarean sections and that she wanted those scars to mean something. M in her evidence consistently demonstrated a single-minded focus on her wants and needs encapsulated in the concept of the recognition of her status as Mason's parent. There appeared to be little appreciation of Mason's wants or needs or the psychological scarring that he might suffer by reason of her attempts to assert her rights where they conflicted with his wants or needs.

[101] Another example of this attitude was demonstrated when M was asked by Ms McGrenera QC who was instructed on behalf of the Guardian ad Litem about her perception of the likely impact upon Mason of him being removed from his carers and placed with her in an assessment in Thorndale. In essence, M's view was that children are resilient and Mason would have gotten over the upset. She stated that one of her other children was a similar age when he was taken off her and taken into care and he had coped. To equate these two situations just illustrates how little insight and empathy M actually possesses. Her older child at the age of 6 was removed from a chaotic and harmful environment and was placed in care because she could not protect that child from harm. This removal was necessary for the child's protection. How could this ever be equated with the removal of a child at the age of 2 from a loving, secure and stable environment into an assessment centre with a relative stranger for the purpose of ascertaining whether that stranger could safely parent the child with a high level of ongoing and intensive support? How could the impact upon the two children of these polar opposite changes in circumstances be compared?

[102] Following M giving her evidence, Miss Armstrong, the Guardian ad Litem, was called to give evidence. However, as indicated above, it was agreed that M would be entitled to return to the witness box to address any issues which arose out of the Guardian's evidence which she had not addressed during her earlier evidence. As it turned out, M did return to give further evidence upon the completion of Miss Armstrong's evidence in order to address issues raised by Miss Armstrong, to update the court on a recent contact with Mason and to draw the court's attention to the contents of various documents recently produced by the Trust by way of discovery.

[103] Miss Fiona Armstrong adopted her 16 reports and updates provided between 28 February 2012 and 8 February 2019 contained in the Bundle of GAL Reports at pages 1 to 168 and her final update dated 14 March 2019 set out in Trial Bundle 2 at pages 171 to 176. In her most recent report, she specifically dealt with the issue of Mason's behavioural difficulties. The Guardian's evidence was very telling. During her visit in May 2014, the Guardian noted Mason's intense interest in and love of all things associated with the farm on which he lived and his already deep-seated desire to grow up to be a farmer on the farm. During her visit with Mason in 2017, she initially observed Mason's wariness towards professional visitors but when she was able to engage with him out on the farm and got him talking about things he was really interested in, he became more relaxed and she had a very easy and positive interaction with the child. During the visits in 2017, 2018 and 2019, the Guardian observed that Mason had developed an age appropriate understanding of his situation. He has become much more aware that his living arrangements are under regular external scrutiny and that his arrangements in the household are different from the child who is now adopted. From her earliest visits in 2012 right up to the present time, Miss Armstrong has noted that Mason has always been settled and content in his placement. This placement represents the only home and family life that he had ever known. However, more recently, Miss Armstrong has observed a

growing insecurity being manifested by Mason as he matures and develops and becomes more aware of his situation and tries to operate within two families with M's emphasis being on constantly trying to secure her primacy as his mother and having that primacy recognised.

[104] Miss Armstrong highlighted the intensive efforts made by the Trust in 2011 to 2013 to explore the possibility of Mason being returned to the care of his birth mother M. These included two assessments at Knocknashinna and Dr Paterson's therapeutic intervention. She denied that she had a closed mindset in respect of M's parenting capacity. She stated in cross-examination that in respect of the Adoption Panel Meeting minute of 18 June 2013, she only saw this minute in October 2013 and she would have commented adversely on this choice of words if she had picked up on it at the time. She was clearly critical of the choice of words and did not seek to defend the choice of words used in the minute. Miss Armstrong gave evidence about the change of direction from a twin track approach to a recommendation of freeing for adoption. In essence, in her opinion, M had not demonstrated an ability to acquire the insight and skills necessary to safely parent Mason and the bespoke supervisory package suggested by Dr Paterson was impracticable and impossible to deliver in reality. She was of the opinion at that time that the removal of Mason from his stable and secure placement to an assessment with his birth mother in Thorndale represented a high-risk strategy which should only be contemplated if there was a high chance of successful rehabilitation. In this case, she was convinced that the chances of success were not at all great. Miss Armstrong also referred to the contents of a conversation which she had with M at the end of January 2019 where M, when talking about the impact of a Thorndale assessment on Mason back in 2013, said that it would only have been 12 weeks out of his life and that children are resilient. M was cross-examined about this conversation and the details of that exchange and my comments thereon are set out in paragraph [101] above.

[105] Miss Armstrong gave evidence that at this time contact, which had been reduced, was of poor quality and poorly planned with M being less interested in meaningfully engaging with the child and more interested in taking Mason out to shops and other venues where she would have met with and been seen by others and would be able to demonstrate her primacy as Mason's mother. Miss Armstrong was convinced by that stage that adoption was necessary to provide the security that Mason needed and in her evidence to the court in April 2019, she stated that more recent events and her assessment of those events had only served to strengthen her views in relation to this issue. She is firmly of the view that as Mason is getting older and becoming more aware of his situation, particularly by reason of the actions and attitudes adopted by M, he is becoming more aware of the insecurity of his present circumstances and this lack of security is damaging to his emotional development. He longs to have full recognition as a full member of the only family that has provided a loving, stable and secure environment for him since his birth. Miss Armstrong commented on the fact that more recently Mason has been able to appreciate the difference in the level of security afforded by adoption and that afforded by long term foster care in that in the case of a child subject to long term

foster care in the household, there was an application to revoke the care order after seven years and this had been very unsettling for the child subject to that care order. Miss Armstrong also referred to many examples where she had noted M's persistent and unremitting efforts to subtly criticise Mason's carers and to undermine his placement and thus undermine Mason's emotional security. She also noted that the same tactic and approach has been adopted by M in respect of Lena, her other child who had been adopted and her insistence that this child still refers to her as "mummy". Although this was very unusual in the context of an adoption, Miss Armstrong gave evidence that Lena's adoptive mother had taken the pragmatic decision not to continue to challenge M about this matter at contact visits so as to avoid the development of unpleasant disagreements in front of the child Lena during contact visits. Deep down M has not accepted the change in Lena's legal status and the Guardian is concerned that if Mason is adopted, M will similarly be unable to come to terms with and accept his change in legal status.

[106] In relation to M's argument that there is no difference between the level of love, affection and commitment which Mason's carers would display in a long term foster care set up and that which would be displayed in the context of adoption, Miss Armstrong as Guardian was at pains to point out that the issue was not solely concerned with the carers' commitment, the issue also related to Mason's perception of his status. If he were to be adopted, his carers would have full and sole authority for parenting Mason. At present as foster carers, they are, in a sense, agents for the Trust, only parenting Mason to the extent permitted and authorised by the Trust. Mason is aware of this limitation in his carers' role in respect of him and he wants to be a complete and integral part of their family. According to Miss Armstrong, Mason wishes his carers to have the sole authority and power to make the major decisions in his life. This will enhance his feelings of belonging to a family and his sense of security. He wishes to be unequivocally recognised as an integral and integrated member of that family and he wishes to be adopted just like "J" the other adopted child in the household and to bear that family name and his emotional security is undermined when he perceives that M is directly or indirectly challenging, threatening or undermining that path towards full integration.

[107] Miss Armstrong gave evidence about the two meetings she had with Mason in 2019, one with the Solicitor for the Guardian (11 January 2019) and one on her own (29 January 2019). She specifically highlighted the report of Mason's emotional dysregulation both before and after the contact with his birth family. In terms of the expression of his wishes and feelings, Miss Armstrong was of the opinion that Mason's wishes and feelings are being expressed with ever increasing confidence. He is relaxed when he can freely express his views in an environment that he considers as his home. He wants to belong to the family that has looked after him since his birth. He does not spontaneously mention his birth family. He does not regard them as his family. His carers and their children are his family. This clearer expression of Mason's wishes and desires is to a large extent mirrored by the deeper entrenchment and clearer expression of M's feelings of resentment and being let down by the Trust.

[108] Mrs Dinsmore's cross-examination of Miss Armstrong was interrupted on 7th May 2019, to allow M to be recalled to give evidence to deal with the contents of discoverable documentation which had been retrieved from storage which mainly dealt with issues surrounding contact visits with Mason and Evan in November, 2015. As I have indicated in the final sentence of paragraph [93] I do not consider it necessary to further expand on these issues or comment on the evidence given in respect of the same. What was more important was M's evidence about a recent contact with Mason in April 2019 when Mason stated that he didn't like school because it was really boring and when he was asked whether he would rather go horse riding than go to school, he replied that he would rather come here and see his mummy every day. M gave evidence that she was very surprised by Mason's comments and it was clear that she placed great weight on these comments in terms of Mason's most recent expression of his wishes and feelings.

[109] The matter was then adjourned to be continued on a date suitable to the parties once the documentation relating to this most recent episode of contact had been collated and on 16 May 2019, M was recalled to the witness box to be cross-examined by Ms Smyth in relation to the most recent contact with Mason. The contact records relating to this contact were added as pages 231 to 240 of Trial Bundle 2. In essence the case put by Ms Smyth was that when Mason said he didn't like school and found it boring during the contact, Kathy Heatley, the Social Worker asked him what would he rather do. M then suggested horse riding and Mason said no. The Trust's case is that M then suggested "Here with me?" and Mason then said yes. M then gave him a big hug. In essence M's case is that the child Mason spontaneously and unexpectedly volunteered that he would rather see his birth mother than go to school whereas the Trust's case is that Mason said yes in response to a pointed and leading question posed by M.

[110] When M had finished her evidence on this point, Ms Kathy Heatley was recalled to the witness box to give evidence on this issue and stated that M had prepared very diligently for this Easter contact and that the contact progressed very well. Mrs Dinsmore QC was keen to establish that Mason showed no reluctance in getting ready for and going to the contact with M his birth mother, that he physically embraced her during the contact and that M had brought eggs along for Mason to take back to the other children in Mason's placement, giving the clear message to Mason that she accepted his placement with those other children. Although Ms Heatley was adamant that M had said "here with me?" rather than Mason saying "here every day with my mummy", she agreed with Mrs Dinsmore QC that Mason quite clearly indicated a preference at that time to be with his mother rather than being at school or even being on the farm or going horse riding and that M was clearly shocked by that answer and that this indicated that she neither had deliberately tried to elicit that answer nor had she expected to receive it. Mrs Dinsmore QC also took the opportunity to question Ms Heatley about her perception of the effect which medication which is intended to treat ADHD has had on Mason's behaviour. Her evidence was to the effect that there had been a marked improvement in Mason's behaviour following the commencement of medication.

Mrs Dinsmore QC also questioned her on whether during the most recent statutory visit there was any reference to nightmares or evidence of Mason being unsettled as a result of having to participate in a statutory visit. Ms Heatley confirmed that there were no such references or evidence and Mrs Dinsmore suggested that this indicated that statutory visits are not a burden upon Mason especially in a household where statutory visits will be occurring in respect of other children irrespective of the outcome of this case.

[111] Following the giving of this evidence, Miss Armstrong was recalled to enable Ms Dinsmore QC to conclude her cross-examination of this witness. In terms of the impact of medication for the diagnosed condition of ADHD, Miss Armstrong was adamant that all the available information indicated that issues such as poor concentration and impulsivity had become less prominent and Mason was doing better at school but emotional dysregulation was still apparent but this was only displayed at times of contact. Even after the much-vaunted contact on 12 April 2019, his behaviour was poor as he refused to share the Easter eggs that had been bought for the other children. His carers had been able to distract him with preparations for the family holiday but even then his unsettled behaviour persisted in the holiday. Miss Armstrong saw this behaviour as part of a now predictable cycle of Mason eventually settling after contact and seeking closer proximity with his carers and seeking to find his place again in that family. Normally, Mason does not talk about his birth family and even when the issue of his birth family is raised, he is reluctant to talk about them. Outside of contact he does not seek contact with his birth family.

[112] In relation to the issue of Mason's wishes and feelings, Mrs Dinsmore QC questioned whether Miss Armstrong was equipped in terms of expertise to properly address this issue and suggested that a Child Psychologist would have been better placed to deal with this issue. Miss Armstrong firmly stated that her many years of experience as a Guardian and her involvement in this case since Mason's birth amply equipped her to give evidence on this issue in this case. Mrs Dinsmore QC concluded her cross-examination by putting to Miss Armstrong that there were a number of matters in this case which clearly indicated that M was not unreasonably withholding her consent to adoption. These matters have been exhaustively dealt with above but for the sake of completeness, they were:

(a) the full commitment of the foster carers, irrespective of the outcome of this case;
(b) M not being afforded an opportunity to parent Mason;
(c) M successfully undergoing difficult and protracted work with Dr Paterson;
(d) M being denied to opportunity to take part in a Thorndale assessment when the judge had recommended that this take place;
(e) the Trust had adopted a closed mindset with the use of the word "formality" in the context of freeing in the minutes of the meeting in June 2013;
(f) M had a proven track record of not making unmerited discharge of care order applications;

(g) Mason's present carers had a diverse and varied family set up with birth children, an adopted child and children subject to long and short-term foster care;
(h) Mason's birth family was equally diverse and varied in terms of makeup;
(i) M was largely consistent in her positive approach to attending contact; and
(j) M had been treated very badly by the Trust in her dealings with the Trust and in the manner in which she was informed of Mason's diagnosis of ADHD.

[113] I do not intend to set out in extenso Ms McGrenera's re-examination on these points. The issues have been dealt with above. There are just three issues worthy of comment arising out of Mrs Dinsmore's cross-examination of Miss Armstrong and these are set out below:

(a) Having assessed Miss Armstrong in the witness box, I regard her as a witness of the highest integrity and I am convinced that she did not approach this case with a closed mindset and indeed kept an open mind and tried to ensure that M was given every opportunity to prove herself as a parent until it became clear in 2013 that despite extensive and bespoke interventions, M was not going to develop the necessary insight and skills required to safely parent Mason. It was only at that stage and not beforehand that Miss Armstrong advocated adoption.

(b) The suggestion at this late stage (16 May 2019, being the last day on which evidence was given, the case having commenced in late February 2019) that it might be appropriate to obtain an opinion of a child psychologist in relation to the issue of Mason's wishes and feelings with the amount of intrusion that this would involve and the significant delay that would be occasioned thereby, struck me as indicating an attitude of mind on the part of M that she still had little appreciation of the impact that this court process was having on Mason and indeed had had on Mason since it commenced back in 2013.

(c) M's stance in relation to the issue of Mason's surname is clearly proprietorial. This proprietorial approach to the issue of Mason's surname does mean that even in respect of a matter such as this, there is a clear difference between adoption and long-term foster care which is important in the context of this case. In adoption, the child's wishes to be known by the same surname as the family he lives with occurs without further order of the court. In the context of long term foster care such a name change to give Mason what he deeply desires could only occur after a bitterly contested court hearing and it is the Guardian's view that it would not be in Mason's best interests for him to be aware of a dispute about his surname being the subject of protracted court proceedings. Therefore, his carers and the Trust might not be minded to push this issue in order to spare Mason this emotional harm and just as in Lena's case, M might "win" that battle simply because those caring for the two children concerned did not want the children to be aware that there was a war going on. This is not a major issue in the overall scheme of things but it just

serves to highlight that the claim that there is no material difference between adoption and long term foster care and that adoption is not clearly needed to further the best interests of Mason, on close examination, does not withstand scrutiny.

[114] As stated above, the hearing of evidence in this case commenced on 14 February 2019 and finished on 16 May 2019 after eleven full or part days of hearing. Thereafter, the closing submissions of the parties were made to the court over the course of two days on 17 and 29 May 2019. Irrespective of the outcome of this case, the parties should at least be able to agree that they have been given every reasonable opportunity to put their case to the court and to test the evidence of any witness perceived as challenging their case. It is now time to conclude this very protracted matter and at least attempt to bring finality to this litigation and thereby bring stability and security to the life of Mason who has for a good number of years now sought those crucial features of family life; features which many brought up in loving, caring and capable families simply take for granted.

[115] It is clear from the entirety of the material before the court that the child Mason is very strongly attached to and strongly identifies with his life-long carers and regards them as his family and that includes regarding the male carer as his "daddy" and the female carer as his "mummy". They have lavished upon him the highest quality of care and parenting since his birth and he regards himself as one of their family and wants to be fully secure by being totally integrated into the fabric and ethos of that family. In seeking integration, security and stability, he is seeking no more than any child should have as part of his or her childhood. I fully accept that it is not the role of the State or indeed is it within the capability of the State to provide such stability and security to each and every child within its jurisdiction but when such security and stability can be achieved and is readily within the grasp of a child who comes within the care system of the State, it is certainly not the role of the State to prevent that child achieving such stability and security simply to satisfy the proprietorial wishes and feelings or indeed the emotional needs of an inadequate and largely incapable birth parent.

[116] The entirety of the evidence clearly demonstrates to me that Mason wants to belong to and be fully integrated into the carer family in this case. He wishes to be adopted and he wishes to take the family name of the carer family and he wants to grow up to work on the family farm. In reaching this conclusion, I take full account of what occurred during the contact between Mason and M on 12 April 2019. I accept that this contact went well and that Mason enjoyed it at the time. This contact took place during the hearing of this case which for M is all about the future of M in Mason's life. Of course, she prepared well for this contact and made every effort to ensure it went well. And when an opportunity presented itself for her to get the child to acknowledge the primacy of her position in his life, she took that opportunity and she was both surprised and delighted when he appeared to do so. This event must be seen in its proper context. It occurred during a contact where Mason was the sole focus of attention and where the child was being lavished with

Easter treats. In a child with an increasing sense of insecurity about the future, who harbours a deep seated desire to be fully integrated into a loving, stable and secure family, it is easy to understand that in the context of his life experience, being in an environment where he is the sole focus of attention, being lavished with treats and affection is, for the time being, a desirable place to be. His unsettled behaviour after this contact simply confirms that such events only serve to confuse, unsettled and destabilise this child in his long term placement and a question that has to be asked is whether this is in the best interests of this child.

[117] All the evidence indicates that this child's deep-seated wishes and desires for such stability and security will be met by making an order freeing the child for adoption. The questions which I have to address are whether the fulfilment of these wishes and desires are in the child's widest best interests and if so, whether it is necessary to make an order freeing the child for adoption for the fulfilment of those wishes and desires to be realised or whether the child's desire for security and stability can be met by long term foster care. In the context of this case, I am bound to pay particular attention to the fact that Mason has been diagnosed as suffering from ADHD and that the expert evidence in this case is clear on the impact of this condition on Mason. "Children with ADHD and social and emotional difficulties require understanding and support particularly in relation to emotional regulation and managing their feelings. Understanding of ADHD symptoms is required to help manage the challenges that children with difficulties with inattention and hyperactivity encounter in their daily lives at home and in school. It is highly important for [Mason], given these additional needs to experience a nurturing, stable and secure environment … [Mason] should reside in an environment that understands his social, emotional and behavioural needs and that provides him with optimal support and care."

[118] This important evidence clearly demonstrates to me the absolute imperative of ensuring that Mason experiences a stable and secure family environment. It is not just about wishes and desires it is about a real need for such things. It is argued on behalf of M that the commitment of the carers in this case will be the same irrespective of whether the court decides on adoption or long term foster care as the best outcome for Mason. However, the phrase "stable and secure family environment" not only refers to the attitudes displayed and projected by those carers providing that environment, it also crucially and centrally refers to Mason's own appreciation of the stability and security of that environment and his perception of his place and his level of integration in that environment. In this case, I am convinced that the fulfilment of Mason's wishes and desires to feel that he is safely, stably, fully and securely integrated into his carers' family is in his best interests, paying particular regard to the needs and vulnerabilities associated with his diagnosed condition.

[119] In light of this finding, the court has to go on to consider whether that goal of achieving maximum security and stability which it has determined is in the best interests of Mason can be achieved by means of long term foster care or whether

only adoption will do in this regard. Taking into account all these matters, it is necessary for the court to carefully examine the two viable options for the long term care of Mason and to come to a decision as to which option is in the best interests of the child.

Long-term foster care versus adoption

[120] In the context of long term foster care, formal parental responsibility would be shared between M and the Trust, with Mason's carers acting as agents for the Trust. With adoption, Mason's present carers would have full parental authority and responsibility with the Trust having a consultative and supportive role, if needed. No one doubts the ability and capability of Mason's carers to be excellent parents for Mason. M's acknowledgement that adoption or long term foster care are the only viable options in this case can only mean that she accepts that she cannot safely parent Mason and that her role is and for the foreseeable future will remain a largely consultative and supportive role. If the role played by M in this case was either largely positive or even neutral, then at least in relation to the issue of the quality of parenting, it could forcefully be argued that the choice of adoption did not bring with it any clear advantages over long term foster care. However, if the role played by M is, when carefully scrutinised, adjudged to have had a negative impact and is likely to continue to do so, then adoption would have clear advantages over the option of long term foster care in this specific domain.

[121] On the basis of all the evidence adduced in this case, I have no hesitation in concluding that the role played by M in this specific domain has been largely negative. She has not contributed in any meaningful and positive way to the parenting of Mason. She has refused to attend LAC meetings since 2015 and has not seen fit to read the material sent to her either in advance of the meetings or thereafter. I do not accept her evidence that she stopped going to LAC reviews because she was being treated like dirt by the Trust. I accept Miss Armstrong's evidence that if she had seen any hint or suggestion of such treatment, she would have raised this matter with the Trust. I utterly reject M's evidence about a Trust employee suggesting that she should kill herself at any stage prior, during or after the LAC review meeting on 29 November 2012. I accept Miss Armstrong's account of what happened at the meeting to cause a dramatic change in M's mood. I accept that Miss Armstrong was instrumental in suggesting that the assistance of the PSNI be sought in order to locate M and ensure that she was safe. M did not like what she was hearing at that meeting in relation to the way forward for Mason. She chose to react to that news in a very dramatic and extreme manner. The claim that this dramatic and extreme reaction was caused by the inappropriate and insensitive comments of a social worker is simply a subsequent fabrication by M.

[122] Rather than contributing in any positive and meaningful way to the parenting of Mason, all M's interactions with Mason, Mason's carers, the Trust, the school and the Guardian have been for the purpose of asserting her primacy as mother of Mason and/or for the purpose of undermining the stability and security of Mason's

placement with his carers. The previous paragraphs of this judgment are peppered with examples of such behaviour and this unremitting negative impact over a prolonged period now must weigh heavily in the balance when determining which of the two viable options best meets Mason's best interests. Having regard to the nature and extent of the deficits in parental capabilities in this case, the lack of empathy, the lack of insight as to the needs of Mason and the ongoing concerns of the Trust and the Guardian, I am satisfied that it is very unlikely that M would ever work constructively in partnership with the carers and the Trust in the best interests of Mason and, therefore, in the domain of parenting, adoption is clearly a better option than long term fostering in terms of serving Mason's best interests.

[123] Mason's current carers have indicated that they wish to adopt him but they would also wish to be his long-term foster carers if that care option was favoured by the court. Therefore, it is clear that in the absence of efforts by others to undermine that placement, Mason will be in a place where he receives safe, secure and consistent care, irrespective of whether that care is provided in the context of long term foster care or adoption. However, as stated above, all M's interactions with Mason, Mason's carers, the Trust, the school and the Guardian have been for the purpose of asserting her primacy as mother of Mason and/or for the purpose of undermining the stability and security of Mason's placement with his carers. This inescapable fact does, therefore, have to be taken into account when comparing the relative merits and demerits of both viable options. In terms of the ability to provide safe, secure and consistent care, the option which is less vulnerable now and in the future to persistent and sustained attempts at undermining it is to be preferred. It is clear that with adoption, M's opportunities for asserting her primacy and undermining the current placement will be dramatically reduced although as Lena's case demonstrates they will not be completely removed. Despite her assurances about not seeking to revoke the care order made in this case and her willingness to agree to an Order under Article 179(14) of the 1995 Order, the choice by the court of long term foster care will be seen by M as providing her with the opportunities she desires to continue to assert her primacy and undermine the current placement and so in this domain also adoption is clearly a better option than long term fostering in terms of serving Mason's best interests.

[124] Long term foster care would enable Mason to retain his birth family name and his sense of birth family identity. However, as indicated above, Mason has been cared for by his present carers from two days after his birth. He is now over seven years old. Mason does not identify with his birth family and parental and sibling attachments are not strong. He does identify with and is strongly attached to his long term carers. He is anxious for reassurance that this is permanent arrangement. Being able to fully integrate into the family that has cared for him from birth would enhance his sense of belonging and his feelings of security. On behalf of M it is argued that it is wrong to treat Mason in such a way as would make it more difficult for him to develop and maintain meaningful relationships with his birth mother and siblings and to achieve a true sense of birth family identity. It is argued that if Mason

is adopted, his chances of enjoying close relationships with his birth mother and siblings will be stymied.

[125] The flaw in this argument is that it totally ignores the fact that M's oldest three children have a strong sense of attachment and belonging to M, their birth mother, which is essentially absent in the case of the child Mason who has been cared for all of his life by his present carers. His sense of attachment and belonging is directed to his carers not his birth family. To try to redirect this to his birth family at this late stage would be confusing, damaging and undermining of the present placement. I emphasise that this is not some theoretical risk. There is clear evidence that M's attempts to redirect Mason's sense of attachment have been confusing and unsettling for Mason and have had the effect of undermining the security and stability of Mason's placement. It is Mason's deep desire to be known by the surname of his long-term carers' family. In Mason's case this will enhance and increase his sense of belonging to this family. It is in his best interests that his sense of belonging is maximised. If Mason were to remain in long term foster care it would be possible to initiate legal proceedings to have his name changed but it is inevitable that such proceedings would be contested by M and it would not be in Mason's best interests for further contested proceedings to be embarked upon for the purpose of securing a change of surname. Therefore, with long term foster care, the likely result is that Mason's surname will not change and he will be left feeling that he does not belong completely to the family that has cared for him since he was born. This unwelcome outcome would not occur with adoption and this is yet another domain in which the obvious advantages of adoption over long term foster care are clear to see.

[126] The advantage of the higher levels of contact with the birth family which is associated with long term foster care is lost if contact is undermining of the foster placement and damaging to the child's psychological welfare. If adoption is favoured by the court, any post adoption contact with the birth family will be at a level which will promote and enhance that child's overall sense of identity and, as he gains maturity, will allow him to obtain information and knowledge about his birth family and his background. It is acknowledged that as an adopted child, Mason may come to experience a sense of loss and uncertainty as to who he is as a result of the realisation that legally he is not a part of his birth family but the role of the adoptive parents and, if necessary, the Trust's Adoption Team, will include providing age appropriate explanations as to how this situation came about. In this case, the potential for the development of a sense of loss in the future associated with adoption has to be balanced against the actual harm which is occurring at present due to the current levels of birth mother and sibling contact. It is clear that the present contact arrangements and M's continuing attempts to engage in unauthorised contacts are having, and if allowed to continue, will continue to have a damaging effect on Mason's placement in that Mason's unsettlement and feelings of instability and insecurity will persist. The balancing exercise in relation to this domain involves weighing up a potential future loss associated with adoption against an actual present loss more closely associated with long term foster care.

Although the balancing exercise produces a less clear-cut result, I still consider that the balance comes down in favour of adoption as being in the best interest of Mason.

[127] In relation to contact, it is common for carers in long term fostering arrangements not to attend with the child during contact with the birth family, this role being performed by Social Services personnel. In adoption situations, the adoptive parents usually do attend contact sessions and this is perceived as providing a level of support and comfort, if contact becomes difficult or challenging. In this instance, judging by M's behaviour in respect of contact with Lena, it is likely that irrespective of which option is chosen by the court that contact in this case will be facilitated by the Trust, as Mason's long term carers do not wish to participate in contact arrangements.

[128] Under long term foster care, four weekly social work visits would continue for as long as Mason remains in foster care. This can be highly beneficial and reassuring when there are any concerns about the physical, psychological and emotional wellbeing of the child or his educational or social development. In the absence of any such concerns, such regular visits can be intrusive and can serve to stigmatise a child as one remaining in the state care system in the long term. Adoption does not involve such intrusive supervision. However, if needed, the Trust's Adoption Team will be on hand to provide support and, if necessary, to facilitate contact with the birth family. In this instance, Mason has been diagnosed with ADHD and he will remain under review in respect of this diagnosis and his treatment regime. Further, it does not appear to be the case that Mason is unduly concerned about statutory visits, particularly in light of the fact that social workers will be regularly visiting the house in future in respect of other children in the house even if not in respect of him. Bearing in mind the particular vulnerabilities of this child, I am satisfied that the enhanced supervisory framework associated with long term foster care would on balance be in Mason's best interests even though his health and wellbeing in the context of management of his condition of ADHD would be subject to community review if he were to be adopted.

[129] One of the stated advantages of long term foster care is the availability of 16+ services, aftercare support and a personal advisor. However, these supports are there to support a young person when his or her time in foster care is coming to an end. It hardly needs repeating that with adoption, the relationship does not terminate at a certain age. These supports do not point towards long term foster care having an advantage over adoption. They are in place to make up for one of the disadvantages of foster care.

[130] One of the stated advantages of foster care is that the foster carers are required to abide by safe parenting practices as per Trust policy. But for young children, the same safe parenting practices do not permit an adult carer being present in a bed with a young child who might be ill or frightened or might have experienced a bad dream. In such circumstances, the foster carer could not provide

comfort to the child in a manner that an adoptive parent could. In this case, the court is aware that Mason has been afflicted with night terrors in the past.

[131] The perceived shortcomings of long term foster care are its impermanence, lack of security, with a birth parent being entitled to regularly challenge the continuance of a Care Order, and possible lack of continuity. It is unlikely that the present carers of the Mason will give up that caring role if long term foster care is determined to be in the best interests of Mason. Therefore, a lack of continuity of care is not a major concern in this case. However, it is much more likely that there will be a lack of continuity in relation to social work personnel involved in Mason's case. If made the subject of long term foster care, it is likely that Mason will have a large number of different social workers involved in his case during the remaining years of his time in foster care. Although this may be unavoidable, it is not an ideal situation.

[132] As young children mature in the care system in foster care, they may become aware of the lack of permanence of their home arrangements and they can grow up feeling that they do not fully belong in a family. Long term foster care also subjects children to corporate and bureaucratic parenting, involving monthly statutory visiting, annual medical examinations, LAC reviews every six months and the need to obtain permission for holidays, outings and overnight stays with school friends, although it is possible for foster carers to be given delegated authority to consent to matters such as minor medical and dental treatments and sleep overs. However, in this instance, M, in her desire to assert her primacy, has not shown any willingness to delegate or concede authority to Mason's carers.

[133] In the case of situations where formal consent is required for medical treatment, an Assistant Senior Social Worker would have to attend the hospital or clinic to sign the consent form on behalf of Mason and this has the potential of highlighting his status as a child in the care system. An Assistant Senior Social Worker would also have to sign a consent form to enable Mason to leave the jurisdiction of Northern Ireland, even for as short a period as part of a day. This makes spontaneous day trips out of Northern Ireland impossible for children in foster care. Furthermore, as parental responsibilities are shared between the Trust, the foster carers and the birth parent, there is the potential for conflict and disagreements which may ultimately require recourse to the court for determination of issues relating to schooling and holidays. No such difficulties arise with adoption. The adoptive parents are able to provide the necessary consents.

[134] Although there are a wide range of outcomes for children in the care system, it is recognised that those who have been in the care system in the long term are more likely to do less well in education, are at a higher risk of experiencing mental health difficulties and are more likely to engage in criminal conduct in later life. In contrast, adoption should provide the best opportunity for Mason to develop and to reach his full potential within a safe, caring and stable environment.

[135] Unlike long term foster care, adoption provides legal, physical and emotional security, a sense of belonging, and a sense of confidence in the continuity and permanence of care, symbolised by the child taking the name of the adopting family. It is common for adopted children to feel a strong sense of belonging to their adopted families and to feel that they have a normal family life with the support of an extended family network. Adoption of Mason by his present carers will enhance the opportunity for him to develop a sense of identity and develop a strong and effective sense of self. He has already made it abundantly clear that he wishes to be fully and completely integrated into his carers' family and the fulfilment of this desire insofar as it can be achieved is in his best interests.

Determination of best interests

[136] Having regard to the matters set out above and conducting the mandatory welfare analysis of both the viable proposals identified in this case, and paying due regard to the reasoned and cogent views expressed by the Guardian ad Litem in this case, it is clear to me that a Care Plan for Permanence by Adoption is in the best interests of Mason. I am mindful of the important guidance given by the UK Supreme Court in *Re B* [2013] UKSC 33 and how this guidance has been interpreted in subsequent appellate decisions. Gillen LJ in *X Health and Social Care Trust v W and E* [2015] NICA 55 had this to say at paragraphs [57] to [60]:

> "[57] The [Children (Northern Ireland) Order 1995] itself makes no mention of proportionality, but it was framed with a developing jurisprudence under Article 8 of the European Convention on Human Rights and Fundamental Freedoms very much in mind. Once the Human Rights Act 1998 came into force, not only the Trust but also the courts as public authorities, came under a duty to act compatibly with Convention rights.
>
> [58] Lady Hale considered the Strasbourg case law in this area and concluded at paragraph [198]:
>
> > '… It is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do. In many cases, and particularly where the feared harm has not yet materialised and may never do so, it will be necessary to explore and attempt alternative solutions. As was said in Re C and B [2001] 1 FLR 611 at para 34:

> "Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child".'
>
> [59] The court in *Re B* held that Article 8 has no application when considering the significant harm test but it is applicable at subsequent stages – for example in relation to the decision as to what form of intervention and family life is appropriate/proportionate.
>
> [60] Maguire J fully recognised this concept. He pointed out at paragraph [155] of his judgment that in Re B Lord Wilson at paragraph [34] indicated that a high degree of justification was required before an adoption order could be made. Lord Neuberger at paragraphs [76]-[78] said that adoption must be necessary and that nothing else would do."

[137] Taking full account of the need to be satisfied that the making of a Care Order with a Care Plan for Permanence by Adoption is a proportionate interference with the Article 8 rights of Mason and his birth mother M, and that the concept of proportionality in the context of adoption has received careful judicial consideration by the Supreme Court, I have no hesitation in concluding that long term foster care would not serve the interests of Mason as well as adoption will. The latter option is clearly better than the former. It is not only better, there are issues in this case that make it necessary for adoption to be the chosen option. Nothing less than adoption will do. The clear and obviously demonstrated need on the part of Mason for security, permanence, a feeling of belonging, a feeling of being an integral part of a loving, stable, protective and secure unit and the need for that set up not to be threatened, jeopardised or undermined by the actions of his birth mother can only be effectively addressed and assured by adoption. Long term foster care would not meet those needs or achieve those goals or provide anything like the necessary degree of protection. Recognising that it is a draconian intervention and a significant interference with the Article 8 rights of the birth parent and the child, I am satisfied that it is, in the circumstances of this case, a proportionate response which satisfies the strict test set out in Article 8 (2) as explained in *Re B* and later appellate decisions.

Consent and the unreasonable withholding of same

[138] An Order freeing a child for adoption can only be made in the absence of the informed consent of the parents, if the court concludes that in withholding their consent, the parents are acting unreasonably. It is important when assessing the reasonableness of the refusal of the parents to take account of the fact that the course of action that they are refusing to countenance has been subjected to intense forensic scrutiny and has been determined to be in the best interests of the child in question. It is also important to take into account the views of the child as expressed in the opinion of the Guardian ad Litem. As Stephens LJ stated in *SEHSCT v M*: "An objective parent in deciding whether to consent would take into account, amongst other matters, what was in the best interests of the child and also take into account the wishes and feelings of the child."

[139] What constitutes unreasonably withholding consent was considered by Morgan LCJ in *Re A (adoption; unreasonable withholding of consent)* [2011] NIFam 19. Paragraph [11] of the judgment of the Lord Chief Justice summarises the law:

> "[11] The applicants ask me to find that the mother is unreasonably withholding her agreement to the adoption of children. The leading authorities on the test the court should apply are Re W (An Infant) [1971] 2 AER 49, Re C (a minor) (Adoption: Parental Agreement, Contact) [1993] 2 FLR 260 and Down and Lisburn Trust v H and R [2006] UKHL 36 which expressly approved the test proposed by Lords Steyn and Hoffmann in Re C.
>
> > '…making the freeing order, the judge had to decide that the mother was 'withholding her agreement unreasonably'. This question had to be answered according to an objective standard. In other words, it required the judge to assume that the mother was not, as she in fact was, a person of limited intelligence and inadequate grasp of the emotional and other needs of a lively little girl of 4. Instead she had to be assumed to be a woman with a full perception of her own deficiencies and an ability to evaluate dispassionately the evidence and opinions of the experts. She was also to be endowed with the intelligence and altruism needed to appreciate, if such were the case, that her child's welfare would be so much better served by adoption that her own maternal feelings should take second place.

> Such a paragon does not of course exist: she shares with the 'reasonable man' the quality of being, as Lord Radcliffe once said, an "anthropomorphic conception of justice". The law conjures the imaginary parent into existence to give expression to what it considers that justice requires as between the welfare of the child as perceived by the judge on the one hand and the legitimate views and interests of the natural parents on the other. The characteristics of the notional reasonable parent have been expounded on many occasions: see for example Lord Wilberforce in *In re D (Adoption: Parent's Consent)* [1977] AC 602, 625 ('endowed with a mind and temperament capable of making reasonable decisions'). The views of such a parent will not necessarily coincide with the judge's views as to what the child's welfare requires. As Lord Hailsham of St Marylebone LC said in *In re W (An Infant)* [1971] AC 682, 700:
>
> "Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable."
>
> Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are other interests of herself and her family which she may legitimately take into account. All this is well settled by authority. Nevertheless, for those who feel some embarrassment at having to consult the views of so improbable a legal fiction, we venture to observe that precisely the same question may be raised in a demythologised form 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 appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents. The reasonable parent is only a piece of machinery invented to provide the answer to this question'."

[140] Keegan J in the case of *XY v A Health and Social Services Trust* [2018] NIFam 1 commented further on this issue at paragraphs [19] and [20] of her judgment:

"[19] The *Down Lisburn* case was taken to the Strasbourg Court and in a decision reported as *R and H v United Kingdom* [2012] 54 EHRR 2 the Strasbourg Court determine that freeing for adoption *per se* did not breach the Convention and that the applications of this nature was within a State's margin of appreciation. Paragraph [88] of that judgment reads as follows:

> 'It is in the very nature of adoption that no real prospects of rehabilitation or family reunification exists and that it is instead in the child's best interest that she be placed permanently in a new family. Article 8 does not require the domestic authorities make endless attempts of family reunification; it only requires that they take all necessary steps that reasonably be demanded to facilitate the reunion of the child and his or her parents … Equally the court has observed that, when a considerable period of time has passed since the child was originally taken into public care, the interests of a child not to have his or her de facto family situation changed again may override the interests of the parents to have their family reunited.'

The strong emphasis upon the interests of the child is articulated in numerous cases both nationally and in the European jurisprudence. The precedence of this factor in the balancing exercise is also explained in *YC v United Kingdom* [2012] 55 EHRR 33, paragraph [134]:

> 'The court reiterates that in cases concerning the placing of a child for adoption which entails the permanent severance of family ties, the best interests of the child are paramount. In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, it is in the child's best interests that his ties with his family be maintained except in cases where the family is proved particularly unfit; and secondly, it is in the child's best interests to ensure his development in a safe and secure environment. It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and,

> where appropriate, to rebuild the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, if the maintenance of family ties would harm the child's health and development, a parent is not entitled under Article 8 to insist that such ties be maintained'."

[141] On behalf of M it is forcefully argued by Mrs Dinsmore QC that M has a legitimate sense of grievance against the Trust as a result of the unjust and unfair manner in which she has been treated by the Trust and that this legitimate sense of grievance is a highly relevant factor when coming to address the question of whether M is unreasonably withholding her consent to adoption. The decisions of *Re B (A Minor) (Adoption: Parental Agreement) [1990] 2 FLR 383*, *Re E (Minors) (Adoption: Parental Agreement) [1990] 2 FLR 397* and *Re E (Adoption: Freeing Order)* [1995] 1 FLR 382 provide some support for that proposition. In the last of these three decisions, Bracewell J giving the judgment of the Court of Appeal at page 389 stated:

> "Counsel has argued that the mother has a legitimate sense of grievance, and we have been referred to two authorities, *Re B (A Minor) (Adoption: Parental Agreement) [1990] 2 FLR 383*, and *Re E (Minors) (Adoption: Parental Agreement)* [1990] 2 FLR 397. Those authorities support the proposition that a sense of grievance can be relevant to the reasonableness of a mother withholding agreement provided that the facts are established which would have been likely to undermine the confidence of a reasonable mother in a decision by a local authority to apply for freeing for adoption. The facts must provide the weight and not the emotional sense of grievance. It is only rarely that such matters can be relevant, and for my mind I find that this local authority did not go beyond what might be described at its highest as an error when contact was discontinued. The judge was alive to this aspect and he considered it in his judgment. He was right to find that many of the matters of supposed grievance extended back over historic events that had occurred many years previously. The judge accepted that a reasonable parent would have grounds, looking at the history, for thinking that the local authority had not done all that they could in exploring or maintaining the contact with the parent. The judge weighed the background circumstances. He took into account the various factors, and he concluded, as in my judgment he was entitled to, that past and present efforts of the local authority to give E a new and reasonable life wholly outweighed the effects of any lack

> of confidence of the mother, and he found that a reasonable parent would recognise the realities of E's situation and needs."

[142] The relevance of a legitimate sense of grievance to the issue of the unreasonable withholding of consent was also addressed in the recent Northern Ireland decision of Maguire J in *Western Health and Social Services Trust v K and L* [2015] NIFam 15 at paragraphs [64] and [65]. It is important to remember that in this case the judge accepted that significant criticisms properly had been directed at the way the Trust handled the matter which was alleged to give rise to a justifiable sense of grievance. Despite this, he concluded that the parents were unreasonably withholding their consent and his reasoning is set out in paragraph [64] of his judgment. In essence, the judge found that the oppositional position of the parents to the Trust's plans was long-standing and unbending. Even in the absence of the matters complained of, their stance to the Trust's application would have been one of total resistance. In essence, the parents' withholding of consent was not as a result of the way in which the Trust had dealt with the matter complained of. But the judge went on to state that even if the parents' withholding of consent had been the product of the way in which the Trust had handled the matter complained of, in assessing whether consent was being reasonably withheld, the court had to have regard to the question whether, notwithstanding all that had occurred in the context of the matter complained of, the best interests of the child are still served by adoption. A reasonable parent in considering the issue would have to bear in mind the overall context and not over-react or act disproportionately. Such a parent would treat the outcome for the children as the most important factor and would not allow any sense of grievance to cloud their judgment in this regard. I am also reminded of the guidance of the Court of Appeal expressed by Stephens LJ in this case where he stated that the notional objective parent in deciding whether to consent to adoption has to consider the welfare of Mason and has also to take into account his wishes and feelings.

[143] The matters said to give rise to a legitimate sense of grievance are:

(i) the manner in which the Trust has treated M (it "treated her like dirt");

(ii) the refusal to provide a parenting assessment at Thorndale despite the recommendation of Dr Paterson and Weir J;

(iii) the inappropriate and insensitive comments of the social worker at the LAC review on 29 November 2012;

(iv) the description of the freeing application as a formality in the minutes of the meeting on 18 June 2013; and

(v) the manner in which information about the diagnosis of ADHD came to the attention of M in September 2018.

These matters have been extensively dealt with in the foregoing paragraphs. For the reasons set out above, I do not accept M's account of the matters set out at (i) and (iii). For the reasons set out above, I consider that the Trust was entirely justified in not providing M with a parenting assessment at Thorndale which disposes of issue (ii). In relation to issue number (v), although more could have been done to provide M with information about this diagnosis, the truth of the matter is that she refuses to attend LAC reviews and obviously does not read the material sent to her or she would have been aware of developments in this regard. She was specifically informed of a referral to a specialist in February 2018. Any failing on the part of the Trust in relation to this issue is not of such a magnitude as to give rise to a legitimate sense of grievance sufficient to justify the withholding of consent.

[144] This leaves the issue described at (iv) above and I have already found that although the language used in this minute was unfortunate and inappropriate, the use of this language did not demonstrate the adoption of a closed corporate mindset on the part of the Trust. Having scrutinised this matter carefully, I do not consider that the facts as established would be likely to undermine the confidence of a reasonable mother in a decision by a Trust to apply for freeing for adoption. Further, I consider that M has failed to bear in mind the overall context and has clearly over-reacted and reacted disproportionately. She has clearly failed to treat the outcome for Mason as the most important factor and has allowed her sense of grievance to cloud her judgment in this regard. She has taken no account of the wishes and feelings of Mason. Finally, on this issue, I have to conclude that on the basis of all the evidence, the oppositional position of M to the Trust's plans was long-standing and unbending. Even in the absence of the matters complained of, her stance to the Trust's application would have been one of total resistance.

[145] In relation to the issue of unreasonably withholding consent, having carefully considered the facts of this case, including the specific matters set out in paragraph [112] above, I readily conclude that the advantages of adoption for the welfare of Mason appear sufficiently strong to justify overriding the views and interests of M, the objecting parent in this case. I am satisfied that an objective parent standing in the shoes of this parent but with unimpaired insight, perception and understanding of her own deficiencies and shortcomings, and possessing the ability to evaluate dispassionately the evidence and opinions of the experts and professionals in this case and being endowed with the intelligence and altruism needed to appreciate that her child's welfare would be so much better served by adoption and that the views expressed on behalf of the child supported such an outcome, could not, if acting reasonably, withhold her consent to adoption in this case.

[146] In the circumstances, having regard to the fact that a Care Order has already been made in this case I now approve the Trust's Care Plan being Permanence by Adoption and I make an Order Freeing Mason for Adoption. I also make an Order terminating the appointment of the Guardian ad Litem. I do not propose to make any Order in respect of post freeing contact. I will simply express my obiter view that the contact proposals set out in the Trust's contact plan seem appropriate in the

circumstances of this case and it is to be hoped that such contact endures to the benefit of Mason.