

JERSEY / JUDGMENT

JS and BS [2005] JRC 108 (29 July 2005)

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judgment

deputy bailiff: 1. This matter concerns an application by the Health & Social Services Committee ("the Committee") to free two children for adoption. The Court heard the case on 4 th July, announced its decision on 7 th July and now gives its reasons. The factual background 2. Mr and Mrs S ('the father' and 'the mother') were married on 6 th May 1995. The mother already had one son, C born on 10 th May 1994 of another father. The father had two daughters from an earlier relationship who lived in England with their mother. The mother and father subsequently had three children together, V (aged 9) born 13 th October 1995, J (aged

- 8) born 11 th May 1997 and B (nearly 5) born 14 th August 2000. Both the father and the mother have learning difficulties; those of the father are quite severe. 3. The family first came to the attention of the Children's Service in 1997 on account of the mother's difficulty in managing the children. However at that stage she did not welcome any interference and refused parenting courses and help by way of Family Centre involvement. The Children's Service did not press the matter at that time. 4. The files were re-opened in March 1998 when the children's nursery reported that C had injuries to his face. The mother said that V had caused these but a month later the nursery reported that bruising had now occurred to the face of V. Since then all of the children have sustained what were considered to be suspicious injuries. The report of Mr Davenport, the children's officer, dated 18 th June 2003 lists twenty such incidents between March 1998 and April 2003 and refers to additional incidents identified by the nursery in relation to V. 5. Both parents have denied hitting the children and the three older children have changed their stories as to how the injuries were caused. In the event police investigations have proved inconclusive but, either the children were being abused by one or more of their parents or, their injuries were being caused through wild and rough play indicating a distinct lack of parental control or adequate supervision. 6. Certainly there has been a history of heated disagreement and some violence between the parents. Thus on one occasion the father was charged with assault upon the mother. After spending some time on remand in custody he was eventually made the subject of a probation order. The parents have separated on occasions but have invariably reconciled thereafter. 7. The three boys were placed on the Child Protection 'At Risk Register' in May 1999 under the category of 'physical abuse', which in September 1999 was amended to include 'emotional abuse'. B's name was added in December 2000. However, following an

apparent improvement in the position, the children were removed from the At Risk Register in September 2002. 8. According to Mr Davenport's report of June 2003 it became more and more apparent that the children knew few boundaries, had few social skills and were wild and uncontrolled in the home. The mother had extreme difficulty in controlling their behaviour and foul language was used by the children. The father did not assist with childcare. He worked long hours and also spent considerable time drinking in public houses. 9. On 9 th June 2003, at a Child Protection Case Conference, it was decided that the names of all four children should be put back on the At Risk Register and it was further agreed that a Core Assessment should be undertaken on the family over the coming three-month period. 10. However events forced the hand of the Children's Service. The next day the Service received a report from the children's school. This stated that the mother had telephoned that morning in order to say that the children would be late for school because J and V had 'done a runner' from the home. They had apparently been caught by a member of the Honorary Police. The written report from the school (which followed) made it clear that, upon their arrival at school, J and V in particular were completely out of control. The report of the head teacher concluded by saying "I was very shocked by the boys' behaviour this morning. They were a danger to themselves and others and totally out of control. Their reaction and lack of feeling towards their mother was chilling. I am very concerned about what will happen at the end of the school day." The report disclosed that the children's breakfast had been thrown out of the car window by J on the way to school. 11. Mr Davenport then visited the home. V was not there but he found the remaining three children completely out of control. J used quite outrageous language towards the mother, who was unable to control the situation. The two boys were so full of frustration and rage that they could be called wild. They appeared to be a danger to themselves and to others. 12. The next day arrangements were made, with the parents' consent, for the children to be taken into voluntary care. On 20 th June, based upon Mr Davenport's report of 18 th June, the Royal Court made an interim care order in favour of the Committee in respect of all four children. 13. J and B were immediately placed in the care of a foster family where they remain to this day. C and V were placed separately. The Core Assessments were undertaken and the following is a summary of the conclusions in respect of all four children:- "1. The physical, social and emotional development of all four children has been affected in varying degrees by both parents' severe lack of parenting skills and understanding of child development, rather than willful neglect. 2. This lack of skills coupled with an incapacity to provide a warm, stable nurturing environment has resulted in B and her siblings being severely at risk. 3. Basic physical needs have generally been reasonably provided for but the lack of routines, boundaries and understanding of development and emotional needs, coupled with [the mother and father's] unstable and often violent relationship, has been severely detrimental to the wellbeing of all the children who, prior to being taken into care, were completely out of the control of their parents. The parents state that they are now separated. 4. Relationships in the wider family on both sides are generally poor and they do not provide much in the way of additional support for the family. 5. Over a long period of time all the children have received bumps and abrasions mostly to the face. Despite a number of joint

Child Protection investigations it has not been possible to state that some or indeed any of these were directly caused by either parent. 6. As stated in the report to the Royal Court in June 2003, professional opinion believes that some of such injuries were caused by one or both parents. 7. If in fact some of the injuries had been caused through rough and unstructured play in the home by the children upon one another, this indicates a distinct lack of adequate controls or supervision by these parents. 8. However these injuries were caused it serves to show that lack of strategies, controls or perhaps due to severe frustrations experienced by these parents, at being unable to impose appropriate controls over their children, resulted in the said damage. Whichever the cause, liability rests with these parents. 9. Other than through access arrangements, the parents have made few enquiries to the professional agencies concerned about the children's welfare and progress." 14. In relation to J the Core Assessment found that he was self-contained and a loner in play who could be violent and aggressive and lacked empathy for others' needs. The Assessment also found that J's relationships with others and his social skills had improved whilst being in foster care and that, although he was still underachieving academically, he had made steady improvement since his reception into care. As to B, her lack of progress whilst living with her parents had given cause for concern. She was functioning below expected norms of development for her age and home visits and observations had described her as being under-stimulated and unresponsive. However, since her removal into foster care, she had made rapid progress in all areas of development i.e. potty trained within two weeks; weight gain to a point that was now considered satisfactory for her age; marked improvement in speech and listening skills; and no evidence of marks or bruising. 15. Mr Davenport prepared a further report dated 7 th October 2003 which confirmed that the children had improved in many areas. They seemed happier and the bruising and abrasions had ceased. The parents had had weekly supervised access meetings with the children. Initially they were late for many sessions but time keeping had improved after criticism. The report suggested that access had not proved encouraging. On most access days the boys had become agitated and very difficult for workers to control. Neither parent seemed able to engage constructively with the children. Chaotic patterns of behaviour often ensued and neither parent had been able to demonstrate any effective means of control. The report noted that neither parent had made contact with the various carers to enquire as to the children's wellbeing. Once this point was raised the mother phoned on one occasion but this was not a success as, according to the carer, the mother had discussed inappropriate things which had led to difficult behaviour from the children. When challenged with this the mother became quite aggressive and petulant and said that she would not telephone again. 16. The Committee returned to the Royal Court on 17 th October 2003 seeking a full care order. The report of Mr Davenport set out the results of the Core Assessments and described the improvement since the children had been taken into care. It stated that the Service would review the situation in New Year 2004 but if the parents were unable to demonstrate any improvement in their abilities to relate to and understand the changing needs of their children and their ability to control the children's behaviour and develop caring, loving relationships, the Service would look towards planning for permanency for all four children away from their parents i.e. look

towards adoption. Having considered the matter the Royal Court made full care orders in respect of all four children on the grounds that they were in need of care, protection and control in accordance with Article 27 Children (Jersey) Law 1969. The mother was legally represented before the Court and, whilst not consenting to the care orders, did not actively oppose them. 17. It had been agreed at a Case Conference on 15 th September 2003 attended by the parents that intensive parenting training courses would be undertaken by both parents. The mother did indeed undertake such a course in the latter part of 2003 although the father did not do so. Access continued as previously on a weekly basis until the end of December 2003. 18. On 22 nd January 2004 a further Case Conference, involving a number of different professionals, was held and the Court has seen the minutes of that meeting. It was reported that access had been very difficult and had been detrimental to the children. At the end of the meeting it was suggested that the Children's Service faced a dilemma as to whether to delay future plans for the children and make a further effort to try to see if there was any possibility of the children returning to the family or whether this would not be in the best interests of the children as they require stability and security within a loving family as soon as possible. The unanimous opinion of all those present at the meeting was that permanent plans needed to be made as soon as possible for these 'highly disturbed' children, who could not cope with any more disruptions. It was therefore decided that access should be discontinued and plans for permanency should be made for all four children. The Adoption and Permanence Panel approved the principle of adoption for J and B on 25 th May 2004 and adoptive parents were identified and approved by the Panel on 19 th October 2004. That decision received the approval of the Committee at a meeting on 4 th April 2005 when it resolved to apply to this Court for an order freeing J and B for adoption and dispensing with the consent of the parents. The current situation 19. At a hearing on 9 th June the Court felt that it did not have sufficient up-to-date information. It directed the mother and the father (if he could) to file affidavits, that the parents then meet with the Children's Service and that the Service file a supplementary report. This has taken place save that the father felt unable to file an affidavit in view of his learning difficulties. 20. According to the latest report of the Children's Service and the oral evidence given before us by the current children's officer, Ms Corfield (Mr Davenport having retired) the children continue to do well. The school reports confirm this. They are happy with the foster carers where they have been living since being taken into care in June 2003. However they cannot stay there much longer as the foster carers are not set up for permanent placement and a period of two years is really the maximum for which they are approved. The children are aware of the fact that the Committee is planning to place them with a 'forever family'. J has requested that he is placed with a family "who will not hit him". 21. The children have had increasing contact with the prospective adopters and, according to the children's officer, this is going very well. The prospective adopters are displaying commitment to the children and a strong knowledge and understanding of the children's needs. The children have not been told that the prospective adopters are their chosen 'forever family' but they may have guessed this and have both dropped hints that they would be very happy if this were to be the case. Neither child has asked about their birth parents other than J who asks for an apology from

his parents for being 'cruel'. 22. There has been no access since the end of 2003 but there has been a chance meeting between the parents and the two children at Portelet in June 2005. In her affidavit the mother accepts that, initially, the children did not hug her although they did hug the father. Subsequently she says that they did hug her and they talked and played games. However when she left, she did so quickly without hugging them goodbye as she did not wish them to see her crying. According to paragraphs 26-30 of the report of the meeting between the parents and the Children's Service on 23 rd June 2005, the version of events of Mrs T, the children's foster mother, is rather different. According to her, when she was told that the mother was talking to J in the play area, she went to see what was happening and saw J backed into a corner with the mother crouching down to him and holding his arm. As Mrs T approached she heard the mother say to J "You know who I am, don't you?" J was seen to shake his head. Mrs T said the mother then repeated this question to J three times and J replied " You are not my real mummy; you are Paula, why did you hit me ?" At the meeting with the Children's Service the mother denied that J had said this but agreed that J's response to her had been upsetting and that he did not seem to recognise her and did not want to hug her. We have not heard oral evidence from the mother or Mrs T on this matter and therefore make no finding of fact on exactly what happened. However it is clear that, even on the mother's case, it was not an easy meeting and, for whatever reason, she left without saying goodbye to the children. 23. The mother is now expecting another child by the father and the baby is due in about two months. The mother and father say that they are reconciled. The father has stopped drinking and is willing to go on an anger management course. Furthermore they are going to counselling at Relate. The Court has also received an affidavit from K G who was a victim support worker and rape counsellor for 2½ years. She has known the parents for about six years and used to see them regularly with the children prior to their going into care. She accepts that, in those days the father often seemed angry and upset when the family came to her home. She believes that this was due to his working long hours and drinking heavily. However, for the last six months, she has not smelt alcohol on his breath at any time and believes that he is genuine when he says that he has stopped drinking heavily. She is sure that the parents love their children and believes that the father, in particular, is now a very different character. She believes that the parents have not received the support which they should have received and that it would be very unfair for their children to be taken from them and adopted. She does not think that the parents were well served by their previous lawyer, a point to which we will come shortly. 24. J and B have had regular contact with C and V and it is intended that this should continue if the children are adopted. C is residing in a children's home and V is with foster carers. The Law 25. There is no dispute between the parties as to the applicable law. The Court has to ask itself two questions:- (i) Is it satisfied that adoption would be in the best interests of each of these two children? (ii) Is it satisfied that the mother and the father are withholding their consent to freeing for adoption unreasonably? 26. An authoritative explanation of the word 'unreasonably' in this context is to be found in *Re W*

- (1971) 2 All ER 49. The head note of that case reads:- "In withholding his consent to the adoption of his child a parent may be acting unreasonably with the meaning of S5(1)(b) of the Adoption Act 1958 even if there is no element of culpability or reprehensible conduct in his decision to withhold consent. The test of whether the refusal to give consent is unreasonable is an objective one to be made in the light of all the circumstances of the case and, although the welfare of the child is not the sole consideration, it is a fact of great importance." 27. The House of Lords approved a passage from the judgment of Lord Denning MR in *Re L*
- (1962) 106 Sol Jo 611 where he said:- "But I must say that in considering whether she is reasonable or unreasonable we must take into account the welfare of the child. A reasonable mother surely gives great weight to what is better for the child. Her anguish of mind is quite understandable; but still it may be unreasonable for her to withhold consent. We must look and see whether it is reasonable or unreasonable according to what a reasonable woman in her place would do in all the circumstances of the case." Lord Hailsham LC summarised the position in *Re W* as follows at 55:- "From this it is clear that the test is reasonableness and not anything else. It is not culpability. It is not indifference. It is not failure to discharge parental duties. It is reasonableness, and reasonableness in the context of the totality of the circumstances. But, although welfare per se is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if and to the extent that a reasonable parent would take it into account. It is decisive in those cases where a reasonable parent must so regard it." 28. Lord Hailsham went on to add this cautionary note at 56:- "I only feel it necessary to add on this part of the case that I entirely agree with Russell LJ when he said in effect that it does not follow from the fact that the test is reasonableness that any court is entitled simply to substitute its own view for that of the parent. In my opinion, it should be extremely careful to guard against this error. Two reasonable parents can reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. The question in any given case is whether a parental veto comes within the band of possible reasonable decisions and not whether it is right or mistaken. Not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable. There is a band of decisions within which no court should seek to replace the individual's judgment with its own." 29. We accept that these various dicta are an accurate statement of the law which we must apply. The parents' submissions 30. Mrs Colley put forward detailed written submissions and supplemented and developed these in her oral submissions. We would like to pay tribute to the quality and thoroughness of those

submissions.

She has only come into the picture fairly recently following a change from the firm of lawyers who had hitherto represented the mother ("the previous lawyers"). Miss Langlois, on behalf of the father, also presented written and oral submissions which supported and supplemented

those of the mother. For ease of reference we propose to refer primarily to the mother's submissions although we accept that these were adopted by the father and in effect represent the submissions of both parties. 31. The mother accepts that there can be no question of the children being returned to her care in the immediate future. Apart from a chance meeting at Portelet in June 2005, there has been no contact for over 18 months. Accordingly she asks that the case be adjourned for a reasonable period in order to allow her to re-establish contact with the children and to give her an opportunity to demonstrate that she has improved as a parent and would be able to provide a proper and loving home for the children if they were returned to her care in due course. She is supported in this request by the father. 32. She accepts that there has been justified concern about her care of the children in the past; indeed Mrs Colley points out that the mother herself acknowledged this by agreeing that the children should go into voluntary care on 11 th June 2003 so that these concerns could be dealt with and she could obtain assistance in improving her parenting skills. However she does not feel that she has received all the help from the Children's Service which she should have received. 33. She also accepts that there have been serious problems in the marriage in the past and that the father has been aggressive towards her. Thus they have separated at times; she went to the Women's Refuge on more than one occasion and she has obtained injunctions against the father. But they are now reconciled and are expecting a child. They have been attending meetings at Relate, the father has agreed to attend an anger management course and he has also dramatically curbed his drinking. The father is now also willing to attend a parenting course. 34. She does not accept that the father has ever injured the children. V has now been diagnosed by Dr Coverley, Consultant Child and Adolescent Psychologist, as having Tourette syndrome with additional symptoms of Attention Deficit Hyperactivity Disorder. She believes that V was responsible for some of the children's injuries and that the others were caused at school when they were being bullied. She did not of course know at the time that V was suffering from this syndrome. 35. She has made great efforts to improve her parenting skills. Once the children were taken into care she attended a parenting course throughout the latter part of 2003. However she was never given the opportunity to put this into effect because the Children's Service stopped access at the end of 2003 and decided to opt for a permanency solution in January 2004. 36. Her feeling of having been dealt with unfairly is compounded by the fact that she was not adequately advised by her previous lawyers. In particular, the consequences of not opposing confirmation of the interim care order in October 2003 was not adequately explained to her. She did not appreciate that this ended her parental rights and conferred them upon the Committee. Mrs Colley referred to a letter dated 8 th October 2003 from the previous lawyers, which sought the mother's instructions as to whether she wished to oppose the application for a final care order. We have not heard from the previous lawyers and it would therefore not be right to make a definitive finding as to exactly what they did or did not advise the mother. However we have not been referred to any letter which sets the position out clearly; on the contrary the letter of 8 th October might be thought to give a somewhat misleading impression in that it indicates that, even if the interim care orders are confirmed, the position would be reviewed in January 2004 when the children might be returned to her care. It ends by saying "I require your instructions as to whether you intend to oppose the application for the order to be confirmed or whether you would rather agree to the confirmation and take time to re-

organise your own life and comply with the recommendations made and then seek the children's return to you in January 2004." On 16 th October 2003 the previous lawyers wrote to Advocate Sharpe, acting for the Committee, confirming that the mother would not oppose confirmation of the orders but making it clear that she was committed to their return at the earliest opportunity, which she assumed to be January 2004. It does seem to us strongly arguable that, if that was the state of mind of the mother, the previous lawyers should either have sought an extension of the interim orders until January 2004 or should have opposed the confirmation of the orders in October. 37. The mother also submits that the Children's Office made up its mind that adoption was the right answer too soon. Thus Mrs Colley referred to Mr Davenport's report of 7 th October 2003 (prepared for the application for confirmation of the interim care orders) where he says the situation should be reviewed in New Year 2004 and that if the parents were by then unable to demonstrate any improvement in their parenting abilities, the Service would look towards planning for permanency for all four children away from their parents. Mrs Colley also refers to the fact that it was in January 2004, only three months after confirmation of the care orders, that a decision was taken to end access and to plan for adoption. She submits that this gave insufficient opportunity to the mother to show that she had benefited from the parenting course and was capable of looking after the children. 38. Whilst acknowledging that it is not entirely favourable to her client, Mrs Colley also drew support from the report of Ms Ireland (Cognitive Behavioural Psychotherapist at the States of Jersey Department of Clinical Psychology) dated 8 th June 2004 where she states that, although the mother could not care for all four children if they were returned to her, a trial period of caring for one child under the supervision of the Children's Service had not been tried. Furthermore, as access visits had been infrequent and supervised, this had been unrewarding for both mother and the children. The report also recorded the mother's feelings that there had been little identification of her requirements as a parent during the time that the children had lived with her. 39. In effect, Mrs Colley concentrated her fire on the question of unreasonableness. She pointed out that this was far from the typical adoption. In this she was strongly supported by Miss Langlois. They submitted that, in most of the contested adoption cases which the courts have dealt with, the child has been illegitimate and the application is therefore against the mother alone; the infant was taken from his mother shortly following birth or at any rate has lived with his mother only for a short period; and the mother has previously consented to the child being freed for adoption but later changed her mind and withheld consent. 40. They contended that this was a very different case. (i) The parents are married, albeit having been separated and being in the process of reconciliation; (ii) The children lived with their parents from the time of their respective births until they went into voluntary care i.e. six years in J's case and two years ten months in B's case. There was therefore a real relationship between these children and their birth parents for a reasonable period; (iii) There had not been any change of mind. The parents had always wanted to retain their children; (iv) This was not a case where the current foster parents were to be the adoptive parents. Thus there would be no question of a quasi-familial bond between the proposed adoptive parents and the children being broken if the Court were to refuse the application for adoption. 41. Mrs Colley also referred to the fact that the parents had not been legally represented at the meeting of 15 th September 2003 or the very significant meeting of 22 nd January 2004. The parents both had

learning difficulties and found it difficult to cope with a meeting of so many people discussing complex matters. Fairness dictated that they should have been legally represented. 42. In summary, Mrs Colley, supported by Miss Langlois, submitted that the parents were not acting unreasonably in withholding consent. They had not had a fair and adequate opportunity of showing that they could provide the relevant parenting skills and the Children's Service had decided too quickly that adoption was the only answer. The right course was to adjourn the matter for a suitable period so as to give the parents a chance to re-establish contact with their children and show that they had improved as parents and could provide a home for them in due course. There would be no real prejudice to the children in that, if this attempt failed, adoption could proceed at that time. The Committee's response 43. We propose to summarise the response of the Committee on only two aspects. Firstly, it is part of the parents' case that they were given insufficient support whilst the children were still living with them. As to that, Ms Corfield has outlined the support given to the parents in her report of 24 th June 2005. From this it appears that, in May 1998, the Children's Service arranged supported nursery placements for both C and V at Blanche Pierre Nursery, which is a specialist nursery and continued to offer the mother parenting advice throughout the time that her children attended there. In October 1998 a child and family support worker was allocated to help the parents with their parenting strategies and to provide support and advice. Further multi-agency support was provided between October 1998 and 2000 when the child and family support worker, a nurse therapist from the Child and Adolescent Mental Health Service and a health visitor all offered advice and support on a regular basis about parenting and family management. 44. In 2001 the Children's Service organised a parenting support course for the mother at Newways Family Centre. However the mother suspended this course after attending only two out of the five sessions offered. In the two sessions which she did attend she was negative about the advice offered. She admitted to shouting at her children and smacking them on their legs or bottoms as a form of control. In 2002 the Children's Service set up a further parenting course at Newways Family Centre for both the father and the mother. During this course a home visit was undertaken from which it was observed that the mother was very authoritarian in her parenting style, strongly reprimanding for extremely minor actions such as picking up a toy which was not theirs. The mother attended the parenting course of 2002 somewhat sporadically and then suspended it. The father was said to ridicule the theory of giving praise to good behaviour and failed to attend any further parenting sessions having told the parenting co-ordinator that the children did as he asked because "They know what they will get if they don't". The mother admitted that the children were scared of the father. In short the Committee's case is that the father and mother chose to disregard any parenting support offered to them prior to the children being taken into care and it was only following their reception into care in 2003 that the mother enrolled on a further parenting course which she completed, although the father did not attend. 45. Secondly the Committee highlighted the unsatisfactory position concerning the injuries to the children. At certain times the mother has accepted that the father was responsible for various of the children's injuries. For example, in the case conference held on 22 nd January 2004, at a time when the mother was living at the Women's Refuge and was therefore away from the father's influence, the notes record the following:- "[The mother] emphatically expressed her desire to

have her children returned to her. She was adamant that she and [the father] were separated, and that she had no intention of returning to him. She had attended parenting classes, and had sought help from a psychologist. She talked about how her own childhood had been difficult and that [the father] had been violent to her and the children. Mrs Andrews asked how much responsibility she took for the trauma the children had experienced over the years and that why, when on several occasions she had separated from her husband and taken injunctions against him, she always broke the injunctions and took him back. [The mother] said that [the father] ignored injunctions and could be very intimidating and that he would talk her round to 'trying again.'" Similarly the report of Ms Ireland of 8 th June 2004 (referred to at para 38 above) records what the mother told her in the following terms:- "She gave a history of physical abuse from [the father], when she was pregnant with V nine years ago, and this appears to have continued over the years, which the children have witnessed. He has given her little in the way of practical, financial or emotional support, but she has remained with him, as she did not believe that she could manage to cope with the children alone. She was aware that her husband was physically abusing V and J as small boys and she tried to protect them, which resulted in her being also physically assaulted. There were times when she has defended his actions by explaining that it did not happen all the time. On two occasions she has sought a restraining order on him, which she has withdrawn at the last minute, through fear of losing him." 46. However, now that she is reconciled with the father and is expecting another child by him, she is giving a very different version of events. Her affidavit essentially blames V for the injuries and, at the meeting with the Children's Service on 23 rd June 2005, she accepted only that the father had bitten J on one occasion. Otherwise she put the children's injuries down to V or to injuries sustained at school. She said that the former head teacher of Samares School had not been telling the truth when he had said over the years that the children's injuries had not occurred at school. As to V's own injuries, she said that C had caused these. Decision 47. The underlying facts are not really disputed in this case. The parents have not sought to challenge the factual assertions contained in the various reports and the Court accepts the facts asserted in the reports and summarised at paras 2-34 above. What is at issue is the inference to be drawn from those facts. The Committee says that the irresistible inference is that it is in the children's best interests that they be freed for adoption and that the parents' refusal to consent is unreasonable. The parents, on the other hand, say that they wish to have the opportunity of providing a home for their children, whom they love, and they wish to be given an opportunity to show that they have changed and have learned the appropriate parenting skills. 48. We must consider first whether we are satisfied that it would be in the children's best interests for them to be freed for adoption. We are in no doubt that it would. In essence, we accept the reasoning of the Children's Service as contained in the various reports but we would summarise our reasons as follows:- (i) These children were clearly suffering from poor parenting by 2003 despite the efforts of the Children's Service to assist the parents. In our judgment, the effect of this poor parenting is correctly described by one of the participants in the case conference of 22 nd January 2004 when she referred to these 'highly disturbed' children. (ii) Since they were taken into care in June 2003, there has been a dramatic improvement in the wellbeing of both J and B. These are summarised in the various reports and the school reports and we accept that to be the case. We find that there is a direct link between

the removal of the children from the care and control of their parents and their improved wellbeing. (iii) The children have clearly been happy with their foster carers, Mr and Mrs T, but they cannot remain with them. They are short term foster carers. In the long term the children must either return in the foreseeable future to live with their parents or must be freed for adoption. A succession of carers is not a satisfactory alternative. (iv) The children themselves wish to have a 'forever family' i.e. they wish to be adopted. They know that this is what is planned for them and, although they have not been told that the prospective adopters are to be their 'forever family', they have expressed the hope that they will be. The evidence is that the relationship between the prospective adopters and the children is going very well. (v) Save for the one occasion at Portelet, the children have not seen their parents for over 18 months. We accept the evidence which suggests that they do not ask after their parents and that indeed J appears to harbour some resentment towards them. We are satisfied that they do not wish to live with their parents. (vi) Whilst the police were unable to come to any conclusion for the purposes of the criminal law as to who caused the children's injuries, we find that they were probably caused by the father. In this respect we note that, on more than one occasion, the mother has admitted that this was so although, now that she is reconciled with the father, she denies it. The fact that the mother cannot remain honest about this suggests that she is willing to suppress the truth in order to protect the father and we believe that she could not be relied upon in the future to put the children's interests first. If therefore the father were once again to be violent towards the children, we do not think that the mother would feel able to take the necessary action to draw this to the authorities' attention or otherwise protect the children satisfactorily. (vii) We are certainly in no doubt - it was not really disputed - that the relationship between the mother and the father has been very volatile and the father has been violent towards the mother. We are pleased to note that they are now attending Relate, that the father is willing to attend an anger management course and that he is curbing his drinking. We wish them both every success in their reconciliation but we have to say that, particularly if two or more children are returned to live with them, there is every likelihood that the relationship between the mother and father will once again deteriorate and that the ensuing disagreements (and possibly violence) will cause distress and damage to the children. (viii) The prospect of a new baby will only increase the stress on the mother and the father. They will undoubtedly have their hands full in looking after the new child and this renders the prospect of their being able to devote the necessary care and energy to looking after two or more other children even more remote. (ix) Neither Mrs Colley nor Miss Langlois put forward the suggestion contained in Ms Ireland's report that one child only might be returned to the supervised care of the parents. In our judgment this would not be a desirable solution. We think that J and B, having been together all of their lives and particularly since leaving the care of the parents should not be separated. For the reasons mentioned we think that the ability of the parents properly to look after both children and the new child is very questionable. Ms Ireland's report suggests that it will be extremely difficult for the mother to change sufficiently to be able to provide adequate parenting for these children. (x) We agree with the Children's Service that a delay (which would have to be at least six months) to enable the mother (and the father) to re-establish their relationship with the children and to show that they have changed, would not be in the best interests of the children. They need certainty and

stability. To re-introduce the parents would introduce both uncertainty and instability, particularly if it was not clear where it might lead. (xi) In any event, we have to say that we find the chances of the parents being able to change sufficiently to render it in the best interests of the children to return to live with them, to be remote. We accept that the mother has attended the parenting course in 2003 and desperately wishes to have the children whom she loves back with her but her inability to recognise fully the problems of the past and her inability to be truthful about the father's responsibility for the physical injuries to the children do not give us any comfort that she would in reality be able to change. We agree with the view expressed in a number of the reports that she simply feels unable to manage without the father and is ultimately dependant upon him. (xii) As to the father, we have grave reservations as to whether he can really change. He has not attended a parenting course. As already mentioned, we are of course pleased to note the efforts which he has made in terms of being willing to attend an anger management course and curbing his drinking but we consider that, when under stress (which the reintroduction of the children as well as the new child would undoubtedly cause) he would revert to his old ways. In particular, if the children were to be returned to live with their parents there would be a real risk of further physical abuse. 49. Having concluded that adoption would be in the best interests of the two children, the Court must next consider whether the decision of the parents not to consent to the freeing for adoption is unreasonable. They are of course the natural parents of the children and the Court has no doubt that they love the children and wish to care for them themselves. 50. As against that there are a number of factors pointing in the other direction:- (i) As outlined above, the best interests of these children would clearly be best served by adoption. That is a weighty matter for any reasonable parent to consider. (ii) For the reasons given above, there is in our judgment no reasonable prospect of the children being returned to the care of the father or the mother. If adoption were to be refused, the children would remain in the care of the Committee. There is no prospect of that care order being revoked. The Committee has made it clear that it would not consider it appropriate to return the children to live with their parents. Accordingly the children would have to continue in foster care. The evidence suggests that they would not be able to remain with their current foster carers. Accordingly they would have to move to a new foster family. Thus stability would not be achieved if adoption were to be refused. On the contrary, there would only be continuing uncertainty and possibly several future changes of foster carer. (iii) We have carefully considered Mrs Colley's point concerning the legal advice received by the mother. We are content to assume, without deciding, that the full significance of the making of a final care order in October 2003 was not brought home to the mother. However, even if she had opposed the application, we have no doubt that, on the material available to it, the Court would have confirmed the care orders in October 2003 or, at the very latest, following the case conference in January 2004. Any other decision by the Court is very hard to envisage. The only material change which might have been before the Court in, say, January would have been that the mother had undertaken a parenting course. But there had been no change intimated by the father at that stage and the Court would undoubtedly have concluded that the prospects of the mother maintaining her determination to live apart from the father were fairly remote. (iv) We also note Mrs Colley's suggestion that, at the critical meetings of September 2003 and January 2004, the mother ought to have the benefit of a legal adviser to

accompany her. We think that there is some force in this point in the particular circumstance of this case. Where a mother (or father) with learning difficulties has to attend a large meeting with a substantial number of highly qualified professionals, it must be an intimidating environment and she is likely to have difficulty in following all that is said during the discussion. We think that the presence of some form of friend (whether a legal adviser or not) who is clearly there to help her understand what is going on and to put forward any points she wishes to make, would be fair and reasonable. We invite the Children's Service to look again at its policy in this respect. But again, in the particular circumstances of this case, we cannot envisage that the presence of a legal adviser would have made any difference to the outcome of either meeting. (v) We do not agree that the Children's Service and the other agencies have not done sufficient to help the parents. We note the various assistance given, as summarised at paras 43 and 44. (vi) Nor do we consider that the Children's Service moved too quickly towards adoption. Such decisions are clearly very difficult. On the one hand it is important to maintain the link between a child and its natural parents if at all possible. On the other hand a child needs stability and if it becomes clear that the parents cannot provide the necessary care, it is important not to delay and leave children in a state of uncertainty and instability longer than necessary. We accept that the decision to move towards adoption was not taken until the Case Conference on 22 nd January 2004. The Children's Service and other agencies had been working with the parents since at least March 1998 in an effort to improve things i.e. nearly six years. In those circumstances we do not consider the decision to go for adoption to have been taken prematurely or that the Children's Service did not give the parents sufficient opportunity to try and show that they could cope. (vii) Children need stability. Adoption offers this prospect whereas continuation of the present situation does not. The parents ask the Court to defer making a decision for a period of months in order to give the parents time to re-establish a relationship with the children with the aim of enabling the children to return to their care. For the reasons already given, we regard the prospects of such a course being successful is extremely remote. Furthermore the cases emphasise that it will not often be the case that deferment of a decision is the correct choice. As *Butler-Sloss L J in Re D*

(1991) 1FLR 48 at 54:- "A judge is, of course, entitled to defer a decision whether a child should be adopted, and there will be cases where at one point in time a parent is not unreasonably withholding consent, whereas at a later stage if circumstances change and/or time passes, the withholding of the consent may become unreasonable. Nevertheless, such instances are unlikely to be frequent and long-term decisions as to a child's future have to be made. The refusal of the application with the prospect of another application in the offing must lead to great uncertainty as to the future status of the child. This may last for a considerable period before the further application, either by the local authority or the prospective adopters, is made. Meanwhile, the child remains in limbo. So do the prospective adopters. On the facts of this case as presented to the judge the issue of adoption has, in our judgment, to be faced and the nettle grasped." The parents do not ask us to reject the Committee's application, merely to defer it; but in our judgment this would leave the children in limbo. Both are expecting to go to a 'forever family' and they wish to

do so. They have not had access to their parents for 18 months and express no wish for such access. The relationship between the children and the prospective adopters is developing and all are ready to move forward if the Court approves. The contact with their siblings will be maintained. As in Re D, we consider that, on the facts of this case, the issue of adoption has to be faced and the nettle grasped. 51. We remind ourselves that the decision for this Court is not whether it would itself consent to adoption; it is whether the parents are being unreasonable in the sense described by Lord Hailsham in the passage set out in para 28 above. We understand and recognise the anguish of the parents and their inability to bring themselves to consent to adoption. We also accept that this is not the typical set of circumstances as summarised in paragraphs 39 and 40 above. Nevertheless, in our judgment, reasonable parents in the position of the mother and father in this case would recognise the overwhelming force of the matters set out in paragraphs 48 and 50 and the unreasonableness of refusing to agree to the freeing for adoption. We hold that the parents have unreasonably withheld their agreement under Article 13(2)(b) of the Law and we make an order declaring J and B free for adoption. Authorities Re W

(1971) 2 All ER 49. Re L

(1962) 106 Sol Jo 611. Re D

(1991) 1FLR 48 at 54. Page Last Updated: 14 Feb 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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