

JERSEY / JUDGMENT

TS and Ors [2005] JRC 178 (22 December 2005)

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judgment

deputy bailiff:

Introduction

1. On Thursday we heard an application by the Minister of Health and Social Services for an order under Article 12 of the Adoption (Jersey) Law 1961 freeing the five children of Mr and Mrs S (to whom we shall refer as the 'parents') for adoption. The application is opposed by the parents. We would add that the application was brought at a time when the Health and Social Services Committee ("the Committee") was in existence and all the relevant decisions were taken by that Committee. Under the recent changes to the Jersey system of government, the Committee has been replaced by the Minister but, for ease of reference, we propose to continue to refer to the Committee in this judgment.

Background

2. The children are aged as follows: T is 8, L is 7, Ca and C are twins aged 6 and Th is 4. The family came to the attention of the Children's Service many years ago and there were concerns about the level of care which the parents (both of whom have learning difficulties) were able to give their children. 3. Subsequently the Committee applied for a permanent care order. This was vigorously opposed by the parents. In a judgment dated 13 th August 2004 ((2004) JRC 141) this Court gave its reasons for granting the Committee's application for a permanent care order. Full details of the difficulties which had arisen in connection with the parents' care of the children are set out in the judgment and we do not propose to repeat them. Suffice it to say that the Court concluded that the children were not receiving such care, protection and guidance as a good parent might reasonably be expected to give and such lack of care, protection and guidance was likely to cause the children unnecessary suffering or seriously to affect their health or proper development. The Court also found that the children were beyond the control of their parents. The parents appealed the decision but the Court of Appeal dismissed their appeal on 12 th November 2004. 4. At the time of the application, the Committee made it clear by reference to its care plan for each of the

children that it considered that adoption was in their best long term interests. 5. The Adoption and Permanency Panel ("the Adoption Panel") is a panel comprising members of the Children's Service and outside individuals. Its approval is necessary before any recommendation for adoption can proceed. The Adoption Panel agreed on 17 th May 2005 that applications to free all the children for adoption should be made. This decision was supported by the Committee at its meeting on 3 rd June 2005. It was known at that stage that the parents did not consent. 6. The matter was originally due to come before this Court in August but, on being informed that the matter was contested, the Court directed that the children should be separately represented and appointed Mrs Jane Ferguson as guardian ad litem . Mrs Ferguson is an experienced social worker, having specialised in child protection work, and is employed by the Probation Service to deal with court welfare cases. She needed some time to prepare her report and the application came on for hearing before us last Thursday. 7. The current position of the children is as follows and, save in respect of the twins, it has been essentially unchanged since February 2004. The twins have been in their current accommodation since September 2004. L and T reside together at a special residential unit created by the Children's Service and the twins reside at a different, but similarly constituted, residential unit. The arrangements at each unit are similar. The children are the only children at each unit and are looked after by a team of three carers from the Children's Service. Each carer is on duty for 24½ hours at a time beginning at 2.00 p.m. and ending at 2.30 p.m. the next day. Thus the same carer puts the children to bed and gets them up in the morning. In addition, Jane Smith manages both units and is the carer with overall responsibility for the children. Th has been placed with foster carers in a family home. It is clear that he has been extremely well looked after by the family in question. 8. Until May 2005 the parents had formal contact with the children. However, in view of the decision to proceed with a freeing order, contact was then stopped by the Children's Service, although the children have occasionally encountered their parents by chance since then. This application 9. The Court has received a considerable amount of material. Mrs Irene Hansford, the child care officer with primary responsibility for the family, and who has known all the children for most of their lives, has filed three affidavits and these exhibit a quantity of material such as carer reports, school reports and care plans. She also gave oral evidence before us. The Committee also relied upon an affidavit from Mr Anthony Le Sueur, manager of the Children's Service, who supplied information about the adoption position generally in Jersey. On behalf of the parents, we have received two affidavits from each of the father and the mother. The guardian ad litem filed a detailed and helpful report and she also gave evidence before us. 10. The Committee's case is essentially quite straightforward. When the children were brought into care they were in effect uncontrollable and very troubled. Since being in care they have improved dramatically. Examples of this were given in the judgment of the Royal Court in the care proceedings at paragraph 17 - 20. The Committee submits that progress has continued and we have been referred to various reports which support this assertion. We accept the evidence that the aggressive behaviour they presented, both verbally and physically, has almost disappeared; they are no longer reluctant to attend school and have become popular members in their respective classes;

they all present as happy 'bubbly' children who have gained in confidence and self-esteem; and they are properly clothed and cleaned. The Committee is adamant that there can be no question of the children being returned to the care of their parents. Conversely the Committee accepts that the present situation is not a long term solution. What is required in the best interests of these children is a permanent home with a family and adoption is therefore the best course for them. Those of the children who are old enough to understand would seem to be enthusiastic at the prospect of a 'forever' family. 11. The Committee accepts that adoption in this case will not be as straightforward as in some cases. Thus it is highly unlikely that any family would be willing to adopt all five children. They will therefore have to be separated. The plan is to find one family for Th, one for the twins and one for T and L if possible. It is accepted that their ages will mean that some prospective adopters will not be willing to take them but, according to Mr Le Sueur's affidavit, they have six prospective adopters approved by the Committee who are willing to take children up to the age of 10. In addition there are a further three sets of prospective adopters who are currently under assessment and a further six couples on a list waiting for assessment by the Children's Service to begin. If the children could not be adopted in Jersey, the Service would look next to Guernsey, although an order of this Court freeing the children for adoption would not be capable of recognition as such by the Guernsey courts and the parents would therefore theoretically have an opportunity of opposing the application for adoption in Guernsey even if this Court had freed the children for adoption. 12. The Committee's position is supported by the guardian ad litem. She concludes that it would be in the best interests of each of these children to be placed in a permanent family setting which would enable them to establish themselves in a secure and caring environment so that they might reach their full potential. She recommends therefore that the application to free the children for adoption should be granted and parental consent should be dispensed with on the grounds that it is being unreasonably withheld. 13. The parents oppose a freeing order. Mr Cadin, who has argued forcefully and said everything that could possibly be said on their behalf, submitted that the Court must look at the situation as it is today and take into account what had happened to date. He was highly critical of the delay which had occurred. These children had been taken into care as long ago as February 2004, yet no real progress had been made in relation to adoption. The Committee was really no further advanced today than it was in 2004. The Committee had not even commenced the matching process. It followed that, even if the application to free the children were granted, it would still take some time for matching and introduction to take place before there could be a permanent placement with a view to adoption, let alone the obtaining of an actual adoption order. During that time the four older children would continue to live in their present accommodation. Although acknowledging the efforts made by the Children's Service, he was critical of the two residential units as an environment for the children on the basis that it involved a rolling set of carers and did not have a permanent adult who could form a fixed point in the children's lives. He referred to the views of Mrs Ferguson in her report that the children were at risk of suffering emotional harm if they continued to be looked after by a team of carers rather than in a family setting. He further argued that, even if the freeing

order were made, there was a real risk that, at the expiry of twelve months, it would not have proved possible to find adopters for some or all of the children. It was therefore extremely important that there should be a 'Plan B' to cater for such an eventuality. 14. He submitted that it was clear from Mrs Hansford's evidence that there was no Plan B and that the Committee was simply resolved to press ahead with adoption. The absence of a Plan B meant that it was not in the children's interests for adoption to proceed and it was certainly not unreasonable for the parents to withhold consent. 15. In his written submissions, Mr Cadin suggested that the application to free should be adjourned for three months in order to allow the Committee time to produce a proper and adequately considered care plan (with resources and timescales identified) and alternative parallel planning options to cater for any failure to find adopters. This was necessary so that the Court might make a proper and informed decision. In his oral submissions, Mr Cadin suggested that the Court should in fact dismiss the application to free the children but should direct the Committee to revert to the Court within three months with a detailed care plan. In the meantime contact should be resumed. 16. In summary he argued (i) that freeing for adoption was not in the best interests of the children; (ii) that it was not unreasonable for the parents to withhold consent; (iii) that the requirements of Article 12(3) of the Adoption Law had not been met in that the Court could not be satisfied that it was likely that the children would be placed for adoption. The Law 17. The Court had occasion in the recent case of *Re JS and BS*

(2005) JRC 108 to review the law in relation to freeing for adoption. The Court set out the applicable principles at paragraphs 25 - 29 and we adopt and apply those principles. In summary the Court has to ask itself two questions:- (i) Is it satisfied that adoption would be in the best interests of each of these children? (ii) Is it satisfied that the parents are withholding their consent to freeing for adoption unreasonably? In considering whether the withholding of consent by a parent is unreasonable, the Court is entitled to take into account the welfare of the child, as a reasonable parent would undoubtedly give great weight to what is best for the child. However the Court must be careful not simply to substitute its own opinion for that of the parent. The question is whether the parental refusal comes within the band of possible reasonable decisions and not whether it is right or mistaken. Thus there is a band of decisions within which no court should seek to replace the individual's judgment with its own. Decision (i) Is freeing for adoption in the children's best interests? 18. We are in absolutely no doubt that adoption would be in the best interests of these children for the reasons put forward both by the Committee and the guardian ad litem . We would summarise our reasons briefly as follows:- (i) There is no reasonable possibility of these children returning to live with their parents. There is no doubt that the children suffered during the time that they were living with their parents and have improved dramatically since they were taken into care. There is compelling evidence to this effect in reports from the carers, the schools and the child care officers. (ii) The present situation of the children is far better than before they were taken into care and we would like to take this opportunity of paying tribute to the efforts which the Children's Service have devoted to looking after these children. However the

arrangements were not intended and are not suitable for the long term. Similarly the foster carers for Th were not intended to be long term carers. Accordingly, alternative permanent arrangements need to be found as soon as practicable. (iii) If the children are not to be adopted, what is the alternative? Given that they cannot return to the care of their parents, the only alternative would appear to be long term foster caring or placement in a residential home such as Brig-y-don. Neither of these solutions would, in our judgment, offer the stability and security of adoption in a family unit. Adoption would, as the Children's Service and guardian ad litem submit, give these children the best hope of fulfilling their potential and of benefiting from a stable and secure family environment. (iv) Mr Cadin placed great weight upon the lack of certainty as to whether adoption could in fact be achieved. We agree that the prospects of being able to achieve adoption are relevant. If, for example, it were clear that there was no reasonable prospect of finding adopters for these children in Jersey, Guernsey or the United Kingdom within the foreseeable future, it would be pointless to free them for adoption. Hopes would be raised only to be dashed. But that is not the situation here. The evidence contained in the affidavit of Mr Le Sueur states that, in the opinion of the Children's Service, there are reasonable prospects of placing Th with prospective adopters in three months and placing the other four children within six to nine months. The Court is willing to proceed on the basis of that evidence. Furthermore, if adoption or placement were not to have occurred within 12 months the parents have the right under Article 8 of the Adoption (Amendment No.5) (Jersey) Law 2002 to apply to this court for the freeing order to be revoked. (v) Mr Cadin also placed great weight upon the delay. He referred to Mrs Hansford's second affidavit (12 th October) which stated at paragraph 22 that a delay longer than a year in placing a child for adoption was likely to cause harm to the child; and to the contents of the report of Mrs Ferguson (para 32) referring to the risk of emotional harm if the older children were to continue to be cared for by a team of carers rather than in a family setting. He pointed out that the children had already been in care for nearly two years and that there was likely to be a further delay of up to one year before adoption finally occurred. In her oral evidence Mrs Ferguson pointed out that she was merely talking of a 'risk' of harm and Mrs Hansford, in her evidence, made it clear that, whilst there was such a risk, the evidence was that the children had thrived under the present arrangements whilst in the care of the Committee and there was accordingly no evidence of actual harm. However she agreed that it was desirable to press on with adoption as soon as possible. Ultimately we did not see that this point assisted Mr Cadin. We propose to mention the question of delay at the end of this judgment but the Court has to deal with the situation as it finds it today. Given our conclusion that adoption is clearly in the best long term interests of all of the children, the fact that there may be a period of delay before adoption is finally achieved does not in any way affect the validity of that conclusion. (vi) The alternative suggestion made by the parents seemed to us highly undesirable. Whether that suggestion was for an adjournment of three months or for a dismissal of the application with an order that the Committee revert to the Court in three months with further plans, the upshot would simply be further delay. The children would

have to remain where they are and, at the end of the period of three months, the Committee would no doubt revert stating that it was still in favour of adoption; but it would have been unable to have progressed adoption as fast as it would wish because the children would not have been freed for adoption. Having concluded unambiguously that adoption is in the best interests of these children, we think that it must be progressed as speedily as possible. We accept that, until a freeing order is made, there are restrictions upon how far the Committee can go in terms of approaching any possible adopters and we therefore conclude that the parents' suggestion of adjourning this matter or dismissing it with a further review in three months would not be in the children's best interests. For these reasons we conclude that freeing for adoption would be in the best interests of each of these children. (ii) Is the withholding of consent unreasonable? 19. We turn next to consider whether the parents' decision to refuse consent is unreasonable. We would begin by saying that the Court fully accepts that the parents love their children and it is not through any want of love that they are unable to care for them. Their distress at the prospect of the children being adopted is wholly understandable and the Court has every sympathy with them. But our duty is to look at the matter objectively in the best interests of the children and the question which we must now consider is whether their withholding of consent is unreasonable. We have come to the conclusion that it is for the following reasons:- (i) As already stated the Court is of the opinion that the welfare of these children would clearly and undoubtedly be best served by adoption. As Lord Denning MR said in *Re L*

- (1962) 106 Sol Jo 611 in a passage set out in para 27 of *Re J S* this is a matter to which any reasonable parent must give great weight. (ii) The parents have accepted that there is no real prospect of the children being returned to their care. It follows that, if the children are not freed for adoption, they will remain in the care of the Committee. As already stated the current arrangements are not suitable for the long term and accordingly the children would have to be placed in long term foster care or in a residential children's home. Although these two courses would enable contact to be retained between the parents and the children, such an arrangement cannot be nearly as satisfactory as adoption and this is something which the reasonable parent would take into account. (iii) In their written submissions the parents criticised the plan for progressing adoption as being vague and uncertain and gave this as an additional reason for withholding consent. When she gave evidence Mrs Hansford described in some detail how matters would progress if a freeing order were made. The process of matching each of the children with prospective adopters would begin immediately and she would expect to go to the Adoption Panel at its next meeting in January 2006 with a recommendation as to which family should be approached for the various children. Thereafter matters would progress in a structured way although the pace would depend upon progress in each case. Thus the prospective family would be approached in order to see if it was willing in principle to consider adoption. Thereafter the relevant child(ren) would be introduced and, if successful, visits would gradually be extended until eventually a decision would be taken to place the child(ren) to live with the

family for the requisite period pending the application for an adoption order. In our judgment the Committee's plans were clear and structured. (iv) Mr Cadin also pointed out on behalf of the parents that it was reasonable for them not to consent because a freeing order would only be effective in Jersey. It would have no effect in Guernsey or the United Kingdom where the Children's Service might have to go if unsuccessful in Jersey. It is true that a freeing order would not be recognised in those jurisdictions. However, in the first place we consider that there are reasonable prospects of securing adopters in Jersey. Even if this turns out not to be the case, we think that this does not militate against the making of a freeing order. We would anticipate that, if a freeing order had been made by this Court after a full hearing, a court in Guernsey or England considering whether to dispense with the consent of the parents in relation to a specific adoption, would be assisted by the decision which we had reached in this jurisdiction. 20. 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 in para 17 above. As we say, we understand and recognise the anguish of the parents and their inability to bring themselves to consent to adoption. 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 above and the unreasonableness of refusing to agree to the freeing for adoption. We therefore hold that they have unreasonably withheld their consent under Article 13(2)(b) of the Law and we make an order declaring all five children free for adoption. 21. We should add that, on the basis of Mr Le Sueur's affidavit, we are satisfied that Article 12(3) is complied with and that it is likely that the children will be placed for adoption. Contact 22. We turn next to consider the question of contact pursuant to the powers conferred on the Court by Article 27 of the Children (Jersey) Law 2002 . In the event of the Court making a freeing order, the parents wish to have formal access to the children for approximately one hour every three weeks until a permanent placement takes place. The Children's Service considers that it would not be in the children's best interests to have any direct contact. The guardian ad litem recommends an intermediate course, namely arranging apparently 'chance' meetings for ten or fifteen minutes along the lines of those which have genuinely taken place by chance in the recent past. 23. As already mentioned, formal contact took place on a regular basis until May 2005. At that stage, having decided to apply for freeing orders, the Children's Service felt that contact should be ended. This was consistent with the care plans which had been in existence for some time. A final 'goodbye' meeting between the parents and the children was arranged for 14th May but the parents felt unable to go through with that meeting. There has been no formal contact since then. 24. However, on a number of occasions, one or more of the children, when out with their carers, have bumped into the parents by chance. This is inevitable in a small island. The evidence suggests that, on such occasions, the children have been pleased to see their parents and have hugged them and chatted to them for a while but they have not been distressed on parting after a few minutes and have not thereafter made requests to see their parents. When interviewed by the guardian ad litem for the purposes of her report to this Court, all of the children told her that they would like

to see their parents. Mrs Hansford accepted that, when asked a specific question, the children would always say that they wished to see their parents but emphasised that this was not a request which they made on a regular basis of their own accord. 25. All of the six families who are on the list of possible adopters have said that they are not willing to accept an 'open' adoption i.e. one in which face to face contact with the birth parents continues. Accordingly the Children's Service has accepted that contact must stop in any event once a permanent placement with a view to adoption takes place. The question then arises as to whether contact should be encouraged in the meantime. We were told that the current thinking is that contact can be beneficial to children if the parents are fully supportive of adoption. Such contact can assist in that the parents can assure the children that all is well and that they should look forward to the plans for adoption and the prospect of a new family. Conversely, where parents have not yet accepted the desirability of adoption, contact can be damaging. It is likely to result in the parents' views becoming known (either deliberately or unconsciously) to the children which will make it much more difficult for them to embrace and commit fully to moving to the proposed adoptive family. 26. The guardian ad litem agrees that formal access, as proposed by the parents, would not be in the children's best interests. She agrees that contact would have to stop once a placement is found and that to increase contact for a short time until then would be upsetting and confusing for the children. 27. The parents, on the other hand, assert that they do now accept the inevitability of adoption and would wish to have formal and meaningful contact with the children in order to say goodbye to them (to achieve closure) and in order to give the children their blessing as well as to ensure that they know their parents love them. Apart from Th (who has his foster carers) there was no permanent adult in the lives of the other children. Given the delays which might occur in adoption, it would be important for the children to have such a figure in the interim period and the parents could fulfil that role. 28. We fully understand the parents' desire to have contact. But again we must look at the matter dispassionately and assess where the best interests of the children lie. We have to say that the Court agrees with both the Children's Service and the guardian ad litem that the resumption of formal contact at this stage would be upsetting and confusing to the children. There are four main reasons:- (i) Despite their recent comments that they have come to accept the position, we are not confident that the parents are really reconciled to the concept of adoption. Indeed their opposition to the application for freeing rather undermines this assertion. We find therefore that the probability would be that their feelings on the matter would be communicated to their children, even if not deliberately. This in turn would cause confusion and uncertainty in the minds of the children, which would in turn reduce the prospects of a successful placement and/or adoption in due course. Any reduction in the chances of successful adoption would be quite contrary to the interests of the children. (ii) The re-introduction of formal access for a comparatively short while followed by its cessation when (probably within a matter of months) a permanent placement is found, would be very unsettling for the children. It would be an added pressure on them at a time when they are attempting to settle into a new family. (iii) We accept that, when interviewed by the guardian ad litem ,

all the children expressed a wish to see their parents. But we also accept that, on a day to day basis, they do not mention this topic and they are not distressed when parting from their parents after chance meetings. We do not think that any pleasure that they might obtain in the short term from seeing their parents for a while outweighs the adverse consequences referred to above. (iv) We note the point that, if it does not prove possible to find adopters, the whole plan for these children will need to be re-thought and contact with the parents might well play a part in those plans if adoption is discarded. The argument therefore is that it would be better to maintain some form of contact in the interim so that relationships are continued. However, we accept the evidence of the Children's Service that, although nothing can be guaranteed, it ought to be possible to find adopters for all the children and we think that decisions in relation to contact should be taken on that basis rather than on the basis of an assumption of failure to find adopters. The important thing is to do all that we can to increase the chances of a successful placement and adoption and, for the reasons given earlier, we think that the re-introduction of formal contact would have the opposite effect. 29. We turn next to the suggestion of the guardian ad litem that the Children's Service should arrange 'chance' meetings with the parents. These would enable an exchange of pleasantries for 10 - 15 minutes every three weeks or so to take place. It would offer some means of keeping the relationship with the parents going (so that, in the event of a failure to find adopters, a resumption of greater contact would be easier) without the adverse consequences of re-introducing formal contact at this stage. The Children's Service was firmly against this suggestion because they felt that it would involve the Service in lying to the children. Mrs Hansford emphasised that the whole relationship of the carers with the children was based on trust and that if the children found out that the meetings were not 'chance' meetings, that trust would be seriously damaged. 30. The Solicitor General argued on behalf of the guardian ad litem that, provided the Children's Service did not actually tell a lie (by specifically saying that it was a chance meeting) no harm would be done. The children were unlikely to make enquiries which would lead to difficulties. There would not therefore be any breach of trust. But we agree with the Children's Service. One cannot rule out the possibility of one or more of the children discovering that the apparently chance meetings were in fact arranged by the Children's Service. One of the children might well ask "Did you know mummy and daddy were going to be there?" How is the carer to reply without telling a lie? One can see the Children's Service being drawn into difficult areas which might well lead to the children feeling that they had not been dealt with truthfully. 31. We do not think that the possible benefit of maintaining this modest level of informal contact outweighs the risk of the children having their trust in their carers damaged. Accordingly, while we fully understand the reasons that the guardian ad litem made this suggestion, we do not think it would be in the children's best interests to order it in this case. It follows that we will not make an order for any direct contact. 32. We would add that the Children's Service fully support the maintaining of indirect contact (e.g. letters, cards etc). Furthermore, given the difficulties which are said to have arisen in connection with the twins' birthday, we emphasise that the Children's Service should ensure that any

birthday or Christmas cards or presents from the parents to the children are delivered punctually on the relevant day. Postscript 33. Certain matters were raised during the hearings which were not essential to our decision but are worthy of brief comment. 34. Firstly, it does seem to us that this case has taken too long. All parties were agreed that decisions in relation to young children must be taken promptly so as to reduce periods of uncertainty in their lives. The Court must play its part in achieving that objective. Mrs Hansford contended that no part of the delay in this case could be attributed to the Children's Service. We accept that much of the delay was caused by the necessary court procedures (i.e. the permanent care order, the appeal therefrom by the parents, and the delay from August to December in obtaining the freeing order). However, in our opinion, there are two areas where it might be helpful if the Children's Service were to review its procedures to see if improvements could be made in order to minimise delay:- (i) Following the decision of the Court of Appeal on 12 th November 2004 confirming the permanent care order, it took until June 2005 for the Service to obtain the authority of the Committee to the making of the application for a freeing order. We appreciate that there was much work to be done in that the Service had to consider the position of each of the children and write up the appropriate reports in order to obtain the approval of both the Adoption Panel and the Committee. Nevertheless we think that the period of seven months was too long. (ii) We were told that, once the Court had appointed a guardian ad litem , no further steps in the matching process were taken in relation to the children. This was apparently done on legal advice by the Law Officers' Department and this advice was in turn based upon some comments made by the Court in the case of *Re J S* criticising a decision to place children with prospective adopters at a time when the parents were still proposing to appeal against the freeing order made by the Royal Court. We maintain the view expressed in that case that it would be wrong to take steps to introduce children to prospective adopters with a view to a permanent placement with them if it is not yet known whether the Court will in fact make an order freeing the children for adoption. There is clearly a risk of false starts and relationships being established which then have to be undone. The children's hopes can be dashed. However we see no reason why the Children's Service should not take all necessary steps (short of effecting an introduction) to match the child with prospective adopters prior to the Court making a freeing order. Thus the Service could go through its list of adopters to decide an order of preference and obtain the approval of the Adoption Panel to its choice. This would mean that, the day after the Court makes a freeing order, the Service would be in a position to proceed. 35. The second area of delay was because of the appointment of a guardian ad litem . The Service obtained authority from the Committee to proceed on 3 rd June 2005 and obtained a hearing date for early August. It clearly came as a surprise to counsel that the Court suggested at that time that a guardian ad litem should be appointed. We accept that delay inevitably occurred whilst the guardian looked into the position and prepared her report. We are of course willing to hear argument on whether this is the right approach but our preliminary view is that, given the introduction of the Children (Jersey) Law 2002 and the imminent introduction of the Human Rights (Jersey) Law, coupled with our understanding

that this is the procedure generally followed in the English courts, we think that, where an application for a freeing order is contested, it would normally be right for the children to be separately represented. Inevitably, by then, the Children's Service have a very clear view of the history of the matter and where they think the children's best interests lie and the parents will often be opposing for emotional

reasons.

The Court was greatly assisted in this case by the report of the guardian ad litem and we would expect that normally to be the case. The guardian can look at the position dispassionately from the point of view of what is in the best interests of the children but with the benefit (which the Court does not have) of meeting the parties involved and seeing them all in their natural setting. If a guardian ad litem is to be appointed, it seems to us that, the moment the Law Officers' Department receives instructions from the Children's Service, it should seek a preliminary directions hearing within a matter of days in order to establish whether a guardian ad litem is to be appointed. Had such a course been followed in this case, it would have avoided the delay from June to August. Having said that, we make no criticism of counsel in this case because the approach of the Court is evolving and counsel were not to know that this would necessarily be the stance of the Court in this case. 36. The introduction of a guardian ad litem inevitably means that another professional will review the actions and decisions of the Children's Service. It is equally inevitable that, on occasions the guardian may not take the same view as the Children's Service. We think it very important that a constructive and measured dialogue be maintained between the guardian ad litem and the Children's Service. After all, both are working to the same end, namely the best outcome for the children and they must be mature enough to accept that a professional difference of opinion may arise. We gained the impression from the papers in this case that there was a slight sensitivity to criticism and that views were expressed on both sides in language which could have been more measured and understanding of the other's point of view. We recommend that this be avoided in future cases. Summary 37. For the reasons which we have given, we free all five children for adoption, we dispense with the parents' consent on the grounds that it is being withheld unreasonably and we make no order as to contact. We expressly repeat our sympathy to the parents and our acceptance that they love their children and will be deeply upset by this decision; but we must fulfil our duty to do what we think is in the children's best interests. Authorities Adoption (Jersey) Law 1961. Adoption (Amendment No.5) (Jersey) Law 2002 Article 8. Re JS and BS

(2005) JRC 108 . Re L (1962) 106 Sol Jo 611 in a passage set out in para 27 of Re J S. Children (Jersey) Law 2002. Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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