

STATES OF JERSEY



COMMITTEE OF INQUIRY: HISTORICAL CHILD ABUSE (P.118/2012) – AMENDMENT (P.118/2012 Amd.) – AMENDMENT

Lodged au Greffe on 12th February 2013
by Deputy M. Tadier of St. Brelade

STATES GREFFE

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After the words “(as set out in Appendix 1 to the Report on the amendment of the Council of Ministers dated 5th February 2013)” insert the words –

“except that in the Terms of Reference –

- (a) in paragraph 2, after the words “run by the States” insert the words “and in other non-States run establishments providing for children, where abuse was reported”;
- (b) in paragraph 3, after the words “run by the States” insert the words “or by third parties”;
- (c) in paragraph 4, after the words “run by the States” insert the words “or by third parties”;
- (d) in paragraph 6, for the words “independent investigations and reports” substitute the words “the range of investigations and reviews that have been taken over the last 20 to 30 years, in particular those”;
- (e) in paragraph 13 for the words from “and the process by which the prosecution authorities decided” through to “interference at any level” substitute the words –

“and establish –

- whether those responsible for deciding on which cases to prosecute took a consistent, professional and impartial approach;
- whether the process was free from political or other interference at any level.”;

- (f) in paragraph 13, delete the last section from the words “If, for these purposes” through to “in question in all the circumstances”;
- (g) in paragraph 14, after the words “residential and foster care services in Jersey” insert the words “and for third party providers of services for children and young people in the Island”;
- (h) in paragraph 15, after the word “children” in both places where it appears insert the words “and young people” and after the words “run by the States” insert the words “or by third parties”.

DEPUTY M. TADIER OF ST. BRELADE

REPORT

It should be noted that whilst these amendments have been lodged in my name, they are the product of much collaboration and hard work with other *stakeholders*, including former and current States members, Care Leavers and other interested parties who have been fighting for justice and fairness for those who suffered abuse as children whilst in care, and I would like to thank them for their support.

Whilst the fight (and it has been a fight) for a meaningful Committee of Inquiry, indeed any Inquiry at all, has been a long one, we are now pleased to be at this point to be finalising the Terms of Reference which will shape the Inquiry in such a way that we hope will be acceptable to all concerned.

We are pleased that, following our letter to the Chief Minister of 5th December 2012, many of the amendments suggested therein have been adopted and lodged by the Council of Ministers in their amendment (P.118/2012 Amd.) lodged on 5th February 2013.

There are, however, some key areas of the Terms of Reference which we still think need to be amended in order for the Inquiry to have full credibility in the eyes of those who were abused themselves in care and their close associates.

An explanation of the rationale behind the amendments can be found below. We hope that they will find acceptability with the Assembly and perhaps even the Council of Ministers, as they have done, generally, with *Verita*.

Amendment (a)

It is clearly correct that a Committee of Inquiry set up by the Government should look, in the first instance, at abuse and alleged abuse that took place in government-run establishments, however it is also the responsibility of any government to have a duty of care for all its citizens, particularly *minors* and *the vulnerable* in our society.

As recent revelations in the U.K. have shown, child abuse is not limited geographically, and abusers do not discriminate between institutions – whether government-run, grant-maintained or voluntary.

Of course, we are **not** asking that all clubs, voluntary organisations, etc. should be *automatically* looked at. This would be both unnecessary and a very difficult task. We have therefore amended our original wording of ‘*any other establishment whether run by the States or voluntary*’ to read – ‘*and in other non-States run establishments providing for children, where abuse was reported.*’

This seems entirely sensible, as we would envisage that any Committee of Inquiry worth its salt would want to look into abuse *holistically* as abusers and the abused would not be limited to States-run institutions. This amendment gives them the Committee the scope to look at these amendments.

It should be noted that these may also included organisations which were not States-run, but which may have received funding or support from the States in one form or another.

Whilst times have changed, and screening and knowledge will have, of course, changed, we believe it is important, at least, to establish the facts of abuse that may have taken place concurrently with abuse in States of Jersey care homes.

We also commend to you *Verita's* comment (on page 18 of the Council's Amendment report) when they say:

'We suggest these amendments are accepted as they are in keeping with the purpose of the CoI'.

* Note: Amendments (b), (c), (g) and (h) – all follow on from this rationale, that there should be scope for the Committee to look at third parties where appropriate.

Amendment (b)

*See note above.

Amendment (c)

*See note to amendment (a).

Amendment (d)

Again, with this amendment, we invite you to consider the words of *Verita* who say 'Our View is that the panel would, regardless, be likely to ask for and consider all relevant reviews in the course of the inquiry.' The addition of the dates will simply ensure that they do so.

A key point about historic child abuse in Jersey and elsewhere is its *systemic* nature – and the fact that it had been going on for years. Part of the evidence needed to examine this will necessarily involve the various external (and internal) reports into abuse and child care in general.

Amendment (e)

We view this amendment as largely 'tidying up' wording and reaffirming the original emphasis of the Term of Reference as originally adopted by the States on 1st March 2011, when the States voted by 27 votes to 21 to agree the inclusion of the following amendment:

'Was a consistent and impartial approach taken when deciding on which cases to prosecute; and was the process free from political influence or interference at any level?'

The wording of the Council of Ministers does go some way to addressing the spirit of the above amendment, in that it does seek to '*Establish the process by which the prosecution authorities decided whether a prosecution should be brought*' and to '*Establish whether that process was free from any **political** interference at any level.*'

What we are seeking to do with this proposed change is simply to reinstate the **original** and agreed wording to read '*establish whether those responsible for deciding on which cases to prosecute took a consistent, professional and impartial approach*'.

We do not see a problem with the word ‘consistent’, as we are simply asking if the same basic principles of justice and fairness were applied to all cases.

The complicated wording as lodged by the Council of Ministers bizarrely, changes the emphasis to something that was never intended.

By saying ‘*Establish whether or not that process enabled those responsible for [deciding whether a prosecution should be brought] to take a professional and impartial approach,*’ they are avoiding the original question or whether they *actually did* take an impartial and professional (and in my words, consistent approach).

We have also suggested that the original wording or ‘other interference’ – *i.e.* not just political interference – be maintained.

We note, again, that Verita endorse this wording, saying that ‘*The amended limb places more emphasis on the actions of the individuals as distinct from matters to do with process. The wording is consistent with our terms of reference and we suggest that it is accepted.*’.

Amendment (f)

We currently question the need for this paragraph and have suggested its removal. We are not certain as to what will be envisaged by the interactions between the Committee and the independent lawyers, or indeed how it easy it will be to secure lawyers who are both independent and fully conversant with relevant Jersey law. Of course, we would expect any lawyers to be aware of material consideration when taking on such a review.

However, we are concerned to make sure that any individual who has concerns about a particular prosecution or lack thereof, should be able to approach the Committee to have their concerns heard.

There is no reason why this area should not be immune from scrutiny if deemed necessary by the Chairman and the Committee where they deem it appropriate. We recognise this scrutiny would be need to done in a way that did not breach confidentiality, and done by independents.

We also note the comments of Verita which suggest that I meet with H.M. Attorney General to discuss this part of the amendment. I would be most happy to do so, with other stakeholders, but I have yet to be invited to do so.

Amendment (g)

*See Note to amendment (a) above.

Amendment (h)

*See Note to amendment (a) above.

Financial and manpower implications

We note the words of the Council of Ministers that this Inquiry will be complex and will need administrative support as outlined in the Verita report. They have estimated the costs of the Inquiry at some £2.04 million; however, they also acknowledge that the estimate does not include the legal fees, which will likely be significant. These are estimated very tentatively at £6 million.

Similarly, for these amendments to amendments, it is difficult to put an exact cost implication, given that for the most part, they are either permissive or simply formalise in writing areas that the Committee may have wanted to look at anyway.

In paragraph (a) we would envisage potential extra work for the Committee, depending on the extent of abuse that was reported in non-States institutions. However, we feel this potential cost is justified. The same applies for the consequential amendments in paragraphs (b), (c), (g) and (h).

We do not envisage increased cost for the adoption of paragraph (d), as we note *Verita*'s comments that 'the panel [committee] would, regardless, be likely to ask for and consider *all* relevant reviews in the course of the inquiry.

Paragraphs (e) and (f): we do not envisage a significant increase in cost or manpower here, given that this is largely to do with clarification of semantics. If there are cases that need to be looked at, which would not be permitted by the Council of Ministers' wording, then we acknowledge that potential addition legal and other fees would be involved, however, this would simply be giving action to the decision of the States agreed in March 2011.

We do not believe these amendments will significantly increase costs beyond those set out in the Council of Ministers' original proposition. We do, however, feel that without these further amendments, the Committee of Inquiry would be undermined and as such, would not represent value for money.