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*(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 THE CHILDREN (NORTHERN IRELAND) ORDER 1995

and

IN THE MATTER OF THE ADOPTION (NORTHERN IRELAND) ORDER 1987

Between

BELFAST HEALTH AND SOCIAL CARE TRUST

Applicant

and

W

First Respondent

and

E

Second Respondent

_____

MAGUIRE J

Introduction

[1] This case involves two applications made by the Belfast Health and Social Care Trust ("The Trust"). Both are in respect of a male child who was born in May 2010 and who shall be referred to hereafter as "M". M is now aged 4 years and 7 months. M's mother is the first respondent and will be referred to as "W" for the purposes of this judgment. The second respondent is M's father, who shall hereafter be referred to as "E". W is now 45 years and E is now 33 years.

[2] The two applications before the court are as follows:

(a) An application by the Trust for a care order in respect of M.

(b) An application by the Trust for an order that M be freed for adoption.

These applications are resisted by the parents.

Overview

[3] Events relating to these applications extend over an unusually lengthy period beginning just before the birth of M in May 2010. At this time the Trust became aware of a relationship between W and E and this gave rise to concerns on its part. These concerns deepened in the first few months of M's life and led to the Trust intervening in September 2010. Initially, the intervention involved the Trust obtaining an Emergency Protection Order ("EPO") in respect of M on 14 September 2010 but this was shortly after followed by it obtaining an Interim Care Order ("ICO") on 16 September 2010. M has been subject to an ICO since – a period of nearly 4½ years. For the great bulk of the time since the making of the ICO M has been cared for by foster carers who the court shall refer to as the "G"s. Fortunately, the foster care which M has been provided with has been of a high standard.

[4] In the period after the making by the court of the ICO the Trust has sought to consider what its care plan in this case should be. This has not been uncomplicated. A number of half siblings of M on the maternal side were also taken into care at or about the same time as M. However, their cases did not involve E and ultimately those cases travelled down their own pathway leading to the making of Care Orders at the end of 2011. In these cases W's parenting was viewed as below the "good enough" standard. Were it not for E, one might have expected the case of M to have gone the same way, but E has maintained that he is able to parent M. In 2011 the Trust received a number of assessments from experts about E and W. These led the Trust in November 2011 to the view that its Care Plan should be for permanence for M away from his parents. However, notwithstanding that view the Trust enabled each of the parents to engage in an initial parenting assessment carried out by the Whiterock Family Resource Team. The results of this, in broad terms, were positive for E and negative for W. While no further work was suggested in W's case, in E's case the Family Resource Team favoured him being provided with a residential parenting assessment with his son, albeit that they had reservations about E's judgment. The Trust, on consideration of the Family Resource Centre's report, was unconvinced about the above recommendation and, in particular, was opposed to removing M from his foster carers for the purpose of a residential parenting assessment.

[5] This issue, it appears, was ventilated before the court at the beginning of September 2012. The outcome was that it was decided that E should be offered a residential parenting assessment at a place called Thorndale and that his son should participate in this with him. The assessment began in December 2012. While it

started well, unfortunately it was suspended in March 2013 and ultimately ended, from E's point of view, in failure. In its aftermath, the Trust reaffirmed its Care Plan for permanence for M away from his parents. The Trust by this stage favoured adoption as the way forward for M. The Gs, to whom M has been returned following the breakdown of the Thorndale assessment, were and are willing to offer themselves as potential adopters, a step viewed as positive by the Trust.

[6] The hearing of these proceedings in the above circumstances did not begin until 21 October 2013 but the conclusion of them has been much delayed. There have been two main reasons for this. Firstly, a very serious incident involving E and his son occurred in early January 2014. This resulted in E being arrested (and later convicted) of a number of significant offences. After E's arrest, he was remanded in custody and for a time a question mark had been raised (by E's representatives in these proceedings) over whether he might be unfit further to participate in them. This gave rise to a series of adjournments before this matter was put to rest following a professional assessment of E by a consultant psychiatrist in which his capacity to understand the proceedings was upheld. Secondly, when it became known to the immigration authorities that E was about to be released from prison as time served in respect of the offending above, and just before the case was about to resume, he was detained by those authorities and taken to a detention centre in Lincolnshire. This detention centre could not offer video link facilities to the court with the consequence that these proceedings again had to be adjourned. They finally resumed after E was granted immigration bail.

[7] In the course of the developments above, the Trust decided that it should add to its application for a Care Order an application for a Freeing Order. Proceedings to this effect were issued by it in March 2014, during the hiatus caused by the issue of E's mental health in the aftermath of the incident of January 2014. There has been no objection by any party to the Trust's initiative in this regard. In these proceedings the Trust was represented by Ms Moira Smith BL; W was represented by Ms Walsh QC and Ms Lavery BL; E was represented by Mr McGuigan QC and Mr Jones BL; and the Guardian ad Litem by Ms Ross BL. The court is very grateful to counsel for their very helpful oral and written submissions.

The issues to be determined

[8] In the court's view, there are three issues which it has to decide in this case. These are:

(i) First, what may be described as "the threshold issue", that is whether the requirements of Article 50(2) of the Children (Northern Ireland) Order 1995 ("the 1995 Order") had been satisfied in this case. This issue falls to be determined on the basis of the situation pertaining at the date of intervention by the Trust, here mid-September 2010. The court must decide whether at that time the child was suffering or was likely to suffer significant harm

attributable to the care given to him, or likely to be given to him, not being what it would be reasonable to expect a parent to give to him.

In considering this issue the court must keep in mind that "harm" is defined in the legislation to mean "ill treatment or the impairment of health and development". In turn, "health" is defined as "physical or mental health" and "development" is defined as "physical, intellectual, emotional, social or behavioural development" (see Article 2 of the 1995 Order).

The question of whether harm is significant is to be determined in accordance with Article 50(3) of the 1995 Order. This states that:

> "Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child."

(ii) Second, what may be described as the "care planning issue", that is whether in this case it should make an order on the basis of the evidence put before the court. It is well-known that in a case of this type the court should not make any order unless it considers "that doing so would be better for the child than making no order at all" (see Article 3(5) of the 1995 Order). In reaching a conclusion on this issue the court shall treat the child's welfare as the paramount consideration (see Article 3(1)) and it should have regard, in particular, to the welfare check list *viz* it 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;
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> (c) the likely effect on him of any change of circumstances;
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> (d) his age, sex, background and any characteristics of his which the court considers relevant;
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> (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; and

(g) the range of powers available to the court under this Order in the proceedings in question" (see Article 3(3) of the 1995 Order)."

The court will therefore need to decide whether it should make no order at all; a Care Order, as the Trust seek in line with its Care Plan as put before the court; or some other order.

(iii) Third, what may be described as "the freeing issue" that is whether it should free M for adoption. In order to decide this issue the court is instructed by Article 9 of the Adoption (Northern Ireland) Order 1987 ("the 1987 Order") to have regard to the welfare of the child as the most important consideration. In reaching its conclusion the court must have regard to all of the circumstances:

"… full consideration being given to:

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

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

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

It is also the case that, so far as practicable, the court must 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.

In this case the Freeing Order sought by the Trust is not the subject of consent from either of the parents. This means that the court will be required to consider (assuming it views adoption as being in the best interests of M) whether to dispense with parental consent. This can be done on a ground specified in Article 16(2) of the 1987 Order, the relevant ground in this case being whether the parent "is withholding his agreement unreasonably". The correct legal approach to this issue will be discussed in due course.

The Threshold Issue

[9] The court's enquiry for the purpose of this issue begins at the end of April 2010, when the Trust became involved as between W and E, and ends at the date of intervention which may be defined as 14 September 2010.

[10] It is necessary to provide some contextual information before entering into the detail of what occurred during the period identified above.

[11] W is a member of the travelling community in Northern Ireland. Her own upbringing was difficult with domestic violence being a feature of her parents' relationship. There was considerable alcohol intake, at least on the part of her father. W herself began drinking when she was 18. She has since developed a habit which is more than that of a social drinker. She left school when she was 11 and has never been employed. When 17 she married her cousin. The marriage was arranged by her parents. Her married life has been difficult. As in the case of her parents' marriage, domestic violence has been a significant issue in her marriage. Her husband drank heavily and abused her when he came home. During the marriage W had 5 children. Eventually W left her husband, which apparently is an unusual occurrence within traveller marriages. This caused much contention and argument within her family. W's mental health has been volatile over time. She often has suffered from low mood and depression. She has, on a significant number of occasions, expressed suicidal ideation. She has overdosed on 5 or 6 occasions. She has, within the last few years, been the subject of compulsory and voluntary mental health interventions.

[12] E, in contrast, is a Palestinian. His background has been the subject of considerable debate and discussion in the papers. His father is said to have been a shepherd. There are conflicting accounts about his father's death. E's mother is still alive. E is the second of three children. E has no formal education but was taught in a Mosque and received instruction as to how to read and write from a friend of his father. At the age of 14 or 15, he left Palestine and appears to have worked in Egypt for 4 years as a porter before going to Jordan, where he spent 3 years working in a restaurant. He then went to Syria for 6 months working on a farm before travelling to Turkey. While in Turkey he paid a smuggler to smuggle him to London from where he made his way to Belfast, arriving in August 2007. He has remained in Northern Ireland since. He has described himself as an asylum seeker. His case, he says, is still going on. When he arrived in the United Kingdom he said he did not speak English. During these proceedings he has been assisted by a translator but it is clear that he now has at least basic English. He lives a somewhat isolated existence in Northern Ireland, at least if the evidence given to the court in this case is anything to go by. He appears to be a regular attender at his Mosque but does not appear to have been in employment, at least for any prolonged period (perhaps because of his immigration status). He has little money and, in the last few years, has changed address regularly, from one rented accommodation to another. He has not kept up any significant contact with his relatives in Palestine. He does not drink. Up until the events which the court is about to set out, he had no children and few relationships.

[13] While few of the facts about W's relationship with E can be stated with complete authority, it can be neutrally asserted that following sexual intercourse between them W became pregnant with E's child. The circumstances giving rise to

this pregnancy need not be gone into in depth but, as will be seen later, E maintains that he was raped by W, an allegation which the court is not in a position definitively to make a finding about.

[14] The pregnancy of W coincided with a relationship which E was having with another woman, R. It appears that E was in a sexual relationship with R at the same time (or thereabouts) as his relationship with W. R, as with W, became pregnant. When the period identified above began in late April 2010, E was residing with R, who was in the late stages of her pregnancy.

The Chronology of Events leading to Trust's Intervention

[15] The court will now sketch in what might be described as the chronology of events leading to the Trust's intervention. The court's methodology in doing so principally will be to take the account from the evidence of key social workers who have outlined the sequence of events from the witness box and have supported it from contemporaneous records which have been compiled by them or other professionals in or around the time of the occurrences in question. It seems to the court that such records can be relied on as being generally accurate, though the court will keep in mind that where there are conflicts of fact of significance it must reach its own conclusion about which version of events it should accept. In this regard it is right that the court should indicate that it found neither W nor E impressive witnesses. W's evidence was largely confined to the provision of statements. Her oral evidence was very limited in content. As will be seen later, W has acknowledged on more than one occasion that she often told lies to suit her interests at particular junctures. The court is ready to believe this. E, on the other hand, not only provided a range of written statements to the court but gave evidence over a prolonged period from the witness box. The court therefore had ample time to consider his demeanour and to observe him. Unfortunately the court has formed the clear view that E was apt to tell lies if he thought it would advance his case. Some of these lies, in the court's view, were blatant. He made allegations of the most implausible nature against social workers so as to explain away his actions and he often resorted to explanations for events which can only be said to bear little relationship to the weight of the evidence. Examples of the former include an allegation that a social worker had taught him a way of disciplining M which involved pulling him by the ear. The social worker in question can only be described as someone who was favourably disposed towards E but he had no hesitation, when he gave evidence, in denying completely this allegation. The court has no doubt that this allegation was untrue and was resorted to by E as a way of trying to explain away an action of his own. A similar example involved E alleging that a senior administrator within social services "gave him the finger" *viz* made an insulting hand gesture towards him. The object of the evidence appears to have been to show that social services were pre-disposed against him and thought nothing of insulting him. The senior administrator gave evidence emphatically denying this allegation. The court has no hesitation in accepting this denial. In the court's judgment the allegation was meant maliciously by E and did not contain a scintilla of truth. In

respect of broader issues, E on various occasions made sweeping denials of events which the court has no hesitation as viewing as having occurred. The most obvious of these relates to the Beech Hall incident which is discussed at length later. E's account of this incident was so much at variance with reality as to be a plainly lying account. For example, he alleged that two knives which were found on his person had been planted on him by persons he had never met before. E was convicted of a series of offences arising out of this incident but nonetheless he maintained before the court his account which had been rejected by the criminal court. Finally, by way of further example, E maintained a version of events in respect of an incident at a contact centre at North Queen Street, Belfast, which had, prior to this hearing, been made the subject of a fact finding hearing in which it had been rejected. The court heard the evidence again but is in no doubt that E's account of this incident is untrue. The court, therefore, has formed a poor view of E's credibility based on listening to his evidence and hearing him cross examined. However, it will be noted, at a later stage of this judgment, that many of the experts who have assessed E have commented negatively on his approach to the truth.

[16] What stimulated the attention of social services was the position of W, who at the end of April 2010 was just a few days away from the birth of her child. W informed the community midwife that she would not be able to care for the baby. The reason for this lay in the cultural and racial situation which confronted her: in particular, what she expected would be her travellers' family adverse reaction to the birth of a child to her which had the father's racial and cultural background. W said that she wanted E to look after the child in the future.

[17] When this information was passed to social services they sought to make enquiries in respect of E's suitability to look after the child. As already noted, at the time, E was living with R who herself was pregnant with her child also due shortly. However, E when spoken to by social services expressed willingness to look after W's child.

[18] As a result of social services enquiries a variety of concerns arose. In respect of E's preparedness to look after W's baby, there were serious doubts. While R was willing to look after W's baby for a short time before her own baby was born, such an arrangement could be no more than very short term. Social services assessed that E had little or no income and no previous experience in caring for a child. They did not consider that E was well prepared to look after the baby, though in evidence E maintained that he had bought a variety of items for the baby. The court doubts that E had purchased very much as social services later had to acquire a wide range of items for the home. Checks carried out with the police on E revealed that they were investigating an alleged assault by E on a female which had led to E being arrested recently. Social services understood that E denied any such assault, a position he maintained before the court, but the court accepts that at the time social services were unable to ascertain where the truth of this allegation against E lay. They were, it seems to the court, entitled to take a precautionary approach bearing in mind that their assessment of E could not be completed at that time. Social services, at this

stage therefore entertained a concern about E's suitability as a carer for the new baby, especially given the unresolved allegation against him.

[19] M was born in May 2010. Initially, the child was removed from the mother in accordance with her wishes but within hours W requested to see the baby and then decided that she would care for him.

[20] On 10 May 2010 E visited W and M in the hospital. An incident occurred during this visit. While this incident was the subject of disputed accounts before the court, the court considers that the balance of the evidence supports the view that at one point E, with the child in his arms, left the ward without any form of permission from the mother. He had to be stopped and was told by staff to return. E, at the time, maintained that he was just going to the shop or a vending machine but the episode fuelled concern about E's understanding of the situation. His action at the least was ill-advised. As will be seen later, E has made a habit of this sort of action.

[21] On 11 May 2010 there was a discussion between social work professionals about the position of E. By this time W was saying to social workers that she no longer was in a relationship with E. It was agreed that E should not have contact with W or M for the time being because of what W had said and the accumulation of concerns about E.

[22] When W left the hospital with M on 13 May 2010 it was on the basis that she was going to care for him. Social services, in advance of W's return home, carried out a home assessment and ensured that necessary baby items were purchased in advance.

[23] On 14 May 2010 social workers met with E, together with an interpreter. The outcome of their meeting of 11 May 2010 was conveyed to him *viz* that he was not to have contact with W or M. He was also told he could seek legal advice in respect of the issue of contact with M.

[24] Matters, from the point of view of social services, rested there until 27 May 2010. On this day a community midwife visited W's home. This was a normal visit and there had been no concerns post-natally. However, the community midwife on arrival felt that W appeared awkward. When, as she usually did, the midwife went into the bedroom she saw a male hiding. He was dressed only in boxer shorts and attempted to run off. The midwife surmised that the male was M's father, E. He got in under the bed clothes. The midwife completed her duties and later informed the social work staff as to what she had seen. In response, social work staff visited the house on that day and reminded W of their concerns about E, in particular in respect of the alleged incident involving E and an ex-partner. W did not deny that E had been staying in the house.

[25] E was not in the house at the time of the visit by social services but W was able to telephone him. One of the social workers then spoke to E. It was reiterated

to him why he was not to stay in the house. However, social service records note, he became very agitated. He said he needed to be in the house to protect the baby. The social worker told him that the baby was not at any immediate risk. But he did not accept this. An arrangement was made for him to come to the social services office the next day but in the meantime he was not to return to W's house.

[26] On the following day, 28 May 2010, there was a meeting between E and social work staff. E repeated his view that he needed to stay in the house to protect the baby. He said he was not sleeping because he was so worried. He claimed that W's children were lifting the baby and not supporting his head. He said T, one of the children, had shaken and pulled the baby. He also said one of W's siblings had been round at the house two days before and had attempted to kick the door in. Social workers said they would speak to W about these things. At the end of the conversation, E said that R was still his wife and that he was still in a relationship with her and that they planned to live together when her child was born.

[27] On the same date social workers reverted to W and spoke to her about E. She apologised for her not informing the social workers about E living with her. When E's allegations about the dangers to the children were put to her, she denied them. She said her children were not rough with the baby. As regards her brother's actions in coming round to the house and kicking in the front door, she said he was drunk and that she had telephoned the police who took him away. One of the social workers suggested she should obtain a non-molestation order against her brother.

[28] A further incident allegedly involving her brother was reported to social services on 8 June 2010. It was alleged that her brother had been arrested for attempting to rape a 17 year old female at the house. It was also alleged that E was staying at the house. A social worker went to the house on 9 June 2010. In response to these allegations W accepted that her brother had been arrested at the house, though she denied letting him in. She admitted that E was staying in the house and that both of them were in bed together when the alleged rape occurred. The social worker indicated that both the brother and E should not be in the home and commented that she was not adhering to what had been agreed. She stated that she would adhere to the earlier decisions and, in particular, she would not let E visit anymore.

[29] Further reports were received by social workers to the effect that E was openly living with W.

[30] By 17 June 2010 it appears that social services were becoming increasingly concerned about W and E, in effect, having moved in together, notwithstanding the strictures they had sought to impose on them. A social worker spoke to R on this day. She said that she had ended her relationship with E some weeks before. She also stated that E came round to her house, with M, the previous Sunday. R asked him if W knew that he (E) had the baby. He allegedly replied, "No, she will go mad". R said that he tried to re-establish his relationship with her. He said that he

hated W deep down in his heart and that the only reason he was with her was to get the baby (M). R then told the social worker that E had said that she should take her baby to Egypt where he would take M. They would get married there. R commented to the social worker that E lived in his own world and was a terrible liar. R then told the social worker that W had recently said that E was trying to steal her baby (M) and that they were exchanging text messages which were not very positive. R also stated that she was adamant that her relationship with E was finished and that she would not let him have contact with her baby (A).

[31] On 18 June 2010 there was further contact between W and E and social work staff. This arose out of an arrangement that had been made for W to go on holiday with her other children. M was not part of this arrangement. He was to be looked after by one of W's sisters, J. Social services went to W's house to ensure that the arrangement was on track as they were concerned that M's welfare be secured and that there should be no slip ups. At the house they were told by W that, despite social workers concerns, she was going to leave the child, M, in the care of E. This gave rise to a considerable argument. Social workers suggested that M could be voluntarily cared for by them but W rejected this. W then indicated that she would not go on the holiday. At one point she threatened to stab one particular social worker and any social workers who called at the house. It appears that at this point the social workers left the house on the basis that the situation would be continuously assessed over the next few days. W did, in fact, go on the holiday and J looked after M during her period, approximately one week, away.

[32] The next significant event took place on 30 June 2010 and took the form of an initial case conference. This was followed by what was described as a pre-proceedings meeting. W and E attended the latter but not the former. It appears that at the pre-proceedings meeting W retracted the threat she had made previously to social workers. The couple advised that they had recently married at a Mosque and that they wished to be assessed as a couple. They agreed to comply with the Trust's care plan as agreed at the earlier case conference. Later E said in one of his statements that the two divorced "in the Islamic fashion". It is not clear when this was.

[33] There then followed a period of relative quiet. However, on 22 July 2010 the police were summoned to W's house by means of a 999 call. When police arrived they were told by W that she wanted them to remove her ex-partner, E, from her house. W said that E had been living between her house and R's house. Police spoke to W and E indicating to W that she was misusing the emergency number. Information was given that a week before W's father had come to the house drunk. It also transpired that when W was on holiday E had telephoned the police to report that W's brother and his friends were partying in the house when he (E) had come home.

[34] On 29 July 2010 social services were told by W that she and E had separated. W said that on the previous weekend he had gone over to visit R to see his other

baby. He then phoned W to say that he was not coming home that evening as R was going out for a drink and he was going to care for the baby, A. W's riposte was that if E did not return home that evening he was not to come back at all. W then took a taxi to R's house and an argument broke out. When W arrived R was half naked and W drew the conclusion that he was still in a relationship with R. W stated that she was going to seek legal advice about returning M's name to his original (non-Muslim) name.

[35] On 30 July 2010 a further pre-proceedings meeting was held. Both W and E attended with their solicitors. As the news of the separation had only just been received it was decided to defer the issues in respect of M to a later date. However, when W sought to leave the building with her children, including M, E followed her out, contrary to the advice of both solicitors present and social services. He became volatile, shouting and insisting on his right to see M. The incident spilt out into the street. W and E were shouting at each other in front of the children. Social services requested the presence of the police. While awaiting their arrival, everyone returned to the office of social services. There then ensued a discussion between W and E. This ended the incident, with everyone leaving together.

[36] On 1 August 2010 social services were informed by the police that on that day E had gone to a police station and had alleged that W, whom he described as his ex-partner, was abusing drugs. He questioned whether she was fit to care for his child, M. Police officers went out to M's house but concluded that they had no concerns either for W or her child, M. E was insistent that social services should care for M.

[37] The next event occurred on 6 August 2010. W attended a meeting with social services accompanied by her solicitor. W advised that she and E had separated again the previous day. She stated that she was going to seek a non-molestation order against him to prevent him attempting to take her baby. A non-molestation order was also being sought by her against W's brother.

[38] A further social work visit occurred to W's house on 10 August 2010. When the social worker arrived, she found that the baby had been left unattended on W's bed. The social worker criticised this as being inappropriate. In conversation with the children who were present, three of the girls indicated that they did not want E to live in the house. T, one of the boys, indicated likewise and recounted that he had been in an argument with E. He said E had been winding him up about his father and that he had reacted by trying to hit him with a TV remote. In the process he said he accidentally pushed the remote into the baby (M's) face. W supported T's account of the incident. The social worker commented that M had been caught up and placed in danger because of an argument between T and E.

[39] When social services visited W's home on 14 August 2010 W appeared to them to be emotionally flat. This stemmed from the lack of support she felt she had received from her family in respect of her relationship with E and the birth of M.

She was also unhappy about the divisive nature of E's relationship with R which was the cause of arguments between her and E. Her former husband had also removed several of her children that day. At one point, E told W that he was taking M and leaving the house. E refused to say where he was going. W did not respond and just sat on the bed. Even when prompted to intervene, to stop E doing this, W remained passive. A social worker then rang the police and on her return explained to both W and E that due to the volatility of the couple's relationship and her concern about the protection of M, E should leave the house. E responded angrily to this, as did W. By this time the police had arrived. Again W was asked to encourage E to leave the house. She said she would do so once the police and social workers left it. She wanted to speak to him and sort things out. The social workers indicated that they were concerned that discussions between the two might deteriorate and lead to violence. W said this would not occur. Police then spoke to W and E and matters calmed. The social workers left, as did the police.

[40] On the next day, 15 August 2010, a serious incident occurred between W and E. It appears that notwithstanding social services view expressed the previous evening that E should leave W's home, in fact E had remained in it. In the morning W perceived that he was going to leave the house with M. This gave rise to an angry row which spilt out into an episode of violence. In the course of the accounts given of this row W and E blame each other and each makes the claim that the other was the aggressor. It is undisputed, however, that this row went on for some time in open view in the street. Throughout the main part of the row, E was holding M while at the same time conducting a physical response to W. W, on the other hand, at one point was trying to strike E with a brush, notwithstanding that E was holding M at the time. There appears to have been a dispute about who called the police. One of the police officers who arrived (and gave evidence) said it was W who called them. The court accepts this evidence, as it does the officer's description of what then occurred. When the police officer arrived she described how M was tucked up under one of E's arms. His head was pointing forward and the officer saw E push W several times. At one point, she described E hitting her on the neck. M throughout was crying and was very distressed. The officer said her chief concern was to help M. She went on to indicate that the police tactic was to seek to separate the two. When she tried to take M from E's arms he resisted. He said, "No, no". Ultimately, the police had to prise M away from E. The officer who gave evidence said she took the child away. Fortunately, the child was uninjured physically. E resisted the police officers and had to be restrained. He was arrested and taken to a police station. Later, he was charged with assault of W and resisting police. That night M had to be looked after by a neighbour. The court later was told that E was convicted of resisting police but not of assault on W. When the officer who gave evidence was cross-examined she was asked how E had appeared that morning. Her reply was that he appeared "agitated and aggressive". When E was later released by police, he made counter-allegations against W, including an allegation that she had assaulted M. Nothing, it appears, became of these allegations.

[41] In the aftermath of the above incident, on the following day M was placed with his maternal aunt, J. W, through her solicitor, indicated that she wanted to obtain a non-molestation order against E.

[42] Unfortunately, after these events W's mental health deteriorated. It seems likely that on the succeeding evening she went out drinking leaving her children with her mother, who was also drinking. Later, her GP referred W to a psychiatrist on 23 August 2010. An appointment was obtained forthwith but W arrived grossly late for it and the assessment of her was not completed.

[43] Against the back cloth of the above chronology of events the Trust intervened in the case on 14 September 2010, successfully seeking an EPO in the first place and then two days later an ICO.

[44] At the same time as these Orders were being sought in the case of M, there were also ongoing proceedings in respect of four other of W's children, all of whom were children of W's marriage contracted when she was 17 years.

Is the Threshold Overcome?

[45] In considering the issue of whether threshold is overcome in this case the court reminds itself of the language of Article 50(2), the salient points of which have been set out above.

[46] The court is looking both at the situation which the child has faced to the date of intervention and the situation which the child would be likely to face in the future.

[47] In the present case the court is satisfied M had both suffered significant harm in the past and that there was, at the date of intervention, a likelihood of significant harm going into the future. The factors which the court would hold gives rise to these conclusions are as follows:

(a) First and foremost, the court takes into account the fraught circumstances surrounding M's birth. To say that the circumstances were uncertain would be an understatement. There was very little certainly about anything. The cause of this is not difficult to identify. M was in no sense being born into a stable relationship. On the contrary, he was being born into a very unstable one. His mother swithered and chopped and changed about whether she wanted to care for him at all. She plainly was severely conflicted about her stance on this issue. On the other hand, E, the father, had been introduced as a possible carer of the child in the most unpropitious of circumstances. At the time he was living with another woman who was concurrently bearing a child to him. At the time it was this woman, R, who was the favoured partner. E's late call up to serve as a carer for M was one for which he had had no preparation by background or experience. He had not cared for a baby before;

he had few resources; and no advance preparation of any significance had been put in place. Social services assessment of him, moreover, was understandably guarded in circumstances where an issue of domestic violence alleged against him, which had led to his arrest, as yet, remained unresolved. In the absence of nothing having really been thought out in advance, the reaction of both parents, W and E, to the birth of the child was ill-organised. A good example may be derived from how both parents dealt with the Trust's child protection concerns *vis a vis* E. From the start the Trust's concerns were not taken seriously by the couple, who appear simply to have ignored the Trust's wish for there to be no contact between the mother and child and the father, at least initially. The mother appeared to have been blissfully unaware of even the possibility that E might have committed domestic violence in the past. Alternatively, if she was aware of a possible risk, she was content to ignore it, notwithstanding that such a position could put her child in danger. While the court is tempted to say that the mother, as a victim of domestic violence both when she was a child and as an adult, ought to have known better, on the other hand, her willingness to take risks may, at least in part, be explained by a propensity on her part to identify domestic violence as normal. E's response to the Trust's approach was dismissive. His outlook was as the baby was his child no-one could seek to restrain his ability to care for him. In his eyes, social services had no business becoming involved at all and the child's welfare was a matter for him not the Trust. Both parents also unmistakably signalled a willingness to mislead and lie to the Trust about the arrangements they were putting into place in respect of the care of M.

(b) The court is in little doubt that M was placed within a volatile relationship which was characterised by domestic disagreements, tensions, argumentation and ultimately a propensity on both parents' part to violence. There is clear evidence before the court of regular arguments between W and E when M was present. There is also material before the court which suggests that there were also arguments of some severity going on in this household between one or other of the parents and one or other of the other children who lived in the house. One of these latter situations gave rise to the circumstance in which a TV remote control was pushed into M's face accidentally but arising out of an argument between E and T. A state of friction seems to have existed between several of the children, other than M, and E. Accusations were made by them of E being controlling and this chimes with a picture formed by the court of E, having listened at length to his evidence. E appears to the court to be a somewhat inflexible and isolated man fixated on a view of the world that only he sees. He views himself as having an absolute right to do what he wishes in respect of his child, irrespective of the concerns of others, especially social services whom he views as having no right to be involved in his or his son's life at all. This assessment has been later borne out in respect of E when regard is had to the professional assessments of him but it is one the court would have arrived at anyway from observing him giving his evidence.

Ultimately, the propensity on the part of both parents to implode was exposed in the incidents which occurred on 14 and 15 August 2010 and which have been described above. The latter incident followed earlier disagreements, most obviously a disagreement between W and E of the night before. For present purposes what matters is that M was subjected to a substantial risk of physical violence and to an emotionally damaging episode by the actions or inactions of each of his parents. It is of limited importance, in the court's view, as to whether the initial aggressor was the mother or the father. Harm for the purpose of Article 50(2) is not to be viewed through the lens of how much blood is spilt or how many bruises had been sustained by the child. In the court's view harm can be just as much emotional as physical and with just as severe consequences. While fortunately M escaped direct physical harm in this incident of 15 August what untold emotional harm he has sustained is less easy to measure. As the chronology shows, the blazing row between these parents was an accident waiting to happen. Long before 15 August 2010 it had become obvious that the core of the relationship between the parents was, if not already rotten, beginning to decay. This is obvious from the on/off nature of their relationship which appeared to stumble from one crisis to the next. At the least, there is ample evidence that E had little respect for W. But, for whatever reasons, the unfortunate reality is that M was caught up in the middle of the maelstrom, of which the fight in the street was but a symptom. Each parent, it should also not be forgotten, threatened violence to the other or to persons in authority *viz* social workers or police.

(c) The court is of the view that far from being capable of working with the social workers the history of events leading up to the Trust's intervention demonstrates an inability on the parents' part to accept help and direction from them. This situation inured to greater risk of harm to the child.

[48] At the time of the intervention by the Trust, the court concludes that M was already suffering significant harm by reason of the cumulative strength of the factors identified above.

[49] By the same token, the court is also satisfied that M would continue to suffer significant harm going into the future unless there was appropriate intervention by the Trust, as in fact occurred.

[50] Finally, the court is of the opinion that the standard of care which M was being provided with by both parents was below the standard a reasonable parent or parents would provide for their child.

[51] For these reasons, the court held after the evidence on this aspect of the case was completed that, in its view, the threshold set in Article 50(2) of the 1995 Order had clearly been surmounted in this case. It now confirms that view.

The Care Planning Issue – Initial Assessments

[52] Following the Trust's intervention on 14 September 2010 the Trust placed M, after a very short period with other carers, with his present foster carers. At this early stage, the Trust's aspiration was, if possible, to return M to his parents. However, there was an ongoing need to engage in a process of assessing W and E. A particular problem at this time related to W's fragile mental health. The Trust's intervention did not just involve the removal of M. It also embraced the removal of other children of W and it was evident that W was agitated, upset and angry. On 15 September 2010 Dr Denise McCartan, a Clinical Psychologist, examined W. She later reported on 20 September 2010. This report provided extensive detail of W's background, much of which has already been rehearsed above. The opposition of W's family to E specifically is referred to. In effect, E was warned off at an early stage in the couple's relationship by members of W's family. Dr McCartan recounts that W had feelings of shame in respect of her pregnancy. Her family, she thought, viewed her as a "slut". For these reasons she had talked about hiding the pregnancy and then putting the child up for adoption. However, she did not go through with this. She described how W and E often rowed and that when they argued it could become violent. W described to Dr McCartan how she could not communicate with social workers and how she felt the social workers did not trust her. She admitted, however, that she had lied to many people about her relationships, including social workers and the police. What she stated she hoped to do was in the future to make her own choices and escape from her family as she felt their influence was negative. In Dr McCartan's view, W had had a history of disappointments in her life. While she sometimes may operate satisfactorily, she may also experience periods of emotional, cognitive or behavioural dysfunction. She had high dependency needs, variable moods and impulsive angry outbursts. She may vacillate between socially agreeable, aggressive and contrite faces. W experienced low mood often. She had limited general intelligence and a full IQ of between 72-81, which is at the fifth percentile, in the borderline range. Her verbal comprehension was at the second percentile. In Dr McCartan's view, W would have difficulty communicating with professionals and, on her own admission, W was dishonest in interactions with them. While W had the ability to accept guidance and direction, if she felt threatened, she was likely to struggle and would require a lot of support and understanding. Dr McCartan acknowledged that W had received a number of positive reports about her parenting skills. In W's case, Dr McCartan thought that her experience of domestic violence in childhood may have normalised this aspect of her behaviour. Dr McCartan favoured referral of her to the Whiterock Family Centre for a comprehensive parenting assessment.

[53] While there were positive features to Dr McCartan's report, a high level of conflict between W and social services, unfortunately, continued. In the early part of 2011, there were repeated reports of abusive behaviour directed by W to social workers. Much of W's ire was taken out on a particular social worker to whom a variety of threats was made. This situation could not, however, be allowed to go on indefinitely. The Trust considered that it would have to stop contact between W and

M for a time because of concern that continuing contact between them would place social workers at risk from W.

Further examinations of W occurred later in 2011 by Dr S McHugh, a consultant psychiatrist. However, these did not add significantly to the overall picture. When examined at the end of May 2011 Dr McHugh described W as having "mildly depressive symptoms" but as feeling shame at having had M as the child was "a big problem" for her in the travellers' culture. Later in November 2011, Dr McHugh, in a second report, referred to W saying that she had had a break down after the baby came home in May 2010 and that, at this time, she had threatened to kill herself. She had low mood for three months. In Dr McHugh's opinion, W suffered from an emotionally unstable personality disorder, characterised by feelings of emptiness, emotional lability, substance abuse and impulsivity. Dr McHugh went on: "This impulsivity may manifest as aggression or suicidal gestures". She drank too much, on her own admission to Dr McHugh. Ultimately Dr McHugh thought that W's psychiatric diagnosis would impact on her day to day capabilities and that she would fluctuate in mood. This would affect her parenting and would also have an impact on her capacity to understand Trust concerns and to act on advice. It would also have an impact on her capacity to work with professionals and effect and sustain change. Dr McHugh thought that W would have difficulty tolerating psychotherapy on a regular basis but was of the view that she could be offered parenting training. The extent and length of that training is not specified. She also needed help with alcohol.

[54] Dr McCartan also assessed E. She met with him on 9 March 2011. Her report followed on 18 March 2011. Much of E's history has already been rehearsed. However, his relationship with W, according to E, arose out of circumstances in which he had told her that he already had a girlfriend (R). There then occurred the following:

> "He was given a drink spiked with a tablet that made him sleep … [W] raped him. He said he woke from sleep and she was on top of him. He remembered pushing her and she was holding him."

This led to W's pregnancy and M's birth. E alleged that W said to her that she needed another son, as one of her sons had been removed from her care. In his account, he heard of W's pregnancy some months later from a friend. At this time he was involved with R who told him to stay away from W or he would get killed because her family was dangerous. Just before the birth a social worker, he said, contacted him and told him that W did not want to keep the baby. E said that he would be willing to do so. When W kept the child, E said that he was told by social services not to visit W and M. However, he told Dr McCartan that he did spend six weeks living with her, though he indicated he did not wish to establish a relationship with W and that he loved R. Notwithstanding this, he told Dr McCartan that he had been told that W had been using drugs while caring for M.

This led to arguments between the two. Interestingly, he told Dr McCartan that he would not have a difficulty working with social services. In Dr McCartan's assessment, E may appear sociable, mature and self-assured at times but he feared autonomy and he may feel generally antagonistic towards others. He had many features, she said, of a narcissistic personality disorder which is characterised by a pervasive pattern of grandiosity, a need for admiration and a lack of empathy. E's non-verbal intelligence was in the "borderline" range at the fourth percentile. Dr McCartan was unable to measure verbal intelligence as English was not E's first language. In her opinion, he was likely to have difficulty problem solving. He should, however, have the ability to understand, accept and have insight into the Trust's concerns and interventions. But there may, Dr McCartan indicated, be cultural influences which impact on E's understanding. She noted that he said that he only ever behaved violently towards W out of fear. Dr McCartan also noted that E had limited insight into the reasons for the Trust's intervention. While he may be agreeable to suggested guidance and direction, on the other hand, he may subsequently feel resentful towards those he perceived as superior. Moreover, the presence of narcissistic personality traits would indicate, she thought, that he believes he is more knowledgeable about his son's needs than others. The information considered by Dr McCartan suggested to her that E may be physically and verbally aggressive at times. In her view, E appeared to have very little knowledge in relation to the social and economic needs of his son. This may be because of his childhood and early adulthood which was focussed on survival. This led her to the view that "his limited problem solving skills [were] likely to make it difficult for [E] to parent his child effectively without a high level of support". He later expressed the view that he did not consider W was an appropriate parent for his child – something described by Dr McCartan as a pre-occupation of E's. She noted that E did not consider the emotional impact on M of growing up without living with his mother. While it may be a difference arising from cultural considerations, Dr McCartan referred to E talking about his son as a possession, which chimed in with E's alleged lack of empathy. As far as future work was concerned, Dr McCartan, indicated that E would benefit from the following intervention:

> "Work on developing empathy for others and in particular with his children.
>
> General parenting skills including knowledge of the needs of children.
>
> Knowledge of the impact of domestic violence on a child's welfare.
>
> Knowledge of attachment issues."

Contact

[55] During the period of initial assessments described above a regime of supervised contact was established in respect of each parent separately and M (save for a suspension of contact with the mother referred to at paragraph [53] *supra*). The hypothesis social services operated upon was that W and E were not in a relationship together. However, the reality, not just at this particular juncture, but throughout the case, has often been different and the better view, the court is convinced, is that the relationship between the two oscillated from on to off and to on again frequently. Unfortunately, it appears evident that both W and E often engaged in misleading social workers as to what was going on between them. While it is unnecessary to cite particular incidents, the court is satisfied that both featured regularly in incidents with the police, social services, and, in E's case, with R and A, and with each other. Often these incidents involved conflict and arguments, alleged minor criminality and hostility. On separate occasions, E and W ended up in prison: in E's case following an alleged breach by him of a non-molestation order which had been taken out by R and A: while, in W's case, for making threats.

[56] Contact between E and M regularly took place. However, on occasions, it gave rise to difficulties. Probably the greatest of these related to the issue of M's name. Initially M was registered with a Christian name and his mother's surname but later the couple changed M's name to a Muslim one. Later, following rows between the parents, W wanted to change it back. In short, W was inconsistent as to what version of M's name she wished to be used. Social workers and carers initially used the name first given to the child by his mother but later adjusted it in accordance with the prevailing sentiment. E always wished M to be known by his Muslim name. At contact, conflict on occasions broke out over this issue and it seems plain that M suffered a substantial element of confusion and angst as a result. It was symptomatic of the couple's relationship that they could not even agree for a prolonged period what M's name was to be, notwithstanding that the confusion created, at the least, must have been damaging for the child, especially as he grew older.

[57] Other difficulties arose at contact as well. It is unnecessary to go into full detail. But it is clear that E often found fault with M's clothes, physical state and appearance. On one occasion E complained that the male carer has struck M. There is no doubt that all of this was aimed by E at the foster carers. The court doubts very much whether there was any objective justification for E's criticisms. Rather they were, the court believes, more in the nature of "shots across the carers' bows" as E resented their involvement with M. This fits in with the description of E's personality later provided by a variety of experts

[58] Smaller issues also created disharmony at contacts between E and M: issues about what food he was to give to the child; how M should be greeted; and the use of English and/or Arabic at contact and so on.

[59] In the context of contacts between W and M there appear to have been fewer difficulties but her attendance at contact at times was poor with many appointments being missed.

[60] In the case of E there were also incidents outside the contact centres which gave rise to considerable concern on the part of social workers. One of these occurred at Ardmonagh Family Centre on 2 November 2011 and is worth mentioning as it is alike to other incidents involving E and M both before it and since. On this occasion when M arrived for contact he was met by E but both were too early for contact. Rather than E handover M to the contact centre staff, E refused to do so, indicating that he would only do so at the point when contact due to start. At one point E appeared to be leaving the centre with M in his arms. Police were called and in the end had to negotiate the return of M for contact. This incident had repercussions in that the contact centre staff required that E sign a new "contract" dealing with contact, which on 8 November 2011, he did.

Dr Browne's Report

[61] In the case of E he was, following the assessment conducted by Dr McCartan, assessed also by a Consultant Forensic Psychiatrist, Dr Fred Browne. Dr Browne met with E on 26 June 2011 and 16 September 2011. His report is dated 5 October 2011. In the course of relating his history E told him about being raped by W. According to E, this was the only time he had sexual intercourse with W. The two had, he said, no relationship as such. Dr Browne recounted E's early background, including E's encounter with W on 15 August 2010, after she had allegedly hit him with a brush. E, by his own admission, said that at that time "he was going to cut [W's] throat" though he claimed he lacked actual intention to do so.

[62] In E's view, as related to Dr Browne, he did not need any help to look after his child. Indeed, he anticipated no problems with his son. He indicated that he did not expect to be in a long term relationship with W. As regards social services concerns in relation to M, he said he did not know what the problem was. Dr Browne pressed him about this. He became very animated and visibly angry. Dr Browne commented that E was trying to present himself in the most favourable light. He saw himself, Dr Browne said, as the victim of others. However, his accounts appeared contradictory at times; at other times he avoided answering. This was a feature which Dr Browne later in his report commented on. Having referred to discrepancies in E's account in respect of a particular matter Dr Browne said: "these discrepancies call into question the reliability and veracity of his accounts". As noted earlier, the court shares these concerns. In Dr Browne's view, assessment of E was more difficult because of a lack of third party information about him. Accordingly, it was not possible to adequately assess E's personality in detail. However, in Dr Browne's view, there was no evidence of psychotic illness; or anxiety or depression; or post-traumatic stress disorder; or learning disability. He did, however, show poor insight into emotions and relationships. There was no evidence that he had been capable of forming and sustaining a mature and mutually respectful relationship

with a partner. In Dr Browne's opinion, it was of importance to assess E's parenting capacity in a practical setting. When asked to comment on the likely risks E may represent to the wellbeing of M, Dr Browne indicated that these related to E's difficulties in understanding his own emotions and relationships and the relationships of others. He was concerned that E had a history of violence and he was also concerned about E's capacity to manage anger appropriately. Dr Browne was of the view that E's attitudes posed substantial difficulties in the way of him being able to work towards achieving a safe environment for M. The prospects for change in respect of E appeared to Dr Browne to be limited.

Whiterock Family Resource Centre

[63] As a result of the foregoing, both W and E attended Whiterock Family Resource Centre ("Whiterock"). Each attended referral meetings before taking part in around six sessions. Following these, Whiterock provided a report on each in May 2012. At this stage the exercise being conducted was less than a comprehensive assessment. Rather it was directed to issues concerning the parents' understanding and awareness about why the child had come into care; the impact of an unstable relationship on a child; awareness of the physical, emotional and social needs of the child and so on. In the case of W the outcome of the Whiterock assessment, unfortunately, was not positive. Many of the sentiments expressed by W to Dr McCartan also found expression in the Whiterock Report *viz* her long history of domestic violence and her desire to break free of her family. Similarly, she referred to her violence directed at E, and to her concern about giving birth to a child in circumstances where she had acted outside cultural norms and let her family down.

[64] The authors of the Whiterock Report noted that W was conflicted by inter-related factors which impacted on her capacity to parent. There was a long list of these. Because of these the assessment process was "very emotionally charged". At times, W had presented, said the authors, as very distressed, so much so that they were concerned for her wellbeing. In order to parent her children, the report indicated that W needed to become emotionally stronger. While there had been an agreement to meet with W again, this did not in fact occur as she would not do so.

[65] The May Whiterock Report practically ended any hope that W would be in a position herself to look after M. However, it is right to record that subsequent to these events, W, sustained at least two breakdowns during which she had to be detained in a mental hospital. In between the two she spent some time in prison for issuing threats of violence. Her contact with M fell off even further so that in fact the last time she had had contact with M was March 2013.

[66] In the case of E, the outcome of the Whiterock assessment was overall more positive. While, as before, he questioned social services' involvement with his child and believed he could parent M, he nonetheless, in the authors' view, demonstrated an awareness of the need to keep M safe and presented as having protective capacity. He also could identify M's need for a strong attachment with a parent or

parents. E, during sessions, described his own practical parenting. The authors accordingly reported that:

> "[E's] concern for the wellbeing of his son in [W's] care was the driving motivation for ignoring social services demands not to reside with [W] and his son".

In the view of the authors, E should be provided with the opportunity to undertake a fuller parenting assessment underpinned with a cultural sensitivity.

[67] In fact further work took place at Whiterock and this led to a second report from this source. In it the authors referred to E having a "very good understanding of his son's developmental needs". Moreover, he had "responded sensitively to his son's needs" at observed contacts. However, it is right to record that the authors had ongoing concerns in "regard to [E's] sense of entitlement regarding the care of his children which [was] so strong it clouds his judgment and ability to be empathetic regarding the attachment of his children to his carers". Nonetheless, the reports taken together offered a measure of assistance to E.

[68] But what they also raised in acute form was whether the prospects of a proposed return of M to his father as a result of a successful further residential parenting assessment would justify the removal of M from his established foster carers so that he could take part in the assessment. This was not an issue posed by or resolved by the Whiterock reports.

[69] At this point it is necessary to consider the evolution of the position of social services in this case. While in the immediate aftermath of their intervention in respect of M there had been hopes that M might later be returned to one or other parents, this hope did not long survive. As early as June 2011 social services were considering the option of permanence away from the parents. This arose, it appears, out of a calculation that neither mother nor father would be able ultimately to care for M. The mother's life was volatile, tangled and confused. Her mood was poor. There were concerns about her stability. At the same time her ability to cope was at a low ebb and she was overwhelmed by the pressure of events on her. At the same time E was not viewed by social workers as a parent who could provide good enough parenting. He appeared to be an isolated figure who had no relevant parenting knowledge and few resources. He was, moreover, unwilling to receive help and indeed was adverse to social workers or others who tried to assist him. His ability to parent without assistance seemed to be a forlorn hope. Meanwhile he appeared to lack empathy and emotional understanding of his child.

[70] In the view of social services, it had proved to be the case that M had settled in well with the Gs, his foster carers, who were performing their role well and appeared to be open to play an even greater role in M's life as a permanent carer. In these circumstances, as M was getting older, social services were of the view increasingly that the best route forward in the interests of M was adoption.

[71] The Whiterock reports in the case of E were a challenge to the views which social services had formed. Their response, however, was not to change course. In their calculations, the disruption to M of removing him to a residential parenting assessment centre to be assessed there with his father was too great to be justified, as there remained post-Whiterock, no guarantee that a residential parenting assessment would in fact be likely to be sufficiently successful to enable M to be cared for by E. In a report of September 2012, the Trust commented that it "had grave reservations in potentially risking the disruption of [M]'s primary attachments to test out further [E]'s parenting capacity through the completion of a residential assessment with limited confidence in its success..".

[72] These issues came before the court in September 2012. The court decided that a residential parenting assessment should take place of father and son together at Thorndale and steps were put in place to enable this to take place.

The Thorndale Assessment

[73] The Thorndale assessment happened in two stages. E moved into Thorndale on 22 October 2012 after various preparations (involving extended contact with M at Thorndale). M went to live with E at Thorndale on 4 December 2012.

[74] Steps were taken, in advance, to try and ensure that the assessment would operate well. A senior manager at Whiterock who had had a significant level of contact with E, and who got on well with him, became a link worker and a female Muslim was recruited to assist in the area of cultural norms.

[75] Unfortunately, on 25 September 2012, an incident occurred at contact which disrupted the preparatory phase. This incident involved a social worker handing over M for contact. This occurred outside the contact centre at North Queen Street. However, instead of E bringing M into the contact centre as expected E went off away from the centre with M in his arms. This caused an immediate panic as it was feared that E was abducting M. Centre staff, social workers, police and one of the carers of M and a member of the public became involved. Eventually E and M were located nearly 200 metres away. A scuffle then took place before M was removed from E. E was arrested. There were then allegations and cross-allegations about what had happened. Contact had to be suspended for a period and later, following further less significant issues, the contact centre management declined to have E at contact at all. This incident is alike to other incidents which had occurred in the past and at least one further substantial incident which took place on 3 January 2014 which is described later. The above incident, moreover, had been the subject of a fact finding hearing before the court. The court held that the facts were as set out above and that E had taken his child in the course of this incident without permission.

[76] Other factors were also at work around this time which had sinister overtones. E complained more than once that he was being threatened by members of W's family. The alleged threats included threats to kill him.

[77] As is not unusual in this case, it also appears around this time that E and W were being reported as being in each other's company. On at least one occasion W was seen coming in and out of E's house.

[78] At one point, arising from the alleged abduction incident, E complained to social services that M's male carer was a "violent man" and that in any event as M was his son social services and the courts should not be making any decisions about him. In fact, later it was E and not the male carer who was convicted of an offence against the other.

[79] The first preliminary stage of the Thorndale assessment broadly went well and it is the period of the main assessment which falls for consideration here. The main assessment ultimately lasted from 4 December 2012 - 28 March 2013 or thereabouts. On this latter date, the court suspended the assessment and ordered the return of M to his foster carer placement. This arose because of a concern among professionals, which the court accepted, that E might be about to remove M out of the country. An employee at Thorndale told the court that M had told him that E and him were going to Dublin to get the aeroplane. But it is clear that even if this issue had not come to court, as it did on an emergency basis, the writing was on the wall for the assessment. Indeed, the guardian ad litem on 27 March 2013 had applied to the court to end the assessment in view of the way in which matters had developed following a professionals meeting on the same date.

[80] All of this was a world away from how the assessment had begun. Back in December – weeks before – it had been felt that the preliminary first stage had gone sufficiently well to enable M's move into the centre to be with his father to be brought forward to enable a start to be made earlier than had originally been planned. E was receiving praise for his degree of co-operation. A placement plan had been agreed with the focus on the overall assessment of E's ability to parent his son. E's ability to implement and sustain routines which best met his son's needs were singled out for attention together with numerous other practical parenting issues. Among the conditions which were agreed was that time out of the centre should be limited to two hours per day and that if E was late returning he should contact staff to advise them of his whereabouts and agree a return time. Moreover, contact with W for M would have to be supervised by staff. There was, therefore, much for E to seek to absorb.

[81] The first 14 weeks appear to have worked reasonably well. Regular meetings occurred between E and key Thorndale staff. A pleasing feature was E's apparent willingness to put into practice the advice and guidance he was receiving. While there remained areas which required further intervention, when an interim report appeared on 18 March 2013, its tone was upbeat. While of course there were many

points of detail which required continuing attention, the positives appeared to out-weigh the negatives. That there were negatives, however, was not in doubt. These included:

- A concern that E began in or around January 2013 to suffer from low mood.

- A concern that both father and son had contracted illnesses.

- A concern that there was a need for a special attachment assessment to be conducted. In fact, Dr Butler, a psychologist, was commissioned to provide such a report in February 2013.

- A concern that on occasions E simply listened to advice and then went on his own way regardless.

- A concern that E was on some days disappearing and staying out of the unit for long periods with M. Such action clearly undermined one of the purposes of the assessment which required father and son to be available to be observed, monitored and assisted in the unit.

- A concern that E was failing to be open about what he was doing and where he was going. He tended not to offer information about his activities, even when he was questioned about them. Such a position did not foster but tended to damage relationships.

[82] While overall assessment outcomes, such as in respect of issues such as meals and bedtime and so on offered promise, there were some significant setbacks from the point of view of the Thorndale team. Among these was a serious incident in February 2013 when E severely disciplined M by taking hold of his right ear and pulling him and then getting hold of both his ears and pulling his head up. This caused a red mark on M's right ear. At one point in response, when E's attention had been drawn by a social worker as to what had occurred, he claimed he had learnt this technique from one of the principal social workers in a previous session, a point needless to say, denied by that social worker when he gave evidence, a denial the court has no hesitation about accepting.

[83] Another issue which also plainly concerned the Thorndale staff related to whether there had been instances of E seeing or being in contact with W. There is evidence to suggest that over the period of the assessment he was doing so. This was despite him being told he was not to do so. As the court has already commented, this is a recurring theme in this case despite E's various denials of him being in contact with W and vice versa.

[84] In its conclusion, the interim report indicated that Thorndale was prepared to recommend an extension to the placement for a short period "to allow an increased

opportunity for E to acquire more advice and guidance". A further 6-8 weeks, it was estimated, would be required. However, no guarantees of success could be offered.

[85] Thorndale's final report on the assessment of E appeared on 8 April 2013. This took the form of an Addendum Report to the Interim Report. By this stage many of the concerns identified earlier had grown in significance.

[86] Notably when E was told of the extension he stated that time had been extended because he had nowhere to live. It had to be explained to him that time was extended to enable a variety of areas of work to be undertaken. These were outlined to him and consisted of:

> "Behaviour management.
>
> Responding to [M's] emotional needs.
>
> Demonstrating ability to engage openly and honestly with all professionals involved with [M] – this will include telling staff where the family is going, with whom, how long for?
>
> Looking at the family support network – [E] to provide details of friends available to support the family."

[87] By the date of the final report the optimism of Thorndale staff had dissipated. It had been replaced by recognition that the objective of the assessment had significantly been harmed by E not being sufficiently open and accessible as to enable E's parenting to be measured. At one point in the report the matter is put bluntly when reference was made to E having "somewhat disengaged from the assessment". This was because of the increasing time E was spending outside Thorndale and his unwillingness, or so it appeared, to be open with Thorndale staff about his activities.

[88] In the final report extensive portions are given over to explaining in detail the chronology of events, with the events of each of the days in the latter phase of the assessment being set out. It is unnecessary to set these out here but it seems clear that E by March was remaining out of Thorndale for long periods and was accordingly not participating in the process – of observation and monitoring - which had been foreseen at the start. While some licence had been given to E staying outside the placement for up to four hours on a Friday – in order to perform religious duties – the record compiled by Thorndale staff demonstrates several days when father and son were out of the placement for long periods with little information as to what they were doing. While there may have been some occasions when an adequate explanation might be available, on other occasions there were not. The net effect, however, was that time spent outside Thorndale was time which could not be used as it should have been for the purpose in hand.

[89] Matters were coming to a head on 27 March 2013 when a professionals meeting was held. At this meeting it was Thorndale staff who indicated that they could not recommend that father and son could move out into the community. Nor did they recommend that continuing with the extension period would be worthwhile as it would offer insufficient time to advance the goal of safe and consistent independent care for M by E. The outcome was explained to E. In the final report's conclusion the summary given largely speaks for itself. At one point the following is stated:

> "[E] had engaged effectively with the recommended area … and it was gravely concerning that [E] appeared to be becoming less open and honest with staff and professionals, and increasingly evasive and in fact almost secretive regarding some issues, his time out, his whereabouts and his movements. The "unknowns" within this case were therefore making it impossible for professionals to safely manage the risks around [M], as it was becoming less clear what the risks in fact were."

The authors shortly afterwards went on:

> "… [E] does have some ability to develop working relationships with professional staff however the sustainability of such developed relationships was short lived and with specific reference to his relationship with Thorndale staff it seems his ability to sustain a working relationship with us expired during the extended period. This perhaps indicates [E] does have a degree of difficulty with motivation/sustainability rather than difficulty in forming relationships."

Simplest of all the authors stated:

> "… [E] dis-engaged thus rendering a position whereby his independent ability could not be assessed."

[90] It is no surprise therefore that the final sentence of the report ruled out further effort to consider E as a full-time parent again. Such was viewed by the authors as futile and inappropriate for M. It is right to record that E has contested the outcome of the Thorndale Assessment. In particular, he argues that it was brought to an end prematurely and that he should have been allowed more time in which to prove himself. However, it is notable that E does not complain about the Thorndale staff at the early stages of the assessment but does so only later when he implies that they were complicit with the Trust in bringing the assessment wrongly to an end. E himself was forced in a statement to indicate that he was "out more towards the end

of the placement" but claims that he was not told that he needed to be in the premises by the staff. The court does not accept that E would have been in any doubt about the need for him to be present, at least substantially, if the assessment was to work. Otherwise there would be little purpose in having the assessment. E's contention that he did not disengage is in stark contrast with the records produced by the Thorndale staff and the court is at a loss to see why those in the Thorndale staff who did so much to work with him should invent a false account of why they in the end had to bring the assessment to a close. E, in effect, impugns the good faith of the decision makers who are members of the Thorndale staff. The court does not accept that the Thorndale staff acted improperly and, while the assessment was ultimately disappointing for E, the court accepts their *bona fides* and accepts the logic of their decision, as they have explained it.

[91] The final report rang the death knell of the Thorndale Assessment. As already noted, M had, as of 28 March 2013, returned to his foster carers. A new phase was beginning.

Events after Thorndale

[92] As recorded earlier, in the context of the Thorndale assessment in February 2013 – just before it came to a close – it was considered by the Trust that there was a need for a specialist attachment assessment in respect of E and M to be completed. Dr Juliet Butler, a Consultant Child and Adolescent Psychiatrist, carried out this task. Dr Butler interviewed E and observed E with M at their flat in Thorndale. She also interviewed two of the key social workers dealing with the case. Her report is undated but must have become available either in late February or March 2013. The report deals in detail with the background and records the views of Dr McCartan and Dr Browne in respect of E, which need not be repeated. Indeed there is a good deal of common ground between the experts. What, however, is described in some detail is Dr Butler's observation of the interaction observed between E and M on 22 February 2013. This description is too detailed to admit a simple summary but Dr Butler's analysis at the end of her report demonstrated on her part a high degree of alarm. In particular, Dr Butler stated that she was deeply concerned at M's presentation. She referred to M as "struggling". His life, to date, was described as characterised by upheaval and violence. M appeared to Dr Butler to be working at "such a high level of physiological arousal". This had been noticed by others, she notes. In trying to find an explanation for it she openly had wondered if at some level M had been depressed since he had moved into Thorndale with E. But in the end her view was that M "is starting to … display his distress and anxiety around all the changes in his life". Dr Butler remarked that M was constantly demanding of all of the adults around him; he screamed rather than spoke; and his voice often sounded like he was going to cry. He often had an open mouth and a tight face. His body was at times completely tense with his fingers splayed wide apart in a posture of absolute anxiety. His respiratory rate increased. He was sweating. He was very unsteady on his feet. His attention span was short and he behaved in a hyper-vigilant way. And all of this on the face of what one might have thought to be a

relatively non-threatening and ordinary situation. In Dr Butler's view, M's functioning at this level of arousal, even for some of his day, would be likely to cause M significant distress. Notably E struggled to know how to manage the situation. In Dr Butler's opinion, M was displaying maladaptive attachment strategies. She put it this way:

> "I think he has experienced significant loss in being removed from the foster carers he was with and the distress and fear that he is going to be moved again is driving him to constantly seek reassurance and care from his father in a completely out of control way. If [E] isn't able to turn this around quickly, then I would be very concerned about [M's] developmental trajectory."

In Dr Butler's view the mix of father and son in this case was a potent one. In her view, E had his own attachment difficulties. He was prone to be overcome with his own anger and held strong views about his own victimisation. He tended to put himself first with M's needs second. At one point Dr Butler commented that "he [E] appears to function by always looking at things from his own perspective and blaming other people if things go wrong". It was Dr Butler's view that E was likely to be a highly traumatised individual. Again this could, she thought, be linked to a maladaptive attachment strategy based on past unresolved trauma which brought with it hyper-vigilance to danger. This led to a concerning comment from Dr Butler:

> "[M] is not going to be able to have the capacity to deal with his father's trauma alongside his own and there is a risk that it will overwhelm him."

While Dr Butler, writing at a time when the Thorndale assessment was on-going, offered views on treatment opportunities for father and son alike (of different types), there can be little doubt that she was worried about the future. In her view the family were too vulnerable to be discharged from Thorndale. But it is obvious reading her report that she viewed M as at risk unless effective action to assist him was taken. In his response to Dr Butler's report E contests her findings about M's condition when she visited them (E and M) in the flat within Thorndale. E suggests that the Trust in advance had taken steps to colour Dr Butler's view of him and that in fact Dr Butler had confused M's excitement as the child being aroused. With these allegations in mind, the court carefully assessed Dr Butler's evidence. The court saw nothing in her evidence or in the way it was given which would cause it to view Dr Butler as other than an accurate and careful professional witness whose evidence could be accepted by the court. The court accepts Dr Butler's evidence.

[93] While Dr Butler's conclusions highlighted her on-going concern, the report did also contain reference to some new allegations on the part of E, which are worth recording for what they reveal about his state of mind. Two, in particular, stand out.

The first reflects on E's view of M's foster carers. An allegation is made by E to Dr Butler that M was imitating the foster carers by simulating a sexual act. E alleged that M had been in the same bedroom as the foster carers when they were having intercourse and that this is how M learnt about it. The second was more of a throwaway line which depicts an antagonism to a new partner of R. The allegation was in support of E's view that the child, A, should be removed from R's care into his care. In support of this he alleged that R's partner had told E that he would rape A.

[94] The court makes clear that it would put no store in the alleged truth of these allegations.

[95] In response to Dr Butler's report, E obtained a report of his own from Melanie Gill, a psychologist. The report is dated 9 August 2013 and appears to be based on an interview with E, observations of a contact between E and M, interviews with M's foster carers and a conversation with one of the social workers employed by the Trust who was dealing with the case.

[96] Ms Gill's assessment of E focused on his history of physical and psychological trauma. He had to adapt, she noted, to the loss of his entire family over a short period of time. He adapted by methods of self-protection characterised by intense emotional response to a very wide range of events. She put it thus:

> "[E's] entire physiological and neurological system is 'primed' to react to danger. In [E's] case threat and danger is generally over predicted to the extent that self-protective action can actually create and even elicit danger to him through angry and aggressive conflict in both personal and professional relationships. Such reactions are motivated by fear."

As Ms Gill put it pithily:

> "E 'displaces' his distress (based on the effects of the past) on to his children in that he projects all of his childhood pain on to them. This causes E sometimes to behave impulsively and recklessly. Ms Gill also acknowledged that M had developed patterns of severe attachment disruption which she relates to M's multiple placements and carers. These, in her view, meant that M needs consistent and permanent stability within all his relationships."

[97] Ms Gill's key conclusions, in the court's view, may be summarised thus:

(i) E does love his child M and wishes desperately to be a good father.

(ii) He idealises his early life with his parents and has a fixed view about what a father should be.

(iii) He believes that only he can look after his child.

(iv) E's perception of a son is affected by his over perception of danger from his traumatic antecedents.

(v) His lack of attachment figures and family care in adolescence means his knowledge of parenting is impoverished.

(vi) His reactive lying derives from his "fight" system.

(vii) While he wants the best for M, he is overwhelmed by chronic feelings of abandonment, rejection, shame and injustice.

(viii) Because of his traumatic background he has far less knowledge of what children need emotionally.

(ix) E has some understanding of M's behaviour and is able to respond, but only at a fairly concrete level.

(x) E does not see the level of unconscious distress that affects M.

(xi) E's understanding of the internal life of his son will require therapeutic intervention.

(xii) E needs to change the way he processes information.

(xiii) The attachment relationship between E and M is essentially insecure.

(xiv) Entry by E into further residential assessment would be highly likely to re-traumatise both E and M.

(xv) Such a re-entry would increase M's likelihood of developing complex post-traumatic stress in the future and contribute to an increase in his risk for psychological ill-health as he develops.

(xvi) E also needs to demonstrate an ability to maintain a safe and stable lifestyle in which M's needs are paramount.

(xvii) M needs to have his levels of anxiety lowered significantly in relation to both his foster care placement and the way contact with his father is handled.

(xviii) M is currently attached to both his father and his carers with the result that loss of contact with any of them will be experienced by him as a significant loss.

[98] Ms Gill's belief was that therapeutic intervention may assist E but that to take advantage of it he would have to be highly motivated. Moreover, she thought that both father and child might be helped by video interactive guidance – an intervention which promotes empathy and builds positive relationships through filming and shared reviewed sessions.

Dr Butler's second report

[99] Dr Butler, at the instigation of the Trust, produced a second report on 22 September 2013. This assessment again was directed at the issues of attachment and relationships, principally between M and E. It is clear that Dr Butler had had access to Ms Gill's report together with updated information about the case. As before, her methodology involved the author meeting with one of the foster carers; with E and with a representative of the Trust. On this occasion Dr Butler observed M at his foster placement. In effect, this second report was in the nature of an addendum to the first report. The major development since the first report was that by the date of the second report the Thorndale assessment was well into the past and M had been back living with his foster carers for some five months or so.

[100] It is recorded in her report by Dr Butler that in April and May 2013 E had missed a substantial number of contacts with M. By this time the venue of contact (which was occurring on a supervised basis twice per week) had changed to Beech Hall. There was evidence that M was distressed before going to contact.

[101] Dr Butler expressed in her September 2013 report some areas of disagreement with Ms Gill's assessment but these do not appear to be major.

[102] At her visit to the foster placement Dr Butler noted in M "a much lower level of arousal" as against when she last saw him at Thorndale. Once the ice had been broken, M was quite relaxed and played well.

[103] The foster carer indicated to Dr Butler that after M had returned to the placement, following the end of the Thorndale assessment, M was "all over the place" and it was distressing for her to see him in this state. At this time he was often very stressed. His sleep was disturbed and while he got off to sleep he woke and would kneel in the cot banging his head off the mattress. This behaviour had, however, decreased in frequency with time.

[104] When Dr Butler spoke with E she felt that not a great deal had changed. He remained of the view that his parenting had been good and that there was no basis for M being away from him. He denigrated the foster carers for the level of care afforded to M and he also criticised R and her partner for the way they parented A,

whose custody he continued to seek. Those, whose versions of events he disagreed with, were liars and racists.

[105] When Dr Butler talked with the Trust's social worker she was told W had not been having contact with M for some months and that E had to confirm in advance if he was coming to contact with M.

[106] Dr Butler was of the view that E's behaviour at Thorndale had displayed an inability to place his son's physical and emotional needs above his own. Behaviour such as staying out of the unit all day and being vague and untruthful about his whereabouts, in her view, were "more likely a realistic picture of how [E] would intend to parent his son". In view of E's history of violence in intimate relationships and aggression with his son, she felt there was clear evidence of the level of risk M was exposed to in the case of his father. Dr Butler did not agree with Ms Gill's view that M showed a high level of compulsion in his interactions with the carers. On the contrary, when she visited the carer's home M was relaxed and she did not witness the physical stress described by Ms Gill, though she accepted that M would remain anxious in the placement as there was no sense of permanence. In the placement, she felt M's attachment strategies were within normal limits. Another area of disagreement with Ms Gill related to whether there existed a warm and loving relationship between father and son. Dr Butler thought not. In her view, based chiefly on what she had personally observed in February 2013, M was distressed when with his father.

[107] In Dr Butler's view, E's sense of self was extremely fragile so that "unless he feels that he is being reinforced in his functioning… he becomes angry and lashes out at the person he feels is attacking him". Overall she felt that the episodes which occurred during periods of his father's care or contact, while small in themselves, "maintain [M] in a fearful state around his father". Consequently Dr Butler was very concerned that "on-going contact is maintaining [M's] levels of post-traumatic stress and his need to hold on to distorted attachment strategies".

[108] As regards E, in Dr Butler's view, he remained completely pre-occupied with blame which drove him constantly to denigrate the care M received from the foster carers. In her view, E's need to constantly be in conflict with the foster carers itself was a risk to M as it was damaging to M's emotional development.

[109] Dr Butler's summary reads:

> "… I think that M is continuing to display disordered attachment development. He is far less hyper-aroused and hyper-vigilant with the care of [his foster carers] who are helping him to gain a sense of security again.

> …. In my opinion the distorted attachment is being maintained by his on-going contact with his father… [E] at times shows some positive interaction but then he can quickly become threatening.
>
> …. I believe there is a significant risk that there has been physical abuse but there has undoubtedly been significant emotional abuse within that relationship."

[110] Dr Butler also concluded that M was displaying symptoms of post-traumatic disorder. As regards the position of W, Dr Butler did not think M had a significant sense of relationship with her. Rather he would now see his foster mother as his female carer.

[111] As E lacked insight and understanding into the concerns held about his parenting, Dr Butler did not agree with recommendations for on-going work for him. In her view he had no capacity to think about the necessity for change. Looking back, the level of his engagement at Thorndale was superficial, according to Dr Butler.

[112] The final conclusions of the report contained a strong message. The main conclusions were:

(i) "The risk to M if he is returned to his father's care is that he will develop significantly distorted attachment development. He is … going to experience emotional abuse and be at risk of physical abuse. He will go on to develop significant mental health problems as well as be at risk of him developing violent behaviour himself."

(ii) "[M] needs to be given a sense of permanence which would hopefully involve him being adopted by [his foster carers]".

(iii) "… Any further assessment or work with M and his father at this time will be abusive".

The outcome of the experts meetings

[113] Given the volume of expert assessments which had been assembled in this case, the guardian ad litem convened a meeting of experts to discuss them. This took place on 15 October 2013.

[114] It is not necessary for the court to describe the generality of the discussion but some notable points did come out of it. The meeting was attended by Dr McCartan, Dr Butler and Ms Gill and the object was to discuss the relationship between E and M and the recommendations the experts might jointly make.

[115] While the experts did not always agree on every point there was a high level of agreement on some, at least, of the fundamentals. For example, there appeared to be general agreement about the quality of the care plan before the court. In particular both Dr Butler and Ms Gill were agreed about the risk of damage to M's attachment relationship which his father represented. Both agreed that to place M with his father would create and court a high level of risk. As Ms Gill put it: "They would quickly re-traumatise each other." Dr Butler and Ms Gill were also in agreement about the strengths of the foster carers.

[116] When the chairperson put the question "which placement option … would best meet [M's] needs?" the responses were:

> "Dr Butler - Well, I would say if it's possible for him to be adopted by his current carers … that would be the best option for him in the long term.
>
> Ms Gill - And I agree."

There also was no disagreement when Dr Butler commented that "I think [M] needs permanency and a sense of safety so it needs to happen quickly".

[117] Finally, in the latter exchange all of the experts were agreed that M should not be placed with his father.

The incident at Beech Hall

[118] These proceedings, as has been noted earlier, began on 21 October 2013. After several days of hearing time there was an adjournment to a date in January 2014. However, before the hearing could resume a serious incident involving E and M occurred on 3 January 2014.

[119] As has already been noted there had been arrangements in place for some time for E to have contact with his son. However, because of a variety of incidents in the past, the venue for contact had, more than once, to be changed. By Christmas 2013 contact was taking place at Beech Hall Wellbeing Centre. This was located on the Andersonstown Road in West Belfast. In order to ensure that M was not needlessly brought for contact, E was required that Christmas to present himself to the centre 30 minutes prior to the contact session starting. Once he had registered his presence, steps were taken then to bring M to the centre. Unfortunately, over the Christmas period contact did not operate smoothly. E did not appear for the contact session which was to have taken place on 24 December 2013. He offered no explanation for his non-appearance. On the next due date of contact – 27 December 2013 – contact was cancelled at 11:10 am as E had not arrived by the agreed time by which he was to have arrived – 09:30 hours. When he did arrive, E demanded that M be brought to him and said he would remain at the centre for 24 hours. A stand-off then ensued for a period. The next date of contact was 31 December 2013. Again

E was to have arrived by 09:30 hours to allow sufficient time for staff to collect and transport M to the centre. E did not arrive until 09:50 hours. When he did arrive he just sat down briefly and then left. He returned again at 10:10 hours. Contact did not occur again that day.

[120] A similar pattern arose on 3 January 2014. By 09:50 hours he had not yet arrived but following a discussion between one of the social workers and E's solicitor it was agreed that staff would collect M for contact. Staff went to do this at around 10:00 hours. At about 10:15 hours, E arrived at the contact centre in an agitated state. An argument ensued between E and a social worker at the reception. He called her a bastard and a devil. She told him his son had just arrived. He then snatched documents out of the social worker's hands, throwing the documents away. At this point a call to police was made by other staff. E ran off towards the underground car park. Shortly afterwards he was seen carrying M in the hallway attempting to leave the building. M was distressed and crying. The social worker, who had brought M to the building, was appealing to E to put M down and was trying to calm E, but E pushed her against the wall calling her "a bastard, devil woman". By this stage E and the child were outside and staff followed. E and M reached the main road and then began to walk down it. At one point, E went to cross the busy road but realised it was too dangerous a manoeuvre to undertake. M was crying and saying that he needed to go to the toilet. One of the social workers indicated to E that M could go to the bathroom in the contact centre. Notwithstanding the risk involved, E ran out into the road with M in his arms. E then went into a nearby shopping centre. Social workers were able at this stage to obtain the assistance of security officers at the shopping centre. The police again were called. More security staff also arrived. There then began an attack by E aimed at the security guards. E kicked and punched out. The security guards told E to stop or they would restrain him but E refused to do so. In the end, the security guards sought to restrain E. Once E was pre-occupied by the security guards, a social worker was able to lift M off him. By this stage a member of the public had also become involved. In the course of the struggle, between the others and E, two eight/nine inch knives were found concealed down his trouser band. Once police arrived they handcuffed and arrested E.

[121] Later that day E was interviewed and charged with a range of offences. He was taken to court on the following day and remanded in custody. He was later refused High Court bail.

[122] It is difficult to see how the Beech Hall incident can do other than underline E's disregard for M's welfare over a prolonged period. Certainly, the incident shows little or no consciousness on E's part of the risks to which his actions placed M. The presence of offensive weapons in what was to have been a contact between father and child is also of great concern, especially given E's past expressed hostility to social workers. It is also of interest to note that E had behaved in this sort of way on a number of occasions – walking off with the child without any regard to the duties and responsibilities of others. The court believes that this type of incident very likely

arose out of a belief on E's part that he could do as he pleased with his child and that others had no standing in the matter.

[123] In the aftermath of the above incident there was concern about E's mental state and it was suggested by his counsel in these proceedings that before the case could resume it would be necessary for a further psychiatric report on him to be obtained dealing, *inter alia*, with the question of his capacity to participate further in the proceedings.

[124] Dr Maria O'Kane, a Consultant Psychiatrist, reported to the court on E's up-to-date position, on 19 February 2014.

Dr O'Kane's Report

[125] Dr O'Kane saw E from prison on 27 December and 7 February 2014 by video-link.

[126] Dr O'Kane had for her study been supplied with the numerous previous reports which had already been prepared for this case. It is unnecessary to address those previous reports at this time as their contents have largely been summarised hitherto. Equally, it is unnecessary to go through E's personal history and background. Dr O'Kane does provide a narrative in respect of E's viewpoint on the incident at the shopping centre. It is of interest that E:

- Denied leaving the centre with M.
- Said that a particular social worker had in her mind creating trouble for him.
- Claimed he was just taking M to the toilet in the shopping centre.
- Alleged that someone had planted a knife on him.

[127] Dr O'Kane found E, on mental state examination, to be excitable and tearful. He said his sleep was disrupted. His children were on his mind constantly. He denied any self-harm or suicidal ideation.

[128] In Dr O'Kane's view E was mentally well. She thought he had a learning disability. His description of what had occurred during the incident could be construed, she felt, as implausible. She further felt that E had a restricted sense of his own past. Dr O'Kane identified themes which had already appeared in other reports about E: his detachment from himself; the fear and threat he lived under; his lack of empathy for both his child-self and his children. She referred to him loving his children but not understanding their needs.

[129] In Dr O'Kane's view E could participate at the Family Court hearing and could stand trial in respect of the offences he faced. In her view E needed to learn about fatherhood before he could continue his relationship with his son.

[130] Dr O'Kane went on to say that E appeared to suffer from a number of personality disorders, namely paranoid, emotionally unstable and dis-social personality disorders. She thought he was "effectively orphaned at 13" and as a result never stood much of a chance of developing into a mature reflective parent. He manifested difficulties in managing his emotions, inter-personal relationships, cognitions and impulsivity. In the domains of his paranoid personality, he was sensitive to criticisms of others and their observation; bore grudges; constantly felt attacked by others and had a combative sense of his own rights. In the context of anti-social personality disorder, Dr O'Kane felt he demonstrated a callous unconcern for others' feelings; a lack of sense of responsibility for social norms; an incapacity to maintain enduring relationships, though having no difficulty establishing them; a low tolerance for frustration and a low threshold for discharge of aggression, including violence. Further, Dr O'Kane indicated he demonstrated a marked propensity to blame others and to offer plausible rationalisations for behaviours.

[131] Dr O'Kane thought he suffered from a borderline learning difficulty with a tendency to respond in a very concrete fashion to questions he was asked. He tended also to become aroused quickly and to go off at a tangent to complain about what he saw as unfair treatment by others. Dr O'Kane's conclusion was stark:

> "I do not believe that the relationship between [E] and his son can be salvaged while [M] is a child, without on-going chaos, disappointment, aggression and potential developmental damage."

[132] While E might avail of long term support and even treatment eventually for his personality disorders – although the presence of paranoid features made him particularly difficult to treat – it would take 3-5 years to effect change and in the meantime current behaviours would continue.

[133] Dr O'Kane's report, recent though it was, turned out not quite to be the last of the professional reports compiled for the court in this case.

[134] Dr Butler provided a third report for the court which is dated 29 March 2014. This report was about M. When Dr Butler met with the carers they reported that M was doing well. He was still rocking at night in his sleep and suffers from occasional night terrors. M at this stage was attending nursery. (He later went to primary school in September 2014). In Dr Butler's view M remained a traumatised child and continued to live under physical and emotional stress. Dr Butler described the standard of care M received from his foster carers' as "absolutely superior level".

The further progress of the case

[135] As matters turned out, E remained in prison until early September 2014. He was convicted of the following offences in June 2014:

(i) Removal of a child in care from the responsible person.

(ii) Assault of a man S McG.

(iii) Disorderly behaviour.

(iv) Having in his possession two kitchen knives.

(v) Making a threat to kill S McG.

(vi) Unlawfully assaulting RR (a social worker).

The account of what occurred set out above is based principally on the police file in respect of what had occurred. What the criminal court found had occurred bears little relationship to what E had told Dr O'Kane about the incident and indeed what he told this court. It is notable that to this day E maintains, for example, that the knives found on his person had been planted on him by someone present at the scene.

E was sentenced in all to a term of 16 months' imprisonment. He was also sentenced to a period of 10 weeks' imprisonment (concurrent with the other terms) in respect of an offence of issuing threats to kill against M's male foster carer at an earlier date.

[136] When he was released on 3 September 2014 he was detained by the United Kingdom immigration authorities and taken to a detention centre in Great Britain. He remained there until he obtained immigration bail on 16 September 2014.

The position of the parties

E

[137] At all times throughout these proceedings E has been opposed to all forms of intervention by the Trust. He has presented himself throughout as a sole carer for M. He does not favour W having care of the child. E believes he is the victim of racism; that the Trust has a closed mind in his case; and that the Trust wishes to deprive M of his heritage, culture and identity. In his view, social services have an idealised view of M's foster carers. In one of his statements he puts the matter in this way: "I am a Muslim and he is a Muslim. I am a Palestinian and he is a Palestinian. I do not accept that the Trust even accepts these simple facts". E's view, in short, is

that the Trust has been hostile to him throughout and is responsible for M being removed from him.

W

[138] At least by the end of the Care and Freeing proceedings, W's position has been that she would wish to be the sole carer for M. However, if she is not viewed as able to perform this role, W is of the view that E should be the sole carer for M.

The Trust

[139] The Trust is clear in arguing that on the facts of this case neither E nor W is capable of caring for M for the foreseeable future. In these circumstances, the Trust argues that the best outcome for M is permanency away from his parents. The Trust's permanent preferred option is adoption of M by his existing foster carers, who are willing to become adopters. It is in order to secure this option that in March 2014 the Trust sought a Freeing Order.

The Guardian ad Litem

[140] The Guardian ad Litem has been involved in this case over a prolonged period and has prepared several reports for the court. Ultimately, her view at the final hearing of this case was clear and reflected the importance for M of permanence. In the Guardian ad Litem's view, neither parent possesses the necessary capacity to look after M. The Guardian ad Litem does not support rehabilitation of M to either parent which she believes is contra-indicated by the voluminous evidence before the court. In these circumstances the Guardian ad Litem supports the Trust's plan for adoption by the current foster carers. The Guardian did not favour other than indirect contact for either parent.

Kinship Care

[141] The court does not have any available option of kinship care before it in this case. There are no kinship carers who have been identified either on W's side of the family or E's side of the family.

The Child's Welfare

[142] In this case it is plain that M is too young to be able to express a view about his own future. However, the court is of the view that M has been through a very difficult upbringing to date. The relationship between W and E has been a turbulent one and the court is of the view that M will have sustained emotional harm, at least, by reason of the volatility of the initial period between May-September 2010 when M was living with his parents. During that period there were incidents of domestic violence which in the court's view must have been likely to scar M emotionally. The reports which have been compiled on M, especially the series of reports by Dr

Butler, depict a child who has in recent times suffered greatly from the effects of change and instability in his placement. In particular, the move by M from his foster placement to Thorndale has undoubtedly damaged his progress and upset his equilibrium in a significant way. The child when seen by Dr Butler in Thorndale was afflicted with a disturbed presentation. Dr Butler's description of M's high level of arousal, distress and anxiety points clearly in the direction of M having suffered the loss of his foster carers while at the same time being placed in circumstances of uncertainty and in a position of confusion as to how to cope with the parenting his father was giving him. Dr Butler, at some length, has explained her view about E's own difficulties, which the court sees no reason not to accept, as they were accepted by several other of the expert witnesses as well. The ingredients in the situation at Thorndale were therefore negative for M and needed urgently to be altered. In effect, M was being emotionally traumatised during his time at Thorndale Residential Parenting Assessment Centre and this had to be brought to an end. As Ms Gill later commented after Thorndale had ended, any return there for M and E would only be likely to cause M significant damage and stress together with risk to M's psychological health. Even after M returned to the foster carers post-Thorndale, it seems clear that M evidenced on-going, albeit lower level, disturbance when visited by Dr Butler in comparison to her visit when she had seen M at Thorndale. However, M's behaviour was improving.

[143] It seems to the court that M's physical and emotional needs are probably best met by his current foster carers and not with either parent. A return to either parent's care would be likely, the court thinks, only to have a negative effect on him. In this regard the court accepts the wealth of expert evidence in this case which supports the conclusion that neither parent could, at this time, provide good enough parenting and nor is there any available sort of therapeutic or other intervention which would be likely to, if undertaken by one or other of the parents, within a reasonable time enable the parent or parents to carry out adequate parenting. The court is inclined to the opinion that there is little basis for believing that interventions with either of the parents would be likely to be successful within any reasonable timetable for the child. It seems to the court that this is an unusual case where the best interests of the child would not be served by direct contact with either parent at this time because of the detrimental effect which contact would be likely to have on the child. It is difficult to avoid the conclusion that what M needs is a period of quiet and stability away from the turbulence of his past in which he can enjoy a settled existence. While the loss of direct contact with either parent is to be viewed as a negative – especially in view of the cultural distinctiveness which each epitomises – on the evidence before the court the damage which may result to M is simply too great to justify the keeping up of contact by direct means. There are in this case significant risks of harm for M which arise at this time and this must be viewed as an important factor in arriving at a picture of M's welfare. Unfortunately, this is not a case where it can on the evidence be asserted that either parent is in a position to look after M. W has for long been labouring under significant mental difficulties. She has been unable to look after most of her other children. She has experienced the problems of being beset by alcohol and/or drugs. She is, in short, a

person who is unable to cope with the responsibility of looking after a small child. She has played a very limited role in this case and has offered no convincing case that in any way she could now parent M. E has, in contrast, sought to advance himself as the carer of M but the court considers that there is now a mountain of expert evidence which strongly supports the proposition that E is unable, because of his background, upbringing and psychological makeup to be the carer of M. Of the experts who attended the experts meeting, all were agreed that E would not be able to look after M to the requisite standard. Dr O'Kane, Consultant Psychiatrist, a little time later was of the same view. The staff working at Thorndale ultimately were also of the same view, notwithstanding that initially they had been willing to work with E and try their best to promote his success. In the end, however, the Thorndale Residential Parenting Assessment collapsed, as earlier described. It did not collapse from a want of trying. Rather it collapsed because E's personality and upbringing doomed it to failure, as the experts in one form or another have all diagnosed. It cannot, moreover, be resurrected and this course is not supported by any of the expert witnesses. Fortunately, there are others who, in the court's estimation should be able to meet M's needs and these persons are the foster carers. They looked after M in the period October 2010-December 2012 and in the period end of March 2013-to date. The reports the court has received in respect of the standard of care which has been afforded to M by them are uniformly good. The court has no reason to doubt them, notwithstanding E's regularly made criticisms of them. The court does not find any of the criticisms of the foster carers made by E to be accurate. On examination, E has engaged in hypercriticism and sometimes criticism for the sake of it. The evidence now available from expert witnesses as to E's makeup demonstrates that it is part of E's personality to attack those he sees as standing in his way – as in all probability he sees the foster carers as standing in his way in the context of the parenting of M.

[144] For all of the above reasons, the court has no difficulty in concluding in this case the following:

(i) That M's welfare will best be served by him not being returned to the care of either parent.

(ii) That M's welfare will be served by permanence away from the parents.

(iii) That M's welfare will be served by him being continued to be placed with his current foster carers.

[145] The court therefore is of the view that the Care Plan which has been advanced by the Trust in this case is a suitable and appropriate one in the circumstances.

[146] In view of the above, this is a case where the court considers it should make an order rather than make no order. The court is of the opinion that this is not a case where a Supervision Order would have attraction for the reasons already offered. In the court's view the response required is that of a Care Order and a Care Order

should be made with a plan for permanence away from the parents. The current carers appear to the court to be the best option available at this time. The court also supports the view that in this case where there ought to be no direct contact between either parent and M as contact with either of them on a direct basis would be likely to be contrary to M's best interests at this time.

The Freeing Issue

[147] The final issues which the court is required to consider in this case is the Freeing Issue. As has already been alluded to earlier in this judgment, the court must first look at the terms of Article 9 of the Adoption Order 1987 in order to arrive at a view about whether, having regard to all of the circumstances, M's welfare would be best served by adoption. In considering this issue the court will have regard to M's best interests throughout his childhood and the importance of providing him with a stable and harmonious home.

[148] In respect of the welfare issue, the court finds itself persuaded to the view that this is a case in which adoption would be in M's best interest, essentially for the reasons which have already been discussed in the last section of this judgment. It is difficult to see how any other option in this case would be likely to have the same attraction as adoption. As the parents, and each of them, are not viewed by the court as potential carers for M, and in the absence of appropriate kinship carers, which is the position in this case, the options appear to be either a long-term fostering arrangement for M or adoption. The court has considered both of these options consistently with its duty to consider all the options. However, in the court's view, the single most important factor is the need to create stability and permanence for a child who badly needs them. M requires to know for now and into the foreseeable future where is going to live and who is going to look after him. He requires a settled outlook and carers he can put long-term confidence in. Areas of uncertainty need, so far as they can, to be eradicated. He must not be left haunted by the volatility of recent years and he needs to have as much confidence as he can that his current existence is not going to suddenly end or be the subject of chopping and changing. It seems to the court that the best way to secure these goals will be the option of adoption, preferably with his existing carers. Without hesitation and again in line with the evidence of all the experts who attended the experts meeting, as well as the Guardian ad Litem and the Trust, the court holds that M's best interests and welfare throughout his childhood lie with adoption as the way to take his care forward and to advance his upbringing. It is the court's belief that long term foster care, even with M's current carers, would be unlikely best to secure M's interests.

[149] The above conclusion, however, does not mean that the court should necessarily make a Freeing Order. The court must consider also whether it should dispense with the consent of each parent. A parent is entitled not to consent to an adoption and that is the situation in this case. In these circumstances the court may

only override each parent's consent if it determines that the parent is withholding his or her consent unreasonably.

[150] The concept of unreasonableness in this area has been the subject of extensive discussion in this jurisdiction. In Re W (An Infant) [1971] 2 AER 49 Lord Hailsham, when considering the test of unreasonableness, said:

> "The test is reasonableness and nothing else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness and reasonableness in the context of the totality of the circumstances. But although welfare *per se* is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if and to the extent that a reasonable parent must take it into account. It is decisive in those cases where a reasonable parent must so regard it."

[151] In Northern Ireland Gillen J (as he then was) in the case of In Re C (Freeing for Adoption Contact) [2002] NI Fam 1 expanded on the appropriate test in this context. He stated:

> "In Re C (A Minor) (Adoption: Parental Agreement: Contact) [1993] 2 FLR 260 the court suggested that the test may be approached by the judge asking himself whether, having regard to the evidence in 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."

[152] In this jurisdiction Morgan LCJ recently considered the matter in the case of TM and RM (Freeing Order) [2010] NI Fam 23. At paragraph [6] he noted that the leading authorities on the test the court should apply are Re W (An Infant), Re C (A Minor) and Down and Lisburn Trust v H and R [2006] UKHL 36 which expressly approved the test proposed by Lord Steyn and Lord Hoffmann in Re C, which he then set out as follows (omitting citations):

> "… making the freeing order, the judge has 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 four.

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 and 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 Re D (Adoption: Parents' Consent) ("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 Re W (An Infant):

> '… two reasonable parents can perfectly well 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."

The Convention

[153] Increasingly the importance of Article 8 of the European Convention on Human Rights ("the Convention") has been recognised by domestic courts in the context of adoption. Article 8, *inter alia*, confers a right to respect for family life and this is engaged in adoption applications both from the perspective of the parent and the child.

[154] In the Down and Lisburn Trust case *supra* which went from the House of Lords to Europe and is reported in the latter forum as R and H v United Kingdom [2012] 54 EHRR 2, a number of important statements were made by the Strasbourg court in the course of its decision. For example, at paragraph 81 it was stated that:

> "Measures which deprive biological parents of their 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".

[155] Recently the Supreme Court has had the opportunity to consider the requirements of the Convention in the case of a stranger adoption in the case of Re B (A Child) [2013] UKSC 33. Of particular importance is what the court had to say about when such an adoption will be proportionate for the purpose of justifying interference with the Article 8 rights involved. Such interference in general had to be necessary (my emphasis) to satisfy Article 8. At paragraph [34] Lord Wilson 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. Lord Kerr chose the language of the need for there to be a high degree of justification before an adoption order could be made (see paragraph [130]), whereas Lord Clarke said that only in the case of necessity would an adoption order be proportionate (see paragraph [135]). Finally, Lady Hale's view, like that of Lord Neuberger, was that an adoption order should only be made where nothing else will do (see paragraph [198]).

[156] In this case the court believes that the realistic options available to it are limited. The court does not believe that M will be able to be cared for by either parent either now or into the foreseeable future. In reaching this conclusion it bases itself on the accumulated evidence of expert witnesses and others which has been set out above. The court has no kinship care option available to it. It believes that permanence and stability are the key elements which need to be secured for M both in the short, medium and long terms. It has already set out its reasons for preferring adoption to long term foster care. In short, the court, while acknowledging the importance of the bond between child and parent and the cultural issues which arise in this case, considers that this is a case in which adoption is necessary and is a case

where nothing else will do. In these circumstances adoption of M would, in the court's view, pass the test of proportionality under Article 8 of the Convention.

[157] Nonetheless the court must ask itself would a parent be acting unreasonably in the way in which that term has been described in the authorities referred to above if he or she refused to consent to adoption in this case? In the court's view the answer to that question is yes. In this case the advantages of adoption for the welfare of M so clearly outweigh the disadvantages that the court is of the view that no reasonable parent concerned about their child and facing up to the objective evidence in this case could reasonably conclude that a course other than that of adoption should be taken.

[158] The court will therefore accede to the Trust's application to dispense with the consent of each of the parents and will make a Freeing Order.

Conclusion

[159] In the course of these proceedings there have from time to time been allegations made by E that the attitude of the Trust and its social workers to him has been built on racism and that as a result of the colour of his skin or his nationality he has been treated less favourably than others would be treated. The court can readily enough appreciate that he may see his treatment in that way. However the court has been alert for any sign that this, viewed objectively, may be so. The court wishes to indicate, before leaving this case, that it rejects any allegations along these lines. For its part, the court has not detected any manifestations of a racist or a discriminatory approach on the part on Trust employees. Nor does it detect any such approach on the part of other professionals involved in the case, including the Guardian ad Litem, those who worked at Thorndale and expert witnesses. The orders made by the court, moreover, should be seen for what they are: an attempt by the court, having sought to assess the evidence objectively, to achieve for the future what is in the best interests of M.