



29th April 2019

Dear States Members,

I write to you in respect to the proposed amendment to the Care of Children in Jersey Review Panel's [amendment](#) of the Draft Commissioner for Children and Young People (Jersey) Law 201- that has been lodged by the Minister for Children and Housing.

The information below would normally be presented as a Comments Paper, however, in light of the Review Panel being required to present in the name of the Chairmen's Committee and the proximity of the debate, it was deemed more appropriate to circulate this information via letter.

As Members will be aware, the Review Panel brought forward its amendment as a result of concerns about the current drafting of Article 8 of the draft Law. The Review Panel conducted a wide ranging and thorough review of the article and received significant submissions which highlighted deficiencies with the lodged article. The Review Panel consulted with both the Attorney General and Children's Commissioner during this process, however, upon consideration of the evidence received agreed to proceed with its amendment as lodged. This was in order to reflect the intended policy position for the draft Law and that of the Law supporting the Children's Commissioner for England.

I feel it is important to address two specific points in relation to the Minister's amendment to the Review Panel amendment in order for Members to understand the current position.

Since the amendment was lodged the Review Panel has had regular communication with the Chief Minister, Minister for Children and Housing and Children's Commissioner about a proposed amendment to its amendment. The concern about the Panel's amendment not being ECHR compatible in respect of legal professional privilege has been discussed at length. The intention of the Review Panel's amendment was to mirror the legislation of the Children's Commissioner for England whereby the only caveat is that information could only be disclosed where it was lawfully able to be disclosed (i.e. under the existence of an enactment). The Children's Commissioner for England is only able to request information from public authorities which is limited to Government and local authorities. Under the draft Law, the Children's Commissioner would be able to request information from an incredibly wide range of organisations and private individuals. There would therefore be a possibility for the Commissioner (under the draft Law) to have access to legally privileged information between a private citizen and their legal representative. This was not the intention of the amendment which was only intended to extend to public authorities (as defined in Article 1 of the draft Law). With this in mind, the Review Panel understands the incompatibility of its amendment with the ECHR and therefore supports the proposed amendment from the Minister.

In respect of the issue of Law Officer's advice privilege the Review Panel has also discussed this at length with the various parties. As a result of constructive discussions between the Chief Minister, Minister for Children and Housing, Children's Commissioner and the Attorney General a satisfactory compromise has been reached within the draft Law in relation to how information relating to Law Officer's advice privilege will be disclosed to the Commissioner. This will be managed through a protocol which has been signed up to by all four parties and will be published imminently as an addendum to the amendment to the Review Panel's amendment. The Review Panel has discussed this protocol with the Children's Commissioner who is satisfied that it will give her the necessary scope in order to carry out her role effectively. It is understood that this arrangement will be reviewed after 6 months and a full review will be conducted after 12 months. Given this commitment and the powers within the draft Law for

the Commissioner to instigate and carry out investigations, the Review Panel will support the proposed amendment to its amendment. The Review Panel will, however, continue to monitor this arrangement and bring forward changes if required in the future.

The Children's Commissioner has written to the Review Panel to express her support of the proposed amendment to our amendment. Her letter is appended for Member's information and shall be reading it out during my speech when the debate continues in second reading tomorrow.

In conclusion, the Review Panel is content that the powers available to the Children's Commissioner throughout the draft Law and the amendments that have been made to Article 8 since it was lodged create a suitable framework for the Commissioner to carry out the role effectively. I would therefore urge Members to support the amendment to the Review Panel's amendment.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Ward', with a long horizontal stroke extending to the right.

Deputy Rob Ward
Chairman
Care of Children in Jersey Review Panel



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

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To all States Assembly Members

29th April 2019

Dear States Assembly Members

I am writing to you all to share my views on the Draft Commissioner for Children and Young People (Jersey) Law 201 – including, Article 8 'Provision of Information to Commissioner'. I would like to clarify my position and to confirm whether the current draft of Article 8 will allow the Children's Commissioner to effectively carry out the duties as set out within Article 4 'Primary Function of the Commissioner' and Article 5 'General Functions of the Commissioner.'

I feel it is important that we do not lose sight of why there has been a Children's Commissioner appointed, and the context in which the Law has been drafted. Therefore, I want to remind you of the findings of the Independent Jersey Care Inquiry (IJCI).

In spring 2017 members of the Children and Vulnerable Adults Ministerial Group (subsequently the Community Policy Group) considered the potential establishment, role and remit of a Children's Commissioner for Jersey. Ministers endorsed the recommended establishment of a full-time post of Children's Commissioner, subject to that role being aligned with any relevant findings made by the IJCI.

In July 2017, the IJCI published its report and made eight recommendations. The first recommendation was to appoint a Children's Commissioner. As the Children's Commissioner recruited specifically in shadow form to provide expert advice on the drafting on the Law, I welcome the opportunity that I have had to work with Government Policy Officers and the Law Officers Department to construct this draft Law.

Frances Oldham QC's opening paragraph in the Executive Summary is a reminder of why a Children's Commissioner has been appointed to ensure independent oversight of the interests of children and young people in Jersey...

"Our remit has been to establish what went wrong in Jersey's child care system over decades. That there were failings is not in dispute. Those failings impacted on children already at a disadvantage, whether through family circumstances, a crime committed against the child or even a crime committed by the child. For many children who were removed from home situations deemed harmful or unsatisfactory, the States of Jersey proved to be an ineffectual and neglectful substitute parent."

Indeed, the Panel concluded "...we believe that, as late as the end of the Inquiry's hearings, aspects of Jersey's services for children remained not fully fit for purpose. In the light of all the evidence that it has heard, the Panel considers that children may still be at risk in Jersey and that

children in the care system are not always receiving the kind or quality of care and support that they need.”

The IJCI exposed how, for decades, Jersey failed the children and young people who were in the care of the Government or otherwise needed support. The Inquiry showed that this was a systemic failure of public services, Government and society. The Inquiry set out 10 systemic failures and made it clear that these needed to be addressed as the underlying causes of service failings, not just in children’s services, but across the States as a whole so that the Government start to put children and young people at the heart of decision making.

One of ten systemic failures was to establish a culture of openness and transparency. *‘Openness and transparency must characterise the culture of public services.’¹ ‘... the perception of cover-up stemmed from outdated attitudes of defensiveness, poor communication and an absence of a culture that valued and promoted public accountability.’² ‘This will be achieved only by a cultural shift throughout the States of Jersey and its services to promote greater transparency in decision making and greater openness in communication.’³*

I would like to thank those who have worked tirelessly to draft the Law and I particularly wish to thank the Children in Care Review Panel. Scrutiny have played a positive, productive part in the decision-making process and this has been a vital and effective role which has enabled productive discussions and provision of expert evidence on Article 8.

The Draft Law and Amendment in relation to Article 8, together with the signed Protocol, will allow the Children’s Commissioner to effectively carry out the duties as set out within Article 4 ‘Primary Function of the Commissioner’ and Article 5 ‘General Functions of the Commissioner.’ The Protocol provides clarity to the application of Article 8 giving paramountcy to the rights of children and young people. The provisions for review of the Protocol enable the Commissioner to immediately raise concerns should the agreed process for the release of information obstruct the Commissioner in carrying out functions and duties under the Law.

In order to achieve greater transparency in decision making and greater openness in communication, and in order to tackle the perception of cover-up, the Law must provide the Children’s Commissioner with enough powers to enable them to hold the Government of Jersey and other relevant authorities, to account to their human rights obligations. The draft Law and amendment that you are debating today does provide the Commissioner with the ability to fulfil that role and to protect children’s human rights – fulfilling the purpose that the IJCI sought to achieve.

The draft Law brings forward strong legislation to provide the Children’s Commissioner with a broad and balanced range of powers to support the primary and general functions to promote and protect children’s rights. This is a tangible representation of this Government’s ambition to put children first. This Law as drafted provides the Commissioner with a significant presence and a comprehensive range of functions and powers to make significant progress in promoting and protecting children’s rights.

The primary objective of the Law was to bring forward legislation establishing a Children’s Commissioner for Jersey, demonstrating that Jersey has not only responded to IJCI recommendations, reflected international best practice and lessons learned from other jurisdictions, but has also established an independent Children’s Commissioner who can act as a champion for the rights of children and young people in Jersey. This legislative framework builds a long-lasting legacy for Jersey and will provide a clear mandate for the Children’s Commissioner to promote and protect our children’s rights.

¹ 12.88

² 12.89

³ 12.89

Yours sincerely

A handwritten signature in black ink, appearing to read "D McMillan". The signature is written in a cursive, flowing style.

Deborah McMillan
Children's Commissioner for Jersey