IN THE MAGISTRATE'S COURT OF THE FALKLAND ISLANDS

(Children Ordinance 1994)

MC/32/12

BETWEEN

THE CROWN

and-

X and X and others(No.1 of 2012)

Re A and B (Wardship and Supervison Order)

This judgment was given in private. The Judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

JUDGMENT

The Background

1. It is but one day shy of a year ago now that the Court first became seized of this matter when, on application by the Crown, an Emergency Protection Order was granted on 13th August 2012 in respect of the two children (who for convenience sake and to preserve anonymity) I shall refer to as A and B and with whom this Court is concerned. There is no doubt that past year has been a tumultuous and difficult one for all those involved in this case.

2. Following the extension of the Emergency Protection Order on 17th August 2012 and, thereafter, the granting of the first Interim Care Order on 24th August 2012 the case has moved slowly onwards.

3. The First, Second and Third Respondents (who for the sake of convenience I shall refer to as the immediate family) in this case are represented by Mr Watson. The Fourth and Fifth Respondents (who for the sake of convenience I shall refer to as the extended family) are represented by Mr O'Sullivan. The Children are represented, through their Guardian Alison Bushell, by Ms Wiley. The Crown are represented by Ms Bland:

4. In this hearing I have heard from:

   (i) the Social Work Manager (SWM) and supervisor of this case

(ii) the Community Psychiatric Nurse (CPN)

(iii) the social worker presently allocated to the children (Allocated SW)

(iv) Dr Hilary Rowland, Director of Social Services and Health

(v) Dr Nigel Blagg, Chartered Psychologist

(vi) Ms Alison Bushell, the Guardian ad litem.

5. I have also read all the statements, reports and documentation filed since the last substantive hearing in February and March 2013. I have re-acquainted myself with all the other relevant papers in the case.

6. Full repetition of all the facts is not, in my view, necessary, save to say that the children were removed from the care of the immediate family following suspicion that one of the children had suffered sexual abuse at the hands of a male (not one of the parties) whilst that male was present in their home.

7. It is, of course, now well established that this person had indeed abused the child.

8. Since August 2012 the children have been living away from the family home with members of the extended family (the interim carers) and have been separated from their parents. The interim carers have done a wonderful job in caring for the children in this difficult time. I add my praise to the efforts and to the results achieved by those members of the extended family in respect of the children.

9. In February/March 2013 a fact finding hearing took place. Again it serves no purpose to recite those matters in detail in this judgment. In summary form the Court found that the children had been living in a household where their needs were taking second place to the needs of the adults and that the children were being exposed to risk and the likelihood of significant harm. The Schedule of Findings of Facts formed the basis for me to conclude that the threshold criteria had been satisfied in this case.

10. At that time the Care Plan then put forward by the Crown was abandoned and the parties engaged in talks as to how to move matters forward. It was agreed by all parties that no final order should be made and a package of measures of counselling and therapy was devised with a view to helping the relevant parties address the identified deficiencies in their care of the children. This approach was endorsed by the Court and, in simple terms, those relevant parties were given a chance to prove themselves and show that they could and would change, no promises being made by this Court.

11. Thereafter the package began to be implemented under the auspices of an Interim Care Order. Therapy by Skype took place with Hilary Tobin and Sam Chromy, counselling began with the

CPN, and efforts were put in place to train those on the Islands in the Webster Stratton Parenting Course so that it might be provided to this family and to others where necessary. After a considerable hiccup with the promised parenting course where those trained, despite large investment by the Crown, were apparently unable or unwilling to assist this family, the CPN stepped into the breach and has been providing what might be described as a bespoke programme based on the Webster Stratton method.

The Present Position

12. I have heard and read evidence which shows that, to their considerable credit, the immediate family have largely engaged with the therapy and counselling offered to them.
    This is all very encouraging.

13. So far as the children are concerned I have seen their school reports which display, as their teacher was to tell Dr Blagg "exceptionally good progress". The children should be very proud of their achievements. Child B's academic progress is described as "nothing short of amazing" and Child A is commended for "the many achievements and learning".

14. The one disappointing note is that relating to one of the parties within the immediate family's alcohol intake and I implore that party to think carefully about what has been said in Court and in the counselling sessions in which they have engaged, and to moderate their consumption accordingly.

The Way Forward

15. I must therefore consider a number of matters:
    (i) whether I endorse the Care Plan as proposed;
    (ii) whether to make any order or orders in this case, and if so
    (iii) what form any order or orders should take.

16. In answering these questions I have had regard to a number of principles led, of course, by the principle that the welfare of the child is paramount. I have had due regard to the welfare checklist and to the rights enshrined in the Constitution as to family life and privacy and the established requirement that any intervention by the Court must only be what is proportionate and necessary in any case.

The Care Plan

17. Let me deal firstly with the Care Plan itself. The request for me to endorse the Plan has been put forwards as a universal submission. The Plan is to try to rehabilitate the children to the day to day care of the immeidate family. The Plan includes continued therapy by Skype, continued sessions with the CPN, direct educational support being made available for one of the children

and a contact point being made available in school for both children. There are, of course, inherent risks in the implementation of this Plan, some of which have been specifically identified in the Guardian's report including the different styles of parenting between homes (and indeed within the immediate family's home itself), the risk of overcompensating, the triangular relationship with the First, Second and Third Respondents and the issues relating to alcohol I have raised above.

18. It is a well established principle that the aim of child care proceedings is to try to keep a family together provided it is in the interests of the children to do so. Not only do all the parties urge the Care Plan upon me but it is the clear desire of the children to return to the care of their immediate family. I have no doubt that these children are loved and the commitment to them following the commencement of proceedings has been consistent and impressive. The immediate family have had regular contact to the children, and have shown considerable commitment in exercising it. Contact has also been facilitated by the extended family.

19. The package of measures proposed can, of course, only seek to minimise risks but I endorse the view that it is a sensible and indeed in some regards an impressive one. In endorsing the Plan however, I make it clear that I am relying upon the Crown keeping to the unequivocal assurance that the therapeutic inputs presently in place will remain in force with this family until they are no longer needed. I should observe that in my view the commitment to continuing to resource the package of support that has been given by the Crown in this assurance to the Court is extremely commendable.

20. I am therefore content that the suggested way forward, as set out in the Care Plan, is an appropriate course.

The Implementation of the Care Plan

21. Having concluded that the plan does set out a sensible way forward I must consider under what framework, if any, it should be implemented.

What is the appropriate way forward

22. Firstly I must consider whether any orders are necessary in this case or whether the no order principle should apply.

23. These children are about to be subject to significant disruption. They are to move back from their placement with the interim carers to their home. It is, in my judgment, wholly unrealistic to assume that in doing so they will not meet a number of difficulties and challenges themselves. The nature of society in the Islands is such that questions will no doubt be asked and rumours will abound. The children will have to go back to a home where sexual abuse took place, they will have changes to routines, there are likely to be unresolved emotions and feeling stemming

from what has happened over the previous 18 months or so. Dr Blagg said in evidence that "the removal will have created insecurities and difficulties in attachments" and the Guardian comments on the there being likely "significant issues in the transit between the two homes". There may well be a honeymoon period, but there may be tantrums and scenes. Dr Blagg is *"sure one child* (who he describes as *"still quite vulnerable"*) *will test the boundaries, the other child perhaps less so".*

24. In addition, although the immediate family have engaged positively with the counselling and therapy, there is no significant evidence, as of yet, that they can successfully put into practice what they have learned on a theoretical level. The CPN has said that the next stage of the Webster Stratton programme can only really progress properly with the children 'in situ' in the family home.

25. In submissions made by the parties Mr O'Sullivan submits that control over the next stage in these proceedings is important in order to reinforce the responsibilities everyone has to the children. He accepts that a lot of work still needs to be done with the children and the adults involved. He submits that it is not right for the Court *"to let go at this stage".* This is a submission supported by Mr Watson who told the Court that *"the Courts overview as to progression is welcomed"* and of the Guardian who is very clear, through Ms Wiley, that the time has not yet come for the Court to be no longer involved in this process.

26. In addition, and perhaps more unusually, the Crown itself submits that only interim orders are appropriate in this case. In the statement of the SWM he says that any final order would be on the basis of *"an untried Care Plan and would require the Court to have confidence that all the agencies involved would adhere to and implement the plan within the identified timescale and take appropriate remedial action should the Care Plan prove to be unviable or if other risk factors arose which required further consideration or a change to the plan of rehabilitation".* He recommends that the proceedings continue to *"enable continuing judicial oversight of the implementation of the Care Plan".*

27. I am therefore satisfied that to carry out such dramatic changes without the structure and supervision of court proceedings would not be appropriate in this case. I take into consideration the benefit in bringing finality to proceedings but conclude that as the delay here is for a positive purpose a further adjournment to these proceedings is both appropriate and necessary.

28. The question therefore falls as to what orders are appropriate to meet the needs of this case and the needs particularly of the children.

The submissions as to the way forward

29. The Crown ask me to renew the present Interim Care Orders in respect of the children, submitting that such an order will properly and adequately protect the children during the planned rehabilitation process.

30. Although on paper the other parties seemed to support this approach, following the evidence heard last week, their position has changed and the Crown now stand alone in making the submission that an Interim Care Order is the best way forward.

31. The submission of all the Respondents is that the Court should make an Interim Supervision Order, that parental responsibility should not be vested in the Crown but should be vested in the Court and that to do so the Court should invoke its inherent jurisdiction and make the children wards of court.

32. Mr O'Sullivan submits that the issues surrounding social services are not encouraging to the belief that social services can adequately manage things in the future as the case enters this difficult phase. Mr Watson supports this submission indicating that his clients have confidence in the Court, whereas that confidence in social services has ebbed and flowed. Ms Wiley on behalf of the Guardian also urges this course upon me on the basis, as she bluntly puts it, *"the Crown cannot be trusted to administer parental responsibility properly"* and the Guardian herself made her views clear in evidence stating that *"I have more confidence in His Honour than I do in the (social services) system".*

33. The Crown reject this contention and submit that the course supported by the other parties is not necessary or appropriate. Ms Bland submits that wardship should not be commenced if the issues in the case can be dealt with in any other way. She points to the fact that the Crown have now adopted all the recommendations that have been made by experts in the case and have delivered on the package of measures since March. It is right, however, to note that Ms Bland says that, whatever order is made, the Crown will remain committed to implementing the measures set out in the Care Plan and will continue to offer the full support of the Crown in doing so.

34. There has been some debate as to how, if the submission to make supervision and wardship orders side by side was considered appropriate, this would best be done in practice. Only the Supreme Court can make a child a ward of court but the consensus seemed to be that, as I am an Acting Judge of the Supreme Court, I could constitute myself in that capacity and make the order either of my own motion or upon application, by perhaps the Guardian, in the Supreme Court. For the moment I put the technicalities to one side and I deal with whether there is power in law for me to do so and whether such a course of action is appropriate.

35. The basis for making the submission that wardship should be exercised alongside interim supervision made by the parties other than the Crown is, as I have said above, that the Crown have demonstrated that they cannot be trusted to exercise any parental responsibility vested in them responsibly or appropriately. This is a submission that is undoubtedly unusual and bold, and unprecedented in my experience. Nevertheless it is one that must be considered.

The legal basis for wardship

36. The jurisdiction of the High Court in England (which to all intents and purposes mirrors that of the Supreme Court in the Islands) to make orders in relation to children derives from the *"right and duty of the Crown as parens patriae to take care of those who are not able to take care of themselves".* The exercise of that inherent jurisdiction is usually exercised by making the child a ward of court. I am entirely satisfied that the inherent jurisdiction of the Supreme Court in this regard is no different to that of the High Court in England.

37. Since the introduction of the Children Act 1989 in the UK the use of wardship has declined significantly. There is no doubt, however, that it still remains as a power in an appropriate case.

38. I turn firstly to the relevant legislation on this point as set out in the Falkland Islands Children Ordinance 1994. It is right to say that even the Crown concede that it is legally possible to have wardship run alongside a supervision order in an appropriate case. Their opposition to this course of action in based on the submission that this is not such a case, such action is neither appropriate or necessary and therefore I should not accede to the submission to do so.

39. Notwithstanding the Crown's concession as to me having the legal power to take such an approach I have considered it appropriate to look at this point myself in a little detail.

The relevant legislation

40. **Section 43 of the Children Ordinance** states:

There shall cease to be exercisable any power of the Supreme Court (otherwise than in the exercise of any power conferred on it by this Ordinance) whether by virtue of any enactment, at common law or in equity-

a) to place a ward of court in the care of the Crown (as distinct from the court) or under the supervision of the Crown (as distinct from the court) or of a public officer in his capacity as such

c) so as to make a child who is subject of a care order a ward of court

41. This section follows in most part s.100 of the Children Act 1989 and I have been directed to, and have considered, jurisprudence on that section in order to assist with my consideration of s.43.

42. It is submitted that the purpose of section s.100 was to prevent wardship being used as a mechanism to force or direct a local authority to take responsibility for the care of a child without the need for that requirement to be tested against the threshold criteria in the Children Act. The rationale, I am invited to conclude, was to ensure that the basis for making orders where the care of a child was entrusted to the local authority was, in so far as it could be, uniform, whatever the nature of the proceedings brought.

43. It seems to me that this is not only the purpose but it is also the effect of s.43(a) and that the mechanism of wardship cannot be used **to direct** *(emphasis added)* the local authority to care for the children or even to have supervision of the children. **In the Matter of E (A Child) (2012)EWCA Civ 1773** Thorpe LJ said *"Plainly the intention of Section 100 is to prevent the court in wardship making any order which has the effect of requiring a child to be placed in care or under the supervison of a local authority. That end can only be achieved by going through the proper threshold finding opening the court's discretionary jurisdiction to make either a care or a supervision order".*

44. However, in the case before me there is no question of using wardship in order to circumvent the statutory threshold criteria. The Crown have brought care proceedings and the threshold criteria within those proceedings have already been met. This is not a case of wardship being used to circumvent the Children Act to require a local authority (or in this case the Crown) to do something without the necessity for it being tested in the light of the statutory criteria contain in the Act itself. Consequently any public law order made in this case would be made under the application before it, which has been made under the Children Ordinance, and not through the mechanism of applying the wardship jurisdiction.

45. I have also had regard to s.43 (c). I am of the view that there is considerable significance in what is not contained in s.43 (c) namely that there is no reference to a supervision order. Whilst the effect of section 43 is to prevent a child being both in the care of the local authority and a ward at the same time it does not prevent a child, who is subject to a supervision order, being made a ward of court. If that had been the intention of the legislation it would have said so and it plainly does not do so.

46. I have also had reference to a number of cases where wardship has been made to run alongside other orders. **Re M and J (Supervision and Residence Orders) (2003) EWHC 1585 (Fam)** is direct authority for the proposition that in an appropriate case a supervision order and wardship can exist alongside each other. Other examples of running wardship alongside

other private and public law orders can be found in **Re K and Others (2011) EWHC B21 (Fam),** and to **In the Matter of E (A Child)** referred to above and in which both to **Re K** and **Re M and J** were considered.

47. I am therefore satisfied that there is power in law for me to make a supervision order (or in this case an interim supervision order) and to make the children wards of court if that is the appropriate course that I consider should be taken.

Is the use of wardship appropriate

48. I then turn to the appropriateness of the use of wardship in this case.

49. Ms Bland refers me to **FPR 2010 Practice Direction 12D**, in which she places reliance. This states, inter alia, that:

> " *such proceedings* (namely wardship) *should not be commenced unless it is clear that the issues concerning the child cannot be resolved under the Children Act 1989*".

50. In **Re M and J** itself, Charles J said *"It seems to me that as a matter of principle, when making orders, under the Children Act 1989, a court should adopt the statutory scheme rather than retreat to an exercise of inherent jurisdiction....."* He went on to say *"By definition, therefore, it seems to me, that if a court is making private and public law orders, as I am invited to do, but is also continuing wardship, it is taking an exceptional course".*

51. With this I obviously agree. To do as is urged upon me by all but the Crown is, to my mind, to take an exceptional course. Of course sometimes an exceptional course is necessary to meet exceptional circumstances.

52. I must therefore consider why this exceptional course is being suggested and whether such a course is appropriate. In considering these issues I have very much in mind as to what order or orders will best protect the children.

53. There is no doubt that this case has been beset with problems from the outset. The Crown themselves acknowledge that this case has itself identified, through the comments and at times criticism of the Court, many and serious deficiencies in the state of child protection in these Islands. Whilst it perhaps serves no purpose to re-examine in great detail what deficiencies have been exposed as this case has progressed, in order to assess what orders, if any, are appropriate now, especially in the context of applications for the Court to intervene through its inherent jurisdiction, one cannot avoid considering the record of social services in this matter. As Mr O'Sullivan submitted to the Court, this case does not exist in a vacuum and must be seen in the wider context of the provision and implementation of social services in the Islands. I agree that, in the context of going into the future and on to the next, and potentially most

delicate, part of this case some reference to what has happened in the past is both helpful and necessary.

54. I emphasise that in doing so it has not been, and is not, the purpose of this Court hearing or any other Court hearing in these proceedings to effectively engage in disciplinary procedures or witch hunts, it is not the remit of this Court to hold a public inquiry. It has always been the sole objective of this Court to protect the best interests of these children.

55. Before doing so I must reflect that, although it has been said that this has been an exceptional case in the context of Falklands society, there is nothing particularly exceptional about it in the context of the cases that come before the English courts on a daily basis. I raise this point to reflect and to question why lawyers trained in the United Kingdom, and why social workers who have come to the Islands from Britain, or other similar commonwealth jurisdictions, with apparent experience in child protection, have apparently found it so difficult to apply simple and what one assumes are well known and well established procedures and principles to this case.

56. In addition, neither can it be said that this case involves the legal department of the Crown having to grapple with new legislation. The Children Ordinance dates from 1994. At the time these proceedings commenced the legislation had been on the statute book for 18 years.

57. Of course a number of difficulties have been encountered in this case due to poor communications with the outside world, both electronically and through travel, and to a lack of lawyers on the Islands. These are problems within which the system has had to work, they are common to many aspects of society in the Islands, and are problems to which there are no easy answers. However, one cannot so easily understand the other problems and deficiencies encountered in the past year. During that time problems encountered and revealed include:
    (i) that there was no provision in the Islands, or system in place, to enable compliance with the statutory duty to appoint a Guardian in public law cases,
    (ii) that there was no real understanding as to what a Guardian did, with the extraordinary suggestion being made by the Crown itself that a social worker involved in the actual removal of the children in this case, and a subordinate to the social worker leading the case, should act as the Guardian in the case,
    (iii) that there was a lack of understanding of the requirements of simple social work procedural matters such as LAC reviews, and/or a failure to comply with such requirements, despite best practice being claimed to have been followed,
    (iv) that there was a lack of proper record keeping with, the original lead social worker, at one hearing suggesting that she shredded some documents when she no longer needed them, that she did not make or file hard copies of all documents, that she then overwrote computer copies, that she would take one document and attach it to

another, and that she would create documents but not keep copies in computer or hard copy form,

(v) that there was an apparent lack of understanding as to simple procedural issues relating to public law proceedings themselves, evidenced, for example, by the apparent lack of knowledge as to what findings of fact actually were, or by the Crown producing a final Care Plan suggesting rehabilitation, prior to any fact finding hearing or adequate assessments having taken place,

(vi) that there was a failure on the part of the Crown to understand their obligations as to disclosure and a lack of understanding of the concept of public interest immunity,

(vii) that there was a failure to provide and file necessary documents and a failure to make obvious and highly relevant checks, enquiries and investigations, leading to the failure to provide full and accurate information to the Court,

(viii) that there was a failure to intervene in a related matter despite all good social work principles dictating that this was clearly needed.

58. Some of these matters led to the need for independent assessments to be commissioned, to extra expense and to delay in this case which should have been avoidable.

59. Other concerns that have been raised, and perhaps of more direct concern in the context of considering the Crown's ability to properly administer parental responsibility as the children return to their immediate family, include the following:

(i) The way that one child was removed, by police officers in uniform, in marked police vehicles which were then driven to the school to collect the other child. Whilst the police were merely following instructions it seems that no advice was offered by social services that this was wholly inappropriate.

(ii) The evidence given by the original lead social worker in February/March 2013 that she gave in to requests resulting in the children being removed during the night from a foster home to a family member because the she felt as if she had been placed under pressure and threats to do so. It is important to note that this evidence was not and has not been challenged by anyone.

(iii) The number of social workers involved with the children (due to problems in recruitment and retention) and the resulting lack of continuity and

(iv) The lack of support provided to the interim carers.

60. It is perhaps necessary to dwell a little longer on the issues as to recruitment and retention, and on the issue of the support provided to the interim carers.

61. On the latter note I have very much in mind what the interim carers have said in their statement of 6th August 2013. In it they say *"We have on very many occasions felt uninformed,*

unsupported and not consulted in a fashion which we are quite sure would have both worried and annoyed any foster carer let alone family members who have unselfishly taken it upon themselves the care of the children in the terrible circumstances of the case". They go on *"these children demonstrably need continuity in their welfare including the social workers and teachers etc. in their future".*

62. Of particular concern to all in this case has been the regular, almost constant change of social services personnel, particularly those associated with the responsibility of befriending and working with the children in this case.

63. A statement by Mr Muhl, the previous Director sought to set the position in relation to this matter. He notes that there have now been 7 allocated social workers in respect of the children. Of those referred to:

    (i) The original social worker had her contract terminated for misconduct,

    (ii) The next recruited social worker seems to have left because she was having difficulties settling to the lifestyle and circumstances of the Falkland Islands. Although I am told that she had a 45 minute meeting with the then Director, Mr Jenkins, to discuss the issues she had, if that meeting did take place the Court has not seen any minutes or notes of that meeting.

    (iii) The social worker then recruited was seemingly dismissed for reasons which are not entirely clear, but she apparently has made complaints about the SWM, and indeed is subject to complaints made about her.

    (iv) On 6th May 2013 Mr Jenkins, the then Director, assured the court that another social worker was due to arrive in the Islands. This social worker came to the Court at a previous hearing complaining of having been required to work solidly since her arrival, saying that she had been employed to work with adults, and being clearly very emotional and distressed. She has not seen the children since 13th June 2013.

    (v) Another social worker, who was the most long running and consistent of the social workers in this case, appears to have taken time off for stress before leaving, citing amongst other things, a lack of management support.

64. The case was then allocated to the SWM who worked on the case with a social work assistant although the social work assistant is presently in the UK on leave.

65. Recently the case was allocated to present Allocated SW, under the supervision of the SWM, who since being given responsibility for the case has met the children and has seemingly begun to build a good rapport with them. The Allocated SW presented as an enthusiastic and committed professional but she herself told the Court she was only presently a locum and

although she would like to stay that was by no means certain. She also told of working into the evening every night and not having had any time off since arriving. This was worryingly similar to the evidence that the Court had previously heard relating to the way that another social worker had been treated. In addition, part way through the hearing and contrary to the understanding portrayed to the Court by the SWM himself, the Court heard that it is likely that he will leave at the end of September when a new social work manager arrives.

66. I pause there. Matters have today taken yet another twist. On entering court and being ready to deliver judgment the Court was informed that a number of very serious allegations have been made by one of the presently employed social workers to the Guardian on a flight that they were both on over the weekend.

67. I have considered whether it is necessary for me to try to adjudicate in some way on these allegations so as to get a clear picture of what, quite simply, is going on. I am satisfied, however, for the purposes of this hearing and for this judgment that is not necessary. Allegations have been made and I trust they will be investigated thoroughly in due course. However, for the purposes of my decisions today I consider that all I need know is what I have been told, namely that the SWM has been removed from this case and so will play no further part in it. I emphasise these are allegations only that I have not adjudicated on these issues and that they will be for another day and for another place but the situation remains that the departure of SWM from the case is yet another change.

68. The lack of continuity in the allocated social worker for the children has meant that the Guardian has had to step into the beach herself and attend the Islands, by necessity, in order to carry out essential work with the children that would usually be carried out by their allocated social worker. In addition the Court has previously commented upon the manner of their departure, with them leaving the Islands at unexplained haste, and without the Court, the parties or even the Guardian being properly informed. The SWM told of social workers being recruited without any form of meaningful interview and without being made aware of the particular circumstances of the Islands. The SWM themselves, much to their surprise, was not interviewed before being offered the job on the basis of a CV, the offer being made by text message. A matter that the Court finds extraordinary is that despite there apparently being a number of complaints about the SWM;s management style he gave evidence that he has never been informed of any complaints and none have ever been addressed with him by anyone in senior management. Dr Rowland now feels that on reflection she might have considered more fully whether to investigate the allegations made by the long serving social worker in their resignation letter described by Mr Muhl rather blandly as management issues. I have some considerable sympathy for Dr Rowland having been thrown into a very deep end and she has now advised she will consider these allegations afresh.

69. On the evidence presented to the Court the past record of social services in respect of recruitment, whatever the causes, does not bode well for the future or indeed the present. Despite the SWM expressing his desire to stay in the department he is no longer is to work this case and it was clear from the evidence of Dr Rowland that his contract is unlikely to be extended beyond September. Despite the Allocated SW indicating her desire to remain in the Islands she is, as of this moment a locum, and Dr Rowland's wish for her to be given a permanent contract is far from assured. In simple terms everything is still very much all in the air and the position is no better than it was at the beginning of these proceedings a year ago.

70. Of particular concern is the effect that all these changes are having on the children. They have not been provided with a social worker in whom they have been able to build a relationship of trust. As Ms Bushell says in her report one of the children *"was told that social workers were going to be 'someone they could talk to' and build trust in only for those workers to disappear usually without explanation".* The Guardian considers that these constant changes present a risk factor to the children in themselves.

71. The Crown have spoken about the continuity of the social work assistant, who is well known to this Court, and in whom the Court has considerable confidence in her role involving probation, but who is not a qualified social worker. The Crown also point to the CPN, who is undoubtedly an impressive professional in his field, and in whom all parties have confidence, but he is involved with the adults in this case and not directly with the children. The Crown go on however, and whilst conceding that there have been many problems, invite the Court to the view that they are being addressed. In my judgment, matters in the presentation of the case itself did measurably improve with the instruction of expert and experienced counsel for the Crown. However Ms Bland sought to refer also to improvements taking place in social services itself. In her opening Ms Bland spoke of training courses being provided from the UK in child protection, of new recording procedures being implemented, of recruitment procedures for staff being changed, of an inspection regime being organised with the Scottish Care Standards Commission and of agreements being reached with Cafcass amongst others. Indeed when the SWM gave evidence he spoke enthusiastically of his Action Plan for child protection improvements, he told of moving towards modern and necessary systems of recording, of training commitments and towards changes to recruitment. He presented as a man on a mission who was determined to put into place his ideas. The impression given to this Court was that changes were afoot and imminent. I should reflect that, although there was criticism of his plan it is right to observe in the history of this case he is the only person, on the evidence, to have seemingly done anything constructive in the area of child protection.

72. However, it only took a few minutes of the evidence of the new Director of Social Services, Dr Rowland, to dash such optimism. She was clearly less than convinced that all the plans were appropriate, viable or deliverable in the short to medium terms. She spoke of her intentions but

could give no promises, explaining that a myriad of bureaucracy would have to be surmounted. When asked about changing to proper recording systems she seemed less than enthusiastic, considering them not matters of priority, despite the Allocated SW specifically saying that these were a major issue in the Department. She also seemed to concentrate significantly on the need for support to social services staff. Whilst this is clearly important I cannot but reflect that if the Department was in good and proper shape the need for pastoral care of support would not be so necessary. Of course the Court must now consider these matters in the light of the news that, from today, the SWM has now been removed from the case and so the implementation of social work is to be entirely reliant on the Allocated SW, who is already working all hours. Any supervision will be carried out by the Director who I have no doubt has much to do elsewhere.

73. The Court has also been entreated by Ms Bland to have confidence in the Crown because of the way that the therapy and counselling package has been resourced without complaint. It has also been commented upon that the support provided has been more than one might expect in a similar situation in the United Kingdom. As I have said before, for this the Crown are to be commended. However, at the risk of being accused of damning with faint praise I am satisfied that it is highly unlikely that this therapeutic intervention would even have been considered had it not been for the guidance and direction of the outside experts involved in the case, especially Dr Blagg and his team, and the Guardian, Ms Bushell. In addition the resources provided are financial and have not effectively included the most important resource needed in this case, that of proper, competent and consistent social work care for the children.

74. Of course until now there have been Interim Care Orders in the case. Why then, if this was appropriate until now, is it no longer the appropriate order to make. Of course previously the children were stable, they were in a safe environment with the interim carers. There was no real element of immediate significant risk as the interim carers were exercising de facto proper and impressive care and control for the children. The involvement of the interim carers, notwithstanding the lack of support from social services, was a very real safeguard. However, the Court must have regard to the fact that this is about to change with the move from the interim carers back to their immediate family. Here there will be the challenges and the risks which I have mentioned. Here they will need competent supervision and support. Here the interim carers will no longer be able to keep close supervision of the situation and the welfare of the children. Here any necessary intervention will need to be properly considered, properly executed and entirely appropriate.

75. The question for me to resolve is whether, in the light of the above and all that has happened and is happening in this case, I can be confident that the interests of the children can and will be properly and adequately protected by the Crown in the guise of the Social Services Department exercising parental responsibility.

76. It remains wholly unclear as to what exactly is happening within the Social Services Department in these Islands but the overwhelming impression is one of complete disharmony and discontentment and a lack of any proper management. The way that these proceedings have been conducted and the deficiencies identified seemed to portray a department thrashing about in the dark with no idea what to do. It is with a considerable degree of regret that I must report that as these proceedings have progressed I have seen very little, if indeed any, actual positive changes of significance or substance within the Social Services Department. We remain with locum social workers, with only a promise that there will be new people arriving and the hope that they will somehow change matters where those before them have failed to do so. Promises have been made before but, from the evidence this Court has seen, nothing seems to have been achieved. On the evidence I have heard and read I am not satisfied that there are any changes of significance actually in train. In any event, any changes that may come about as a result of any action plan are too little and certainly too late to assist this family. In my judgment, there remains a very real risk that the children will be faced with yet another face or faces before this case is completed. Dr Rowland herself when questioned about what she had discovered and assessed in the short time she had been Director of Social Services conceded that the situation "looks a shambles". With that assessment it is with deep regret that I agree.

77. I am therefore satisfied that there is considerable merit in the submissions made by the parties to the effect that the Crown, who I find are still clearly in a state of flux and chaos and without any real certainty or consistently or clear direction or management, are not in a position to properly and appropriately exercise parental responsibility in this case.

78. In my judgment, the children are best served, at this particularly sensitive, challenging and potentially difficult time, by making an interim Supervision Order and, within the Supreme Court jurisdiction, by making both children wards of court. This is an exceptional course but these are exceptional circumstances. This course is, in my judgment necessary, appropriate and proportionate. In a moment I will rise and invite the parties to consider and address me as to how this is most appropriately done, as to who should be the parties to the wardship, where care and control should vest and as to any ancillary orders that are sought. Clearly the schools, hospital and police will need to be notified. I would invite all counsel to make sure that their clients fully understand the implications of such an order, and their very real and significant duties and obligations to the Court in this regard.

79. Finally I consider that it is important that I make the following observations.

80. It is important to make it clear that although the parties and the Court have criticised the Social Services Department in this case, it is to my mind, on the evidence I have heard, abundantly clear that this criticism should fall upon the shoulder of management. Those at the coal face,

such as the CPN, the Allocated SW, and the social work assistant in this case have the admiration of the Court as they try to work in a system that it seems, in my judgment, continues to be deeply dysfunctional, out of date, under resourced and badly managed.

81. As I have said above the purpose of this hearing is to deal with two young and vulnerable children who, in the last 18 months or more, have been subject to issues and circumstances that no child should have to go through. I repeat that it has not been the purpose of this case to hold a public inquiry into social services in the Islands.

82. However, it is not the role of a Court to sit by and allow a system which is charged with the protection of the most vulnerable in society to fail in so many ways, without comment and criticism where such is justified. So far the response of the Crown, on the evidence I have read and heard and with the exception of the resourcing of the therapy and counselling in this case, to the many identified problems has been largely confused, dilatory and inadequate. It is a sad indictment to note that instead of the social services providing a solution to problems relating to child welfare issues in this case the way that social services has operated in some respects relating to the children has itself become part of the problem. The Court has been promised changes. It hopes that these promises will not be broken. This is not for the Court's sake but for the sake of the children in this case and the children of these Islands.

C J Gumsley
The Senior Magistrate