



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

Comptroller and Auditor General Code of Conduct: Consultation Response

Who we are

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

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

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

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

Further information on the role of the Commissioner and the wider office is available on our website at www.childcomjersey.org.je

Introduction

We welcome the opportunity to participate in this consultation on reforms to the Comptroller and Auditor General's role. The consultation paper sets out that the intention of the Comptroller General is to focus on "the extent to which public money is spent economically, efficiently and effectively and on whether the controls and governance arrangements in place within public bodies demonstrate value for money".

We have concerns about the proposals as they relate to the role of the Office of the Children's Commissioner, specifically around how value for money is to be assessed and how this would interact with existing accountability mechanisms for the Office. This response does not consider every question in the consultation paper, but instead is focused on our key concerns.

Assessing Economy, Efficiency and Effectiveness

The Office of the Children's Commissioner was established with the primary purpose to promote and protect children's rights¹. This is a wide-ranging duty, as evidenced by the general functions of the Commissioner as set out in the law². The proposals seek a change in the law to provide that the Comptroller and Auditor General would appoint an external auditor of the Office. As part of this process, the auditor would assess 'value for money' with respect to the economy, efficiency and effectiveness principles.

Paragraph 42 of the Draft Code of Practice sets out that public bodies have the following duty:

"In respect of economy, efficiency and effectiveness: establish arrangements to secure economy (minimisation of the costs of inputs), efficiency (maximising the outputs from the inputs) and effectiveness (maximising the alignment between the outputs and the outcomes desired)."

The promotion and protection of rights involves complex decisions balancing rights when planning and undertaking work. As such, any consideration as to the effectiveness of our work requires knowledge of children's rights. How would an appointed auditor assess the economy, efficiency and effectiveness of the Office and would they have a sound understanding of the nature of our work, its significance and benefits? Indeed, a Unicef study highlights what a complex and difficult question it is to assess impact of our work³:

"Another type of monitoring and evaluation of child rights institutions is cost effectiveness analysis. Assessment of costs is regularly part of debates related to reviewing and reforming independent institutions. However, given the difficulty of quantifying outcomes and costs in light of the complexity of policy change processes and problems in assessing 'soft power' influence, indicators for cost effectiveness are elusive."⁴

We are conscious of our responsibility in ensuring that funds are spent effectively, as is set out in our Framework Agreement⁵ with the Government of Jersey, at paragraph 3.22:

"The Accountable Officer will require assurance from the Children's Commissioner regarding financial propriety and regularity, that funds are used economically, efficiently and effectively, that there is effective stewardship of any assets controlled or safeguarded, and that appropriate systems are in place to identify and manage risks. The Children's Commissioner will be required to complete an Annual Financial Assurance Statement."

We therefore submit that the existing mechanisms allow for the same goals to be reached but drawing on expertise that is rooted in children's rights. We have a robust accountability structure which provides further safeguards as set out below.

¹ Article 4, Commissioner for Children and Young People (Jersey) Law 2019

² Ibid, Article 5

³ See Chapter 4 in particular of United Nations Children's Fund (2013) *Championing Children's Rights: A global study of independent human rights institutions for children*, UNICEF Office of Research, Florence. Available at https://www.unicef-irc.org/publications/pdf/c950_ccrbook_130903web_noblanks.pdf

⁴ Ibid, page 53

⁵ Framework Agreement Between the Office of the Children's Commissioner for Jersey and the Department for Strategic Policy, Performance and Population, available online at <https://www.childcomjersey.org.je/media/1284/frameworkagreement.pdf>

Accountability

As is noted in the Unicef study, accountability mechanisms in turn support independence and transparency of NHRIs, which is why the Office has accountability embedded within our systems and structures.



Image: Accountability & Governance Framework of the Office of the Children's Commissioner

Our governance procedures have been seen by the Chief Internal Auditor and previous Comptroller and Auditor General and neither of them have expressed any concerns. Indeed, our accountability and governance framework, and the framework agreement with the Government, was recognised as good practice. The Office has 3 independent Advisory Panels, including an Audit and Risk Advisory Panel, and importantly we have a Young Advisory Panel made up of children and young people in Jersey who guide the work of the Office. These mechanisms bring together a blend of legal, accounting and child's rights expertise and experiences to embed a child rights-based approach both structurally and in practice.

We have a duty to lodge annual reports covering the work of the Children's Commissioner, as well as plans for future work, which is subject to scrutiny and debate. We also have the duty to publish this annual report in a child friendly format, as well as to publish annual accounts and to lodge this with the States Assembly as an additional scrutiny mechanism, and so a further report on finances would appear to be a duplication of work. There are therefore already a number of avenues for public scrutiny, including scrutiny of the work of the office and its finances, which have been designed to embed children's rights protections throughout.

As a National Human Rights Institution, the Office occupies a distinct space unlike any other on island. As has been noted in international research, "there is an inherent tension related

to an institution's independence and its existence as a public body.”⁶ It is imperative that the Office of the Children's Commissioner maintains its independence as per the Paris Principles.⁷ The Principles establish core features of a National Human Rights Institution (NHRI) which includes that there must be access to adequate funding “in order to be independent of the Government and not be subjected to financial control which might affect its independence”.

The link between finances and independence is reiterated in General Comment No. 2⁸ issued by the United Nations Committee on the Rights of the Child, which focusses on the role of Children's Commissioners.⁹ The design of the accountability mechanisms for the Office, including the financial arrangements were therefore carefully considered when it was created. Indeed, in the law drafting documents for the creation of the Children's Commissioner (Jersey) Law 2019, it states clearly that:

“In relation to auditing of accounts, the intention is that there should not be a mandatory obligation or requirement on the Jersey Commissioner to have accounts audited annually, or for those accounts to be audited in a particular manner. The intention is that the Jersey Commissioner's accounts should be audited at the discretion of the Jersey Commissioner, and on such basis as the Jersey Commissioner considers fit. In practice, this may mean that the accounts will be audited as part of the irregular independent audit review”.

This is reflected in the Schedule to the Children's Commissioner Jersey Law 2019 in 14(2) which provides that “The Commissioner may, on such basis as the Commissioner determines, appoint auditors –

(a) qualified to be recognised auditors in accordance with Article 112 of the Companies (Jersey) Law 1991;

(b) to audit the accounts of the office in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the office for the financial year in question and of the state of the office's affairs at the end of that year.”

The proposals therefore appear to be an unnecessary change to the very recent law, which was written following significant debate, research and consideration. We would question why this change is being sought, and how it is envisaged that this would interface without our other accountability mechanisms to ensure that any assessments over the effectiveness of the work are grounded in children's rights and international learning.

To conclude, we believe that our existing accountability mechanisms which were carefully designed and brought into law 12 months ago ensure transparency and provide for scrutiny on financial and indeed operational decisions. International learning has shown the

⁶ Page 25, United Nations Children's Fund (2013) Championing Children's Rights: A global study of independent human rights institutions for children, UNICEF Office of Research, Florence. Available at https://www.unicef-irc.org/publications/pdf/c950_ccrbook_130903web_noblanks.pdf

⁷ The Principles Relating to the Status of national Institutions (The Paris Principles) Indeed, the Care Inquiry Report highlighted the importance of the need for a Children's Commissioner which is consistent with the Paris Principles in their final report (Recommendation 1A, 13.5 The Report of the Independent Jersey Care Inquiry 2017)

⁸ UN Committee on the Rights of the Child (CRC), General comment No. 2 (2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child, 15 November 2002, CRC/GC/2002/2

⁹ Ibid, paragraph 10 which states that the Office must have adequate infrastructure, funding, staff, premises and “freedom from forms of financial control that might affect their independence

'elusiveness' of cost-effective indicators for NHRIs and we are concerned as to how assessments on what is economic, efficient and effective would be carried out.

As the global study concludes, children's ombudsmen are a very peculiar entity: an independent human rights institution but also a public body. Being a public body does mean that at least some rules governing public sector do relate to it too and we accept that.

Nevertheless, it is felt that it is unnecessary that the Commissioner for Children and Young People (Jersey) Law 2019 position around audit may be changed so soon after I become a statutory body. I therefore conclude that I do not support the changes proposed.