

STATES OF JERSEY



FAMILY X: PLACEMENT IN THE UNITED KINGDOM

Lodged au Greffe on 22nd April 2009
by Deputy P.V.F. Le Claire of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to request the Minister for Health and Social Services to take the necessary steps to ensure that the X children are moved as soon as possible to the United Kingdom placements that have been identified as suitable for them; and
- (b) to request the Minister for Treasury and Resources to assess whether the funding required for these placements can be identified through the reprioritisation of existing heads of expenditure and, if not, to further request the Minister to bring forward for approval a request under Article 11(8) of the Public Finances (Jersey) Law 2005 for the necessary additional funding to meet the cost of these payments in 2009 in view of their urgency and to then make appropriate provision in future Annual Business Plans to meet the on-going annual cost.

DEPUTY P.V.F. LE CLAIRE OF ST. HELIER

REPORT

Children in the care of the Minister

The children who are the subject of this proposition are currently in the care of the Minister. All the professionals involved in their care in Jersey, and experts from England who have assessed them, have expressed the view that their needs will best be met by specialist therapeutic residential placements in England. This is also the view expressed by the Royal Court on 27th April 2009. Care proceedings were first instituted in 1999 in respect of these children because there were real concerns that their parents could not care for them. The system failed the children in the essential period 1999–2000 and thereafter. It then took some 9 years for the children to be taken into care, by which time the children had suffered years of abuse and neglect. A Serious Case Review has now been instituted in response to allegations of multi-agency failures by the States of Jersey. They now rank as the most damaged children in Jersey and also in the top tier of all such children in England. Dr. Silver (an expert engaged by the States and practicing as a consultant psychologist in Northamptonshire) states that the children would be in the top 5, possibly top 3, of 650 damaged children that she deals with, and that they would have been placed in the specialist therapeutic placements that are now sought. (Northamptonshire spends £16 million on its 42 children that are in residential care.)

Therapeutic placements for the children

The children are very damaged and vulnerable and are in dire need of residential *therapeutic* placements to help them recover from serious and sustained abuse over many years.

The children have been neglected to a significant degree over the whole of their lives, their birth family not being able to care for them properly, largely due to problems in their parents' own backgrounds. In addition to chronic neglect over many years the children have suffered sexual abuse to a quite horrific extent. This abuse is likely to have been committed by different adults at different times. The children have displayed highly sexualised behaviour from a very young age, such that one of the children has been described by the consultant clinical psychologist as the most disturbed child she has ever worked with. The children all have very serious problems.

Placements in the UK

The professionals involved with the care of these children have expressed the view that the only way for them to have any chance of regaining their childhoods and to be able to recover from their traumatic lives to date is for them to be placed in very specialised therapeutic communities. The experts who have worked with the children have identified 2 units in England where they will be able to receive the care they need. These units provide “wrap-around care” 24 hours a day, 7 days a week. They are units with proven track records of working with some of the most disturbed children in England. They are units which provide a stable, caring, residential environment with the children living in very small groups so that their individual needs are met. The units provide the psychological and emotional support and therapy the children need, they ensure that their physical health is promoted, and they provide tailored educational provision on site for each child.

These placements for the children will provide them with a safe and consistent environment, away from their abusive background, where they can grow, physically, emotionally and spiritually. They will learn how to form proper relationships, gain the self-esteem they lack, and unlearn the patterns of abuse which will otherwise blight their lives.

The current situation

The parents have been ruled out as viable carers for the children for a variety of reasons, but one is that they cannot provide good enough care within an acceptable timeframe for these children. It is both ironic and tragic therefore that the children have remained in care now for over a year and still have not had their needs met by their corporate parent, in the form of the Minister for Health and Social Services, and who is unlikely to be able to meet their therapeutic needs in any meaningful way until late 2010–2011, by which time the damage suffered is likely to be permanent. Despite the overwhelming view that the children need to be placed in the UK placements, on 19th December 2008, the Minister for Health and Social Services (through delegated powers to his Chief Officer Mike Pollard), decided not to place the children in the UK, but to pursue a Jersey option of hastily arranged units, using staff from existing residential children's homes in Jersey, and redeploying a child psychologist from CAMHS to train staff and develop the units. The independent experts (Dr. Silver, the clinical child psychologist who prepared the substantive report on the children, and the children's guardian) are firmly of the view that the proposed new units will not be able to meet the children's needs within timescales suitable for their recovery. Such units will take at least 18 months to 2 years to be sufficiently established to treat children as damaged as these, and probably not even then. This does not however detract from the commitment of those involved in the creation of the Jersey units, which is considerable. They will just not be suitable for these children in time. *See attached Appendix from Dr. Silver.*

The cost of providing this essential care for the children will be considerable whether the care is provided in the UK or Jersey.

Cost of the UK placements

The cost of sending all the children to the identified placements in the UK will be £714,175 per year. The UK placement costs are completely all-in. They include all accommodation, food, board, entertainment, clothes, travel, holidays, trips out, etc. They include all education costs, to be provided on site by specialist highly qualified teachers. They include all health care, all specialist therapy and everything the children will need. There will be no other costs to Jersey apart from the social worker visiting up to 4 times a year.

Cost of the proposed Jersey placements

It is presently unclear exactly what the costs of the proposed Jersey provision will be. The information provided is incomplete, and does not include the cost of education, which is borne by another budget. There will be very significant manpower implications, and more psychologists and residential children's home workers will need to be recruited and trained. The Court of Appeal of Jersey is expected, in its imminent written judgment, to refer to various issues surrounding the way in which the cost of Jersey provision has been approached.

It is however clear that the level of provision proposed in Jersey, even if the funding sought as a draw-down from the money earmarked from the post-Williamson Implementation Plan is forthcoming, falls significantly short of what is available at the identified UK units.

The effect of not providing the children with the treatment in the UK placements, and trying to implement a system of care here, will be similar but far more likely to fail in the long term, according to the independent experts. This will mean that the chances of the children needing further care as adults and the chances of them becoming part of a continuing cycle of abuse will be greatly increased. This may have long-term effects upon their own families in the future and the community as a whole. In financial terms, the long-term costs associated with the children not having the treatment they need from the specialist UK placements are likely to be significant, and exceed considerably the outlay required at this time.

Sources of funding

Although the fact that the needs of these children are significant was clear in the early part of 2008, and the prospect of off-Island provision being necessary was raised by Dr. Silver in June 2008, no provision at all was made in the Children's Service budget for 2009 for the extra costs required by these children.

No applications for funding have been made apart from the application for a draw-down of the money earmarked for the Williamson Implementation Plan.

No applications have been made to the Treasury for funding for these children.

No applications have been made to the contingency funds for funding for these children.

Those representing the children have been offered charitable funding from the Variety Club and a donor who wishes to remain anonymous, but the Minister has indicated that he does not wish this source of funding to be pursued. No explanation has been given for this stance. At present a total of £125,000 appears to be available from charitable funding.

At the same time that money is desperately needed for the treatment of these children, on 21st March 2009 the Minister for Treasury and Resources announced that there was £5.1 million saved from 2008 and available to Departments that show a compelling case. The Minister for Health and Social Services has not made any application in respect of this money to assist these children in his care. This is despite a request being made by the Royal Court on 26th March 2009 that the Minister makes such an application.

Moreover, on 9th April it was announced that £44 million has been made available to stimulate the economy.

It is important that these damaged and vulnerable children, who are the responsibility of the Minister, who acts as their corporate parent, are not placed at the bottom of the list of current priorities. A debt is owed to these children who deserve the best (and in fact the only option) that will promote their welfare.

The future

As part of the work which will be undertaken in the UK placements, the children will be prepared for their move back to Jersey in the future. From very early on, links will be forged with foster-carers in Jersey with whom the children will be placed when they are ready to return to the Island of their birth. It is anticipated that the children will need therapeutic work in England for 3 years. However it is possible that in time, and given commitment and resources from the States, proper follow-on residential provision could be made available in Jersey to allow them to return sooner.

Doing the right thing for these children now will not only benefit some of the most deprived and needy children in Jersey, but their future families, their future communities and Jersey itself.

Judicial Review proceedings

The decision of the Minister on 19th December 2008 not to agree to the placement of the children in the UK was subject to an application for judicial review. This application was dismissed by the Royal Court on 12th March, with reasons provided in a judgment handed down on 26th March 2009. That decision was appealed, and on 8th April 2009 the Court of Appeal overturned the decision of the Royal Court and quashed the decision of the Minister.

The Greffier of the Court of Appeal recorded the decision as follows:

“The appeal was allowed and the Minister’s decision of 19th December 2008 was quashed in the case of one child only. The Court did not quash the Minister’s decisions on the other children as he has already agreed to reconsider those decisions and the guidance referred to above should assist him there as well. The Minister was ordered to reconsider that decision according to the law on the grounds that he should have disclosed the substance of a particular report to the Guardian (the Williamson Implementation Plan) and hence the experts on the children’s behalf, in order to give them a reasonable opportunity to consider and comment on that report.

Reasons will be provided as soon as possible and the Court will also seek to give the Minister guidance as to the legal basis on which he should make his decision.”

Attempts at resolving matters

The Court has not placed a time limit on the above decisions, although everyone must realise the urgency of this matter, no date has been set. The Minister has refused to meet with the Advocates or the guardian appointed by the States to act for the children at any time during the proceedings. More recently the Minister has refused to talk with them with me. The following e-mail was sent by the Minister in response to a request for such a meeting:

Dear Paul.

Judy, officers and I would be delighted to meet with you to assist you and explain our position. It would be difficult however to meet with the lawyers who are taking legal action against me in my capacity as minister for H@SS. I assure you however, of my full cooperation and support . I am unable to fix a date for this meeting until after easter.

Part of the judgment of the Court of Appeal will be in respect of all parties working together. Guidance upon this issue is given in England as follows:

Re L (Care: Assessment: Fair Trial) [2002] 2 FLR 730:

“If the watchword of the Family Division is indeed openness – and it is and must be – then documents must be made openly available and crucial meetings at which a family’s future is being decided must be conducted openly and with the parents, if they wish, either present or represented. Otherwise there is unacceptable scope for unfairness and injustice, not just to the parents but also to the children.”

It is incumbent on all involved with the care of vulnerable children in Jersey to work together to try to make things better, to work out the best ways of helping our children get the very best and to have their needs met as fully as possible. Rather than arguing fruitlessly about the way decisions have been reached in the past, the Minister and those working with him should look to finding ways of funding what is required. He should work collaboratively with others for the benefit of the children in his care.

Concerns about the situation

There is a misunderstanding on the part of the Minister for Health and Social Services as to the role of the lawyers acting for the children and the guardian who is appointed by the court to protect their interests. In the case of *Re S and W (Care Proceedings)* [2007] 2 FLR 275 it was stated that: *“the guardian is appointed by the court as the children’s representative and the local authority should respect and facilitate the guardian’s duties fearlessly to protect the children against local authority incompetence and maladministration, as well as poor social work practice”*.

It is difficult to understand why no applications were made to the Treasury for funding before 19th December or at any time thereafter. If they were, when were they? And why was the funding not approved?

Why was a managed option within the system that had failed them so badly believed to be sufficient, when it is recognised that within the whole of the UK there are only a handful of units available to handle children subject to this level of abuse and so badly damaged?

Why did Jersey believe it could manage when the independent expert identified the children as being as badly abused as the top 3-5 children out of 650 children in her care for the whole of Northamptonshire?

Why then, when it is recognised that unless these children receive immediate care of the highest quality are we still waiting for a Ministerial decision?

The longer we wait and the more we advocate unsuitable Jersey treatment, the more the children will continue to deteriorate.

If they are not properly treated now, they will be more prone to adult mental health problems in the future, more prone to become involved in or become victims of crime, more prone to repeat the abuse to their own children in the future due to a lack of understanding of parental care, more prone to psychological harm, and there will be a much greater risk of the damage carrying on into the next generation of their children and possibly on into the rest of the community.

The reality is that after years of Jersey management and care these children are worse off than when they were first brought to our attention as politicians by the Children's Services in 1999.

Any Jersey system will take years to get into place with the properly resourced and trained staff. It may be that the Jersey unit in any event will never be fully equipped or funded to handle *this* level of abused children and we must acknowledge that there will be a risk to our own staff in exposing them to the level of caring that is required.

It is likely that the staff themselves may become emotionally and psychologically affected to the point where they will become retired on health grounds or simply off work.

Let us not try to be the best hospital and health service in the world, merely the one that knows the best treatment for patients and the courage to know when their needs are beyond our capacity to treat, but within our compassion and competence to refer for treatment to a place where the best is available for them.

In this case the children need the funding to be given the opportunities that are available at the moment in the UK, in the units that have been approached and have the capacity at present and the track record to deliver.

To do otherwise would be to bury our heads in the sand.

APPENDIX

Discussions conducted between Deputy Paul Le Claire and Dr. Silver on 14th and 15th April 2009.

“About me

In my NHS role I'm currently the service manager for the CAMHS team for Looked After and Adopted Children in Northamptonshire (a population 7 times the size of Jersey, with 7 times the number of Looked After Children). I'm also multi-agency lead for our innovative Intensive Attachment Intervention Team, which works therapeutically with children who are struggling to form healthy relationships within their new placements. I offer consultation to Social Workers and managers about placement planning, care plans and the appropriateness of therapeutic interventions. I provide training to professionals and foster and adoptive carers about working with children with poor early care and disrupted attachments.

I'm the national chair of the network for Clinical Psychologists working with Looked After and Adopted Children, CPLAAC (that is, I co-ordinate the network of 220 psychologists who specialise in this kind of work, the largest network within the British Psychological Society). I also annually chair a national conference around best practise when working therapeutically with Looked After and Adopted Children, and lead the symposium related to this client group within the Child Faculty Conference (the main child psychology conference in the UK). I also have a significant research portfolio with this client group which has led to several publications, and I am leading the national working group to develop effective outcome measurement techniques for professionals working with the Looked After population.

In my role as an independent expert for the court, I have completed psychological assessments of more than 60 complex families involved in Care Proceedings over the last 8 years, specialising in assessing parenting competence, attachment relationships, the impact of abuse and trauma on children, and their needs in future placements. I am the preferred expert witness in Care Proceedings for Milton Keynes and Buckinghamshire Local Authorities. I was invited to train the Family Court Group (Guardians, Magistrates, Judges and legal teams) in Northamptonshire in 2008 and Buckinghamshire in 2009 about attachment issues and the enduring/transgenerational impact of poor early care, with very positive feedback. I am approved as an Expert Witness by the BPS, and have attended specialist training courses about legal work. I regularly give evidence in court.

About what I was asked to do and my views

I was asked to provide an independent assessment of the family, and the needs of the children. I completed this with the assistance of my mother, who is also a Consultant Clinical Psychologist (she is a highly experienced psychologist who manages the Child Psychology Service for Suffolk and also regularly does court expert witness work). As part of my conclusions I recommended that 3 of the children were placed in specialist residential therapeutic placements on the UK mainland, due to the complexity of their needs, the prolonged exposure they had to multiple sources of abuse and the importance of investing in intensive interventions before the window of opportunity is lost and we are left with managing extremely damaged and vulnerable adults (who run the risk of having enduring mental health concerns, dysfunctional relationships, involvement in crime or substance abuse, and who may struggle to

parent their own children – leading to ongoing health and social care interventions). I believe such placements are necessary due to the long timescale required for developing sufficiently skilled and experienced local services, when the children need their recovery to start as soon as possible. I would recommend the same type of placement for children with the same issues within my own locality, and note that, despite the expense, the use of “out of area” specialist placements would be normal practise in the UK, with 10% of children who are Looked After having such placements across the UK. To set the recommendation in context, it may be helpful to note that despite the complexity of the cases I am involved with I have rarely recommended specialist out of area residential placements in my expert reports (I did not recommend such placements for the other children assessed in this case, and in the other case for which the States of Jersey employed me for an independent expert assessment I recommended a local package of care, when others felt that the young person involved required a package of secure or specialist residential care which was not available on the island).

As I understand it, there was complete professional consensus with my recommendations, which were endorsed by the Guardian, Social Worker and local CAMHS/psychology service. I understand that a group of these professionals went out and visited possible placements in the UK, identified preferred placements for each child and established the availability of immediate placements, which were consistent with the initial care plans submitted to court and the children could have been placed in by January 2009, if not earlier. I had not recommended specific placements in my initial report, just the type of placements that would best meet the children’s needs – the specific choice of placements was made by the Guardian and Local professionals, though subsequently having read the brochures and sought some feedback about the placements chosen I was able to support the selection. However, latterly, having told there will be no funding of off island placements, the care plans have had to be amended, and the local professionals have been placed in a position where they have had to make the best possible plans within the constraints of what is available on the island (initially with a promise of new funding from the start of April, and now with any potential funding being delayed until at least June). It would appear that political and financial influences have been more powerful than the consensus of professional opinion of what would be best for these children – everyone appears to be trying to make do with a plan B that is being increasingly compromised and was never the preferred choice (except of politicians and accountants). An idealised view of the Jersey placements has been created in which they are equally or nearly as good as the placements identified, but in my view (and that of the Guardian, as I understand it), even if the (already much-delayed) proposed funding for enhancing the provision available on the island (so called “post Williamson implementation” monies) were forthcoming these placements will take some 18 months to 2 years to establish sufficiently to be therapeutic in quality, let alone comparable to the established placements identified. The placement plan also rests on one individual psychologist, who is to develop the therapeutic culture of the placements, train and supervise the staff team and deliver the direct therapy to the children. I have the greatest regard for her, but this is a heavy burden to place on one individual (which I would not take on myself), and I feel that in order to deliver it she will require a significant support network and specialised supervision – when she asked whether I could provide the latter I declined but recommended a potential contact, but again this seems to be dependent on as yet unsecured funding. There appears to be a high risk of burnout, and I am uncertain what would happen to the scheme if she were to become sick, or pregnant, or experience life events that were to take her away from work.

This case has been unique in my professional experience. Previously in the cases I have been involved in, both in my NHS and court work, the interests of the children have been held paramount in such a way that the only debate has been about how their needs are best met. Never before have my sincere and considered professional recommendations (which were endorsed by all local professionals) led to such a complex minefield of finance and politics, in which it appears that the shock value of the total price of the placements (for 3 children over 3 years, without comparison to the baseline of what would be spent on local care in the same period) is more influential than the pressing needs of such damaged children that have been failed for so many years. The net result has been 3 young people who have been stuck in limbo for many months, in which they could be beginning to recover from their experiences. I fully accept that no package of care comes with a guarantee of success, but it is my genuine belief that it is the better moral and financial decision to invest in the short term and save in the long term, rather than compromise the quality of care these needy children receive in order to cut the up-front costs.

Dr. Miriam Silver
BSc MSc ClinPsyD CPsychol AFBPsS
Consultant Clinical Psychologist”

Subsequently, on 15th April, Dr. Silver went on to confirm the following –

- * That the window of opportunity for children to recover from their abuse is narrow and literally each day that is lost diminishes the prospects of the children being successfully treated;
- * The age of all of these children makes receiving the correct therapeutic treatment a matter of extreme urgency;
- * That without such successful treatment the Island faces the prospect of these children continuing into adulthood as severely damaged individuals with potential risks to them and to others;
- * That a breakdown in any placement that these children are now put through would be disastrous for them; that the risks of such breakdown are great in any Jersey provision that is envisaged whereas the UK placements are tested and proven and have excellent rates of success;
- * That experience in England shows that what is being envisaged in Jersey, i.e. by redeploying residential staff (with different experience and training) to a would be therapeutic unit, has a great risk of failure, and that she knows of a similar unit that failed in the UK.

Dr. Silver will be providing a hard copy of her views in due course.

Financial and manpower implications

The cost of providing this essential care for the children will be considerable whether the care is provided in the UK or Jersey.

Cost of the UK placements

The cost of sending all the children to the identified placements in the UK will be £714,175 per year. The UK placement costs are completely all-in. They include all accommodation, food, board, entertainment, clothes, travel, holidays, trips out, etc. They include all education costs, to be provided on site by specialist highly qualified teachers. They include all health care, all specialist therapy and everything the children will need. There will be no other costs to Jersey apart from the social worker visiting up to 4 times a year.