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

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF DECISIONS OF THE NORTHERN IRELAND HEALTH AND SOCIAL CARE TRUST FOR NORTHERN IRELAND

Publication of any information that would identify the applicant or her child is prohibited.

TREACY J

Introduction

[1] This is a challenge to the decision of the Northern Ireland Health and Social Care Trust ("the Trust") to exercise its powers under Article 52 of the Children (Northern Ireland) Order 1986 ("the 1986 Order") to remove a child from the care of her mother. Further it is a challenge to the manner in which such removal was effected, specifically as regards the failure to consult with affected parties before the removal. Laura McMahon BL appeared for the applicant, Henry Toner QC along with Jill Lindsay BL appeared for the Trust, Maria McNally BL appeared for the father, Kate Cunnigham BL appeared for the Guardian ad Litem and Nessa Murnaghan BL appeared for the NI Court Service.

[2] Finally, the applicant challenges the Northern Ireland Courts Service ("NICtS") for its failure to have in place any means whereby an expedited hearing can be held in relation to decisions made when an interim care order ("ICO") is in place.

Order 53 Statement

[3] The applicant sought the following relief:

(a) An order of Certiorari quashing the decision of the Trust to remove a child from the care of her mother.

(b) Declarations that the reasons relied on by the Trust are unlawful, unreasonable and in breach of natural justice.

(c) Declarations that the methodology employed by the Trust in removing the child is unlawful, unreasonable and in breach of natural justice.

(d) Declarations that the failure of the Northern Ireland Court Service to have in place a system to expedite hearings in cases where a child has been removed is unlawful and unreasonable.

(e) Declarations that Article 52 of the Children (NI) Order 1995 should be read down so that a hearing concerning the removal of a child subject to an interim care order must take place prior to the child being removed to allow all parties to be heard in the matter, in furtherance of the State's obligations under the ECHR.

(f) Further, and in the alternative, a declaration that the Applicant's rights under Article 8 of the ECHR and those of her daughter have been breached, and damages.

[4] The grounds upon which relief was sought included:

(a) The decision to remove the child from her mother on the basis that the applicant accepted that she took alcohol when her child was neither in her presence nor in her care is neither justified nor proportionate and is in violation of the Article 8 rights of both the applicant and her child.

(b) The decision to remove the child from the care of her mother has not been evidenced by the Trust as being necessary as the least intrusive form of interference available with the Article 8 rights of both mother and child in order to protect the welfare of the child.

(c) The Trust have failed in their duty to consult with all affected parties before a decision is reached upon important aspects of the life of the child whilst an ICO is in force.

(d) The actions of the Trust in removing the child from her mother are unreasonable and in breach of natural justice.

(e) The Trust has acted unlawfully in removing the child from the care of her mother without establishing how the legislative criteria for doing so provided for under Article 52 of the Children (NI) Order 1995 have been met.

(f) In failing to establish and particularise how the applicant's consumption of alcohol when her daughter is away staying with her father establishes the applicant's failure to meet her parental responsibility for her daughter (Article 52 3 (b)), the Trust has acted unreasonably and in breach of natural justice.

(g) In failing to establish and particularise how the applicant's consumption of alcohol when her daughter is away staying with her father necessitates the removal of her daughter to the care of foster parents, such action purportedly being necessary to safeguard or promote the child's welfare (Article 52 (4)), the Trust has acted unreasonably and in breach of natural justice.

(h) The requirements of ECHR Articles 6 and 8 necessitate an urgent hearing of the issue of the removal of a child to allow all relevant parties to be heard.

(i) The Northern Ireland Court Service has acted unlawfully and unreasonably in failing to have in place a system to expedite hearings in cases where a child has been removed, as evidenced in this case when such an expedited hearing was sought and denied.

Factual Background / Sequence of Events

[5] The detailed factual background is set out in a confidential annex which for reasons of confidentiality and brevity I do not intend to set out here.

Statutory Framework

[6] The relevant provisions of the Children's Order (NI) 1995 are as follows:

> "**Care Orders and Supervision Orders**
>
> 50.(1) On the application of any authority or authorised person, the court may make an order –
>
> (a) placing the child with respect to whom the application is made in the care of a designated authority; or
>
> (b) putting him under the supervision of a designated authority.
>
> (2) A court may only make a care or a supervision order if it is satisfied –
>
> (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
>
> (b) that the harm, or likelihood of harm, is attributable to –
>
> (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
>
> (ii) the child's being beyond parental control.
>
> (3) Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be

compared with that which could reasonably be expected of a similar child.

...

Effect of Care Order

52. (1) Where a care order is made with respect to a child the authority designated by the order shall receive him into its care and keep him in its care while the order remains in force.

...

(3) While a care order is in force with respect to a child, the authority designated by the order shall –

(a) have parental responsibility for the child; and

(b) have the power (subject to paragraphs (4) to (9)) to determine the extent to which a parent or guardian may meet his parental responsibility to the child.

(4) The authority shall not exercise the power in paragraph (3)(b) unless it is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.

(5) Nothing in paragraph (3)(b) shall prevent a parent or guardian of the child who has care of him from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.

...

(9) The power in paragraph (3)(b) is subject (in addition to being subject to the provisions of this Article) to any right, duty, power, responsibility or authority which a parent or guardian of the child has in relation to the child and his property by virtue of any other statutory provision.

57(1) Where-

(a) In any proceedings on the application for a care or a supervision order, the proceedings are adjourned;

...

The court may make an interim care order or an interim supervision order with respect to the child concerned.

...

63.(1) Where any person ('the applicant') applies to the court for any order to be made under this Article with respect to a child, the court may make the order if, but only if, it is satisfied that -

(a) there is reasonable cause to believe that the child is likely to suffer significant harm if –

(i) he is not removed to accommodation provided by or on behalf of the applicant; or

(ii) he does not remain in the place in which he is then being accommodated; or

(b) in the case of an application made by an authority –

(i) inquiries are being made with respect to the child under Article 66(1)(b); and

(ii) those inquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency; or

(c) in the case of an application made by an authorised person –

(i) the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm;

(ii) the applicant is making inquiries with respect to the child's welfare; and

(iii) those inquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency

(4) While an order under this Article (an "emergency protection order") is in force it ……. –

(b) operates as a direction to any person who is in a position to do so to comply with any request to produce the child to the applicant

(c) authorises –

(i) the removal of the child at any time to accommodation provided by or on behalf of the applicant and his being kept there; or

(ii) the prevention of the child's removal from any hospital, or other place, in which he was being accommodated immediately before the making of the order; and

(d) gives the applicant parental responsibility for the child. "

[7] Section 6 of the Human Rights Act 1998 provides:

"(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if –

(a) As a result of one or more provisions of primary legislation the authority could not have acted differently; or

(b) In the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions."

[8] Arts 3 and 4 of the Children (Allocation of Proceedings) Order 1996 provide where relevant:

Proceedings to be commenced in family proceedings court

3.(1) Subject to paragraphs (2), (3), (4), and (5) and to Article 4, proceedings under any of the following provisions of the 1995 Oder shall be commenced in a family proceedings court.

...

(f) Article 50 (care orders and supervision orders)

...

(k) Article 63 (emergency protection orders);

(l) Article 64 (duration of emergency protection order);

Application to extend, vary or discharge order

4.(1) Proceedings under the 1995 Order –

(a) To extend, vary or discharge an order, or

(b) The determination of which may have the effect of varying or discharging an order

shall be commenced in the court which made the order

(2) A court may transfer proceedings commenced in accordance with paragraph (1) to another court in accordance with Articles 5, 6 or 8.

Arguments

Applicant's Arguments

[9] The applicant argued that the decision to remove the child and place her in foster care was unlawful and that the means by which/the procedure by which the child was removed was unlawful. She also argued that the failure to have in place a system to expedite hearings in cases in which a child has been removed is unlawful, unreasonable and a breach of the applicant's Article 6 and Article 8 rights.

[10] The applicant further argued that Article 52 of the 1995 Order is unlawful and a breach of her ECHR rights and should be read down so that a hearing concerning the removal of a child subject to an ICO must take place prior to the removal of the child.

[11] The applicant argued that the child's father (from whom she was separated) should have been consulted prior to the removal of the child from her as he had agreed on 21 September 2012 that if she became incapable of caring for the child she should be placed with him. The applicant argues that the threshold set down in Article 52(4) [ie the power to determine the extent to which a parent ... may meet his parental responsibility for the child] was not met on the facts founding the removal.

[12] The applicant argued that as the Article 52(4) threshold was not met, the removal of the child was not necessary or proportionate. She submits that there was no evidence that the child needed safeguarding. Specifically the applicant submits that:

(a) The applicant freely provided the information that she had consumed alcohol.

(b) The issue in relation to hair follicle testing was an ongoing issue between the applicant and the trust and not a one off issue.

(c) There were no complaints about the care of the child from any source.

(d) The contentions in the emergency case planning meeting on 24 April 2013 wherein it is alleged that

> the applicant is 'belligerent' and displaying 'irrational behaviour' are unsupported by any further information as to how such alleged behaviour manifested itself to such a degree as to trigger concern about the child that could meet the threshold in Article 52(4) of the 1995 Order.

[13] The applicant argues that the removal of the child was an unjustified interference with her Article 8 rights which was not justified or proportionate and that the circumstances in this case did not require the abrupt removal of the child.

[14] The applicant argued that there should have been consultation with relevant parties. Failure to consult violates the procedural guarantee of proportionality in Article 8. The applicant argued that there was a lack of procedures sufficient to ensure that the interests of all affected family members were protected. The applicant argued that her Article 8 rights were breached as she was not sufficiently involved in the decision to remove her daughter.

[15] The applicant argued that the Trust failed to consider the least possible interference necessary in order to achieve their averred objective of protecting the child.

[16] The applicant argued that the absence of a process that enabled the applicant to be heard, make representations, or access an appeal mechanism other than having the overarching ICO proceedings listed (as was attempted), resulted in the Trust having complete unilateral control in pursuance of their powers under Article 52(3)(b) of the 1995 Order. To the extent that the procedure used is analogous to *ex parte* hearings, it is unlawful as it evades judicial scrutiny of the lawfulness of the removal.

[17] The applicant argued that in failing to have in place a system to expedite hearings in cases where a child has been removed, the Court Service have acted unlawfully and unreasonably and in violation of the Article 6 and Article 8 rights of the applicant and her daughter.

[18] The applicant argued that in cases which rupture the family unit abruptly it is essential that there should be judicial scrutiny of the administrative decisions. The removal of her daughter without enabling the applicant to be heard, make representations or appeal such a decision was an unnecessary and disproportionate response to the averred legitimate aim of protecting the child, such actions being unlawful and in violations of Article 6 and Article 8.

[19] The applicant argued that the relevant legislation should be interpreted via section 3(1) Human Rights Act to find a meaning which is Convention compliant. Specifically the applicant argued that Article 52 should be read down so that a hearing

concerning the removal of a child subject to an Interim Care Order must take place prior to the child being removed to allow all parties to be heard in the matter.

[20] The applicant argued that an Emergency Protection Order is the most appropriate procedure to be followed if the removal of a child is sought. Alternatively, the applicant argued that the provisions of the Children (Allocation of Proceedings) Order 1996, Articles 3 and 4(1) require that the Trust should have returned to court in any event prior to removing the child as the removal constituted a variation of the ICO granted by the court at first instance. The removal of the applicant's child, who was at the time subject to an ICO, constitutes a variation in the terms of the ICO granted by the court at first instance. To the extent that such a variation must be applied for to the court which made the original order, the respondent Trust should have returned to court to indicate that a variation was required which provided for the immediate removal of the child. Such a process would have allowed all parties to be heard and enabled judicial oversight and scrutiny of a process leading to the immediate removal of a child from her family home.

[21] The applicant argued that the arrangements for the listing of hearings in proceedings relating to an emergency protection order ('an EPO') should apply *mutatis mutandis* to the applicant's application for discharge of an interim care order.

The applicant's father, a notice party to these proceedings, agrees in full with the arguments of the applicant and the relief sought

Submissions on behalf of the Guardian ad Litem (Notice Party)

[22] The Guardian ad Litem considered that while the information in respect of alcohol consumption by the applicant justified urgent consideration of the care arrangements for her child, she had concerns about the removal of the child from her mother's care on 25 April 2013 for the following reasons:

(a) The child was not prepared for the removal;

(b) Consideration of kinship care of the child should have been exhausted prior to placement with a foster carer.

[23] While the Guardian ad Litem recognised that the Trust needed to safeguard the interests of the child following the receipt of information on 24 April 2013, she queried whether safeguarding the interests of the child required immediate removal from her mother's care. The Guardian ad Litem considered that an assessment of immediate risk to the child and preparatory work with the child should have been carried out prior to the removal.

First Respondent's Arguments (The Trust)

[24] The first respondent argued that there was evidence that the child required safeguarding, namely that:

> (a) The child had twice been placed on the Child Protection Register and that she was the subject of an interim care order. The first Respondent argues that these facts recognise that the child was at risk, that the child required Social Services protection and that there were reasonable grounds to believe that the child had either suffered, or was likely to suffer, significant harm.
>
> (b) Part of the risk to the child stemmed from her mother having a 10 year history of alcohol and drug abuse.
>
> (c) It was explicit in the Child Protection Plan and the Care Plan that the applicant was expected to remain abstinent from alcohol and drugs if the child was to remain in her care.
>
> (d) The trust was informed by the applicant's solicitor and the community addictions team that the mother had been dishonest with Social Services and the LAC review and had thus breached both the Child Protection Plan and the Care Plan.

[25] The Trust argued that in the meeting of 24 April 2013 various options in relation to the child were discussed and at that juncture the only feasible option was to remove the child urgently and place her with foster carers; the options discussed were:

> (a) That the child stay with her mother. This was not considered feasible as the child's safety could not be guaranteed.
>
> (b) That the child stay with her father. This was not considered feasible as he had not demonstrated commitment to the child and further assessment of his parenting was required. There were also issues in relation to the testing of his hair follicles.
>
> (c) That the child stay with extended family. This was not considered feasible as no extended family have been identified.

(d) That the child be placed in foster care in a planned manner. This was not considered feasible as her safety could not be guaranteed and the applicant's situation was deteriorating rapidly.

(e) That the child be removed from the applicant's care urgently. This was considered feasible.

[26] The Trust asserted that it did not remove the child as a knee-jerk reaction to the information that it received in relation to the mother's alcohol consumption. Rather the Trust held a planning meeting wherein various options were debated. The Care Plan of 17 December 2012, of which the applicant was aware, stated that if she was found to be intoxicated then Children's Services would consider legal intervention in order to place the child in alternative care arrangements. The applicant was at an LAC review on 24 April 2013 where the Care Plan was revisited.

[27] The Trust asserted that at the time of the decision, and due to the applicant's history with alcohol use, she could not safely decide to take alcohol whilst caring for the child. As a result the trust believed that the child was at risk of being neglected by reason of her mother's drinking. The Trust submitted that in all the circumstances of the case, and particularly in light of the applicant's admitted use of alcohol, the Trust believed that the risks to the child were immediate and of such a nature that consultation was not possible.

Second Respondent's Arguments

[28] The Second Respondent disputed that the absence of any system to expedite hearings in such circumstances as those that occurred in this case, namely an application to discharge an interim care order did not amount to a breach of the applicant's Article 6 or Article 8 rights and denied that the decision to list the hearing on 2 May was unreasonable or unlawful.

[29] Further, it argued that this application should be refused as it is unnecessary satellite litigation cutting across ongoing Children Order proceedings. In this context the Second Respondent asserted that, viewed in the wider context, the applicant has suffered no prejudice by the listing of the application to discharge the interim care order a week after it was initially sought.

[30] The Second Respondent argued that this application should be refused on the basis that the applicant has not expended all suitable and effective alternative remedies short of judicial review. In particular, the applicant could have made an oral application to District Judge Meehan at any time between 29 April and 2 May 2013.

[31] The Second Respondent argued that it was reasonable to delay proceedings to allow District Judge Meehan to hear the application as he would have been best placed to adjudicate on the instant application as he had previous carriage of the case and was familiar with the background to the factual matrix.

[32] The second respondent denies that the arrangements for listing of hearings in proceedings relating to emergency protection orders should apply *mutatis mutandis* to the discharge of an interim care order and notes in this regard that the challenge in ES was fundamentally different in nature to the instant case.

[33] In this regard the second respondent submitted that the nature of an ICO is quite different to that of an EPO in the following ways:

> (a) The ICO was made with the parties consent.
>
> (b) While in the instant case District Judge Kelly was aware of the asserted urgency of the proceedings, an ICO can be challenged for a range of reasons, some urgent, some mundane.
>
> (c) The statutory provisions providing for ICOs differ from those for EPOs as there is no reference in Article 57 (ICO) for there to be an element of urgency for the compulsory intervention for child protection in relation to interim care orders. Significantly in this regard, an Article 57 interim care order does not make explicit provision for the removal of a child and so does not imply an immediate and obvious change in residence. On these bases it is argued that EPOs can easily be distinguished from interim care orders.
>
> (d) The Children Order does not make any provision for an expedited hearing in relation to interim care orders. Crucially, unlike an EPO, the discharge of an interim care order must be addressed on an *inter partes* basis and therefore, given the need to advise all relevant parties of the hearing, it is fundamentally different in nature to an expedited ex parte hearing.
>
> (e) Further, unlike Article 64(8), there is no embargo on the timing of when one might bring an application for discharge of a care order and so there is not the same

> prima facie incompatibility with the provisions of Articles 6 and 8.
>
> (f) As a result of the foregoing, when the Second Respondent is asked to list a challenge to an EPO it is clear that an expedited hearing is necessary as implicit in such an application will be a potentially serious interference with a parent's Convention rights. There is no such implication engendered by an application to discharge an interim care order.

[34] In relation to Article 6 the Second Respondent submitted that there is no express guarantee of the right of access to a court; further, in determining what is a reasonable time in the context of access to a court the complexity of the issue, the factual/legal issues and 'what is at stake for the applicant' may all be issues to be considered. It is submitted that in the instant case the listing of the application for a discharge of the ICO would not have had an 'irreversible' or 'definitive' impact on the outcome of the child's care.

[35] The Second Respondent argued that limitations on the right of access to a court must pursue a legitimate aim, be proportionate and be legally certain. It is submitted that in the instant case the short delay pursued the legitimate aim of ensuring that District Judge Meehan continued to deal with the case and in those circumstances the delay was proportionate.

[36] In relation to Article 8 the second respondent argued that the threshold conditions in Article 8(2) were met when the interim care order was made (by consent) and this amounted to a clearly established objective basis for such interference with their Article 8 rights. There was therefore already a 'pressing social need' for the state to interfere in the family life enjoyed by the child and her mother. The delay in listing the application to discharge the ICO was proportionate and legitimate.

[37] The Second Respondent submitted that the court should be cautious before importing procedural protections developed in the context of criminal law (ie bail) into the child protection arena.

[38] The Second Respondent submitted that the applicant has failed to establish that this listing of the application to discharge the ICO was unlawful and argued that its actions must be viewed in light of the fact that there was a complete absence of any statutory imperative compelling it to expedite the hearing of the application. In this context its actions cannot be viewed as unreasonable or unlawful.

Discussion

Was the threshold made out for Article 52?

[39] The test in Article 52 gives the Trust the power to 'determine the extent to which a parent or guardian may meet his parental responsibility to the child' where it is satisfied that this is necessary to safeguard or promote the child's welfare. In the instant case the decision to remove the child pursuant to this power was made between the evening of 23 March 2013 and 25 March 2013 following information received by the Trust that the applicant (the child's mother) had taken some alcohol.

[40] There had been an ongoing issue between the Trust and the applicant about submitting to hair follicle testing. The judge who granted the interim care order had been concerned about how, in the absence of proof of abstinence via hair follicle testing, the Trust could guarantee the child's wellbeing.

[41] In the initial Looked after Children (LAC) meeting on 23 March, the Trust noted that the child appeared healthy, active, confident and independent, that her school attendance was very good and that she seemed happy in her mother's care. It was also stated that there was no present evidence of neglect and that the child's needs were being met to a reasonable standard. It goes as far as to say '[the child] is **thriving** in her mother's care' [my emphasis]. The Trust at this meeting concluded that there were no reasons at this time to remove the child from her mother. The applicant again refused hair follicle testing and this was noted as a serious concern of the Trust.

[42] The following day the information was received in relation to the applicant having taken alcohol while the child was staying at her father's home. An emergency case planning meeting was held. The Trust was concerned about the child's wellbeing because of this information and because it represented a breach of the agreed care plan. The Trust was cognisant of the query from the judge about how it could guarantee the child's safety in the absence of hair follicle testing. At this meeting the described presentation of the applicant was completely different to the presentation of her in the meeting notes ***of the previous day.*** On 24 March the applicant was described as 'belligerent' and 'irrational' and it was noted that she left the meeting of the 23rd early (in the notes from the meeting of the 23rd it is recorded that the applicant left the meeting to pick up her child). It is stated that the applicant's situation was 'deteriorating rapidly'. No evidence for or explanation of these descriptions is evident in the meeting notes.

[43] Based on this revised perception of the applicant the Trust decided that the child needed to be placed in foster care. It was decided that the only way that the child's safety could be guaranteed was to remove her urgently from her mother's care and without planning or preparation of the child.

[44] In deciding how to 'safeguard and promote' a child's welfare, the Trust must weigh up the risks in the child's current environment to her welfare, against the

traumatic effect of an unplanned move to foster care on the child's welfare. While a discovery that the applicant had taken alcohol while the child was NOT in her care and thus breached the agreed care plan must affect the Trust's assessment of the long term suitability of the child's living arrangements, it is difficult to see how the information received on 24 April alone could be sufficient to persuade the Trust that it was necessary to safeguard or promote the child's welfare by immediately removing a 'thriving' child from her mother's care. Unlike the meeting of the 23rd, there was clearly no attempt to consider the effect that such an abrupt removal would have on the child's welfare.

[45] For this reason the removal of the child from the applicant's care was unlawful and there was a consequent breach of the applicant's and the child's Article 8 rights.

Did the failure to consult breach Article 8?

[46] The issue of the nature and extent of the duty to consult when an interim care order is in place was considered in R (on the application of H) v Kingston Upon Hull City Council [2013] EWHC 388 where, at para 52, Judge Richardson QC said:

> 'When an ICO is made the local authority and the parent share parental responsibility for the child – albeit the local authority is usually the one in the driving seat particularly when removal has been sanctioned. This plainly does not mean the parents or others are of little or no consequence. Although the local authority may be driving the vehicle, on a journey approved by the court, it does not mean it is able to ignore the views of the passengers as to the route to follow. There needs to be consultation, and concurrence (if possible). The consultation must be genuine and not merely a process whereby decisions are merely the subject of information to the parents. I repeat a parent with parental responsibility does not surrender that when an ICO is made, nor when removal is permitted by the court. The weight to be attached to the views of parents and others is a different question. A local authority must always work in a carefully calibrated manner and act in a proportionate way commensurate with the issues involved and those involved. Calibration and proportionality are highly fact specific. The level and manner of consultation with one family will inevitably differ to that with another family depending on the issues and circumstances. The weight to be attached to

> the views of a father who murdered the mother of his child is likely to be rather less (if any) to be attached to the views of the grandparents who are looking after a child in a difficult family situation. A sense of reality and a sense of proportion are key to the concept of consultation; however, consultation there must be, save in exceptional circumstances where child safety or other pressing reasons are present….'

[47] Referring to the judgment of Munby J in Re G (Care: Challenge to Local Authority Decision) [2003] EWHC 551 (Fam) **Judge** Richardson QC distils the following reasoning:

> '(1) It is always important (usually vital) for any decision-maker to consult with all relevant parties to be affected by the proposal before making the decision. The weight (or none) to be attached to the responses is a matter for the decision-maker providing the decision is legally rational.
>
> (2) .... the removal of a child from a parent… should not be countenanced unless and until there has been due and proper consultation and an opportunity to challenge the proposal.
>
> (3) Article 8 not only provides substantive protection for parents …. but requires procedural safeguards too.
>
> (4) Article 8 is not something that applies simply to the judicial process, but to other decisions made by the local authority too.

[48] In the case of the applicant's child, no relevant parties were consulted, neither the mother, the father, the Guardian ad Litem nor the child whose life would be subjected to the greatest disruption of all. As noted above, there was no material upon which the Trust could have considered this applicant's non-compliance with an agreed care plan, in circumstances where the child was neither present nor immediately affected by the infraction, to be so immediately threatening as to require the Trust to uproot a 'thriving' child without any consultation with any affected party - not even the Guardian ad Litem who could have provided a useful safety mechanism for both the Trust and the family involved. It was neither necessary nor proportionate to by-pass the requirement to have genuine and effective consultation with all the parties concerned. It is crucial that public authorities recognize and accept that statutory

requirements or Departmental guidance which recommends genuine consultation with the people most personally affected by administrative decisions do so in order to ensure that decision making is well informed, well calibrated and proportionate and avoids the risk of excessive reliance on coercive powers. Administrative decision makers should embrace the requirement to consult and appreciate it as a valuable protective mechanism for themselves which should operate to prevent them from developing a case-hardened blindness to the personal circumstances of the people whose lives will be most affected by the decision makers' actions. Good consultation should keep administrators alive to the possibility of legitimate alternative approaches to objectives shared by the administrative system and the human individuals who need to rely on that system.

[49] In this case there were no procedural safeguards extended to the mother to protect her Article 8 rights. Further, a mother's views, in most circumstances, and certainly in the instant case, are a vital consideration to take into account in relation to the child's Article 8 rights. Therefore the manifest lack of procedural safeguards attending the decision to remove the child from her mother similarly violated the child's Article 8 rights.

Did the court service fail in not having a system in place to expedite hearings?

[50] It is clear from the district judge's affidavit that the applicant's solicitors were invited to make representations as to the urgency of the matter and that the issue could have been remitted to the original judge for urgent treatment had appropriate representations been made. In this case the solicitors did not make such representations. Without having exhausted this opportunity to be heard it would be inappropriate to decide that the applicant's Article 6 rights were breached.

Conclusion

[51] For the above reasons the judicial review is allowed. I will hear the parties as to what relief, if any, is required when they have had time to consider the judgment.