



**Children's
Commissioner
for Jersey**

**Supplementary Report of the
Commissioner for Children and
Young People Jersey**

UN Committee on the Rights of the Child
Examination of the United Kingdom of Great
Britain and Northern Ireland

(December 2022)

Introduction

This is a Supplementary Submission to the Report of the **Commissioner for Children and Young People Jersey**, dated July 2022 and prepared for the UN Committee on the Rights of the Child's examination of the United Kingdom under the United Nations Convention on the Rights of the Child (UNCRC).

This supplementary submission shall focus entirely on the deprivation of liberty of children in Jersey, both in the context of care and criminal justice. The reason for this focus is the Commissioner's very serious and ongoing concern that the principle of **best interests of the child** is not reflected in all law, policy, and practice in Jersey. This is especially prominent in instances when the child is deprived of his/her liberty, be it in the context of alternative care, or criminal justice.

1. Deprivation of liberty of a child in the criminal justice context

1.1. Lack of a dedicated child justice strategy

To date, although it has been promised for a number of years now, the island does not have a child justice strategy. This means that, in practice, there is no joining up of various child justice actors, their expertise and services. This in turn means that the very small handful of children who come into contact with the criminal justice system do not receive a response that would respect the fundamental principles encapsulated in UNCRC and General Comment 24. Fundamentally, because of a lack of overall strategic direction to ensure the exceptionality of detention of a child, the unavailability of alternatives to detention, poor system of diversion through all stages of criminal justice process, entirely inadequate provision of secure accommodation, the very small number of children in Jersey who come into contact with the criminal justice system may find themselves in the adult prison, HMP La Moye, in a situation of *de facto* isolation.

RECOMMENDATION: The Government of Jersey must immediately redouble their efforts to formulate and adopt, in close consultation with all stakeholders, including the Children's Commissioner, an island-wide child justice strategy. Such strategy must emphasise prevention and adopt child-friendly and multidisciplinary responses to the first signs of behaviour that may be considered an offence. Evidence-based intervention programmes must be developed, reflecting not only the multiple psychosocial causes of such behaviour but also the protective factors that may strengthen resilience.

The strategy must reflect, and all actors implementing that strategy must ensure, **as an absolute priority that children should be supported within their families and communities.**¹ The child justice strategy must place as its integral part an effective system of diverting children from the formal criminal justice system at all stages, and a range of measures alternative to detention must be introduced so as to ensure that deprivation of liberty of a child truly is a measure of last resort for the shortest period of time.

¹ Committee on the Rights of the Child. General comment No. 24 (2019) on children's rights in the child justice system. UN Doc CRC/C/GC/24, at para 11.

1.2. Deprivation of liberty

The fundamental principle of detaining a child as a measure of last resort is neither understood by nor embedded in the law or practice of the law enforcement agencies of Jersey.

(a) Pre-trial detention. Currently, the Attorney General’s Guidance Overnight Detention of Children and Youths (2019) makes it possible to hold a child aged 10-17yrs in police custody overnight if “it is impracticable to transfer the child or young person to secure accommodation or if there is no secure accommodation available pending their attendance before the Court” (Section 2 (7)). The decision of remanding a child in police custody rests with a Centenier, an honorary police officer in Jersey, who is not a judicial authority or “other competent, independent and impartial authority” and as such does not satisfy the requirements of Article 37 (d) of the UNCRC. There is no possibility to appeal this decision, which is a further violation of Article 37 (d) of the UNCRC and, strikingly, the Guidance does not provide any explanation as to how a Centenier would arrive at the decision that the transfer of the child or young person to secure accommodation is “impracticable” and what circumstances would qualify as “impracticable”. Thus, a Centenier is given very broad powers without any safeguards to prevent their arbitrary application which is a serious shortcoming if examined against Articles 37(b) and (d) of the UNCRC and Article 9 of the ICCPR. There appears to be no obligation imposed upon a Centenier or any other authority to do their utmost to secure other accommodation for the child so as to seek to ensure that every attempt is made that detention of a child in police custody remains truly a measure of last resort. This once again poses a challenge with Article 37 of the UNCRC and Article 9 of the ICCPR. Further, Section 31 of the Guidance states that the child or young person must be held in lawful custody until their appearance at court. This, however, leaves open the question of how long such detention could last and whether periodic review of the continued need to remand the child or young person in custody would take place. Notably, there is no obligation to consider the best interests of the child in the whole decision-making process concerning the overnight detention of a child in police custody.

RECOMMENDATION: The Attorney General’s Guidance Overnight Detention of Children and Youths (2019) must be amended without delay, in close consultation with the Children’s Commissioner, to ensure it complies with the UNCRC and especially is reflective of the principles of detention of a child being a last resort and best interests of child as a prime consideration. The Government of Jersey Police, as well as the Honorary Police, must undergo training on the UNCRC without delay. It must be ensured that only an authority which complies with the requirements of independence and impartiality encapsulated in Article 37 (d) of the UNCRC is entitled to order the detention of a child.

(b) Diversion. The research into the existing diversion mechanisms in Jersey and their compliance with the UNCRC in 2021 concluded that there is only one such mechanism, the Parish Hall Enquiries (PHEs)². This research concluded, however, that the system of PHEs falls short of the requirements of the UNCRC, including that this diversion option is only available at the very start of the process and, once the courts are seized of the matter, it is no longer possible to divert a child to the PHE system; appearance at the PHE creates a record, for life, accessible to those authorities entitled to enhanced disclosure; the children appear at PHEs without legal representation and authorities who discharge the

² Assessing the system of Parish Hall Enquiries in Jersey in the light of the United Nations Convention on the Rights of the Child (2021).

system of PHEs have no training in children's rights and the UNCRC. Notably, once again, the principle of the best interests of the child is not enshrined in the PHE process.

RECOMMENDATION: The Government of Jersey must review the system of Parish Hall Enquiries to bring it into line with the requirements of Articles 37 and 40 of the UNCRC. Other diversion measures, compatible with the UNCRC, should be introduced alongside the PHEs.

- (c) **Prison.** Jersey has no dedicated prison for child offenders. In fact, there is only one prison on the island, HMP La Moye. It should be noted that those under the age of 18 used to be held there, and during its last inspection in 2017, Her Majesty's Inspectorate for Prisons recorded the following: "We also remain concerned that, while it is rare, there was still a chance that children under the age of 18 could be imprisoned in HMP La Moye. Children should never be held in an adult prison. Even with the plans to renovate a section of the current women's unit to improve juvenile accommodation, any child arriving at HMP La Moye would be isolated, marginalised and deprived of the opportunity to thrive as they might in a dedicated children's site".³ Following this, the Young Offenders Institution/Unit at HMP La Moye was closed in 2018.

Despite this, and notwithstanding objections of the Children's Commissioner, a 15-year-old child was placed in HMP La Moye in April 2022 for repeated breach of a community disposal for affray (and not a violent crime) and remains there to date. The child in question was initially held in the Segregation Unit of the HMP La Moye, entirely on his own, with two prison staff, before being moved to the adult section of HMP La Moye and isolated from others.

RECOMMENDATION: The Government of Jersey must make alternative arrangements for holding children in custody in a child-friendly place of safety, in a manner consistent with and regime reflective of the requirements of the UNCRC especially in terms of children's right to education, family and peer contact. Crucially, it must be ensured that children are never be held in the facilities mixed with adults.

2. Deprivation of liberty in the care context

2.1 Secure accommodation orders

The *Children (Jersey) Law 2002* (the Children Law) provides for the possibility to place a child who is looked after by the Minister under a secure accommodation order in those cases when the child in question has a history of absconding and is likely to suffer significant harm if they abscond, or where a child is likely to harm themselves or others in any other form of accommodation. This process is regulated by the *Children (Secure Accommodation) (Jersey) Order 2005* (SAO Order 2005) which requires that such detention would, in general, be authorised by a court and that a court should only do so after taking into account the welfare of the child as a paramount consideration. However, the Children Law does not require best interests to be taken into account as a primary consideration where a child should be deprived of their liberty under the legislation.⁴ Moreover, when the court is considering an order under the Children Law for a child to be kept in secure accommodation, the court must inform the child of his/her right to apply for legal aid, and must not exercise its powers if the child does not have legal representation, unless the child has been informed of the right to apply for legal representation and has either refused or failed to apply for legal aid. However, it is noted that the Legal Aid Guidelines do not make express provision for the granting of legal aid in these

³ [Report on an announced inspection of La Moye Prison, Jersey by HM Chief Inspector of Prisons \(2017\)](#) at p. 5.

⁴ Hoffman, S. and Sellwood, S. [Legislative Gap Analysis Relating to States of Jersey](#) (2020); at para 295.

circumstances.⁵ Consequently, a child can be placed in a secure accommodation through this process entirely in the absence of legal representation, which is a violation of Article 37 (d) of the UNCRC.

Furthermore, the maximum period that a court can authorise a child to be kept in a secure accommodation is three months⁶, although the SAO Order 2005 also allows for the possibility for the court to authorise for a child to be kept for a further period of up to 6 months⁷ and review must take place, albeit no time frame for such a review is set out. Moreover, the SAO Order 2005 does not list any reasons which the court must be presented with for such an extension of secure accommodation order but merely states that that the court ‘may from time to time’ authorise such extension. This means that the maximum period a child can be in secure accommodation on the basis of secure accommodation order issued by the court is nine months. Strikingly, none of the SAO Order 2005 provisions in relation to the duration of time that a child can be kept in secure accommodation refer to the fundamental principle of child justice. Article 37 (b) of the UNCRC requires that children would only be detained as a measure of last resort and the CRC has required that alternatives to detention are always sought to ensure that deprivation of liberty really and truly is resorted to as a very last call.⁸ Equally, the CRC has required that in those instances when deprivation of liberty cannot be avoided, the duration of such detention is as short as possible.⁹

RECOMMENDATION: The Government of Jersey must urgently review the process for placing children under the secure accommodation orders, so as to bring these proceedings in line with the requirements of international human rights law and standards, and the UNCRC and Article 37 of the UNCRC in particular.

2.2 Greenfields Secure Care Unit

Currently, there is only one facility in Jersey which provides secure accommodation to children, the Greenfields Secure Care Unit, with three registered bedrooms. Noting that children can be remanded to secure accommodation, both in the context of care as well as in criminal justice context, Greenfields is a de facto multipurpose facility: aside from housing children for care reasons, it can also house children in the criminal justice context, both pre-trial and sentenced. Moreover, across the three categories, it can hold both boys and girls. While numbers are usually very small, there is nevertheless a real possibility of children across these distinct groups being held together despite the separation which is required by international law and the UNCRC or indeed of use of unregistered spaces for admitting children. Indeed, the 2020 inspection by the Jersey Care Commission also noted the varied use of Greenfields, even recording an ‘admission of one care receiver directly into the home’s visitor’s room, rather than into a room that is registered’.¹⁰

Moreover, especially over the past couple of years, the provision of care for children in Greenfields has been particularly poor. In 2022, Greenfields has been served with two Improvement Notices by the Jersey Care Commission, on 28 March and 28 September, respectively. These notices follow on from an earlier Improvement Notice which was served by the Jersey Care Commission on Greenfields

⁵ Hoffman, S. and Sellwood, S. Legislative Gap Analysis Relating to States of Jersey (2020); at para 168.

⁶ SAO Order 2005, Article 3 (1).

⁷ SAO Order 2005, Article 3 (2).

⁸ Committee on the Rights of the Child. General comment No. 24 (2019) on children’s rights in the child justice system. UN Doc CRC/C/GC/24, at para 85.

⁹ Committee on the Rights of the Child. General comment No. 24 (2019) on children’s rights in the child justice system. UN Doc CRC/C/GC/24, at para 11.

¹⁰ Jersey Care Commission “Inspection Report. Secure Children’s Home. Care Home Service.” 29 June 2020; at p. 8.

in November 2021.¹¹ Noting that in the past two years the Jersey Care Commission has issued only four Improvement Notices overall, it is very concerning that three of them, issued at six-month intervals, concern Greenfields which is mandated to ensure secure accommodation for children in Jersey.

Even more concerningly, the March 2022 Improvement Notice records that '[T]he Commission is not assured that proper provision is being made for care receivers of the Secure Children's Home and *that there are risks to their safety and wellbeing*' (emphasis added).¹² In other words, the Jersey Care Commission expressed concerns over the very safety and wellbeing of children held in Greenfields. The 29 April 2022 Jersey Care Commission report, following a further inspection of Greenfields, notes 'insufficient progress' with implementing any of the actions requested.¹³

To date, Greenfields continues to struggle significantly with the right number of staff, as well as the right professional diversity among the staff and the provision of education for children in Greenfields. Notably, at the time of the inspection carried out on 29 September 2022 by the Jersey Care Commission, there was only one child in Greenfields, and the Jersey Care Commission recorded that '[T]he education provision for one care receiver was not in place at the start of the new term in September 2022 and what was offered to the care receiver was *woefully inadequate to meet their needs*' (emphasis added)¹⁴ It is argued that this well-documented inability of the Government of Jersey to ensure the requisite standard of care in Greenfields leads to children being taken to residential care facilities in the UK nearly by default which, in the view of the Commissioner, must only be used in the most exceptional cases, when the required care for the child cannot be sourced on the island.

RECOMMENDATION: The Government of Jersey must immediately ensure the appropriate staff ratio in the Greenfields Secure Care Unit, as well as ensure that the staff have among them the requisite mix of professional qualifications to ensure care, protection and therapeutic recovery for children in secure accommodation. The provision of education appropriate for the age of children held in Greenfields must be ensured and that education must be of at least the same quality as provided to children in the community.

2.3 Placement of children in alternative care settings off-island

The Commissioner remains seriously concerned that children's rights are at risk when placed off-island, in alternative care, health or detention settings, in private or public social welfare bodies by providing any form of direct services for children, including care, foster care, health, education and the administration of detention facilities, without any requirement for those businesses to undertake **child's rights due diligence**.

¹¹ See: [Improvement Notices | Jersey Care Commission](#)

¹² Jersey Care Commission [Improvement Notice](#) 28 March 2022; at p. 1.

¹³ Jersey Care Commission "[Inspection Report \(update to report completed on 9 and 24 March 2022\)](#). [Secure Children's Home. Care Home Service](#)" 29 April 2022; at p. 3.

¹⁴ Jersey Care Commission [Improvement Notice](#) 28 September 2022, at p. 1.

The Government of Jersey has not yet established a regulatory framework for the business sector, including for public procurement to ensure that business activities in Jersey and overseas do not have an adverse impact on children's rights, in line with *UN General Comment 16*.¹⁵

The Commissioner has been alerted to children alleging that they had been coerced or restrained and removed from the jurisdiction against their will by representatives of the Government of Jersey.

The Government of Jersey has failed to establish sufficient, alternative children's facilities to provide care, protection and therapeutic interventions and support to meet children's needs and rights to an adequate standard of health and recovery from trauma.

Arguably, owing to the entirely inadequate provision of care in the Greenfields Secure Care Unit, as noted above, Jersey is increasingly resorting to the placement of children in private care settings in the mainland UK.

Case study: In November and December 2022, an 11-year-old child was subjected to 4 attempts over a 3-day period, to remove him to England, including after the Government of Jersey commissioned a private aeroplane to transport this child. Each time, the child refused, became distressed and absconded from the airport. The child and the parents were then informed that any future moves would be planned and only carried out if the child and parents consented to the placement off-island. The Director of Children's Social Care authorised the detention of the child in Greenfields for 72 hours before making an application to the Royal Court for a Secure Accommodation Order. The child was not afforded the opportunity to participate in the decision-making or planning processes. Without the knowledge or consent of the child's parents and without any prior notice to the independent professionals involved in the child's proceedings, including the Children's Commissioner, the Government of Jersey removed the child from the jurisdiction of Jersey, by force and transported him by sea, with the use of overnight boat and then onwards by road to a private residential children's house in England.

This is the third child that the Commissioner is aware of, in the past year, who has been removed from Jersey against their will and without their legitimate and informed consent, and at considerable expense to the public expenditure.

RECOMMENDATION: The Government of Jersey must urgently revise the protocols for removing a child from the care of their family to the UK for alternative care settings to ensure that such can only occur in exceptional circumstances, with the explicit and informed consent of the child and his/her parents or those with parental rights and responsibility. Any such removals must be a measure of last resort, fully respect the best interests of the child and occur only when all on-island options have been effectively exhausted. The Government of Jersey must notify the Children's Commissioner of its intention to place a child beyond the jurisdiction of Jersey.

The Government of Jersey must ensure that a child's rights approach underpins all processes and decisions and undertake a CRIA for each child where the proposal is to remove the child to a placement off-island. The views of the child must be sought and respected in the design and implementation of his/her care plan, and all such care plans must be periodically reviewed to ensure that the required care cannot be provided on-island, with the view of returning the child to Jersey at the very earliest

¹⁵ General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights

possibility. The current financial resources focused on sending children off-island must be refocused to ensure that the appropriate facility for protection, therapeutic intervention and care is available in Jersey.

Conclusion

This supplementary submission has not been made as a knee-jerk reaction to some of the alarming, recent events to which it makes reference. Instead, it is based on evidence that spans a number of years and which, at this point, must surely be viewed as the Government of Jersey's long-term, systemic failure to consider the principle of best interests of the child, especially in cases where children are being deprived of their liberty, be it in the context of alternative care, or criminal justice.

As was outlined in the Report of July 2022¹⁶, the Commissioner welcomed the passing of the Children (Convention Rights) (Jersey) Law ('the convention Law) this year, and the Government of Jersey's acceptance of the findings of the Legislative Gap Analysis (LGA)¹⁷ which has provided a route map towards compliance and harmonisation of Jersey law with the UNCRC and has resulted in the Government reorganising its priorities for policy development.

However, it remains of concern to the Commissioner that Jersey has not opted for the full incorporation of the UNCRC in its domestic legislation. As highlighted above, significant shortcomings in the existing, legislative framework of Jersey mean that children in conflict with the law, and those in need of alternative care and protection are most at risk of their rights being violated.

Moreover, the numerous public statements made by the authorities giving assurances that the legislation to ensure 'due regard' to the provisions of the UNCRC, have yet to result in concrete legislative measures, as the Government of Jersey has not provided a clear timeline of the proposition and adoption of the requisite legislation. It is the firm belief of the Commissioner that the very serious violations of the UNCRC, disclosed in the present supplementary submission, would have been at least mitigated if the obligation to undertake a child rights impact assessment and the duty to have due regard to the UNCRC had been in force in Jersey.

The Committee on the Rights of the Child is therefore respectfully invited to urge the Government of Jersey to:

- **revise its current legislative framework and make the necessary amendments, in the light of the findings of the Legislative Gap Analysis, to ensure compatibility with the requirements of the UNCRC;**
- **expedite the bringing of the Convention Law into force and ensure that the Children's Scheme of training, guidance, CRIA and participation will be implemented without further delay;**
- **fully and directly incorporate the provisions of the UNCRC, into domestic Jersey law, setting out a clear timeline for the adoption of the requisite legislation.,**

¹⁶ p5

¹⁷ Legislative Gap Analysis Report. Hoffman, S. and Sellwood, S. Legislative Gap Analysis Relating to States of Jersey (2020). Available at <https://www.childcomjersey.org.je/media/1389/legislative-gap-analysis-oct-2020.pdf>

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