

Neutral Citation no. [2006] NIFam 9

Ref: NICC5517

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

Delivered: 23/06/06

05/035319

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE: C, A MINOR

NICHOLSON LJ

Introduction

[1] I direct that nothing is to be published which enables the name of the child or her parents or any other person or group connected with them to be identified.

[2] This judgment has been anonymised for the purposes of publication.

[3] Ms M Smyth appears for the applicant; Ms Walsh QC and Mr Davidson appear for the respondent; Mr Long QC and Ms McAllister appear for the guardian ad litem. The father of the child was made a Notice Party and has indicated that he does not wish to take part in the proceedings.

[4] The child, to whom I will refer as C, was born on 26 September 2001. Her mother, the respondent, whom I will call T, was born on 28 November 1978 and is Scottish. C's father had a relationship with T for about 12 months which ended when T was pregnant with C for about 6 months. T, who is 27 years of age, has an elder daughter, J, who was born on 20 July 2000. The identity of J's father has been discussed with T by social workers for the Trust. Their relationship lasted for about 6 months.

Care orders were made in respect of J and C at Ballymena Family Proceedings Court under Article 50 of the Children (Northern Ireland) Order 1995 on 26 April 2004. The Trust applied for the care orders.

[5] The Trust is now applying for a Freeing Order. The application commenced on 6 September 2005, 16 months after the care order was made. I

heard evidence on Monday and Tuesday, 20 and 21 February 2006, adjourned the hearing because T became ill during the course of giving evidence, adjourned the hearing until 3 March 2006 when oral evidence was completed and received written submissions until 13 March 2006.

The application is brought under Article 18 of the Adoption (NI) Order 1987. The court has to be satisfied in the case of each parent of the child that his or her agreement to the making of an adoption order should be dispensed with on a ground specified in Article 16(2). The relevant ground in this application is that the parent is withholding agreement unreasonably. Ms JB, a field worker with Antrim Social Services, gave evidence to the court. She relied on and adopted her report and notes of interviews. Ms H, adoption support manager of the Trust also gave evidence. The report of Professor Tresiliotis was agreed. T and the mother of D, her partner, gave evidence for the respondent. Where their evidence differed from the evidence of T or the mother of D, I preferred the evidence of Ms JB and Ms H.

Background

A. Scotland until July 2002

[6] The court is dependent on social workers in making an assessment of T although I heard her giving evidence over a period of 2 days. She was born in Scotland. Her childhood was unhappy. She spent much of it in a Childrens' Home in Scotland. She said that she was "in care", in a home, in a residential school. She was out of parental control when she was a child. She suffered from depression from an early age and had a history of self-harm. She was involved with psychiatric services and was diagnosed at some stage as manic-depressive. Following discharge from care she lived with her parents, then became homeless and moved to bed and breakfast accommodation in a particular area of Scotland. Her parents have been married for 30 years. T stated that her father has had 3 heart attacks and a stroke and that her mother and sister have had nervous breakdowns. She did not have happy memories of Social Services in Scotland as a teenager, nor did she have a good relationship with them from 2000 - 2002 or in 2003 - 2005. Recently adoption counselling has been offered.

[7] Ms JB provided a lengthy report about events leading to the arrival of T with her 2 children, J and C, in Northern Ireland. Social Services in Scotland had become involved with T and J when J was 4 months old. Anonymous allegations were made by neighbours against T and concern was raised about J. Family support workers became involved; it is said that practical help and guidance were given to T regarding the parenting of J. A range of concerns is said to have been noted; safety issues, lack of hygiene, lack of stimulation. T's lifestyle was described as chaotic and she was not always willing to maintain contact with professionals. She became pregnant

with C and her twin in 2001, had an ectopic pregnancy and lost the twin. She avoided social work contact and the Criminal Justice Agency is said to have been concerned about the company she was keeping.

[8] On 2 April 2001 a professional planning meeting was held and concerns were expressed about the level of hygiene and safety within the home, Ms JB records. But the health visitor noted that J was thriving. Further problems arose. On the day of C's birth in hospital she was placed in an incubator suffering from hypothermia but T discharged herself and C from the hospital against medical advice on that day.

On 18 December 2001 a professional planning meeting was held. The health visitor suggested that there might be attachment issues in relation to C. It was noted that T held C at a distance and while she could be affectionate towards J, had not been observed to be affectionate towards C. T herself said that she had no bond with C, it is recorded. In January 2002 a risk assessment was to be carried out but T moved with J and C into an area under the control of another group of social workers.

The following areas of concern were recorded:

T's parenting capacity and the level of her positive parenting of J and C resulted in them being unable to experience a secure, stable and responsive relationship with her. There was little evidence of routine, boundaries or guidance to assist the children to regulate their own emotions and behaviour. There was little regard for safety in the home and no recognition of hazardous objects for the children. T would not engage sufficiently to assess this or identify appropriate supports, although it was recognised that she might be suffering from experience of loss and trauma from her past.

It was noted that in February 2002 J had 4 or 5 nail marks on her forehead and upper neck, a burn mark on her right hand and a bite mark on her right arm and C had 3 nail marks on her eyebrows. The health visitor called on 27 February 2002 at T's home at 1.15pm, found J in the hall, C on the sofa and T in bed. Both children were said to be wearing their pyjamas and having dirty nappies. On 13 March 2002 the health visitor found T in her nightwear at 1.15pm. The house was described as chaotic and very dirty. On 5 May 2002 the health visitor noted a bottle of vodka ice and a bottle of vodka by a chair and 5 ashtrays.

Her mental health, that is to say, her depression was a problem in her life in Scotland and has remained a problem.

[9] The names of J and C were placed on the Child Protection Register on 19 June 2002. A report was prepared regarding the need for the children to be cared for by Social Services. T took J and C to Antrim in July 2002. According

to Ms JB's report her senior social worker was told by T that one of the reasons for leaving Scotland was to avoid the children being removed from her. All of these matters were recorded by Ms JB and adopted as part of her evidence.

[10] T denied in evidence all the allegations. She stated that the children were happy in the area of Scotland in which they were living. There were no marks on them. Hygiene was satisfactory. She was harrassed by neighbours and a social worker and that was why she moved to Antrim. She wanted to come to Northern Ireland for a better life for the children. She did not know anyone in Northern Ireland. She thought that she would have a normal life. The stories about the health visitor were false. The bottle of vodka was in a male friend's bag. The children had clean clothes, were bathed, washed and fed properly. I did not believe her.

[11] I make all the allowances that I can for the fact that Ms JB's report is based on hearsay and double hearsay. But I find it impossible to believe that the children were put on the Child Protection Register in Scotland without good reason. Nor can I accept T's evidence that she left Scotland for Northern Ireland unaware that there was a serious risk that her children would be taken away from her. She was a forceful, outspoken witness. Making every allowance for the stress that she was under, I was unable to believe her story as to why she came to live in Antrim. She was convicted of lewd and libidinous behaviour towards 2 boys aged 13 and 15 and made the subject of a Probation Order for 2 years until April 2003 and registered as a sex offender in Scotland. She must have known of the concerns of social services in Scotland and the risk that the children would be taken into care.

B. Northern Ireland until April 2003

[12] On 19 August 2002 the Trust held a transfer Child Protection Case Conference. It was agreed that the names of J and C should be placed on the Child Protection Register under the same categories as in Scotland, namely "potential for emotional harm" and "potential for neglect". The same risks as had been identified in Scotland were recorded: see [8]. T stated her intention to cooperate with the Trust but, it is recorded, she was unhappy that the children had been placed on the Child Protection Register.

Social workers highlighted concerns regarding hygiene and safety within the home. T reported threats of intimidation from the local community accusing her of prostitution. These allegations were also made anonymously in Scotland. Shots from an airgun were fired at her home on 28 October 2002.

On 29 October she and the children moved to Mill House Hostel, Ballymena because of the intimidation. The Trust received reports from staff

at the hostel regarding T's care of the children. The staff reported that they had to constantly remind T to feed J and C regularly and not to leave them unattended. It was claimed that she had to be wakened while the children were in the room. On 8 November 2002 staff contacted the Trust's Out of Hours Service. They stated that T had gone to a party with another resident to Ballymoney and failed to make adequate arrangements for the children to be cared for. Allegations were made by residents of the hostel akin to the anonymous allegations made in Scotland. On 12 November 2002 the Trust applied for ex parte Emergency Protection Orders in respect of J and C as T had left Scotland at a similar stage. The grounds were that J and C needed an immediate improvement in care.

[13] In her affidavit sworn on 2 November 2005 and in evidence T denied strenuously that the allegations made by social workers were justified. She maintained that the accusations involving Mill House Hostel were unjustified. She pointed out that there was no allegation that she was unfit to look after the children because she had too much to drink. She said that she needed an occasional opportunity to have a break and had arranged for her children to be looked after. That arrangement had broken down through no fault of her own.

She said in evidence that she thought she had not done a bad job, bringing up her children in the hostel to which she had been forced to go through intimidation. She explained to the court in some detail the incident when she left the children in the hostel and went out for the evening. She said that she did not get on very well with other residents of the hostel. One of them threatened her quite a lot. She stated in her affidavit that she found the allegations made by residents of the hostel hurtful and malicious. These were similar to the allegations made in Scotland, namely that she was a prostitute. She said in evidence that she was disgusted by them and was disgusted by the life led by prostitutes. I cannot rely on her evidence. But I am not prepared to take these allegations about her personal life into account.

[14] Having listened to her evidence, however, I was left in no doubt that this was and is a troubled young woman who found the stress and strain of coping with J and C beyond her in Northern Ireland. She probably believes in her mothering abilities and she certainly believes that she lives in a world unfairly hostile to her. But she was and is unable to recognise that there were and are a number of people trying to help her, whose help she has resented particularly, if not entirely, because she has believed that she has not needed help and has not wanted help from them.

[15] On 25 November 2002 it was decided at the first Looked After Children Review (LAC) that a motivational assessment followed by a comprehensive assessment of T should be carried out. It was also agreed that the Scottish Social Services would carry out an initial assessment of T's extended family

and that an interim care order should be sought for J and C. In my view this was a decision which took into account T's rights under Article 8 of the Convention although I am sure that no thought was given expressly to them. It would be unfair to Social Services in this part of the United Kingdom to state that they have ignored the rights of parents set against the rights of their children, merely because they have not referred expressly to rights under Article 8. There has perhaps been a failure to realise the desperate efforts of parents to put right their lives when adoption is threatened and their right to refuse consent to adoption as against long term foster care in certain cases in which an order for adoption would be made if the welfare of the child was paramount.

[16] On 12 February 2003 the Scottish Social Services indicated that there were no foster placements available within the relevant local authority area in Scotland and later information established that there were none in Scotland as a whole. On 24 March 2003 at a LAC Review it was noted that T who had been given 3 contact sessions per week with J and C after they had been taken into care had attended all 3 sessions in only one of a number of weeks. It was apparent that T objected to the placement of her children with her sister and her partner in Scotland on the basis of his violence and excessive use of alcohol. These objections were later shown to be valid. It was agreed that the NSPCC would carry out a motivational assessment of T. At a LAC review on 14 May 2003 it was noted that T had not attended the assessments by NSPCC but had left for Manchester on 9 April where she stayed for some months before moving back to Scotland. It appears that she attended only one appointment.

[17] T complained to this court that the NSPCC were going too far into her background at the first assessment and did not go to any other NSPCC assessments as a result. She claimed that a resident in the hostel forced her to go to Manchester by threatening that if she did not do so, she would get the UDA to come and get T. This unidentified lady wanted T to marry a Pakistani so that he could get a residential visa, T said. She went to Manchester but did not marry the Pakistani. She did not return to Northern Ireland for any LAC Reviews because she could not afford to do so. She told counsel for the Trust that she went to Manchester because she was told the UDA or the UVF would shoot her if she did not go. She avoided marrying the Pakistani by making the excuse that her father was ill. When she was in Manchester the vouchers to travel back to Northern Ireland went to the wrong address. She never got them. The tickets were sent to a kebab shop. She lived over the shop. The shop owners did not know her second name and returned them to the main post office. She went on to say that she got vouchers for LAC Reviews sometimes. She was to come over to Northern Ireland on 28 August 2003 but was taken ill at Stranraer. Her recollection appears to be faulty as the LAC Review indicates that she attended. She arranged for copies of the LAC Reviews to be sent to her as she did not get to

see her children if she came over for Reviews. She did come over for some reviews before the Care Order was made.

[18] I regret to say that I did not believe her story as to the reason why she went to Manchester. My impression of her in the witness box was that she would not have left the hostel to go to Manchester for the reason that she gave. I conclude that she left Northern Ireland and went to Manchester for reasons of her own and I believe that she decided voluntarily not to return to Northern Ireland for the LAC Review in May 2003, not because she did not have the travel vouchers. They were sent to her by recorded delivery. She may have refused to accept delivery of them.

[19] The information given to the LAC Review members on 14 May 2003 was that T had moved to Manchester to get married within a month and that on her departure she had said that she intended to return to Northern Ireland for weekly contact with her children. She did not do so. Paragraph 5 of her affidavit of 2 November 2005 gives the game away. "This [move to Manchester] was due to a relationship I was in."

From 14 May 2003 until the Care Hearing on 26 April 2004

[20] On 14 May 2003 the decision was taken that future contact between T and the children would be at LAC Reviews and that travel arrangements would be made. There was to be telephone contact on a weekly basis. On 3 July 2003 at a LAC Review it was noted that C had been moved to join J, no face to face contact had occurred between T and C but there was telephone contact. T refused to attend the LAC Review, it was noted. It will be recalled that T said she did not attend because she was not allowed contact.

[21] The assessment of T's sister and brother-in-law was unfavourable by reason of issues relating to domestic violence and anger shown by the brother-in-law. The Trust and Scottish Social Services sought to find placements for J and C in Scotland; it became apparent that this might prove difficult and eventually it was discovered that there were no placements in Scotland. On 28 August 2003 it was noted at a LAC Review that long-term care for J and C would be best provided through adoption. A request was then made to T to visit Social Services in Scotland in order that her current life style and any changes she had made could be looked at. But she did not comply with the request, it was noted. It was decided to carry out an analysis of adoptive placement in Scotland versus placement in Northern Ireland and T was offered adoptive counselling at the meeting but declined. She saw C on 29 August 2003 following the LAC Review.

[22] On 6 October 2003 it was decided to remove the names of J and C from the Child Protection Register as reunion with T had been ruled out. On 18 November 2003 it was noted that J and C had settled well in the same foster

placement. T attended this Review and informed the Review members that her lifestyle had changed and she wished to undergo assessment. She was told that this was not part of the Trust's care plan and she did not have contact with the children on the following day, as had been arranged by the Trust. She was asked, however, to visit social services in Scotland so that they could look at her current lifestyle and the changes she said that she had made. But she fell out with the Scottish social worker. On 29 January 2004 T told the social worker that she had secured new housing and asked that the children be returned to her care. This was, presumably, the accommodation which she would not allow Ms JB to see. On 3 March 2004 C's case was presented to the Adoption Panel which required further information regarding T's physical and mental history and a HIV test to be carried out on C. On 23 March 2004 a LAC Review was held. It was noted that T had telephone contact fortnightly or every three weeks with J and C and direct contact on the day of the review which she attended. Ms JB took the view that contact should be brought to an end that day as T's attitude and behaviour at contact was negative. The Trust decided to apply to the court for an end to direct contact. By this time Professor Tresiliotis' report was available. He had concluded for reasons which I will discuss later that J and C should be placed separately.

The Care Hearing on 26 April 2004

[23] The court had available reports by the social workers SMcI and RMcF from 28 October 2002 until 18 February 2004 and a care plan by SMcI. In his care plan he stated that C had suffered significant harm by way of emotional harm and neglect and that it was believed that her basic needs had not been adequately met by T. She was with approved foster-carers. An initial motivational assessment of T was arranged to commence on 24 March 2003, to be carried out by NSPCC. She attended the first but no other appointments and left Northern Ireland on 9 April 2003. It will be recalled that she complained in her evidence that they went too far back into her past life.

On the basis of her lack of cooperation with the assessment, the Trust decided that it was not in C's best interest to be returned to her birth mother. An assessment was made of family members, namely, T's sister and brother-in-law. The Registration Panel in Scotland decided that this couple could not provide care for J and C.

Both the Trust and Social Services in Scotland were seeking placements for the children with a view to commencing proceedings for the children to be freed for adoption. C's needs were currently being met by a short-term foster carer.

There had been no physical contact between T and C from 8 April 2003 until 28 August 2003. Tickets which were sent by recorded delivery to T to attend the LAC Review on 14 May 2003 were not used and she declined to

attend on 3 July 2003. When she left Northern Ireland on 9 April 2003 she said that she would return on a weekly basis to see the children but she did not do so. She did not see C again until 23 March 2004 although she was offered the opportunity to see her. When she did see her she behaved in such a way that Ms JB decided direct contact was not in C's interests. Ms JB's record of her behaviour justified that decision. Her decision not to travel over to see C (or J) was not caused by financial problems. The Trust made available financial assistance for travel and accommodation.

C needed to have regular contact with her half-sister, J, to promote their relationship. An adoption placement separate from her half-sister would meet her needs and monthly face to face contact would be arranged.

T's views were constantly sought by social workers, it was stated. She maintained that she believed that she had been providing adequate care and protection to the children and was not prepared to agree with the Trust's plan. C had been in her current placement with her sister J since October 2003 and it was hoped that she would remain there until foster carers approved as potential adoptive carers had been secured. There were no plans for reunification with T as she had not shown any commitment to a process to assess her capacity to change and provide better parenting. T would be informed of all decisions and recommendations made in respect of C and invited to play a role in all LAC Reviews, it was recorded.

[24] Professor Tresiliotis provided a report dated 11 February 2004 in which he set out a review of the literature on the placing of siblings, a brief background to the case, his observation of contact and his conclusions and recommendations. His final observation on the literature was that "siblings should not be separated unless this is part of a well thought out plan on each child's needs ... However, a child's needs should not be sacrificed in order to meet those of a sibling" quoting the Department of Health's Guidance in 1990 to the Children Act 1989.

Much of the background material in his report can be found earlier in this judgment. But, in addition, he referred to the fact that when they were first taken into care, they were separated because of J's highly challenging and demanding behaviour which required very individualised care. C, though appearing equally needy, presented herself as placid, very passive and undemanding. After a number of moves resulting from J's disturbing behaviour, J and C were now with short-term foster carers.

He met with the various foster-carers and the social workers and visited J and C. He commented that J's intense rivalry with C dominated the session. In his view the placement together appeared to be very largely at the expense of C.

He concluded that these were two very needy children who had a very neglectful and emotionally abusive early life. As a result they had failed to develop secure attachments to a parental figure. C appeared to have experienced an even worse quality of care from her mother than J. He recommended the splitting of the two siblings. At her age there should be no difficulty in identifying a suitable family for C.

Long-term foster care was too unpredictable and did not provide the legality, the full physical and emotional security, and the sense of belonging that go with adoption. To deprive J and C of the benefits that go with adoption would be neglectful. Generous contact would have to be allowed between the siblings until such time as they were able to express their own wishes about frequency and duration.

[25] At an interim hearing of the case on 28 May 2003 it was decreed by the court that the threshold criteria had been crossed. The guardian ad litem made his reports dated 22 October 2003 and 26 February 2004 available to the Family Proceedings Court. The court ordered that J and C be placed in the care of the Trust, that the care plan be approved and authorised the Trust to refuse contact between the children and T until further Order under Article 53(4) of the Children (Northern Ireland) Order 1995. As I have already stated the Orders were made on 26 April 2004.

[26] On 26 May 2004 it was noted at a LAC Review that when T telephoned the foster home, she did not ask to speak to C. The Trust decided that indirect only contact should be offered to T. The Adoption Panel recommended that C should be adopted on 2 July 2004. On 20 July 2004 Ms J B and the senior social worker travelled to Scotland to meet T and give her the letter from the Trust's decision-maker. T stated her objection to C being freed for adoption but did not request that a further assessment be undertaken nor ask about C.

[27] C was moved to foster carers who were prospective adopting parents on 6 August 2004. C and J commenced weekly contact. C was noted to be very well settled on 8 November 2004. A medical review by Dr Troughton in September concluded that she had mild/moderate developmental delay. On 4 February 2005 Ms JB and the senior social worker met with T in Scotland. She declined to make a declaration of consent to adoption under Article 18(3) of the 1987 Order. She said, however, that she wished to avail of adoption counselling and agreed that information about her medical history could be obtained. On 11 March 2005 she met with Ms Haslett, Adoption Development Officer and Ms JB.

[28] On 9 June 2005 Ms JB and the senior social worker met with T and her partner, D, to gather information about her current circumstances and their lifestyle and relationship. They had been together for approximately a year. He was 20 years of age and she was 26. He was aware of the situation about J

and C. He has a sister who is married with a daughter and a brother who is single and lives with his parents. They described their relationship as very good. D said he had a learning difficulty and had attended a special school. If T got the children, they would look after them as well as they could, said D. He had some experience with children through caring for his niece. He saw his parents regularly.

T said she was still on anti-depressants having taken them from the age of 11, and had recently been prescribed Valium as her nerves had been bad. There had been bother with the police as a neighbour was a violent alcoholic and was always trying to start fights with her or D. T said that she had produced a sword to this person about two months previously and was being charged with possession of an offensive weapon. She gave the name of her solicitor and gave permission to speak to local police. Between the age of 12-16 D had been involved in vandalism. He had worked for a year as a tray-washer for Asda.

T visits her mother and father once a fortnight. She goes for walks with her pup for a couple of hours during the day, goes to bingo once a month and visits D's parents once every 3-4 weeks for a drink. T and D drink sparingly and do not take any drugs other than those prescribed (for T).

Ms JB and the senior social worker had asked to see T in her home surroundings but she refused. She said that she was applying for a transfer. She said that her life was more active now. She and D shared the housework. They did have rows but there had never been violence. T said that her medication made her feel drowsy and she would sleep in the mornings. They said they were planning to get married on 2 December.

They were given information about J and C. T was advised of difficulties with J. She said that Social Services held responsibility for this and that J would be fine if she came back to her. She said that she would like to have more contact.

[29] On 28 June 2005 Ms JB and the Trust's adoption officer, Ms H met again with T and she was given a letter about the proposed adoption of C. T was left alone with the adoption officer and Ms JB recorded that she was visibly upset when Ms JB returned. Later visits to T were recorded by Ms JB. At all visits photographs of the children were given to her and she gave presents for the children. At one visit she spoke about J's father. They had been together for about six months. She was 3 months pregnant when they split up. She had been together with C's father for about a year. After they split up he would visit her until she went to Northern Ireland and would telephone once a month to find out how C was. She was advised that Social Services needed to speak to C's father.

She was asked what was her understanding as to why the children were taken into care. She said that she did not understand what happened. She had been suicidal and had manic depression at the time and did not remember much about what happened. She said that all the residents of the hostel turned against her when the children were taken into care.

She informed Ms JB that in her teenage years she had self-harmed by cutting, burning herself and pulling out her hair and eyelashes. The last time she had done this was about a year previously. She was not close to either of her parents whom she saw about once a fortnight. She said that she had an A level and was a fully qualified caterer. She feels in much better heart now.

[30] The father of C, JP, met Ms JB, and Mr SMcI in February 2006, informed her that he was not in a position to care for C, and asked about contact. He was told that the Trust might agree to hold a contact address with the post-adoption team so that in the future if C wished to have information about him, she would be able to have access to it. There was also a discussion about telephone contact between him and Ms JB so that he could learn how C was getting on. He had never laid eyes on his child.

[31] J is now in long-term foster care. Her disturbing behaviour has deteriorated and her foster carers who had previously been prepared to adopt her felt that her behaviour was such that they were not prepared to undertake the responsibility for adoption, although she remains with them and they are very fond of her, as Professor Tresiliotis reported. A high level of professional help is needed. T's story of intimidation and problems with neighbours was still continuing between September and November 2005. The medical report of her general practitioner in October 2005 stated that she had joined the practice in May 2004, suffered mild depression ever since, has had a history of personality disorder and irresponsible behaviour for the past 10 years and was sent to hospital in September 2004 because of a collapse following alcohol and ecstasy ingestion.

The evidence of Ms JB

[32] I have dealt with much of Ms JB's evidence by way of background at paras [6] to [22] and [25] to [30]. She adopted the report of other social workers such as those of SMcI and RMcF. She said that she had had an opportunity to discuss T's present lifestyle in July, September and November 2005. T was seen at social services offices in Scotland as she refused to allow visits to her home.

T had not the capacity to meet C's needs and little capacity to change. A move from her current placement would have a devastating effect on C who had little, if any, knowledge of her birth mother. When she had had face

to face contact with J and C she struggled, because J demanded attention and T did not show commitment to contact.

She was not aware of any reason why T should not have travelled from Scotland for contact meetings up to April 2004. In February 2004 she gave as a reason that she was having work done on her house. In March 2004 she supervised contact between T and the children. On arrival at the Family Centre T said: "No social service building is nice with youse in it." T asked the children to tell the social worker that they wanted to come with her, that the social worker was a bad man and would not let them live with her and repeated this several times. She kept saying that social workers were bad people (in front of the children). This part of her evidence was given by referring to a report of 23 March 2004.

The Trust had provided T with photographs of the children and she was told of their well-being during visits to her and in telephone calls on several occasions throughout the year 2004-2005. Ms JB would be concerned in case T said something to C which undermined C.

Before meeting C's father the Trust had been unable to obtain his address from T because she said that he had asked her not to give it. An advertisement was placed in the town where he lived and as a result of a telephone call she and the senior social worker met with him. They had his daughter's address (by another woman) but he did not contact them so as to have annual contact with the Trust about C.

In cross-examination on behalf of the guardian ad litem she said that the Family Proceedings Court had held that the threshold criteria were met. A care plan was devised (and approved by the Court). Placement with dual-approved carers was secured. That couple hope to adopt C but will care for her in any event.

As to the delay in 2004 and 2005 recommendation for adoption of C was made by the Adoption Panel in June 2004: see LAC Reviews of 28 August 2003, 18 November 2003, 3 March 2004 (when the Adoption Panel was approached). The decision-maker for the Trust wrote to T telling her of the decision. Between July 2004-January 2005 a Statement of Facts was drawn up, preparation for the application was made in the light of judgments from the courts and to ensure that the human rights of mother and child were respected.

Explicit reference was not made to Article 8 of the Convention as would be the case now. But reference was made to T's human rights explicitly in the LAC Review of 10 May 2005.

After contact had been refused by order of the court in April 2004 T did not apply for contact. At one stage she indicated that she would seek a discharge of the care order but she did not do so.

In cross-examination on behalf of T Ms BS said that a decision to apply for a freeing order was taken on 17 August 2004. Proceedings were drafted in December. The Statement of Facts was agreed and signed in January 2005. The decision in AR v Homefirst Community Trust was published in February 2005. But for awaiting the decision in the case of AR proceedings would have been issued in January 2005. Proceedings were issued in September. The Trust was not relying on the argument that C's attachment to her carers in the period of "delay" was a ground for granting a freeing order. T was not able to provide suitable care for her children.

Delay had occurred as child care staff had been awaiting a letter from the Adoption Panel decision-maker so as to deliver it to T. The Trust had previously visited T in an attempt to explore her circumstances and had done so on several occasions in 2005. Mr Breslin wrote to T on 18 July 2005. The only indication of any change in the circumstances of T was that she had been in a relationship for a year. That was reported in a positive way. Her relationship with her parents was not problem free. Her father had been an alcoholic when younger and her mother could not care for her. She had a very negative relationship with her brother-in-law. She was on ongoing medication for depression. The Trust did not think that she could cope. Opportunities had been offered to her which she did not take. She had a transient lifestyle before meeting D. D's family was an unknown factor. Information about her health was sought and obtained from her GP. T complained of harrassment of social services.

Ms J B accepted that before T left Scotland for Northern Ireland the health visitor had accepted that at one stage J was "thriving" in T's care, that marks seen on the children in Scotland were not pursued, that T claimed that the children were well-cared for in Antrim. She was in denial about concerns which the Trust had about hygiene and safety. Alcohol use was not a difficulty in Northern Ireland.

After the removal of her children on 12 November 2002 contact records as between T and them were relatively good. In April 2003 she was intimidated out of her home in Antrim and went to Mill House Hostel. She advised the Trust that she wished to get married. She later said that she was forced into that situation. Had Ms J B learnt that T was looking after her sister's child in Scotland in 2005 she would have been forced to inform Scottish social workers, given the concerns about the care of her own children.

In August 2003 T was advised to link up with social services in Scotland. She was abusive to a social worker in Scotland as was her father

and was barred from social services offices. The Trust had ruled out rehabilitation for T with J and C by July 2003 and considered adoption as the best plan. After it was decided that face to face contact would stop, she was offered telephone contact weekly. She did not do so weekly but she did make telephone contact.

The Trust asked Ms H to make available adoption counselling for T. Scottish Social Services have had staffing problems and their adoption services are not as developed as in Northern Ireland. She accepted that their contact with T was recent.

The carers of C have a new child, she stated, but C has more than enough attention. Extended family members and the carers' family have helped. There is no advantage to C to be in long term foster care. There is no advantage to have direct contact with T at this stage. Work will be undertaken to bring C to love and understand her mother. T has had a hard life but she has not made enough change to warrant investigation as a carer.

The evidence of Ms H

Ms H, the Adoption Support Manager, gave evidence adopting her report of September 2005. She spoke to T in Scotland on 11 March 2005 and again on 28 June 2005. T told her that the Trust had stolen her children from her, that there have never been concerns in Scotland about her care of the children. There was no acceptance by her that she was in any way responsible for the fact that they were taken into care. She was very negative about their foster placements, did not want strangers being called "daddy" or "mummy" by the children. The children had been brainwashed. She did not wish to meet their carers.

Mrs H was of the opinion that fact to face contact would not be constructive. One needs to have the mother's permission to attach to carers so that they have a sense of belonging and security. T is unable to give that permission.

It was of concern that despite the period of time since J and C lived with T, she appeared to have been unable to make any progress, either in acknowledging the serious concerns of the Trust regarding her children's safety and her inability to protect them or in accepting her changed role.

She indicated her willingness to engage in independent adoption counselling and Ms H wrote to Social Services in Scotland. T had been in touch with them.

Mrs H did not believe that C would benefit in any way from the re-introduction of direct contact with T. It would seriously risk undermining the

security of C's placement. The child's need for information about her mother could be met through a carefully monitored annual letterbox arrangement. Such an arrangement would protect C from unsuitable correspondence and provide support for T in preparing letters and other correspondence. One of the team members monitors and co-ordinates support services of this kind and there would be a counselling service for T locally as well.

The carers of C had not had an opportunity of meeting T and are open to the possibility of meeting and supportive of contact. They have photographs of T. She might be helped by a brief video recording of J and C.

She was cross-examined by Mr Long QC. Professor Tresiliotis had undertaken a review of his research. His views were the current views about adoption as opposed to long-term foster care. T did not see the importance of giving permission to the child to do well with carers. A lot of parents can put their child in front of themselves, others are resentful and hostile. There was potential for T to change her views about this. It had taken time for the support services in Scotland to play their part. A review of contact would be made. The potential for contact would always exist. As time passes and C understands her position, if all parties see it as in C's interests, they will be ready for direct contact.

In answer to Ms Walsh, for the respondent, she explained the set up as between the Trust and the Scottish social services in relation to adoption counselling. The delay in Scotland had been caused by the fact that they had not had an experienced social worker to work with T. The case had now been allocated to CW.

As for contact, J had become familiar with getting cards from T at Christmas and on her birthday. Contact by card with C was annual and the Trust preferred that this should not be at Christmas or on her birthday. Presents could be undermining if excessive. Much depends on how T accepts counselling. C's progress has been quite marked since she was separated from J. J has not progressed. She is a traumatised child and in need of individual therapy. If she makes progress the Trust's plan would be adoption for her. J was very attention seeking. The problems as between J and C were that J controlled C who allowed J to take over.

C lived with her mother for a very short time. Ms H would be fearful that C would be distressed by direct contact. They would be establishing direct contact from scratch, instead of indirect contact first of all. She did not think it would be of benefit to C at this time. It would be confusing. Her assessment was based on C, the carers and T. Life-story work, T's attitude, progress of time might lead to beneficial contact. It would be a benefit for C's carers to meet T. Preparatory work would be needed but it would be a

positive step. T needed to understand the contribution which the carers were making. The carers would be able to talk to C about her mother.

The evidence of T

[33] T adopted her affidavit sworn on 2 November 2005. She stated that she thought that her children should be re-united with her in Scotland. They had no connection with Northern Ireland. She and her family were Scottish and the children should be brought up in the Scottish Protestant religion which she associated with a Scottish Orange Lodge. She claimed that the children had been happy there. When she came to Northern Ireland she thought that she has done a not bad job in bringing up her children, looking after them to the best of her knowledge. She said that she had been willing to be assessed by the NSPCC but they went far too far into her background at the first assessment and she went to no more. She told the story about going to Manchester on which I have commented. I have also referred already to her explanations for not attending LAC reviews. She said that she was able to help with her sister's child who had ADT. She did not usually use foul language in front of her children. When she was in Northern Ireland she would telephone her father and J would speak to him. After her children were taken into care in November 2002 she thought contact with them went well. She fell out with a lady from social services in Scotland when she returned there from Manchester and was barred from their offices.

She agreed to have adoption counselling but social services in Scotland did not provide it. She thought that there was no need to go to LAC Reviews when she had no contact with her children. She was referring to the period after the Family Court Order of 26 April 2004. She came to an arrangement with social workers to bring to Scotland or post to her copies of the LAC reviews.

The children do not belong to strangers, she said. The situation has changed. She has a long term relationship with a man which has lasted for two years. She gets a lot of support from his family. Her health is not too bad at the moment. She feels that she could cope with her children. She would undergo an assessment if it was carried out in Scotland. She said that the children should not have been split up or adopted. If C stayed in NI she would want direct contact with her. It would put her mind at ease if she met C's carers. Indirect contact once a year was not right.

In cross-examination on behalf of the Trust she said that she has no objection to an assessment now. She had suffered from manic depression which is now under control through medication. She is dyslexic. She has been living in the same house since 2004. It is not in a very nice area. A lot of repairs are needed to be done to her house. The Council are getting on to them now. She had been unwilling to have social workers at the house

because she was uptight about repairs. She needs new ceilings, a new bathroom, new floorboards. The house is not really fit to live in. She is waiting for the Council to move her. She does not feel safe in her home. She was referred to paragraph 15 of her affidavit of 2 November 2005 in which she stated that she had a suitable home which she maintained in good condition. It was put to her that this was completely at variance with her evidence. She then walked out of court, saying something that I did not hear. I accepted and accept that she was ill. But she was also caught out by her contradictory statements. She returned to resume her evidence ten days later.

The reason for not marrying in December 2005 was financial, she said. There was an age difference of six years between her and D. He is currently 'on the sick'. He last had a job in June 2004. He suffers from clots in the stomach, constantly has to use the toilet. It was his option to fill in the form about police checks. He did not feel it right to disclose information to people whom he did not know. She explained to him that it was for C. She answered questions about his criminal record and her own. She said that D bottles things up, as she does and then explodes. The past is the past, she said. Neither of them works. She walks her two dogs. Every second Monday she goes to do her parents' shopping. She has not had a drink for four months because of the anti-depressant medicine. She plays dominoes at week-ends, visits D's parents every three to four weeks. She was referred to the affidavit of D's mother who had stated that she was willing to baby sit seven days a week.

She said that his mother has good days and bad days with arthritis. D's mother would have her as much as she could. She said she knew how to handle her sister's child who has ADHD and stays with her once a month. She dismissed social worker involvement. She repeated that she did not believe the social workers' concerns about her treatment of her children.

C was always clean. Her nappy was taken off and a clean nappy put on. She said she wanted the name of the person who said that she shouted at J and threatened to give her away "to a bad man" as he was "getting done for slander". J's behavioural problems arose because she was being moved "from pillar to post". She told counsel that the Trust was destroying her children. She did not think that there was anything wrong with the card she sent to C at Christmas 2003. No one had ever offered to allow her to meet C's carers. When it was put to her that she had stated that she did not want to meet them, she said the opposite was the truth.

She referred to Manchester and said that she could not afford to return to Northern Ireland at that time. She told counsel not to repeat questions that she had answered and shortly afterwards left court but returned.

In answer to counsel for the guardian ad litem she said that she could not remember giving evidence at the care proceedings. Then she said a lady barrister cross-examined her and she walked out. She pointed to Mr Long's junior counsel. It was her belief that social services were brain-washing C. Everybody had misjudged herself. "If someone needs help, I help them." Social workers were nosy, back stabbers, saying one thing and doing another.

She referred to the social worker in Scotland to which she went after being in Manchester.

They did not like each other, she said. She said that she has got herself a house, a partner, a family, goes for walks, looks after her niece, is always doing something, tries to keep herself amused. She said that she did not know that she could make an application to the court about the care order or the No Contact Order. She could not think of any reason why she could not look after her children.

She said that she had agreed to adoption counselling so that it could be explained to her what happened on adoption and to give her help. She had got a letter the day before she gave evidence (on 3 March) to see a lady on the following Wednesday. Both children should be returned to her. She had a three bed roomed apartment flat. She would be willing to engage in an assessment as would her partner.

She was given an opportunity by the court to provide independent evidence of her assertion that she had an A level and was a fully qualified caterer. She failed to do so and her explanations for her inability to do so were feeble. I did not believe this evidence.

The evidence of D's mother

[34] D's mother gave evidence on her behalf. She said that she had known T for two years. T had told her about losing the children in Northern Ireland. She saw D every day, T every other day and gets on well enough with T. T's house needs a few repairs done, she said. Social services had been involved with D. He had had behavioural problems. She would give T the same help with her children as she gave her own daughter help with her child.

In cross-examination on behalf of the Trust she said that she had arthritis of the spine and all her joints but it did not affect her in looking after her granddaughter.

She referred to D as nervous, suffering from colitis, losing quite a bit of weight. She heard T say that he was offered [the opportunity] to come over for the case. He would not leave his home town to go to Glasgow. When he and T are at cross-purposes he can get upset. He shouts. It is frustration. He

does not know what is going on. Their marriage works quite well. They have problems with neighbours.

In answer to counsel for the guardian ad litem, she said that D wants a family, knows that T cannot [have children]. She thought that he would have difficulty in answering questions [in court].

The evidence of the guardian ad litem

[35] Mr Macklin as guardian ad litem gave evidence that he acted for J and C in the care proceedings. There was a threshold hearing followed by a care plan hearing. He referred to his report. He met T in 2005. She said she had changed but she denied that Scottish Social Services had concerns about her when the children were in Scotland and denied that there were social services concerns when she was in Mill House hostel. There was no change in her attitude in 2005. There may have been a change in her way of life. It was he who offered to meet her. She did not request it. He had been willing to meet her before the final care hearing. There was no reasonable prospect of rehabilitation. The options for C are foster care or adoption. T is in a form of denial. She has not challenged the refusal of contact. She has not given in depth consideration to either child. He was of the view that she knew that she could challenge the No Contact Order and the Care Order. She has an oppositional stance to authority and to social workers. He was not denying that she has genuine love and consideration for her children. If there was a change of attitude, of living conditions and of motivation, that would help. He thought she understood why her children were in care. She is denying allegations that have a clear foundation and which he believes to be accurate. She is seriously disadvantaged. He wished to give her credit for her courtesy to him.

He was referred by counsel for the Trust to a letter from SMCI to her advising her of the outcome of the care proceedings and suggesting that she should consult her solicitor if she had any query and to para. 2.7 of his own report of 27 January 2005.

He accepted Ms Walsh's suggestion that there may be a change in her lifestyle and that this is a positive development. She suggested to him that there had been a flurry of activity by social workers in the summer of 2005. He said that he had attended LAC Reviews and tried to get her views. She could have done more with Scottish Social Services. He agreed that when the case was transferred to Northern Ireland the Scots distanced themselves from it. Adoption counselling could have been quicker.

There was a difference between the two children, J and C. J had serious behavioural problems with tantrums and aggressive behaviour. These could be a combination of heredity, of moves between carers and the

number of carers she had had. He questioned whether a reasonable parent would not challenge a care order or a No Contact Order. He thought T should have placed herself in Northern Ireland, placed herself as available for assessment and shown by her actions that she was willing to work with professionals.

Time was running out for C. Further delay and uncertainty for her were detrimental.

Written Submissions

[36] It was agreed that submissions would be made in writing at the end of the hearing.

A. On behalf of the Trust

Reference was made to Article 9 of the 1987 Order and to the Trust's Statement of Facts, (paras 81-84) for a summary of why the Trust says that adoption is in C's best interest. Reliance was placed on a passage in Professor Tresiliotis' report about his preferred solution for C's welfare.

As to whether T was unreasonably withholding her agreement to adoption, Re W [1971] AC 82 was cited and the well known passage in Lord Hailsham's judgment as to the appropriate test was set out. Lord Wilberforce expressed the test in a helpful passage in Re D (An infant) [1977] 1 All ER 145 which was also set out.

It was submitted that the court should ask itself whether T, in her individual circumstances, was by an objective standard, being reasonable or unreasonable in withholding her agreement to the adoption.

The court was referred to the passage in Re G (Interim Care Order: Residential Assessment) [2005] 3 WLR 1166 in which Lord Scott said:

"There is no Article 8 right to be made a better parent at public expense."

Reliance was placed on the assessment opportunities made available to the mother including the NSPCC. A number of relevant points were made about T's background and character and steps taken by her which, it was argued, supported the view that she was acting unreasonably in refusing her consent. The assessment opportunities of which she did not avail were listed. She lacked insight into the quality of her parenting, was in denial about the extent of her parenting deficits, accused a number of people of not telling the truth about her, when she was giving evidence.

The state of her present accommodation, the bad area in which she lives, her bad relations with a neighbour and recent conviction for possessing an offensive weapon, using it against her neighbour and altercation with a policewoman were suggestive of lack of stability and a lifestyle that is not consistent with meeting the needs of a dependent child. She has not permitted a Trust worker to visit her home.

Her relationship with D was significant. He had attended a special school and his mother said in evidence that he would not be able to cope with travelling to Belfast. He would not be able to leave his home town independently. Despite his mother's encouragement he had declined to agree to a police check. This demonstrated a lack of insight on his part as to the need for the Trust to enquire into such matters. His mother described him as "deep as the ocean".

T's main support network appeared to come from D and his mother but the court was given conflicting accounts of the frequency of contact with D's parents. Both of them were disabled. His mother's lack of knowledge about C and her life history were striking. The extent of practical support which she could give was very limited. T's own family were not in a position to offer her support due to various physical and mental illnesses. Only after the adjournment of the trial on 21 February 2006 by reason of illness of T was an affidavit filed by D's mother and arrangements for her to attend trial were only made after the adjournment. No question was asked of Ms J B by counsel for the respondent as to her views about D and his extended family as potential carers.

In her affidavit sworn on 2 November 2005 T averred:

"I do accept that I did not appeal that determination" but in her oral evidence she said that she was unaware that she could have challenged the No Contact Order and/or the care order. She had the benefit of legal advice throughout the care order and freeing order proceedings and in between the proceedings as correspondence between her solicitor and the Trust evidences. Yet she made no application to discharge the care order or the order in relation to contact.

C's placement history was spelt out in detail. Her medical condition before admission into care was set out in the report by Dr Livingstone on 1 November 2002. T was aware of his findings.

Since C's admission to care, contact attendance by T had been very poor. Both the Trust and the Guardian ad litem advocated indirect contact post-adoption.

As to delay a chronology was prepared as from 2 June 2004. Following the decisions in AR v Homefirst Community Trust [2005] NICA and the judgment of Gillen J a month later, Trusts across Northern Ireland conducted a widespread review of decision-making practices in respect of adoption.

Counsel cited a passage from Gillen J's judgment in Re W and M, referred to Re V [2005] 1 FLR 627 and cited a passage from the judgment of Thorpe LJ.

It was submitted that the delay in issuing proceedings was largely brought about by the Trust's review of procedures and its wish to include T in the decision-making process and provide her with sufficient protection for her rights. The court should be cautious not to isolate one point and use it as a basis for a finding of a breach of the mother's rights. The mother asserts that the delay has diminished her ability to challenge realistically the freeing application and on the other asserts that she has a more stable life now.

As to contact reference was made to a passage in the judgment of Gillen J in Re P and C [2005] NI Fam 11. The court was reminded that the Trust will review the contact arrangements, including the potential for direct contact. A meeting between T and C's carers may bring about a change in T's attitude towards adoption.

B. On behalf of the respondent T

1. It was submitted that when a decision was taken that J's care plan should be changed to long-term foster care, Professor Tresiliotis should have been consulted about C's care plan as he might well have recommended that hers should also be changed to long-term foster care.

2. The mother was not unreasonably withholding her agreement to the adoption of C for the following reasons:

The Trust had not adequately explored alternative measures to avoid adoption, such as further assessments and "education" of the mother with a view to the child being returned to her. Its theme as regards the mother had been to specify criticisms of deficits in her parenting without actually advising her to any great extent how these could be remedied or improved.

In 2003 it arranged for the NSPCC to carry out a motivational assessment of the mother. When this terminated early (due to the mother's feelings about the intrusiveness of the issues relating to the past; the threat she was under to go to Manchester and marry; her return to Scotland due to family ill-health) the Trust then suggested at a LAC meeting on 28 August 2003 that she was to link up with Social Services in an area of Scotland to discuss her current lifestyle despite the fact that she was barred from the

Social Services building. T had given evidence of falling out with a social worker and that was the extent of linking in with Social Services. The Guardian ad litem gave evidence that Scottish Social Services appear to have distanced themselves from the case. The Trust cannot absolve itself from responsibility to the mother by laying professional inactivity at the door of Scottish Social Services. The Trust has C in its care.

From 2003 the Trust did not regularly and actively keep itself apprised of the details of the mother's personal circumstances.

This was as a result of the decisions in AR's case and W and M's case. However Gillen J had already emphasised the importance of complying with the Adoption Agencies Regulations (NI) 2002: see Re J 2002 NI Fam 26.

The Trust's explanation for the delay did not stand up to scrutiny.

The LAC Review of 10 May 2005 suggests a mindset of accepting the Adoption Panel recommendation first, then exploring T's circumstances after the decision has been made. On 4 July 2005 the mother's solicitor wrote to the Trust setting out seven reasons why the Trust should not taken adoption proceedings. The Trust's unjustifiable delay has influenced the decision maker to accept the Adoption Panel's recommendation. This is a breach of the mother's Article 8 rights to respect for her family life.

The delay impinges upon the mother's Article 6 and Article 8 rights as, in practical terms it may diminish the ability of the mother to argue successfully that the child should be removed from the home of her carers: see W v UK (1988) 10 EHRR 29, paragraph 65 and Hoppe v Germany (2004) 38 EHRR 15, paragraph 54.

The post-adoption contact recommendations are unreasonable. The mother has sought adoption counselling since 4 February 2005. The evidence from the mother was that it was due to start on 8 March 2006. See the dissenting judgment of Sheil LJ in Down Lisburn Health and Social Services Trust v H & R 2005 NICA 47.

There are other interests of the reasonable parent and her family which she may legitimately take into account, such as the Scottish link and that J and C may be reared together.

T has a legitimate sense of grievance. Hershman & McFarlane Vol 1 Section D, paragraph 145.

The court is entitled to make an order for contact or residence: see Article 10(1) of the Children (NI) Order 1995.

It was only in 2005 that there was a flurry of activity on the part of the Trust to ascertain details of her circumstances, leading to the meeting with T and D on 9 June 2005.

A Trust should adopt a more proactive stance to explore alternatives to permanency away from a birth mother: see Re L 2002 2 FLR 730 at 771, 772; AR v Homefirst Community Trust [2005] NICA 8 at paragraph 78.

The difference between Re V and the present case is that in the former case Thorpe LJ was referring to an isolated incident. In the present case the Trust pursued a theme of focusing on permanency for C without adequately exploring alternatives.

The Trust and the Guardian ad litem allege that due to C's age it is too late to take the chance of carrying out any further assessments of the mother and that the child needs permanency now. But it is not too late because the child would remain with her current carers during the initial stages of the assessment: see C v Solihull MBC [1993] 1 FLR 290 approved in AR's case at paragraph 92.

There has been a significant improvement in the mother's lifestyle. She is in a stable relationship, has more structures and routines in her life, feels that her mental health is much improved, feels able to look after her children, has support from her family and D's family. This is in huge contrast to November 2002.

The Trust's decision-making process is flawed and in breach of the mother's Article 6 and 8 rights.

On 2 June 2004 the Adoption Panel made its recommendation that an application be made for C for adoption. On 24 June 2004 the Trust's decision-maker wrote to the mother notifying her of the decision to accept the Panel's recommendation. On 6 August 2004 C moved to her current carers who are her prospective adopters. On 17 August 2004 the Trust agreed to lodge a freeing application by the end of September 2004. This was not done until September 2005.

The Trust's explanation for the delay centres round its more acute awareness of human rights issues.

C. On behalf of the Guardian ad Litem

Whether adoption is in the best interests of the child depends on whether there is a reasonable possibility of rehabilitation of the child to the mother within a time that is consistent with the child's needs for a stable long-term home. The starting-point is usually the findings of fact at the threshold

hearing. In the present case there does not appear to be a written judgment or written statement of threshold criteria.

It is clear that the mother is still in a state of denial of the allegations made against her and apparently found to be proven by the Family Proceedings Court. Her answers to the Guardian at their meeting in November 2005 made it clear to him that she had not begun to acknowledge or address the behaviour on her part which resulted in her children being taken into care.

The cause of the problem has very largely been her own withdrawal from the children's lives despite her assertions that she wanted to fight for the children. No attempt appears to have been made to reopen the threshold issues whether by appeal or otherwise. An appeal from the Family Proceedings Court to the Family Care Centre is by way of a full rehearing. No discharge application has been brought in respect of the care order although she asserts that both her children should now be returned to her care. No challenge has been brought to the care planning or placement decisions. No challenge was mounted to the order under Article 53(4) or the Children (Northern Ireland) Order 1995 either by appeal or by seeking an order under Article 53(3) of the 1995 Order or by way of judicial review of under the Human Rights Act. The mother has been in receipt of legal advice throughout. The mother said that she did not know that she could taken any of these steps. It is for the court to determine whether that is really the case or is reflective of indifference or an acceptance of the validity of the conclusions reached by the Trust and the Family Proceedings Court.

The child is now in the position that she has not had contact with her mother for nearly two years and only sporadic contact during the year and a half or so before that.

There has apparently been some change in the mother's circumstances. She puts herself forward with D as carers for both her children. There is no evidence from him and no statement from him. He appears to have a learning difficulty unassessed by the Trust. His mother's description of him is of concern.

The Trust is not obliged to provide therapeutic services to make a parent a better parent: see in Re G a minor [2005] UKHL 68 but it is under an obligation to consider whether rehabilitation is viable. The mother's non-cooperation is not in itself decisive but it is submitted that the mother's refusal to understand or accept the reasons why the children were taken into care and why the Family Proceedings Court thought they were at risk as a result of the care provided or likely to be provided to them by her is decisive. There is no evidence of any change in the mother's understanding. There is

no basis upon which rehabilitation could be considered a viable option at this stage.

The Trust should have been aware of the human rights issues involved since October 2002. Delay can be damaging to a parent or advantageous. The mother has had the opportunity to effect change. She has not had adoption counselling but that is not a ground for refusing the application. The issue of contact can be dealt with by the court. The evidence is that face to face contact would not be to the advantage of the child at this stage.

Conclusions

[37] Statutory framework

(1) The 1987 Order provides, inter alia:

“3.—(1) Every Board shall establish and maintain within its area a service designed to meet the needs, in relation to adoption, of—

(a) children who have been or may be adopted;

(b) parents and guardians of such children; and

(c) persons who have adopted or may adopt a child,

and for that purpose shall provide the requisite facilities, or secure that they are provided by registered adoption societies.

(2) The facilities to be provided as part of the service maintained under paragraph (1) include—

(a) temporary board and lodging where needed by pregnant women, mothers or children;

(b) arrangements for assessing children and prospective adopters, and placing children for adoption;

(c) counselling for persons with problems relating to adoption.

(3) The service maintained by Boards under paragraph (1) may be collectively referred to as "the Adoption Service", and a Board or a registered adoption society may be referred to as an adoption agency.

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

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

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

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

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

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

16.–(1) An adoption order shall not be made unless –

(a) the child is free for adoption by virtue of an order made in Northern Ireland under Article 17(1) or 18(1), made in England and Wales under section 18 of the Adoption Act 1976 (freeing children for adoption in England and Wales) or made in Scotland under section 18 of the Adoption (Scotland) Act 1978 (freeing children for adoption in Scotland); or

(b) in the case of each parent or guardian of the child the court is satisfied that –

(i) he freely, and with full understanding of what is involved, agrees –

(aa) either generally in respect of the adoption of the child or only in respect of the adoption of the child by a specified person, and

(ab) either unconditionally or subject only to a condition with respect to the religious persuasion in which the child is to be brought up, to the making of an adoption order; or

(ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in paragraph (2).

(2) The grounds mentioned in paragraph (1)(b)(ii) are that the parent or guardian –

(a) cannot be found or is incapable of giving agreement;

(b) is withholding his agreement unreasonably;

(c) has persistently failed without reasonable cause to discharge the parental duties in relation to the child;

(d) has abandoned or neglected the child;

(e) has persistently ill-treated the child;

(f) has seriously ill-treated the child (subject to paragraph (4)).

17.- (5) Before making an order under paragraph (1), the court shall satisfy itself, in relation to each parent or guardian of the child who can be found, that he has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.

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

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

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

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

(3) Paragraphs (3), (5) and (6) of Article 17 shall apply to an order made by a court under paragraph (1) as they apply to an order made by a court under Article 17(1)."

These proceedings are being disposed of in chambers in accordance with Article 66(1). A guardian ad litem has been appointed to safeguard the interests of C in accordance with Article 67.

(2) The 1995 Order provides in Part II:-

"3. – (1) Where a court determines any question with respect to –

(a) the upbringing of a child; or

(b) the administration of a child's property or the application of any income arising from it,
the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

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

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

(b) his physical, emotional and educational needs;

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

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

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

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

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

(4) The circumstances are that—

(a) the court is considering whether to make, vary or discharge an Article 8 order, and the making, variation or discharge of

the order is opposed by any party to the proceedings; or

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

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

5.—(1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.

(2) Where a child's father and mother were not married to each other at the time of his birth—

(a) the mother shall have parental responsibility for the child;

(b) the father shall not have parental responsibility for the child, unless he acquires it in accordance with the provisions of this Order.

7.—(1) Where a child's father and mother were not married to each other at the time of his birth—

(a) the court may, on the application of the father, order that he shall have parental responsibility for the child ...”

In Part 3 the court is given the power to make a contact order in any family proceedings in which a question arises with respect to the welfare of a child: see Article 10(1)(b).

Care orders are governed by Part V of the 1995 Order which provides:

“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.

53.—(1) Where a child is in the care of an authority, the authority shall (subject to the provisions of this Article) allow the child reasonable contact with –

(a) his parents;

(4) On an application made by the authority or the child, the court may make an order authorising the authority to refuse to allow contact between the child and any person who is mentioned in subparagraphs (a) to (d) of paragraph (1) and named in the order.

(9) The court may vary or discharge any order made under this Article on the application of the authority, the child concerned or the person named in the order.

(11) Before making a care order with respect to any child the court shall –

(a) consider the arrangements which the authority has made, or proposes to make, for affording any person contact with a child to whom this Article applies; and

(b) invite the parties to the proceedings to comment on those arrangements.”

Article 58 provides for the discharge of a care order on the application of any person who has parental responsibility for the child and for an appeal against any decision of the court. Emergency protection orders are made under Article 63 of the 1995 Order.

Article 166 provides for an appeal from a care order made by a Family Proceedings Court.

(3) The Human Rights Act 1998 provides by section 1 and Schedule 1 incorporation of Articles of the European Convention on Human Rights including:-

Article 6

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”

Article 8

“1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, for the protection of health or

morals, or for the protection of the rights and freedoms of others.”

Section 2(1) provides for the taking into account of any judgment of the European Court of Human Rights.

Some of the relevant facts arising from the statutory framework are:

1. T is the responsible parent of C. The father, JP, has no parental responsibility. The Trust is an adoption agency under Article 3 of the 1987 Order.
2. An Emergency Protection Order in respect of C was obtained by the Trust under Article 63 of the 1995 Order in November 2002. A series of interim care orders were made. A care order was made by the Family Proceedings Court in Ballymena on 26 April 2004. On the same date an order was made authorising the Trust to refuse T direct contact with C: see Articles 50 and 53 of the 1995 Order.
3. An application to free C for adoption was made on 6 September 2005: see Articles 17 and 18 of the 1987 Order.
4. T has been given an opportunity of making a declaration that she prefers not to be involved in future questions concerning the adoption of the child and has declined to do so: accordingly Articles 18 and 16(2) of the 1987 Order apply.
5. All reasonable steps have been taken to identify the father of C; he has been given notice of, and the opportunity of appearing at, the proceedings. He has declined to do, explained his reasons for not doing so and wishes that the decision of the court will be in the best interests of the child.
6. The court has to decide whether adoption is in the best interests of the child: see Article 9 of the 1987 Order.
7. The court shall not so decide unless it is satisfied that the responsible parent, T, is withholding her agreement unreasonably and that her agreement to the making of an order freeing C for adoption should be dispensed with.
8. Under Article 9 the court is enjoined to have regard to the welfare of the child as the most important consideration in deciding on any course of action in relation to the adoption of the child.
9. Parliament has, however, recognised that the parent’s right to withhold consent to adoption may be based not solely on the child’s own best interests but on other considerations.

Issues

1. Is adoption in the best interests of C?

[38] In my view all the available evidence points to the conclusion that the answer to this question is in the affirmative. She was born on 26 September 2001 and is now four and a half years of age. She spent the first fourteen months of her life with her mother and J. She and her sister were placed on the Child Protection Register in Scotland on 19 June 2002 under the categories "Potential for Emotional Harm" and "Potential for Neglect." Social Services in Scotland had concerns regarding the care provided to them, lack of supervision, poor hygiene at home and unsafe environment in the home (cigarettes, lighters, full ashtrays and, on occasion, alcohol, all within reach of the children). There was evidence of lack of stimulation of both children, although worse in C's case than in J's case. After she was born there were concerns regarding attachment issues between mother and daughter. There was a series of non-attendance at crèche and non-admittance to T's home for social service and health visitor staff. I am satisfied that she lied in the witness-box when she said that she did not leave Scotland for Northern Ireland for fear that her children would be taken off her. She admitted to Mr SMcI, a social worker, that this was one of the reasons for leaving Scotland. I need not repeat paragraphs [6] to [11] of this judgment but I adopt them in answering the question which I have asked myself.

She set up home in Antrim and social workers there became concerned about hygiene and safety levels in the home. She was intimidated and harrassed by local people who called her "prostitute" and "whore." She moved to a hostel in Ballymena. Staff at the hostel reported that they had to constantly remind T to feed the children regularly, not to have them unattended and to waken here while the children were awake in the room. There were also reports that she appeared to be operating as a prostitute.

The problems which led to the ex parte Emergency Orders of 12 November are set out at paragraphs [12] to [14] of this judgment and I adopt them here as part of the answer to the first issue. In my view these orders had to be made. I am not sitting on appeal from the Care Orders made on 26 April 2004. But I have set out at paragraphs [15] to [25] the matters which I have considered relevant to explain the discussions of 26 April 2004 which were rightly made, I am sure. I also adopt them.

[39] T asked to be assessed on 18 November 2003 but I consider that the Trust was entitled to reject this request.

The new housing to which she referred in January 2004 was, presumably, the accommodation which she refused to let Ms JB see because it was in such bad repair. Nothing had changed in her life. If it had, she had

the opportunity to show it at the Family Proceedings Court. So far as I can tell she was legally represented when the threshold criteria was established to the satisfaction of the court. But it may be that she did not attend that hearing. She did give evidence on 26 April 2004 because she walked out of court during the course of cross-examination. The Care Order was made by a Resident Magistrate. There was a right of appeal to the County Court. There is no suggestion on her behalf that there should have been an appeal on the basis that an assessment should have been made by the Trust in November 2003 or for any other reason. In case there should be any doubt about it I am satisfied that T's views about the children were constantly sought by social workers: see paragraph [23] of this judgment. The problem was and remains that T has no insight into her lack of care of her children. At paragraph [15] of her affidavit of 2 November 2005 she stated:

"I accept that my parenting has had difficulties and problems. I have not always engaged as well as I should have with services that have been offered to me in the past."

Those who drafted the affidavit – and I make no criticism of them – could not have foreseen that in the witness-box she would reject any suggestion that her parenting had difficulties or problems or that she had not engaged as well as she should have with social services. She maintained the opposite position, blaming everyone but herself.

[40] There is no evidence that T is more capable in 2006 of looking after C than she was in 2002. Nor is there any evidence that she is likely to be capable in the next few years. She has had a relationship with D for about two years. How stable it is remains to be seen. They have a home which, she says, is in serious disrepair, is in a bad area and which she wants to leave. Yet she was prepared to swear the opposite in November 2005. She has been living there for nearly two years. Neither she nor D work. But they do not appear to have done anything for themselves. The Council gets the blame for the state of her home. She has problems with a neighbour. She has always had problems with neighbours. She walks her dogs every day. She goes to bingo. She plays dominoes. She has made no effort to show that she can look after children. Apart from an expressed willingness to have adoption counselling and to meet the carers of C she has had her children in care for three and a half years. She has taken no step which would enable this court to say that there was hope that she would be fit to cope with C. Her health is poor. She does not get up till late in the morning. There is no evidence that D would be a suitable stepfather. In my view the relationship between T and D is likely to be damaged seriously if not irretrievably, were C to join them as a member of their family. D's mother was somewhat more frank than T was about D. No medical evidence was provided but he has medical problems.

That he did not come to give evidence in this court, whether one accepts the explanations which were given or not, speaks for itself. His mother's health and her husband's health, the relationship between T and her parents and between T and her sister and brother-in-law show that T would have minimal support, if C was to go back to live with her mother in Scotland.

In my view there is no realistic prospect that T will be able to care for C in the short or medium term. C is now four and a half years old. I share Professor Tresiliotis' views about adoption as against long-term foster care. The carers of C are wholly suited to caring for C, according to the evidence before me. If I am entitled to dispense with the consent of T, I will order that T is freed for adoption by her present carers.

I also refer to the views of Kerr LCJ in AR v Homefirst Community Trust [2005] NICA 8 at paragraph [91] what MacDermott LJ said in Re MC (unreported: 31 October 1997) and Z and T re Freeing Application [2005] NI Fam 6 per Gillen J. Relevant citations from their judgments are to be found in my judgment in Down Lisburn Health and Social Services Trust v H and R at paragraph [17]. I respectfully adopt them here.

[41] Under Article 16 of the 1987 Order as Adoption Order shall not be made in the case of each parents of the child unless the court is satisfied that the agreement of the parent should be dispensed with. The father does not have parental responsibility and accordingly his consent is not required. But the evidence which I have satisfies me that he is willing to have C adopted, if it is in her best interests. He has never seen C and he has only seen photographs of her with her carers and been told by Ms JB about her. I do not, therefore, attach weight to the fact that he consents when I come to consider the position of T. She does not consent and her consent requires to be dispensed with, if C is to be adopted. She has been afforded the opportunity to make the requisite declaration pursuant to Article 17(95) of the 1987 Act and has chosen not to do so. Her refusal to consent must be judged at the end of the hearing of the case which has been extended because, on receipt of the written submissions I requested a report from Scottish Social Services about their relationships with T and a report from them about adoption counselling which I has indicated that she would be willing to receive. Unfortunately I did not receive them until recently.

[42] In Re W [1971] 2 All ER 49 Lord Hailsham set out the test to be applied in these often repeated words:

"It is clear that the test is unreasonableness and nothing else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness, and reasonableness in the context of the totality of the circumstances. But

although welfare per se is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if and to the extent that a reasonable parent would take into account, and it is decisive in those cases where a reasonable parent must regard it so."

In Re D (an infant) [1977] 1 All ER 145 Lord Wilberforce expressed the test as follows:-

"What, in my understanding, is required is for the court to ask whether the question, actually made by the father in his individual circumstances, is, by an objective standard, reasonable or unreasonable. This involves considering how a father in the circumstances of the actual father, but (hypothetically) endowed with a mind and temperament capable of making reasonable decisions, would approach a complex question involving a judgment as to the present and as to the future and the probable impact of these on the child."

In Re C (a minor) (Adoption: Parental Agreement, Contact) [1993] 2 FLR 260 at 272 Steyn and Hoffman LJ (as they then were) said this:-

"The characteristics of the notional responsible parent have been expounded on many occasions: see for example Lord Wilberforce in Re D (An Infant) (Adoption: Parents Consent) [1977] AC 602 at 625 ("endowed with a mind and temperament capable of making reasonable decisions"). The views of such a parent will not necessarily coincide with the judge's views as to what the child's welfare requires. As Lord Hailsham of St. Marylebone LC said in Re W (An Infant) [1971] AC 682 at 700:

'Two reasonable parents can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.'

Furthermore, although the reasonable parent will give great weight to the welfare of the child, there are

other interests of herself and her family which she may legitimately take into account. All this is well settled by authority. Nevertheless, for those who feel some embarrassment at having to consult the views of so improbable a legal fiction, we venture to observe that precisely the same question may be raised in a demythologised form by the judge asking himself whether, having regard to the evidence and applying the current values of our society, the advantages of adoption for the welfare of the child appear sufficiently strong to justify overriding the views and interests of the objecting parent or parents. The reasonable parent is only a piece of machinery invested to provide the answer to this question."

This has been praised by many: see, for example, Dame Elizabeth Butler-Sloss and Thorpe LJ in Re F [2002] 2 FLR 505.

The effect of Article 8 of the European Convention has been discussed in a number of cases, not least in this jurisdiction in AR v Homefirst Trust [2005] NI in which Kerr LCJ said at [77] and [78]:-

"In KA v Finland 1 FLR 696, ECtHR held that mutual enjoyment by a parent and child of each other's company constitutes a fundamental element of family life. Interference with that fundamental element of family life will be a violation of Article 8 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'. The fact that a child could be placed in a more beneficial environment will not alone justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the 'necessity' for such an interference with the parents' right under Article 8 of the Convention to enjoy a family life with their child. The removal of a child from its parents is recognised in Strasbourg jurisprudence and in domestic law as a draconian measure, to be undertaken only in the most compelling of circumstances. In particular the state authorities must explore alternative measures to avoid such a drastic course. Only where it can be demonstrated that no other option is feasible will such a choice be justified"

Sheil LJ has drawn these and other authorities together in a helpful way, referring to the "tensions between what is in the best interests of the child and the question of whether a parent is withholding his or her consent unreasonably: see, for example, In The Matter of JN [2005] NICA 14.

Gillen J, the Family Judge, has given a valuable series of judgments on the issue of withholding consent, not least Re J (Care Order; Adoption Agencies; Adjourment: Adoption Agencies Regulations) (NI) 1989 [2002] NI Fam. 26. His warning to Trusts appears to have gone unheeded until Kerr LCJ's powerful judgment in February 2005. He followed this with other judgments such as In The Matter of W and M (Breach of Article 8 of the European Convention on Human Rights: Freeing for Adoption Order) [2005] NI and Re P and C (Care Orders; Freeing Orders for Adoption without Parental Consent) [2005] NI Fam. 11. These and the modern English and European courts' decisions were helpfully drawn to my attention by counsel and I have read them all, including Re G (Interim Care Order; Restricted Assessment) [2005] 3 WLR 1166 in which Lord Scott said at paragraph 24:-

“Finally, I must refer to the submissions based on the Human Rights Act 1998 that were made on behalf of the respondents. There is no dispute but that both Ellie and her parents have the right under article 8 of the Convention to “respect” for their ‘family life’. Mr Cohen QC submitted, as I understood it, that this right placed the state, and the County Council as an emanation of the state, under a positive obligation to provide for Ellie’s mother to have the benefit of the proposed therapeutic and assessment programme at the Cassel Hospital in order to provide Ellie and her family with the optimum chance of being able to live together as a family. He submitted that if section 38(6) were to be given a scope that did not extend to a direction that that programme be offered it would have deprived Ellie ‘s parents, and would deprive other parents in a similar position, of the chance to demonstrate that fundamental changes could be made within the necessary timescale so that it would be safe for them to parent their child. That may be so but the proposition that the refusal of the court to make that direction, or the unwillingness of the Council, or, for that matter, the NHS Trust or the legal aid authorities, to fund its implementation, would have constituted a breach of Ellie ‘s or the parents’ article 8 rights cannot, in my opinion, be accepted. There is no article 8 right to be made a better parent at public expense.”

[43] I bear in mind that it is essential in every single case to realize that the legislation enables a court to break irrevocably the bond between the natural parent and the child and that this casts a burden on the court to act with the utmost caution. The cases under Article 8 of the European Convention emphasise this.

I have already indicated that I am satisfied that adoption is in the best interests of C. I need not repeat what I have already said at great length. I recognize that it is not the sole or paramount criterion under our legislation and that I must be objective in my approach. The test is that of the reasonable parent, not the view of the court. But I am certain that T is unreasonably withholding her consent for a number of reasons. What I now set out is not exhaustive. It would be hurtful to set out all the reasons. But I must set out some of them:-

1. The history of C's early life with T in Scotland is one of neglect and of serious damage to C.
2. The history of C's early life with T in Northern Ireland, is equally, one of neglect and of serious damage to C.
3. When T moved to Manchester and then to Scotland she put her own interests first and the interests of her children significantly lower down in order of importance. I do not necessarily blame her for putting her own life first but she must accept the consequences, when one is assessing what a reasonable parent would have done.
4. Despite all the advice that she has received, she ended up in the witness box in 2006, blaming everyone but herself. Relationships with Social Services can often be stormy but when I listened to them and to the guardian ad litem I realized that she is in the blame game for her own selfish ends and has given no thought to the interests of C.
5. In view of the fact that no potential adopters or long term foster carers could be found for J or C in Scotland it is unreasonable for T to contend that they should be reared in Scotland, when long term carers have been found for them in Northern Ireland. Those who care for C are willing to adopt her and there is a strong bond between them and C.
6. It is unreasonable for T to contend that J and C should be reared together, having regard to the report of Professor Tresolitos: see paragraph [24] of this judgment.
7. T has not appealed against the care order or the No Contact Order and has attempted to undermine the placement of C with her carers.

8. T has failed to realize that C needs a permanent home which is available to her.

[44] I am forced to the view that no reasonable parent, taking into account the circumstances in which T has been placed, would act as she has done in relation to C. I read the closing submission on her behalf with great care, not least because they were placed before me so skillfully in such difficult circumstances. I have already dealt with them on the issue of what is in the best interests of C and need not repeat myself on that issue.

I accept that the Trust can be justifiably criticized for delay, but I cannot accept that there has been any significant breach of T's Article 6 or Article 8 rights, despite the delay and "the flurry of activity".

[45] I have been concerned about the contact arrangements up to now. But in my view T has forced the Trust to take the steps which it has taken to obtain a court order for no direct contact because T has behaved in a way which is inimical to C's interests. This is because she has no insight or refuses to admit that she has been a bad mother. I welcome the expressed willingness of T to meet C's carers but bear in mind that she refused to do so previously. I find nothing irrational in the Trust's approach to contact. I have been disappointed at the slowness of the Scottish Social Services to offer adoption counseling services to T and in that context refer to the most recent report by CW received by the Trust on 15 May 2006 at my request.

I consider that the difference in approach to indirect contact as between T and J on the one hand and T and C on the other is sensible. This has been explained by the social workers involved with contact.

[46] Meetings with C's carers pre-adoption and pro-active adoption counselling are essential if direct contact is ever to be established between T and C. It has not been the fault of the Trust that it has taken Scottish Social Services so long to provide adoption counseling but, nonetheless, they must accept responsibility. However, I am content to allow the judge at the adoption hearing to deal with contact, so long as the Trust and Scottish Social Services provide T with the opportunity to meet the carers and to have the counselling which she needs.

[47] C is in the care of an adoption agency pursuant to the Care Order and in accord with Article 18 of the 1989 Order. I am satisfied that it is highly likely that she will be adopted by her current carers. A freeing order is a proportionate response to the legitimate aim of ensuring the welfare of C. The Article 8 rights of T have been properly taken into account, bearing in mind that a freeing order is a "draconian" remedy.

[48] Accordingly I order that C should be freed for adoption.