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*(subject to editorial corrections)**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**FAMILY DIVISION**

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**IN THE MATTER OF AN APPEAL FROM THE FAMILY CARE CENTRE SITTING IN BELFAST**

**Between:**

**TG**

**Appellant;**

**-and-**

**A HEALTH AND SOCIAL CARE TRUST, Mr G**

**Respondents.**

**and**

**IN THE MATTER OF T, K, KE, H and S**

**(Appeal: Discharge of Care Order: Injunction: Human Rights)**

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**KEEGAN J**

**Introduction**

[1] The identities of the parties have been anonymised in order to protect the interests of the children to whom this judgment relates. Nothing must be published or reported which allows these children or any related adults to be identified in any way.

[2] This case relates to an appeal from a decision of His Honour Judge McFarland made on 13 May 2016 in relation to five children aged 14, 13, 10, 9 and 7 at the date of hearing. The appellant is TG, the mother of the children. The reasons for the decision were given on 16 May 2016. The appeal is from the Judge's dismissal of the parent's application for discharge of care orders in relation to the five children. The Judge had also made an interim injunction under the Human Rights Act 1998

pending a hearing. After the hearing the Judge removed the injunction in relation to the three youngest children of the family KE, H and S. This allowed the Trust to remove those children into care on 13 May 2016. The elder two children were not removed and the Trust ultimately amended their care plan to allow T and K to remain at home. This appeal therefore centres on whether or not the judge was correct in his disposal of the case which led to the three youngest children of the family being removed from the care of the parents. The father was also an applicant in the discharge proceedings which were originally lodged in the Family Proceedings Court and transferred up to the Family Care Centre by His Honour Judge McFarland.

[3] The appeal was conducted by Ms Smyth QC with Mr Mullan BL for the appellant. The Trust was represented by Ms MacKenzie BL. The second respondent was represented by Ms McCartney BL and the Guardian ad Litem was represented by Ms Steele BL. I am grateful to all counsel for the care and attention they have applied to this case and for their written and oral submissions.

**Background**

[4] The family have been known to social services since 2001. It is reported that social service intervention increased from 2008 onwards due to concerns about hygiene, non-attendance at medical appointments, home conditions and the children's presentation. An Initial Child Protection Case Conference was convened on 16 August 2010 and the children were added to the Child Protection Register under the categories of confirmed neglect, potential emotional abuse and potential sexual abuse. Difficulties continued to be reported in 2010 in relation to aggressive behaviour on the part of the father, the children's presentation and allegations that the father was hitting the children. A pre-proceedings procedure was commenced in December 2010. Bryson House was involved with the family at this stage in terms of home support and there was a pre-proceedings review on 23 June 2011. There were ongoing reports of poor home conditions and the children presenting as unkempt in the first half of 2012. However, it appears that the children were de-registered and the case was closed by social services on 10 April 2013.

[5] Social services did become involved again in relation to these children after a school referral in respect of the children presenting as unkempt on 4 December 2013. The school also reported that H aged 7 and S aged 6 wore nappies to school in early 2014. This led to the case being re-opened by social services and an Initial Child Protection Case Conference took place on 19 May 2014. The children were registered under the categories of confirmed neglect and suspected emotional abuse. There were ongoing concerns about home conditions and the children's presentation. The parents were assessed by Dr Barbour, Chartered Psychologist, in September 2014 and Bryson Home Support was again put in place in October 2014. Another pre-proceedings meeting was held on 11 December 2014. Care proceedings were then issued in 2015 and this led to a full care order being granted on 2 December 2015 in relation to all of the children.

[6] The care orders were made by a Family Proceedings Court sitting at Newtownards. As a prelude to the making of the care orders, the threshold criteria were set out in a document which is dated 1 July 2015. The threshold criteria were agreed under the following headings:

(i) The children have suffered neglect of physical needs due to parenting provided by the respondents.

(ii) The respondents have moved home 14 times and this has caused instability in the children's lives.

(iii) The respondents have been unable to maintain sufficient change in spite of interventions over the years since 2004.

(iv) The respondents have not met the children's medical needs.

(v) The children have witnessed a level of aggression in the home.

(vi) The respondents have not met the children's emotional needs.

[7] There were many particulars given which established threshold. I do not intend to recite all of the details however I do record that they paint a picture of chronic neglect over many years. For instance on 24 March 2009 it is reported by the Northern Ireland Housing Executive (NIHE) that the home was filthy, with rotten sofas, floors and a stench and 3 young children were seen with dirty nappies and their parents did not seem motivated to change. There are a myriad of similar references through the years. On 16 September 2014 it is noted that the flat balcony had dog faeces over it and dogs were lying on it, the flat was unclean and flies were noted in the living room, T's pillow had turned a dark brown colour. On 8 December 2014 KE's bed was noted to be wet but made up for him to use. On 23 December 2014 dogs were observed walking in their own faeces on the balcony of the family flat and spreading this through the home. Allied with the appalling home conditions and the poor presentation of the children, there are references to the family being uncooperative, the father being aggressive and the social workers failing to gain access to the children. Reports are received from the police, the NIHE and school about conditions. I note that in 2011 the GP reported an issue about the condition of his waiting room after the family had attended.

[8] The reports from schools are particularly alarming. I note that in 2011 the nursery report contained concerns regarding H's personal hygiene and reported that other children alienated him due to this. The taxi firm which transported the children to school also reported concerns in 2012. On 9 December 2013 the primary school informed the Trust that the children were soiling themselves in school and presented as unkempt. On 6 March 2014 the school reported that H aged 7 and S

aged 6 wore nappies to school that day. The schools also reported that the children were isolated and struggled to make friends due to their presentation.

[9] I note the lack of attendance at medical appointments. In 2008 it is noted that the Senior Medical Officer attended the home due to the children's non-attendance at medicals. In 2010 the children were discharged from speech therapy due to non-attendance. In 2014 it is reported that the children had not been to a dentist for over 2 years and were not registered with a dentist. In 2014 H did not attend a number of physiotherapy appointments. In 2014 H was discharged from podiatry having missed his initial appointment. In 2014 it is reported that KE had been soiling himself for one year before the parents sought medical assistance.

[10] The Trust decided to work with the family over the years and I do note brief pockets of improvements. However, the patterns repeat and the same issues regarding the children's presentation, the home conditions, the parent's cooperation and the father's aggression to social services re-emerge over the years. Notwithstanding these issues the children all remained at home until the present application.

[11] I have read the care plan which was prepared for the final care hearing. The overall aim of the plan was that the children would all remain at home under the care orders and the parents were to be offered an assessment at Knocknashinna Family Centre which was to assess the parents' motivation to make changes and their insight into historic concerns regarding neglect. This assessment was to focus on the parent's understanding of the impact of neglect on children, focussing on what has impacted on the parent's ability to meet the needs of the children, and why the patterns have re-emerged and the parents' views on recurrence. The care plans stated:

> "Depending on the outcome of the work with the Family Centre further work or assessments may be required. If the assessment from the Family Centre in respect of the parents highlight the parents are not able to sustain the changes the Trust will seek to place the children in foster care should the care order be granted. If the Family Centre indicates these changes are likely to be sustained the children would remain at home with a care order in place, therefore if the situation should deteriorate the children would be placed in alternative foster care arrangements."

[12] I was informed during the course of this hearing that the parents' representatives asked that the final care orders be adjourned to allow the assessment to take place. However, this application was refused on the basis that the care plans were choate. The Guardian ad Litem reported at the full care hearing and in that report at paragraph 7.3 he says:

> "The parents should be relieved the children remain in their care and they have another opportunity to care long term for them. It is the parents absolute right to oppose the Trust applications today. I would suggest that they should focus on the opportunity now being offered to them as opposed to querying the realistic wording of the Trust report/care plans. The first test of their motivation to do so is to accept how close the children were/are to admission to care."

At paragraph 7.1 the Guardian says:

> "I am clear that all five children have suffered chronic neglect and associated emotional abuse over a number of years. This is related to the harmful and neglectful actions of both parents which Mr and Mrs G unreasonably denied until July 2015 when they only accepted the threshold with considerable ambivalence."

Paragraph 7.6 of the Guardian's Report also reads:

> "I note the parents have suggested an adjournment to await the Family Centre assessment being completed. I am cognisant of the principle of no delay and given the care plans seem clear and choate I do not see any need to delay these proceedings."

[13] The parents did undertake an assessment at Knocknashinna Family Centre. The referral meeting took place on 9 December 2015 and a series of appointments were offered to them. The assessment was not a positive one and the final report in relation to the parents in the conclusion section states as follows:

> "However, as highlighted earlier within my report there were significant discrepancies between the couple's self-reporting and information presented by professionals at the recent LAC review on 10 March 2016. The couple at this time articulated they would make the necessary changes. However, it is concerning that there is a re-emergence of historical concerns and that these concerns continue to have relevance today.

> Despite intensive work of sharing information in relation to recent concerns, probing, exploring, Mr and Mrs G were adamant the information presented by professionals was inaccurate and that they had evidence to counteract these concerns.
>
> It was with regret that the assessment was concluded without a positive outcome."

[14] This failure led to a decision-making process as follows. There was a Looked After Child (LAC) review on 10 March 2016. This reviewed the progress of the Knocknashinna assessment and whilst there were clear problematic indicators it was decided that a number of further sessions would be offered. These sessions were offered and ultimately the main decision-making LAC took place on 7 April 2016. This LAC review decided that given the lack of progress that the children should be removed into care. It was a distressing LAC review for the parents, however they were accompanied by a solicitor. The Trust explained their position, gave notice as to their plan to remove the children and allowed the parents to take advice in relation to what actions they might take in light of the plan.

**Discharge of the Care Order**

[15] The day after the LAC review the mother and father issued a C1 seeking discharge of the care orders. This was followed by an application for an injunction to prevent the removal of the children pending a hearing. The Trust did not seek to remove the children immediately. The matter came swiftly to the relevant court. It appears that the discharge applications were issued in the Family Proceedings Court but they was transferred to the Family Care Centre and heard alongside the injunction application. The case was first listed on 19 April 2016. It was then listed on 4 May 2016. On that date the case had to be adjourned because some discovery was missing and the Guardian and the Knocknashinna key worker were out of the jurisdiction. A hearing then commenced on 9 May 2016 and concluded on 13 May 2016.

[16] On 9 May 2016 the mother gave evidence in support of the discharge applications and the injunction. The father did not give evidence. On 13 May 2016 the social worker in the case, the Knocknashinna worker and the Guardian ad Litem gave evidence. I note that this was a hearing late into the afternoon and that the trial judge gave a ruling around 5 o'clock on 13 May whereby he dismissed the application to discharge the care orders and he removed the injunction in relation to the three youngest children allowing them to be placed in to care. An application was made to stay this order pending appeal. That application was refused. The matter was then heard as an emergency on the evening of 13 May 2016 before Stephens J and he refused to stay the orders pending appeal. The three younger children were therefore removed into care on 13 May 2016 and the substantive appeal was subsequently listed before me.

**Issues on Appeal**

[17] The appeal notice is dated 16 May 2016 and it sets out 7 grounds of appeal as follows:

(i) The learned trial judge failed to have regard to the appellant's right to a fair trial pursuant to Article 6 of the Human Rights Act 1998.

(ii) There were a number of documents not served on the appellant by the respondent Trust until during the course of the proceedings and so the appellant did not have adequate time to consider same.

(iii) The Trust also relied heavily on hearsay evidence of conversations held with medical professionals and school staff. The appellant was therefore denied the right to cross-examine on this information.

(iv) There was no report from the Guardian ad Litem who had also not spoken to the three youngest children during the course of these proceedings.

(v) The learned judge refused to allow time for an updated assessment of the appellant and an assessment of the subject children to be conducted which would have assisted the court in reaching its decision.

(vi) The learned judge refused any stay of the decision pending an urgent appeal in order to allow the children to be prepared for the decision of the court. The children had never previously been removed from the appellant's care.

(vii) The learned judge failed to have due regard to the appellant's right to respect for private and family life pursuant to Article 8 of the Human Rights Act 1998.

[18] Ms Smyth QC who appeared on behalf of the mother streamlined her submissions in this appeal in an impressive manner. She realistically did not pursue the procedural complaints outlined in the Notice of Appeal. She based her submissions upon point 5 in the Notice of Appeal, and argued that the lower court should have considered an updated assessment of the appellant before reaching a decision. This argument was further refined before this court in that Ms Smyth applied for an assessment of the mother initially by Mr Ken Wilson, an independent social worker and then by Dr Jennifer Galbraith who has an expertise in learning disability. Ms Smyth candidly accepted that this was not a case where the care orders could be discharged.

[19] During the appeal hearing I requested that a background report should be provided. This was a report in relation to the mother's learning difficulty from

Dr Crymble, Assistant Psychologist, and Dr Creegan, Consultant Psychologist, within the learning disability service. This report had not been provided or requested at the lower court despite the reference to it in Dr Barbour's report. This was the report upon which Dr Barbour grounded his assessment and it set out the very real difficulties that the mother presented with in terms of learning difficulty. The report also made some suggestions in relation to potential assessments. Ms Smyth argued that this report bolstered her case that the lower court should have ordered a further assessment and the appeal court should order a further assessment. I was also provided with a similar background report on Mr G which again had not been requested or provided at the lower court.

[20] Ms MacKenzie BL on behalf of the Trust made some preliminary comments about the nature of this appeal. She indicated that the appeal was redundant given that the discharge applications could not be pursued and that it would be an improper exercise of power of the appellate court to order re-assessments when full care orders had been made. Ms MacKenzie pointed out that there was no freestanding human rights challenge in this case to the care plans. An injunction application had been brought as an ancillary to the discharge applications. Ms Steele BL on behalf of the Guardian supported the Trust position and disputed that there should be any further assessment in the context of this case.

**Legal Principles**

[21] The statutory provisions that are pertinent to this case emanate from the Children (Northern Ireland) Order 1995 and the Human Rights Act 1998. Article 51(2) of the Children (NI) Order 1995 provides:

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

Articles 52(3) and 52(4) of the 1995 Order state:

> "(3) While a care order is in force with respect to a child, the authority designated by the order shall –
>
> (a) have parental responsibility for the child; and
>
> (b) have the power (subject to paragraphs (4) to (9)) to determine the extent to which a parent or guardian of the child may meet his parental responsibility for the child.
>
> (4) The authority shall not exercise the power in paragraph (3)(b) unless it is satisfied that it is

> necessary to do so in order to safeguard or promote the child's welfare."

Article 52(9) of the Children (Northern Ireland) Order 1995 provides:

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

[22] It follows that Article 52(4) of the Children (Northern Ireland) Order 1995 means that where a child is placed at home under a care order, a Trust may not remove that child from the care of his or her parents unless it is satisfied that such steps are necessary in order to safeguard or promote the child's welfare. That is the starting position for a Trust in making a decision to remove a child placed at home under a care order.

[23] A Trust is also subject to the obligations contained within the European Convention on Human Rights (ECHR). A Trust as a public authority must act in a way which is compatible with the ECHR. In particular it is clear that a removal of children from the care of their parents is a violation of their right to family life. The right to family life under Article 8 is a right contained in Article 8(1). However, Article 8(2) is the provision whereby a breach of Article 8 can be justified if necessary and proportionate. The Trust has to act in a manner which is compatible with the Convention under Article 8.

[24] It is also well established within family law jurisprudence that Article 8 contains procedural safeguards which cross over with the rights contained in Article 6 of the ECHR. The decision of Baker J in a case in 2014 reported as Re DE (A child) 2014 EWFC 6 is instructive in this area in terms of the obligations placed upon Trusts and in relation to the relief that parents can obtain in the event that there is a potential breach. That was a case where a child was placed at home under a care order. There was then a decision to remove and a challenge was brought by way of discharge of care order. It was the judge at first instance who raised the issue of an injunction, although that was not granted, the appellate court reiterated the fact that it was available to any parent pending a hearing of a discharge application which is the substantive mechanism of challenge where a Trust wished to remove a child under a care order.

[25] At paragraph 49 of the DE judgment Baker J gave general guidance as follows:

> "(i) In every case where a care order is made on the basis of a care plan providing that a child

should live at home with his or her parents, it should be a term of the care plan and a recital in the care order, that the local authority agrees to give not less than 14 days' notice of a removal of the child save in an emergency. I consider that 14 days is an appropriate period on the one hand to avoid unnecessary delay but, on the other hand to allow the parents an opportunity to obtain legal advice.

(ii) Where a care order has been granted on the basis of a care plan providing that the child should remain at home, a local authority considering changing the plan and removing the child permanently from the family must have regard to the fact that permanent placement outside the family is to be preferred only as a last resort where nothing else will do and must rigorously analyse all the realistic options, considering the arguments for and against each option. Furthermore, it must involve the parents properly in the decision-making process.

(iii) In every case where a parent decides to apply to discharge a care order in circumstances where the local authority has given notice of intention to remove a child placed at home under a care order, the parents should consider whether to apply in addition for an injunction under Section 8 of the Human Rights Act to prevent the local authority from removing the child pending the determination of the discharge application. If the parent decides to apply for an injunction, that application should be issued at the same time as the discharge application.

(iv) When a local authority, having given notice of its intention to remove a child placed at home under a care order, is given notice of an application for discharge of the care order, the local authority must consider whether the child's welfare requires his immediate removal. Furthermore, the authority must keep a written record demonstrating that it has

considered this question and recording the reasons for its decision. In reaching its decision on this point the local authority must again inter alia consult with the parents. Any removal of a child in circumstances where the child's welfare does not require immediate removal or without proper consideration and consultation, is likely to be an unlawful interference with the Article 8 rights of the parent and the child.

(v) On receipt of an application to discharge a care order, where the child has been living at home, the allocation gatekeeper at the designated family centre should check whether it is accompanied by an application under Section 8 of the Human Rights Act and, if not, whether the circumstances might give rise to such an application. This check is needed because, as discussed below, automatic legal aid is not at present available for such applications to discharge a care order, and it is therefore likely that such applications may be made by parents acting in person. In cases where the discharge application is accompanied by an application for an order under Section 8 of the Human Rights Act, or the allocation gatekeeper considers that the circumstances might give rise to such an application, he or she should allocate the case as soon as possible to a circuit judge for case management. Any application for an injunction in these circumstances must be listed for an early hearing.

(vi) On hearing an application for an injunction under Section 8 of the Human Rights Act to restrain a local authority removing a child living at home under a care order pending determination of an application to discharge the care order the court should normally grant the injunction unless the child's welfare requires his immediate removal from the family home."

[26] I understand that this decision has been circulated and applied by Trusts in Northern Ireland. Happily, there is not the same difficulty with legal aid funding

when a discharge application is contemplated in this jurisdiction. The decision of Baker J also points to the fact that the Trust may not be able to give notice and have a hearing pre-removal in an emergency situation. That is something that should be borne in mind and so the particular facts of the case will determine the procedure. The actual procedure is within the discretion of the Trust and there will be emergency cases where notice is not possible. In those cases the parents may apply to court after the event when the Trust's actions can be scrutinised.

[27] If notice is to be given there is a procedure to be followed. This decision illustrates that the substantive application a parent can bring is discharge of the care order. The court also said that an injunction can be applied for and should be granted on an interim basis unless the child's welfare requires his immediate removal from the family home. The injunction however is simply to maintain the status quo pending hearing of the discharge application.

[28] In terms of this case, I am determining this as an appeal from the Family Care Centre. This appeal is conducted under Article 166 of the Children (Northern Ireland) Order 1995. A procedural point was raised by Ms MacKenzie that the human rights application does not fall under the Children Order. However, without making any determinative finding in relation to the implications of this, it seems to me proper to proceed on the basis that these are intertwined and related proceedings and that these are family proceedings which are appealable under the Children Order Article 166. The appellate test is found in the case of Re B (A child) [2013] UKSC 33. The Supreme Court held in that case that the guidance in the traditional authority of G v G [1995] 1 WLR 647 is to be confined to cases where the appellate court is asked to review a purely discretionary decision. Where the appellate court's task is to review a first instance determination based on an evaluation of the facts the G v G approach is inapt. The Supreme Court held unanimously that in such a case the question is simply whether or not the trial judge was wrong.

[29] I was asked to determine this matter on the basis of submissions made to me and upon a consideration of the written papers in this case. I indicated to the parties that in certain circumstances oral evidence may be appropriate in an appellate court, however there was no application made in this particular case.

**Conclusions**

[30] I consider that the Trust has followed a proper procedure in this case which was human rights compliant. In particular the Trust has followed the dicta in Re DE. This was a case of care orders with the children at home and if that was to change it required consideration and procedural safeguards. I cannot criticise the Trust for the approach taken in relation to this.

[31] In my view the hearing of this case was also procedurally fair. The trial judge granted an interim injunction to maintain the status quo pending a full hearing. He

then heard evidence from the mother, the social worker, the Knocknashinna worker and the Guardian ad Litem. There was therefore substantial evidence in this case heard over a period two days. Ms Smyth QC did not pursue the procedural complaints that are set out in the Notice of Appeal, and upon reading the transcript of the proceedings I consider that she was correct in that assessment.

[32] The issue in this case is really one of substance as to whether the judge should have allowed another expert assessment before reaching his decision. The context is important in relation to this issue. I note that the application to bring another expert into the case was made by C2 application on the second day of the hearing, after the mother had given her evidence. There was no identified expert, there was no letter of instruction and there was no timeframe given to the judge. The application had two limbs, the first of which was to assess the mother and the second was to look at the effect of removal upon the children. The judge pointed out that the mother had already been assessed by Dr Barbour and he could not see any utility in a further assessment. He was not in any event given any further information about the purpose of this assessment. There was reference to the mother's learning difficulties which were on display when she gave evidence. The judge referred to the application to assess the children as misconceived on the basis that there would be an obvious disruption to children being removed from their home.

[33] The case made on appeal for another assessment was very different to the case made before the trial judge. The application in relation to the children was not pursued and so the argument was simply in relation to the mother. I have to consider whether this issue impacts upon the judge's conclusion. In doing so I have to determine what the purpose of a new assessment would be. It is clearly not an assessment to discharge the care order because the concession is made that care orders are necessary in this case. It is also not an assessment to prevent the removal which has occurred. Really it seems to me that this assessment is to critique the care plans going forward – it is potentially to look at work and supports for the mother, to see if her learning difficulty impacts upon various aspects of her care and to see if future rehabilitation is possible. I did postulate during the hearing, that if there were to be another assessment it would have to include the other older children who remain at home and it would have to consider whether or not that is the correct placement for them.

[34] All of these questions do not seem to me to be unreasonable in looking at this case. However, the issue is whether or not this type of inquiry should be conducted in the context of this appeal. I have to be careful not to stray into management of Trust care plans bearing in mind the dicta of the House of Lords in Re S Re W [2002] UKHL 10. I also consider that the questions I have identified do not necessarily need the input of another expert given the assessments already available in this case and the fact that social workers have their own expertise and experience to deal with care planning.

[35] The assessments to date should inform care planning in this case. The report that I received in relation to mother was that from Dr Crymble and Dr Creegan in May 2011. That report details that the mother's full scale IQ fell within a range of 62-70 and it concluded that she suffered significant intellectual impairment but that she did not meet the criteria for referral to learning disability services. Also, certain recommendations were made in relation to supports and potential assessments.

[36] Dr Barbour then assessed the mother and he found that she had the same difficulties. He felt that the results of the cognitive testing from 2011 remained valid and that there was no need for repeat tests. He gave advice on how to engage with Mrs G when carrying out any interventions and these recommendations were set out in his report. In essence this amounted to ensuring information was presented in simple format, that there was frequent repetition of information, encouragement, and small amounts of information provided at a time. There is a record that Knocknashinna Family Centre had this report and the worker was aware of it when conducting her assessment.

[37] The conclusion of Dr Barbour at page 14 of his report is stated as follows:

> "The single greatest barrier to successful completion of a parenting assessment at this time would, I feel, centre on Mrs G's rejection and dismissal of almost all of the current and historical concerns and her inability to provide accurate information about her background and experiences. Mrs G is also unwilling to admit to or identify any personal shortcomings and this will also impact negatively on her ability to engage fully in a parenting assessment. As noted above, Mrs G's low level of motivation to engage with Trust staff will also pose challenges for those trying to engage her in parenting work. I would suggest that this is likely to take a long period of intensive input and contact with Mrs G in order to build up some level of trust between Mrs G and professionals and even then could not guarantee that Mrs G will ever reach a level of openness and honesty that would allow the work recommended to be completed appropriately."

[38] There is also the issue of Mr G and there has been a historical problem with him and his aggression towards social services. I note that this issue arose again in the context of the Knocknashinna assessment. Mr G did not give evidence before the trial judge which is telling in my view given that he is the parent with the greater ability. I was also shown a report from 2011 from Dr Crymble and Dr Creegan in relation to Mr G. That report indicated that Mr G did not fall within the criteria for learning disability services. It did point out some difficulties in terms of his

cognitive functioning. It did however find that Mr G's social and adaptive behaviour are within the above average range of functioning. Mr G's full scale IQ was assessed to be low average of between 78 and 86.

[39] Mr G is obviously an important part of this case. The parents are married and live in settled relationship. However, Mr G seems to be unable to contain his aggression towards social services and he presents in the papers as an uncooperative man. It seems to me there is also a potential issue about Mr G's support of Mrs G. I have sympathy for Mrs G in this regard given her obvious limitations. I consider that social services should take cognisance of this issue.

[40] The discharge of the care orders was the vehicle by which the mother brought proceedings to court but it seems to me that the applications were bound to fail on the facts of this case. The injunction it must be remembered was a holding mechanism pending hearing of the case for discharge. There was no other application before the court. I bear in mind the material that the judge had before him and the fact that he heard evidence and assessed the witnesses in this case. Having considered the evidence and the judge's ruling, I cannot fault his decision making in terms of the ultimate outcome in this case. This is a serious case of chronic neglect where intervention has only come after a long process of voluntary arrangements. Arguably, there should have been more robust action much sooner in this case to protect these children. There may also have been gaps in supports and services and/or a failure by the parents to engage and accept supports and services. Either way, that will have compounded the problems. I consider that the Trust intervention was justified and necessary to safeguard the welfare of the children. It also seems to me that a proper assessment took place of the parents at Knocknashinna prior to intervention. There is sufficient evidence that the assessment took into account the mother's learning difficulties. The Knocknashinna outcome clearly points to the fact that there has not been a full appreciation by the parents of the serious child care issues in this case. In particular Mr G, who has a higher ability that Mrs G, related the problems within his family to having horses.

[41] I was also asked to receive, without objection, some updated evidence about the children's presentation immediately upon being received into care. I appreciate that this is after the event, however I cannot ignore this evidence. On arrival to foster care it was reported that S and K were not distressed. They had bags containing clothes and soft toys which had a strong smell of smoke, body odour and damp. S and K's underwear was covered in faeces and had to be disposed of subsequently. S and K received a shower due to their presentation and strong odour. S and K attended at the chiropodist as their toe nails were overgrown and curling around their toes. It was reported that after this appointment, both boys experienced an improvement in their ability to walk. It is also reported that both S and K had a number of soiling episodes since removal. They did not appear to be able to have a full appreciation of toileting. They were not able to use a knife and fork.

[42] In relation to the other child H, his foster carer noted that he was upset and did not want to leave the car when he was removed into care. He had three bags on arrival, containing clothes and soft toys, and a strong smell of smoke, body odour and damp was noted. H's toe nails were long and overgrown, to the point that they were curling around his toes. This has since been addressed. This child also had episodes of soiling after removal into care and he was unaware of when he needed to go to the toilet and it appeared that he did not know how to use the toilet.

[43] These are obviously very serious issues and they point to chronic neglect. Sadly this case is characterised by the children presenting in an appalling condition over many years.

[44] It follows from the above, that I cannot find that the judge was wrong in his assessment of this case. In particular I consider that he was correct to dismiss the application to discharge the care orders. Upon that happening, the injunction had to fail. The application for another assessment was not well formulated and I cannot fault the judge for refusing an application on the second day of trial which had little definition to it. In any event I do not consider that it is appropriate to direct another expert assessment. The children remain subject to care orders and there is no issue taken with that. On the basis of the reports which are now available from Dr Crymble and Dr Creegan, in addition to the report from Dr Barbour, I consider that there is enough information to form an assessment of both parent's abilities and needs. It seems to me that the focus should be on the supports and services being provided for the parents and for the children. This is particularly pertinent given that the Trust decision is that the two eldest children now aged 15 and 13 should remain at home.

[45] I reiterate the principle that the Trust has an obligation under Article 8 of the ECHR to look at the situation of children and parents on an ongoing basis. There is strong European jurisprudence to this effect including cases such as KA v Finland [2003] 1 FLR 696 and Kutzner v Germany [2003] 1 FCR 249. These cases give clear expression to the view that the obligations imposed upon a public authority are weighty and continue after care orders are made. A Trust must consider both rehabilitation of children and removal of children depending on the circumstances that exist at a particular time. It seems to me that Trusts must also consider appropriate services to ensure that the intervention remains proportionate. If parents consider that there has been any breach of their Article 8 rights they have a remedy under the Human Rights Act 1998.

[46] Trusts and professionals must also be alive to the fact that parents with learning difficulties have particular needs which require consideration and appropriate treatment both within the court process and as part of wider social service provision. The importance of identifying these issues and acting accordingly has been well articulated in the case of Re G &A (Care Order: Freeing Order: Parents with a Learning Disability) 2006 NI Fam as applied by Sir James Munby in Re D (a Child) [2016] EWFC 1.

[47] This case will be subject to ongoing reviews and monitoring as all of the children are subject to care orders. The responsibility for this process lies with the Trust. In a case such as this, care planning is not static. The parents may raise issues which the Trust will have to consider. In view of the history, there is also an imperative in relation to the provision of supports and services for this family. In relation to these issues, I hope that a purposive approach is adopted by all of the parties.

[48] Accordingly, I dismiss the appeal. I discharge the Guardian ad Litem.