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MISCELLANY

**The distinction between a “guardian” and a
“befriender”**

1 A recent judgment of the Court of Appeal of Jersey has demonstrated that aside from a lawyer that may be appointed for a child, there are two other types of professionals that may be appointed to assist a child: a “guardian” and a “befriender”. The case of *Re D*¹ is reported in the last edition of this *Review*. A child had the benefit of a lawyer and a guardian appointed to represent him in care proceedings. He was made the subject of a final care order but because of ongoing issues about contact with his father the Royal Court reappointed the former guardian in the proceedings but this time as a person who could “assist and befriend” the child in relation to contact issues and purported to do so under art 75(1)(b) of the Children (Jersey) Law 2002. The term “befriender” is therefore used in this article to describe such a person. The Court of Appeal held that the Royal Court did not in fact have the power to make such an order which was not anchored into any extant legal proceedings. Instead, the Court of Appeal approached the matter as if an application for contact had been made between the child and the father and reappointed the guardian for such contact proceedings.

2 The case is of interest, of course, in clarifying the statutory language used in art 75 and also in highlighting the duty of Counsel to raise points of jurisdiction when the judgment was circulated in draft and irrespective of the precise terms of the Practice Direction governing this aspect. However, what appears to have escaped attention from wider comment is that this Court of Appeal decision settled some controversy surrounding the statutory provision under which guardians were appointed. The Court of Appeal accepted that the jurisdiction to appoint a guardian and a befriender flowed from two separate statutory provisions and the roles were very different. At para 23 the Court of Appeal correctly recorded that the guardian in this case had originally been appointed for the child “to represent him in the care proceedings ... the court [having] exercised its discretion under article 75(1)(a).”

¹ [2011] JCA 104.

As was argued on the appeal, a guardian is appointed under art 75(1)(a) and does indeed represent the child (with or without the additional appointment of a lawyer). A guardian therefore does far more than merely “assist and befriend” the child as is the language used in art 75(1)(b). At para 28 of the judgment, the Court of Appeal accepted those differences—

“The Minister is, we believe, correct when submitting that the way to protect D’s interests is for an application in respect of contact to be deemed to have been made. The role of the guardian, qua guardian, would continue. D’s interests would be well protected. Indeed Ms Corbett accepted in her submissions that D’s interests would be better protected by the guardian, qua guardian, than by an appointee under Article 75(1)(b), even if that person happened to have acted as the guardian hitherto. There would be no need for the guardian to be reappointed thus eliminating delay in that respect. A deemed application for contact would be in place thereby obviating the need to reactivate contact proceedings. Finally, the role of a guardian, as Ms Corbett was at pains to point out, has a much greater role than an appointee under Article 75(1)(b).”

3 In the previous Royal Court case of *Re KK*,² Bailhache, Commr. built upon the foundations of *Re B*³ and went on to describe guardians as being appointed under art 75(1)(b) and therefore by nature of the role therein described they performed a different role from their counterparts in England under the Children Act 1989. That view is now no longer tenable after the Court of Appeal’s decision in *Re D*. Guardians “represent” a child and are very different to those persons appointed under art 75(1)(b) to assist and befriend a child. The difference is one of substance and not mere terminology. Pending publication of a long-awaited Practice Direction on the issue, however, guidance upon the precise role of a guardian is likely to continue to be taken from English practice.

² [2010] JRC 220.

³ [2010] JRC 150.