



Children's Commissioner for Jersey

Input for List of Issues Prior to Reporting

The Children's Commissioner for Jersey

1st November 2020

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Introduction

The Children's Commissioner for Jersey was established through the Commissioner for Children and Young People (Jersey) Law 2019 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

Whilst the Office is new, we have developed a strong understanding of key children's rights issues in Jersey, as outlined in this report. This understanding draws on engagement work through our Island-wide consultation involving over 1,700 children and young people in Jersey, as well as in-depth research *Life on the Rock*, which provides insights into, and a deeper understanding of, children's lived experiences on the island. This submission will also draw from the Legislative Gap Analysis report, a comprehensive review of Jersey law for compatibility from a children's rights perspective, and is underpinned by accessible data, learning from our casework enquiries and the wider work of the office. We would also like to thank NGOs across Jersey for sharing their valuable knowledge and insights into key challenges for children and young people in Jersey, which has also informed this report.

General Measures of Implementation

There have been considerable positive steps forward to improve children's rights protection in Jersey in recent years. This includes the extension of the United Nations Convention on the Rights of the Child (UNCRC) to Jersey in 2014, and the passing of the Commissioner for Children and Young People (Jersey) Law 2019¹.

A proposal to introduce an obligation on Ministers and elected members to have due regard to the UNCRC is expected to be passed into law during this reporting cycle, which will include the use of Child Rights Impact Assessments (CRIAs).

A substantial piece of work to review the compatibility of Jersey law with the UNCRC was published in September 2020: the Legislative Gap Analysis (LGA), undertaken by the Welsh observatory for Children's Rights. This significant piece of work not only informed much of our response, but also provides a routemap towards compliance and harmonisation of Jersey law with the UNCRC. The Government of Jersey has committed to making a decision on incorporation of the UNCRC into Jersey Law by May 2022.²

The Commissioner invites the Committee to:

- a. urge the state to fully and directly incorporate the UNCRC into Jersey law**
- b. ask the state to provide detailed information on what steps will be taken to improve compliance with the UNCRC following the findings of the Legislative Gap Analysis report?**

Data collection

Data collection and availability remain barriers to assessing and responding to threats to children's rights in Jersey. Systems can be disjointed, the use of paper-based systems in the recent past means that long-term studies are challenging, and Freedom of Information requests can be frustrated by lack of ready access to information.

Record keeping is also an issue, as well as effective data sharing across departments. For example, when conducting research into youth justice in Jersey, three separate departments gave us different figures when we asked them for data concerning the number of young people currently on probation. Further, there is not always public access to data.

The lack of collection of comparable data presents challenges to learning from international best practice. For example, the Better Life Index 2019³ places Jersey above the Organisation for Economic Co-operation and Development (OECD) average, yet six out of the eleven OECD indicators "were not used due to a lack of comparable data currently available for Jersey" and included: "household net financial wealth"; "years in education"; "stakeholder engagement for developing regulations"; and "time devoted to leisure and personal care".

It is notable that these missing categories correspond with challenges that children and young people in Jersey have told us that they feel to be the biggest issues facing them and their peers.

¹ Law accessible at https://www.jerseylaw.je/laws/enacted/Pages/L-08-2019.aspx#_Toc14534538

² Discussed on Page 8, Legislative Gap Analysis Report. Available at <https://www.childcomjersey.org.je/media/1389/legislative-gap-analysis-oct-2020.pdf>

³ Better Life Index 2019, Statistics Jersey: <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20JerseyBetterLifeIndex%2020200214%20SJ.pdf>

The Commissioner invites the Committee to ask if the state acknowledges that data from different organisations cannot be properly compared and collated, and what action is being taken to improve this, particularly to ensure that CRIAs can be conducted and implemented effectively?

Disability, Basic Health and Welfare

Access to general practitioners (GPs), dentists and mental health support has been consistently identified as a key concern for many children and young people in Jersey. The price associated with accessing healthcare represents a significant barrier for children and young people, and has been a clear priority that children in Jersey want the Commissioner to challenge:

“If I was the Children’s commissioner the first thing that I would try and action is to make doctors and dentists free for those under the age of 18. I think it is important that children are well and can attend school. However, I know the prices for these services are extortionate, resulting in some parents being unable to pay these fees. This will prevent the children going to the doctors/dentist and getting themselves better. As a child myself I know people who have not been to the doctors as they have been unwell, as the parents cannot afford to go, and they only got worse resulting in them having more time off school than they should have had.”

Information on healthcare services, access, eligibility and charging is complex and not accessible for children and young people. There is no National Health Service in Jersey. Instead, access to healthcare is underpinned by a contributory health insurance scheme established under the Health Insurance (Jersey) Law 1967, but children cannot access health insurance in their own name until they are no longer of compulsory school age (where a child attains the age of 16 years before the 30th June in a school year).⁴

Children of compulsory school age and younger can access insurance-backed healthcare if they belong to the household of an insured person, who is themselves required to be ordinarily resident in Jersey. The insured person has to have been entered into an insurance scheme for 6 months before their child can be eligible for insurance benefits, and has to have paid all social security contributions that are due.⁵ Access to insurance backed healthcare is therefore dependent upon the status of the parent or adult responsible for them.

For children who are not able to access healthcare through insurance, access to GPs is subject to a charge or is offered free of charge at the discretion of the healthcare provider. Costs for children aged 5-18 to visit a GP range from £18 - £30, although during the peak of Covid-19, rates were set at £10 for those aged 5 years or older, or free if the child is aged 4 or younger⁶. A recent vote on extending free healthcare to all children in Jersey was rejected by the States Assembly in June of this year⁷. The Community Dental Department has been closed since March to non-emergency dental treatment, meaning no child is currently accessing this or being screened for oral health.

⁴ Article 3

⁵ Articles 3 and 6

⁶ See <https://www.gov.je/Health/DoctorDentist/Doctors/Pages/HealthCard.aspx>

⁷ <https://statesassembly.gov.je/assemblypropositions/2020/p.80-2020.pdf>

There are costs associated with hospital treatments and long-term care services⁸, although emergency hospital treatment is free to all.⁹ This has led to emergency admissions for issues which could have been supported earlier with access to appropriate healthcare, demonstrating that many view the hospital as their only available source of medical treatment.

Further, access to free non-emergency hospital care is dependent upon a number of conditions, including length of residency and employment status¹⁰. The conditionality of healthcare presents a significant barrier to children and young people whose access to healthcare is dependent upon their parents' status or indeed their own as an independent child.

Similarly, a child assessed as in need of long-term care¹¹ may be eligible for free care based on their residency and employment status or that of their parents¹².

The same conditions for non-emergency care being provided free of charge also apply to maternity, birth and post-natal care¹³. Once the child is born, they are eligible for free healthcare regardless of the mother's eligibility status, provided that she is able to evidence that neither she nor her baby has any previously diagnosed conditions that could require specialist care. They must also remain living and working in Jersey to qualify for this care. This practice is discriminatory to children with health conditions and could interfere with a child's right to life, survival and development.

As highlighted in the LGA report:

"The Charging Policy is expressly and directly discriminatory ... as it allocates health resources by reference to status, based on residence and/or employment. The Charging Policy sets a number of criteria which need to be met before a child can access free non-emergency hospital treatment, long-term care or HIV treatment. Children may find it impossible to meet eligibility criteria in their own right. Dependent children may be denied treatment because their parents or carers fail to meet the requisite residence or employment criteria."¹⁴

The Commissioner invites the Committee to ask if the state acknowledges that the current charging policy is discriminatory, and what action is it taking to protect all children in Jersey's right to health?

Healthy weight and lifestyles

Children have also told us that they would like to be able to access opportunities to keep them healthy and well, but that cost and transport can often be barriers. Children have advocated for:

"Free gym memberships to promote healthy lifestyles and body confidence in young people"

"Free activities for all children under 16 to encourage fitness, entertaining themselves to prevent boredom and crime in their future and to prevent obesity."

⁸ Residents and Non-residents Charging Policy, 2014:
<https://www.gov.je/SiteCollectionDocuments/Health%20and%20wellbeing/P%20Resident%20and%20Non%20resident%20Charging%20Policy%2020140829%20MM.pdf>

⁹ Ibid, Part 1

¹⁰ Ibid, Part 2

¹¹ As defined in the Long Term Care (Jersey) Law 2012

¹² Supra 8, Part 5

¹³ Supra 8, Part 6

¹⁴ Paragraph 67, Legislative Gap Analysis

In the academic year 2018/2019, “two in ten children in Year R (21%) and around three in ten children in Year 6 (30%) were overweight or obese.”¹⁵ In a 2017 survey, 48% of respondents said it’s difficult to find affordable fruit and vegetables in Jersey with 10% of households having gone without¹⁶. Food bank usage has risen in the years since this survey was undertaken¹⁷, and with further financial difficulty expected by many, it is important that action is taken to ensure that children’s right to health, including access to nutritious food, is protected.

The Commissioner invites the Committee to ask the state to provide a detailed response outlining action the state is taking to tackle food insecurity, promote access to healthy food and activities, and how this will feature in Covid-19 recovery planning.

Harmful substances

A 2015 report on drug use in Jersey found that “drug use is occurring on the island and involving significant numbers of young people.”¹⁸ Children have told us that there is often a pressure to use harmful substances, or a feeling that some engage in substance use due to boredom:

“People fall into it really easily here. I think they get bored. Because there’s not that much to do. And people just like- end up doing drugs... I find there’s huge drug levels here and it’s like... makes me a bit uncomfortable sometimes. I’m like why is everyone trying to like... do cocaine?”

Between 2013 and 2015, there were around 400 admissions of young people aged 15-24 where substance misuse was recorded as either a primary or secondary diagnosis, the majority of which were for use of tobacco.¹⁹

Education on drugs in schools is underpinned by the *Drugs Policy*²⁰ which outlines key aims but states that, “all schools need to set realistic aims for their drug education... which are consistent with the values of the school and the laws of society, as well as appropriate to the age of pupils.”²¹ This lack of clearly prescribed educational targets may lead to gaps in education between pupils at different schools and different ages across the island. Findings in the 2015 report observed that there was “a strong case for developing a more structured, consistent input of drugs education provision within Jersey schools which at present tends to be shaped on an individual school-by-school basis.”

¹⁵ Jersey Child Measurement Programme 2018/2019, Statistics Jersey:
<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20JerseyChildMeasurementReport2018-2019%2020191211%20SJ.pdf>

¹⁶ Jersey Opinions and Lifestyle Survey Report 2017, Statistics Jersey:
<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Opinions%20and%20Lifestyle%20Survey%202017%20report%2020171130%20SU.pdf>

¹⁷ See “Food Bank Usage” section of report

¹⁸ The Nature, Extent, Impact, and Response to Illicit Drug Use in Jersey (2015), p.7:
<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20The%20nature%20Extent%20impact%20and%20response%20to%20illegal%20drug%20use%20in%20Jersey%2020150611%20CDMR.pdf>

¹⁹ Jersey Health Profile (2016), p.35
<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20HealthProfile2016%2020161123%20HI.pdf>

²⁰ States of Jersey Education Department, Drugs Policy:
<https://www.gov.je/SiteCollectionDocuments/Education/P%20Drugs%20Policy%2020160511%20SJ.pdf>

²¹ Ibid, page 3

A joined-up approach to combat drug use on-island was identified as a route forward, with support for “integrated evidence-based educational/preventive approach in schools and raising awareness in the wider community.”²²

The Commissioner invites the Committee to ask the state to provide detail on what action is being taken to prevent drug use, including detail on how the effectiveness of policies, strategies and collaborative working is being monitored, and how children are involved in their development and review.

Mental Health

The Jersey School Survey Report for 2018 showed that 1 in 8 children self-reported having a mental or physical disability or long-term illness. A separate report found that 35% of all pupils with SEN were recorded as having a social, emotional and mental health need.²³

In our 2018 survey of 11 to 18 year-olds in Jersey:

- Almost one third (30%) said they had almost always or often felt sad in the last month
- 42% had often or almost always felt worried
- 12% said that they had never felt motivated in the last month and 7% said that they had never felt relaxed or energetic.

Research from the Life on the Rock project reinforced that mental health is an important issue, with one young person describing how *“many kids my age were just like crashing and burning at my school.”*

Young people did report that when they engaged with mental health services the results were positive, however, the road to getting treatment was long, as described by one young person: *“I’ve had pretty bad mental health issues especially in the last couple of years, but I think they were an issue a lot longer ago, but I wasn’t offered the support so I just ignored that they were happening.”*

Long waiting lists meant a lack of early intervention, which was further delayed by a high rate of staff turnover. *“I’ve probably had at least about 10 counsellors... I can’t even remember all their names it was that bad.”*

This mirrors difficulties we have heard about regarding social workers changing, which prevents good quality relationships being built between children and young people and those who are there to support them.

The geographical locations of spaces for support has also been identified as a barrier for children to access mental health support, particularly when considering issues around confidentiality. For example, the location of the Child and Adolescent Mental Health Services (CAMHS) office is on a prominent bus route in a glass-fronted building and the reception is visible from the pavement. This undermines the feeling of privacy when accessing support for many children and represents a barrier. Localised supports in child-friendly spaces, and an increase in available support with reduced waiting times are all important pillars in supporting children’s mental health in Jersey.

²² Building a Safer Society A Community Safety and Substance Misuse Strategy for Jersey 2016-2019, p.39: <https://statesassembly.gov.je/AssemblyReports/2016/R.111-2016.pdf>

²³ Schools, pupils and their characteristics - Academic year 2017/2018: <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Schools%20pupils%20and%20characteristics%2020180912%20SS.pdf>

Parity of esteem is an important principal as stated by one young person: *“I think they do need more funding in that area to have a team 24 hours like they do for A&E and they’re both just as important.”*

Children can be deprived of their liberty for reasons relating to their mental health under the Mental Health (Jersey) Law²⁴. The law requires ‘authorised officers’²⁵ to act with the best interests of the patient in mind, but the law does not require the best interests of a child deprived of their liberty to be taken into account as a primary consideration. Further, neither the Mental Health Law nor the Children Law relating to secure accommodation include express requirements to ensure that children who are detained are able to maintain contact with family.²⁶

Children facing deprivation of their liberty for mental health reasons do not have a right to legal representation under the Mental Health Law. A ‘nearest person’ can be appointed from a prescribed list to represent the detained child²⁷, but the Minister and not the child may nominate a preferred nearest person²⁸.

Further, children deprived of their liberty under the Mental Health Law are either placed in an adult setting or in the children’s ward of the hospital.

The Commissioner invites the Committee to ask the state to provide detailed information about the full range of measures it is taking to ensure that mental health support in Jersey is consistent with children’s rights and upholds children’s right to the highest attainable standard of mental health.

Impact of Covid-19

During a survey to look at the impact of coronavirus, when asked if they were worried about anything, around 48% of children and young people surveyed said yes, which was more prevalent for the youngest (5-7 year olds) and oldest (16+) groups.

Mental health was specifically cited by 37 young people as a key concern in relation to social/physical distancing. One young person stated that:

“In all honesty the Stay at Home order has had an extremely negative impact on my mental health. I suffer from [mental health condition] so not being able to see my long-term boyfriend or friends to distract me has made my symptoms worse and my mood low constantly.”

The Commissioner invites the Committee to ask the state how they will support children and young people to manage the negative impact the pandemic has had on children’s mental health in Jersey?

Bullying

In our island-wide consultation in 2018, bullying was highlighted as an issue by children in all age groups. More than two thirds of children aged 7-11 had been hit by other children, 61% had been left out by other children and 53% had been called nasty names or made fun of at least once in the last month by children. For young people aged 11-17, 25% had been hit by other children at least

²⁴ See Article 15

²⁵ Article 6

²⁶ In the case of the Children Law, such an order may be made ancillary to other orders. For discussion see paragraph 299, Legislative Gap Analysis

²⁷ Article 8 (3)

²⁸ Article 10 (2)

once in the last month, 49% had been left out by other children in their school at least once in the last month and 52% had been called nasty names or made fun of at least once in the last month. This means 125 young people said that they had regularly been the victims of physical violence in school in the 4 weeks prior to the consultation work.

The Counter Bullying Policy²⁹ applies to “all staff in provided education settings, including special education provisions” and stresses the independent management schools must take on: “it is the responsibility of education settings to... develop, disseminate and implement a school policy to all stakeholders within the school community”. The policy and in particular the accompanying guidelines³⁰ provide valuable information and examples, however both are notably sparse when it comes to information around cyber-bullying.

The lack of prescriptive policy has led to inconsistencies and gaps. For example, the guidelines clearly state, “the ethos for dealing with children who bully needs to focus on consequence and support” and that “one mandatory consequence is that the child who has been bullying is given emotional and behavioural support to help address the underlying emotional need that feeds the need to bully in the first place.”³¹ However, the bullying policies of various secondary schools on the island differ greatly in their interpretation of these guidelines, and none in our research detail the one ‘mandatory’ consequence of emotional and behavioural support.

The Commissioner invites the Committee to ask the state what action it will take to reduce bullying, including cyber-bullying, and how is the effectiveness of policies and their implementation evaluated?

Poverty

Despite being a wealthy island, there are children and young people in Jersey growing up in poverty. Data from 2015 showed that more than a quarter (29%) of children were living in relative low-income households³². The Jersey Opinions and Lifestyle Survey Report 2017³³ revealed that 1 in 7 households were materially deprived, with 1 in 10 households in severe material deprivation. While around 25% of households had difficulty coping financially, this rose to 44% of single parent families and 23% of households with children that had gone without new clothing for their child over the last year.

Access to support from the state is dependent upon a child or their family’s residency and work status with respect to income support, housing and healthcare.

²⁹Children, Young People, Education and Skills (CYPES), Counter Bullying Policy (March 2019): <https://www.gov.je/SiteCollectionDocuments/Education/P%20Counter%20Bullying%20Policy%2020190722%20MV.pdf>

³⁰ Government of Jersey, Countering bullying: Guidelines for Jersey Settings (June 2019): <https://www.gov.je/SiteCollectionDocuments/Education/ID%20Counter%20Bullying%20Guidelines%20booklet%2020190722%20MV.pdf>

³¹ Ibid, page 22

³² Jersey Household Income Distribution 2014/15, Statistics Jersey: <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Income%20Distribution%20Survey%20Report%202014-15%2020151112%20SU.pdf>

³³ Chapter 1, Jersey Opinions and Lifestyle Survey Report 2017, Statistics Jersey: <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Opinions%20and%20Lifestyle%20Survey%202017%20report%2020171130%20SU.pdf>

Income support

Social security support is provided through the Income Support (Jersey) Law 2007, which young people aged around 16³⁴ are entitled to claim. Support is contingent upon satisfying a residency test, with a minimum residency in Jersey of five years, and the further requirement that a person must either be working, looking for work or exempt from work.

NGOs have told us that families who are not able to receive income support have a lack of choices around childcare, which they need to continue to work. This can lead to them having to use unregistered childcare.

Impact of Covid-19

More than a third (36%) of households reported that their finances had deteriorated due to the COVID-19 pandemic, with half (50%) of households living in non-qualified rental accommodation reporting a deterioration in their household finances. Further, when asked, more than a quarter (27%) of households expected their financial situation to get worse over the next 12 months.³⁵

The public health emergency has had a significant impact on tourism and hospitality which will have a direct impact on the financial security of families that work in these sectors in Jersey.

The Commissioner invites the Committee to ask the state to clarify measures to tackle poverty, including support for families who do not qualify for income support but who have been severely impacted by the Covid-19 pandemic.

Food bank usage

A number of NGOs provide access to food for families. A report in 2016³⁶ showed that more than a quarter of people accessing foodbanks had dependent children, and that 89% of people accessing food banks were either born in Jersey or had lived in the island long enough to gain an 'entitled' status for work and housing qualifications. A follow-up report was conducted in 2017³⁷, identifying challenges in accessing good quality data; however, no strong recommendations for follow-up activity to reduce reliance on foodbanks featured in the report.

While we are not aware of a comprehensive report on food bank usage island-wide, we are aware of reports that food bank usage has risen during the Covid-19 pandemic. For example, a collection of food banks in Jersey made more than 3,000 deliveries to 600 people between March and August this year.³⁸ Further, £5,000 of food/electricity vouchers have been given out this year by one charity alone to support families. These are usually given in the amount of £20 at any one time, and are used to support families over a weekend or until they can access a food bank.

As one young person said:

³⁴ The Income Support Law defines an 'adult' as someone over compulsory school age, and a child as someone below the upper limit of compulsory school age (Article 1).

³⁵ Page 7, Jersey Opinions and Lifestyle Survey Report 2020, Statistics Jersey:
<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Opinions%20and%20Lifestyle%20Survey%202020%20Report%20200903%20SJ.pdf>

³⁶ Food banks in Jersey 2016 Usage Report: <https://statesassembly.gov.je/AssemblyReports/2016/R.114-2016.pdf>

³⁷ Foodbanks in Jersey 2017 Usage Report: <https://statesassembly.gov.je/assemblyreports/2017/r.139-2017.pdf>

³⁸ <https://www.itv.com/news/channel/2020-08-30/jersey-food-bank-supported-600-people-per-week-during-the-pandemic>

“Make sure families have enough money to buy good food for their children. I’ve heard some children have had less food in their lunch boxes nearer the end of the month.”

We would invite the Committee to ask the state to clarify what ongoing efforts are being made by the state to ensure all children and young people have access to nutritious food and what action has been taken since identifying gaps in data?

Housing

Access to safe, affordable housing remains a key issue for many families in Jersey. Access to housing in Jersey is governed by the Control of Housing and Work (Jersey) Law 2012. This places restrictions on the occupation of ‘qualified’ housing, limiting its availability to persons with a defined status in order to reserve some housing to meet the needs of long-established ‘entitled’ residents (10 years occupation), or residents whose employment entitles them to ‘licensed’ status (licensed employment). New proposals to change the Control of Housing and Work (Jersey) Law have been announced, which “will remove the graduation mechanism which allows migrants to automatically gain Entitled to Work and Entitled housing status”³⁹, further impacting access to housing.

Due to high demand for housing for those who do not meet these eligibility criteria and therefore are unable to access qualified housing, prices for unregistered housing are often unaffordable for families. Adverts for unqualified housing frequently specify ‘no children’, discriminating against children and preventing them from access to a significant share of available houses. We have heard concerns of significant overcrowding in households, with multiple families sharing small spaces with only one room per family. The recent government plan⁴⁰ highlighted that 2,079 households (5% of all dwellings in Jersey) classified as ‘overcrowded’. This disproportionately impacts families from the Portuguese/Madeiran (30%) and Polish (56%) communities.

We have also heard concerns around poor quality of housing with issues of damp and mold, and an overall culture of a power imbalance which leads to families feeling disempowered to challenge landlords or request repairs due to concerns that they will be evicted. A recent independent report⁴¹ highlighted the lack of affordable housing in Jersey, and therefore the lack of access for vulnerable groups. The report also highlights “poor conditions in parts of the private rented stock that are experienced by households that are in housing need but are ineligible to join the Affordable Housing Gateway”.

Data from 2015⁴² showed that 2,100 children were living in relative low-income households before housing costs were considered – this rose to 2,365 children in 2019⁴³. The number of children living in relative low-income households once housing costs have been considered has risen sharply to 4,900 according to figures from 2015. The proportion of household finances spent on housing costs has a significant impact on standards of living for children in Jersey.

³⁹ <https://www.gov.je/News/2020/Pages/AssistantChiefMinisterStatement.aspx>

⁴⁰ Children and Young People’s Plan 2019-2023:

<https://www.gov.je/SiteCollectionDocuments/Caring%20and%20support/ID%20Children%20and%20Young%20People%20Plan%202019%20to%202023%20EW.pdf>

⁴¹ Executive summary: allocations and lettings in Jersey, Government of Jersey, 2019:

<https://www.gov.je/SiteCollectionDocuments/Travel%20and%20transport/R%20Review%20Access%20Social%20Housing%20Executive%20Summary.pdf>

⁴² Jersey Household Income Distribution 2014/15:

<https://www.gov.je/Government/Pages/StatesReports.aspx?reportid=1726>

⁴³ Children and Young People’s Plan 2019-2023

Social rented housing is provided by the state via an arm's length body (Andium Homes) for those unable to afford to rent or buy on the open housing market. Access to affordable housing is via an Affordable Housing Gateway (AHG), which is only available to adults with Entitled (or possibly Licensed) status⁴⁴ and is therefore discriminatory as it excludes some potential applicants from accessing affordable housing. Jersey legislation does not provide for housing, or access to housing, to be determined by reference to need or vulnerability, including vulnerability by reason of age.

The Commissioner invites the Committee to ask the state to provide a detailed response on measures taken to support children's right to an adequate standard of living, including:

- a. what action the state is taking to ensure the availability of adequate housing for families in Jersey, including ensuring regulation of landlords, home safety and quality standards?**
- b. details of any future plans to increase availability of affordable housing?**
- c. what action the state is taking to end practices which discriminate against children and families with regards to housing?**

Housing and protection from violence

The precariousness of housing situations has also led to children and families feeling trapped in abusive situations. In situations where one parent is abusive yet holds the 'licensed' employment and therefore holds the housing qualifications while the other does not, then that parent will struggle to find affordable, safe accommodation without access to financial support from the government to do so. A Jersey NGO offers support for mothers and children by providing accommodation; however, this can only be offered for a short time in order to meet demand. While hardship funding can be applied for, support is often required to access this and we have acted for at least 3 families in temporary accommodation to claim entitled status on hardship grounds. Ordinarily very few applications are approved, although it is at the discretion of the Minister.

Parental separations involving court proceedings can often be slow, lengthy processes that leave parents and their children in unsuitable accommodation and facing uncertainty, which can impact their mental and emotional health. Partners in NGOs have told us of families who have lived in emergency accommodation and become trapped in a 'limbo' situation, whereby they cannot leave Jersey but do not have access to financial support to have suitable accommodation or to feel secure or settled. Some parents decide to leave Jersey to go to where their support networks are or where they feel they can support themselves and their family financially, but cannot leave the island until residency and contact are decided on, which puts children at risk of living in an abusive environment or staying in emergency accommodation.

It is important that children are supported to maintain contact with family members unless it is not in their best interests to do so, but decisions on residency and contact should be resolved quickly to support children's sense of stability. We are concerned that this balance is not being struck. We have also heard from NGOs that some parents they have worked with have felt that their only option is to return to an abusive situation, placing children and families at significant risk from emotional, mental and physical abuse.

The Commissioner invites the Committee to ask the state to provide a detailed response on:

- a. what support it provides for families who have been in situations of abuse to protect children's rights, including access to safe accommodation?**

⁴⁴ For discussion see paragraph 73, Legislative Gap Analysis

- b. how the state balances the need for speedy resolution and securing certainty for children and families with ensuring sufficient time for cases to proceed and to what extent are proceedings expedited when concerning children leaving situations of abuse?**

Education, Leisure and Cultural Activities

There are 43 primary, secondary and specialist schools in Jersey. Some are private, some are partially state-funded, fee-paying schools, and some are wholly funded by the state. There is a similar number of nurseries and pre-schools on the island. A very small number of families educate their children at home, and they are monitored by the Education Support Team.

Independent reviews of schools have only very recently been established under the Jersey Schools Review Framework⁴⁵, with the first inspection carried out in September 2019.⁴⁶ There is no obligation in law to evaluate educational provision, and children are not involved in school reviews.

Special Educational Needs

The Education Law places a duty on the Minister to make available appropriate, free provision for all children with special educational needs.⁴⁷ However, the Children Law does not expressly recognise a disabled child as a ‘child in need’ who may need additional resources to be able to exercise or benefit from their rights. The Children Law is very similar to the Children Act 1989 in English Law, yet it has weaker levels of protection in some areas. One of these is that children recognised as being ‘in need’ do not have a statutory right to support, despite there being a recognition that there is a need for support.

Through our casework, we have heard from many families who do not have access to resources and support, and who have expressed frustration at the lack of clarity around entitlements. This is also true of specialist care services which offer tailored support for children and young people in Jersey to build independence, including through spending time away from their families. A recent overhaul of funding structures has led to a number of services being withdrawn, with demand for support far outpacing what is offered.

There is a significant difference between the number of children and young people who have a Special Educational Need (SEN) and those who have a Record of Need (RoN). In 2018, there were 1,576 pupils with SEN, but of those, 1,361 have SEN but do not have a RoN⁴⁸, suggesting that the need for support is greater than what is being offered. We have heard from families that insufficient funding leads to issues with retaining specialised staff, such as educational psychologists, who can support individual children and schools with putting in place effective support. We have also heard reports that families who home school children or whose children attend private school have to pay for any specialist support, such as educational psychologists.

⁴⁵ www.gov.je/SiteCollectionDocuments/Education/P%20Jersey%20Schools%20Review%20Framework%2020191001%20PH.pdf

⁴⁶ Further information as well as copies of inspection reports are available at <https://www.gov.je/Education/Schools/ChildLearning/Pages/Jerseyschoolsreviewframework.aspx>

⁴⁷ Articles 4 and 28.

⁴⁸ Supra note 23

In its Concluding Observations on the UK State Party in 2016, the Committee recommended that the UK “ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affects them, including on access to and choice of personal support and education”.⁴⁹ Article 29 of the Education Law provides that a child will not be educated in a special school unless the child’s parent wishes them to be, but the child’s wishes are only taken into consideration if they are aged 16 or over. The Special Educational Needs Code of Practice 2017 states that the views, wishes and feelings of a child and their parents/carers should be ‘had regard to’, but there is not legislative footing for this.

The Commissioner invites the Committee to ask:

- a. does the state acknowledge that the demand for support for children with special educational needs is not currently being met, and what action will the state take to ensure that every child is supported to fully enjoy their right to education in Jersey?**
- b. does the state recognise that children with special educational needs are being denied their right to express their views on their education and for those views to be taken seriously, and how will this be rectified?**

Early Years Education

The Education Law provides a framework for development for early years education. There is provision for nursery education in the year before the child reaches compulsory school age, but no legislative framework for provision in early childhood, including education.⁵⁰

The Minister has the power to establish nursery schools and nursery classes in schools, and to give financial assistance to children below compulsory school age for the purposes of promoting education.⁵¹

The Government of Jersey currently funds up to 20 hours of nursery education each week for 38 weeks per year for children in the year before they start primary school through the Nursery Education Fund (NEF).

Children with Special Educational Needs who attend private nursery or pre-school are supported by a Jersey charity to access this provision, including support to access the NEF provision. The government offers no equivalent support.

Exclusions

Rates of exclusion have been rising in Jersey in primary and secondary schools. Exclusions rose from 350 in 2014/2015 to 911 in 2018/2019 in secondary schools, while in primary schools, this figure rose from 27 in 2014/2015 to 82 in 2018/2019⁵².

Exclusions occur disproportionately amongst male pupils, and often those with a Record of Need or in receipt of the Jersey Premium. The Jersey Premium⁵³ is targeted financial support which is intended to support the education of children who are or have been ‘looked after’, or who are living

⁴⁹ Paragraph 57

⁵⁰ Paragraph 92, Legislative Gap Analysis

⁵¹ Articles 8 and 10

⁵² Data Source Freedom of Information request 30/11/17 and 5/6/19 and Education Department 12/10/19

⁵³ Jersey Premium Policy

www.gov.je/SiteCollectionDocuments/Education/P%20Jersey%20Premium%20Policy%2020200128%20JP.pdf

in a household that has recently claimed income support. Approximately 3,500 children and young people in Jersey are eligible for the Jersey Premium, according to the Children and Young People's Plan 2019-2023. There were 522 instances of exclusions for students in receipt of Jersey Premium, representing approximately 50% of all exclusion instances and 40% of all excluded students⁵⁴. At La Sente (alternative curriculum) school, 45.8% of pupils have had at least one exclusion.

Legislation does not permit a child who is under 18 the right to appeal in their own name against a decision to suspend/exclude them from education.

The Commissioner invites the Committee to ask:

- a. what action is the state taking to reduce exclusions, support schools with inclusive education and to support with training on behavioural management techniques?**
- b. what action is the state taking to reduce the disproportionately high exclusion rates among specific groups as noted above to ensure all children are able to access their right to education equally?**

Although the Education Law states that all children of compulsory school age should receive education, governmental policy states that only British and EEA citizens, and third country nationals with the appropriate visa, may access publicly funded primary and secondary education.⁵⁵ Unaccompanied Asylum Seeking Children or separated children would therefore not be able to access publicly funded education until the outcome of their application for asylum or a visa is known.

Further, there is no legislation to require support to be provided to children who do not speak English to learn English, or to support participation in education.

The Discrimination Law does not prohibit discrimination on religious ground, generally or in relation to access to education.

The Commissioner invites the Committee to ask the state what action it will take to provide support for children who do not speak English or who do not meet visa requirements to participate in education, and how will they protect children's right to non-discrimination on the grounds of their religion?

Play, rest and leisure

The right to rest and play and to engage in leisure and cultural activities is not guaranteed in Jersey law. Current legislation does not provide comprehensive coverage to ensure that leisure or play facilities used by children are safe. The Policing of Parks (Jersey) Regulations 2005 provide for the regulation of behaviours within parks to ensure safe places for children, but there is no equivalent legislation which makes specific provision for the safety of other leisure or play facilities that children may use, such as privately operated indoor play facilities.

⁵⁴ Source - Information Request by Children's Commissioner

⁵⁵ See: Access to Publicly Funded Education:
www.gov.je/SiteCollectionDocuments/Education/P%20Access%20to%20Publicly%20Funded%20Education%2020160803%20KP.pdf

Children's right to play rest and leisure is also not protected by law from the impact of employment. The statutory minimum age for employment in Jersey is 13⁵⁶, which is below the recommended international minimum working age⁵⁷ and may prejudice a child's ability to enjoy their right to play, rest and leisure. Further, there is no play strategy for Jersey.

Children were asked how their local area could be made a better place for children in our island-wide survey. A key theme for children aged 7-11 was to have more things for children and young people to do, and more places to play:

"We could have more places for children to meet with their friends and other children without their parents there but where they are still safe and still have responsible adults to make sure they are alright."

"More parks and play areas for children aged 8 years+... Jersey can be a very lonely place if you don't live on a cul-de-sac."

When asked if there were places to go and things to do in their local area, 45% agreed that there were places for them to go, but only 19% agreed that there were fun things to do. Young people told us they wanted more places to go and more things to do that weren't expensive, but that were specifically aimed at teenagers, including *"healthy fun activities for 11+"*, *"more outdoor activity's that aren't mega expensive"* and *"more communal areas that are safe."*

In a survey which explored the impact of Covid-19, 85% of children said they had something fun to do. This was mostly made up of technology, arts and crafts and toys, although exercise also featured in more than 450 responses. When asked 'do you get physical exercise', 56% said every day, 38% said sometimes and 6% said no. The percentage of young people who answered every day was highest amongst the youngest age group: 67% of 5-7 year olds vs 39% for 16+. This survey was administered digitally and so it is important to note that there will be a demographic who do not have access to digital technology and so were unable to share their views.

A review of the status of culture, heritage and the arts in Jersey was undertaken in 2018⁵⁸ and identified a low level of investment in these sectors. The report found that 1 in 3 young people say that arts and culture are essential to their lives, yet none of the recommendations in the report refer specifically to children. The report makes no reference to the rights set out in Article 31 of the UNCRC, and the document only mentions 'children' on 4 occasions, but does recognise the importance of culture and the arts to young people. There is also no evidence of progress towards achieving its recommendations.

Children and young people have told us that they do not feel listened to. Indeed, in our survey, only 14% of young people felt that adults in their local area listen to young people's views. Reports like this exemplify the adult-centric nature of review, planning and design that we often hear about from children, which does not lead to positive change for young people, despite them being citizens who are directly impacted by government decision-making. It is crucial that children's views, experiences and opinions are taken into account, and that the full complement of their rights are recognised.

⁵⁶ The Children's Law; Children (Regulation of Employment) (Jersey) Order 2011.

⁵⁷ ILO Minimum Age Convention 1973 (No 138)

⁵⁸ Jersey Culture, Arts and Heritage Strategic Review and Recommendations:
<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20180222%20SoJ%20Culture%20Arts%20and%20Heritage%20Strategic%20Review%20vFINAL.pdf>

The Commissioner invites the Committee to ask the state to provide information on current or proposed measures to:

- a. protect children’s right to play, rest and leisure**
- b. ensure that children of all ages, including young children, are listened to and their views taken seriously on all decisions which affect them**

Family Environment and Alternative Care

The Independent Jersey Care Inquiry (the Inquiry), which was conducted following years of systemic issues that did not protect children from abuse, marked a significant shift in the care landscape in Jersey. The Inquiry was extensive, and was centred on the experiences of those who had experienced care in Jersey and those who worked with them.

The Inquiry found that the Government of Jersey had “for decades, been an ineffectual, neglectful parent”⁵⁹. It stated that there had been ‘little consideration given to the experience of children in the system’ and highlighted a “failure to value children in the care system, listen to them, ensure they are nurtured and give them adequate opportunities to flourish”⁶⁰.

Educational Outcomes

Educational outcomes for care experienced young people were described by Ofsted in December 2019⁶¹ as “woeful... for children in care at all key stages”.⁶² The report went on to say that “these very poor outcomes show a lack of care or aspiration from their corporate parents.”

A review of supports in place in 2018⁶³ found that “Meetings to consider personal education plans (PEPs) take place, but the resultant plans require further development to ensure that they are sufficiently clear about the actions needed to improve children’s educational outcomes. PEPs cannot always be located on the child’s electronic record, which further limits the targeting of resources to a child’s specific educational needs.”⁶⁴

41% of care experienced children in secondary school have been excluded, and school attendance is disproportionately lower for care experienced children and young people⁶⁵

⁵⁹ See 12.76, Independent Jersey Care Inquiry Report:

<http://www.jerseycareinquiry.org/Final%20Report/Ch%2012%20resupplied.pdf>

⁶⁰ Ibid at 12.40

⁶¹ Making a Difference; Driving Improvement An Inspection of The Government of Jersey Children’s Social Work Service A follow-up report, Jersey Care Commission, December 2019. Available at <https://carecommission.je/wp-content/uploads/2019/12/Ofsted-progress-report-FINAL-Copy.pdf>

⁶² Ibid, paragraph 40

⁶³ Making a Difference; Driving Improvement An Inspection of The States of Jersey Children’s Social Work Service, Jersey Care Commission, September 2018. Available at <https://www.gov.je/SiteCollectionDocuments/Caring%20and%20support/R%20Jersey%20children's%20social%20work%20service%20inspection%20Final2%20%2020180809%20cb.pdf>

⁶⁴ Ibid, paragraph 57

⁶⁵ Source currently unpublished

Children's Social Care

As a small island, Jersey has faced issues in attracting and retaining staff for specific skillsets. There has been a persistent issue of high staff turnover in social work, leading to a lack of stability and trust in relationships with children and young people in Jersey. This can also interrupt or delay care planning for children in care. Further, the loss of expertise when staff frequently change can have a significant impact on children's services.

The Inquiry referenced the 'fear factor and lack of trust', which can be compounded by working in a smaller community, and highlighted that there can be a fear amongst professionals of speaking up about issues that they are aware of. The report spoke of the 'Jersey Way':

"At its best, the "Jersey Way" is said to refer to the maintenance of proud and ancient traditions and the preservation of the island's way of life. At its worst, the "Jersey Way" is said to involve the protection of powerful interests and resistance to change, even when change is patently needed."⁶⁶

The Independent Jersey Care Inquiry Report in 2017 highlighted that there was no statutory requirement for children's services to be inspected, and called for this to be done within 12 months of the report being published.⁶⁷ This has yet to be implemented in law.

Since publication of the report, the Jersey Care Commission has been established. The Care Commission has a mandate to inspect and regulate children's homes, and has developed a set of standards for care facilities, all of which need to be registered with the Commission to operate in Jersey.

There has been an identified lack of support in transitions for care leavers. Children leave care at the age of 18. Whilst the care leavers' offer has been launched, existing legislation makes it difficult to implement, and this support is not enshrined in law so care leavers have no right to stay on in care. Care experienced young people and those who support them have expressed concern of an overt focus on 'becoming independent' as a box-ticking exercise rather than supporting young people to be able to live full and happy lives. Accessing support often requires navigating complex processes, and many young care leavers feel unsupported:

"A number of participants spoke about the lack of care and support when they leave care and about either moving into unsuitable accommodation, or the need to, together with those who care about them, fight very hard not to. There was a strong sense that we are 'not their business anymore' at 18. Several participants felt scared to navigate the adult world with no support."⁶⁸

There is also a lack of therapeutic care that is trauma informed, and access to mental health support is inconsistent. This is of further significance for care experienced young people who have experienced trauma or neglect, as per their right to support under Article 39.

Access to case files has also been highlighted by NGOs as an important issue for care experienced young people. Case files can be redacted due to risk of harm, however there are concerns that redaction is overused in place of providing support for children receiving their files.

⁶⁶ See 2.2, The Jersey Independent Care Inquiry Report 2017, available at <http://www.jerseycareinquiry.org/Final%20Report/Exec%20Summary.pdf>

⁶⁷ See 13.19, Independent Jersey Care Inquiry Report 2017, available at <http://www.jerseycareinquiry.org/Final%20Report/Ch%2013.pdf>

⁶⁸ See page 15, Listen Louder, Scoping a way forward for the voices of care-experienced people to be heard, November 2018: <https://www.gov.je/SiteCollectionDocuments/Caring%20and%20support/R%20Listen%20louder%201118.pdf>

Children cared for off-island

In 2018, around a quarter of children in care resided off-island,⁶⁹ which makes maintaining relationships with friends and family members difficult. The Children Law does not ensure a child who is separated from their parent(s) is able to maintain contact with family, friends and acquaintances.

Further, if a child turns 18 years old whilst off-island, they can be faced with difficult decisions as to whether to move back to Jersey or to stay in the community they have been living in on the mainland UK. Decisions on where children and young people reside ought to be based on what is in their best interests, and not what is easiest to manage from a systemic perspective.

The Commissioner invites the Committee to ask the state:

- a. how decisions to place a child off-island are made and in what ways are the views of the child taken into account when making this decision?**
- b. how does the state uphold children's rights to maintain family relationships with their siblings and parents, and their wider cultural identity, and what transitional support is offered specifically for those cared for off-island?**
- c. what efforts is the state making to recruit and retain specialised staff, including social workers, to support children in care?**

Violence Against Children

The Children (Jersey) Law 2002 gives children specific protection against harm caused by caregivers by making it an offence for any person with responsibility for a child under 16 to intentionally or recklessly harm or neglect a child.⁷⁰ However, this statutory protection against harm or neglect inflicted by caregivers does not extend to children aged 16 or 17 years old.

The Children Law provides for the police or the Minister to take action if they have reasonable cause to suspect that a child under the age of 18 is suffering, or is likely to suffer, significant harm⁷¹. The Children Law does not specify any other relevant authorities which are empowered, or have responsibility, to take action to protect children.

The Children Law does not include a general requirement on the Minister (or any authority) to take action to promote the welfare or best interests of all children in Jersey.

Domestic Abuse

Around one in five children have been exposed to domestic abuse.⁷² Police figures show that the number of children exposed to high risk domestic abuse has risen by 49% when comparing January-March 2019 with January-March 2020.⁷³ There has been an increase in rates of domestic abuse

⁶⁹ Supra note 63

⁷⁰ Article 35

⁷¹ Article 36

⁷² Domestic Abuse Strategy 2019-2022: <https://jersey.police.uk/media/516624/spb-da-strategy-2019-2022.pdf>

⁷³ States of Jersey Police Performance Briefing January –March 2020: <https://jersey.police.uk/media/582534/2020-q2-annual-performance-statistics.pdf>

around the world during the Covid-19 pandemic, and we have concerns that this could be reflected in Jersey.

School closures could lead to fewer referrals due to a decrease in time that professionals are spending with children and families, thereby weakening protective measures. In a survey exploring the impact of Covid-19 on children in Jersey, one young person expressed that they were “*worried about people in abusive households with no escape*”. Others spoke of concern over relationships at home, including parental ‘anger’ or ‘temper’.

The Commissioner invites the Committee to ask:

- a. does the state recognise that all children up to the age of 18 should be protected from harm, and will they ensure that 16 and 17 year-olds receive this protection?**
- b. will the state take action to ensure that the best interests of all children in Jersey are promoted?**

Special Protection Measures

Youth Justice

In July 2019, the Jersey Youth Justice Review (the Review) was carried out to address the recommendations of the Independent Jersey Care Inquiry. The Inquiry highlighted the practice of criminalising care experienced children and young people, noting that “several young people experienced a revolving-door existence of remand-release-offend-remand, up to 17 times, with no effective intervention to tackle the roots of their offending behaviour.”⁷⁴ As such, one of the key recommendations from the Inquiry was that “the youth justice system move to a model that always treats young offenders as children first and offenders second.”⁷⁵

The Review was viewed as ‘a rare opportunity to make a comprehensive and coherent set of improvements to the criminal justice system that will [...] make a significant difference to some of the most vulnerable children in our society’.⁷⁶ This review was undertaken prior to the publication of General Comment No. 24 and the Children’s Commissioner is undertaking a review of youth justice systems using the General Comment as the benchmark and, importantly, engaging with children and young people to learn from their experiences of the youth justice system.

Jersey has a unique system, the Parish Hall Enquiry (PHE) system, which is described on the Government of Jersey website as “the process of preliminary investigation conducted by a Centenier (honorary police officer) to decide whether there is enough evidence to justify a prosecution and whether the matter should be presented before the court.”⁷⁷

The PHE was described in the Review as a “unique institution, based on voluntary community involvement, [that] provides a distinctive and effective first tier of intervention and diversion from

⁷⁴ Paragraph 4.35, <http://www.jerseycareinquiry.org/Final%20Report/Exec%20Summary.pdf>

⁷⁵ Paragraph 13.15, <http://www.jerseycareinquiry.org/Final%20Report/Exec%20Summary.pdf>

⁷⁶ See Ministerial Foreword to the Review.

⁷⁷ See <https://www.gov.je/CrimeJustice/ParishPolicing/Pages/ParishHallEnquiries.aspx>

prosecution.”⁷⁸ However, PHEs have a range of options at their disposal, including the power to: impose fines up to £200 for certain statutory offences; place young offenders under voluntary supervision orders with either the Probation Service or the Alcohol and Drug Service; charge and bail for a court appearance. They can also defer decisions to a later date, however there is no route for diversion post-deferral and the youth justice system is disconnected to the processes to early help or the child and families hub, so in effect children and young people involved in PHEs are offered no further support.

We are concerned over the level of offences committed by children recorded in Jersey, and the practice of remanding children in custody. Research carried out by our office suggests that the rate of offences per 1,000 children aged 10-17 in Jersey is 18. This is higher than the published rate for all regions by the Youth Justice Board. Moreover, the rate of children in custody per 10,000 of the general 10 to 17-year-old population in Jersey is around 1. In comparison, the rate for the whole of Wales is 1.2 young people. This data would suggest the overcriminalisation of children in Jersey, and that diversionary methods are not working as effectively as they could.

Minimum Age of Criminal Responsibility

The Minimum Age of Criminal Responsibility is set at 10 in Jersey, falling significantly below the Committee’s recommendation of 14, as set out in General Comment No 24⁷⁹. The Attorney General has issued guidance on the prosecution of children, advising that children under the age of 12 should not be criminalised. However, guidance is an insufficient safeguard to these important rights, and we are clear that the minimum age of criminal responsibility should be raised in line with international minimum standards. In the last 10 years 5,385 crimes have been recorded by the Police as being committed by children. 30 were under 10 years old and 1,424 were aged 10-13 years old.

The Review states that: *“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.”*⁸⁰

The Review also refers to consideration being given to revising the existing legislation to give further powers to the Youth Court to deal with trials and sentencing that involve allegations against children below the age of 18.

The Commissioner invites the Committee to ask:

- a. does the state recognise that the minimum age of criminal responsibility is set too low at age 10, and will it commit to raising this in line with international minimum standards?**
- b. what deliverable outcomes following on from the Youth Justice Review will be achieved and by when?**

⁷⁸ Paragraph 2.4, Jersey Youth Justice Review:

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

⁷⁹ General comment No. 24 (2019) on children’s rights in the child justice system, Committee on the Rights of the Child, CRC/C/GC/24

⁸⁰ Jersey Youth Justice Review, 6.12, p. 43

Detention

In the 2016 Concluding Observations, the Committee expressed concern over the high number of children in custody and that detention is not always applied as a measure of last resort.⁸¹ A freedom of Information request⁸² showed that 700 young people under the age of 18 were detained in Jersey between 2015 and 2019, of whom nine were held for more than 24 hours and a further 82 for longer than 12 hours.

The Attorney General's Guidance on Overnight Detention of Children and Youths⁸³ (the Guidance) falls short of the requirements⁸⁴ set out by the Committee in a number of areas. Although Article 36(7) of the Police Procedure and Criminal Evidence (Jersey) Law 2003 as amended (PPCE) states that a child or young person can be kept in police detention only when she or he has been charged, the Guidance makes it clear that such detention may occur upon the arrest of a child or young person and prior to being charged⁸⁵. The Guidance however does not specify the legal basis for such detention prior to charge and therefore contradicts Article 36(7) and the 2016 Concluding Observations.

The Guidance refers to the requirement of the UNCRC that detention of children should be only used "as a measure of last resort". However, it does not specify the time period for which the child or young person could be remanded in custody before they are presented before the judicial authority, which is currently set as a maximum of 72 hours⁸⁶, three times the length recommended by the Committee.

Through casework, we are aware of an increasing number of cases where children are being deprived of their liberty where there is evidence that it is not the last resort.

The Commissioner invites the Committee to ask the state how the use of detention is monitored, including its use as a measure of last resort?

⁸¹ Paragraph 78 d).

⁸² <https://www.gov.je/government/freedomofinformation/pages/foi.aspx?ReportID=3445>

⁸³ Available at

<https://www.gov.je/sitecollectiondocuments/government%20and%20administration/id%20ag%20guidance%20to%20custody%20sergeants%20centeniers%20on%20youth%20remands%2026.09.19.pdf>

⁸⁴ Paragraphs 79 d), e) and f)

⁸⁵ Sections 2(i) and 19

⁸⁶ 7(4), Criminal Justice (Young Offenders) (Jersey) Law 2014:

https://www.jerseylaw.je/laws/revised/Pages/08.380.aspx#_Toc473885354