

## Key Issues in the Separate Representation of Children in Jersey

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There is no doubt that child law in England and Wales is not perfect, but as a Jersey lawyer, it is easy to be slightly envious of the apparent maturity of the legal position that has now been reached as we in Jersey grapple with the subtlety of our own Children (Jersey) Law 2002. In so doing, it is easy to forget both the background to the Children Act 1989 (the 1989 Act) and also that it has been in operation for some time, namely since late autumn 1991. It has reached its 17th birthday – not quite the age of majority but nevertheless a youth that is demanding attention. While practising in England during its introduction, I recall the unease and concern at this new statute and even with the new terminology. It quickly became apparent that the 1989 Act marked a radical break with the past, so much so that cases pre-Children Act 1989 were soon dismissed as no longer authoritative.

### Background to the Children Act 1989

One of the pillars of the 1989 Act was its emphasis in affording the child the opportunity of

communicating his/her own views and, where appropriate, to be explained through independent representation. As Sir Thomas Bingham explained in *Re S (A Minor) (Independent Representation)* [1993] 2 FLR 437, the Act and rules of court introduced an exception to the general law of disability, in that a minor was now permitted to conduct a case in person or to instruct his own solicitor in certain prescribed circumstances. In addition, in cases in the public field, s 41 made it mandatory for a guardian ad litem to be appointed unless the court was satisfied that such an appointment was unnecessary, but provisions also applied so that the child also had the assistance of a lawyer. The position of children was therefore different to other areas of civil litigation and the view was accepted that children need a voice in proceedings, and particularly so where the stakes are so high in the public law sphere. In more recent times, of course, this approach has been extended whereby guardians assist in difficult private law cases using the provisions of the Family Proceedings Rules 1991 (SI 1991/1247) (FPR), r 9.5. Table 1 summarises the current position in England and Wales.

**Table 1: 'Representation' of children in proceedings in England under the Children Act 1989**

Public law		
<ul style="list-style-type: none"> <li>■ The child is automatically a party.</li> <li>■ The child has a lawyer appointed.</li> <li>■ The child has the benefit of a 'children's guardian' (formerly a guardian ad litem; GAL).</li> </ul>		
Children Act 1989, s 41; FPR 4.10–4.11, 4.12.		
Private law		
Ordinarily	Child as party/separate representation	Starting/defending proceedings by child
<ul style="list-style-type: none"> <li>■ Child not a party</li> <li>■ No lawyer representing child</li> <li>■ No children's guardian or GAL</li> </ul>	<ul style="list-style-type: none"> <li>■ Best interests of child to be made a party</li> <li>■ Issue of significant difficulty</li> <li>■ GAL appointed (Cafcass, Official Solicitor or another) 'with authority to take part in proceedings on child's behalf unless child can participate as party</li> <li>■ Lawyer represents child</li> <li>■ FPR 9.5, 9.2A</li> <li>■ President's Direction [2004] 1 FLR 1188</li> </ul>	<ul style="list-style-type: none"> <li>■ Must sue by next friend or defend by GAL (but subject to checks)</li> <li>■ Leave required – 'sufficient understanding to make' s 8 application</li> <li>■ No next friend/GAL required if court grants leave because 'child has sufficient understanding to participate as a party' or solicitor considers child can give instructions and solicitor accepts instructions</li> <li>■ FPR 9.1–9.2A</li> <li>■ Children Act 1989, s 10(6)</li> </ul>

## The Jersey perspective: the Children (Jersey) Law 2002 and the case of the missing guardian

In Jersey, the Children (Jersey) Law 2002 (the 2002 Law) had a far longer gestation period, coming onto our statute book in 2002 but not being brought into force until 1 August 2005. In comparison to the 1989 Act, it is still therefore a mere infant, but like its English relative, has also caused a great deal of angst to those who have to grapple with its provisions. It too marks a radical break with the past, but perhaps has been less of a shock given that young Jersey lawyers frequently receive their legal education in the UK and therefore have some familiarity with the provisions of the 1989 Act upon which our law is clearly based.

From a quick perusal of the Jersey statute, many of its provisions appear familiar to those who have worked under the 1989 Act. One might gripe that s 8 orders are inconveniently to be found in Jersey under an article 10, but it all looks fairly unsurprising. However, there is a rather startling variation that has recently become the focus of substantial debate among local practitioners and before the Royal Court. Table 2 below summarises the Jersey position and it is not difficult to spot some key differences, principally in the public law sphere. The position of the guardian under the Children Act 1989 was of fundamental importance in the public law sphere (and of relevance in certain categories of private law proceedings), yet it does not even get a mention in this context in the Jersey statute and associated rules. In fact, the only references to the term ‘guardian’ under the Jersey statute is confined

to guardianship orders under art 7, which mirrors the English position where there is no parent – but this is a different creature entirely; and under art 75(2), a guardian ad litem that a child would need to have so as to bring or defend proceedings, having some similarity to the English position. (Note however that in Jersey one can defend or bring proceedings by a guardian ad litem, although in England one brings proceedings through a next friend). Otherwise, in respect of a children’s guardian, the 2002 Law is curiously silent. Importantly, because it is silent there is also no provision for inspection of records held by children’s services by a guardian that would exist under s 42 of the 1989 Act in public law proceedings. Equally, there is no guidance as to the role of any children’s guardian because as a concept it is curiously missing.

One can only postulate as to why the draftsman/woman decided (quite deliberately) to leave out that important component of the English regime. Moreover, it would be interesting to research whether or not this issue was brought to the attention of the states of Jersey and debated. No doubt, however, it would have passed through the draftsman’s mind that there is a limited pool of social workers in Jersey who could perform the job of guardian, and that this pool would be radically reduced if a social worker independent of Children’s Services had to be selected, as of course *would* have to be the case, at least in public law proceedings. Those of course are significant obstacles to overcome, but nevertheless it does appear to convert the Rolls Royce system of England and Wales into a rather less attractive vehicle.

**Table 2: ‘Representation’ of children in Jersey under the Children (Jersey) Law 2002**

Public law		
Child is <i>not</i> automatically a party	BUT	Power of court to add as a party under Children Rules, r 10
Child has <i>no</i> lawyer automatically appointed	BUT	Article 75(1): ‘child [may] be separately represented as court may specify’
‘Children’s guardian’ <i>wholly absent</i> from provisions	BUT	Article 75(1) and inherent jurisdiction – lawyer and independent social worker appointed
Private law		
Ordinarily	Child as party/separate representation	Starting/defending proceedings by child
<ul style="list-style-type: none"> <li>■ Child not a party</li> <li>■ No lawyer representing child</li> <li>■ No children’s guardian or GAL</li> </ul>	<ul style="list-style-type: none"> <li>■ Power of court to add child as a party under CR 10</li> <li>■ Power to appoint lawyer and assistance of independent social worker: art 75(1); ‘child [may] be separately represented ... as court may specify’ and inherent jurisdiction</li> </ul>	<ul style="list-style-type: none"> <li>■ Proceedings under Law leave required under art 75(2) – child must have ‘sufficient understanding’.</li> <li>■ GAL required but may be appointed by court under art 75(2) or RCR 4/2.</li> </ul>

## Potential solutions

Now, at first sight, this issue is rather troubling, but thankfully *it does not mean* that the Jersey Court is unable to rectify the position should it wish to do so. In this respect, we can immediately cling to our breasts a decision by the Royal Court in *Re TS and Others* [2005] JRC 178, which, while being an application to free children for adoption (and therefore under a different statute), made clear the court's wish to make more use of guardians to safeguard the interests of children in appropriate Jersey cases. However, the difficulty of finding a guardian who was wholly independent of the states appears to have been glossed over in that case, because (as it appears) a local Court Welfare Officer from the probation service performed the role. Perhaps more surprisingly, the Minister for Health and Social Services who made the application was represented by one law officer while another, her boss, the then Solicitor General, represented the guardian. The potential conflicts or tensions in all of these arrangements do not appear to have had any effect on the case, but it is worrying that under our 2002 Law there is no clear signposting as to what arrangements should be put in place for those professionals charged with representing the interests of the child. The position has become particularly pressing since the summer of 2008 because the Royal Court has started to appoint guardians in both public law cases and also in difficult private law cases.

The key provision for such appointments is art 75(1) of our 2002 Law and this provides as follows:

*'Representation and assistance for children*

(1) Where it considers it desirable in the interests of a child to do so the court may order—

- (a) that the child be separately represented in such proceedings under this Law as the court may specify; or
- (b) that the child be assisted and befriended by such person, being a person independent from the Minister, as the court may specify.'

The first thing to note is that art 75(1) applies to all proceedings under the Children Law. Also, I would argue that provisions (a) and (b) should be read as powers that might be exercised on the same occasion rather than disjunctively, otherwise the powers of the court to take such measures as may be necessary to promote the welfare of children would be fettered to a choice between the two provisions. That is said because (b) requires a person to be independent from the Minister, so it would seem that this is aimed at public law matters, but there is in fact no reason why it could not be deployed in any case under the 2002 Law.

The role of the person under (b) is merely 'to assist and befriend the child'. Accordingly, I cannot

see this provision as a viable route for the appointment of a 'children's guardian' as exists in England and Wales and with the onerous set of duties that that role entails.

At first glance, art 75(1)(a) appears to be aimed at legal representation and would also therefore need to be discounted, but it is submitted that it is *not* restricted merely to representation by lawyers and that the court is entitled to specify how any representation should be provided to a child. Article 75(3) is instructive in this respect in that it alone refers to legal representation when dealing with how the costs of legal representation might be paid:

'Without prejudice to any other power of the court to make an order for costs against any party to proceedings, where a child has been granted *legal* representation under a legal aid certificate for any proceedings under this Law, the court may order that the costs of such representation be paid—

- out of public funds ...' (emphasis added)

I suggest that there is a difference between this provision and the width of the representation that is permitted in art 75(1)(a).

Accordingly, I would suggest that through art 75(1)(a), the tandem model of lawyer and independent social worker that is used so effectively in England and Wales may legitimately be deployed in Jersey by careful directions issued by the court. Even if you disagree with that proposition, art 75 can of course be supplemented by the inherent jurisdiction of the court which permits it to appoint any expert to provide assistance or even appoint an *amicus curiae* (advocate of the court) in its discretion: see *Re H (A Minor) (Role of Official Solicitor)* [1993] 2 FLR 552.

So far so good, but having decided that a child should be 'separately represented' and through what professionals, it is important to consider what status that child should have in the proceedings. As I have already set out in the tables above, a child is not an automatic party in either public or private law proceedings in Jersey. (In contrast, in England and Wales, a child is made an automatic party in public law proceedings, as Table 1 demonstrates.) Power exists in Jersey, however, through r 10 of the Children Rules 2005, for the child to be made a party even without the need for a formal application.

Certainly where the court feels that the child should be separately represented, that child should be made a party. The English case of *L v L (Minors) (Separate Representation)* [1994] 1 FLR 156 makes this absolutely clear. And that proposition makes sense: if children who are separately represented are not made parties, they are the subject of legal proceedings, with appointed legal representatives, but have no formal status for their lawyers to call evidence on their behalf, seek disclosure, cross-examine witnesses and so on, these being the rights ordinarily enjoyed by a party to legal proceedings. Such a view finds some further support in an unreported decision of the Bailiff on 1 October 2008, where a 13-year-old child was joined

as a party in private law proceedings, having been granted legal representation. Unfortunately, the consideration of wider practice was left to be resolved at a future date. As a matter of practice, I would suggest that the English approach as summarised in Table 1 should be adopted in determining when a child should be made a party in Jersey proceedings. In a small jurisdiction with limited resources, it would seem sensible to follow the lead of England and Wales in various basic respects unless a sensible reason exists to do otherwise.

So what would be the role and status of an advocate and guardian in Jersey? You may not be surprised that I argue that it should be the same in all essential respects as that which exists under the 1989 Act. The lawyer should specifically represent the child, as opposed to being appointed to represent the guardian. Unfortunately, our firm has found itself appointed recently in three cases (one private law and two public law cases) as representing the guardian. In the two latter cases, the guardians selected from the NSPCC in England questioned why *they* needed the legal representation and not the child, and of course they were right. (The position became even more embarrassing when the NSPCC had to be presented with our firm's terms and conditions as is required by our Law Society Code of Conduct, but that is another topic.)

It is of course hoped that such appointments will be varied and that we will shortly achieve a degree of settled practice for future cases. But the issue is important, not only in emphasising the rights of the child (who is the party) but also in catering for the possibility of a conflict between the views of a more mature and competent child with those expressed by the guardian. While the lawyer will normally take instructions from the guardian, in the event of such a conflict, the lawyer will argue the wishes and feelings of the child who is capable of giving instructions. Subject to the court's directions, the guardian will express his or her views to the court independently. A lawyer who attempts the impossible of presenting two conflicting standpoints will fail both child and guardian: *Re H (A Minor) (Care Proceedings: Child's Wishes)* [1993] 1 FLR 440.

As far as the drafting of an order that could be made in Jersey for the tandem appointment of lawyer and guardian under art 75(1)(a) is concerned, I make the following suggestion. This suggestion is not perfect by any means, but in the absence of any provisions at all that place flesh on the bare bones, it marks a start:

'Pursuant to article 75(1)(a) of the Children (Jersey) Law 2002 and the inherent jurisdiction of the Court [Children's names] shall be separately represented by (i) Advocate [Name] (referred to as the legal representative for the children) and (ii) [Name] social worker, employed by [Name, eg the NSPCC] (referred

to as the [Guardian] [Safeguarder] for the children) who shall take all necessary steps so as to safeguard the children's interests, and without limitation thereto, having regard to article 2(2) (the principle of delay) and article 2(3) (the welfare checklist) of the Children (Jersey) Law 2002.'

It will be seen that I have left as an option differing from English terminology as to the term 'guardian' (given that the 1989 Act utilises such a term in at least four different ways) and using the term 'safeguarder' instead. The latter appears more apposite given that this represents the overriding duty, ie to 'safeguard' the interests of the child (terminology in fact adopted in Guernsey).

The tandem model in private law proceedings is perhaps not as essential, although it would be the preferred option. It is in fact possible for an appropriate lawyer to represent children in the combined role of lawyer and guardian ad litem depending upon the nature of any particular case: *Re K (Replacement of Guardian ad Litem)* [2001] 1 FLR 663. In such a case independent experts in particular fields could instead be used. However, with the more mature child in private law cases, depending on the issues, it is probably safer to adopt the tandem model.

## The problem of the Jersey legal aid system and the Bailiff's solution

In Jersey, to its credit, all lawyers of less than 15 years' call provide legal aid services according to a rota. In most instances such services end up being provided free of charge, but legally aided clients can still be required to pay a contribution according to their means. In addition, the states provide limited funding for lawyers who are burdened by 'onerous' cases and such funding varies from what is known as 5/6th of the Factor A rate up to an hourly rate that would be paid to an advocate briefed by the Attorney General. The Factor A rate is what is referred to as the basic component that the court views a lawyer needs to earn to cover overheads – so while desirable, being paid 5/6th of Factor A means that the court recognises that the lawyer is making a loss, but it is not as bad as carrying out the work for nothing.

The problem is that the rota normally allocates legal aid cases irrespective of the assigned lawyer's particular area of expertise. Instead, each lawyer is expected to have in place some means of having the work dealt with competently, even if this means paying another lawyer with the requisite expertise to do the work. Cries of professional embarrassment are thereby discouraged from lawyers, although such an approach might one day be challenged.

Nevertheless, some smaller firms have been able to take on the legal aid burden of larger commercial firms, for instance legal aid family cases, and have managed to derive reasonable incomes while the larger commercial firms have been content to devote their energies elsewhere. The sharing out of legal aid work by rota has, therefore, produced an income stream for

# Features

various smaller firms who have also been able to administer such work more cheaply by dint of volume of similar work.

However, in this delicate and complex area involving children, such a rota cannot realistically work, not least because the pool of local lawyers with actual experience of working on behalf of children is extremely small and the risks to such vulnerable children of inexperienced lawyers would be too great to countenance. Accordingly, the representation of children under the 2002 Law has recently been confirmed by the Acting *Batônnier* (who allocates legal aid certificates) to a small panel of lawyers with specific experience of children cases and who have been prepared to accept such work irrespective of whether it was their turn on the rota or that they had built up sufficient credits not to be called upon for some considerable time. In the case of our firm, for example, we could technically avoid having a legal aid client walk in through the door for at least a year because we have done sufficient *pro bono* work on various matters so as to enjoy a number of legal aid credits.

However, no matter how passionate those child lawyers are, they have to have some payment. This is particularly so for two reasons: (i) speaking generally, studies in England have shown that there is often more case management work acting for children, in taking the lead in finding and instructing experts for example, than might be the case acting for other parties; and (ii) when there are other streams of well-remunerated work available, it is difficult to expect firms to take a business decision to consciously work at a loss and place their businesses at risk.

Fortunately, there is express provision in art 75(3) for the payment out of public funds for legal representation of children and the Bailiff has made it clear in the recent case of *B v J* [2008] JRC 102 that lawyers appointed under art 75 can expect to receive their fees out of the public coffers. They are, however, unlikely to match their normal contractual rates, and instead will be taxed on the indemnity basis under our Royal Court Rules, which apply certain scales to their calculation and which thereby depresses the amount actually recovered.

*B v J* was an extremely important decision of the Bailiff because it meets head on and recognises the problem posed by our legal aid system in meeting the needs of children, and a system which otherwise saves the taxpayer a small fortune. Nevertheless, there are a few grumbles already circulating among some groups as to this modest development.

## **Pushing the frontiers: the decision of the Deputy Bailiff in *Attorney General v B* [2008] JRC 157**

In this case, a man was convicted of a number of serious offences and awaited sentencing. The

Crown was moving for a substantial prison sentence and a recommendation that he be deported. The man was married and had a number of children, including two who we viewed as having sufficient understanding to give us instructions. We were asked to intervene and make representations on their behalf against any recommendation that their father be deported. Accordingly, we were appointed under the Royal Court Rules as guardian ad litem of the two eldest children.

It is important to appreciate that the conventional position in Jersey and in England has always been that the defendant's legal team will argue against deportation, and that other than the Crown and the defendant, other persons are excluded from being heard directly. The reality is, however, that the voice of the offender's family has not always been heard as clearly as it should have been in this process. A few enquiries in this case, for example, revealed that no one had come and seen the wife; no one had ascertained the views of any of the children – most of whom had been born and brought up in Jersey – and no one had investigated how their lives might be affected by any subsequent order for the deportation of their father. In fact, there was not even a requirement under the relevant immigration law for the Attorney General to serve a simple notice on the offender's wife stating that a recommendation would be sought against the husband. The offender's family was left out on a limb.

Indeed, upon our instruction of a child psychologist, it soon became apparent that there were a number of particular areas that needed to be probed in order to better understand the potential harm that would befall these particular children were their father deported to a country where the wife and children could not realistically simply 'up sticks' and relocate. Further, the expert opinion explained that the muffling of the voice of these children in the legal process stood to cause them frustration and anxiety as a result of their inability to be heard and participate. Indeed, research was cited to the effect that children who simply do not understand the process can suffer a great deal as they worry as to what may become of their parent.

In this ground-breaking decision, the Deputy Bailiff permitted the children to intervene on the issue of any recommendation for deportation. In justifying the conclusion reached, the Royal Court picked up on the English cases of *Mabon v Mabon* [2005] EWCA Civ 634, [2005] 2 FLR 1011 and *CF v Secretary of State for the Home Department* [2004] EWHC 111 (Fam), [2004] 2 FLR 517 and applied the principles encapsulated in those decisions. (In fact, while the dicta of Thorpe LJ and Munby J in those cases is routinely referred to at conferences and in articles, there have only been a few English decisions that have built upon such foundations to date.)

## Potential reforms

### ***The need for urgent action and structural re-organisation***

It is clear from recent cases before the Royal Court that the tandem appointment of lawyer and guardian for children is something that Jersey intends to promote. However, what we need are procedural rules, practice directions or a decision of the Royal Court that sets out with precision the relationships and duties of the professionals involved. Such a task is probably not that difficult and should be achieved without significant further delay. In the meantime, we have found ourselves facing fairly fundamental arguments made on behalf of the states of Jersey that there is no legal duty to provide a guardian with access to documentation comparable to s 42 of the 1989 Act, and even that there is no duty for full and frank disclosure of documents relevant to an application to place children into care. Fortunately, such inspection and disclosure has been achieved 'voluntarily', but sometimes not without a fair amount of persuasion first having to be exerted. Clearly, it is not appropriate for there to be any doubt on such important issues or indeed for only partial compliance to be given in the belief that no duty exists to begin with.

The appointment of guardians and lawyers following the tandem model is still very new, but plans are afoot to create an organisation within Jersey, similar to the Guernsey 'Safeguarder service'. The plan to form a Jersey Courts Advisory Service (JCAS) is actively now being considered, with a view to starting work in early 2009. The intention is to form an independent team of social workers that is separate from the states of Jersey. The intention is, in the short term, for the NSPCC to provide children's guardians through JCAS at first, while local guardians gain in experience and expertise, but for the NSPCC's role to reduce over time as the skills of local guardians are enhanced. In respect of funding of guardians, the states of Jersey will also no doubt heed the case of *R v Cornwall County Council ex parte G* [1992] 1 FLR 270, where a local authority's attempts to cut costs by interfering with the payment and time spent by guardians on cases were quashed by order of the High Court; the High Court emphasising the importance of guardians being properly resourced and independent from local authority interference.

### ***Protocol or draft contract for outside agencies***

It appears that the NSPCC is the preferred outside agency to be used to assist in the formation of JCAS, but there should also be scope for the use of guardians for other organisations when necessary, such as the National Youth Advocacy Scheme

(NYAS) or even guardians from the English Cafcass. With any outside agency there will need to be a certain amount of clarification and guidance in respect of funding of resources from outside the island. At present, generally experts in child matters are paid by the states through one budget or another and the lawyers process that bill. However, with some external organisations being appointed by the court to supply suitable guardians, such organisations may currently be in an uneasy haziness as to the process of securing payment and reimbursement of expenses. There clearly needs to be a protocol or draft contractual arrangement that is entered into in this respect so as to smooth the process and ensure that energies are devoted to the job in hand of safeguarding the interests of the child; and not wasted in confused administration.

### ***Panel of Jersey specialists***

It is also recommended that a panel of Jersey lawyers specialising in acting for children should be established and kept by the court. Such lawyers should be able to demonstrate expertise in child law and acting for children and be under an obligation to undertake a certain amount of specific training each year. At the time of writing, a panel of lawyers has now been identified.

### ***Appointment of Court of Appeal specialist judge***

We also need a Court of Appeal specialist judge in this area and it is notable that there is no such specialist in the Jersey or Guernsey Court of Appeal. Our respective Court of Appeal judges are normally very eminent Queen's Counsel from the UK and have brains the size of small planets. However, their specialist areas are not the province of child law, but more often than not are in commercial matters, judicial review, trust and contract matters. Indeed, even sitting as deputy High Court judges or recorders in England, they would not necessarily have what is referred to as the family 'ticket' to hear care cases even in the County Court. Accordingly, why should they sit on child appeal cases in Jersey or indeed in Guernsey? Perhaps it is the case that they can hit for six anything that is thrown at them, but it would be more reassuring to have at least one person in our Court of Appeal that could be called on as the specialist judge on children matters.

### ***Use of specialist commissioners as judges***

Consideration perhaps also needs to be given to a greater use of specialist practitioners from the UK to sit as commissioners of the Royal Court. This would ensure that the Royal Court can handle what appears to be a growing volume of complex child cases in recent months.

# Features

## ***Training of judges and jurats and greater transparency***

Jersey uses a system that combines a judge (who decides legal issues) with jurats (who are elected lay judges of fact). On the whole this system works extremely well and is something that the advocate needs to tailor his or her skills to because of the lay/legal combination at any hearing. However, there is little transparency as to what training our judges and jurats each receive.

## ***Recent reports and recommendations***

In the last decade there have been several reports and enquiries into services for children in Jersey, and these have made recommendations for the improvement of those services. The so-called Bull Report into Children with Social, Emotional and Behavioural Difficulties reported in 2002. This report recommended the establishment of a Children's Executive and an External Independent Review Group. Following the introduction of ministerial government, the External Independent Review Group was superseded by scrutiny panels. In April 2008, the Education and Home Affairs Scrutiny Panel, in its report into Early Years provision (recommendation 8.6.12), recommended that the Council of Ministers 'should evaluate the need to establish the position of an Independent Children's Commissioner for Jersey'.

The next report, the Williamson Report, 'An Inquiry Into Child Protection in Jersey', was commissioned by the states of Jersey in 2008 as a result of various complaints as to current practice in respect of child protection. While the absence of serious criticism in the report is pleasing, some found such an important piece of work not to be the compelling and in-depth read that they had expected. Nevertheless, it made two particularly important recommendations: (i) the creation of a Minister for Children to ensure accountability; and (ii) a professional independent reviewing officer external to the island. There is now a commitment on the part of the states of Jersey to implement in

full the recommendations of the Williamson Report.

The most recent report of relevance to Jersey children was the Jersey Review of the youth justice system by the Howard League for Penal Reform, which reported in November 2008. Among the recommendations of the Howard League was again the appointment of a lead minister for children's services, an independent children's advocacy scheme, a children's complaints procedure, greater consultation of children and an independent 'whistle blowing' policy.

## ***Ratification of the UNCRC***

However, the first and foremost recommendation of the Howard League Report was the ratification by Jersey of the United Nations Convention on the Rights of the Child 1989. The UK ratified it in December 1991 but with several declarations and reservations, but in September 2008 gave up these and agreed to the Convention in full. In respect of our domestication of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 we perhaps were not that far behind the UK, by virtue of passing our Human Rights Law in 2000. But perhaps we were a little naughty in delaying bringing it into force until 2007 – just in case someone might have sought to rely on it before we could alter the non-compliant laws! In that instance, 'justice delayed is justice denied' might be a fair description of such an approach.

But even ratification of the UN Convention on the Rights of the Child 1989 does not necessarily lead to great advances (as recently as October 2008 the UK was criticised in the various reports submitted by the Commissioners for Children to the United Nations). Indeed, a quick perusal of the internet reveals many countries that have fallen short of their obligations despite ratifying the Convention. Against that background, perhaps Jersey has little to fear from ratifying such a Convention, but it might be nice to think that we could ratify it and, who knows, actually do more than just pay lip service to it, as certain countries appear to have done.