



**Children's Commissioner for Jersey**  
Promoting and Protecting Children's Rights

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## Children's Law Reform: Consultation Response

### Who we are

The Children's Commissioner for Jersey was established to promote and protect children and young people's rights. The Children's Commissioner works for every child and young person in Jersey who is:

- Under the age of 18
- Under the age of 25 if they have a disability, have been care experienced or have been sentenced under the Young Offenders Law
- Placed off-island for their care or treatment

The Commissioner for Children and Young People (Jersey) Law 2019 established the role of the Commissioner, and set out the powers and actions the Commissioner can take. These include:

- Providing children and young people with information about their rights.
- Supporting children and young people to complain.
- Working with people and organisations who provide services to help them to solve any problems or complaints at the earliest opportunity.
- Asking for information from people providing services to children and young people.
- Visiting places where children and young people are cared for, accommodated or receive services and speak to them.
- Investigating cases where the rights of children and young people have not been respected and suggest how things could be improved.
- Going to court for children and young people in certain circumstances.

Further information on the role of the Commissioner and the wider office is available on our website at [www.childcomjersey.org.je](http://www.childcomjersey.org.je)

### Introduction

We welcome the opportunity to respond to the Government's consultation on the Children's Law Reform and are supportive of steps to better entrench children's rights protections in Jersey Law. We very much welcome the recognition that support offered at crisis point is too late, and that steps to ensure that support offered to children and families is offered earlier is more conducive in protecting children's rights in Jersey. We also support the Government's ambition to improve and safeguard children's wellbeing, and would strongly urge the Government to consider the relationship between rights and wellbeing when legislating to protect both in Jersey.

We would recommend embedding children's rights protections explicitly, by fully and directly incorporating the United Nations Convention on the Rights of the Child (UNCRC) into Jersey Law. At a minimum, it is important that the Children's Law reform work tracks across to the Due Regard model being implemented by the Government, and that this new system will be based on the fundamental rights of children and young people in Jersey. That requires adopting a child rights based-approach which in essence places children at the centre and builds systems and structures around them. The

Right Way<sup>1</sup> provides a comprehensive overview and framework for embedding a child rights-based approach based around 5 key principles:

- Embedding children's rights
- Equality and Non-discrimination
- Empowering children
- Participation
- Accountability

We therefore continue to advocate for full and direct incorporation of the UNCRC into Jersey Law which embeds children's rights, provides clear accountability alongside the full complement of rights in domestic law. We recognise that incorporation by itself will not be an immediate 'fix' and mean that rights will never be infringed, indeed the concept of progressive realisation speaks to the continuously evolving nature of rights; however, it will provide a robust framework to protect, respect and fulfil children's rights including access to remedy where required.

We will respond to the consultation questions in the subsequent sections, however would like to highlight the following areas as being of particular note.

### Rights and Wellbeing

The relationship between rights and wellbeing has been subject to analysis by a number of researchers, however there is not as of yet an agreed upon definition<sup>2</sup>. It is important to recognise the link between rights and wellbeing, and there is value in having a common language. We welcome the recognition of intersectionality through a wellbeing assessment, but would seek clarity as to how this is expected to interact with the current work to indirectly incorporate the UNCRC.

Children and young people in Jersey know their rights through the Rights Respecting Schools programme, and there is value in children claiming ownership in their rights and being empowered to advocate for them.<sup>3</sup> Rights are also a clear expression of a minimum standard, with scope for progressive realisation of rights<sup>4</sup> facilitating continuous improvements. Wellbeing is often considered indicative of a more aspirational standard, however there is no minimum threshold established for wellbeing, and so we would advocate for a rights-based framework with guaranteed minimum standards. In Scotland, wellbeing is not directly defined in statute but provision is made in relation to the assessment of wellbeing<sup>5</sup> as per the SHANARRI indicators, which it appears would be echoed here. Rights were however explicitly protected to a degree through the same legislation<sup>6</sup>, and brought in Child Rights and Wellbeing Impact Assessments, thereby linking the two approaches. We strongly support early intervention and preventative approaches, but would highlight the need for a child rights-based approach built on the UNCRC.

We would also draw attention to the experience in Scotland around information sharing, detailed later in this paper.

There is also scope for learning from Wales through the Social Services and Wellbeing (Wales) Act 2014, which adopts a holistic approach to support which is not based on thresholds but on wellbeing needs. Wellbeing is defined in Section 2 of the Act, which also includes enhanced considerations for children including their "physical, intellectual, emotional, social and behavioural development"<sup>7</sup>.

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<sup>1</sup> The Right Way: A Children's Rights Approach in Wales, Children Commissioner for Wales. Available at <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>

<sup>2</sup> See for example Tisdall, EKM 2015, 'Children's rights and children's wellbeing: Equivalent policy concepts?', *Journal of Social Policy*, vol. 44, no. 4, pp. 807-823.

<sup>3</sup> The Right Way, Children's Commissioner for Wales <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>

<sup>4</sup> For discussion of progressive realisation, see for example *Frequently Asked Questions on Economic, Social and Cultural Rights*, Office of the United Nations High Commissioner for Human Rights. Available at <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>

<sup>5</sup> Section 96, Children and Young People (Scotland) Act 2014

<sup>6</sup> Children and Young People (Scotland) Act 2014

<sup>7</sup> Section 2 (3) Social Services and Well-being (Wales) Act 2014

## Age limits and Transitions

It is vital that the support for wellbeing is being put in place is for all children and young people, and we welcome the commitment to support care experienced young people up to age 25<sup>8</sup>.

We know through our casework that there are significant issues with children and young people not receiving support, particularly if they are aged 16-17 and are told that they are too old for children's services or not yet an adult and therefore unable to access adult services. Children and young people should be effectively supported and should not be expected to navigate complex systems where services disagree about who the duty bearers are. Effective transitions are a key part of this, but so too is training for staff and clarity around what support a young person is entitled to and how this should look. This includes a clear route for referrals, accessible information for children and young people about what they can expect and timescales. This should be accompanied by a clear transitional pathway into adult services where required, with significant input from children and young people both for their individual plans and to shape what support is on offer.

Strong, protective universal services play a crucial role in children's rights and wellbeing, from schools; early learning and childcare; sports and leisure facilities; police and; healthcare providers. The universal offer must be protective, but also ensure equality of access including taking steps to prevent and remedy discriminatory processes. Similar steps under the Discrimination (Jersey) Law 2013 will likely offer rich learning around what indirect discrimination can look like, which will further be strengthened by effective use of Child Rights Impact Assessments.

Whilst wellbeing encompasses a range of factors, we have particular concerns around children's right to health. Children's rights under international law require states to take proactive steps to protect, respect and fulfil children's rights. This includes the right to health which is protected under Article 24 of the United Nations Convention on the Rights of the Child (UNCRC). It is also protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR) through Article 12<sup>9</sup>. ICESCR was extended to Jersey in 1976, which provides for the progressive realisation of rights including the duty to prevent regression of rights, thereby embedding a minimum standard.

In Jersey, children and young people do not have free access to General Practitioners, thereby significantly impacting their right to health. This is further compounded when considering that GPs are often 'gatekeepers' to services such as CAMHS, and to prescriptions which whilst free are not accessible without an appointment. Access to healthcare must not be dependent upon individual GP surgeries deciding to provide free care for children; this is a state responsibility and therefore we welcome moves to make access to healthcare free of charge for specific groups<sup>10</sup> and would strongly advocate for healthcare to be free for all children and young people.

We undertook significant consultation work and heard from 1700 children<sup>11</sup> and young people aged 3 – 17, who consistently advocated for their rights to healthcare. Not only was better access to healthcare highlighted as a priority area by approximately half of all children and young people asked, others clearly expressed what they want to see happen:

*"make appointments at doctors free for all children"*

*"Better health for all children because I had Epilepsy and I had to wait months to be seen at the hospital every time."*

*"For older children like 16-18, making facilities such as housing, doctors and dentists cheaper as they're all hard to afford without a full time job."*

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<sup>8</sup> <https://www.gov.je/News/2020/Pages/CareLeaversoffer.aspx>

<sup>9</sup> For further discussion see CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4

<sup>10</sup> See States Assembly Debate 4<sup>th</sup> February 2020 at

<https://statesassembly.gov.je/Pages/Hansard.aspx?docid=D174FC53-DFE4-466F-B994-43C8E90DA375>

<sup>11</sup> *Island wide consultation: The findings*, Children's Commissioner for Jersey

Further, children and young people clearly called for their rights to be protected on a range of issues, including:

- Bullying
- Play, things to do
- Emotional and mental health support for children and young people
- Education
- Poverty

It is important that issues children and young people have raised are addressed in information for them about universal services and the new early help model so that they are aware of what types of support are available for issues they or people they know may be facing. It also helps to close the 'feedback loop' to illustrate that children are being listened to. This was something that many children and young people who responded to our survey felt was lacking, for example only 16% of young people aged 11 to 18+ said that they hear the outcomes after being consulted on what happens at school or college with the majority (55%) saying that they hardly ever or never hear the outcome<sup>12</sup>.

*"Listen to a variety of different young people's views. The island needs to provide safe places for lgbt young people".*

*"The older generations to be more polite and understanding of the younger generation. To simply listen to what we have to say and don't always assume, and think that they know better."*

There is rich learning from the substantial review undertaken in Scotland on the experiences of children and young people in the Scottish Care Review. The review states that:

*"For lives and futures to change, Scotland must change the way it supports families to stay together. Because despite Scotland's aspiration for early intervention and prevention, its good intentions, and the hard work of many, the experience of far too many children and families is of a fractured, bureaucratic, unfeeling 'care system' that operates when children and families are facing crisis."<sup>13</sup>*

It is therefore important to learn from the experiences in Scotland and make sure that the system does not replicate and entrench the negative unintended consequences of the care system. The description of a 'fractured, bureaucratic and unfeeling' system is concerning and precisely what these reforms seek to avoid. It is vital that work is done not just to support rights on an individual basis but that at a policy level, explicit links to children's rights and the Due Regard duty are made. Children have a right to support from the Government, and so the 'care offer' should be framed and understood in such terms.

### **Corporate Parenting Duties**

We are supportive of the establishment of corporate parents in law. We support the position in the consultation paper that:

*"Determining whether a body or named role should be included on the list will consider:*

- *The extent to which in the course of exercising their functions they engage directly with children in care and care leavers*
- *Whether their activities have the potential to have a significant impact on children in care and on care leavers"*

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<sup>12</sup> Ibid, page 11

<sup>13</sup> The Promise, Independent Care Review (Scotland) February 2020

In order for the second criteria in particular to be met, it is vital that care experienced young people are involved in shaping who and what they feel can have a significant impact on children in care and care leavers.

We agree that the duties of corporate parents should be clearly defined in law, and would add that this should be made accessible in child friendly language so that children and young people are aware of the role of a corporate parent, responsibilities and the support they can offer.

We welcome the commitment to ensure that the range of supports to be offered should be informed by the views and experiences of children with care experience, which is conducive with children's rights to be involved in decisions which affect them. We also welcome the pledge to "publish and deliver an entitlement for children in care as well as those leaving care that covers specific elements of support that are known to offer the best chances of a positive childhood and a successful transition into adulthood". We support the commitment to evidence-based interventions, as well as the transparent nature of publishing entitlements in order to facilitate transparency and support young people to be aware of and access their rights and would again advocate for this to be accessible for children and young people.

We therefore agree with the areas of support as identified by the consultation paper, which would be adapted based on engagement with care experienced children and young people. These include:

- Health and development
- Relationships and social life
- Finances and money
- Accommodation and home life
- Education, training and employment
- Staying safe
- Rights and participation

The offer should be underpinned by the rights and entitlements as set out in the UNCRC. Care experienced young people are protected against discrimination under the UNCRC<sup>14</sup> and should therefore be able to expect the same enjoyment of their rights as their peers. We very much support the Government's work to better protect, respect and fulfil children's rights in Jersey and of the steps taken to identify the impact of care of children and young people through using the evidence available. It is unacceptable that care experienced young people are experiencing poorer outcomes than their peers, and that they are disproportionately represented amongst the most disadvantaged groups. It is important that this perspective continues to be adopted, which is only possible with proper data gathering and importantly through continuously engaging with children and young people about their experiences. We very much welcome the recognition of Adverse Childhood Experiences and the impact they can have on children and young people, and would advocate for trauma informed practice to become standard practice. This should also be reflected across the board for example in youth justice and the Parish Hall Enquiry system.

We would therefore add an overarching duty to have due regard to the UNCRC as per the proposed indirect incorporation consultation to supplement the proposed list of corporate parenting duties in the consultation, namely:

- To be alert to matters which, or which might, adversely affect the wellbeing of looked after children and care leavers
- To assess the needs of those children and young people for the services and support it provides
- To promote the interests of those children and young people
- To seek to provide looked after children and care leavers with opportunities to participate in activities designed to promote their wellbeing
- To take action to help looked after children and care leavers
- To take any other action it considers appropriate for the purpose of improving the way in which it exercises its functions in relation to looked after children and care leavers

Again, it is vital that duties be shaped by the views and experiences of care experienced children and young people, and on a continuous basis so that supports available can adapt and improve. This is in

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<sup>14</sup> Article 2, UNCRC

line with Recommendation 2 from the Independent Jersey Care Inquiry report<sup>15</sup> to 'give children and young people a voice' and listen to what they say.

It is also important that children and young people have access to child-friendly complaints mechanisms and advocacy to ensure that there are avenues to raise concerns about rights breaches should these duties not be correctly implemented, up to and including the court system. With these protections, the corporate parenting duty could be a very effective mechanism to embed rights protections, and offer tailored support to individuals to have a positive impact on the lives of children and young people in care and leaving care.

## **People Working Together**

We support the intention of the Government's proposals to ensure integrated planning and joint working, and agree that cooperative services can lead to improved outcomes for children and young people. We do however wish to highlight caution with regards to information sharing to ensure that children's rights to privacy are protected, respected and fulfilled.

### Information sharing

In order for children and young people's wellbeing needs to be met, it is important that supports and services can be put around the child when necessary in a coordinated manner. This requires the sharing of information, but it is vital that the thresholds here are appropriate in order to protect the child's right to privacy. We note the guidance for practitioners,<sup>16</sup> however would stress that it is important to learn from the experience in Scotland where these thresholds were challenged in the courts. The Supreme Court held<sup>17</sup> that whilst the aims and intentions of the legislation<sup>18</sup> were 'legitimate and benign', it violated a child's right to privacy "under article 8 of the ECHR because they are not "in accordance with the law" as that article requires" and "may in practice result in a disproportionate interference with the article 8 rights of many children, young persons and their parents, through the sharing of private information". The Human Rights (Jersey) Law 2000 protects Article 8 of the European Convention on Human Rights (ECHR) in domestic law and therefore any legislation and policy will have to be cognisant of the rights protections here and how to ensure compatibility of rights. We would therefore recommend that the guidance be updated to reflect human rights protections and considerations, and that training is provided to ensure clarity and embed protections. Proportionality is a cornerstone of human rights law, which recognises that rights are interdependent and interrelated. There is therefore a range of resources and jurisprudence to draw from which can support the development of law, policy and practice here.

## **The right to express views freely**

We strongly support the intention for the four Guiding Principles of the UNCRC to be embedded in and underpin the amendments proposed in Children (Jersey) Law, 2002. Again, as explored above, the link to the proposed duty to have Due Regard to the UNCRC must be made explicit, particularly as this would include the full complement of rights under the UNCRC and not just the 4 Guiding Principles. We would advocate for a clear articulation of duties here.

We strongly support the proposed provision of independent advocacy, and agree that this is an important measure to support children and young people's rights to participate in decisions which affect them. The Department of Health's National Standards for the Provision of Children's Advocacy Services<sup>19</sup> states that "Advocacy is about empowering children and young people to make sure that

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<sup>15</sup> Available at <http://www.jerseycareinquiry.org/final-report>

<sup>16</sup> [www.gov.je/SiteCollectionDocuments/Caring%20and%20support/ID%20JCF%209%20Sharing%20Information.pdf](http://www.gov.je/SiteCollectionDocuments/Caring%20and%20support/ID%20JCF%209%20Sharing%20Information.pdf)

<sup>17</sup> The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland), [2016] UKSC 51

<sup>18</sup> The Children and Young People (Scotland) Act 2014

<sup>19</sup> National standards for the provision of children's advocacy services, Department of Health (2002)

their rights are respected and their views and wishes are heard at all times. Advocacy is about representing the views, wishes and needs of children and young people to decision-makers, and helping them to navigate the system.”

We recommend that this should be proactively offered when they are making, or wishing to make their views or feelings known to Government about matters that affect them, or when they wish to make a representation about a decision made or an action proposed or taken under the law. However, we would add that access to advocacy should be available to children and young people at any time they may require it. Having statutory provisions to this effect would be a strong protective measure to protect, respect and fulfil their Article 12 rights, but importantly to empower children and young people to access their rights.

## **Conclusion**

To conclude, we strongly support the shift towards integrated and effective services to support children and young peoples' wellbeing, alongside the move to put early intervention on a statutory footing. We welcome the Government's efforts to better support care experienced young people in particular through the establishment of a corporate parenting duty, and to involve them in shaping the support offered. We recommend strengthening rights protections through a clear articulation of children's rights under the UNCRC and linking to work to implement a Due Regard duty in order to support the Government's aims and mainstream children's rights protections in Jersey.