

Care of Children in Jersey Review Panel: Update Report

SUBMISSION

RECOMMENDATION 5: Legislation

1. It is with concern that Jersey has yet to reform its limitation laws in relation to child abuse.
THE LAW REFORM (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 1960
2. The 1960 Law affords in civil proceedings an absolute defence to any claim brought outside the 3 year limitation period laid down by Article 2.
3. It is well understood and recognised that victims of childhood abuse do not come forward in a conventional and timely fashion. The limitation clock starts running down on their eighteenth birthday and stops on their twenty-first. The vast majority of victims will come forward many years after the events complained of, and by the very nature of the consequences of the abuse suffered are effectively prohibited from bringing a case before their twenty-first birthday.
4. Representation on the need for reform has been made to the Chief Minister and the JJCI.
5. It is proposed that the 1960 Law be amended so that the 3 year limitation period does not apply to child abuse. It is to be hoped that the legislation required can be tabled in the next session.
6. The proposed law removes the current three year limitation period in actions seeking damages in respect of personal injury where the action relates to child abuse when the person who sustained the injuries and is bringing the action was a child at the time of the abuse. It applies to abuse occurring before or after commencement of the provisions.
7. The rationale behind the proposed law is reflect the recognition that victims of child abuse are prohibited because of the nature of the crime and its consequences from bring claims for damages within the ordinary limitation period of three years which will have commenced on their eighteenth birthday. The law as it stand does not reflect the world as it is in 2019, let alone societal values. It is unjust that a law that is now 60 years old impedes justice.
8. What is being proposed is not controversial. The Scottish Parliament and the legislatures in the Australian states have all amended their respective limitation laws on very similar lines as is being proposed.
9. This draft law recognises that just must not only be done but must be seen to be done, and so the rights of those who have to meet cases of child abuse, perhaps, many years after the events complained of are protected.
10. This is what the Royal Commission into Institutional Responses to Child Abuse had to say:

Notwithstanding these considerations, we are satisfied that the limitation period for commencing civil litigation for personal injury related to child sexual abuse should be removed and that the removal should be retrospective in operation.

There is now clear evidence that it is likely to take many survivors years, even decades, to disclose their experience of sexual abuse as a child. There is also an increasing understanding of the devastating impacts of child sexual abuse and how these may work against a survivor even being able to disclose the abuse to a family member or friend, let alone seek legal advice and commence proceedings. There is little evidence that survivors of child sexual abuse are 'sleeping on their rights'.

It seems to us that the objective should be to allow claims for damages that arise from allegations of institutional child sexual abuse to be determined on their merits.

The claimant has no incentive to delay commencing proceedings. The claimant will still need to prove their case through admissible evidence. The defendant will be protected from unfair proceedings as a result of the passage of time by preserving the court's power to stay proceedings.

11. The Jersey Government should adopt - what the Royal Commission observed for itself and apply itself to reforming the law as proposed.

RECOMMENDATION 7: The 'Jersey Way'

12. In early 2019 the Jersey Government agreed to pay compensation to two victims of child abuse. The victims accepted the Government's terms and signed the "paperwork" that was required of them. There was a natural expectation that the compensation would be paid in a timely manner, but this was not so. The victims had to wait many months. No credible explanation was ever forthcoming for what was an unreasonable delay in making payment of very modest sums of money.
13. The delay caused the victims unnecessary distress. They thought not unreasonably that the Government was renegeing on the settlements. Whatever good has been achieved by the settlements vanished. Any trust evaporated on the part of the victims viz the Government was destroyed.
14. Maybe this an example of the "Jersey Way"? Jersey has so many opportunities to do things better. It has a unique ability to do better than its contemporaries, but whether through inertia or ineptitude the ability to make good constructively as this attitude towards the two victims demonstrates can be wasted.
15. To change the "Jersey Way" requires leadership and a shift in attitude towards victims of child abuse. This is what was submitted to IJCI in May 2019:

The need for advocacy and support services

Over the last three years I have learned a great deal from the Les Chenes survivors. I had thought I had heard it all but, once again, I was proved wrong.

Until I sat down and listened to the survivors I had no idea as to the impact that solitary confinement has upon a child, young person, or indeed an adult. To be honest I had never given it much thought. Listening to their accounts proved more than food for thought. On a personal or intellectual level it is interesting to observe how the Les Chenes survivors reacted to their treatment – some would self-harm, others would become acclimatise and to the extent that they could only function in their confined surroundings.

It is internationally recognised that the trauma of institutional child abuse can have profound, long-lasting and cumulative impacts on survivors. Many survivors face a complex set of challenges throughout their lives. What is striking is how many Les Chenes survivors have histories of mental ill health. At various times, depending on the circumstances, survivors seek support from a range of mainstream and specialist services to help manage the detrimental impacts of abuse on their mental health. They may also need support for legal, education, housing, health, employment and financial issues, and for assistance with reporting abuse. The services used by survivors span several sectors and can be difficult if not impossible to navigate. The need for support often extends to secondary victims, such as family members, carers and friends. It is often they who are left to cope with the legacy of abuse.

Some Les Chenes survivors have moved away from Jersey so as to rebuild as they see fit their lives. Many have not and they speak a common language of frustration and anger. Much of it aimed at the “authorities” that is those who placed them at Les Chenes, and the lack of help they received at the time and subsequently. Many complain of the poor education, and how that has impacted on their adult lives. Some have done well but that just highlights the obstacles that had to be overcome.

I question whether Jersey currently has the capacity to meet survivors’ needs?

Survivors who have suffered serious sexual abuse tell me about the struggles they endure to access the specialist services that they need for example specialised therapy. Some tell me that they do receive excellent help, but they seem to be a small minority. I have made my own enquiries and it is quite revealing that survivors of sexual abuse

are regarded as a priority over those who have suffered non-sexual abuse. I am not sure that there should be a distinction.

I have raised the case of one survivor of sexual abuse with a senior minister and sadly I am unconvinced that it has done much good if any at all.

It must be recognised that in many cases, an individual will be in multiple systems, moving in and out of services over many years, and so that has to be factored in.

Now is a good time for Jersey to give serious thought as to how it treats survivors and supports them today, but tomorrow too?

Survivors need access to quality advocacy and support services.

Advocacy and support and therapeutic treatment services are interdependent, assisting survivors by addressing their practical, emotional and therapeutic needs. Advocacy and support can connect people to therapeutic treatment and can also be therapeutic. A strong advocacy sector can ensure responsive support services, effective and appropriate therapeutic treatments, and continuous improvement.

Survivors who face immediate physical, economic or other hardships may not be in a position to effectively engage with therapeutic treatment. They may first require support to establish a sense of safety and stability and to have their immediate physical, economic or other needs

Therapeutic treatment can be unhelpful if offered to a victim before more immediate needs are met, and that ignoring these pressing needs can impair the victim's recovery and affect their ability to trust service providers.

Survivors' needs are interconnected and change over time. The type of advocacy and support and therapeutic treatment a child, young person, adult or older person who has experienced childhood sexual abuse may need and find helpful can vary, depending on the person's life stage.

Many survivors said they faced stigmatising societal and professional attitudes because they had been at les Chenes for example "they are criminals". Other survivors speak of hearing mixed messages: "we have heard enough about the inquiry, we want to move on". A personal example and the survivor has to remain anonymised of course. We can call the survivor X. X has been owed agreed compensation since

February 2019. It is now May and the Jersey governmental apparatus has still to arrange payment. What kind of message does that send?

I think it says a lot and provides a window for us to gaze through to understand the "state" mindset.

The risk is that that taking positive action for example implementing IJCI's recommendations is undermined by inertia and intemperate or inappropriate language.

Care also needs to be taken when measuring survivor needs purely against the yardstick of cost. It is if one thinks about it potentially futile if not counter-productive. If it is going to cost £x to implement that measure what is the cost if you don't? Again what kind of message are you delivering to society?

Purely focusing on cost has its cost. Jersey does not deserve a low-quality provision of services which would diminish the effectiveness of government expenditure. The lifetime impacts of child sexual abuse on victims, their families and communities are broad-ranging and entail significant economic costs to individuals and governments in healthcare expenditure, lost earnings and tax revenue, increased costs associated with income support and child protection, and increased crime. Supporting survivors to heal will interrupt cycles of trauma and enhance their quality of life and their ability to lead productive lives.

Efforts to address the stigma surrounding child abuse and improve service quality should be underpinned by a single organisation that provides leadership, building on and disseminating the work already underway by various bodies in Jersey.

There is a clear need for an entity to drive stigma reduction, promote help-seeking and support best practice to improve outcomes for victims and survivors

There is a need for leadership to drive good practice and policy improvement for victims and survivors of child sexual abuse. Victims and survivors would benefit from the creation and support of an organisation that is adequately resourced and that has the authority to focus on the impacts of child abuse.

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28th May 2018

LONDON