

Judgment 1/2003

**In Re C (an infant)
Royal Court (Matrimonial Causes
Division)
17th December, 2002**

Matrimonial proceedings – status of Court Welfare report – disclosure to Court Welfare Officer or Court in the foreign jurisdiction – need for agreement of parties – comity between courts.

OFFICIAL TRANSCRIPT

17.12.02

TUESDAY 17TH DECEMBER 2002

**IN THE ROYAL COURT OF GUERNSEY
(MATRIMONIAL CAUSES DIVISION)**

Before

Sir de Vic Carey

Bailiff

In Re C (An infant)

The Bailiff's decision on the Application

1. Dramatis Personae

As what I say may be of general interest I propose to refer to the various persons involved anonymously with letters as follows:

F Father - Respondent in the matrimonial cause currently before this Court.

M Mother - former partner of F.

C Child - the son of F and M, currently aged 2.

**W Wife - the former wife of F and Petitioner in the matrimonial cause
before this Court.**

**The children of the marriage - the children of F and W, all of whom are
minors.**

CWO The Guernsey Court Welfare Officer.

The English Court - The Magistrates Court seeking assistance.

The English Court is requesting that the report of the CWO (in fact dated 3.12.01) prepared for proceedings between F and W and relating to issues of care and control of the children of the

marriage be released to that Court for consideration in proceedings before it between F and M, concerning a residence order for C.

2. Background

This application was preceded by correspondence from solicitors acting for F, who were asking that the report should not be released to solicitors acting for M. The solicitors were aware of the report because on 10th September 2002, the CWO had written to the Magistrate seeking his permission to provide Cafcass in the UK with access to welfare reports on this case and another case that was before the Magistrate in his Court. So far as this case was concerned Mr. Finch, the Magistrate, was not then seized with it although he had had it before him at an earlier stage. He therefore consulted with the judge in the Matrimonial Causes Division dealing with the matter, Lieutenant Bailiff Hancox.

The conclusion of Mr. Finch and Mr. Hancox was that the reports should be released on the basis that the Court sitting should have access to all relevant information in order to pay full heed to the welfare of the children involved.

When the first letter was received from the solicitors acting for F, I arranged for H.M. Deputy Greffier to set up a meeting with the CWO to endeavour to clarify the reasons for her seeking for this report to be released to the English Court. Her view was that there was information in it which would assist the English Court in determining the residence application in the best interests of C. It is apparently the practice in England for reports such as these to be available to other Courts and it was quite clear that neither she nor perhaps the learned Magistrate, who did not have the benefit of any proper submissions to him, considered the inter jurisdictional issues involved. I accordingly directed the Greffier to write to F's solicitors advising them that formal application would have to be made to the Guernsey Court by the English Court for release of the reports and at the same time M's solicitors and the English Court were so advised in separate letters.

The request to which I have referred was subsequently received and I therefore listed the case for today, inviting Counsel for F and W who are on the record in the Guernsey Matrimonial Proceedings to attend upon me. Counsel for F has indicated that she will not consent to the release of the reports. She has also helpfully drawn my attention to paragraph 38.37 of Rayden 17th Edition, which reads as follows:

“38.37 Confidentiality of welfare reports: disclosure of contents. Welfare reports are confidential. It is a contempt of court, punishable by fine, imprisonment or both, to show or reveal the contents of the report to any person who is not either a party to the proceedings or the legal adviser of such a party, although a legal adviser may make use of the report in connection with an application for legal aid. Leave of the court must first be obtained if it is desired to disclose the report to any other person. Consent to disclose, or make use of, information in the report in proceedings other than those for which it had been ordered can only be given by the court that ordered it or in which the proceedings had been conducted. The court must evaluate the two aspects of public interest, that is, the extent to which maintaining the confidentiality of the report is needed and the extent to which it needs to be released and must assess the gravity of the consequences likely to ensue in either event: the court must then make an overall judgment on what justice requires to be done in the particular case...”

We then looked at the case quoted in the footnote of Brown v. Matthews (1990) Ch 662, which is an unusual case where a welfare report contained certain information concerning the attitude of the in-laws of a party to matrimonial proceedings with regard to the ownership and disposal of a house which was used as a matrimonial home by the parties. The father-in-law sought to restrain the use of the welfare report in proceedings brought by the husband for a share in the proceeds of sale of the house. In that case the Court decided that the balance favoured disclosure. There, that Court had two parties before it. In this case before me I do not have two parties to the extent that M is not involved in this application today. Counsel for W has natural reservations concerning wider disclosure of certain aspects of the report particularly relating to her own circumstances and her health. I have considerable sympathy, as I cannot see that the somewhat unfortunate personal circumstances of W have anything to do with the matters in issue between F and M.

3. The Guernsey Report and the state of the Guernsey proceedings

Although the Guernsey report was prepared in December 2001, the proceedings in Guernsey are outstanding and no order in respect of custody and care and control of the children of the marriage has been made. The report of the CWO, which is, for reasons I need not dwell on, a

comprehensive and detailed review in a difficult case relating to the upbringing of children, has not been examined judicially and neither party has had the opportunity of testing the opinions expressed therein by the CWO. There is material in that report which might be of assistance to the English Court when it considers the residence application in respect of C. I say “might” because I do not wish to give the impression of evaluating it. However put at its most neutral the CWO has carried out a detailed investigation into the relations of F with the children of the marriage and she has had the benefit of talking with other members of the family of F. However, it is quite clear from what I have seen that F strongly disputes the conclusions which she has reached.

4. The Status of the Reports

I have not had the benefit of detailed argument of the status of the Court Welfare reports. The basic principle is that they are prepared by Welfare Officers who are answerable to the Court. However, the material contained in them is inevitably sensitive and that is why they are always carefully labelled as being strictly confidential and available to members and Officers of the Court and parties to the case before the Court and their Advocates. Added other words that they are available “to such other persons as the Court may authorise.” I read this as a general restriction that the Court should be hesitant before disseminating reports particularly where they relate to other proceedings and other children of the parties. In view of the sensitivity of the material I do not think that as a general principle reports should be disclosed to foreign courts, by that I mean all courts outside of the Bailiwick of Guernsey, without the agreement of the parties to the case in respect of which the report was originally prepared and at this stage I find it hard to identify exceptional cases where this consent should be dispensed with.

5. Another route

In view of the relative ease of interchange of the populations of Guernsey and other jurisdictions in the British islands, it is clear that there will often be information available in Guernsey concerning children who have landed up elsewhere and in this regard I am not limiting the principle to the British islands. There is currently before the Court a case where

children have been removed to a distant part of the Commonwealth and the Courts of that jurisdiction are involved for their welfare. It seems to me that under the principles of comity between courts the Guernsey Court Welfare Service and/or the Children Board and/or the Probation Service should be prepared to investigate and report on cases involving children who are outside the jurisdiction where relevant material to determine the best interests of that child can only be found in Guernsey. However, in Guernsey the system of Court Welfare Officers is somewhat different to that in other jurisdictions as the Court itself has no resources of its own and no dedicated officers. What happens is that whenever the assistance of a Court Welfare Officer is needed to prepare a report, approach is made either to the Probation Service under the control of the States Probation Committee or the Childrens' Officers under the control of the States Children Board to produce a report and we are generally extremely well served whenever we ask for this assistance.

I do not consider that it falls within the mandate of this Court at the present time to direct work to be done by these overworked departments at the request of "foreign" courts. I imagine that at the level of welfare agencies the position may be somewhat different as no doubt Cafcass and the Children Board have their own arrangements for giving mutual assistance to each other in the case of children moving from one jurisdiction to another, but that is not a matter for me. What would clearly be desirable would be that if the English Court here considers that the CWO has relevant information concerning F, M and C, which would assist in determining the English application a report be requested from the CWO limited to the issues surrounding C rather than the issues surrounding the children of the marriage, albeit that the experience of F's parenting of the children of the marriage may be relevant to determine the English application. If a fresh report is sought by whatever channel there will be the issue of how far the writer of that report can access the December 2001 report. It certainly seems unreasonable that the Court Welfare Service/Children Board should not be able to include in their report all relevant material whenever gained, beyond that I express no view thereon.

6. My decision

It will be clear from the above that I am not happy that this report should in its present form be available for the use of the Court in the English proceedings. The application of the English Court is therefore declined and I would add that it has not been necessary for me to consider the propriety of receiving a request like this from a Magistrate's Court rather than a Crown Court. I certainly feel that as a matter of comity we should not be throwing up barriers against lower courts seeking assistance from this Court, but again I have not had the benefit of any argument on that particular topic and it must be reserved for another day.

7. Reservations

Finally, whilst I have endeavoured to deal with this matter today I can see no early date to which it can be adjourned for further argument or representations of other persons, I have to point out that M has not been represented in the proceedings today. Neither have I heard from the Law Officers of the Crown who, in this jurisdiction, have a general interest to represent those who cannot look after themselves and if this matter were to develop further, might properly be invited to address the Court on the interests of C specifically, and children in general, in cases such as this to enable all relevant material prepared in Guernsey for this Court to be transmitted to a foreign court. It might be that such further argument would persuade me that the general rule that I have propounded is subject to wider exceptions than I have indicated. Any interested parties who have not been before the Court today are therefore at liberty to return for the matter to be reviewed but clearly on that occasion the parties to these proceedings, F and W, would have the right to be heard.