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(subject to editorial corrections)\*

Armagh and Dungannon Health & Social Services Trust Applicant AND A Respondent	Family Proceedings Court at East Tyrone  County Court Division of Fermanagh and Tyrone
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*Preliminary*

1. I have prepared this judgment in an anonymised form. Nothing must be published which might lead, either directly or indirectly, to the identification of the child or any of his family.
2. On the afternoon of Friday, 30<sup>th</sup> June 2006 two Social Workers, Mrs. C and Mrs. D, from Armagh and Dungannon Health and Social Services Trust attended me in chambers at Dungannon Courthouse, without legal representation, to seek the ex parte Hearing of an application for an Emergency Protection Order.
3. The case concerned a 7-year-old Portuguese boy, B, who had been removed from his mother's care on the previous Sunday evening (25<sup>th</sup> June) with, I was told, her agreement. He had remained in a foster placement throughout that week. On the Friday morning, his mother expressed a desire to have him returned to her and, in response, Social Services had initiated the application. Social Workers had told Mrs. A of their intentions, but had given her no further information as to the Hearing, although they had been engaged that afternoon in trying to put her in touch with a Solicitor of her choice with respect to the case generally. No papers had been served upon Mrs. A. There was no issue as to a risk of her abducting the child; she did not even know the address of the foster carers with whom her son had been placed.
4. In A Trust v M [2005] Mag 33 (unreported judgment dated 7<sup>th</sup> December 2005), I dealt at length with the prevailing deficiencies of practice in respect of applications for Emergency Protection Orders, including deficiencies in the approach taken by Social Services. I do not propose to restate that judgment; suffice to say that an application

for leave to proceed ex parte, with the features which I have just summarized, was bound to fail.

5. Kerr, LCJ, pointed out in AR v Homefirst Community Trust, [2005] NICA 8 that “By virtue of section 6 of the Human Rights Act 1998 it is unlawful for a public authority to act in a way that is incompatible with a convention right. Both the trust and the court are constituted public authorities for the purpose of this section.”
6. Article 6 of The European Convention on Human Rights and Fundamental Freedoms reads;

‘In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.’

I refused leave to proceed with the Application ex parte and directed that the application be listed for hearing on Tuesday, 4<sup>th</sup> July, upon notice to Mrs. A. I also directed that Ms. D, Senior Social Worker, write up her notes taken during the hearing of the application for leave and that these be served upon the Respondent. Finally, it was also directed that a Guardian ad Litem be appointed for the subject child.

### *The Background History*

7. Mrs. A therefore appeared for the renewed Application by Armagh and Dungannon Trust for an Emergency Protection Order the following week. She was represented by her solicitor, Mr. Quinn, and assisted by an Interpreter. The Trust’s application was grounded on the evidence of three Social Workers, Mr. E, Assistant Principal Social Worker, Mrs. F, a Senior Social Worker, and Ms. D.
8. Late in the evening of Friday, 23<sup>rd</sup> June 2006, the Police had received notification that the subject child had been badly beaten. Officers went out that night to the family home, but got no response. Next morning, the 24<sup>th</sup>, the Police did find both mother and son at home. They saw evidence of serious injuries to the child’s back and called in the Care Unit of Social Services. Ms. G, on duty as the Emergency Social Worker, attended the home and liaised with Mr. H, the Duty Co-ordinator at that time. With the assistance of a Constable I, who was able to act as interpreter, Ms. G obtained the verbal consent of Mrs. A to her son being brought to Dungannon Police Station for a forensic examination. They were met there by Ms. J of the Care Unit, who explained about making a formal complaint against the perpetrator and established that Mrs. A did not wish to adopt that course. The mother’s

written consent to the forensic examination was obtained at that juncture.

9. The examining physician, Dr. K, confirmed that those injuries were consistent with the boy having been beaten with a belt and its buckle. Mrs. A had already disclosed that her boyfriend had beaten the child on Saturday, 17<sup>th</sup> June.

10. Throughout those events on Saturday, the Emergency Social Worker liaised with the Duty Co-ordinator and the agreed strategy was formulated, whereby;

Mrs. A agreed to the Police meeting with Mr. L and that the Police would ask him for the keys to her home; he would be advised by the Police that he was not permitted to reside at or visit Ms. A's home.

Mrs. A agreed to herself and B remaining at her address and that she would not permit Mr. L to reside or visit at her home.

Mrs. A was not to bring B to the address to which Mr. L would be moving as he could be present during such a visit.

Mrs. A agreed to out-of-hours social services visiting with her unannounced on Saturday 24<sup>th</sup> and Sunday 25<sup>th</sup> and that Dungannon Social Services would be managing the case from Monday, the 26<sup>th</sup>.

Should Mrs. A not adhere to this agreement B would be removed from her care and placed in an emergency foster placement.

11. Throughout the relevant period, Mrs. A did not have access to legal representation. In addition, she was a foreign national with limited grasp of our legal system; one simply cannot say whether she perceived that Social Services had the power to remove her child whenever they deemed it appropriate for his well being; indeed, one cannot say whether that be the misapprehension of many parents who find themselves in such circumstances. In any event, the Social Worker's ostensible authority had been made explicit and Mrs. A had been given to understand that the former had the power to remove her son, should the latter not comply with requirements.

12. There was a random visit made to the home on the next evening, Saturday 24<sup>th</sup> June. Ms. G, in her detailed notes dated 26<sup>th</sup> June, reported that B presented as withdrawn and watchful throughout. She checked with Mrs. A about whether she had contacted Mr. L since Friday and was told that Ms. A had spoken to him by telephone and that a friend of his had called and collected his belongings.

#### *The Evidence of Mr. E*

13. It was Mr. E, a experienced Senior Social Worker, who carried out the visits on Sunday, the 25<sup>th</sup> June. He had first attempted to obtain access that afternoon, accompanied by two police officers, but there was no-

- one at home. In consultation, again, with the Duty Co-ordinator, by now Mrs. F, it was decided to leave things until that evening.
14. Upon returning to the apartment on Sunday evening, along with the two police officers, Mr. E could hear very loud music coming from inside. It took Mrs. A a number of minutes to answer the door. He identified himself and gave Mrs. A his card (Constable I was again on hand to translate). He made explicitly clear why he was visiting. Mr. L was not present, but the Police pointed to some of his belongings, in a kit bag, in the kitchen. Mrs. A said that he was staying at another address in Dungannon, the house of his sister and her husband, about 10 to 15 minutes' walk away.
  15. When Mr. E entered the living room, he became concerned at the physical demeanour of B. The young boy appeared frightened – sitting rigid and upright in the chair. Mr. E took into consideration that he himself was a complete stranger; he sought to reassure the boy that he had done nothing wrong and explained that Mr. E was there to check that L was not there and that B was safe. Mr. E was struck by the fact that B kept staring at his mother and would not engage with the Social Worker. Mrs. A was talking to the Police at that moment. Mr. E was anxious to get a clear message across to her about Social Services' concerns with regard to what had happened on 17<sup>th</sup> June.
  16. Mrs. A, however, maintained that what had happened then was culturally acceptable in Portugal. Mr. E explained carefully that it was not acceptable in Northern Ireland. One of the concerns on the part of Social Services was that Mrs. A had been unclear or evasive about where she had been at the time of the beating. On Saturday, when speaking to Ms. G, Mrs. A had said, first, that she had been in the apartment living room and then asserted that she had been in the bedroom when the beating occurred.
  17. Mr. E satisfied himself that Mrs. A knew the nature of the concerns and that these were what she described as culturally acceptable. She was clearly minimising what had happened, in his assessment. Mrs. A said that her son had got the beating because he had been a “very, very bad boy”. B had had a disagreement with a neighbour's child, the child of her child minder. B had hit the girl and the child minder, in turn, was now refusing to look after B anymore. Mrs. A was very angry because that meant that she could not work. When she had told all this to Mr. L on 17<sup>th</sup> June, the beating followed.
  18. Mrs. A told Mr. E that her immediate plans entailed B leaving Dungannon, so that Social Services and the Police had nothing to worry about. On the other hand, she was vague as to where the boy was

- going. It took Mr. E a considerable amount of time to elicit the information, such as it was. Eventually, Mrs. A stated that B would be moved to a family in Portadown. First she said he would be moved on Monday, then Tuesday. Mr. E explained that he needed clarity. Mrs. A became agitated in response to this pressure. She continued to speak, through the interpreter, and could not understand why Social Services needed to know more. She went to the telephone to get a number and started shouting, in Portuguese of course, at B. Her son responded by running over to her. She offered an address, but Mr. E insisted upon a telephone number, which was eventually disclosed.
19. Mrs. A went on to say that she was in a dilemma. Since her current partner was paying the rent for her she was going to have to move out because of B. She could not see her partner. She said that she was, in addition, very anxious about her daughter M, who was in Portugal. She declared herself worried that she was not going to see her again. M was being cared for by Mr. L's parents; Mrs. A's plans with him had been greatly upset by what had happened.
  20. The Police who had been involved the previous day were concerned that B had told his mother, the Police and the Social Workers that he did not want to go to Portugal to his father, whom he described as even stricter than Mr. L. Mrs. A confirmed this assessment to Mr. E.
  21. Mr. E considered Mrs. A to be confused about her Portuguese plans. Mr. E's prime concern was whether B would be safe in Portugal, given the connections there with Mr. L's family. Mrs. A became frustrated in the face of such concerns, saying that if B could not leave, then she would have to go and leave him behind, because of her concerns about her daughter.
  22. Mr. E explained to the Court that the more he heard of all this, the more concerned he became about the capacity of Mrs. A to act as a protective, responsible parent to her son. Throughout his appraisal, he was in contact with Mrs. F (the Duty Co-ordinator for that day). He sought to keep in mind the mother's rights, but Social Services' responsibility was protecting the child. He felt that the risks were too great and that an emergency placement would simply have to be found for the boy.
  23. The removal of the boy was, said Mr. E, only after considerable discussion – and ultimately with the mother's consent. To that end, Mr. E returned at 11.00 pm that same evening. He was worried that B was not going to be there on Monday. He explained to Mrs. A that it was very important that she attend Social Services on Monday (the next day) to see both himself and Mrs. C, the caseworker at Dungannon offices.

- Mrs. A, however, replied that she had a lot of things to do on Monday, with regard to her job and her worries about her daughter.
24. Mrs. A did not agree to B being placed in voluntary care that evening without a lot of discussion (and that, of itself, was an additional concern to Mr. E, as he said). Mr. E had thought it fair to give her the opportunity to agree, but did stipulate that he would be seeking a Police Protection Order if she did not volunteer consent.
  25. Under cross-examination, Mr. E explained that his decision on Sunday to the effect that B had to be removed from his mother's care was based upon his professional judgment, his observations of the child's behaviour – signalling fear and anxiety - compounded by his mother's evasive attitude, her denial of the gravity of the injuries inflicted and the fact that she was blaming the boy for the physical assault. In Mr. E's opinion, there was a complete absence of any emotional empathy or sympathy for the child's trauma. There was a continuing uncertainty about where Mrs. A had been while B was beaten. In addition, the fact was that Mrs. A continued to have contact with Mr. L through the week immediately following and also that she made no complaint about it. If Mrs. A agreed to B returning to Portugal then, while he could not speak for the Trust, he would have serious reservations. Mrs. A (still) could not give an accurate address for the child's father in Portugal, in order for local Social Services to establish that it was a safe place. It was clear that Mrs. A's priority was her daughter and that she was quite prepared to see B remain with Social Services here.
  26. Mrs. A attended Social Services offices at 11.00 am on Monday, 26<sup>th</sup> June. There she met with Mrs. C, Mr. E and an interpreter. Mrs. A he described as still very anxious and "angry", stating that she now had to look after herself and her daughter. She emphasised that B was a very bad child, who had caused a lot of trouble. Mrs. C did acknowledge to Mrs. A that a consent form should have been completed before B was removed into Trust accommodation the previous night. Mr. E was not aware whether such a form had (even) yet been signed in respect of B's placement.
  27. Given that Mr. E was maintaining that this was a voluntary arrangement, whereby the boy was being accommodated with his mother's consent, it was a telling moment in that meeting, the morning after, when Mrs. A said that if Social Services "were not going to return" B, she would try to change his name on the flight ticket, booked for that Friday, to her own. Both Social Workers advised her not to do so as she would be abandoning her child, whereas he needed her reassurance. Again, though, Mrs. A seemed to have had difficulty in understanding that or in seeing the need for Mr. E's involvement.

28. The Social Workers were anxious that Mrs. A should have contact with her son, so that there could be an assessment made of their interaction, but it seemed that Mrs. A was not taking that in during the meeting on Monday. She appeared preoccupied about getting to Portugal and seeing her daughter. The Social Workers went over B's declared views about Portugal and his mother acknowledged that these were negative in nature, but she felt that she had no alternative.
29. In closing his evidence-in-chief, Mr. E pointed out that Mrs. A was "now saying clearly" on Monday, 26<sup>th</sup> June that B had become Social Services' problem. She did not demand B's return "there and then", he said.

*The Evidence of Mrs. F*

30. Mrs. F had been the Duty Co-ordinator over the period from Saturday evening through to Monday morning that weekend. Upon taking up duty, she had been briefed upon the monitoring then in play. Ms. G had about 10 hours' involvement as Emergency Social Worker on Saturday. Dr. K, the physician who carried out the forensic examination that day, had remarked that in 20 years he had not witnessed belt marks as deep in a child so young. From the Trust's point of view, B was allowed to remain in his mother's care on Saturday with the clear understanding that Mrs. A would co-operate fully and with priority given to the child's interests. Mrs. F worked closely with Mr. E on Sunday evening and ultimately came to the conclusion that B could no longer remain in her mother's care due to –
  - the child's presentation
  - the mother's lack of concern about his injuries
  - the mother's admission that despite some confusion about the room in which she had been, she was present when the child was beaten
  - the mother's failure to intervene to stop this incident, especially in view of the fact that a 7-year-old would look to his mother for such protection
31. Mrs. F also emphasized that B left his mother freely and, having been brought away, presented as a completely different child –smiling and happy.
32. There had been a period of rather open discussion at one stage in Mr. E's evidence-in-chief, across the four Social Workers present, during which I expressed the view that this could not be regarded properly as a case of voluntary agreement by Mrs. A to her son's removal. In referring back to those remarks, Mrs. F said she accepted entirely that it was not voluntary, where the parent had been told that Social Services would remove the child anyway, should her agreement not be forthcoming.

33. I had asked Mr. E, in terms, why he had invested so much time on Sunday evening, seeking to secure consent from Mrs. A. His reply was that he had been endeavouring to work in partnership with her in settling the arrangements for her son. This is at the heart of the difficulties which beset the Trust toward the end of the week following B's emergency placement with foster carers (though by no means is this the responsibility of Mr. E).

*“Working in Partnership”*

34. Any decision about the protection of children is immensely complex, sensitive and stressful. All concerned, including Police, worked hard on this occasion to address a very difficult situation. The determination that a child has been exposed to the risk of significant harm may be relatively simple. The difficult decision is with regard to whether one can nonetheless work in partnership with the parent(s) in supporting the family, while adequately securing the child's protection or, on the other hand, must intervene and invoke powers to command what is to happen by way of arrangements for the child, even in the face of parental objections.
35. I see those two options as alternatives and, in turn, question a practice (seen again here as in A Trust v M) whereby Social Services have moved to authoritarian mode, while still seeking to bank parental agreement. The rationale offered is “working in partnership” and I fear that the term is abused in that context.
36. In *The Children Act Now: Messages from Research* (Dept. of Health *et al.*, 2001) it is made plain that this is no novel issue. At page 51 there appears the following passage;

*Accommodation and the “no order” principle*

The third type of accommodation arrangement [i.e. offering accommodation or going to court as the alternative where “..[a]ll concerned recognise that safeguarding issues must receive attention and the use of court proceedings in the future is not ruled out”] tests the balance between compulsion and voluntariness. The Children Act studies suggest that the early use of accommodation can be explained in the context of the “no order” principle. Although the no order principle applies mostly to the making of court orders, its influence has “trickled down” to the use of accommodation. The no order principle seeks to use voluntary agreements rather than court orders where this is in the context of promoting the children's welfare.

Clearly, the Children Act is saying that court orders should be avoided if other means can be employed, but in all cases safeguarding and promoting the children's welfare should drive any decisions.

Employing a voluntary approach does not assume that each case will have the same model of working with parents, as the studies on short-term



accommodation and family support and maltreatment show...[In the case of a parent about whom there are suspicions of emotional abuse] ... workers may have to invoke the positive use of authority to explain to the parent(s), openly and with precision, that the outcome of using accommodation arranged by negotiated formal agreement will depend on the parents keeping their side of the contract. Such an approach has inherent tensions. The authority role brings with it the need for workers and parents to recognise overtly the power imbalance between them. Sometimes this can work well ... [but] ... it is clear from the earlier court studies, that social workers, solicitors and guardians ad litem are concerned about issues of justice and fairness, as the view of one team leader suggests:

The fact that we have to go for accommodation with a threat of an application if parents don't agree, that's a much more subtle use of power than actually putting it before the court. I would have thought it felt more oppressive. Best practice would ensure you use accommodation wherever possible but this is forcing accommodation.

This quote reflects the findings of several studies, albeit in a minority of cases, which talk of "enforced" or "sham partnerships" between social workers and families. The findings from research studies suggest that practice in relation to accommodation has been rather confused. In some cases social workers are misunderstanding the negotiated nature of accommodation. *So, for example, in the fostering family contact study, there were cases of accommodated children having to be supervised during contact with parents.* In other cases, in this and other studies, accommodation seems to have been used when a Care Order would have been more appropriate to safeguard children at risk of suffering impairment or even on the margins of suffering significant harm. In the early days of implementation there was a misunderstanding about the no order principle by some social workers and local authority solicitors, the mistaken view being that court proceedings should be avoided in all circumstances. This contradicts the flexibility built into the Children Act 1989 to provide different routes to safeguard and promote children's welfare. (*my emphasis*)

37. The point is reinforced at page 71:-

In Chapter 3 the tensions between compulsion and voluntariness in the use of accommodation were discussed. From the perspective of the parents, there were some examples of what the researchers called "sham" or "enforced" partnerships. Take the study on parental perspectives in care proceedings, for example. Here, parents:

Felt under pressure to comply, to be negotiating from a weak and powerless position which left them little option ... to be threatened with court action if they did not agree.

Similar issues were raised in the fostering family contact study. As one parent said:

I had to agree. With the social worker at the door I'd no choice. I either agreed or they'd slap a Care Order on us.

Such findings go to the heart of the difficulties social workers face and reveal how important are the skills of negotiation in situations where the balance between compulsion and voluntariness is to be made.

... Social workers can undertake this complex work to good effect. There is good evidence from the child protection overview that parents were able to emerge from child protection enquiries saying that they did not like the intrusion of social workers but they had been on the receiving end of a job well done. The Children Act studies point to the need for the transfer of such skills to the interface between family support and looked after children.

38. In this instance, this was not a matter of the boy being merely "... at risk of suffering impairment or even on the margins of suffering significant harm". B had been exposed to serious physical violence. On the Sunday evening, at the latest, B should have been taken into Police protection, for an initial period of up to 72 hours, pursuant to the provisions contained in Article 65 of The Children (Northern Ireland) Order 1995, whereby Social Services would then have been required to obtain an Emergency Protection Order by end-Wednesday, 28<sup>th</sup> June.
39. Instead, Mr. E invested a considerable amount of time in persuading Mrs. A to agree to the boy's removal to Social Services accommodation. On the other hand, there was no formal agreement obtained from Mrs. A, in the sense that no written consent was obtained. Mrs. A articulated her consent and this was deemed sufficient to permit the boy's lawful removal from her care and control. This, as I have said, was justified by reference to the concept of "working in partnership".
40. If it be the case that the parent is not admitting of the relevant concerns, I have difficulty in seeing how it can be said that the decision to remove him was made in partnership with the parent. I would have thought that the minimum requirement, before the action can properly be viewed as a partnership between parent and Social Services, is that there is a consensus as to why it is necessary to remove the child; which is to say, within the terms of the passages quoted above, that Mrs. A had recognised that issues of safeguarding the child from the risks which she represented, directly or indirectly, had to be addressed by the child's removal from her immediate care. Throughout the process that Sunday evening, Mrs. A would seem to have maintained that her son was a bad boy, that he had brought his beating upon himself and that this beating was culturally acceptable from her perspective. Social Services, I am sure, would not wish to suggest that it was working in partnership with such a position.
41. The decision to remove B was made by Social Services alone. It is not meaningful, and in my opinion it merely confuses the issue, to speak of it being made in partnership with Mrs. A.

Working 'in partnership' with parents is not without its tensions. It is important to recognise that, in cases where Social Services take steps of legal

enforcement through the courts, the position of the social workers *vis-à-vis* the parents will be one of authority and power. Attempts to deny this reality will appear to the parents to be tokenistic or patronizing, as the parents reported to the researchers.

(*Op. cit.*, page 67)

42. If one were to characterise the arrangement which came into play in this case that Sunday night as “forced accommodation”, then one may usefully turn to *The Last Resort; Child Protection, the Courts and the 1989 Children Act* (Hunt, Macleod and Thomas, The Stationary Office, (1999), pages 36 and 37, to explore the issues which this presents;

Concerns were expressed first about justice and fairness. Thus ‘forced’ accommodation was seen as basically dishonest, a perversion of the concept of accommodation which intended to be a service to families. In this view if the local authority decides the child needs to be looked after and would take court action if parents do not agree then accommodation is not appropriate.

My main anxiety is accommodation; I feel that is not really working. I don’t know how you get round it; there’s nothing illegal about it but social services are in such a strong position that parents have little option, if they don’t comply with various conditions then the local authority will take proceedings. So social services manage to achieve the same result without actually going through court proceedings. In theory parents have complete parental responsibility; in reality they are quite powerless (Solicitor)

Accommodation is for those situations where parents need help and ask for help. But if the local authority would take proceedings if the family don’t agree then they should take proceedings. I feel legal proceedings can protect families. I know they’re very stressful and that has to be taken into account but they can also protect families against local authorities abusing their power. (Guardian ad Litem)

One might expect this position to be held most forcibly by practitioners within the legal system. However similar qualms were also expressed by some social services personnel...

For lawyers, as one might expect, issues of due process were central. Thus several cited the poor protection for the rights of parents and children within the *welfare* system compared to the sophisticated mechanisms which have developed within the *legal* system. Once a case gets to court parents have a right to be legally represented; they are entitled to legal aid irrespective of income; there will be a guardian to make an independent enquiry into the merits of the application. None of these protections exists within the welfare domain. Parental consent to accommodation may be neither informed nor freely given: while it may be good practice for social workers to encourage parents to seek legal advice, it is not compulsory and parents may not see the importance of getting themselves to a solicitor. Even if they do, the advice the lawyer can give is limited by the provisions of the Green Form scheme. Local authorities may not allow the lawyer to attend case conferences or other crucial meetings. There is no equivalent of the Guardian ad Litem offering an independent social work opinion. Thus while decisions about accommodation may be made in the ‘shadow’ of the court they none the less lack its protections.

Some lawyers suggested that because local authorities achieve a measure of actual control over the child without having to satisfy any legal tests they may be tempted to “negotiate” accommodation in cases they suspect to be evidentially weak, even though parents may be unaware of their doubts and agree thinking they are thereby avoiding certain court action. There was a little evidence from our research data that this does actually happen. However it does not appear to be widespread. ... generally it has been the so-called *no order principle* that has made social services most hesitant about going to court, not the threshold criteria.

Another aspect about this concern about fairness was the fear that in all but very short periods of accommodation parents’ rights will be diminished simply by the passage of time. Courts tend to be reluctant to disturb the status quo before the final hearing; by which time the outcome may be a foregone conclusion.

43. Mrs. A did not complete a written consent to her son’s placement prior to her removal. When Mrs. C raised the matter at the Monday meeting, Mrs. A still refused to put her consent in writing even then. Yet again, there was a signal that this was no true partnership. The evidence from Ms. D at the Hearing on 4<sup>th</sup> July was that Mrs. A was asked each day throughout the following week to sign a written consent to B’s placement and each day stated that she agreed to the placement, but refused to sign anything to that effect. That is something which turned out to be disputed between the parties, when the court heard later the evidence of Mrs. A, but Ms. D’s evidence on the point was not challenged in cross-examination, so the panel was wary of making any positive finding on that point. Howsoever that may be, it merely adds to the judgment that this “consent” was highly fragile. To hold a child in accommodation without the written consent of the parent(s) is a serious derogation from proper practice and ought, of itself, to have necessitated re-consideration of the child’s status.
44. Even if one were to pass over the exchanges of that Sunday evening on the basis that Mrs. A did consent to her son’s removal by Social Services, the team concerned should have revisited the subject on Monday morning and considered whether the mother’s agreement was clear, informed, free and settled. Where the consent had been achieved only through threat of unilateral action, and where Mrs. A refused, and maintained her refusal, to sign a formal consent, it should have been recognised, no later than at the meeting on Monday, 1<sup>st</sup> July, that such consent as existed was liable to be withdrawn at any time and that the accommodation remained under threat, given that Mrs. A could (explicitly) withdraw her consent to such accommodation at any time. In those circumstances, the Trust ought to have sought either an Emergency Protection Order or a Care Order, on notice to Mrs. A, at that juncture and on the basis that the Trust needed to have parental responsibility, should Mrs. A withdraw her co-operation, in order to provide adequate protection for the child, within the law.

### *Events following Accommodation*

45. In any event, matters ran on from Monday, 26 June without decisive action by Social Services to clarify the basis of B's placement. That evening, he was moved by Mrs. C from the emergency placement to the foster carers with whom he was to remain for the duration of these proceedings. Mrs. A was offered contact with her son on Monday but declined. At a further meeting next day the same offer was declined. Only on Wednesday, 28 June, did Mrs. A agree to contact.
  
46. It was supervised contact which was arranged to take place at Social Services premises in the South Tyrone Hospital (see *The Children Act Now*, where quoted at paragraph 35 above). Present at that contact were Mrs. C, Social Worker, and an interpreter, later joined by Ms. D, Senior Social Worker. The child entered, quiet, reserved and wary. Mrs. A refused to look at or speak to him. Mrs. C tried to engage her in playing with B with toys but she refused to speak to anyone and simply looked straight ahead. The interpreter was seated opposite and Mrs. A started to talk in Portuguese to her. Her speech was rapid, loud and distressed. The interpreter explained that Mrs. A took issue with B being portrayed as the victim in the present situation, where it was really she. He was a bad boy who had therefore been punished. She (the putative partner of Social Services with regard to promoting the boy's welfare at this time) proceeded to blame the child for ruining her life. Throughout this, B sat to her left, saying not a word. Quite understandably, Mrs. C felt that this was fast becoming an abusive encounter for the boy. Mrs. A, as the Social Worker saw it, had never asked about the boy and was talking only of herself and of her own situation and the difficulties she now faced. In those circumstances, after some 10 minutes, it was decided that the Social Workers needed to remove B from further abuse. It was the interpreter who began to lead him out and, as she did so, she asked him if he would like to give his mum a goodbye hug. B went over willingly and put his arms around Mrs. A; again, she did not respond. He left the room quietly with Mrs. C.
  
47. That Wednesday, as Social Services would have it, Mrs. A continued to consent to B being accommodated by the Trust (but still refused to sign any document to that effect). Running alongside these matters was the unfolding information as to Mrs. A's plans. B already had a ticket to travel back to his father in Portugal on Friday, 30<sup>th</sup> June. Mrs. A spoke of changing the ticket into her own name. She spoke of finishing her work contract on 28<sup>th</sup> July (i.e. almost a month later) and then returning to her home country to look after her daughter M, who was then in the care of her paternal grandmother.

### *The Evidence of Mrs. C*

48. Mrs. C had testified that there had been a Looked After Child Review (LAC review) convened on Thursday, 29<sup>th</sup> June. She explained that this was convened because Mrs. A was intimating that she would be leaving for Portugal, with or without her son. She spoke of leaving on Thursday and coming back the following week to sort things out here. (There is of course another factor, namely that Social Services personnel had witnessed what might be considered as clear evidence of emotional neglect and abuse at the aborted contact visit on Wednesday, 28<sup>th</sup> June.) The LAC review decided, I was told, that a Care Order should be sought.
49. Mrs. C arranged to meet Mrs. A at the office on Friday morning, 30<sup>th</sup> June, in order to provide feedback on the LAC meeting. (It was not entirely clear why Mrs. A did not attend the LAC meeting.) Mrs. C explained that the LAC review had decided to seek an Interim Care Order. She set about explaining some of the recommendations, such as the implementation of a parenting assessment. There were difficulties in interpreting and Mrs. A was therefore distressed and confused, according to Mrs. C. During the conversation, however, Mrs. A stated that she wanted B to be with her and to take him with her.
50. In response, Mrs. C returned to the need for Mrs. A to consult a Solicitor (she had been urging this course upon Mrs. A in all meetings throughout the week and in telephone discussions on Thursday, the only day that week when she did not meet in person with Mrs. A).

*The Parent asks for the return of the Child*

51. This raises another core issue, one not at all uncommon in these cases of forced agreements. What happens when the parent actually asks for the child to be returned, perhaps most often where events force the hand of Social Services and they have to inform a mother, who has been pressurized into articulating her consent to a child being accommodated, that a Court application is going to be made anyway? There is, I believe, a considerable degree of confused thinking about this in Social Work practice. In that room on Friday morning, there was only one person who had parental responsibility for B, namely his mother, albeit that the Trust had more than 4 days in which to plan for this eventuality. B was accommodated by the Trust on no authority other than his parent's putative consent. When that was unequivocally withdrawn by his mother, the right of the Trust, in law, to accommodate the boy ceased.
52. Before I proceed to consider the implications arising from the manner in which the Trust set up the application for an EPO, I must return briefly to the underlying theme about sham agreements. In the context of the published research material, as set out earlier, the reaction by Mrs. A to the announcement that the Trust was in fact going to seek a Care Order

was entirely predictable. If it be right that she had only articulated an agreement to the removal of her son from her care that Sunday night because the Trust told her that they would otherwise have to take Court action (never mind the fact that this is a Court in what remains to her a foreign country, where even the language is incomprehensible) the announcement that the Trust was going to do so anyway was always likely to result in a decision on her part that she had nothing left to lose by demanding her child back.

53. Hunt *et al.* (*Op. cit.*, pages 35 to 36) point out that forced accommodation carries insecurity with it;

Other criticisms centred on the insecurity of the arrangement for the child, the carer and the social worker. Abolition of the 28-day notice period required by the previous legislation was the key criticism here, since it exposed placements to the threat of disruption. In reality, attempted on-the-spot removal may not be a very frequent occurrence; there was none in the sample. But the effect of fear itself should not be under-estimated. Thus a number of local authority personnel argued for the restoration of a notice period. Interestingly so did one lawyer who argues that accommodation would be used more if there was a period of notice:

The real weakness is that *one can't prevent the parents' right to have the child home and undo*, at very short notice, whatever arrangement has been made. I think in that situation it's understandable that the local authority say 'Well, yes, she can agree to accommodate, but for how long?' I think it would reinforce agreements if the accommodation arrangements can be such that ... parents couldn't simply turn round and take them out of care without giving at least 7 days' notice. (*my emphasis*)

54. But that is not how it is working in Northern Ireland. Here we have Trusts rationalizing that they are proceeding proportionately by responding to this turn of events (the assertion of the mother's right) by mounting an application to the Court for an Emergency Protection Order – while still withholding the child from his parent. This expediency has no basis in law. The only legitimate response is to return the child when requested and make the application to the Court, or else resort to Police Protection for the child.
55. Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms states;

Everyone has the right to respect for his private family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for

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

56. It is to be noted that all *caveats* set out in Article 8(2) are predicated upon the interference being in accordance with the law. Thus, one cannot rely upon a worthy motive, such as the protection of the health of a child, unless the action is itself in accordance with the law. One cannot begin to consider whether the action of the public authority in question was proportionate and necessary in the interest of protecting the child unless one finds first that it was authorised by law. There is no margin of appreciation afforded to a Trust in this situation. Trusts need to understand better that to breach fundamental human rights raises the possibility of judicial remedies under Section 8 of the Human Rights Act 1998.
57. More than that, where the Trust keeps a child contrary to the wishes of the care parent and without lawful authority, it may well render itself liable, not just to a claim for damages under the 1998 Act, but also to civil action under the tort of false imprisonment. Most especially, Trust managers owe it to their staff to have particular regard to the common law offence of false imprisonment whereby, conceivably, a prosecution under criminal law might result. In Rahman (1985) 81 Cr App R 349 a conviction for false imprisonment was upheld where the Appellant had taken his 15-year-old daughter from her foster parents against her will. In essence, he had overstepped his right as a parent to exercise normal parental control. That of course is a case in which the person who removed the child had at least parental authority in the first place. All this is to say that some misbegotten notion that a Social Services Trust which has no parental responsibility for a child may keep him from his parent on the strength of a previous consent now withdrawn, and while rushing for a court order, is unlawful.

*The Application for an Emergency Protection Order*

58. To return to the train of events, Mrs. C did not address the right of Mrs. A to have her child returned to her and instead focused on urging her, once again, to consult with a Solicitor, as to the situation generally. Mrs. A, after some time, eventually agreed to see a Solicitor, where Social Services had agreed to meet her concerns about costs by funding a one-hour consultation (an unnecessary provision, as it happens). Unfortunately, the Solicitor identified did not wish to take the case and, within an hour or so of learning this, I was told, Mrs. C and Ms. D were in chambers, seeking an Emergency Protection Order (an EPO). B, meanwhile, remained with his foster carers.
59. When the Social Workers attended before me on 30<sup>th</sup> June they brought with them Forms C1 (Application for an Order under Article 63) and Forms C8 (Supplement for an Application for an Emergency Protection



Order). They were each completed in detail. Given what this entailed by way of liaison with the Directorate of Legal Services I have serious reservations that all this could have been set up – and an attendance at chambers arranged - within an hour. On the other hand, while the case was based to a large extent on the events of the previous weekend, with the Emergency Social Worker closely involved on Saturday, 24<sup>th</sup> June, and the Assistant Principal Social Worker extensively involved in the pivotal decisions made next day, Sunday, it was notable that no Report from either was tendered to me. One would have expected that such Reports would have been completed at some point during the ensuing week. Indeed, one would have thought that the Reports would have been before the Looked After Child Review on the intervening Thursday.

60. More glaringly, Mrs. A was absent at the Hearing of the EPO application on Friday afternoon. Enquiries established that she had not been informed of the Hearing appointment, although I was told she was informed that an Emergency Protection Order was being sought. It was a mere incidental that neither Mrs. C nor Ms. D had heard tell of the judgment in A Trust v M. That judgment, delivered by this Court on 7<sup>th</sup> December 2005, did not purport to lay down any new law, but merely to assist in disseminating the relevant law, as authoritatively declared by Munby J, in particular, in X Council v B (Emergency Protection Orders), delivered on 16<sup>th</sup> August 2004, first reported in [2004] EWHC 2015 (Fam) and again at [2005] 1 FLR 341.

61. For present purposes, I need only re-iterate the following from the list of requirements laid down by the Court in X Council v B with respect to the presentation and conduct of applications for Emergency Protection Orders;

(ii) Both the local authority which seeks and the FPC which makes an EPO assume a heavy burden of responsibility. It is important that both the local authority and the FPC approach every application for an EPO with an anxious awareness of the extreme gravity of the relief being sought and a scrupulous regard for the European Convention rights of both the child and the parents.

(vi) The evidence in support of the application for an EPO must be full, detailed, precise and compelling. Unparticularised generalities will not suffice. The sources of hearsay evidence must be identified. Expressions of opinion must be supported by detailed evidence and properly articulated reasoning.

(vii) Save in wholly exceptional cases, parents must be given adequate prior notice of the date, time and place of any application by a local authority for an EPO. They must also be given proper notice of the evidence the local authority is relying upon.

(viii) Where the application for an EPO is made ex parte the local authority must make out a compelling case for applying without first giving the parents notice. An ex parte application will normally be appropriate only if the case is genuinely one of emergency or other great urgency - and even then it should normally be possible to give some kind of albeit informal notice to the parents - or if there are compelling reasons to believe that the child's welfare will be compromised if the parents are alerted in advance to what is going on.

62. The application for leave to proceed with the application for an Emergency Protection Order late on Friday afternoon was refused because I could find no sufficient reason why Mrs. A should not be given notice, even informally, of the proceedings and thereby afforded her right to attend and dispute it. As already mentioned, I directed instead that the application be listed before a panel sitting next in the Youth Court on the following Tuesday, 4<sup>th</sup> July. The Trust continued to withhold B from his mother.
63. Thus did the matter come before a Family Proceedings Court for proper consideration. I have already detailed much of the evidence which was then taken from Mr. E, Ms. D and Mrs. F. The panel then heard from Mrs. A, through her interpreter and what follows is her version of events.

#### *The Evidence of Mrs. A*

64. Mrs. A testified that she had got a message that her son had hurt another's daughter, causing bruises to her leg. Mrs. A was in the bedroom of the family apartment when she heard of that. She challenged B, but he first denied the incident and started crying. She told him to tell the truth, since there would be no-one else but this other parent to look after him when she was out at work. Her partner, Mr. L, took B to their bedroom, saying that he would have a word with the boy. Mrs. A proceeded into the living room and listened to music.
65. Her partner, she knew, had beaten B, but Mrs. A did not know with what. B had already been crying, so she placed no particular significance in the fact that he was doing so still when he emerged from the bedroom. He proceeded to his own bedroom and went to sleep. It was Sunday night, when B was having a shower, that Mrs. A first saw that his shoulder was covered in marks and she realised that he had been hurt.
66. Mrs. A described herself as very nervous at this discovery. B told her that he had fallen, but she told him that he had to tell her what happened; that she was there to protect him. B then admitted that Mr. L had caused the injuries. She put cream on his back. Mrs. A admitted that she did not challenge her partner about this, but did tell his sister when visiting her at her house next day, Monday.

67. The Police came at 9.00 am the following Saturday. They told her that B had telephoned them to report that he had been beaten. B denied that. The Police told Mrs. A that they would see B anyway, so she let them. They woke him and saw that his back was very badly hurt. They asked how it had happened and he replied that he had fallen. Mrs. A urged him to tell the truth, but he continued to deny the real cause and she shouted at him before he finally told the Police how it had really happened.
68. Mrs. A told the Police that she had been at home at the time of the incident. She also informed them that Mr. L sometimes slept there and that he kept clothes in the apartment. The Police told her to gather up all the clothes – that he was not to return. She pointed out that he had a key and they went to his place of work and retrieved it.
69. Mrs. A went down to the Police Station for the medical examination and signed a Statement about the assault. She got home at about 6.00 pm. The Police returned later to see that everything was alright and to check that Mr. L had not come back. A Social Worker followed the Police and then another Social Worker also came later that same night.
70. On Sunday morning, next day, she went up to MacDonald's (the fast food outlet) and then returned home. Mr. E arrived and went to see B. Two Police officers took the boy away, maybe to the toilet. They asked B questions and then went away.
71. At around midnight Mrs. A was in bed. When the door was knocked, she thought it might be Mr. L, but she eventually answered it. The visitors identified themselves. It was very bad. She could do nothing; they took B away, leaving her in tears. She was in a panic. She left and went over to a friend's house. That took an hour, there being no taxi available. She slept there. Mr. E had said that he would be back on Monday, but she had pointed out that she would not be there.
72. Mrs. A further testified that, during the meeting on Monday, she could barely understand the interpreter, but Mr. E and Mrs. C started to explain why they took B. She knew she could have challenged them but did not. She pointed out that she also had been beaten by Mr. L. She gave the Social Workers B's papers and told them that if they did not give B back they could keep him.
73. Mrs. A asserted that Mr. L had left for Barcelona and that she did not have an address for B's father in Portugal. B had a ticket to return to his father at the end of the week. She was never asked to sign a written consent to B's accommodation, neither at the weekend, nor on Monday.

74. Mrs. A' account of her reunion with B on Wednesday conceded that she did not speak to her son. To her, it looked like he was in prison. She was very down and she conceded that the failure of the encounter was her fault. She added that she only had a daughter now and that was what she was now worried about. As for Mr. L, she had last seen him on the Sunday of the initial incident.
75. Under cross-examination by Mr. Brady, for the Trust, Mrs. A asserted that she did not know what her partner would do. He had been violent to her previously – but just once. She had confiscated her son's play station and had told him he was going back to Portugal. He was already crying after that. She did not believe that he was going to actually beat her son. For her own part, she did not believe that a child should be beaten; she had only said to the Social Worker that people smacked, not beat, children in Portugal.
76. B had behavioural problems. She had to start work at 6.00 am each working day. She could not get anyone to look after him.
77. She did not speak to B after he had received the beating. Mr. L had simply said that B had promised that he was going to behave. The next day, she saw blood on B's shirt. She did not speak to Social Services about it, although she had known Social Services from before.
78. Mr. L took B aside, but her son forced her partner to beat him because he continued to deny what he had done.
79. Mrs. A claimed, further, that she had in fact told Social Services on the following Wednesday (28<sup>th</sup> June) that she wanted B back. She explained that if they were not going to do that, then she was going to go back to look after M. She was being cared for in Portugal presently by her paternal grandmother, but that lady was going to Africa and there would otherwise be no-one looking after her.
80. As to the notion of her remaining, in order to work on having B returned, it was going to take months and she had "lost interest".
81. Mrs. A denied that she was asked to see B on Monday. She could not remember whether she had been asked on Tuesday. She did see him on Wednesday and admitted that she had not reacted well.
82. For my own part, I questioned Mrs. A more closely on this matter of her involvement in the incident on 17<sup>th</sup> June. In short, she placed herself in the living room; she was upset, pacing up and down, with the door open. She claimed that there was no shouting, no screaming – that she heard nothing untoward. The usual bedtime routine would be that she

would have him say his prayers and gives him a goodnight kiss; he asks her to bless him and he sometimes then teaches her a few words in English. That night, none of this occurred. He had simply made his way to bed.

### *Conclusions on the Evidence*

83. I have to state that the Panel, when it withdrew to consider the matter, had no difficulty in finding that the evidence of Mrs. A was unworthy of belief in several respects. At its heart, it was simply beyond belief that, in the relatively small apartment, when B was being beaten – and beaten with exceptional violence – his mother heard and saw nothing, either during or after the event, to cause her to recognise that he was being subjected to serious violence. That his sufferings on that occasion constituted serious physical injury – physical harm – was beyond question. We rejected unreservedly the efforts of Mrs. A to exonerate herself. On the balance of probabilities and more, we found that she knew that Mr. L was going to beat her son, she knew what he was doing when those serious injuries were being inflicted and if she did not see it happen, she would certainly have heard it.
84. The evidence as to the findings on forensic examination, though hearsay, we accept and deduce that Mrs. A failed in her obligations to have her son afforded medical care. On her own account, the wounds drew blood and left extensive injuries in the area of his shoulders and back.
85. We also found that, though it may not have been her honest opinion, she asserted to Social Services that it was culturally acceptable in Portugal to beat children in this way, a self-serving proposition, needless to say, which we would not be prepared to entertain merely for the stating of it.
86. We accepted the evidence of Mr. E and the evidence with respect to the events during the preliminary parenting assessment (for that is what it was) on Wednesday, to the effect that there were clear and unequivocal grounds for serious concern that the attachment between B and his mother was poor (or worse) and that it involved emotionally abusive conduct on the part of Mrs. A. We accepted as entirely genuine the oft-repeated opinion on her part that B had brought the beating upon himself. Overall, in the events over the course of that week following intervention, Mrs. A showed no real insight into the serious concerns and peppered throughout it, and even during her evidence in Court, was a striking willingness to express outright rejection of her son and an intention to abandon him in the face of any further challenge. We did have a care about the difficulties arising from the fact that Mrs. A expressed herself in a foreign language and through an interpreter. We were mindful of the fact that this could at times produce a blunted

version of her self-expression. Nonetheless, we were satisfied the Court had heard her accurately in all material respects.

87. Within the terms of Article 63 of the 1995 Order we were satisfied that the Court had reasonable cause to believe, on the evidence then before us, including the direct testimony of his mother, that B was likely to suffer significant harm if he did not remain in the place where he was presently being accommodated.
88. We were satisfied that Mrs. A had been afforded a fair hearing, within the terms of her Article 6 Convention rights. I was less sanguine in respect of B's rights in that regard and I was mindful of the requirements contained in Article 12 of The United Nations Convention on the Rights of the Child. He was not represented before the Court, due to an unfortunate oversight whereby Notice to Guardian Ad Litem Agency, pursuant to the Direction I gave on 30<sup>th</sup> June, had not stated the date on which the inter partes Hearing was to be listed. On the other hand, all that we had heard indicated that he was content to have been accommodated by the Trust and, most particularly, did not wish to travel to Portugal that week with a view to being returned to his father, as was his mother's intention. At no time in her evidence did Mrs. A suggest that B himself wished to go back to Portugal; her contention was simply that there was no other viable option. I also took the view that in making any Order it would cover only the period from that Tuesday until the Thursday next following, i.e., 6<sup>th</sup> July. It was intended that an application for a Care Order be then moved, for which purpose provision was in place for B to be more properly represented. Equally, there is the nice point that, whereas the Court is required to have regard to the Welfare Checklist, including the ascertainable wishes and feelings of the subject child, when making a determination under Part V of the 1995 Order, including a Care Order, the requirements set out in Article 3 of the 1995 Order do not apply to an Application for an Emergency Protection Order under Part IV, Article 63. In short, I took the view that any derogation from B's Convention rights in the circumstances of this emergency situation would be cured by providing for a more fully compliant Hearing in two days' time. In all of this, one kept in mind the precept which is also contained in Article 3 of the 1995 Order – Article 3(1) – that the child's welfare is to be the paramount consideration for a court in determining any question with respect to the upbringing of a child.
89. The Panel was satisfied that the harm from which it was necessary to protect B was substantial, specific and imminent. Were he to be returned to his mother he would, we believed, be subject to further significant emotional abuse. He would most likely be subjected to continued withholding of affection, continued verbal abuse, whereby his

mother would upbraid him as a bad child, with consequent serious harm to his self-esteem, and that she would continue to seek to imprint upon him a perverse belief that it was his fault that he had received a beating at the hands of her partner on 17<sup>th</sup> June. In addition, his mother would proceed with plans to have him sent back to Portugal, within a matter of days, to an uncertain future at the hands of a father who was at best more disciplinarian, at worst more physically abusive, than Mr. L. The evidence strongly indicated that this was the subject of acute apprehension on B's part.

... there is substantial research evidence to suggest that the health and development of children, including their educational attainment, may be severely affected if they have been subjected to child maltreatment (Varma (ed), 1993; Adcock and White (eds), 1998; Jones and Ramchandani, 1999).

*Framework for the Assessment of Children in Need and Their Families* (Dept. of Health; Dept. of Educ., Home Office (London) 2000, 6<sup>th</sup> Imp., 2006)

90. The Court was however not blind to the circumstance whereby Mrs. A was clearly a woman under very great pressure. It was apparent that she carried a very heavy burden in her struggle to maintain herself and her family through work not likely to be particularly well-paid, in a foreign country, through a language of which she had very limited understanding and, in particular, working highly unsocial hours. Anything which threatened to collapse her associated child care arrangements was bound to be seen by her as extremely grave. "Living on a low income in a run down neighbourhood does not make it impossible to be the affectionate, authoritative parent of healthy, sociable children. But it does, undeniably, make it more difficult" (Utting, 1995, p. 40, quoted in *Framework for the Assessment of Children in Need and Their Families* (*Op. cit.*, p. 11). One also had to bear in mind the caution endorsed in *Social Work Decisions in Child Care, etc.* (*Op. cit.*, p.8) back in 1985 and which, of course, is equally pertinent to judicial decision-making in this field; "It seems probable that social workers quite often misinterpret natural parents' behaviour at the time of admission because the psycho-social study of the family is not sufficiently thorough ... we have some painfully vivid examples of cases where parents were considered rejecting or uncaring because the problems they were facing had not been properly understood" (*Long Term Foster Care, Rowe et. Al.*, 1984). Nonetheless, as is my practice in circumstances where the Court is authorising the removal of a child from his parent(s), I embarked upon detailed comment to Mrs. A with regard to the mid-term implications of the Emergency Protection Order, intending to emphasise that the intention for all concerned was to effect a rehabilitation within the family and stressing the urgent need to work with Social Services toward that end. In response, Mrs. A shot back, in a tone of anger more than anything else, "How am I to look after a child when I have to start work at 6 o'clock in the morning?" On the plain of

affection, that was a singular response, pointing to the need for a careful and sophisticated assessment programme.

*The Ensuing Application for a Care Order*

91. With the Emergency Protection Order in place from 4<sup>th</sup> July, the initial Application for a Care Order came before the regular Family Proceedings Court on Thursday, the 6<sup>th</sup>, whereat the presiding Resident Magistrate was my colleague, Mr. McNally. As well as the Trust and Mrs. A being then represented, there was also representation for B, in the person of the Guardian as Litem, Mr. Michael McCluskey, instructing Mr. McAllister, Solicitor. The Court accepted the submissions by all parties to the effect that it was unnecessary to re-hear the evidence, since there was no material difference between the test used by the Court on 4<sup>th</sup> July, for the purposes of an EPO, under Article 63, and that to be used in respect of an Interim Care Order, under Article 57(1), both being concerned with “reasonable cause to believe” that the child was otherwise likely to suffer significant harm, as opposed to the test for a full Care Order under Article 50, whereby the Court had to be satisfied that the child is otherwise likely to suffer significant harm by reason of either inadequate parenting or by reason of being beyond parental control. Mr. McNally ensured that the Panel read all the Reports and afforded Mrs. A the opportunity to give evidence, should she so wish. In the event, Mrs. A declined to give evidence and the Application for an Interim Care Order was granted for 4 weeks, the matter adjourned to 3<sup>rd</sup> August accordingly and the Trust directed to file a Schedule of Assessments by 27<sup>th</sup> July.
92. The papers considered by the Court on 6<sup>th</sup> July consisted of;  
An E.S.W. Report from Ms. G, covering her involvement with the family on 25<sup>th</sup> June 2006 and dated the following day, plus an undated Report, signed by Mr. E but undated, both faxed to the Court on 5<sup>th</sup> July 2006.

It will be recalled that I had commented on the absence of any such Report, more especially from Mr. E, at the time of the Application for leave to proceed ex parte on 30<sup>th</sup> June. In any event, I can see no reason why those core Reports could not have been disclosed to the mother’s representatives in good time for the inter partes Hearing the following week, on 4<sup>th</sup> July, and no reason was proffered to the Court.

A Report for Hearing on 6<sup>th</sup> July, compiled by Mrs. C, Social Worker, and containing provision for signature on the last page by both her and Ms. D, Senior Social Worker (though in fact, as all too commonplace with such Reports, not actually signed at all).



A Care Plan in respect of B. The Date of Plan is given as 29<sup>th</sup> June (the Thursday) on the title page. This may be the actual date upon which work on preparation for a Care Order commenced.

*The Emergent Plan*

93. On 17<sup>th</sup> July, foreshadowing a major turn in events, the Trust filed an Application for Directions, on notice to the other parties, seeking authority to share with the Portuguese Consulate and Social Services "... all reports prepared in respect of the on-going case before the Court so that it can adequately engage the assistance of the Portuguese authorities in the Care Planning for the child". That Direction was given by the Court, with my colleague Mr. McCourt, RM presiding, on 20<sup>th</sup> July.
94. When the matter came back before me on 3<sup>rd</sup> August, the Portuguese Honorary Consul, Mrs. Cecilia Whiteside, was permitted to attend. The Court was informed by Mr. Brady, for the Trust, that B remained in Trust foster care and that his mother sought to have him returned to her as soon as possible. She had reported to the Trust that she had a job which she needed to take up in Portugal urgently. The Honorary Consul had informed the Trust that the Portuguese Government was keen to have both citizens returned. The Portuguese authorities, Mr. Brady explained, had kindly indicated that their Social Services could become involved, upon Mrs. A and B returning home, but the child would be in his mother's care and the suggestion was that local Social Services would provide support to Mrs. A. On a scenario whereby B would be returned to his mother's care and fly back, local Social Services might meet them at the airport upon their arrival, or, then again, might simply carry out a home visit thereafter. The Trust, conversely, had a difficulty because it felt that B was at risk of significant harm under such arrangements. It did not wish to occasion offence to the Portuguese authorities, but the Trust felt that there were very real difficulties; it did not think that it would be fulfilling its statutory obligation if it should consent to B being returned to Portugal on the basis which was being suggested. Discussions, however, were at an early stage as to what might be put in place in Portugal, should B be returned and there needed to be certainty for the child. By the same token, the Trust accepted that there were difficulties about carrying out assessments if the mother were in Portugal and the child in Northern Ireland.
95. On B's part, the Guardian ad Litem had concerns about the quality and nature of the relationship between the child and his mother. The Guardian ad Litem had met the boy some two weeks ago; he had seemed a very warm and friendly boy, but also reserved. The Guardian ad Litem was due to observe contact next day.

96. On behalf of Mrs. A, it was stated that she planned to return to Portugal next week. She had secured employment in Cape Verde. Her other child, M, was over in Portugal and there would otherwise be no-one to look after her. Portugal wished very strongly to see the child returned.
97. These accounts made apparent that the focus of attention had moved to the relatively narrow issue as to whether a domestic process under The Children (NI) Order 1995 should be continued, or whether, instead, the child should be permitted to leave the jurisdiction and the current enquiries terminated. In that, as in all other issues under our domestic law, the key consideration should be B's best interests. To gauge those, in turn, it was necessary to take account of his wishes and feelings (pursuant to Article 3(3)(a) of the 1995 Order).
98. There then followed a focused enquiry as to just how quickly one could feasibly convene a hearing on the proposal that the child be removed from this jurisdiction to Portugal. Key to this was the speed with which, first, the Trust could settle its position, in light of any further enquiries with the Portuguese authorities and, more especially, how fast the Guardian Ad Litem could both appraise these and liaise with B before settling his position on the proposal. The upshot, on 3<sup>rd</sup> August, was that 1<sup>st</sup> September was identified as the first practical date upon which a Hearing on the issue could be convened, dependent upon a variety of steps falling into place. The Court therefore granted a further Interim Care Order for just 3 weeks, to 24<sup>th</sup> August, with a view to confirming 1<sup>st</sup> September as the Hearing date, or, as the Direction stated, to timetable a further Directions Hearing, there being, as yet, no Application before the Court for termination of the Care proceedings.
99. By written Application in Form C2 dated 9<sup>th</sup> August 2006 Mrs. A duly made application for Discharge of the current Care proceedings on the basis that she intended to return to Portugal and wished to take her son with her. This was listed before the Court on 24<sup>th</sup> August. At that point, the Trust advised that it was awaiting the outcome of a Report from the Portuguese Social Services, through the Consulate, by the end of the following week and indicated that a Hearing on the issue might be feasible on 14<sup>th</sup> September. On Mrs. A's part, she had meanwhile visited Portugal and was proposing that a family friend look after B. She had contacted local Social Services personally and they had approved that placement. The same friend was presently looking after her daughter M while the paternal grandmother was in Africa, due to return on 14<sup>th</sup> September. Mrs. A was no longer employed. She had been due to start work in Portugal on 7<sup>th</sup> August, but the arrangement had been revoked in light of her presence in Northern Ireland. There was a prospect of it being reconsidered if she were able to return. She was under financial pressure and, further, would be homeless in

Northern Ireland from 30<sup>th</sup> August. She recognised that matters would become hugely complicated, were she to return to Portugal without the child and had given a commitment that she would stay here until matters were resolved. Time, however, was of the essence. She was anxious to have her application for discharge determined as soon as possible. Much now turned upon the Report from Portuguese Social Services, but the Trust and its representatives were not allowed direct communication with those Social Services and had to work through the Consulate. In all those circumstances, I ruled that the date of 1<sup>st</sup> September would stand for the intended Hearing of the Discharge application and a special Family Proceedings Court empanelled for that purpose, but with the Trust to confirm, no later than noon on 30<sup>th</sup> August that the Report from Portugal was received and that the Hearing could therefore proceed.

100. In the event, a Social Report dated 23<sup>rd</sup> August 2006 and prepared by M. José Delgado was duly supplied by the Portuguese Consulate General in Manchester in time for a Hearing on 1<sup>st</sup> September. M. Delgado had been able to interview Mrs. A in Portugal, where she was staying at the home of her mother-in-law, Ms. N, who lived there with her husband and two underage grandchildren, for whom Ms. N already had care. At the time of the home visit, on 17<sup>th</sup> August 2006, Mrs. A's parents-in-law were on holiday in Cape Verde until 11<sup>th</sup> September. While Mrs. A planned to return on a permanent basis to Portugal, her proposal in respect of B was that he should be placed in the care of her sister, Ms. O, and her husband, Mr. P. While Mrs. A informed local social services that she and her husband were separated, Mr. Delgado suspected that they were likely to get together again, given that Mrs. A "still likes him" and was staying at his parents' home. In view of the perception that there existed both a physical and emotional risk to B, local social services decided to interview Ms. O.
101. Ms. O lives with her partner of six years, Mr. P and her children, Q, aged 13, R, aged 11, and S, aged 2. The youngest child is also the daughter of Mr. P, while the father of the two older children is a previous partner. Ms. O and her family were due to move from their present rented accommodation to other premises on 1<sup>st</sup> September. The family unit was considered to be stable and harmonious.
102. Mr. Delgado's Report disclosed that B had lived with his parents for the first year of his life, whereafter his mother moved with him to rented accommodation. Mrs. A first moved to Northern Ireland when B was 2 and he was then accommodated by a maternal aunt and uncle, Mr. X and Ms. O, where he remained until 2004. At that point, Mrs. A brought him to Northern Ireland to live with herself and Mr. L.

103. From their investigations, Portuguese Social Services had concluded that there remained a risk that Ms. A would get back together with Mr. L. On the other hand, the maternal uncle and aunt had already cared for B for a substantial period of time. They would welcome his return to their care and would enroll him at school and the local health centre. Ms. O understood that if B did come to live with her his contact with his mother would have to be approved by Social Services, who would continue their involvement with the family.

104. The Portuguese Honorary Consul, for her part, in a letter to the Court dated 31<sup>st</sup> August, submitted that B could now be released to return to his homeland, bearing in mind that;

There was identified a foster home with which he was familiar and where he would be well cared for;

Earlier issues surrounding the mechanics of transporting B home had now been resolved, in that Northern Ireland Social Services would accompany him on the journey;

Portuguese Social Services would continue to monitor B's well-being, once he had been returned;

The proposal was in accordance with B's wishes and he would be starting back to a local school

Whereas it had not been possible in the time available to have a report upon B's father, he did not have parental rights over the child and was accorded no role unless he made an appropriate application to the Portuguese Courts, where, as here, the mechanisms were in place with regard to common principles of child protection and with the wishes and feelings of the subject child likewise given prominence.

105. By 1<sup>st</sup> September, in fact, the Trust had advanced matters to the point at which it now wished, on its own part, to file an Application pursuant to Article 33 of the 1995 for leave to arrange for B to live in Portugal. That Article 33(3), in particular, reads;

(3) The court shall not give its approval under paragraph (1) unless it is satisfied that—

- (a) living outside Northern Ireland would be in the child's best interests;
- (b) suitable arrangements have been, or will be, made for his reception and welfare in the country in which he will live;
- (c) the child has consented to living in that country; and
- (d) every person who has parental responsibility for the child has consented to his living in that country.

106. The Trust's application was supported by Mrs. A and also by the Guardian ad Litem, who was able to confirm B's consent. The final piece was put in place by the Honorary Consul, who produced to the Court a notarised Consent executed by Mrs. A and expressed in

irrevocable terms, whereby she consented to her son being placed in the permanent care of her sister, Ms. O and husband.

107. In those circumstances, the panel had no difficulty in approving the Trust's proposal to allow B to leave for Portugal and so ordered.

108. This constitutes a judgment on parental responsibility and I therefore directed the Trust to present for signature a form of Certificate referred to in Article 39 of Council Regulation (EC) No 2201/2003 for my signature and thereafter to have both it, and a copy of this judgment, forwarded to the appropriate authorities in Portugal.

Dated this 24<sup>th</sup> October 2006

John Meehan,  
Resident Magistrate  
Chairman of Dungannon Family Proceedings Court.