

Neutral Citation No: [2023] NIFam 16

Ref: ROO12289

ICOS No:

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

Delivered: 27/10/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

Between:

BELFAST HEALTH AND SOCIAL CARE TRUST

Applicant

and

AP

and

AU

Respondents

Ms S Simpson KC with Mr Clelland (instructed by Directorate of Legal Services) for the
Applicant

Ms Smyth KC with Mr McCabe (instructed by McIlvenny Law, Solicitors) for AU
Ms Hannigan KC and Ms Ross (instructed by Donnelly & Wall, Solicitors) for the
Children's Court Guardian

ROONEY J

Introduction

[1] I have anonymised the judgment to protect the identity of the children. The randomly chosen ciphers 'AP' and 'AU' have been used for the respondents. The children will be referred to as 'F' and 'M.' Nothing must be published that will lead to their identification.

[2] In a statement dated 23 September 2023 and in his oral evidence, AU stated that he was the biological father, by commercial surrogacy, of his two children, F and M who are twins. The children were born in May 2020. From birth until July 2022,

the children lived with their surrogate mother, AP in the Philippines. The children met AU for the first time in July 2022.

[3] From July 2022 to November 2022, AU states that the children lived in the Philippines with him and AP. In November 2022, AU brought the children to Australia where they lived with him until February 2023. As considered in more detail below, AU and the children left Australia in February 2023 and travelled to Thailand, Malaysia, Dubai, Italy and France. In August 2023, AU and the children arrived in the south of Ireland before travelling to Northern Ireland on 18 August 2023.

[4] AU states that he is a British citizen living in Melbourne, Australia. The children are Filipino and Australian citizens. AU has another child, namely T, who was also conceived through surrogacy. T, his daughter, remained in Australia when AU travelled to the Philippines in July 2022. T remains in Australia. It is unclear whether AU is T's biological father.

[5] The court has been provided with the report from the North Eastern Melbourne Investigation and Response Team dated 3 May 2023. The report provides that in November 2022, AU was stopped by Border Control at Sydney Airport. Concerns were raised about child exploitation and human trafficking because the children's birth countries were high-risk areas. Upon inspection of AU's luggage, it was noted that there was a lack of children's belongings which would have been expected for a long journey with two small children. It was also noted that AU had multiple devices, including phones, laptops, hard drives and computer devices. However, these devices had been stripped internally with hard drives hidden. Border Control raised concerns in relation to child sexual exploitation. AU's bag also contained a penis enlarger, rubbish and a camp cooker. During the process, AU was described as hostile, non-cooperative and occasionally aggressive.

[6] The report also refers to nine previous reports in relation to T's safety and well-being in the care of AU between 2011 and 2022. Concerns were also expressed with regard to AU's lack of engagement with Child Protection, parenting issues, homelessness, lack of school attendance and AU's mental health issues. Although Child Protection obtained court orders in 2012, these were later withdrawn due to a lack of evidence.

[7] In November 2022, a decision was made that careful planning needed to occur and that information should be shared between the Australian Federal Police (AFP), the AFP Joint Anti-Child Exploitation Team (JACET), the Sexual Offences and Child Abuse Investigation Team (SOCIT), Border Force and Child Protection.

[8] Border Force provided information that JACET had assessed that there were no concerns that the children were being trafficked. SOCIT advised that there was nothing illegal or incriminating on AU's phone. Inappropriate material was, however, noted.

[9] In January 2023, Child Protection made several attempts to contact AU to arrange a meeting. During a visit in February 2023, the report states that AU displayed high levels of coercive behaviour, becoming vague and defensive when answering questions and was generally dismissive.

[10] On 5 February 2023, AU left Australia with the twins. T was not present. It was further discovered that T was residing in the care of a paternal grandfather. On 7 February 2023, an alert was issued at the National Operations State Service Centre (NOSSE), to inform Child Protection when AU returns to Melbourne.

[11] On leaving Australia, AU travelled with the children to Malaysia and Thailand. He then flew to Dubai on 26 June 2023 and remained until 9 August 2023. On 10 August 2023, he flew to Italy, then took a train to Paris and arrived in Rosslare on 13 August 2023. AU had little money, no firm plans regarding the children and no support in Ireland. AU and the children booked into a hotel in Waterford. AU quickly disengaged with the authorities.

[12] AU arrived in Belfast on 18 August 2023. The family were placed in Grosvenor Road hostel. Several days later the hostel staff referred the family to Social Services due to concerns about neglect of the children. The children were reported to be wearing the same clothes for days, were grubby and did not appear to be eating. They were also reported to be subdued and quiet. An Interpol alert had been issued in relation to AU.

[13] On 28 August 2023, AU was arrested for child cruelty and the children were placed in care under a Police Protection Order. An Emergency Protection Order was granted by the court on 25 August 2023. An Interim Care Order was made on 29 August 2023. On 12 September 2023, proceedings under the Children (Northern Ireland) Order 1995 were transferred to the High Court.

[14] The applications for care orders pursuant to article 50 of the Children (Northern Ireland) Order 1995 were made on the basis that the children were or likely to suffer significant harm and the harm, or the likelihood of harm, is attributable to the care given to the children or likely to be given to the children if the orders were not made, not being what it would be reasonable to expect a parent to give to the children.

[15] Care plans for both children were implemented. The children were assigned Ms Shauna Leitch, Social Worker, and Ms Claire Geddis, Senior Social Worker. Both children were placed in foster care.

[16] On 30 August 2023, a meeting was convened between Ms Leitch, AU and his legal representative to discuss contact arrangements. Contact subsequently took place on 31 August 2023, 1 September 2023, 7 September 2023, 8 September 2023 and 15 September 2023. Full details of the contact will be discussed in more detail below.

In summary, the applicant Trust has significant concerns with regard to the presentation of the children before, during and after contact. The foster carers have also observed a notable change in the children when discussing contact with AU, whereby the children would continuously state that they did not wish to attend the contact facility. Ms Leitch, the social worker, has further observed that the children would present as withdrawn and mute during contact.

The application

[17] An application has been brought by the applicant Trust that, in the best interests of the children, direct contact should cease and that only indirect contact should continue. It was recommended that AU should provide family photographs to the social worker who will show the photographs to the children and encourage conversations regarding their father. Should the children respond positively to these photographs, the applicant Trust would consider progression to indirect video calls. The applicant Trust further proposed that AU should engage with educative work with the North Belfast Contact Centre. It was further suggested that Ms Leitch, the field social worker, would consult with the Therapeutic Support Service (TSS) and the Child Care Centre on 17 October 2023. In addition, the applicant Trust would give weekly updates via telephone and provide pictures of the children to AU.

[18] Ms Julie Johnston, was appointed as the Children's Court Guardian (CCG). In a detailed report dated 27 September 2023, Ms Johnston recommended that all direct contact between the children and AU should be suspended. Ms Johnston disagreed with the applicant Trust's proposal of indirect contact, indicating that such contact would not be in the best interests of the children at this time. Ms Johnston did not object to weekly updates and photographs of the children being provided to AU. She also welcomed a consultation with TSS and the Child Care Centre as a way forward.

[19] For his part, AU strenuously objected to the suspension of direct contact. Rather, AU submitted that contact should be increased.

The evidence

[20] On 4 October 2023, at the hearing of the Trust's application, the court heard evidence from Ms Leitch, Social Worker and AU. The hearing continued on 12 October 2023 with further evidence from AU and thereafter Ms Johnston (CCG). I will consider the evidence of the witnesses seriatim.

Ms Shauna Leitch, Social Worker

[21] Ms Shauna Leitch, submitted social work statements dated 28 August 2023 and 16 September 2023. The said statements were admitted into evidence. The court was also provided with contact observation notes compiled by Ms Leitch dated

31 August 2023, 1 September 2023, 7 September 2023, 8 September 2023 and 15 September 2023.

[22] As stated above, prior to contact being established, AU met with Ms Leitch to discuss the arrangements and expectations of contact. Ms Leitch reported that AU was receptive to advice given to him, and that he brought different toys, sticker books, art activities and healthy snacks to the contact.

[23] On 31 August 2023, Ms Leitch met the children for the first time at the foster placement. F was upset when getting into the car but easily settled following nursery rhymes and singing. When AU entered the contact building F ran towards a toy house, shut the windows and doors and hid a corner. When AU went to the toy house to greet F, she became upset shouting "go away" and flicked her hand towards her father. When AU attempted to provide reassurance to F and to lift her, F repeatedly shouted "get away" before running out of the toy house and towards Ms Leitch. According to Ms Leitch, F presented as very distressed. F sat on Ms Leitch's knee with her eyes shut tight and her hands over her eyes. Ms Leitch encouraged F's interaction with her father. However, F continued to present as distressed and refused to open her eyes. When AU attempted to lift F from Ms Leitch's knee, F became extremely distressed, continued to wiggle away from AU and shouted, "get away." Thereafter, F hid behind Ms Leitch throughout the contact. According to Ms Leitch, F remained extremely upset. When she was advised it was time to go, F put her hands up towards Ms Leitch and shouted "car, car."

[24] With regard to M, AU entered the room and verbally greeted him stating "I love you." When AU walked closer to M, the child moved backwards on the bike away from his father. AU offered both M and F snacks. Both refused. When AU approached M again, M shouted "stop" before back peddling away from his father. M turned to the social workers for reassurance. When AU spoke to M in Malay, the social workers observed a notable change in M's presentation, in that he looked dismayed and uneasy and looked to the social workers for reassurance.

[25] On a positive note, when AU attempted to engage with the children, pulling his T-shirt above his head, M smiled at his father. M also allowed his father to lift him and run around the room.

[26] On the following day, namely 1 September 2023, the second contact session took place. AU came prepared with toys, including a sand bucket, spades and a doll. Upon arrival AU greeted both M and F. F hid behind Ms McArdle, senior social worker, on the sofa. M ran towards a bike in the contact room.

[27] Ms Leitch encouraged AU on three occasions to sit on the sofa in order to engage F. Although F did not engage with her father, she was more receptive to him sitting near her throughout contact. AU chased M around the room during the session, which M appeared to enjoy.

[28] During the session, AU continued to ask the social workers numerous questions about the foster carers. Specifically, AU asked the social worker their religion stating to them “I have a real issue with Roman Catholics.” Ms Leitch advised that she would not disclose this information.

[29] The third contact session was on 7 September 2023. Ms Leitch collected both children from the foster placement. Upon arrival, both children were upset stating that they did not want to go. During the car journey, F kept repeating the name of the foster carers.

[30] AU chased M around the room with his T-shirt pulled over his head. M gave his father a smile during this game. F initially sat beside the social worker. M and F drew on a whiteboard, there was no interaction with their father during this activity.

[31] Throughout contact, F sought affection and reassurance from the social workers. When sitting on the social worker’s knee, AU gave a doll to F. F would not accept the doll. The social worker took the doll to encourage conversation regarding her father. AU gave a bucket and spade to M which he accepted. At the end of the contact session, there were no goodbyes from either M or F.

[32] The fourth contact session took place on 8 September 2023. The social worker collected both F and M from the foster placement. Both children were distressed when leaving their foster carer and continued to say, “no daddy.” Throughout contact, AU continued to speak in Malay to M. M did not respond to his father and looked at him blankly. M did appear to enjoy when AU pulled his T-shirt over his head and pretended to be a “zombie.” Throughout contact, no physical affection was displayed by the children to their father. Rather, F continued to seek affection from Ms Leitch. When AU moved closer to F and attempted to engage with her, she pulled away and walked towards the supervising social worker. When AU attempted to touch F’s face, she pulled away and stood beside the social worker. Ms Leitch stated that, throughout this contact, AU presented as more focused on his issues with social services and social workers, rather than interacting with M and F.

[33] The next contact session took place on 15 September 2023. Ms Leitch collected both children from the foster placement. M was very quiet on collection. F kept repeating the word “today” to the foster carer. During the car journey to the contact placement, F quietly repeated the word “today.”

[34] When arriving at the door of the contact room, both M and F had to be encouraged to walk in. M went to play with toys on a small table. F stood beside the social worker. AU brought a banana and an apple for the children. Both children refused the food. AU showed both children a sticker book that he had purchased. F was intrigued. M accepted a sticker from his father. When AU attempted to sit near F, she turned away, curled into herself and faced the wall while

attempting to pull away from AU. When AU started to move away, F returned to normal sitting.

[35] During contact on 15 September 2023, Ms Johnston (CCG) was also present. Her observations will be considered in more detail below.

[36] During cross-examination by Ms Smyth KC, senior counsel for AU, Ms Leitch accepted that on some occasions M did respond positively to his father. Ms Smyth also suggested that Ms Leitch had unconsciously allowed herself to engage in “confirmation bias”, particularly after she had considered the reports and documentation from the Australian authorities. In essence, Ms Smyth stated that this bias had been perpetuated by the Trust.

[37] Ms Leitch robustly maintained a position that her evidence was primarily based on her observations during contact. She stated that since contact began on 31 August 2023, M and F have consistently refused to engage with their father and presented as increasingly withdrawn. In particular, F shut her eyes tight and covered them with her hands when her father attempted to interact with her on this date. Also, both M and F flinched and pulled away from their father when he touched their hands and hair during contact on 15 September 2023. M and F did not show any emotions at the end of contact. Neither M nor F responded to their father’s goodbyes but rather asked if they are going to see their foster carer.

[38] In the report from Ms Leitch dated 16 September 2023, she stated that:

“The foster carer has informed the field social worker that M would often tell her to ‘shush’ and ‘no more’ when she references contact or their father. In addition to this F has refused to show the carers their drawings from contact and, most recently, “threw” away the doll that her father had purchased [for] her.”

AU's evidence

[39] AU’s statement dated 23 September 2023 was formally admitted into evidence. In the said statement, AU provided details as to the surrogacy arrangement with the first respondent. Significantly, he claimed that AP was not the children’s biological mother.

[40] AU confirmed that he arrived in the Philippines in early July 2022 where both children entered into his care. He stated that he remained with AP for approximately four months. AU provided the court with considerable detail regarding his relationship with AP and his concern about AP’s boyfriend. These details are not relevant to this application.

[41] AU alleges that he has been victimised by the Australian Border Force and that “unbelievable insinuations” have been made against him. In essence, he claims that when it was discovered that the twins were born from surrogacy, “wild accusations of a risk, in relation to the children are made, again, based on completely unfounded insinuations.” These unfounded insinuations remained a persistent theme for AU during the course of his evidence.

[42] AU never fully explained why he left Australia. Despite this, he asserts that he wishes to return to Australia with the children. In his statement, he stated that he expected to be in Ireland for a relatively short period, initially to visit friends in Waterford and then go to Belfast. He said that he considered treating Northern Ireland as a starting point for summer holidays in Europe.

[43] When the children were taken into care on 23 August 2023, a habeas corpus application was instigated by AU on behalf of the children. AU continues to deny that the authorities were justified in arresting him and removing the children from his custody.

[44] Dealing specifically with this application, AU states that he has very serious concerns about the emotional impact any proposed reduction in contact will have on his children. He claims that he had a very close and loving relationship with his children prior to arriving in Northern Ireland, which he claims is being actively undermined by the current arrangements for their care. AU produced videos which, he asserts, confirms the alleged close and loving relationship. AU asserted that the children have been traumatised as a result of their removal from his care. He maintains that the applicant Trust has wrongly engaged in unconscious bias, and wrongly believed that the insinuations made against him by the Australian Border Force and others are true. The result, according to AU, is that the applicant Trust is actively taking steps to permanently remove the children from his care.

[45] During his evidence, AU took issue with the observations made by Ms Leitch during contact detailed above. However, during cross-examination by Ms Simpson KC on behalf of the Trust, it became clear that AU was determined to focus on the insinuations he claims have been made against him, rather than on his relationship with the children.

[46] I found it surprising, to say the least, that F and M do not seek to demonstrate a strong parent bond with their father. On the basis of the observations made by Ms Leitch and emphasised in her evidence, it was tolerably clear that there was little evidence that the children were emotionally attached to AU. It was suggested to AU that the children appeared to be traumatised and fearful of their father. It is significant that AU agreed that this presentation applied with regard to F, but not M. This perception was particularly concerning in view of the fact that AU had been the primary carer for the children for over a year.

[47] During questioning by Ms Hannigan KC, AU took issue with the detailed observation note provided by Ms Johnston (CCG) on 15 September 2023. AU denied that he said to M “no matter what happens, I will look for you.” However, AU did agree that he said to M “I am not leaving voluntarily. I will look out for you for the rest of my life.”

[48] During questioning, AU accepted that the children did not respond to their father and that there were no goodbyes from them.

[49] During a resumption of AU’s evidence on 12 October 2023, following further questioning by Ms Hannigan KC, AU denied that in November 2022 he reported to the Australian Child Protection that he did not want the children in his care and that he was attempting to have family members look after the children. AU was adamant in his testimony that significant aspects of the reports and documents provided by the Australian Child Protection authorities were lies.

[50] By way of one example, AU stated that the Australian Child Protection authorities had lied in reports that T was withdrawn at school and that her attendances at school were poor and that she did not always have food. AU said that it was a deliberate lie that T set a bin on fire at school. When asked specifically as to whether T had drawn a picture showing two children with chains around their necks in a room with cameras, AU admitted that he had not seen the picture.

[51] Ms Hannigan KC further questioned AU about his arrival in Ireland on 13 August 2023. AU did not accept that both children presented as “cold and agitated”, claiming that they were in “unusually good spirits.” He denied that he made deliberate attempts to avoid Tusla and An Garda Síochána.

[52] On arrival in Northern Ireland on 22 August 2023, AU denied the assertion made that the children were not fed and presented with ill-fitting and dirty clothes.

[53] Returning to the evidence relating to the contact sessions, AU stated that much contained within the reports were deliberate misrepresentations as to what occurred.

The evidence of Ms Julie Johnston, Children’s Court Guardian

[54] Ms Johnston was appointed the Children’s Court Guardian (CCG) on 25 August 2023. Following her attendance at a contact session on 15 September 2023, and having reviewed the relevant documentation, Ms Johnston prepared a report dated 27 September 2023. The said report was formally admitted into evidence and will be considered in more detail below. Ms Johnston’s report refers in detail to her observations relating to the said contact sessions with the social workers. The report also includes details of her interview with the foster carer and her observations of the children in foster care placement on 20 September 2023.

[55] Ms Johnston gave her evidence on 12 October 2023. In my judgment, Ms Johnston presented as an articulate, informed, reliable and honest witness. When questioned by Ms Smyth KC, counsel for AU, she made appropriate concessions in relation to observed “positive” features of the children’s interaction with AU during some contact sessions. However, Ms Johnston emphasised that the evidence of “positive” exchanges lasted for “brief seconds within the contact sessions.”

[56] Throughout questioning by Ms Smyth KC on behalf of AU, Ms Johnston remained firm in her conclusion that contact between AU and the children should be suspended and, furthermore, that indirect contact is not in the best interests of the children. Ms Johnston’s view is encapsulated in the following paras contained in her report dated 27 September 2023:

“5.13 It is my view the children are presenting as extremely frightened of their father. It is clear there is something very seriously wrong with the attachments between the children and their father. I am concerned that the children have experienced significant trauma and adversity connected to their father. I have never observed such extreme responses like F’s and M’s to family time. I am concerned that F and M’s responses are extreme because their experiences have been extreme.

5.14 It is my view that continuing direct family time with AU and the children will continue to expose the children to a frightening and traumatic situation. I am very worried about the impact of continuing contact upon the children’s mental health and well-being and sense of safety. F’s repetitive citations, M’s vacant looks and disassociation, the way in which the children have learned to control themselves, despite their age, all indicate there are serious problems. This contact in my professional assessment is not in these children’s best interests at this time and is indeed potentially harmful both short and long-term.

5.15 The children need safety; they need to be protected from whatever they are frightened and fearful of. They need space to feel safe in their foster placement and to begin to make recovery from whatever adversity they have experienced in the care of their father. They need to know professionals and their carers are there to keep them safe and not to take them to contact that frightens them, colluding with what is making them scared.”

[57] I have taken into consideration Ms Johnston's interview with the foster carer. It is noted that the children do not ask about their father and have not spoken about their life with him. They have not mentioned their mother either. When the carer mentions their father or when she mentions a toy or an item bought by their father, they either say "no!" or are vacant and will not engage in any conversation. Furthermore, when the children are told that they are going to see their father, they tense up and say "no ... no dad." Both children cry and F is inconsolable. This was a consistent theme regarding the first four contacts. On the fifth contact, F cried but then stopped and was comforted. She then began to repeat the word "today." M did not cry but tensed up.

[58] It is noted that the children frequently ask their carer whether the social worker is coming today. They associate the social worker, Ms Leitch, with taking them to see their father and contact. On those days in which there is no contact, they require reassurance that Ms Leitch is not coming. They then relax.

[59] On return from contact, they do not talk about their father. It is reported that M returns from contact withdrawn and quiet. F appears happy to be back and clings to the carer. Both children seek lots of cuddles and need reassurance from their carer.

[60] Ms Johnston was also advised by the carer that F threw the doll she had been given to her by her father out of the car window. The children will not talk about the picture drawn for them by their father.

[61] Ms Johnston also observed the children in foster care placement. She noted that the children played happily with their carer, Ms Johnston and each other. The children smiled often and displayed great animated expressions in response to funny and imaginative play with Ms Johnston, their carer and the family dog. The children also sought out physical closeness with their carer and hugged her with extravagant tight hugs.

[62] These observations were in stark contrast to the observations made by Ms Johnston during contact on 15 September 2023. The observations are noted in paras 5.3 to 5.16 of the CCG's report. I have also taken into consideration the contemporaneous notes provided by Ms Johnston. Ms Johnston observed that the children had solemn and sad faces during contact. Smiles disappeared in a second. Significantly at paragraph 5.7 of her report, Ms Johnston stated as follows:

"5.7 In my role as CCG I have never experienced children of this age consistently saying they don't want contact with a parent (with the exception of parental alienation cases). I would observe that even children who have experienced degrees of adversity in parental care want to see their parent and are excited to go to family time.

5.8 AU suggests the artificial nature of contact, his children's upsetting separation from him and gaps in contact are the reason for the above presentations in the children. However, these explanations do not explain the children's adverse reaction to their father's presence and their contrasting behaviour in placement. Neither do they explain their consistent express wish to not go to see him.

5.9 I have observed hundreds of children in contact rooms after removal from parents has occurred. In my experience children of this young age are not as aware of the artificialness of the occasion, especially when there is comfortable space, toys and their primary attachment figure is present.

5.10 I would note that the children were only removed from their father four weeks ago and have had twice weekly contact (with the exception of the first week). This has been frequent enough for attachments and memories to be maintained and does not explain the children's responses to their father."

[63] The import of the evidence of Ms Johnston causes me significant concerns. Ms Smyth KC, on behalf of AU, submits that contact should be allowed to continue and that an independent psychologist should be instructed to observe further contact sessions and to prepare a report for the court. I have given further consideration to this proposal below.

[64] At the conclusion of the evidence of the witnesses, I indicated that, prior to making my decision, I would benefit from the input of the Trust's Therapeutic Support Service (TSS) who were scheduled to consult on 17 October 2023 and to discuss recommendations relating to contact between AU and the children.

Therapeutic Support Service

[65] An initial professional network meeting with the Trust's Therapeutic Support Service was convened on 17 October 2023. The meeting was attended by the field social worker, the Children's Court Guardian, the fostering link social worker and the Child Care Centre. The purpose of this consultation was:

- (a) To consider the children's therapeutic needs from a trauma and an attachment informed perspective;

- (b) To consider the children's presentation in their current foster placement and during contact with their father;
- (c) To consider how direct contact has affected the children and to reflect on how indirect contact could be facilitated in a manner which feels safe and emotionally containing for the children.

[66] The facilitators included Mr Robin Jordan, Consultant Forensic Psychologist, and Mr Diarmid Reay, Clinical Psychologist. Having considered the relevant contact records the court was advised that the TSS were of the opinion that the children do not have a safe and secure relationship with their father with even indirect contact causing anxiety. TSS recommended that any further contact should be carefully and thoughtfully planned. It was considered that the reintroduction of contact necessarily included a continuing assessment of the children's responses, commencing with the least threatening approach as possible. A letter or a card was suggested. In order to protect the placement, it was recommended that this form of contact should be communicated when both children were outside of their placement and by the field social worker.

[67] In a social work report dated 24 October 2023, following consultation with the TSS and after consideration of their recommendations, the Trust recommended the following:

- (a) Direct contact between AU and both children should not be progressed at this time.
- (b) AU provides the field social worker with a card that includes a brief message that can be shared with both children.
- (c) The card will be given to F and M outside of their foster placement in a library setting or an alternative quiet safe place.
- (d) The foster carer will transport the children to this venue to help them feel comforted and reassured both before and afterwards.
- (e) F and M will be given the choice to keep the card, however, should this be refused, the card will be kept in a memory box.
- (f) This proposal will occur on a weekly basis and the Trust will continue to monitor and assess F and M's presentation both during and after this contact to ensure that it does not negatively impact upon their emotional well-being and cause any distress.
- (g) The Trust proposes that AU contacts the field social worker once weekly at an agreed time and date to receive an update on both children.

[68] I refer to a position paper submitted on behalf of the Children's Court Guardian dated 24 October 2023. It is noted that Ms Johnston's report of 27 September 2023 was not provided at the initial professional network meeting on 23 October 2023. Ms Johnston was not asked to express a specific view on contact or her recommendations. However, Ms Johnston's record of the contact observation on 15 September 2023 was provided to the professionals.

[69] It is noted that Ms Johnston, now agrees with the recommendations provided in the Trust's report dated 24 October 2023.

Position paper on behalf of the respondent father (AU)

[70] The respondent (AU) states that he is deeply concerned as to the contents and recommendations of the professionals at the TSS meeting. He notes that arising out of the TSS meeting, the Trust and the Children's Court Guardian are maintaining their position that it is not currently in the children's best interests to have direct or indeed two-way indirect contact with their father. The respondent remains cognisant of the Trust's concerns in relation to contact but claims that no weight has been given to the harmful impacts of the children's loss of contact with their father and consequently the biological family of origin, including their sister.

[71] The respondent is adamant that the immediate reinstatement of direct contact with both children is of paramount importance in protecting the children's long-term emotional welfare and redressing the emotional harm caused by removal of contact from their father and the alienation from the biological family. The respondent's contested removal of contact raises, in particular, a specific objection to the ongoing assertion by the Trust and the Children's Court Guardian that his children have suffered some form of, as yet unidentified, harm attributable to their care by the respondent father.

[72] The respondent does not accept that the physical and emotional presentation of the children in contact is as a result of experiences which they have had in his care. He points to the unknown nature of the children's experiences in the care of the first respondent in the first two years of their lives in the Philippines in 2022. He states that the children also witnessed the distressing circumstances of the children's removal from their father's care into stranger foster care in Northern Ireland which involved the police placing their father in handcuffs. In evidence to the court, the respondent was of the view that there had been a deterioration in the presentation of the children since they were removed from his primary care.

[73] The respondent father is particularly concerned that the TSS professionals, the Trust and the Children's Court Guardian have not properly or at all considered, in his view, the many positive features of the children's contact experiences with their father.

[74] A central and continuing issue of pressing concern to the respondent is the fact that the Trust and Children's Court Guardian have repeatedly raised in their respective reports and evidence to the court that there remains a concern in respect of him presenting as a risk of sexual exploitation and harm to his children despite the fact that the Australian Social Services has confirmed that the Australian multi-disciplinary/agencies investigation showed no evidence of such a risk to his children. The respondent submits that he has been investigated by both Australian and Northern Irish Police in respect of potential criminal offences and both police forces have found no evidence of any criminal offences that have led to charges of any nature let alone those of a sexual nature towards his children.

[75] The respondent asserted at the hearing that the continued reference to the previous investigation into child trafficking/exploitation has led both the Trust and the Children's Court Guardian to view all other alleged welfare concerns through the prism of the father being a potential sexual risk to his children. This, he claims has led to a pervasive bias, which may be unconscious, and has resulted in unwarranted conclusions being drawn in terms of the potential risk he poses to his children.

[76] The respondent asserts that the detrimental impact of the unproven and unsubstantiated allegations that he presents a risk of sexual harm is being perpetuated by the attendance of the Child Care Centre (regional experts in child sexual abuse) at the Trust's TSS meeting. His case is that the prejudicial effect of the repeated references to the child trafficking/exploitation investigation and the regurgitation of the contents of his suitcase at the airport, including the penis pump, outweighs the probative value of this information and this is impacting negatively upon professional analysis and decision-making. Further, the respondent argues that the hearsay in the reports and the exaggerated claims are entirely prejudicial and do not stand up to scrutiny. Nevertheless, they are maintained and repeated.

[77] The respondent articulates his concern that those at the TSS meeting, the Trust and Children's Court Guardian failed to give any appropriate consideration to the video evidence submitted by him when assessing the children's attachment and relationship to their father. He also asserts that there has been a failure to address Garda observations that the children were securely attached. The absence of any appropriate consideration of these matters, according to the respondent, renders the assessment by the professionals as flawed and unbalanced. Consequently, there is no basis for the continued suspension of his direct contact with the children.

[78] The respondent asserts that the continued suspension of his direct contact, after only five direct contact sessions, is disproportionate particularly in light of the fact that, according to him, there is no real evidence before the court of a detrimental impact on the mood and demeanour of the children in placement. It is asserted that the children are noted as being well settled with each child eating and sleeping well.

[79] The respondent wants the court to direct an independent assessment of his contact with his children. It is submitted that during the independent assessment, he would be observed in person or by video having direct contact with the children. The respondent submits that the continued suspension of direct contact prevents him from pursuing this independent assessment which he alleges constitutes a breach of his article 6 right to a fair hearing in challenging the Trust and CCG's position that direct contact is currently harmful to his children.

Decision

[80] I have read in detail the written reports, the written observations of the contact sessions and the minutes of the various meetings as referred to above. I have considered the position papers and, in particular, the written and oral testimony of the witnesses. I remind myself that the purpose of this application is simply to determine whether direct contact between the respondent and the children is to be suspended and, if so, how should contact be progressed in the interests of both the children and the respondent.

[81] It must be emphasised that this hearing is not engaged in a fact-finding exercise as to whether the respondent poses a potential risk to his children. In making this decision, I have ignored the assertions and allegations that have been made against the respondent, which are unsubstantiated and unproven. However, I have taken into account the potential detrimental impact such allegations could, on a conscious or unconscious level, have on the professionals involved in this case, particularly the social workers, CCG and TSS. The potential for unconscious bias has been highlighted. It is a real risk and must not be overlooked.

[82] Against this background and focusing primarily on the contact sessions, following questioning of Ms Leitch and Ms Johnston, I considered both to be honest and reliable witnesses, determined to give their independent opinion to the court. I was particularly impressed with the evidence of Ms Johnston, both regarding her interpretation on the initial contact sessions and her observed contact session on 15 September. I was most concerned about Ms Johnston's comment that:

"In my role as CCG I have never experienced children of this age consistently saying they don't want contact with a parent (with the exception of parental alienation cases). I would observe that even children who have experienced degrees of adversity in parental care want to see their parent and are excited to go to family time."

[83] Ms Johnston stated further that she was concerned that the children have experienced significant trauma and adversity connected to their father. She stated that she had never observed such extreme responses from children at family time. Notably, Ms Johnston stated that she was concerned that the children's responses were extreme because their experiences have been extreme.

[84] Ms Johnston said at para 5.15 of her report:

“5.15 The children need safety; they need to be protected from whatever they are frightened and fearful of. They need space to feel safe in their foster placement and to begin to make recovery from whatever adversity they have experienced in the care of their father. They need to know professionals and their carers are there to keep them safe and not to take them to contact that frightens them, colluding with what is making them scared.”

[85] I am persuaded by the evidence of Ms Johnston and Ms Leitch. I was not so convinced by evidence of the respondent. The respondent is clearly an intelligent and articulate individual. However, I found his answers to many questions unconvincing and deliberately evasive, particularly regarding his explanation as to the detached behaviour and adverse reaction of the children during the contact sessions. There was little evidence of any love and affection by the children towards their father. The children clearly presented as fearful and frightened. Accordingly, in the best interests of the children and whilst acknowledging the respondent's paternal rights, my decision is as follows:

- (i) Authority is given to the Trust to continue to suspend direct contact.
- (ii) Progression to indirect contact must be carefully planned and monitored.
- (iii) Initial contact will be progressed by way of a letter/card from the respondent that includes a brief message that can be shared to both children. The message in the letter/card must be appropriate and must be approved by the social worker prior to being shared with the children.
- (iv) The card will be given to the children outside of their placement in a library setting or alternatively a quiet and safe place. The foster carers will transport the children to this venue to help them feel comforted and reassured both before and afterwards. The children will be given a choice to keep the card. Should this be refused, the card should be kept in a memory box.
- (v) The said indirect contact will occur on a weekly basis until the case is reviewed on 4 January 2024. At this stage, the court will hear submissions as to whether at least one direct contact session should take place subject to the observation of an independent psychologist.
- (vi) The Trust will continue to monitor and assess the children's presentation both during and after this contact.

- (vii) The respondent will contact the field social worker once weekly at an agreed time and day to receive an update of the children.