

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

28th September 2022

Proposition No. P.2022/74

Committee for Health & Social Care

Review of the Children Law and Outcomes

AMENDMENT

Proposed by: Deputy P J Roffey

Seconded by: Deputy Y Burford

1. To delete proposition 7 and substitute therefor:
 - “7. To direct that the Law should be amended to empower the court to make an interim care requirement where it is seized of a matter further to a referral for determination from the Children’s Convenor.”

Rule 4(1) Information

- a) The proposition contributes to the States objectives and policy plans set out in the GWP 2021-2025 relating to young people and improvements to the Children Law and the family justice system.
- b) Consultation has been undertaken with the Committee for Health and Social Care and the Children and Young People’s Board.
- c) The proposition has been submitted to His Majesty’s Procureur for advice on any legal or constitutional implications.
- d) It is not considered that there will be any significant financial implications of carrying this proposal into effect.

Explanatory Note

The Policy Letter at paragraph 6.24 states that proposition 7 has the benefit of ensuring that the case continues towards a conclusion with the fewest changes in forum. However, where the court is hearing a referral from the Children’s Convenor, it

is the Tribunal that is exercising the primary jurisdiction: the court's role is to determine, on the Tribunal's behalf, whether the facts that are disputed by the family meet the statutory threshold for intervention. The shape of that intervention is a related but discrete question.

The division of roles of the court and Tribunal is a central feature of the 2008 Law. This separation allows each forum to focus on what it is particularly good at. The role of the Tribunal is to explore with the child and family, once the facts have been accepted or established by the court, what help and support is in the child's welfare interests and whether there needs to be a legal order in place to achieve this.

It is not clear how proposition 7 would reduce the time it takes to reach a decision: once the court has determined the facts it would require reports and further information to reach a decision and therefore would need to adjourn to obtain these. It is recognised at paragraph 6.25 of the Policy Letter that this proposal could risk cases taking much longer than currently to dispose of through the Tribunal.

The ability of the child to participate effectively in this decision about his or her future also requires to be considered. The Tribunal has the time (once the facts are agreed or established) to sit down with the family and those key individuals in the child's life to explore whether intervention is needed and what form this should take. It does this in an environment that is less formal than a court where the language used is accessible to children and young people and where they are able to participate directly. Many young people take this opportunity - participating in ways that might be difficult to accommodate within the normal conventions of a court environment. Proposition 7 would require the court to take on this additional role.

There may however be occasions where the court's findings suggest a different level of risk to the child from that previously assessed by the Convenor or Tribunal. It would therefore be helpful to empower the court to make an interim care requirement at the point when the court determines the facts and where it concludes that immediate compulsory intervention is required. This amendment would ensure that an appropriate interim order could be put in place pending a full hearing of the child's case by the Tribunal.