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Judgment: approved by the Court for handing down (subject to editorial corrections) | *Delivered:* **11/10/05**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE: P AND C (CARE ORDERS: FREEING ORDERS FOR ADOPTION WITHOUT PARENTAL CONSENT)

GILLEN J

[1] I direct that there be no identification of the names of the children in this case, the names of either of the parents or any other material that may lead to the identification of the family.

[2] These applications concern two children namely P born 14 May 2002 and C born 15 October 2003. A Health and Social Services Trust which I do not propose to name ("the Trust") has brought applications before the court for the following relief;

(i) Care orders in relation to both children pursuant to Article 50 of the Children (Northern Ireland) Order 1995 ("the 1995 Order").

(ii) If the care orders are granted, thereafter applications for orders freeing both children for adoption pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987 ("the 1987 Order").

[3] At the outset of the hearing Ms Smyth, who appeared on behalf of the Trust, with the consent of Mr Maguire, who appeared on behalf of the father of the children, ("M") and Ms Robinson who appeared on behalf of the mother ("L") indicated that the mother had agreed the threshold criteria proposed by the Trust and, the father, with certain amendments, had also agreed the threshold criteria proposed by the Trust. It was also indicated on behalf of both parties that they were agreeable to a care order being made. In order for a court to make a care order, a two-fold process has to be considered. In the first place, the court may only make an order if it is

satisfied that the child has suffered or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the child or is likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give. This is the threshold criteria. I have considered the background issues in this case and all the evidence before me and I have come to the conclusion that the threshold criteria which have been conceded in this case are appropriate and reflect the reality of the issues in the case. I therefore am satisfied that the conceded threshold criteria have been proven. For ease of reference, and as a background to the factual matters in this case, I shall now set out the threshold criteria conceded by the mother and the father;

(i) L has been unable to meet the basic physical and emotional needs of any of her children.

(ii) All of C's other siblings experienced neglectful parenting over time and were significantly physically and emotionally deprived despite a high level of professional intervention and support being offered to L. Whilst in their care, L did not impose boundaries or establish any routines for her children.

(iii) L has been diagnosed with alcohol dependence syndrome, featuring an episodic or binge pattern to her alcohol consumption. L has not been consistent in attending medical appointments to review her health in light of her diagnosis.

(iv) Over many years of Trust intervention, L has been unable to consistently co-operate with professionals and has not consistently availed of support services offered to her to address her parenting deficiencies and personal problems.

(v) M abuses alcohol to the extent that he comes to the attention of the agencies such as the police. M's own mother has secured a Non-molestation Order against him.

(vi) The relationship between L and M has been marked by instability, alcohol abuse, aggression, domestic violence and serial separations and reunifications. L has secured a Non-molestation Order against M, which he has breached on at least two occasions. M has been remanded in custody on two occasions after assaulting L and he threatened to kill L in September 2004.

(vii) Despite significant professional services (including therapeutic services) being made available to M and L, neither of them has been able to effect lasting change to their lifestyle, address their parenting deficits in a

meaningful manner or display any insight into the negative impact their parenting has had on their children.

[4] Being satisfied that the threshold criteria have been proven, I then must move to the second stage of the process and examine the care plan and the welfare check list. The Trust care plan for P and C is one of permanence through adoption. P is presently placed with foster carers who wish to adopt him. This couple are also minded to adopt C. I have come to the conclusion that against the background of the threshold criteria, this is an appropriate care plan. I must then also consider the welfare check list set out in Article 3(3) of the 1995 Order. I have considered each one of the separate sub-articles and whilst I do not intend to slavishly recite each of them, I consider that a review of them in relation to this case points towards a care order being made. In particular I am satisfied that neither parent currently has the capacity to deal with these children because of the factual matters I have already referred to. P has four older half siblings and one full younger sibling. The four older siblings are all the subject of care orders and their care plans do not envisage reunification. The Trust has been involved with this mother since August 1993 and there have been persistent concerns about her parenting in the context of child neglect, domestic violence and alcohol abuse. Various supports have been offered to her including the parenting and assessment service, counselling services, addiction services and psychological services but she has been unable to engage these effectively. Similar concerns are held in respect of the father who also abuses alcohol, indulges in domestic violence and leads a lifestyle inconsistent with parenting children. As a result of this behaviour P has been exposed to neglectful parenting and had been placed with foster carers at the age of seven months. C was born nine weeks prematurely and remained in hospital for one month after her birth. Upon her discharge from hospital she had been placed with foster carers. I consider that this background is all indicative of the incapacity of these parents currently to meet the needs of these children. Given the ages of the children, and their vulnerability, I am satisfied that no alternative remedy less draconian than a care order would be sufficient. In particular a supervision order would not accord a sufficient degree of parental responsibility to the Trust. Before making a care order of course I am obliged to consider the question of contact and to allow the parties to address me. Currently there is contact by the mother and father with P and C twice a week for one hour. The Trust propose a gradual reduction of contact and I shall deal with this in another context.

[5] Before making a care order a court must consider the impact of the European Convention on Human Rights and Fundamental Freedoms. In particular Article 8 must be considered in light of the need to afford to the mother and father in this case a right to family life. They can only be deprived of such a right if the court is satisfied that such an interference is a proportionate response to a legitimate aim. I am satisfied in this case that the

aim of protecting and securing the needs of these children renders a care order the only proportionate response to protect that legitimate aim.

[6] I have therefore come to the conclusion that there must be a care order in this case in each instance.

[7] I then turn to consider the question of an order freeing these children for adoption which in essence was the substantial issue in this case.

[8] As a background to my consideration of this matter, it is necessary that I draw attention to two factual matters that I determined at an early stage:

(1) <u>Domestic Violence</u>

Domestic Violence was clearly a salient matter in the relationship between M and L. The report of a Domestic Violence Officer D Harwood was agreed and was put in evidence before me. It is necessary for me to recite in full the contents of that report suitably anonymised.

> "1. 11 AUGUST 2003 – 2007 HOURS – 40 VICTORIA STREET, LURGAN
>
> L contacted police and reported that M had turned up at the above address and thrown both her and her mother out. M was abusive and aggressive towards police whilst they were speaking to L at the scene. An argument ensued as to who was renting the house and who should stay or go. The landlord arrived at the scene and sorted the matter out with M agreeing to leave. A statement of no complaint was recorded from L.
>
> At approximately 0250 hours L again phoned police requesting M be removed from the premises. He left on request of police but stood outside and was committing no offence at that time. Advice re NMO/Occupation Orders given to L.
>
> 2. 24 AUGUST 2003 – 0715 HOURS – WILLIAM STREET/VICTORIA STREET, LURGAN
>
> L contacted police via "999" system and reported that she wanted her ex-partner, M, removed from her house. Upon arrival of police at a public telephone box located at William Street, Lurgan, police observed L and M arguing. L claimed that M had assaulted her

in the house and followed her to William Street where he pushed her against the shutter of a shop. While police were talking to L, M stated to her, 'I'll kill you, you bastard, you'll be dead.' Police observed that L was visibly frightened and shaken by this. Police spoke, in private, to L who stated that she was in genuine fear of her life. She stated to police that she was fearful that M would return to her house after police left, and carry out his threat. L provided police with a statement of complaint and stated she was in the process of obtaining a Non-molestation Order. M was subsequently arrested at William Street for threats to kill.

A full Non-molestation Order, excluding M from Victoria Street, Lurgan, was granted at Craigavon Court on 1 October 2003 and remains in force until 1 October 2005.

3. On 13 December 2003 at approximately 2255 hours, L contacted police via 999 system to report that M was in her house, that she had a Non-molestation/Occupation Order against him and that he had drink taken. Police spoke to L who then informed them she had called police by mistake and there was no one in her house. She refused police entry to check.

Police had earlier telephoned L's home and a male person answered the phone and identified himself as M. He was told that police were on their way, to which he replied, 'You can send whoever the fuck you like.' Police arrested M for Breach of Non-molestation Order and L thanked them for removing him from her home. After being arrested, M became violent and had to be restrained and handcuffed whilst being conveyed to Lurgan Custody Suite. M was later charged to appear at Craigavon Magistrate's Court on 15 December 2003.

L had recently had a child by M.

Both parties had consumed alcohol.

Constable Cleland, Investigating Officer.

4. On 29 January 2004 at 2200 hours L reported that M had just kicked in the front door and was still in the house. A male person could be heard in the background saying, 'Go on, make my day.' She stated she had a Non-molestation Order in place. On police arrival the Investigating Officer, Constable G Bothwell noted that there was no reply to the door. Police opened the front door, which was insecure, and checked the house. No occupants were in the house. At approximately 2205 hours police returned to the house to speak with the Injured Party regarding her initial call and she stated she did not call the police. The house was checked again and M would found hiding in the hot-press. He was arrested for Breach of Non-molestation Order and charged to Court on 30 January 2004.

5. On 20 May 2004 at approximately 0226 hours, L contacted police via 999 to report her ex-boyfriend, M, had broken into the house and pulled her hair. She stated she was not in the house but would wait for police nearby. Police spoke to L, who stated that M had left the house and she no longer wished to pursue a complaint and wished no further police action. Police noted that L was with friends and sounded calm.

6. On 21 September 2004 at 0238 hours L reported that M was in her home and refusing to leave. She stated she had a Non-molestation Order in force. Police attended and M was arrested for Breach of Non-molestation Order, Threats to Kill and Criminal Damage. He was charged to Court on 21 September 2004.

D HARWOOD
DOMESTIC VIOLENCE OFFICER"

[9] I regard these instances of domestic violence as being not only extremely serious but highly significant in the determination of the issues in this case. I pause to observe that I accept in its entirety the view expressed by a social worker Ms D and the views of the Guardian ad Litem on the effects that domestic violence can have on children. In her report of 2 August 2005 the Guardian ad Litem commented on the effects that domestic violence can have on children. In her report of 2 August 2005 the Guardian ad Litem said "The effects of domestic violence on children have been well documented and

coupled with problematic misuse of alcohol can create frightening, neglectful and abusive experiences for children. Ms D dilated to some extent on this and indicated that it is not only very frightening for children to witness and hear primary carers fighting but in such circumstances the children's needs are not being met either emotionally or physically. Children exposed to domestic violence see their carers as role models and if children become used to this behaviour, it is highly likely that they will develop a similar mode of behaviour themselves. It has detrimental affects on all aspects of their development and they carry the consequences with them for the rest of their lives. It is futile to draw a distinction between children seeing as opposed to hearing the domestic violence and to recognising that it has happened. The atmosphere in the household engendered by domestic violence is never lost on children. I have not the slightest doubt that these are accurate and prescient comments on the effects of domestic violence.

[10] I endorse entirely the sentiments echoed by Hale LJ (as she then was) in Bond v Lester County Council (Times 23 Nov 2001) when she said:

> "Once violence had begun, it was likely to be repeated with escalating severity. It caused a sense of shame and powerlessness in the victims who often blamed themselves and found it impossible to escape."

[11] I consider it absolutely vital that those who engage in domestic violence exhibit a capacity to repair themselves to a point of which they can recognise the damage that may be caused to children. They must progress to a point where they can recognise that in order to provide consistent and safe care for such children they need to admit the problem and avail of professional help.

(2) Alcoholism

I endorse entirely the view expressed by the Guardian ad Litem in a report of February 2005 when she said at paragraph 11.3:

> "Research on the affect of alcohol misuse on a parent's capacity to meet a child's needs find that such misuse can affect the parent's emotional and behavioural response to a child. Problematic alcohol misuse can impact on a parent's capacity to organise their lives and ability to provide consistency for their children. Children can find themselves alone with inappropriate physical and medical care, left hungry and dirty, particularly if

> the family finances are used to support parental problem alcohol use."

Dealing with the older children in this family and with P, the Guardian continued:

> "S, C, S and C and P have found themselves in the position described in research regarding the impact of problem alcohol use. They have often been dirty, they have often been alone, and they often been hungry and cold. Fortunately due to the earliest intervention by the Trust C has not had the neglectful experience of her older brothers and sisters."

[12] Accordingly I regard misuse of alcohol as an extremely serious matter when it arises in the case of primary carers endowed with the care of children.

[13] I turn then to consideration of the evidence in this case:

(1) <u>Dr McDonald</u>

Dr McDonald, a Consultant Clinical Psychologist had had contact with L over a lengthy time span initially between January 2003 to July 2004 arising from care proceedings for P and his older siblings in 2002/2003. Thereafter he reported in respect of care proceedings for C on 25 April 2005. There were five reports before me. In the course of his evidence and cross-examination, I determined the following conclusions:

(i) I was satisfied that Dr McDonald had been a concerned and informed reporter on this couple. I was impressed by the appropriately measured but conspicuously careful analysis he had brought to bear in this case. I found him a very convincing witness.

(ii) He found that L was a very intelligent women with an IQ in the top 32% of the population. On the other hand he found she was a woman of limited insight who lacked self-reflective capacity. Her working intelligence was influenced by her personality-based factors which reflected adversely on her capacity to care for the children. He found that she was regularly precipitated easily into self-complacent images of herself and illustrated a minimum learning capacity with reference to her frailties.

(iii) He found that her needs impacted on her decision-making capabilities and in essence she lacked empathy with the life circumstances of her children. He recognised that she did not have malevolent intent but lacked

insightfulness with reference to the adult responsibilities of parenting. He had conducted a number of motivational therapy sessions with her which gave him a broad base upon which to find his opinions.

(iv) She had failed to identify any historic experience in her formative years which influenced her overall personality. She made no links between the past and her present behaviour. She perceives assistance such as her assessment at Springwell as a source of support but is not able to identify educational progress with reference to the care of her children. In short her own needs dominate her thoughts and behaviour. It is this which creates a difficulty in her assimilating sufficient knowledge relating the therapeutic process. She needs to bring about a change in her thought process and general coping style.

(v) She has regularly exhibited a lack of candour with professionals regularly attempting to anaesthetise their concerns with misleading information. I found this very well illustrated in the case before me. In particular, she had lied not only to social workers about the nature of her continuing relationship with M but perhaps more importantly had deliberately and to some extent effectively misled her family therapist Dr Philomena Horner from the Springwell Centre who had been dealing with her in therapeutic sessions since 2003. It was quite clear to me that Dr Horner was taken by surprise to discover the extent of the drinking that L had engaged in during the course of 2005 at a time when she was asserting confidently to Dr Horner that she was no longer abusing alcohol. Dr Horner was driven to concede:

> "If these allegations are true, I would be surprised and professionally discredited. I would see things differently and not be as confident. My understanding was she was not drinking throughout her pregnancy (with T)."

[14] I pause at this stage to visit this issue of misleading information by setting out a chronology of events on which the Trust witness Ms D relied from 4 February 2005 until 30 March 2005. The relevance of this of course is that it was during this period that L was pregnant with her recent child T who as born 23 April 2005 and who is not the subject of these proceedings. I shall quote the chronology appropriately anonymised.

> "CHRONOLOGY OF EVENTS SINCE PREVIOUS SOCIAL WORK REPORT DATED 24.01.05
>
> 04.02.05 Social worker suggested to L that she looked pregnant. L admitted to being pregnant and agreed to see GP.

Continues to deny relations with M and states she is drinking however, is managing this.

Feb 02	M released from Maghaberry Prison.
11.02.05	M informs his mother he will live with L Monday to Friday.
12.02.05	M, L's sister attended LAC meeting and stated that M living with L.
18.02.05	M admits he is living with L, however L denies this.
23.02.05	L and M attended contact together.
24.02.05	L stating M a nuisance and wont permit him to attend contact with her.
7.03.05	M borrowed heather from mother for L's house, stated he is living with L.
9.03.05	Philomena Horner, Springwell Centre, Lurgan stating L claiming she was alcohol free.
9.03.05	Mrs C reports M and L had alcohol carry out, went to L's sisters house and M returned at 4am to his sisters home. M said he and L had had a row. L admitted this at C's LAC on 10 March 05.
10.03.05	LAC meeting – M was present and confirmed that he and L were drinking together the night of his arrest on 21 September 2004. L has consistently denied this.
11.03.05	M in Victoria Street, stated he was bringing electric card to L. Stated he could not sleep on because of the noise of roadworks in the street. L had constantly denied M with living with her.
12.03.05	S [daughter of L] had contact with L. Spent time in L's friend, F's house. S informed her Social Worker that L was drinking vodka. Claimed L stated if she reported this she would be responsible for L losing the baby as the Trust

	would remove the child at birth. L refused to accompany S to the train station. Sister M reported that L telephoned several times during the evening and sounded more drunk each time. L denies all of these allegations.
30.03.05	Mrs C states M arrived at her home stating he and L had a row and asking to stay with her. States L and M drinking at a party in the street on 28 March. Mrs C had a telephone call from M and overheard L in the background."

[15] I observe that in the course of her evidence before me and through cross-examination L stoutly denied a number of these allegations. She insisted that she had only been drinking on two occasions after she had found out that she was pregnant with T. I reject that entirely. She attacked the authors of the allegations on the basis they were lying. Thus she was accusing her partner M, her daughter S, her sister M and her mother Mrs C of all making up these allegations against her. I watched her carefully during the course of her evidence about these matters and found her singularly unconvincing. I find absolutely no credible reason why any of these witnesses would have made up these stories about her individually or cumulatively. In particular her daughter S was wishing to be returned to her and would have had no motivation for lying. Her sister M, with whom S was staying, had independently corroborated precisely what S had said about the incident of 12 March 2005 and I find this very significant. The whole matter was further corroborated by the social worker Ms D who indicated that on several occasions L had admitted to her that she had been drinking during this period. Once again it was put to the witness that she was simply lying.

[16] I pause also to observe at this stage that I am satisfied that L also attempted to mislead me in the course of her evidence about her intentions for her future relationship with M. I shall deal in some further detail with that during my review of her evidence but I insert it at this stage as a factor which further underlined my absolute conviction that Dr McDonald was correct in indicating that she displayed a strong lack of candour and he regarded this as a significant risk factor for the future. If she is unable to be frank and candid about her problems, then that reflects a failure to have a learning capability to acquire the necessary skills and to assimilate knowledge for the welfare of children. It does not reflect that profound change of emphasis on her lifestyle which is so necessary in Dr McDonald's opinion to provide a baseline in order to move forward. If she does not genuinely accept the concerns about the need to change, then it is impossible to sustain that change. It illustrates the core issue of a lack of reflectiveness on her part.

[17] This led him to make a determination with which I am in total agreement, that the likelihood of sustainable change in the future is very slim. In his opinion it would be years before there could be any confidence reposed in the depth of her ability to change.

[18] Turning to M, Dr McDonald voiced the following views:

> "M is mild borderline learning disability. He is cognitively naïve and exhibits a poverty of appreciation of the care and development needs of children."

I found this well illustrated in other aspects of the case. He told Mr McDonald and indeed the social worker Ms D that he saw no real problems with L and no need for social work intervention with her. I regarded that as an extraordinary state of affairs given that over a period of approximately 12 years L has been offered and participated in a number of services and assessments some of which have been repeatedly offered for a number of years. These have included referrals to and support from the parenting assessment team within the Trust, referrals to addiction services, practical and financial support. This complete lack of insightfulness on the part of M resonates with his comment to the Guardian ad Litem as recently as July 2005 that he did not consider himself as having a drink problem, but whilst he had been alcohol free for two months at that time he was only attending addiction services because Social Services required his attendance. Dealing with domestic violence the Guardian ad Litem quotes the following in her report of August 2005:

> "L was imprisoned in September 2004 following a breach of a non molestation Order granted on 1 October 2003. L commented that there was not much he could do about it and `its just the way things go'. M reported he had been living with L at that time. M related that there never was any violence in his relationship with L just arguments and the police wanted him because of an unpaid fine and had been following him. The case abounds with other instances of his lack of insight."

Dr McDonald had recorded that whilst M might be able to pick up the ability to physically care for a child, there was a huge quantum difference between being able to turn up for contact and exercising real care. He has no appreciation of the responsibilities associated with parenting. M made no reference to the need for a child to be loved and emotionally nurtured. This

echoed the report of the Guardian ad Litem of August 2005 when she recorded at paragraph 4.21:

> "M had difficulty commenting on any aspect of childcare, children's needs or well-being. When asked to consider what P's feelings would be if moved from his foster-carers, M was of the view that P would think this was brilliant, it wouldn't bother him one bit, he would be glad to have his real mum and dad looking after him."

When one recognises that P has been with his present carers for now almost three years and clearly loves them dearly, this statement is chilling in its lack of genuine insight into the welfare and needs of a young boy. Whilst I do not minimise for one moment the impact of this man's low intellect on his decision-making capabilities, I have no doubt that many fathers with a similar intellectual disability are perfectly capable of competently caring for children. That is not the case in this instance because of the deficits to which Dr McDonald referred. I am satisfied that M fully understood the role of Dr McDonald and the reason for his assessment. His abuse of alcohol, his absence of involvement with vocational training, and his engaging in domestic violence all contribute towards a very poor prognosis for this man's capacity to care for children. He manifests a cluster of difficulties arising out of his intrinsic deficiencies.

2. Dr Philomena Horner

Dr Horner is a psychologist and family therapist. She met L in 2001 and resumed work with her in 2003. L was referred to her by Social Services with concerns about her alcoholism, parenting and personal issues. I had before me reports helpfully made by Dr Horner. I observe at this stage that I regard Dr Horner as a dedicated informed therapist who displayed integrity and commitment throughout her evidence before. In the course of her examination and cross-examination Dr Horner made the following points:

(1) L has complex problems with alcoholism. There has been a history of moving forward and relapsing. However in her opinion she has now gained control over her alcoholism and is in a state of recovery. She believes that she is determined to succeed and has a better understanding than previously was the case.

(2) It was Dr Horner's view that she will not drink again although she stressed she cannot be certain. Dr Horner had seen this woman in therapy on a fortnightly basis since 2003.

(3) Initially Dr Horner said she thought that L had been off drink for one year but she subsequently corrected that to recognise that in fact it had been something in the range of 4½ months. She fully accepted that in the past L had lied to her but she indicated that mendacity is typical of alcoholics and that relapse is an expected phase of recovery. She described L as a woman whose life had been damaged by alcohol abuse, who did not respond well to being compelled to do anything and in her view persisted in a relationship with M partly because social workers wished her to end it. Dr Horner agreed that it was preferable that she should not associate with someone such as M who himself has a drink problem and has engaged in domestic violence. It was Dr Horner's view that it was increasingly unlikely that L would allow herself to be a victim again of such violence.

(4) She regarded it as a welcome sign that L had now joined ANEW which is a group formed to support and encourage women who are alcoholics with an emphasis on support emanating from other women. In essence Dr Horner felt that L's alcoholism was due to unresolved guilt arising out of painful experiences in her family context and which needed to be addressed.

(5) Dr Horner recognised that L displayed a negative attitude towards social workers and she felt that they perhaps did not see the side of her that Dr Horner had seen wherein she displayed an awareness of the impact of her behaviour and was doing what she could to make it right.

(6) Dr Horner fundamentally disagreed with the views of Dr McDonald. She indicated that since L had been in Thorndale, she had mixed well with family and friends, had not consumed drink even though had had the opportunity to do so and that a key change now was that L had an empathetic therapeutic relationship with Dr Horner and is therefore more motivated to change. She regarded L as a highly intelligent woman who has passed a word processing exam with distinction and is well capable of understanding what is being said to her. In essence Dr Horner felt that she has the capacity and motivation to put her children above her relationship with M. Dr Horner would be guiding her for at least another two years and she will also be attending classes together with the form of therapy. It was Dr Horner's view that L realised that was her last chance and was very keen to avail of it.

(7) Dr Horner felt that L was ambivalent in her attitude to M and had never confided to her that she loved him.

[19] Dr Horner underwent a searching cross-examination by Ms Smith on behalf of the Trust. In the course of that cross-examination it emerged that on the facts which I have determined, L had misled Dr Horner (and indeed other experts) on numerous occasions. In particular she had wilfully misled Dr Horner as to her drinking when she was pregnant with the most recent child

T and it had been Dr Horner's understanding that she had not been drinking during the time that she known she was pregnant with this child. Not only were there recorded accounts of this drinking, to which I have already adverted, but she had admitted her drinking during this period to Ms D the social worker. This pattern of misleading professionals about her drinking has seared her historical association with them. On 22 March 2004 at a looked after children review, she had strongly asserted that she was abstaining from alcohol. Again on 2 November 2004, at another looked after children's review she again asserted that she was abstaining from alcohol. She told Dr Cassidy the Consultant Psychiatrist acting on behalf of the Trust on 19 August 2004 that her then partner M was not a drinker even though all the history clearly reveals that this man had been drinking since he was about 11 years of age and had a virtually insuperable problem with alcohol. In May 2003, when examined by Dr McDonald she told him she had not consumed alcohol since February and it was her intention not to take alcohol again. The motivation apparently was that she wished to obtain direct care of her youngest child P. Dr McDonald's note records: "she referenced that if she resumes alcohol in the future – it would put E (ie her social worker) off her trolley altogether" giving emphasis that Social Services "need someone to blame". On 26 May 2004, a report from Dr Horner records:

> "In recent months I have noted a marked improvement in L's attitude. She appears now to be determined to understand herself, to overcome her alcohol addiction and to gain control over her life. It is my understanding that she has not taken any alcohol for all of six months. L has spoken in detail about her early history and has gained considerable insight into how her present attitudes and behaviour have resulted from painful childhood experiences. … Until recently, I did not consider that L would become able to parent her children, but recently, I have seen a considerable change in her. The recent disclosures by her daughters, S and C, must surely have tested her personal resources, but she appears to have handled the situation calmly and appropriately, and most significantly, without resorting to alcohol."

I must observe at this stage that this is precisely the view that Dr Horner was putting before me now 18 months later notwithstanding the same views, expressed in May 2004, had been completely confounded by L's return to drinking and unacceptable behaviour. It undermined my confidence in Dr Horner's current confidence about L that she was, prior to this hearing, unaware that she had been misled again.

[20] I regard Dr Horner as having been also wilfully misled by L with reference to the relationship with M. The Trust evidence, largely derived from Ms D and the Guardian ad Litem, is to the effect that L is frequently giving differing versions about the state of and commitment to her relationship with M. It is very difficult to tell when she is telling the truth about this according to the Trust. Dr Horner seemed unequivocal in expressing the view that in her opinion L had made it clear that she did not want to live with him, that she wanted to be free to look at the situation independently and that she had no wish to cohabit with him. That of course is completely contrary to the report from and evidence of Dr McDonald to the effect that in July 2005 M informed him that L "right out of the blue" had invited him to marry her and that it was the intention of the two of them to get married in the near future. I have no doubt that this explains the contents of paragraphs 3 and 7 of his affidavit of 6 September 2005 where L specifically referred to their attempts to plan a future together as a couple. Less than three weeks later before me, in the course of her evidence, L attempted to retract that intention indicating to me that she had never intended to marry him and insofar as she had planned to make a future with him that was no longer her intention. She told me that she had now changed her mind and accepted the recommendation of the Trust. I had no doubt L was being untruthful before me and had once again deceived Dr Horner.

[21] I was driven to conclude that whilst Dr Horner is a distinguished and experienced clinician, in this case the additional evidence which was before me and which Dr Horner did not have at hand when forming her clinical opinion, served to undermine materially the faith which Dr Horner reposed in the future for L. I consider that Dr Horner has been misled to a very material extent by L and that has critically flawed her conclusions. Dr Horner is undoubtedly an expert of sound experience and I part company from her with reluctance and anxiety. However she is not the only person in this case who has been so misled and visit no criticism upon her for this circumstance. However I am satisfied that an overall view of the facts in this case lead me to conclude that the evidence of Dr McDonald is more in touch with the realities of the case and the welfare of these children. Accordingly I have rejected the evidence of Dr Horner and preferred that of Dr McDonald.

Ms D

[22] This was a social worker with the Trust who had care responsibility for P and C. She had been involved with L since about 1993. She recognised that there were two sides to this woman. On the one hand there were some good parenting skills which she manifested but on the other hand there were clear instances of alcohol abuse, neglect and inappropriate association with M. In the course of her examination in chief and cross-examination the following matters emerged:

(1) P had been with L for the first nine months of his life. As an instance of how matters can change radically within a short time with L, she indicated that at a looked after review on 4 February 2003 the Trust were satisfied that L had made improvements in her child caring abilities but that they would await the report from Dr McDonald on her capabilities. Within three days of this, on 7 February 2003, social services received an anonymous phone call stating that L had been drinking heavily the previous day. There were two other reports described as reliable to the Trust which stated that L was drunk and unable to care adequately for P the previous day. Social services called to L's home on three occasions but were unable to gain access. There were several telephone calls to both of her numbers but no response was received. Social services also contacted L's sister and her boyfriend both of whom stated that they had not seen her. Following consultation with senior management the social worker contacted the police who called to L's home at approximately 2.30pm. There was no reply and the police were obliged to make a forced entry. L was in bed upstairs with M whom she stated was P's father. P was lying in a crib in the same room. An empty bottle of vodka and two empty beer cans were lying in a living-room which was very untidy. There was no heat in the house and when P was brought downstairs he was wearing a vest, nappy and a sweater, and the child was very cold. L stated she had given him a bottle in the earlier day. L denied she had been drinking the previous day. When informed that P would have to be removed she was against the decision but nonetheless was cooperative. L was asked to pack clothes for P. She included three nappies, a pair of socks and two toys. When asked to provide baby food L could only produce two feeds stating that she usually orders food from the chemist on Fridays. Social services were obliged to purchase food, a soother, nappies and a new baby bottle as those provided for P by L were thoroughly worn. It was also necessary to purchase clothing and shoes. The child was placed in foster care where he has remained ever since. Thereafter on 15 February 2003, C was taken into foster care from the hospital where she had been since birth.

[23] I observe at this stage that given that this event of February 2003 was against a background where L had agreed to attend with Dr McDonald and Dr Horner and had apparently given no concerns to the Trust about her care for the boy in the previous two months, it was positively chilling to discover the events that unfolded with this visit of the Trust to her house on 7 February 2003. It seemed to resonate with the conclusions which Dr McDonald had made prior to February 2003 when he had said:

> "This lady presents with a disordered personality with markedly elevated antisocial, aggressive and paranoid traits. Her general proneness to aggressive impulses cannot be underestimated. … The lady's personality presentation is a markedly

> inhibitory factor for her to develop an understanding regarding the concerns of the statutory agencies relating to the protection and welfare of her children. … Her lack of empathy for her children regarding the life settings they were placed with when within her care was markedly evident and she did not display a motivational base to address the very significant personal and social competence issues relating to the care of her children. The lady presents with limited maturation of the motivational and emotional capacities required for effective caring. Her present lifestyle is very disorganised and she displays a lack of discriminative skills in relation to her interpersonal relationships."

The findings of the Trust on 7 February 2003 illustrated this graphically.

[24] Ms D went on to record the minutes of a looked after childrens review of 22 December 2003 when the team manager had made crystal clear to L the Trust expectations if the children were to be returned. The note records:

> "CE, team manager, stated that expectations placed on L are clear. Social services are recommending that L cease drinking alcohol, commit to working with the addiction unit, reengage counselling with Philomena Horner and stop disrupting the older children's placement especially in Armagh. CE reiterated the chairperson's earlier point that L had given the impression that she was not drinking. (The chairperson) then pointed out that even though L was aware that meeting would be held today she still decided to have a drink on Saturday afternoon. L repeated that she felt like drinking."

[25] Ms D then dealt with her assessment of M. She referred to an assessment of him by a social worker CF who had indicated that he simply had no insight into the family problems, not understanding why the children were in care and unequivocally stating that L was a good mother without reference to the history of problems that had arisen.

[26] The witness dealt with the issues of domestic violence and the dangers which it presents to children as already outlined by me in the course of this judgment.

[27] It was in this context that Ms D indicated that whilst L has been recently assessed in Thorndale assessment centre with her most recent child T, M was not involved given the comprehensive assessment that already had been carried out on him and his aggressive domestic violence up to the child's birth. This whole approach of the Trust was heavily underlined by the contents of Dr McDonald's report which served finally to convince the Trust that the assessment process in Thorndale was not suitable for M in light of his violent relationship with L over the previous three years. It is my view that this was an entirely reasonable and proper conclusion by the Trust who have in my opinion afforded M every opportunity to evince some insight into his behaviour, his attitude to L and to the children. No progress has been witnessed and I have no doubt that there must be appropriate limits to the steps that any Trust can be expected to take. The resources of Trusts are not infinite and it is perfectly appropriate in my opinion for Trusts to consider as a factor the resources open to it in order to facilitate endless opportunities for parents to change (see in Re S (a Child) (Care Proceedings: Contact) (Unreported) Times Law Reports 22 September 2005). In the absence of some positive evidence that there was a realistic opportunity of some gain being achieved by financing M to be assessed in Thorndale, I consider that it was a reasonable decision by the Trust to refuse to do so.

[28] Ms D also indicated that so far as L was concerned she is still in the early stages of being assessed with reference to T. Her period at Thorndale is now coming to a close and while she has cooperated well here, she is now moving from a closely supervised supportive regime at Thorndale to a much less supervised or supported regime in Zion House. Given her history, Ms D was extremely cautious as to whether she could maintain her alcohol abstinence or engage in domestic violence. She adopted very much the view of Dr McDonald that her singular attention should be fixed on T and that the extra burden of caring for P and C would be unacceptable. The fact of the matter is that P is now well settled for some years with his foster family and similarly C is exhibiting no difficulties in her foster care. To take P now from this settled placement in the hope that over the course of the next period of months or years some certainly could be confidently placed in L's change given her history of failure was in her opinion likely to lead to a very detrimental impact upon his emotional health. Similarly with C this child was developing her appropriate milestones and had never been exposed to the dangers characterised by her mother's behaviour.

[29] Dealing with the care plan, Ms D indicated that the plan envisaged permanence for both children outside the birth family. The foster parents of P have indicated that they are prepared to care for C as well as P in an adoption placement and that this is the hope of the Trust.

[30] It is the Trust's plan that monthly contact between P and C would continue until adoption took place and that thereafter indirect contact would

be the recommendation. It was hoped that the paternal grandmother and paternal aunt would however have direct contact perhaps three times per year. It was Ms D's opinion that adoption was by far the best option for these children given their tender years, the fact that they were now in a settled environment free from the dangers of alcohol abuse and domestic violence. The four eldest children of this woman were in long-term foster care and now several years down the line they were still waiting to be rehabilitated with their mother. She was anxious that this risk should not be repeated with P and C.

[31] In cross-examination she was challenged as to the veracity of the various allegations of drinking during the time that L was pregnant with T. I have already dealt with these matters at [14] and [15] of this judgment and I repeat that I am completely satisfied that the thrust of the allegations made by the Trust about her drinking was absolutely true.

[32] The witness was taxed with the suggestion that the instances of domestic violence had occurred at times when P was not there. As will be clear from my comments at paragraph 9 of this judgment, I regard the concept of domestic violence between parents as being potentially damaging to children whether or not the children actually witness the violence itself. As Ms D said, when this couple are drinking, it is unlikely that they would care whether the children were present or not when their passions are aroused.

[33] Turning to the current Thorndale assessment, the witness reiterated that L's progress to Zion House will take place over six months to one year and it was the witness's belief that it will take overall a period of years before one could be confident that she has dealt with the demons that now consume her life.

[34] Ms D recognised that C will have to be moved from her current carers but she was satisfied that was for good reason and that the carers of P have now stepped into the breach and will permanently care for her if approved.

[35] On the issue of post-adoption contact, the witness recognised that the Trust had not yet given full consideration to contact by the older siblings although contact had been arranged, the last occasion being some four weeks before. Only one of the elder children seem genuinely interested in P and C and it was a Trust concern that the four elder children did have difficulties of their own which required to be stabilised and that therefore contact at this time could conceivably be detrimental to P and C. She accepted that the mother L had attended contact regularly and had never made any contact with either of the foster carers of P or C. It may be that S, one of the older children, will be rehabilitated to her and possibly C, another of the older children, at a later date. The possibilities of this were to some extent

impacted on by the birth of T and caused a postponement of the consideration.

[36] Dealing with the cross-examination of Mr Maguire on behalf of M, the witness accepted that M had consistently attended at contact and that the experience had been a good one. However the witness steadfastly denied that the Trust had dealt superficially with M or had ruled him out prematurely from the role of a primary carer. Whilst admitting that psychological services had not been offered to him, the witness strongly asserted that the report of Dr McDonald and his extreme pessimism about the possibilities of rehabilitation with the children had all underlined the views already formed by the Trust given the background of drink and domestic violence. M was clear what was expected of him if he was to parent these children and had shown no insight whatsoever into addressing these problems or to changing his lifestyle. She summarised three reasons therefore why Thorndale assessment had not been considered appropriate for him. First the comprehensive assessment made by a social worker to which I have already referred, secondly his profound history of domestic violence and thirdly the psychological assessment of Dr McDonald. When the contents of Dr McDonald's report had been revealed to M his reaction was "I don't want to hear this – tell me the bottom line – am I going to Thorndale or not". This underlines to me the lack of his insight and the appropriateness of the Trust's decision that he could not parent these children. In answer to the suggestion that he is now abstinent from alcohol for three months and is living with his mother coupled with an assertion that he has not been involved in domestic violence since September 2004, the witness made the perfectly valid point that a man with this background is unlikely to change without the benefit of professional help and assistance in a context where he recognises that he has problems and has motivated the change. It is clear from the evidence that has been before me that he has absolutely no insight into his problems whether that be alcohol abuse or domestic violence and until this stage is reached help any assistance is unlikely to produce any material gain. In essence I found that this witness's account underlined the conclusions drawn by Dr McDonald as to the inherent unlikelihood of any material change in M's lifestyle which would be imperative if these children were to be protected.

<u>M</u>

[37] M did not give evidence in this case but I did take into account the statements that he had made before me.

L

[38] L had made statements which I have adverted to and in addition gave evidence before me. In the course of examination in chief and cross-examination, the following matters emerged:

(1) Pattern of drinking

L asserted that between the birth of C and the birth of T, she had only been drinking on four to five occasions. She recognised that she had been drinking far too much before that and had not been honest with Dr Horner or any of the other professionals about her drinking. She asserted that since Christmas she had been drinking on two occasions before she found out she was pregnant with T and thereafter on a further two occasions. It amounted to only a few alcopops. She recognised that drinking had been a major problem in the past. Several of her seven children were now subject to full Care Orders. She recognised that her main problem had been putting alcohol before her children and she knew the children suffered thereby. Cross-examined by Ms Smyth she denied the various instances of drinking that I have referred to save for the limited consumption of alcopops. I found her singularly unconvincing in this regard and I had not the slightest doubt that she was attempting to mislead the court when she denied most of those instances. She clearly has been drinking on many more than the four to five occasions she has admitted since the birth of C and to a much greater level than she is accepting. As I watched her carefully on this matter, it was quite clear to me that she was being wilfully untruthful and I fear that even now she did not really recognise the seriousness of the alcohol abuse in which she had engaged.

(2) Her relationship with M

The witness asserted that domestic violence had not been a problem in the early period of her relationship with M and that it gathered momentum only due to alcohol and subsequent to the birth of C. She asserted that they were not consistently together as a couple because a cycle developed of alcohol abuse, violence, M had then been sentenced on two occasions to periods of imprisonment for breaches of Non-Molestation Orders, he would then get out of prison and live with his mother and the two of them would get back together and so the cycle would recommence. It was her view that alcohol was no longer a problem between them and whilst in the past she had attempted to conceal the relationship in order to achieve the rehabilitation of P and C, she now was being frank. She strongly asserted that despite what she had sworn in her affidavit of 6 September 2005, she has now changed her mind, accepts the recommendation of the Trust that she should break her relationship with M and that she does not intend to live with him and the children in the foreseeable future. She strongly denied that there was ever

any proposal for marriage forthcoming from her. Indeed she asserted that although she had heard in court for the first time when Dr McDonald was giving evidence that she had allegedly proposed to M, she did not discuss the matter with him until shortly before she gave evidence. She also attributed her change of heart as to her future relationship with him over the past two weeks to the fact that she now read what was contained in Dr McDonald's report. It was her view that the "bottom line" was that M "did not have a clue" and whilst at 6 September 2005 she still wanted life as a couple with him, that had now changed. She admitted that she had broken the embargo on him seeing the child during her period at Thorndale as recently as 13 June 2005 when she had gone out with him. She stressed that she was now living in Belfast and he in Lurgan and whilst they would have to have some form of relationship it would not be living together for the foreseeable future. She admitted that not only had she lied in the past about her relationship with him, but she had now discharged the outstanding Non-Molestation Order which had been in existence during 2003 and 2004 because she felt there was no longer any risk from him. I found her evidence in this matter again very unconvincing and I have no doubt that she was yet again engaging in an attempt to deceive this court. I simply do not believe that her passion for this man which was so evident as recently as 6 September 2005 is yet spent and I have no doubt that if these children were to be returned to her, they would be exposed to his presence with all the attendant risks of alcohol abuse and domestic violence. Her demeanour, her body language and even her voice betrayed all too clearly the deception which she was attempting to practice on the court in relation to M. She has not yet reached the stage where she understands either that actions speak much louder than words in the context of the welfare of her children or the dangers which her relationship with M presents to them.

(3) <u>Guardian ad Litem</u>

The Guardian ad Litem in this case had prepared four reports for the court between 2002 and the final report of 2 August 2005.

In the course of her examination in chief and her cross-examination the following points emerged:

1. She had made numerous efforts to make contact with L by writing, visiting her home and travelling to Lurgan after the social worker had attempted to set up a meeting but all to no avail. Eventually she did see her during the course of a contact between herself and the children. Similarly, attempts to arrange a meeting with M had failed until January 2005 although he had been in prison on a number of occasions.

2. The Guardian shared the concerns of the Trust about alcohol abuse and domestic violence in this relationship in terms of the children's welfare. The witness shared the views of Dr Horner and Dr McDonald that a lengthy

period in terms of years could elapse before one could be confident that the troubles that consume this couple were passed.

3. P had been in care now almost three years and had made secure attachments. To move him now to a placement with his mother would in her opinion be unacceptable given the uncertainty of her future and the risks to which this child would be exposed. So far as C was concerned, whilst a move is planned from her present fostercarers, permanence was necessary for this child and there could be no real indication of permanence with her mother given the current situation. She does not have a bond with her mother and the burden of attempting to devote time to C in addition to T would in her opinion be simply too much given the other problems of maintaining sobriety, and the relations with the older children apart from the dangers inherent in her relationship with M.

4. The Guardian ad Litem was satisfied that in light of the report on M given by Dr McDonald coupled with the assessment of him as a single carer in August 2005 the Trust had genuinely considered him in an appropriate manner but that the possibilities of rehabilitation with him were simply hopeless.

5. The Guardian ad Litem was satisfied that P is now a contented happy little boy who would suffer grave difficulties if taken away from his present carers. C is familiar with those carers having spent some time in their care and whilst the move would need to be planned, it would clearly be the best thing for her. It was the opinion of the Guardian ad Litem that rehabilitation was now effectively ruled out in the case of L because although she had been self-reportedly sober now for four months, she faced a lengthy process with unresolved issues about domestic violence and the need to test her sobriety in society. In the Guardian's opinion this did not fit within a timeframe for the children. Similarly she felt that M was unsuitable for rehabilitation.

6. In cross-examination by Ms Smyth on behalf of the Trust, the witness acknowledged that M had spent lengthy periods in prison but notwithstanding that had been invited to a number of statutory reviews and case conferences. She was satisfied that the Trust had encouraged him to attend addiction services and his assessment had been fully updated by the social work CF.

7. Cross-examined by Ms Robinson on behalf of L, the witness asserted, as she had done in her report of 2 August 2005, that there had been delay on the part of the Trust in proceeding with and concluding an assessment of the suitability of P's carers as perspective adoptive parents for him. Since no change is proposed regarding the child's placement, this delay did not significantly impinge upon his welfare. However the fact remains that this child has spent the majority of his short life in care and has been waiting now for over two years for permanent arrangements to be made regarding his

future. I observe that this is a matter that should be looked at by the Trust in great detail at the end of this case. Lessons must be learned to ensure that such delay is not occasioned in the future. I have absolutely no hesitation in agreeing with the Guardian ad Litem that whilst no prejudice has accrued in this case, delay can occasion great damage to children who form attachments without the prospect of certainty or permanence in many instances. I cannot underline too much the importance of this Trust reviewing its practices so that this does not occur in the future.

8. The Guardian indicated that whilst L had maintained sobriety during the course of the Thorndale assessment, this was at a very early stage of a very lengthy process. She is in a supervised residential setting and any real testing of her sobriety will occur when she is out in her own community over a lengthy period of time. Moreover domestic violence needs to be addressed conceptually and this has not occurred.

9. She conceded in cross-examination that one could not be definitive about the question of post-adoption contact with L and that direct contact once/twice per year is a real possibility that should be considered by the Trust depending on the progress she makes in terms of her cooperation with social workers, her continued abstinence from alcohol and how supportive she is to the placement.

10. In cross-examination by Mr Maguire on behalf of M he raised the issue of the legal representation of M during the course his interviews with the Guardian ad Litem. I am satisfied that she had advised him of his legal entitlements at all times and that at least in May 2005 she had been in contact with a firm of solicitors who did represent him. I believe he was well aware of his opportunities and rights to have legal representation at any stage during the process relevant to these proceedings.

11. The witness accepted the reports that M had now been alcohol free for three months and whilst this was encouraging and positive, she did not feel it was evidence of permanent abstinence. Similarly although there had been no recorded episodes of domestic violence since September 2004, the fact remains that those who are given to domestic violence need help and assistance of a professional nature in order to change their ways and this he had not done.

12. Whilst on occasions during his visits to L at Thorndale eg 28 June 2005, he had demonstrated some maturity in feeding T, this scarcely outweighed the other frailties from which he suffers and the Guardian in her observation found it difficult to see what benefit the child was deriving from contact with him.

13. Whilst she acknowledged that it was possible that some more attention might have been given by the Trust to programmes on anger management or

alcohol abuse, she recognised that the Trust were always confronted with the difficulty of establishing just what the status was of his relationship with L and whether or not he was to be assessed as a carer. His lack of honesty about the status of their relationship obviously contributed towards some measure of indecision in deciding which appropriate services should be offered to him. Moreover his periods in prison for his acts of domestic violence which breached the Non-Molestation Order inhibited assessment. The essential problem however in the Guardian's view was that for such programmes to work with a perpetrator, he must admit his involvement. It was quite clear to her through her conversations with him that he did not consider himself as having a drink problem and that he was only attending addiction services at that time in 2005 because social services required his attendance. Moreover he expressed the view to the Guardian ad Litem (and recorded at paragraph 4.23 of her report of August 2005) that whilst he would go to the assessments of the children because he had to, he did not think there was any need and when the children come home they would not need to have Social Services visiting them. He added "its none of their business if I'm off drink, if they don't believe me that's their bad luck". It was the Guardian's view that attitudes such as this rendered any referrals about domestic violence or alcohol abuse to be of little avail. He has had three years since the birth of P to gain some insight into these problems but as recently as July still failed to recognise that he needed help or assistance. It was the Guardian's view that he simply did not have the conviction that goes with motivation to change.

Conclusions

(1) I commence my deliberations in this issue by recognising the draconian nature of the legislation which is now being invoked by the Trust. It is difficult to imagine any piece of legislation potentially more invasive than that which enables a court to break irrevocably the bond between parent and child and to take steps irretrievably inconsistent with the aim of reuniting natural parent and child (see Re T (Freeing Without Consent: Refusal to Dispense with Agreement of the Parent) NI Fam 6 (Unreported) 11 Feb 2004).

(2) I recognise that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment do amount to an interference with the right to such protection under Article 8 of the ECHR. I also recognise that taking a child into care should normally be regarded as a temporary measure to be discontinued as soon as circumstances permit and that any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and the child wherever possible.

(3) I have derived great assistance from two recent cases in the Court of Appeal in Northern Ireland namely AR v Homefirst Community Trust [2005]

NICA 8 and Homefirst Community Health and Social Services Trust v SN [2005] NICA14. In the former, Kerr LCJ stated in the course of the judgment of the court:

> "It is unsurprising that research into the subject discloses that it is desirable that permanent arrangements be made for a child as soon as possible. Uncertainty as to his future, even for a very young child, can be deeply unsettling. Changes to daily routine will have an impact on a child's need to feel secure as to who his carers are. It is not difficult to imagine how disturbing it must be for a child to be taken from a caring environment and placed with someone who is unfamiliar to him. It is therefore entirely proper that this factor should have weighed heavily with the Trust and with the judge in deciding what was best for J. But, as we have said, this factor must not be isolated from other matters which should be taken into account in this difficult decision. It is important also to recognise that the long-term welfare of a child can be affected by the knowledge that he has been taken from his natural parents, even if he discovers that this was against their will.
>
> So, while there may be many cases on which prompt decisions as to the placement of children are warranted, this is not inevitably or invariably the best course … We consider that in the present case there were sound reasons to postpone the decision as to where J should ultimately be placed. As the judge rightly observed, it might be many years before Mrs R could finally demonstrate that she had completely overcome her problems with alcohol and lack of insight, but it does not inevitably follow that no delay in deciding what should become of J was warranted. There was already cause for optimism and with close supervision of it at least distinctly possible that Mrs R would have been able to care for her son … although a decision in J's future that would have allowed permanent arrangements to be made was desirable, this did not, in our opinion, outweigh the need to give Mrs R the chance to prove herself. Taking into account "the imperative demands" of the Convention in relation to her Article 8 rights,

> the need to have matters settled for J should not have been allowed to predominate to the extent that the mother's Convention rights could be disregarded."

(4) Equally so I recognise that in Yousef v The Netherlands [2003] 1 FLR 210 at 221, para 73 the ECtHR stated:

> "The court reiterates that in judicial decisions where the rights under Article 8 (of the European Convention) of parents and those of a child are at stake, the child's rights must be the paramount consideration. If any balancing of interest is necessary, the interests of the child must prevail."

(5) Accordingly it is important to remind myself that the Trust and this court as public authorities have an obligation to comply with the provisions of Article 8 of the European Convention on Human Rights which was incorporated into our domestic law on the coming into force of the Human Rights Act 1988. Article 8 provides:

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (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 in the interests of … or for the protection of the rights and freedoms of others."

I am conscious that the Court of Appeal in these two recent cases has been critical of Trust's failure to comply with these rights. In JN Sheil LJ said:

> "If the Trust in the present case had been fully cognisant of SN's rights under Article 8 of the European Convention, this court considers that it should have given her a further opportunity to prove herself by undergoing the further suggested therapeutic work in early 2003. That regrettably was not done thereby depriving her of the opportunity to prove that JN could be returned safely to her care. Having regard to the real progress which she had made in her life, despite not having the benefit of the further suggested therapeutic work, there was some real prospect that she might succeed in so doing although that would take some time to establish."

(6) Article 9 of the Adoption (Northern Ireland) 1987 provides:

> "In deciding on any course of action in relation to the adoption of a child, the court or adoption agency shall have regard to 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 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.
>
> The views and wishes of the child where the age is appropriate must be taken into account."

(7) Article 18 of the Adoption (Northern Ireland) Order 1987 provides:

> "(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 adoption shall be made under para (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."

[39] In this case I am satisfied that adoption is in the best interests of both these children. The history of alcohol abuse and domestic violence over the

years in the case of L and M present dangers that are chilling for these two children. I have already dealt with the dangers of these twin social cancers at paras 8-12 of this judgment. I believe it is extremely unlikely that either L or M will be able to resolve the very high risk factors in their relationship. Neither have successfully completed a programme to address their reported difficulties with alcohol. Neither accept in my view the dangers of alcohol abuse or domestic violence within the relationship or recognise that such acceptance amounts to a fundamental and basic step in undertaking any future therapeutic or relationship work. I am satisfied that the lack of candour betrayed by both of them throughout these proceedings and in particular before me by L betrays a fundamental lack of capacity to adjust their lifestyle so that either of these children could be safely or appropriately brought up by them individually or together.

[40] Dr McDonald's report, and his evidence, which for the reasons I have set out in paragraphs 19-21 I prefer to that of Dr Horner, persuaded me that L's limited insight regarding the historic care of her older children, her historical inability to put her own needs before those of developing children, her lack of knowledge or insight gained from either the attendance at Springwell Centre through therapeutic services provided by Dr Horner all provide convincing evidence that she has not made any real progress in her life and that the time to effect this is too long for the timeframe of these children. I readily accept Dr McDonald's caution as to her ability to sustain appropriate parenting given the very lengthy history of alcohol abuse, poor parenting and domestic violence. I am satisfied that she should now give singular emphasis to the possibility of care of T within a supervised and monitored structured setting and that such attention will consume all of her available capacity leaving no hope for rehabilitation with P and C. Similarly I am satisfied that Dr McDonald was correct in concluding that M was an immature personality with limited intellectual capacity who exhibited profound lack of insight or knowledge of the needs of these children exhibiting along the way a lack of empathy regarding the experiences of them. He lacks the motivation and the learning capacity to assimilate any information provided. I am satisfied that for these children, given their tender years, and the period of care to which they have been now exposed, adoption will be in their best interests. I have concluded that this is the only way to safeguard and promote their welfare throughout their childhood and to provide them with a stable and harmonious home.

[41] I accept the view of the Guardian ad Litem that whilst long-term foster care can be advantageous for many children, that option would be insufficient to meet the best and future needs of these children given their age and stage of development. If they remain with a long-term foster placement, they potentially face the remainder of their lives within the public care system. They may also experience the uncertainty that the placement could be open to legal challenge at any time and the uncertainty exists as to whether a fostercare placement could endure for the duration of their childhood and

early adulthood. It is not in either of these children's interest that they experience the duration of their childhood subject to the vagaries of the public care system. The merits and limitations of long-term foster planning or adoption have been extensively considered in literature. It is generally held that while long-term foster care can be advantageous for many children, adoption is more advantageous for young children. Adoption can provide the potential and opportunity for children to experience a normal childhood in a family environment enabling them to have emotional and legal security, a sense of belonging an opportunity to maximise their development into adulthood affording safety and protection. I stress again that if I had thought thee was any realistic cause for optimism even with close supervision for rehabilitation with the birth parents I would not have reached this conclusion in the case of these children.

[42] I then turn to Article 16(2)(b) of the 1987 Order and I must decide whether the Trust have satisfied me on the balance of probabilities that each parent in this case is unreasonably withholding his or her consent. The leading authority on the meaning of the ground and the test that the court should apply is that set out in Re W [1971] 2 AER 49. During the course of the leading opinion, Lord Hailsham described the test in this way:

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

Lord Hobson at p718b stated:

> "The test of reasonableness is objective, and it has been repeatedly held that the withholding of consent could not be held to be unreasonable merely because the order if made would conduce to the welfare of the child."

[43] In JN (Supra) Sheil LJ added at para 26:

> "In many cases, and this is one of them there is a tension between what is in the best interests of the

child and the question of whether a parent is withholding his or her consent unreasonably. In Re F [2000] 2 FLR at 505-509 Thorpe LJ referred to the joint judgment of Steyn and Hoffman LJJ in the case of Re C (a minor) (Adoption: Parental Agreement: Contact) [1993] 2 FLR 268-272 where they stated:

> `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 (supra):

> `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 invented to provide the answer to this question."

[44] I recognise that the reasonableness of the parent's refusal to consent must be judged at the time of the hearing and I am doing that. I have taken into account all the circumstances of the case. I have recognised that whilst the welfare of the child must be taken into account it is not the sole or paramount criterion. I have applied an objective test in the case of each parent. I have recognised that the test is reasonableness and nothing else. I have been wary not to substitute my own view for that of the reasonable parent. I recognise that there is a band of reasonable decisions each of which may be reasonable in any given case. I have come to the conclusion that both these parties are unreasonably withholding their consent for the following reasons:

(1) I consider that this is a classic case where these children cannot indefinitely wait for parents to change. It is not in any child's interest to wait indefinitely for parents to engage upon a process of change. The prognosis for change in these parents is so vague and at best so long-term and these children, particularly P, have been in care for such a long period, that I have no doubt that any reasonable parent would recognise in a commonsense manner that they can wait no longer. Consequently any withholding of consent is unreasonable.

(2) A reasonable parent would recognise that the deep-seated problems of alcohol abuse and domestic violence rife in this case have not been addressed in any meaningful fashion by either of these two parents over a lengthy period of years. They have displayed no evidence that real progress has been made in their lives despite having been given ample opportunity over the years to prove themselves. Any reasonable parent would recognise that they have not adequately addressed these issues to create confidence that there has been or will be a real and substantive change in their lifestyle and attitudes. The minimisation of the importance of domestic violence and the abuse of alcohol by them even recently is chilling in its lack of insight. The danger of history repeating itself here is overwhelming if these children were to be rehabilitated to either of these parents.

(3) I am satisfied that this Trust has afforded due consideration of this couple's rights under Article 8 of the ECHR and that every reasonable consideration has been given to the prospect of rehabilitation. However the Trust have also taken into account the rights of these children to a family and have in my opinion correctly concluded that this can only be done by following the path of adoption. I consider that the response has been a proportionate one to legitimate aim namely to protect the welfare and interests of these children. I am satisfied therefore that the Convention rights of these parents have been adequately recognised, that no outcome other than that which it has decided on could have been reasonably contemplated and there is no legitimate grievance that could be harboured by either of these parents.

[45] I have therefore come to the conclusion that both these parents are unreasonably withholding their consent.

[46] Turning to Article 18 I am satisfied that both of these children are in the care of an adoption agency pursuant to their Care Orders. I am entirely satisfied that it is likely that these children will be adopted by P's current carers.

[47] Whilst it is inappropriate for me to look at the question of contact post adoption until these children come before the court for adoption, it is appropriate that I should say that I am firmly convinced that wherever possible post adoption contact of a direct nature between birth parent and child should be invoked provided no attempt is made to undermine the placement, that the parties have addressed their drinking and domestic violence issues to the extent that contact can take place safely and harmoniously and that they recognise the purpose is to aid the child to come to terms with his or her new placement whilst at the same time affording confidence and reassurance about the welfare of the birth parents. I therefore consider that the Trust should strongly consider the possibility of direct contact if these circumstances permit albeit of course no final decision can be taken until the adoption hearing. It is my view that the paternal grandmother and parental aunt should have direct contact three times per year. I leave to the discretion of the Trust how best to deal appropriately with inter-sibling contact depending on how the children are individually reacting. Inter-sibling contact is a good concept provided it is working in practice.

[48] Finally I am satisfied that both parents have been afforded the opportunity to make the requisite declaration pursuant to Article 17(5) of the 1987 and have chosen not to do so.

[49] I am satisfied that a Freeing Order in this case is a proportionate respondent to the legitimate aim of ensuring the welfare of each of these children. I have sought to balance the Article 8 rights of both parents, reminded myself that this draconian remedy should only be resorted to where no alternative avenue is open and where the interests of the children clearly require it.

[50] In all the circumstances I have therefore come to the conclusion that each of these children should be freed for adoption.