Judgment 42/2012

In the matter of "C"
Juvenile Court
6th December, 2012

An appeal from a decision of the Child Youth and Community Tribunal.

Approved Text
10.12.2012

IN THE GUERNSEY

JUVENILE COURT

IN THE MATTER OF "C"

Between	**"GM"** **("Maternal Grandmother")**	**First Appellant**
	-and-	
	"M **("Mother")**	**Second Appellant**
	-and-	
	THE STATES OF GUERNSEY **(Acting by and through the Health and Social Services Department)**	**First Respondent**
	-and-	
	THE CHILDREN'S CONVENOR	**Second Respondent**
	-and-	
	"F" **("Father")**	**Third Respondent**
	-and-	
	"C" (THE CHILD) **(Acting by and through his safeguarder Mrs Sadie Gill)**	**Fourth Respondent**

Date of hearing: 3rd December 2012 (pm) 5th December 2012

Judgment handed down: 6th December 2012

Before: Cherry Amanda McMillen, Judge of the Magistrate's Court

Counsel for the First Appellant:	Advocate P M Grainge
Counsel for the Second Appellant:	Advocate R B Eeles
Counsel for the First Respondent:	Advocate L Evans
Counsel for the Second Respondent:	The Children's Convenor in person
Counsel for the Third Respondent:	Not present or represented
Counsel for the Fourth Respondent:	Advocate A M Merrien

Statutes and Cases referred to:-

1) The Children (Guernsey and Alderney) Law, 2008
2) The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009
3) The Family Proceedings (Guernsey and Alderney) Rules 2009.
4) R v R Guernsey Court of Appeal 409 – 17th March 2010
5) G v G 1985 2 All ER 225
6) Bellenden (formerly Satterthwaite) v Satterthwaite [1948]1 All ER
7) W v Schaffer 2001 SLT 86
8) The Children (Scotland) Act, 1995
9) A & B (2008) GLR note 22
10) Articles 6 and Article 8 of the ECHR
11) X Council B and Others [2004] EWHC 2015,
12) Re X Emergency Protection Orders (2006) EWHC 510,
13) Re G (Care: Challenge to Local Authority's Decision) [2003] 2 FLR 42
14) Haase v Germany Application No 11057/02-judgment delivered 2004

This Judgment has been anonymised and permission has been given by the Court in accordance with Rule 59 of the Family Proceedings (Guernsey and Alderney) Rules, 2009 that the anonymised judgment may be disseminated.

Introduction

1. I am going to hand down this judgment. It is in written form and it will in due course be typed or printed up. For the purposes of today, I will not read out the sections of the law that I have included in the judgment, or where I have taken direct quotations from the papers, but they will be included in the final version of the judgment.

2. This judgment relates to an appeal by GM ("the maternal grandmother") and the second appellant "M" ("the mother") against a decision of the Child Youth and Community Tribunal dated the 19th November 2012.

3. The appeal concerns the child C [.....]. C has lived in the care of his grandmother since in or about January 2009 until the 19th November 2012 when the Child Youth Community Tribunal ("the tribunal") ordered what was in effect C's removal from the care of his grandmother and placed him in the care of the HSSD ("the department"). It was that decision, by way of a condition attached to an interim care requirement which lies at the heart of this appeal; the maternal grandmother and the mother appeal, submitting that the Child Youth and Community Tribunal erred in making that decision.

4. [.....]

5. It is my understanding that this is the first effective appeal from the decision of the tribunal since the commencement of The Children (Guernsey and Alderney) Law, 2008 and it will therefore be helpful to set out the legal issues raised by this appeal. Both appellants have issued an appeal under section 99(1) of the law which states:

(1) An appeal from any decision of the Tribunal under Part VII relating to a care requirement including, without limitation, a decision –

(a) to make, or to refuse to make, a care requirement, or
(b) to make a care requirement subject to conditions,

shall be to the Juvenile court.

6. The tribunal made the following decisions on the 19th November 2012:

(1) It made an Interim Care Requirement requiring the child to be under the supervisory care of the States of Guernsey for a period of 28 days from the 19th November 2012

and for the duration of the interim care requirement, it was stated that the child "*shall be subject to the conditions noted below"* and I set out in the judgment the conditions below:

(1) That C shall reside in the care of the department.
(2) C shall only have supervised contact with [the maternal grandmother] and his half sister[....] twice per week for one hour each time.
(3) C shall only have supervised contact with [the mother] once per week for one hour.
(4) C shall only have supervised contact with (the paternal grandmother,) as agreed by the department.

7. The tribunal made the interim care requirement, subject to those conditions in accordance with Section 43 and Section 44 of the law as amended by Section 52 of The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009 :

Meaning and purpose of a care requirement

43. (1) A care requirement is an order made by the Tribunal placing a child under the supervisory care of the States.

(2) The purpose of a care requirement is -

(a) To protect the child from harm and promote his proper and adequate health, welfare and development, and
(b) To assist the parent, or any other person who is for the time being caring for the child, to provide adequate care, protection, guidance and control for the child.

Further provisions in respect of a care requirement

44. (1) A care requirement may only be made in respect of a child where –

(a) after consideration of the child's case, the Tribunal is satisfied that –

(i) the question, of whether compulsory intervention may be needed, arises under section 35,
(ii) compulsory intervention is necessary to ensure the provision of adequate care, protection, guidance or control for the child,
(iii) the provision of subsection (4) are met, and

(b) the Tribunal has approved a child's plan for the child which sets out such arrangements for the child as may be specified by rules of the Tribunal.

(2) A care requirement may be made on an interim basis, for a period of not more than 28 days at any one time where the Tribunal -

(a) is not in a position to make a final care requirement, and

"(b) either –

(i) the condition for referral –
(A) has been accepted by the prescribed person, or
(B) has been determined by the Juvenile Court, under section 42(3), or
(ii) the condition has not been accepted or determined under subparagraph (i), but the Tribunal is satisfied that the welfare of the child requires immediate compulsory intervention to ensure the provision of adequate care, protection, guidance or control."

(3) A care requirement may be made subject to such conditions as the Tribunal considers to be necessary including, without limitation, conditions concerning or relating to -

(a) where the child shall, or shall not, live,
(b) the person with whom the child shall, or shall not, live,
(c) the persons with whom the child shall, or shall not have, contact,
(d) the circumstances in which a person may have contact with the child, and
(e) placement of the child out of the jurisdiction.

8. As an aside, I note that the interim care requirement stated that the child [.....] shall be subject to the conditions noted. In fact, Section 44(3) states that the care requirement (interim or final) "*may be made subject to such conditions as the Tribunal considers to be necessary ……".*

9. I therefore query why the Order from the tribunal says the child "*shall be subject to the conditions"* when the law states the care requirement may be subject to conditions. In any event, I merely highlight it - it matters not in this matter or possibly in any others.

10. Neither the grandmother nor the mother seek to appeal the interim care requirement, but appeal condition one "*that the child shall reside in the care of the department*". If they are successful in that appeal, condition 2 falls away but conditions 3 and 4 would remain in place if I consider they should and they are not currently the subject of an appeal.

The Parties

11. The mother and maternal grandmother are appellants by virtue of Rule 54 (2) of The Family Proceedings (Guernsey and Alderney) Rules 2009.

12. There was some issue as to who the respondents are to such an appeal.

13. I am satisfied that Rule 21 of The Family Proceedings (Guernsey and Alderney) Rules 2009 applies and that rule sets out who is entitled to be a respondent to these proceedings. I refer to the rules themselves and note the heading in Part X:

> "*Referrals to Juvenile court by convenor and Appeals from the Child, Youth and Community Tribunal"*

However, R49 of the rules specifically disapplies Rule 21 that I have already referred to. However, all those appearing in front of me were agreed that the heading in Part X, including using the words "*Appeals*" from the Child Youth and Community Tribunal is a misnomer because actually Part XI of the rules which is headed only "*Appeals*" specifically deals with appeals such as this, whereas, apart from its inclusion in the title of Part X, no section or rule in Part X deals with appeals. Rule 21 is not disapplied in Part XI and it therefore follows that it applies in this case and all such appeals.

14. The following persons are respondents to this appeal:

(1) The department as per Section Rule 21(a)
(2) The maternal grandmother on the mother's appeal – Rule 21(b)
(3) The mother on the grandmother's appeal – Rule 21(b)
(4) The birth father, [.....] who does not have parental responsibility but was a party to the tribunal proceedings, therefore under rule 21(d).

15. During the course of this hearing I have also joined the convenor as a party under rule 21(e), and having heard submissions, I consider that to be an appropriate course of action.

16. I also directed under rule 21(2), that the child should be a party because:

(1) The child is a party in the private law proceedings of which I will refer to later and
(2) The appeals raised important and complex issues and I considered in this case it would be appropriate.

The birth father

17. The birth father [.....] was not in attendance during the appeal. Indeed, apart from some attendances at the commencement of the private law proceedings, he has apparently absented himself from those proceedings and I am told that he has not attended any tribunal hearing.

18. I am satisfied that the father knew of these proceedings and their import and has for whatever reason failed to attend thereby not placing his child's interests as a priority. I am satisfied that I can proceed in his absence without it affecting either his or the child's rights.

The powers of the Juvenile Court on an appeal.

19. R 56 (1) relating to an appeal refers to Section 104 subsection (1) of the law. R56 states:

(a) Where it is satisfied that the decision of the tribunal was justified in all the circumstances, shall confirm the decision of the tribunal, or

(b) Where it is satisfied that the decision of the tribunal was not justified in all the circumstances may –

(i) Remit the matter to the tribunal or
(ii) Reverse, vary or substitute the decision of the tribunal and exercise any power which could have been exercised by the tribunal and

> *under (2) a decision of the Juvenile Court under para 1(b)(2) above which varies or substitutes the decision of the tribunal, or exercises any power which could have been exercised by the tribunal shall be deemed to be a decision of the tribunal.*

20. I also have regard to Section 104 of the law -

> *"Where the Juvenile Court is seised of any matter sitting in an appellate capacity under S99(1).....it may by order, confirm, reverse, vary or substitute the decisions of the tribunal against which an appeal has been made, and –*
>
> *(a) Remit the matter back to the tribunal, or*
> *(b) Exercise any power which could have been exercised by the tribunal"*

21. It seems to me that Rule 56 and Section 104 both mirror each other and I apply the law set out in Rule 56 as these appeals are one to which Section 104(1)of the law applies.

22. An issue arose as to the standard that the court should apply to the test or criteria in Rule 56. The wording "*justified in all the circumstances"* in R 56(1) (a) or indeed "*not justified in all the circumstances"* as per R56 (1) (b). Advocate Grainge urged me to find or conclude that the words "*in all the circumstances"* meant that if there was but only one circumstance in which I found the tribunal was not justified in their decision, then the appeals before the court were bound to succeed because the court had to consider and find that the tribunal was justified in each aspect of its decision making and if it failed on even one aspect then as I have said, the appeal succeeded. None of the other Advocates or the convenor agreed with the submission. Their view was that the words in all the circumstances meant that the court had to have regard to the totality and context, the latter being my word, of the tribunal's decision making and decision. So that even if I found that there was a ground for appeal which succeeded, that was not alone determinative of the success of the appeal. I agree with these submissions. I do not agree with Advocate Grainge's submissions. I am satisfied the court has to have regard to the entirety or totality of all the circumstances of the case, the child and the issues.

23. Further, the issue arose as to what standard the court should apply to the wording in R56, "*whether the court should find that test justified or not justified*" on a balance of probabilities, as per Advocate Grainge's submissions that the test in R 56 is unique in Guernsey law, or in accordance with the other parties' submissions that the standard the court should apply is as already established in Guernsey case law. I was referred to R v R Guernsey Court of Appeal 409 (17th March 2010) in which the learned judges considered the law relating to appeals "*in this type of case*," that case being an appeal arising out of a Matrimonial Causes matter. I refer to paragraphs 17 to 20 in that judgment:

> "*17. It is now necessary to consider in detail, Mrs Allen's attack on this judgment and before doing so, it is right that we should record what we see as the duty of an Appellate Court in a case such as this, involving as it does an invitation to interfere with the exercise of the Deputy Bailiff's discretion.*
>
> *18. This in our view is a case where the Court should be taking careful note of the oft quoted words of Lord Fraser in G v G 1985 2 All ER 225 at page 228:*
>
> > *"All practicable answers are to some extent unsatisfactory and therefore to some extent wrong, and the best that can be done is to find an answer that is reasonably satisfactory. It is comparatively seldom that the Court of Appeal, even if it would itself have preferred a different answer, can say that the judge's decision was wrong, and unless it can say so it will leave his decision undisturbed".*

> *19. We acknowledge that this case was one relating to custody but in our view the principle applies to ancillary relief applications as well as other cases involving the exercise of judicial discretion. Lord Fraser goes on to quote from Asquith LJ in Bellenden (formerly Satterthwaite) v Satterthwaite [1948] 1 All ER at page 345:*
>
> > *"It is, of course, not enough for the wife to establish that this court might, or would, have made a different order. We are here concerned with a judicial discretion, and it is of the essence of such a discretion that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere."*
>
> *20. Again on page 229 Lord Fraser restates the principle:*
>
> > *"All these various expressions were used in order to emphasise the point that the appellate court should only interfere when it considers that the judge of first instance has not merely preferred an imperfect solution which is different from an alternative imperfect solution which the Court of Appeal might or would have adopted, but has exceeded the generous ambit within which a reasonable disagreement is possible."*

24. The learned judges in the Court of Appeal in that case also referred to the law in G v G in 1985 and Bellenden (formerly Satterthwaite) v Satterthwaite [1948]. Further I was helpfully referred to by the convenor to the case of W v Schaffer 2001, a Scottish case based on law which is not dissimilar to Guernsey legislation and in this regard I refer to Section 51 (5) of The Children Scotland Act, 1995 which established the test in Scotland for similar appeals from the children's hearing to the Sheriff.

25. Section 51(5) says: "*Where the Sheriff is satisfied that the decision of the children's hearing is not justified in all the circumstances of the case he shall allow the appeal"* In the judgment of Sheriff Principal Nicholson in the Schaffer case, he observed "*the task facing a Sheriff to whom an appeal has been taken is not to reconsider the evidence which was before the hearing with a view to making his own decision on that evidence. Instead the Sheriff's task is to see if there has been some procedural irregularity in the conduct of the case; to see whether the hearing has failed to give proper, or any, consideration to a relevant factor in the case; and in general to consider whether the decision reached by the hearing can be characterised as one which could not, upon any reasonable view , be regarded as being justified in all the circumstances of the case"* and further stated "*in my opinion the foregoing ground of appeal does not permit a Sheriff to substitute his own decisions for that of the children's hearing merely because he disagrees with the conclusion at which the hearing has arrived or because he would have arrived at a different conclusion had he been dealing with the matter at first instance".*

26. The convenor also referred me to A & B (2007 - 2008) GLR note 22 "*wherein it was held on an appeal against an order made in the exercise of the Magistrate's discretion, that the Royal Court should not interfere with that exercise of discretion, unless it has reached the conclusion that the Magistrate's exercise of discretion must be set aside. It does not begin by exercising an independently discretionary judgment of its own. It must be fair to the lower court's exercise of its discretion and not interfere merely because it would have exercised the jurisdiction differently. It may set aside the decision only if it was based on a*

misunderstanding of the law or of the evidence or a wrong inference of fact withdrawn from that evidence or there has been a subsequent change of circumstances".

27. Having considered all of the submissions, again, I do not agree with Advocate Grainge's submissions. I am satisfied that the standard to be applied to the test in R 56 is that set down in those cases which state that the decision must be plainly wrong and it is not my rule to substitute my views for the tribunal members. I agree with Sheriff Principal Nicholson's comments in the Schaffer case.

> "*Instead the Sheriff's task is to see if there has been some procedural irregularity in the conduct of the case; to see whether the hearing has failed to give proper, or any, consideration to a relevant factor in the case; and in general to consider whether the decision reached by the hearing can be characterised as one which could not, upon any reasonable view, be regarded as being justified in all the circumstances of the case".*

28. I now deal with the chronology. I do not set out a full chronology but highlight the following points.

29. There have been lengthy, ongoing, private law proceedings since March 2010[.....]. Those proceedings were issued in the Magistrate's Court under Section 17 of the law. In those proceedings the maternal grandmother seeks a residence order relating to the child, I believe pending rehabilitation of C with his mother in due course; although that is not absolutely clear to me. C's mother and father are the respondents in those proceedings. However due to concerns expressed by the department and safeguarder, those proceedings have not yet concluded but it is relevant to note that the maternal grandmother currently has the benefit of an interim residence order in relation to the child under Section 17 of the law. She has sought that the court grant her a final or full residence order, but I have refused to grant the same due to the concerns expressed by the department and the safeguarder and also because of those concerns, C was referred to the tribunal by the department and the first interim care requirement with attached conditions, was made by the tribunal on the 24th May of this year.

30. In May 2012 and thereafter neither the mother, nor indeed the maternal grandmother, accepted that there may be grounds for compulsory intervention under Section 35 of the law. As a consequence, the convenor referred the matter to the Juvenile Court for that court to consider whether the convenor could establish the condition of the referral and facts. That hearing came before me sitting as the Juvenile Court on the 29th August 2012. Neither the mother, the maternal grandmother, nor the father attended. The court established the following condition of referral and facts and those will be included in their entirety in the judgment:

> *"A) in terms of Section 35(2) (a) of the Children (Guernsey and Alderney) Law 2008, he has suffered or is likely to suffer, significant impairment to his health or development.*
>
> ***Statement of Facts***
>
> *[.....]*

31. The child was referred back to the tribunal under R53 of the rules for consideration and determination under S 42 of the law.

32. C had been subject to interim care requirements and conditions since the 24th May this year which was reviewed by the tribunal before the exploration of each 28 day period, namely on the 20th June, the 16th July, the 10th August and the 5th September. Once the condition of

referral and facts were established, the convenor requested that the department prepare a child's plan. That is undated unfortunately, but in any event, it was obviously received by the convenor's office on the 24th September 2012.

33. That stated:

> "*It is recommended that C remains in the care of [the maternal grandmother] subject to a full care requirement whilst an assessment of C's needs is undertaken to ensure his placement with his maternal grandmother is in C's best interests in the long-term."*

34. This child's plan was before the tribunal on the 28th September 2012. It is obvious from the dates that I have read out that the department failed to comply with paragraph 9 of schedule 1 of the ordinance:

> *9 (1) Subject to paragraph 6, so far as may be practicable, the children's convenor shall, at least 7 days before the date of any hearing before the Tribunal send to –*
>
> *(a) the members of the Tribunal*
> *(b) the parties to the proceedings*
> *(c) any Safeguarder appointed in respect of the proceedings*
>
> *the documents, or copies of the documents, referred to in sub paragraph (2) that are relevant to the hearing.*
>
> *9 (2) the documents for the purposes of subparagraph (1) are –*
>
> *(a) the record of the Children's Convenor meeting referred to in paragraph 7 (2)*
> *(b) the statement of any condition for referral of the matter to the Tribunal and facts in support,*
> *(c) where any matter has been referred for determination by eth Juvenile Court, notice of the Court's decision,*
> *(d) any application for review of care requirement,*
> *(e) any report prepared by a safeguarder appointed in respect of the proceedings,*
> *(f) <u>any chronology of events provided by the Department,</u>*
> *(g) <u>the child's plan,</u>*
> *(h) any record of a decision of the Children's Convenor to refer the case of the child to the Tribunal under section 79 (2) of the Law,*
> *(i) any prior or current care requirement,*
> *(j) any statement or other information contained in a document received from, or on behalf of, the child, and*
> *(k) any other document that the Children's Convenor considers would assist the Tribunal in its determination of the matter.*
>
> ((f) an(g) are underlined by myself)

35. As a consequence of late service and because of other factors set out in the reasons for the decision, the tribunal did not feel that they could conclude the application before them on that day. On the 28th September, the tribunal made a further interim care requirement for 28 days and attached specific conditions:

> *1) C shall have no contact with [3 named individuals .....].*
>
> *2) [The maternal grandmother] will advise children service's of any important developments with C's health and welfare.*

3) *[The maternal grandmother] will advise children's services should she need to leave Guernsey and provide a forwarding address in case of emergencies.*

4) *[The maternal grandmother] will allow children's services to undertake announced and unannounced home visits a minimum fortnightly and to have access to all areas of the home.*

5) *[The maternal grandmother] and [the mother] to fully participate in the assessment process facilitated by children's services.*

6) *[The mother] will not reside at her mother's home address whilst C is in the care of [the maternal grandmother].*

7) *[The mother] to have supervised contact with C facilitated by children's services until the completion of an assessment which identifies the risks are sufficiently reduced for mother and son to have unsupervised contact.*

In the reasons for their decision given on that date as to why the conditions were necessary, the tribunal recorded their reasons as follows: - .

> *"The Tribunal decided to proceed in the absence of F. F was invited to attend but has not attended any of the Tribunals.*
>
> *The Tribunal made this decision because although the Convenor's Statement had been established, the Child's Plan had not been discussed with GM and her Advocate and M had not received a copy [.....]. The decision was to adjourn for up to 28 days to give sufficient time for the Plan to be considered by GM and M; possibly with their Advocates.*
>
> *Concerning condition 1 there was discussion concerning [.....] We were unable to receive information which might allay our concerns but this was part of civil court proceedings and not available.*
>
> *Conditions 2 and 3 reflect previous failure to keep the Department informed and was decided by majority.*
>
> *Condition 4 was discussed at length. GM was adamant that she would not accept any unannounced home visits. The Tribunal hopes that these will take place as it is important to see C in his home surroundings. Condition 5 was accepted as the beginning of an assessment process.*
>
> *Condition 6 was to avoid the re-introduction of M to C in a rushed manner. [.....].*
>
> *Condition 7 was discussed at length however the Tribunal felt it appropriate to give HSSD and M flexibility in arranging contact times.*
>
> *We heard from C's head teacher, that he is settling well and making good progress; both academically and socially.*
>
> *We discussed GM's application for a residency order. M asked if it could be a joint order which HSSD confirmed is possible. GM and M may need to discuss this with their lawyers.*

It became clear that there is tension between GM and the professionals involved in C's care. We suggested to HSSD that they may find it useful if they can find somebody able to offer a mediation or conciliation service.

There was a clear understanding that everyone had C's best interests at heart however thee were divergent opinions on how this could be achieved."

36. [.....].. It is accepted by her [the mother] and the maternal grandmother that condition 7 of the conditions of the 28th September 2012 was breached on two occasions namely on the 15th October 2012 when the mother attended her mother's home [.....], purportedly to eat a roast dinner and on the 17th October 2012, when the mother attended her mother's home, purportedly to cut C's hair. As a consequence of this and other factors, the conditions were amended on the 25th October 2012.

    1) *C shall have no contact with [3 named individuals.....].*

    2) *[The maternal grandmother] will advise children service's of any important developments with C's health and welfare.*

    3) *[The maternal grandmother] will advise children's services should she need to leave Guernsey and provide a forwarding address in case of emergencies.*

    4) *The maternal grandmother] will allow children's services to undertake announced and unannounced home visits a minimum fortnightly and to have access to all areas of the home.*

    5) *[The maternal grandmother] and [the mother] to fully participate in the assessment process facilitated by children's services.*

    6) *[The mother] will not visit or reside at her mother's home address whilst C is present.*

    7) *[The mother] shall not have contact other than supervised contact with C facilitated by children's services until the completion of an assessment which identifies the risks are sufficiently reduced for mother and son to have unsupervised contact.*

37. It was therefore for that reason that paragraph 7 of the conditions the wording was "tightened*"* (my wording*).*

38. It was the view of the department that the mother and the maternal grandmother's averral to the tribunal that they had not understood condition 7 of the conditions of the 28th September 2012 was unsustainable on the facts and they believed that the breaches were deliberate. The department also told me that the maternal grandmother had made it clear to them and to the tribunal on the 25th October, that primarily the maternal grandmother would not allow the department's social worker practitioners into her home.

39. On the 25th October 2012, the mother was unable to attend the hearing and the matter was adjourned until the 19th November 2012.

40. From the delivery of the child's plan on the 24th September until the tribunal hearing on the 19th November, the following chronological facts and issues are relevant:

    (1) The mother has failed to attend any supervised contact visit arranged on Wednesday afternoons, although I am told that she did attend on the 21st November.

(2) The social worker was on holiday from the end of October until I believe around the 7th November and the department did not make any unannounced visits to the maternal grandmother's home.

(3) An appointment was given to the maternal grandmother to meet with the department on the 14th November 2012. The maternal grandmother and the department liaised before that appointment and it was changed to the 15th November. The department do not wholly accept the maternal grandmother's explanation for the reason the appointment had to be changed.

(4) In or about November 2012, the department prepared a lengthy chronology of significant events in relation to C found in the bundle. It is not my function to consider that, save to note that it raises considerable concerns about both the mother and the maternal grandmother.

(5) The maternal grandmother met with the department on the 24th October 2012. It was described as a lengthy meeting but unsatisfactory from the department's point of view because it was perceived that the maternal grandmother set her own agenda and spoke only about matters that she wanted to speak about and not the issues of concern to the department.

(6) When the maternal grandmother met with the department on the 15th November she was given, I believe, a copy of the chronology.

(7) At the meeting on the 15th November 2012, the maternal grandmother was told that the department had decided that they wanted a clinical psychologist assessment by Dr Bryn Williams, an independent expert, of herself, her daughter (C's mother) and C. With particular emphasis on attachment.

(8) Further, the department told the grandmother that they were likely to make a recommendation to the tribunal on the 19th November 2012, that C should be removed, in effect, from her care, for the purposes of the assessment, although the exact words used remain unclear to me. As a consequence of being told that information, the maternal grandmother walked out of the meeting, so yet again the department were left feeling concerned that the maternal grandmother, C's primary carer, was not engaging with them.

(9) The department met with the mother on the 16th November 2012. I am satisfied that it was likely she had spoken with her mother and knew generally what was going to be said. The mother said the department spoke only to her about their likely recommendation to the tribunal that C be removed but not about the instruction of Dr Williams, although I believe that is not agreed with by the department.

(10) The department did not amend their child's plan of the 24th September, but did submit the chronology to the tribunal which is as I have said, I have referred to as the date of the 14th November. Again, the date when the tribunal received it, the 14th November 2012 and the date of the tribunal, the 19th, meant that there had been insufficient service on the tribunal and the parties in accordance with paragraph 9, schedule 1 of the ordinance.

(11) The safeguarder had increasing concerns about C's wellbeing and welfare prior to the tribunal hearing and her e-mail of the 19th November, see C146 in the bundle to the convenor refers.

The Tribunal

41. The tribunal took place on the 19th November 2012. The time of commencement of the tribunal changed and the mother was late, due I believe to her work commitments. I should note that I am told the maternal grandmother left the tribunal before it concluded.

42. I am told that the department set out three options to the tribunal:

    1) Firstly, to continue as per the conditions imposed on the 25th October.
    2) Secondly, to consider the imposition of further conditions in order to try and ensure the maternal grandmother and mother engaged with the department and presumably the assessment and
    3) To remove C.

43. I asked if the department expressed a preference for which alternative and whilst no-one could tell me that they did, I think it is likely that they told the tribunal that their preferred option was number 3, namely removal on that day from his maternal grandmother's care. We know from the record of decision, the tribunal agreed and attached the relevant conditions and C was removed from the care of his grandmother, with whom he had been living for the previous 3 years 9 months. I am satisfied that I can take into account the following factors as of import in the decision I have to make:

    (1) As previously stated, the department gave no indication to the mother or maternal grandmother in writing at all and gave the maternal grandmother one clear working days notice of their intentions to recommend the removal of C, although it would have been two if the maternal grandmother had kept her original appointment and told the mother, I believe, the working day before the hearing itself.

    (2) I have no information before me that there was or had been any consultation with either the maternal grandmother or mother, both of whom have parental responsibility, by the department as to the fact they were considering a recommendation for removal. Both the maternal grandmother and the mother were notified of the likely recommendation on the 15th and 16th November respectively.

    (3) The chronology of significant events was given to the maternal grandmother and mother on the 15th and 16th November respectively.

    (4) At no time prior to the tribunal hearing did the department seek to amend in writing the child's plan of the 24th September which stated that their recommendation was that C remains in the care of the maternal grandmother, subject to a full care requirement, whilst an assessment of C's needs is undertaken to ensure his placement with his maternal grandmother is in C's best interests in the long-term. When the tribunal made its decision on the 19th November, it did so without an amended child's plan in front of it. I am told that the reason for that is that the department believes that it is not the practice to amend, I says now, it is obvious it should be. If there is a proposed substantive change in the child's plan, it should be amended in writing and the department should comply with paragraph 9, schedule 1 of the ordinance.

    (5) The department breached paragraph 9, schedule 1 of the ordinance in not filing the chronology that I have referred to on time.

(6) I am told that the tribunal decided to adjourn the hearing on the 19th November and not make a full or final care requirement, but then proceeded to attach a condition which involved the compulsory removal of the child.

(7) There was a complete lack of clarity as to the purpose of the removal of C from his grandmother's care. The safeguarder and the department submitted to me that they understood that the tribunal were being asked to remove C from his maternal grandmother's care for the purpose of an assessment by Dr Williams. In effect, to ensure that the assessment took place, because of their stated concern that the maternal grandmother and the mother would not engage and make C available to the assessment process, but further, that C's residence or future residence, would depend on the outcome of that assessment. However, the assistant convenor who was present at the tribunal and indeed the paperwork seemed to concur with her view, told me that she believed and therefore believed the tribunal members believed, that the removal was for the purpose of the assessment only and there was no indication that the department also wanted to await the outcome of the assessment. After having heard all the submissions and having read the following reason for the decision: "*The tribunal therefore decided to place C within the care of the department so the assessments can be carried out"*, I remain unclear as to what was asked and what was in the minds of the tribunal members. There is a difference. Removal so an assessment can take place or, removal for welfare concerns so there can be an assessment and the outcome of the assessment is to be known. Without anything in writing, I can well understand why there was confusion, but for such an important recommendation, it should not have been the case.

(8) The tribunal members were told that the assessment would take 8 weeks. They were not told, possibly because the persons before the tribunal did not know that the assessment would not actually commence for 3 or 4 weeks thereafter. That apart from a letter of instruction and papers being sent to Dr Williams, indeed nothing would happen at all and indeed still has not happened (and in this regard I do not criticize Dr Williams) – no-one has asked yet to meet with the maternal grandmother, the mother of C and yet he was removed some 3 weeks ago apparently for that very reason.

(9) I cannot identify in the papers, in the record of decisions and reasons of the hearing that any of the tribunal members addressed the issues in Section 3 and 4 of the law or indeed the issues raised in Article 6 and 8 of the ECHR

Section 3 & 4 of The Children (Guernsey and Alderney) Law, 2008

"Welfare of the child and the child welfare principles

3.(1) Subject to subsection (3), when a public authority carries out, in respect of a child, any function under this Law, that authority shall –

1. *Take into consideration such of the child welfare principles set out in subsection (2) as may be relevant to the circumstances or matter in relation to which the function is being carried out, and*
2. *Having taken those principles into account, carry out the function, having regard to the overriding principle that the child's welfare is the paramount consideration.*

(2) *The principles (the "**child welfare principles"**) for the purpose of subsection (1) are -*

1. *that a child's welfare is normally best served by being brought up within his own family and community.*
2. *that, where it is not possible for a child to be brought up within his own family or community, his welfare is normally best served by maintenance of regular contact with his family and community,*
3. *that no compulsory intervention shall be made in respect of a child, unless it is necessary for the effective provision to the child of care, protection, guidance or control,*
4. *that any delay in determining a question about a child's upbringing is likely to be prejudicial to the child's welfare,*
5. *that irrespective of age, development or ability, a child should be given an opportunity to express his wishes, feelings and views in all matters affecting him,*
6. *that, except where it is shown to the contrary, it is presumed that a child is capable of forming a considered view from the age of 12 years.*
7. *that a child in the care of the States is entitled to be provided with, and may expect to be subject to, insofar as is practicable, similar levels of care, protection, guidance and control as would be expected to be provided or exercised in respect of a child by reasonable parents,*
8. *that in any case involving criminal activity, or the risk of criminal activity, by a child, the primary purpose of any compulsory intervention shall be the prevention of such activity in both the short and long terms,*
9. *that it is expected that parents and any others responsible for a child's welfare will consult and co-operate with one another, and where possible resolve matters by agreement, in an atmosphere of openness and non-confrontation, with recourse to formal proceedings (whether court or tribunal) only as a last resort,*
10. *that it is normally in the best interests of a child to have ongoing contact with both parents and it is the responsibility of the parents and any public authority to take reasonable steps to promote such contact, and*
11. *that in determining any issue under this Law there shall be no discrimination by any public authority on the grounds of gender, marital status, ethnic or cultural origin, religion, disability, age or sexual orientation.*

(3) *Subsection (1) does not apply –*

1. *Where the carrying out of a function in accordance with subsection (1) is likely to cause an immediate risk to the health and safety of any person, in which case the public authority by whom the function may be carried out, shall carry out the function, in such manner, as appears to the authority in question to be reasonable in all the circumstances, having regard to –*

    1. *The requirements of subsection (1), and*
    2. *The need to minimise that immediate risk,*

2. *Where a relevant court makes a variation order under section 97, or*

3. *Where the function is a decision relating to the prosecution of any criminal offence.*

The child welfare checklist

4. (1) When determining any issue concerning –

(a) the upbringing of a child under this Law, or
(b) the application of the child welfare principles,

*a public authority shall, in particular, have regard to the matters set out in subsection (2) (the "**child welfare checklist"**).*

(2) The matters for the purposes of subsection (1) are -

(a) the child's wishes and feelings (in the context of his age and understanding),
(b) the age, gender, ethnicity, cultural background, language, religion and any other relevant characteristics of the child,
(c) any harm the child has suffered or is at risk of suffering.
(d) the child's physical, emotional and educational needs,
(e) how capable each of the parents (or any other person looking after or having parental responsibility for the child) is of meeting the child's needs,
(f) the importance and likely effect of contact between the child and his parents, siblings, relatives and any other people significant to the child, and
(g) the effect or likely effect of any change in the child's circumstances, including the effect of the child's removal from Guernsey or Alderney."

Article 6 of ECHR

"Right to a fair trial

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

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 8 of the ECHR

"Right to respect for private and family life

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

The Advocate for the child submitted that the judgment or the notice of reasons do not need to specify the sections – the reasons just need to demonstrate that the relevant legislation was taken into account and I agree with that.

The convenor highlighted certain issues which she said evidenced the fact the tribunal members had Section 3 and 4 at the forefront of their minds. She also reminded me that the tribunal members were trained in the law.

I am satisfied that Section 3 and Section 4 of The Children (Guernsey and Alderney) Law, 2008 and the relevant rights as afforded in this case Section 6 and Section 8 of the ECHR are the whole foundation, or to use Advocate Grainge's word, "*the underpinning"* of the decision making by the tribunal and indeed the department and of course this court".

Its importance to decision making cannot be emphasized enough. It is the starting point, the middle and the end of those decisions where the court has to exercise discretion.

Advocate Merrien referred me to two references in the papers from the record of decision of the tribunal where the words "C's welfare" were referred to, (20th June and the 16th July) and also on the 28th September the words "C's best interests" were used.

Having read the documentation in its entirety and specifically the documentation from the 19th November 2012, I have not been able to identify where the tribunal applied the criteria in Section 3 or 4 of the law, or at any time whether they considered the rights enjoyed by the maternal grandmother and C and indeed the mother under Article 6 and 8 of the ECHR.

I would suggest in future that the tribunal ensures it has reference to the legislation, and considers its application on each occasion it has to exercise its discretion.

Further, and as importantly, there is nothing in the paperwork before me that the department carried out that exercise of discretion, prior to making a recommendation to the tribunal, because I have nothing in writing that reflects that.

(10) I have not been able to identify any fact which I would classify was 'urgent' or an emergency that had arisen between the 25th October or indeed the 28th September and the 19th November. I have been referred to the fact that C's glasses were broken, the grandmother had walked out of a meeting on the 15th November as she did the tribunal on the 19th November. I have been referred to [.....] and other matters of concern which I paraphrase as being "*more of the same*". But neither the tribunal nor I were told of an event which is of such import that it contributed to the department's recommendation, or the tribunal's decision, that the child should be removed summarily. It appears on the papers to me that the department had concluded, (again my words), "*enough is enough*" because of their genuinely perceived and increasing concerns about C and they utilised the tribunal hearing in order to achieve what they thought was right for C.

(11) The removal of a child from a primary carer is a draconian step. If the department were seeking an Interim Community Parenting Order, they would under Rule 17(2) have to give the maternal grandmother and the mother at least four clear days notice. That did not happen in this case. I accept there was no application for an Interim Community Parenting Order, but the emphasis is on the notice period.

(12) I am told that the tribunal is a 'lawyer free zone'. I have not heard submissions as to whether that principle is legally correct or just "wishful thinking". For the purposes of this judgment, I do not need to comment on it, but I note that neither the maternal grandmother, nor the mother, had access to legal representation at the hearing where the decision was taken.

(13) The court had established that the condition of referral under Section 35(2) (a) had been established as had the facts set out in the documentation dated 29th August 2012. But of course that was dated the 29th August 2012 and the child's plan of the 24th September came after the establishment of the condition of referral and facts.

(14) There is a dispute before me as to whether the paternal grandmother had understood that she could offer to care for C during the assessment period. The maternal grandmother and mother say she was not told. There is correspondence from her in the bundle, but it is not wholly clear to me what she understood or now says.

44. There is of course no Guernsey case law on the removal of children from their primary carer when the decision has been taken by the tribunal. This is the first case.

45. I have reminded myself overnight of the content of the judgments in the matter of the B Children between X Council B and Others [2004] EWHC 2015 and the judgment of Munby J (as he then was) and also Re X Emergency Protection Orders (2006) EWHC 510, the judgment of McFarlane J.

46. I am well aware that both of those cases deal with English legislation and in England and Wales they do not have a regime of the tribunal proceedings as we have in Guernsey. Nevertheless, they set out important legal principles when considering, as in this case, the summary removal of a child. In Re B, Munby J, referred to Re G (Care: Challenge to Local Authority Decision) [2003] 2 FLR 42. That case refers I believe to an ex parte case. This case is not an ex-parte case. Re G dealt with an ex parte matter, but again I state the principles are relevant. I refer to paragraph 29 of the Re B judgment which in turn refers to paragraphs 43 – 45 of the Re G document

> *"[43] The fact that a local authority has parental responsibility for children pursuant to s 33(3)(a) of the Children Act 1989 does not entitle it to take decisions about those children without reference to, or over the heads of, the children's parents. A local authority, even if clothed with the authority of a care order, is not entitled to make significant changes in the care plan, or to change the arrangements under which the children are living, let alone to remove the children from home if they are living with the parents, without properly involving the parents in the decision-making process and without giving the parents a proper opportunity to make their case before a decision is made. After all, the fact that the local authority also has parental responsibility does not deprive the parents of their parental responsibility.*
>
> *[44] A local authority can lawfully exercise parental responsibility for a child only in a manner consistent with the substantive and procedural requirements of Art 8. There is nothing in s 33(3)(b) of the children Act 1989 that entitles a local authority to act in breach of Art 8. On the contrary, s 6(1) of the Human rights Act 1998 requires a local authority to exercise its powers under both s 33(3)(a) and s 33(3)(b) of the Children Act 1989 in a manner consistent with both the substantive and the procedural requirements of Article 8."*
>
> *[45] In a case such as this, a local authority, before it can properly arrive at a decision to remove children from their parents, must tell the parents (preferably in writing) precisely what it is proposing to do. It must spell out (again in writing) the reasons why it is proposing to do so. It must spell out precisely (in writing) the factual matters it is relying on. It must give the parents a proper opportunity to answer (either orally and/or in writing as the parents wish) the allegations being made against them. And it must give the parents a proper opportunity (orally and/or in writing as they wish) to make representations as to why the local authority should not take the threatened steps. In short, the local authority must involve the parents properly in the decision-making process. In particular, the parents (together with their representatives if they wish to be assisted) should normally be given the opportunity to attend at, and address, any critical meeting at which crucial decisions are to be made."*

47. And at paragraph 30 he said *"Of course, there may be occasions of emergency or extreme urgency when for one reason or another, it is not possible for a local authority to involve parents as fully in the decision making process as would normally be appropriate". Circumstances necessarily change cases* "and he went on to say: "*I would expect such cases to be rare".*

48. As I say, that case dealt with an emergency matter, I think an ex parte EPO. I accept without equivocation this is not a parallel case, but the legal principles are transferable. "*An EPO, summarily removing a child, from his parents, is a terrible and drastic remedy* "(paragraph 34) and at paragraph 35 of Re B Munby J said that in effect *"an order to remove a child is in principle entirely compatible with Convention, and moreover there be may be cases where an ex parte (without notice) application is justified.".*

49. In Guernsey law there is a whole raft of safeguards if an emergency child protection order is made. Those safeguards are not available to unrepresented parents if a child is removed in accordance with a condition attached to a care requirement. I have regard to the safeguards in Section 57 and Section 58 of the law if this court makes an ECPO. Mr Justice Munby at paragraph 44 of Re X above:

> *"The Articles 6 and 8 rights of the parents required the judge to abstain from premature determination of their case for the future beyond the final fixture, unless the welfare of the child demanded it. In effect, since removal from these lifelong parents to foster parents would be deeply traumatic for the child, and of course open*

to further upset should the parents' case ultimately succeed, that separation was only to be contemplated if in that case B's safety demanded immediate separation".

50. And at paragraph 45, the learned judge referred to European case Haase v Germany which stated in its judgment at paragraph 94:

> *"Whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such to ensure due respect of the interests safeguarded by Article 8. The court must therefore determine whether having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicants have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests."*

51. In this case even if I accept the department's submission that the maternal grandmother and mother were not, willing at all to engage with them, this did not allow the department to abdicate their duty to ensure that they, the maternal grandmother and mother, were invited to participate in decision making progress and if they failed to avail themselves of the opportunity, the very least they should have had was a written document setting out the recommendations and the reasons for the change in the child's care plan, less than two months earlier.

52. I refer to paragraph 64 from the Re X judgment. This deals with the practicalities of the application:" This was an application from the local authority. The local authority said to the court this:

> *"the children are at risk of significant harm by virtue of the care currently afforded to them. A thorough assessment of the children is required and past attempts at such suggest that this will not be possible whilst the children are in the care of either parent."*

One can see that it is not dissimilar to what we have before us today.

53. I also refer to paragraph 93:

> "*The summary removal of children from their parents in circumstances such as this is bound to be traumatic for all concerned. It needs to be handled with great care and sensitivity. Otherwise lasting damage may be done, both to the children and to their parents"*.

54. I also draw all parties' attention to the case of Re X - Emergency Protection Orders [2006] EWHC 510 (FAM) and to the points referred to at paragraph 101, setting out practice and guidance for those involved in applications for Emergency Protection Orders.

> "a) The 14 key points made by Munby J in *X Council v B* should be copied and made available to the justices hearing an EPO on each and every occasion such an application is made;
> b) It is the duty of the applicant for an EPO to ensure that the *X Council v B* guidance is brought to the court's attention of the bench;
> c) Mere lack of information or a need for assessment can never of themselves establish the existence of a genuine emergency sufficient to justify and EPO. The proper course in such a case is to consider application for a Child Assessment Order or issuing s 31 proceedings and seeking the court's directions under s 38(6) for assessment;

d) Evidence given to the justices should come from the best available source. In most cases this will be from the social worker with direct knowledge of the case;
e) Where there has been a case conference with respect to the child, the most recent case conference minutes should be produced to the court;
f) Where the application is made without notice, if possible the applicant should be represented by a lawyer, whose duties will include ensuring that the court understands the legal criteria required both for an EPO and for an application without notice;
g) The applicant must ensure that as full a note as possible of the hearing is prepared and given to the child's parents at the earliest possible opportunity;
h) Unless it is impossible to do so, every without notice hearing should either be tape-recorded or be recorded in writing by a full note being taken by a dedicated note taker who has no other role (such as clerk) to play in the hearing;
i) When the matter is before the court at the first 'on notice' hearing, the court should ensure that the parents have received a copy of the clerk's notes of the EPO hearing together with a copy of any material submitted to the court and a copy of the justices' reasons;
j) Cases of emotional abuse will rarely, if ever, warrant an EPO, let alone an application without notice;
k) Cases of sexual abuse where the allegations are inchoate and non-specific, and where there is no evidence of immediate risk of harm to the child, will rarely warrant an EPO;
l) Cases of fabricated or induced illness, where there is no medical evidence of immediate risk of direct physical harm to the child, will rarely warrant an EPO;
m) Justices faced with an EPO application in a case of emotional abuse, non specific allegations of sexual abuse and/or fabricated or induced illness, should actively consider refusing the EPO application on the basis that the local authority should then issue an application for an interim care order. Once an application for an ICO has been issued in such a case it is likely that justices will consider that it should immediately be transferred up for determination by a county court or the High Court;
n) The requirement that justices give detailed findings and reasons applies as much to an EPO application as it does to any other application. In a case of urgency, the decision may be announced and the order made with the detailed reasons prepared thereafter;
o) Where an application is made without notice, there is a need for the court to determine whether or not the hearing should proceed on a without notice basis (and to give reasons for that decision) independently of any subsequent decision upon the substantive EPO application."

55. I stress, I am aware this is not an Emergency Child Protection Order situation. It was not ex parte, it was not an application for an ECPO and some notice had been given to both the maternal grandmother and the mother. I accept Re X and Re B, they are not directly parallel, but I am satisfied that the principles set out and detailed by the learned judges are obviously applicable when either a court or a tribunal are asked, as in this case, to grant a condition, as in this case, attached to a care requirement, which would entail the summary removal of a child from his primary carer.

56. Having considered all of the above, I am satisfied that the procedure followed by the department, prior to the tribunal hearing, which is part of the process itself, was unfair due to:

(1) The lack of consultation with the maternal grandmother even in writing.
(2) Non compliance with Para 9 of the first schedule of the Ordinance, denying the grandmother an opportunity to seek timely legal advice.

(3) A failure to set out an amended child plan in writing, leading to direct confusion at the tribunal as to why the condition was being sought.
(4) A failure to consider Section 3 and Section 4 of the law or their approach under Article 6 and failure to give proper weight to Article 8 of the ECHR.

57. I am further satisfied that the process at the tribunal on the 19th November 2012 was fundamentally flawed and fundamentally unfair because:

1) Whilst the tribunal adjourned the application for a final or full care requirement, they did not adjourn the decision to remove the child from the care of the maternal grandmother, despite knowing:

(i) That insufficient notice had been given by the department at all, or at least by the rules.
(ii) There had been no emergency event which had occurred prior to the 19th November 2012.
(iii) They were not given, nor did they ask sufficient questions about the nature or the start date of the assessment, which in effect has not yet started.

2) I am not satisfied the CYCT addressed their minds to the law at all or the rights of the child, grandmother or mother, under Article 6 or 8 of the ECHR. There is no reference in the paperwork. I found myself trying to second guess whether a particular reference in the record of decision of the 19th November was relevant to any part of Section 3 or 4 of the law. I should not have to do that. It should be obvious and transparent that the tribunal had taken into account the provisions of Section 3 and 4 of the law and Article 6 and 8 into account, without someone having to trawl through the various records as Advocate Merrien did, to see if he could find a relevant reference to the law.

3) I cannot identify anywhere in the reasons where the tribunal considered the impact of a removal on a child, save where it referred to the safeguarder's view on this issue. This is not recorded. That was, in my view, a failing. To remove a child is so grave. The reasons for it and consideration of the law, including the impact on the child should be included in the reasons.

4) The tribunal did not appear to consider whether additional conditions could be imposed to achieve the aims that the department were seeking, before they proceeded to remove the child. This wasn't an emergency. C's glasses had been broken in not unusual circumstances and even if I accept that she did not tell the department immediately it wasn't a major event. There was an issue, which is not accepted, about the child's presentation at school, combined all ongoing and earlier concerns, in addition to those three concerns which for the purpose of this judgment alone, I have accepted, but none of them were, in my opinion, sufficient on any interpretation of the law for the department to recommend summary or immediate removal on the 19th November, or for the tribunal to grant it. I am satisfied that the decision taken by the tribunal on the 19th November was plainly wrong.

58. Having considered the matter, I confirm that the interim care requirement made by the tribunal, but I substitute the following for those made on the 19th November:

1. C is to live with his maternal grandmother, GM, as at or after school on 7th December 2012 (which I believe is tomorrow).

2. C shall not have contact with [3 named individuals.....].

3. C will have no contact at all or at any time whether direct or indirect with his mother unless it has been arranged by and approved by the Children's Services of the HSSD.

4. GM will notify the department in writing at least 7 days in advance if she is leaving Guernsey for any reason.

5. If GM does leave Guernsey for any reason she can only take C with her if she has the Children's Services agreement in writing, and she is to notify them where C will be at all times in her absence, including his full address.

6. GM will fully co-operate with the Children's Services and attend all appointments with them and is to allow any representative of the department into her home without limitation at any time if they seek to visit, even if the visit is unannounced.

7. GM and M must co-operate fully with the assessment to be carried out by Dr Bryn Williams including but not exclusively:

   (1) Attending all appointments arranged by him.
   and
   (2) M will allow Dr Williams to visit either the home of GM or M if he wishes.

8. GM will make C available for all appointments at the venue and date and time as nominated by either the department or by Dr Williams.

9. M will not visit or reside at GM's address at any time.

Judge Cherry McMillen
6th December 2012