



## **Covid-19 Response: Impact on Children and Young People**

*The Children's Commissioner for Jersey*

**October 2021**

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## Introduction

The European Network of Ombudspersons for Children (ENOC) identified the need for research to examine the impact of Covid-19 Emergency Measures on children's rights so that lessons may be learned in order to better protect children's rights during any future pandemic or public health emergency. The research, '**Mapping the Impact of Emergency Measures introduced in Response to the Covid-19 Pandemic on Children's Rights in ENOC Member States**', was carried out with ENOC members during March and April 2021. This report is drawn from the evidence presented to the researchers by Jersey's Commissioner for Children and Young People, Deborah McMillan.

The pandemic has had a huge impact on island life. The island was put into lockdown in March 2020, after which life changed for everyone. The emergency measures introduced by the Government impacted all islanders but those who were impacted most were children and young people.

This report examines the impact of those emergency measures on children and is structured to reflect the United Nations Committee on the Rights of the Child thematic reporting guidelines:

- General measures of implementation (GMI) of the Convention on the Rights of the Child (CRC)
- General principles of the CRC
- Civil rights and freedoms
- Violence against children
- Family environment and alternative care
- Health and welfare
- Education, play, leisure and cultural life
- Special protection measures

The Office of the Children's Commissioner routinely receives enquiries and complaints from children and/or their representatives about violations of Convention rights. The Commissioner has observed an increase in the number of these received from children and/or their representatives about violations of Convention rights since the pandemic started. The scale of increase in enquiries and complaints received was around 24%. Quarter two of 2020 saw the largest spike in enquiries to the office coinciding with the lockdown in Jersey.

Covid-related enquiries are predominantly concerning education and the impact of restrictions on educational access for children: 43% of all enquiries citing Covid were in relation to education. Other enquiries have been related to health, financial concerns, contact tracing, isolation following travel, access to leisure and childcare.

Emergency Measures were introduced during the pandemic and these affected children's rights in the following areas:

- Government action to implement the Convention
- Discrimination against children
- Children's civil rights and freedoms
- Violence against children (in any setting)
- Children's mental health
- Children's physical health
- Children's rights to education
- Children's rights to play and leisure
- Children's right to an adequate standard of living

There were three areas where Emergency Measures have had the most negative impact on children's rights:

- Juvenile justice and deprivation of liberty
- Children's mental health and access to healthcare
- Children's access to education

The Government could have done better in making sure that all of children's rights were considered when making decisions during the pandemic. It has been easier for Government to use the excuse of the pandemic to ignore or marginalise children's rights, rather than placing them centre stage.

The UN Committee on the Rights of the Child provided advice to governments in April 2020. This guidance warned of the grave physical, emotional and psychological effects of the pandemic on children. It highlighted ways in which the government could protect their rights. Here is the link to that advice

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/STA/9095&Lang=en)

What we saw in Jersey was that measures contained within certain Covid-related restrictions had a significant impact on the lives of young islanders. All of their rights were affected.

In this report I will provide evidence of this across the United Nations (UN) thematic reporting guidelines.

## General Measures of Implementation

The emergency measures affected the general measures of implementation of the CRC.

The main issues are:

**Data collection and availability** remain barriers to assessing and responding to threats to children's rights in Jersey, and there has been limited data on the impact of Covid on children's rights to date. The Children's Commissioner's joint survey with Government on the impact of Covid remains the only comprehensive survey carried out.

**Legislation** to implement indirect incorporation and the Child Rights Impact Assessment (CRIA) has been delayed due to the pandemic and risks not being lodged and debated before the end of this Government's term of office. Jersey's Minister for Children and Education has committed to bring forward a draft law which will indirectly incorporate the United Nations Convention on the Rights of the Child (UNCRC) into the Island's domestic legislation. The commitment was to have the draft Law lodged and debated before the end of this Government's term of office. In July 2020 a consultation process reached the conclusion that no significant amendments were required and that the model was therefore fit for purpose. To date the draft Law has not been lodged.

There has been a significant delay to the revised Children's Law drafting process and associated amendments.

The Commissioner for Children and Young People was not included in **decision-making around Emergency Measures**. In May 2020 a letter was sent to the Chief Minister regarding the statutory obligation for the Minister to consult with the Children's Commissioner. Under Article 25 of the Commissioner for Children and Young People (Jersey) Law 2019, Ministers have a duty to consult with the Children's Commissioner where any proposed enactment directly concerns the rights of children or young people. The Children's Commissioner then has a corresponding duty to advise when consulted.

The Children's Commissioner had not been consulted on several matters which were pertinent to the rights of children and young people, meaning that the relevant Ministers were in breach of Article 25 of the Law. Similarly, the Children's Commissioner has not been involved in emergency planning meetings dealing with issues that would affect the rights of children and young people, nor had she been made aware of press conferences that were occurring. This has resulted in her being asked to comment on matters where she was not aware of what had taken place. Incredibly, on raising this as an issue, the Children's Commissioner was informed that she should check the gov.je website for the latest press releases, which is an unacceptable solution. The Chief Minister apologised on behalf of the Council of Ministers. Following this there were improvements in the level of engagement with officers, however the Government did not meet regularly with the Commissioner to listen to concerns and answer questions. The fact that the Office of the Children's Minister saw three separate incumbents during this period made it even harder to maintain consistent communications.

In August 2021 the Commissioner was concerned about the measures being put in place in schools and wrote to the Chief Minister to set out those concerns. A Children's Rights Impact Assessment (CRIA) had not been completed on the return to schools and the Commissioner had not been consulted on the restrictions. The Commissioner wrote: *'I am concerned that the measures proposed for the start of the school autumn term are too cautious and risk-averse. We have been working together throughout the pandemic to make sure that any measures, which are in essence restrictions, are lawful, necessary and proportionate. I think that to date the decision-making has been in the best interests of children, with the balance of harms understood and being paramount to decision-making. However, I consider these proposals to be disproportionate and unnecessary.'* Following attendance at the Competent Authority Ministers meeting, the measures were reviewed, and changes made with a commitment to regularly review them throughout the term.

**Children were not consulted on Emergency Measures** and often were not the focus of Government communications. Whilst some information was provided in a child-friendly format, most information was not shared in a child-friendly way on child-friendly platforms. Messages regarding isolation and attending school were often confused and conflicting. Ministers did not meet with young people to listen to their experiences and answer questions. When key decisions were made, information about those decisions was not always shared in a format that was accessible to children and young people.

The Commissioner reported: *'We already know from the joint Covid survey that we did with the government that 48% of our children and young people have told us that they're feeling anxious, worried and stressed. That hasn't gone away.'*

*'Therefore, when you are passing on really important public health messages to children, you do not say "if you share a vape with somebody, your granny might die", which is essentially what the Chief Minister was saying.'*

The effect of Emergency Measures on the General Measures of Implementation had a **disproportionate negative impact on particular groups of children**. These include children in the juvenile justice system, children with a mental illness, and children of divorced/separated parents. Children already identified as living in situations of vulnerability were more severely and disproportionately discriminated against due to the Emergency Measures. These issues are explored further in this report, but these are the headline issues:

- There was an increase in juvenile arrests of 104%, with a spike after lockdown ended in 2020.
- Waiting lists for CAMHS have increased. There were 909 children on the CAMHS caseload at the end of July 2021.
- Children sectioned under statute were transferred from Robin Ward at the hospital to the secure children's home, Greenfields, and were housed alongside young people who were there on remand, on secure accommodation orders, and those convicted by the Youth Court.

- The contact centre for separated children was affected during Covid, meaning that some children missed out on contact with a parent.

The Government did take some steps to minimise the negative impact of Emergency Measures on General Measures of Implementation. There were allocations of additional funding, resources were targeted at vulnerable groups of children, e.g. Kooth, measures were put in place to enable some children living in situations of vulnerability to attend school, financial support was provided for workers who were suffering loss of income, and the Covid Phone Helpline was set up. A new child and family's hub was established to offer advice and support to families. A Scrutiny panel was established to review the Government's response to the pandemic. These steps had some effect in minimising any negative impact of the Emergency Measures.

## General Principles

Emergency Measures have had a negative impact on all of the General Principles but particularly on the **Best Interests of the Child** (UNRCR Article 3).

The Emergency Measures relating to the General Principles had a disproportionately negative effects on particular groups of children, including **children in the care of the Minister**. There is evidence of decisions being made that were not in the best interest of children: for example, as part of Emergency Measures there was a relaxation in the Care Commission Law which enables regulation and inspection of children's homes.

The Government did take steps to try to minimise any anticipated negative impact of Emergency Measures on the General Principles: for example, it was not in the best interests of children for schools to be closed. The Government devised guidance for schools around a recovery curriculum for when schools reopened, with a focus on the wellbeing of pupils rather than catching up with the curriculum. However, they did not compel schools to implement it. This resulted in inconsistencies in the ways in which schools supported children to return to the classroom after lockdown.

A comprehensive CRIA on reopening schools was completed after the Children's Commissioner suggested that the Government complete one. However, it is unclear if the CRIA was taken into consideration and acted upon by the Competent Authority Ministers (CAM). No other CRIAs were undertaken in relation to the decisions that had significant impact on children's access to their rights. The Office of the Children's Commissioner offered to assist with the assessment of the rights issues in the decision-making process, but this was not taken up.

## Civil rights and Freedoms

### Article 15 Freedom of association and of peaceful assembly

Emergency Covid legislation meant that most children and young people could not attend nursery, school or college, and could not meet with others. For some children, the move to meeting online has been a positive outcome. But for others, this has raised concerns about the lack of regulations to safeguard children online and to protect their privacy. The digital divide has meant that some children could not simply 'move' their right to meet with friends into that online space. Youth clubs closed, as did all structured clubs and activities for children. All citizens were required to stay in their

homes apart from two hours a day for essential shopping, exercise and access to healthcare. Legislation was brought in to stop gatherings outdoors, and this applied to children. Children were arrested and detained for failing to isolate and breaching the regulations.

## Violence Against Children

### Article 19 Abuse and Neglect

Safeguarding legislation remained in place during the pandemic but emergency measures brought **significant changes to the way in which children's residential settings were regulated**. The Commissioner provided formal advice on the Government's Draft Regulation of Care (Standards and Requirements) (Covid-19 - Temporary Amendment) (Jersey) Regulations 2020 and the Regulation of Care (Amendment of Law) (Covid-19 – Temporary Amendment) (Jersey) Regulations 2020.

The Commissioner provided this response: *'The Care Commission fulfils an essential role on the island to honour these protections and help to ensure that children and young people are safe and protected, offering tailored advice based on significant expertise. The Commission provides important oversight which has been narrowed by the Regulations and as such the amendment ought to be withdrawn at the earliest opportunity so as to ensure that the Care Commission are not impeded from carrying out their statutory duties keeping children and young people in Jersey safe. These Amendments have had the effect of relaxing and amending the requirements imposed under them. I was given expressed assurances that the I would be notified of any intention to use the Regulations, however this has not been the case. In correspondence dated 26/03/2020, the Director of Safeguarding and Care stated "In the unlikely event that we need to begin considering the use of any amendments, I have agreed to notify the [Education and Home Affairs] Panel in advance together with the Children's Commissioner, to demonstrate that we have exhausted all other options."*

*'I have not been notified of any use of the Regulations, yet my office has been made aware of a young person being deprived of their liberty in a deregulated area within the setting known as Greenfields. This has been permitted under the Regulations. Therefore, the lack of oversight powers of the Care Commissioner in relation to deregulated areas is compounded by the absence of engagement with my office to protect children's rights.'*

The Commissioner responded quickly to propositions that would undermine the safety, care and protection of children. The Government proposed the Draft Children (Placement) (Amendment) (Jersey) Regulation 202-

The Commissioner reviewed the draft regulations and provided the following formal advice: *'I have significant concerns regarding the proposed amendment to place children with unregistered foster carers for a substantial period of time, which may be putting children at significant risk of harm. This risk is compounded by the lack of additional safeguards, which undermine children's rights to be safe, supported and protected. I am clear that at times of crisis, additional safeguards are required, not less.'* Following this advice, the proposal was withdrawn.



Whilst organisations responsible for the care, support and protection of children adapted to new ways of working, it is clear that the emergency measures had a negative impact on some children and young people, some of whom were already living in situations of vulnerability.

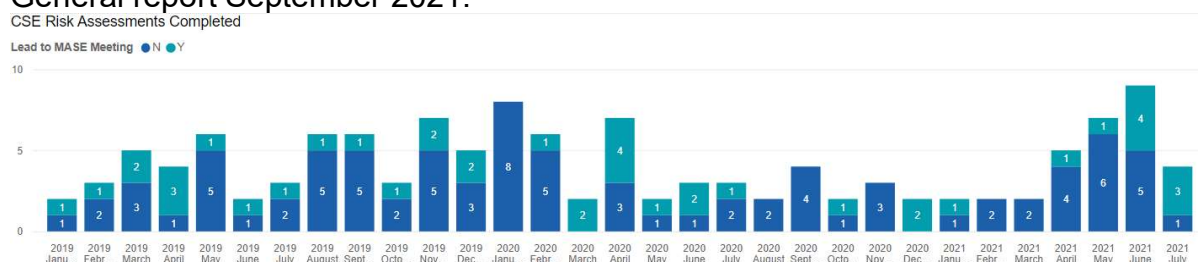
During the pandemic there was an increase in the number of children experiencing the impact of **domestic abuse**. There was an increase in the number of domestic abuse reports to the police and therefore an increase in the number of children witnessing abuse. Police figures show that the number of children exposed to high-risk domestic abuse has risen by 49% when comparing January-March 2019 with January-March 2020.

It is estimated that there are more than 3,500 children living in a Jersey household where domestic violence or abuse is present: this equates to six children in a typical class of 25.

The Jersey Women's Refuge charity offers support for mothers and children by providing accommodation. During the pandemic demand increased to the extent that a second home had to be opened for families fleeing violence. The Commissioner was made aware of one family where the Government offered to repatriate a mother and her children during Covid as the mother was in the refuge and without entitlement under the Housing and Work Law had no home to move to.

In our Covid survey exploring the impact of Covid on children in Jersey, children reported seeing their parents argue during lockdown. School closures have led to fewer referrals to the Multi Agency Safeguarding Hub (MASH) due to a decrease in time that professionals spent face to face with children and families, thereby weakening protective measures. In the survey, 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'*.

This chart below shows that the volume of Child Sexual Exploitation (CSE) risk assessments has increased significantly in recent months. Source CYPES Director General report September 2021.



*"My dad can be violent and bad tempered if things do not go how he wanted or expected."*

## Family and Alternative Care

**Article 18 Assistance to working parents and provision of childcare services**

**Article 10 Family reunification**

**Article 20 Children deprived of a family environment**

**Measures to ensure the best interests of children with incarcerated parents**

During the pandemic, at a time when there should be forensic scrutiny of children's services, **crucial board meetings did not take place**: for example, the Strategic Leadership Board which oversees the improvement of children's social care had no Board meeting between June 2020 and March 2021, while the Corporate Parenting Board did not meet for more than 12 months.

**Family visits to parents incarcerated** in prison were stopped during Covid. There was some provision for families to meet using technology however this presumed that families had adequate digital provision to enable them to do so.

**Looked-after children placed overseas** in the UK were unable to maintain face to face contact with parents and siblings.

**Closure of schools** meant that some children were unable to access support that school might otherwise have been able to offer. Even though schools remained open for children of key workers and those living in situations of vulnerability, few children took up the offer at secondary school age.

A reliance on the UK for agency social workers meant that due to Covid there were **issues with staffing**, and a high turnover rate meant many children in care and those on child protection plans had a frequent change of social worker. 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 Children's Service has struggled to maintain services to protect children who may be at risk of harm. At the Children's Strategic Leadership Board meeting held on 6<sup>th</sup> September 2021 two reports were shared. These stated: *'We do not have sufficient on-Island care settings - Foster Care and Residential Care - for children in the care of the Minister and those children and young people on the edge of care. We have had to establish care settings outside of regulations and we have placed children in our children's homes outside of the Statement of Purpose we have previously agreed with the Jersey Care Commission'*. It was also reported: *'We are struggling to meet all the assessed needs of young people placed at Greenfields. This is due to challenges with staffing levels, inexperience and the mix, number and needs of the children and young people.'*

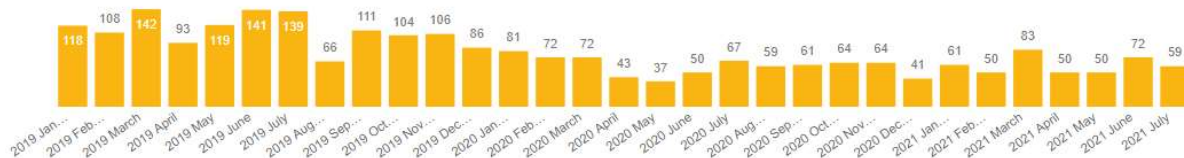
The Board went on to discuss that there is a **shortage of sufficient placements** of sufficient quality to meet the needs of our most vulnerable children in the care of the Minister. **Foster care** is not able to meet the needs of older teenagers, which is a growing demographic of children who are looked after. There are insufficient options for young people aged 16-plus, both among those currently in care and care leavers,

who are in need of continued support, whether that be in supported lodgings or other options.

Children's social care reports that their data continues to highlight concerns about the impact of the pandemic. Children's Social Care has not yet seen the anticipated increase in need, which in itself is a concern, and there has been a slight increase in the number of families being supported with an Early Help team around the child and family.

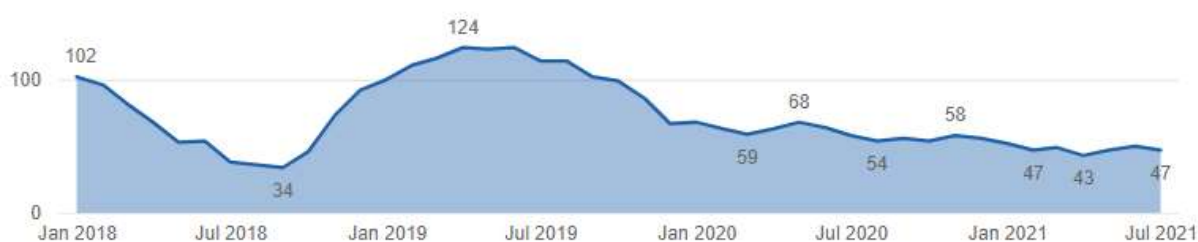
**Referrals to Social Care** remain well below the numbers that were seen pre-Covid (below). Compared with benchmarks, referral numbers were high up until March 2020, with a large proportion of assessments leading to no further action. Whilst many more families are able to benefit from support from the Children and Families Hub (advice, guidance, signposting or single-agency support) and Early Help, there remain some concerns about hidden harm on the island, given the significant reduction in referrals. The Children's Service anticipate that referral numbers will increase over the coming months but will not return to the level experienced before the pandemic.

Referrals to Children's Social Care



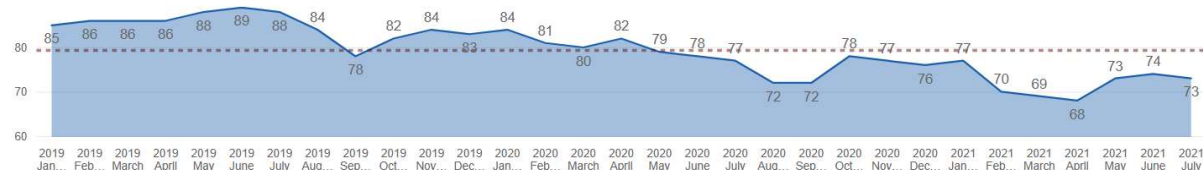
**Child Protection** numbers are reported as being stable. There were 47 Child Protection Plans at the end of July. The Children's Service anticipates that it is likely that the numbers will increase gradually over time as they discover some of the hidden harms from the last 18 months. Source of data CYPES September 2021.

Number of Child Protection Plans



The number of **Children Looked After** has been fairly stable for the last twelve months.

Number of Children Looked After



## Health and Welfare

### **Article 24 Right to highest attainable standard of physical and mental health**

#### **Access to health services, primary health care, emergency care, rehabilitative, palliative care**

##### **Access to mental health services**

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. This was exacerbated during the pandemic as family incomes were reduced.

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 five years or older, or free if the child is aged 4 or younger. A vote on extending free healthcare to all children in Jersey was rejected by the States Assembly in June 2021.

The community Dental Department closed in March 2020 to nonemergency dental treatment, meaning no child could access dental care or be screened for oral health.

During Covid, 100 GPs were temporarily employed directly by the Government of Jersey, and access to GPs became free of charge for children aged up to four years old, as will childhood immunisation. However, this did not apply to all children and young people up to the age of 18.

The newly established **urgent treatment centre (UTC)** brought in two sets of charges for children, with those children not registered with a GP being charged more to access treatment. Following a complaint from the Commissioner, the Government changed their mind on the fees for children at the Urgent Treatment Centre. However, the UTC is now closed, and charges apply to all children unless their families receive Income Support. Access to free non-emergency hospital care is dependent upon a number of conditions, including length of residency and employment status. However, 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.

Our survey showed that children with pre-existing mental health needs were disproportionately affected as some services were impacted due to the pandemic making it harder for children to access support. School closures meant that the normal mechanisms in place to support children were no longer there.

In the Commissioner's survey to look at the impact of Covid, when asked if they were worried about anything, around 48% of children and young people surveyed said they were, 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:

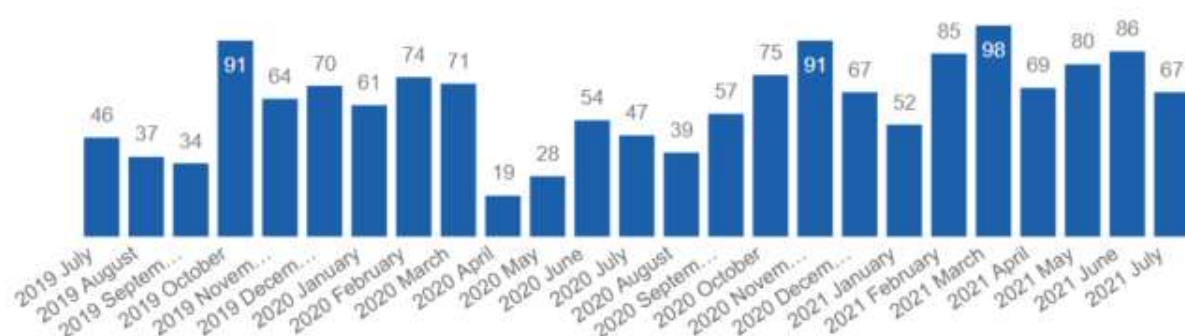
*"In all honesty the Stay at Home order has had an extremely negative impact on my mental health. I suffer from [mental health condition] so not being able to see my long-term boyfriend or friends to distract me has made my symptoms worse and my mood low constantly."*

The Government **counselling service** for young people changed its method of operation to enable online and text counselling rather than face to face, which is something that some young people have said they prefer. There is now a waiting list to access this service.

**CAMHS** continues to see increased demand – the average number of referrals has increased from around 55 per month in 2019 and 2020, to 76 per month so far this year (Sept 2021).

Caseloads have increased, too, with a total of 909 children on the caseload at the end of July. There has been a notable increase in the number of children accessing CAMHS due to ADHD – from 299 in January 2020 to 478 at the end of July.

CAMHS Referrals



Children and young people reported in the survey:

*"Feel alone, dark, empty and numb."*

*"I am worried about my mental health deteriorating because I have to stay inside every day doing the same thing. Life is like Groundhog Day at the moment."*

*"I have mental health problems which have been worsened by the lockdown so I regularly experience urges to self-harm and suicidal ideation."*

The Jersey Opinions and Lifestyle Survey Report 2020 stated that more than a third (36%) of households reported that their **finances had deteriorated** due to the Covid 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.<sup>1</sup>

Families that work in seasonal jobs in the hospitality sector rely on income over the summer holiday, in particular, to allow them to save money for bills over the winter. During 2020 and 2021, the public health emergency has had a significant impact on

<sup>1</sup> Page 7, Jersey Opinions and Lifestyle Survey Report 2020, Statistics Jersey available at <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Opinions%20and%20Lifestyle%20Survey%202020%20Report%2020200903%20SJ.pdf>



tourism and hospitality, which will have a direct impact on the financial security of those families in Jersey.

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 pandemic. For example, a collection of food banks in Jersey have made more than 3,000 deliveries to 600 people between March and August this year.<sup>2</sup> 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. Therefore, support for families to access their right to health and for children to have nutritious food is still required, and the Government has a duty to provide this support.

As one young person said:

*“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.”*

Some schools were able to provide families with food during the pandemic in the absence of any Government provision.

## Education, Play and Leisure

### **Article 28 The right to access education (early childhood)**

#### **The right to access education (primary)**

#### **The right to access education (secondary)**

#### **The right to access education (vocation training)**

The Emergency Measures impacted on children’s right to an education. During lockdown, **schools were closed**, apart from access for key worker children and those living in situations of vulnerability. However, at secondary school age, very few children living in situations of vulnerability attended school. The Commissioner’s survey showed that a significant number of children (48%) felt anxious and worried and had lost their safety net of school during lockdown.

Children were unable to take **public examinations** and around 25% of survey respondents were worried about exams and coursework.

**Online learning** was inconsistent across the island, with schools taking different approaches. Children without **digital devices** at home could not access online learning, and the home learning experience was inconsistent across schools. The Commissioner was made aware that some pupils did not have very basic resources to complete schoolwork at home: for example, not having access to paper to write on. The identification of pupils without access to a digital device or internet was slow, and the subsequent response slow. Over 98% of primary-age children said that they have been able to do schoolwork at home, but this declines to 95% for ages 11-16 and 89% for those over 16. Motivational issues were the most common barrier, but other reasons featured such as limited internet access.

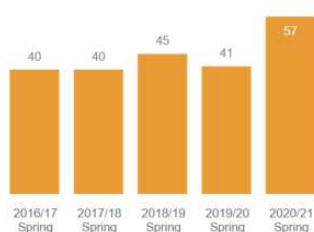
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<sup>2</sup> <https://www.itv.com/news/channel/2020-08-30/jersey-food-bank-supported-600-people-per-week-during-the-pandemic>

The Government took steps to mitigate the impact of emergency measures on education. Measures were put in place when pupils returned to school: for example, lateral flow tests were offered in schools when pupils returned to school in January 2021, however take up of the voluntary testing at that stage was low.

The Children's Service report that there has been an increase in the number of children who are being **Educated Other than at School** (EOTAs). This may signify more children being educated at home.

Educated Other than at School



Children and young people reported:

*"I would much rather be at school where I'm receiving a better education and have structure in my day."*

*"I haven't really enjoyed it. I struggle to stay focused sometimes so I've been struggling to meet deadlines which is quite stressful."*

*"I hate it, my teachers are struggling to give clear instructions on important tasks and this makes it frustrating to complete, lowering work efficiency."*

*"School not having the support from teachers- hard over the phone and emails for points to come through."*

## Special Protection Measures

**Article 37 Deprivation of liberty of children**

**Article 40 Right to a fair trial without delay that is by a competent, independent and impartial authority or judicial body**

**Parish Hall Enquiries** were suspended, meaning that children had to wait months before their case was held for alleged criminal offences. The Commissioner observed PHEs that took place 7 months after the offence took place.

The rate of **arrests** of children and young people increased in 2020 by 104%.

The Attorney General's Guidance on Overnight Detention of Children and Youths falls short of the requirements set out by the UNCRC in a number of areas. During the pandemic children and youths have been refused bail and sent to Greenfields. When appearing before the Youth Court, they were then released home, suggesting that the detention was neither necessary nor proportionate. Through casework, the Children's Commissioner is aware of an increasing number of cases where children are being deprived of their liberty when there is evidence that it is not the measure of last resort.

Children have been detained during Covid in the secure children's home, with those on remand mixing with those convicted, and also with those held for welfare reasons, as well as the setting being used as an inpatient unit of the hospital for children with mental health illnesses.

**Overcrowding** and the need to separate all of these groups meant that a child was placed in a room not designated as a bedroom and with no toilet facilities and they were locked in the room at night.

The Commissioner sought assurances that children and young people would not be subject to **arrest or detention** due to the breaching of Covid regulations. There were concerns that children were being disproportionately targeted by police for not maintaining two metre distancing and congregating in public, particularly during the summer of 2020 when there was a corresponding spike in arrests of children, and the number of **children being stopped and searched**. In 2019 there were 35 juveniles stopped by the Police and searched. In 2020 this rose to 257. The Police have reported that data giving the exact reasons why an individual was stopped is not readily available and so it has been impossible to see if the rise has been as a result of Covid or indeed any other factors. Nevertheless, it is a huge concern. A child under the age of 18 was arrested, detained and charged for breaching isolation legislation. The Commissioner sought the early release of a young person who was detained in the secure children's home following an outbreak of Covid in the home. This was not granted.

## Conclusions

Emergency Measures were developed with very little consideration given to children or children's rights.

There was insufficient targeted messaging for children and young people.

The Commissioner was not routinely approached to provide children's human rights advice on the Emergency Measures.

The Government responded to the pandemic as a public health emergency, which led to a lack of attention to the physical, mental, social or economic impacts on children as a group or on particular groups of children. The consequence has been that Emergency Measures have had negative impacts on the General Measures of Implementation, especially the planning and coordination of children's rights, and on the General Principles of best interests, non-discrimination, participation and children's survival and development.

There continues to be negative impacts from Emergency Measures on children and young people.



## Recommendations

**These recommendations have been agreed by the European Network of Ombudspersons for Children (ENOC). Jersey's Commissioner for Children and Young People, as a member of ENOC, endorses these recommendations and urges the Government to adopt the recommendations to ensure that they respect, protect and fulfil children's rights in response to future public emergencies**

- 1. Embed children's rights in legislative, policy and budgetary decision-making, so that children's rights are given priority in decision-making at all times, including in times of public emergency**
  - a. Ensure that decision-makers at all levels act in compliance with the CRC at all times, including in times of public emergency.
  - b. Ensure that a Child Rights Impact Assessment (CRIA<sup>3</sup>) is applied to all policy, legislation and Emergency Measures to determine whether they will have any negative impact on children, and in particular, on any group of children who are already in situations of vulnerability or disadvantage.
  - c. CRIA must be conducted as part of the process of developing policy, legislation, Emergency Measures, so that the assessment is properly taken into account by policy makers and not applied retrospectively to fit the already made decision.
  - d. Ensure that a CRIA is conducted on any existing plans for public emergencies or develop and publish an advance plan setting out how government and other public authorities will take account of and ensure maximum compliance with the CRC in public emergencies.
  - e. Identify key individuals and/or establish a team with direct and cross-cutting responsibility (e.g., an inter-ministerial group) to protect and promote children's rights and draw on external expertise e.g. Child Specialist Advisers such as Children's Ombudspersons, to inform decision making at all times, including in times of public emergency.
  - f. Identify how resources will be safeguarded and allocated to the maximum extent possible to ensure children's rights are respected, protected and fulfilled in any public emergency.
  - g. Ensure budget allocation is transparent and demonstrates the proportion of expenditure on children, at all times including in a public emergency.
  - h. Ensure that the introduction of critical legislation that protects children's rights is not delayed, including in times of public emergency.
  - i. Ensure that mitigation measures are in place to ensure that education, social care, health care, food security, civil and criminal justice, National Human Rights Institutions (NHRIs) and independent advocacy are available, acceptable, accessible and of good quality<sup>4</sup> to children in times of public emergency.

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<sup>3</sup> See ENOC Common Frame of Reference for CRIA – A guide to carry out CRIA <http://enoc.eu/wp-content/uploads/2020/12/ENOC-Common-Framework-of-Reference-FV.pdf> accessed August 2021; See ENOC Position Statement 2020 on CRIA: <http://enoc.eu/wp-content/uploads/2020/11/ENOC-2020-Position-Statement-on-CRIA-FV-1.pdf> accessed August 2021

<sup>4</sup> See UN Committee on the Rights of the Child, *General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health* CRC/C/15/2013 paras

- j. Ensure investment and training is provided to all professionals that work with children, to identify and protect children who may be experiencing violence.
- k. Ensure all Response/Recovery Strategies consider the impact (using CRIA and CRIE) on children and specific groups of children and their rights.
- l. Ensure investment in education, social care and health services (including mental health), and guarantee intersectoral support for all children and in particular vulnerable children, making sure all services are available, acceptable, accessible and of good quality during a public emergency.

## **Equality and non-discrimination**

### **2. Ensure that decisions and actions at all levels do not adversely discriminate against children and/or specific groups of children at any time, including in times of public emergency.**

- a. Introduce legislation and policy to prevent discrimination against children at any time.
- b. Require action to be taken, including the allocation of additional resources and special assistance to remove or mitigate any predicted discriminatory impact of any Emergency Measures on children and/or on groups of children.
- c. Establish robust mechanisms to gather data on the impact and experiences of children (including disaggregated data on different groups of children) in times of public emergency and ensure that relevant data (quantitative and qualitative) is available to inform the development of Emergency Measures.
- d. Ensure that available information about any public emergency does not discriminate against children, or groups of children, by presenting them as a 'problem' to be addressed by Emergency Measures.
- e. Ensure that any Public Inquiry (or other public examination) into the impact of a public emergency or Emergency Measures takes into account the impact on children and children's rights, including the reasons for any adverse discriminatory impact on children or groups of children.
- f. Learning must ensure that improvements in practice and service delivery are retained and built upon, rather than reverting to the situation that existed before a public emergency.

## **Empower children**

### **3. Enhance children's knowledge and understanding of their rights, through education and information so that children can exercise and take advantage of their rights, including in times of public emergency.**

- a. Ensure that education curricula for children of all ages, include education on human rights and children's rights, and mechanisms to claim and enforce rights, including how Children's Ombudspersons protect rights in particular jurisdictions.
- b. Take all reasonable steps to ensure that schools (and other education institutions) remain open and accessible to all children, and that any

school closures are as a measure of absolute last resort and are reversed as soon as possible.

- c. Take all reasonable steps to ensure that spaces where children socialise and play remain open and accessible to all children, and that any closures are as a measure of absolute last resort and are reversed as soon as possible.
- d. Where schools (and other education institutions) are closed, provide uninterrupted substitute and high quality adapted education services (including therapeutic and support services) accessible to all children, including children with additional learning needs.
- e. Prioritise and support children from disadvantaged situations so that they have the knowledge, skills, equipment and infrastructure (e.g., broadband) to access and make effective and safe use of the digital environment (including raising awareness of the risks, e.g. cyber-bullying or sexual exploitation),<sup>5</sup>including times of public emergency.
- f. Provide children with accessible, age-appropriate and reliable information (from a trusted source) about any public emergency, so that all children are able to make choices and exercise their rights.
- g. Provide children with accessible and age-appropriate information on independent human rights institutions, advocacy services and professional legal advice, and ensure these services remain available to all children at all times.

#### **Participation in decision-making**

#### **4. Ensure that children's views are heard and given due weight in any decision-making process that directly or indirectly affects them, so that their views are fully taken into account in times of public emergency.**

- a. Introduce mechanisms<sup>6</sup> to support children to meaningfully participate in the development of all policy and legislation, including Emergency Measures.
- b. Ensure Children's Ombudspersons can continue to act as independent champions for children, to speak out and advocate on their behalf during times of public emergency.
- c. Where physical meeting spaces are unavailable to children, establish safe 'virtual spaces' for children to discuss common concerns and issues during any public emergency.<sup>7</sup>
- d. Consult with children during and after a public emergency so that their experiences inform CRIA, CRIE and crisis response plans as well as national recovery strategies.

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<sup>5</sup> See ENOC Statement on Children's Rights in the Digital Environment <http://enoc.eu/wp-content/uploads/2019/10/ENOC-2019-Statement-on-Childrens-Rights-in-the-Digital-Environment.pdf> accessed August 2021

<sup>6</sup>For example, see Lundy's Participation Model: Lundy, L. 'Voice is not enough, conceptualising Article 12 of the United Nations Convention on the Rights of the Child', *British Educational Research Journal* (2007) 33/6, 937

<sup>7</sup> See ENOC Statement on Children's Rights in the Digital Environment <http://enoc.eu/wp-content/uploads/2019/10/ENOC-2019-Statement-on-Childrens-Rights-in-the-Digital-Environment.pdf> accessed August 2021

- e. Carry out regular assessment of children's participation across all functions and ensure that this is robust and available in times of public emergency.
- f. Establish mechanisms where children from different backgrounds can contribute their views and experiences to inform governmental responses to public emergencies.
- g. Allocate and identify resources in budgets to support children's meaningful participation in times of public emergency.

### **Accountability**

#### **5. Ensure that government at all levels and public organisations are accountable for how they comply with children's rights at all times, including in times of public emergency.**

- a. Carry out children's rights monitoring against children's rights indicators, and commit to children's rights benchmarks, including during times of public emergency.
- b. Publish regular reports on performance against children's rights indicators during times of public emergency and disseminate the findings.
- c. Encourage independent monitoring led by Children's Ombudspersons and children, including during times of public emergency.
- d. Ensure Children's Ombudspersons can continue to hold governments to account to respect, protect and fulfil children's rights in times of public emergency.
- e. Ensure all institutions where children (e.g. children in care, young offenders, asylum seekers and refugees, disabled children, children with complex mental health conditions etc.) reside are continuously monitored against children's rights indicators, especially during times of public emergency.
- f. Ensure that the family as the fundamental group of society and the natural environment for the growth and well-being of children must be afforded the necessary protection and assistance in a public emergency.
- g. Provide children with accessible and age-appropriate information on the process for making complaints, and ensure this process is accessible and child-friendly (and on the role of Children's Ombudspersons) to promote and protect rights, and that these remain available during times of public emergency.
- h. Provide children with accessible and age-appropriate information on the process for holding government and public authorities to account for violation of their rights, and how to obtain a remedy (where available) and ensure that these processes are child-friendly and accessible and remain available during times of public emergency.