

**Judgment 20/2013**

**In the matter of “C”  
Royal Court  
3<sup>rd</sup> January, 2013**

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**An appeal from a decision of the Juvenile Court on an appeal from the Child, Youth and Community Tribunal**

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

**Between:**

**THE CHILDREN’S CONVENOR**

**First Appellant**

**-And-**

**THE STATES OF GUERNSEY  
(HEALTH AND SOCIAL SERVICES DEPARTMENT – “HSSD”)**

**Second Appellant**

**-And-**

**(“GM”)**

**First Respondent**

**-And-**

**(“M”)**

**Second Respondent**

**-And-**

**(“C”)**

**(Acting by and through his Safeguarder, Sadie Gill) Third Respondent**

**-And-**

**(“F”)**

**Fourth Respondent**

**Hearing date: 7 December (PM only) and 12 December 2012**

**Judgment handed down: 3<sup>rd</sup> January 2013**

**Before: Richard James McMahon, Esq., Deputy Bailiff**

Counsel for the First Appellant: Advocate S C Hodgett  
Counsel for the Second Appellant: Advocate J Hill  
Counsel for the First Respondent: Advocate P M Grainge

Counsel for the Second Respondent: Advocate R B Eeles  
Counsel for the Third Respondent: Advocate A M Merrien  
Fourth Respondent not present or represented

### **Cases & legislation referred to:**

The Family Proceedings (Guernsey and Alderney) Rules, 2009  
The Children (Guernsey and Alderney) Law, 2008  
The European Convention on Human Rights  
W v Shaffer 2001 SLT (Sh Ct) 86  
Re G (Care: Challenge to Local Authority Decision) [2003] 2 FLR  
Re X – Emergency Protection Orders [2006] EWHC 510 (Fam)  
The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009  
The Human Rights (Bailiwick of Guernsey) Law, 2000  
C (a child) [2010] EWCA Civ 89

### **Introduction**

1. At the conclusion of the appeal hearing on 12 December 2012, I announced that I would allow the Appellants’ appeals, giving an outline of my reasoning for doing so, and heard further submissions on the appropriate disposal of their appeals. In the light of the confirmation that a further hearing was already scheduled before the Child, Youth and Community Tribunal (hereafter referred to as “the CYCT”) for 1 pm on 14 December 2012, coupled with the Safeguarder’s view that C “*should remain in alternative accommodation until the assessment outcome is known*” and the general consensus among the parties that the CYCT is the appropriate forum in which to seek to resolve these types of issue, I decided not to interfere in C’s current residence arrangements for the period of less than 48 hours between the end of the appeal hearing and the sitting of the CYCT. I did, however, order that condition 1 to which the care requirement made by the CYCT on an interim basis on 19 November 2012 had been made subject would be deleted with effect from 3 pm on 14 December 2012.
2. When giving the outline of my reasoning, I indicated that I would, when time permitted, provide the parties with a more fully reasoned written judgment. I was informed that the appeal to the Juvenile Court was the first under the new legislative framework meaning that this was also the first occasion on which such appellate proceedings are being held in the Royal Court. Accordingly, adopting the same practice as used in the close analysis of the statutory framework undertaken in the judgment of the Juvenile Court, the comments I offer in this judgment may provide general guidance for the benefit of the CYCT and those appearing before it or advising on matters relating to it. In preparing this judgment, I have written it in an anonymised form making it capable of wider dissemination than just the parties and duly give an indication in accordance with rule 59 of the Family Proceedings (Guernsey and Alderney) Rules, 2009 that the fully-anonymised judgment can be so disseminated.

### **Background**

3. The appeals were brought under section 99(2)(b) of the Children (Guernsey and Alderney) Law, 2008. That paragraph limits an appeal to one “*on a question of law*”.
4. By virtue of section 104(2) of the 2008 Law:

*“Where the Royal Court is seised of any matter sitting in an appellate capacity under section 98(1), 99(2), 100(1), 102(2) or (3), it may by order confirm, reverse, vary or substitute the decision of the Magistrate’s Court, the Court of Alderney or the Juvenile Court, as the case may be, against which an appeal has been made, and –*

- (a) *remit the matter back to the Magistrate’s Court, Court of Alderney or Juvenile Court, as the case may be, or*
- (b) *make such other order in the matter as it thinks fit.”*

Unlike in relation to the Juvenile Court, where section 104(1) of the 2008 Law is expanded upon by rule 56 of the 2009 Rules, there appears to be no further material in those Rules establishing how the Royal Court is to deal with appeals from the Juvenile Court, including their disposal.

5. The case involves a child who is now 5 years old and to whom I will refer as “C”. Until the making of the interim care requirement by the CYCT on 19 November 2012, C had been living with his maternal grandmother, to whom I will refer as “GM”. Contact with C’s mother, GM’s daughter, to whom I will refer as “M”, had been dealt with by way of a further condition on the more recent interim care requirements. Other conditions were also attached. At a CYCT hearing on 19 November 2012, the conditions to which the interim care requirement was subjected changed very significantly because C was to reside in the care of the Health and Social Services Department (hereafter referred to as “the HSSD”), with consequential changes to the other conditions.
6. Notices of Appeal against the CYCT’s decision dated 23 and 26 November 2012 were filed on behalf of GM and M respectively. GM’s Notice of Appeal was amended on 28 November 2012.
7. The Juvenile Court’s judgment was delivered during the afternoon of 6 December 2012. The learned Judge had heard submissions during the afternoon of 3 December and on 5 December 2012. She had then taken a short time overnight and through the morning of 6 December 2012 to collect her thoughts and craft a very closely reasoned judgment on the substance of the appeals from the CYCT decision of 19 November 2012, which she delivered less than 24 hours after the end of submissions.

*The stay application*

8. The matter then first came before me in the Royal Court during the afternoon of 7 December 2012, at which time no written judgment of the Juvenile Court’s decision was available, although I was given access to the learned Judge’s detailed notes from which she had delivered her judgment, which proved to be extremely helpful. The HSSD, as Second Appellant, sought a stay of the order of the Juvenile Court, the main effect of which was that the condition imposed by the CYCT that C shall reside in the care of the HSSD would be replaced with a condition imposed by the Juvenile Court that C was to live with GM after school on 7 December 2012. As I will explain in due course, the other conditions attaching to the interim care requirement in both orders largely flowed from that primary condition.
9. Given the urgency with which the application for a stay was made, the Counsel involved did their best to explain what had occurred during the hearing before the Juvenile Court and the consequences of that Court’s decision. The Notice of Appeal filed on behalf of both Appellants by HM Procureur, who appeared on their behalf that afternoon, set out succinctly that the decision to substitute or vary the condition of residence attaching to the interim care requirement did not comply with the statutory framework. Because there had been insufficient time to produce documents in support of the stay application, oral evidence on behalf of the HSSD was given by Aimie Dye. Her evidence was subjected to cross-examination on behalf of the Respondents. She focused on what she perceived to be the emotional harm to C if he were to be returned to GM only for the need for the HSSD to accommodate him, as she suspected would be the case, to arise shortly thereafter. In her opinion, continuity of care and having in place arrangements to enable the assessment of the family to determine C’s future care to take place were important factors.
10. The Safeguarder’s position was explained by Advocate Merrien. (The Safeguarder appointed for C was unable to attend in person the urgently convened hearing on 7 December 2012 but the head of the Safeguarder Service, her manager, was in attendance.) The Safeguarder was similarly concerned about the effect that a move back to residing with GM would have on C’s

emotional needs. Following the move into the care of the HSSD, C had described himself as “big happy”. Her view was that it was in C’s best interests to remain in the care of the HSSD.

11. The stay application was opposed on behalf of GM and M. There was some debate about the test that should be applied. On behalf of GM, Advocate Grainge subjected the Notice of Appeal to close scrutiny against a test of whether the appeal as pleaded stood any chance of being arguable. She reminded the Court that, as a public authority, it was similarly bound to apply the terms of the 2008 Law. On behalf of M, Advocate Eeles adopted those arguments and further submitted that the European Convention on Human Rights and, in particular, the right to family life set out in Article 8, should be at the forefront of the Court’s considerations. She submitted that the “plainly wrong” test to which the Juvenile Court had referred would have to apply to the appeal to the Royal Court. Therefore, in the absence of a good arguable case, the stay application should be dismissed. However, as Advocate Merrien pointed out, an appeal under section 99(2)(b) of the 2008 Law is an appeal on a point of law, meaning that the appellate court has to determine whether the court below got it right or got it wrong.
12. One thing on which all Counsel were agreed was the importance of having proper regard to the child welfare principles and the child welfare checklist set out in sections 3 and 4 of the 2008 Law and “*the overriding principle that the child’s welfare is the paramount consideration*” (section 3(1)(b)). Having considered the stay application carefully, I reached the conclusion that I could not say from my review of the notes from which the learned Judge delivered her judgment and the grounds of appeal set out in the Notice of Appeal that the Second Appellant’s appeal was unarguable. It was difficult in the circumstances of the case to form a view on what the prospects of success were, but I placed them as being more than merely fanciful, because the Appellants were criticising the procedural approach adopted and the absence of reasoning about the disposal, which had been the very basis on which the appeals from the CYCT had been allowed. Accordingly, having conducted a balancing exercise weighing up the risks inherent in granting the stay and the risks inherent in refusing the stay application, always bearing in mind the requirements of sections 3 and 4 of the 2008 Law, I granted the stay and fixed the substantive hearing of the appeals for the following Wednesday, with a tight timetable for the lodging of written submissions.

#### *The appeals*

13. Both Appellants filed Amended Notices of Appeal on 10 December 2012. All five Counsel appearing in the appeal submitted Skeleton Arguments and other material prior to the Court sitting on 12 December 2012. Those written submissions, expanded on during oral argument, have been of considerable assistance to the Court and I am grateful to everyone for their prompt attention to matters.
14. C’s father, to whom I shall refer as “F”, had been treated as a party before the Juvenile Court, although he chose not to appear or be represented. In this Court, he has similarly been treated as a party to the appeal, and I was satisfied that his non-appearance meant that he did not wish to participate in this further stage in the proceedings.
15. Neither Appellant sought to overturn the decision of the Juvenile Court to allow the appeals to it from the CYCT decision. Although the First Appellant queried whether the Juvenile Court had misdirected itself by applying a test of “*plainly wrong*”, she accepted that the decision to allow the appeals was unaffected had that Court referred, without elaboration or qualification, to the wording in rule 56(1) of the 2009 Rules, namely whether it was satisfied that the decision was, or was not, “*justified in all the circumstances*”.
16. Instead, the Appellants complained about procedural irregularities in not taking evidence and/or inviting further submissions before deciding what steps to take having allowed the appeals and about the absence of reasoning leading to the outcome chosen, including the failure to explain why there was to be a departure from the recommendation of the Safeguarder. The Appellants further argued that the absence of reasoning may have meant

that the learned Judge misdirected herself as to the legal test to be applied before subjecting a care requirement to a condition. In the event that their appeals were successful, both Appellants invited the Court to remit the matter to the CYCT.

### Context of the appeals

17. In order to place the appeals into their context, it is necessary for me to refer in some detail to the judgment delivered by the Juvenile Court. That judgment must, of course, be read as a whole to appreciate what it dealt with and I acknowledge that it was prepared in some haste following the parties’ submissions. As I have already commented, I regard it as a carefully and closely reasoned analysis of the errors into which the CYCT fell. Upon reading the whole judgment, the text of which only became available on 11 December 2012, I was left with the distinct impression that the learned Judge was horrified at the inadequacies in the approach taken by the CYCT. I share the concerns she expressed. I believe it is a reasonable inference from the choice not to appeal the Juvenile Court’s decision on the substance of the appeals from the CYCT that the Appellants accepted that the CYCT decision could not be sustained.
18. The issue before the Juvenile Court was not the mounting of a challenge to the making of a care requirement on an interim basis, but rather appeals against the first condition to which that care requirement was made subject, namely “*that [C] shall reside in the care of the Department*” (see, eg, para. 10 of the Juvenile Court’s judgment, which further noted that, if the first condition could not be sustained, the second condition relating to contact with GM and another named daughter of GM would fall away and further consideration would be needed to the other two conditions relating to contact with M and contact with C’s other grandmother). This was, therefore, an appeal under section 99(1)(b) of the 2008 Law. The basis upon which the appeals to the Juvenile Court were made is relevant when it comes to considering the effect of the order made upon allowing the appeals.
19. The Juvenile Court’s judgment proceeded to analyse the legislative framework under which appeals from the CYCT lie. It is quite clear to me that the learned Judge paid proper regard to the interplay between the provisions in the 2008 Law and the way in which those provisions are further clarified in the 2009 Rules. In particular, at para. 25 of her judgment, having taken into account the wording in rule 56 of the 2009 Rules, the Juvenile Court concluded that it had “*to have regard to the entirety or totality of the circumstances of the case, the child and the issues*”.

#### *Guidance on applicable legal test*

20. The Juvenile Court also found assistance through having regard to the approach taken in Scotland and, in particular, the observations of Sheriff Principal Nicholson QC in *W v Shaffer* 2001 SLT (Sh Ct) 86. A passage from the Sheriff Principal’s judgment was quoted at para. 25 of the Juvenile Court’s judgment. Whilst remembering that the Guernsey legislative framework is not identical to that of Scotland, the Scottish system of children’s hearings is acknowledged to have provided the framework for the new approach to children matters set out in the 2008 Law. Accordingly, I have also derived assistance from the passage in that case under the heading “The statutory framework for appeals”, set out more fully as follows:

*“That framework is to be found in s 51 of the Children (Scotland) Act 1995 ... it provides, in subs (5), that, where the sheriff ‘is satisfied that the decision of the children’s hearing is not justified in all the circumstances of the case’, he is to allow the appeal and to proceed in one of several specified ways. Consequently, what the subsection appears to be saying, albeit somewhat obliquely, is that the ground of an appeal to a sheriff is to be that the decision of the children’s hearing was not justified in all the circumstances of the case.*

*In my opinion the foregoing ground of appeal does not permit a sheriff to substitute his own decision 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. ... 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.*

*The ground of appeal before a sheriff is accordingly quite a narrow one. But the ground of appeal to a sheriff principal, or to the Court of Session, as provided in s. 51(11) is even narrower. That subsection provides that an appeal from a decision by a sheriff is to lie by way of stated case 'either on a point of law or in respect of any irregularity in the conduct of the case'. Assuming that no challenge is advanced on the ground of irregularity ... it must in my opinion follow that an appeal to a sheriff principal or to the Court of Session will only be capable of succeeding if it can be shown either that the sheriff failed to apply the correct test ... under subs (5), or that the sheriff misconstrued or misapplied some other point of law pertinent to the issue before him. What all of that means ... is that an appeal to a sheriff principal is not an opportunity to challenge directly the merits of the decision taken by the children's hearing. Instead, an appeal to a sheriff principal must be primarily concerned with seeking to challenge the decision of the sheriff on one or other of the grounds which I have just described."*

21. In the context of the appeals by GM and M against making the interim care requirement subject to a condition that C shall reside in the care of the HSSD, applying a standard of considering whether the CYCT decision was “*plainly wrong*” (see para. 27 of the Juvenile Court judgment and the conclusion at para. 57(4)) did not affect the outcome. If a decision is “*plainly wrong*” it is difficult to envisage how it could also be argued as being justified in all the circumstances of the case. However, the role of the Juvenile Court, in similar vein to the role of the sheriff in Scotland, is to consider whether the decision of the CYCT was, or was not, justified in all the circumstances and there appears to be the potential to argue that something might not reach the standard of being “*plainly wrong*” yet still satisfy that test as set out in rule 56 of the 2009 Rules. Accordingly, I suggest that there is no requirement under Guernsey's legislative framework to treat the words in rule 56 as always requiring the Juvenile Court to find that the decision of the CYCT was plainly wrong.
  
22. The “*plainly wrong*” test will, however, be capable of being applied where the decision of the CYCT under appeal involves the exercise of discretion. That was, of course, the situation found in the cases to which the Juvenile Court's judgment referred. The basis of the appeals to the Juvenile Court by GM and M was not to question the exercise of the CYCT's discretion but rather to point to matters that the CYCT apparently failed to taken into account as shown by the gaps in its reasoning. The learned Judge decided to allow the appeals because the procedure followed before the CYCT hearing was unfair, finding that the process was “*fundamentally flawed and fundamentally unfair*” by reason of the shortcomings in the approach taken by the CYCT, as evidenced by the brevity and inadequacy of the reasoning recorded. Procedural irregularity and irrationality, in the sense of failing to take into account something that ought to have been considered or taking into account something that should not have been, are well-known public law principles of general application. Such grounds are either established or they are not. Even where such a ground is found to exist, the Juvenile Court then still needs to consider, as indicated in *W v Shaffer*, “*in general ... whether the decision reached ... can be characterised as one which could not, upon any reasonable view, be regarded as being justified in all the circumstances of the case*”. In my view, when dealing with allegations of procedural irregularity, rather than questioning how the CYCT's discretion has been exercised, there is no need to introduce into the analysis any “*plainly wrong*” test.

*Condition of residence on care requirement*

23. In the appeals brought by GM and M, the learned Judge set out in considerable detail why she found that the procedure adopted was flawed. Sections 43 and 44 of the 2008 Law were quoted at para. 7 of the Juvenile Court’s judgment. It is important to remember that section 44(3) provides that “A care requirement may be made subject to such conditions as the Tribunal considers to be necessary”. Although I understand why the focus in the main body of the Juvenile Court’s judgment was more about the proper procedure to adopt where a decision-making body is considering the summary removal from its home of a child, I was mildly surprised that there was no express reference in the latter paragraphs to the high hurdle imposed by a test of necessity before a condition, including one concerning or relating to “where the child shall, or shall not, live” (section 44(3)(a)), can be attached to a care requirement. It was, however, implicit that the learned Judge’s conclusions on the procedural errors and other inadequacies meant that she had decided that the conditions against which the appeals had been instituted were not necessary and their imposition was not justified.
24. Although the Juvenile Court stressed that it was aware that it was not dealing with an ex parte application for an emergency child protection order (see, eg, para. 55), which involves a distinct set of provisions in the 2008 Law (section 55 *et seq.*), its judgment highlights that there are important legal principles applying to situations involving the summary removal of a child (see, in particular, the paragraphs from *Re G (Care: Challenge to Local Authority Decision)* [2003] 2 FLR 42 and the points from *Re X – Emergency Protection Orders* [2006] EWHC 510 (Fam) quoted at paragraphs 46 and 54 of the Juvenile Court’s judgment respectively). Whilst recognising that these are not parallel regimes, the learned Judge treated the legal principles as “transferable” (para. 48 of her judgment). I endorse that approach. The substance of a condition attaching to an interim care requirement about where a child shall, or shall not, live, when dealt with in a summary fashion, albeit inter partes, is effectively indistinguishable from the making of an emergency child protection order, even if the form is very different. What the Juvenile Court’s judgment clearly demonstrates is that the procedural safeguards before such an order is made by the CYCT must be followed and that the thought-processes of the members of the CYCT must transparently show that all the relevant considerations have been taken into account before reaching the conclusion that a condition having the effect of removing a child from its home to reside in the care of the HSSD is necessary.

*CYCT reasoning*

25. In that regard, the CYCT’s reasoning for adding the condition of residence to the interim care requirement (condition 1) was briefly recorded in writing, as required by para. 12 of the Third Schedule to the Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009, as follows:

*“The Tribunal made this decision because the Tribunal was brought up to date with the Department’s attempts to engage with [GM] which had once again failed to achieve meaningful engagement. A chronology was tabled which shows that the issues concerning [GM’s] ability to address [C’s] attachment needs remain very much in question. It was felt essential that psychological assessments of [GM], [M] and [C] be carried out and it was clear that this could not happen within [GM’s] house. There was a long history of [GM’s] failure to co-operate with the Department and other agencies over this. The Tribunal therefore decided to place [C] within the care of the Department so that assessments can be carried out. The safeguarders were asked what impact this would likely have on [C] and they warned that it would be difficult for him however it was still their view that this was the preferable course of action.”*

As the judgment of the Juvenile Court quite properly notes, within that record of decisions and reasons there are no references to the relevant provisions in the 2008 Law or of

Convention principles to which the CYCT, as a public authority, is obliged to have regard in accordance with the Human Rights (Bailiwick of Guernsey) Law, 2000.

26. The judgment of the Juvenile Court was highly critical about these shortcomings in the CYCT’s reasoning. In para. 57, having just stated that there should be no need for an appellate court to second guess whether the relevant provisions and principles have been properly addressed, because this “*should be obvious and transparent*”, the learned Judge commented that “*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*”.
27. Whilst acknowledging that the CYCT members are lay people who have volunteered to participate in the provision of an important public service and cannot, perhaps, be expected to approach the giving of reasons in precisely the same way as a legally-qualified person, I take the view that there are certain fundamental elements of operating under the 2008 Law (and, where the Convention principles given effect through the 2000 Law are engaged, under that Law) that do need to be spelt out with sufficient clarity for everyone to realise how they have been applied by the members in reaching their decisions. Paragraph 11(2) of the 2009 Ordinance provides that:

*“When giving a decision in any matter heard before the Tribunal, each member of the Tribunal before whom the matter is heard shall declare orally the reasons for his decision.”*

It is important that those appearing before the CYCT understand the reasons for every element of the decision.

28. As I have already noted, the test for subjecting a care requirement, including an interim care requirement, to a condition is that the condition is considered “*necessary*” (section 44(3) of the 2008 Law). At the same time, the CYCT as decision-maker is obliged to “*take into consideration such of the child welfare principles ... as may be relevant to the circumstances or matter in relation to which the function is being carried out*” (section 3(1)(a) of the 2008 Law) and to the child welfare checklist in section 4(2). Although it is not necessary to set out explicitly which of the child welfare principles have been taken into account and which have been treated as not applicable, it is potentially good practice for the members of the CYCT to have these matters at the forefront of their minds when articulating their reasons for any decision. This will be of assistance to the chairperson when informing the persons mentioned in para. 11(4) of the Third Schedule to the 2009 Ordinance of the reasons for the decision (see para. 11(3)(b)). It also avoids the need to deconstruct what is actually contained in the written record to see if the correct principles have been applied.
29. Without wishing to introduce what might be regarded as an unnecessary distinction into the range of CYCT decisions by reference to a graduated scale of effects, there are clearly some decisions that can be reached by the CYCT that have a greater impact on a child and its family than other decisions will. Because the decision to impose a condition about where a child shall, or shall not, live and/or the person with whom the child shall, or shall not, live (section 44(3)(a) and (b) of the 2008 Law) is such a significant decision, I take the view, which is consistent with the approach of the Juvenile Court, that particular care is needed to explain the reasoning underpinning such a decision.

#### *Procedural safeguards*

30. A similar comment can be made about the need to adhere to the procedural safeguards prior to the holding of a CYCT hearing. Those safeguards have been imposed by the legislature in the 2009 Ordinance for the very good reason that they are to be regarded as needing to be complied with to ensure that the parties appearing before the CYCT are afforded a fair hearing, ie, something satisfying Article 6 of the European Convention on Human Rights. The parties are entitled to understand what is being recommended to the CYCT in order to

prepare themselves to meet those recommendations, especially if they would be minded to oppose them. This is an important aspect in any context of the rules of natural justice. It is particularly important where the decision of the CYCT may engage Convention principles where the touchstone of proportionality is so relevant.

31. At para. 34 of the Juvenile Court’s judgment, para. 9 of the First Schedule to the 2009 Ordinance was quoted in full and commented on. Two of the documents that should be circulated “*at least 7 days before the date of any hearing before the Tribunal*” were highlighted: any chronology of events provided by the HSSD and any child’s plan (para. 9(2)(f) and (g)). Paragraph 9(1) does include the words “*so far as may be practicable*” before fixing the time limit of a minimum of 7 days, indicating that if a document is not in existence, or only becomes available later on, it obviously cannot be sent out by the Convenor, as usually intended, in good time before the hearing. However, in my view, the statutorily-imposed scheme of providing documentation in advance of CYCT hearings emphasises the importance of recipient parties having time to consider and understand what is contained in those documents. Various comments have been made about the CYCT being a “lawyer-free zone”. If the attendance of lawyers is discouraged, it is of real importance that the parties appearing without such assistance can, if they wish, seek appropriate advice and guidance beforehand. If they cannot, there is a risk that there will not be equality of arms. In particular, they should not be ambushed with material that should have been provided in a timely fashion. Consequently, the CYCT needs to be sensibly cautious before relying on material supplied to the parties late, or only tabled at the CYCT hearing itself, unless there is good reason to do so.

32. In respect of the two documents highlighted, as noted at para. 40(1)) of the Juvenile Court’s judgment, “*The department did not amend their child’s plan of the 24<sup>th</sup> September but did submit the chronology to the tribunal*”. The understandable concerns of the learned Judge were then set out at para. 43(4) of her judgment:

*“At no time prior to the tribunal hearing [on 19 November 2012] did the department seek to amend in writing the child’s plan of the 24<sup>th</sup> September which stated that their recommendation was that [C] remains in the care of [GM], subject to a full (sic) care requirement, whilst an assessment of [C’s] needs is undertaken to ensure his placement with [GM] is in [C’s] best interests in the long-term.”*  
*Child’s plan*

33. Because the States of Deliberation have made it a requirement for the Convenor to provide in advance of a CYCT hearing (insofar as it is available and practicable to do so) *inter alia* “*the child’s plan*”, I take the view that this must always have been intended to be, and clearly is, a document of some significance. Section 44 (1)(b) of the 2008 Law provides that a care requirement may only be made where “*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*”. A “care requirement” is defined by reference to section 43 of that Law. It may be a final care requirement or may be made on an interim basis. In either case, it is regarded as a care requirement and so section 44(1) appears to apply to both types of care requirement.

34. Having previously circulated a child’s plan, undated but stamped as received at the Convenor’s Office on 24 September 2012, it was, in my view, incumbent on the author of it to update it if the approach recommended to be adopted at a subsequent CYCT hearing represented a departure for its contents. If the recommendations in it are those advanced on behalf of the HSSD, similarly being a public authority for these purposes, the HSSD would need to demonstrate that it has properly considered the legal principles applicable to changing its recommendation. I believe that it would only be in a situation where the urgency of the matter is such that the HSSD cannot crystallise its position into writing by way of a revised and updated child’s plan that the CYCT should countenance the parties appearing before it being taken by surprise by such a change of position. Where matters are fast-moving, an oral

update or modification may be acceptable. However, in any other situation, there really is no excuse for not putting the new position into writing and doing so in the timely fashion expected by the legislation.

35. As found by the Juvenile Court, there has been no suggestion of that degree of urgency in this case (see, eg, para. 43(1) of its judgment). Accordingly, the CYCT was not offered by any of the professionals present at its hearing on 19 November 2012 appropriate guidance about the procedural safeguards that should have been followed, with the consequence that it unfortunately misdirected itself as to what it should properly have done. In effect, those who should have been assisting failed in their responsibilities to do so, which is why the CYCT reached a decision that could not subsequently be defended.
36. Although there was no appeal against the determination of the Juvenile Court that the appeal from the CYCT should be allowed, I have set out in quite some detail how the Juvenile Court approached the substance of the appeal and my endorsement of the outcome (albeit using my own approach and words) to demonstrate how the appeal to this Court arose and the background against which it had to be judged. Put simply, the processes leading up to the CYCT decision on 19 November 2012 and the decision itself was so flawed that the CYCT’s decision could not be sustained. The real question, therefore, was the appropriate way to deal with C’s position in the light of that outcome.

#### **Disposal of appeal in Juvenile Court**

37. As its judgment sets out, section 104(1) of the 2008 Law provides that, on appeal from the CYCT, the Juvenile Court “*may by order confirm, reverse, vary or substitute*” the decision of the CYCT. The subsection further provides that the Juvenile Court may:

- “(a) *remit the matter back to the Tribunal, or*
- “(b) *exercise any power which could have been exercised by the Tribunal.*”

Those powers are clarified in rule 56 of the 2009 Rules:

- “(1) *On an appeal to which section 104(1) of the Law applies, the Juvenile Court –*
  - (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.*
- (2) *A decision of the Juvenile Court under paragraph (1)(b)(ii) 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.*”

38. The judgment of the Juvenile Court quoted section 104(1) of the 2008 Law in para. 20 and rule 56(1) of the 2009 Rules in para. 19. This demonstrates to me that the learned Judge did have regard to what the legislature has enacted and the Rules made by the Royal Court. However, after the careful and detailed reasoning leading to the appeals of GM and M from the imposition, in particular, of condition 1 to which the interim care requirement was made subject on 19 November 2012 being allowed, there is only a single paragraph in the judgment, numbered 58, setting out the Court’s conclusion as follows:

*“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 19<sup>th</sup> November:*

1. *[C] is to live with [GM] as at or after school on 7<sup>th</sup> December 2012 (which I believe is tomorrow).*
2. *[C] shall not have contact with [three named persons].*
3. *[C] will have no contact at all or at any time whether direct or indirect with [M] 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 appointment 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.*
  - (2) *[GM] and [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.”*

### **Current appeal**

39. The jump from summarising the reasoning why the appeal was being allowed to setting out the outcome for the parties, but without explaining what led to that outcome, is what the Appellants complain about in their appeals. They queried what the Juvenile Court meant by using the word “confirm” in relation to the interim care requirement. They argued that the procedure adopted meant that a decision on disposal was reached without the Court hearing evidence and/or without providing sufficient opportunity for the parties to make representations. They submitted that the absence of any indication that the child welfare principles and the child welfare checklist were, as required by sections 3 and 4 of the 2008 Law, applied by the learned Judge meant the Juvenile Court’s judgment suffered from the same type of shortcomings as the learned Judge had found in the CYCT’s decision. The final ground of challenge was that the Juvenile Court failed to explain its reasons for departing from the recommendation of the Safeguarder. Accordingly, for any of those reasons, or a combination of them, the decision of the Juvenile Court was said to be wrong in law.
40. I have some sympathy with the position in which the Juvenile Court found itself. As its judgment makes abundantly clear, the decision of the CYCT to impose condition 1 on the interim care requirement was so tainted that it really should not have been left in place for any longer. Having reached the conclusion that the CYCT had erred in this way, the option of removing the condition would inevitably have been uppermost in the learned Judge’s mind. The broad effect of the substituted conditions set out in para. 58 of her judgment was to place the parties in the position they would have been in had the decision to remove [C] summarily not been taken. In other words, the previous conditions about contact and co-operating with the assessment of the family already envisaged and planned as set out in the September child’s plan were, albeit in slightly more robust terms, re-used. Those were the conditions to which the interim care requirement made by the CYCT on 25 October 2012 had been subjected. Again, there is a high degree of logic for the Juvenile Court to decide that the unlawful condition or conditions should be removed and the status quo ante preserved.

#### *Absence of explanation*

41. The problem with that course of action and the way it was dealt with in the Juvenile Court is that there has been no explanation of how that conclusion was reached. Just as the CYCT is a public authority for the purposes of sections 3 and 4 of the 2008 Law, so are the Courts. This is also the position under the 2000 Human Rights Law. Accordingly, before reaching a decision about [C], the Juvenile Court needed to know sufficient about the position prevailing at the time of disposing of the appeal in order to reach the conclusion that it did and to explain how the outcome related to C’s present situation.

42. I was told that the Court did not hear any evidence during the appeal. That is understandable, because the process is an appellate one and not a re-hearing of the issues that were live before the CYCT. As the passage from *W v Shaffer* explains, the Court’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*”. The appeal hearing is looking backwards at events surrounding the decision of the CYCT. However, I take the view that once the Juvenile Court has decided to allow the appeal from the CYCT because its decision “*was not justified in all the circumstances*”, there must then be a second phase of considering which of the powers available to the Court should be exercised.
43. In referring to “*a second phase*”, I am not suggesting that there necessarily has to be an invitation at that point in the proceedings to the parties to make further representations. Consequently, I reject the submission on behalf of the Second Appellant that “*the Court should have sought full submissions from all the parties*”. Each appeal will inevitably be case-specific and it is entirely possible that the various options available to the Court will have been covered in sufficient depth during the oral submissions. The timescales involved may mean that the material before the CYCT is still highly relevant and applicable, meaning that there is no requirement for any oral evidence to be adduced once the outcome is announced or the parties may have come prepared with appropriate written material to place before the Court. The relevant matters may have been explored sufficiently during the appeal hearing itself so that a second phase of the hearing itself is not needed. However, if no further representations are to be invited, it does make it all the more important for the Court’s judgment to set out clearly the basis on which its decision as regards disposal has been reached.
44. In the present case, I consider that the starting point is to recall what was being appealed. The Notices of Appeal to the Juvenile Court did not seek to challenge the making of the interim care requirement by the CYCT on 19 November 2012. Instead, the appeals were against making that interim care requirement subject to condition 1. Accordingly, when the learned Judge referred in the opening words of para. 58 of her judgment to “*confirming*” the interim care requirement, I do not construe that term as indicating that any part of the appeal was being dismissed but rather that she was acknowledging that the absence of any appeal against that part of the CYCT’s decision meant that the interim care requirement continued to be effective as from 19 November 2012. As a result, the conditions set out in para. 58 of the Juvenile Court’s judgment were new conditions being substituted for the original conditions made by the CYCT.
45. By choosing to substitute new conditions, rule 56(2) of the 2009 Rules applies. The decision of the Juvenile Court to place different conditions on an interim care requirement is “*deemed to be a decision of the Tribunal*”. As such, the statutory regime applicable to the CYCT reaching a decision to impose a condition will apply equally to the Juvenile Court. In particular, this means that the Juvenile Court has to be in a position to explain why its conditions are considered by it to be “*necessary*” (section 44(3) of the 2008 Law).
46. I accept that there does not have to be slavish reference to each and every paragraph setting out the child welfare principles and the child welfare checklist. By reading the Juvenile Court’s judgment as a whole, it is quite clear that all the relevant provisions have been considered by the learned Judge. However, just as para. 57(2) of its judgment emphasised that the Juvenile Court should not have to second guess what the reasoning was because it should be “*obvious and transparent*”, this Court has been left in a similar position.
47. Whilst there have been ample references in the body of that judgment to the relevant criteria to be considered from which I could potentially ascertain why the substituted conditions were being made at that time, I would necessarily be speculating about how each influenced the learned Judge in reaching her decision. More particularly, the parties would also need to speculate. Such speculation should not be needed and is likely to be dangerous because it is

quite possible that the conclusions reached about reasoning would not be identical by each person engaging in that exercise. In these circumstances, I did not feel it appropriate for me to imply from the totality of the Juvenile Court’s judgment why the decision to substitute conditions had been made, and so to decide that such reasoning must have borne in mind all the relevant provisions. I have, therefore, concluded that the Juvenile Court fell into error in not expressly articulating any reasoning in relation to the manner in which it disposed of the appeals of GM and M.

#### *Role of Counsel*

48. In family proceedings, rule 1(1) of the 2009 Rules provides that “*The overriding objective ... is to enable the relevant court to deal with cases justly*”. By rule 1(2), “*The parties are required to help the relevant court to further the overriding objective.*” Where parties are represented by Counsel, it is the duty of Counsel to assist the Court and, in the context of this type of proceedings, to draw attention to anything that needs to be highlighted. I understand that there were several Counsel in attendance when the Juvenile Court’s judgment was delivered and the Convenor appeared in person. It is, therefore, most unfortunate that none of them asked the learned Judge if she had inadvertently missed out something between the part of her judgment where she indicated why she was allowing the appeals of GM and M and then announcing what she would do in the light of her primary decision. In this regard, I consider that the Juvenile Court was not well-served by those in attendance and a lot of time and effort, and the inevitable emotional strain placed upon all those concerned, might have been spared had someone spoken up. I am confident that the learned Judge would have been able, no doubt by reference to the passages to which she had already referred, to have explained the reasons why she was making the decision she did about substituting conditions attaching to the interim care requirement in respect of C.

#### *Departure from Safeguarder’s recommendation*

49. What I have just indicated applies in a similar vein to the need to explain, however briefly, why a Court is not following a recommendation made by a Safeguarder. The principle (reading “Safeguarder” for “guardian”) is conveniently set out in the judgment of Wilson LJ (as he then was) in *C (a child)* [2010] EWCA Civ 89 (at para. [28]):

*“When a judge decides to depart from the recommendation of the guardian ad litem or children’s guardian, he is supposed, under our jurisprudence, to explain why he has resolved to effect departure.”*

This is a recognised principle in Guernsey in the same way as it is in England and Wales. The importance of it is that everyone involved, at whatever level in the adjudication system, knows what the professionals are recommending in respect of a child and why the decision-maker disagrees with those proposals. The importance of satisfactory reasoning is to enable those affected by such a decision to understand why the decision has been reached and to analyse whether there might be grounds for challenging the decision. In the absence of adequate clarity, just as the Juvenile Court itself found, all those involved in reviewing what has occurred beforehand will struggle to understand whether the basis for the decision and whether it can be sustained. The parties affected by the decision need to be informed of the basis of the decision and it is undesirable for appellate bodies to have to speculate about the adequacy of the other tribunal’s reasoning.

#### *Decision*

50. It was for these reasons that I concluded after hearing argument on 12 December 2012 that the Juvenile Court had fallen into error in deciding to substitute the conditions it did without explaining the reasons for it. By not inviting any further submissions as to what the current position was, possibly even extending to the taking of evidence, there was always going to be a risk that the decision to substitute the conditions to which the interim care requirement was being subjected would appear to be procedurally flawed. In my judgment, such a perceived irregularity is capable of being remedied if the Juvenile Court explains the basis on which its decision is being reached. To do so would, as a minimum, entail explaining how the test in

section 44(3) of the Law was considered to be satisfied by reference to the material before the Court. Where there had been a Safeguarder recommendation, that would need to be addressed. If, at the relevant time, the material before the CYCT is still regarded as being applicable, it could be relied upon but, as is often the case in the lives of children, where events can move on swiftly, even on an appeal against a decision reached just weeks earlier, as here, there may be the need for the appellate Court to entertain updates from the parties before being in a position adequately to balance any competing arguments. In weighing up the different factors, it will generally be desirable for the Court to identify which of them has played the more significant part in the decision made, and doing so by reference to the content of sections 3 and 4 of the 2008 Law and, where applicable, relevant Convention principles will usually make sense.

### **Disposal of this appeal**

51. Having reached the conclusion that the decision of the Juvenile Court to substitute the conditions attaching to the interim care requirement made by the CYCT on 19 November 2012 was legally unsustainable, I was then left to resolve how to dispose of the Appellants’ appeals. I was very conscious of the need, especially in the circumstances of this case, to make sure that the parties had the opportunity to make representations, both during the appeal hearing and immediately after I had outlined my decision.
52. The starting point is what the 2008 Law empowers the Royal Court to do. One option (section 104(2)(a)) would have been to remit the matter to the Juvenile Court. None of the parties urged that course of action upon me. I did not regard that option as at all attractive. All of the parties did consider that the most desirable outcome would be to remit the matter to the CYCT. Although not expressly empowered to do so, I considered that section 104(2)(b), enabling the Court to “*make such other order in the matter as it thinks fit*”, encompassed that outcome.
53. In *W v Shaffer*, the Sheriff Principal drew attention to Professor Norrie’s commentary in Greens Annotated Acts suggesting that “*in most cases, where a sheriff principal or the Court of Session allows an appeal, only procedural directions will be appropriate*” and also commented that “*it seems to me that it would be very artificial and unsatisfactory for a sheriff principal or the Court of Session in effect to direct a sheriff to impose a requirement different from that decided upon by a children’s hearing in circumstances where, ex hypothesi, the sheriff had previously decided that the hearing’s own decision had been justified in the circumstances*”. Adopting this guidance, appellate courts should be cautious about substituting their own decisions for those of the original decision-maker, namely the CYCT.
54. Each case will, of course, depend on its own circumstances. In the present appeal, as I believe was the position in the Juvenile Court, the prospect of perpetuating a condition of residence amounting to the summary removal of C from his home, where that condition had been imposed unlawfully, was not particularly welcome. By analogy with general public law considerations, if a condition were imposed unlawfully it would probably be quashed, although whether that is the final outcome still lies in the discretion of the Court. The matter might be remitted to the decision-maker for a fresh decision to be taken. However, this cannot be an exact analogy in a case involving a child where there is a recognised ongoing need to have an interim care requirement and some of the arrangements for the child need to be dealt with by way of condition, eg, contact. Moreover, the effect of simply quashing the unlawful condition would need to be borne in mind, which is probably why the 2008 Law permits the appellate Court to vary or substitute the decision being appealed.
55. The HSSD wanted C to stay in its care pending the next CYCT hearing. The Convenor indicated that a CYCT hearing was already scheduled for two days hence. However, the paperwork for that hearing had not been circulated, as required, well in advance of that hearing. Accordingly, that hearing was unlikely to be able to make any longer-standing determination and might reach a decision to cover a short period ahead only. An updated

child’s plan had been prepared. At my request, I was provided with a copy to satisfy myself that the changed position with regard to C was properly reflected within it but, because it had not been provided to other parties, who therefore had no opportunity to comment on it, I do not propose to make any further comments about its content.

56. Quite understandably, on behalf of GM, Advocate Grainge wished to uphold the decision of the Juvenile Court. That stance was supported on behalf of M by Advocate Eeles, although the position of M as regards contact with C was not noticeably different as between the two sets of conditions. Their position flows from the basic finding, which was not subject to appeal, that the decision of the CYCT on 19 November 2012 to impose a condition that amounted to the summary removal of C was unlawful. Because it should not have been made in the first place, it should be set aside at the earliest opportunity, which was the effect of the Juvenile Court’s decision. In substance, had the Juvenile Court proceeded as it might have done, or had its judgment set out the reasons as fully as it should, any appeal to this Court would have been dismissed and those substituted conditions would have stood, applying to the interim care requirement made for 28 days on 19 November 2012.

*Safeguarder recommendation*

57. The main difficulty I faced was that the Safeguarder had prepared an updated report dated 12 December 2012 in which she stated that “*it is my continuing view that [C] should remain in alternative accommodation until the assessment outcome is known*”. I had also had the benefit at the stay hearing of more up-to-date information on behalf of the HSSD given in the evidence of Aimie Dye. By comparison, I had very little additional information on behalf of GM and M. Indeed, at the commencement of the appeal hearing, Advocate Grainge had apologised for the absence of GM who was unwell. However much I might have wished to be able to undo the CYCT’s condition 1 about residence, the idea of creating a situation in which C would be returned to GM’s care to reside with her, at whatever time might have been chosen, when she was acknowledged to be unwell may well have been taking a step too far when C’s welfare is the paramount consideration.
58. Before being in a position to articulate the reasons for departing from the Safeguarder’s recommendation, I would have needed to have received some further information from or on behalf of GM, and possibly also M. In the absence of such material, whether that would have been an oral update by way of evidence or something in writing, I felt that I did not have the material warranting any departure from that recommendation.
59. I also took into account the timescales for taking any positive action by substituting conditions. As I have previously indicated, I reached the conclusion that the interim care requirement made by the CYCT on 19 November 2012 continued with effect from that date. It was made for the maximum period permitted by section 44(2) of the 2008 Law, namely 28 days. The arrangements for C therefore needed to be addressed before the CYCT by no later than 17 December 2012, ie, within three working days. Challenges to interim care requirements, and more particularly just to one or more of the conditions to which such a care requirement is made subject by the CYCT, will inevitably produce these timing issues, of which the appellate Courts need to be aware and where the views of the professionals involved will I suspect play a significant role.
60. Finally, having been informed on behalf of the Convenor that a CYCT hearing was scheduled to take place less than 48 hours later, I was satisfied that the best outcome for C, as well as for GM and M, was for that hearing to address what was the most appropriate decision in respect of C, to be taken in the light of all the material to which the CYCT could then properly have regard, rather than the partial picture being presented to me. Because I did not wish to perpetuate the inappropriately made residence condition for longer than was necessary, I made an order that condition 1 to which the interim care requirement of 19 November 2012 was made subject would cease to have effect from 3pm on 14 December 2012, thereby enabling the CYCT to be seized of the matter prior to that time.

### Postscript – Guidance

61. The final paragraph of the Skeleton Argument filed on behalf of the First Respondent noted that the CYCT is not “*a professional tribunal*”, which I understand to be a reference to it being manned by volunteer lay people rather than the quality of its approach to its task, and to request some guidance as to how to meet the standards described in the judgment of the Juvenile Court to enable the CYCT better to exercise its functions lawfully in future. Although the Court would not normally accede to a request for general guidance, confining itself to determining matters in dispute between the parties, because this is a new regime where it has taken close on three years for such a matter to reach the Courts, it does seem an appropriate case in which to depart from usual practice. Accordingly, whilst what follows should not be regarded as prescriptive, I offer a few thoughts on how some simple steps might in appropriate cases assist.
62. From the material that was placed before me, which I understand was the appeal bundle provided to the Juvenile Court, it is apparent that some templates are being used by the CYCT and the Convenor. I believe that this is a good idea because it ensures some consistency of approach, especially when the chairperson is making, of causing to be made, the written record of the decision and reasons for the decision, as required by para. 12 of the Third Schedule to the 2009 Ordinance. However, in recording the reasons for the decision, some cross-referencing to the relevant provisions in sections 3 and 4 of the 2008 Law would be desirable.
63. There are, of course, a variety of ways of endeavouring to ensure that this takes place. One simple option might be to print out the text of the child welfare principles and the child welfare checklist, perhaps adding a suitable reference to remind the user that the overriding principle that the child’s welfare is the paramount consideration, and then to laminate the page or pages for use by the members of the CYCT at each hearing. If space permitted, the laminated document might also contain advisory wording relating to Article 8 of the European Convention on Human Rights, emphasising the need to decide what is proportionate in the circumstances of the case. This is a key aspect of decision-making in this area and a gentle reminder to the CYCT members to bear all these principles in mind when taking decision may be beneficial for all concerned.
64. At para. 54 of the Juvenile Court’s judgment, para. 101 of the judgment in *Re X – Emergency Protection Orders* [2006] EWHC 510 (Fam) was quoted. I do not suggest reproducing this text for the CYCT members to have available, but the first point recorded there is, I believe, worthy of consideration:

“(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.*”

Although giving consideration to a condition on a care requirement that has the effect of summarily removing a child from its home is different from an emergency child protection application, especially one made ex parte, the guidance offered for the benefit of justices is, I think, something that could be mirrored in Guernsey in relation to the CYCT members. The text of para. 57 of the judgment of Munby J could be printed out and laminated for use, when appropriate, although it may be best to re-word it to remove references to English legislation and replace them with corresponding references to Guernsey’s statutory framework. In addition, it may be necessary to clarify that these principles are not directly usable by the CYCT when considering a residence condition to a care requirement. I certainly believe that it would be helpful to provide some means of reminding the CYCT members that removing a child from the family environment, even after a hearing with all parties present, is such an important decision that it requires “*exceptional justification*”. Such a reminder would serve to focus minds and emphasise the importance of giving appropriately detailed reasoning in a case where a CYCT reaches this type of decision.

65. The final suggestion, if such documents do not already exist, would be for someone, probably the Convenor (who has, after all, requested this guidance), to consider preparing written material showing the pathways for decision-makers to follow. The Convenor is empowered by para. 13(c)(ii) of the First Schedule to the 2009 Ordinance to prescribe forms for use in connection with any hearing before the CYCT and this type of guidance note might be regarded as an extension to that power. The pathways would set out the key criteria for the CYCT members to consider in given situations. In many cases, insofar as there are “standard” cases, this might not need to be provided. However, in the more complex situation, having a checklist of considerations, particularly about compliance with the procedural safeguards and what steps may or may not be appropriate depending on the extent of compliance, to note what the Safeguarder’s recommendation, if any, is and a clear reminder of the need to articulate reasons before reaching a conclusion that does not conform to any such recommendation, as well as a reminder of the thresholds set out in the legislation which must be met before reaching a particular type of decision, might all prove to be of some assistance.
66. By adopting some or all of these suggestions, or variations thereon more suited to the practical operation of the CYCT, I hope that the mistakes made in this case might in future be averted.