

**WRITTEN QUESTION TO THE MINISTER FOR HOME AFFAIRS
BY DEPUTY M. TADIER OF ST. BRELADE
ANSWER TO BE TABLED ON TUESDAY 21st FEBRUARY 2012**

Question

Will the Minister state which of the recommendations of the Howard League for Penal Reform Report have been implemented and which ones have not and where they have not, will he explain why?

Answer

The Howard League for Penal Reform requested a progress report from the former Chief Minister in December 2010 on the implementation of the recommendations contained in their report. A comprehensive reply was given and a copy is attached to the answer. More recently, the Children's Policy Group prepared an Improvement Plan in response to the Care Inspectorate's report entitled 'States of Jersey – Inspection of services for looked after children' published in January 2012. Their first recommendation was to identify, revisit and review all previous reports that are relevant to services for children. Section D, also attached, covers the recommendations outstanding from the Howard League Report.

If any further information is required, the response would also need to be co-ordinated through the Children's Policy Group as the subject matter is the responsibility of more than one Minister. However, a reasonable amount of time would be needed for the agencies concerned to provide a co-ordinated update.

The Howard League for Penal Reform Youth Justice Review recommendations and the response to them as at December 2010.

1. Jersey should immediately ratify the United Nations Convention on the Rights of the Child (UNCRC).

The States of Jersey have resolved to request the United Kingdom to extend their ratification of the United Nations Convention on the Rights of the Child (UNCRC) to Jersey and this commitment forms part of the Strategic Plan of the States of Jersey 2009 – 2014. (Priority 9)

The States of Jersey takes ratifying international conventions very seriously and wishes to ensure that its legislation is UNCRC compliant prior to becoming a “signatory”. The United Kingdom will only extend its ratification if it is satisfied that Jersey fulfils the relevant requirements.

This work is being led by the Director of International Relations. A number of legislative changes have been identified and work is progressing in a number of departments on resolving them. A recent review into Youth Justice (attached) led by the Chief Probation Officer has recommended that the States of Jersey pursues ratification of the Convention immediately as sufficient progress has been made to demonstrate a firm intention to become compliant, or alternatively for the States of Jersey to incorporate the Convention into domestic legislation. The Children’s Policy Group of Ministers is considering this recommendation and the other recommendations from the 2010 Youth Justice review at its meeting in January 2011.

Progress with regards to the other recommendations is as follows:

2. A lead minister for children’s services should be appointed.

Whilst the formal post of ‘Minister for Children’ has not been established, the responsibility for services for vulnerable children, young people and their families forms part of the portfolio carried by the Minister for Health and Social Services, who has formally delegated this function to an Assistant Minister for Health and Social Services. The Ministers for Home Affairs, Health and Social Services and Education Sport and Culture form the Children’s Policy Group chaired by the Minister for Health and Social Services to ensure that all matters concerning children are dealt with in a coordinated and timely fashion.

3. Jersey should develop a child-specific criminal justice policy and 4.

The ‘welfare principle’ should be enshrined in all law and policy that effects children and in particular criminal justice law

The Children’s Policy Group have incorporated the “Welfare Principle” into their statement of purpose.

The Children’s Policy Group commissioned a review of Youth Justice in March 2010, received the report in August 2010 and will be considering the recommendations following feedback from key stakeholders in January 2011. The Review recommends inserting provisions into the Criminal Justice (Young Offenders) (Jersey) Law 1994 which recognise that the welfare of the child should be a primary consideration when children come into conflict with the criminal law and that compulsory measures should only be used when voluntary means have failed and are unlikely to be successful in the present case.

4. Jersey should raise the age of criminal responsibility to 14

The age of criminal responsibility remains at 10 years as is the case in England and Wales. The Home Affairs Minister was not in favour of raising the age of Criminal responsibility as recommended in the Howard League Report.

The Youth Justice Review of this year recommends an increase to 12 years as is happening in Guernsey and Scotland. The review also recommends that pending a change in legislation that the Attorney General could issue a guideline which would result in the prosecution of children under the age of 12 in exceptional circumstances only. This appears to reflect current practice; records show that in a 30 month period prior to the writing of the Review only 3 children under 12 years of age were prosecuted.

5. Jersey should raise the minimum age for a Youth Detention Order to 16 years

This recommendation was not accepted by the Minister for Home Affairs, although there is agreement that custody should be used as a last resort for children. The Minister does accept that children of school age should not normally be detained in the Young Offenders Institution. The Children's Policy Group are supportive of school age children normally serving custodial sentences at Greenfields Secure Unit. This is also the recommendation of the Youth Justice Review and the necessary arrangements are being progressed by a multi agency senior officer group.

The 2010 Youth Justice Review recommends amending the 1994 Young Offenders Law to strengthen the restrictions on imposing custodial sentences on children to comply with the requirements of the UNCRC.

7. Remand procedures should be clarified in law and in particular the presumption of bail should be established

It is agreed that there is no statute governing bail in Jersey. However it is not agreed that there is no presumption of bail. Jersey is a signatory to the European Convention of Human Rights and the principles which guide bail decisions are observed by the Court (Article 5 – Right to Liberty and Article 6 – Right to a fair trial), particularly the risk of re-offending and, in the case of young offenders, the need to consider best interest and the need for protection.

In the UK, the welfare principle applies to the remand decision, and the court 'shall in proper cases take steps for removing the youth from 'undesirable surroundings' (s.44 CYPA 1933).

There is an additional limb to the protection exception to bail in respect of children, which applies only to children:

'The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or if he is a child or young person, *for his own welfare*' (BA 1976 Schedule 1, Part 1, para 3 and Part 2, para 3).

The exception to bail refers to imprisonable and non-imprisonable offences. This makes it clear that it is welfare rather than the seriousness of the offence which may prompt the court to ensure a 'safe' bail status for the child.

The Youth Justice Review has recommended the introduction of a statutory right to bail and has also recommended some practice changes which should reduce the use of custodial remand, including the appointment of a specialist bail support worker.

8. The good prevention services that Jersey has established, should be sustained and strengthened, and in particular financing should be put on a firm and reliable footing

Jersey operates a mixed economy of preventive services. State, charitable and voluntary organisations co-exist to provide support to vulnerable children and their families.

The Bridge is a particular example of a successful partnership project. The state recognises its role in creating the circumstances necessary for these projects to flourish and is committed to effective partnership working.

9. Similarly the excellent youth service provision should be sustained and strengthened

The Youth Service is recognised as excellent in its field and the various projects and regular activities contribute to a safer society. There is much scope for the role of informal education to further contribute to the rehabilitation of children who offend. The Youth Service continues to develop initiatives targeted at children at risk of offending

10. The parish hall enquiry system should be sustained and strengthened.

The Miles and Raynor report in 2005 examined the Parish Hall Enquiry in considerable detail and noted its ability to provide a “local, timely, inclusive, sensitive, needs-based, independent forum to deal with a wide range of norm-violating behaviour and social disorder”. The Criminal Justice Policy published in 2007 further endorsed the role of the Parish Hall Enquiry System as a mechanism for dealing successfully and appropriately with a wide range of offending.

In particular attention should be paid to:

Putting in place measures to ensure that it is only bypassed for clearly defined reasons:

It was agreed by the Home Affairs Minister that the Parish Hall Enquiry was bypassed for reasons that were not always clearly defined. The Probation and After Care Service has been monitoring the situation and following discussions with the States of Jersey Police, Centeniers and the Youth Court Panel it is recommended in the 2010 Youth Justice Review that Centeniers should only be called in to Police Headquarters when the States of Jersey Police are intending to hold a child in custody prior to appearing in the youth Court and that in other cases, the child should be warned for a Parish Hall Enquiry.

Strengthening its access to and use of restorative justice processes:

The principles of restoration, rehabilitation and reparation are fundamental tenets of the parish hall enquiry and the honorary service upon which it depends. All youth offenders attending a parish hall enquiry are screened by the Restorative Justice Officer who offers reparative and restorative opportunities of victims and offenders. Local research shows very high levels of satisfaction with the process. There is already a blanket approach to restorative justice for children and young people appearing at Parish Hall Enquiry, receiving a community supervision

order and those in custody. The restorative justice officer screens all cases where there is victim involvement and attends to talk to individual children and young people and their families / legal guardians about restorative opportunities.

Building in safeguards against inconsistent practice

Detailed research over a five year period by Miles and Raynor revealed very low levels of inconsistent practice. It is possible that this comment from the Howard League is anecdotal in nature. The Miles and Raynor research revealed very high levels of compliance with the guidelines and codes of practice prescribed by the Attorney General.

Building in safeguards to constrain the actions of Centeniers seems to have more to do with issues of accountability and managerial control than any public concern for consistency of practice. During the five year period of the Miles and Raynor research, very few complaints about the practice of Centeniers at Parish Hall Enquiry were noted by the Attorney General.

Attendees have the right to disagree and request hearing by a formal Court. Even after the Enquiry, decisions can be referred to the Attorney-General by the attendee. In practice, this seems to be a rare occurrence. Decisions made by the Centenier (with the exception of laying a charge) are made on a consensual basis. In the United Kingdom, prosecutors are required to take into account 'any lines of defence'. Centeniers are not bound by this in their decision-making.

Importantly, attempts to achieve procedural uniformity and consistency run the risk of undermining the flexibility and responsiveness to the circumstances of the individual case which appear to be essential components in the system's current effectiveness.

Developing mandatory training for Centeniers

As volunteers, it is difficult to compel Centeniers to attend mandatory training. However, training is available and usually well attended. In 2001 a retired States' Police Inspector was appointed as Honorary Police Training Co-ordinator to deliver a minimum of twenty-six weeks training per annum to Honorary Officers. This post was funded by the Home Affairs Committee until the end of 2004 whereupon the cost reverted to the rate payers.

One of the benefits of the Parish Hall Enquiry is the flexible approach of the Centeniers. Whilst it is accepted that training is vital to avoid breaches of law and instil best practice, observational research suggests that over-formalisation of the informal process can result in less favourable outcomes.

11. An independent prosecution service should be established

Whilst all police officers in Jersey have powers of arrest, they do not have the power to charge a person with an offence. These powers are expressly reserved for the Connétable and the Centenier.

The Parish Hall Enquiry is not a judicial body. It is primarily a prosecution process and provides the mechanism by which Centeniers can decide whether the evidential and public interest tests have been satisfied such that a charge should be brought.

The principle of independence suggests that the reviewer of a case should be independent of the investigating officer. This operates well in Jersey where all cases are independently reviewed by the Centenier. It was recommended and implemented as a result of the first Clothier report that Centeniers should cease the practice of both conducting a Parish Hall Enquiry where they have previously investigated the incident. Observational evidence suggests that great strides are made to avoid a conflict of interest in this area. In extreme circumstances, a Centenier from a neighbouring parish may be asked to deal with a particular case in order to ensure impartiality. There are a number of mechanisms inherent in the system that affords an intrinsic level of accountability.

Much debate has taken place about the role of the Centenier as prosecutor. The Criminal Justice Policy makes the following Policy Statement in regard to the establishment of an independent prosecution service:

Having taken advice at an early stage in the policy setting process, the Home Affairs Minister will not pursue the Rutherford recommendations that a Public Prosecution Service be created. This could not be justified on cost grounds and would result in Centeniers losing their traditional role of presenting cases in the Magistrates Court (2007:73)

There are no further plans to either revisit the role of the Centenier or establish an independent service.

12. The Youth Court should be reformed to make it less formal and more relevant for children. The Jersey authorities should consider abolishing the Youth Court and replacing it with a system based on the Scottish Children's Hearings, for children up to the age of 16 or even 18 years, where addressing the needs not the deeds is the paramount concern.

This recommendation cannot be considered in isolation and relates to the enshrinement of the welfare principle and raising of the age of criminal responsibility.

The introduction of a similar style of Hearing in Jersey would risk placing a further layer of hybridisation into the system. There would be additional expense in the establishment of a professional, state funded institution.

Importantly, there is potential to undermine the Parish Hall Enquiry and the honorary system upon which it depends. It is important that attempts to modernise and formalise the system do not undermine the traditional arrangements which are already more effective and efficient than some formal processes.

The 2010 Youth Justice Review, notes that practice in the Youth Court has changed considerably in the last two years. For example the Panel members now sit on the same level as the children who have their parents or guardians alongside them. The Court has adopted a more problem solving approach and speaks directly with children rather than through their advocates, wherever possible and appropriate. The review commends this approach and recommends joint training for Jersey Youth Panel members with their Children Hearing Panel counterparts in Guernsey.

13. Preventive services offered by the YAT should be available to children assessed as at risk of crime, and other difficulties, as well as those who have started to offend. They should be offered from a non criminal justice organisational base.

The Youth Action Team (YAT) was established following the Bull report in 2002. The proposal was for a multi-disciplinary team to offer early intervention services to young people at risk of offending rather than working with children and young people already in the criminal justice system whose needs are best met by the specialist interventions of the Probation and After Care Service in both a statutory and voluntary capacity. It is accepted that YAT had moved into areas it was not best equipped to work within. YAT has now ceased direct Court and Parish Hall work, and further change is recommended in the 2010 Youth Justice Review, with the transfer of their bail support function to the Probation and After Care Service. YAT is being re organised as a support service for children at risk of crime and as a resource for other agencies to use as part of child care plans.

14. The Probation Service should, in partnership with Social Services, develop more intensive alternatives to custody, including intensive supervision and specialist fostering.

The Howard League did not review the work of the Probation Service in any detail. The work of the Service includes many of the positive features of intensive supervision orders without the associated negative features which can result in a greater use of custody. Fewer children are sentenced to custody in Jersey than in England and Wales; the high custody figure is a result of remand rather than sentencing practice. The 2010 Youth Justice review recommends more age appropriate supervision practice including the increased use of family problem solving which shows encouraging results particularly with younger children. A file reading exercise for the review found that those few children who gave the most cause for concern had problems which were not likely to be resolved by the Criminal Justice System and the Review recommends the formation of a formal multi agency protocol to ensure that these children and their families receive the services they need without any additional labelling as offenders.

There has been considerable investment in fostering services in recent years and work continues on the development of specialist services capable of meeting the needs of young people in the criminal justice system.

The 2010 Youth Justice Review also recommends that Bail Support responsibilities be transferred to the probation service, as the existing service has been inconsistent and not met the requirements of the Court.

15. The use of restorative justice interventions should be broadened to include use in schools, and work with looked after children and children in custody.

In Jersey 'restorative justice' is by no means a new concept. Centeniers, through the Parish Hall Enquiry system have for centuries been demonstrating processes and practices that have more recently been defined as 'restorative justice' in modern societies.

A part-time restorative justice officer is funded by Home Affairs under the aegis of the Building a Safer Society Strategy. The post is managed by the Jersey Probation and After Care Service under the supervision of the Assistant Chief Probation Officer. There is already a blanket approach to restorative justice for children and young people appearing at Parish Hall Enquiry, receiving a community supervision order and those in custody. The restorative justice officer screens all

cases where there is victim involvement and attends to talk to individual children and young people and their families /legal guardians about restorative opportunities.

The 2010 Youth Justice Review also recommends that training in restorative justice is extended to other agencies who could benefit from using it.

16. The use of custody for children should be eliminated or virtually eliminated in Jersey. This can be achieved by :

- a) Raising the age of criminal responsibility**
- b) Raising the age at which custody is available**
- c) Introducing a presumption of the right to bail**
- d) Strengthening the custody threshold in law to ensure that custody is only used as a genuine last resort**
- e) Senior politicians should lead public opinion in the argument against children's custody**
- f) The development of effective alternatives to custody, in particular intensive supervision and specialist fostering**

The sub headings a,b,c and f are a repetition of previous recommendations which have been addressed elsewhere. With regard to d) and e) :

d) Strengthening the custody threshold to ensure that custody is only used as a genuine last resort

The Criminal Justice (Young Offenders) (Jersey) Law 1994 offers some safeguards. Article 4(2) states:

A court shall not pass a sentence of youth detention unless it considers that no other method of dealing with the person is appropriate because it appears to the court that –

- (a) the person has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them;
- (b) only a custodial sentence would be adequate to protect the public from serious harm from the person; or
- (c) the offence or the totality of the offending is so serious that a non custodial sentence cannot be justified,

There is no evidence in Jersey that children are being sentenced to custody for minor matters. The latest reconviction study by the Probation Service demonstrates that every sentence made to the Young Offenders Institution between July 2002 and December 2005 involved serious offences committed by young offenders who were assessed as being at high or very high, risk of reconviction. However, the 2010 Youth Justice Review recommends that Article 4(2) is strengthened in order to comply with International Conventions.

The law also requires the court to justify reasons for a custodial sentence:

The court shall state in open court its reasons for imposing a sentence of youth detention.

e) Senior politicians should lead public opinion in the argument against children's custody

The Children's Policy Group of Ministers have demonstrated their commitment to understanding and promoting the best interests of children who offend by commissioning the review into Youth Justice and incorporating it into the draft Children Framework a document for all the Island's children which is currently out for consultation. Ministers have opposed the "naming and shaming" of children who offend, put forward by non ministerial members.

17. The holding of children at La Moye should cease

It is accepted by the Children's Policy Group that the holding of nearly all school age children at the Young Offenders Institution should cease. Due to the small numbers of children held in custody and in secure accommodation in Jersey there are particular difficulties in ensuring appropriate placement. The Youth Justice Review makes a number of recommendations about this and it is envisaged that:

Greenfields Secure Unit be used for children of compulsory school age whether remanded or sentenced and that the regime at Greenfields should continue to be that of a Children's home with security: in effect once at Greenfields a child would be treated as if they were subject to a Secure Accommodation Order for the length of their sentence. If a child is considered to be too disruptive or to pose a specific risk to another Greenfields resident they may serve their sentence at the YOI.

Those children above the age of compulsory education i.e. over 16 years in June, will normally serve their sentence in the YOI, however they may serve their sentence at Greenfields if they would be particularly vulnerable in the YOI and would not adversely affect the lives of other children at Greenfields.

A similar discretion should be exercised for those aged 18 – 21 who currently serve their sentences in the YOI, with the expectation being that a proportion of these will serve their sentences in the adult prison. This may or may not allow for the placing of 17 and 18 year old female offenders in the YOI rather than in the main prison.

18. Independent inspection arrangements should be introduced for Greenfields and other children's establishments

The Scottish Social Work Inspection Agency (SWIA) has been engaged by the Health and Social Services Department to inspect all aspects of Social Work commencing with services for looked after children in 2011.

In addition a new Panel of Visitors has been established The new Panel will provide oversight for all residential units.

All instances of physical restraint are recorded and referred to the Jersey Child Protection Committee.

19. These should be based on a rigorous standards framework, such as the English National Minimum Standards for Children's Homes.

Our policies and procedures are drawn up in accordance with National Minimum Standards for Children's Homes. Every instance of physical restraint is recorded

through the 'Datix' System and also reviewed by an independent who is trained to instructor level in Therapeutic Crisis intervention.

20. An independent children's advocacy system established to assist children in custody, (and indeed in other parts of the youth justice and care system) in raising concerns

See 18 above (any other measures?)

21. A 'whistle blowing' policy should be developed which has a strong independent element within it, and which enjoys the confidence of staff

The States of Jersey has reviewed its "serious concerns" policy and increased its independence by routing serious concerns directly through the Auditor and Controller General. (Policy attached)

22. A children's complaints procedure should be developed which has a strong independent element within it, and enjoys the confidence of children and young people.

Outside of the organisation, children and young people may raise concerns confidentially with a member of the Independent Panel of Visitors. They may also voice any concerns to their social worker or advocate.

23. Search procedures should be reviewed to reduce the use of strip searching to an absolute minimum

Strip searching is used only when necessary. However, it is better that a child is allowed temporary release from a secure unit and then searched on return rather than being denied temporary release. Search procedures have been designed to minimise embarrassment and to be as dignified as is consistent with effectiveness. A person subjected to such a search is never naked retaining either the upper or lower garments during the procedure. A dressing gown is provided which allows for under garments to be removed without undue exposure. The search is always performed with two staff of the same sex as the resident.

24. Children should be consulted about the way they are looked after in custody and care.

Children are involved in the selection of new staff members and consulted about their daily routine and care plan. Individual Care Plans are subject to constant review to respond to changing circumstances. The subjects of these plans provide a vital element in their formulation.

25. Recruitment of staff should be brought into line with the requirements of the Warner report.

Our recruitment policies conform to the Warner Report.

26. There should be closer involvement with, and oversight by, the Jersey Child Protection Committee in relation to safeguarding arrangements at Greenfields.

(See 18 above) The independent Chair of the JCPC attends meetings of the Children's Policy Group to advise Ministers on Safeguarding matters.

27. The longstanding staff conflicts and difficulties at Greenfields, should be addressed through independent/mediation/conciliation/team building processes, and measures should be taken to ensure that management arrangements are in place that support staff and are trusted by them.

There is a harmonious and committed staff team at Greenfields who are dedicated to working together and most importantly for the best interests of the children they are responsible for.

**EXTRACT FROM THE CARE INSPECTORATE'S REPORT:
STATES OF JERSEY INSPECTION OF SERVICES FOR LOOKED AFTER
CHILDREN, PUBLISHED JANUARY 2012**

| D. RECOMMENDATIONS OUTSTANDING FROM THE HOWARD LEAGUE REPORT (26-28): | | |
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| Recommendation | In Progress | Target Completion Date |
| 26. (1) Jersey should immediately ratify the United Nations Convention on the Rights of the Child (UNCRC). <i>X Ref:</i> (SPR Rec. 2.28/3.19) (YJR Rec. 6.1) | YES | To Be Advised by Chief Minister's Dep. |
| 27. (3) Jersey should develop a child specific justice policy. | YES | Qtr 2 2011 |
| 28. (13) Preventive services offered by the Youth Action Team should be available to children assessed as at risk of crime, and other difficulties, as well as those who have started to offend. They should be offered from a non criminal justice organisational base <i>X Ref:</i> (SPR Rec. 2.31) (YJR Rec. 6.8.i) | YES | Qtr 2 2012 |