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2015/023339

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

IN THE MATTER OF AC (A CHILD)

BETWEEN:

A TRUST

Applicant

and

AM

AF

Respondents

McBRIDE J

### Anonymisation

[1] I have anonymised the names of the parties and throughout this judgment I will refer to the Trust, AM ("the mother"), AF ("the father") and AC ("the child").

### Applications

[2] There are two applications before the court:-

- (a) an application by the father for a residence order in respect of the child; and
- (b) an application by the Trust for a care order, with a care plan of removal from the mother and placement in foster care until the child can be placed with his father.

## **Representation**

[3] The Trust was represented by Henry Toner QC and Sarah Ramsey of counsel. The mother was represented by Ronan Lavery QC and Carol Sholdis of counsel, the father was represented by Noelle McGreenera QC and Conor Byrne of counsel and the Guardian ad Litem was represented by Moira Smyth QC and Louise Murphy of counsel. I am particularly grateful to all counsel for their very helpful submissions in this exceedingly complex case.

## **Background**

[4] The mother was born in Northern Ireland. She moved and lived in England for a short period of time. During this period she entered into a relationship and became pregnant with FC, her first child. Her relationship with the first child's father broke down and she moved back to Northern Ireland when she was still pregnant. The father remained living in England and is now in a new relationship. The mother was the primary carer of FC who has had limited contact with his father.

[5] The father of AC has lived all his life in Northern Ireland. The mother has known the father all her life as they were neighbours and attended the same church and primary school. The mother and father entered into a relationship and the child was born in 2007.

[6] The mother and father never lived together. Their relationship ended prior to the birth of the child although the father attended the 20 week scan and attended at the hospital to visit the child shortly after his birth.

[7] Since the child's birth there has been a bitter dispute between the mother and father. This commenced in 2007 when the mother obtained an ex parte Non-Molestation Order. The application was hotly contested by the father at the inter parties hearing and after a 3 or 4 day hearing the application was dismissed.

[8] Thereafter the father had difficulty obtaining contact with the child and he was obliged to issue proceedings seeking contact with the child. His initial application for contact was brought on 20 August 2007. Since that time, as the chronology below illustrates, he has made multiple applications for contact.

[9] On 4 November 2009 the court ordered an Article 56 investigation. Ms Murray, Social Worker prepared a report dated 9 February 2010. She set out the reason for the Article 56 investigation and its remit as follows:- "given the implacable hostility evident in this case and the allegations of sexual abuse an investigation has been directed to consider the impact on [the child] and whether he is at risk of suffering or is likely to suffer significant harm as a result of this and if so should social services intervene". After investigating the matter Ms Murray found that the child had not been facilitated to develop a relationship with his father. She noted however that there were no behavioural concerns and no sign of emotional

distress. She found that there was no independent evidence to suggest that the child was at risk of significant harm. Notwithstanding the concerns in relation to the potential emotional effects, she found that threshold was not met and she recommended that there be “no order”. Patricia Owens, Guardian ad Litem in her report dated 23 March 2010 agreed with the views of the Trust Social Worker that threshold was not met.

[10] In light of the outcome of the Article 56 investigation there was no public law intervention at that time. Thereafter, as a result of further breaches of orders for contact the father issued contempt proceedings against the mother. On 29 October 2013 the father applied for a residence order. The case was transferred from the Family Proceedings Court to the Family Care Centre and then to the High Court.

[11] During the currency of the private law proceedings in the High Court the court requested an Article 4 report. This was prepared by Ms Nadine McGorrey Social Worker on 25 April 2014. In the course of her investigations she formed the view that the child had suffered emotional harm and referred the matter to the Gateway Team.

[12] On 10 November 2014 both children’s names were placed on the Child Protection Register under the category of Confirmed Emotional Abuse.

[13] On 5 March 2015 the Trust initiated public law proceedings and applied for a care order in respect of both children with a care plan of removal.

### **Chronology of Court Proceedings**

[14]

- a. 2007 - Ex parte application for non-molestation order by mother. Dismissed on 21 June 2007 after 3/4 day hearing.
- b. 20 August 2007 - Father applied for contact.
- c. 10 December 2007 - Contact order made
- d. 9 September 2008 - Father granted parental responsibility order.
- e. 23 June 2009 - Mother convicted of contempt of court for breach of contact order and fined.
- f. 15 September 2009 - mother convicted on second occasion for contempt of court for breaching contact order and fined. Conviction and fine affirmed on appeal.
- g. 9 November 2009 - mother convicted on third occasion for contempt of court for breach of contact order and fined.
- h. 14 May 2010 - Case transferred from Family Proceedings Court to Family Care Centre and then to High Court.
- i. 16 December 2010 - Weir J made contact order in terms agreed by the mother and father.
- j. 23 March 2011 - Contact order varied to provide that the mother was not to attend when the child was collected from school.

- k. 7 August 2013 – Mother found guilty of contempt of court on fourth occasion for breach of a contact order and fined.
- l. 29 October 2013 – Father applied for a residence order. Case transferred to High Court and court directed an Article 4 report. Nadine McCorrey Social Worker filed report dated 5 April 2014 and referred the case to the Gateway Team.
- m. 10 November 2014 – Child Protection Case Conference convened. Children’s names placed on Child Protection Register.
- n. 5 March 2015 – Trust applied for care order in respect of each child.
- o. 1 February 2016 – Melanie Gill, psychologist, provided expert report to the Trust which led to a change in the care plan to one of removal of the children from the mother.
- p. 9th May 2018 - The Trust withdrew its application for a care order in respect of FC by reason of his age. The court granted leave to withdraw the application.

#### **History of Specific Allegations/Complaints Made by the Mother**

[15]

- a. October 2008 – Mother made a referral regarding mark on child’s bottom post contact. Non-accidental injury not substantiated.
- b. November 2008 – Referral by nursery regarding concerns about the child including concerns expressed by the mother about redness on the child’s bottom.
- c. April 2009 – Mother reported that after contact the child had a red ring around his anus and that he had said to her “daddy do it”. The father denied any wrongdoing. Allegation of sexual abuse not substantiated.
- d. 26 January 2009 – Mother reported that the child returned after contact with a nettle “strategically placed on his bottom” in his nappy. The father denied any wrongdoing. A finding of sexual abuse not substantiated.
- e. 10 May 2010 – Mother made allegation that the child had unexplained bruising. The doctor’s view was that there was insufficient evidence to support a diagnosis of non-accidental injury.
- f. June 2010 – child taken to A&E by the mother as the child was complaining of a sore bottom following contact. The Consultant noted mild perianal redness but concluded that there was insufficient evidence to support a finding of sexual abuse.
- g. October 2011 the mother raised concerns regarding the child engaging in sexualised activity with his cousins during contact by playing a “super winky” game during which his grandfather was alleged to have his trousers down. This was denied by the father. After investigation it was found there was no evidence to substantiate abuse.
- h. August 2012 – Complaint by the mother that the father had been physically violent to the child.
- i. 13 October 2013 – the mother took the child to the GP who noticed swelling and a nail mark to his wrist. The mother advised the child had been to

contact and was jumping on a sofa. As a result his grandmother grabbed him roughly around the wrist and dug her nail into his wrist causing a cut and bleed. The father then grabbed him roughly on the wrist and caused further bleeding. The child informed the GP that his dad had held his wrist very tightly and had hurt him and caused the cut to bleed. The father and the grandmother denied causing injury.

- j. 3 December 2013 – Child alleged his father had slapped him three times. The doctor noted a 3-4mm laceration on his eye. The doctor referred mother and child to A& E but did not make finding of non-accidental injury.
- k. 11 November 2015 – allegation the father had thrown child into car and kicked him. PSNI recommended no prosecution after ABE interview.

[16] As a result of the various allegations the child underwent various medical examinations, was interviewed by social workers and also attended joint protocol interviews. There were no police prosecutions but contact was stopped during the periods when various complaints were under investigation.

### **The Mother**

[17] The mother has been diagnosed with Asperger's syndrome and dyslexia by Ms Joanne Douglas, consultant psychologist. This diagnosis was also made by Sharon Beattie, Psychologist. Ms Beattie and Dr Denise McCartan, Clinical Psychologist both assessed the mother as having traits of a Narcissistic personality. Her diagnosis of Asperger's syndrome and dyslexia results in the mother having a significant learning difficulty in relation to her speed of processing.

[18] As a result of her various diagnoses, the mother was permitted to have an advocate at court to assist her and she was given appropriate breaks.

### **The Child**

[19] The child is currently aged 12 years. He is very intelligent and attained a very high AQE mark.

[20] The child has always lived in the sole care of his mother with his half-brother, FC. He has had contact with his father throughout his life although contact was stopped on numerous occasions or was supervised for various reasons.

[21] Throughout this hearing, there was a debate about whether the child was autistic. Ms Joanne Douglas, who prepared a report on behalf of the mother, assessed the child as having dyslexia, attention deficit difficulties and Asperger's syndrome. Dr Claire Caughey, Educational Psychologist in a report dated 27 April 2014 concluded that the child presents with "a Dyslexic profile and significant traits of a high functioning Autistic Spectrum Disorder".

[22] In contrast Ms Melanie Gill gave evidence that the child did not meet the threshold to be diagnosed with autism. Similarly Dr DeJong, Consultant Child and Adolescent Psychiatrist at Great Ormond Street Hospital, London gave evidence that she thought it was unlikely that the child was on the autistic spectrum but given the discrepancies in school and maternal report of the child's behaviour she felt that both the Autism Spectrum Disorder ("ASD") and Attention Deficit Hyperactivity Disorder ("ADHD") diagnoses should be reviewed by Child and Adolescent Mental Health Service ("CAMHS").

### **The Hearing**

[23] As appears from the chronology, proceedings have been ongoing in the child's life since his birth. Consequently a vast amount of paperwork has been generated as a result of the various court proceedings which have now spanned over 11 years.

[24] At the commencement of the hearing the court was presented with approximately 40 trial bundles. In light of the voluminous documentation the court requested a core bundle to ensure efficiency in hearing the case. This request produced three core bundles by the Trust, a core bundle by the mother, a core bundle by the father and a core bundle by the Guardian ad Litem. The court was also presented with a core bundle of discovery by the Trust, a core discovery bundle on behalf of the mother, one on behalf of the father and one on behalf of the Guardian ad Litem. Notwithstanding the number of core bundles provided, it transpired during the hearing that a very large number of documents, which the parties wished to refer to, were not contained within the various core bundles and therefore the court had to refer to the original trial bundles and the original discovery bundles. This meant that the court had to refer to 50 bundles. Notwithstanding the physically demanding task of navigating these bundles the trial process was made even more difficult by the fact that the court bundles did not always contain the documents which witnesses wished to refer to. As a result the court was then provided with numerous loose leaf papers. The difficulties in hearing this case were further compounded by the fact that the court bundles did not always accord with the witnesses' bundles or counsels' bundles. As a consequence there was significant delay whilst attempts were made to reconcile the bundles.

[25] This was a most unsatisfactory state of affairs. It extended the time required to hear the case resulting in the case having to be adjourned on a number of occasions as there was insufficient court time. It also made it very difficult for the court to navigate its way through the very voluminous documentation. In the future it is important that the Trust provides a proposed index of trial bundles in a timely fashion so that all the parties can identify the documents they intend to rely on and can collectively prepare an agreed core bundle. In the future a failure to provide the papers in a manageable way could result in the case being adjourned with a costs sanction.

[26] The case was first opened on 21 April 2016. It was then adjourned as the parties wished to engage various expert witnesses. The case did not resume hearing until March 2017. Evidence was heard at that time from a number of witnesses. The case adjourned on a number of occasions for various reasons including lack of court time as the hearing took much longer than expected. The case was not ultimately completed until this year.

[27] The court had the benefit of numerous written social work reports, reports by expert witnesses and a lever arch file of statements made by the parents spanning an 11 year period. The court also heard oral evidence from a number of social workers, a number of expert witnesses, the mother, the father and the Guardian ad Litem. This evidence related to both threshold and care planning.

[28] The court suggested, and the parties agreed that the court should initially consider the question of threshold, given:- the complexity of the issues; the fact the child's situation was very dynamic, and the fact that there have been very significant changes in the child's life as a result of the passage of time since the application for the care order.

### **Relevant Legislation in Respect of Threshold**

[29] Article 50(2) of the Children (Northern Ireland) Order 1995 provides:-

- “(2) A court may only make a care or a supervision order if it is satisfied –
- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
  - (b) that the harm, or likelihood of harm, is attributable to –
    - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
    - (ii) the child's being beyond parental control.”

[30] Harm is defined in Article 2(2) as meaning ill-treatment or the impairment of health and “development” as meaning physical, intellectual, emotional, social or behavioural development and “health” includes both physical and mental health. “Significant” is not defined in the statute.

### **Trust's Threshold Document**

[31] The Trust provided a number of documents in which it set out its “Threshold Criteria”. These included:-

- Grounding C1 application for the care order.
- Threshold criteria document dated 5 April 2016.

- Case on behalf of the Trust dated 12 March 2017
- Revised threshold criteria documents dated 8 May 2017.
- Revised threshold criteria document dated 26 October 2018.
- Further submissions in respect of threshold dated 11 January 2019.

[32] The Trust indicated that it wished to rely on the revised threshold document dated 26 October 2018 to establish that the threshold was met against the mother. At no time did the Trust seek to establish threshold criteria against the father.

### **Relevant Legal Principles Regarding the Threshold Criteria Document**

[33] In *J (a Child)* [2015] EWCA Civ 222, McFarlane J observed at paragraphs 46 and 47:-

“46. Sir James Munby, as President of the Family Division has offered his view upon the format and length of the ‘threshold statement’ that a local authority must file in support of any application under The Children Order 1989, Section 31 (View from the President’s Chambers: the process of reform: the revised PLO and the local authority [2013] 213 Fam Law 680 (June 2013)) in which he states that –

‘The threshold statement is to be limited to no more than two pages (original emphasis) and that ‘it is not necessary for the court to find a mass of specific facts in order to arrive at a proper threshold finding’

And in answer to the question ‘what does the court need?’ he answers:

‘It needs to know what the nature of the local authority case is; what the essential factual basis of the case is; what the evidence is upon which the local authority relies to establish its case; what the local authority is asking the court, and why’.

Nothing that I have said concerning the threshold document in this case is intended in any way to contradict or alter the advice that the President has given on this topic and I would indeed go further and expressly welcome and endorse the importance that the President has attributed to the need for there to be linkage between the individual facts relied upon and the requirements of Section 31 where at paragraph 12 in *Re A* (above) he says:



“The second fundamentally important point is the need to link the facts relied upon by the local authority with its facts on threshold the need to demonstrate why, as the local asserts, facts A+B+C justify the conclusion the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage will be obvious as where the facts proved established physical harm. But the linkage may be very much less obvious where the allegation is only the child is at risk of suffering emotional harm or, as in the present case, risk of suffering neglect. In the present case, as we shall see, an important element of the local authority’s case was that the father ‘lacks honesty with professionals’, ‘minimises matters of importance’ and is ‘immature and lacks insight of issues of importance’. Maybe. But how does this feed through to a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise. The local authority’s evidence and submissions must set out the argument and explain specifically why is said that, in the particular, case the conclusion indeed follows from the facts.”

[34] Like Munby LJ, I consider that the threshold criteria document is essentially an indictment against the parent (s), making them and the court aware in short form, of what has led to a need to intervene in the child’s life. The parents, in accordance with natural justice and their Article 6 rights are entitled to know the case they have to meet and be given a fair opportunity to answer that case.

[35] The reason the jurisprudence sets out the format in which the threshold document should be provided is to ensure:-

- (a) that the parties know the case they have to meet,
- (b) that the parties can marshal their proofs to answer that case, and
- (c) the court’s attention is drawn to the significant parts of the case and the evidence relied upon thereby enabling the court to have a focussed hearing concentrating only on the facts which need to be proved and hearing only the evidence which establishes those facts and the causal link. In this way the threshold document acts as a reference point throughout the case and enables the court and the parties to focus on the relevant issues and evidence.

[36] The threshold criteria document should therefore set out:-

- a. The facts which the Trust intends to prove on the balance of probabilities. It should refer to facts rather than vague suspicions or assumptions.
- b. The evidence which the Trust asserts establishes these facts. The Trust should reference the evidence with particularity by referring to the page number of the trial bundle rather than referring generally to social work reports and/or the chronology or the evidence generally. A failure to identify the relevant evidence supporting the facts increases the time the parties and the court has to spend sifting through voluminous documentation. In cases such as the present one where the evidence is very voluminous and spans over a decade of time, to ease the court's task in locating the relevant evidence and to prevent the court having to spend long hours in navigating numerous bundles the Trust should identify with particularity the evidence it is relying on. It is not of much assistance to the court or the parties if the Trust simply refers to, for example, "the evidence to be heard at the trial". It is imperative therefore that the Trust specifically references the evidence it intends to rely upon as establishing the facts it asserts, by referring to actual page references in the trial bundles.
- c. The threshold criteria document must set out the causal link between the alleged facts and the alleged harm caused or the harm likely to be caused to the child. The Trust must show the linkage between the facts it relies upon and its conclusion that the child has suffered or is at risk of suffering the type of significant harm alleged by the Trust.
- d. The evidence establishing that the child is suffering or is likely to suffer the alleged harm. Mere assertions without an evidential basis are not sufficient proof. In some cases there can be no doubt that, if the facts are established, the child is suffering or is likely to suffer the alleged harm. For example if it is established that the parent physically assaulted the child then it is clear that the child has suffered actual physical harm. In other cases the causal link is not so obvious and it will be necessary for the Trust to point to evidence showing that the established facts have caused or are likely to cause harm to the child. This is generally achieved by way of expert evidence referencing relevant and sufficient research evidence. This is particularly required in cases where it is alleged the child has suffered or is likely to suffer emotional harm. In cases involving inconsistent contact, for example, I consider that the court cannot be expected to take "judicial notice" that inconsistent contact between the child and his father ipso facto means that he is at risk of significant emotional harm. The burden remains on the Trust to show on the basis of relevant and sufficient evidence that inconsistent contact has caused or is likely to cause the subject child significant emotional harm.

[37] In some cases it may be accepted that the child has suffered emotional harm but the cause of the harm is disputed. In such cases I consider that it is incumbent on the Trust to provide evidence to the court which establishes on the balance of probabilities that the cause of the harm is due to the actions or omissions of the parent or parents and is not due to some other cause, for example the actions of third parties or as a result of some medical condition or syndrome the child suffers from.

### **Trust Threshold Document**

[38] The threshold relied upon by the Trust has changed throughout the course of the hearing. The initial threshold document dated 5 April 2016 did not comply with the guidelines set out in the jurisprudence and at the court's request the Trust provided the second threshold document dated 12 March 2017, which superseded the initial threshold document.

[39] The second threshold document contained new allegations and in particular alleged that the mother had fabricated illness in respect of both children. This allegation was inserted as a result of expert evidence obtained by the Trust during the currency of the hearing. After hearing this expert evidence and after cross examination of the expert witnesses the Trust then submitted a third threshold document dated 26 October 2018 which no longer relied on an allegation that the mother fabricated illness.

[40] The final Trust threshold document dated 26 October 2018 stated as follows:-

**“Threshold Criteria  
Revised 26<sup>th</sup> October 2018**

The Court has heard the evidence at trial and has decided to address the question of threshold first in its deliberations.

This document sets out the general propositions of the Applicant in respect of threshold. The attached document sets out in chronological order specific public law events known to the applicant and upon which the applicant relies. For the avoidance of doubt the Applicant will rely also upon the evidence which has been heard in the trial which will be set out in the Applicant's formal submissions. The Applicant will also rely upon the facts known to and asserted by [the father] in his private law application.

**General**

“1. [The mother] has imprinted upon [the child] her enduring hostility towards [the father].

2. The mother has controlled and manipulated the child to meet her own needs to the detriment of the child in particular in their (sic) relationships with his father.
3. This hostility has resulted in the child having a fractured and distorted relationship with his father.
4. The mother has set herself against contact between the child and his father. She has prevented contact in so far as she has been able. In so far as she has not been able to prevent contact, she has controlled and disrupted it to a very substantial degree and influenced the child's view of his father to the extent that he has hostility and dislike towards his father disproportionate to any actions of the father.
5. As a result of the mother's behaviour the child has suffered emotional harm.
6. The mother has failed to comply with court orders in respect of contact arrangements and in so far as she has she has made formal compliance she has feigned compliance and sought to control contact so as to undermine its purpose.
7. The children are likely to suffer significant emotional harm as the mother has not been cooperative with the Trust during their investigation of the children's welfare. This creates difficulties in respect of the Trust's assessment of the children given that professionals are at times unable to ascertain whether the information being provided by the mother with regard to all aspects of the children's (sic) care and well-being is true or false.
8. The child has suffered and is likely to suffer emotional harm as a result of the mother telling the child or allowing the child to be told information inappropriate for his age.
9. The child is at risk of suffering significant or emotional or physical harm as the mother has demonstrated an inability to recognise risks to the child and has failed to protect him appropriately.
10. The child is likely to suffer significant emotional and physical harm due to the mother's inability to appropriately discipline and control his behaviours. The mother has an inability to place boundaries on him and put in place age appropriate consequences for inappropriate behaviours.
11. The child has suffered and will suffer significant emotional harm in the future if he remains in the mother's care: the mother has

brought the child up in such a manner that his attachment relationship with the mother is essentially traumatic.

12. The mother has brought the child up in such a manner that he oscillates between two different kinds of insecure attachment and is extremely insecure and that he is very emotionally dysregulated.

13. The mother has brought up the child in such a manner that he thinks her views about his fathers are his own.

14. The mother has denied the child age related autonomy and will continue to do so and thereby them (sic), as adults, autonomy from her.

15. In so far as the foregoing in relation to the mother's control and manipulation of the child may not be proved, the applicant will rely upon the behaviour of the child to show that he is beyond her control to such an extent that the intervention of the court is necessary.

#### **PARTICULARS**

Particulars of the facts relied upon in proof in the above are set out in the document "Trust Chronology of Public Law Events" attached hereto."

[41] The attached chronology sets out a number of specific incidents in chronological date order and references some pages in the trial bundles. In total it references 24 specific incidents. (The chronology is set out in schedule to this judgment.)

#### **Court's view of Trust Threshold Document**

[42] The Trust's threshold criteria has changed during the course of the hearing. The first change occurred as the original threshold did not comply with the guidelines set out in the jurisprudence in England and Wales. The court recognises that the initial threshold was drafted in April 2016 which was shortly after guidelines were given in England and Wales. Such guidelines do not automatically apply in this jurisdiction and therefore no criticism is made of the Trust as it was following the approach which had traditionally been adopted in this jurisdiction. The Court however made it clear at the outset of the hearing that the Trust should follow the approach set out in the English jurisprudence. This led to the second Trust threshold document.

[43] Significantly, the second threshold criteria document dated March 2017, for the first time, alleged that the mother was responsible for fabricated or fictitious illness. During the hearing, but only after expert evidence had been heard and

submissions made, the Trust indicated it no longer intended to rely on this ground to establish threshold. The court recognises that this allegation was inserted due to the emergence of expert evidence and was then deleted as the evidence did not come up to proof. Whilst the insertion and later deletion of this allegation led to delay and expense, I consider that the Trust acted appropriately in all the circumstances.

[44] The third Trust threshold document dated May 2017 which ran to some 10 pages and referred to a large number of allegations. Some of the allegations were historical in nature; others were vague or not supported by evidence and there was a lack of clarity as to how the alleged facts had caused emotional harm. Whilst this “kitchen sink and all” approach was no doubt adopted as a precautionary measure it was not helpful to the court or the parties. It meant that the evidence was presented in a completely unfocussed manner. As a result it was necessary for the court to intervene during the hearing to bring clarity and finality to the threshold criteria relied on by the Trust.

[45] If the threshold had been more concisely defined at the outset there would have been less paperwork and everyone could have concentrated on the relevant papers and issues and the case could have been disposed of in a timelier manner.

[46] It is important in the future that the Trust clearly thinks through the criteria it intends to rely on so that it can state with clarity and precision in the threshold document the facts the Trust intend to rely on; the evidence in support of those facts, and the causal link between those facts and harm. In the future if the guidelines set out in the jurisprudence are not complied with, the court may adjourn the case with a costs sanction or dismiss the case if it considers the parents’ article 6 rights cannot be protected.

[47] As a result of the court’s intervention the Trust submitted a final threshold document, just prior to legal submissions. The presentation of threshold at the end of the case is most unusual as the parties are entitled to know the case they have to meet at the outset. This threshold document however was presented towards the end of the hearing as the court had intervened on a number of occasions during the hearing to ask the Trust to clarify its threshold. The final document which was presented was essentially a written record of the threshold which the Trust had previously orally outlined to the court. In this way the court ensured that the mother and her representatives knew the case they had to meet and were afforded the opportunity to answer it.

[48] In its final submissions the Trust stated that the heart of its case for threshold was the mother’s frustration of contact. Specifically it then stated that threshold was met on the following grounds:-

A. The mother had frustrated contact. The evidence in support of this was:-

- (i) Breach of contact orders by the mother as proved by a number of contempt findings against her.
  - (ii) The evidence of Dr DeJong that the child had positive contact when the mother was not present.
  - (iii) The evidence of social workers that the child had positive contact when the mother was not present.
  - (iv) The fact the mother made false allegations of abuse against the father as set out at numbers 3-12, 15 and 21 of the chronology of significant public law events (“the chronology”). These represented a deliberate attempt by her to frustrate contact as these complaints were all unsubstantiated.
- B. The mother had influenced the child to have a negative view of the father as evidenced by:-
- (i) Kim Lloyd’s evidence about an incident on 9 December 2015 as detailed at number 17 of the chronology.
  - (ii) The evidence of Karen Patterson and Helena Livingstone about supervision of contacts in 2016 and as particularised at number 18 of the chronology.
  - (iii) The evidence of Nadine McGorrey Social Worker that the mother told the child negative things about the father including that he had broken his grandmother’s spine.
- C. Providing the child with inappropriate information. The evidence in support was that the mother had provided the child with inappropriate information about the court process as particularised at number 16 of the chronology.
- D. Failure to set appropriate boundaries/failing to discipline the child as evidenced by the details set out at numbers 19, 20, 22, 23 and 24 of the chronology and the evidence of Kim Lloyd that the child had punched her in the stomach and the mother had failed to react to this appropriately.
- E. The Trust submitted that all of these facts caused significant emotional harm to the child or were likely to cause significant emotional harm to the child on the basis of the evidence of Dr DeJong and the research she had referenced in her report. The Trust indicated at submission stage that it did not seek to rely on the evidence of Ms Gill who had been engaged to deal, inter alia, with the issue of emotional harm.

[49] I consider that the above summary encapsulates all of the matters set out in the Trust's threshold document dated 26 October 2018 save numbers 7, 11, 12, 14 and 15 of the chronology.

[50] Numbers 7 and 14 related to lack of co-operation. As noted by Lady Hale at paragraph 207 of *Re B (A Child)* [2013] UKSC 33, "the parents have no legal duty to co-operate with social services unless the threshold is crossed." Therefore a refusal to co-operate, even if proved does not go to threshold. Accordingly I have excluded this as a ground of threshold.

[51] I further consider the reason for a lack of co-operation by the mother or a perceived lack of co-operation in this case arose, in part, from the actions of the Trust. The mother suffers from Asperger's Syndrome and this diagnosis was known to the Trust. I consider that this diagnosis was not properly or adequately taken into account by a number of the Trust's personnel who worked with the mother. Often the mother's responses were treated as a lack of co-operation when in fact they were a symptom of her condition. As a result there was a lack of proper communication between the parties which led to a lack of trust between them leading to a vicious circle of suspicion and misunderstandings. It is important in the future that social workers who are working with parents who have a specific diagnosis understand the nature of that diagnosis and adjust their practice accordingly. In certain situations it may be necessary for specialist social workers to be involved.

[52] In relation to numbers 11 and 12 of the chronology, I note that these relate to harm caused by the nature of attachment. These matters are no longer relied on by the Trust.

[53] Number 15 of the chronology relates to an allegation that the child is beyond the control of a parent. This is no longer alleged by the Trust.

[54] I consider that all of the other allegations set out in the Trust's threshold document dated 26 October 2018 have been otherwise amalgamated into the statement of threshold which I have set out above.

### **Relevant Legal Principles Regarding Threshold Criteria**

#### **Relevant date for threshold**

[55] The date at which threshold must be crossed is the date the Trust first intervened to protect the child. This is either the date when the Trust applied for a care order, or in circumstances where protective measures are in place before then, the date on which those measures were put in place – See *Re M (A Minor) (care Order: Threshold Conditions)*[1994] 2 FLR 577 where Lord Templeman stated at p 440,

“...a local authority cannot apply for a care order unless at the date of the application the child is suffering or is likely to suffer significant harm”.



[56] The Trust accepted that the date of intervention in this case was the date it applied for a care order being 5 March 2015. As appears from the Trust's chronology however the Trust seeks to rely on a number of events which occurred after this date. The mother submitted that the court should exclude all the incidents relied upon by the Trust which occurred after the relevant date of 5 March 2015.

[57] In *Re G* [2001] 2 FLR 1111 Hale LJ held at paragraph [20] that later acquired information as to the state of affairs at the relevant date can be taken into account but at paragraph [23] confirmed that,

“later events cannot be relied upon unless they are capable of showing what the position was at the relevant time. But if they are capable of proving this, then in my view they should be admitted as evidence for that purpose. It will then be a matter for the judge to consider how much weight they should be given.”

[58] I further consider that after acquired information can also be relied upon by a parent to demonstrate that threshold did not exist at the relevant date. Thus later acquired information can work both ways. In light of *Re G* I therefore admitted evidence on behalf of the Trust which was acquired after the date of intervention. The relevance and weight I attached to this evidence is set out in my consideration.

[59] The Trust's Chronology of specific public law events also referenced a large number of historical incidents. All of which matters were taken into account in the Article 56 investigation. At that time the Trust social worker Emily Murray and the Guardian ad Litem, Ms Patricia Owens expressed the view that threshold was not crossed. I will deal with the relevance of these incidents in my consideration.

### **Requirements under Article 50**

[60] In accordance with Article 50 of the Children (NI) Order 1995 the court can only make a care or supervision order if both limbs of threshold are met namely:-

- (a) the child is suffering or is likely to suffer significant harm, and
- (b) the harm is attributable to the care given by the parent(s).

If threshold is met the court then goes on to consider the welfare stage.

[61] “Significant” is not defined in the statute but Lady Hale in *Re B* [2013] UKSC 33 stated that significant harm is harm “which is considerable, noteworthy or important”.

[62] The burden of proof rests on the Trust to establish, on the balance of probabilities, the factual matters which support its assertion that the threshold is met – *H (Minors) (Sexual abuse- standard of proof)* [1996] 1 FLR 80.

[63] In *Re SB* [2009] UKSC 17 the court held that in order to establish that a child is “likely to suffer significant harm” the court must be satisfied on the balance of probabilities that the facts upon which that prediction is based did actually occur. It is not enough that they may have done or there is a real possibility they did. Therefore the court must, having heard and considered the evidence be satisfied on the balance of probabilities that the facts did occur.

[64] Lady Hale in *Re B* [2013] UKSC 33 at paragraph 192 provided the following guidance to judges when determining whether threshold is met. She stated as follows-

“Where the threshold is in dispute, courts might find it helpful to bear the following in mind:

- (1) The court’s task is not to improve on nature or even to secure that every child has a happy and fulfilled life, but to be satisfied that the statutory threshold has been crossed.
- (2) When deciding whether the threshold is crossed the court should identify, as precisely as possible, the nature of the harm which the child is suffering or is likely to suffer. This is particularly important where the child has not yet suffered any, or any significant harm and where the harm which is feared is the impairment of intellectual, emotional, social or behavioural development.
- (3) Significant harm is harm which is ‘considerable, noteworthy or important’. The court should identify why and in what respect the harm is significant. Again, this may be particularly important where the harm in question is the impairment of intellectual, emotional, social or behavioural development which has not yet happened.
- (4) The harm has to be attributable to a lack, or likely lack, or reasonable parental care, not simply to the characters and personalities of both the child and her parents. So once again, the court identify the respects in which parental care is falling, or is likely to fall, short of what it would be reasonable to expect.

- (5) Finally, where harm has not yet been suffered, the court must consider the degree of likelihood that it will be suffered in the future. This will entail considering the degree of likelihood that the parents' future behaviour will amount to a lack of reasonable parental care. It will also entail considering the relationship between the significance of the harm feared and the likelihood it will occur. Simply to state that there is a 'risk' is not enough. The court has to be satisfied by relevant and sufficient evidence, that the harm is likely: see *In Re J* [2013] 2 FCR 149."

[65] Lady Hale reiterated that the purpose of having threshold conditions is to protect the child and the family from unwarranted interference by the State.

[66] The role of the Judge in a threshold hearing is therefore to consider all of the evidence before the court, to determine the following:

- (a) What facts are proved to the requisite standard. It must in particular identify the respects in which the parents are falling short or likely to fall short of what it would be reasonable to expect. In making such findings of fact the court needs to assess all of the available evidence and in particular consider the credibility and the reliability of the various witnesses.
- (b) Whether it is established the child is suffering from significant harm or likely to suffer from significant harm and to identify the nature of the harm suffered or likely to be suffered. Especially in cases involving emotional harm and in cases where harm has not yet been suffered, the court must be satisfied by relevant and sufficient evidence that the harm has been caused or is likely.
- (c) Whether the harm or likelihood of harm has been caused by the proved facts relating to the parenting by the parent or parents rather than to the characters and personalities of both the child and his parent.

### **The Evidence**

[67] The court heard from a large number of witnesses who gave evidence about threshold and welfare planning. The court at this stage is focussing on the evidence which is relevant to threshold. Consequently I do not intend to refer to the evidence of witnesses which related only to welfare.

## **The Evidence Generally**

[68] The court heard evidence from Nadine McGorrey, Senior Social Work Practitioner; Kim Lloyd, Social Worker; Laura Totten, Senior Social Worker; Karen Patterson, Social Worker and Sharon Skillen, Social Worker. In addition it heard expert evidence from Dr DeJong, Consultant Child and Adolescent Psychiatrist based at Great Ormond Street Hospital London, Ms Melanie Gill, Psychologist, Dr Beth Major, Senior Clinical Psychologist, Ms Joanne Douglas, Psychologist at the Spectrum Centre and Dr Denise McCartan, Psychiatrist. The court also heard evidence from the father, the mother and the Guardian ad Litem.

[69] In addition to the oral evidence the court had the benefit of a bundle of statements made by the parents spanning some 11 years, historical social work reports, reports from Arlene Healey, family therapist, Sharon Beattie, Psychologist, Dr Bun, Psychiatrist and Claire Caughey, Educational Psychologist.

[70] Ms Gill and Ms Douglas both prepared expert reports and gave oral evidence. The Trust indicated it did not intend to rely on the evidence of Ms Gill. Consequently I do not consider it necessary to refer to her evidence. Similarly Ms Douglas's evidence did not relate to threshold and therefore I do not intend to refer to it. The only relevant evidence given by these witnesses for the purposes of this judgment related to the question whether the child had autism. Ms Gill's view was that he did not meet the threshold for such a diagnosis. In contrast Ms Douglas's assessment was that he had ASD and ADHD.

[71] Dr Beth Major's evidence related to FC and was not relied upon as evidence of threshold for AC. Dr McCartan gave evidence about her assessment of both the mother and the father. Again the Trust did not seek to rely on her evidence in establishing threshold and accordingly I do not intend to set out details of her evidence.

## **Evidence of Dr DeJong**

[72] Dr DeJong, a Consultant Child and Adolescent Psychiatrist based at Great Ormond Street Hospital London prepared a report with Ms Zimmerman, Family Therapist dated 22 December 2016. They were jointly instructed by the Guardian ad litem, the Trust and both fathers to conduct an assessment and to answer questions about AC's and FC's mental health, the cause for same and to address the question whether AC's and FC's presentation was due to autism or parenting.

[73] In preparing the report the authors met the father, a number of social workers, AC's school principal and read the expert reports prepared by Ms Gill and Ms Douglas.

[74] Whilst much of the report relates to FC and to care planning issues, there are some aspects of the report and Dr DeJong's evidence which is relevant to the threshold criteria.

[75] In her oral evidence Dr DeJong described a contact visit she observed on 15 November 2015 between the child and his father. This was a court ordered contact visit and the court order had a penal notice attached. When the child met his father he said "I hate you. This is blackmail. Mum is going to get into trouble if I don't come". He then proceeded to call his father "a moron". The mother did not intervene or attempt to chastise the child. She simply walked off. After an initial period of hostility the child then enjoyed contact with his father. He laughed, stood close to his father, touched his father's hand, called him dad and engaged in play. Once contact moved to another venue however the child reverted to insulting and aggressive behaviour towards his father.

[76] It was Dr De Jong's view that the child had been exposed to the court process by the mother as demonstrated by his adult language e.g. his reference to blackmail, and his knowledge of what was said and done at court in respect of the penal notice and the potential consequences of breach of the court order. She further felt that his reference to his mother "going to prison" was evidence of him being highly influenced by his mother and drawn into the parental conflict. She formed the view that the contact she observed between the father and the child was very positive and the mother's actions demonstrated that she had little or no capacity to chastise the child when he was rude and aggressive to his father. Her conclusion was that the mother had actively alienated the child from his father, obstructed contact, openly denigrated his father and colluded in the child's resultant hostility to his father. She said this behaviour was aptly described as "implacable hostility".

[77] Dr DeJong did not carry out any assessment of the child. Based on the interview with the school principal and the documents she read she concluded that it was highly unlikely that the threshold had been met for a diagnosis of ASD or ADHD although she accepted that Ms Douglas's diagnosis had been made after an appropriately conducted assessment. She accepted the child's diagnosis of dyslexia. She accepted that there was a discrepancy between the assessments carried out by Ms Gill and Ms Douglas in respect of whether the child had ASD or ADHD and noted that Dr Claire Caughey Educational Psychologist had suggested possible autistic traits. In view of the conflict between the experts she recommended that the child be reviewed by CAMHS to resolve the conflict in respect of his diagnosis.

[78] Her conclusion was that the child was caught up in parental hostility and expressed his mother's hostility towards his father. The child was aggressive, challenging, angry and highly distressed. Dr DeJong felt that the child had emotional difficulties attributable to his mother's care as she failed to protect him from the court process, alienated him from his father and deprived him of a relationship with his father. She noted that there were three strands of emotional harm present in this case namely - the child was alienated and deprived of a

relationship with the father; the child was exposed to the mother's mental state and the child was over diagnosed. In her report she referred to Danya Glaser's paper, *Child Abuse and Neglect*, 2011 35:866-875. It provides a conceptual framework for describing abuse. Under the heading "Emotional unavailability" it includes "failure to support relationship with fathers and a strong tendency to attribute emotional and behavioural issues to diagnoses such as ASD and ADHD". Dr DeJong concluded that the mother failed to support the relationship between the child and his father. In addition the mother attributed his behaviour to ASD and ADHD. Under the second heading of Glaser's conceptual framework, "Negative attributions and mis-attributions to the child" Dr DeJong found that the mother misattributed the child's anger and anxiety to a real fear of his father rather than as a result of being caught up in a conflicted relationship between his parents. Under the heading of "Developmentally inappropriate or inconsistent interactions with the child" Dr DeJong held there was a failure to establish age appropriate limits and boundaries to the child's behaviour. Under the heading "Exposing a child to frightening experiences" Dr DeJong noted that the child had been exposed to verbally aggressive exchanges between the parents and the mother and professionals. Under the heading "Failure to recognize or acknowledge the child's individuality" she notes the failure of the mother to allow the child to have an autonomous relationship with his father and exposure to the mother's own implacable hostility and under the final heading of "Failure to promote the child's social adaptations" she found little evidence of actively promoting the child socialization through developing social networks for the child and failure to protect from the court process.

[79] Dr DeJong set out details of research identifying the harm which can be caused by refusal of contact/implacable hostility including her own paper entitled, "Contact Refusal by children following acrimonious separation; Therapeutic approaches with children and parents" DeJong & Davies, *Clin Child Psychol* 2013, 18(2), 185-198, which reviewed the literature on this subject. The harm identified included emotional distress persisting into adulthood and a negative impact on the capacity to form close relationships. Under cross examination Dr DeJong accepted that the research referred to in her paper, which linked adverse emotional sequelae to implacable hostility, was not very robust.

[80] I am satisfied that this witness's observation of contact confirms that the mother did not intervene to chastise or discipline the child when he was rude and aggressive to his father. This evidence is corroborated by the evidence of other social workers and the Guardian ad litem. I am also satisfied that the observed contact confirms that the mother did inform the child about the court process. This is the only way in which the child could have known that the court imposed a penal notice and could have understood the significance of such a notice, namely that the mother could be sent to prison if she breached the terms of the order. Again, this knowledge of the court process is something that other witnesses observed.

[81] This witness accepted that she did not carry out an assessment of the child and her conclusions were based on a review of the papers and one observed contact

visit. In respect of the question whether the child suffers from ASD/ADHD there are competing expert views. Ms Gill whose evidence is no longer relied on by the Trust said that he did not have such diagnosis. In contrast Ms Douglas from Spectrum Centre said he did and Claire Caughey found symptoms of ASD in her assessment. The question of whether the child has ASD/ADHD is relevant to the question whether his presenting behavior is due to his diagnosis or his parenting. As this witness did not carry out her own assessment, I consider that she is not in a position to come to a conclusion about the child's diagnosis. Consequently she cannot properly conclude that the mother misattributed the child's behaviour to ASD and ADHD.

[82] In addition she concluded that the mother misattributed the child's anger and anxiety to a real fear of his father rather than as a result of being caught up in a conflicted relationship between his parents. This conclusion was premised on the fact the mother made allegations against the father which were untrue as they were unsubstantiated. I consider however that, as this witness did not carry out any investigation into the allegations, she was not in a position to determine that the allegations were untrue and was therefore unable to come to the conclusion that the mother misattributed the child's anger and anxiety to a fear of his father rather than as a result of being caught up in a conflicted relationship between her parents. Further as this witness did not carry out any detailed assessment of the child I consider that she cannot independently comment on the child's emotional development.

### **Nadine McGorrey**

[83] Ms McGorrey prepared an Article 4 report dated 24 April 2014 at the request of the court in the context of on-going private law proceedings. In her report she set out the background information and details of her interviews with the child, the mother and the father. She also reported on her observation of two contact visits and noted the interaction between the father and the child and the mother's conduct at handover for contact. She noted that the mother had consistently made allegations regarding the father and that none of these had been substantiated. Although the mother denied ever negatively influencing the child against his father or advising him of court proceedings Ms McGorrey concluded that this was "seriously questionable" given the mother's stated views about the father and her view that the father had either sexually abused the child or allowed him to be sexually abused; physically abused him and had no interest in his well-being. She considered that the mother's behavior could "have implications for the long term emotional impact on [the child] as he believes his father has been responsible for physically harming his grandmother and intentionally and deliberately hurting him during times of contact." She further referenced that previous reports had highlighted the detrimental emotional harm the child could experience if the matter was not rectified. She felt the mother's behaviour would not change and the allegations would continue and as the child got older he would become more and more confused and alienated from his father. As result of her concerns about the mother's

ongoing behaviour on the child's emotional wellbeing she referred the case to the Gateway team and recommended that further detailed assessments be carried out in terms of the risk or potential risk of significant harm to the child's emotional and social development due to the mother's behaviour. Although she stated in her report that social services, in Article 8 contact proceedings will often focus on investigating whether the allegations made are true or false, she accepted that she did not carry out such investigation in this case. Rather she concluded that the allegations were untrue as none of the allegations were substantiated.

[84] Ms McGorrey gave oral evidence that the child reported to her that he hated his father and informed her:- "he lies a lot ... he keeps trying to get mum arrested" and "he broke my granny's spine". He also referred to his paternal grandmother as "Nanny Goat". The child advised Ms McGorrey that his mother told him that his father broke her mother's spine. When the mother was spoken to by Ms McGorrey she advised that the father did break her mother's spine. Later she advised another social worker that she had since spoken to her mother and that the father had not broken her spine but had hurt her and that she had now explained this to the child. Ms McGorrey was concerned about the impact such inaccurate information would have had on the child's view of his father.

[85] Ms McGorrey also observed two contact visits. During these she noted that the child had very positive contact when alone with his father. When the mother was present however the child stated that he did not wish to see his father, attempted to kick him and spat on him in the presence of the mother.

[86] Ms McGorrey's expressed concern about the child's emotional wellbeing as a result of the fact the mother consistently made allegations about the father which were unsubstantiated; the fact the mother had influenced the child by advising him of the court proceedings; and, the fact she had negatively influenced him against the father. She was concerned that in the future the child would become alienated from his father.

[87] Having read Ms McGorrey's report and listened carefully to her evidence it is of particular note that she failed to make any positive comments about the mother. Under cross examination she accepted that this was a failing and she ought to have commented on the many positive features about the mother's care of the child.

[88] Further, she accepted that, contrary to her own averment that social services in article 8 contact disputes investigate whether the allegations are true or false, she did not carry out any fact-finding exercise in respect of the various complaints and allegations made by the mother. Her conclusion that the child was potentially suffering emotional harm was based the premise that the mother had deliberately made false allegations against the father and the child therefore wrongly believed the father had harmed him. Before she could have come to this conclusion I consider that she ought to have carried out a fact finding investigation into the various



allegations. Accordingly I find that her conclusion about emotional harm to the child is flawed as it was based on an erroneous premise.

[89] The Trust seek to rely on Ms McGorrey's evidence that the mother frustrated contact by making unsubstantiated allegations against the father. It is not refuted that the mother made a number of complaints/allegations which necessitated investigation which in turn led to either a suspension of contact or supervised contact. Further it is not disputed that none of the allegations was ever substantiated. This however does not mean they never happened. I note in particular that there were physical findings made by the medics in respect of a number of the complaints. There was bruising, redness around the anus and on another occasion a nail mark. Indeed the nature of the evidence was such that Social Services conducted joint protocol interviews with the police and the mother was encouraged, as appears in the discovered documentation, to report any child protection concerns. In the absence of a finding made after a proper investigation, that the allegations were untrue, I consider that no criticism can be made of the mother in making such allegations/complaints. Failure to do so could have amounted to a failure to protect. I do not consider that the reporting of these incidents, even though they were ultimately unsubstantiated, amounts to evidence that the mother was being dishonest, implacably hostile or deliberately frustrating contact. Consequently I find that Ms McGorrey's conclusion that the mother frustrated contact by making unsubstantiated allegations is flawed.

[90] In her report Ms McGorrey concluded that an assessment needed to be carried out in respect of the risk or potential risk of emotional harm to the child due to the mother's behaviour. When similar behaviours by the mother namely inconsistent contact between the child and the father, breaches of contact orders and the making of numerous allegations or complaints against the father by the mother were considered by Ms Emily Murray, social worker, in 2010/11, she found that threshold had not been met. Ms Murray's view was shared by the Guardian ad Litem, Ms Owens, who recommended no intervention. Ms McGorrey in her report and in her oral evidence, failed to set out precisely what evidence she was relying on to support her conclusion expressed in court that the child was now at risk of emotional harm. At the date of her report her conclusion was that this matter still needed to be assessed. When she gave oral evidence she pointed to no new expert evidence or new assessment which supported her conclusion that the mother's behavior at the date of intervention in 2015, meant the child was at risk of significant harm. Significantly she could not rely on Ms Gill's evidence as the Trust no longer sought to rely on her evidence in respect of emotional harm.

### **Karen Patterson**

[91] Karen Patterson is a social worker who specialises in Autism. She and Ms Livingstone supervised a number of contact visits between 6<sup>th</sup> and 24<sup>th</sup> May 2016. She noted that the child behaved well when in the sole care of the father and engaged positively in contact. When in the presence of the mother however the

child was rude and made derogatory comments about the father and was physically aggressive towards him. At these times the mother failed to intervene to stop the child kicking his father and did not correct him when he was rude. The mother was observed to generally have difficulties in putting any boundaries in place. On 21 May the mother was verbally aggressive to the social workers in the presence of the child leaving the child looking bewildered.

[92] Whilst this evidence relates to incidents which occurred after the date of court intervention it is evidence which shows the mother does not chastise or put appropriate boundaries in place. It is evidence which is supportive of the Trust's case that at the time of intervention the mother was not putting appropriate boundaries in place. I therefore give it some weight on the basis that it is corroborative of other evidence given by other social workers about the mother's conduct at the date of intervention.

### **Kim Lloyd**

[93] Ms Lloyd is a social worker who prepared reports for the court dated 5 March 2015, 24 February 2016 and 13 February 2017, including care plans.

[94] In her oral evidence to the court she described the mother's, father's and child's behaviour at a number of contacts she had supervised. On 9 December 2015 she observed that the child hit his father, stamped his foot and made rude comments to him such as "douche bag" and "screw you". On two occasions she had to tell the child to behave as the mother sat watching without any attempt to address the child's inappropriate behaviour. On 7 June 2016 during a contact visit the child kicked Ms Lloyd in the stomach. When the mother was advised she did not seek to discipline the child but rather asked the social worker if she had shouted at him. On 10 June 2016 Ms Lloyd noted that the mother did not leave the Centre when contact was to take place, although she accepted the contact sheet recorded that the mother later told the child to stay when he wanted to leave and the mother then then left the Centre. On 19 September 2016 when Ms Lloyd interviewed the child he was very cheeky and although the mother intervened Ms Lloyd felt that she really lacked any conviction in disciplining the child.

[95] Ms Lloyd also referenced a number of contacts sheets dated 1 June 2016 and 23 September 2016 when contact was supervised by another social worker Ms McNulty. Ms McNulty recorded that the child called the father a "moron" and the mother did not intervene. These records also record the child being very rude to social workers.

[96] When questioned by the court, Ms Lloyd said she was undecided about whether the mother deliberately frustrated contact or whether she needed help to assist her in making contact happen. When asked why the child was difficult at contact and rude to his father she opined that the child did not want to go to contact. She stated that she believed the child believed something "bad" had happened to

him in the past during contact and she did not know if in fact the child had suffered harm in the past. She felt the child needed work done to help him overcome this “block”. She further felt the father needed educative work to enable him to deal with the child’s challenging behaviour.

[97] Ms Lloyd, when cross examined, stated that the child was suffering emotional harm but she thought this was due to the on-going court proceedings and the fact the child was being forced to go to contact when he did not want to go.

[98] I found Ms Lloyd to be a very experienced social worker who thought carefully before she answered the questions. I give great weight to her evidence for this reason especially as she did not always just repeat the Trust “party line” but gave reasons for her considered views.

#### **Laura Totten**

[99] Ms Totten is a senior social worker. When she first became involved she was concerned that the mother had made a number of complaints/allegations which she concluded were made to obstruct contact. She observed contact on 3 December 2014 and noted that this was very positive. At that contact visit however the mother advised her that the father had slapped the child at a previous contact on 1 December 2014 and as a result the child had sustained a cut. The mother attended with the GP who then referred them to A&E. This led to an ABE interview and the police ultimately recommended no prosecution. Ms Totten felt that the mother had raised this issue to frustrate contact. She felt that the mother’s behaviour was causing emotional harm to the child.

[100] Under cross-examination she accepted that the child had presented with challenging behaviour and that Ms Douglas had reported that he had Asperger’s and ADHD. This however was not the view of the Trust. She accepted that she did not put any specialist support in place for contact.

#### **Sharon Skillen**

[101] Sharon Skillen is a social worker who has recently met the child and observed his interaction with his mother and father. She gave evidence that the child expressed to her very negative views about his father which were strong, vehement and consistent and he clearly articulate the reasons why he hated his father. The reasons were that his father lied about past events; had physically harmed him; arrived late for contact, did boring activities, was annoying etc..

[102] Ms Skillen stated that it is likely the child’s views were influenced by the mother but as he has got older he is now clearly stating his wishes and feelings. She considered that the child was independent and capable of forming his own views and although it was impossible to define how much is truly his own opinion she felt that his expressed views were 60% his own views. She considered that the child was

fiercely opposed to contact and was angry and distressed because he was not being listened to. She reported that he was “beyond frustration” that he has said repeatedly and frequently to all professionals that he does not want contact yet he feels unheard and angry that his views are not actioned. She felt that his fears and anxiety were being caused by the on-going court process and the on-going contact. She recommended that direct contact was causing the child harm and therefore recommended only future indirect contact.

### **Evidence of the father**

[103] The father gave detailed evidence to the court in respect of his relationship with the mother and his attempts since the child’s birth, to obtain contact with his son. After multiple applications to court and after a number of contempt findings against the mother, the father ultimately applied for a residence order. He expressed concern regarding the fact he was unable to develop a relationship with his son. He stated that the mother had said negative things about him to the child and had deliberately frustrated contact by making false allegations against him and his family. The father denied any wrongdoing and advised the court that his son had enjoyed contact with him in the past including contact at the farm. He further advised the court that he had undertaken various courses and educative work to enable him to care for his son whom he loved very much. He indicated that he supported the Trust’s application for a care order.

[104] I have no doubt that the father loves his son very much and wants to have a relationship with him. To this end he has been steadfast in his attempt to have contact established and as a consequence has been involved in court proceedings since the time of the child’s birth. I found the father to be open and straightforward. He genuinely believed that the only reason his son did not want to have contact was because of the negative things he had been told by his mother. He further believed that his son enjoyed contact and it had been frustrated from the outset by the mother who made false allegations of abuse and who remained at the contact venue when the court had ordered that she was to leave. He denied that his son had ASD or ADHD.

[105] Having listened carefully to his evidence I accept his evidence that the mother has a very negative view of him and that she has communicated this to the child. It is very clear that the language used by the child mirrored exactly the language used by the mother. I also accept that the mother has frustrated contact by breaching numerous contact orders and by refusing to allow unsupervised contact from the date of the child’s birth.

[106] I do however have some concerns regarding how the father handled the child at some contact visits. I accept that on most occasions, as witnessed by a number of social workers, the father behaved very appropriately with the child when he has very rude, aggressive and abusive towards him and to other professionals. I consider that the father appropriately disciplined him.

Notwithstanding this I consider that the father on a number of other occasions lost his temper with the child and handled him inappropriately. In particular I consider that he handled him roughly in or around October 2013. This is corroborated by what the child said and the fact the child sustained a cut to his wrist which was noted by the GP. I also accept that the father slapped the child on the face on 1 December 2014 and this is supported by the fact the child had a 3-4 mm laceration on his eye which was noted by his GP the next day after contact. I have no doubt that the child's behaviour is very challenging but I consider that on some occasions the father has not reacted appropriately. I note that the father has now undertaken educative work which hopefully has addressed the question of handling challenging behaviour. Further I have some concerns regarding the "superwinky" game which took place at the father's home at the farm. The father gave evidence that this was a game played by the child and his cousins during which they all had their trousers down and pulled each other's penises. When he observed the children playing this game he said that he "let out a yell" which is again evidence of his loss of temper. He denied that any adults were present during the game but he accepted he was out of the house at the time because he was down the yard doing farm work. I do not consider that the father ever sexually abused the child and indeed this case was not made by the mother. I do however find that an adult family member (now deceased) was present during this contact and participated in the superwinky game. There was an allegation that the adult present was the child's paternal grandfather. The father denied that any adult was present. I am satisfied that an adult family member was present. I find that the adult present was not the child's grandfather but rather an uncle who is now deceased. I make this finding as the uncle was present at a number of contacts and was the person named by the mother as someone who may have sexually abused the child.

### **The mother**

[107] The mother gave evidence that she had been diagnosed with ADHD, Aspergers and dyslexia. She denied that threshold existed. She consistently stated that the child had formed his own views of his father and those views arose as a result of father's behaviour. She said the child did not like contact and did not enjoy it because "illegal things" had happened at contact and in particular the child was frightened to go to the farm. She referred to the various allegations she had made over the years including occasions when the father had been physically abusive to the child for example slapping him, hurting his wrist, trailing him out of the car and kicking him.

[108] She denied that she had influenced the child against his father. She stated that the child was frustrated as no one was listening to him and this was a "big problem" in his life which was causing him stress. It was her view that the child was suffering emotional harm due to the on-going court process.

[109] She believed that contact was mixed. Sometimes the child enjoyed contact and she wanted to build on this. She further informed the court that she wanted the

father and child to have a good relationship. She stated that she had encouraged contact and in particular had taken the advice of Ms Douglas and had encouraged contact by ensuring activities were planned and the activities were things the child liked doing. She felt that there were problems in the interaction between the father and child and as these had not been properly addressed contact remained problematic.

[110] She denied that she had given the child inappropriate information regarding the court process. She also stated that she disciplined the child and set boundaries in a way which was recommended by Ms Douglas as appropriate for a child who had ASD and ADHD.

[111] Having heard and observed the mother give evidence I find that she is quite “concrete” in her thinking. She considers that she is right and everyone else is wrong and she lacks an ability to see the other person’s perspective or to be flexible in an attempt to accommodate different perspectives. She was also selective and evasive in some of the answers she gave, changing her evidence to make her appear in a more positive light. I have no doubt that she is a good mother in many respects and loves her son dearly and wants what she considers best for him. It was clear from her evidence however that she was unable to say anything positive about the father. When asked to do so in cross examination there was a very long pause. When she spoke about him she did so with obvious disdain saying that he lacked ability as a parent and that it was not safe for the child to go to contact. I have no doubt that the child is very aware of the mother’s obvious contempt for the father. I also find that she communicated her negative views about him to the child and the child has then repeated her views. In particular I find that the child’s comments about the father’s intelligence and about alleged incidents which occurred when the child was aged 3 years old could not have been known by him unless the mother informed the child about these matters. I am satisfied that the child has repeated to professionals what the mother has said about the father. The mother has also been very rude about a number of professionals and the child at least on one occasion observed her shouting at them and being very offensive to them. I am satisfied that his mother’s behaviour has in part caused the child to be very cheeky with professionals and on at least one occasion to be physically aggressive towards a social worker.

[112] She does however I find genuinely believe that the child does not want to have contact and believes that something “bad” happened to him at contact and that having contact is distressing for him. For these reasons I consider that she finds it difficult to encourage contact. For example when the child said at contact supervised by Dr DeJong, “this is blackmail”, the mother said, “No, not blackmail. Just something we have to do.” I consider therefore that she is unable and unwilling to actively encourage contact and would require assistance to overcome her concerns.

### **Guardian ad Litem**

[113] The Guardian ad litem prepared a number of helpful reports for the court and gave oral evidence about her interviews with the child and her observations of contact and her views of the Trust's application. She stated that she first interviewed the child when he was aged 8 years old. At that time he stated he hated his father and wished he was dead. She noted that the child's language was adult in nature and his recollection of events was "scripted". For this reason her view was that his negative views of his father were influenced by his mother's hostility to the father.

[114] When she observed contact she noted that the child's positive behaviour was inconsistent with his expressed negative views of his father. She further noted that the mother failed to discipline him when he was rude and aggressive to his father and professionals and that she failed to put appropriate boundaries in place.

[115] It was her view that the child was caught up in a toxic conflict for 11 ½ years including conflicts between the parents at nursery, church and school and conflicts between the mother and professionals. She further noted that the child was very aware of the court process and had been given inappropriate information by his mother including information that the "judge was sick" and details of the evidence of one of the social workers and the mother had inappropriately involved the child in drawing up a "contract" of contact.

[116] It was the Guardian's view that the child was suffering emotional harm as he had no relationship with his father and that he was in particular given inaccurate information about his father, causing him to have a negative view of his father. In particular she relied on the expert views of Dr DeJong about the emotional impact this behaviour had on the child.

### **Consideration**

[117] Given that threshold is disputed, the task of the court is to be satisfied on the balance of probabilities, that the child has suffered or is likely to suffer significant emotional harm and that this harm is due to the parenting of the mother.

[118] The Trust submitted that the child has suffered or is likely to suffer significant emotional harm as the evidence established the following facts:-

- (a) The mother frustrated contact.
- (b) The mother has influenced the child to have a negative view of his father.
- (c) The mother has provided the child with inappropriate information regarding court proceedings.
- (d) The mother has failed to set appropriate boundaries/discipline the child.

## **Finding of Facts**

(1) *Did the mother frustrate contact?*

[119] The Trust submitted that the mother frustrated contact as evidenced by the breaches of contact orders, the evidence that the child enjoyed positive contact with his father when the mother was absent and the fact the mother deliberately made allegations of abuse which were unsubstantiated.

[120] As appears from the chronology the mother has breached numerous contact orders and has been found to be in contempt of court for breach of contact orders on four occasions. I further find that the child enjoyed very positive contact with his father as observed by numerous social workers, the Guardian ad litem and Dr DeJong. In addition I find that the mother has made numerous complaints to professionals after contact about possible physical and sexual abuse the child may have sustained.

[121] Although there is evidence the mother disobeyed court orders and thereby frustrated contact, there is also evidence that contact did not take place because the child did not want to go to contact. In particular Ms Lloyd gave evidence that the child believed something “bad” had happened to him at contact and had a “block” which needed to be addressed. Similarly Ms Skillen found that the child did not want to go to contact and was able to articulate good reasons for this including his father’s behaviour towards him. I accept that this evidence relates to conversations Ms Skillen recently had with the child. Nonetheless I find that this evidence assists the court in understanding what facts existed at the date of intervention. Even though the child was only aged 8 years at the date of intervention I find that at that stage there were times when he did not want to go to contact. I have no doubt that his refusal to go to contact was partly informed by his mother’s hostility towards the father. It is clear from her evidence that she had nothing but disdain for the father and many of her negative views of the father were repeated by the child. However I find that his refusal to go to contact at the date of intervention was not solely due to the mother’s hostility but also arose due to his experiences at contact. In particular as set out above I am satisfied that at times the father handled the child roughly and that an adult was present with his trousers down during the superwinky game. I consider that these were negative experiences for the child and provide an explanation for his refusal to attend contact. In addition the child’s refusal to go to contact may be due to his ASD and or ADHD. There is conflicting evidence regarding the question whether the child has ASD and ADHD. Such a diagnosis may explain his refusal to go to contact or his change of attitude during contact. The child’s change in attitude to contact often arose when he was required to change venue. For example, during one contact visit he behaved very positively and enjoyed contact until he was required to leave and go to McDonalds. At that stage his behaviour changed completely and he refused to go. This behaviour may be explained by ASD. Accordingly I find that even though the child appeared to enjoy



contact, the reasons for his refusal to go to contact on other occasions is multi-factorial and cannot be explained solely on the basis that the mother obstructed contact. I therefore find that contact did not take place for multi-factorial reasons. The mother struggled with permitting contact, the child had concerns about going to contact and the Trust put no specialist services in place to investigate the reasons for difficulties at contact or to assist the child or father with contact. Consequently I am not satisfied that this is a case where contact did not occur simply and solely because the mother deliberately frustrated it. I therefore do not make a finding on the balance of probabilities that contact was frustrated because of the mother's conduct alone.

[122] Secondly, in respect of the allegations of abuse made by the mother, I do not accept that because the allegations were unsubstantiated, this is evidence that they were a deliberate attempt by the mother to frustrate contact. Social services never carried out any investigation to determine whether the allegations were true or false. As noted by Ms McGorrey social services normally, in an article 8 contact case where there are allegations, carry out an investigation to determine whether the allegations are true or false. It is very unfortunate that such an exercise was not carried out at that stage. All the research indicates that it is imperative that a fact finding in respect of such allegations takes place at an early stage so that implacable hostility can be identified early and steps taken to address it or if the allegations are true steps taken to protect the child appropriately.

[123] As a result is there no evidence before the court that the allegations were untrue. Just because an allegation is unsubstantiated does not mean it is untrue. I find that the complaints made by the mother cannot be dismissed "out of hand" especially as there were medical findings including, bruising, redness around the anus, and on another occasion a cut on the child's wrist. Further, Police and Social Services took the concerns seriously at the time and carried joint protocol interviews. The fact the allegations were not ultimately substantiated does not mean that they did not happen or that the mother should be criticized for reporting her concerns. I therefore do not find that the making of complaints/allegations in this case by the mother is evidence of her attempting to frustrate contact.

[124] Even if it was established that the mother had frustrated contact by breaching court orders; being hostile to the father and deliberately making false allegations; I am not satisfied that the Trust has established that these facts caused or are likely to cause the child significant emotional harm.

[125] This is because the breaches of the contact orders, the vast majority of the complaints/allegations and the evidence that the child enjoyed good contact with his father when the mother was not present, were facts which all existed when the Article 56 investigation was commenced in 2009. Ms Murray, social worker, in her report dated 9 February 2010 noted that by reason of "...the implacable hostility...and the allegations of sexual abuse" an Article 56 investigation has been directed to "consider the impact on [the child]". After conducting a full investigation she stated that it was her belief that the child had not been facilitated to develop a

relationship with his father but nonetheless concluded “there are no behavioural concerns or any signs of emotional distress”. Her analysis was that whilst there were concerns in relation to the emotional effects of the current situation on the child “there is no independent evidence to suggest that [the child] is at risk of significant harm”. The Guardian ad litem Ms Patricia Owens in her report dated 23 March 2010 concluded that “there is no suggestion the child has suffered significant harm in his mother’s care”. Whilst she flagged up that if the current situation in respect of contact and allegations did not resolve the child “may experience emotional harm in the future” she nonetheless found the threshold was not met and did not recommend intervention. In determining whether the threshold was met both the social worker and the Guardian ad litem had to consider whether there was a likelihood of significant harm in the future. Although the social worker and the Guardian ad litem both flagged up that there may be emotional harm in the future neither recommended intervention. Their conclusions must therefore have been on the basis that they each considered that the threshold standard of “significant” harm was not met, otherwise they would have recommended intervention. Similarly the court did not make any public law orders and on 23 March 2011 only made a private law contact order. I am therefore satisfied that neither the professionals nor the court considered the threshold was met in 2011 notwithstanding the fact that the mother had breached contact orders, there had been inconsistent contact for a number of years and there were on-going complaints/allegations.

[126] At the date of intervention in 2015 nothing appears to have changed. There was simply a continuation of the status quo with inconsistent contact, breached contact orders and on-going, albeit less frequent, complaints/allegations by the mother. For the court to intervene on the basis of these facts it would require evidence to show that these facts, unlike in 2010, were now causing or likely to cause significant harm to the child. Ms McCorrey wanted an assessment to be carried out to ascertain whether emotional harm was being caused by the mother’s conduct. Ms Gill carried out such an assessment but the Trust are not relying on her conclusions. Consequently the only evidence presented to the court in respect of emotional harm was the evidence of Dr De Jong and the Guardian ad litem who both stated that the child was suffering or likely to suffer emotional harm.

[127] Dr DeJong, found three strands of emotional harm namely:-

- The child was alienated and deprived of a relationship with his father
- The child was exposed to the mother’s mental state and
- The child was over diagnosed.

As set out in paragraph [78] above Dr DeJong set out other facts which she said indicated the child had suffered emotional abuse. In particular she submitted that the child was over diagnosed and lacked socialization. It is important to note that the Trust did not seek to rely on these facts as evidence of threshold.

[128] I consider that Dr DeJong's evidence does not establish that the child at the date of intervention was suffering or likely to suffer significant emotional harm due to the mother's parenting for the following reasons.

[129] Firstly, this witness, in assessing risk of emotional harm found that the mother's view that the child had ASD and ADHD was evidence of emotional harm. In circumstances where the diagnosis was made by a qualified expert, Ms Douglas; (whose methodology Dr DeJong did not criticize), and where that view was supported by another expert namely Ms Claire Caughey, and where the mother herself suffers from Aspergers, I do not consider that the mother's view the child had ASD and ADHD can be criticized or held to be evidence of emotional abuse of the child by the mother. In any event the Trust did not seek to rely on the mother's view of the child's diagnosis as part of threshold. As a result of her view that the mother had wrongly attributed a diagnosis to the child this witness failed to consider that the child's presentation and behaviour may have arisen as a result of his diagnosis of ASD and or ADHD.

[130] Secondly she relied heavily on the report of Ms Gill and research papers in making her assessment that the child was at risk of emotional harm arising from contact being frustrated and the mother alienating the child. The report of Ms Gill is no longer relied on by the Trust and Dr DeJong accepted that the research was not very robust as there was a lack of empirical studies which sufficiently established a causal relationship between adverse outcomes and parental alienation. See in particular "Review of research and case law on parental alienation" Doughty, Maxwell and Slater, Cardiff University, April 2018 at paragraph 6.5.

[131] Thirdly, her assessment of emotional harm was based upon findings that the mother had misattributed the child's anger and anxiety to a real fear of his father. In light of my findings I do not consider that there was such a misattribution. She further found that the mother alienated and deprived the child of a relationship with his father and had failed to protect him from the court process. These findings already existed at the date of the article 56 investigation and notwithstanding these concerns neither the court, nor the professionals involved found that the child was at risk of significant emotional harm. Dr DeJong did not explain what had changed or why these same facts now caused threshold to be crossed at the date of intervention.

[132] Fourthly, she failed to consider other possible reasons for the child's presentation of emotional harm including the on-going court process and his view that he was being forced to do something against his will.

[133] In addition to the evidence of Dr DeJong the court heard the evidence from the Guardian ad litem that it was her view the child was suffering emotional harm as a result of the mother's hostility and the fact he was deprived of a relationship with his father. Her views however were largely based on the expertise of Dr DeJong.

[134] I therefore find that there is no relevant or sufficient evidence before this court to establish that the child has suffered significant harm or is at risk of *significant* emotional harm in the future due to the mother's behaviour.

(2) *Did the mother influence the child to have a negative view of his father?*

[135] I accept the evidence of the various professionals that the child has a very negative view of his father and that this is expressed in trenchant terms. Indeed the language used by the child about his father was most concerning especially the comments made by the child to the Guardian ad litem about his father. I have no doubt that the child has mimicked views which his mother has expressed about the father as the language used by the child is exactly the same as the language used by the mother. Further much of what the child said about his father could only have been known by him because his mother informed him of these facts, for example the details about his education, allegedly breaking her mother's spine etc.,

[136] I find however that the child, even at the date of intervention being March 2015 and being aged 8 years of age, had formed negative views of his father based not only on what his mother had told him but also based on his own experiences. The child is very intelligent and I believe that even at the age of 8 he had formed independent views of his father based on his own experiences. As Ms Skillen noted the child was able to give reasons for his negative views of his father and reasons why he disliked his father. He reported in particular that the father was often late for contact; that he had handled him roughly and that contact was boring. Ms Lloyd also accepted that the child believed something "bad" had happened at contact and that this may be the reason why the child had a negative view of his father. Whilst I am satisfied that the father did not sexually abuse the child, something the mother also confirmed, I had some concerns about what may have happened during some contacts. In particular I had some concerns about the allegation that the children engaged in a "super winky" game during which all the children, including an adult, now deceased, had their trousers down and during which they pulled each other's penises. The father gave evidence that when he observed the children playing this game he "let out a yell". He denied that any adults were present during the game but he accepted he was out of the house at the time because he was down the yard doing farm work. I consider that such contact may have been an adverse experience for the child and accordingly it may be a reason why the child has some concerns about going to contact. Further I consider that the child may have disliked being yelled at. I also consider that on other occasions the child was handled roughly at contact as evidenced by the fact he had, at least on one occasion a cut to his wrist and a nail mark. I also note that the Trust agreed that the father needed to do some educative work in terms of dealing with the child's challenging behaviour.

[137] Further, the child's presentation in relation to his father may be influenced by his own personality. There is conflicting evidence as to whether he has ASD and ADHD. Such diagnoses may affect the child's presentation and may affect his view of his father especially as his father does not accept this diagnosis and accordingly

does not make any provision for it in terms of how contact is conducted. I consider that there are multi-factorial reasons for the child's negative view of his father and therefore I am not satisfied that his negative view of his father is entirely the product of his mother's influence upon him.

(3) *Did the mother share inappropriate information with the child?*

[138] I am satisfied the mother did share inappropriate information with the child about the court process. In particular I find that she informed the child that the judge was sick and that the judge had imposed a penal notice on the contact order. These are matters that the child could not have known except the mother shared this information with him. I consider that it is clearly damaging for the child to have been exposed to this type of information. Notwithstanding this, however the child who is an intelligent child, was very aware of the court proceedings in any event as he had engaged with multiple professionals, experts and social workers. Consequently I do not find that the fact that the mother shared this information about the court process caused or is likely to cause significant emotional harm to the child especially when the child was already exposed to significant information regarding the court process generally.

(4) *Did the mother fail to set boundaries/discipline with child?*

[139] I find on the basis of the evidence of several social workers, the Guardian ad litem and Dr DeJong that the mother did not chastise the child when he was cheeky and physically aggressive to his father and the social workers.

[140] The contact records show that when the child called the social worker "a liar" the mother asked the child to explain why he had said that and on another occasion when he was being rude she said "that is not nice". When the child kicked the social worker in the stomach, the mother, on being informed asked the social worker, "did you shout at him?"

[141] Whilst many people would find the mother's style of discipline inadequate or inappropriate, that does not mean it meets the threshold. In our society there are many styles of disciplining children. I consider that the mother's style of disciplining is informed by her own personality, her experiences, her diagnosis and her view that the child has Autism and therefore needs to be disciplined in a different way to other children. As Hedley J said in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2052 at paragraph [50]:

"Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent ... It is not the

providence of the State to spare children all the consequences of defecting parenting.”

[142] Lady Hale further in the matter of *J (Children)* at paragraph [44] reminded judges that:

“Threshold conditions are there to protect both the child and his family from unwarranted interference by the State. There must be a clearly established objective basis for such interference. Without it there would be no ‘pressing social need’ for the State to interfere in the family life enjoyed by the child and his parents which is protected by Article 8 of the ECHR.”

[143] I am therefore not satisfied that the mother’s style of discipline meets threshold. This is especially so in a situation where the evidence is that the child is very well behaved at school, respects authority and is a very high achiever. There is absolutely no evidence before the court that the child has suffered harm or significant harm arising from the alleged lack of boundaries/discipline.

### **Conclusion**

[144] This is a highly complex case. Whilst I have made a number of adverse findings against the mother I am not satisfied on the balance of probabilities that threshold has been crossed especially as I consider that the reasons for the inconsistent contact and the child’s negative view of his father are multi-factorial.

[145] Secondly, I consider that, if the mother was solely responsible for frustrating contact and influencing the child to have a negative view of his father, the Trust has failed to establish on the evidence presented to the court that the child has suffered or is likely to suffer significant emotional harm, as a result. In particular the Trust did not provide evidence to the court which established a causal link between the facts and the child’s risk of significant harm because the research relied on by Dr DeJong, was, as she accepted not sufficiently robust to establish this causal link and the Trust had no other expert evidence in respect of emotional harm as they did not seek to rely on Ms Gill’s evidence.

[146] In addition the Trust failed to establish on the balance of probabilities that any harm suffered or likely to be suffered by the child was caused by the mother’s actions. This was because there were a number of other possible reasons advanced for the child’s behaviour and presentation. Firstly, there was a query over whether his presentation was due to ASD and ADHD. Secondly, there was evidence that the child was suffering emotional harm due to the court process and because he did not want to go to contact. Ms Skillen gave evidence that the emotional harm was caused by the on-going court process, the fact that the child felt he was not being listened to and the fact that he was being forced to go to contact when he did not want to go to

it. Similarly, Ms Lloyd considered that the child was being caused emotional harm as a result of the on-going process and forcing the child to go to contact. In light of this evidence, I find that the Trust has failed to establish on the balance of probabilities that the emotional harm was caused by the mother's parenting.

[147] I therefore find that the Trust has failed to establish threshold. This a fact specific decision and should not therefore be used as a precedent to say that threshold can never be met in cases where there is inconsistent contact or where there is evidence one parent is frustrating contact or negatively influencing a child against the other parent. Threshold can be been crossed in such circumstances and there are a number of decided cases in which threshold has been found where a parent has frustrated contact or negatively influenced a child against the other parent. Each case however must be determined on its own specific facts.

### **The Future**

[148] This is a very sad and concerning case. I consider that the dispute has been going on for far too long and that a number of steps which should have been taken in the past were not taken. As a result the situation has remained unresolved.

[149] I consider that it is imperative that steps are taken, even at this late stage to attempt to facilitate a relationship between the child and his father. For this to happen I consider that the parents should engage in meaningful mediation and ultimately this should involve the child. I further consider that it is important that a family therapist is involved to do work with the parents and the child. Arlene Healey started this work but unfortunately it was never finalised and I consider that there is scope for this work to re-commence. In addition individual work may need to be done with the child to explore his experiences of past contact and to address any concerns he has. Finally I consider that it is very important that the child is assessed. There is an unresolved debate about whether the child has autism and whether this is the reason for his presentation. I consider that it is imperative in light of the conflict which exists between the professionals that the child is independently assessed as this will give guidance to the professionals how to work with him and give an insight into the reasons for his presentation and how contact with his father can best be facilitated. Like Dr De Jong and Ms Skillen I consider that the child needs to be urgently referred to CAMHS.

[150] Under Article 16 of the Children (NI) Order 1995 the court can make a family assistance order. Article 16 provides as follows:-

#### **"Family assistance orders**

**16.**—(1) Where, in any family proceedings, the court has power to make an order under this Part with respect to any child, it may (whether or not it makes such an order) make an order requiring an authority to make a suitably qualified person available, to advise, assist and (where appropriate) befriend any person named in the order.

(2) The persons who may be named in an order under this Article (a “family assistance order”) are –

- (a) any parent or guardian of the child;
- (b) any person with whom the child is living or in whose favour a contact order is in force with respect to the child;
- (c) the child himself.

(3) No court may make a family assistance order unless –

- (a) it is satisfied that the circumstances of the case are exceptional; and
- (b) it has obtained the consent of every person to be named in the order other than the child.

(4) A family assistance order may direct –

- (a) the person named in the order; or
  - (b) such of the persons named in the order as may be specified in the order,
- to take such steps as may be so specified with a view to enabling the suitably qualified person mentioned in paragraph (1) to be kept informed of the address of any person named in the order and to be allowed to visit him.

(5) Unless it specifies a shorter period, a family assistance order shall have effect for a period of six months beginning with the day on which it is made.

(6) Where –

- (a) a family assistance order is in force with respect to a child; and
  - (b) an Article 8 order is also in force with respect to the child,
- the suitably qualified person mentioned in paragraph (1) may refer to the court the question whether the Article 8 order should be varied or discharged.”

(7) A family assistance order shall not be made so as to require an authority to make a suitably qualified person available under paragraph (1) unless –

- (a) the authority agrees; or
- (b) the child concerned lives or will live within its area.

[151] In light of the steps which need to be taken I consider that it would be useful if the court could make a family assistance order for a period of 6 months. It can only do so if the mother and the Trust consent. I therefore will hear counsel in respect of this proposed disposal.