

Submission by Advocate T.V.R. Hanson

I refer to the Access to Justice Consultation which I understand remains open for further comments. I hope that this submission will also be accepted.

One of the key components being considered in Jersey is improving access to justice in relation to children and family matters. I note that in England that there are various recent proposals in this respect, including those made by the Children and Vulnerable Witnesses Working Group. Hopefully, such work will also inform the process in Jersey although I appreciate that in England there are particular problems caused by the swingeing legal aid cuts that have operated over many years there.

The object of this letter is to suggest a reform in Jersey that would assist children that are the subject of care or supervision proceedings but would not significantly affect funding.

The case of *Re B (Separate Representation of Minors)* 2010 JLR 387 brought about a change in the practice of the Royal Court when considering whether or not to appoint a lawyer for a child that was subject to such proceedings. In essence, it restricted such appointments and also encouraged guardians (who had social work experience but no legal qualifications) to advance that child's interests without the advantage of a lawyer also being appointed to represent the child in court. Children, therefore, even where they could be permanently separated from their parents might not have a lawyer appointed to act for them.

A critique of that decision has already been published in the 2011 Jersey and Guernsey Law Review and need not therefore be repeated here.

(See https://www.jerseylaw.ie/Publications/jerseylawreview/feb11/JLR1102_Hanson.aspx)

The approach in *Re B*, however, was expressed in the judgment to be subject to review were Jersey to ratify the United Nations Convention on the Rights of the Child which it has now done. We also now have a new system of funding for such cases. If one were to try and preserve the spirit of the case of *Re B*, therefore, it seems to me that it would not be difficult to arrive at a position where a lawyer is appointed in tandem with a guardian at the outset of every case that a child is subject to a care/supervision order. The lawyer would, however, be required to provide an initial opinion to the Court as to whether or not it is considered appropriate for a lawyer to continue in that role and how that role might evolve. At least that way each child would receive some legal representation at the outset, as opposed to the current system which sees almost every child unrepresented at the outset. Guardians would further not be placed in an invidious position of doing the best that they can and feeling uncomfortable at having to seek legal advice.

In advocating this reform, I have to confess that I would hope that children would obtain more legal representation than less, but this would simply underline the point that in some cases children are not being legally represented when they should be, or if they do have a lawyer appointed eventually, it's all rather late in the day, either shortly before a trial or when key decisions have already been taken.

Given that we have signed up to the UNCRC, a report will be going to the UN next year as to whether or not we are complying and furthering the rights of children. The suggestion that I make above might therefore be useful in Jersey demonstrating that it is meeting its obligations under that Convention. It should also improve outcomes for vulnerable children caught up in public law proceedings.

Yours sincerely

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