



Children's Commissioner for Jersey

Promoting and Protecting Children's Rights

Children's Commissioner's Review of the Government of Jersey report '*Jersey Youth Justice Review*' (JYJR) – the report that reviewed the way in which Jersey's justice system deals with children.

Introduction

Jersey's commitment to children's rights has never been stronger. This is evidenced by the passing of a Law in 2019 establishing my post - the 'Commissioner for Children and Young People (Jersey) Law'. This Law sets out my statutory duties – making it clear what the Commissioner must do to promote and protect the rights of children and young people.

The mission of the office of Commissioner for Children and Young People in Jersey is a straightforward one: to champion the rights of all children and young people in Jersey. In 2014 Jersey formally agreed to ensure that every child on the island has all the rights listed in the convention by ratifying the United Nations Convention on the Rights of the Child (UNCRC). This means that the Government has agreed to do everything in their power to protect and to promote children's rights. The Commissioner will monitor the Government and keep under review the effectiveness and adequacy of youth justice law, policy and practice.

As articulated within the Commissioner's Strategic Plan 'Our Plan 2019-2023', I intend to do this by:

- Driving change
- Doing it the right way
- Proving it can be done

Amongst my responsibilities as the independent Commissioner for Children and Young People in Jersey is the duty to:

- Keep under review the adequacy and effectiveness of law, policy, services and practice relating to the rights to children and young people and to make suggestions to improve the law, policies and the way people work.
- Make sure people in power and with influence in Jersey all respect, protect and fulfil the rights of children and young people.

It is with this mandate in mind that I have prepared my response to the Jersey Youth Justice Review (JYJR)¹. The JYJR was commissioned by the Government of Jersey considering the Independent Jersey Care Inquiry (IJCI)² recommendation:

'(we recommend that) the youth justice system move to a model that always treats young offenders as children first and offenders second' (IJCI Volume 1, p.59) and that the Youth Justice system move from a court based, punitive system to a 'welfare-based approach.' (Vol 1, p.23.)

This rights-based approach with accompanying recommendations and comment is intended to strengthen and add value to the implementation of each of the JYJR recommendations.

I hope that my report will help progress this important agenda towards child friendly justice in a cohesive and coordinated way, rather than the recommendations being addressed in isolation through a series of loosely connected interrelated tasks. This is an opportunity to create a child friendly justice system that guarantees the respect and effective implementation of all children's rights.

Children and young people encounter the justice system in many ways. This can be for family matters in both public and private law for example divorce or care orders, in administrative justice for nationality or immigration issues, or in criminal justice as victims, witnesses or perpetrators of crimes. When faced with the justice system, children are thrown into an adult world which may be frightening and one that they cannot understand. This means that we must create a justice system that guarantees the respect and effective implementation of all children's rights.

That means justice that is:

- accessible;
- age appropriate;
- speedy;
- diligent;
- adapted to and focused on the needs of the child;
- respecting the right to due process;
- respecting the right to participate in and to understand the proceedings;
- respecting the right to private and family life;
- respecting the right to integrity and dignity.³

¹<https://www.gov.je/SiteCollectionDocuments/Crime%20and%20justice/R%20Youth%20Justice%20Review%2020190529.pdf>

² <http://www.jerseycareinquiry.org/Final%20Report/Volume%201%20Combined.pdf> The Report of the Independent Jersey Care Inquiry 2017 chaired by Frances Oldham QC

³ Council of Europe [Child-friendly justice](#)

Background

Conducted by Professor Jonathan Evans and his team during 2018, the Jersey Youth Justice Review was published later in 2019. The Review made a significant number of recommendations that have been accepted in principle by the Council of Ministers. The recommendations were seen under 8 broad headings:

1. To develop a multi-agency youth justice strategy
2. Changes to the Law, Guidance and Legal Practice
3. Parish Hall Enquiries
4. Courts
5. Custody
6. Training
7. Diversity, Recruitment and Monitoring
8. Research

A Child Rights-Based Approach

Children's rights have increasingly been used for analysing and critiquing the youth justice system in England and Wales. The European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC) have provided a rights framework for those seeking to ensure that a culture of children's rights is evident in the Justice system. We can see that international rights standards have also increasingly formed the basis of legal challenges brought by children and their advocates.

The Government of Jersey have made a commitment to '*Putting Children First*'. The only way to achieve that ambition is to adopt and embed a child rights-based approach.

What is a child rights-based approach and why it is fundamental to promoting and protecting children's rights?

Children's rights are entitlements, they are not optional (UNCRC Article 1). Children aged 0-18 years are given a special set of rights in the UNCRC¹. In looking at the JYJR through a children's rights lens, particular attention should be given to the four general principles of the UNCRC, which are **non-discrimination** (UNCRC Article 2), the **best interests** of the child (UNCRC Article 3), the right to **life, survival, and development** (UNCRC Article 6) and the right of the child to **participation** (UNCRC Article 12). These are recognised as being particularly "special" as they help to interpret all the other rights in the UNCRC and play a fundamental role in their realisation. See Appendix 1 for further details.

However, all rights are interconnected and of equal importance. Duty-bearers are those defined as having obligations under the UNCRC and other international human rights conventions. The Government of Jersey is the main duty-bearer (UNCRC Article 4). As that duty-bearer the Government needs to start thinking about children in the youth justice context in terms of 'rights' rather than 'needs' and how they

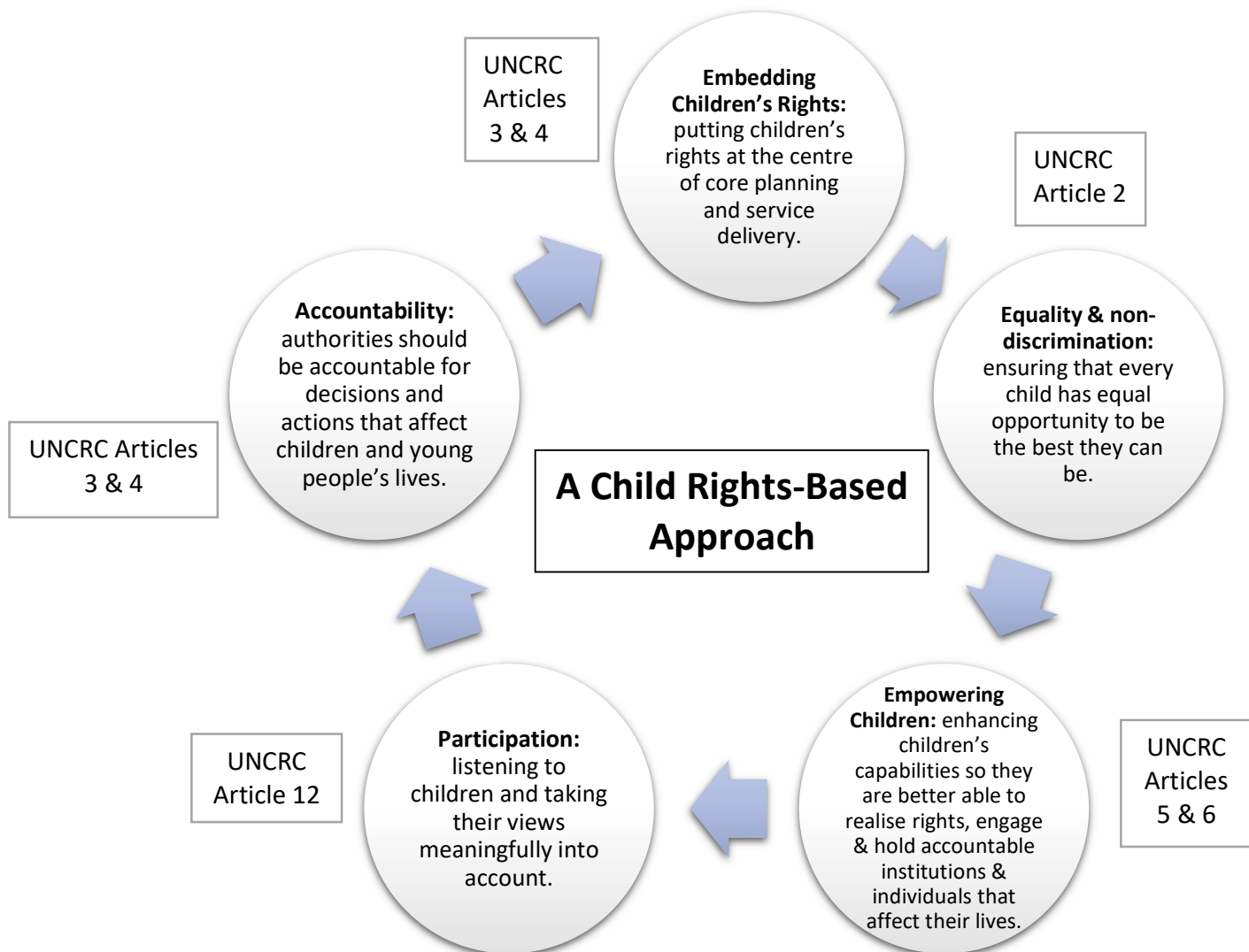
can create child friendly justice which brings together the rights of children with those who have responsibility to provide those rights to children.

A child rights-based approach is not just working with the UNCRC or being able to cite specific articles. It is the way in which the Government can embody the UNCRC in all that it does. It gives the Government a rights-based perspective. Central to this approach is a focus on transforming societal views and organisational cultures with a focus on an absolute understanding of what a child rights-based approach is in simple, straightforward and deliverable terms.

A Child Rights-Based Approach is a principled and practical framework for working with children, grounded in the UNCRC⁴. It is about placing the UNCRC at the core of planning and service delivery and integrating children's rights into every aspect of decision-making, policy and practice. It is a systematic approach to ensure that the Government upholds its duty and responsibilities to respect, promote and fulfil the rights of children and young people. Children's rights are the lens through which we can examine how actions that affect children are rooted, reviewed and resolved. It places the relationship between children as rights holders and the Government as duty bearers at the forefront. Government and civil society must be aware of and understand children's rights. It will help all organisations in the private and public sectors give effect to children's rights. It should underpin all our work and all those providing services and support to children and young people should be applying the Child Rights-Based Approach. A Child Rights-Based Approach is a fundamental element of a legitimate youth justice system.

⁴ Main principles - Child Rights Approach | Toolkit on Diversion and Alternatives to Detention | UNICEF. Available at: https://www.unicef.org/tdad/index_55678.html. (Accessed: 7th September 2019)

Key principles of A Child Rights-Based Approach:⁵



In basic terms, a child rights-based approach is one in which:

- Each child is an **equally valuable** human being;
- Every child has the right to **life, survival** and **development** to their **fullest potential**;
- Every child **understands** their situation and has experience to offer us;
- Children deserve to have their **best interests** met through **proper allocation of resources**.

⁵ Adapted from UNICEF Seven Principles of a child rights-based approach and Office of the Children's Commissioner Wales 'The Right Way.' <https://www.unicef.org.uk/favicon.ico>

Council of Europe Guidelines

The Council of Europe has created various standards and guidelines⁶ in the field of child-friendly justice. These standards aim at improving the justice system and adapting it to the specific needs of children. This entails creating a justice system that guarantees respect for and the effective implementation of all children's rights. The most extensive set of standards on child-friendly justice are contained in these guidelines and they address children's rights in all areas of law (civil, administrative, criminal), at all stages of procedures (before, during and after), and in all capacities and circumstances (be the children victims, witnesses, authors of crime, a party to proceedings or 'just affected' by legal proceedings such as, for example, a seizure of property by a bailiff).

The guidelines state:

- **Information, representation and participation:** children should be informed on their rights, have free access to a lawyer, have a say and have decisions affecting them explained in a way that they can understand.
- **Protection of privacy:** A child's privacy should be protected, including from the media. In particular, no one is allowed to print a child's name, picture or personal information including about him/her or his/her family in the newspaper or on the internet. If children are being heard in court or other official settings only the concerned people should be present.
- **Safety:** Children should be protected from harm and when they have been hurt, it is important to keep them safe. Everyone working with children should be checked to make sure they are not likely to harm them.
- **Multidisciplinary approach and training:** Professionals working with children should work together towards the child's best interests. They should receive training on child rights, communication and needs at different ages so as to protect them from hardship of procedures as well as to ensure the reliability and good administration of justice.
- **Safeguards before, during and after all proceedings:** When children go to court, the settings and process should be well described and explained to them. They should have the possibility to have their own lawyer and to have a say in cases that affect them. Decisions should be taken as quickly as possible and be clearly explained to children.
- **Deprivation of liberty:** A child should be detained only when there is no other option and should never be detained on immigration grounds. If a child is detained, it should be as briefly as possible and apart from adults except if in his/her best interests. Despite the detention, they should enjoy all their other rights, especially the rights to contact family and friends, education or training, religion and have access to sports and leisure facilities. They should be prepared for their return home.
- **Promoting and monitoring child-friendly actions:** Governments should set up information structures for children (e.g. free helpline or Children's Commissioner), make sure children know how and

⁶ Council of Europe. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice Guidelines. (2011).

who to complain to about their treatment, teach children, parents and professionals about children's rights, foresee protective legislation understandable for children, regularly check children's treatment in justice and take measures to improve it.

My review examines the JYJR report through the lens of children's rights, as established in the UNCRC. Each recommendation has been explored regarding its relationship to the general principles of the UNCRC, the principles that embody the Child Rights Approach, and the Council of Europe guidelines.

JYJR Recommendation 1: To develop a multi-agency Youth Justice Strategy

The review recommended that:

"There should be an understanding promoted across all relevant professional staff that the reasons children and young people present with challenging behaviour are many, complex and often interacting. As part of this, there should be an awareness that the most vulnerable and disadvantaged often present the greatest challenge and that evidence-based approaches are likely to have the greatest impact." (JYJR, 6.0, p.43)

This recommendation proposes the development of a multi-agency Youth Justice Strategy that addresses the rights and needs of children as perpetrators and victims within the existing children's human rights framework which should enshrine principles that protect and promote children's rights in the youth justice system.

The recommendation proposes nine aims, all of which to a greater or lesser degree reflect the UNCRC child's rights-based approach. These include the key principles as outlined in my introduction, as well as some of the key elements of the Council of Europe guidelines. In the table below, each of the key recommendations regarding the development of a youth justice strategy and the relevant UNCRC Article from the JYJR is highlighted.

Youth Justice System recommendations from JYJR	UNRC
The Youth Justice system should be compliant with international children's human rights conventions.	Article 1 (definition of the child)
Welfare should be a primary consideration and young people should always be treated as children first and offenders second.	Article 3 (best interests of the child) Article 6 (life, survival and development)
Whenever possible children should be diverted from the criminal justice system with the expectation that their needs will be met.	Article 3 (best interests of the child)
Young people in the youth justice system should have the same access to their rights and entitlements as any other young person.	Article 2 (non-discrimination)
Children in the youth justice system are kept safe at all times.	Article 6 (life, survival and development)
Children in the youth justice system should be seen and heard.	Article 12 (respect for the views of the child)

Children in the youth justice system should be dealt with in the least restrictive way possible and only deprived of their liberty as a measure of last resort.	Article 3 (best interests of the child)
Victims should be heard, their needs met and, where appropriate, provided with the opportunity to share their views and take part in restorative processes.	Article 12 (respect for the views of the child)
Services should be held to account for addressing the needs of young people.	Article 4 (implementation of the Convention)

It also recommended the creation of a strategic multi-agency Governance Board with agreed outcomes and measures to evaluate performance including independent academic evaluation and independent inspection arrangements. The primary purpose of the governance board appears to be to oversee and 'drive through implementation' of the Youth Justice Strategy.

The review recommended that the Youth Justice Strategy should sit within a broader child and youth participation strategy that should be *'proactive in seeking the views of children and young people in relation to all of the key agencies and processes of the youth justice system. In adhering to Article 12 (UNRC) children's voices should also be represented in the main governance structures of the system in order that young people can feedback on existing provision and contribute to the planning of future service delivery'*. I am in support of the development of a participation strategy for Jersey and urge the Government to make this a priority for the Children and Young People's Strategic Partnership.

It is imperative to establish how the Youth Justice Strategy will serve to respect, protect, and fulfil the rights of children, as established in UNCRC (Article 1). It is important to remember that children are rights holders and the Government of Jersey is duty-bearer to these rights (Article 4), and as such has specific obligations to children that are set out in the UNCRC and therefore it may be useful to map the child's journey through the Youth Justice System in all areas of law (civil, administrative, criminal), at all stages of procedures (before, during and after), and in all capacities and circumstances (be the children victims, witnesses, authors of crime, a party to proceedings or 'just affected' by legal proceedings), to acknowledge strengths and weaknesses in terms of realising children's rights.

The JYJR additionally recommended that the Government's Children and Young People's Plan and Pledge to Jersey's Children and Young People should be complemented by a Children's Charter of Rights that are linked to tangible universal entitlements guaranteed by the States of Jersey. They propose that the launch of such a Charter should be accompanied by a rolling programme of education and awareness-raising amongst children, families and all relevant professionals; and clear signposting to advice and advocacy services for children and their parents/care givers.

I fully support the development of a charter that is co-produced and actively participated in by children and young people (UNCRC Article 5 & 12). It should make their rights and entitlements clear, be produced in a language that is appropriate, reflect the diverse communities within Jersey (UNCRC Article 2; Article

7; Article 8) and be supported with a suite of relevant information that has a strong evidence base (UNCRC Article 3; Article 17) and is linked to a proactive communication strategy and the UNICEF Rights Respecting Schools Award⁷ in Jersey. This award puts children's rights at the heart of schools, creating safe and inspiring places to learn, where children are respected, their talents nurtured, and they can thrive. The States of Jersey Police have recently launched a charter 'States of Jersey Police - Our Pledge to the Children and Young People of Jersey' which I recognise as good practice and an example which other organisations in Jersey should follow.

My commitment to enabling meaningful participation is front and centre in my [strategic plan 2019-2023](#). It should also be noted that considerable evidence suggests that when children are involved in the planning and structuring of their interventions, they are more likely to engage in services and positive gains are made in relation to behaviour, respect and confidence⁸.

There is a real risk that the suggested development of so many policies, protocols, procedures and charters that underpin the proposed Youth Justice Strategy may serve to confuse the essence of a child's rights-based approach, and hence reduce synergy and become conflicting and confusing. Any strategic governance board which oversees this work needs to ensure that the interdependencies of all policies, procedures and charters are clearly understood and each brings value independently, but also drives towards the ambition of having a holistic child rights-based approach to criminal justice.

The JYJR recommends that the Youth Justice Strategy should sit within a well-developed Early Help model that ensures children's holistic needs are identified and responded to at the very earliest opportunity. Whilst I fully endorse the early intervention approach, I feel that care should be taken not to conflate early intervention opportunities with automatic and inevitable escalation to the youth justice system. The opportunity for early intervention, support and diversion seeks to prevent children and young people from entering the youth justice system and whilst it should be acknowledged as the lowest tier of intervention within a Youth Justice Strategy, existing provisions and services, such as 'Right Help, Right Time' as the Early Help approach in Jersey, require review in addition to the development of a comprehensive prevention strategy. I welcome the commitment to expand the focus of the Law to provide an entitlement to children and families for early help and support as part of the Children's Legislation Transformation Programme Further. This must be then appropriately aligned with the Youth Justice Strategy.

The final element of recommendation 1 is the development of a Restorative Justice Strategy for Jersey including appropriate practice in the domains of community, education, public care, Parish Hall Enquiry and criminal justice. In my view, this recommendation is a core feature of the development of a Youth Justice Strategy and not an optional extra.

⁷ <https://www.unicef.org.uk/rights-respecting-schools/>

⁸ Creaney, S. and Smith, R. (2014) 'Youth justice back at the crossroads.', *Safer communities.*, 13 (2). pp. 83-8

JYJR Recommendation 2: Changes to the Law, Guidance and Legal Practice

JYJR Recommendation 2 refers to changes in the law, guidance and legal practice, the Youth Justice review proposes that:

'In line with Article 3 of the UNCRC 1989, which states that 'the best interests of the child shall be a primary consideration', the Criminal Justice (Young Offenders) (Jersey) Law 2014 should be amended to include an explicit reference to this welfare principle.' (JYJR, 6.9, p. 45)

The JYJR refers to consideration being given to revising the existing legislation to give further powers to the Youth Court to deal with trials and sentencing involving allegations against children below the age of 18 and welcomes the guidance of the Attorney General on the prosecution of children. It is worth noting that currently this is set as 'guidance'. This means that any new Attorney General may take a different approach to those children under 12 years and issue revised guidance. Subsequently, the review and change of minimum age of criminal responsibility from 10 years is the only way to ensure we do not sentence younger children.

The JYJR acknowledges that the UNCRC has stated that the age of criminal responsibility should be no lower than 12 years and reflects that a review of the age of criminal responsibility scheduled to take place in 2021. However, the revised UNCRC General Comment now encourages States Parties to increase the minimum age to at least 14 years of age. The JYJR states:

"Given that a review of the age of criminal responsibility is scheduled to take place in 2021 and the Independent Care Inquiry has requested that consideration be given to developing a welfare-based system of youth justice, we would recommend that the two issues be considered together. The terms of reference of the 2021 review should be widened to include an exploration of how a move to raise the age of criminal responsibility could be supported by an appropriate, welfare-based model that protects children's rights via appropriate judicial oversight." (JYJR, 6.12, p. 43)

Other legislative, guidance and legal practice changes are also recommended within the review. One area the review did not consider is whether or not children are adequately represented in care proceedings. I am carrying out an independent audit of child representation in public law cases, and I urge this to be considered as part of any design of a child friendly justice system.

Clearly, any and all changes to legislation need to be considered using a child's rights-based approach and, as per Commissioner's Law part 4, Article 25, to the Minister must consult the Commissioner upon any proposals for the preparation of any enactment directly concerning children. This means proactive application of the key principles of the UNCRC in any changes to the Law, guidance and legal practice as well as application of the Council of Europe Guidelines on child friendly justice.

The UNCRC Committee on the Rights of the Child General Comment No. 24 (2019) on children's rights in the child justice system makes two important comments:

*'The Committee recommends that those States parties that limit the applicability of their child justice system to children under the age of 16 years (or lower), or that allow by way of exception that certain children are treated as adult offenders (for example, because of the offence category), change their laws to ensure a non-discriminatory full application of their child justice system to **all persons below the age of 18 years** at the time of the offence' (Part C Paragraph 30).*

*'Every child deprived of liberty is **to be separated from adults**, including in police cells. A child deprived of liberty is **not to be placed** in a centre or prison for **adults**, as there is **abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate**. The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention – "unless it is considered in the child's best interests not to do so" – should be interpreted narrowly and the convenience of the States parties should not override best interests. **'States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.'** (Part F Paragraph 92.)*

These comments are intrinsically linked to the following recommendations which, in my view, cannot wait until a broader review of the Minimum Age of Criminal Responsibility (MACR) which the Government has scheduled to be undertaken in 2021. This is because of:

- The possibility of a child being detained in custody with adults remains highly possible in the case of girls in Jersey, and;
- The legislative anomaly highlighted with regards to applications under Article 5 (5) of the Sex Offenders (Jersey) Law 2010 (application to no longer be subject to notification requirements) as articulated in the JYJR.

JYJR Recommendation 3: Parish Hall Enquiries (PHE)

The JYJR recommended that although there is room for improvement, the consensus from those who contributed to the review was that the longstanding Parish Hall Enquiries (PHEs) should be retained as a restorative justice lower level resolution option (JYJR, 6.18, p.47). However, further analysis may be required here due to the lack of children and young offenders that were part of this engagement. In its current model, can we be sure that the PHE system is fair and consistent and that all children have their rights fulfilled and protected in accordance with the relevant articles? Do all children and young people have a voice in the PHE current model and are we listening and responding to what they are saying?

The continuation of the PHE as a diversion option prior to the involvement of the Youth Justice system itself offers an opportunity to evaluate, using an evidence-based lens, the options, pathways and most appropriate organisations to support the process whilst overlaying in a very clear intentional way, a child's rights-based approach to this option.

As with other areas within this report, there is key learning that can be taken from places that have undertaken innovative approaches and provided data and evidence on outcomes. It is acknowledged that there is positive engagement between the youth court and children, and it is now customary for Personal Information Forms to be completed for any child entering the PHE. However, this process could be extended to increase the number of escalations before a child encounters the Parish Hall Enquiries and, therefore, increase the potential for diversion before reaching the courts. For example, consideration of the same principles of the system in place in Guernsey and evolving the PHEs into a meaningful and core part of a community based early intervention and restorative justice solution within the widest youth justice context. Similarly, the Swansea Bureau⁹ was set up in 2013 to expand on the level of cautioning across Wales before children enter the criminal justice system. In line with the [All Wales Youth Offending Strategy \(AWYOS\)](#)¹⁰, there is a level of horizontal escalation before a young person is reprimanded in order to reduce the number entering the criminal justice system. This framework has more than halved the number of first-time entries to the youth justice system between 2006 and 2010 (Justice Committee, 2011). Therefore, the Jersey Parish Hall Enquiries may benefit from a systems, user and practitioner review, alongside a desk-top review of other diversion schemes that exist nationally and internationally.

Of note, this was echoed in the Independent Jersey Care Inquiry review (IJCIR)¹¹ which was published on 23rd September 2019 who commented:

‘We recognise that parishes value the familiarity and locality of the Parish Hall Enquiry system. We are of the opinion that there should be a review of how it operates, particularly in respect of dealing with young people.’ (IJCIR, 59, P 20)

JYJR Recommendation 4: Courts

The recommendation by the JYJR under this section are mainly confined to giving consideration to how the Youth Court and Royal Court could make further progress towards being more child friendly and recommend that *‘an element of formality in proceedings should not necessarily be removed completely, but in some cases a more informal and sensitive approach is appropriate.’* (JYJR, 6.19, p.47).

The review makes various positive comments about the representation of probation at court, but further analysis of assessments and recommendations made at court should be undertaken to ensure that they are appropriate and consider the wider family and situational factors for the child or young person, and indeed if the assessments consider children’s rights.

The JYJR mentions the benefits of more advanced notification from probation to the court, widening the membership of the Youth Appeal panel and lifting the current age limit on youth court panel members of 60. Whilst I understand the need for increasing the ability for individuals in the community to participate

⁹ Stephen Case and Kevin Haines. Children First, Offenders Second: The Centrality of Engagement in Positive Youth Justice. Howard J. 54 No. 2, 157–175 (2015)

¹⁰ All Wales Youth Offending Strategy Welsh Assembly Government 2004

¹¹ Independent Jersey Care Inquiry - Review 2019 chaired by Francis Oldham QC

in the Youth Appeal panel, it would be recommended that the Government explore efforts to recruit those from a more diverse background.

JYJR Recommendation 5: Custody

The JYJR stated that there does not appear to be a problem with excessive or inappropriate custodial sentencing, however, there remains a risk of children being deprived of their liberty due to the unavailability of appropriate accommodation. UNCRC Article 37 covers what happens if a child or young person commits a crime. It says they shouldn't be arrested unless there are no other options, and that they have a right for lawyers to give them advice about their situation and represent them in court.

If a child or young person is placed in detention they should remain there for the shortest possible time, and should:

- be treated with respect
- if in their best interest, be kept apart from adults
- have their age taken into account when people think about their needs.

Article 40 says that when a child or young person gets legal help, they should get it without being discriminated against in any way. Their best interests must be considered. Children and young people have the same rights when being tried for a crime as adults do. Like all people who are accused of breaking the law, they have the right to be presumed innocent until proven guilty. All their legal rights should be upheld while they are being tried. Children and young people also have the right to privacy while they are being tried, and this should be respected by everyone. The media shouldn't publish stories or information that could violate this right. Any young person who is tried in a court should be treated without discrimination, and care should be taken to make sure this is the case. People who need a translator in court – including those with disabilities – should have access to one.

The Attorney General's recent guidance on 'Overnight Detention of Children and Youths' is welcomed but does not go far enough to ensure that detention is only be used as a measure of last resort and for the shortest possible period of time. Cases that have come to my attention demonstrate that the guidance appears not to be fit for purpose, illustrated by the difficulties in the application of the relevant legislation relating to the Criminal Procedure (Bail) Jersey Law 2017. This can potentially result in children being held overnight in police custody and inappropriate custodial remands. As a matter of urgency, the JYJR recommended that a Bail and Accommodation Strategy is developed to ensure children are not subject to the inappropriate deprivation of liberty in police custody and secure accommodation. The JYJR recommends that a Task and Finish Group be established to explore innovative ways of providing a continuum of appropriate, safe and secure accommodation that takes full account of issues related to welfare, mental health and criminogenic needs. They further suggested that this should include specialist foster care as well as suitable residential units and that urgent attention should also be given to how to address late requests for remand. Finally, they recommended that the Task and Finish Group should revisit and review the appropriateness of whether the Youth Court should enjoy equivalent powers in respect of the Secure Accommodation Order as those available in Family Proceedings under Article 29 of the Children (Jersey) Law 2002.

The JYJR welcomed the decline in the use of custodial sentencing since the Review in 2010 but notes that this has resulted in the risk of social isolation for some children in Greenfields Secure Children's Home. They recommended that *"the walls of secure accommodation are more permeable in terms of developing a more integrated approach to the use of the facility"* (YJYR, 6.24, p.48) and suggest that this could include:

- Greater use of properly risk-assessed day release for children to partake in community resources such as education and training; and;
- Access to Greenfields being given to community-based agencies that work with young people due to concerns regarding the breach of UNCRC Article 3 through potential social isolation of children and young people. Other Articles, such as 28 (right to education) and Article 37 (not to be punished in cruel, or harmful way) may also be relevant, which is simply not acceptable.

Importantly, in the IJCIR 2019, the Panel observed:

*'We recommend that plans are developed to **move all residential childcare from this site**. It is our view that the **Greenfields building is entirely unsuitable for the care and welfare of distressed children and young people** and that it would not be capable of being transformed into a more appropriate facility. A population of the size of Jersey does not require this type or scale of secure facility. Although the building is relatively new, it should be demolished and replaced with small homely units within which close support can be provided when necessary.'* (61, P21)

Transition between youth custody and adult custody is process driven and not people centred. When a young person in custody reaches the age of 18, the current system in Jersey is that the individual is transferred into the adult system as a matter of course and process without any transition in place. Best practice within other Youth Offender Institutes (YOI), such as Woodlands, Belfast sees young offenders serve out their crime in that YOI. They do not transfer to the adult prison on reaching the age of 18.

This is specifically commented on by the UNCRC Committee on the Rights of the Child General Comment No. 24 (2019) Part F Paragraph 93 where it is stated that a child should not be moved to a facility for adults immediately after he or she reaches the age of 18, and that the continuation of his or her stay in the facility for children should be possible if that is in his or her best interests.

JYJR Recommendation 6, 7 and 8: Training, Diversity, Recruitment and Monitoring and Research

It is my view that to achieve a true child's rights-focused approach, it is necessary to consider these last 3 recommendations together and, as such, my recommendations will reflect this.

Training:

I agree with the JYJR that specialist training is required for those working with children (JYJR, 6.25, p.48), but I see the need for this to be extended to all professionals, volunteers and people who have contact with children in the Youth Justice system. This should be high quality and evidenced-based, specialist training on how best to communicate and engage with young people. The content of the training should include (a) an understanding of what children's rights are and how children's rights should be applied in practice; and (b) Adverse Childhood Experiences, child development, trauma informed practice and

developing resilience and (c) a general introduction to diversity in its broadest terms. This comprehensive training package should ensure that children currently at risk of being perceived as non-compliant are not unnecessarily criminalised or ignored. Those included in the training should be the States Police, Honorary Police, Judges and Jurats, advocates, probation officers, restorative justice practitioners, relevant third sector professionals, volunteers, parents, carers and most importantly, children and young people.

The UNCRC Committee on the Rights of the Child General Comment No. 24 (2019) on children's rights in the child justice system Part C Paragraph 22 states:

'...the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making.'

In Part VI. Paragraph 112 they also comment:

'It is essential for the quality of the administration of child justice that all the professionals involved receive appropriate multidisciplinary training on the content and meaning of the Convention....It should include established and emerging information from a variety of fields on, inter alia, the social and other causes of crime, the social and psychological development of children, including current neuroscience findings, disparities that may amount to discrimination against certain marginalized groups such as children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities and the available diversion measures and non-custodial sentences, in particular measures that avoid resorting to judicial proceedings.'

Most of the previous recommendations I have outlined above include elements of training. It is important to ensure that an evidence-based approach is applied to this work, allowing sufficient scoping work to be undertaken, ensuring that user engagement is purposeful and meaningful in gathering thoughts in current experiences, and integrating these any new training or re-design and testing. The JYJR comments on a change in the policing response since 2010 to 2018 with some additional training undertaken and closer working relationships with the Youth Service (2.15, p.27). However, there is a lack of data to ensure that Jersey can evidence these changes in practice, policy, direction and culture in a clear, transparent way to demonstrate that our Child Rights-Based Approach is being achieved for those exposed to our criminal justice system.

The IJCIR 2019 stated:

*'We recommended that there should be a programme of **regular training** for all those acting in a judicial capacity in respect of children and young people. Whilst we understand that some training has been provided, we continued to hear that there was at least a perception that the courts did not always have the welfare of the child as their paramount consideration... We therefore **reinforce the need for ongoing training** for all involved in court decision making in respect of children.'* (62, P 21)

Diversity, Recruitment and Monitoring

The JYJR stated that *'It should be the aim of every public service to **reflect the community** it serves in all its diversity'* (6.26, p.49).

Accordingly, consideration should be given to taking positive action to encourage applications from the widest possible range of potential candidates within all key voluntary and professional roles in the youth justice system.

Research

The JYJR throughout the report recommended translating the components of the UNCRC into the Jersey Youth Justice system and continuing to research best practices in line with these. Research needs to be a key component going forwards, with consideration to scope current provisions, alternate models of working (desktop reviews), with evaluation and data analysis to understand and clearly evidence whether a Child Rights-Based Approach is being achieved.

There is much learning that can be acquired nationally and internationally, with an emphasis on scoping and understanding the current status before delving into solutions. Approaches need to ensure they reach all aspects of the criminal justice system, in that it should include the demand, systems, pathways and flow of individuals through the criminal justice system, along with the rich, powerful experiences of children and young people, whether they are a victim, perpetrator or witness, and also those working within it. Only by examining our Justice System in its entirety will we be able to create and evidence the transformational journey by Jersey to ensuring we achieve a Child Rights-Based Approach and truly put Children First.

Recommendations.

The Commissioner for Children and Young People recommends that:
<ul style="list-style-type: none">• A child rights-based approach must be embedded within any Youth Justice Strategy for Jersey.• Development and design of the Strategy should keep pace with advances in justice and care in the developed world whilst continuing to follow ECHR and UNCRC guiding principles, and the UNCRC General Comments.• The voice of the child is heard, and children and young people are supported to participate in development of the Youth Justice Strategy (UNCRC Article 12).• The addition of a prevention strategy for Jersey is core in the development of the Youth Justice Strategy (UNCRC Article 6). Linked to this should be the design and implementation of a set of meaningful associated measures.• The journey of children in all areas of law, at all stages of procedures, and in all capacities and circumstances should be mapped from start to end, identifying which rights of the child exist at each stage and using this child rights-based approach to inform strategic planning.• The review of the 'Right Help, Right Time' early help model ensures that it is cognisant of the ECHR and UNCRC guiding principles with regards to ensuring a child's rights-based approach is embedded within any future operating model development. This includes ensuring that any new early help measures are not only aligned with the emerging Youth Justice Strategy, but the measures have a clear child's rights-based focus (UNCRC Article 6).
<ul style="list-style-type: none">• Priority be given to raising the Minimum Age of Criminal Responsibility (UNCRC Article 3, 25, 37, 40).• An analysis of youth offending data be undertaken to ensure that children's rights are being respected, protected, and fulfilled.• Children and young people should be consulted with regards to any proposed changes to legislation and policy and their views taken seriously (UNCRC Article 12).• There be a review of child representation in public law to understand and establish compliance with UNCRC and ECHR.

<ul style="list-style-type: none"> • An independent review of Parish Hall Enquiry system should be undertaken including compliance with UNCRC and other treaties (UNCRC Articles 37 and 40).
<ul style="list-style-type: none"> • Any changes to the courts system should reflect the ECHR and the guiding principles of the UNCRC (Article 37,40) in addition to reflecting the General Comment No. 24 on children's rights in the child justice system. • A child friendly feedback mechanism should be established involving children and young people to establish their experiences, what worked well and where improvements could be made (Article 12).
<ul style="list-style-type: none"> • The recently published Greenfields review report recommendations and any subsequent policy and practice decisions are enshrined in the best interests of children Article 3 and ensure those children at the facility can realise their rights under Article 28 the right to an education, and Article 37 the right not to be punished in a cruel or hurtful way. • Ongoing detention of children in Greenfields must be addressed as a priority. • The current transition system between youth and adult custody be reviewed in light of international best practice and the UN General Comment 24.
<ul style="list-style-type: none"> • A skills and practice review be undertaken with all professional and people who encounter children and young people in a youth justice context, including parents and carers. From this, priority areas and skills/knowledge gaps can be identified with bespoke training developed, implemented and evaluated for each profession and/or person involved with children and young people. • Any training delivered to staff in the wider justice system should include ECHR and UNCRC as these are core components within an effective child friendly justice system. • Training should consistently include a basic understanding of ECHR, UNCRC and other relevant treaties. Additional specific training such as research-based developments in children's wellbeing, brain development and trauma can be incorporated onto that knowledge baseline.

Conclusions

A child rights-based approach must continue to be the cornerstone of any and all progress and activity generated as a result of the Jersey Youth Justice Review. The justice system must guarantee the respect and effective implementation of all children's rights.

Meaningful participation of children and young people to inform, shape, co-design and co-produce a Youth Justice Service which has a true child rights-based approach should be at the heart of developing a child friendly justice system.

Service redesign must be underpinned by a proven evidence-based methodology which includes looking outside Jersey for developments in services. Applying this approach will guarantee that service redesign is carried out transparently, strategically, based on best practice and, most importantly, is built around a child rights-based approach.

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Appendix 1

The four general principles of the UNCRCⁱ

UNCRC Article 2 The principle of non-discrimination grants children the right to be treated equally under the UNCRC regardless of particular characteristics or family background. This principle underpins the necessity for a review of Youth Justice in Jersey as children, whether perpetrators or victims, are entitled to the full realisation of all UNCRC rights, as are all children in Jersey.

UNCRC Article 3 The Government of Jersey must work to respect the right of the child to have their best interests taken as a primary consideration when decisions are made about them. This principle is twofold: first, legislation and policies should always consider their potential impact on children in Jersey and action should be taken to mitigate any negative impacts; second, decisions made about individual children should take into account the best interests of that particular child. An individual child's best interest may differ from the broader needs of children in Jersey, and thus decisions about individual children should be made on a case-by-case basis.

UNCRC Article 6 Children in Jersey have the right to life, survival and development. This right must be carefully considered when making decisions about children, particularly when children are within the 'criminal justice system' as improper care and negative experiences may mean children experiencing delays to their development; many UNCRC rights are closely linked to this right, including the right to health and health services (UNCRC Article 24) and the right to education (UNCRC Articles 28 and 29).

UNCRC Article 12 grants children the right to participation. It is imperative that the child is given the opportunity to express his or her views and have them taken into account in line with the child's age and maturity. This participation on the part of the child should continue to be encouraged and sought after throughout the any youth justice process. Identifying areas where active participation is possible is essential if the planned Youth Justice strategy is going to truly represent the voice of children in Jersey.

ⁱ https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_summary-1.pdf?_ga=2.238016320.1530270581.1568969429-1226532051.1568969428