

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

Delivered: 17/11/04

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF J, T AND C (CARE ORDERS: CONCURRENT
CRIMINAL AND FAMILY PROCEEDINGS: BURDEN OF PROOF)

GILLEN J

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

[2] There is before the court three applications by Health and Social Services Trust which I do not propose to identify ("the Trust") seeking care orders under Article 50 of the Children (NI) Order 1995 ("the 1995 Order") in relation to three children whom I shall identify as J aged 13, T aged 9, and C aged 7.

Background

[3] The mother of these three children shall be identified as D. The father of T and C shall be identified as A. They have both been represented in this case and have participated fully in opposing the application. R is the father of J and although he was made aware of these proceedings has taken no part in them. D and R were the respective mother and father of a number of other children namely S who is now 21 years of age, A1 who is now 19 years of age, W who sadly died in 2003, and S1 aged 18.

[4] The following are some of the salient background factual matters in this case:

(i) Social services had been involved with family relationships from as far back as 1998. D had contacted social services following her separation from R advising of behavioural and medical problems with W. At that time she attributed A1's poor school attendance to him being bullied at school. In August 1998 she again contacted social services advising that two of her children had moved to reside with R. However by December 1998 the children were residing with D and her new partner A. In February 1999 social services were informed that A1 had not returned home from school but had gone to his father's house. At that stage D had told A1 that if he went to his father's house he was not to come back and had expressed annoyance that A1 had alleged that A was hitting him. D advised that A1 had a very vivid imagination and that for many years had told some very convincing stories. She attributed A1's allegations regarding A being physically abusive to his desire to reside with his father. On 10 March 1999 the Trust received information from R that A1 and W had been residing with him. By April 1999 S was residing with his maternal grandmother Mrs B. D said that S had moved out as he found it easier to study there. D again expressed concern that A1 was alleging that A had hit him. In April 1999 social services received an anonymous referral expressing concern about the children being beaten by A on an ongoing basis. A home start volunteer was involved with the family at that time and A was reported to be resistant to support from social services. On 16 April 1999 a social worker received a further anonymous call again alleging mistreatment by A.

(ii) Social services then investigated the allegations. Initially S stated that A had hit him but was not prepared to elaborate and was not prepared to speak to the police. He then left the family home and was residing with his maternal grandparents Mr and Mrs B. He stated he had left home due to beatings. D alleged that S had been observed by D and A masturbating and was embarrassed about this, hence leaving home. By November 1999 social service records indicated that A1 and S were residing with their maternal grandparents. Social services were exploring the possibility of A1's father caring for him. A maternal uncle NB was also being considered as a carer for A1. D had advised that A had left home because he had been smoking and had been verbally reprimanded for this. D stated that A1 had told his grandparents that he would not be returning home because his stepfather A had hit him for eating too much cheese. D denied that A had hit A1 but felt that A1's behaviour was beyond their control.

(iii) On 9 November 1999 A1 reported to a social worker that A had hit him on the face approximately three weeks previously as A had accused him of eating too much cheese and stealing biscuits. A1 admitted that he had sold his dinner tickets to buy cigarettes. A1 was adamant that he was not

returning home and asked if he could go to a foster home or alternatively stay with his maternal uncle NB. In a discussion on 10 November 1999 with NB he alleged that three months previously W had a black eye and he believed that A had hit him causing the injury. D said the injury was sustained as a result of W falling. NB alleged that W had told his aunt that A had caused the injury. On 10 November 1999 A1 had a further discussion with social workers and alleged that W told him that A had punched on the arm and that he had subsequently fallen hitting his eye on the corner of a table. A1 referred to another incident, which he believed occurred approximately three years previously, when A hit J with a rubber pipe.

(iv) On 11 November 1999 D was advised that NB was prepared to make a complaint regarding A being physically abusive towards the children. D was requesting reassurance that the children would not be removed from her care due to A hitting them. D alleged that A1 had told S1 in school that "he had to say that A was hitting him".

(v) On 12 November 1999 A1 stated that A had hit him, slapped him across the face and arms and grabbed him by the throat. A1 stated his mother and siblings would be present when A hit him. He thought he had been hit about seven times in the previous three week period. He recalled an incident when A had hit S with a stick on the back of the legs approximately three weeks previously. S had left the family home a number of months previously.

It is clear however that A1 subsequently withdrew these allegations as did S.

(vi) The next referral to social services appears to be recorded for 14 February 2002 when D had advised that she was finding it difficult to cope with W's behaviour, specifically it being noted that W was stealing from other family members and on two occasions within the school setting also. D reported that she had brought W to a psychologist in the South of Ireland arranging the appointment privately. Support was offered to the family. In May 2002 D contacted the police regarding W's stealing. On 13 May 2002 W was reported as having run away from home. A attributed this to W stealing money and his mother advising that they would be contacting the police. On 20 November 2002 W and J were reported missing to the police. W stated that he ran away because he wanted to live with his father.

(vii) On 20 January 2003 a referral was received from an education welfare officer expressing concern about the sexual and violent content of an essay W had written in school.

(viii) On 15 April 2003 R contacted social services requesting arrangements to be made for W to be transferred to his mother's home as R had no room for

him to stay. D at that time advised social workers that this was the third time W had run away from home for no apparent reason.

(ix) On 3 May 2003 W died in tragic circumstances when apparently he shot himself. He was 14 at the time.

(x) On 27 May 2003 S made allegations to social services that while he lived at home with D and A:

(a) He was continually beaten with a belt and a rubber hose pipe by A.

(b) A was a violent man who would also have been aggressive to his brothers.

(c) A, S, S1, J, T and C were not being properly fed.

(d) That his mother D was complicit in the abusive behaviour of A. S then made a statement to the police.

(xi) On 27 May 2003 R contacted the PSNI and stated that he was concerned about his son A1 who had alleged:

(a) That he had been beaten by A and his brother would have been beaten as well.

(b) That he would have been beaten with a belt and rubber hose pipe and would have been hit around the face by A.

(c) That three weeks before W's death, A punched W on the head and he fell to the ground. He then proceeded to kick W while he lay on the ground.

A1 then also made a statement to the police.

(xii) On 3 June 2003 S1 and J were interviewed by the Care Unit and social services staff separately but no complaints were made. On this date S1 and J were placed with their maternal aunt and her partner ("N and C"). It is worthy of note that these children have remained there to this date and neither of them has ever asked to return home.

(xiii) A strategy meeting of 30 May 2003 held by the Trust following the suicide of W on 3 May 2003 and the further referral of 27 May 2003 following the allegations made by S. A decision was taken to intervene to safeguard the four children remaining in the household with D and A namely, S1, J, T and C.

(xiv) On 3 June 2003 J and S1 were interviewed at school. J denied that A had ever hit him. S1 denied that A had ever hit any of them. Both of them indicated they did not know why their brothers were running away from home from time to time and S1 kept saying that other people were telling lies about A. A decision was then taken by the Trust to remove J and S1 from the home.

(xv) On 4 June 2003 a social worker Ms McA interviewed T and C in their home as part of a child protection investigation. At that interview T, whilst acknowledging that his mother and father at times became angry with him and shouted at him, denied that his father had ever hit him. Shortly thereafter C was interviewed with a social worker, her maternal aunt and T present. An extract from this interview is revealing as recorded by the social worker:

“I asked C why would/did daddy shout the most and she said that he gets angry the most. I asked C what happens when daddy gets angry and she said that he hits me with a belt. I asked C where does daddy hit you with the belt and she said the back and the bum. I asked C if daddy hits her with anything else and she said yes, his hand. I asked her where and she said the back and her bum. At this point T interrupted C and said ‘he doesn’t, he doesn’t, daddy doesn’t hit us’. C stared and frowned at T and said ‘he does hit me with the belt T and his hand’. T said ‘he doesn’t,’ he shook his head. I asked C who does daddy hit with the belt and his hand and she said me and T. I asked C what do you do? She said I cry. I said what else does daddy do? C said he sends us to our room. I asked C who does daddy send to the room, she said me and T. I asked C have you seen daddy hit T and she said yes. I asked her ‘have you seen daddy hit S and J?’ and she said yes. I asked her what would he hit them with? And she said his hand. I asked her ‘would they cry’ and she said yes. I asked her ‘have you seen daddy do anything else?’ C said yes he would shout. I asked who he would shout at and she said ‘me, T, S1 and J.’ I asked C ‘what do you do to be bold’ and she said ‘I broke a cup’. I said ‘did you?’ C said ‘daddy never hit us with a stick’ I said has he not? She said no. Throughout the interview I noticed T kept staring at C and she was frowning at him. I glanced at T a few times and I kept encouraging C to look at me while she was talking. I asked if daddy had hit any of

her brothers with a stick? She said no, just his hand. I asked her have you seen daddy hit W with his hand. She said yes. I asked her what did W do and she said he cried."

(xvi) On foot of these disclosures T and C, with their parents permission, were removed from their home and accommodated with their paternal aunt and uncle Mr and Mrs B.

I pause to observe that on 3 June 2003 the Trust sought emergency protection orders in relation to S1, J, T and C because D and A withdrew their consent to the children being voluntarily accommodated.

(xvii) On 5 June 2003 a video interview took place between a police officer and C and T. T was alleged to have been seen by a detective constable grabbing C by the shoulders and shaking her saying "don't tell anyone anything". At that interview C informed the police that she did not make the disclosure to social services staff the previous evening and said she had told a wee lie and made "a wee mistake." T was not interviewed on that occasion.

(xviii) On 13 July 2003 J had a joint protocol with a detective constable in the Care Unit. I saw this video and I shall make comments on it later in this judgment. Suffice to say at this stage that the child made the following allegations:

(a) That A hit him and all of his brothers except T and C only when they were bad. He said S1 was rarely hit. He described the circumstances of the beatings being if they took money or received detentions in school.

(b) He said that A would have been informed of bad behaviour when he came home from work by D. A would then tell them to come in and he would strike them. He described the room with a fireplace where they were struck. The boy was interviewed a second time on 1 July 2003 and again I saw the video of that interview. On this occasion he related an occasion when he was at A's farm and A's father had kicked him after an altercation between himself and his cousin. On this occasion he also went on to relate that W informed him that A had put a gun into his mouth and said that if he ever ran away from home again he would kill him. He described that gun hidden in A's bedroom as a BB gun or rifle. He also recalled himself and W being struck across the face or on the stomach. The boy also revealed that W ran away because A was hitting him.

(xiv) I observe at this stage that there were joint protocol interviews on 18 July with S1 but the Trust did not present those to me, did not call S1 to give evidence and do not ask me to rely on any evidence thereby adduced.

(xx) I regard it as being of significance that subsequently J requested no further contact with either D or A and this has remained the situation to date.

(xxi) T and C were initially placed with their paternal aunt but in light of Trust concerns that the children may have been negatively influenced, the children were placed with emergency foster carers and on 28 July 2003 moved to the care of Mr and Mrs K where they have remained until recently. Between 4 June 2003 and 8 September 2003, T and C had twice weekly contact for one hour with their parents supervised by social worker staff. The Trust alleged that during this period of contact, the parents were whispering to the children, and the children were evidencing distress. It was alleged that on 4 August 2003 D informed the children that they would be home shortly before a family wedding and social work records indicate concern about co-operation with the parents.

(xxii) On 10 September 2003 A and E were arrested on charges connected with alleged physical abuse and neglect of the children. They were granted bail on 2 October 2003 with stringent conditions aimed at ensuring they made no contact with their children.

(xxiii) On 23 October 2003 during the course of a home visit with Ms McC, social worker, T told her that he wanted to see her because he was worried about telling lies in the past when he said that his mother or father did not hit him. He went to say that they did hit the children but only with their hands and on the back of their heads but they never hit them with sticks or belts. He went on to add that he knew that his brothers had told the truth. In the course of that conversation he allegedly said that he felt he had to protect his mother and father because Mr and Mrs B, his grandparents had told him that he was not to tell social workers anything in order to do so. He indicated that these relatives had told him that J, S, S1, A and N and C had told things that had gone on at home and that was why his parents were in jail.

(xxiv) On 28 November 2003, during a home visit to the carers of T and C. Ms McC, social worker said that C made further disclosures. She related:

- (a) That A had hit her with a belt when she was bold on a number of occasions. She said that she was struck on the bottom always.
- (b) She had witnessed her father striking T in bed with a belt.
- (c) That T and C were sometimes left on their own when it was dark. She explained that she was frightened but that T had a flashlight

in the bedroom. She said that sometimes J and S1 would have been away on their bikes but she did not know where her mother and father were.

(xxv) On 28 November 2003 Mrs K telephoned social workers to say that the boy come downstairs after going to bed and told her that he was ready to tell the truth now and asked her to request that Ms McC, social worker, would return. The social worker returned the next morning and the following emerged:

(a) He said to the social worker "I know you know I know stuff about home but I'll not be telling you". He was told that that was all right and that no one was going to make him say anything. The boy then indicated that he knew each of his brothers had different stories to tell because the older ones knew more than the younger ones and he explained that he knew more than C because he had seen more than C given that he was older. He went on to say that he would never tell because he knew that it would get his mother and father in more trouble. He said he knew this because his grandparents had told him.

(b) That his father had hit him with a belt when he was bold and that he had also hit C.

(c) He said that sometimes children needed to be hit to teach them a lesson and teach them right from wrong. He said he had been worried because he had always promised his mother and father that he would never tell and his grandparents had told him he had to protect his mother and father. He asked if he was going to get his mother and father into more trouble. He informed the social worker that he wished to tell because he worried about it and thought if he told he would not have to worry any more.

(d) T described that when he was being hit by his father, his mother stood and shouted at him for what he had done and vice versa. He said that sometimes he had taken the blame for things C had done because she had asked him to do so and then he got struck. He referred to one occasion when C had broken an ornament and he said he did it. He described being hit on the bottom and across the knees.

(e) He described his father striking his brothers S1, J, A1 and W with his hand.

(f) He recalled an incident when he had been locked in a shed one day after he had pushed C into a puddle and she had banged her head. He said that his mother and father had taken C in the car and drove off

leaving him in the hayshed. He described lying down beside the dog and some puppies and crying.

(g) He also described being left in the house with C on their own. He said that they would be left in the room and that all the lights would be turned off. He said this happened on a number of occasions and as a result he used to keep a small flashlight in under the bed so that he could find his way when his parents were away. He described himself being afraid and C crying.

(h) He related how on one occasion when he had been placed for respite with carers, he had been frightened because he heard one of the other boys in the house crying when the adult carer had been in his room. He said that when he met the adult carer coming out of the room he saw his father's face in the face of the carer. He thought that the adult carer had hit one of the boys and he had been frightened because it made him think about what happened at home and how his father looked when he hit them.

(i) When giving evidence about this Ms McC social worker indicated how she had prepared a handwritten sheet as she spoke to T and he then went through the disclosures with her a second time. She described how he presented initially as very worried and with a confused look on his face. He was hesitant as he made the disclosures. As the interview went on he became upset and there were tears in his eyes. However towards the end of the disclosure she described how he became more relaxed. He described how he cried at night thinking about his mother and father and worried about what would happen to them. He then said he now felt better that he was able to get rid of his worries and was trying to move on. That same witness described the demeanour of C on 28 November. C was sitting on the social worker's knee and she said she was worried about the disclosures and whether or not she would be believed. She was described by the social worker as speaking freely.

[xxvi] On 29 November 2003 C underwent a joint protocol interview with a detective constable in the Care Unit and also Ms McC social worker. I viewed that video and have read the transcript. I shall deal with my assessment of that video shortly, but in the meantime I should record that factually the child disclosed the following;

(a) That her father had smacked T and C with a belt on an occasion when they were talking together in bed. They were smacked on their bottom on this occasion. She went on to record that she was hit with a belt lots of times thereafter. The assailants were both her mother and father. She described how it was a black belt taken out of a drawer at the bottom of A's bed.

(b) She recalled how her mother and father had left T and C on their own in the house. The lights were off and they were frightened causing them to cry.

(c) She made reference to the occasion when her mother and father had gone up the hill leaving T alone in the yard where the hayshed was.

(xxvii) On 1 December 2003 T underwent a further joint protocol interview with another social worker Mr S and a detective constable from the Care Unit. The boy relayed again the incident of him being locked in hayshed and lying beside some puppies. He recalled other times when he was also locked in the house when his mother and father went to the maternal grandparents. He repeated the incidents where he had been struck with a belt by his father when he had taken the blame for C breaking an ornament. He said that when he was smacked it was sometimes about his legs and sometimes on his bottom. He recorded that on that occasion both his mother and father were present. He described the belt as black or brown and it was kept in his parents room under the bed.

(xxviii) Between 6 and 9 February 2004 D, T and C made further disclosures to their carer Mrs K. Mrs K reported that following contact with Dr Leddy, T seemed to be frightened that he might have to go home without his brothers. He informed her that they must all stick together. He indicated he wanted to write things down. When C heard this, she also wanted to do the same. Mrs K reported that both children wanted to do this separately and did not want the other to know what they were saying. I have read the disclosures written down by these children and they included the following:

T

T wrote;

- (a) That his father threatened him with a gun.
- (b) That his older brother A1 kept a knife under his pillow to protect himself.
- (c) That his mother and father fired plates at each other when they were fighting.
- (d) That his father cut him with a knife on his arms and hands when he was in a temper. He said his father threatened to stab him.
- (e) That his father beat him with a belt on the legs and he had to stay in the hayshed all night.

(f) He wrote "mummy and daddy touched my willie after I had a bath".

C

C wrote;

(a) "When A and D were bathing me, they rubbed my private parts and it hurt me. D and A put his finger inside my private part. D called A to watch her doing it. D watched A doing it to me too.

(b) A took his private part out of his trousers, same night, and he put in my private part. He told me to open my legs and pull my pants down, he moved me up and down, D watched the television when he was doing it".

(c) She stated she wanted to tell the social worker T about having no forks and eating with her hands.

(d) She stated "W and S1 done the same to me what A had done to me".

[xxix] Thereafter on 18 February 2004 there were two further joint protocol interviews with T and C. Once again I have viewed the videos of these two interviews. In the interview with T and a care unit Detective Constable, T described what he had already written. Inter alia he described:

That his father had said he would shoot him with a gun if he told what had been going on. He also added that his father said he would stab him with a knife if he told Siobhan W, Social Worker, what was going on. He recalled this having been said on an occasion when he had been with his aunt A. He indicated that he had denied this on a past occasion when C had asserted it because he had promised his mother and father that he would not tell. He said also that his parents told him that if he did tell he would not see them again. He described the knife being in the kitchen and the gun being under the bed. At the request of the interviewing police officer he drew the gun and the knife. It was worthy of note that towards the end of that interview T said "I came here because if I don't tell I just live with it all my life and then I, I wanted to get on with my life and forget about it".

C was also separately interviewed on that date by a Detective Constable in CIRE Unit. The following emerged from that interview;

(a) At the start of the interview the child said "I get my problems out of me so." I'll get my problems, them all away from me."

(b) The child again repeated that her father and her brothers had placed their private parts into her private parts.

(c) She also said that she ate with her hands at home. She described how they did not use forks and knives. They copied the cats by digging a hole going to the toilet. She alleged that her mother and father rubbed her private parts when she was in the bath. She described how her father had told her to take her trousers down and had then placed his private parts into her private parts. She described her mother being present when this happened. S1 and W were the two brothers that she described as performing the same activities. She described how this activity was painful and that sometimes when she went to the toilet she was itchy and sore. When relating the incidents in the bath, she described her parents rubbing her private parts. Again she felt that was sore. She detailed that her father appeared to have a rough finger because he was gardening and that her mother rubbed her very hard in that area. She recalled her mother sticking her nail in on one occasion.

(d) She described how when she came home from school she would not have been given anything to eat and when they did get food there was not very much. She described the only food as being coleslaw, biscuits and what she described as "mucky food".

(e) Towards the end of the interview, she said "that's all my worries".

I pause to observe at this stage that when Ms McC, the Social Worker, was giving evidence before me concerning the home visits when these letters had first surfaced, she described how the children presented to her. So far as T is concerned, she said that when he took the envelope out and made reference to the letter, he appeared uncomfortable. He looked at each section of the letter and was distressed during parts of it. In her view he was frightened looking and shaking when talking about the gun incident. He became very nervous when discussing the sexual abuse. He in fact pushed the paper away when he got to the section dealing with the sexual abuse. Commenting on C's reaction, Ms McC described how she had collected C coming from school. When she took out her envelope, she was very pale faced and spoke in a low tone. Describing the sexual abuse by her father, she did not make any eye contact with Ms McC. She clearly found it embarrassing and uncomfortable according to Ms McC.

(xxx) On 25 February 2004 a forensic examination was carried out on C. There was no evidence of abuse found during this examination.

[xxxi] On 25 March 2004, Mrs K, the foster carer of T and C, described to Ms McC, the Social Worker, that she had found C lying on her bed masturbating. She had sat with C for a while and talked to her about it. Both children later that evening informed Mrs K that they both masturbate when in bed and had been doing this since they had moved to the foster carer's home. T told Mrs K that his mother used to make him do it when his father was on the farm and

that she used to touch him when he was in the bath. Both said that the parents would get C to masturbate and then all the others would watch her. T claimed that his father taught him how to masturbate and C agreed that this was so. T had become very distressed when telling this. At that stage T was nine and C was six. On 1 April 2004 Ms McC, Social Worker, spoke to T and C about the most recent allegations but both children refused to disclose any more to her.

[xxxii] Mr and Mrs K the foster carers found it difficult to deal with this aspect of the children's behaviour and indicated to social workers that they could not take any more. I was informed that these were experienced foster carers in their late forties who still remain as foster carers but had never come across allegations of this kind. Mr and Mrs K felt that they could no longer cope with the nature of this problem despite the children having been with them since 28 July 2003. Consequently in August 2004, T and C were moved to other foster carers.

Concurrent family proceedings and criminal proceedings

[5] A complicating factor in this case is that criminal proceedings are pending against the mother and father. These will not be processed until later in the year. I have already determined that this case should not be delayed and that the present proceedings should continue in the interim. It is important, therefore, that I initially distinguish between the criminal trial and the civil proceedings now before me. The tasks facing a judge in family proceedings and the task facing a judge and jury in criminal proceedings are quite different. This has been highlighted recently in a leading English authority of *Re: A Local Authority v S, W and T* (By His Guardian) (2004) 2FLR 129. I could not hope to improve on the distinction highlighted by Hedley J in that case and I therefore draw upon it by quoting the judge at p.131 (6);

“In the criminal proceedings, the jury, having heard the admissible evidence, had to decide whether they were sure that this man had used criminal violence to this child which brought about her death. They decided that they were not sure; no more than that can be read into the verdict. They may have decided the he was in fact innocent or they may have decided that he was very probably guilty but they could not be sure of it...Their verdict does not give us the answer nor could it.

In family proceedings, however, the judge's task is quite different. In the end I will have to decide whether the surviving child T can be safely returned to one or both of her parents. In order to decide

that, I need to reach views about why X died and the question I have to ask is this; 'What was the most probable cause of her death?'. That is very different to the question faced by the jury both in terms of his emphasis (they were primarily concerned with W as a defendant whilst I am primarily concerned with the child) and in terms of the standard of proof. They had to be sure of guilt; I have to determine the probabilities and give detailed reasons for my view. Moreover I have heard a much wider range of evidence than would have been admissible in the criminal trial.

It would be apparent then, however odd it might seem at first blush, that I could give a different answer to the one given by the jury yet both of us could have correctly answered the questions actually posed to us. Truth is an absolute but elusive concept and the law, in recognising that, deals with it in terms of what can be proved. The fact that something cannot be proved does not mean it did not happen but only that it cannot be proved to the requisite standard that it did. That is the price society has to pay for human fallibility in the quest for truth".

In *Re U (Serious Injury: Standard of Proof)*; *Re B* [2004] 2 FLR 263 the Court of Appeal revisited the standard of proof in family cases. This case unequivocally established that the standard of proof to be applied in Children Order cases is the balance of probabilities and the approach in these difficult cases was that laid down by Lord Nicholls of Birkenhead in *Re H (Minors) (Sexual Abuse: Standard of Proof)* 1996 AC 563. It was incorrect to treat the distinction between criminal and civil standards as "largely illusory". In the context of this case, an extract from Lord Nicholls speech in the House of Lords in *Re H* at 586 and 96 respectively et seq bears repetition:

"Where the matters in issue are facts the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability. This is the established general principle. There are exceptions such as contempt of court proceedings, but I can see no reason for thinking that family proceedings are, or should be, an exception. By family proceedings I mean proceedings so described in the act of 1989, ss 105 and 8(3). Despite their special features, family proceedings remain essentially a form of civil

proceedings. Family proceedings often raise very serious issues, but so do other forms of civil proceedings.

The balance of probabilities standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A step-father is usually less likely to have repeatedly raped and had non-consensual oral sex with his underage step-daughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungood-Thomas J expressed this neatly in *Re Dellow's Will Trusts* (1964) 1 WLR 451, 455:

‘The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.’

This substantially accords with the approach adopted in authorities such as the well known judgment of

Morris LJ in *Hornal v Newberger Products Limited*
(1957) 1 QB 247, 266:

‘This approach also provides a means by which the balance of probabilities standard can accommodate one’s instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegations proved than when deciding less serious or trivial matters.’”

These authorities reflect the approach that I have adopted in this case.

The evidence

[6] Before turning to the evidence in this case, it may be helpful if I set out some general observations on the duty of a court to determine the credibility of witnesses;

(i) It is important to make full judicial use of the opportunity given to a judge hearing the *vive voce* evidence. I have carefully considered the demeanour of the witnesses, together with their candour, keeping a careful watch for any evidence of partisanship.

(ii) In each case I have considered whether there is any essential improbability in the evidence bearing in mind of course always that the onus in this entire case is on the Trust to establish the truth of these witnesses on the balance of probabilities. In order to consider this however one should always test the truthfulness of evidence against any objective facts. Does the statement of any particular witness fit in with statements of others? Are there internal inconsistencies in the witness’s evidence or inconsistencies with what the witness has said or deposed on other occasions? In doing so it is important to take account not only of points supporting a witness’s evidence, but also those which militate against it without over weighing one aspect rather than the other. Evidence must be checked by a critical examination of the evidence as a whole.

(iii) In looking at the credibility of witness’s I derive assistance from what Lord Pearce said in *Onassis and Calogeropoulos v Vergisi* [1968] to Lloyd’s Law Reports p.431;

“ ‘Credibility’ still now in general involves wider problems than mere demeanour “which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be.”

Credibility covers the following problems. First, is the witness a truthful or untruthful person; secondly, is he, though a truthful person, telling something less than the truth on this occasion, or, though an untruthful person, telling the truth of this occasion? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them. Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism often used in accident cases, that with every date that passes the memory become fainter and the imagination becomes more active.... . And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process.”

(iv) The complexity of the task was well summed up by Hutton LCJ in *R v Murphy Moen and Gilmour* (Court of Appeal. Unreported 4 January 1993) at p.7 when he said;

“Where a trial judge considers that a witness has told a lie or a number of lies in relation to part of his evidence, no general rule can be laid down as to whether the remainder of his evidence should be accepted or rejected by the trial judge. That will depend on the particular facts and circumstances of the individual case (the judge then quoted from Phipson on Evidence 14th Edition which is replicated in the 15th Edition at para. 6-16)

‘Unlike admissibility the weight of evidence cannot be determined by arbitrary rules, since it depends mainly on common sense, logic and experience. ‘For weighing evidence and drawing inferences from it,

there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited.' 'The weight of evidence depends on rules of common sense.'"

Dr Fiona Leddy

[7] I heard evidence from Dr Fionnula Leddy who is employed as a consultant child and adolescent psychiatrist at the Royal Belfast Hospital for Sick Children since February 1997. Initially she had been asked to prepare reports in the matter on the three children who are the subject of these applications dealing with the issue as to whether or not there ought to be any direct contact between them and their parents in the immediate future. She interviewed A1, Ms K the then foster carer of T and C and also the respondents D and A. However at the outset of this hearing, following submissions from Mr Toner QC on behalf of the Trust, the respondents furnished further particulars of their allegations which in essence broadened their case to allege that the children had made false allegations as a result of the influence of a number of members of the maternal family, other children, R and an overly receptive attitude to such allegations exhibited by social workers. Consequently the Trust submitted that Dr Leddy should be permitted to dilate upon her evidence to express her opinion as to whether or not there was evidence that these children had been coached to make the false allegations. I acceded to the application because of the lateness of the expanded allegations now being made by the respondents. Moreover cases such as these involving the welfare of children are quasi inquisitorial in nature where the paramount consideration of the court is the welfare of the children. To that end I consider that the welfare of these children would be served by the court obtaining as much assistance as to the credibility of these children in the context of these allegations and that an expert such as Dr Leddy should be permitted to give evidence, subject of course to cross-examination in light of any frailties that might emerge either as to her expertise or investigations on this occasion. I made it clear that I would take all necessary steps to ensure that Ms McGrenara QC on behalf of the respondents was not prejudiced. Accordingly I ordered that Dr Leddy initially would only give evidence in chief, that a transcript of her evidence would then be prepared and given to Ms McGrenara and her solicitors and that she would be afforded a further week to consider the evidence before being obliged to cross-examine.

In the course of Dr Leddy's evidence and cross-examination, the following points, inter alia, emerged:

(i) Dr Leddy recognised that she was relying on her interviews, and the social service reports before her. She had not approached her interviews with

the subject children as verification interviews. However, whilst she acknowledged that she had not been conducting a credibility exercise, nonetheless she felt that she was able to give a considered opinion on their credibility because she could not be expressing concern about contact if she was not considering the reliability of these children.

(ii) She felt there were a number of indications that would support the reliability of the allegations being made by these children. They were as follows:

(a) She found a lack of motivation for the children to make these allegations up. She illustrated this by pointing out that the children, J, T and C, were initially torn between the idea of living with their parents and living away from their parents. There was some evidence that part of the time they wanted to be with them and therefore it is difficult to find a motivation for them to make up such stories against D or A.

(b) She could not see any evidence of any powerful enough adult in frequent and constant enough contact with these children who had a motive to coach them and to persuade them that they should be telling lies about their parents. Whilst the children were in foster placements, there was nobody such as a powerful family member who was present to make them tell lies against their parents.

(c) She found that the process of disclosure with the allegations coming out gradually and tentatively with a build up to them telling follows the normal pattern of disclosure by children.

(d) She found a consistency between what T and C had said. For example, both of them gave examples in relation to sexual abuse in the bathroom. She also found that the reports of the foster mother, social workers, and, as she understood them, the joint protocol interviews, bore striking resemblances. She illustrates this by pointing out that T had talked about a gun being used as a threat to him and that that was in keeping with the stories in the family of other children being threatened by A with a gun.

(e) She found the emotional context of the children giving these reports to be in keeping with the nature of the allegations they were making. There was an element of reluctance, embarrassment, and discomfort with having to talk about this. She felt that that was in keeping with the nature of the allegations. This comment underscored the evidence of the social worker who noted the demeanour of T and C when dealing with them later and referred to at page 12 of this judgment.

(f) Dr Leddy commented on her perception of the actual flow of the disclosures as she read them in the social worker's report. She felt there was a narrative flow to them. Her opinion was that the phrases did not come across as a child parroting phrases that had been taught to him or her and there was absence of that urgency which might be associated when a child is being coached and needs to say what they have been told they must say. She illustrated this by referring to the last occasion when she had spoken to the children. Specifically, when she was speaking to C about how things were when she was living at home the child said something like "I'd be afraid of the beatings happening again and the other problems". She then prompted C to tell her a bit more about what those other problems were and she indicated this was to do with sexual touching. In Dr Leddy's opinion, the way that the child responded to that prompt was not in keeping with a child who was coached and had to say something that they had been told they must say. On the contrary she found C reluctant and without the urgency about informing which would have been present had she been coached. The child appeared embarrassed and really did not want to say very much about it whilst at the same time, "solidly sticking by what she had said previously".

(g) So far as T was concerned, Dr Leddy recalled that he had built up to making disclosures and they had come out at different times.

(h) Dr Leddy gave evidence that in her view that which the children had said to the foster carer Ms K was in keeping with what they had said afterwards to the social worker Ms McC. She concluded that the indications from Ms K were that the children were open with her in attempting to tell her what had been happening in their home. The witness drew attention to the fact that Ms K had told her that when T and C came to her they were thin and were not using cutlery. This she felt was consistent with T and C's statements about the amount of food they were given, the inadequate preparation of meals and the method of eating that food. She described the picture of children who had gained in joy and spontaneity since leaving their home by referring to a spontaneous comment by A1 during his interview. At that time T and C were waiting outside Dr Leddy's interviewing room and were laughing and playing in the corridor. Dr Leddy gave evidence as follows:

"A1 looked at me with joy in his eyes and said 'You know, I never heard them like that. They were never like that'."

Dr Leddy thought that this was in keeping with a deprived picture of children who were thin when they went to Ms K and who were perhaps lacking in joy and in spontaneity;

(i) The witness thought it was highly unlikely that T and C, who were taken into foster care in July 2003 and remained in that care thereafter, should have retained coached messages given to them before they were taken into care and then chosen to disclose, as they did, in February 2004. In Dr Leddy's opinion it was highly unlikely the children would retain information for that long and that the information would then be imparted in such a free flowing manner. She doubted that any adult in a powerful enough position with respect to these children would have had sufficient time to coach them in the manner that would have been required. She concluded therefore that in her opinion there was a high likelihood that the allegations made by T and C were truthful.

(j) Dr Leddy commented on the impression D and A had made on her during her interview with them. She said that she found them lacking in spontaneity and for the most part they seemed to have anticipated a lot of questions that she was asking. In terms she found a rehearsed quality to the responses and at times they finished each other sentences and on other occasions spoke in unison. On one occasion when their answers appeared to conflict, A was silent for a long time and D kept trying to intervene indicating that she could now remember what it was that A had been referring to. No response was forthcoming from him.

(k) Dr Leddy had pressed both A and D as to why they felt the children had made these allegations. When first asked they indicated "Oh we hadn't thought of that. We hadn't thought about that." This surprised Dr Leddy because she felt that in general people would be very shocked that allegations like this were being made against them, wondering why these allegations were being made. She asked them again and this time the only thing they could think about was that it must be because the children wanted an excuse - this was in relation to the older boys - to be able to see their father. Whilst recognising that only related to J and the older children (therefore not T and C), it would in any event in her experience be very unusual for children to make up such allegations in order to see an absent parent as opposed to the contrary of avoiding contact with an absent parent. In any event it seemed to Dr Leddy inherently unlikely since both A and D had stressed their desire to encourage contact between the children and their father.

(l) Neither D nor A gave any explanation as to why T and C would make up the allegations that they made. In answer to me Dr Leddy specifically stated that there was no mention whatsoever of any suggestion that D's family had individually or collectively coached the children into making these allegations because of their distaste for A. Given the late introduction of such suggestions into this case, I regarded this as a very significant piece of evidence.

(m) Dr Leddy was pressed by counsel that the lack of spontaneity disclosed was explicable on the basis that these people were nervous. Whilst accepting this Dr Leddy emphasised again the measure of rehearsal in her view that had taken place prior to their meeting.

(n) The witness conceded that a number of the contact records illustrated that notwithstanding the allegations that T and C had made, contact was clearly good and profitable on many occasions. However the witness emphasised that this was not inconsistent with allegations of abuse because these children would still regard D and A as their primary carers offering love and affection as well as hurt and anxiety. She said it was not without significance that the children had expressed a desire to go back to their parents in a context where their foster placement was becoming less secure, their social worker was on holidays and they may have been feeling a sense of abandonment. Dr Leddy captured this notion by saying "The children will seek out what they know, even on occasions when what they know it is a source of anxiety. Fear of the unknown is sometimes greater than fear of what is known." She contrasted this with their reluctance to see their parents after they had made disclosures as recorded by the social worker Ms McC. When Dr Leddy had spoken to T in August 2004, and asked why he did not want to see his parents, he said it was because he was thinking a lot about the bad things that happened with mummy and daddy, but now he wanted contact again.

(o) Counsel drew attention to the fact that from 1996 there had been a number of social service visits at the instigation of D (primarily to obtain assistance with W) as well as the presence of a health visitor at a time also when the children were at school. Dr Leddy recorded that it is well documented that children can be frightened to make disclosures and the children in this case had alleged that they were hit in such a way that it would not be revealed.

[8] On the question of future contact, Dr Leddy's recommendation was that if a care order was made, there should be contact between C and T and her parents to a level of one hour directly supervised every two months. She manifested concerns about contact between these children and felt that re-establishing contact could cause distress and disturbance to T and C.

Nonetheless she still saw a need for contact and has considered each child individually in this respect. She recognised that the children do miss their parents and expressed the view they have very mixed up feeling about them. She found that whilst they are clear that they did not like what their parents did they still love them as parents and have affectionate feelings for them. Coming into contact with them may help to sort out some of the mixed up feelings that they have had and reassure them that their parents are safe and still thinking about them. This could bring about some positive benefits for them. The supervision should be by experienced social workers who would be informed of the risks. That contact should be in, for example, a Family Centre. The responses to contact should be monitored closely and they should be spoken to after contact to ascertain what had been going on.

[9] The witness also supported supervised contact with the cousins of T and C. She agreed with the Trust proposal that this would probably be twice a year at Easter and Christmas.

[10] It was her view that there should be no contact between J and her parents in accordance with his wishes.

[11] In passing I pause to observe that I found the evidence of Dr Leddy careful, measured and compelling. I consider that she listened to all those that she interviewed with patient indulgence and has shrewdly and analytically approached her task recognising in so doing the fact that she had not been aware of all the evidence that has been before me. After I had heard all the evidence, I determined that her assessments had been accurate and insightful.

Professor Bull, expert on the video material

[12] Professor Raymond Bull is a professor of forensic psychology with an extremely impressive curriculum vitae. He also gave evidence before me. He is clearly an extremely distinguished expert in his field and is a co-author of a Home Office Guidance to Interviewers. He had been instructed in this case by the solicitor on behalf of the respondents. Having read a large bundle of material including the interviews by the social workers, he viewed the video tapes of C, T and J ie the joint protocol interviews.

He pointed to some weaknesses in the interviewer's approach. These included:

(a) It would have been helpful to have known the identity of the interviewer and the nature of the earlier conversations which the children had engaged in before conducting the interviews described in the transcript. It would have been important to have established that such conversations were conducted appropriately.

(b) On a number of occasions the interviewer had informed the children that these interviews could be used in court proceedings. He said that in his experience of writing guidance for and evaluating video recorded interviews with children he had rarely if ever heard such a thing. The danger is that it is presumptive that the child may say something of interest to a court. However, he later indicated that this could also have the effect of discouraging the child from revealing material.

(c) He also indicated that, for example, with C it was bad practice for the interviewer to say “very good” after the child had given an account.

(d) He recognised that by assuring T that his aunt was outside, this could encourage him to say what would be pleasing to his aunt if she was a person who had coached him.

(e) It was also poor practice to suggest that people might be punished for bad things as this might create an expectation in the mind of the child that the child should reveal bad things.

(f) He recognised that if the child was highly motivated, a strong relationship such as a brother could be brought to bear to persuade that child to repeat what the brother had told them.

[13] However, notwithstanding these weaknesses, Professor Bull was unbending in my view in forming the following conclusions;

(i) Having had experiences of many similar interviews in other countries, his conclusion was that the subject joint protocol interviews were “amongst the strongest he had seen.” He described them therefore as “very good”.

(ii) He did not notice any examples of clearly leading questions by the interviewers. In his view the language of the children was appropriate to their age with one or two exceptions. The exceptions were;

(a) T, then aged 9, said at the conclusion of a joint protocol interview on 18 February 2004:

“I came here because, em, if I don’t tell I just live with it all my life and then I want to get on with my life.”

This is rather a mature statement for a nine year old boy. He had not been counselled or attended any therapy prior to this.

(b) C, at the commencement of her joint protocol interview of 18 February 2004 said:

“I get my problems out of me, so” and “I get my problems, them all away from me”.

Once again this child had not had any counselling or therapy prior to this. However Professor Bull indicated that children can pick up what adults say even when it is not directed to them. These statements did catch his attention but he failed to find anything else in the course of what they said that indicated to him that they were borrowing the thoughts, words or concepts of adults or other people.

(c) Professor Bull saw no evidence or signs that these children were rehearsing evidence fabricated for them by adults and put into their mind by such persons. Tellingly, Professor Bull emphasised that whilst it would be possible for someone with an appropriate depth of knowledge to coach children in such a sophisticated way that they would continue to speak like a child, it really would need to be some very sophisticated and knowledgeable person who had done this. Such a person or persons would require relevant knowledge of the need to ensure that children continued to speak in a child-like fashion. Absent that sophistication, he found absolutely no evidence that these children had been coached albeit he could not state categorically whether or not the children were telling lies. This expert reinforced my view that there was nothing inappropriate in the language of these children to suggest any bias as a result of previous discussions.

(d) Professor Bull concluded that what the children communicated in these interviews was not unduly influenced by what the interviewer said or did.

[14] I found this evidence extremely weighty delivered as it was in a cogent and convincing manner with all the weight of Professor Bull’s professional expertise behind it. After I had heard all the evidence, I determined that his assessment mirrored my own analysis of the evidence of J, T and C.

S

[15] This young man is now 21 years of age. His father is R and his mother the first respondent in this case D. Until 1992 he had been living with his mother and his other brothers. In 1992 D and R parted and A, the second named respondent, moved into the house with the family. S remained there until 1999. He recalled how living in the house there was A1 his step-brother, W his step-brother, S1, J, T and C.

He recorded that since 1999 the only occasion on which he has seen J, T and C was at W’s funeral in May 2003 when he had spoken to J. He gave evidence

that things in their home changed when A came to live there. His mother spent more time with A and the children then started to receive beatings. He gave evidence that he was left looking after the children and made their evening meal, prepared bottles of milk for them, washed, changed their nappies and generally cared for them. He said this continued on a daily basis. Sometimes the mother made them food but most times they were given take-away food. He recalled how the children did not eat at the same table as D and A because they ate in the living room. There was before me in bundle 6A pages 5-10 a statement that he had made to the police on 4th June 2003. He then turned to give details of the beatings that he had witnessed and had received. In his evidence he said that A carried out most of the beatings although D carried out some as well. He never saw T and C being beaten but he did witness A1, W, S and J receive them. He said that if they did something wrong, no matter how big or how small, they would be hit with the hand, a rubber stick, belt, slippers or fists. He said this happened very regularly and indeed occurred nearly every night. His evidence was that he did not take showers at school because he was afraid people would see the bruises. He then recalled a number of incidents;

(a) He was about 13 years of age when the family took a holiday in Portrush. He had been building sand-castles with A when he accidentally knocked A's over. A then proceeded to strike him with a spade on his leg.

(b) He recalled how the beatings occurred mostly on his anus or on his head. Whoever did anything wrong was lined up and their trousers and under-pants were taken down. The other children were made to watch when a child was being beaten. His mother said that they deserved it.

(c) He recalled an incident when he had lost his dinner tickets at school. When he returned home and told his mother, she beat him with a rubber stick about the legs. He said he had lost count of other occasions when she did this. He said A1 and S were treated equally badly and that J was perhaps treated a bit more punitively than the others. He recalled how when S was beaten he would not cry. Then A would say he was "coming over as the big fella", he would then be beaten again until he did cry.

(d) He recalled a fear of spiders that he had. On one occasion A threw one at him on the stairs and he fell down the stairs.

(e) At Easter 1999, he recalled that C had fallen and he received a beating for this. He ran away to the home of a friend of his EB. He went to his grandparents that night and stayed with them for about one year and then moved to stay with a family with whom he is still living.

In 1999 he related to the social services and the police details of the beatings but subsequently withdrew these allegations because his brother A had gone

back to live with his mother and he had withdraw his allegations. Consequently S proclaimed that he felt he could not do anything.

Finally in May 2003 he spoke to the social worker again. He said he did this because he did not want to see what happened to W to happen to the rest of his family.

In cross-examination Ms McGrenara QC elicited the following points;

(i) S reiterated that since 1999 he had only seen J, T and C at W's funeral and that he had not seen them at his 18th birthday party. He said he sees A1 on a regular basis ie about once per month as well as T and C but they never discuss these incidents, adding that he said he gets upset if he talks about them. He also sees S1 sometimes in Armagh and J occasionally.

(ii) He emphasised that his mother seemed to down tools when A arrived. He asserted that the shopping she did resulted in the usual dinners of beans on toast and potatoes for Sunday dinner. Ms McGrenara put to him a signed statement from a friend of the mother WC (bundle B2 page 155) indicating that there was nothing unusual about the food that was bought. The witness said that WC must be wrong about this. A further witness statement from EB found at B2 page 173 who owns a local shop was put to him in which the deponent said that she purchased normal food and that the children looked well fed and looked after.

(iii) The witness's school report was then put to him which painted a picture of a boy who was pleasant, helpful and well mannered. Counsel suggested to him that these reports did not depict someone who had to spend all his spare time carrying out work for the children. S said that he enjoyed school with his friends and worked hard there.

(iv) Ms McGrenara also put to this witness that the report of a health visitor RK (see bundle 7 page 121) indicated she had visited the home but was unaware of any bruises or mark. The suggestion was also put to him that the wider family had been against A moving in with D although this witness declared that he was not aware of this.

(v) Counsel then put to the witness a number of apparent inconsistencies. A1 had not mentioned in his statements the taking down of the trousers for the beatings to which the witness replied that perhaps he was embarrassed about this. She also drew attention to the fact that T said that everyone except A1 and S were smacked. The witness dealt with this by saying that T was very young. Certainly S had never seen T or C being beaten themselves. It was his evidence that A1, S1, J, W and himself were beaten daily. It was then put to him that S1 (at bundle 6 page 82) recorded that he and A1 hardly got any beatings. The witness said that compared to J and himself this was true

but he still insisted that S was beaten almost on a daily basis although in their eyes they did not get as many beatings as J and W.

(vi) Issue was joined between Ms McGrenara and the witness over the circumstances in which S left the home. It was put to him that he had left because his mother found him masturbating in front of C. He denied this although he accepted that his mother accused him of this.

(vii) Counsel raised with him the circumstance in which he withdrew his allegations. He reiterated that he had dropped his allegations because A1 had withdrawn his upon his returning home and he did not think anyone would believe him. However, Counsel put to him that A1 had not in fact left to join his father until 31st March 2000 whereas he had dropped his complaints in November 1999.

(viii) The witness had asserted that he was not taken to the doctor in his statement. However, when the evidence of Dr Knipe was put to him that the medical records of W, T and C showed a pattern of the children being regularly taken to hospital for queries, and Dr Knipe had deposed that all the normal milestones had been met, he accepted that he may have been wrong about that.

(ix) He was insistent that the children were hit with rubber sticks, belt, slipper and fists whereas J in his first statement to the Police Service for Northern Ireland said they were not hit with anything save a hand or fist.

(x) He denied A ever hitting him about the face whereas A1 claims his lip was once split by A.

(xi) Finally it was put to this witness that he was a violent person and indeed he accepted that during a row between his father and step-mother when his father and step-mother had been fighting, he had used a knife on his father at a time when he was 20 years of age.

(xii) In cross examination by the Guardian ad Litem, S indicated that things got worse in the later period of school. The records showed that there were frequent absences in the late years and he said this was because he was at home looking after T and C. It was also drawn to his attention that D had apparently told a social worker (see bundle 7 page 172) that he had moved out in 1999 because he found it easier to study. However, the witness did concede that his mother did accuse him of masturbating in front of C at a time when only the two of them were together.

Finally the witness said that his mother was not violent before A came to live with them and that it was a relatively happy home before A arrived.

My conclusions on this witness are as follows;

(i) I consider that the passage of time may well have dimmed this witness's recollections on precise details on some occasions. Indeed it would be an extraordinary thing if he had perfect recollection for incidents that have occurred over the last 12 years. Incidents that occur over years may become telescoped to some extent so that e.g. the violence may not have started as soon as A came into the home but some months or even one to two years later. But when the violence goes on for years, the late start can be overlooked or forgotten. I share the view of the guardian ad litem therefore that if something happens frequently children may honestly but mistakenly remember it as happening more regularly and, as in this case, even daily. The risk of that phenomenon occurring increases if the child is questioned some years after the events. It does not surprise me that S may have made some mistakes about hospital visits, details of timings and of individual incidents. Hence the fact that A1 felt that violence commenced two years or thereabouts after A's arrival does not in my view militate against the probability that the core of S's evidence about the violence in this household is truthful.

(ii) I watched this young man carefully during the course of his evidence and I found him an impressive witness who recollected his experiences without a trace of self-pity. I believe that he captured the shocking randomness of the violence that was visited on this family and I found him convincing and cogent in the general thrust of the violence that he depicted.

(iii) I could discern no motivation for mendacity on the part of this witness. He struck me as a young man doing his best to come to terms with an unhappy childhood. As in the case of all the other witnesses, I bear in mind that in such an important situation it is only in the firmest ground that I should tread, but I am satisfied that this young man was being truthful when he recorded the general level of violence visited by A and to some extent D on these children during the years that he lived in that unhappy family.

(iv) I find corroboration for the general thrust of his comments in a number of areas. The lack of interest shown in him when he left home in March/April 1999 is indicative of a household where he was unloved in the insensitive manner he describes. Secondly I found the allegation against him that he had left home in the wake of being discovered masturbating in front of his young sister to be untruthful. It is highly significant that whilst the social workers were at the time told that both D and A had seen this and D made the same allegation in her statement to the court she then changed her evidence before me to say that A was elsewhere. I regard that as a very important change in the evidence which I do not believe she could possibly have made if she had been telling the truth. I believe that she introduced the presence of A into her earlier statements in an attempt to shore up what was otherwise a completely untruthful allegation. I watched this young man carefully when that

allegation was made against him and I was left satisfied that he was telling me the truth. This general abandonment of S in March 1999 and the lengths to which I am satisfied A and D were prepared to go with this allegation in order to blacken him, were well echoed by the lack of interest shown in A1 who left home for approximately three and a half months when he was only 14 years of age. It seemed to me that once again no real attempt was made to bring such a young boy back home. All of this resonates with a home where violence was redolent.

(v) I found this young man to be quite prepared in the course of his evidence to make concessions when appropriate e.g. that he accepted that he was mistaken about the assertion that he was never brought to medical treatment, that he may have been wrong about the precise timing of A1's return home at a time when the allegations in 1999 were withdrawn and his acceptance that he had produced a knife on an occasion in the presence of his father and step-mother. All of this revealed a disarming candour and an ability to recognise and accept when he had made a mistake. I found no glaring improbability in any part of his evidence as a whole when dealing with the violence that was visited upon him.

A1

[16] This young man is now 19 years of age. He described a number of incidents of violence visited on him by A which commenced about two years after A had moved in with the family. The precise date of A's arrival was somewhat in dispute but I did not find resolution of this matter to be of material significance. The incidents that A1 described were as follow;

(a) He alleged that the first time that he was beaten was on an occasion when he opened the back door and accidentally struck A. According to the witness A then punched him on the lip which caused his lip to be split. A1 said he was then about 9 or 10 years of age. A told him to say that he had fallen on his scooter.

(b) On another occasion when he had sold his dinner tickets in order to get money, A beat him with a rubber stick which was normally used for beating cattle. At that time he recalled that he was in the second year at Armagh High School. He said he was beaten about the legs, the back and on his bottom.

(c) On another occasion when he had taken too much cheese from a food cupboard A punched him on the chest. He said that that night he left the family home via the window and went to stay with his grandmother for about two or three weeks. When he did return he claimed that A never apologised. I pause to observe at this stage that in looking for internal consistency I note that this was one of several examples where the children in

this household ran away. W ran away with J for a period of weeks and J ran away on another occasion. I find it to be an extremely troubling matter that the children should be running away if this household was a happy place.

(d) On another occasion when he was helping at the farm, a cow got away and A kicked him.

(e) A1 said that these were but examples of regular occurrences of beatings by A. The witness alleged that D was there but never remonstrated with A. On the contrary D would relate to A when the children had allegedly done something wrong and A would then administer a beating.

[17] A1 then related incidents of when the other children had been beaten. These included:

(a) On one occasion S ran away. A friend of the family found him. When the boy was taken home A punched him. He recalled that S had football cards in his hand at the time and they spilled during the beating.

(b) On another occasion he recalled S making a smart remark about football occasioning A to strike him.

(c) He recalled an instance when another of the children had sold some dinner tickets and A had beaten him with a rubber stick.

(d) It was the witness's evidence that S1 was not struck as often as the rest of them.

(e) However, he did recall that W was struck on a very regular basis. He related an incident where A questioned the children on the subject of stolen money. When no one would admit to stealing the money, A discovered that W was the miscreant and gave him a physical hiding. A was striking him so hard that on that occasion D intervened to tell him to calm down.

(f) On one occasion J had sold some dinner tickets, and the witness recalled A putting him over his knee, pulling his pants down and smacking him. S and W were both present on the occasion.

(g) A1 recalled another occasion when J had taken a biscuit without permission and A had slapped him.

(h) He recalled J and W running away. They were brought back the same day after the police had been called. The two of them were then beaten after the police left by A. D witnessed the beating of these two children.

(i) A1's evidence was also that D and A ate together in separate rooms from the other children. Dinner was not prepared for them by D or A and it was usually done by S or S1 or by themselves. A and D received proper meals. The children usually received beans or tinned hoops. A1 said that he was often hungry and would have taken a biscuit. He was required to ask permission because otherwise he would receive a beating. Most times when he left in the morning he did not take breakfast.

[18] The witness said that he complained to the social services in 1999 but withdrew because his mother was present. He was worried that something would happen to her. In 2003 he told the police about what had been happening because he wanted to get his brother and sister out of the house.

[19] This witness made a number of concessions in cross examination. They included the following;

(a) He could not account for the fact that S had said the beatings had started as soon as A arrived whereas his evidence was that they took two years. I have already adverted to this discrepancy. Its very existence illustrated to me that S and A1 had not consorted to make up these allegations. However A1 did say that there were so many beatings that he could not remember every one. There was also discrepancy between his evidence and that of S in that A1 alleged that he was hit often on the face over the years whereas S had indicated that A avoided this area. A1 also indicated that bruises were left. I did not find it at all concerning that the bruises were not observed by school teachers or by the health visitor. Children, especially boys, often receive bruises in normal play and adults are sometimes unaware of the significance of them. Moreover experience has revealed on countless occasions that children in abusive circumstances do not reveal the extent of their abuse to those in authority. Counsel had also suggested to him that it was incongruous that he was described in various school reports during the course of 1996 as pleasant and co-operative despite the fact that he was being beaten at home. I consider that children are very resilient and if they are brought up in a lifestyle where beatings become part of the pattern, then they often accommodate themselves to that to the extent that others do not notice the underlying symptoms. Equally, I did not find it inconsistent that this witness did not see T and C being beaten because, particularly towards the end of his stay in the home, he was working in the day or at school throughout the day. Moreover, in an atmosphere where beatings were regularly administered, it does not surprise me that he could remember some beatings which others had forgotten and vice versa.

(b) It was also put to A1 that far from running away because he had been beaten on the occasion he left for his grandmother's, he left because basically he was out of control, had been verbally reprimanded because he was smoking and had stolen some dinner tickets. Frankly I could not conceive of

a child leaving home in these circumstances if he had nothing more to fear than a verbal remonstrance and I believed that A1's account was much more plausible.

(c) Attention was drawn to the fact that A1 had on an occasion lied to a school teacher to avoid detention on the pretext that he was to meet a social worker which in the event was a total fabrication. He admitted also stealing money from his father. In a police referral note of 11 November 1999 there is a note to the effect that subsequent to leaving A and D to live with his father in April 1999, he returned to them in June 1999 alleging that his natural father had hit him. In cross examination he accepted that his father had not hit him saying that he may have used the wrong words or that he may have panicked. Moreover he was unable to account for the fact that S1 had said that he and A1 were rarely hit.

[20] I watched this young man carefully during the course of his evidence. Whilst his account was not without flaw, I became more and more convinced as I listened to him that the general thrust of his evidence to the effect that he was beaten on occasions by A was true. He was clearly flawed on some of the details but it did not surprise me that a child who had come through such an experience was not to be relied on when dealing with the minutiae of all these incidents. I looked for consistency with other accounts and I found such consistency to be present. As I have indicated, the lack of interest shown in him when he left home for approximately three and a half months when he was only 14 and was not coaxed back is again indicative of the lack of care in this family. I found it significant that Mr B, his carer for the period whilst he was away from home in 1999, told the social worker that he had heard A1 on the telephone to this mother saying "you told me you would not let him hit me again and you did." I find that a telling anecdote which is recorded in the Trust daily records of 9 November 1999. It is illustrative of the fact that his boy has been consistently making this case of beatings. The general thread of beatings with fists and other implements, observed on occasions by the mother, the children running away from home, inadequate food, coarses through the evidence in this case. I found this young man convincing and cogent in the basic tenets of what he said.

Dr Knipe

[21] Dr Knipe was a GP working in the area where the family lived. He had been the GP since birth of J, T and C and had been the GP of A and D. He recalled the children being brought in to see him from time to time. His recollection was that the children were brought to him to have immunisations and regular health checks. He recalled few injuries during their childhood

and the children were seen in the course of normal childhood illnesses. He found nothing untoward in the children's' medicals to suggest any abuse.

Ms McC, Social Worker

[22] I have already outlined much of the evidence given by this witness. She presented the historical analysis of the trust case including the various visits to the homes of the children in question, the joint protocol interviews and the other occasions when the children made disclosures. In addition she indicated that whilst T and C have been with family members between 4 June 2003 and 28 July 2003, they have remained in foster care since that date. Originally they were with the extended family of Mr and Mrs B and thereafter contact has been supervised by the children's' carers. Contact with the parents is always supervised by the Trust. For very short periods of time the children may have spoken to other members of the extended family but largely they have been supervised the entire time.

It was suggested to her that there were concerns about domestic violence with N and C who were the foster carers for S and J. It was put to this witness that the children may have witnessed some domestic violence in that household. It was also suggested to her that J had commenced truanting, smoking and general behavioural deterioration whilst in their household. This witness felt that the tragic loss of his brother, the break up of the family and the general developments may have made a greater contribution to J's misbehaviour than anything else. She also recognised that there had been a gap between 1999 and 2002 during which A1 and S had withdrawn their allegations before any further referrals. It was drawn to her attention that the health visitor was coming to the house and made no complaints about bruising or marks. In this context it was suggested to her that it was significant that at this time D was inviting social services to become involved with W ie between 1999 and 2002. There was regular involvement of the social services with the family particularly with W and it was likely that any untoward matters would have come to the attention of the social worker. The contradictions that have been highlighted already in the course of the evidence of the witnesses were also drawn to her attention. In essence the case was made to her that social services had been involved with this family since 1996 with regular assistance being sought. The allegations made by S and A1 in 1999 were investigated, no action take by the Trust and both allegations were then withdrawn with A1 at least returning to live in the household from about March 2000. It was also pointed out to her that the principle of the school where T and C attended had objected to them being moved indicating that she could not see how they had been subject to any untoward abuse. The witness also accepted that during the period that T and

C were with Mr and Mrs B, some of the B family may well have seen them unsupervised. The thrust of the cross examination in this aspect of the case was to the effect that D's family were unhappy at her relationship with A and that therefore they may have been manifesting their annoyance by putting words into the mouths of these children. It was suggested that if, as T said, he had been cut with a knife, then why was there an absence of reference in the medical reports? Similarly it was put to the witness that if C was correct in saying the children were not eating with knives and forks, surely this would have been noticed in the school? It was directly put to this witness that she and her social services colleagues had become too much influenced by members of the B family ie the maternal family who were opposed to A, and had ignored school records, medical records and the headmistress of the school of T and C. In terms therefore the case was made that this Trust was too ready to believe the allegations and not enough attention was paid to inconsistencies.

I watched this witness very carefully when she was in the witness box. I determined that she gave her evidence with conspicuous care and seemed to me to be a mature and insightful witness unlikely to be taken in by fabricated stories from children or implausible accounts. Her participation in the joint protocol interviews and the considered manner in which she dealt with the disclosures made to her by these children illustrated to me that this was a witness in whom I could safely repose confidence. Her conclusions echoed those drawn by others more expert in different fields such as Dr Leddy and Professor Bull. I am satisfied that she took into account all the disparate aspects of this case and afforded to the parents a full opportunity to make their case and if possible to refute any allegations that were made. In conclusion I found this a witness that I believed and her assessments of the children to which I have earlier referred were cogent and convincing. I reject entirely the suggestion that she was too ready to believe allegations.

Ms D

[23] A Senior Social Worker from the Trust, Ms D, gave evidence essentially about the care plan. In essence the plan is that J shall reside with current carers and have no future contact with his parents. Counsel on behalf of the parents conceded, albeit reluctantly, that they should accede to J's stated views that he wishes to remain with N and C and have no contact with A or D.

The care plan for T and C is that relative carers have been identified who are now being assessed namely Mr and Mrs B. If unsuccessful, the plan would be to assess a second set of relatives namely Mrs B1 and her husband. Mrs B1 is D's sister. So far as contact is concerned, there will be no future contact with J, but that there should be contact with T and C one hour every two months on a supervised and videoed basis. The Trust proposal was that so far as

inter-sibling contact was concerned, T, C and J would meet once per week on a supervised basis. The proposal was that A1 and S could rejoin sibling contact with the young children although this had not been their wish for some time now. It was also possible that S1 would join in as work with him progressed with reference to the allegations made against him.

It was suggested to this witness that little thought had been given to fostering arrangements for T and C and in particular to the possibility of Mr and Mrs B1 being preferred to Mr and Mrs B, Mrs B being the sister-of-law of D. Ms D gave evidence that Mr and Mrs B had precedence over Mr and Mrs B1 because they had already been respite carers for S1 and J, they had worked in partnership with the Trust for some time, and had demonstrated an understanding about the allegations. Whilst not ruling out Mr and Mrs B1 there were concerns about the fact that in the past Mrs B1 had indicated she did not believe what the children were saying. It was the Trust view that clear messages need to be sent to these children and that a clearer possibility of this seemed to exist where Mr and Mrs B had already offered respite to this family. They live in close proximity to the carers of S and J and with a good working relationship with the Trust they are more likely to be beneficial to the children.

D

[24] D, the mother of these children, gave evidence before me. I had of course the benefit of reading her statements which she adopted in their entirety at the outset of her evidence. She described having undergone a testing childhood herself, being beaten by both her mother and father, as were her siblings, with fists, a wooden spoon and a poker. She said it made her aware that her children would not be brought up in the same manner. She described the vicissitudes of living with R when he was abusive to her and abused alcohol. Accordingly she separated from R and commenced to live with A in the Christmas of 1993. She said that between 1993 and 1996 the boys and A lived happily together. She described how her family, being "town people" took exception to A who was from a rural background. She denied that A was ever abusive to the children. She invoked the assistance of the social services for financial help from about 1996 and in the summer of 1998 concerning W's behaviour. She described having a good relationship with the health visitor Mrs McK. There had been some difficulties with enuresis on the part of with J and T and she had spoken to a Dr Moore to deal with this. A1 had been bullied at school although this was not substantiated she felt. She recalled A1 and W returning to live with their father but that the two of them thereafter came home. She did find it difficult to cope with the boys going to and fro between her and her former husband R. She recalled in February 1999 the allegation being made against A by A1 and when she asked him why he had made up these stories he said he did not know. It was her conclusion that children from broken homes do blame step-parents to justify

why they are going to the other parent. S had left home about March 1999 on an occasion when she had come across him masturbating in front of C. She denied any allegations that S had left because he was beaten. She recalled A1 leaving home in November 1999 because he had been caught smoking in the hayshed and had been strongly reprimanded.

She strongly denied that the children were ever abused remembering only that J had been once slapped on the bottom by A. She herself had slapped the children from time to time but only on the bottom. The Social Worker, Ms K, had advised her and A that discipline should be carried out by taking the television away or reducing pocket money etc and that they had taken this on board.

She had been concerned about W right up until his death. She had liaised with the school and had sought assistance from medical advice. A1 had a period when he was not going to school and S had said that he was ill when he was not in fact, to avoid school. She was particularly concerned about the essay written by W to which I have already adverted. Eventually W committed suicide and she felt that the whole family now was looking for someone to blame. It was in the wake of W's death that S and A1 had made their allegations. She asserted that she had regularly taken S, A1 and J to the doctors, they were fed properly, and she gave appropriate food to the children.

She strongly refuted Dr Leddy's evidence denying any rehearsal of evidence before she and A attended with her. It was her view that somebody else was influencing the children but she could not say who.

[25] I pause at this stage to observe that the respondents D and A had filed a reply to particulars at the commencement of this case (to which I have referred in the course of Dr Leddy's evidence) outlining a lengthy series of allegations against family members including D and M, her sister-in-law and partner, Mr and Mrs B, the maternal grandparents, N and J the maternal uncle and wife, ie her brother and his wife, A2, the maternal sister-in-law and E the maternal sister together with the older children and all the social workers involved who it was alleged had the opportunity to influence these children.

[26] I found this witness's evidence profoundly unsatisfactory. I considered her evasive and disingenuous. Having heard her give her evidence in chief and then subjected to cross examination, I was convinced that there was a serious want of probity on her part. In particular;

(a) She was totally unable to provide any plausible reason why members of her family would have persuaded the children to make up such detailed and wicked allegations against a loving mother and father. I found it completely implausible that she was unable to give me a reason why they did

not like him based on her failure to discuss it very much with them. She limply suggested that perhaps they were trying to punish her for W's death. However this had never been suggested to her apparently and no one had openly put blame on her for the event. Her suggestion that since the death of W, her family had been taking the children for walks and spent a lot of time with them particularly during the month of May 2003, availing of opportunities to coach them to tell lies was risible. She was quite unable to suggest how this could have been done without her being aware of any change in the children or of the influences that were being brought to bear on them.

(b) She was unable to account for the fact that C had made the allegations against them when she was still living with D and A at a time when A and D would have undoubtedly have noticed any attempt to influence or persuade this child to tell lies about them. Moreover by the time the sexual allegations came along, the children had been with Mr and Mrs K for some time with contact being closely supervised, and it is inconceivable that children of this age could have remembered ideas put into their heads some months before by members of the family in unsupervised moments. In so far as there was any suggestion that Mrs K had made this up, I regard that as an outrageous allegation made in an attempt to smear a caring and considerate foster carer.

(c) She was unable to offer any explanation as to why a number of their children kept running away from home. Such events were totally inconsistent with the happy home that she depicted. She was unable to provide any plausible reason why when A1 was away from home for almost four months between November and January, no real attempt was made to bring the boy home. He was then only 14 years of age and despite his tender years, no attempt was made to persuade him to return. Similarly when S left home in March/ April 1999, no genuine effort was made to bring this boy back home.

(d) I found her allegation against S that he had left home in April 1999 because she caught him masturbating to be completely implausible given that she had shifted her ground from telling social workers that this incident had been seen by both her and A whereas when she came before me she told the court that A was elsewhere. She could produce no reason why A1, S, J, T and C should have been individually singled out and persuaded to accept fabricated stories foisted on them by other persons showing collectively an aptitude to provide a coherent and in many respects entirely consistent story. I reject her evidence entirely.

A

[27] He asserted that the allegations made by S and A1 were all fabricated due to the boys' being influenced by the maternal family who were against him from the outset. He was unable to specify who in particular had been

putting these children up to make these allegations. Similarly the allegations by J, T and C had been fabricated. He did not know who had put them up to make the suggestions but he was satisfied it was the B family in all likelihood. He had never given them any cause to dislike him.

[28] He asserted that he and D had enjoyed their contact with T and C up to September 2003 and now missed them terribly. He wished T and C to be returned to his care. He recognised that J did not want to return home and he was driven to accept the inevitable.

[29] As in the case of his wife, I found this witness to be totally unconvincing and quite prepared to lie when it suited him. It was clear to me that he was aware that he was grasping at straws in attempting to generally smear the maternal family in a vain effort to find some reason why so many children in the family were making allegations against him and his wife. In cross examination he was met time and again with the sheer implausibility of the case he was making and I find it chilling that he was so unflinching in his denials even when the facts themselves were virtually irrefutable. Some examples will suffice;

(a) He refused to accept that it was inherently implausible that someone would have dreamt up the story about T being left in a hayshed for a period of time on his own in the darkness with dogs. The child had said that the dog was called Suzie and, given this level of detail, the witness simply said he did not know how the maternal family would have known about this dog called Suzie. Perhaps, he suggested, T had told them.

(b) T's story of imagining his father's face in that of his respite carer who had been angry with his son, was again ascribed to the imagination of the maternal family making up such a story and then expecting a boy of his years to remember it. At that stage the boy had been in care for six months and all contact with him was supervised. Plainly prepared to ignore the implausibility of this event, A suggested that the social services had taken the side of the B family and that all this information may have been betrayed by the social services to the B family. This attempt to combine the social services into the conspiracy with the B family displayed a cameo of how far this man was prepared to spread his net of smear in order to protect himself.

(c) Similarly, discussing the disclosure by T in February 2004 when he revealed that his father had threatened to shoot him or stab him if he made disclosures to the social workers, he was unable to provide any plausible reason how, since this child had been now with Mr and Mrs K for eight months, he could have retained such a story being fed to him prior to going to care. He persisted in his account that the B family were responsible for these stories even though he had never heard them blame him for the death of W nor had there been any quarrel between them.

(d) He was unable to account as to why if this story if the B family being the authors of these fabricated tales was true, they had somehow decided to put D into the frame of abuse when C was describing how she was sexually abused. He could think of no logical reason why they would have chosen to do this to a child to six. He agreed that she could not have made this up herself but then, under pressure in cross examination, he switched to suggest that perhaps other children may have told her to do this. I could not fail to notice during the course of his evidence that however implausible his explanation was, he was unflinching in his assertions and totally unremorseful about the tragic plight into which these children had fallen.

(e) A could find no reason why those who had been putting stories into the mind of T and C, involving perverted sexual abuse, would have been so sophisticated as to ensure that J made no such allegation but confined his complaints to physical abuse. It was A's view that J's carers, N and C, had been fabricating these stories for him to tell. Similarly he was unable to suggest why such fabrication would have included a suggestion by J that A's father had struck him. Why would the suggestion not have been that it was A himself who hit him?

(f) Confronted by the suggestion that his theory that the B family were conspiring to blame him for W's death seemed scarcely to fit in with the fact that allegations were being made against him as far back as 1999 long before W died, he reverted to saying that Mrs B had made it clear from an early stage that she did not like him.

(g) I watched him carefully when he was asked why he had not made any attempt to bring back A1, then only 14, after he had left home between November 1999 and March 2000. A's response that the boy needed his own time and space betrayed a chilling lack of concern for this child. He was similarly unmoved by the fact that S left in 1999 and never came back. He failed to see a pattern emerging now that J has gone and has also refused to come back wishing to have no further contact with him. I came to the conclusion that this man cared little for the fact that the boys left and it was consistent with such lack of feeling that he would have physically and sexually abused children as described.

Witnesses on behalf of the respondents

(a) A's father gave evidence on his son's behalf. He described how W had assisted him very well on many occasions on the farm. He saw S as well with his other grandchildren. None of the children ever told him any of the

problems which now had emerged. He denied in particular striking J as was alleged by him. As with several of the other witnesses who gave evidence, their assertion of normality overlooks the fact that children who are terrorised often fail to betray the signs to outsiders. Fear of what disclosure may entail often causes a veil to be thrown over an unhappy childhood and those, including grandparents, who are not looking for the signs fail to see them. I found this witness to be very loyal to his son and as a caring father was of course quite unwilling to see any flaw in the family make-up. The fact that several of the children ran away from home required no explanation for him.

(b) The sister of A gave evidence. She described living on her father's farm with three children and recorded how she had got on well with D once her relationship with A commenced. She called in twice per week to see them. She recalled staying overnight with J, T and C and bathing them without ever witnessing any marks or bruises or scratches. She felt she was very close to J, T and C and indeed collected A every morning going to work. However notwithstanding this contact, she was unable to provide any reason why the children ran away from home periodically and said they had never told her why they did this. I found it difficult to understand how she seemed to be unaware of this passage of unhappiness leading to the children running away if she was as involved as she described to me.

(c) A next door neighbour who saw D regularly, namely Mrs C, also gave evidence. She said she saw the children on a regular basis. Her own children were friendly. She found nothing unusual about the children and saw no bruising about them. Her children never related to her any complaints by the family. She had been living opposite that family for three years between 1994 and 1997 and then she moved two or three miles away. However she conceded that whilst W had been causing problems in the family, she never really discussed as to why the other children were running away from time to time. Her sole excuse was to say "children do run away." She had been unaware that the B family were apparently telling lies against them. Since this is now the kernel of their case, it struck me as very odd and not indicative of a close relationship, if this witness was blissfully unaware that there was allegedly an underlying conflict between A and D on the one hand and the B family on the other. I could not understand how a close friend would have been unaware of such a strain.

(d) Another neighbour gave similar evidence namely Mr S. He said that W helped out regularly to prepare cattle for shows. A1 and W came down to his farm. He saw the children in A's company. They seemed to act perfectly normally. However despite his closeness with W, W never told him what was troubling him and he didn't think he was deeply unhappy. He felt his death was a result of an accident. I fear that this portrayed a failure to understand what was going on in this boy's life. It once again illustrated that he was

unaware as to the dynamics in this family forming at best a superficial view without becoming intimately aware of what was going on.

(e) Ms S who had known A all her life also gave evidence. She had come to know all of the children with the exception of S. She was a P1 Classroom Assistant with a number of them. She saw the children every day. She had never seen anything untoward with the children. However once again she was completely unaware as to why the various children left the household and claimed that she never discussed it with either A or D. Indeed she conceded in cross examination that she really did not go into personal details with them about family matters. She was really relying more on what she saw in the children at school. I felt her knowledge of this family was fleeting and lacking in depth.

(f) Three other statements on behalf of the respondents were agreed and the witnesses were not called. One was from A's sister-in-law who said she had a close relationship with A and D. She knew the children well and T and C stayed with them frequently. She never found them anything other than content. However whilst her statement records D being upset by W's behaviour, she made no other reference to the unhappy events in that household which resulted in the children running away on a number of occasions. As in the case of every other witness who spoke in this case, there was not the slightest suggestion that there was any underlying current of difficulty between D's family and A or that there was any suggestion that there was a current of strain or stress in the relationship between A and his in-laws. A further neighbour Mr JB made a statement that he never saw any cause for concern with the family. Once again those matters that I have adverted to in the course of the other witnesses were missing in this statement and reveal to me that this witness, like the others, had no real insight into this family. The final witness was in written form from a Mr EB who was a proprietor of a local shop. He recalled how A and D purchased the normal items expected of a large family including food and household items. These items were purchased on a regular basis. This evidence of course ignored the fact that the suggestion of improper feeding was couched in terms which suggested A and D had proper food for themselves (which obviously would have been purchased from EB) but that this was withheld from the children.

The guardian ad litem

[30] The guardian ad litem has provided two very helpful reports on this case dated 21 April 2004 and 31 August 2004. In essence her recommendation was that a care order should be made in the case of J, T and C. It was her view that the evidence indicated that A demonstrated a dominant role within the household and could be threatening both emotionally and physically to family members. D had a long history of suffering from depression and this appeared to have impacted on her parenting ability. However she felt it was

clear that D's treatment of her children was also inappropriate in that she failed to protect them from the conduct of her partner and that she engaged in abusive sexual and negative behaviour toward them. It was her view that T and C are young children who have experienced a series of separations and traumatic events in their young lives including the death of their brother, separation from their parents, siblings, extended family and local community. The breakdown of the placement with Mr and Mrs K had devastated both children. J was a boy whose needs now were being appropriately and consistently met within his current placement. He stated that separation from his mother and A had been a positive life-changing experience for him. The guardian recorded that he was steadfast in his view that he wanted to continue living with his aunt and her partner and have no contact with either A or D. Tellingly the guardian revealed that when these children were settled in foster care, they expressed the same view as their older sibling which was that they did not wish to return to their parents' care. T and C following the breakdown of their placement with Mr and Mrs K did request a return home and the reasons they have cited for this choice was that "they do not want to keep having to move to strangers". T expressed the optimistic view that should "bad things happen again" he can be rescued by Mrs K. The guardian felt this was of crucial significance in understanding what these children have experienced whilst in their parents care. She felt that the Trust care planning has incorporated therapeutic work for these children which will be required to assist them in understanding what they have experienced and attempt to address the damage that has been caused. The guardian ad litem therefore recommended that a care order be made. Her views about contact coincided with those of Dr Leddy. I found the guardian to be a very impressive witness who had applied herself with care and insight into this troubling case. Her illustrations were well made and I found myself in total agreement with her approach.

Conclusions

[31] Under Article 50 of 1995 Order on the application of any authority or authorised person the court may make an order placing a child with respect to whom the application is made in the care of a designated authority. A court may only make such an order if it satisfied that the child concerned is suffering or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him. Whether or not the court does or does not make a care order depends upon a two stage process. First, the court must consider whether or not the criteria for making a care order have been satisfied ie the threshold criteria. I have reminded myself again of the burden of proof in a case such as this in light of the authorities which I have already set out earlier in this judgment. Applying those tests, I have come to the

conclusion that the threshold criteria submitted by the Trust in this case have been satisfied. In particular I am satisfied:

(a) That C and T has been subjected to sexual abuse by the first and second named respondents.

(b) That S, A1, J, T and C have been subjected to multiple episodes of physical abuse by the second named respondent, the first named respondent being aware of and complicit in such physical abuse.

(c) That S, A1, J, T and C have been subjected to severe emotional abuse by the first and second named respondents.

(d) That S, A1, J, T and C have been subjected to physical neglect by the first and second named respondent.

[32] I am satisfied that J, T and C were telling the truth in the course of their evidence and that A and D were wilfully misleading the court in denying their assertions. The gravamen of my conclusion will have been clear from the judgment so far delivered, but it may be helpful if I summarise some of the salient issues which have pointed me to this conclusion;

(a) I watched the videos of J, T and C. I had the benefit of the appraisals of Dr Leddy and Professor Bull in assessing the veracity of these children. As I watched these children unfolding their stories, I became more and more convinced that they were spontaneous, uncoached, essentially consistent one with another and truthful when giving their accounts. The language of these children was totally inappropriate to children who had been coached by adults. With one or two exceptions, they had not borrowed any adult phraseology and I find it inconceivable that they would have been coached by those sophisticated enough to teach them to use childish language and to recall the fabricated stories several months after they had been introduced to such an account. I agree with Professor Bull that it would be a truly remarkable achievement had anyone been able to do this. I found absolutely no evidence to suggest that any such sophisticated conspiracy had been hatched or carried out. I share Professor Bull's incredulity that such an occurrence had been forthcoming in this case.

(b) The detail that the children evinced was telling. Two instances will suffice to illustrate this. First, the disclosures to the social workers were consistent with the disclosures in the joint protocol interviews. I simply do not believe these children could have consistently remembered the minutiae to enable them to do this if they had been giving fabricated stories. Secondly, as Mr Toner QC on behalf of the Trust urged, I believe there is internal consistency eg recollections of the use of the gun by more than one child, the recollection of T and C being left in the darkness, the use of the belt and its

location in the house by more than one child are but brief examples. The telling detail of T's account about seeing his father's face superimposed on that of the foster carer was much too sophisticated a story for a child to retain unless it was true. Similarly the account of lying down in the hayshed with dogs to cry carried the stamp of truth for this little boy.

(c) I could find absolutely no motivation whatsoever for these children to make these allegations up especially if, as asserted by D and A, the household was perfectly happy. Dr Leddy illustrated this well by pointing out that eg T and C were initially torn between the idea of living with their parents and living away from their parents. It would be inconceivable that this was the case if they were motivated to make up stories against them.

(d) The process of disclosure with the allegations coming out gradually and tentatively being built up was a pattern which Dr Leddy said was indicative of the pattern in child abuse cases. The sexual abuse allegations coming out at a much later stage at a time when it would have been inconceivable that this story could have been fed to them recently, again carried the stamp of truth. The shocking disclosures of Mrs K, such that she felt she could no longer carry on this foster care, were too dramatic to be made up by a little girl of six and a boy of nine without the most sophisticated assistance which I believe was absent in this case. The children were consistent in such allegations.

(e) The conspiracy theory of the B family was completely implausible. None of the other witnesses called to give evidence on behalf of the respondents had heard of it. Had it been a major factor in the household, I have no doubt that the stress and strain of it would have been conveyed to neighbours and friends. It was clearly a last minute theory dragged up by A and D when they realised that the truth was closing in on them.

(f) The lack of interest shown by this couple when A1, S and J left home was indicative of the lack of care and love in this family. The fact that a number of these children ran away on disparate occasions resonates with the overall picture of unhappiness and violence in this household.

(g) The description by Ms McC, social worker, of the agony suffered by these children as they disclosed the sexual abuse convinced me that this was a truthful account being told by children as best they could in the form of a letter.

(h) As I have indicated I found S and A1 to be essentially truthful. I have considered the various attacks upon their credibility skilfully made by Ms McGreenera QC on behalf of the respondents but I remain convinced that the gravamen of what these two young men was telling was the truth and that it underlined the case made on behalf of J, T and C. The fact that none of

the older boys stated at any stage that T and C were physically or sexually abused by the respondents, not only is a testament to the lack of any general conspiracy, but in any event is perfectly understandable given that the sexual activity was largely carried out in private at bath time for these children. That C may have exaggerated by saying that she was masturbating in front of all the other children is indicative of how a little girl's mind and imagination may be perverted by these unspeakable acts carried out against her. Given the length of time over which these events occurred it is inconceivable to imagine that there would not be some inconsistencies in their stories.

[33] I was not surprised that the medical evidence did not provide corroboration for these stories. Children, particularly boys, regularly sustain bruises in the rough and tumble of ordinary life and it did not surprise me that neither school teachers nor social workers, not looking for such signs, failed to note them. Abuse of children is replete with instances where abuse has gone on for a long time without the authorities becoming aware. Children are frightened to speak out at school and teachers may not be trained to look for the appropriate signs. Even social workers visiting a house to deal with the problems such as that of W, may not have been alive to other activities that were going on. The very fact that these children were so slow to make revelations – in the case of T even when C had made them – illustrates how children can be too terrified to reveal what is going on even to a practised eye. I do not find it therefore significant that the social work involvement with W failed to turn up any allegations of abuse by any of the other children during that period. Similarly the lack of reference in the school reports does not surprise me. I was unmoved by Ms McGreenera's submission that S and A1 had been truanting from school or that their behaviour had deteriorated. It is not surprising that children react adversely to behaviour at home in this way.

[34] I have already indicated that the witnesses called by the respondents were clearly unaware of objective problems in this family which involved the children running away from home on a number of occasions. They were witnesses doing their best in a good neighbourly or family manner to assist A and D.

[35] Having concluded that the threshold criteria have been established, I must then consider in the light of the care plan and after consideration of the matters contained in the welfare checklist in Article 3(3) of the 1995 Order, whether this points to a care order. I am absolutely satisfied with the care plan. Given the plight of these children in the past, it seems to me that permanence outside the household of A and D is appropriate. J is clearly benefiting from his present situation. I believe this is even accepted by A and D. I consider that T and C desperately need a period of secure and dedicated family life. It is more likely to be obtained with their future relative carers given the proximity to J and the family connections in the past. I therefore

consider that the care plan is appropriate. I have considered the welfare checklist in Article 3(3) of the 1995 Order. In particular;

(a) The ascertainable wishes and feelings of these children are matters of concern to me. In particular J has clearly voted with his feet and I have taken his views into account. This child should be informed of this. Similarly I found the views of T as expressed to the guardian ad litem to be very revealing indeed.

(b) I believe that the effect of any change in the circumstances of these children which would involve a removal from their present source of care or that contemplated in the future by the Trust would be detrimental to them, particularly if it involved a return to A and D.

(c) I have come to the conclusion that these children have suffered harm in the past and are clearly at risk of suffering harm in the future if they returned to A and D.

(d) I am satisfied that given the mendacity of A and D and their behaviour towards these children in the past, neither of them is capable of meeting their needs. I have considered the relevance of other people but I have come to the conclusion that only those who care for the children or those with whom the Trust consider they should reside in the future at the moment are capable of meeting their needs.

(e) I have considered the range of powers available to me under this order but I have come to the conclusion that only a care order is sufficient. A supervision order would not vest in the Trust sufficient parental responsibility to care for these children.

[36] I have decided that it is better for each of these children if I make an order than to make no order at all pursuant to Article 3(5) of the 1995 Order.

[37] I recognise that mutual enjoyment by parent and child of each others company constitutes a fundamental element of family life and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the European Convention of Human Rights and Fundamental Freedoms 1950 ("Convention Rights"). Any interference constitutes a violation of this article unless it is in accordance with the law, pursues an aim or aims that are legitimate under Article 8(2) and can be regarded as "necessary in a democratic society". (See *K and T v Finland* [2000] 3 FCR 248). I consider that it is a proportionate response to the needs of these children to make a care order. I have taken into account Article 3(2) of the 1995 Order which enjoins this court to make the children's welfare the court's paramount consideration. That I consider to be a legitimate aim to pursue.

[38] Finally before arriving at a decision I must afford the parties the opportunity to consider the question of contact. I have considered all the representations before me and I have come to the conclusion that the recommendations of Dr Leddy are entirely appropriate in this case. In terms I consider that there should be contact between T and C and A and D to the level expressed by Dr Leddy. Given the views of J, which are accepted by A and D there should be no contact in this regard. Inter-sibling contact should also be to the level espoused by Dr Leddy. However I do not intend to make an order to this effect because the Trust should maintain maximum flexibility in a case as complex as this where the needs of the children may alter as events unfold.

[39] In all the circumstances therefore I have come to the conclusions that a care order must be made in this case and I do so in the case of each child.