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Deputy Robert Ward
Brunel House
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Dear Deputy Ward,

I have read with interest the terms of reference for the scrutiny process currently underway on the draft law that will govern the work of Jersey's Children's Commissioner – both that of the current post holder who is working in shadow form until the law is enacted, and any future Commissioner working to promote and protect the rights of Jersey's children and young people.

This letter will be brief, given I have read, and fully agree with and support, the submissions you have already received from Simon Hoffman at Swansea University, the Scottish Children and Young People's Commissioner, the UK's Information Commissioner, the Bosdet Foundation, Brightly and others. Those submissions undertake, between them, a forensic analysis of the draft law, in particular not only Article 8 which is deeply problematic and would stop the Commissioner undertaking her role, but 44 and 45 which contradict each other and would create more problems than they would solve with regard to the Commissioner's power to seek information without fear or favour. My submission does not repeat that forensic unpicking of the draft law, given such analysis is already very full and has been presented to you from a wide range of differing perspectives by people working both on and off the Island, all of them with particular expertise and experience in the fields concerned.

I would remind all concerned of two very salient points as you consider Article 8, which as it stands is not fit for purpose if Jersey is to respond to what the Inquiry said, what the children's services inspection in 2018 reported, and what you have all committed to do.

The first issue to raise here is the ICJI's report, which gave rise to the appointment of a Commissioner who is to be fully independent of the government and all public bodies, that role creation and appointment in turn leading to the creation of a law that will allow the post holder to undertake the role in its fullest and most independent fashion. This law should be written once, and should stand for a succession of CCs – the fact that you have a post holder operating in shadow form at the moment should not divert Jersey from the creation of a CC role that will pass from post holder to post holder robust and whole. I would strongly advise that writing and passing a law that then needs to be reopened and potentially rewritten because Article 8 as drafted is not fit for purpose would divert energy, resources and attention you cannot afford to waste.

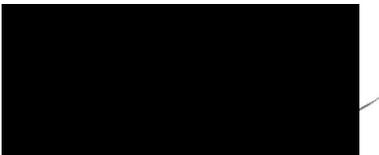
The second issue to raise is that this role, which is explicitly described in the ICJI's report, is to be created, and then empowered by law to run, in full compliance with the UN's Paris Principles which stipulate what Human Rights bodies must be empowered to do. Those principles are clear that the right of a Human Rights body such as the CC's office should be empowered to seek any information and data the CC needs to see, without fear or favour and certainly not only – as the draft indicates – in the limited circumstances of an Investigation. Public bodies should not be permitted to refuse to share relevant data and information that the CC needs to undertake her or his role. Article 8 would permit such refusals and is therefore a means of fettering the independence and limiting the rights promotion and protection function which leads all that the CC does.

I was Children's Commissioner for England from 2010-2015. In my time in the role, the Westminster Parliament re-drew the role and remit in 2014, having in 2004 created a Commissioner's role that was both flawed and fettered, in part exactly as Article 8 of Jersey's draft law would fetter the island's Children's Commissioner's ability to carry out the role. As it is currently drafted it will seriously limit what the CC can do, which will go directly against what the ICJI found and reported, and what the 2018 inspection reinforced, as weaknesses and areas for concern in the way Jersey cares for, listens to, defends the rights of and nurtures its children and young people.

Getting this law right for the long term matters enormously, and scrutinising this problematic Article and those it relates to is an important step in ensuring the law makes the CC's role, remit and reach as strong as Jersey needs them to be. No public body on the Island has anything to fear, and much to gain in terms of transparency, trust and further positive development of services for children young people and families from a CC who is enabled and entrusted by law to seek information and data, and to receive them when they are asked for. I urge that the strength and unanimity of commentaries you have already received on this problematic Article guide your thinking, and the rewriting of that Article to make it both compliant with the Paris Principles, and a truly fitting response to the ICJI's report.

Thank you for considering this submission.

Yours sincerely



Dr Maggie Atkinson

Founder and Chief Executive, Maggie Atkinson Consulting Ltd

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Current: Member of the Children's Commissioner for Jersey's Adult Advisory Board

Current: Professional expert commentator on development of Jersey CC's remit, including the draft law.