



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

May 2021

Formal response to the Review of Children's Homes in Jersey

The Commissioner for Children and Young People Jersey has examined the **Independent Children's Homes Association (ICHA) - Review of Children's Homes in Jersey and the Response by the Government of Jersey** (Review) through the lens of children's rights, as established in the United Nations Convention on the Rights of the Child (UNCRC). The Government of Jersey signed this legally-binding international agreement in 2014.

The Commissioner has a function under the Commissioner for Children and Young People (Jersey) Law 2019 to review the adequacy and effectiveness of services provided for children.

It is a huge concern to read in the Review that "*children's needs are not consistently met*" and that "*some children are put in unsuitable placements and staff consequently struggle to meet their needs*".

The Commissioner is alarmed to read that an inappropriate placement had been made in a supported accommodation home and that enforcement action for the Care Commissioner had not swiftly resolved the situation.

The Commissioner is concerned to see continuing inappropriate use of the secure children's home despite significant advice being provided to end such use.

The Commissioner is concerned that children are being locked in rooms and are sleeping in rooms that were not designed as bedrooms with no bathroom facilities. This is inhumane and degrading treatment and are issues currently under review by the Commissioner.

Whilst the report mentions children's rights, the fundamental rights of children growing up in the care of the Minister have not been mentioned.

The United Nation Convention on the Rights of the Child

Several Articles apply to children growing up in alternative care. Article 20 focuses specifically on the right to special protection and help if children cannot live with their family:

UNCRC Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

The **United Nations (UN) Alternative Care Guidelines**, published in 2010, were developed by UN bodies, government authorities, and NGOs, in consultation with children and young people. They offer guidance on making rights real for children who are without the care of their parents or are at risk of losing this care. The Guidelines are intended to enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so. The Guidelines seek to ensure that, firstly, children do not find themselves in out-of-home care unnecessarily and, secondly, that the type and quality of out-of-home care provided is appropriate to the rights and specific needs of the child concerned.

Here is a link to the guidance:

<https://resourcecentre.savethechildren.net/node/5416/pdf/5416.pdf>

The **Council of Europe Recommendation Rec(2005)5** on the rights of children living in residential institutions establishes overall guiding principles to be applied whenever a child is placed outside the family, particularly in a residential institution. It underlines that every placement must ensure that the child's human rights are fully respected. According to this Recommendation, placements are justified only when the child is in such danger that it is impossible for him or her to remain in the family environment. The Recommendation sets quality standards for institutions, for example that small, family-style living units should be provided.

Here is a link to the Council of Europe guidance:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805daac2

The United Nations guidance implies that placement in "suitable institutions for the care of children" is the last resort, second best to placement in an alternative family. Whilst in care, children are entitled to good living conditions. The Government must ensure that they benefit from comfort, security, healthy living conditions, and education. Children in care have the right to good-quality health care and regular check-ups. If their living conditions do not meet these needs, the Government is responsible for finding a solution.

How will the Government respect, protect and fulfil the rights of children?

In order to examine this review, it is imperative to establish how the Review and the forthcoming Care Homes Improvement Plan (Plan) will serve to respect, protect and fulfil the rights of children, as established in the UNCRC. It is important to remember that children are rights bearers, and the Government of Jersey is duty bearer to these rights, and as such has specific obligations to children that are set out in the UNCRC.

In July 2003, a report entitled "Hardship Experienced by Children and Young People in Jersey" was published¹. The report included a poem written by a 14-year-old child. The poem opened the Independent Jersey Care Inquiry (IJCI) report.

¹ https://catalogue.jerseyheritage.org/wp-content/plugins/adlib-interface/adlib-download.php?p=110413418&f=0&d=archive&suppress_download

*LISTEN2
We cry for help
Do you hear?
No, you don't
Because we are still here
We all have rights
So, people hear
We say it loud
We say it clear
Why do we have to live in fear?
Tell us now
How you feel
About these situations
Listen, they're real
We don't want to scream
We don't want to shout
We just want to put our point out*

The Hardship Experienced by Children and Young People in Jersey report was published 18 years ago. The report stated:

“The scale of the hardship experienced by our young people is ultimately a reflection of the values that underpin our community. The authors of this report believe that the current situation does not reflect the values held by many Islanders”.

Iris Le Feuvre OBE, the Chair of the review, stated in her introduction to the report:

“When you read this report I hope that, like me, you will resolve that we cannot ignore these issues. I hope that you will also agree that the relevant authorities, supported by the community, must take positive steps to ensure that all our children have the opportunity to develop to their full potential.”

More than a decade ago, in December 2010, Jersey's Chief Minister made a formal apology following an investigation by the States of Jersey Police, known as Operation Rectangle.² This acknowledged that the care system had failed children living in residential care:

“On behalf of the island's Government I acknowledge that the care system that operated historically in the island of Jersey failed some children in the States residential care in a serious way.”

In 2017 the Chief Minister made a further formal apology³ and stated:

“The [IJCI] report’s recommendations are wide ranging and will require the full commitment of everyone involved if they are to be implemented speedily. We will need to be persistent and tenacious. We must invest and we must be prepared to challenge ourselves in order to create a new culture. One that is truly open and transparent, and which engenders trust. It must be our shared goal to deliver lasting change.”

In 2019, at the Commissioner’s request, the Panel of the IJCI returned and carried out a review: Report of the Independent Jersey Care Inquiry Panel 2019 (Two Year Review).⁴ The Panel concluded:

“Some long-held approaches will need to be relinquished to allow new ones to develop to ensure a better future for the island’s children. We are reminded that almost everyone who had suffered maltreatment in the island’s care system told us that the purpose of sharing their experiences was to ensure that, in the future, children in Jersey had safer, more fulfilling and happier childhoods. Delivering that future honours their past.”

The Government of Jersey is committed to ‘Putting Children First’ and improving residential care services, and is clearly passionate about improving outcomes for children and young people, yet appears unable to do so at any pace. Eighteen years on from Hardship Report, ten years on from the formal apology, and nearly four years on from the IJCI, it appears that significant barriers are still preventing change. It has been described to the Commissioner for Children and Young People as *‘the barriers to driving change quickly are in the granite.’* So, what needs to be different? The Government’s priority is Putting Children First. This can be achieved by putting children’s rights at the heart of Government. That would require a fundamental change in thinking and far more than a tick-box exercise. All successive governments should absolutely seek to provide the best for children, particularly those in care. It shouldn’t be taking this long.

Adopting a child rights-based approach – transforming children’s services by weaving rights into structures and systems at all levels – is the best way to work with and for children. The approach begins with the child. It places children and young people at the centre of services, empowering them and their families. It improves the ability of professionals, services and partner organisations to protect and fulfil children’s rights, creating a common driver that connects services across the whole local authority. Ultimately, the approach ensures that every child is treated with dignity and fairness, and is protected and able to participate.

The Plan that follows this Review must not focus solely on compliance with a set of standards. It must focus on placing the child, and the rights of the child, at the centre of policy development and practice. A focus on compliance has not brought about change in recent years. What is needed is a change in culture and behaviours. This is evident not only in this report but also in the Greenfields Review, the Youth Justice Review, the Ofsted reports of 2018 and 2019, and the Independent Jersey Care Inquiry reports of 2017 and

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<https://statesassembly.gov.je/assemblystatements/2017/2017.07.04%20chief%20minister%20re%20independent%20jersey%20care%20inquiry%20report.pdf>

⁴ https://statesassembly.gov.je/assemblyreports/2019/r.123-2019.pdf?_gl=1*1kau2oi*_ga*MTU5MTkxMzlyNS4xNjE5NDQwNTQy*_ga_07GM08Q17P*MTYyMTI0NTg2NC4xOC4xLjE2MjE5NDYwNDYuMA..

2019. The General Principles of the UNCRC provide a framework that will enable the Government to meet its ambition to put children first.

The Government have committed to ensuring children's rights are respected, protected and fulfilled. The obligation to respect means that the Government must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires the Government to protect individuals and groups against human rights abuses. The obligation to fulfil means that the Government must take positive action to facilitate the enjoyment of basic human rights.

In looking at the Review 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)
- 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.

The 33 recommendations in the Review focus heavily on those in charge (the duty-bearers) and the actions they should take to deliver change, without discussing what exactly children need from them as rights holders. The Government will need to identify the rights of children who are in the care of the Minister which are not currently being realised by the Government of Jersey and to create a plan that recognises and respects these rights, and to monitor and evaluate the impact of these measures on children's experiences of their rights. If this is done, the rights of children will be upheld through improved care for children, which will lead to the success of the Plan. Improving the care of children and recognising their rights cannot be seen as a by-product of compliance with a set of recommendations. As with the IJCI, simply ticking the box to mark a recommendation as 'complete' will not drive the culture and behaviours necessary to effect change.

From a rights-based perspective, the discussion around the Assistant Minister's statement made in May 2021 (**'it is clear that we must do more'**⁵) should be based on the progressive realisation of the rights of children. 'Must do more' clearly has not worked. Framing the Plan around rights would make it clear that there is a minimum standard beneath which no child must fall but that Jersey is aiming higher for its children and is committed to building and enhancing on this standard to improve children's experience, including the experience of being looked after. The Government has been 'doing more' for several years and yet the necessary improvements have not been made. 'Doing more' will not bring about the systemic and cultural change required. The approach must be grounded in the United Nations Convention on the Rights of the Child. This means using the UNCRC as a practical framework for working with and for children and young people. The goal is to promote and secure the full range of a child's human rights.

I recommend that the forthcoming Care Homes Improvement Plan takes a child rights approach with the UNCRC and the United Nations Alternative Care Guidelines at its core.

I would like to highlight and amplify the lack of children's voice in this report, as children and young people are the receivers of the care provided by the state and we cannot see how they have been meaningfully engaged. Incorporating the voice of children is essential to

⁵ Assistant Minister Scott Wickenden Press Release

enable true participation and engagement, and will ensure that any future Plan reflects their needs. I recommend that all those who advocate for children in care are engaged in developing the plan alongside children and young people.

The Commissioner would be pleased to offer advice as the Plan develops to ensure that the Government delivers on its commitment to respect, protect and fulfil the rights of children.