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# STATES OF JERSEY



## **INDEPENDENT JERSEY CARE INQUIRY (IJCI): REPORT OF THE INFORMATION COMMISSIONER PURSUANT TO ARTICLE 52(3) OF THE DATA PROTECTION (JERSEY) LAW 2005 AND RESPONSE OF THE IJCI**

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Presented to the States on 6th May 2016  
by the Chief Minister

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STATES GREFFE

## REPORT

Under Article 52 of the Data Protection (Jersey) Law 2005 (“the Law”), the Information Commissioner (“the Commissioner”) (*formerly known as “the Data Protection Commissioner”*) may provide the Chief Minister with reports relating to the Commissioner’s functions or activities, and the Chief Minister is obliged to lay a copy of any such report before the Assembly.

The Commissioner provided such a report, entitled “Report of the Information Commissioner pursuant to Article 52(3) of the Data Protection (Jersey) Law 2005” to the Chief Minister on 7th March 2016.

Subsequently, on 30th March 2016, after due consideration of the content, the Report was provided on behalf of the Chief Minister to the Independent Jersey Care Inquiry (the “Inquiry”) requesting comments to be presented alongside the Report of the Commissioner. The Inquiry provided comments on 3rd May 2016.

The Commissioner is established under the Law as an independent office-holder. The functions of the Chief Minister are restricted to those defined in the Law, including the obligation to lay copies of such reports before the States as soon as practicable. The Inquiry is also fully independent, as established by the Assembly. In this instance, the Inquiry have been provided with an opportunity to provide a response in order that States Members can receive the fullest information possible.

Clearly, it is of the utmost importance both to protect personal and sensitive information, and to investigate the historic abuse of children in Jersey’s care system, so that we learn the lessons from past failings for the benefit of future generations. The Chief Minister has provided both the report of the Commissioner and the response of the Inquiry in order to achieve the high degree of transparency and balance required in these circumstances.

**Note:**

Appendix D to the response of the Inquiry has not been published, at the request of the Inquiry, in order to protect sensitive information.



To: Chief Minister Ian Gorst  
PO Box 140  
Cyril le Marquand House  
The Parade  
St Helier  
Jersey  
JE4 8QT

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**REPORT OF THE INFORMATION COMMISSIONER PURSUANT TO ARTICLE 52(3) OF THE  
DATA PROTECTION (JERSEY) LAW 2005**

**Independent Jersey Care Inquiry**

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## **Forward - The Role of the Information Commissioner**

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1. The Information Commissioner (the **Commissioner**) has responsibility in Jersey for, *inter alia*, enforcing and promoting compliance with the Data Protection (Jersey) Law 2005<sup>1</sup> (the **DPL**). **The Commissioner's Office (the OIC) is Jersey's independent** regulatory authority set up to uphold information rights in the public interest and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can and taking appropriate action where the law is broken.
2. The Commissioner regulates the DPL which established a framework of rights and duties which are designed to safeguard personal data (information from which a living individual can be identified). This framework balances the legitimate needs of organisations to collect, use and store personal information against the rights of individuals to respect for the privacy of their personal data.
3. Art.52(3) of the DPL contains a provision that the Commissioner may provide the Chief Minister (the **Chief Minister**) with any reports relating to the Commissioner's functions or activities as she thinks fit. Pursuant to Art.52(5) of the DPL, the Chief Minister shall lay a copy of a report, or of a code, so provided before the States as soon as practicable after the Chief Minister receives the report or a copy of the code.
4. This report (the **Report**) is accordingly provided pursuant to Art.52(3) of the DPL and following a review of the policies and procedures of the Independent Jersey Care Inquiry (the **Inquiry**) which raise issues for the Commissioner in relation to the legislation that her office regulates, and as a consequence of various issues being communicated to her office on a confidential basis by parties/individuals with an interest in the Inquiry.

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<sup>1</sup>

[https://www.jerseylaw.je/Law/Display.aspx?url=%2flaw%2flawsinforce%2fconsolidated%2f15%2f15.240\\_DataProtectionLaw2005\\_RevisedEdition\\_1January2015.pdf](https://www.jerseylaw.je/Law/Display.aspx?url=%2flaw%2flawsinforce%2fconsolidated%2f15%2f15.240_DataProtectionLaw2005_RevisedEdition_1January2015.pdf)

## Executive Summary

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5. People care about their personal privacy and have a right to expect that their personal details are and should remain confidential. Who they are, where they live, who their friends and family are, how they run their lives: these are all private matters. Individuals may divulge such information to others, but unless the law compels them to do so the choice is theirs.
6. The Commissioner has prepared this Report as a consequence of various approaches which have been made to her office by those **concerned by the Inquiry's handling** of (often sensitive) **personal data and with general concerns as to the Inquiry's adherence** to and understanding of the DPL. **This Report reveals, in the Commissioner's view, evidence of systemic breaches in** personal privacy and a fundamental misunderstanding by the Inquiry (such term including lawyers to the Inquiry, Eversheds) as to their obligations under the DPL and the importance of good data governance.
7. The Inquiry has called for and now holds and processes an enormous amount of personal (and in the most cases sensitive personal) data and they are obliged to handle that data in accordance with the DPL.
8. In addition to the concerns that have been communicated to the Commissioner on a confidential basis **via third parties, she has her own concerns regarding the Inquiry's handling** of data following certain communications received by her directly from Eversheds. The Commissioner has attempted to engage with the Inquiry regarding those concerns but has found the Inquiry to be, on the whole, unreceptive to criticism and generally unwilling to accept any offer of assistance from the Commissioner to review and improve their processes, save for on their own terms.
9. The Commissioner hopes that this Report strikes an adequate balance between the rights of the various complainants and the confidentiality which is attached to the information they have provided, and the rights of the Inquiry to know the nature of the complaints that have been made against them and to provide enough information to allow them to reply to such criticism.
10. The Commissioner has further taken account of the effect of the incorporation in Jersey law of the European Convention on Human Rights (**ECHR**), by virtue of the Human Rights (Jersey) Law 2000. In particular, the Commissioner is mindful of the provisions of Article 8 of the ECHR in that the individuals whose personal data was in the documents provided to the Inquiry have the right to respect for private and family life, home and correspondence.
11. The Commissioner has **identified and highlighted a number of deficiencies in the Inquiry's** processes and this Report will focus on the following matters:
  - a. Data protection governance – The extent to which data protection responsibility, policies and procedures, performance measurement controls, and reporting mechanisms to monitor compliance with the DPL are in place and in operation throughout the Inquiry.
  - b. Deficiencies in process – the robustness (or otherwise) of processes put in place by the Inquiry.

- c. Training and awareness – The provision and monitoring of staff data protection training and the awareness of data protection requirements relating to their roles and responsibilities.
  - d. Records management (manual and electronic) – The processes in place for managing both manual and electronic records containing personal data. This will include controls in place to monitor the creation, maintenance, storage, movement, retention and destruction of personal data records.
  - e. Security of personal data – The procedures and organisational measures in place to ensure that there is adequate security over personal data held in manual or electronic form.
12. Those third parties who have communicated their concerns to the Commissioner will not be identified in the main body of this Report in order to preserve confidentiality. They will, however, be referred to by reference to the following identifiers where appropriate to do so:
- a. C1
  - b. C2
  - c. C3
  - d. C4
  - e. C5
  - f. C6
  - g. C7
  - h. C8
  - i. C9
  - j. C10

**Appendix 1** which sets out the identities of the third party complainants has been redacted in the disclosable version of this Report as has any documentation provided by the complainants and which have assisted the Commissioner in the preparation of this Report.

So called "Examples" set out in the body of this report relate to issues raised by the various complainants but have also been anonymised where appropriate, in order to preserve the confidentiality of those complainants.

## The Eight Data Protection Principles

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13. The DPL provides that an organisation or body when handling personal information must adhere to eight data protection principles of good information handling<sup>2</sup>. This is to ensure that the interests of the individuals whose personal information is being processed are protected. They apply to everything an organisation (including the Inquiry) does when it uses and holds this personal information, unless an exemption in the DPL can apply.
14. Respect for privacy is one of the foundation stones of the modern democratic state. It was written into the ECHR, which guarantees certain fundamental human rights. Article 8 of the ECHR **declares that 'Everyone has the right to respect for his private and family life, his home and his correspondence'**. Adopted by the Council of Europe in 1950, the ECHR is directly enforceable in Jersey courts through the Human Rights (Jersey) Law 2000. Failure to respect **an individual's privacy can lead to distress and in certain** circumstances can cause that individual real damage, mentally, physically and financially.
15. Furthermore, privacy is in itself a value that needs protecting, even when the loss suffered is not readily quantifiable in terms of damage or distress.
16. The Inquiry is a data controller, as defined in Art.1(1) of the DPL in respect of the processing of personal data and has notified the OIC accordingly<sup>3</sup>. Art.4(4) of the DPL provides that subject to Art.27(1) of the DPL, it is the duty of a data controller (here the Inquiry) to comply with the data protection principles in relation to all personal data in respect of which they are the data controller.
17. The Inquiry has additional responsibilities in respect of so-called sensitive personal data (as defined at Art.2 of the DPL) pursuant to the Data Protection (Sensitive Personal Data) (Jersey) Regulations 2005<sup>4</sup> (the **SPD Regulations**). "**Sensitive Personal Data**" is, in relation to a data subject, personal data consisting of information as to:
  - a. the racial or ethnic origin of the data subject;
  - b. the political opinions of the data subject;

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- 1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—  
(a) in every case – at least one of the conditions set out in paragraphs 1-6 of Schedule 2 is met, and  
(b) in the case of sensitive personal data, at least one of the conditions in paragraphs 1-10 of Schedule 3 is also met.
- 2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
- 3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- 4 Personal data shall be accurate and, where necessary, kept up to date.
- 5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- 6 Personal data shall be processed in accordance with the rights of data subjects under this Law.
- 7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data

<sup>3</sup> Registration No: 19889

<sup>4</sup>

[https://www.jerseylaw.je/Law/Display.aspx?url=%2flaw%2flawsinforce%2fconsolidated%2f15%2f15.240.35\\_DataProtection\(SensitivePersonalData\)Regulations2005\\_RevisedEdition\\_1January2006.pdf](https://www.jerseylaw.je/Law/Display.aspx?url=%2flaw%2flawsinforce%2fconsolidated%2f15%2f15.240.35_DataProtection(SensitivePersonalData)Regulations2005_RevisedEdition_1January2006.pdf)

- c. **the data subject's religious beliefs or other beliefs** of a similar nature;
- d. whether the data subject is a member of a trade union;
- e. **the data subject's physical or mental health or condition;**
- f. **the data subject's sexual life;**
- g. **the data subject's commission, or alleged commission, of any offence; or**
- h. any proceedings for any offence committed, or alleged to have been committed, by the data subject, the disposal of any such proceedings or any sentence of a court in any such proceedings.

18. **In order for the Inquiry to process an individual's sensitive personal data, then** pursuant to the Schedule 3 of the DPL at least one of several other conditions must also be met before the processing can comply with the first data protection principle. These other conditions are as follows.

- a. The data subject whom the sensitive personal data is about has given explicit consent to the processing.
- b. The processing is necessary to comply with employment law.
- c. The processing is necessary to protect the vital interests of:
  - i. the data subject (in a case where the data subject's **consent cannot be given** or reasonably obtained), or
  - ii. another person (in a case where the data subject's **consent has been unreasonably withheld**).
- d. The processing is carried out by a not-for-profit organisation and does not involve disclosing personal data to a third party, unless the data subject consents. Extra limitations apply to this condition.
- e. The data subject has deliberately made the information public.
- f. The processing is necessary in relation to legal proceedings; for obtaining legal advice; or otherwise for establishing, exercising or defending legal rights.
- g. The processing is necessary for administering justice, or for exercising statutory or governmental functions.
- h. The processing is necessary for medical purposes, and is undertaken by a health professional or by someone who is subject to an equivalent duty of confidentiality.
- i. The processing is necessary for monitoring equality of opportunity, and is carried out with appropriate safeguards for the rights of individuals.

19. In addition to the above conditions – which are all set out in the DPL itself – the SPD Regulations set out several other conditions for processing sensitive personal data. Their effect is to permit the processing of sensitive personal data for a range of other purposes – typically those that are substantially in the public interest, and which must necessarily be carried out without the explicit consent of the individual. Examples of such purposes include preventing or detecting crime and protecting the public against malpractice or maladministration.

## Background to the Inquiry

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20. In November 2011, Verita<sup>5</sup> (at the instruction of the Council of Ministers) produced a paper (the **Verita Report**) (as appended to Projet P.118/2012<sup>6</sup> (**Appendix 2**)) setting out proposals and recommendations regarding the commissioning of a Committee of Inquiry into historic child abuse in Jersey. This was precipitated by Operation Rectangle<sup>7</sup> and the various criminal prosecutions which arose as a result of that investigation and, in particular, the sheer number of offences which were alleged **to have been committed at Haut de la Garenne children's home (HdeIG)**. As is noted at page three of the Verita Report:

*"The States Assembly asked the Council of Ministers earlier this year to propose terms of reference for a possible Committee of Inquiry. Ministers in turn asked Verita to report on how such an inquiry might be framed".*

21. The Verita Report made, *inter alia*, the following observations/recommendations in respect of data protection issues:

- a. At paragraph 2.9: *"The chair would be likely to need the services of a project manager/inquiry secretary and a part-time legal adviser... The legal adviser would need to be an advocate qualified to practice law in Jersey. The chair might also request the services of counsel".*
- b. At paragraph 2.16: *"Two potential obstacles came to light during our meetings. They concern disclosure and data protection.*

*2.17 First, it is likely that States of Jersey Police would need to take legal advice before releasing some of the information they hold.*

*2.18 Second, consent will be needed if the inquiry wanted access to the personal records of someone still alive.*

...

*2.20 We and HM Attorney General suggest that there should be a further discussion between the Jersey Data Commissioner and the Law Officers' Department. We also recommend that there should be a discussion between the Committee of Inquiry and the Data Commissioner to ensure that data is processed in an appropriate manner. This should include developing a protocol in relation to the processing of personal data".*

22. The Inquiry was set up pursuant to SO.146 of the Standing Orders of the States of Jersey<sup>8</sup> (the **Standing Orders**). Under SO.147(1) thereof, the Inquiry may regulate its own procedure for and conduct and management of its proceedings.

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<sup>5</sup> <http://www.verita.net/>

<sup>6</sup> <http://www.statesassembly.gov.je/AssemblyPropositions/2012/P.118-2012.pdf>

<sup>7</sup> Operation Rectangle was the code name assigned to the Historical Child Abuse Enquiry undertaken by the States of Jersey Police.

<sup>8</sup>

[https://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f16%2f16.800.15\\_StandingOrdersoftheStatesofJersey\\_RevisedEdition\\_1January2015.htm](https://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f16%2f16.800.15_StandingOrdersoftheStatesofJersey_RevisedEdition_1January2015.htm)



23. The specific powers of the Inquiry are set out under the provisions of the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007<sup>9</sup> (the **Inquiry Regulations**). In particular, Reg.2 of the Inquiry Regulations sets out that the Inquiry has the power to issue a summons requiring a person to appear before it and produce documents and Reg.3(4) states that the summons may require the person to produce:

- a. all documents;
- b. specific documents; or
- c. documents described by reference to their subject matter or any other factor,

which are or might reasonably be relevant to the matter that the committee of inquiry is inquiring into.

24. Chief Minister Gorst (Hansard: 6 March 2013<sup>10</sup>) [**Appendix 16**] noted, *inter alia*, that:

*"The main objectives of a public inquiry are to establish the facts, learn from past events and prevent their reoccurrence, provide an opportunity for reconciliation and resolution, to rebuild public confidence, to hold people and organisation to account and to demonstrate that something has been done and that government is transparent. This Inquiry is not a court of law and will not be able to judge the guilt or innocence of individuals mentioned by witnesses. Its role is to understand what happened to cared for children, by allowing victims to describe what happened to them, by allowing those accused of abuse, but not charged with a crime, to have their say and by collating information from past investigations and reviews, particularly from those carried out since 2007..."*

25. The Inquiry should therefore act impartially and so as to safeguard the interests of all those involved, alleged victims and alleged abusers alike, and, in particular, to process both sets of individuals' data in accordance with the principles of the DPL.

#### The Commissioner's engagement with the Inquiry

26. As noted at paragraph 6 above, the Commissioner has received a number of concerns from a number of third parties regarding the Inquiry process and the manner in which the Inquiry have and continue to process data under the DPL.

27. The Commissioner has also had cause to engage directly with the Inquiry and, as further noted at paragraph 8 above, the Commissioner has formed her own concerns regarding the Inquiry's compliance with the DPL, such as came to the fore following receipt by the Commissioner of an email from Eversheds on 10 March 2015 (the **Eversheds Email**) [**Appendix 12**].

28. In that email, Eversheds sought guidance in respect of certain social services records which have been obtained by the Inquiry pursuant to summons and, in particular, confirmation as to the manner in which those records should be redacted. They also asked certain questions as

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<sup>9</sup>

[https://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f16%2f16.800.23\\_SoJ\(Powers%2cPrivilegesandImmunities\)\(CommitteesofInquiry\)Regulations2007\\_RevisedEdition\\_1January2008.htm](https://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%2fconsolidated%2f16%2f16.800.23_SoJ(Powers%2cPrivilegesandImmunities)(CommitteesofInquiry)Regulations2007_RevisedEdition_1January2008.htm)

<sup>10</sup> <http://www.statesassembly.gov.je/AssemblyHansard/2013/2013.03.06%20States%20-%20Edited%20Transcript.pdf>

to whether or not (and if so to what extent) third party data could be provided to those alleged abusers in what was, at that point, the next stage of the Inquiry proceedings.

29. The questions posed by Eversheds in that email highlighted, **in the Commissioner's** view, the clear deficiencies in the manner in which Eversheds are dealing with Data Protection issues and raise questions as to whether or not the lawyers engaged by the Inquiry are suitably qualified in this area generally and/or have suitable knowledge of the DPL in this jurisdiction.
30. Given the extremely large volume of data which has been summonsed by the Inquiry from various entities (i.e. States of Jersey Police and Health & Social Services) and which are purportedly being processed by the Inquiry in accordance with the DPL, it is extremely important that any lawyers engaged in processing or otherwise dealing with what is, in these circumstances, extremely sensitive personal data, are fully concordant with the terms of the DPL, the SPD Regulations and the principles to which the Inquiry must adhere.
31. The Commissioner considers that the manner in which Eversheds are dealing with the data which has been provided to the Inquiry is inadequate and that the Inquiry (and/or their legal counsel) has failed to implement, from the outset, clear policies as to how that data should be dealt with so as to comply with the DPL. The Inquiry also appears to have failed to appreciate the effect that certain decisions taken at an earlier stage of the Inquiry may have on proceedings further down the line. For example, the Eversheds Email notes that:

*"You may be aware that the Inquiry will shortly be moving to its next phase of evidence during which the Inquiry will need to put some of the allegations of abuse to the alleged abusers to seek their version of events and their response to the allegations made. As part of this process it is anticipated that a number of individuals will request specific details and information in respect of who has made such allegations; you will appreciate that some allegations have been made against former staff members, for example, therefore without specific details it will be difficult for individuals to recall certain scenarios/situations. The Inquiry therefore needs to be satisfied that these allegations are put to those accused of abuse with sufficient detail to allow them to respond but also protecting the person making the allegation..."*

32. They then go on to ask a series of questions as to what documentation/evidence could properly be advanced to the alleged abusers.
33. The questions posed in the Eversheds Email apparently demonstrate that little or no consideration was given, at the outset, to the above issues and it is extremely unfortunate that the opportunity was not taken at an early stage by the Inquiry to liaise with the Commissioner regarding the manner in which data was to be handled by the Inquiry. This should have been done at the time of inception but the Commissioner was not approached at any stage by the Inquiry or their lawyers to discuss the manner in which data was to be handled by the Inquiry, nor the policies they were minded to put in place contrary to the recommendations set out by Verita.
34. In light of her concerns and following receipt of the Eversheds Email, the Commissioner wrote to the Inquiry on 17 April 2015 (the **April 2015 Letter**) [**Appendix 12**] inviting a meeting

with the Inquiry and offering the Inquiry the benefit of a voluntary assessment, pursuant to Art.51(7) of the DPL (**Voluntary Assessment**). Art.51(7) of the DPL contains a provision giving the Commissioner power to assess any organisation's processing of personal data for the following of 'good practice', but only with the agreement of the data controller. Good practice is defined in the DPL as practices for processing personal data which appear to be desirable. This includes, but is not limited to, compliance with the requirements of the DPL.

35. The Commissioner is of the opinion that a Voluntary Assessment is a constructive process which had the propensity to provide real benefits to the Inquiry, particularly in light of the apparent deficiencies in process to which the Commissioner had been alerted. Accordingly, the Commissioner invited the Inquiry to consider whether or not the Inquiry would agree to a Voluntary Assessment in order to identify what issues exist and how they may best be dealt with in a collaborative and non-adversarial manner.
36. As is common practice, the scope of that process would have been agreed between the Commissioner and the Inquiry and would typically have sought to assess the Inquiry's procedures, systems, records and activities in order to:
  - a. ensure the appropriate policies and procedures are in place;
  - b. verify that those policies and procedures are being followed;
  - c. test the adequacy controls in place;
  - d. detect breaches or potential breaches of compliance; and
  - e. recommend any indicated changes in control, policy and procedure.
37. Given the extremely sensitive nature of the Inquiry proceedings, the Commissioner proposed that an independent Voluntary Audit would be assisted by the Information Commissioner for the United Kingdom or another appropriately qualified individual, with assistance from the **Commissioner's local counsel**.
38. Following receipt by the Inquiry of the April 2015 Letter, meetings were held between the Commissioner and/or her legal representative and the Inquiry on 7 and 13 May 2015. At those meetings, discussions were entered into regarding the Commissioner's concerns as to the Inquiry's obligations under the DPL and the manner in which the Inquiry was processing data. However, it became apparent that any Voluntary Assessment was likely to be inconvenient to the existing Inquiry timetable. Counsel for the Commissioner wrote to the Inquiry on 15 May 2015 (the **May 2015 Letter**) [**Appendix 12**] advising that unless the Inquiry was willing to postpone the next phase of the Inquiry (which was then due to commence on 26 May 2015 (the **Next Phase**) that there would be little to be achieved in pursuing a Voluntary Assessment in tandem with the Next Phase and so, instead, she would provide a detailed report as to the deficiencies identified by the Commissioner as to the Inquiry's handing of data under the DPL.
39. This is that Report.

## Identified Deficiencies

### Data Protection Governance

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#### Summonses for information/documentation

40. The Inquiry has broad powers to procure evidence and documents, to examine witnesses, to conduct its proceedings in public or in private and generally to regulate its procedure. Reg.2 of the Inquiry Regulations allows the Inquiry to issue a summons requiring a person to appear before it and produce documents. Reg.3(4) states that the summons may require the person to produce:

- a. all documents;
- b. specific documents; or
- c. documents described by reference to their subject matter or any other factor,

which are or might reasonably be relevant to the matter that the committee of inquiry is inquiring into.

41. The Commissioner has noted at Art.2(i) of the Inquiry Regulations that the Inquiry has wide powers to require evidence and production of documents and the Commissioner is cognisant of the fact that, pursuant to the Terms of Reference dated 6 March 2013 [**Appendix 3**] the Inquiry has the remit to investigate institutions providing care to children (particularly vulnerable children) throughout the period 9 May 1945 – 3 April 2014. It is likely that there are thousands (if not hundreds of thousands) of paper, manual and electronic records that potentially fall within the scope of this time period.

42. The Commissioner has noted that the Inquiry Protocol relating to providing evidence to the Inquiry [**Appendix 6**] is silent on how it seeks access to such information and what criteria it will use for obtaining records relevant to its functions save for paragraph 3 of that Protocol which states that a:

*"...document will be considered to be a 'relevant document' if the Inquiry would, if aware of its existence, wish to be provided with it, given the Inquiry's Terms of Reference".*

43. The Commissioner would draw attention to the Third Principle which states:

*"Personal data shall be adequate, relevant, and not excessive in relation to the purpose or purposes for which they are processed".*

44. In practice, this means that the Inquiry should ensure that it only holds personal data about an **individual that is sufficient for the Inquiry's purposes** and it should not hold more information than it needs for that purpose. In other words, it should identify the minimum amount of personal data it needs to fulfil those purposes and hold that information; this is known as data minimisation and aids compliance with the Third Principle. The Commissioner considers that the Inquiry should have put rules in place setting out how it would seek access to records and

how it will ensure that it is not seeking access to records it does not need. Given the apparent recent scrutiny upon the Inquiry regarding costs, the Inquiry may consider putting in place rules relating to the inspection of records *in situ*, in other words inspection of records within **the institutions coming under the Inquiry's remit, to save on** the wholesale transmission of records many of which may not, in fact, be needed.

45. The Commissioner has been contacted by a number of individuals<sup>11</sup> complaining about the manner in which the Inquiry has conducted the summons process. In particular, the Commissioner understands that a number of individuals who formed part of the Historic Abuse Redress Scheme<sup>12</sup> (the **Redress Scheme**) were initially contacted by the Minister for Health and Social Services (**H&SS**) to ascertain whether or not they would provide their consent to their personal data being released to the Inquiry. The Inquiry then decided to do away with the consent process and, instead, issue a formal summons to the Minister for H&SS requiring that they disclose all information relating to the Redress Scheme, even in circumstances where the data subject had actively withheld consent or where that Department had not been able to elicit a response. Certain of those individuals who actively withheld consent did so on the basis that they did not want to be involved in the Inquiry in any way.
46. As stated at paragraph 43 above, the Third Principle clearly states that the data processed by the Inquiry must be adequate, relevant and not excessive. The Commissioner does not consider that it was necessary or proportionate for the Inquiry to override the consent of competent individuals and effectively force potentially vulnerable individuals to have their very sensitive personal information provided to the Inquiry and for such to then be provided to the Interested Parties. The Commissioner has had regard to the SPD Regulations and, in particular, Schedule 3 of the DPL as set out at paragraph 19 above which is clear in its terms that a data controller (here the Inquiry) must have the consent of the data subject in order to **process that individual's sensitive personal data** (unless certain exemptions apply). It is not known how much data was received by the Inquiry such as referred to individuals who had not provided consent nor whether such was made available to the Interested Parties and/or the Public.
47. The Commissioner is aware of further examples whereby documentation has not been sought by the Inquiry through proper channels or has been sought at very short notice.

#### **Example**

At the beginning of the Inquiry, a former director was purportedly contacted directly by solicitors to the Inquiry for C4 documents rather than through the proper channels. These documents were not personal; they were **C4's** documents and should have been requested through the correct procedure, particularly as the aforementioned was to be called as a witness. The released documentation had to be documented retrospectively.<sup>13</sup>

#### **Example**

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<sup>11</sup> C5 and alleged victims

<sup>12</sup> <http://www.gov.je/Government/Departments/HealthSocialServices/Pages/HistoricAbuseRedress.aspx>

<sup>13</sup> C8

Documentation is purportedly requested at extremely short notice. On one occasion the documents (which were highly sensitive and located in a private area) were said to be required almost immediately and this was very problematic, on both an organisational and staff welfare basis.<sup>14</sup>

#### Changing of Inquiry Protocols

48. The Inquiry has published on its website<sup>15</sup> a number of "Protocols"<sup>16</sup> which set out how the Inquiry will conduct its business. Of particular interest for the purposes of this Report are:

- a. Inquiry Protocol: Data Protection, FOI and Redaction<sup>17</sup> (the **DP Protocol**) [**Appendix 4**];
- b. Inquiry Protocol: Protective Measures Protocol<sup>18</sup> (the **Protective Measures Protocol**) [**Appendix 5**];
- c. Inquiry Protocol: Providing Evidence to the Inquiry<sup>19</sup> (the **Evidence Protocol**) [**Appendix 6**]; and
- d. Inquiry Protocol: General Procedures<sup>20</sup> (the **General Procedures Protocol**) [**Appendix 7**].

#### The DP Protocol

49. The DP Protocol purportedly sets out the manner in which the Inquiry will adhere to the DPL and the relevant Principles. It has been amended twice during the course of the Inquiry.

#### Naming of deceased alleged abusers

50. On 7 October 2014, the Inquiry made a ruling following applications by Counsel to the Inquiry to amend the DP Protocol regarding the naming of those whom the Inquiry reasonably believes to be deceased. Submissions were heard from Mr Sadd (Counsel to the Inquiry); Advocate Beverley Lacey (on behalf of H&SS), Advocate Robert MacRae (on behalf of the States of Jersey Police (**SOJP**)) and Mr Collins (on behalf of the Jersey Care Leavers Association (**JCLA**)).

51. Mr Sadd sought an amendment to paragraph 17.1.2 of the DP Protocol and, in particular, the general protective ruling which provided for the redaction of the names and identifying details: "*of any individuals accused of abused, except for those who have criminal convictions*". The amendment was resisted by Advocates Lacey and MacRae.

52. A transcript to that hearing may be found on the Inquiry website<sup>21</sup> and ultimately that application was adjourned for consideration on another day<sup>22</sup>.

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<sup>14</sup> C8

<sup>15</sup> [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

<sup>16</sup> <http://www.jerseycareinquiry.org/key-documents>

<sup>17</sup> <http://www.jerseycareinquiry.org/Key%20Documents/Data%20Protection,%20FOI%20and%20Redaction.pdf>

<sup>18</sup> <http://www.jerseycareinquiry.org/Key%20Documents/PM%20Application.pdf>

<sup>19</sup> <http://www.jerseycareinquiry.org/Key%20Documents/Inquiry%20Protocol%20-%20Providing%20Evidence%20to%20the%20Inquiry%20-%20April%202014.PDF>

<sup>20</sup> [http://www.jerseycareinquiry.org/Key%20Documents/Inquiry%20Protocol%20-%20General%20Procedures\\_-\\_April\\_2014.PDF](http://www.jerseycareinquiry.org/Key%20Documents/Inquiry%20Protocol%20-%20General%20Procedures_-_April_2014.PDF)

53. On 15 October 2014<sup>23</sup> the Inquiry heard further submissions from Counsel to the Inquiry regarding proposed further amendments to the DP Protocol and, in particular *"what the Panel is being invited to consider is what constitutes the public domain and therefore what information is it, in relation to the Redaction Protocol, that need not be redacted"*

54. The Inquiry ultimately handed down their ruling regarding the above amendments on 24 October 2014<sup>24</sup> and stated that:

*"On 23 September 2014 Interested Parties were notified of an intended change to the Redaction Protocol. The relevant Protocols are: Protective Measures at 8.1.2, Data Protection, Freedom of Information and Redaction at 17.1.2.*

*These Protocols currently prohibit the naming of*

*"... any individuals accused of abuse, except for those who have criminal convictions for that abuse."*

*The proposed amendment at that date of 23 September was for the Protocol to read as follows:*

*"... any individuals accused of abuse, except for those who have criminal convictions for that abuse and those whom the Inquiry reasonably believes to be deceased."*

*On 7 October the Panel heard submissions on the naming of those whom the Inquiry reasonably believed to be deceased. The matter was then adjourned to 15 October for the Panel to hear further submissions and determine the following:*

*(i) Public domain - what should this encompass?*

*(ii) Whether the exception on the prohibition on naming is confined to those who have "criminal convictions for that abuse" or "criminal convictions for abuse"*

*(iii) Notification of changes to the Protocols*

*(iv) Provision of unredacted material to Interested Parties...*

*...it is clear that the Protocol of not naming alleged deceased abusers is not tenable. There is a need for more transparency and a need for the narrative, the witness's voice, to be more easily and readily understood by all. Those alleged abusers who are still alive may have a contribution to make to the Inquiry. Accordingly, they will be given an opportunity to respond to allegations against them by giving evidence to the Inquiry. The same does not of course apply to alleged deceased abusers.*

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<sup>21</sup> <http://www.jerseycareinquiry.org/Transcripts/JER%20INO%20-%20Day%2021%20Final.pdf>

<sup>22</sup> <http://www.jerseycareinquiry.org/Transcripts/JER%20INO%20-%20Day%2022%20Final.pdf>

<sup>23</sup> <http://www.jerseycareinquiry.org/Transcripts/JER%20INO%20-%20Day%2025%20Final.pdf>

<sup>24</sup> <http://www.jerseycareinquiry.org/Transcripts/JER%20INO%20-%20Day%2028%20Ruling.pdf>

*The Panel do recognise that there is a balance to be achieved between transparency, the need for a cogent report and the wishes/feelings of the relatives of the deceased. Our focus, however, must be our Terms of Reference and the production of a cogent and coherent report for the benefit of the people of Jersey.*

*Accordingly, in the exercise of its discretion, the Panel agree that the Protocols be amended to permit the naming of individuals accused of abuse whom the Inquiry reasonably believes to be deceased...*

#### *Ruling*

##### *18 (i)"in the public domain"*

*The proposed change is agreed, namely that under the Data Protection, Freedom of Information and Redaction Protocol, information that is already in the public domain will not be redacted and names of individuals that are in the public domain will not be redacted.*

*"In the public domain" is information that is realistically accessible to the general public, information that has been published in regulated media - newspapers (printed or online), radio and television broadcast..."*

55. The First Principle states that personal information must be fairly and lawfully processed and the Sixth Principle states that personal information must be processed in line with the data subject's rights.
56. The Commissioner is concerned that the manner in which the Inquiry takes steps to amend its Protocols are inadequate and, in particular, that:
- a. The Inquiry does not appear to advise the Interested Parties of proposed amendments with sufficient notice to allow the Interested Parties to properly consider those amendments;
  - b. The Inquiry refuses to accept submissions from the Interested Parties as to the adequacy of the proposed amendments;

#### **Example**

On 17 March 2015 the Inquiry wrote to the Interested Parties advising that the Inquiry Panel had decided to amend the Protocol and a copy of the proposed amended Protocol was provided. The Inquiry advised that the Protocol was to come into effect on 24 March 2015.

The Inquiry indicated that they would not entertain further submissions in respect of the proposed amended Protocol in light of the fact that they had received submissions in respect of "*the proposed process previously circulated*". The Inquiry concluded by stating that "*In light of the Panel's decision to amend the Protocol and also the process, the Inquiry will not respond to those submissions previously made.*"



- c. Insufficient reasons are provided by the Inquiry as to the reasons behind the proposed amendments and, where submissions are received from Interested Parties, no reasons are given as to what weight (if any) has been given those submissions.

**Example**

At **Appendix 8** is a copy of the Inquiry Ruling – Amendment to Data Protection, Freedom of Information and Redaction Protocol<sup>25</sup> which states that *"The Panel, having reviewed a number of documents received from various providers, have made the following ruling of its own initiative.*

*The protocol has been amended to include that any information already in the public domain will not be redacted"* (emphasis supplied).

**Example**

On occasions, witnesses' inquiry statements contain inaccurate facts or claims which are hearsay from third parties. This means that certain information being put into the public domain is potentially inaccurate.<sup>26</sup>

**Example**

In relation to the Protective Measures Protocol, the deletion of the former paragraph 18 had the effect that Interested Parties are now no longer to be informed when protective measures applications are being made, or have the chance to make submissions, taking away their right of reply in relation to those matters.<sup>27</sup>

**Example**

*"Due to the sensitivity of the records, and the allegations being made, it is essential that the redactions are applied consistently and that there are no errors. It only requires one occurrence of a name left un-redacted to lead to the identification of an individual. Under the protocol, departments are meant to have 5 days' notice to check provisional redactions. Under the old protocol, when larger amounts of documents were being redacted, (which was unnecessary as they would not ultimately be utilised in a public hearing room), the compliance with the 5 days process and the error rate was unacceptably high".<sup>28</sup>*

**Example**

There is a commitment to give notice of any future changes to the DP Protocol, but it is evident that this has not happened on a number of occasions. This means that any teams assisting the Inquiry often struggle to do so. Under the DP Protocol, the Inquiry should give 48 hours' notice with regards to any rejected redactions, or in relation to

<sup>25</sup> <http://www.jerseycareinquiry.org/Key%20Documents/Inquiry%20Ruling%20-%20Amendment%20to%20Data%20Protection,%20Freedom%20of%20Information%20and%20Redaction%20Protocol.pdf>

<sup>26</sup> C6

<sup>27</sup> C1

<sup>28</sup> C6

witnesses coming forward to give evidence. For example, notification of witness 80 coming forward to give evidence was only sent after close of business on the day **before the witness was due to appear, meaning that many of those individuals' records were not available for the Inquiry hearing.**<sup>29</sup>

57. The Commissioner considers that proposed amendments to Protocols should be circulated to all Interested Parties with sufficient time to allow them to consider those amendments and to make such representations as they feel necessary. Such submissions should be received by the Inquiry and detailed reasons provided to the Interested Parties as to why their submissions are accepted/rejected as the case may be.

Whilst it is acknowledged that the Inquiry is free to regulate its own procedure for and conduct and management of its proceedings and pursuant to SO.147(1) of the Standing Orders, the Commissioner considers that given the effect that proposed amendment to Inquiry Protocols are likely to have on end service users, that those end service users are afforded sufficient time to consider proposed amendments and make representations, as necessary and so as to ensure that any data processed by the Inquiry continues to be handled in a manner compatible with the DPL and, in particular, the First Principle.

58. The Commissioner is concerned by the amendments made to the DP Protocol following the 24 October 2014 ruling and, in particular, that the Inquiry:

- a. decided to permit the naming of deceased alleged abusers. This was effected by the way of an amendment to paragraph 17.1.2 of the DP Protocol; and
- b. decided that information in the **"public domain" will not be redacted, irrespective of whether or not a particular individual has been convicted of an allegation which has entered the public domain**<sup>30</sup>.

59. The Commissioner considers that it is unhelpful in a small community such as Jersey for there to be any naming of those who have been named as alleged abusers but who have not been convicted and in circumstances where such individuals may have living relatives and who are likely to be easily identifiable. There is a risk that naming of deceased alleged abusers in such a way may bring about recriminations, shaming of those with links to the deceased alleged abusers and substantial ill-feeling. It is also of concern (albeit not strictly a data protection concern), that such deceased individuals are unable to respond to the allegations that have been made against them.

#### *Provisional Redactions to Documents Provided to the Inquiry*

60. In February 2015, the Inquiry amended the DP Protocol to remove the rights of document providers to apply provisional redactions to the documents supplied to the Inquiry.

61. At paragraph 17 of the DP Protocol, it is noted that the **Inquiry's General Protective Ruling (the General Protective Ruling)** provides for the following information to be redacted from all

<sup>29</sup> C2 – C4

<sup>30</sup> The media release on the Inquiry website dated 24 October 2014 states that "public domain" means "Information realistically accessible to the general public that has been published in regulated media – newspapers (printed or online)/radio and TV broadcast" (<http://www.jerseycareinquiry.org/news?newsid=83>).

material before it is disclosed by the Inquiry to Interested Parties and/or published on the Inquiry's website:

- a. The names and identifying details of:
  - i. Individuals having claimed to be abused, or having been a witness to any abuse alleged;
  - ii. Any individuals accused of abuse, except for those who have criminal convictions for abuse or those accused of abuse whose details are in the public domain as defined above and those whom the Inquiry reasonably believes to be deceased.
  - iii. Individuals not falling into any of the above categories, whose identity the Inquiry considers ought not to be disclosed;
  - iv. Any applicants who have successfully applied to the Inquiry to not have their identities revealed and who do not fall into any of the above categories.
- b. The Commissioner understands that the Inquiry has not always provided **the 5 days'** notice that a particular document is going to be publicly referred to in proceedings (such as it is required to do under paragraph 22.3 of the DP Protocol) and this has purportedly given rise to significant failings in the redaction process which cannot be timeously addressed by the document providers. The Commissioner understands that it is often the case that errors are sometimes only picked up during the course of an Inquiry hearing by which time the breach has already occurred and the information in the public domain.
- c. For example, on 9 June 2015<sup>31</sup>, Counsel to the Inquiry (Mr Sadd) stated as follows:

*"Madam, before I start just one matter of important housekeeping. First I ought to apologise for a protocol breach in relation to two documents that the Inquiry will be looking at and they are Her Majesty's Inspections of Prison 2001-2005, they are documents that I asked at the end of last week to be uploaded and that takes time.*

*There is also one document that we received this morning following disclosure on Friday but then there is a process for that document to be uploaded onto the system and as a consequence of that late provision unfortunately we haven't been able to notify the Interest Parties in sufficient time, but again it is a document that will be available for all parties to be able to see..."*

#### **Example**

The Inquiry has apparently displayed a relatively high propensity to fail to redact personal data in documents that the Inquiry has generated or that it has received from elsewhere

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<sup>31</sup> <http://www.jerseycareinquiry.org/Transcripts/JERINO%20-%20Day%2072%20Further%20Amended.pdf>

than the 'official' documents providers. One document provider estimates that the failure rate may be as high as 30-40%.<sup>32</sup>

**Example**

The Inquiry is apparently resistant to the suggestions of certain document providers to redact certain identifying features of witnesses (for example month and year of birth). It is not clear why the Inquiry considers that such specific personal data should be left unredacted or why it assists the Inquiry's processes not to take the 'abundance of caution' approach to redaction apparently advocated by certain of the document providers.<sup>33</sup>

**Example**

There have been numerous instances of careless disclosure of data to Interested Parties due to redaction errors by the Inquiry and this is an on-going problem.<sup>34</sup>

**Example**

At least one Social Enquiry Report (**SER**) pertaining to an offender was disclosed to the Inquiry without the knowledge or approval of the Royal Court<sup>35</sup>. The matter came to light when the prosecution bundle including the SER were to be uploaded onto the Inquiry website and there was dispute between the Advocate for the relevant document provider and the Inquiry Solicitor as to which parts should be redacted.<sup>36</sup>

62. A further example is that the Commissioner understands that on 26 May 2015, two witness statements relating to witnesses who were to be examined on 27 May 2015 had still not been provided to the Interested Parties. It is further understood that one witness statement was received on 26 May 2015 at 19:52 but that witness did not ultimately give evidence until 28 May 2015. As for the remaining witness who was examined on 26 May 2015, their witness statement was not received until 26 May 2015 at 22:18.<sup>37</sup>

63. Despite the protection purportedly afforded by the DP Protocol, there are instances of sensitive personal data being published during the Inquiry hearings or on the Inquiry's website.

**Example**

A senior member of C4 has watched the enquiry on two occasions; both times a name was mistakenly un-redacted and was shown on the large screen in the presence of the public and journalists. On another occasion, a colleague's name was shown on the large screen simply because they had printed out the document in question and their name was not appropriately redacted.<sup>38</sup>

**Example**

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<sup>32</sup> C1  
<sup>33</sup> Ibid  
<sup>34</sup> Ibid  
<sup>35</sup> C9  
<sup>36</sup> C9  
<sup>37</sup> C1  
<sup>38</sup> C8

In April 2015 a document containing the name of an alleged victim was published on the Inquiry website. The Interested Party who had provided this document to the Inquiry had proposed redactions in yellow which they considered ought to be made to the document. Those redactions were apparently ignored/overlooked by the Inquiry and the document was published on the Inquiry website which contained the name of the alleged victim together with certain other sensitive data.

The document purportedly remained on the Inquiry website for some hours prior to an independent third party contacting the Inquiry and advising them of the error.

Despite Eversheds confirming that the error was unforeseen but remedied, this document remained on the Inquiry website until 13 October 2015 allowing any third party accessing such documents to remove certain of the redactions. The document was subsequently replaced at the insistence of the third party.

### **Example**

There are instances where social care files of individuals (including of those who explicitly rejected the use of their records by the Inquiry) being uploaded to the Inquiry website<sup>39</sup>. The Commissioner remains concerned about the publication of such social care files, albeit with redactions, and making such available on the World Wide Web, due to their extreme sensitivity.

### **Example**

One complainant has expressed concerns that the mechanisms in place to protect individuals granted anonymity are not as robust as they necessarily could be. For instance, while an individual sits behind a screen, there is no mechanism to disguise their voice<sup>40</sup>.

### **Example**

One complainant has noted that the Inquiry team has prepared redacted documentation for witnesses which also have a unique cipher number applied to it. During the public evidence, the witness is purportedly often shown a ciphered document, and told that number e.g. 123 refers to them. Therefore, anyone within the public gallery knows that 123 = for e.g. Mr Smith. The same document is then shown to Mr Smith when appearing as an anonymous witness Mr X. This further negates the anonymity protection<sup>41</sup>.

## Inappropriate redaction of documentation and careless disclosure to Interested Parties with access to Opus Magnum

64. Individuals and organisations are able to apply to the Inquiry for Interested Party status, in accordance with the General Procedures Protocol<sup>42</sup> [**Appendix 7**]. Those who are granted

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<sup>39</sup> C6

<sup>40</sup> C6

<sup>41</sup> C6

<sup>42</sup> [http://www.jerseycareinquiry.org/Key%20Documents/Inquiry%20Protocol%20-%20General%20Procedures\\_-\\_April\\_2014.PDF](http://www.jerseycareinquiry.org/Key%20Documents/Inquiry%20Protocol%20-%20General%20Procedures_-_April_2014.PDF)

Interested Party status are obliged to adhere to certain obligations as to confidentiality as follows:

*"Confidentiality obligations of Interested Parties*

15. *A person (which includes an institution, organisation or body) who is designated as an Interested Party, and who agrees to such designation, automatically undertakes to be bound by the following confidentiality provisions in respect of the Inquiry's work:*
  - 15.1 *All material provided to the Interested Party by the Inquiry is confidential and, in consideration of the provision of that material, the Interested Party agrees to take all necessary steps to preserve that confidentiality. The material is provided solely for the purpose of assisting the Interested Party in assisting the Inquiry and for no other purpose.*
  - 15.2 *All Interested Parties undertake to the Inquiry not to disclose or pass on to any third party, other than to the Interested Parties' own legal representatives, any document, witness statement, or other material supplied to it by the Inquiry, or any of the information contained within that material, save with written permission of the Inquiry.*
  - 15.3 *All material supplied to an Interested Party by the Inquiry must be stored in a secure place in order to prevent access to it by any person not authorised by the Inquiry.*
  - 15.4 *All material and information supplied to an Interested Party by the Inquiry must be used solely for the purpose of the Inquiry and, at the direction of the Inquiry, any and all material, and any copies, must be returned to the Inquiry or destroyed at the Inquiry's request.*
16. *The above confidentiality obligations will continue even when the Inquiry's work has finished and/or when a person ceases to be an Interested Party.*
17. *Where an Interested Party is an organisation, institution, or other body, every individual who forms part of that Interested Party, will be subject to the above confidentiality provisions. An Interested Party, must, on request from the Inquiry, provide a list of all individuals who have access to the Inquiry material and therefore are bound by the confidentiality obligations."*

65. The Commissioner understands that the following have been afforded Interested Party Status:

- a. SOJP
- b. Chief Minister's Department<sup>43</sup>

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<sup>43</sup>

<http://www.jerseycareinquiry.org/Key%20Documents/Applications%20for%20interested%20party%20status%20and%20access%20to%20lawyers%20for%20relevant%20departments%20of%20the%20States%20of%20Jersey.pdf>

- c. H&SS<sup>44</sup>
  - d. Education, Sport and Culture Department<sup>45</sup>
  - e. **The Law Officers' Department** (to include former Attorneys and Solicitors General namely, William Bailhache, Tim Le Cocq and Sir Michael Birt<sup>46</sup>, and Sir Philip Bailhache, Terence Snowden QC, Stephanie Nicolle QC and Howard Sharp QC<sup>47</sup>).
  - f. **The Jersey Care Leavers' Association**
  - g. Mr Leonard (Lenny) Harper<sup>48</sup>
  - h. Mr Michael Gradwell<sup>49</sup>
66. As may be noted in the FAQ section<sup>50</sup> to the Inquiry website, the Interested Parties are given advance access to documents uploaded to Opus Magnum (**Magnum**) and so that they may propose to the Inquiry that certain questions are put to a witness:

*"Q: What does being an Interested Party mean?"*

*A: Interested Parties will be able to propose to the Inquiry that certain questions be asked of a witness. These questions would need to be submitted to the Inquiry's legal team no later than 48 hours in advance of that witness giving oral evidence. Counsel to the Inquiry will then consider those questions and put them to the witness if they feel it is appropriate to do so.*

*Interested Parties, providing they accept that they must keep anything given to them by the Inquiry confidential, will have advance access to documents. This is to allow Interested Parties the opportunity to consider papers in advance of witnesses giving evidence and to submit questions to Counsel to the Inquiry, if they so wish, in the way described above.*

*Interested Parties have other roles too, such as the ability to seek permission to make an opening and / or a closing statement to the Inquiry and they will be entitled to be present to read the Inquiry's final report two hours before its publication".*

67. Paragraph 19 of the General Procedures Protocol [**Appendix 7**] states:

*"19. A person who is designated by the Inquiry as an Interested Party and/or their Accredited Lawyer will:*

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<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> <http://www.jerseycareinquiry.org/Key%20Documents/Ruling%20on%20Interested%20Party%20Extension.pdf>

<sup>47</sup> <http://www.jerseycareinquiry.org/Key%20Documents/Ruling%20LOD.pdf>

<sup>48</sup>

<http://www.jerseycareinquiry.org/Key%20Documents/Application%20for%20Interested%20Party%20status%20from%20Leonard%20Harper.pdf>

<sup>49</sup>

<http://www.jerseycareinquiry.org/Key%20Documents/Application%20for%20Interested%20Party%20status%20for%20Michael%20Gradwell.pdf>

<sup>50</sup> <http://www.jerseycareinquiry.org/faqs>

*19.1 Be provided with access to a dedicated area of the Inquiry's Document Management System for Interested Parties in order to view evidence, as set out below;*

*19.2 Be entitled to be legally represented in accordance with the Inquiry Protocol: Legal Representation;*

*19.3 Be entitled to formally appear at any public hearings;*

*19.4 Be entitled to submit questions to Inquiry Counsel for consideration by them, via the Solicitors to the Inquiry, that the Interested Party would want a witness appearing before the Inquiry to be asked;*

*19.5 Be entitled to seek permission from the Inquiry to make an opening and/or closing statement to the Inquiry, in accordance with the Inquiry Protocol: Oral Hearings; and*

*19.6 Be entitled to be present to read the Inquiry's finalised report two hours before its publication."*

68. The Commissioner understands that there have been various instances of careless disclosure of sensitive personal data to Interested Parties via Magnum due to redaction errors on the part of the Inquiry.

#### **Examples**

- a. 2 October 2014: Error in redaction to the statement of Witness 23. Certain third party names had been left unredacted by the Inquiry. This was communicated to the Inquiry at 19:08pm on 2 October 2014 and responded to by the Inquiry at 20:12 that same day.
- b. 11 December 2014: **Error in redaction to the statement of Witness 236. The witness' name had been left unredacted by the Inquiry.** This was communicated to the Inquiry at 09:28am on 11 December 2014 and responded to by the Inquiry at 13:37pm that same day. It is noted that the Inquiry had sent notice to all parties of the availability of, *inter alia*, that document at 20:38pm on 10 December 2014 and so the **witness' name was visible for some 17 hours before being appropriately dealt with by the Inquiry.**
- c. 13 April 2014: **Error in redaction to document WD005724. An individual's name had been left unredacted by the Inquiry.** This was communicated to the Inquiry at 17:30pm on 8 May 2015 and responded to by the Inquiry at 11:15am on 14 May 2015.
- d. 16 April 2015: Error in redactions to document WD005327\_UR. The name of a rape victim and their abuser was uploaded to Magnum despite provisional redactions having been provided by the document provider. This apparently was due to an issue with Magnum which the Inquiry were not aware of until this issue was raised. There were apparently no checks in place to counteract this.
- e. November 2014: Error in redaction to a Witness Statement as uploaded to Magnum in/about November 2014. This witness' **statement contained various unproven (and potentially defamatory) allegations against a number of individuals.** In particular, the



witness made allegations of sexual harassment against a third party who remained identifiable from certain other information contained within the statement (although that **individual's name had been redacted**). **This was communicated to the Inquiry at 10:33** on 11 November 2015 and responded to by the Inquiry at 17:48 on 12 November 2015. It is noted that by the time the Inquiry was made aware of the deficiencies of this document, it had been visible to all Interested Parties via Magnum for approximately some 12 months<sup>51</sup>.

- f. 27 May 2015: Error in redactions to the witness statements of two individuals in respect of identifying features. This was communicated to the Inquiry at 08:49am on 27 May 2015 and responded to by the Inquiry at 08:58am that same day indicating that they would review the comments which had been communicated to them and would make replacements where they saw fit to do so. At 10:04am later that day, the Inquiry responded to the effect that certain of the comments had been accepted and further redactions made.
- g. 2 June 2015: **Error in redaction to document WS000561. A witness' name had been left unredacted** by the Inquiry. This was communicated to the Inquiry at 12:11am on 2 June 2015 and responded to by the Inquiry at 17:35 on 4 June 2015
- h. 9 June 2015: Error in redaction to the documents folder pertaining to Witness 735 in that certain documents were available in un-redacted form. This was communicated to the Inquiry at 13:39am on 9 June 2015 and responded to by the Inquiry at 15:06 later that same day confirming that the documents had been hidden from view.
- i. 18 June 2015: Error in redaction involving the statement of Witness 168 which had not been redacted sufficiently in view of applicable reporting restrictions pursuant to the Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002. This was communicated to the Inquiry at 12:55pm on 18 June 2015 and responded to by the Inquiry at 18:37 on 18 June 2015 indicating that the offending document would be removed but that it was not possible to do so at that time. The Inquiry responded on 22 June 2015 at 10:51pm indicating that the offending document had been replaced.
- j. 30 June 2015: Error in redaction to document WD006633 contained in the documents bundle for Witness 164 (containing sensitive personal data). The relevant redactions were applied but due to an error within Magnum, such redactions did not show. This was communicated to the Inquiry at 10:43am on 30 June 2015 and responded to by the Inquiry at 11:09am on 30 June 2015.
- k. 4 August 2015: Error in redaction **to document WS000624. Witness 246's name had been left unredacted** in the signature block at the end of their witness statement thus allowing the anonymous witness to be identified. This was communicated to the Inquiry at 16:55pm on 4 August 2015 and responded to by the Inquiry at 20:48pm that same day advising that the document was hidden from view ten minutes after the error was brought **to the Inquiry's attention. Witness 246's witness statement was released to all parties at 15:47** and was available in partially unredacted form for over an hour.

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<sup>51</sup> C10

- l. 7 August 2015: Error in redaction to document LOD00693. At paragraphs 28 and 30, the names of individuals who were not part of the Inquiry process had been left unredacted. This was communicated to the Inquiry at 11:37am on 7 August 2015 and responded to by the Inquiry at 18:45 on 10 August 2015.
- m. 4 November 2015: Error in redaction to a Witness Statement as uploaded to Magnum on 4 November 2015. This witness referred to an unproven allegation of rape made against an individual, at one stage describing that individual as a "serial rapist". The alleged offender had never been prosecuted or named in connection with this allegation and whilst the alleged offender's name had been redacted from the majority of the witness statement, it was overlooked and remained in one particular paragraph. This was communicated to the Inquiry at 12:39pm on 12 November 2015 and responded to by the Inquiry at 14:54pm that same day<sup>22</sup>.
- n. 10 November 2015: Error in redaction to Exhibit RFB1 up-loaded to Magnum. The document referred was a publicly available document but which identified a witness as the victim of abuse. Whilst that individual's name was redacted by the Inquiry and replaced with a numerical identifier, the witness' name was not redacted in certain other parts of the document, such remaining clearly visible to those accessing the document on Magnum. This error was communicated to the Inquiry at 12:45 on 10 November 2015 and responded to by the Inquiry at 17:44 that same day. The Commissioner notes that notwithstanding the further redactions made by the Inquiry that the witness remained identifiable as the certain other parts of the document had not been redacted and could have led to that witness' identification by any member of the public. Accordingly, the Commissioner wrote to the Inquiry on 15 January 2016 (at 09:34am) [Appendix 12] asking that the document be further redacted. The Inquiry responded at 09:55am that same day [Appendix 12] indicating that the day 114 documents had been removed from the Inquiry website. On 3 February 2016, the Inquiry provided a substantive response to the Commissioner noting as follows:

*"...We have reviewed the [REDACTED] was however redacted by our Documents Team in accordance with our redaction policy, which means that the individual's name was redacted and ciphered, even though that material is publicly available elsewhere.*

*We recognise that, unfortunately, a limited number of members of the public may proactively attempt to translate the Inquiry's redaction and anonymisation method by running searches to identify other material. The Inquiry takes all reasonable measures to ensure this does not happen, although in some cases this is not impossible, particularly where the identity of an individual and the potential abuse they have suffered is already in the public domain.*

<sup>22</sup> C10

*We however accept the point you make in relation to someone being able to search for [REDACTED] if they so wished. Therefore, we will apply the additional redactions proposed" [Appendix 12].*

- o. October/November 2015: Error in redaction to a Witness Statement uploaded to Magnum some several months previously. The version first uploaded to Magnum (and thus available to all Interested Parties) referred to unproven allegations of sexual harassment against a third party who remained identifiable from certain other information contained within the statement. At some point in late October/November 2015, the earlier version of this witness' **statement was replaced with a version redacting the name of that third party** against whom allegations had been made.<sup>53</sup>

69. In respect of those statements referred to at paragraphs 67(e) and 63(m), whilst the Inquiry responded to the party who pointed out the error indicating that they agreed with the redactions proposed they did not, in fact, alert any of the other Interested Parties to the fact that the statements had been further redacted and replaced on Magnum. It therefore potentially remains a risk that certain Interested Parties may not be aware that amendments have been made and that they may not rely on the earlier versions of such documents. The Commissioner considers that in any circumstances whereby documents have been further redacted and replaced on Magnum that the Inquiry should take active steps to alert all those who had access to the previous versions and, in particular, to inform them that they may not rely on, nor retain, such earlier versions. The Inquiry should also ask for confirmation from each of the Interested Parties that any earlier versions which have been printed off/stored have been destroyed and not otherwise duplicated/passed on.

70. In allowing the publication of the names of alleged victims/alleged abusers due to inadequate redaction, the Commissioner considers that such repeated and significant errors in the redaction process **indicates that the Inquiry's** data handling processes fall short of an acceptable standard in relation to its procedure for preparing documents for disclosure and the manner in which such documents are then presented to the public. The Commissioner also considers that in a small community such as Jersey, inadvertently naming (by reason of insufficient redaction) those that have not been found guilty of any crime potentially places such individuals (and their families) at risk of retribution. Further, in allowing the inadvertent naming of alleged victims (sometimes by reference to historic documents), this has the potential to cause significant damage and/or distress to those individuals who are linked with abuse.

#### Breach of Injunction

71. On 9 December 2015, errors in relation to the redaction of a witness statement became apparent once that statement was uploaded to Magnum. In that statement, the witness referred to civil proceedings which had been held in private, and to which an injunction preventing the naming/identification of certain parties to those proceedings applies. Notwithstanding the terms of the injunction, the witness statement was insufficiently redacted and uploaded to Magnum and made available to the Interested Parties. This was

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<sup>53</sup> C10

communicated to the Inquiry on 9 December 2015 and the Inquiry responded on 10 December 2015 (at 9:36am), confirming that the statement was to be replaced on Magnum with appropriate redactions in place.

72. The Commissioner considers that the Inquiry paid insufficient regard to the contents of that statement in that they failed to identify that the contents thereof related to “in private” civil proceedings nor the injunctions flowing from such proceedings. The Commissioner understands that the Inquiry is not able to override the terms of an injunction imposed by the Royal Court of Jersey. In releasing injunctioned information to the Interested Parties the Inquiry potentially breached the injunction and put the individuals with the protection of such injunction at risk.

### “Reading through” agreed redactions

73. On 9 June 2015, during the course of live evidence, Counsel to the Inquiry (Mr Sadd) stated:

*“...those rectangular blocks that you see there and other that you will see in your statement are in line with the Inquiry’s protocols vis-à-vis confidentiality and the necessity as a default position to redact names and to maintain people’s confidentiality where necessary. I will probably read through a good amount of the redaction because those people whose names you mention that have been redacted will be giving evidence in public and therefore I can name them”.*

This is recorded at page 65 line 1 of the transcript for that day<sup>54</sup> and did not draw any comment from the Inquiry panel. Counsel then proceeded to refer openly to a third party throughout the course of **that day’s hearing without any protective measures ruling being made** and prior to that individual providing evidence or waiving any right to anonymity.

74. The Commissioner understands that it was only as a result of representations being made to the Inquiry on 9 June 2015 that the Inquiry agreed that the redactions had been incorrectly read through by Counsel to the Inquiry and who was then purportedly reminded of the **redaction policy. The transcript of that day’s hearing were then redacted removing the name** of the third party but not apparently until on/about 17 June 2015 by which time the transcript had been online and visible to the world for some 9 days.

### The Inquiry’s use of Twitter

75. It is noted that the Inquiry live tweets during hearings and posts are made to the [www.twitter.com](http://www.twitter.com) website using the handle @JerseyInquiry<sup>55</sup>. There is, apparently, no Inquiry protocol/social media policy **dealing with the Inquiry’s use of Twitter and how this impacts on an individual’s rights** under the DPL.

76. The Commissioner notes that certain of the tweets published by the Inquiry (such as referred to in the example below) purportedly refer to allegations made by certain witnesses within their witness statements and whose statements were then read into the record by Counsel. It is not always clear from the wording of the tweets, however, that this is the case.

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<sup>54</sup> <http://www.jerseycareinquiry.org/Transcripts/JERINQ%20-%20Day%2072%20Further%20Amended.pdf>

<sup>55</sup> <https://twitter.com/JerseyInquiry>

### Example

Certain tweets were published by the Inquiry and which detail allegations made by certain alleged victims against a former houseparent of Haut de La Garenne (**HDLG**) i.e.:



[Appendix 7]<sup>56</sup>

77. Using the above as an example, it is not clear as to whether or not the individual referred to in the above tweet is alive/deceased or whether he was ever formally charged/prosecuted/convicted of any crime. If that individual is alive then the manner in which the allegations (which may not be proven) are worded, read as if to insinuate that there has been some finding of fact against that individual or, indeed, that the allegations against him have been proven rather than simply recording the fact that certain allegations have been made by Witness 123 and detailing the nature of those allegations.
78. Great care should be taken by the Inquiry to ensure that the processing of an individual's data is relevant, not excessive and that it is fairly and lawfully processed.
79. It is clear that not all tweets (such as referenced above) fairly meet this requirement and great care should be taken by the Inquiry to distinguish between those things which are allegations and those which are proven facts.
80. The Commissioner notes that notwithstanding her raising this particular issue with the Inquiry in her letter dated 17 April 2015, and the Inquiry acknowledging that the tweets were inappropriate and the relevant individual spoken to, that they remain on the Inquiry's twitter feed.

<sup>56</sup> The Commissioner has decided to redact this individual's name, in line with her comments at paragraphs 77-81 of this report.

## **Training and awareness**

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81. It is incumbent on the Inquiry to ensure that all staff are aware of the Inquiry's obligations under the DPL. This is particularly important regarding the Inquiry's legal counsel who are the ones receiving and processing vast quantities of data in accordance with the DPL and the Inquiry's own policies and Protocols.
82. The conditions for processing are set out in Schedules 2 and 3 to the DPL. Unless a relevant exemption applies, at least one of the following conditions must be met whenever processing personal data:
- a. The individual whom the personal data is about has consented to the processing.
  - b. The processing is necessary:
    - i. in relation to a contract which the individual has entered into; or
    - ii. because the individual has asked for something to be done so they can enter into a contract.
  - c. The processing is necessary because of a legal obligation that applies to the data controller (except an obligation imposed by a contract).
  - d. **The processing is necessary to protect the individual's "vital interests"** (in so-called "life or death" situations).
  - e. The processing is necessary for administering justice, or for exercising statutory, governmental, or other public functions.
  - f. **The processing is in accordance with the "legitimate interests" condition.**
83. If the information is sensitive personal data, at least one of several other conditions must also be met before the processing can comply with the first data protection principle. These other conditions are as follows.
- a. The individual whom the sensitive personal data is about has given explicit consent to the processing.
  - b. The processing is necessary so that the data controller can comply with employment law.
  - c. The processing is necessary to protect the vital interests of:
    - i. the individual (in a case where the individual's consent cannot be given or reasonably obtained), or
    - ii. another person (in a case where the individual's consent has been unreasonably withheld).

- d. The processing is carried out by a not-for-profit organisation and does not involve disclosing personal data to a third party, unless the individual consents. Extra limitations apply to this condition.
- e. The individual has deliberately made the information public.
- f. The processing is necessary in relation to legal proceedings; for obtaining legal advice; or otherwise for establishing, exercising or defending legal rights.
- g. The processing is necessary for administering justice, or for exercising statutory or governmental functions.
- h. The processing is necessary for medical purposes, and is undertaken by a health professional or by someone who is subject to an equivalent duty of confidentiality.
- i. The processing is necessary for monitoring equality of opportunity, and is carried out with appropriate safeguards for the rights of individuals.

#### ***Identified Deficiencies***

84. The Eversheds Email sought guidance from the Commissioner in respect of certain social services records which have been obtained by the Inquiry pursuant to summons. In particular, they sought advice as to i) the manner in which such data should be redacted and ii) whether (and if so to what extent) third party data can be provided to those alleged abusers in the next phase of the Inquiry proceedings<sup>57</sup>.
85. The questions posed by Eversheds demonstrate a distinct lack of understanding as to the manner in which documents may be redacted in accordance with the terms of the DPL and the Commissioner notes that at her meeting with the Inquiry on 7 May 2015 Eversheds asked for the Commissioner to review certain documents and the redactions which had been proposed as a "perfect example".
86. The DPL is perfectly clear regarding the manner in which third party data must be dealt with:

*"(7) If a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, the controller is not obliged to comply with the request unless –*

*(a) the other individual has consented to the disclosure of the information to the person making the request; or*

*(b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual.*

*(8) In paragraph (7), the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought in the request.*

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<sup>57</sup> Which began on 26 May 2015.

*(9) Paragraph (7) is not to be construed as excusing a data controller from communicating so much of the information sought in the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.*

*(10) In determining for the purposes of paragraph (7)(b) whether it is reasonable in all the circumstances to comply with the request without the consent of the other individual concerned, regard shall be had, in particular, to –*

- (a) any duty of confidentiality owed to the other individual;*
- (b) any steps taken by the data controller to seek the consent of the other individual;*
- (c) whether the other individual is capable of giving consent; and*
- (d) any express refusal of consent by the other individual.”*

87. The extent of any redaction proposed entirely relates to the document itself and every document will be different. It is for the Inquiry to be satisfied that once the redaction process is complete that the third party should not be identifiable, taking into account any other information which, in the reasonable belief of the Inquiry, is likely to be in (or to come into) the possession of the data subject.

88. The Commissioner considers that the questions posed in the Eversheds Email clearly indicate **that the Inquiry/Eversheds lack sufficient understanding of the Inquiry’s obligations pursuant to the terms of the DPL and that this, in turn, impacts on the Inquiry’s ability to lawful process an individual’s data in accordance with the Law.**

89. The Commissioner is aware that the Inquiry, whilst notified as a data controller, has sought to respond to subject access requests (**DSARs**) made to them by individuals, pursuant to Article 7 of the DPL but that the Inquiry apparently failed to appreciate the difference between the **Inquiry’s standard redaction protocol such as it relates to the Inquiry’s obligations under the DPL.**

#### **Example**

On 18 May 2015, the Inquiry wrote to one of the document providers<sup>58</sup> informing that provider of the intended disclosure of copies of that provider’s records to a witness to the Inquiry and asking the provider to review the Inquiry team’s proposed redactions. The provider wrote to the Inquiry indicating that they had very serious concerns regarding the proposed redactions and indicating that they did not consider that it was appropriate for the Inquiry to respond to DSARs and that such should be referred to the provider. In particular, the provider would, when responding to DSARs and because of the sensitivity of the documentation, meeting with the individual in order to answer any specific questions which would not be done by the Inquiry.

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<sup>58</sup> C3



The provider also had concerns regarding the redactions proposed by the Inquiry and identified the following deficiencies:

1. **The Inquiry proposed to release information pertaining to the individual's family members and was minded to release information regarding the individual's siblings.** That third party information was the personal data of the sibling and not the individual and so should not be disclosed.

2. **Certain documents had been "over-redacted" in that whilst they were case histories relating to the individual, the Inquiry had then gone on to redact the individual's personal details i.e. the school they attended, date of birth and address.**

The provider considered that the Inquiry had applied the standard redaction approach in line with the Inquiry protocol, but which was not in line with the DPL and namely, whether the data for release was actually the personal data of the individuals making the DSAR.

## **Records Management (manual and electronic)**

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### The DPL

90. The relevant provision of the DPL is the Seventh Data Protection Principle which provides, at Part I of Schedule 1 to the DPL, that:

*"Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data".*

91. Paragraph 9 at Part II of Schedule 1 to the DPL provides that:

*"the measures shall ensure, having regard to the state of technological development and the cost of implementing any measures, a level of security appropriate to –*

*(a) the harm that might result from such unauthorised or unlawful processing of, or accidental loss, destruction or damage to, the personal data; and*

*(b) the nature of the personal data to be protected".*

92. The Commissioner considers that there are flaws in the technical and organisational measures apparently put in place by the Inquiry to safely deal with personal data.

### Measures put in place by the Inquiry

93. In States' Report (R.8/2011 dated 1 February 2011<sup>59</sup> (**Appendix 10**)) reference was made as follows to the Inquiry having a dedicated DP Officer:

#### *"Document Management*

*Document management will be required to handle the collection of documents, sort/order them and ensure their safekeeping. A dedicated Document Manager will be the point of contact with those who may have documents and will ensure that a disclosure schedule is signed off and will deal with continuing disclosure. The Document Manager will also be the Data Protection Officer for the inquiry".*

94. The DP Protocol sets out how the Inquiry will treat information received by it, in the following way:

*"1. The Inquiry is committed to ensuring any personal data will be dealt with in accordance with the Data Protection (Jersey) Law 2005.*

*2. The Inquiry will collate and generate a large amount of information during its work. This information will include personal data and sensitive personal data. There will understandably be concerns about how this information is to be used. This protocol therefore sets out:*

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<sup>59</sup> <http://www.statesassembly.gov.je/AssemblyReports/2011/12027-37051-122011.pdf>

*2.1 How the Inquiry will treat information disclosed to it;*

*2.2 The extent to which this information will be published;*

*2.3 The limited circumstances under which information may be passed on to third parties; and*

*2.4 The procedures that the Inquiry will follow in obscuring information from documents, known as the 'redaction' process.*

*How the Inquiry will treat information received*

*3. All documents received by the Inquiry will only be accessed by members of the Inquiry Panel and Inquiry Legal Team (which consists of Solicitors to the Inquiry and Counsel to the Inquiry) until material is released in accordance with paragraph 6.*

*4. In broad terms the evidence the Inquiry expects to receive during the course of its work will fall into one of the following categories:*

*4.1 Documents provided to the Inquiry by any individual, institution, organisation or body;*

*4.2 Witness statements;*

*4.3 Evidence given by witnesses at oral hearings; and*

*4.4 Evidence that the Inquiry obtains through its own research or efforts, and from whatever source it considers necessary".*

**Identified Deficiencies**

95. The Commissioner is unaware of the Inquiry putting in place any DP Officer. It is presumed that control of document management for the Inquiry lies with Messrs. Eversheds as solicitors to the Inquiry.

**Example**

Concerns have been raised by C2, C3 and C4 regarding the **Inquiry's use of court** documents. For example it has uploaded liability reports for a case currently involved in live proceedings to all Interested Parties, contrary to a court order, and has also uploaded Probation Social Enquiry reports<sup>60</sup>.

96. The DP Protocol fails to deal adequately or at all with data security.

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<sup>60</sup> C6

## Security of Personal Data

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97. Fundamental to the Inquiry's handling of personal information is the requirement to adhere to the Seventh Principle.

98. The Seventh Principle states that "Personal information must be secure" and thus requires the Inquiry to have in place appropriate technical and organisational measures to secure the personal information it will be handling, receiving and sharing. The seventh principle means that the Inquiry must have appropriate security to prevent personal data it holds being accidentally or deliberately compromised. This includes by physical and technical means.

### *The Inquiry Protocols*

99. The DP Protocol states at paragraph 19 thereof that documents will be received by the Inquiry on a confidential basis, and that such documents will not be referred to or released to Interested Parties until redactions are agreed with the evidence provider. This is designed to ensure that any personal information of individuals referred to in the documents concerned will be adequately obscured so as to provide security to those individuals, whether a victim or an alleged abuser.

100. The Evidence Protocol sets out, at paragraphs 15-21 thereof, the manner in which the Inquiry obtain evidence from a witness and, in particular, as follows:

*"18. If the Solicitors to the Inquiry prepare a draft witness statement for a witness following interview, a copy of the draft witness statement will be sent to the witness who may add to, alter or amend the statement before approving its contents and signing the statement. The witness however will not be entitled to materially change fundamental elements of their account given to the Solicitors to the Inquiry at interview. The statement will become evidence to the Inquiry.*

*19. In the event that a witness fails to return an approved and signed copy of their statement within five working days, or refuses to sign the statement without good reason, the Inquiry may release to Interested Parties and their Accredited Lawyers, a copy of the unsigned and unapproved statement. The unsigned and unapproved statement will become evidence to the Inquiry.*

*20. Witness statements should be sent electronically to the secure email at [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org), or sent by post to the Independent Jersey Care Inquiry, PO Box 551, St Helier, Jersey, JE4 8XN, Channel Islands..." [Appendix 6]*

101. None of the other Inquiry Protocols set out, in any detail, the manner in which data is to be transferred between Jersey and the UK.

### *Identified Deficiencies*

102. The Commissioner is aware of potentially unsatisfactory data handling practices exhibited by the Inquiry in that:

- a. An individual spent two days with an Eversheds employee in Jersey providing a proof of evidence;
- b. The Eversheds employee took away from the Island the hard copy notes they had made in that interview; and
- c. The Eversheds employee subsequently left the employment of Eversheds and those original notes could not be located.
- d. The witness had to be recalled to provide a further proof of evidence.

103. It is noted that Schedule 1, Part II of the DPL states that *'The data controller shall take reasonable steps to ensure the reliability of any employees of the data controller who have access to the personal data.'*

104. In addition, the Commissioner is aware that the draft witness statement of Mr Leonard Harper was purportedly sent out by the Inquiry using standard post, rather than by recorded delivery or courier. In an article from the BBC website dated 9 October 2014<sup>61</sup>, it is reported that:

*"...Officials sent him his 200-page confidential statement to sign, but he said it appeared to have been opened and was not sent by recorded delivery..."*

*He said that the post office in the UK had resealed the package in a plastic bag because it had been damaged and inserted a letter of apology for the condition.*

*Mr Harper said: "There are details of alleged abusers, there are details of many victims and what victims were saying happened to them.*

*There are details of allegations of corrupt behaviour by officials in Jersey and many other details of a sensitive nature.*

*It could cause a lot of distress to a lot of people.*

*My main concern obviously would be the victims who gave accounts of what had happened to them in confidence at that time."*

*The Inquiry said it could not comment further at this stage" [Appendix 13].*

105. In a further BBC report<sup>62</sup> dated 11 October 2014, a link is provided to a statement issued by the Inquiry on 9 October 2014<sup>63</sup> which states as follows:

*"There has been no security breach over mail sent by the Inquiry.*

*Here is its statement.*

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<sup>61</sup> <http://www.bbc.co.uk/news/world-europe-jersey-29552912>

<sup>62</sup> <http://www.bbc.co.uk/news/world-europe-jersey-29583544>

<sup>63</sup> <http://www.jerseycareinquiry.org/news?newsid=73>

*"The Inquiry is in contact with a wide range of witnesses, some of whom are on the island and some are not. Much of our contact with witnesses is by telephone or electronic, but sometimes it is necessary to send documentation through the post, particularly to witnesses who are not on the island. The Inquiry has deliberately chosen not to draw attention to post, which is sent in plain, non-branded envelopes or plastic document bags in the normal post. The Inquiry by necessity has to use the postal service on the island. The Inquiry views with concern the reports from Mr Harper that his private mail has possibly been tampered with and has been in contact with Mr Harper" [Appendix 14].*

106. The Inquiry published on its Twitter account similar words to that effect:



107. On 10 October 2014, the Inquiry published on its Twitter account, the following tweets referring to a purported breach by a journalist:





108. On 14 October 2014<sup>64</sup>, the Inquiry made a statement during the course of that day's hearing as follows:

*"THE CHAIR: Before we do that, Mr Sadd, a matter has occurred over the weekend and I wish to say this: that the Inquiry is considering an alleged serious breach of privacy by which a journalist released into the public domain confidential witness information. We will not be responding to any questions at this stage until that is concluded"* [**Appendix 15**].

109. In respect of both of the examples cited above, the Commissioner is concerned that the Inquiry has apparently allowed hard copy documentation to be transmitted insecurely between Jersey and the UK.

110. The Commissioner is also concerned that the Inquiry appears to lack appropriate organisational measures against the accidental loss of personal data. Such measures might have included:

- a. Centralised storage of hard copy notes/proofs of evidence in Jersey;
- b. Usage procedures/log;

<sup>64</sup> <http://www.jerseycareinquiry.org/Transcripts/JER%20INO%20-%20Day%2024%20Final.pdf>

- c. Secure storage of master copies; and
  - d. Regular training in relation to reporting procedures following a security breach.
111. The Commissioner considers that the apparent loss of hardcopy notes by Eversheds is potentially very serious because it highlights that there appears to be a lack of appropriate security measures in place for the transmission off-island of hard copy documentation.
112. The Commissioner also considers that the transmission of draft witness statements to witnesses in the UK (and elsewhere) by standard post, rather than by recorded delivery or courier, is inappropriate in the circumstances. For example, Mr Harper's draft witness statement purportedly contained the unredacted information of a number of potential victims and alleged abusers which may have been read by a third party.
113. The Commissioner considers that contraventions of this kind are likely to cause substantial damage or distress. The failure to take appropriate organisational measures is likely to cause substantial distress to any witness who may know or suspect that their confidential and sensitive personal data has been lost and/or potentially been found/disclosed to a recipient who has no right to see that information. Further, that witness is likely to be distressed by justifiable concerns that their data may be disseminated even if those concerns do not actually materialise.
114. The Commissioner considers that the Inquiry knew or ought to have known that there was a risk that this type of contravention might occur and that such a contravention would be of a kind likely to cause substantial damage or substantial distress. The Commissioner considers that the Inquiry appears to lack appropriate procedures which would prevent this type of contravention and there is no reference at all, in any of the Inquiry documentation, regarding proper data security.
115. The Commissioner also considers that the loss of the hardcopy notes/such being intercepted by unrelated third parties had the potential to interfere with the Inquiry process.
116. The likelihood of distress in these circumstances is self-evident. The individuals whose personal data was put at risk of unauthorised access and further dissemination would be likely to have suffered worry and anxiety on account of the risk that their data would come into the possession of unauthorised individuals. While there is no evidence (as far as the Commissioner is aware) that damage has been caused there was a significant risk that it could have been.
117. In particular the Inquiry and or Eversheds needs to be able to better account for the safe storage, handling and destruction of such data given that it appears to be dispersed to a large number of people across a potentially wide geographic area and transmitted between Jersey and the UK.
118. The Commissioner is also aware of a certain issue regarding unsatisfactory redaction and, in particular, that pertaining to the day 67 documents (the **Day 67 Documents**)<sup>65</sup>. On 16 April 2015, it became apparent during the course of that day's hearing that certain of the

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<sup>65</sup> <http://www.jerseycareinquiry.org/Transcripts/Day%2067%20documents.pdf>.



supporting documents which had been disclosed to the Interested Parties (and subsequently uploaded to the Inquiry website) had “lost” the yellow redaction provided by one of the document providers<sup>66</sup> exposing the names of various individuals. The Commissioner understands that representatives from C10 raised their concerns with Eversheds later that day requesting an explanation as to how such sensitive information had lost its redaction.

119. Following on from that incident, Eversheds responded to C10 indicating that the reason that those redactions had been lost was due to a technical (and unforeseen) issue but that such had been resolved and would not happen again. Whilst the date of Eversheds response is not entirely clear, it appears from the Inquiry website that the link to the Day 67 Documents was last modified on 6 May 2015.

120. On 13 October 2015, it became apparent that, in fact, the redaction issue regarding the day 67 documents was not resolved and that anyone downloading those documents from the Inquiry website was able to remove those electronic yellow highlights exposing the names of certain individuals who were said to be the victims of childhood sexual abuse. The Commissioner wrote (via Counsel) to the Inquiry (at 15:15pm that same day) **[Appendix 12]** asking for the offending documents to be removed from their website and the Inquiry complied immediately with that request. Eversheds responded substantively to the issue regarding the Day 67 Documents on 19 October 2015 **[Appendix 12]** with an explanation as to how such a problem had arisen. In particular Eversheds commented that:

*“The issue in April only related to circumstances where redline boxes abutted the opaque yellow boxes. The remaining opaque yellow boxes remained in situ and acted as a form of redaction, albeit that the boxes were yellow rather than black. As a result of this understanding, document WD005327 was not flattened in April (as per Opus’ solution above) as the Inquiry believed that the redactions required had all been made and were not aware that the yellow opaque boxes which still remained in the document posed a further (but different) problem. This meant that the document was ‘over-redacted’ – i.e. that the yellow opaque boxes were covering up information which the team may not actually have redacted. It was thought that there was no risk as these words were hidden by the opaque boxes and could not be edited by anyone else”.*

121. It was noted, however, that a link to those documents still appeared if conducting a search in Google and the link directs users to <https://ijci-public.sharepoint.com/forms/default.aspx?apr=1&wa=wsignin1.0> and this was communicated to the Inquiry by letter from the Commissioner dated 20 October 2015 **[Appendix 12]**.

122. Whilst it is acknowledged by the Commissioner that the issues raised by a document provider<sup>67</sup> in April 2015 were slightly different to those raised by the Commissioner in October 2015, the Commissioner considers that it is extremely surprising that the entirety of that document was not checked for other issues and particularly once it was uploaded to the Inquiry website. The Commissioner is not satisfied with Eversheds’ response that “...neither the Inquiry nor Opus were aware that documents could be exported by the Interested Parties and edited...Similarly, the Inquiry was not aware that documents could be downloaded from

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<sup>66</sup> C10

<sup>67</sup> C10

*the Website and edited in Adobe Acrobat. As far as the Inquiry was concerned, the website only contained an 'image' of a document, rather than the document itself which is contained on Magnum..."* It is clear that the redactions which were capable of being removed allowed the sensitive personal data of third parties whom should have been afforded protection under the **Inquiry's own Protocol and the DPL to be revealed to the world and in so doing** identifies those parties as having been involved in child sexual abuse. The Commissioner considers that it was (and remains) the duty of the Inquiry to ensure that they have adequate procedures in place ensure that documents which are available to the world at large are secure and, in particular, that they maintain the privacy rights of data subjects.

123. In particular, the Commissioner considers that when the first issue was highlighted to the Inquiry in April 2015 that the Inquiry should have made certain that when such documents were re-published on the Inquiry website they were compliant with the DPL and steps should have been taken to check the entirety of the Day 67 Documentation for errors. The Commissioner has requested an explanation from Eversheds as to how this very serious breach was allowed to continue for some 6 months notwithstanding the representations made by Eversheds previously that the error had been rectified.

124. **The Commissioner, in light of this very serious matter, also took steps to have each day's** documents (such as have been uploaded to the Inquiry website) manually reviewed to ascertain whether or not there were any further problematic documents. Certain issues were identified and the Commissioner wrote to the Inquiry on 20 October 2015 [**Appendix 12**] in this regard.

125. Numerous documents have been disclosed to the Inquiry which contain the most confidential and sensitive personal data on children formerly in the care of the States of Jersey and their families. Provisional redactions supplied by the relevant document provider sought to protect the identities of child victims of sexual abuse and it is inconceivable that notwithstanding the confirmations provided by Eversheds that the initial error had been rectified the Inquiry purportedly failed to realise that such defects had not, in fact, been remedied. This is all the more astonishing in light of the fact that Eversheds liaised with the document provider on this very point and, in particular, the extremely sensitive nature of these records and the need to process the same with the utmost sensitivity, caution and in **accordance with the DPL (and indeed the Inquiry's own Protocol)**.

126. The Commissioner considers the uploading of such very sensitive documentation shows a lack of appropriate technical knowledge on the part of the Inquiry and a failure to ensure that the measures they have put in place to deal with the data supplied are adequate, safe, and not capable of being breached. In light of such concerns, the Commissioner wrote to the Inquiry on 20 November 2015:

*"I write further to your letter dated 18 November 2015 in respect of the Day 67 documents.*

*At page 2, paragraph 1 of that letter I note your comments that "The Inquiry did rectify these issues with the Day 67 documents of which it was aware back in April 2015; these issues were immediately actioned. The document was also checked once uploaded to the*

website and the data in question was obscured by the yellow opaque boxes. The Inquiry also took steps to ensure that the same issue did not happen again” (emphasis supplied)

Please confirm:

1. Who checked the Day 67 documents once they were uploaded to the Inquiry website;
2. Whether the entirety of the Day 67 documents were checked (rather than simply the part relation to the issue identified in April 2015);
3. What checks were actually performed i.e. was the document checked for errors as if being accessed by a member of the public with access to Adobe Reader; and finally
4. What checks are made once documentation is uploaded to the Inquiry website. Are all items manually reviewed to ensure that the redactions are correct and the document free of errors? If such checks are performed, who performs that check?”

127. The Inquiry responded to that letter as follows [**Appendix 12**]:

"1. The Day 67 documents which contained the yellow opaque boxed was rectified and was checked again by a member of the redaction team when they were uploaded to the Inquiry website.

2. The entirety of the relevant document was reviewed when uploaded to the Inquiry website to ensure that there were not red boxes visible and no names revealed which should have been redacted in accordance with the Inquiry’s Protocols, with specific attention being paid to the issues identified in April 2015. The entirety of the Day 67 documents were not re-checked (see point 4 below).

3. As stated in our letters of 19 October and 18 November 2015 nobody within the Inquiry team nor Opus envisaged that the documents were capable of such manipulation therefore the document was not checked to the extent of being downloaded from the website and tested within Adobe Reader to see if the redactions could be deleted.

4. As explained in our previous correspondence the process has changed over the course of the Inquiry. The initial process provided for documents to be reviewed twice by the Inquiry’s redaction team: R1 review was conducted by a junior member of the team, with R2 being conducted by a more senior member of the team therefore being forwarded to the document provider for comment. The process was subsequently reduced by the Panel to remove the two internal lines of review. This was a decision based on budget and proportionality as it was felt that this was a duplication of work since the document provider would also be reviewing the documents and the proposed redactions before they were used in the hearing room and uploaded to the Inquiry’s website.

As you are aware from the correspondence exchanged earlier in the year, we sought your views on the process when it was changed. It was accepted by the Inquiry that ideally the two lines of review should continue but this was not possible for the reasons outlined above and discussed earlier this year.

*For the avoidance of doubt, the current process is that the documents are reacted by the Inquiry team and sent to the document provider for comment. The document provider has five days to review the redactions and upon agreement of the redactions with the document provider the documents are used in the hearing room and subsequently uploaded to the Inquiry website. No further checks are carried out once the documents are uploaded.*

*This matter has been discussed with the Chair. The Chair is satisfied that there was no further action that could have been taken by the team in the circumstances and that the current processes are sufficient...* (emphasis supplied).

#### The naming of alleged abusers

128. Certain individuals who may have been the subject of police inquiries at various times but against whom no charges were brought/arrests made (such cases clearly, for whatever reason, not having passed the evidential threshold for prosecution) are being routinely named by the Inquiry notwithstanding the fact that they are still alive and where the specific information referred to in the Inquiry was not previously in the public domain.

129. Whilst it is noted that the Inquiry ruled that *"under the Data Protection, Freedom of Information and Redaction Protocol, information that is already in the public domain will not be redacted and names of individuals that are in the public domain will not be redacted. "In the Public Domain" is information realistically accessible to the general public that has been published in regulated media – newspapers (printed or online)/radio and TV broadcast"*<sup>68</sup> it is arguable that individuals are being named, who properly ought not to be. The Commissioner is not aware of any policy/guidance notes made by the Inquiry which explain who and by whom a decision is taken to publish the name of certain individuals but not others.

130. It has been submitted that the "Public Domain" should be afforded a broader interpretation by the Inquiry, in that it should not be limited to insular media, particularly when the Island has access to all mainstream UK public and commercial broadcasters, and given the worldwide publicity the events giving rise to the Inquiry received. However, such a submission can be seen as stripping away the safeguards afforded to individuals with a role to play in the Inquiry. It must be remembered that the Inquiry is not a trial, and the difficulty with naming individuals in respect of allegations which have not been proved is that there is a very good chance that such individuals will not be in a position to defend themselves or their reputations.

#### **Example**

An individual<sup>69</sup> made an application for protective measures in early 2015 [Appendix 16] under paragraph 1.1.4 of the Protective Measures Protocol. The individual's application was refused for the reasons set out in the Inquiry Ruling and on the basis that the panel was satisfied that allegations of physical abuse made against that individual were in the "public domain", such as defined by the Inquiry in a ruling on 24 October 2014. This

<sup>68</sup> <http://www.jerseycareinquiry.org/Transcripts/JER%20INQ%20-%20Day%2028%20Ruling.pdf>

<sup>69</sup> C7

finding was apparently on the basis that allegations purportedly originally aired in a television broadcast in 2010 by a member of the regulated media remained accessible online and that the information remained realistically accessible to the general public.

The report relied on by the Inquiry has, in fact, been removed from the regulated media website and is only available via a social media website. The report had also been clearly edited from that as originally broadcast.

**The Inquiry's rationale for not granting that** individual protective measures are unclear.

131. The naming of alleged abusers and the recitation of in depth allegations by alleged victims (the details of which are then published on the Internet) appears to demonstrate an inconsistent approach being taken by the Inquiry in such matters and, in particular, that alleged abusers are being treated in a manner which is inconsistent with that of the alleged victims (who, generally speaking, enjoy blanket anonymity).

132. The DPL treats all individuals equally unless, of course, certain exemptions are deemed to apply and in such circumstances the burden is on the data controller to show which exemption applies, and why.

Inadequate protection afforded to the personal data of victims/administrative errors in public hearings

133. Certain administrative errors have been made in public hearings regarding the personal data of victims.

**Example**

Certain documentation pertaining to an alleged victim was projected onto a screen during the course of public hearings that it bore, in handwriting, the name of that victim in the top corner of the document (notwithstanding the fact that the victim benefits from anonymity).

The document apparently remained on view for a significant length of time and also notwithstanding that the rest of the document had been appropriately redacted.

**Example**

The Commissioner understands that the Inquiry does not always **provide the 5 days' notice** that particular document is going to be used in proceedings that it is required to do under paragraph 22.3 of the DP Protocol and this has given rise to significant failings in the redaction process which cannot be timeously address by the document providers.<sup>70</sup>

**Example**

As by failing to operate within its own protocols in respect of the timeous disclosure of documents we are given little or no notice that the Inquiry is going to use particular

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<sup>70</sup> C1

documents, so we are concerned that redaction problems only become apparent after a breach may have been committed.<sup>71</sup>

**Example**

The Inquiry's rate of what we consider to be inappropriate disclosure of personal data appears to be unreasonably high and even when they have been identified by third parties, issues have not been remediated with due expediency.<sup>72</sup>

134. This demonstrates that the **Inquiry's procedures** fell short in relation to its procedure for preparing documents for disclosure.

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<sup>71</sup> C1  
<sup>72</sup> C1

## Concluding Remarks

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135. The Commissioner understands and appreciates that the Inquiry has attempted to put in place a framework whereby alleged victims of institutional abuse together with alleged abusers and service providers can give evidence to the Inquiry in what are no doubt difficult circumstances. This Report is, in no way, meant to undermine that aim but as an indication of the Commissioner's concerns regarding the Inquiry's data handling processes.
136. The Commissioner considers that it is unfortunate that the Inquiry did not liaise with the Commissioner's office at the outset of the Inquiry process in order to discuss the various pertinent privacy issues and, more particularly, the manner in which the Inquiry proposed to handle data and the Commissioner notes paragraph 2.20 of the Verita Report recommends that *"there should be a discussion between the Committee of Inquiry and the Data Commissioner to ensure that data is processed in an appropriate manner. This should include developing a protocol in relation to the processing of personal data"*.
137. It is noted that the Inquiry failed to act on this advice and seek the views of the Commissioner at the outset of the Inquiry process.
138. It should be noted that in the absence of any formal complaint the Commissioner has very limited powers of an investigatory nature under the DPL and is thus constrained as to how the various concerns which have been articulated to her over the past 18 months might best be recorded and addressed.
139. The Commissioner hopes that this Report assists the Chief Minister in highlighting the perceived deficiencies in the Inquiry's data processing policies, and recording the difficulties experienced by certain parties to the Inquiry and which have been communicated to the Commissioner on a confidential basis.

Dated this 9<sup>th</sup> day of March 2016



Mrs Emma Martins  
Information Commissioner

**Identities of Complainants**

1. The identities of the complainants shall not be disclosed as part of the final report and their names have been redacted by the Commissioner in the public version of this report in order to preserve confidentiality.

2. The identifiers refer to each claimant as follows:

C1 - [REDACTED FOR CONFIDENTIALITY]

C2 - [REDACTED FOR CONFIDENTIALITY]

C3 - [REDACTED FOR CONFIDENTIALITY]

C4 - [REDACTED FOR CONFIDENTIALITY]

C5 - [REDACTED FOR CONFIDENTIALITY]

C6 - [REDACTED FOR CONFIDENTIALITY]

C7 - [REDACTED FOR CONFIDENTIALITY]

C8 - [REDACTED FOR CONFIDENTIALITY]

C9 - [REDACTED FOR CONFIDENTIALITY]

C10 - [REDACTED FOR CONFIDENTIALITY]



**Project P.118/2012 – Committee of Inquiry: Historical Child Abuse**

# **STATES OF JERSEY**



## **COMMITTEE OF INQUIRY: HISTORICAL CHILD ABUSE**

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**Lodged au Greffe on 6th November 2012  
by the Council of Ministers**

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**STATES GREFFE**

## **PROPOSITION**

### **THE STATES are asked to decide whether they are of opinion –**

- (a) to agree that a Committee of Inquiry should be established in accordance with Standing Order 146 to enquire into a definite matter of public importance, namely historical child abuse in Jersey; and that the Committee should be comprised of a senior legally qualified Chairman of significant standing from outside Jersey and 2 other members from outside the Island with suitable skills and experience;
- (b) to approve the Terms of Reference for the Committee of Inquiry (as set out in Appendix 1 to the Report of the Council of Ministers dated 5th November 2012);
- (c) to agree that the Chairman should be selected by a Panel comprising the Greffier of the States and 2 independent persons from the United Kingdom, with the selection process being overseen by the Jersey Appointments Commission;
- (d) to agree that the 2 members of the Committee should be selected by a Panel comprising the proposed Chairman, the Greffier of the States and 2 independent persons from the United Kingdom, with the selection process being overseen by the Jersey Appointments Commission;
- (e) to agree that the proposed Chairman should be requested to recommend any final changes to the Terms of Reference for the Committee of Inquiry referred to in paragraph (b) above for approval by the Assembly, and also to set out the proposed process for conducting the Inquiry having consulted with interested parties where necessary;
- (f) to request the Chief Minister to bring forward to the States the necessary proposition relating to the appointment of the Chairman and members and, if necessary, to the approval by the States of the final Terms of Reference if changes have been recommended by the proposed Chairman;
- (g) to agree that the Committee of Inquiry should be requested to complete its work within 12 months of commencing the Inquiry.

### **COUNCIL OF MINISTERS**

## REPORT

### Historical Child Abuse: Establishment of Committee of Inquiry

#### Background

This proposition, seeking the establishment of a Committee of Inquiry into Historical Child Abuse in Jersey, reflects both the belief of the Council of Ministers that this course of action is the correct one for the whole community and that it is the will of the States, following the approval of P.19/2011 (**Appendix 2**). The Council of Ministers also believes that it is in keeping with the intention of this proposition to reiterate the apology made on 6th December 2010 by former Chief Minister, Senator T.A. Le Sueur –

*“On behalf of the Island’s government, I acknowledge that the care system that operated historically in the Island of Jersey failed some children in the States’ residential care in a serious way. Such abuse has been confirmed by the criminal cases that have been before Jersey’s courts. To all those who suffered abuse, whether confirmed by criminal conviction or not, the Island’s government offers its unreserved apology.”*

In making that apology, the States of Jersey acknowledged failings in the Island’s historical residential care system and, as a consequence, the Council of Ministers agreed the details of a Historic Abuse Redress Scheme for those who were in the States of Jersey’s full-time residential care between 9th May 1945 and 31st December 1994. Detailed discussions with claimants’ lawyers concluded that individuals concerned would prefer to settle matters, if possible, outside of public and adversarial court proceedings. Under the Scheme, which began in April 2012, claimants provide the relevant details and Mourant Ozannes (the Scheme lawyers) assess each claim. They will then determine whether the claim can be admitted into the Scheme, and assess the amount to be paid within agreed financial bands. Those bands have been arrived at following advice from expert UK counsel and feedback from specialist lawyers acting for claimants. All claims for financial redress were to be received by the States of Jersey’s legal advisers by 30th September 2012. Late claims would be considered by the Council of Ministers on a case-by-case basis.

Since 2008 there have been a number of independent reports relating to Children’s Services. These have included –

- Williamson Report: An Inquiry into Child Protection in Jersey – June 2008
- The Howard League for Penal Reform – Jersey Review: November 2008
- Williamson Report: Implementation Plan – January 2009
- Health, Social Security and Housing Scrutiny Panel Review – July 2009
- Report by the European Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment – July 2010
- Youth Justice in Jersey: Options for Change – August 2010
- Action for Children – Review of Services for Children and Young People with Complex and Additional Needs – September 2012
- Voice of the Child Report – July 2012.

The recommendations and actions contained in these reports are reported to the Children's Policy Group on a quarterly basis and are contained in the Health and Social Services Department's Service Improvement Plan. Since the approval of this Plan by the Children's Policy Group at the end of 2011, significant progress has been made in implementing many of the recommendations.

### **A Committee of Inquiry**

Public Inquiries are generally established to investigate specific and often controversial events that have given rise to public concern and are followed by calls for a 'full and public inquiry'. The common factor in every Public Inquiry is the pressing public concern that something has happened that must be investigated openly and fairly by a body that is independent of the problem. In Jersey, the first test for a Committee of Inquiry, as set out in Standing Orders, is that it must be about a '*definite matter of public interest*'.

In general, there are 6 main objectives of a public inquiry –

- (1) **Establishing the facts** – providing a full and fair account of what happened.
- (2) **Learning from events** – distilling lessons and preventing their recurrence through changing practice.
- (3) **Therapeutic exposure** – providing an opportunity for reconciliation and resolution between different parties.
- (4) **Reassurance** – rebuilding public confidence in whatever service or issue has been the subject of the inquiry.
- (5) **Accountability** – holding people and organisations to account, sometimes indirectly contributing to the assignment of blame and mechanisms for retribution.
- (6) **Transparency** – demonstrating that 'something has been done' or transparency in government.

A full Committee of Inquiry is a significant undertaking which will require the appointment of individuals of sufficient stature and experience to act impartially and judicially in order to safeguard the interests of all involved. Experience of other Inquiries, such as that of the Ireland Commission, is that many of those who wish to engage with it, whether as witnesses, those named by witnesses or other organisations would require legal support. This would be in addition to the legal support provided to the Inquiry team itself. All legal representation would be paid for by the States.

### **The framework for a Committee of Inquiry**

The previous Council of Ministers commissioned Verita to seek the views of interested parties about the purpose, manner and conduct of a Committee of Inquiry, to propose Terms of Reference, to forecast likely costs, and to make a written report with recommendations. The key tasks were to –

- seek the views of interested parties about the purpose, manner and conduct of the intervention/inquiry;
- research the various options, including restorative justice, in order to be able to advise the Council of Ministers and the States Assembly;
- propose Terms of Reference for the intervention/inquiry building on those resulting from the debate over P.19/2011;
- suggest ways of conducting the intervention/inquiry taking account of previous undertakings and current views;
- model costs of the options – so that Ministers and other States Members understand what they are committing to spend;
- set out the practical implications arising from the decisions they take e.g. appointment of Chairman, Panel, recovery of documentation, etc.;
- set out a timetable for the commissioning and conduct of an intervention/inquiry.

This report was considered by the former Council of Ministers in 2011, subsequently published and is attached as **Appendix 3**.

In view of the passage of time since Verita's initial work, the Chief Minister requested that Mr. Andrew Williamson, a specialist in childcare services, review both the Terms of Reference and the recommendations of the Verita report. This review is attached as **Appendix 4**.

These 2 reports raised a number of issues which the Council of Ministers considered in preparing this final Proposition and Report for presentation to the States for approval. These included the following issues, which are dealt with, in turn, below –

- the Terms of Reference;
  - the composition of the Committee;
  - the process for gaining States approval.
- **Terms of Reference**

The Verita report provided draft terms of reference for a Committee of Inquiry (see Appendix 1 of the Verita report).

Following due consideration of the issues raised, the Verita recommendations have been used as the foundation for Terms of Reference, which answer the central purpose for establishing this Committee of Inquiry, namely to provide a trusted forum in which all witnesses can share their experiences, allow for a healing process to begin and for a shared understanding of the lessons which need to be learned from our past.

These are provided in **Appendix 1** to this Report.

- **Composition of Committee**

The Council of Ministers recommends that the Chairman should be independent of Jersey and of all interested parties and should have a legal/judicial background. In order to ensure that the recruitment process is handled in an independent manner, it is proposed that the selection Panel should be comprised of the Greffier of the States and 2 independent persons with appropriate experience from the United Kingdom. It is further recommended that the Jersey Appointments Commission should oversee the appointment process of the Chairman. The Greffier has indicated his willingness to undertake this role if requested to do so by the States, and has suggested that he would seek to select one independent panellist with experience in dealing with public inquiries of this nature, and one with experience in working alongside victims of abuse, to form the Panel.

It is also recommended that the Chairman should be supported by one or 2 panellists, also recruited from outside Jersey, with at least one lay member from an island community, and that one panellist should have childcare experience.

- **Process for gaining States approval**

The Council of Ministers asks the States to approve the establishment of a Committee of Inquiry, a set of Terms of Reference and a process of recruitment for the Chairman and members. Following appropriate consultation, the proposed Chairman would then recommend any changes he/she deemed to be appropriate to the Terms of Reference. A further Proposition and Report would then be presented to the States to approve –

- (i) any changes to the Terms of Reference recommended by the proposed Chairman; and
- (ii) the appointment of the Chairman and the 2 Committee members.

### **Financial and manpower implications**

The Council of Ministers recognises that this Inquiry will be complex and will need administrative support as outlined in the Verita report. The estimated known and quantifiable costs of the Inquiry are put at some £2.04 million and are considered in detail in section 2.12 – 2.15 and Appendix 3 of the Verita report. Andrew Williamson considers these to be a fair reflection of the costs involved.

However, it should be borne in mind that this estimate does not include the legal fees, which could be significant. These may be incurred under legal advice for the Panel, legal costs of interviewees and the legal costs for a review of the decisions on whether to prosecute. Verita has advised that the legal costs of similar Committees of Inquiry may account for some 70% of the total overall costs.

The magnitude of legal costs will necessarily depend on the size of the Inquiry and the number of witnesses and their requirement for legal representation, all of which makes it difficult to precisely quantify the full costs at this stage. However, the best estimate of the total costs of a Committee of Inquiry, including legal costs, is likely to be in the region of some £6 million. Costs will need to be met from year-end carry-forwards and the Contingency for Emerging Items.

There are no permanent staffing implications for the States as a result of this Proposition, although a number of temporary staff will need to be recruited. The cost estimate does not include officer time in departments which have dealings with the Committee – for example – for liaising with the Inquiry team, recovering documents, taking legal advice about disclosure and supporting those who are witnesses. This means that temporary staff may be needed, either to assist the Inquiry or to backfill staff who are assisting. This, in turn, could have further cost implications.

### **Conclusion**

It is the united view of this Council of Ministers that a Committee of Inquiry is the right and proper way in which to proceed. It provides a clear acknowledgement that things have gone wrong in the past, and that now is the time to learn lessons from past failings in childcare provision.

Ministers believe that by establishing a thorough, trusted and independent process of inquiry, the experiences of all witnesses will be accorded their rightful importance and play a part in ensuring that Jersey has the correct framework to protect all Islanders, especially its most vulnerable.

It is the sincere hope of the Council of Ministers that this Committee of Inquiry will be the first step in the healing process for all who have suffered and for the whole community.

**The Council of Ministers urges Members to support this Proposition.**

5th November 2012



## APPENDIX 1

### Terms of Reference

The Committee of Inquiry (“the Committee”) is asked to do the following –

1. Establish the type and nature of children’s homes and fostering services in Jersey in the post-war period, with a particular focus on the period after 1960. Consider (in general terms) why children were placed and maintained in these services.
2. Determine the organisation (including recruitment and supervision of staff), management, governance and culture of children’s homes.
3. Examine the political oversight of children’s homes and fostering services by the various Education Committees between 1960 and 1995, by the various Health and Social Services Committees between 1996 and 2005, and by ministerial government from 2006 to the current day.
4. Establish a chronology of significant changes in childcare practice and policy during this period, with reference to Jersey and the UK in order to identify the social norms under which the services in Jersey operated throughout the period under review.
5. Take into account the independent investigations and reports conducted in response to the concerns raised in 2007 and any relevant information that has come to light during the development and progression of the Redress Scheme.
6. Consider the experiences of those witnesses who suffered abuse or believe that they suffered abuse, and hear from staff who worked in these services, together with any other relevant witnesses. It will be a matter for the Committee to determine the balance between privacy for the witness against the requirement for openness in a Committee of Inquiry. The Committee, in accordance with the requirements of Standing Order 147(2), will have the power to conduct hearings in private if the Chairman and members consider this to be appropriate.
7. Identify how and by what means concerns about abuse were raised and how, and to whom, they were reported. Establish whether systems existed to allow children and others to raise concerns and safeguard their wellbeing.
8. Consider how the Education and Health and Social Services Departments dealt with concerns about alleged abuse, what action they took, and whether these actions were in line with the policies and procedures of the day.
9. Establish whether, where abuse was suspected, it was reported to the appropriate bodies including the States of Jersey Police; and what action was taken by persons or entities including the police, and whether this was in line with policies and procedures of the day.

10. Establish the process by which files submitted by the States of Jersey Police for consideration as to whether or not a prosecution should be brought, were dealt with by the prosecution authorities and establish whether or not that process –

- enabled those responsible for deciding on which cases to prosecute to take a consistent and impartial approach;
- was free from any political influence or interference at any level.

If, in the opinion of the Chairman of the Committee, it is necessary that one or more of the prosecution files underpinning any prosecution decision should be examined, those files shall be examined by an independent expert or experts in criminal law from outside Jersey, appointed by the Committee, who shall prepare a confidential report to the Committee maintaining the anonymity of witnesses and persons against who accusations are made. Any such expert or experts shall ensure that they are fully informed of the relevant Jersey law at the material time, and shall carry out any such review on the basis of the reasonableness of the decision in question in all the circumstances.

11. Set out what lessons can be learnt for the current system of residential and foster care services in Jersey.
12. Report on any other issues arising during the Inquiry considered to be relevant to the past safety of children in residential or foster care. The Inquiry should make full use of all work conducted since 2007.

## PROPOSITION

### Historical Child Abuse: request to Council of Ministers (P.19/2011)

#### As adopted on 2nd March 2011 as amended

THE STATES agreed to request the Chief Minister and the Council of Ministers to reconsider their decision and lodge a proposition asking the States to establish a Committee of Inquiry to investigate the following issues which remain unresolved in relation to historical abuse in the Island –

- (1) What measures were taken to address inappropriate behaviour from staff when it was discovered, and if those measures were insufficient, what other measures should have been taken?
- (2) How did those in authority at political and officer level deal with problems that were brought to their attention?
- (3) Were there any mechanisms in operation to allow children to report their concerns in safety and what action was taken if and when concerns were voiced?
- (4) 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?

# VERITA

IMPROVEMENT THROUGH INVESTIGATION

**Report to Council of Ministers:  
Historical child abuse Committee of Inquiry**

**November 2011**

## **Introduction**

This paper sets out for the Council of Ministers a summary of our visit to Jersey in September 2011 and proposals for and recommendations about commissioning a Committee of Inquiry (Col) into historical child abuse. The report appendices contain draft terms of reference, cost forecasts and a note of actions needed to get commissioning underway.

## **Purpose of our consultative work**

The Council of Ministers asked us to seek the views of interested parties about the purpose, manner and conduct of a Col; to propose terms of reference; to forecast likely costs; to set out the practical implications of a decision to commission such an inquiry; and to make a written report with recommendations.

Ed Marsden, managing partner of Verita, and Patricia Wright, an associate, carried out the work. Verita's finance team calculated the likely costs of any inquiry.

## **Structure of this report**

The paper is in three parts. Part 1 summarises what we learned during our visit. Part 2 contains our analysis and recommendations. Part three contains the appendices.

## **Preface**

Operation Rectangle and recent criminal prosecutions involving the physical, mental and sexual abuse of children in residential care in Jersey have raised serious concerns. A total of 533 alleged offences were reported and recorded by the States of Jersey Police Operation Rectangle between September 2007 and December 2010. Of these 315 were reported as being committed at Haut de la Garenne children's home. Eight people have been prosecuted for 145 offences and seven convictions secured. Police identified 151 named offenders and 192 victims. No more prosecutions are proposed.

The States Assembly asked the Council of Ministers earlier this year to propose terms of reference for a possible Committee of Inquiry. Ministers in turn asked Verita to report on how such an inquiry might be framed.

We are satisfied that we have heard the views of those with an interest in this matter. We set out as requested our suggestions about the terms of reference that should govern the inquiry. We make proposals about the next steps in commissioning it.

## Part 1

The first part of this paper summarises what we learned during our visit.

### Who we met and the overall outcome of our discussions

1.1 We came to Jersey between Sunday 4 September and Friday 9 September 2011. We prepared for our visit by office-based research. We held 21 meetings and heard from a range of people including victims and their representatives, States officers and politicians, including backbenchers and ministers. Most of our interviewees had responded to our invitation to contribute to the development of the terms of reference. We visited the Jersey Archive and asked the head of archives and collections about the documents held concerning historical child abuse. We met representatives of States of Jersey Police who were familiar with Operation Rectangle.

1.2 Some interviewees provided information and opinions in response to our questions. Others expressed views without prompting. The following summary represents an overview of the main points.

1.3 Overall, we found clear agreement that the Col should take place. Its purpose would be to:

- understand what really happened to children cared for by the States and private foster care systems by: allowing victims of abuse to describe what happened to them; allowing those accused of abuse (but not charged with a crime) to have their say and collating information from the range of investigations and reviews that have been undertaken over the last 20-30 years with a particular focus on those carried out since 2007
- set this information in the context of social norms across the period to be reviewed
- understand what went wrong, what was done at the time and who was accountable

- ensure that current and future services are arranged so that children are protected
- ensure trust in children's services and the States' supervision of them
- ensure the reputation of Jersey with respect to child care

1.4 We found widespread agreement that the Col was needed to close this chapter in the island's history and that the inquiry must be comprehensive.

1.5 We found a general consensus that the Col should:

- accept that abuse occurred and undertake a review within this context
- focus on systemic issues, although it was clear that individuals would want to have their say
- cover a period from 1960 - 2005, though some people thought it should be able to go back to the post-war period
- take a historical perspective rather than review current services
- deal with residential care and fostering services, state and privately provided
- focus as a minimum on all seven proposed terms of reference debated in the States Assembly earlier this year

1.6 Most people we heard from recognised that the inquiry was likely to be expensive. Some felt the money would be better spent on providing continuing support for the victims of abuse and improving services for children and young people.

### **People who have been in care**

1.7 People who have been in care (care leavers) supported a systemic review and wanted individuals to have the opportunity to tell their story, even if it was traumatic. They felt the inquiry should work in public with the discretion to hear evidence in private. Some wanted the opportunity to ask questions.



## **1.8 Care leavers raised concerns about:**

- Transparency of process for appointing the inquiry panel and the conduct of its work
- Lack of trust of the Jersey 'establishment'
- A perception that their concerns are not important

## **The inquiry process**

**1.9** Our brief was to concentrate on what an inquiry would consider but the question of how it should be conducted was raised in many of the interviews. This section, therefore, highlights a number of points that Council of Ministers/States Assembly, the chair and panel will need to take into consideration if a satisfactory outcome is to be achieved.

## **Process for agreeing the terms of reference**

**1.10** Everyone we heard from appreciated that their views had been sought but some were sceptical about whether the full range of views would be incorporated into the proposition to be submitted to the States Assembly later this year. People recognised that the draft terms of reference would be discussed by the Council of Ministers before submission to the States but felt that care leavers and backbenchers should see the Verita report (including the draft terms of reference) before any proposition was laid in the States.

## **Recruitment of the chair**

**1.11** We found overwhelming agreement that whoever chaired the inquiry should not be connected with Jersey. The care leavers sought assurance that the chair would be independent and that they and others could play a part in the recruitment process so as to be confident of this.

1.12 We found mixed views about whether the chair should have a legal background or a caring background. People recognised that this may be determined by the availability of individuals interested in undertaking the role.

1.13 Most felt that the chair would need the following qualities:

- an appreciation of the historical and sociological features of the island
- empathy
- trusted (by the people who had been in care)
- understanding of how to run an inquiry
- independence
- unimpeachable integrity
- strong but fair
- judicial background

### **Recruitment of the panel**

1.14 Views about whether panel members could be Jersey residents were more mixed and no consensus was achieved. Some thought that recruiting from the local community would give rise to concerns about independence.

## **Part 2**

This part of the paper sets out our analysis and recommendations.

### **Terms of reference**

2.1 We took as our starting point the outcome of the States Assembly debate earlier this year. We reviewed the seven terms of reference the States debated. We also took into account views we heard during our visit and in particular we tried to reflect what victims and their representatives told us.

**2.2** We suggest that the inquiry focuses primarily on historical events but also considers lessons for services today (see appendix 1 for terms of reference). We propose that the inquiry should consider the ‘system’ of services rather than investigate individual allegations of abuse that might more properly be matters for Jersey’s criminal justice system. The period to be covered is primarily 1960 to 2005. However, we drafted the terms of reference with scope to consider the post-war period because abuse victims from that period are still alive. We suggest that the inquiry considers the organisation and supervision of services, how complaints of abuse were dealt with and what the government could learn from their handling of the matter following the events in 2008.

**2.3** An inquiry is by nature inquisitorial but a number of people we met stressed the importance of the work being conducted in a non-adversarial way. The chair should set the tone of this inquiry.

### **Statutory basis of the Committee of Inquiry**

**2.4** The Committee of Inquiry would be commissioned under Standing Orders. It would have power to compel witnesses to attend and to have documents disclosed to it. The presumption is that most of the committee’s work would be in public but the chair would have power to decide whether some proceedings took place in private in the interests of justice or in the public interest.

### **Scope of the inquiry**

**2.5** The inquiry would gather evidence from interviews and documents. The evidential challenges are considerable because the inquiry would span about 50 years or more. However, our initial impression is that the Col would have enough sources of information to meet its terms of reference.

**2.6** We tried during our visit to establish the scale of the inquiry. We estimate that it would take evidence from between 60 and 100 victims (this figure cross-refers to the number of civil claims and accords with the views of Jersey Care Leavers Association). We estimate that 100 - 125 other people may also be required to give evidence. It would take about six months to speak to this number of witnesses, assuming between three and four interviews a day.

**2.7** A substantial amount of documentary evidence is available. The Jersey Archive holds about 500 boxes of documents, including admission registers, client files, staff and foster parent files and minutes and reports from oversight committees (see appendix 2 for a description of the material). The education and law officers' departments hold relevant material. States of Jersey Police hold information associated with Operation Rectangle, some of which the inquiry would want to see. Some of this is on paper, some is held on the Home Office Large Major Enquiry System (HOLMES) and only a trained operator can retrieve it.

#### **Logistical needs of the inquiry**

**2.8** The inquiry would need a secure base in Jersey and access to a neutral venue for conducting interviews. It should have its own confidential email and electronic document storage system.

**2.9** The chair would be likely to need the services of a project manager/inquiry secretary and a part-time legal adviser (we allow for four days a month in the costs). The legal adviser would need to be an advocate qualified to practise law in Jersey. The chair might also request the services of counsel.

**2.10** The administrative burden associated with the inquiry is likely to be daunting. It would include, for example, establishing administrative systems, receiving and responding to correspondence, organising and scheduling 200 or so interviews and making arrangements for travel and

accommodation. A small dedicated team would need to carry out this work. This would be in addition to current resources available.

2.11 The chair would need a small team to gather, sort and read the available documents. This team would serve the documentary needs of the panel and liaise with the administrative team once hearings began.

### **Cost of the inquiry**

2.12 The costs of any inquiry are driven by a number of factors. The main ones are:

- the size of the panel - clearly the larger the panel the higher the costs
- whether the panel has counsel and witnesses are granted legal representation
- the number of interviews to be conducted
- the quantity of documents to be reviewed
- the organisation of the inquiry - robust management will help to ensure that timetables are adhered to and prevent unnecessary costs being incurred.

2.13 For the purposes of providing an estimate of costs, we have made the following main assumptions:

- the inquiry will run for about a year - 3 months in preparation, 6 months for hearings and a further 3 months for evaluation and drafting the report.
- the inquiry will have a chair and two panel members
- the panel will have a legal adviser for 1 day a week for the duration of the inquiry
- there will be just over 200 interviewees and the panel will see between three and four interviewees per day

- a project manager will act as inquiry secretary for 3 days per week for all phases of the inquiry (i.e. probably 12 months). He/she will have a small administrative support team working five days per week during the three month preparatory stage; six days per week during the hearings and reducing to two days per week during the final evaluation/writing stage.
- a document team to review and identify the key documents for the panel. We have estimated this will take three people nine weeks on a full time basis.
- On this basis we estimate the cost, excluding legal fees, to be approximately £2.040 million (see appendix 3). This splits into approximately £1.175 million of panel fees and £585k of fees for support to the inquiry panel including some support for the communications unit. In addition we have allowed for travel and accommodation costs for the panel and support team as well as some travel costs for interviewees and the transcribing of oral evidence.
- The legal fees could be significant. They may be incurred under three headings: legal advice for the panel (other than as above), legal costs of interviewees (if chair agrees to allow such) and legal costs for a review of earlier decisions about prosecution.

This is our best estimate based on the above assumptions and our knowledge to date. If there are material differences the estimate is likely to change.

**2.14** There will be other requirements for the inquiry which we have assumed will be met from internal resources, such as a venue, offices for the inquiry team, a suitable room for the hearings, IT, telephones and general office costs (stationery, postage etc).

**2.15** From our discussions it is clear that the inquiry is likely to have cost implications for a number of States departments and States of Jersey Police. For example, these could include liaising with the inquiry team, recovering

documents, taking legal advice about disclosure and supporting those who are witnesses. It has not been possible to put a value on these costs.

### **Disclosure and data protection**

**2.16** Two potential obstacles came to light during our meetings. They concern disclosure and data protection.

**2.17** First, it is likely that States of Jersey Police would need to take legal advice before releasing some of the information they hold.

**2.18** Second, consent will be needed if the inquiry wanted access to the personal records of someone still alive.

**2.19** We have asked the advice of HM Attorney General about these matters. He agrees that the States of Jersey Police will need to take legal advice before releasing some of the information that they hold. It may be appropriate that some of this advice is provided independently of the Law Officers' Department.

**2.20** We and HM Attorney General suggest that there should be a further discussion between the Jersey Data Commissioner and the Law Officers' Department. We also recommend that there should be a discussion between the Committee of Inquiry and the Data Commissioner to ensure that data is processed in an appropriate manner. This should include developing a protocol in relation to the processing of personal data.

### **Identifying and appointing a chair and panellists**

**2.21** We strongly recommend that the chair is independent of the island with no relationship or commercial interests with politicians, senior officers or other interested parties. On balance, we think the chair should be a senior lawyer because we think the inquiry might face significant procedural challenges, including those to do with fairness.

2.22 We advise that we prepare a role description and a person specification for the post of chair. We suggest we take informal soundings of suitable candidates and in doing so explain to them the task and the appointment process. Those interested should then be invited to apply perhaps through the Jersey Appointments Commission. We suggest that victims' representatives have the opportunity to meet the chair. This would be after the formal appointment but before the nomination was put to the States for approval.

2.23 We recognise that recruiting panellists from the island may seem desirable but we think it could undermine the perceived independence of the inquiry and that membership could put undue pressure on the individuals concerned. We favour seeking panellists from outside Jersey, with ideally at least one from an island community. We suggest our advice is discussed with the chair once he/she is appointed.

2.24 The inquiry will also need access to independent expert advice including from a senior, experienced prosecutor from outside Jersey.

#### **Handling the next steps**

2.25 We heard the views of many people. We made clear that the decision about commissioning an inquiry rests with the Council of Ministers and the States Assembly. Even so, the very act of consultation has inevitably raised expectations. Backbench politicians are keen to keep abreast of developments, while victims and their representatives want to ensure that the inquiry takes place and that their opinions count. We recommend that all parties are informed about progress and engaged in further discussions.

2.26 We suggest two possible ways of handling the commissioning of the inquiry (see appendix 4).

2.27 The first option is for a chair to be recruited and his/her nomination put to the States for approval *at the same time* as the draft terms of



reference are debated. This will allow the chair to comment on the draft terms of reference and possibly speak to them before the debate in the States. We think this an important way of binding the chair into the remit of the inquiry. It may also provide confidence to States Members about how the chair will conduct the inquiry. Approving the terms of reference and the chair nomination is likely to reduce the time needed to commission the inquiry but it is nevertheless only right to point out that this approach could mean that a chair who was already appointed was faced with significantly altered terms of reference as a result of amendments from States members during the debate.

**2.28** The second option is for the States to debate the terms of reference and for the chair *to be recruited after this*. The appointment would be the subject of a further proposition to the States. This will allow the States the opportunity to debate the terms of reference and the likely costs and provide more time for recruiting the chair and panellists. However it assumes that the chair will not want a say in the terms of reference or the resourcing of the inquiry. Given the likely stature of the chair, we think that they are sure to want a say in both matters. This approach is likely to extend the timescale for commissioning the inquiry.

## **Recommendations**

**2.29** We recommend:

1. The Council of Ministers should commission a Committee of Inquiry into historical child abuse. We suggest that the attached terms of reference form the basis of the committee's work. We advise that these are proposed to the States Assembly.
2. The States should appoint an inquiry chair independent of the island. He/she should be appointed in a transparent and open manner and, ideally, should have the opportunity to comment on the terms of reference before they are finalised. On balance, we suggest that the

chair has a legal background because he/she may need to deal with complex procedural challenges. We recommend that a role description and person specification be produced to guide the appointment process. Jersey Appointments Commission should be asked whether they wish to handle the appointment.

3. We advise that the chair be supported by one or two panellists not from the island; one panellist should have child care experience and a lay member should come from an island community.
4. We suggest that the inquiry is supported by independent, robust project-management to ensure that it is conducted efficiently and effectively.
5. We suggest that victims' representatives and backbench politicians are kept informed of the inquiry commissioning plans.
6. We recommend that the Col is conducted in a thorough and timely way so that this matter is laid to rest. We advise that it is commissioned and conducted properly or not at all.
7. We suggest that the inquiry commissioning actions suggested in the chart at appendix 4 are set in train.
8. We recommend that the attached terms of reference, cost estimate and nominations for chair and panellists are put to the States Assembly at the earliest opportunity.

Ed Marsden  
Managing partner

Patricia Wright  
Associate

November 2011

### **Part 3**

This section contains the appendices.

**Draft terms of reference**

**Committee of Inquiry into historical child abuse in Jersey**

**Commissioner**

The States of Jersey is the commissioner of this Committee of Inquiry. It is commissioned under Standing Orders and with reference to the powers laid down in the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) Regulations 2007.

**Context**

The States of Jersey has commissioned this Committee of Inquiry to investigate the organisation, management and oversight of children's residential and fostering services in Jersey with an emphasis on the period after 1960. The inquiry will look at how concerns about reported abuse were dealt with by relevant States organisations.

The purpose of the inquiry is to establish the facts, to provide learning, to enable reconciliation and resolution, to rebuild public confidence and trust, to hold to account and to demonstrate transparency of government by the inquiry examining this matter on behalf of the States of Jersey.

## Terms of reference

The Committee of Inquiry is asked to do the following:

### *Establishing the facts*

- Establish the type and nature of children's homes and fostering services in Jersey in the post-war period with a particular focus on the period after 1960. Consider (in general terms) why children were placed and maintained in these services
- Determine the organisation (including recruitment and supervision of staff), management, governance and culture of children's homes and the social norms under which they operated
- Examine the political oversight of children's homes and fostering services by the various education committees between 1960 and 1995, by the various health and social services committees between 1996 and 2005 and by ministerial government from 2006 to the current day
- Establish a chronology of significant changes in child care practice and policy during this period with reference to Jersey, the UK and, if appropriate, France
- Consider and appraise the independent investigations and reports conducted in response to the concerns raised in 2007

### *What was done in response to concerns about abuse?*

- Consider the experiences of those witnesses who suffered abuse or believe that they suffered abuse and hear from staff who worked in these services
- Identify how and by what means concerns about abuse<sup>1</sup> were raised and how and to whom they were reported. Did systems exist to allow children and others to raise concerns and safeguard their wellbeing?

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<sup>1</sup>World Health Organisation definition of abuse(1999): Physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival,

- Consider how the education, health and social services departments dealt with concerns about alleged abuse, what action they took and whether they were in line with the policies and procedures of the day
- Establish, where abuse was suspected, whether it was reported to the appropriate bodies including the States of Jersey Police and what action was taken by persons or entities including the police and whether this was in line with policies and procedures of the day
- Determine whether the concerns in 2007 were sufficient to justify the States of Jersey Police setting in train Operation Rectangle
- Determine whether, on reviewing files submitted by the States of Jersey Police for consideration as to whether or not a prosecution should be brought, those responsible for deciding on which cases to prosecute took a consistent and impartial approach and whether the process was free from any political influence or interference at any level

#### *Children's services in 2011*

- Set out what lessons can be learnt for the current system of residential and foster care services in Jersey

#### *Government*

- Review what actions the government took when concerns came to light in 2008 and what, if any, lessons there are to be learned

#### *General*

- Report on any other issues arising during the inquiry considered to be relevant to the past safety of children in residential or foster care

The inquiry should make full use of all the work conducted since 2007.

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development or dignity in the context of a relationship of responsibility, trust or power. (WHO definition suggests that abuse should be interpreted within the context of the cultural environment in which it occurs)

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At an appropriate moment, the inquiry should hold a seminar(s) to enable a broader discussion of some of the themes raised by the evidence. The seminar(s) will not make recommendations to the chair but will provide ideas and information that will form part of the material to be considered as the report is drafted.

## List of documentation held at Jersey Archive

Information provided by Linda Romeril, head of archives and collections

### Children's Home Inquiry

The following records are held at Jersey archive:

#### Social services

#### Haut de la Garenne

#### Admission registers

- 4 admission registers from relevant period, 1933 - 1984
- 2 admission registers from relevant period for Jersey Home for Girls, 1915 - 1959
- 3 admission registers from Westaway Creche, 1941 - 1965

#### Case file sheets

c.500 green case file sheets (generally only 1-2 foolscap pages). Green case file sheets have been fully listed in excel with name of individual, date of birth, last date of file and any comments.

Clients included in these files have dates of birth which range from 1940 - 1975.

#### Client files c.400 boxes

There are c.12,000 client files from central Children's Services and individual children's homes including c.1,240 from Haut de la Garenne at Jersey Archive.



This series also includes files from La Preference, Blanche Pierre Nursery, St Mark's Hostel, Brig-y-Don, Heathfield, Grands Vaux, Greenfields, Les Chenes and Tevielka.

There are often several files for one individual, e.g. a central Children's Services file, a file from Greenfields for the individual and a file from La Preference.

Client files can relate to one individual or to a family.

Client files range in size from a single sheet to up to 10 large folders.

Client files have all been listed on individual spreadsheets which have been merged to one master spreadsheet.

The master spreadsheet includes details of client's name, date of birth, year of last entry and children's home.

Dates of birth for client files range from the 1940s - 2000s.

#### **Staff and foster careers files c.35-40 boxes**

There are c.1,900 staff and foster careers files at Jersey Archive. These include staff working at specific Children's Homes and staff working for central Children's Services.

Most staff files are for those who left the service between 1978 - 2009.

Files have all been listed on individual spreadsheets which have been merged to one master spreadsheet.

The master spreadsheet includes details of individual's name, address, employee number, start date and year of last entry/year left service.

### **Miscellaneous c. 50 boxes**

There are c.675 misc. files from Children's Services and Children's Homes at Jersey Archive. These include c.60 children's report books, petty cash and pocket money books, daily diaries, rules and regulations, secure cell log books etc.

These files are mainly from Haut de la Garenne, St Mark's Hostel, Brig-y-Don and Greenfields.

The files in this section date from the 1930s - 2000s.

### **Children's services additional records**

There are 8 boxes of records that were deposited at the Archive in 1997.

These boxes include copies of the minutes and reports of the Children's Sub-Committee, copies of Education Committee Acts, some admission forms to the Jersey Home for Girls, Foster Parent Books and some strategic/planning papers.

### **Judicial Greffe**

- Criminal Court records to 1984
- Magistrates Court criminal records to 1964
- Magistrates Court civil records to 1982
- Police Charge Sheets on Microfilm from 1949 - 1979
- Depositions in criminal cases 19th century - 1968 (later depositions are held at the Judicial Greffe)

### **Law officers' department**

- Correspondence files concerning children at risk index, 1963 - 1991

### **Education sport and culture**

- Staff files - NB These files are still at ESC for pension purposes
- Departmental correspondence files
- Individual school headmaster's diaries and punishments books e.g:
  - D/J/N8/8 - St Helier Vauxhall Boys school Punishments Book, 1965 - 1975
  - D/J/N29/3 - Les Landes School, formerly St Ouens Parochial School- Punishment book, 14/09/1916 - 07/06/1962
  - D/J/N34/C/1 - Punishment book for St Clement's Parochial School, 15/02/1944 - 29/01/1965

### **General background archives**

- Acts and Minutes of the States of Jersey, e.g. D/AU/Y2/C/18 Projets du loi relating to the punishment of indecent conduct towards children, 1961
- A/D1/C34 Correspondence relating to corporal punishment in Jersey, includes extracts from the Jersey Evening Post 29/04/1960 - 18/04/1979

## Costing calculations

## Panel

	Chair	Panel member	Panel member
Fee per day	£2,800	£2,000	£1,500
Total days	206.00	171.00	171.00
Total fee calculation	<b>£576,800</b>	<b>£342,000</b>	<b>£256,500</b>

## Inquiry support team

	Project manager	Legal/ advocate	Admin	Document team	Comms
Fee per day	£1,250	£1,000	£640	£800	£1,250
Total days	161.00	55.00	259.00	180.00	14.00
Total fee calculation	<b>£201,250</b>	<b>£55,000</b>	<b>£165,760</b>	<b>£144,000</b>	<b>£17,500</b>

Total fees	£1,758,810
Transcription costs	£87,075
Travel & accom	£194,040
<b>Total estimated costs</b>	<b>£2,039,925</b>

These costs are supported by a detailed spreadsheet held by the Verita finance team.

Proposed timescales

Appendix 4

Commissioning the historical child abuse Committee of Inquiry	Month											
	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12						
Option One												
Present paper to Council of Ministers and reach agreement about the actions needed to commission the inquiry (discuss with interested backbenchers)												
Finalise the process for appointing the inquiry chair with CoM, CMD and Jersey Appointments Commission												
Draft role description and person specification for chair												
Informal discussions with potential chair candidates												
Run a formal appointment process (advertised position) - involving Jersey Appointments Commission, backbenchers and CoM - victims representatives could be invited to an informal event to meet candidates)												
Draft and lodge a proposition containing chair nomination and draft ToRs												
Debate proposition with nomination and terms of reference with States Assembly												



## APPENDIX 4

I was asked by the Chief Minister to review both the terms of reference and the recommendations of the Verita report to the Council of Ministers into historical child abuse in the States of Jersey. The report was published in November 2011 and subsequently considered by the Council of Ministers.

The Verita report recommended that the Council of Ministers should commission a Committee of Enquiry into historical child abuse and listed a number of specific recommendations in relation to the composition of the members of the Enquiry Panel; the various aspects of children's services that should be investigated and that the timescale for the enquiry should be from 1960 to the present day. It was further recommended the Enquiry should consider the experiences of the witnesses who suffered abuse or believe they suffered abuse and also the views of staff who worked in the service during this period.

There are also recommendations for the Enquiry to review the actions taken by the Government of the States of Jersey when the various allegations of abuse within the care system were made and finally consider the action the States of Jersey has taken in response to the various reports commissioned over recent years.

Whilst this significant piece of work was being undertaken much work was going on both within the Health and Social Services Department and other departments involved with Children's safeguarding to ensure all recommendations from recent enquiries and inspections were implemented.

In preparation for writing this report I have carried out a number of enquiries, held meetings with various representative groups for children in, or have been in the care system in Jersey, and also other interested individuals or organisations who responded to the advertisement placed in the Jersey Evening Post in June of this year. I have also reviewed relevant reports and visited the Jersey Archives to confirm the existence of the relevant records.

One of the most significant developments since the publication of the Verita Report in 2011 has been the implementation of the Historic Abuse Redress Scheme in March 2012. The scheme is designed to deal with applications for compensation for sexual or unlawful physical abuse suffered by individuals between May 1945 and the 31st December 1994 when in the States of Jersey full time residential care. This programme was launched with a full apology by the States of Jersey to all those who had been abused and significant efforts have been made to publicise the Redress Scheme to ensure that all those who are entitled to claim for compensation do so within the 6 month timescale which concludes on the 30th September 2012. Financial provision has been made by the States to ensure independent legal advice is provided to all claimants and financial compensation has been provided for.

To date, a significant number of applications (nearly 100 by the end of June) to be considered for the Redress Scheme have been received. The Scheme is well publicised and has received media coverage. At the time of writing this

report there are still three months remaining, for those who feel they have a claim to do so. I have looked at the way the Redress Scheme is being managed, the States response to claimants, and the support offered and I am impressed by the apparent non-judgemental way in which it operates. It is worth re-emphasising that the Redress Scheme is available for all former residents of Jersey's Children's Homes from 1945 to 1994.

It should also be noted that as part of the recent review of the Children's Services, in addition to the Redress Scheme and formal apology by the States of Jersey to all children who were abused whilst in their care, the States have financially invested in the Children's Service to ensure high standards of care are provided and that there is external scrutiny to ensure that these are maintained. External scrutiny exists both in the establishment of the Jersey Child Protection Committee and the reviews of the service by Independent Inspection Agencies. To further illustrate this point I understand that that as a follow up to its recent comprehensive review of the Children's Services provided across the Island the Scottish Inspection Agency has been invited to make a return visit in the near future to ensure all recommendations made as a result of the last inspection have been implemented.

Another significant development in the Children's Service is that since the completion of the Verita Report all of the Children's Homes, apart from Brig Y Don, that were in operation during the period of allegations of abuse have closed and smaller more 'family friendly' homes have been opened, together with a significant investment in the development of the fostering service. Brig Y Don has been completely refurbished and the management of this Home, together with all the recently opened Homes have introduced more open and transparent approaches to managing the Homes and involving the young people who are resident. A good illustration of these developments is the introduction of the Statement of Purpose and Function for the Home which is a document explaining the complaints and suggestions process.

To summarise in relation to the service provided for children in Jersey, many safeguards have been implemented to try to ensure a high quality of service is provided by trained, qualified staff who have all been vetted to ensure none possess a criminal record etc. It is crucial that this vigorous approach to ensuring high standards is maintained. The Improvement Plan which is updated on a quarterly basis and provided to the members of the Children's Policy Group provides regular information to the Ministerial Group of the achievements and areas requiring improvement. The availability of such information provides a valid benchmark for the delivery of quality services.

With regard to the various enquiries at the former Children's Home, Haut la Garenne, the police enquiry, Operation Rectangle, resulted in convictions against seven former members of staff working at Haut la Garenne and no further prosecutions are proposed.

There is however a strongly held view amongst some of the people who made contact with me during this review that a further examination of the decision whether or not to prosecute should be undertaken. Given that the Redress Scheme is currently progressing it may be appropriate for the States of Jersey to commission an independent, legal review of the decisions to prosecute or take no further action. This could be carried out by an independent non island



based lawyer and will involve the reviews of factual evidence. It must be acknowledged that the police have undertaken a review of how they carried out the original enquiry into abuse suffered and general management of Haut La Garenne Children's Home.

Given the significant investment in the Children's Service and the Redress Scheme currently in operation a number of the original concerns have been or are being addressed. Nevertheless from the interviews I have undertaken and the information I have received there remains a strongly held view that there must be an independent enquiry to examine whether the Children's Services for a long period of time challenged or examined the quality of the services provided and the overall standards of care. If this didn't happen was it a deliberate act and was there a conspiracy within the senior management and political representatives to ignore or deny the issues?

Whilst such an enquiry will inevitably be complex there is a strong determination to learn from the past to ensure that such practices, if they did exist, do not happen again. I would therefore recommend that, in order to avoid conflict with the Redress Scheme and various ongoing police matters the terms of reference for an enquiry are restricted to the issues of managerial and political accountability between 1960 to 1994 (the same period as the Redress Scheme). This should be chaired by a lawyer and I would recommend a person who is not a resident of the island. Further that a review could be carried out of the decisions to prosecute or not following the various police enquiries as a result of the Haut La Garenne investigation. This could also be undertaken by a lawyer who would review the paperwork which was considered at the time to determine whether there was sufficient evidence to proceed with a prosecution. Finally the States of Jersey may want to consider establishing a Truth and Reconciliation enquiry following the closure of all the claims made under the Redress Scheme. This could be undertaken by a national children's charitable organisation and could provide ongoing support and consistency to those who are making claims in the Scheme but have made it very clear to me that they would not be prepared to give evidence to a formal public enquiry. They would however appreciate the opportunity to talk about their experiences in a more confidential basis if accepted. This should not commence until the work of the Redress Scheme is concluded to avoid any possibility of adversely affecting the legal processes as the Redress Scheme draws to a conclusion.

## **Conclusions**

To conclude therefore I would make three recommendations to the States of Jersey:-

1. To convene an independent Committee of Inquiry to look at the decisions taken by both political and senior management of the Children's Services in Jersey during the period 1960 to 1994 with particular reference to the standards of care provided to children in the care system.

2. To commission a review of the decisions taken whether or not to prosecute individuals identified during the police enquiry concerning the various allegations that culminated in the enquiry into Haut la Garenne. This can be undertaken by a lawyer, not resident in Jersey, and should be a review of the legal evidence available at that time.
3. Following the closure of the Redress Scheme in May 2013 the States of Jersey may wish to consider commissioning a Truth and Reconciliation Service to assist those individuals who made claims to talk about their experiences and receive support on a confidential basis. This would also enable those people who claim they've suffered abuse whilst in residential care but do not feel able to give evidence to a full public enquiry to talk about their experiences on a confidential basis.

**Andrew Williamson**

**Terms of Reference: As approved by the States of Jersey on 6<sup>th</sup> March 2013**

## **Terms of Reference, as approved by the States of Jersey on 6th March 2013**

The Committee of Inquiry (“the Committee”) is asked to do the following –

1. Establish the type and nature of children’s homes and fostering services in Jersey in the period under review, that is the post-war period, with a particular focus on the period after 1960. Consider (in general terms) why children were placed and maintained in these services.
2. Determine the organisation (including recruitment and supervision of staff), management, governance and culture of children’s homes and any other establishments caring for children, run by the States and in other non-States run establishments providing for children, where abuse has been alleged, in the period under review and consider whether these aspects of these establishments were adequate.
3. Examine the political and other oversight of children’s homes and fostering services and other establishments run by the States with a particular focus on oversight by the various Education Committees between 1960 and 1995, by the various Health and Social Services Committees between 1996 and 2005, and by ministerial government from 2006 to the current day.
4. Examine the political and societal environment during the period under review and its effect on the oversight of children’s homes, fostering services and other establishments run by the States, on the reporting or non-reporting of abuse within or outside such organisations, on the response to those reports of abuse by all agencies and by the public, on the eventual police and any other investigations, and on the eventual outcomes.
5. Establish a chronology of significant changes in childcare practice and policy during the period under review, with reference to Jersey and the UK in order to identify the social and professional norms under which the services in Jersey operated throughout the period under review.
6. Take into account the independent investigations and reports conducted in response to the concerns raised in 2007, and any relevant information that has come to light during the development and progression of the Redress Scheme.
7. Consider the experiences of those witnesses who suffered abuse or believe that they suffered abuse, and hear from staff who worked in these services, together with any other relevant witnesses. It will be for the Committee to determine, by balancing the interests of justice and the public interest against the presumption of openness, whether, and to what extent, all or any of the evidence given to it should be given in private. The Committee, in accordance with Standing Order 147(2), will have the power to conduct hearings in private if the Chairman and members consider this to be appropriate.

8. Identify how and by what means concerns about abuse were raised and how, and to whom, they were reported. Establish whether systems existed to allow children and others to raise concerns and safeguard their wellbeing, whether these systems were adequate, and any failings they had.
9. Review the actions of the agencies of the government, the justice system and politicians during the period under review, in particular when concerns came to light about child abuse and establish what, if any, lessons are to be learned.
10. Consider how the Education and Health and Social Services Departments dealt with concerns about alleged abuse, what action they took, whether these actions were in line with the policies and procedures of the day, and whether those policies and procedures were adequate.
11. Establish whether, where abuse was suspected, it was reported to the appropriate bodies, including the States of Jersey Police; what action was taken by persons or entities including the police, and whether this was in line with policies and procedures of the day and whether those policies and procedures were adequate.
12. Determine whether the concerns in 2007 were sufficient to justify the States of Jersey Police setting in train 'Operation Rectangle'.
13. Establish the process by which files were submitted by the States of Jersey Police to the prosecuting authorities for consideration, and establish –
  - Whether those responsible for deciding on which cases to prosecute took a professional approach;
  - Whether the process was free from political or other interference at any level.

If, for these purposes, or as a result of evidence given under paragraph 7, in the opinion of the Chairman of the Committee, it would be of assistance that one or more of the prosecution files underpinning any prosecution decision may be examined in a manner to be determined by the Committee.

14. Set out what lessons can be learned for the current system of residential and foster care services in Jersey and for third party providers of services for children and young people in the Island.
15. Report on any other issues arising during the Inquiry considered to be relevant to the past safety of children in residential or foster care and other establishments run by the States, and whether these issues affect the safety of children in the future.

**Inquiry Protocol: Data Protection, Freedom of Information and Redaction**

# Independent Jersey Care Inquiry

## **The Independent Jersey Care Inquiry (the “Inquiry”)**

### **Inquiry Protocol: Data Protection, Freedom of Information and Redaction**

1. The Inquiry is committed to ensuring any personal data will be dealt with in accordance with the Data Protection (Jersey) Law 2005.
2. The Inquiry will collate and generate a large amount of information during its work. This information will include personal data and sensitive personal data. There will understandably be concerns about how this information is to be used. This protocol therefore sets out:
  - 2.1 How the Inquiry will treat information disclosed to it;
  - 2.2 The extent to which this information will be published;
  - 2.3 The limited circumstances under which information may be passed on to third parties; and
  - 2.4 The procedures that the Inquiry will follow in obscuring information from documents, known as the ‘redaction’ process.

#### **How the Inquiry will treat information received**

3. All documents received by the Inquiry will only be accessed by members of the Inquiry Panel and Inquiry Legal Team (which consists of Solicitors to the Inquiry and Counsel to the Inquiry) until material is released in accordance with paragraph 6.
4. In broad terms the evidence the Inquiry expects to receive during the course of its work will fall into one of the following categories:
  - 4.1 Documents provided to the Inquiry by any individual, institution, organisation or body;
  - 4.2 Witness statements;
  - 4.3 Evidence given by witnesses at oral hearings; and
  - 4.4 Evidence that the Inquiry obtains through its own research or efforts, and from whatever source it considers necessary.

5. The Inquiry team may also process other personal information received by the Inquiry, for example personal contact details. The Inquiry team consists of:
  - 5.1 The Inquiry Panel;
  - 5.2 Counsel to the Inquiry; and
  - 5.3 The Solicitors to the Inquiry, to include the whole legal team and support staff.
6. The Inquiry will categorise the information that it receives into the following categories:
  - 6.1 Category 1 – evidence given and referred to during oral hearings. This will include witness statements of those witnesses giving oral evidence and those that are taken as read in to the Inquiry’s record. This information will be uploaded onto the Inquiry’s website;
  - 6.2 Category 2 – information that is relevant and material to the Inquiry’s Terms of Reference and is probative of them; and
  - 6.3 Category 3 – information that is irrelevant or immaterial to the Inquiry’s Terms of Reference or not probative of them. This information will not be disclosed to Interested Parties or published as part of the Inquiry’s work.
7. All Category 1 and Category 2 information will be considered and the documents referred to within the hearing room will be redacted in accordance with the Inquiry’s policy on redacting personal information (which is set out in detail below), prior to release to Interested Parties and/or publication on the Inquiry’s website.
8. Following the conclusion of the Inquiry’s work, all Category 1 material will be transferred to the States of Jersey Archive in redacted form. All other information will be logged and then destroyed by the Inquiry or originals returned to the provider. A copy of the document log will be provided to the States of Jersey Archive, again redacted in accordance with the Inquiry’s redaction policy.

**Providing information to third parties**

9. If in the interests of justice, the Inquiry believes that information should be transmitted to a third party against whom allegations or criticisms are made, in order to allow that third party to respond to such allegations or criticisms, the Inquiry may reveal the information upon receipt of suitable confidentiality undertakings from the third party recipient. The individual concerned will be informed that the information has been provided in this way.



10. Other than as described above, the Inquiry will not disclose information to third parties. However, if an individual or witness requests to use the independent support service set up by the Inquiry, the Inquiry may need to disclose personal details to the independent support service. The Inquiry will inform that individual if personal details are to be disclosed in such a way. The provider of the support service will be required to give the Inquiry an undertaking that any information about an individual that the Inquiry passes on will be held securely by that third party, in accordance with the Data Protection (Jersey) Law 2005, and used only to provide the services or information that individual has requested.
11. An individual has a right to request a copy of their personal details at any time to check the accuracy of the information held. If an individual would like to ask whether the Inquiry holds any personal data relating to them, they should contact the Inquiry by email at [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org).

### **Freedom of Information**

12. The Inquiry will be a scheduled public authority as defined by Schedule 1 of the Freedom of Information (Jersey) Law 2011. The Inquiry invokes the absolute exemption contained at Article 24 of the Freedom of Information (Jersey) Act 2011.

### **Redaction**

13. The Inquiry has formulated procedures which it will follow in obscuring information from documents, known as the 'redaction' process.
14. In relation to the procedures for redaction, a "Document" means anything in which information of any description is recorded and includes, but is not limited to, reports, reviews, board/committee minutes, governing/constitutional documents, legislation, letters and emails (internal and external), records and registers, information from websites, guides/codes of conduct, policy documents, articles and audio tapes of interviews, statements, notes and calendar entries.
15. Reference to an 'evidence provider' means any individual, institution, organisation or body who provides evidence to the Inquiry.
16. The Inquiry's procedures for the redaction of documents are intended to ensure that:
  - 16.1 Interested Parties, Accredited Lawyers and the public are aware of the Inquiry's procedures in relation to the redaction of documents;
  - 16.2 The Inquiry promptly receives documents from evidence providers, without delay being caused by applications being made for redactions or protective rulings before those documents are disclosed to the Inquiry; and

- 16.3 Where Interested Parties and Accredited Lawyers have concerns they can draw them to the attention of the Inquiry.

#### The Inquiry's General Protective Ruling

17. In order to restrict the disclosure or publication of the identity of certain persons and information that is not in the public domain (i.e. information that is realistically accessible to the general public, information that has been published in regulated media - newspapers (printed or online), radio and television broadcast), the Inquiry has implemented a General Protective Ruling, being a general ruling to protect information provided to the Inquiry. The General Protective Ruling means that the following information will be redacted from all material before it is disclosed by the Inquiry to Interested Parties and/or published on the Inquiry's website:
- 17.1 The names and identifying details of:
- 17.1.1 individuals identified as having claimed to have been abused, or as having been a witness to any abuse alleged;
  - 17.1.2 any individuals accused of abuse, except for those who have criminal convictions for abuse, or those accused of abuse whose details are in the public domain as defined above and those whom the Inquiry reasonably believes to be deceased;
  - 17.1.3 individuals not falling into any of the above categories, whose identity the Inquiry considers ought not to be disclosed;
  - 17.1.4 any applicants who have successfully applied to the Inquiry to not have their identities revealed and who do not fall into any of the above categories.
- 17.2 Other personal information. This does not extend to individuals' names (save for those individuals specified at paragraph 17.1 above), but would include telephone numbers, dates of birth and home addresses, unless there are particular circumstances that make such personal information relevant to the Inquiry's Terms of Reference.
18. In order to ensure compliance with the Inquiry's General Protective Ruling, evidence providers are required to follow the procedures below in relation to the redaction of documents.

#### Providing documents to the Inquiry

19. All relevant documents should be disclosed to the Inquiry in an unredacted form on a confidential basis. No documents will be released to Interested Parties or referred to in the hearing room unless redactions are agreed with the evidence provider.
20. If, and to the extent that, an evidence provider wishes to rely on legal professional privilege as a reason for not producing a document (or part of a document) to the Inquiry, it must notify the Inquiry in writing of the nature of the material which it seeks to withhold and must summarise why it believes that the document attracts legal professional privilege. Evidence providers are reminded that they may choose to waive legal professional privilege and should therefore consider carefully whether the public interest, in ensuring that the Inquiry is effective, would justify waiving legal professional privilege.
21. Evidence providers should retain original versions of all documents provided to the Inquiry, as the Inquiry may request originals.

#### The Inquiry's consideration of evidence provider's redactions

22. Where an evidence provider seeks redactions to a document which are outside the terms of the Inquiry's General Protective Ruling, the Inquiry will treat the document as being the subject of an application for a further protective ruling. The Inquiry will not publish the provisionally redacted parts of the document to Interested Parties unless:
  - 22.1 An individual witness or Interested Party was the author or recipient of the unredacted document and is therefore entitled to see it in its unredacted form; or
  - 22.2 The evidence provider has subsequently agreed in writing to the removal or amendment of the provisional redactions; or
  - 22.3 The Inquiry has refused the evidence provider's application for a protective ruling and has given the evidence provider five working days' notice of that decision so that it can be challenged by the evidence provider, either by way of application to the Inquiry, or through due process and for the Inquiry to be notified of such a challenge.

#### Additional redactions which may be justified

23. Where an evidence provider seeks redactions which are outside the terms of the Inquiry's General Protective Ruling, there will be cases in which additional redaction appears to the Inquiry to be, on its face, justified. For example, additional redactions may be:

- 23.1 Information that is irrelevant to the Inquiry's Terms of Reference; or
  - 23.2 Relevant, but where there is an apparent clear and strong public interest in, and/or a positive duty to ensure, that the document or the redacted passages are not made available to Interested Parties.
24. In such cases, the Inquiry will usually make a protective ruling without requiring any further written application from the evidence provider.
  25. Where a protective ruling has been made by the Inquiry without a written application having been made by the evidence provider, and an Interested Party is dissatisfied with the extent of the redaction specified in the protective ruling, they may apply to the Inquiry seeking a variation of the protective ruling.

**Inquiry Protocol: Protective Measures Protocol**

# Independent Jersey Care Inquiry

## **The Independent Jersey Care Inquiry (the “Inquiry”)**

### **Inquiry Protocol: Protective Measures**

#### **Scope**

1. This protocol establishes the procedures whereby the Inquiry has the ability to issue orders:
  - 1.1 Protecting the identity of a witness by ordering anonymity;
  - 1.2 Restricting the attendance at the Inquiry, for example by excluding a person or persons, or permitting evidence to be given privately;
  - 1.3 Restricting the disclosure or publication of any evidence or documents given, produced or provided to the Inquiry;
  - 1.4 Restricting the disclosure or publication of the identity of any person; and
  - 1.5 Putting in place special measures to protect and safeguard the well-being of witnesses.
2. This protocol also:
  - 2.1 Sets out the privileges and immunities that will apply to persons appearing before or producing documents to the Inquiry; and
  - 2.2 Sets out the Inquiry’s approach to warning individuals, institutions, organisations or bodies about criticisms that may be made of them.

#### **Protective measures for witnesses**

3. In order to protect the well-being of witnesses and in the public interest, the Inquiry has set out measures to assist witnesses who wish to give evidence, or have been summonsed to give evidence, to the Inquiry. The Inquiry will consider the following applications:
  - 3.1 The giving of evidence anonymously;
  - 3.2 The giving of evidence in private – see the Inquiry Protocol: Oral Hearings;
  - 3.3 Protective Rulings; and

3.4 Other special measures.

4. Interested Parties, witnesses and/or their legal representative are entitled to make an application for any of these measures. The Inquiry can also implement any of these measures of its own accord (see provisions below).

#### Anonymity

5. An anonymity order will act so as to protect the identity of a witness appearing before the Inquiry. Such an order will also prevent the publication of information given to the Inquiry which identifies the witness. This may include the need to take additional measures, such as screening.

6. If an anonymity order is granted, the following measures will automatically apply to that witness:

6.1 The witness will be identified by a letter or number reference which will be used from then on as the public identifier for that individual during the course of the Inquiry's work, for example, Witness A.

6.2 The following information related to that individual will be redacted from all material made use of and/or published by the Inquiry:

6.2.1 Name;

6.2.2 Personal information, such as address, telephone number, date of birth, national insurance number; and

6.2.3 Any other information from which the identity of the individual could reasonably be discerned, such as the names of relatives.

6.3 When giving oral evidence to the Inquiry:

6.3.1 The individual's identity will not be given and he/she will be screened from the public if he/she so requests; or

6.3.2 An application can be made for evidence to be given to the Inquiry in private (see the Inquiry Protocol: Oral Hearings), which will be considered by the Inquiry.

6.4 Once an anonymity order is made, any evidence or document which reveals, or might reveal, the identity of the witness will be prohibited from being published in newspapers, on television or radio, on the internet or social media, and any other media outlet. The strict terms of any anonymity order made by the Inquiry in relation to the publication of evidence must be respected by all members of the public and the media.



## Protective Rulings

7. A Protective Ruling is a ruling given by the Inquiry that protects witnesses during the Inquiry's proceedings.
8. The Chair has made a General Protective Ruling in order to restrict the disclosure or publication of the identity of certain persons and information that is not in the public domain. The General Protective Ruling means that the following information will be redacted from all material before it is disclosed by the Inquiry to Interested Parties and/or published on the Inquiry's website:
  - 8.1 The names and identifying details of:
    - 8.1.1 individuals identified as having claimed to have been abused, or as having been a witness to any abuse alleged;
    - 8.1.2 any individuals accused of abuse, except for those who have criminal convictions for that abuse;
    - 8.1.3 individuals not falling into any of the above categories, whose identity the Inquiry considers ought not to be disclosed;
    - 8.1.4 any applicants who have successfully applied to the Inquiry to not have their identities revealed and who do not fall into any of the above categories.
  - 8.2 Other personal information. This does not extend to individuals' names (save for those individuals specified at paragraph 8.1 above), but would include telephone numbers, dates of birth and home addresses, unless there are particular circumstances that make such personal information relevant to the Inquiry's Terms of Reference.
9. In order to ensure compliance with the Inquiry's General Protective Ruling, those providing documents to the Inquiry are required to follow the procedures set out in the Inquiry Protocol: Data Protection, Freedom of Information and Redaction, relating to the redaction of information.
10. The Inquiry also has the ability to make other Protective Rulings. Examples include:
  - 10.1 For a specified period of time, restrict the attendance of a person or class of persons at the Inquiry, or part of the Inquiry. Such a protection may be imposed if it is necessary to exclude the public, or part of the public, Interested Parties (or some of the Interested Parties), Accredited Lawyers (or some Accredited Lawyers) from the oral hearings of the Inquiry;



- 10.2 A restriction on the disclosure of any evidence or documents given, produced, or provided to the Inquiry. For example, it may be necessary to limit the onward disclosure of a document that has been given, produced or provided to the Inquiry, for example by limiting the disclosure of that document to certain Interested Parties only; and
- 10.3 A restriction on the publication of any evidence or documents given, produced, or provided to the Inquiry, or parts of any document. Such a protection may be necessary to prevent the publication of documents (or parts of documents) that have, for example, been disclosed to Interested Parties and referred to in the Inquiry's hearings, but which should not be published, or which were mistakenly referred to during oral hearings. A Protective Ruling might also be necessary where the transcript of the Inquiry's hearings should not be published on a particular day, for example where evidence is given in private. Evidence directed to be given privately will not be published.

#### Special measures

11. A variety of special measures, including video links, may be authorised by the Inquiry for the purpose of taking the evidence of a witness.

#### **Applications for protective measures**

##### Timing and contents of an application

12. Any person who wishes to apply for protective measures pursuant to this protocol should do so promptly and not later than 14 days before the date when the witness is scheduled to give evidence. Applicants should however bear in mind that disclosure of information that may be the subject of an application for protective measures may have already been made available to Interested Parties, Accredited Lawyers and the public. Any delay in making an application will mean that an individual's personal information may become public.
13. The Solicitors to the Inquiry can assist applicants with the format of, and procedures for, making an application.
14. Any application must include details of the following:
  - 14.1 The nature and circumstances of the issues which are the subject of this Inquiry and which are relevant to the applicant;
  - 14.2 The nature of the evidence the applicant is likely to give;
  - 14.3 The personal and/or professional circumstances of the applicant which are said to warrant the making of an order granting protective measures;

- 14.4 If the application is for anonymity or restricting the identity of the applicant, the extent to which the identity of the applicant has – in connection with the matters under consideration by the Inquiry – already been disclosed, either to Interested Parties or to the public at large;
- 14.5 If the application is for restricting the disclosure and/or publication of documents, the extent to which the material has – in connection with the matters under consideration by the Inquiry – already been disclosed, either to Interested Parties or to the public at large;
- 14.6 Why protective measures are considered necessary for the applicant;
- 14.7 The possible effect on the applicant if required to give evidence or give disclosure of documents or have documents published without the benefit of any protective measure; and
- 14.8 The protective measure(s) considered to be appropriate for taking the applicant’s evidence, having regard to the applicant’s best interests and the public interest.

#### Format of the application

15. The application should be divided into the following three sections:
  - 15.1 Section 1 - A submission of the nature of the evidence that can be given by the witness;
  - 15.2 Section 2 - a submission setting out the protective measure(s) sought and the reason for doing so.

, The material submitted in section 1 and section 2 should collectively set out each and every ground relied on by the applicant.
16. The application should be supported by a statement of truth.
17. The application should be sent to the Solicitors to the Inquiry by email to [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org) or by post to PO Box 551, St Helier, Jersey, JE4 8XN, Channel Islands.
18. The application will be considered by the Panel and the applicant will be notified of the outcome.
19. If, exceptionally, it is necessary to hold a hearing (whether closed or open) to consider an application/s the Inquiry will notify persons concerned with the Inquiry of that fact.

### **Ruling on an application**

20. The Inquiry shall, after submissions from Interested Parties and/or their Accredited Lawyers have been received, consider the application and issue a ruling which authorises or refuses the use of protective measure(s).
21. In deciding the application, the Inquiry will balance the interests of the witness with the public interest.
22. The Inquiry may issue a closed and draft open ruling to the applicant. The applicant will be asked to confirm within 7 days that the open ruling can be published in the terms proposed by the Panel. The final decision as to the wording of the open ruling will be for the Panel to decide. After 7 days have elapsed, an open ruling will be distributed to Interested Parties and Accredited Lawyer and published.

### **Protective measures implemented of the Inquiry's own accord**

23. The Inquiry may review the arrangements for taking a witness's evidence at any time.

### **Privileges and immunities of persons appearing before or producing documents to the Inquiry**

24. In accordance with the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007:
  - 24.1 A person asked or required to give evidence or produce documents before the Inquiry shall be entitled, in respect of such evidence and documents, to legal professional privilege and privilege against self-incrimination;
  - 24.2 An answer given by a person to a question put to that person, or an oral or written statement made by that person, or a document produced by a person in the course of his or her appearance before the Inquiry shall not be admissible in evidence against that person in any civil or criminal proceedings;
  - 24.3 Paragraph 23.2 above shall not apply to evidence given or documents produced by that person which he or she knows to be untrue.

### **Criticisms**

25. Individuals, institutions, organisations and/or other bodies may be subject to criticism in the Inquiry's final report, or any interim reports, arising out of evidence that the Inquiry has heard. The Inquiry does not intend to give any forewarning to the subject of such criticisms prior to the publication of any report unless it would be unfair not to do so in the judgment of the Inquiry.

**Inquiry Protocol: Providing Evidence to the Inquiry**

# Independent Jersey Care Inquiry

## **The Independent Jersey Care Inquiry (the "Inquiry")**

### **Inquiry Protocol: Providing Evidence to the Inquiry**

#### **Scope**

1. This protocol is designed to assist the Inquiry in obtaining information necessary for its work. The protocol sets out how the Inquiry will request information relevant to its Terms of Reference.
2. The Inquiry anticipates that documentation will be provided voluntarily. The Inquiry has the power to order an individual or an organisation to provide evidence in the form of documents and/or a witness statement, such rights being set out in the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007. Failure to comply with such an order constitutes an offence. The Inquiry anticipates that documents and witness statements will be provided without the Inquiry needing to use such powers.
3. A document will be considered to be a 'relevant document' if the Inquiry would, if aware of its existence, wish to be provided with it, given the Inquiry's Terms of Reference.

#### **Documents**

##### Requests for documents

4. The Inquiry may request that a person (which includes an individual, organisation, institution or body) disclose relevant documents to it.
5. Any other person, institution, organisation or body who believes they may have relevant documents should contact the Solicitors to the Inquiry as soon as possible.

##### Searches for documents

6. If someone receives a request for relevant documents, they will need to undertake a comprehensive and thorough search for such documents. The Solicitors to the Inquiry are available to answer questions about how to undertake such a search. A search for relevant documents should be carried out without delay.
7. The Inquiry will usually expect documents to be provided within 14 days of the date of a request.

### Disclosure of documents

8. The procedures that the Inquiry will follow in obscuring information from documents, known as the 'redaction' process, are set out in the Inquiry Protocol: Data Protection, Freedom of Information and Redaction.
9. Documents disclosed to the Inquiry should be provided with provisional redactions applied to the document using yellow highlighting, unless otherwise directed by the Inquiry.
10. Where the person providing the documents believes that some or all of the information requested may be subject to legal professional privilege ("LPP") they may withhold it, or redact in full (i.e. black out the information) some, or all, of the information before sending it to the Inquiry. Written reasons should be provided to explain why the material is considered to attract LPP. The provision of documents should not be delayed on the grounds that some or all of this information may be subject to LPP. The procedure is explained further in the Inquiry Protocol: Data Protection, Freedom of Information and Redaction.
11. The Inquiry may agree to receive information on the basis of strict confidentiality for the sole purpose of reviewing the information for relevance. Where information is provided on such a basis, this does not prevent the person providing the documents from subsequently claiming LPP in respect of all or part of that information.
12. Original (unredacted) documents must be retained by the person, institution, organisation or body providing the documents. If the Inquiry wishes to inspect any original document(s), the holder of the document(s) will be contacted by the Solicitors to the Inquiry and asked to produce the document(s) at a time and place specified.
13. The Inquiry may draw adverse conclusions or inferences if it considers that documents have been, or may have been, without good reason, distorted, destroyed, intentionally suppressed, concealed or altered.
14. The Inquiry's preference is for documents to be sent electronically, either by email to its secure email system at [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org), or contained on a disc or memory stick and sent to: Independent Jersey Care Inquiry, PO Box 551, St Helier, Jersey, JE4 8XN, Channel Islands. Alternatively, documents can be sent in hard copy to the same address. Arrangements can also be made for personal delivery.



## **Witness statements**

### Requests for witness evidence

15. The Inquiry may ask a person (which includes an individual, organisation, institution or body) to provide evidence in the form of a written witness statement or invite them to be interviewed by the Solicitors to the Inquiry, who will then prepare a witness statement for them.
16. Any other person, institution, organisation or body who believes they may be able to give relevant witness evidence should contact the Solicitors to the Inquiry as soon as possible.
17. Generally, the Inquiry will rely on witness statements produced by the Solicitors to the Inquiry. However, in some cases, the Inquiry may rely on witness statements given in another proceedings or forums, such as police interviews. Where this is the case, the Solicitors to the Inquiry may write to the witness to ask for their consent for the statement to be used by the Inquiry. The witness will be asked to review the contents of that earlier statement and add to it or amend any inaccurate details by way of a covering statement. They may ask the Solicitors to the Inquiry for assistance with this process. In some cases, this may involve the witness attending a meeting with the Solicitors to the Inquiry. Once a final form of amendments/covering statement has been prepared, the Inquiry will follow the procedures set out below so that the witness can agree and sign a final form of that statement.
18. If the Solicitors to the Inquiry prepare a draft witness statement for a witness following interview, a copy of the draft witness statement will be sent to the witness who may add to, alter or amend the statement before approving its contents and signing the statement. The witness however will not be entitled to materially change fundamental elements of their account given to the Solicitors to the Inquiry at interview. The approved and signed statement shall be returned by the witness promptly. The statement will become evidence to the Inquiry.
19. In the event that a witness fails to return an approved and signed copy of their statement within five working days, or refuses to sign the statement without good reason, the Inquiry may release to Interested Parties and their Accredited Lawyers a copy of the unsigned and unapproved statement. The unsigned and unapproved statement will become evidence to the Inquiry.
20. Witness statements should be sent electronically to the secure email at [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org), or sent by post to the Independent Jersey Care Inquiry, PO Box 551, St Helier, Jersey, JE4 8XN, Channel Islands.

21. Any questions concerning the content or format of a witness statement, or any documents attached to the statement, should be raised with the Solicitors to the Inquiry, in writing, as soon as possible upon receipt of a request for a witness statement.

**Witness expenses**

22. Individual witnesses who are asked by the Inquiry to give evidence to it can seek reimbursement of their reasonable expenses in so doing. The Inquiry will assist in making arrangements in advance. The Inquiry will not reimburse expenses incurred where it is reasonable for another party to do so.



**Inquiry Protocol: General Procedures**

# Independent Jersey Care Inquiry

## **The Independent Jersey Care Inquiry (the “Inquiry”)**

### **Inquiry Protocol: General Procedures**

#### **Introduction**

1. The Independent Jersey Care Inquiry has been established by the Council of Ministers by proposition lodged au Greffe on 6 November 2012, under Standing Order 146, adopted by the States on 6 March 2013, to investigate historical abuse in Jersey. The Inquiry’s Terms of Reference are annexed to this protocol at Annex A, and a copy can also be found on the Inquiry’s website at [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org).
2. Standing Order 147 says that a committee of inquiry may regulate its own procedure for the conduct and management of its proceedings. The Inquiry is also subject to the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007:
  - 2.1 This General Procedures Protocol is intended to provide general guidance as to the procedures that the Inquiry intends to follow;
  - 2.2 For the Inquiry to operate effectively and efficiently, it needs to operate flexibly. The procedures set out in this, and other protocols, may be subject to amendment by the Inquiry during the course of the Inquiry at its discretion. Where an amendment or clarification is made, an amended version of the relevant protocol will be made available on the Inquiry’s website; and
  - 2.3 This Protocol is not intended to cover every eventuality that may arise. Where procedural decisions need to be taken, they will be taken by the Inquiry as and when necessary.
3. This General Procedures Protocol is subject to, and must be read in conjunction with the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007. The General Procedures Protocol addresses the following matters:
  - 3.1 The Inquiry’s general approach;
  - 3.2 The designation by the Inquiry of Interested Parties;
  - 3.3 Access to the Inquiry’s work;
  - 3.4 Support for witnesses; and

- 3.5 Contact details.
4. The General Procedures Protocol must also be read in conjunction with the following Inquiry Protocols:
- 4.1 Legal Representation. This protocol addresses the designation of Accredited Lawyers and the procedures relating to applications for legal fees and expenses.
- 4.2 Providing Evidence to the Inquiry. This protocol sets out how the Inquiry will treat information, the Inquiry's procedures for requesting documents and witness evidence, and witnesses expenses.
- 4.3 Oral Hearings. This protocol sets out how hearings will be scheduled and conducted so that witnesses know what to expect when giving evidence.
- 4.4 Protective Measures. This protocol sets out the procedures that have been put in place by the Inquiry to: protect the identities of witnesses by ordering anonymity; restrict the attendance at the Inquiry; restrict the disclosure or publication of any evidence or documents; restrict the disclosure or publication of the identity of any person; and put in place special measures to protect the well-being of witnesses. The protocol also sets out the privileges and immunities that will apply to persons appearing before or producing documents to the Inquiry. Finally, it sets out the Inquiry's approach to alerting individuals or organisations about evidence that could form the basis of criticisms of them.
- 4.5 Data Protection, Freedom of Information and Redaction. This protocol sets out how personal data will be used during the Inquiry and addresses the Inquiry's approach to freedom of information requests. This protocol also sets out the procedures for obscuring information from a document, known as redaction, and how to make an application for information to be redacted in such a way.
- 4.6 Media and Conduct in the Hearing Room. This protocol sets out how applications for media accreditation can be made and the Inquiry's expectations of conduct in the hearing room.

## **General**

5. The Inquiry will conduct its business in an inquisitorial, and not an adversarial, manner. This means that the Inquiry will take on the role of actively investigating the facts and finding out the truth itself, rather than relying solely on other parties to present the facts to it.

6. The Inquiry will also be engaging with vulnerable individuals. As a result, the Inquiry expects all those engaged with its work, including Interested Parties and Accredited Lawyers (as defined in the Inquiry Protocol: Legal Representation), to adopt a co-operative and constructive approach. Good and efficient relationships with the Inquiry will be essential to ensuring its smooth operation.
7. In making any decision as to the procedure and conduct of the Inquiry, the Inquiry will act with fairness and with regard to the need to avoid any unnecessary cost.
8. The Inquiry is a public inquiry. The aim is for the Inquiry to be as open and as transparent as possible. In accordance with Standing Order 147(2), proceedings before the Inquiry shall be held in public unless the Inquiry, in the interests of justice or in the public interest, decides that all or any part of the proceedings shall be in private. The Inquiry may also decide that any part of the evidence shall be given in public, but without identifying the person giving the relevant evidence (i.e. giving evidence anonymously).

### **Interested Parties**

#### Applications for Interested Party status

9. The Inquiry may designate an individual, institution or other organisation (including any States department or other public body) as an Interested Party at any time during the course of the Inquiry, provided they consent to being so designated.
10. In addition, any individual, institution or other organisation (including any States department or other public body) that considers it may have a relevant interest in matters to be considered by the Inquiry may apply to the Inquiry to be designated as an Interested Party.
11. Any individual, institution or other organisation (including any states department or other public body) who wishes to be designated as an Interested Party must make an application to the Inquiry.
12. In deciding whether to designate any individual, institution or other organisation (including any states department or other public body) as an Interested Party, the Inquiry will consider in particular:
  - 12.1 Whether the person, institution or organisation played, or may have played, a direct and significant role in relation to an issue or issues to which the Inquiry relates;

- 12.2 Whether the person, institution or organisation has a significant interest in an important aspect of the matters to which the Inquiry relates and will assist the Inquiry to fulfil its Terms of Reference;
  - 12.3 Whether the person, institution or organisation may be subject to significant criticism during the Inquiry's proceedings or in any interim report, or in the final report;
  - 12.4 Whether the person's, institution's or organisation's interests or contribution to the Inquiry requires the status of being an Interested Party; and
  - 12.5 Any other circumstances which the Inquiry considers relevant.
13. Applications for designation as an Interested Party must be made in writing to the Solicitors to the Inquiry, and must set out the grounds for the application.
  14. If the Inquiry considers that further information is required before it can make a decision, the Inquiry may require the applicant to provide such further information as it considers necessary. If the Inquiry thinks it necessary, the Inquiry may require an applicant to appear before it at a hearing to make an oral application for Interested Party status.

#### Confidentiality obligations of Interested Parties

15. A person (which includes an institution, organisation or body) who is designated as an Interested Party, and who agrees to such designation, automatically undertakes to be bound by the following confidentiality provisions in respect of the Inquiry's work:
  - 15.1 All material provided to the Interested Party by the Inquiry is confidential and, in consideration of the provision of that material, the Interested Party agrees to take all necessary steps to preserve that confidentiality. The material is provided solely for the purpose of assisting the Interested Party in assisting the Inquiry and for no other purpose.
  - 15.2 All Interested Parties undertake to the Inquiry not to disclose or pass on to any third party, other than to the Interested Parties' own legal representatives, any document, witness statement, or other material supplied to it by the Inquiry, or any of the information contained within that material, save with written permission of the Inquiry.
  - 15.3 All material supplied to an Interested Party by the Inquiry must be stored in a secure place in order to prevent access to it by any person not authorised by the Inquiry.

- 15.4 All material and information supplied to an Interested Party by the Inquiry must be used solely for the purpose of the Inquiry and, at the direction of the Inquiry, any and all material, and any copies, must be returned to the Inquiry or destroyed at the Inquiry's request.
16. The above confidentiality obligations will continue even when the Inquiry's work has finished and/or when a person ceases to be an Interested Party.
17. Where an Interested Party is an organisation, institution, or other body, every individual who forms part of that Interested Party, will be subject to the above confidentiality provisions. An Interested Party, must, on request from the Inquiry, provide a list of all individuals who have access to the Inquiry material and therefore are bound by the confidentiality obligations.
18. Any solicitor or advocate who is awarded Accredited Lawyer status (in accordance with the procedures in the Inquiry Protocol: Legal Representation), is also automatically bound by the confidentiality provisions set out above.

#### The role of an Interested Party

19. A person who is designated by the Inquiry as an Interested Party and/or their Accredited Lawyer will:
  - 19.1 Be provided with access to a dedicated area of the Inquiry's Document Management System for Interested Parties in order to view evidence, as set out below;
  - 19.2 Be entitled to be legally represented in accordance with the Inquiry Protocol: Legal Representation;
  - 19.3 Be entitled to formally appear at any public hearings;
  - 19.4 Be entitled to submit questions to Inquiry Counsel for consideration by them, via the Solicitors to the Inquiry, that the Interested Party would want a witness appearing before the Inquiry to be asked;
  - 19.5 Be entitled to seek permission from the Inquiry to make an opening and/or closing statement to the Inquiry, in accordance with the Inquiry Protocol: Oral Hearings; and
  - 19.6 Be entitled to be present to read the Inquiry's finalised report two hours before its publication.

#### **Access to the Inquiry's work**

20. As set out above, the Inquiry's intention is that it will be as open and transparent as possible, and in accordance with Standing Order 147(2), proceedings before



the Inquiry will usually be held in public. The Inquiry therefore intends to manage the disclosure of information regarding its work as follows:

#### Access to Interested Parties and Accredited Lawyers

- 20.1 Interested Parties and their Accredited Lawyers will be able to view documents uploaded on to a dedicated area of the Inquiry's Document Management System ("DMS") for Interested Parties as the Inquiry will direct.
- 20.2 Usernames to access the DMS will be limited in number for each Interested Party and Accredited Lawyers.
- 20.3 Those documents defined as category 1 or category 2 documents in the Inquiry Protocol: Data Protection, Freedom of Information and Redaction, will be suitably redacted and then made available for viewing on the dedicated area of the DMS. Those witness statements given privately will not be available on the DMS.
- 20.4 The purpose of such access is to enable an Interested Party and/or its Accredited Lawyer:
  - 20.4.1 To read the relevant evidence in advance of oral evidence; and
  - 20.4.2 To present requests to Inquiry Counsel to consider for specific questions to be asked of witnesses, in accordance with the procedure set out in the Inquiry Protocol: Oral Hearings.

#### Access to the public

- 20.5 The following information will be published on the Inquiry's public website as soon as reasonably practicable after the conclusion of any evidence given to the Inquiry in its public proceedings:
  - 20.5.1 A transcript of each day's oral hearings heard in public;
  - 20.5.2 Witness statements (and any exhibits and/or documents referred to in the witness statements) of those witnesses who have given oral evidence publicly, subject to publication restrictions (see the Inquiry Protocol: Protective Measures and the Inquiry Protocol: Data Protection, Freedom of Information and Redaction); and
  - 20.5.3 Documentary material displayed in the oral hearings.

- 20.6 Rulings of the Inquiry Panel, press notices and other information about the Inquiry will be published on the Inquiry's website, as and when the Inquiry considers it appropriate to do so.

### **Support for witnesses**

21. A witness support service will be available for those who are involved with the Inquiry's work. The service will be delivered by a provider who is separate to the Inquiry.
22. The service is free and confidential and relevant contact details for witnesses will be published on the Inquiry's website.

### **Contact details for the Inquiry**

23. The Inquiry's designated postal address is:
- Independent Jersey Care Inquiry  
PO Box 551  
St Helier  
Jersey  
JE4 8XN
24. The Inquiry's designated email address is [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)
25. The contact email for press enquiries is [press@jerseycareinquiry.org](mailto:press@jerseycareinquiry.org)
26. The Inquiry's public website address is [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)
27. The Inquiry's contact telephone numbers are:
- Freephone from Jersey/UK: 0800 735 0100  
International callers: +44 (0)1534 828798



## **Annex A**

### **Terms of Reference, as approved by the States of Jersey on 6th March 2013**

The Committee of Inquiry (“the Committee”) is asked to do the following –

1. Establish the type and nature of children’s homes and fostering services in Jersey in the period under review, that is the post-war period, with a particular focus on the period after 1960. Consider (in general terms) why children were placed and maintained in these services.
2. Determine the organisation (including recruitment and supervision of staff), management, governance and culture of children’s homes and any other establishments caring for children, run by the States and in other non-States run establishments providing for children, where abuse has been alleged, in the period under review and consider whether these aspects of these establishments were adequate.
3. Examine the political and other oversight of children’s homes and fostering services and other establishments run by the States with a particular focus on oversight by the various Education Committees between 1960 and 1995, by the various Health and Social Services Committees between 1996 and 2005, and by ministerial government from 2006 to the current day.
4. Examine the political and societal environment during the period under review and its effect on the oversight of children’s homes, fostering services and other establishments run by the States, on the reporting or non-reporting of abuse within or outside such organisations, on the response to those reports of abuse by all agencies and by the public, on the eventual police and any other investigations, and on the eventual outcomes.
5. Establish a chronology of significant changes in childcare practice and policy during the period under review, with reference to Jersey and the UK in order to identify the social and professional norms under which the services in Jersey operated throughout the period under review.
6. Take into account the independent investigations and reports conducted in response to the concerns raised in 2007, and any relevant information that has come to light during the development and progression of the Redress Scheme.
7. Consider the experiences of those witnesses who suffered abuse or believe that they suffered abuse, and hear from staff who worked in these services, together with any other relevant witnesses. It will be for the Committee to determine, by balancing the interests of justice and the public interest against the presumption of openness, whether, and to what extent, all or any of the evidence given to it should be given in private. The Committee, in accordance with Standing Order 147(2), will have the power to conduct hearings in private if the Chairman and members consider this to be appropriate.
8. Identify how and by what means concerns about abuse were raised and how, and to whom, they were reported. Establish whether systems existed to allow children and others to raise concerns and safeguard their wellbeing, whether these systems were adequate, and any failings they had.
9. Review the actions of the agencies of the government, the justice system and politicians during the period under review, in particular when concerns came to light about child abuse and establish what, if any, lessons are to be learned.

10. Consider how the Education and Health and Social Services Departments dealt with concerns about alleged abuse, what action they took, whether these actions were in line with the policies and procedures of the day, and whether those policies and procedures were adequate.
11. Establish whether, where abuse was suspected, it was reported to the appropriate bodies, including the States of Jersey Police; what action was taken by persons or entities including the police, and whether this was in line with policies and procedures of the day and whether those policies and procedures were adequate.
12. Determine whether the concerns in 2007 were sufficient to justify the States of Jersey Police setting in train 'Operation Rectangle'.
13. Establish the process by which files were submitted by the States of Jersey Police to the prosecuting authorities for consideration, and establish –
  - Whether those responsible for deciding on which cases to prosecute took a professional approach;
  - Whether the process was free from political or other interference at any level.

If, for these purposes, or as a result of evidence given under paragraph 7, in the opinion of the Chairman of the Committee, it would be of assistance that one or more of the prosecution files underpinning any prosecution decision may be examined in a manner to be determined by the Committee.

14. Set out what lessons can be learned for the current system of residential and foster care services in Jersey and for third party providers of services for children and young people in the Island.
15. Report on any other issues arising during the Inquiry considered to be relevant to the past safety of children in residential or foster care and other establishments run by the States, and whether these issues affect the safety of children in the future.

**Inquiry Ruling: Amendment to Data Protection, Freedom of Information and  
Redaction Protocol**

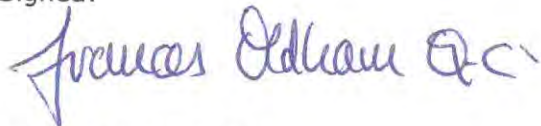
INQUIRY RULING

AMENDMENT TO DATA PROTECTION, FREEDOM  
OF INFORMATION AND REDACTION PROTOCOL

The Panel, having reviewed a number of documents received from various providers, have made the following ruling of its own initiative.

The protocol has been amended to include that any information already in the public domain will not be redacted.

Signed:

A handwritten signature in blue ink that reads "Frances Oldham QC". The signature is written in a cursive style with a checkmark at the end.

Frances Oldham QC

**Extracts from Twitter**



Tweet



Independent  
Jersey Care  
Inquiry

**Jersey Inquiry**

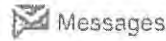
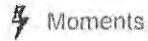
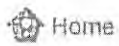
@JerseyInquiry

Witness 209, abused regularly by  
[REDACTED] at #HdlG was never  
aware of it happening to others.  
She never told anyone at the time.

#IJCI

10/12/2014 3:50 pm





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Following

Witness 123 first abused at #HdlG at aged 10. Had sexual relationship with [REDACTED] [REDACTED] Tells #IJCI she didn't know it was wrong

RETWEETS

7

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1



4:09 PM - 10 Dec 2014



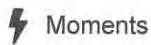
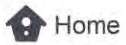
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@truth\_eater



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Top cop finds his mailed statement on child abuse in tax shelter #Jersey opened -- a gross violation:  
[ricosorda.blogspot.com/2014/10/jersey...](http://ricosorda.blogspot.com/2014/10/jersey...)  
#CSAinquiry

RETWEETS

14

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4:14 PM - 9 Oct 2014

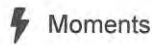


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Townsend Gbemi Norbury Andrew Bailey





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@truth\_eater



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.@RicoSorda breaks news that @jsypost and @RoyalMail are not safe for sensitive documents on child abuse:  
ricosorda.blogspot.com/2014/10/jersey...  
#CSAinquiry

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4:50 PM - 9 Oct 2014



Reply to @truth\_eater @RicoSorda @jsypost @RoyalMail



**voiceforchildren** @TheVoiceJersey · 9 Oct 2014

@truth\_eater @RicoSorda @jsypost @RoyalMail LH is not the 1st person investigating #ChildAbuse to have mail "damaged"  
leahmcgrathgoodman.com/2012/07/18/par...



2



View summary



**King of Darkness** @DarkJersey · 9 Oct 2014

@truth\_eater @RicoSorda @jsypost @RoyalMail Maybe we should not be blaming the messenger maybe the interceptor #lawofficers #darkjersey



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#bless #AustraliaDay #RepublicDay #CharityTuesday #TravelTuesday Pandya Andros  
Townsend Gbemi Norbury Australia by 37



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There has been no security breach over letters sent by the Inquiry. Reports suggesting otherwise are inaccurate.  
[ow.ly/Cvyaa](http://ow.ly/Cvyaa)

RETWEETS

4



4:57 PM - 9 Oct 2014

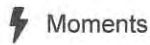
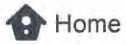


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Andros Townsend Norbury Pandya Andrew Bailey

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@GaryBurgessITV



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Jersey's inquiry into historical child abuse is defending the way it posts out sensitive documents... [itv.com/news/channel/u...](http://itv.com/news/channel/u...)  
#IJCI

**Care Inquiry defends sending sensitive documents through...**

Jersey's Care Inquiry into historical child abuse is defending its decision to send sensitive documents through the post, rather than by courier. It follows reports a key witness in the UK received a...  
[itv.com](http://itv.com)

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2



12:23 PM - 10 Oct 2014



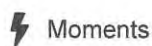
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Ah, the power of the lone blogger!: RT @bbcjersey RT Hat tip to @RicoSorda 4 exposing data breach @JerseyInquiry jerseycareinquiry.org/news?newsid=73

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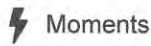
4:43 PM - 10 Oct 2014



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Has @jsypost responded? RT @TheVoiceJersey: A blog on this major security breach [in child-abuse inquiry]:voiceforchildren.blogspot.com/2014/10/jersey... #CSAinquiry

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5:45 PM - 10 Oct 2014



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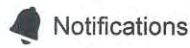
**ANDY BROWN** @ANDYDB7 · 10 Oct 2014

@truth\_eater @jsypost @TheVoiceJersey Where s your book?



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@RoyalMail:"apologies"for security breach vs @JerseyInquiry:"There has been no security breach."Now for the photos...



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6:14 PM - 10 Oct 2014



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**Póló** @irlpol · 10 Oct 2014

@truth\_eater

You just couldn't make it up.

@RoyalMail @JerseyInquiry @StuartSyvret



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**jrjasrichy@gmail.com** @jrjasrichy · 26 Nov 2014

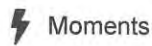
@truth\_eater @RoyalMail @JerseyInquiry #HS2=PONZI SCAM VETO #NHS

#UKIP #SFO #Scandal #CSAinquiry #CameronMustGo #SCAMALERT

@trutherbot







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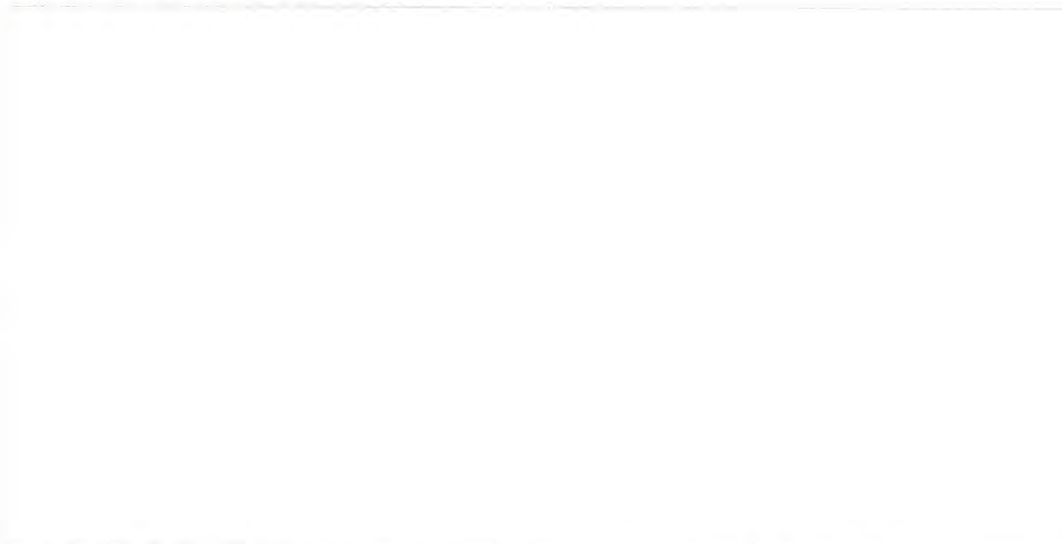
**Leah McGrath Goodman**

@truth\_eater



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.@DailyMailUK:Names of almost 200 child sex victims of Jersey scandal could be leaked after dox breach:dailym.ai/1tKTRTZ #CSAinquiry



**Child sex victims of Jersey care home scandal could be revealed**

The details of hundreds of child abuse victims may have been leaked after officials failed to post sensitive documents securely, former senior investigator, Lenny Ha...  
dailymail.co.uk

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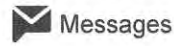
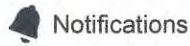
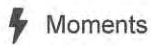


Reply to @truth\_eater @DailyMailUK



**voiceforchildren** @TheVoiceJersey · 10 Oct 2014

@truth\_eater @DailyMailUK The Mail might also be interested in this update?  
voiceforchildren.blogspot.com/2014/10/jersey... #CSAinquiry #Jersey #ChildAbuse



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Independent Jersey Care Inquiry

**Jersey Inquiry**

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#IJCI takes very seriously the breach of a witness' private data by a journalist on Twitter earlier this evening. [ow.ly/CzSaB](http://ow.ly/CzSaB)

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7:16 PM - 10 Oct 2014



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19:17 - 10 Oct 2014

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There has been a breach of a witness' details by a journalist in the Jersey Care Inquiry. The Panel says they have been in touch with the individual concerned to advise them.

The Independent Jersey Care Inquiry takes very seriously the breach of a witness' private data by a journalist on Twitter earlier this evening. This was shared several times before being taken down.

We have been in touch with the witness concerned to advise them of this breach.

– *The Independent Jersey Care Inquiry*



Last updated Wed 13 Jan 2016

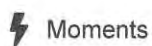
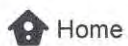
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**Jersey Inquiry**

@JerseyInquiry



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This was shared several times before being taken down.... [ow.ly/CzSq7](https://ow.ly/CzSq7)

7:16 PM - 10 Oct 2014



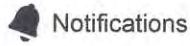
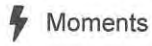
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#LJB5 #bless #AustraliaDay #CharityTuesday #RearrangeAWordChangeAFilm Gbemi

Andros Townsend Norbury Pandya Andrew Bailey

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...We have been in touch with the witness concerned to advise them of this breach.  
[ow.ly/CzStN](http://ow.ly/CzStN) #IJCI

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7:17 PM - 10 Oct 2014



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## Identities of almost 200 child sex victims of Jersey care home scandal could be leaked after secret document was sent by standard post and arrived OPENED

- Former Jersey police chief Lenny Harper fears details of child abuse victims may have been leaked
- The Jersey Care Inquiry sent him the 200-page document to sign, but failed to send it by recorded delivery
- Mr Harper said the confidential document arrived in an opened envelope
- Jersey Care Inquiry said it 'deliberately chose not to draw attention to post'

By THOMAS BURROWS FOR MAILONLINE

PUBLISHED: 17:36, 10 October 2014 | UPDATED: 18:45, 10 October 2014

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### DON'T MISS

'I love you': CBB's Stephanie Davis FINALLY reveals her true feelings for Jeremy McConnell... as he calls her 'girlfriend material' Look away now, Sam!



Kendall Jenner rocks a plunging black gown as she makes a surprise appearance at Chanel's Paris show amid 'two-timing' Harry Styles reports



Gigi Hadid rules the runway in chic off-white number as sister Bella cuts a demure figure in embellished ensemble at the Chanel show in Paris



Blac Chyna puts her best asset on display in outrageous shoot as it's claimed Kylie Jenner is 'livid' at the prospect Tyga's ex dating brother Rob



Simon Cowell leaves fellow Britain's Got Talent judge David Walliams 'shocked' after quip about ex-wife Lara Stone Wasn't so funny...



CBB's Megan McKenna hits the town in a flirty floral off-shoulder number after branding Tiffany 'desperate' for smooching Scotty T



'Izzy is my hero': Harry Judd and his wife announce the arrival of daughter Lola Rose Emma as they become first-time parents Happy news



Puppy love: Cara Delevingne cosies up to her pet pooch as she goes braless in daring sheer top at Chanel's Haute Couture show in Paris



Busty Emily Ratajkowski draws attention to her super-slender waist in a skimpy striped bikini as she lounges in the sun Soaking up the sunshine



Louis Tomlinson 'renting a three bedroom home in Calabasas worth in the hundreds of thousands not millions' for new son and former flame Briana Jungwirth



Rita Ora continues her racy display in Paris as



3 View comments

The details of hundreds of child abuse victims may have been leaked after officials failed to post sensitive documents securely, a former senior investigator fears.

The year-long inquiry into historic claims that children were molested in care homes in Jersey is currently under way.

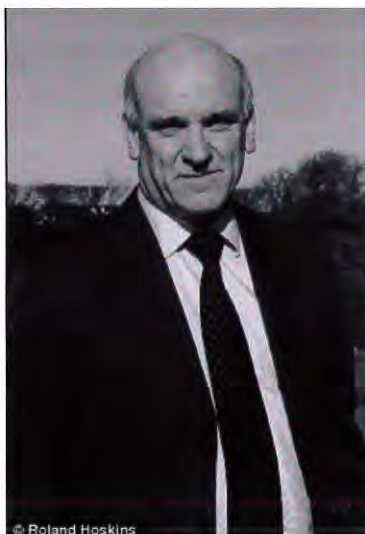
Police have taken 1,776 statements in connection with 532 offences - with the 191 victims all entitled to anonymity.

But former Jersey police chief, Lenny Harper, fears their details may have been accidentally leaked after a confidential document posted to him by inquiry officials arrived in an opened envelope.

Mr Harper, who looked into reports of child abuse on the island in 2007 and 2008, said the Jersey Care Inquiry sent him the 200-page document to sign, but failed to send it by recorded delivery.

He said the post office in the UK had resealed the package in a plastic bag because it had been damaged and inserted a letter of apology for the condition.

Mr Harper has given evidence at the inquiry into reports of abuse in the island's children's homes and fostering services and said the document had contained 'the most sensitive information'.



Lenny Harper (pictured) fears the details of child abuse victims may have been leaked

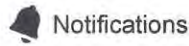
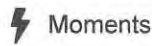


Former Jersey police chief, Lenny Harper, outside the Haut de la Garenne care home, which shut in 1986

Many victims were targeted in the Haut de la Garenne care home which closed in 1986.

He said: 'There are details of alleged abusers, there are details of many victims and what victims were saying happened to them.'





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**Leah McGrath Goodman**

@truth\_eater



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10:15 PM - 10 Oct 2014



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**ITV News Channel TV** @itvchanneltv · 10 Oct 2014

@truth\_eater @JerseyInquiry @bbcjersey @JEPnews @jsypost It is not no.



**Leah McGrath Goodman** @truth\_eater · 14 Oct 2014

@itvchanneltv @bbcjersey @JEPnews @jsypost Looks like it is. JerseyInquiry thinks private data = public address you can find on PeopleTracer.



3

3



**Leigh LaFon** @DenverElle · 14 Oct 2014

@truth\_eater @itvchanneltv @bbcjersey @JEPnews @jsypost That an outside world exists is The real tragedy" of child abuse? (To Oligarchy)



1

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**JJ Nortyperson** @JJNortyperson · 14 Oct 2014

@DenverElle @truth\_eater @itvchanneltv @bbcjersey @JEPnews @jsypost norty inquiry, \*pokes the inquiry\* :)



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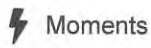
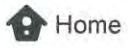
**Leigh LaFon** @DenverElle · 14 Oct 2014

@JJNortyperson @truth\_eater @itvchanneltv @bbcjersey @JEPnews @jsypost Go poke 'em.



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**Hannah Bechelet**

@hannahbechITV



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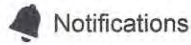
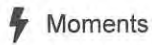
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10:11 AM - 11 Oct 2014



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#IJCI is considering alleged serious breach of privacy by journalist who published confidential witness information  
ow.ly/CIRBv

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11:46 AM - 14 Oct 2014



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**Elgit @2Vacant** · 14 Oct 2014

@JerseyInquiry which only begs the question, where did they get the information?



1



**Elgit @2Vacant** · 14 Oct 2014

@JerseyInquiry just it's been a month and the last one took less than week



**Elgit @2Vacant** · 14 Oct 2014

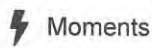
@JerseyInquiry speaking of which still waiting for a copy of my statement



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Andros Townsend Norbury Andrew Bailey





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**Leah McGrath Goodman**

@truth\_eater



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So,@JerseyInquiry says opened 200-pg witness statement "no breach," but public address on mailing label is? #priorities @bbcjersey @JEPnews

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4:20 PM - 14 Oct 2014



Reply to @truth\_eater @JerseyInquiry @BBCJersey @JEPnews



**Leigh LaFon** @DenverElle · 14 Oct 2014

@truth\_eater @JerseyInquiry @bbcjersey @JEPnews Jersey officials are not used to answering to anyone, unless they fall out with a Balihache.



1

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**Stuart Syvret** @StuartSyvret · 14 Oct 2014

@truth\_eater And if @bbcjersey & @JEPnews hacks need an explanation of why @JerseyInquiry is now wrecked - I could tell them.



1

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**Stuart Syvret** @StuartSyvret · 14 Oct 2014

@truth\_eater The loss of that witness-statement data by @JerseyInquiry has destroyed the effectiveness of the inquiry. @bbcjersey @JEPnews



1

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**Stuart Syvret** @StuartSyvret · 14 Oct 2014

@truth\_eater @JerseyInquiry has caused a profound security breach. Let no-one underestimate the seriousness of this. @bbcjersey @JEPnews



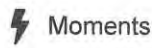
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**Stuart Syvret** @StuartSyvret · 14 Oct 2014

@truth\_eater The failure to send such sensitive documents by recorded mail at least, is shocking. @JerseyInquiry @bbcjersey @JEPnews



**Leah McGrath Goodman** @truth\_eater · 10 Oct 2014

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@JerseyInquiry: Is 'private data' the witness's public address you yourself leaked? @itvchanneltv @bbcjersey @JEPnews @jsypost #hopenot



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**ITV News Channel TV** @itvchanneltv · 10 Oct 2014

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**Leah McGrath Goodman**

@truth\_eater



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4:54 PM - 14 Oct 2014



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**Leigh LaFon** @DenverElle · 14 Oct 2014

@truth\_eater @itvchanneltv @bbcjersey @JEPnews @jsypost That an outside world exists is "The real tragedy" of child abuse? (To Oligarchy)



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**JJ Nortyperson** @JJNortyperson · 14 Oct 2014

@DenverElle @truth\_eater @itvchanneltv @bbcjersey @JEPnews @jsypost norty inquiry, \*pokes the inquiry\* :)



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**Leigh LaFon** @DenverElle · 14 Oct 2014

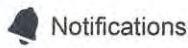
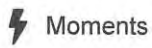
@JJNortyperson @truth\_eater @itvchanneltv @bbcjersey @JEPnews @jsypost Go poke 'em.



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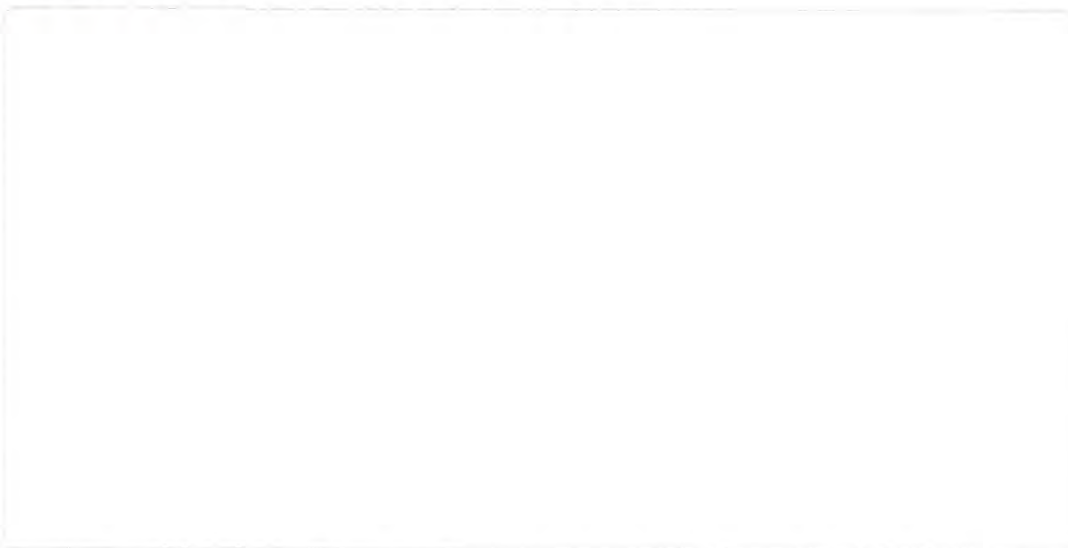
**Leah McGrath Goodman**

@truth\_eater



Follow

Don't worry, @JerseyInquiry -- you have our sympathies. But let's have no more fake 'private data' breaches, ok?:  
[bbc.com/news/world-eur...](http://bbc.com/news/world-eur...)



**Jersey Care Inquiry: Witness says privacy probe 'red herring' - BBC News**

A former senior police officer whose address was published by a journalist says he does not care about the privacy breach.

[bbc.com](http://bbc.com)

RETWEETS

6

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5



6:19 PM - 14 Oct 2014



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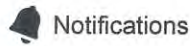
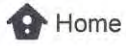
**Bob the Peasant** @woodmouse1 · 14 Oct 2014

@truth\_eater @TheVoiceJersey @JerseyInquiry thanks for reporting Leah



2





**Leah McGrath Goodman** @truth\_eater · 14 Oct 2014

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Don't worry, @JerseyInquiry -- you have our sympathies. But let's have no more fake 'private data' breaches, ok?: [bbc.com/news/world-eur...](http://bbc.com/news/world-eur...)



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5



View summary



**Bob the Peasant** @woodmouse1 · 14 Oct 2014

@truth\_eater @TheVoiceJersey @JerseyInquiry thanks for reporting Leah



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**Leah McGrath Goodman**

@truth\_eater



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@woodmouse1 @TheVoiceJersey Will @JerseyInquiry answer questions about if it will investigate the real breach of 200-page witness statement?

RETWEETS  
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7:59 PM - 14 Oct 2014



Reply to @truth\_eater @woodmouse1 @TheVoiceJersey @JerseyInquiry



**Bob the Peasant** @woodmouse1 · 14 Oct 2014

@truth\_eater @TheVoiceJersey @JerseyInquiry The red herring distracts from the elephant in the room to mix my metaphors.



1



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#bless #AustraliaDay #RepublicDay #CharityTuesday #TravelTuesday Andros  
Townsend Gbemi Virat Kohli Beatrix Potter Norbury



**voiceforchildren** @TheVoiceJersey · 14 Oct 2014  
@JerseyInquiry The idea is when you are digging a hole 4 yourself to put the shovel down. Not ask for a bigger one! #desperate @truth\_eater

Retweets: 3 Likes: 3



**Leah McGrath Goodman**  
@truth\_eater

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@TheVoiceJersey @JerseyInquiry A major news source on island calls lack of Jersey Inquiry's mail security 'damning.'

RETWEETS: 2 LIKES: 2



8:01 PM - 14 Oct 2014

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**voiceforchildren** @TheVoiceJersey · 14 Oct 2014  
.@truth\_eater @JerseyInquiry This is not considered a breach of security by #Jersey #ChildAbuse #inquiry voiceforchildren.blogspot.com/2014/10/jersey... #CSAinquiry

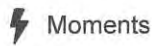
Retweets: 6 Likes: 2



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#bless #AustraliaDay #RepublicDay #CharityTuesday Beatrix Potter Gbemi Virat Kohli #AddSportsRuinAShow Andros Townsend Norbury





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#IJCI statement re damage to a package containing a witness statement whilst in transit. [ow.ly/CMr2U](http://ow.ly/CMr2U)

RETWEETS

5



9:27 AM - 15 Oct 2014



Reply to @JerseyInquiry



**King of Darkness** @DarkJersey · 15 Oct 2014

@JerseyInquiry That is not a statement it is a non statement - Do you people not have any self respect you clearly have none for the victim



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Andros Townsend Norbury Andrew Bailey

February 2015

January 2015

December 2014

November 2014

October 2014



**14 October 2014**

The Chair of the Independent Jersey Care Inquiry, Frances Oldham, opened today's proceedings with the following statement:

"A matter has occurred over the weekend and I wish to say this.

"The Inquiry is considering an alleged serious breach of privacy by which a journalist released into the public domain confidential witness information. We will not be responding to any questions at this stage until that is concluded."

**< Back**

September 2014

August 2014

July 2014

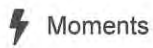
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complete his evidence.

**Read more...**

**25 June 2014**

The Independent Jersey Care Inquiry is engaged in securing the documents necessary for its work. It will be taking stock of the position at the next Public Hearing on 2 July.



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**Gary Burgess**

@GaryBurgessITV



Following

Today: Jersey's inquiry into historical child abuse could name alleged dead abusers...  
itv.com/news/channel/u... #IJCI

**Ruling expected on alleged dead abusers**

The Independent Jersey Care Inquiry will announce whether alleged abusers who have died can be named. The panel of experts will make their ruling this morning and then continue to h...  
itv.com

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8:11 AM - 24 Oct 2014

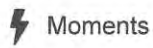


Reply to @GaryBurgessITV

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Townsend Norbury Andrew Bailey





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Inquiry

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@JerseyInquiry



Following

#IJCI Panel rule that alleged abusers who have died can be named and this will be applied retrospectively.

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13

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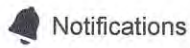
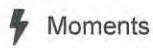
1



9:51 AM - 24 Oct 2014



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**Jersey Inquiry**

@JerseyInquiry



Following

1/2 #IJCI Panel rules that information & names of individuals that are in the Public Domain will not be redacted.....

10:24 AM - 24 Oct 2014

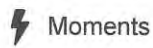


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Townsend Norbury Andrew Bailey

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Jersey Care  
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2/2 .."in the Public Domain" is information realistically accessible to the general public that has been published in regulated media. #IJCI

10:24 AM - 24 Oct 2014

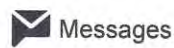
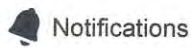
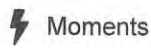
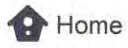


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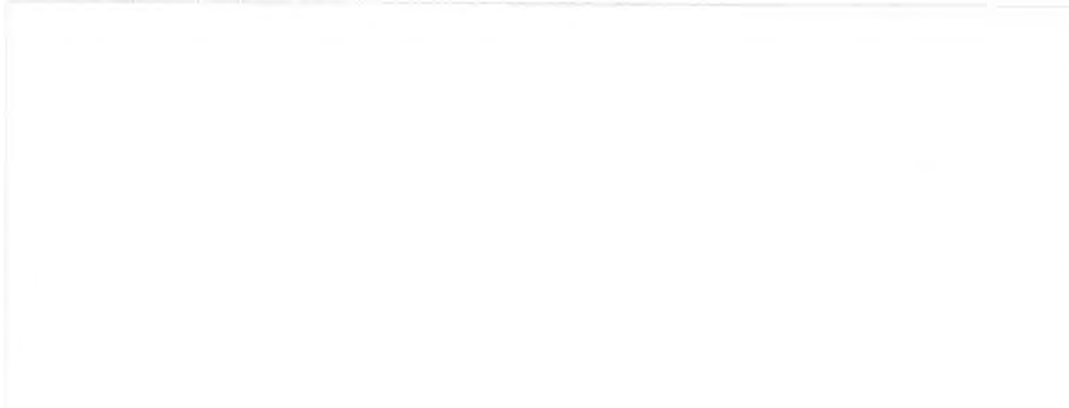
Independent Jersey Care Inquiry

**Jersey Inquiry**  
@JerseyInquiry



Following

**BBC News - #IJCI to name dead alleged abusers** [bbc.in/1wouP0P](http://bbc.in/1wouP0P)



**Jersey inquiry to name dead alleged abusers - BBC News**

Alleged abusers who have died will be named by an inquiry into abuse in Jersey's care system, it is revealed.

[bbc.co.uk](http://bbc.co.uk)

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1:18 PM - 24 Oct 2014



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**States Report: R.8/2011**

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# **STATES OF JERSEY**



## **HISTORICAL CHILD ABUSE: COMMITTEE OF INQUIRY**

---

**Presented to the States on 1st February 2011  
by the Chief Minister**

---

**STATES GREFFE**

## REPORT

### 1. INTRODUCTION

On 6th December 2010, the Chief Minister made the following apology –

On behalf of the Island's government, I acknowledge that the care system that operated historically in the Island of Jersey failed some children in the States' residential care in a serious way. Such abuse has been confirmed by the criminal cases that have been before Jersey's courts. To all those who suffered abuse, whether confirmed by criminal conviction or not, the Island's government offers its unreserved apology.

This report sets out the Council's position in relation to a Committee of Inquiry into historical child abuse. In arriving at their conclusion, the Council have considered the number of investigations and reviews that have been undertaken around the issue.

### 2. THE COUNCIL OF MINISTERS' COMMITMENT

On 31st March 2008 the previous Council of Ministers presented a report to the States (R.27/2008 – see **Appendix A**) announcing the intention of that Council to ask the States to establish a Committee of Inquiry to investigate any unresolved issues in relation to historic abuse in the Island at the conclusion of criminal investigations.

The report came in the wake of the announcement made in late February 2008 by the States of Jersey Police of the discovery of a fragment of what was initially described as partial human remains and later as part of a skull at Haut de la Garenne. These announcements led to massive public concern and international media attention and gave the appearance that Jersey had uncovered historic abuse on a scale far more serious than anywhere in the UK. The attention this generated included allegations that Jersey was an island of 'deep secrets' where the authorities had been complicit for many years in covering up child abuse.

It was in this context that the previous Council of Ministers announced that a Committee of Inquiry would be established in due course to investigate any unresolved issues.

### 3. THE CURRENT CONTEXT

There is no doubt that the context has changed considerably since the previous Council of Ministers made its public proposal for a Committee of Inquiry. The current Council believes that the actions that have taken place since, and the context in which we find ourselves today, are key considerations in deciding whether some form of inquiry should take place.

#### 3.1 Police Investigation

On 12th November 2008 the States of Jersey Police announced that they had found no evidence of any murders having taken place at Haut de la Garenne.

In December 2010, it announced the end of the thorough and detailed enquiry into allegations of historical abuse within the childcare system in Jersey during the period 1941 to 2009. On its conclusion, 8 people had been charged, with

7 successful prosecutions resulting from these cases. The States of Jersey Police has stated that, at this point in time, there is insufficient evidence from which it would be possible to mount any further prosecutions.

### 3.2 Current Childcare Arrangements

In an immediate response to concerns raised about the nature of childcare in the Island, in August 2007, the previous Council commissioned Mr. Andrew Williamson to undertake a review of children's services in the Island. This report, which was published in July 2008, concluded that current services were not failing in the Island, but identified important improvements to be made. These improvements have been included within a comprehensive plan which is currently being implemented with significant additional annual revenue funding which will reach £3.3 million by 2012. It is expected that by the end of 2011, 80% of these recommendations will have been fully implemented.

As part of this plan, in December 2010 the Children's Policy Group launched a public consultation on the Children and Young People's Strategic Framework that will run until mid-February. It is expected that this will then be lodged for debate in March 2011. Amongst other things, the plan also includes regular reviews of children's services by the Scottish Inspection Agency, the first of which began in January 2011.

### 3.3 Wiltshire Report

Shortly after the November 2008 announcement and following the suspension of the Chief of Police, the Wiltshire Police conducted an independent disciplinary investigation into the handling of the investigation. This work was completed in October 2009 and redacted versions of part of the main report, the financial report and the BDO audit were published in July 2010 and the rest of the main report will be published in redacted form very shortly.

The Wiltshire report contained 8 recommendations, 7 of which related to improvements to be made by the States of Jersey Police in how it manages future investigations (the eighth being a matter for ACPO in the UK). The States of Jersey Police have drawn up an action plan to fulfill these recommendations with good progress being made in all areas.

### 3.4 Governance of States of Jersey Police

The early phase of the Police investigation undoubtedly raised concerns over the governance arrangements for the States of Jersey Police.

On 21st December 2010, the Minister for Home Affairs lodged a Proposition and Report (P.192/2010), setting out the principles and roles of a Jersey Police Authority and requesting States approval to develop draft legislation based on these principles. This proposition is expected to be debated in February 2011.

Central to this proposal is providing proper oversight through establishing a body which provides a 'buffer' between the Minister and the Police and is in a position to challenge how policing is delivered to the community without accusation of interference. The Council firmly believes such arrangements are crucial to the effective oversight of the States of Jersey Police in the future.



### 3.5 The prosecution service

A regrettable feature over the period of the inquiry has been the criticisms levelled by some against the prosecution and courts in the Island. The Council is in no doubt that fair and impartial justice has been delivered in the glare of what has been at times unprecedented publicity.

In June 2009, in conjunction with decisions relating to files received by the Law Officers' Department, the then Attorney General made a detailed public statement which set out clearly the approach taken and the underlying principles and reasoning behind decisions of this nature. In July 2009, the then Attorney General also made a statement to the States Assembly in relation to cases where he had directed that there should be no further action. Amongst other things, these statements identified the role played by independent lawyers in the process of considering files.

Also in 2009, the States commissioned an independent review of the role of the Crown Officers, including roles of the Attorney General and Solicitor General as legal adviser to the States of Jersey and chief prosecutor. This report was published as a report to the States in December 2010 and work is currently being undertaken to begin the process of progressing the recommendations.

### 3.6 Support for those affected

Throughout the historical abuse investigation, arrangements have been put in place to support those who have been affected by or been victims of abuse. This support is extremely important and the current Council of Ministers recognises this need and is putting in place measures for this to continue in the future on an independent basis for a specified period.

As a result of the investigation, the National Society for the Prevention of Cruelty to Children (NSPCC) Counsellor received 168 inquiries from alleged victims of physical, sexual and emotional abuse arising from their time in the care of the States of Jersey. Of these, 116 maintained regular contact and 25 received one-to-one counselling. In 7 of these cases, counselling occurred on a daily basis. A further 10 victims were serving a sentence in prison and required some therapeutic service.

The Health and Social Services Department worked closely with the States of Jersey Police to ensure a smooth transition of care and support for these alleged victims to its Psychological Assessment and Therapy Service. A helpline was set up by the Critical Incident Support Team and manned for a period of several months with the Psychological Assessment and Therapy Team worked closely with Victim Support. During the inquiry, the Psychological Assessment and Therapies Service worked with and offered consultation to the various multi-agencies involved in the inquiry process, including the police investigation team and Victim Support to meet the clients' needs.

The provision of a traumatic counselling service for those who have suffered complex post-traumatic syndrome (PTSD) is a fundamental contribution to the "recovery chances" of victims. Fifty individuals, many of whom are still in receipt of treatment, have been referred for such support as a direct consequence of events related to the historic abuse investigation. In addition, referral rates to the Psychology Service for cases relating to historic abuse more generally have increased by 20% over this period. In order to cope with the increased demand,

increased provision was made and in April 2009 a Counselling Psychologist was employed on a full-time basis to offer, working alongside those within the department, trauma-focussed therapy to clients.

Working with the Jersey Care Leavers Association, it was recognised that there may be a number of people in the community who need help but who have not contacted the service because they see it as part of the system which permitted their abuse to occur. With the announcement of the closure of criminal cases, the Council will shortly be establishing an independent and confidential point of contact for any remaining individuals who feel that they have either not been heard or are seeking assistance from the States of Jersey as a result of their experiences. Andrew Williamson, CBE, has been asked to provide this point of contact, which would be established through the States Greffe, to be independent from the H&SS Department. These arrangements will be established for a specified period in 2011 and it is anticipated that Mr. Williamson would speak with individuals about their experiences and assist them to access the appropriate services to meet their needs.

### 3.7 Dealing with claims for financial compensation

As would be expected, claims for financial compensation have been received and these are being dealt with by the Health and Social Services Department. The current Council has, however, considered the matter of dealing with such claims on a number of occasions since late 2009 and lawyers have been appointed to act on behalf of the States of Jersey.

The claims themselves, and the most appropriate approach to be adopted in managing those claims, are presently under review and are subject to detailed discussions between relevant parties. At this stage, the Council is unable to make any comment on this subject until this process has been completed.

### 3.8 Evidence of Conspiracy

The current Council is mindful of the claims of conspiracy and cover-up and therefore believe it was important to establish whether there had been any substantive evidence of a high-level conspiracy. With this in mind, in December 2010, the States of Jersey Police and the Attorney General were asked –

- (a) In the course of the Police investigation had there been any evidence of any form of high level conspiracy?
- (b) If the answer was yes, to explain the potential nature of any possible conspiracy.

The Attorney General has confirmed that both he and prosecuting counsel are aware of no evidence to suggest any form of high level conspiracy, either to carry out abusive activities or to cover up such activities.

The former Acting Chief of Police also confirmed that had been advised that the police enquiry did not reveal any high level conspiracy to commit offences against children in the childcare system. Nor was there evidence to indicate there had been any cover-ups of any such alleged activities. He also confirmed that no evidence was found of paedophile rings operating in the childcare system.

The current Council of Ministers have noted that there is no evidence of any conspiracy in the investigations and reviews on the issue of historic child abuse.

### 3.9 Summary of current context

In March 2008 the Island was in shock and mourning for those it was alleged had been murdered at Haut de la Garenne, particularly in the light of allegations of complicity and cover-up. When considering what has taken place since then, it is clear that the context within which the previous Council of Ministers made its public commitment to a Committee of Inquiry has changed beyond recognition, In particular –

- (a) The alleged abuse has not been of the scale and scope as it appeared early in 2008, when it appeared to be potentially the worst case of historic abuse ever discovered in the UK. In particular:
  - There is no evidence that murder took place at Haut de la Garenne.
  - There have been fewer prosecutions than were envisaged at this time.
- (b) An in-depth investigation has been undertaken into current childcare arrangements, with all recommended improvements being comprehensively acted upon.
- (c) Concerns about how the police enquiry was conducted in the period leading up to November 2008 have been addressed through the publication of the Wiltshire report and the implementation of key actions by the States of Jersey Police.
- (d) Associated concerns about the governance arrangements of the Police are being addressed by the Minister for Home Affairs through the current proposal to establish a Police Authority.
- (e) Criticisms of the prosecution service have no firm basis, the former Attorney General has publicly explained the principles and reasoning behind prosecution decisions and the role of the Attorney General is covered within the Carswell report that was presented to the States Assembly in December 2010.
- (f) Both the Attorney General and the States of Jersey Police have confirmed that the investigation has not revealed evidence of high level conspiracy or cover-up.
- (g) The Chief Minister has made an unreserved apology to all those who had suffered abuse in the Island's care system in the past.
- (h) Comprehensive arrangements to provide support to those affected have been in place since 2009 and the Council of Ministers will be putting in place arrangements to strengthen these through a new independent gateway via Mr. Andrew Williamson CBE to assist individuals' access to the services they need.
- (i) The approach to be adopted in dealing with civil claims for compensation is presently subject to review and detailed discussion between relevant parties.

#### 4. A COMMITTEE OF INQUIRY

Public Inquiries are generally established to investigate specific and often controversial events that have given rise to public concern and are followed by calls for a ‘full and public inquiry’. The common factor in every Public Inquiry is the pressing public concern that something has happened that must be investigated openly and fairly by a body that is independent of the problem. In Jersey, the first test for a Committee of Inquiry, as set out in Standing Orders, is that it must be about a ‘*definite matter of public interest*’.

Whilst it is difficult to generalise, it is also clear that some inquiries are the result of what could be described either as a ‘flaw’ in society or the systematic failure of the State to protect its citizens. The Ireland Commission of Inquiry, for example, was the result of serious and widespread abuse of children across c. 140 institutions, which lead to c. 15,000 individual applications to its Redress Board.

In general, there are 6 main objectives of a public inquiry –

- (1) **Establishing the facts** – providing a full and fair account of what happened.
- (2) **Learning from events** – distilling lessons and preventing their recurrence through changing practice.
- (3) **Therapeutic exposure** – providing an opportunity for reconciliation and resolution between different parties.
- (4) **Reassurance** – rebuilding public confidence in whatever service or issue has been the subject of the inquiry.
- (5) **Accountability** – holding people and organisations to account, sometimes indirectly contributing to the assignment of blame and mechanisms for retribution.
- (6) **Transparency** – demonstrating that ‘something has been done’ or transparency in government.

As part of reviewing this matter, the Council has considered the characteristics, objectives and outcomes of a range of inquiries, including the North Wales Waterhouse Inquiry, Edinburgh Children’s Inquiry, Victoria Climbié Inquiry and the Ireland Commission to Inquire into Child Abuse (see **Appendix B**).

A full Committee of Inquiry is a significant undertaking which would require the appointment of individuals of sufficient stature and experience to act impartially and judicially in order to safeguard the interests of all involved. Experience of other Inquiries, such as that of the Ireland Commission, is that all those who wish to engage with it, whether as witnesses, those named by witnesses or other organisations would require legal support. This would be in addition to the significant legal support provided to the inquiry team itself. All legal representation would be paid for by the States.

Whilst cost should not be the deciding factor whether to commission a Committee of Inquiry it must be considered. As well as legal support, other main areas of cost would include the Chair and Inquiry team for the duration of the inquiry, secretarial support to that team, support for evidence-gathering and witnesses,

accommodation, media support and information technology systems for document management and transcription.

To illustrate the possible scale of such an approach, it has been estimated that on any one day of the 209 days that the North Wales Tribunal sat was regularly attended by c. 30 Counsel, plus solicitor advocates. It has also been estimated that a day of hearings (typically 3 per day) cost the Ireland Commission 103,000 euros per day.

**Appendix C** identifies some of the resource and practical issues in more detail.

## 5. OPTIONS CONSIDERED

With the above in mind, the Council has given serious consideration as to whether an inquiry is required and justified in the following areas –

- Historic childcare.
- Current childcare
- The prosecution process
- The police investigation.

### 5.1 Historic Childcare

A historical inquiry as described by the Council of Ministers in R.27/2008, including what happened in different organisations (e.g. Children's Service and Children's homes), processes and policies, how complaints were dealt with and how those in authority reacted.

This would be predominantly backward-looking, and may serve to address the objectives of fact finding, transparency and providing victims with the chance to tell their story and understand what happened, but it is unlikely to contribute to learning or provide public reassurance that current systems are effective. Due to the time that has passed, the ability of such an inquiry to uncover additional evidence or to hold individuals or organisations to account is considered highly questionable.

It is clear that the circumstances are far less serious than they initially appeared and are certainly not, as initially thought, worse than many other such incidents in the UK. Consideration has been given to the main issues that have emerged from inquiries into residential child abuse that have been conducted in the UK. A number of key findings have been consistently found from a range of such inquiries, including poor management of homes, in particular the level of autonomy given to the heads of homes; lack of close inspection; inadequacies in handling of complaints and lack of clear policies on this issue; lack of sensitivity towards children's needs and a failure to listen to them; poorly trained and unqualified staff exacerbated by inadequate recruitment procedures. It is likely that an inquiry into historical abuse in Jersey would uncover similar findings or conclusions; and with the services now provided having changed and moved on, it is at present difficult to imagine any lessons from the past leading to improvements in current and future services.

The current Council cannot see how using an inquiry to hold organisations to account for past policies and practices would be beneficial, particularly when independent external advisors have been engaged and we know that current standards of child care are appropriate and are in the process of being further improved. It is also difficult to see how an inquiry could be used to bring

individuals in the system at the time to account when a thorough and detailed police investigation has resulted in convictions and has concluded that there is no evidence to justify further prosecutions.

The Council recognises that an inquiry in this area could provide those individuals who have suffered abuse to have their stories heard, understand what happened and to draw a line under their experience. Experience shows, however, that this is not always achieved though an inquiry; not only can some find the experience traumatic, the outcome can lead to immense dissatisfaction amongst those affected, as was notably the case with the Ireland Commission. In addition, through the services in place to support those affected and the implementation of additional independent gateway arrangements in 2011, it is hoped that individuals who have been affected will continue to be able to tell their story and access appropriate support.

The Council of Ministers is therefore of the view that a Committee of Inquiry in this area would be of questionable benefit and, in the current context, could not be justified.

## 5.2 Current Childcare

The examination of current childcare arrangements in the Island to assess whether the Island is discharging its responsibilities properly.

This would address objectives around providing reassurance that current childcare arrangements are satisfactory, provide transparency around these arrangements and would enable learning to take place for the future.

The current Council of Ministers believes that this aspect has been fully covered by the Williamson report. This provided an independent and rigorous review of the standard of child protection and care in the Island and has identified areas for improvement which are in the process of being implemented. Amongst other things, this work includes the current consultation on a Children's Plan and the independent inspections of services by the Scottish Social Work Inspection Agency, the first of which commenced recently.

For this reason, the Council firmly believes there would be little benefit in undertaking a Committee of Inquiry in this area.

## 5.3 The Prosecution Process

The examination of issues relating to the performance of the prosecution service and how cases were dealt with leading up to decisions on whether to prosecute.

This would address objectives around providing reassurance and public confidence in the process, could enable learning for the future and would address issues of transparency in government.

The Council believes that criticism that Island's prosecution service has delivered anything but fair and impartial justice is unjust and has no firm basis. The former Attorney General took steps to explain the principles and reasoning behind prosecution decisions, including the engagement of external lawyers, and the role of the Attorney General is covered within the independent Carswell report that was presented to the States Assembly in December 2010.

#### 5.4 The Police Investigation

The examination of how the police investigation was conducted, including overall governance of the police service.

This could address objectives around providing reassurance and public confidence in the Police, could enable learning for the future and may address issues of accountability and transparency in government.

The Wiltshire investigation focused heavily on the conduct of the investigation. This independent report has now been published and the recommendations identified are in the process of being implemented by the States of Jersey Police. This would appear to fulfil the requirements for public scrutiny and future improvement. In addition, the current proposals for a Police Authority seek to address concerns about the governance of the police. The current Council finds it difficult to conceive what a Committee of Inquiry would add to this work.

### 6. RESOURCE IMPLICATIONS

Public inquiries are inevitably costly, something recognised in R.27/2008, when the Council of Ministers stated there would be significant cost to such an undertaking. The costs will vary widely depending on the scope of any such exercise; and forecasting such costs in advance of establishing the detailed scope and terms of reference is particularly difficult. It is also clear that costs and scope can be easily be subject to significant underestimate at the start, the experience in Ireland being a good example of this, where initial estimates were c. 2.1 million euros and projected final costs of between 126 and 136 million euros.

It is therefore only possible to make a broad assessment at this stage, using other recent inquiries as a guide. With this in mind an initial estimate would be that, in Jersey, an inquiry with reduced scope could cost in the order of £3 million – £5 million with something of broader scope anything between £5 million and £10 million.

The costs of a Committee of Inquiry would clearly be in addition to those incurred as part of addressing the subject more broadly, in particular:

<b>One-off costs:</b>	
Historical Abuse Investigation	£7,575,000
Williamson Review	£35,000
Williamson Implementation (capital)	£600,000
Wiltshire Investigation	£639,000
<b>Additional revenue expenditure:</b>	
Williamson Implementation (by 2012)	£3,300,000
(£3.0 million in 2011)	

The Island has already committed considerable resource to dealing with both the investigation and matters arising, including reviewing and improving current childcare and reviewing the police investigation. In addition to the above, there

will be a number of civil claims which will incur significant cost and potentially result in compensation payments. In total this could amount to a seven-figure cost.

## 7. CONCLUSIONS

In March 2008, it was feared that what had been uncovered by the historical abuse investigation represented the worst ever case of abuse anywhere in the UK. This has proved not to be the case and, whilst any individual case of child abuse is serious, the scale of the issue has been shown to be very different to that apparently presented when the Council of Ministers made its commitment to a Committee of Inquiry.

There is no question that the care system operating historically in the Island had failed certain children in the States' residential care in a serious and unacceptable way. The Island's government has unreservedly apologised for this and, given the confirmation that all criminal prosecutions are concluded, is working in detail on the most appropriate approach to be adopted in dealing with the claims for compensation.

Although the criminal case has ended, the support and care provided to those affected continues. The arrangements for Psychological support that have been in place since 2009 will be strengthened in 2011 through the provision of an independent gateway which will enable individuals to both have their story heard and be provided with access to appropriate services.

In addition, whilst the work undertaken since 2007 demonstrated that services within childcare were not failing, significant steps are being taken to ensure that current and future child care is of the highest possible standard.

There is also no question that the way the Police investigation was handled early in 2008 generated a level of fear and apprehension amongst the public which has subsequently been judged to have been wholly inappropriate. It is clear lessons have been learned from this, and steps have already been taken to improve Police investigations and governance in the future.

The current Council recognises that the most compelling argument for some form of inquiry is in the area of historical childcare. It is accepted that an inquiry in this area might provide opportunities for those affected to have their story heard and understand what has happened, though evidence would suggest that outcomes often fail to match expectations, sometimes adding to the sense of grievance and anger.

With the police investigation having fully investigated the allegations made, it is unclear what an inquiry into events that took place many years ago would add to this and what meaningful benefit would be derived from such a complex undertaking.

The Council has therefore concluded that a Committee of Inquiry would not meet the requirement to investigate unresolved issues in relation to the historic abuse in the Island as the issues have been reviewed.

It is accepted that not everyone will agree with the Council's decision and some individuals may still have questions. It is hoped that those who may not agree will recognise the seriousness with which the Council has considered the matter. With



the advantage of the passage of time, the Council has reviewed all the issues and considers that a Committee of Inquiry would not be appropriate.

The current Council of Ministers firmly believes that the Island would be best served by recognising the steps that have already been taken and the continued focus on improving current levels of childcare and also continuing to meet and support the needs of those affected.

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**STATES OF JERSEY**



**COMMITTEE OF INQUIRY:  
CHILDREN'S CARE HOMES**

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Presented to the States on 31st March 2008  
by the Council of Ministers

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STATES GREFFE

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2008

Price code: B

R.27

## **REPORT**

The Chief Minister and the Council of Ministers have made it clear since the announcement of the police investigation into historic child abuse that all required resources will be made available to enable the investigation and any subsequent criminal proceedings to be completed effectively. At this time this must be the top priority for the Island.

It is nevertheless almost inevitable that, at the conclusion of the current criminal process, there will still be a very large number of unanswered questions about the way in which children have been cared for in Jersey in previous decades.

The Council of Ministers believes that the only way to ensure that there is total transparency in relation to this issue is for a full public inquiry to be held in due course, and the Council is hopeful that all members of the States will share this view. The most effective way to undertake any such inquiry is through a Committee of Inquiry established under the States of Jersey Law 2005.

The Council of Ministers has approved the attached draft proposition relating to this issue (see Appendix) in order to illustrate the nature and extent of the Inquiry that is envisaged. The purpose of this Report is to place the matter in the public domain. The Council does not, however, consider it would be appropriate to lodge this proposition 'au Greffe' until the criminal process has been completed. This would firstly be inappropriate because lodging and debating this proposition now could risk compromising the ongoing criminal process. Secondly, until that process is complete, it remains unclear exactly what questions will remain unanswered at the end of the process, and this proposition may need to be amended. It could be some time before it is possible to lodge and debate this, but the Council nevertheless believes that this should be done as soon as it becomes possible.

**Council of Ministers**

**DRAFT****PROPOSITION**

**(to be finalised once the criminal process has been completed)**

**THE STATES are asked to decide whether they are of opinion –**

to agree that a Committee of Inquiry should be established in accordance with Standing Order 146 in order to investigate any issues which remain unresolved in relation to historic abuse in the Island.

**COUNCIL OF MINISTERS**

Note: The membership and terms of reference of the Committee of Inquiry to be agreed by the States at that time.

**REPORT**

Since the announcement of the police investigation into alleged historic child abuse in the Island, the Council of Ministers has made it clear that the Island's first priority must be to give full support to the police investigation and any subsequent prosecutions to ensure that anyone found guilty of abuse can be brought to justice. The Council has also made it clear that anyone who, while not necessarily acting criminally, covered up evidence or who deliberately or negligently failed to act upon information they received will be dealt with appropriately. The Council has undertaken to ensure that all the necessary resources will be made available to achieve this objective.

In a statement made on Monday 25th February 2008, just after the discovery of the fragment of a skull at Haut de la Garenne, the Chief Minister stated that *"The protection of children is our highest priority and we are totally committed to supporting the Police and Criminal Justice authorities in uncovering any historic abuse and bringing those responsible to justice. There will be no hiding place for anyone who abused children or in any way colluded with or helped to cover up that abuse. We will commit whatever resources are necessary to the investigation and any subsequent criminal cases."*

Experience in other jurisdictions that have faced similar investigations in the past has shown that there are always a large number of unanswered questions that remain at the end of the investigation and prosecution process. It is therefore probable that the future conviction of any guilty parties in Jersey will only go some small way towards answering the many questions that local residents and others outside the Island have been asking in recent weeks. These are likely to include questions such as –

- How have the Island's children's homes been run in recent decades?
- What procedures were in place to recruit staff and how was the performance of staff monitored? Should other steps have been taken to monitor performance?
- What measures were taken to address inappropriate behaviour from staff when it was discovered, and if those measures were insufficient, what other measures should have been taken?
- How did those in authority at political and officer level deal with problems that were brought to their attention?
- What processes were in place to assess the performance of the homes and what action was taken as a result of any problems that were identified?
- Were there any mechanisms in operation to allow children to report their concerns in safety and what action was taken if and when concerns were voiced?

The Council of Ministers believes it is essential that its undertaking to ensure that there is complete transparency in relation to these issues is translated into a firm commitment to hold a full inquiry into any unanswered questions in due course. It is, of course, the case that the inquiry will not be able to begin until the conclusion of the current police investigations and any associated prosecutions, but the Council nevertheless considers that it is important for the States to be advised now of the Council's commitment that this inquiry should take place so that work can start as soon as possible after the conclusion of any criminal trials. There have been many comments in recent days in the international press alleging a 'culture of secrecy' and 'cover-up' in Jersey and a public commitment at this stage to hold a full transparent inquiry would demonstrate in a practical way that this is simply not the case in 2008.

The Council of Ministers believes that the inquiry should take the form of a States Committee of Inquiry established in accordance with the procedures set out in the States of Jersey Law 2005 and the Standing Orders of the States of Jersey. This would enable the States as a whole to agree the terms of reference of the inquiry and its membership. In addition, a Committee of Inquiry has the advantage of having all the powers and immunities conferred by the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007 (see Appendix) which enable it to summon evidence and witnesses if necessary, and also provide protection against civil and criminal proceedings. These powers and immunities will be essential to ensure that the Committee can discover the full facts without any inhibition.

It would be premature at this stage to speculate on the precise scope of the Committee's terms of reference, as these may depend in part on the outcome of the current police investigations. The Council is determined that nothing should be done or proposed at this time that could, in any way, prejudice the current police investigation. When it is possible to establish the Committee it will, however, be essential to ensure that the terms of reference are far-reaching so that every concern expressed and every allegation made can be fully investigated. Whilst it may be too late to right the wrongs of the past, it will be important for the people of Jersey that all relevant issues are brought out into the open so that the truth of what may have happened in recent decades can be established.

Under Standing Orders a Committee of Inquiry can be comprised of between one and 5 people and the appropriate membership will need to be considered once the precise terms of reference can be drawn up. In order to ensure a proper degree of independence, it is nevertheless almost certain that it will be necessary to appoint one or more members with appropriate professional qualifications and experience from outside the Island. The Committee will require considerable administrative support to undertake its work effectively and it would be naïve to imagine that there will not be a significant cost associated with its work. The Council nevertheless believes that this will be an essential and worthwhile use of public funds in the light of recent events.

**Financial and manpower implications**

As explained above it is likely to be many months, or even years, before this Committee of Inquiry can begin work and there are therefore no immediate resource implications arising from this proposition. When a further proposition is brought in due course to appoint members of the Committee and agree terms of reference, a full resource implication statement will be included, together with details of the proposed source of those resources.

## APPENDIX B

## Summary of other inquiries

Inquiry	Summary	Costs	Key Dates
North Wales Tribunal	A Tribunal to inquire into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974 – 1996 Looked at 89 homes which operated over the 22 year period Re-interviewed 500+ former residents of childrens homes who alleged physical or sexual abuse during the initial police investigation	Approx. £13 million (the majority of this was for legal expenses and this amount does not include the legal costs of participating public agencies)	Announced 1996 Report published 2000
Edinburgh's Children Inquiry	Ascertain whether there was any allegation of abuse raised prior to the commencement of the police investigation into the abuse of a large number of residents by two former staff members over a period of 14 years and; to review current procedures, practice and guidelines in operation within Edinburgh County Council 66 interviews 16 other contacts 2 office visits 21 residential unit visits 3 foster family visits	Not available	Announced 1998 Report published 1999
Commission to Inquire into Child Abuse – Ireland	To conduct an inquiry into abuse of children in institutions and hear evidence from those who allege they suffered abuse during the period 1940, or earlier, to the present day Approx. 140 institutions Investigation Committee: 2,107 applications received, of which 1,007 proceeded Confidential Committee: 1,541 applications received, of which 1,090 gave evidence	€126 – €136 million for the Commission Total cost of response including Redress Scheme, Commission and Education Finance Board estimated at €1.36 billion	Commission established 2000 Report published May 2009 Ongoing work to settle legal and discovery costs until approx. 2010
Victoria Climbié Inquiry	To establish the circumstances leading to and surrounding the death of Victoria Climbié	£3.8 million	Announced 2001 Report published 2003
Kerlaw Residential School and Secure Unit Inquiry	To secure comprehensive insight into the circumstances that led to the abuse that occurred at Kerlaw open and secure school from April 1996 until closure. 350 – 400 allegations of abuse from 159 people 166 interviews conducted	Not available	Announced 2007 Report published 2009

## APPENDIX C

## 1. Some issues surrounding costs

Whilst it is vital that a commitment is obtained at the outset to adequately fund an inquiry, in its initial stages it will be extremely difficult to gauge the overall projected costs accurately because of unknown or variable factors. Providing a forecast in advance of establishing overall scope and the inquiry team's detailed terms of reference have been definitively established is particularly difficult and a preliminary budget would need to be identified at the outset.

This difficulty is highlighted by the initial estimate in 1999 of the costs of the Commission of Inquiry in Ireland would be between 1.9 million and 2.1 million euros and would take 2 years to complete. In practice, it was 10 years before a report was produced and it has been estimated that final costs could be between 126 and 136 million euros.

In 2004 the Department for Constitutional Affairs (DCA) produced a consultation paper, *Effective Inquiries*, in response to a wider piece of work known as Government by Inquiry. In this consultation document, the DCA noted that there had been approximately 30 significant/extensive inquiries since 1990 at a total estimated cost of over £300 million. Some of these inquiries and their costs are listed below –

- Stephen Lawrence Inquiry – 1997 – £4.2 million
- Bristol Royal Infirmary Inquiry – 1998 – £14.5 million
- Bloody Sunday Inquiry – 1998 – c. £155 million
- Royal Liverpool Children's Hospital Inquiry – 1999 – £3.5 million
- Marchioness Inquiry – 2000 – £6.3 million
- Shipman Inquiry – 2000 – £16 million – £21 million.

Based on these inquiries, it was estimated in 2004, that the average cost of inquiries was approximately £7 million (this figure excludes the Bloody Sunday Inquiry). It has also been recognised that in addition to this there will be further costs to a department itself in terms of the handling of the inquiry and its aftermath, as well as the redeployment of staff away from their usual tasks.

As an example of a breakdown of costs, the Ireland Commission is projected to cost (Source: C&AG Ireland report June 09) –

Category	Total Projected Cost in euros
Administration*	30m
Legal team Costs	15.5m
Litigation Costs	2m
State Respondent Costs**	8.5m
Other Costs	2m
Third Party Legal Costs	68 – 78m

\* Administration: 58% salaries, 25% accommodation, 6% IT, 4% experts, 3% accountancy.

\*\* Costs of representing the public interest, government departments and compliance with discovery orders.

What is striking from the above figures is the amount spent on legal costs – a broad estimate would be 90 – 100 million euros. If, as would be likely, Jersey adopted the principle that legal representation should be met by the States, then a great deal of expenditure on a Committee of Inquiry would be on legal fees. The



list of the main practical issues provided in Section 2, below, identifies at least 4 areas where Counsel/legal advice will be required –

- for the Inquiry Team
- for witnesses
- for those named by others
- for other parties (e.g. States Departments).

To further illustrate these costs –

- It has been estimated that on any one day of the 209 days the North Wales Tribunal on Child Abuse sat was regularly attended by 8 Queen’s Counsel, 21 Junior Counsel and solicitor advocates.
- it has been estimated that a day of hearings (typically 3) cost the Ireland Commission 103,000 euros per day (though in Jersey this is likely to be higher).

## **2. Practical Considerations**

In considering what a Committee of Inquiry might look like in Jersey, consideration of other public inquiries in the UK has identified a number of issues that will need to be considered. These are set out below and will need to form part of the thinking behind the size and scope of any inquiry.

### Chair/Inquiry Team

Many inquiries operate with a single Chair, who may choose some suitably qualified assistants for support (e.g. Victoria Climbié, 1 Chair, 4 assessors). Others will appoint a team of people (e.g. 3), with one identified as the Chair. Under Standing Orders, a Committee of Inquiry in Jersey can be comprised of between one and 5 people.

### Counsel for the Inquiry Team

The inquiry team will almost certainly require specific legal support, probably in the form of a solicitor to the inquiry and a legal team in support. This is likely to be significant.

The Victoria Climbié inquiry had a legal team of 13 and the North Wales ‘Lost in Care’ enquiry had 10 plus legal assistant support.

### Counsel for Witnesses

Legal support will be required for witnesses, which is very often paid for by the inquiry.

### Counsel for those named by others

Legal support for those either accused of abuse or those accused of operating or presiding over systems which allowed abuse to go unchecked.

### Counsel for other parties

Legal support for other parties, such as the States Departments involved or other involved parties.

Secretariat

A secretarial service will be required for the inquiry team. This often includes a secretary to the Chair, plus support staff.

The Victoria Climbié inquiry had a secretary plus 7 others and the North Wales 'Lost in Care' Inquiry had 8 administrative staff under a Chief Administration Officer.

Evidence-Gathering/Witness Team

Careful consideration will need to be given to who should provide evidence, what evidence is required and what support is required to gathering evidence.

Some inquiries, such as the North Wales 'Lost in Care' inquiry include support to the evidence gathering process through a witness interviewing team (9 people, including 8 retired detectives).

Document Management

Document management will be required to handle the collection of documents, sort/order them and ensure their safekeeping. A dedicated Document Manager will be the point of contact with those who may have documents and will ensure that a disclosure schedule is signed off and will deal with continuing disclosure. The Document Manager will also be the Data Protection Officer for the inquiry.

Venue

A multi-functional venue will be required which will provide facilities to hold the public inquiry, including public access, provide facilities for the inquiry team, legal team and secretarial and to house the technology requirements. Separate meeting rooms will be required both for the inquiry team and to meet witnesses.

Media Support

It will be crucial to have dedicated and experienced media support for the inquiry. This will be particularly important during public hearings, when new information will undoubtedly come to light and will need to be responded to and co-ordinated with some urgency.

One dedicated person is likely to be an absolute requirement, though more may be required at key times. (e.g. Victoria Climbié 2 people, North Wales 'Lost in Care' 1 person).

IT Support

IT systems and support will be required for –

- Document/evidence management systems
- Transcription systems
- Website

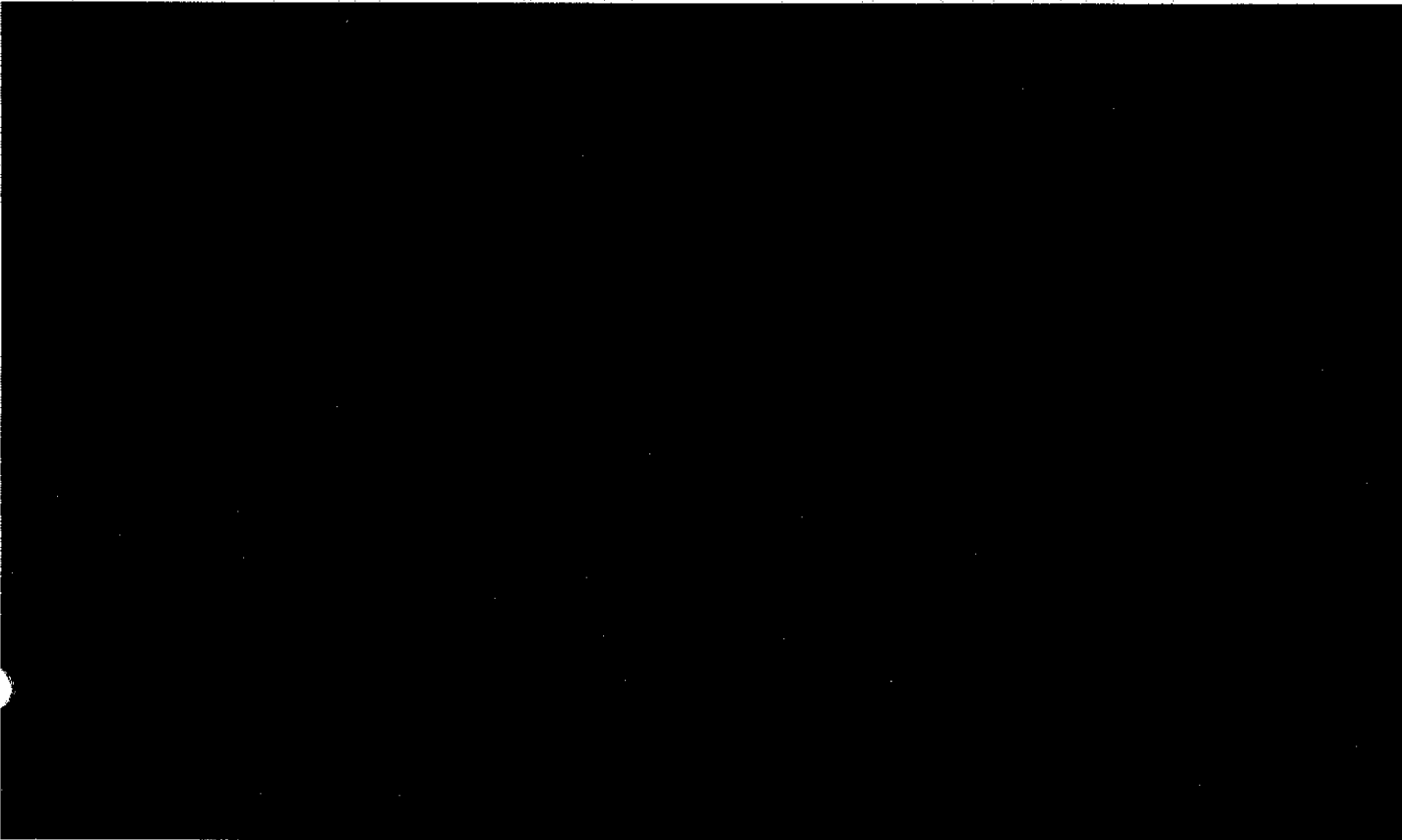
Not only will the right systems have to be selected and implemented, ongoing support will be required, particularly for the transcription service, systems support and website updating.

Inquiry Ruling dated 10 February 2015 regarding an individual's application for protective measures

[REDACTED]

**Correspondence**

**[PART REDACTED FOR CONFIDENTIALITY]**



**From:** Angharad Shurmer [mailto:angharad.shurmer@jerseycareinquiry.org]  
**Sent:** 10 March 2015 10:31  
**To:** Emma Martins  
**Subject:** RE: Independent Jersey Care Inquiry

Dear Emma,

Thank you for your response which is most helpful.

In respect of your response to the second question, we have received some requests for social services records. Some social services records are family files as opposed to individual files. In those circumstances the files provide details in respect of other members of the family. In those circumstances are we correct in redacting all information not relevant to the individual making the request, not just redacting the name of everybody other than the individual making the request?

Also, as a result of your responses I have received some other queries from the team and would be grateful if you could please clarify.

You may be aware that the Inquiry will shortly be moving to its next phase of evidence during which the Inquiry will need to put some of the allegations of abuse to the alleged abusers to seek their version of events and their responses to the allegations made. As part of this process it is anticipated that a number of individuals will request specific details and information in respect of who has made such allegations; you will appreciate that some allegations have been made against former staff members, for example, therefore without specific details it will be difficult for individuals to recall certain scenarios/situations. The inquiry therefore needs to be satisfied that these allegations are put to those accused of abuse with sufficient detail to allow them to respond but also protecting the person making the allegation. Could you please consider the following?

1. Can we put allegations or evidence of abuse to an alleged abuser where we do not refer to documents but explaining the allegation verbally, including names?

2. Can we put unredacted documents to a witness where they may not have been seen by the witness previously and they include allegations or evidence of abuse by the witness (e.g. a statement given to the police by an alleged victim and/or witness)?
3. Can we provide any of the following other documents to a witness in unredacted form:
  - a) documents which they authored in their current/former role?
  - b) documents which they would have had sight of in their current/former role (e.g. minutes of meetings or reports where the witness is recorded as being in attendance, or where their role is such that we consider they are likely to have seen the document)?
  - c) documents which they may not previously have had sight of (e.g. providing a care-home employee with a document from a social services file of a former resident)?
4. In the event that redacted documents are provided to a witness, could the Inquiry take the witness through an unredacted version of the document at interview but not provide a hard copy of the unredacted document?

Does the answer to 1-3 change if the documents are provided in redacted form?

Does the answer to 1-3 change if we obtain a signed confidentiality undertaking from the witness before giving them sight of the documents?

I appreciate that you met with my colleagues when the Inquiry was set up and some of these issues were addressed then, therefore apologies if I am revisiting old ground. However I would be grateful if you could please clarify the position to ensure that I am correctly guiding the team.

I am not on the island at the moment, but could arrange a telephone call should you wish to discuss.

Thank you again for your assistance.

Yours sincerely,

Angharad Shurmer  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

Addressed to: Angharad Shurmer  
**Independent  
Jersey Care  
Inquiry**

From: Emma Martins [<mailto:e.martins@dataci.org>]  
Sent: 05 March 2015 14:30  
To: Jersey Care Inquiry  
Subject: RE: Independent Jersey Care Inquiry

Dear Angharad


Thank you for your e-mail.

I am happy to respond to the points you raise on email.

1. As I understand it, the Inquiry has summonsed the data required to conduct the relevant enquiries. If that is indeed the case, the manner in which data are highlighted for redaction is a matter for the Inquiry. Clearly we would wish to see robust processes and procedures in place to ensure the highest standards of data protection for all personal data processed by the Inquiry and appropriate reference to the data controller that has provided the data.
2. The Inquiry is a data controller in its own right, as defined in the Data Protection (Jersey) Law 2005. Any request by an individual (data subject) for information relating to him/her should be responded to in the manner set out in that Law. I am of the view that due to the nature of the data being processed by the Inquiry, procedures should be in place to ensure the views of the originating data controller are sought to ensure appropriate application of exemptions that may apply.

I trust this is of some assistance.


Kind regards

 **Emma Martins**  
Data Protection & Information Commissioner  
Telephone +44 (0) 1534 716530 (Jersey Office)  
+44 (0) 1481 742074 (Guernsey Office)  
e-mail [e.martins@dataci.org](mailto:e.martins@dataci.org)  
Website [www.dataprotection.gov.je](http://www.dataprotection.gov.je) (Jersey Office)  
[www.gov.gg/dataprotection](http://www.gov.gg/dataprotection) (Guernsey Office)

**From:** Jersey Care Inquiry [<mailto:info@jerseycareinquiry.org>]  
**Sent:** 04 March 2015 17:05  
**To:** Emma Martins  
**Subject:** FW: Independent Jersey Care Inquiry

Dear Emma,

Thank you for your call to my colleague, Tina, and for providing your availability to meet with me this week.

 I am available at 9am on Friday 6 March 2015 and will attend your office for the meeting. However, there are only two main points I wish to discuss therefore it may be easier (as I appreciate that you are very busy) if I detail them here for your consideration.

1. The Panel wish to amend the Inquiry's Protocol in respect of redaction. To date document providers (SoJP, States Departments and Law Officers) have all provided documents with provisional redactions highlighted in yellow. In essence, the Panel wish to amend the Protocol to allow for the release of the documents to the Inquiry on a confidential basis without provisional redactions. The Inquiry will then select those pages that will be referred to in the hearing room and those pages will then be redacted and returned to the document provider for comment before being released to the Interested Parties and being referred to in the hearing room. Can you please confirm if you foresee any problem with the document providers releasing the documents to the Inquiry without any provisional redactions, subject to the Inquiry returning to the document provider to agree redactions before making any documents public?
2. A number of witnesses who have provided evidence to the Inquiry have requested copies of the documentation that we hold in respect of their time in care and/or their police statements. If the documents are referred to in the hearing room they are redacted and ciphered in accordance with the Inquiry's Protocols and ultimately published on the inquiry's website. However, are we able to release other witness specific documents to the individuals in a suitably redacted form? i.e. can we release Mr X's documents to Mr X subject to all references to other people and any personal data being redacted in accordance with our protocols?

If you are happy to address these queries by return e-mail there will be no need to meet on Friday. However, in the event that you feel these queries are best discussed at a meeting I am more than willing to attend your office on Friday to discuss.

Thank you for your time and assistance.

Kind regards,

Angharad Shurmer  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

## Independent Jersey Care Inquiry

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From: Jersey Care Inquiry  
Sent: 04 March 2015 12:39  
To: 'e.martins@dataci.org'  
Subject: Independent Jersey Care Inquiry

Dear Mrs Martins

I have attempted to contact you by telephone to arrange a meeting between yourself and Angharad Shurmer of this office. Your colleague, David, asked me forward some available dates to you by email.

I would be grateful if you could let me know if you are available at any point this week to either meet in person or over the telephone? Angharad Shurmer will not be on the Island next week and so this week would be preferable.

I look forward to hearing from you.

Kind regards.

Tina Wing  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

## Independent Jersey Care Inquiry



**From:** Jersey Care Inquiry [mailto:[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)]  
**Sent:** 24 March 2015 13:23  
**To:** Emma Martins  
**Subject:** Re: Independent Jersey Care Inquiry

Dear Ms Martins,

Thank you for your email.

Please see attached an email sent to Interested Parties regarding the revised redaction process, for your information.

We will respond to the queries in your email dated 17 March in full as soon as possible. Apologies for the delay in responding to you, the legal team have been away from the Island over the last few weeks.

Yours sincerely,

Lisa Wilson

Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)



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**From:** Emma Martins <[e.martins@dataci.org](mailto:e.martins@dataci.org)>  
**Sent:** 17 March 2015 12:53

To: Jersey Care Inquiry  
Subject: RE: Independent Jersey Care Inquiry

Dear Ms Wilson,

I refer to the below email which has been brought to my attention and which refers to confirmation purportedly given by me regarding the Inquiry's amendments to the Data Protection, Freedom of Information and Redaction Protocol (the "Redaction Protocol"). I would say, at the outset, that I am surprised by the statement which has been advanced to those Interested Parties by the Inquiry as to my views on the amendments.

I attach for ease of reference the email exchange with Ahgharad Shurmer regarding the Inquiry's then proposed amendments to the Redaction Protocol. In her initial email dated 4 March 2015 (timed at 17:05), she asked as follows:

"1. The Panel wish to amend the Inquiry's Protocol in respect of redaction. To date document providers (SoJP, States Departments and Law Officers) have all provided documents with provisional redactions highlighted in yellow. In essence, the Panel wish to amend the Protocol to allow for the release of the documents to the Inquiry on a confidential basis without provisional redactions. The Inquiry will then select those pages that will be referred to in the hearing room and those pages will then be redacted and returned to the document provider for comment before being released to the Interested Parties and being referred to in the hearing room. Can you please confirm if you foresee any problem with the document providers releasing the documents to the Inquiry without any provisional redactions, subject to the Inquiry returning to the document provider to agree redactions before making any documents public?"

In my response dated 5 March 2015 (timed at 14:03) I responded as follows:

"1. As I understand it, the Inquiry has summonsed the data required to conduct the relevant enquiries. If that is indeed the case, the manner in which data are highlighted for redaction is a matter for the Inquiry. Clearly we would wish to see robust processes and procedures in place to ensure the highest standards of data protection for all personal data processed by the Inquiry and appropriate reference to the data controller that has provided the data."

Accordingly, I am disappointed to note the contents of the email below stating that I have provided confirmation that I "cannot foresee any problems with document providers providing documents to the Inquiry without provisional redactions..." To couch the comments made in my email dated 5 March 2015 in such a way is incorrect and misleading as I provided no such positive confirmation as stated in the email below. What I did say was that it was for the Inquiry to decide the manner in which they dealt with any redaction process but that, as Information Commissioner, I would expect to see robust processes in place to ensure that any process adopted by the Inquiry was compliant with local Data Protection legislation and also that the document providers should be involved in that process.

I should be grateful if you would take appropriate steps to clarify the comments made in your email below with the Interested Parties.

I would also take this opportunity to advise you that in light of this and other more recent queries raised by Ms Shurmer in her email dated 10 March 2015 (at 10:30am), I am considering matters generally regarding the Inquiry's handling of data protection matters and I shall be contacting you shortly in this regard.

Yours sincerely,

*Emma Martins*

Data Protection & Information Commissioner

Telephone +44 (0) 1534 716530 (Jersey Office)

+44 (0) 1481 742074 (Guernsey Office)

e-mail [e.martins@dataci.org](mailto:e.martins@dataci.org)

Website [www.dataci.org](http://www.dataci.org)

Dear Interested Parties,

We refer to previous correspondence in respect of the Redaction Protocol.

The Panel have decided to amend the Protocol and a copy of the proposed amended Protocol is attached. This Protocol will come into effect on 24 March 2015.

The Data Commissioner has been contacted and has confirmed that she cannot foresee any problems with document providers providing documents to the inquiry without provisional redactions subject to robust processes and procedures being in place to ensure that protection of personal data and the document provider being part of this process. The new Protocol states that no documents will be released without prior discussion with the document provider in respect of redactions and as such document providers will form part of the process.

As stated above, the inquiry has received various submissions in respect of the proposed process previously circulated. In light of the Panel's decision to amend the Protocol and also the process, the Inquiry will not respond to those submissions previously made.

Yours faithfully,

Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

From: Jersey Care Inquiry [<mailto:info@jerseycareinquiry.org>]  
Sent: 16 March 2015 15:40  
To: Emma Martins  
Subject: Fw: Independent Jersey Care Inquiry

Dear Ms Martins

Please accept my apologies for chasing a response to the email below. My colleague Angharad is currently on annual leave and has asked me to progress the queries below in her absence as the Inquiry is about to move to its next phase of evidence.

Please do let me know if you feel these queries are best discussed over the telephone. I am not on the island at the moment, but could arrange a telephone call should you wish to discuss.

Thank you again for your assistance.

Yours sincerely

Lisa Wilson  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry

T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
<http://www.jerseycareinquiry.org>



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**From:** /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20589746B1584738B048D61EC96BEE3E-ANGHARAD.SH on behalf of Angharad Shurmer  
**Sent:** 10 March 2015 10:30  
**To:** 'Emma Martins'  
**Subject:** RE: Independent Jersey Care Inquiry

Dear Emma,

Thank you for your response which is most helpful.

In respect of your response to the second question, we have received some requests for social services records. Some social services records are family files as opposed to individual files. In those circumstances the files provide details in respect of other members of the family. In those circumstances are we correct in redacting all information not relevant to the individual making the request, not just redacting the name of everybody other than the individual making the request?

Also, as a result of your responses I have received some other queries from the team and would be grateful if you could please clarify.

You may be aware that the Inquiry will shortly be moving to its next phase of evidence during which the Inquiry will need to put some of the allegations of abuse to the alleged abusers to seek their version of events and their responses to the allegations made. As part of this process it is anticipated that a number of individuals will request specific details and information in respect of who has made such allegations; you will appreciate that some allegations have been made against former staff members, for example, therefore without specific details it will be difficult for individuals to recall certain scenarios/situations. The Inquiry therefore needs to be satisfied that these allegations are put to those accused of abuse with sufficient detail to allow them to respond but also protecting the person making the allegation. Could you please consider the following?

1. Can we put allegations or evidence of abuse to an alleged abuser where we do not refer to documents but explaining the allegation verbally, including names?
2. Can we put unredacted documents to a witness where they may not have been seen by the witness previously and they include allegations or evidence of abuse by the witness (e.g. a statement given to the police by an alleged victim and/or witness)?
3. Can we provide any of the following other documents to a witness in unredacted form:
  - a) documents which they authored in their current/former role?
  - b) documents which they would have had sight of in their current/former role (e.g. minutes of meetings or reports where the witness is recorded as being in attendance, or where their role is such that we consider they are likely to have seen the document)?
  - c) documents which they may not previously have had sight of (e.g. providing a care-home employee with a document from a social services file of a former resident)?
4. In the event that redacted documents are provided to a witness, could the Inquiry take the witness through an unredacted version of the document at interview but not provide a hard copy of the unredacted document?

Does the answer to 1-3 change if the documents are provided in redacted form?

Does the answer to 1-3 change if we obtain a signed confidentiality undertaking from the witness before giving them sight of the documents?

I appreciate that you met with my colleagues when the inquiry was set up and some of these issues were addressed then, therefore apologies if I am revisiting old ground. However I would be grateful if you could please clarify the position to ensure that I am correctly guiding the team.

I am not on the island at the moment, but could arrange a telephone call should you wish to discuss.

Thank you again for your assistance.

Yours sincerely,

Angharad Shurmer  
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W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

## Independent Jersey Care Inquiry

**From:** Emma Martins [<mailto:e.martins@dataci.org>]  
**Sent:** 05 March 2015 14:30  
**To:** Jersey Care Inquiry  
**Subject:** RE: Independent Jersey Care Inquiry

Dear Angharad

Thank you for your e-mail.

I am happy to respond to the points you raise on email.

1. As I understand it, the inquiry has summonsed the data required to conduct the relevant enquiries. If that is indeed the case, the manner in which data are highlighted for redaction is a matter for the inquiry. Clearly we would wish to see robust processes and procedures in place to ensure the highest standards of data protection for all personal data processed by the inquiry and appropriate reference to the data controller that has provided the data.
2. The inquiry is a data controller in its own right, as defined in the Data Protection (Jersey) Law 2005. Any request by an individual (data subject) for information relating to him/her should be responded to in the manner set out in that Law. I am of the view that due to the nature of the data being processed by the inquiry, procedures should be in place to ensure the views of the originating data controller are sought to ensure appropriate application of exemptions that may apply.

I trust this is of some assistance.

Kind regards

*Emma Martins*  
Data Protection & Information Commissioner

Telephone +44 (0) 1534 716530 (Jersey Office)  
+44 (0) 1481 742074 (Guernsey Office)  
e-mail [e.martins@datacl.org](mailto:e.martins@datacl.org)  
Website [www.dataprotection.gov.je](http://www.dataprotection.gov.je) (Jersey Office)  
[www.gov.gg/dataprotection](http://www.gov.gg/dataprotection) (Guernsey Office)

**From:** Jersey Care Inquiry [<mailto:info@jerseycareinquiry.org>]  
**Sent:** 04 March 2015 17:05  
**To:** Emma Martins  
**Subject:** FW: Independent Jersey Care Inquiry

Dear Emma,

Thank you for your call to my colleague, Tina, and for providing your availability to meet with me this week.

I am available at 9am on Friday 6 March 2015 and will attend your office for the meeting. However, there are only two main points I wish to discuss therefore it may be easier (as I appreciate that you are very busy) if I detail them here for your consideration.

1. The Panel wish to amend the Inquiry's Protocol in respect of redaction. To date document providers (SoJP, States Departments and Law Officers) have all provided documents with provisional redactions highlighted in yellow. In essence, the Panel wish to amend the Protocol to allow for the release of the documents to the Inquiry on a confidential basis without provisional redactions. The Inquiry will then select those pages that will be referred to in the hearing room and those pages will then be redacted and returned to the document provider for comment before being released to the Interested Parties and being referred to in the hearing room. Can you please confirm if you foresee any problem with the document providers releasing the documents to the Inquiry without any provisional redactions, subject to the Inquiry returning to the document provider to agree redactions before making any documents public?
2. A number of witnesses who have provided evidence to the Inquiry have requested copies of the documentation that we hold in respect of their time in care and/or their police statements. If the documents are referred to in the hearing room they are redacted and ciphered in accordance with the Inquiry's Protocols and ultimately published on the Inquiry's website. However, are we able to release other witness specific documents to the individuals in a suitably redacted form? i.e. can we release Mr X's documents to Mr X subject to all references to other people and any personal data being redacted in accordance with our protocols?

If you are happy to address these queries by return e-mail there will be no need to meet on Friday. However, in the event that you feel these queries are best discussed at a meeting I am more than willing to attend your office on Friday to discuss.

Thank you for your time and assistance.

Kind regards,

Angharad Shurmer  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
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W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

Independent  
Jersey Care  
Inquiry

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**From:** Jersey Care Inquiry  
**Sent:** 04 March 2015 12:39  
**To:** 'e.martins@dataci.org'  
**Subject:** Independent Jersey Care Inquiry

Dear Mrs Martins

I have attempted to contact you by telephone to arrange a meeting between yourself and Angharad Shurmer of this office. Your colleague, David, asked me forward some available dates to you by email.

I would be grateful if you could let me know if you are available at any point this week to either meet in person or over the telephone? Angharad Shurmer will not be on the Island next week and so this week would be preferable.

I look forward to hearing from you.

Kind regards.

Fina Wing  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

Independent  
Jersey Care  
Inquiry

**From:** Jersey Care Inquiry <[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)>  
**Date:** 1 April 2015 20:11:53 CEST  
**To:** Emma Martins <[e.martins@dataci.org](mailto:e.martins@dataci.org)>  
**Subject:** RE: Independent Jersey Care Inquiry

Dear Ms Martins,

Thank you for your e-mail received week before last. As my colleague, Lisa Wilson, explained I was on annual leave and have now had the opportunity to review your correspondence.

I apologise if you feel that the e-mail sent to the Interested Parties was either incorrect or misleading; that was not the intention. In response to my question as to whether you could foresee any problem with the document providers releasing the documents to the Inquiry in an unredacted form you stated that as the documents had been summonsed the manner in which data are highlighted for redaction is a matter for the Inquiry. You raised no concerns with documents being disclosed to the Inquiry in an unredacted form but emphasised that you would want to see robust processes and procedures in place to ensure the highest standard of data protection. This was repeated in the e-mail to the Interested Parties.

It was decided by the Panel that the information in respect of the process behind the amended Protocol would not be shared with the Interested Parties at the same time as the Protocol. This has subsequently been provided to the Interested Parties and a copy was forwarded to you on 24 March 2015 (a further copy is attached for ease of reference). The Interested Parties are therefore now fully aware of the process that the Inquiry will adopt in relation to redaction going forward, including the removal of the second line review.

The Interested Parties, having now received the proposed process behind the amended Protocol, are able to make any submissions to the Panel they wish, given their Interested Party status. Discussions have been ongoing with the Interested Parties in respect of amendments to the redaction Protocol and process since October 2014 therefore the Interested Parties have been aware that the Protocol would be amended for some time and they have made various suggestions and representations as to how this process should be amended. Ultimately the Panel have decided to amend the Protocol as they feel appropriate but clearly all documents must be handled and redacted in accordance with the relevant legislation.

I note that you are considering the additional queries contained within my e-mail of 10 March 2015. I am not currently based in Jersey but could arrange a telephone conference should you wish to discuss any outstanding issues. It would be extremely helpful if we could speak at your earliest



convenience as we are keen to seek your input on the points we have raised and implement any process changes which may be required.

Again, please accept my sincere apologies in the event that you feel the e-mail sent to the Interested Parties was incorrect or misleading.

I look forward to discussing matters with you further.

Yours sincerely,

**Angharad Shurmer**  
**Eversheds LLP**  
**Solicitor to the Independent Jersey Care Inquiry**  
**T: 0800 735 0100**  
**Int: +44(0) 1534 828 798**  
**E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)**  
**W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)**

**Independent Jersey Care Inquiry**  
PO Box 551  
St Helier  
Jersey  
JE4 8XN

15 April 2015

Dear Mrs Oldham

**Independent Jersey Care Inquiry (the "Inquiry")**

**Data Protection (Jersey) Law 2005 (the "DPL")**

I write in relation to the above and, more particularly, to raise with you certain concerns regarding the Inquiry's solicitors Eversheds LLP ("Eversheds").

**The Role of the Inquiry**

Chief Minister Gorst (Hansard: 6 March 2012) noted, *inter alia*, that "The main objectives of a public inquiry are to establish the facts, learn from past events and prevent their reoccurrence, provide an opportunity for reconciliation and resolution, to rebuild public confidence, to hold people and organisation to account and to demonstrate that something has been done and that government is transparent. This Inquiry is not a court of law and will not be able to judge the guilt or innocence of individuals mentioned by witnesses. Its role is to understand what happened to cared for children, by allowing victims to describe what happened to them, by allowing those accused of abuse, but not charged with a crime, to have their say and by collating information from past investigations and reviews, particularly from those carried out since 2007..." (emphasis supplied).

It appears clear to me, therefore, that the Inquiry should act impartially and so as to safeguard the interests of all those involved, alleged victims and alleged abusers alike, and, in particular, to process both sets of individuals' data in accordance with the principles of the DPL.

***The Eight Principles<sup>1</sup>***

The DPL provides that an organisation or body when handling personal information must adhere to eight data protection principles of good information handling and this is to ensure that the interests of the individuals whose personal information is being processed are protected. They

---

<sup>1</sup> 1Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless--

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

2Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

3Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

4Personal data shall be accurate and, where necessary, kept up to date.

5Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

6Personal data shall be processed in accordance with the rights of data subjects under this Act.

7Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

8Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data

apply to everything an organisation (including the Inquiry) does when it uses and holds this personal information, unless an exemption in the DPL can apply.

I would state, at the outset, that I am not confident that the Inquiry are adhering to those principles and it is for this reason that I am writing to you.

### **Concerns**

I have a number of concerns, which I set out in detail below.

#### **1. Eversheds' knowledge of the DPL and the manner in which personal data should be processed**

I received an email from Ms Angharad Shurmer of Eversheds on 10 March 2015 ("Ms Shurmer's email"), a copy of which I enclose for your ease of reference.

In her email, Ms Shurmer seeks guidance from me in respect of certain social services records which have been obtained by the Inquiry pursuant to summons and, in particular, she seeks confirmation as to the manner in which those records should be redacted. She then goes on to ask certain questions as to whether or not (and if so to what extent) third party data can be provided to those alleged abusers in the next stage of the Inquiry proceedings (these issues apparently not having been considered by Eversheds previously).

In my opinion, the questions posed by Ms Shurmer in her most recent correspondence highlight the clear deficiencies in the manner in which Eversheds are dealing with Data Protection issues and raise questions as to whether or not the lawyers engaged by the Inquiry are suitably qualified in this area generally and/or have suitable knowledge of the DPL in this jurisdiction.

In particular, and given the extremely large volume of data which has been summonsed by the Inquiry from various entities (i.e. States of Jersey Police and Health & Social Services) and which are purportedly being processed by the Inquiry in accordance with the DPL, it is extremely important that any lawyers engaged in processing or otherwise dealing with what is, in these circumstances, extremely sensitive personal data, are fully concordant with the terms of the DPL and the principles to which the Inquiry must adhere.

It appears clear from Ms Shurmer's email however that the manner in which Eversheds are dealing with the data which has been provided to the Inquiry is inadequate and that Eversheds (and/or their Counsel) have failed to implement, from the outset, clear policies as to how that data should be dealt with so as to comply with the DPL. They also appear to have failed to appreciate the effect that certain decisions taken at an earlier stage of the Inquiry may have on proceedings further down the line. For example, Ms Shurmer notes that:

*"You may be aware that the Inquiry will shortly be moving to its next phase of evidence during which the Inquiry will need to put some of the allegations of abuse to the alleged abusers to seek their version of events and their response to the allegations made. As part of this process it is anticipated that a number of individuals will request specific details and information in respect of who has made such allegations; you will appreciate that some allegations have been made against former staff members, for example, therefore*

*without specific details it will be difficult for individuals to recall certain scenarios/situations. The Inquiry therefore needs to be satisfied that these allegations are put to those accused of abuse with sufficient detail to allow them to respond but also protecting the person making the allegation..."*

She then goes on to ask a series of questions as to what documentation/evidence I consider can properly be advanced to the alleged abusers.

Not only do the questions posed in Ms Shurmer's email appear to be something to which Counsel to the Inquiry should properly opine (being issues about the manner in which the Inquiry is run) but they also clearly show that no consideration was given, at the outset, to these issues.

It is extremely unfortunate that the opportunity was not taken at an early stage by the Inquiry to liaise with this office regarding the manner in which data was to be handled by the Inquiry and I note that Verita, an independent UK consultancy firm with recent experience of investigations in Jersey, in their report dated November 2011 at para.2.20 thereof, they recommended that *"there should be a discussion between the Committee of Inquiry and the Data Commissioner to ensure that data is processed in an appropriate manner. This should include developing a protocol in relation to the processing of personal data"*.

For the record, this office was never approached to discuss the manner in which data was to be handed by the Inquiry and I am disappointed that this was not done given the recommendations made and as referred to above. Perhaps if this had been done, then the issues outlined by Ms Shurmer in her recent correspondence could have been considered at a much earlier stage and rather than half way through the Inquiry proceedings.

## 2. The Inquiry's use of Twitter

It is noted that the Inquiry live tweets during hearings and posts are made to the [www.twitter.com](http://www.twitter.com) website using the handle @JerseyInquiry and I **enclose** for your attention certain tweets that have been brought to my attention and which detail allegations made by certain alleged victims against [REDACTED], a former houseparent of Haut de La Garenne ("HDLG").

It is my understanding that the extracts refer to allegations made by certain witnesses and which were read into the record by Counsel. I am unaware as to whether or not Mr Williams is alive/deceased nor whether he was ever formally charged/prosecuted of any crime.

If he is alive, then I am concerned as to the manner in which allegations (which may not be proven) are being recorded on Twitter where they are worded in such a way as to insinuate that there has been some finding of fact as against [REDACTED] or, indeed, that the allegations against him have been proven rather than their simply recording the fact that certain allegations have been made and detailing the nature of those allegations. For example:

*"Witness 209, abused regularly by [REDACTED] at #HdLG was never aware of it happening to others. She never told anyone at the time. #DCI"*

Great care should be taken by Eversheds to ensure that the processing of an individual's data is relevant, not excessive and that it is fairly and lawfully processed. I do not consider that tweets

(such as referenced above) fairly meet this requirement and I consider that great care should be taken by the Inquiry to distinguish between those things which are allegations and those which are proven facts.

3. The naming of alleged abusers in general

Recent coverage in the local media has also prompted this decision to write to you on the issue of the naming of individuals by witnesses to the Inquiry. In particular, I am concerned to note that certain individuals who may have been the subject of police inquiries at various times but against whom no charges were brought/arrests made (such cases clearly, for whatever reason, not having passed the evidential threshold for prosecution) are being routinely named by the Inquiry notwithstanding the fact that they are still alive and where the specific information referred to in the Inquiry was not previously in the public domain. I note your policy in respect of deceased individuals and your ruling that *"The Independent Jersey Care Inquiry has ... also ruled that information and names of individuals that are in the Public Domain will not be redacted. "In the Public Domain" is information realistically accessible to the general public that has been published in regulated media - newspapers (printed or online)/radio and TV broadcast"* and I am concerned that notwithstanding that protocol that individuals are being named, who properly ought not to be. I am not aware of any policy/guidance notes made by the Inquiry which explain who and by whom a decision is taken to publish the name of certain individuals but not others.

The naming of alleged abusers and the recitation of in depth allegations by alleged victims (the details of which are then published on the Internet) appears to demonstrate an inconsistent approach being taken by Eversheds in such matters and, in particular, that alleged abusers are being treated in a manner which is inconsistent with that of the alleged victims (who, generally speaking, enjoy blanket anonymity).

The DPL treats all individuals equally unless, of course, certain exemptions are deemed to apply and in such circumstances the burden is on the data controller to show which exemption applies, and why. I have not been able to identify any cogent reasons as to why certain alleged abusers have been named, but not others.

4. Inadequate protection afforded to the personal data of victims/administrative errors in public hearings

It has been brought to my attention that certain administrative errors have been made in public hearings regarding the personal data of victims.

By way of example, I have been advised that certain documentation pertaining to an alleged victim was projected onto a screen during the course of public hearings that it bore, in handwriting, the name of that victim in the top corner of the document. I understand that this may have been written by Eversheds to assist with their filing of such documents but in circumstances where that victim had otherwise been afforded anonymity.

This document apparently remained on view for a significant length of time until a member of the public pointed out the error and I also understand that this is not the only incidence of such error occurring.

## 5. Inadequate notification as a Data Controller

The Inquiry was registered with this office as a data controller (notification number 19889) on 2 April 2014 (the "Notification") and that entry details the type of data being processed by the Inquiry. I enclose a copy of the Inquiry's Notification for your ease of reference.

In particular, I note that in the section referring to "Purpose 2: Legal Services" states as follows in respect of data classes and recipients:

### *"Data classes are:*

- *Criminal Proceedings, Outcomes & Sentences*
- *Family, Lifestyle & Social Circumstances*
- *Offences (including alleged offences)*
- *Personal Details*

### *Recipients:*

- *Police Forces*
- *Relatives, Guardians or other persons associated with the Customer or Individual*
- *The Individual or Customer Themselves"*

I also note that the section detailing transfers notes that data shall not be transferred "outside the Bailiwick of Jersey and EEA".

Art.17(1) of the DPL states that "Personal data shall not be processed unless an entry in respect of the data controller who determines the purposes for which and the manner in which the data are so processed is included (or taken to be included) in the register" and it is an offence under Art.21(1) of the DPL for data to be processed in contravention of the principles set out in Art.17(1).

I consider that the Notification provided by the Inquiry to be incomplete and inadequate, particularly in light of the fact that the Inquiry is holding hearings in public and uploading personal data (redacted or not as the case may be) to the Internet either by way of the Inquiry website (which includes links to transcripts and documentation) or via Twitter. Data is clearly being transmitted Worldwide by the Inquiry and the Inquiry's notification should be amended to reflect this as should the sections referring to Data Classes and Recipients.

### Offer of voluntary assessment

Art.51(7) of the DPL contains a provision giving the Information Commissioner power to assess any organisation's processing of personal data for the following of 'good practice', with the agreement of the data controller. Good practice is defined in the DPL as practices for processing

personal data which appear to be desirable. This includes, but is not limited to, compliance with the requirements of the DPL.

My office sees auditing as a constructive process with real benefits for the Inquiry, particularly in light of the apparent deficiencies in process to which I have referred above. Accordingly, I invite you to consider whether or not the Inquiry would agree to a voluntary audit in order to identify what issues exist and how they may best be dealt with.

As is common practice, the scope of any audit would be agreed between this office and the Inquiry and would typically assess the Inquiry's procedures, systems, records and activities in order to:

1. ensure the appropriate policies and procedures are in place;
2. verify that those policies and procedures are being followed;
3. test the adequacy controls in place;
4. detect breaches or potential breaches of compliance; and
5. recommend any indicated changes in control, policy and procedure.

At the end of the Inquiry we would provide you with an assessment of our findings together with recommendations for improvement. It would also be carried out at our cost.

Given the extremely sensitive nature of the Inquiry proceedings, we would also propose that the voluntary audit is assisted by the Information Commissioner for the United Kingdom and who has indicated that he is willing to make members of his team available to assist in this process.

Concluding remarks

I should be grateful to hear from you at your earliest convenience in respect of the issues I have raised and, in any event, within 14 days of the date of this letter.

Yours sincerely

Mrs Emma Martins  
Information Commissioner

*Encs*

**From:** Angharad Shurmer (<mailto:angharad.shurmer@jerseycareinquiry.org>)

**Sent:** 10 March 2015 10:31

**To:** Emma Martins

**Subject:** RE: Independent Jersey Care Inquiry

Dear Emma,

Thank you for your response which is most helpful.

In respect of your response to the second question, we have received some requests for social services records. Some social services records are family files as opposed to individual files. In those circumstances the files provide details in respect of other members of the family. In those circumstances are we correct in redacting all information not relevant to the individual making the request, not just redacting the name of everybody other than the individual making the request?

Also, as a result of your responses I have received some other queries from the team and would be grateful if you could please clarify.

You may be aware that the Inquiry will shortly be moving to its next phase of evidence during which the Inquiry will need to put some of the allegations of abuse to the alleged abusers to seek their version of events and their responses to the allegations made. As part of this process it is anticipated that a number of individuals will request specific details and information in respect of who has made such allegations; you will appreciate that some allegations have been made against former staff members, for example, therefore without specific details it will be difficult for individuals to recall certain scenarios/situations. The Inquiry therefore needs to be satisfied that these allegations are put to those accused of abuse with sufficient detail to allow them to respond but also protecting the person making the allegation. Could you please consider the following?

1. Can we put allegations or evidence of abuse to an alleged abuser where we do not refer to documents but explaining the allegation verbally, including names?
2. Can we put unredacted documents to a witness where they may not have been seen by the witness previously and they include allegations or evidence of abuse by the witness (e.g. a statement given to the police by an alleged victim and/or witness)?
3. Can we provide any of the following other documents to a witness in unredacted form:
  - a) documents which they authored in their current/former role?
  - b) documents which they would have had sight of in their current/former role (e.g. minutes of meetings or reports where the witness is recorded as being in attendance, or where their role is such that we consider they are likely to have seen the document)?
  - c) documents which they may not previously have had sight of (e.g. providing a care-home employee with a document from a social services file of a former resident)?
4. In the event that redacted documents are provided to a witness, could the Inquiry take the witness through an unredacted version of the document at interview but not provide a hard copy of the unredacted document?

Does the answer to 1-3 change if the documents are provided in redacted form?



Does the answer to 1-3 change if we obtain a signed confidentiality undertaking from the witness before giving them sight of the documents?

I appreciate that you met with my colleagues when the Inquiry was set up and some of these issues were addressed then, therefore apologies if I am revisiting old ground. However I would be grateful if you could please clarify the position to ensure that I am correctly guiding the team.

I am not on the island at the moment, but could arrange a telephone call should you wish to discuss.

Thank you again for your assistance.

Yours sincerely,

Angharad Shurmer  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

## Independent Jersey Care Inquiry

From: Emma Martins (<mailto:e.martins@datacl.org>)  
Sent: 05 March 2015 14:30  
To: Jersey Care Inquiry  
Subject: RE: Independent Jersey Care Inquiry

Dear Angharad

Thank you for your e-mail.

I am happy to respond to the points you raise on email.

1. As I understand it, the inquiry has summonsed the data required to conduct the relevant enquiries. If that is indeed the case, the manner in which data are highlighted for redaction is a matter for the inquiry. Clearly we would wish to see robust processes and procedures in place to ensure the highest standards of data protection for all personal data processed by the inquiry and appropriate reference to the data controller that has provided the data.
2. The inquiry is a data controller in its own right, as defined in the Data Protection (Jersey) Law 2005. Any request by an individual (data subject) for information relating to him/her should be responded to in the manner set out in that Law. I am of the view that due to the nature of the data being processed by the inquiry, procedures should be in place to ensure the views of the originating data controller are sought to ensure appropriate application of exemptions that may apply.

I trust this is of some assistance.

Kind regards

*Emma Martins*

Data Protection & Information Commissioner

Telephone +44 (0) 1534 716530 (Jersey Office)

+44 (0) 1481 742074 (Guernsey Office)

e-mail [e.martins@dataci.org](mailto:e.martins@dataci.org)

Website [www.dataprotection.gov.je](http://www.dataprotection.gov.je) (Jersey Office)

[www.gov.gg/dataprotection](http://www.gov.gg/dataprotection) (Guernsey Office)

From: Jersey Care Inquiry [<mailto:info@jerseycareinquiry.org>]

Sent: 04 March 2015 17:05

To: Emma Martins

Subject: FW: Independent Jersey Care Inquiry

Dear Emma,

Thank you for your call to my colleague, Tina, and for providing your availability to meet with me this week.

I am available at 9am on Friday 6 March 2015 and will attend your office for the meeting. However, there are only two main points I wish to discuss therefore it may be easier (as I appreciate that you are very busy) if I detail them here for your consideration.

1. The Panel wish to amend the Inquiry's Protocol in respect of redaction. To date document providers (So/P, States Departments and Law Officers) have all provided documents with provisional redactions highlighted in yellow. In essence, the Panel wish to amend the Protocol to allow for the release of the documents to the Inquiry on a confidential basis without provisional redactions. The Inquiry will then select those pages that will be referred to in the hearing room and those pages will then be redacted and returned to the document provider for comment before being released to the Interested Parties and being referred to in the hearing room. Can you please confirm if you foresee any problem with the document providers releasing the documents to the Inquiry without any provisional redactions, subject to the Inquiry returning to the document provider to agree redactions before making any documents public?
2. A number of witnesses who have provided evidence to the Inquiry have requested copies of the documentation that we hold in respect of their time in care and/or their police statements. If the documents are referred to in the hearing room they are redacted and ciphered in accordance with the Inquiry's Protocols and ultimately published on the Inquiry's website. However, are we able to release other witness specific documents to the individuals in a suitably redacted form? i.e. can we release Mr X's documents to Mr X subject to all references to other people and any personal data being redacted in accordance with our protocols?

If you are happy to address these queries by return e-mail there will be no need to meet on Friday. However, in the event that you feel these queries are best discussed at a meeting I am more than willing to attend your office on Friday to discuss.

Thank you for your time and assistance.

Kind regards,

Angharad Shurmer

Eversheds LLP

Solicitors to the Independent Jersey Care Inquiry

T: 0800 735 0100

Int: +44(0) 1534 828 798

E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)

W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

# Independent Jersey Care Inquiry

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**From:** Jersey Care Inquiry  
**Sent:** 04 March 2015 12:39  
**To:** 'e.martins@dataci.org'  
**Subject:** Independent Jersey Care Inquiry

Dear Mrs Martins

I have attempted to contact you by telephone to arrange a meeting between yourself and Angharad Shurmer of this office. Your colleague, David, asked me forward some available dates to you by email.

I would be grateful if you could let me know if you are available at any point this week to either meet in person or over the telephone? Angharad Shurmer will not be on the Island next week and so this week would be preferable.

I look forward to hearing from you.

Kind regards.

Tina Wing  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

# Independent Jersey Care Inquiry

**Jersey Inquiry**

Hearings IJCI start again at 2pm. More evidence will be heard against [REDACTED] [REDACTED], Houseparent at HdIG

Witness 209, abused regularly by [REDACTED] at HdIG was never aware of it happening to others. She never told anyone at the time.

IJCI

10/12/2014 3:50 pm



- Witness 123 first abused at HdlG at aged 10. Had sexual relationship with [REDACTED]. Tells IJCI she didn't know it was wrong

10/12/2014 4:09 pm





## Online Notification

### Search the Data Protection Register

Notifications prior to 1 December 2005 will not appear in this Register until renewed.

Enter known details of a company in one or more of the boxes below, and click on the Search button.

**Name:**

inquiry

**Part of the address:**

**Notification number (if known):**

SEARCH >

## Data Protection (Jersey) Law 2005 - Register of Data Controllers

### Independent Jersey Care Inquiry

**Notification Number:** 19889

**Date Registered:** 2014-04-02

**Notification Expires:** 2016-04-02

**Additional Trading Names:**

- Committee of Inquiry into Historical Child abuse
- Independent Jersey Care Inquiry

**Name of Contact:** Mr Michael Haden

**Registered Address:**

States Greffe  
 Morier House  
 Halkett Place  
 St. Helier JE1 1DD

This register entry describes, in very general terms, the personal data being processed by: Independent Jersey Care Inquiry

This register entry contains personal data held for 3 purpose(s)

**PURPOSE 1: CUSTOMER AND CLIENT  
ADMINISTRATION**

**Data subjects**

are:

- **Advisers, Consultants &  
Professional Experts**
- **Customers & Clients**
- **Offenders & Suspected Offenders**

**Data classes**

are:

- **Personal Details**

**Recipients:**

- **Government Departments**
- **Healthcare, Social & Welfare  
Advisers or Practitioners**
- **Relatives, Guardians or other  
Persons associated with the  
Customer or Individual**
- **The Individual or Customer  
Themselves**

**Transfers:**

**None outside the Bailiwick of Jersey  
and EEA**

**PURPOSE 2: LEGAL SERVICES**

**Data subjects**

are:

- **Advisers, Consultants &  
Professional Experts**
- **Complainants, Correspondents &  
Enquirers**
- **Customers & Clients**
- **Relatives, Guardians & Associates  
of the Data Subject**

**Data classes**

are:

- **Criminal Proceedings, Outcomes  
& Sentences**
- **Family, Lifestyle & Social  
Circumstances**
- **Offences (including alleged  
offences)**
- **Personal Details**

**Recipients:**

- **Police Forces**



- Relatives, Guardians or other Persons associated with the Customer or Individual
- The Individual or Customer Themselves

**Transfers:**

None outside the Bailiwick of Jersey and EEA

**PURPOSE 3: PERSONNEL, EMPLOYEE AND PAYROLL ADMINISTRATION**

**Data subjects**

are:

- Relatives, Guardians & Associates of the Data Subject

**Data classes**

are:

**Recipients:**

**Transfers:**

## Search Results

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Results per page:  

Page 1 of 1

- Committee of Inquiry into Historical Child abuse (No 19889)
- Independent Jersey Care Inquiry (No 19889)

Page 1 of 1

Office of the Information Commissioner  
Brunel House, Old Street, St Helier, Jersey JE2 3RG

Independent Jersey Care Inquiry  
PO Box 551  
St Helier  
Jersey  
JE4 8XN

Email [REDACTED]

Direct Dial +44 (0) 1534 [REDACTED]  
Direct Fax +44 (0) 1534 [REDACTED]  
Tel +44 (0) 1534 888 777  
Fax +44 (0) 1534 888 778

Attention: Mrs Frances Oldham

Your Ref

Appleby Ref [REDACTED]

Private & Confidential

15 May 2015

Dear Mrs Oldham

**Independent Jersey Care Inquiry (the "Inquiry")**

**Data Protection (Jersey) Law 2005 (the "DPL")**

I write further to previous correspondence in this matter and thank you, and the rest of the Panel, for taking the time to meet with me most recently on 13 May 2015.

I have now had the opportunity of discussing matters with the Information Commissioner (the "Commissioner") arising as a result of that meeting.

Insofar as regards the provision to the Panel of specific concerns raised with the Commissioner by third parties on a confidential basis to the Inquiry, the Commissioner is not prepared to waive any confidentiality to those individuals.

In any event, the Commissioner notes that the Inquiry does not wish to delay, in any way, the commencement of the next stage of the Inquiry (namely the hearing of evidence from alleged abusers) and which is due to begin the w/c 26 May 2015 (the "next phase"). Whilst she notes and respects the reasons given by the Panel for not wishing to delay the next phase, she considers that it would be undesirable to carry out any assessment into the Inquiry's handling of data protection issues whilst the Inquiry is in process and considers that any assessment can only be properly effective if it is done prior to the commencement of the next phase. There is clearly not enough time to carry out any assessment between now and the next phase and, the Commissioner considers that there is little benefit in progressing in the manner proposed by the Panel and running both the assessment and the Inquiry in tandem.

That being so, and unless the Panel is willing to delay the next phase to allow an assessment to be carried out (given that any findings may have a direct impact on the manner in which the next phase of the Inquiry is handled) the Commissioner does not propose to provide assistance in the manner envisaged in her initial letter to you dated 17 April 2015.

3128337v1

Jersey Office  
PO Box 207  
13-14 Esplanade  
St Helier  
Jersey JE1 1BD  
Channel Islands

Tel +44 (0)1534 888 777

applebyglobal.com

Jersey Managing Partner  
Michael Cushing

Jersey Partners  
Ferah Beards  
Wendy Benjamin  
James Gaudin  
Timothy Hart  
Victoria Myerson  
Michael O'Connell  
Fraser Roberson  
Andrew Weaver



Dear Angharad

Thank you for your e-mail.

I note the questions you have put to this office. I am of the view that many of them appear to be questions relating to procedural fairness and therefore questions upon which the Inquiry should form an independent view. This view should be formed having taken appropriate legal advice from Counsel to the Inquiry and in light of the applicable statutory powers and terms of reference.

Please know that I do not wish to be unhelpful in this respect and trust you appreciate the position taken.

*Emma Martins*

**Data Protection & Information Commissioner**

Telephone +44 (0) 1534 716530 (Jersey Office)

+44 (0) 1481 742074 (Guernsey Office)

e-mail [e.martins@dataci.org](mailto:e.martins@dataci.org)

Website [www.dataci.org](http://www.dataci.org)

**From:** Angharad Shurmer [mailto:[angharad.shurmer@jerseycareinquiry.org](mailto:angharad.shurmer@jerseycareinquiry.org)]

**Sent:** 10 March 2015 10:31

**To:** Emma Martins

**Subject:** RE: Independent Jersey Care Inquiry

Dear Emma,

Thank you for your response which is most helpful.

In respect of your response to the second question, we have received some requests for social services records. Some social services records are family files as opposed to individual files. In those circumstances the files provide details in respect of other members of the family. In those circumstances are we correct in redacting all information not relevant to the individual making the request, not just redacting the name of everybody other than the individual making the request?

Also, as a result of your responses I have received some other queries from the team and would be grateful if you could please clarify.

You may be aware that the Inquiry will shortly be moving to its next phase of evidence during which the Inquiry will need to put some of the allegations of abuse to the alleged abusers to seek their version of events and their responses to the allegations made. As part of this process it is anticipated that a number of individuals will request specific details and information in respect of who has made such allegations; you will appreciate that some allegations have been made against former staff members, for example, therefore without specific details it will be difficult for individuals to recall certain scenarios/situations. The Inquiry therefore needs to be satisfied that these allegations are put to those accused of abuse with sufficient detail to allow them to respond but also protecting the person making the allegation. Could you please consider the following?

1. Can we put allegations or evidence of abuse to an alleged abuser where we do not refer to documents but explaining the allegation verbally, including names?
2. Can we put unredacted documents to a witness where they may not have been seen by the witness previously and they include allegations or evidence of abuse by the witness (e.g. a statement given to the police by an alleged victim and/or witness)?
3. Can we provide any of the following other documents to a witness in unredacted form:
  - a) documents which they authored in their current/former role?
  - b) documents which they would have had sight of in their current/former role (e.g. minutes of meetings or reports where the witness is recorded as being in attendance, or where their role is such that we consider they are likely to have seen the document)?
  - c) documents which they may not previously have had sight of (e.g. providing a care-home employee with a document from a social services file of a former resident)?
4. In the event that redacted documents are provided to a witness, could the Inquiry take the witness through an unredacted version of the document at interview but not provide a hard copy of the unredacted document?

Does the answer to 1-3 change if the documents are provided in redacted form?

Does the answer to 1-3 change if we obtain a signed confidentiality undertaking from the witness before giving them sight of the documents?

I appreciate that you met with my colleagues when the Inquiry was set up and some of these issues were addressed then, therefore apologies if I am revisiting old ground. However I would be grateful if you could please clarify the position to ensure that I am correctly guiding the team.

I am not on the island at the moment, but could arrange a telephone call should you wish to discuss.

Thank you again for your assistance.

Yours sincerely,

Angharad Shurmer  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

Independent  
Jersey Care  
Inquiry

From: Emma Martins [<mailto:e.martins@dataci.org>]  
Sent: 05 March 2015 14:30  
To: Jersey Care Inquiry  
Subject: RE: Independent Jersey Care Inquiry

Dear Angharad

Thank you for your e-mail.

I am happy to respond to the points you raise on email.

1. As I understand it, the Inquiry has summonsed the data required to conduct the relevant enquiries. If that is indeed the case, the manner in which data are highlighted for redaction is a matter for the Inquiry. Clearly we would wish to see robust processes and procedures in place to ensure the highest standards of data protection for all personal data processed by the Inquiry and appropriate reference to the data controller that has provided the data.
2. The Inquiry is a data controller in its own right, as defined in the Data Protection (Jersey) Law 2005. Any request by an individual (data subject) for information relating to him/her should be responded to in the manner set out in that Law. I am of the view that due to the nature of the data being processed by the Inquiry, procedures should be in place to ensure the views of the originating data controller are sought to ensure appropriate application of exemptions that may apply.

I trust this is of some assistance.

Kind regards

*Emma Martins*

Data Protection & Information Commissioner

Telephone +44 (0) 1534 716530 (Jersey Office)

+44 (0) 1481 742074 (Guernsey Office)

e-mail [e.martins@dataci.org](mailto:e.martins@dataci.org)

Website [www.dataprotection.gov.je](http://www.dataprotection.gov.je) (Jersey Office)

[www.gov.gg/dataprotection](http://www.gov.gg/dataprotection) (Guernsey Office)

**From:** Jersey Care Inquiry [<mailto:info@jerseycareinquiry.org>]

**Sent:** 04 March 2015 17:05

**To:** Emma Martins

**Subject:** FW: Independent Jersey Care Inquiry

Dear Emma,

Thank you for your call to my colleague, Tina, and for providing your availability to meet with me this week.

I am available at 9am on Friday 6 March 2015 and will attend your office for the meeting. However, there are only two main points I wish to discuss therefore it may be easier (as I appreciate that you are very busy) if I detail them here for your consideration.

1. The Panel wish to amend the Inquiry's Protocol in respect of redaction. To date document providers (SoJP, States Departments and Law Officers) have all provided documents with provisional redactions highlighted in yellow. In essence, the Panel wish to amend the Protocol to allow for the release of the documents to the Inquiry on a confidential basis without provisional redactions. The Inquiry will then select those pages that will be referred to in the hearing room and those pages will then be redacted and returned to the document provider for comment before being released to the Interested Parties and being referred to in the hearing room. Can you please confirm if you foresee any problem with the document providers releasing the documents to the Inquiry without any provisional redactions, subject to the Inquiry returning to the document provider to agree redactions before making any documents public?
2. A number of witnesses who have provided evidence to the Inquiry have requested copies of the documentation that we hold in respect of their time in care and/or their police statements. If the documents are referred to in the hearing room they are redacted and ciphered in accordance with the Inquiry's Protocols and ultimately published on the Inquiry's website. However, are we able to release other

witness specific documents to the individuals in a suitably redacted form? i.e. can we release Mr X's documents to Mr X subject to all references to other people and any personal data being redacted in accordance with our protocols?

If you are happy to address these queries by return e-mail there will be no need to meet on Friday. However, in the event that you feel these queries are best discussed at a meeting I am more than willing to attend your office on Friday to discuss.

Thank you for your time and assistance.

Kind regards,

Angharad Shurmer  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

## Independent Jersey Care Inquiry

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From: Jersey Care Inquiry  
Sent: 04 March 2015 12:39  
To: 'e.martins@dataci.org'  
Subject: Independent Jersey Care Inquiry

Dear Mrs Martins

I have attempted to contact you by telephone to arrange a meeting between yourself and Angharad Shurmer of this office. Your colleague, David, asked me forward some available dates to you by email.

I would be grateful if you could let me know if you are available at any point this week to either meet in person or over the telephone? Angharad Shurmer will not be on the Island next week and so this week would be preferable.

I look forward to hearing from you.

Kind regards.

Tina Wing  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

**Independent  
Jersey Care  
Inquiry**



**From:** Jersey Care Inquiry <info@jerseycareinquiry.org>  
**Sent:** 14 May 2015 09:42  
**To:** [REDACTED]  
**Subject:** RE: FAO Angharad Shurmer [REDACTED]

Dear [REDACTED],

Thank you for your e-mail. I telephoned the Information Commissioner's office yesterday and extended the Inquiry's notification to worldwide and also changed the contact to myself.

Kind regards,

Angharad

**Oversheds LLP**  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

Independent  
Jersey Care  
Inquiry

**From:** [REDACTED]  
**Sent:** 13 May 2015 15:08  
**To:** Jersey Care Inquiry  
**Cc:** [REDACTED]  
**Subject:** FAO Angharad Shurmer [REDACTED]

Dear Angharad,

At our meeting this morning I think you were going to raise some queries regarding the Inquiry's notification with the Information Commissioner's Office but we didn't, in the event, get to speaking about this. Did you require assistance/have any queries that I can assist with?

With kind regards,

Yours sincerely,

[REDACTED]  
[REDACTED]  
Appleby, Jersey Office  
Tel: +44 (0)1534 [REDACTED]  
[applebyglobal.com](http://applebyglobal.com)

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[REDACTED]

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**From:** Jersey Care Inquiry <info@jerseycareinquiry.org>  
**Sent:** 13 October 2015 15:19  
**To:** [REDACTED]  
**Cc:** Emma Martins (e.martins@dataci.org)  
**Subject:** RE: FAO Angharad Shurmer [REDACTED]

Dear [REDACTED],

I confirm that the documents have been removed from the Inquiry website. I will look into the matter and respond in more detail following those investigations, however could you please confirm if you mean the black redactions could be removed when opened in Adobe?

Thank you.

Yours sincerely,

Angharad Shurmer  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

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Jersey Care  
Inquiry

**From:** [REDACTED]  
**Sent:** 13 October 2015 15:15  
**To:** Jersey Care Inquiry  
**Cc:** Emma Martins (e.martins@dataci.org)  
**Subject:** FAO Angharad Shurmer [REDACTED]  
**Importance:** High

Dear Angharad,

I write further to our telephone conversation a short while ago.

As indicated, I have been asked by the Commissioner to contact you to advise that when you click on the link to the Day 67 documents (<http://www.jerseycareinquiry.org/Transcripts/Day%2067%20documents.pdf>) certain of the yellow highlighting can be removed when those documents are opened in Adobe.

You confirmed that you would immediately remove the documents from the website and I should be grateful to receive your urgent confirmation that this has been done.

Yours sincerely,

Appleby, Jersey Office  
Tel: +44 (0)1534

applebyglobal.com

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[REDACTED]

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**From:** Jersey Care Inquiry <info@jerseycareinquiry.org>  
**Sent:** 13 October 2015 15:23  
**To:** [REDACTED]  
**Cc:** Emma Martins (e.martins@dataci.org)  
**Subject:** RE: FAO Angharad Shurmer [REDACTED]

Thank you for the further information, [REDACTED]. I will look into this.

Yours sincerely,

Angharad

**From:** [REDACTED]  
**Sent:** 13 October 2015 15:22  
**To:** Jersey Care Inquiry  
**Cc:** Emma Martins (e.martins@dataci.org)  
**Subject:** RE: FAO Angharad Shurmer [REDACTED]

Dear Angharad,

Thank you for that confirmation.

It is the electronic yellow highlighting which can be removed from the last 17 pages of the documentation when opened in Adobe.

Yours sincerely,

[REDACTED]

[REDACTED]

Appleby, Jersey Office  
Tel: +44 (0)1534 [REDACTED]  
applebyglobal.com

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** 16 October 2015 13:23  
**To:** 'Jersey Care Inquiry'  
**Cc:** Emma Martins (e.martins@dataci.org); [REDACTED]  
**Subject:** RE: FAO Angharad Shurmer - Day 86 documents [REDACTED]  
**Attachments:** RE: FAO Angharad Shurmer [REDACTED]; Day 86 page73 (comments box still visible).PDF; Day 86 pages 67 - 76 (with highlights removed).PDF; Day 86 pages 67 - 76 (with highlights).PDF

**Importance:** High

Dear Angharad

I write further to our email exchange of earlier this week.

It is apparent that the Memo from Bridget Shaw dated 18<sup>th</sup> April 2006 which contained the inappropriate redactions in the Day 67 documents also appears in the documents for Day 86 (please see attached)

<http://www.jerseycareinquiry.org/Transcripts/Day%2086%20Documents%20Optimised.pdf>. I should be grateful if you would similarly remove the documents for Day 86 immediately from the website and confirm that this has been done.

Yours sincerely,

[REDACTED]

[REDACTED]

Appleby, Jersey Office

Tel: +44 (0)1534 [REDACTED]

applebyglobal.com

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**MEMORANDUM**

To: Bridget Shaw  
From: Detective Sergeant 671 Fossey  
Date: 18<sup>th</sup> April 2006  
Ref: Long Term Team, La Chasse

This report outlines a number of issues which have come to my attention in dealing with the above team of child care officers since taking up the post of Sergeant, FPT in January 2006.

Firstly, there is the case of the [redacted] has a long history with Childrens Service. A chronology of Childrens Service involvement with the family is attached which dates back to 1993. Since 1998 there have also been a number of police investigations (summary attached), mostly into allegations made by [redacted]. Only one investigation has resulted in a conviction.

Concerns about this family have been repeatedly expressed to social services over the years, indeed my predecessor Sergeant Underwood called 2 strategy meetings within a short period of time last year in an attempt to urge Childrens Service to take some action. The police service is extremely concerned for the welfare of [redacted] who is an extremely vulnerable victim. This is not helped by the fact that we cannot prove any of her allegations or alternatively disprove the veracity of them. Any attempts to urge Childrens Service to take action have been unsuccessful and my recent experience with the team manager Danny Wherry has been similarly unhelpful. During a strategy meeting to discuss the latest allegation made by [redacted] that she was having sex with [redacted]

I made frequent references to the chronology provided by Childrens Service, which Mr Wherry freely admitted not having read. He felt, however, that he could make the decision that

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was not at risk and if she chose to leave La Preference nothing could be done. He did state that he would seek legal advice on the matter. This amounted to him speaking to a member of staff in the law officer's department who wasn't qualified to give legal advice and told him that he would not be successful in getting an emergency order should he apply. Mr Wherry also expressed opinion at that same strategy meeting that he would need a prosecution before he could act.

Three days prior to this latest allegation made by [redacted] against [redacted] a case conference was held at La Chasse chaired by Mr Wherry. DC Carter attended and reported that Mr Wherry made it quite clear from the outset that [redacted] should not be put on the register and that his case must be considered separately [redacted] who was having a case conference at a later date and would likely go on the register.

This is not the first time Mr Wherry has behaved irregularly at a case conference. DC Coxshall reported that at a case conference for [redacted] Mr Wherry again in the role of chair made it quite obvious from the start that [redacted] would be removed from the register.

Other cases involving La Chasse which show little or no action on behalf of Childrens Service are the [redacted] Chronology attached. This has finally resulted in an assault being reported to the police and the legal advisor being left in the difficult position of having to decide whether to charge [redacted] for a minor assault after years of abuse.

Both the [redacted] and the [redacted] it could be argued are history and beyond rectification. Indeed [redacted] the Child care officer for [redacted] put on her report to the latest case conference that it was not helpful to focus on past allegations or concerns. It is my opinion that these children are extremely vulnerable and that past allegations and concerns are very relevant in protecting these children in the future.

It has become increasingly obvious to myself that the team at La Chasse appear to have no idea how to deal with emergency child protection matters. Frequently reports of assaults on children open to the long term team are not referred to the police until a couple of days after the incident if at all. Obviously this affects the quality of the police response particularly in terms of gathering evidence forensically. A good

DELAY  
in Reporting



## Privilege waived - 15/04/2015

recent example of their shortcomings in this respect was the which involved a baby with a suspected fracture to the skull. This was reported to the Duty Child care officer (David Castledine at la Chasse) by at 2100hrs on The police were finally notified at 1300hrs the following day and even then only by chance because the family Child care Officer happened to be speaking to a senior member of the Emergency childcare team who advised her that she should inform the police. This was just the start of the problems with this case which was not helped when the Childrens' service applied for an emergency order and provided the expert's report on the injury to the Law Officers who then disclosed it to the suspects prior to police interview.

Although this report may seem unduly negative it is my opinion that it is simply training that needs to be addressed plus an understanding of the police role in child protection. I have attempted to engage Mr Wherry on this following an incident earlier on this year but he informed me that I would be better meeting with the Emergency childcare team as I would have more dealings with them. I can report I have an excellent relationship with the emergency team and we work very well together and have a good understanding of each others roles.

Legally Privileged  
Not for Publication

Witness Name: Janet Brotherton  
Statement No: First  
Exhibits: JB1-JB13  
Dated :

**THE INDEPENDENT JERSEY CARE INQUIRY**

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**EXHIBIT JB6**

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# Privilege waived - 15/04/2015

## **Children's Service**

### **Background**

In January 2006 DS (now DI) Alison Fossey assumed responsibility for what is now the Police Public Protection Team (PPU) formerly known as FPT.

DI Fossey began to present us with many more cases for advice than we had previously received from the Police. The number of prosecutions rose accordingly, indeed we have had some very successful prosecutions. However at the same time DI Fossey brought to my attention a number of issues concerning the way in which Children's Service officers were dealing with cases.

These can be summarised as delay in referring matters to the police; heavy reliance on Police to take action in cases where Children Service should be acting and fail to do so; lack of understanding of Children's Service's primary role in Child Protection; reluctance to apply for Care Orders or Emergency Protection Orders for fear of failing, and poor handling of case conferences

The main issues at the time were with the long term care team who run the Children's Homes, not, I stress, anything to do with Greenfields, nor with any behaviour that could be considered criminal. It appeared to the Police that a number of members of staff did not appreciate the risks to children, did not act when they should to protect children and did not understand the respective roles of the Police and Children's Service.

### **Action by Legal Advisers' Office**

I raised the matter with the Solicitor General and DI Fossey subsequently sent me a report in April 2006 (attached folder 1 together with schedule of investigations and Children's Service chronologies)

My file note and my subsequent report to the Solicitor General outlining my concerns are also attached (folders 2 and 3).

### **Meeting with Police**

On 6<sup>th</sup> June 2006 The SG and I met with DCI Bonjour and DS Fossey to discuss the issues (please see folder 4).

DI Fossey had brought to our attention a number of cases which were symptomatic of the standards apparently applied by Children's Service such as shown by the family histories.

In many cases little seems to be done by Children's Service to intervene when in view of the Police, Children's Service should act. They rely too much on the Police and seem to think the Police can act when Children's Service can't -

## Privilege waived - 15/04/2015

rather than the other way around due to the different standards of proof. Frequently when a case was referred to the Police, Children's Service would ask what the Police were doing about it rather than taking action themselves. The details are in the attached reports.

There was frequently delay in reporting matters to the Police. A case in which delay could have had fatal consequences was the case of the (please see report DS Fossey folder 1) who was taken to A&E with a suspected fractured skull. Doctors were investigating this as a non-accidental injury and the parents were the sole carers and therefore the chief suspects. Children's Service did not inform the Police. The Child was admitted at approximately 17.00 one day and Police were not informed until 13.00 the following day, and then, only by chance. In the meantime the child had been allowed home for the night with her parents. I am not an expert in child care but one only has to apply a modicum of common sense to realise that the Police should have been informed at once and that the child should have been placed with someone other than her parents until investigations were complete. The next day, not one but two suspicious skull fractures were confirmed.

The second area of concern was that members of the long-term care teams did not seem to know what their roles were vis a vis the Police. They seemed to think that it was for the Police to act primarily to protect children. The Police's primary role is to investigate crime. In doing so they work alongside Children's Service but too often Police found Children's Service expected the Police to take action when they themselves did not act. They were reluctant to apply for Emergency Protection Orders or Care Orders, even in cases where children such as the such as appeared to be at considerable risk in her own home.

Another area of concern was the conduct of case conferences, which are meetings held between all agencies to decide whether a child should be put onto the Child Protection Register. This categorises children at the highest risk and a plan of intervention is formed. In the the chair of the conference was the parents' former children's service officer who was clearly not impartial. Other concerns specifically surrounded a Manager named Danny Wherry. He would, for example, start the conference by stating that he did /did not intend to put the child on the register. This was not conducive to an open discussion and joint working between the various agencies

Mr Wherry also told Police that if a Child on the Register was reported as missing, he did not want the Children's Service to be contacted about it out of hours - it could wait until the morning. Children are put on the register if they are thought to be at very high risk. One would have thought that Children's Service would be just the people the Police need to speak to in order to help find a very vulnerable child late at night.

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## Meeting with Children's Service

The SG and I met with Marnie Baudins and Tony Le Sueur, (a Children's Service manager). They accepted that Case Conferences were not always handled well and said they were short of people in the Island qualified to chair them (something Marnie is working to improve).

As far as the long term cases were concerned, they effectively said that the chronologies we saw reflected only part of the work that went on but admitted that cost was a factor in dealing with such families, they thought they would never get care orders as the bar is set too high and even if they applied, they would have to show that the care home was better than the family home, which wasn't necessarily the case as they would struggle to place such children.

We were told that incidents such as the baby case should not have happened and were exceptional.

We also brought up the case of which came to light in was convicted of sexual offences against girls (aged 12/13) and sentenced to three years imprisonment. Before he was released he underwent a RAMAS assessment which assesses a person's risk of committing further serious offences. He was deemed to be at high risk. He also expressed his intention to return to live with his partner. This woman did not accept that he remained a risk ('He has paid his debt to society etc'). She had an 11 year old daughter. Clearly, the mother was in no position to protect her daughter if she did not accept that he posed a risk of offending. Children's Service did not intervene to protect the girl.

Two years later, the almost inevitable disclosure was made to the Police that had been indecently assaulting the daughter from the moment he came home. This was a tragedy which could have been avoided. is now serving another prison sentence. Children's Service said they were not able to establish that he was actually living at the partner's address and denied it when challenged.

Overall they believed they were doing a good job but that they felt unable to apply for Court orders to take children into care as the standards set by the Court were very high and applications even in such cases as were likely to fail. The driving factor behind these decisions seems too often to be whether Children's Service have suitable accommodation for the child rather than whether the child is at risk of harm if he or she stays in the home.

I still find this hard to understand particularly as I successfully prosecuted mother for neglect when she admitted allowing a known sex offender into her home on a daily basis and watched him indecently assault

# Privilege waived - 15/04/2015

on two occasions without intervening. When parents cannot or will not protect a child surely the state has a duty to act.

## **The Present Position**

The view of the Police is nothing has improved since our meeting with Children's Service. Indeed things have deteriorated as the problems were formerly to do with the long term care team and response from the emergency team had been good. Since then some members of the emergency team have left and things have not improved.

Delays in reporting matters to the Police and questionable judgement issues remain.

## **Delays**

The delay in the case was clearly not an exception. There have been many instances in which there has been delay in informing the Police. A glaring example is the case (folder 5). I no longer have the full file but I enclose copies of the documents showing a referral from Health to Children's Service on 10.10.07.

was a young single mother with a disturbed background. On 10.10.07 she informed psychiatric nurse that she had tried to kill her old baby by smothering him. She stopped in time. However, she felt that the baby was better off without her but as she did not want anyone else to have the child it would be better for him to die.

The documents show that informed Children's Service at once. However, Children's Service did not inform the Police until 4 weeks later. In the meantime Children's Service had agreed with that her father should care for the baby but they did not tell him what had happened. The grandfather was therefore not in a position properly to protect the child as he did not know either that the child was at risk or what that risk was. The Grandfather in fact took the baby with him on a visit to UK where joined them. No authorities in UK had any idea that the child was at risk. Police were only informed 4 weeks after when the family returned to Jersey. One can only conclude that in this case there was an abject failure to follow basic procedures and in my view the child must have been put at risk by those failures.

## **Poor Judgment**

Another recent example of what is wrong in Children's Service is the case of (folder 6). The letter on file is from a senior manager. The letter is self explanatory. The children were at so much risk that they were put on the Register in December 2006. By June 2007 Children's Service had had no intervention in the family, and had not even completed a core assessment as mother would not co-operate. The suggestion then, is that the children should come off the register! Surely mother's refusal to let

# Privilege waived - 15/04/2015

Children's Service into the house and refusal to co operate is all the more reason for concern for these children, not less. DI Fossey's reply is also attached.

Another example is the case of [redacted] (folder 7). This was brought to my attention last week. [redacted] has been fostered by a family since the age of [redacted]. He is now, around [redacted]. He has severe psychiatric problems. Recently he tried to strangle the [redacted]-year old son of his foster parents. Children's Service seem only able to focus on what they think is best for [redacted] are ignoring the need to protect the [redacted]-yr old in the family. They are adamant that [redacted] should not be prosecuted and should remain in the home. It was only the Police who asked in case conference what the mother's view was (she can no longer cope with him) and the effect on the [redacted]-yr old (very fearful he or his parents will be killed by [redacted] in their sleep). There are two children here and the Police have actually alleged that Mr McVey of Children's Service has tried to mislead them about whether to prosecute firstly in omitting [redacted] comments that [redacted] should be prosecuted from the minutes of the meeting and then writing to DI Fossey saying that CAMHS (ie [redacted]) were of the opinion that prosecution would not be in [redacted] best interest. This is a very serious allegation but the officer (DC Cornelliser) does not see what other interpretation he can put on the facts.

Yet another case earlier this year was [redacted]. He was a convicted sex offender living with a woman [redacted] and her daughter, [redacted] who has equal, if not [redacted] was assessed as having [redacted]. She was 15. [redacted] mother knew [redacted] was a sex offender. She was unable to protect her daughter. [redacted] slept in her daughter's room with the girl. Children's Service knew he was a sex offender living with two people of [redacted]. They did not intervene. [redacted] repeatedly raped [redacted] and even filmed to acts himself. He is now serving [redacted] years. Even after [redacted] arrest Children's Service would not remove [redacted] from her mother's care, not because they didn't appreciate mother's inability to protect her daughter but because they didn't have anywhere to put a child with [redacted]. This continued even after [redacted] tried to contact [redacted] from prison and mother sent him photographs of her.

## Williamson Enquiry

When the enquiry was set up I contacted the Solicitor General and asked whether I should speak to Mr Williamson about the concerns we had had about Children's Service which led to our meeting last year. The SG said that I should do so. I was aware that the Police still had problems with Children's Service and I spoke to DI Fossey who gave me the most recent examples of

I would emphasise that I have no knowledge of the matters relating to the allegations Senator Syvret has made about Greenfields and I feel I have nothing to contribute to that aspect of Mr Williamson's enquiry. However, the enquiry was set up to look at child protection in its widest sense and I felt

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under an obligation to bring the above matters to Mr Williamson's attention, which, with the agreement of the SG, I did last Thursday.



Bridget Shaw

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**MEMORANDUM**

**To: Bridget Shaw**  
**From: Detective Sergeant 671 Fossey**  
**Date: 18<sup>th</sup> April 2006**  
**Ref: Long Term Team, La Chasse**

This report outlines a number of issues which have come to my attention in dealing with the above team of child care officers since taking up the post of Sergeant, FPT in January 2006.

Firstly, there is the case of the [REDACTED] [REDACTED] has a long history with Childrens Service as does [REDACTED]. A chronology of Childrens Service involvement with the family is attached which dates back to 1993. Since 1998 there have also been a number of police investigations (summary attached), mostly into allegations made by [REDACTED]. Only one investigation has resulted in a conviction.

Concerns about this family have been repeatedly expressed to social services over the years, indeed my predecessor Sergeant Underwood called 2 strategy meetings within a short period of time last year in an attempt to urge Childrens Service to take some action. The police service is extremely concerned for the welfare of [REDACTED] who is an extremely vulnerable victim. This is not helped by the fact that we cannot prove any of her allegations or alternatively disprove the veracity of them. Any attempts to urge Childrens Service to take action have been unsuccessful and my recent experience with the team manager Danny Wherry has been similarly unhelpful. During a strategy meeting to discuss the latest allegation made by [REDACTED] that she was having sex with [REDACTED] I made frequent references to the chronology provided by Childrens Service, which Mr Wherry freely admitted not having read. He felt, however, that he could make the decision that

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██████████ was not at risk and if she chose to leave La Preference nothing could be done. He did state that he would seek legal advice on the matter. This amounted to him speaking to a member of staff in the law officer's department who wasn't qualified to give legal advice and told him that he would not be successful in getting an emergency order should he apply. Mr Wherry also expressed opinion at that same strategy meeting that he would need a prosecution before he could act.

Three days prior to this latest allegation made by ██████████ against ██████████ a case conference was held at La Chasse chaired by Mr Wherry. Dc Carter attended and reported that Mr Wherry made it quite clear from the outset that ██████████ name should not be put on the register and that his case must be considered separate from ██████████ who was having a case conference at a later date and would likely go on the register.

This is not the first time Mr Wherry has behaved irregularly at a case conference. Dc Coxshall reported that at a case conference for ██████████ Mr Wherry again in the role of chair made it quite obvious from the start that ██████████ name would be removed from the register.

Other cases involving La Chasse which show little or no action on behalf of Childrens Service are the ██████████ family. Chronology attached. This has finally resulted in an assault being reported to the police and the legal advisor being left in the difficult position of having to decide whether to charge ██████████ for a minor assault after years of abuse.

Both the ██████████ case and the ██████████ case it could be argued are history and beyond rectification. Indeed Kerstee Norris the Child care officer for ██████████ put on her report to the latest case conference that it was not helpful to focus on past allegations or concerns. It is my opinion that these children are extremely vulnerable and that past allegations and concerns are very relevant in protecting these children in the future.

It has become increasingly obvious to myself that the team at La Chasse appear to have no idea how to deal with emergency child protection matters. Frequently reports of assaults on children open to the long term team are not referred to the police until a couple of days after the incident if at all. Obviously this affects the quality of the police response particularly in terms of gathering evidence forensically. A good

DELAY  
in  
reporting

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recent example of their shortcomings in this respect was the [REDACTED] case which involved a baby with a suspected fracture to the skull. This was reported to the Duty Child care officer (David Castledine at la Chasse) by Dr Malpass at 2100hrs on 16<sup>th</sup> March 2006. The police were finally notified at 1300hrs the following day and even then only by chance because the family Child care Officer happened to be speaking to a senior member of the Emergency childcare team who advised her that she should inform the police. This was just the start of the problems with this case which was not helped when the Childrens' service applied for an emergency order and provided the expert's report on the injury to the Law Officers who then disclosed it to the suspects prior to police interview.

Although this report may seem unduly negative it is my opinion that it is simply training that needs to be addressed plus an understanding of the police role in child protection. I have attempted to engage Mr Wherry on this following an incident earlier on this year but he informed me that I would be better meeting with the Emergency childcare team as I would have more dealings with them. I can report I have an excellent relationship with the emergency team and we work very well together and have a good understanding of each others roles.

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**Witness Name: Janet Brotherton**  
**Statement No: First**  
**Exhibits: JB1-JB13**  
**Dated :**

**THE INDEPENDENT JERSEY CARE INQUIRY**

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**EXHIBIT JB6**

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## **Children's Service**

### **Background**

In January 2006 DS (now DI) Alison Fossey assumed responsibility for what is now the Police Public Protection Team (PPU) formerly known as FPT.

DI Fossey began to present us with many more cases for advice than we had previously received from the Police. The number of prosecutions rose accordingly, indeed we have had some very successful prosecutions. However at the same time DI Fossey brought to my attention a number of issues concerning the way in which Children's Service officers were dealing with cases.

These can be summarised as delay in referring matters to the police; heavy reliance on Police to take action in cases where Children's Service should be acting and fail to do so; lack of understanding of Children's Service's primary role in Child Protection; reluctance to apply for Care Orders or Emergency Protection Orders for fear of failing; and poor handling of case conferences

The main issues at the time were with the long term care team who run the Children's Homes, not, I stress, anything to do with Greenfields, nor with any behaviour that could be considered criminal. It appeared to the Police that a number of members of staff did not appreciate the risks to children, did not act when they should to protect children and did not understand the respective roles of the Police and Children's Service.

### **Action by Legal Advisers' Office**

I raised the matter with the Solicitor General and DI Fossey subsequently sent me a report in April 2006 (attached folder 1 together with schedule of investigations and Children's Service chronologies)

My file note and my subsequent report to the Solicitor General outlining my concerns are also attached (folders 2 and 3).

### **Meeting with Police**

On 5<sup>th</sup> June 2006 The SG and I met with DCI Bonjour and DS Fossey to discuss the issues (please see folder 4).

DI Fossey had brought to our attention a number of cases which were symptomatic of the standards apparently applied by Children's Service such as shown by the [REDACTED] family histories.

In many cases little seems to be done by Children's Service to intervene when in view of the Police, Children's Service should act. They rely too much on the Police and seem to think the Police can act when Children's Service can't -

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rather than the other way around due to the different standards of proof. Frequently when a case was referred to the Police, Children's Service would ask what the Police were doing about it rather than taking action themselves. The details are in the attached reports.

There was frequently delay in reporting matters to the Police. A case in which delay could have had fatal consequences was the case of the [redacted] baby (please see report DS Fossey 18.04.06 folder 1) who was taken to A&E with a suspected fractured skull. Doctors were investigating this as a non-accidental injury and the parents were the sole carers and therefore the chief suspects. Children's Service did not inform the Police. The Child was admitted at approximately 17.00 one day and Police were not informed until 13.00 the following day, and then, only by chance. In the meantime the child had been allowed home for the night with her parents. I am not an expert in child care but one only has to apply a modicum of commonsense to realise that the Police should have been informed at once and that the child should have been placed with someone other than her parents until investigations were complete. The next day, not one but two suspicious skull fractures were confirmed.

The second area of concern was that members of the long term care teams did not seem to know what their roles were vis a vis the Police. They seemed to think that it was for the Police to act primarily to protect children. The Police's primary role is to investigate crime. In doing so they work alongside Children's Service but too often Police found Children's Service expected the Police to take action when they themselves did not act. They were reluctant to apply for Emergency Protection Orders or Care Orders, even in cases where children such as the [redacted] children such as [redacted] appeared to be at considerable risk in her own home.

Another area of concern was the conduct of case conferences, which are meetings held between all agencies to decide whether a child should be put onto the Child Protection Register. This categorises children at the highest risk and a plan of intervention is formed. In the [redacted] case the chair of the conference was the parents' former children's service officer who was clearly not impartial. Other concerns specifically surrounded a Manager named Danny Wherry. He would, for example, start the conference by stating that he did /did not intend to put the child on the register. This was not conducive to an open discussion and joint working between the various agencies.

Mr Wherry also told Police that if a Child on the Register was reported as missing, he did not want the Children's Service to be contacted about it out of hours - it could wait until the morning. Children are put on the register if they are thought to be at very high risk. One would have thought that Children's Service would be just the people the Police need to speak to in order to help find a very vulnerable child late at night.

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## Meeting with Children's Service

The SG and I met with Marnie Baudins and Tony Le Sueur, (a Children's Service manager). They accepted that Case Conferences were not always handled well and said they were short of people in the Island qualified to chair them (something Marnie is working to improve).

As far as the long term cases were concerned, they effectively said that the chronologies we saw reflected only part of the work that went on but admitted that cost was a factor in dealing with such families, they thought they would never get care orders as the bar is set too high and even if they applied, they would have to show that the care home was better than the family home, which wasn't necessarily the case as they would struggle to place such children.

We were told that incidents such as the [redacted] baby case should not have happened and were exceptional.

We also brought up the case of [redacted] which came to light in [redacted] [redacted] was convicted of sexual offences against girls (aged 12/13) and sentenced to three years imprisonment. Before he was released he underwent a RAMAS assessment which assesses a person's risk of committing further serious offences. He was deemed to be at high risk. He also expressed his intention to return to live with his partner. This woman did not accept that he remained a risk ('He has paid his debt to society etc'). She had an 11 year old daughter. Clearly, the mother was in no position to protect her daughter if she did not accept that he posed a risk of offending. Children's Service did not intervene to protect the girl.

Two years later, the almost inevitable disclosure was made to the Police that [redacted] had been indecently assaulting [redacted] from the moment he came home. This was a tragedy which could have been avoided. [redacted] is now serving another prison sentence. Children's Service said they were not able to establish that he was actually living at the partner's address and denied it when challenged.

Overall they believed they were doing a good job but that they felt unable to apply for Court orders to take children into care as the standards set by the Court were very high and applications even in such cases as [redacted] were likely to fail. The driving factor behind these decisions seems too often to be whether Children's Service have suitable accommodation for the child rather than whether the child is at risk of harm if he or she stays in the home.

I still find this hard to understand particularly as I successfully prosecuted [redacted] mother for neglect when she admitted allowing a known sex offender into her home on a daily basis and watched him indecently assault

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██████████ on two occasions with out intervening. When parents cannot or will not protect a child surely the state has a duty to act.

## **The Present Position**

The view of the Police is nothing has improved since our meeting with Children's Service. Indeed things have deteriorated as the problems were formerly to do with the long term care team and response from the emergency team had been good. Since then some members of the emergency team have left and things have not improved.

Delays in reporting matters to the Police and questionable judgement issues remain.

## **Delays**

The delay in the ██████████ case was clearly not an exception. There have been many instances in which there has been delay in informing the Police. A glaring example is the case ██████████ (folder 5). I no longer have the full file but I enclose copies of the documents showing a referral from Health to Children's Service on 10.10.07.

██████████ was a young single mother with a disturbed background. On 10.10.07 she informed psychiatric nurse ██████████ that she had tried to kill her ██████████ old baby by smothering him. She stopped in time. However, she felt that the baby was better off without her but as she did not want anyone else to have the child it would be better for him to die.

The documents show that ██████████ informed Children's Service at once. However, Children's Service did not inform the Police until 4 weeks later. In the meantime Children's Service had agreed with ██████████ that her father should care for the baby but they did not tell him what had happened. The grandfather was therefore not in a position properly to protect the child as he did not know either that the child was at risk or what that risk was. The Grandfather in fact took the baby with him on a visit to UK where ██████████ joined them. No authorities in UK had any idea that the child was at risk. Police were only informed 4 weeks after ██████████ when the family returned to Jersey. One can only conclude that in this case there was an abject failure to follow basic procedures and in my view the child must have been put at risk by those failures.

## **Poor Judgment**

Another recent example of what is wrong in Children's Service is the case of ██████████ (folder 6). The letter on file is from ██████████ a senior manager. The letter is self explanatory. The children were at so much risk that they were put on the Register in December 2006. By June 2007 Children's Service had had no intervention in the family, and had not even completed a core assessment as mother would not co-operate. The suggestion then, is that the children should come off the register! Surely mother's refusal to let



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Children's Service into the house and refusal to co operate is all the more reason for concern for these children, not less. DI Fossey's reply is also attached.

Another example is the case of [redacted] (folder 7). This was brought to my attention last week. [redacted] has been fostered by a family since the age of [redacted]. He is now, around [redacted]. He has severe psychiatric problems. Recently he tried to strangle the [redacted] year old son of his foster parents. Children's Service seem only able to focus on what they think is best for [redacted] are ignoring the need to protect the [redacted] yr old in the family. They are adamant that [redacted] should not be prosecuted and should remain in the home. It was only the Police who asked in case conference what the mother's view was (she can no longer cope with him) and the effect on the [redacted] yr old (very fearful he or his parents will be killed by [redacted] in their sleep). There are two children here and the Police have actually alleged that Mr McVey of Children's Service has tried to mislead them about whether to prosecute firstly in omitting [redacted] comments that [redacted] should be prosecuted from the minutes of the meeting and their writing to DI Fossey saying that CAMHS (ie [redacted]) were of the opinion that prosecution would not be in [redacted] best interest. This is a very serious allegation but the officer (DC Comellisen) does not see what other interpretation he can put on the facts.

Yet another case earlier this year was [redacted]. He was a convicted sex offender living with a woman [redacted] and her daughter, [redacted], who has equal, if not [redacted] was assessed as having [redacted]. She was 15 [redacted] mother knew [redacted] was a sex offender. She was unable to protect her daughter. [redacted] slept in her daughter's room with the girl. Children's Service knew he was a sex offender living with two people of [redacted]. They did not intervene. [redacted] repeatedly raped [redacted] and even filmed to acts himself. He is now serving [redacted] years. Even after [redacted] arrest Children's Service would not remove [redacted] from her mother's care, not because they didn't appreciate mother's inability to protect her daughter but because they didn't have anywhere to put a child with [redacted]. This continued even after [redacted] tried to contact [redacted] from prison and mother sent him photographs of her.

## Williamson Enquiry

When the enquiry was set up I contacted the Solicitor General and asked whether I should speak to Mr Williamson about the concerns we had had about Children's Service which led to our meeting last year. The SG said that I should do ~~not~~ was aware that the Police still had problems with Children's Service and I spoke to DI Fossey who gave me the most recent examples of [redacted]

I would emphasise that I have no knowledge of the matters relating to the allegations Senator Syvret has made about Greenfields and I feel I have nothing to contribute to that aspect of Mr Williamson's enquiry. However, the enquiry was set up to look at child protection in its widest sense and I felt

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under an obligation to bring the above matters to Mr Williamson's attention, which, with the agreement of the SG, I did last Thursday.



Bridget Shaw

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Chronologies we saw reflected only part of the work that went on but admitted that cost was a factor in dealing with such families, they thought they would never get care orders as the bar is set too high and even if they applied, they would have to show that the care home was better than the family home, which wasn't necessarily the case as they would struggle to place such children.

We were told that incidents such as the Carson baby case should not have happened and were exceptional.

We also brought up the case of [redacted] which came to light in May 2006. [redacted] was convicted of sexual offences against girls (aged 12/13) and sentenced to three years imprisonment. Before he was released he underwent a RAMAS assessment which assesses a person's risk of committing further serious offences. He was deemed to be at high risk. He also expressed his intention to return to live with his partner. This woman did not accept that he remained a risk ('He has paid his debt to society etc'). She had an 11 year old daughter. Clearly, the mother was in no position to protect her daughter if she did not accept that he posed a risk of offending. Children's Service did not intervene to protect the girl.

Two years later, the almost inevitable disclosure was made to the Police that had been indecently assaulting the daughter from the moment he came home. This was a tragedy which could have been avoided. [redacted] is now serving another prison sentence. Children's Service said they were not

[REDACTED]

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**From:** Jersey Care Inquiry <info@jerseycareinquiry.org>  
**Sent:** 16 October 2015 13:32  
**To:** [REDACTED]  
**Cc:** Emma Martins (e.martins@dataci.org)  
**Subject:** RE: FAO Angharad Shurmer - Day 86 documents [REDACTED]

Dear [REDACTED],

Thank you for your e-mail. I can confirm that these documents have been removed from the website.

Kind regards,

Angharad

**From:** [REDACTED]  
**Sent:** 16 October 2015 13:23  
**To:** Jersey Care Inquiry  
**Cc:** Emma Martins (e.martins@dataci.org); [REDACTED]  
**Subject:** RE: FAO Angharad Shurmer - Day 86 documents [REDACTED]  
**Importance:** High

Dear Angharad

I write further to our email exchange of earlier this week.

It is apparent that the Memo from Bridget Shaw dated 18<sup>th</sup> April 2006 which contained the inappropriate redactions in the Day 67 documents also appears in the documents for Day 86 (please see **attached**)  
<http://www.jerseycareinquiry.org/Transcripts/Day%2086%20Documents%20Optimised.pdf>. I should be grateful if you would similarly remove the documents for Day 86 immediately from the website and confirm that this has been done.

Yours sincerely,

[REDACTED]

Appleby, Jersey Office  
Tel: +44 (0)1534 [REDACTED]  
applebyglobal.com

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[REDACTED]

---

**From:**

**Sent:**

[REDACTED]  
16 October 2015 13:42

**To:**

'Jersey Care Inquiry'

**Cc:**

Emma Martins (e.martins@dataci.org); [REDACTED]

**Subject:**

RE: FAO Angharad Shurmer - Day 86 documents [REDACTED]

**Attachments:**

RE: FAO Angharad Shurmer - Day 86 documents [REDACTED]

Thank you for that confirmation.

With kind regards,

Yours sincerely,

[REDACTED]

[REDACTED]  
Appleby, Jersey Office

Tel: +44 (0)1534 [REDACTED]

applebyglobal.com

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[REDACTED]

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**From:** Jersey Care Inquiry <[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)>  
**Sent:** 19 October 2015 19:57  
**To:** [REDACTED]  
**Cc:** [e.martins@dataci.org](mailto:e.martins@dataci.org)  
**Subject:** UCI - Correspondence  
**Attachments:** document.pdf

Dear Sirs,

Please see attached correspondence.

Yours faithfully,

Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

 **Independent  
Jersey Care  
Inquiry**

# Independent Jersey Care Inquiry

Apppleby  
PO Box 207  
13-14 Esplanade  
St Helier  
Jersey  
JE1 1BD

By e-mail only: [e.martins@datacl.org](mailto:e.martins@datacl.org)

19 October 2015

Dear Sirs

## Independent Jersey Care Inquiry (the "Inquiry")

We write further to your telephone call of 13 October 2015 and emails of 13 and 16 October 2015 concerning an issue you had raised, on behalf of the Data Commissioner, in respect of a document related to Days 67 and 86 of the Inquiry's proceedings, whereby yellow highlighting could be removed from the document available on the Inquiry's website.

Thank you very much for drawing this to our attention. We would like to reassure your client that we are taking this issue very seriously; upon receipt of your correspondence, the document was immediately removed from the Inquiry's website and the issue has been, and continues to be, investigated (as confirmed in our e-mails of 13 October 2015 timed at 15:19 and 16 October 2015 timed at 13:32).

The affected document in question has a document identification reference (used by the Inquiry and its Interested Parties) of WD005327, which is derived from Magnum - this being the document management system that the Inquiry is using for its work. For ease, we will use this reference throughout the correspondence.

We understand that in respect of document WD005327, when the document is downloaded from the Inquiry's website, is saved and reopened in Adobe, the yellow opaque boxes in the document, which act to obscure data, can be deleted and data underneath those boxes revealed.

Our investigations have revealed the following:

- The document was supplied to us by the Law Officers' Department with transparent yellow highlighting, which revealed the text behind that highlighting. However, upon uploading the document to Magnum, because of the 'layering' of the document, the highlighting became opaque yellow and the data underneath

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0800 735 0100  
International callers:  
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[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

# Independent Jersey Care Inquiry

was not visible. This appeared to be an anomaly as the majority of documents provided by the Law Officers' Department were not 'layered' in the same way.

- When the document was subsequently redacted, the opaque yellow boxes acted as a form of redaction and the Inquiry team left these boxes in place and redacted around this information. Unfortunately, due to a technical issue with the systems, when the redline boxes (which are created when a document is being redacted) abutted a yellow opaque box in the document, at the point that these redline boxes were 'burnt' (i.e. applied as blacked out redactions), the abutted yellow opaque boxes disappeared completely revealing the data underneath. This was the first time that the Inquiry and Opus (who are the company that manage Magnum) had come across this as an issue. The matter was immediately rectified and redactions were applied to the document where the yellow opaque boxes had disappeared. We believe that this is the issue [REDACTED] was referring to during her conversation with Angharad Shurmer on Tuesday, 13 October 2015, that [REDACTED] had previously informed the Inquiry of.
- It was agreed going forwards that if the Inquiry came across a document containing yellow opaque boxes and the document required redacting, Opus would need to 'flatten' the document, which would remove the 'layering' and thereby ensure that the yellow boxes appeared transparent. This would ensure that there was never a risk of a red box inadvertently removing an opaque box going forward.
- This issue in April only related to circumstances where redline boxes abutted the opaque yellow boxes. The remaining opaque yellow boxes remained in situ and acted as a form of redaction, albeit that the boxes were yellow, rather than black. As a result of this understanding, document WD005327 was not flattened in April (as per Opus' solution above) as the Inquiry believed that the redactions required had all been made and were not aware that the yellow opaque boxes which still remained in the document posed a further (but different) problem. This meant that document WD005327 was 'over-redacted' - i.e. that the yellow opaque boxes were covering up information which the team may not have actually redacted. It was thought that there was no risk as these words were hidden by the opaque boxes and could not be edited by anyone else.
- However, our recent investigations have revealed that these yellow boxes are editable outside of the Inquiry team, i.e. the Interested Parties can export the documents and delete the opaque yellow boxes if they wish and the documents can be downloaded into Adobe Acrobat and edited in the same way. Whilst the Inquiry was able to export and edit documents itself (which included being able to remove the opaque yellow boxes), neither the Inquiry nor Opus were aware that documents could be exported by the Interested Parties and edited in the same way. Similarly, the Inquiry was not aware that documents could be downloaded from the website and edited in Adobe Acrobat. As far as the Inquiry was concerned, the website only contained an 'image' of a document, rather than the document itself, which is contained on Magnum. For example, the hyperlinks

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PO Box 551, St Helier, Jersey, JE4 BXN

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## Independent Jersey Care Inquiry

contained in the transcripts which are uploaded to the website do not work, as they cannot be linked back to original documents on Magnum.

- Neither Eversheds nor Opus were aware that this was technically possible and no similar issue has arisen during the Inquiry's work to date. Opus has also informed us that they have not seen this in other cases they have dealt with and they would have informed the Inquiry if this had been the case.

We apologise if the explanation above is somewhat technical and it may be difficult to follow. Therefore please let me know if it would be useful to discuss this on the telephone.

As a result of our investigations, we can confirm that document WD005327 has been removed from the Interested Party replica in Magnum and the Inquiry's website. The document will be 'flattened' and the document re-redacted to ensure that all redactions appear in black and are therefore un-editable by anyone.

In addition, we are in the process of conducting a review of all documents on the website and the Interested Party replica to see if this issue affects other documents. The Inquiry team have also been fully briefed about this issue.

As can be seen, the issue that has arisen is very much a technical one and we thank you for bringing it to our attention, as it was not one that was foreseen either by the Inquiry or Opus. We can also confirm that the Data Commissioner is the only person to have raised this issue with the Inquiry. No contact has been made by any Interested Party or Document Provider.

If you do have any other concerns now or in the future, please do draw these to our attention as the Inquiry wishes to ensure that all possible steps are taken to protect data and we are unaware of any other potential issues.

Yours faithfully

*Eversheds LLP*

**Eversheds LLP**  
**Solicitors to the Inquiry**

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828784

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

**Independent Jersey Care Inquiry**  
PO Box 551  
St Helier  
Jersey  
JE4 8XN

20 October 2015

Dear Mrs Oldham

**Independent Jersey Care Inquiry (the "Inquiry")**

**Data Protection (Jersey) Law 2005 (the "DPL")**

I write in relation to the above and, more particularly, further to my letter to you of even date (which you will have received separately) regarding the day 67 documents.

It appears that there are certain other documents on your website which may not have received adequate attention during the redaction and uploading process and which I draw to your attention as follows:

<b>Day</b>	<b>Issue</b>
17.	Comment boxes remain at pages 46, 62 and 69
19.	A comment box remains at page 75
24.	A comment box remains at page 274
31.	Page 98 contains removable redactions
36.	Pages 94 and 100 contain removable yellow highlights
51.	A comment box remains at page 89
57.	Pages 57 and 100 contain removable yellow highlights
60.	Page 41 has a red outline around text - should this name have been redacted?
61.	Pages 71 and 275 contain removable yellow highlights
91.	Pages 138 and 193 contain removable yellow highlights
92.	Pages 116 and 117 contain removable yellow highlights
95.	Pages 674 and 675 contain removable yellow redactions

I also enclose copies of those documents for your ease of reference and I look forward to hearing from you with an explanation regarding each of the documents identified.

Yours sincerely

Mrs Emma Martins  
**Information Commissioner**

*Encs*

**RESTRICTED**  
DOCUMENT RECORD PRINT

**Officer's Report**

<b>TO:</b>	<b>SID</b>	<b>Number</b>	██████████
<b>STN/DEPT</b>	Operation Rectangle	<b>REF</b>	
<b>FROM:</b>	<b>DC KING, DUNCAN</b>	<b>REF:</b>	
<b>STN/DEPT:</b>	Historic Abuse Team	<b>TEL/EXT:</b>	
<b>SUBJECT:</b>	Operation Rectangle	<b>DATE:</b>	07/08/2008

**TITLE:**  
 PURN check shows ██████████, PURN ██████████, shows indecent assault on boy aged 13, 2 accounts on 25/02/1961 (sheet attached) shows dealt with at Jersey court, bound over 3 years and conditions to leave the island. No details of victims shown. No details on CIS.

██████████ contacted no files held with Jersey Police re ██████████ no other details available.

██████████ check shows ██████████, 1 x offence in 1985 of gross indecency, dealt with at Plymouth Court. No details on PNC of Jersey offence. (PNC attached)

Microfisch request made 29/07 08, request returned 30/07/08 only offence on Microfisch is the 1985 offence Plymouth which states "in a cubicle of a public lavatory, placed his arm under a partition wall and masturbated the occupant of the adjoining cubicle." (Records attached). No details on Microfisch of Jersey offence.

Jersey Archive contacted who have a copy of a report re the indecent assault by ██████████ reported dated 31 Jan 1961, written by Ralph Edward Bishop VOISIN Esq, Police Magistrate, photocopy of report attached.

Report names the victim as ██████████, aged 14 years in 1961.

Checks on ██████████ show ██████████ 1947, PURN various offences mainly motoring and drunk and incapable, last offence 2004, last address 2004 ██████████ shelters.

Duncan KING DC 236

**RESTRICTED**  
DOCUMENT RECORD PRINT

**Officer's Report**

TO:	SIO	Number	██████████
STN/DEPT	Operation Rectangle	REF	
FROM:	DC KING, DUNCAN	REF	
STN/DEPT:	Historic Abuse Team	TEL/EXT:	
SUBJECT:	Operation Rectangle	DATE:	07/08/2008

**TITLE:**

**PURN check shows** ██████████ **PURN** , shows indecent assault on boy aged 13. 2 accounts on 25/02/1961 (sheet attached) shows dealt with at Jersey court, bound over 3 years and conditions to leave the island. No details of victims shown. No details on CIS

██████████ contacted no files held with Jersey Police re ██████████ no other details available.

**PNC check shows** ██████████ , 1 x offence in 1985 of gross indecency, dealt with at Plymouth Court. No details on PNC of Jersey offence (PNC attached)

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**Checks on PURN show** ██████████ 1947, PURN various offences mainly motoring and drunk and incapable, last offence 2004, last address 2004 ██████████ shelters.

Duncan KING DC 236

**RESTRICTED**

July 26 pg 1001914  
①

10501

**RESTRICTED**

Statement of: [REDACTED]

Form MG11(T)  
Page 2 of 6

Date:      Signed

[REDACTED]

1. I am making this statement of my own free will. During this statement I will describe certain events that happened to me. I have not given any names or identified any places that are not purely within my own knowledge. The police have not forced me to say anything I don't want to say or did not know before the police spoke with me.

2. I was born in Jersey on [REDACTED] 1953 to [REDACTED] and [REDACTED] and am the oldest of [REDACTED] children; the others are [REDACTED].

3. I was diagnosed as suffering from [REDACTED] at the age of 9yrs and used to suffer from reasonably [REDACTED]. I was also quite argumentative with my parents so as result of this my psychologist at the time (Dr COLLINS) advised my parents that it might be an idea for me to go to the Haut de la Garenne children's home for a period of one year. I'm not sure what the thinking was behind this or how it was supposed to benefit me but I was taken around the home prior to my starting there.

4. I remember [REDACTED] TILBROOK showing me around and pointing out which dormitory I would be sleeping in. My initial thoughts of the place were that it was quite cold and I didn't like it.

5. I started at the Haut de la Garenne in 1966 when I was 13yrs old; I don't remember the exact date. [REDACTED] TILBROOK were in charge and my house parents were the [REDACTED] (whose first names I can't remember but the female may have been a [REDACTED]). The only other member of staff I remember is one called Mr HAMAN who helped out when the [REDACTED] had a day off; he was nice and I liked it when he was there. I remember he used to work for the [REDACTED] or something like that.

6. [REDACTED] TILBROOK didn't have much to do with me on a daily basis but I remember [REDACTED] as being very cold [REDACTED], there was no warmth [REDACTED].

7. Mr [REDACTED] WILLIAMS made me so nervous that I used to confuse their names by accident; I'd call Mr Williams [REDACTED] and vice versa. This wasn't deliberate on my part, it just happened when I

Signature: [REDACTED]  
2010/11

Signature witnessed by: DC HARVEY

**RESTRICTED**

**RESTRICTED**

Statement of: [REDACTED]

Form MG11(T)  
Page 2 of 6

Date:      Signed

[REDACTED]

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Signature: [REDACTED]  
2010/11

Signature witnessed by: DC HARVEY

**RESTRICTED**

RESTRICTED

Statement of: [REDACTED]

Form MG11(T)  
Page 2 of 6

Date:      Signed

[REDACTED]

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Signature: [REDACTED]  
2010/11

Signature witnessed by: DC HARVEY

RESTRICTED

Day 36 PG 100  
②

10501

**RESTRICTED**

Statement of: [REDACTED]

Form MG11(T)  
Page 2 of 6

Date: Signed

[REDACTED]

1. I am making this statement of my own free will. During this statement I will describe certain events that happened to me. I have not given any names or identified any places that are not purely within my own knowledge. The police have not forced me to say anything I don't want to say or did not know before the police spoke with me.

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Signature: [REDACTED]  
2010/11

Signature witnessed by: DC HARVEY

**RESTRICTED**



**RESTRICTED**  
DOCUMENT RECORD PRINT

**Officer's Report**

TO: SIO  
STN/DEPT: OPERATION RECTANGLE  
FROM: SUPP HARRIES, HOWARD  
STN/DEPT: OPERATION RECTANGLE  
SUBJECT: A3041 INTERVIEW [REDACTED] OVER ALLEGATIONS  
Number REF: R58AG  
REF: TELEXT:  
DATE: 10/01/2009  
TITLE:

Sir,

1. On 25th August 2008, [REDACTED] made a complaint against [REDACTED], a [REDACTED] at Les Chenes, of a number of sexual assaults. This complaint was contained within a statement dated that day and followed interview of [REDACTED] by D/C's NEWMAN and EVANS of Operation Rectangle. [REDACTED] was the [REDACTED] at the time of the assaults and [REDACTED] stated that [REDACTED] was in the habit of coming up behind him and grabbing his testicles- "he used to do this a lot". He mentions one set of circumstances in particular when he and [REDACTED] "were trying to climb up the fencing at Les Chenes to get away and [REDACTED] grabbed us by the balls to pull us back down. [REDACTED] reported it to the police. I think it was investigated by Brian CARTER ". [REDACTED] also mentions inappropriate behaviour displayed by [REDACTED] in that it is alleged that he and [REDACTED] were invited to do a "bit of gym" with him and whilst changing he saw that when [REDACTED] took his trousers off to put his shorts on, he could see that [REDACTED] was not wearing underneath and that he could see his penis- "told him that we didn't want to be seeing him half naked".

2. In 2003, similar allegations were made against [REDACTED] by [REDACTED], (close friends of [REDACTED]) which were investigated by Brian CARTER and reported on on 2.7.2003. The file was vetted by the Police Legal Advisors who made the decision of 'No Further Action'. (copy file attached)

3. In 2003 [REDACTED] did not report the allegations of indecent assaults although he was aware that Brian CARTER was in the process of investigating the [REDACTED] identical complaint and in so doing, was at Les Chenes on a daily basis interviewing both residents and staff. I have spoken to Brian CARTER who remembers that [REDACTED] only mentioned that he had gone to the toilet and seen [REDACTED] naked in the shower making no attempt to cover himself up. When [REDACTED] was interviewed in 2003 he confirmed that he had been taking a shower when [REDACTED] had suddenly come and that he had turned his back to him not to expose himself. He also stated that [REDACTED] had come back after using the toilet, to throw water at him.

4. Neither in 2003 or 20008 when [REDACTED] made a statement about his time at Les Chenes, does he make any mention about the incident involving [REDACTED] and himself seeing [REDACTED]'s penis whilst in the changing room.

5. In his report of 2.7.2003, Brian CARTER points to [REDACTED]'s good character and experience as opposed to the background and criminal propensities of the complainant in this case. He also points out the fact that [REDACTED] at this time had not been trained in restraint techniques and that he was

**RESTRICTED**  
DOCUMENT RECORD PRINT

**Officer's Report**

TO: SIO  
STN/DEPT: OPERATION RECTANGLE  
Number: R58AG  
REF:

FROM: SUPP HARRIES, HOWARD  
STN/DEPT: OPERATION RECTANGLE  
REF:  
TEL/EXT:

SUBJECT: A3041 INTERVIEW [REDACTED] OVER  
ALLEGATIONS DATE: 10/01/2009

TITLE:

Sir,

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**RESTRICTED**

**RESTRICTED**  
DOCUMENT RECORD PRINT

**Officer's Report**

TO:	S.I.O.	Number
STN/DEPT:	OPERATION RECTANGLE	REF:
FROM:	DC JACKSON, JULIE	REF:
STN/DEPT:		TEL/EXT:
SUBJECT:		DATE: 01/12/2008

TITLE:

Sir,

The above action relates to the tracing and interviewing of [REDACTED] whose personal details are as follows;

DOB - [REDACTED] 1970

ADD - [REDACTED]

TEL - [REDACTED]

PURN -

CIS -

PNC ID - N/T

CRO - N/T

CLUE - requested. To be carried out at a later date.

I spoke with [REDACTED] via telephone on Friday 28<sup>th</sup> November 2008. He informed me that he is employed at Greenfields as a [REDACTED] and has been since November 2003. [REDACTED] is [REDACTED] current [REDACTED] and [REDACTED] is the [REDACTED] of [REDACTED] [REDACTED] Greenfields when [REDACTED] first started working there. Prior to his employment commencing, a specialist team from the UK were employed at Greenfields in order to control the residents as their behaviour was unruly, e.g. throwing televisions out of windows etc...

During his first month at Greenfields, residents were placed in secure cells, which only contained a mattress, if they were a danger to themselves or others. [REDACTED] stated that during that first month, he placed some residents in the secure cells upon instruction but only for the reasons outlined above. The residents would remain in the secure cells until their behaviour improved, however, this would be no longer than 3 - 4 days. The longest he can recall a resident having been in a cell, was 4 days. He can not recall who that resident was.

[REDACTED] introduced the Grand Prix system which [REDACTED] carried out. He describes the Grand Prix as sounding harsh on paper but in reality it was a better system which the residents made no complaints about. If a resident was displaying bad behaviour, they would be placed in a cell for 3



Day 61 Pg 71 ①

13062

**RESTRICTED**  
DOCUMENT RECORD PRINT

**Officer's Report**

TO:	SIO	Number	[REDACTED]
STN/DEPT:	OPERATION RECTANGLE	REF:	
FROM:	DC JACKSON, JULIE	REF:	
STN/DEPT:	HISTORICAL ABUSE TEAM	TEL/EXT:	
SUBJECT:	[REDACTED]	DATE:	05/02/2009

TITLE:

Sir,

The above action relates to the tracing and interviewing of [REDACTED] inquiries reveal this lady to be [REDACTED] personal details are as follows;

DOB - [REDACTED] 1929

ADD - [REDACTED]

**PURN -**

CIS - N/T

PNC ID - N/T

CRO - N/T

CLUE -- to be carried out at a later date.

[REDACTED] used to work at Les Chenes as a [REDACTED] whereby the residents and staff referred to her as [REDACTED] as her surname at that time was [REDACTED]. She worked there for 10 - 11 years starting in 1978. She described [REDACTED] as fair and kind towards the residents and that he was always there for them. She described Mario LUNDY (N538) as a smashing bloke. At no time did she witness any form of abuse and she stated that she couldn't express that strongly enough.

She stated that she had spoken with an ex resident not long ago called [REDACTED] who is known within the enquiry as [REDACTED]. [REDACTED] told her that a girl named [REDACTED] had called a meeting between some ex residents of Les Chenes but they didn't want to know. [REDACTED] also told her that [REDACTED] had [REDACTED] her story to a [REDACTED] as she was trying to [REDACTED] out of it.

Due to this, I contacted [REDACTED] by telephone. She described [REDACTED] who she confirmed as [REDACTED] as a 'bit of a coot'. She stated that it was only through hearsay that she had

**RESTRICTED**

July 6, 2014 (2)

13062

**RESTRICTED**  
DOCUMENT RECORD PRINT

**Officer's Report**

TO:	SIO	Number	[REDACTED]
STN/DEPT:	OPERATION RECTANGLE	REF:	
FROM	DC JACKSON, JULIE	REF	
STN/DEPT:	HISTORICAL ABUSE TEAM	TEL/EXT:	
SUBJECT:	[REDACTED]	DATE:	05/02/2009

TITLE: \_\_\_\_\_

Sir,

The above action relates to the tracing and interviewing of [REDACTED] Enquiries reveal this lady to be [REDACTED] personal details are as follows;

DOB - [REDACTED] 1929

ADD - [REDACTED]

[REDACTED]

**PURN -**

CIS - N/T

PNC ID - N/T

CRO - N/T

CLUE - to be carried out at a later date.

[REDACTED] used to work at Les Chenes as a [REDACTED] whereby the residents and staff referred to her as [REDACTED] as her surname at that time was [REDACTED] She worked there for 10-11 years starting in 1978. She described [REDACTED] as fair and kind towards the residents and that he was always there for them. She described Mario LUNDY (N538) as a smashing bloke. At no time did she witness any form of abuse and she stated that she couldn't express that strongly enough.

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**RESTRICTED**

**RESTRICTED**

**ACTION RECORD PRINT**

Action No: [REDACTED] Priority: Low  
Title: RESEARCH [REDACTED] 753 OR SIMILAR; [REDACTED] WHO WAS A [REDACTED]

Text:  
Research [REDACTED] 753 (or similar [REDACTED] who was a [REDACTED] at HEATHFIELD Childrens Centre and who according to [REDACTED] admitted having sex with one of the residents there, believed to be called [REDACTED] 752  
[REDACTED] apparently admitted the offence and was dismissed, believed childrens office did not involve the Police.  
UPDATED on 22/08/2008  
Update from [REDACTED] correct name is [REDACTED] 753 - [REDACTED] states rumours about her and [REDACTED] were not true.

Allocated To: DAVIDSON SUPP

Originating Document No: [REDACTED]  
Originating Details:

Associated Documents:  
Linked Actions: [REDACTED]  
Attachments:

Result of Action (Please write clearly)  
PARTIALLY RESULTED on 27/09/2008  
[REDACTED] has been interviewed via [REDACTED] and denies that the above happened. He has been identified as [REDACTED] b [REDACTED] 1967. LKA in 2004 is [REDACTED] tel: [REDACTED]  
I have requested his personal file from SSD and am awaiting that so it's contents can be reviewed.  
Please reallocate to me for this to be done.  
RESULTED on 02/12/2008  
A personal file has been received however, this covers employment from 01/06/2002 to 12/11/2002 only. [REDACTED] made enquiries of Officers behalf at the Childrens Services however, no other file could be found.  
In view of [REDACTED] making no allegations against him, suggest this could be filed no further action.  
FILED on 20/06/2009  
Recorded By:

**RESTRICTED**

**RESTRICTED**

**ACTION RECORD PRINT**

Action No.: [REDACTED] Priority: Low  
Title: RESEARCH [REDACTED] (OR SIMILAR) [REDACTED] WHO WAS A

**Text:**  
Research [REDACTED] (or similar [REDACTED] who was a [REDACTED] at HEATHFIELD Childrens Centre and who according to [REDACTED] admitted having sex with one of the residents there, believed to be called [REDACTED].  
[REDACTED] apparently admitted the offence and was dismissed, believed childrens office did not involve the Police.  
**UPDATED on 22/08/2008**  
Update from [REDACTED] correct name is [REDACTED] states rumours about her and [REDACTED] were not true.

**Allocated To:** DAVIDSON SUPP

**Originating Document No:** [REDACTED]  
**Originating Details:**

**Associated Documents:**  
**Linked Actions:** [REDACTED]  
**Attachments:**

**Result of Action (Please write clearly)**  
**PARTIALLY RESULTED on 27/09/2008**  
[REDACTED] has been interviewed via [REDACTED] and denies that the above happened. He has been identified as [REDACTED] b [REDACTED] 1967, LKA in 2004 is [REDACTED], tel: [REDACTED].  
I have requested his personal file from SSD and am awaiting that so it's contents can be reviewed.  
Please reallocate to me for this to be done.  
**RESULTED on 02/12/2008**  
A personal file has been received however, this covers employment from 01/06/2002 to 12/11/2002 only. [REDACTED] made enquiries of Officers behalf at the Childrens Services however, no other file could be found.  
In view of [REDACTED] making no allegations against him, suggest this could be filed no further action.  
**FILED on 20/05/2009**  
**Recorded By:**



Day 9/1pg 135  
①

**MEMORANDUM**

To: DS R. Pryke  
C.P.T.

From: A/Insp. B. Faudemer  
Operational Support Unit

Ref: BF/AE/MEMOS/CN1

Date: 21st May, 1997

**RE: JANE MAGUIRE AND ALAN MAGUIRE**

I have received a 'phone call from Marnie Baudains, concerning the following case, which I bring to your attention. The Children's Office did not liaise directly with C.P.T., as they were fully committed on other enquiries at the time and of course you were out of the Island.

At 12.30 hours on 20th May, 1997, CCO Baudains contacted me and reported suspected child abuse on the part of a Children's Office Employee, namely Jane Maguire. The suspect's husband, Alan Maguire, who is terminally ill, was also suspect of historical sexual abuse. Mr. and Mrs. Maguire were in charge of the Blanche Pierre Children's Home, which closed some 7 to 8 years ago. I am led to believe that Blanche Pierre was run as a family home, with up to 5 youngsters resident on the premises. The Children's Office have harboured suspicions about Mr. and Mrs. Maguire for some considerable time, but no children have come forward to make definite complaints of abuse. Rumours have been in circulation concerning the treatment of children under the care of both persons. Children who passed through the home would now be adults. I am led to believe that Mrs. Maguire received a threatening letter from an ex-resident and she reported the matter to the Police, namely PC Mark De Ste George. A copy of the letter was forwarded to C.P.T. The Children's Office have requested a formal investigation into the conduct of Mr. and Mrs. Maguire.

The Children's Office believe that there is a strong possibility that a significant volume of abuse will be unearthed during the course of this enquiry.

  
A/Inspector  
Operational Support Unit

Day 91 PG 138  
②

**MEMORANDUM**

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The Children's Office believe that there is a strong possibility that a significant volume of abuse will be unearthed during the course of this enquiry.

  
A/Inspector  
Operational Support Unit

The view of the Police is nothing has improved since our meeting with Children's Service. Indeed things have deteriorated as the problems were formerly to do with the long term care team and response from the emergency team had been good. Since then some members of the emergency team have left and things have not improved.

Delays in reporting matters to the Police and questionable judgement issues remain.

#### Delays

The delay in the [Family 4] case was clearly not an exception. There have been many instances in which there has been delay in informing the Police. A glaring example is the case [Child, Family 6] (folder 5). I no longer have the full file but I enclose copies of the documents showing a referral from Health to Children's Service on [Date excised.]

[Mother, Family 6] was a young single mother with a disturbed background. On [Date excised] she informed psychiatric nurse [Nurse A] that she had tried to kill her [Age excised] old baby by smothering him. She stopped in time. However, she felt that the baby was better off without her but as she did not want anyone else to have the child it would be better for him to die.

The documents show that [Nurse A] informed Children's Service at once. However, Children's Service did not inform the Police until 4 weeks later. In the meantime Children's Service had agreed with [Mother, Family 6] that her father should care for the baby but they did not tell him what had happened. The grandfather was therefore not in a position properly to protect the child as he did not know either that the child was at risk or what that risk was. The Grandfather in fact took the baby with him on a visit to UK where [Mother, Family 6] joined them. No authorities in UK had any idea that the Child was at risk. Police were only informed 4 weeks after [Date excised] when the family returned to Jersey. One can only conclude that in this case there was an abject failure to follow basic procedures and in my view, the Child must have been put at risk by those failures.

#### Poor Judgment

Another recent example of what is wrong in Children's Service is the case of the [Family 7] (folder 6). The letter on file is from Linda Dodds, a senior manager. The letter is self explanatory. The children were at so much risk that they were put on the Register in [Date excised] 2006. By [Date excised] 2007 Children's Service had had no intervention in the family, and had not even completed a core assessment as mother would not co-operate. The suggestion then, is that the children should come off the register! Surely mother's refusal to let Children's Service into the house and refusal to co-operate is all the more reason for concern for these children, not less. DI Fossey's reply is also attached.

Another example is the case of [Child, Family 8] (folder 7). This was brought to my attention last week. [Child, Family 8] has been fostered by a family since the age of [Age

Day 91 Pg 193  
②

The view of the Police is nothing has improved since our meeting with Children's Service. Indeed things have deteriorated as the problems were formerly to do with the long term care team and response from the emergency team had been good. Since then some members of the emergency team have left and things have not improved.

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Another example is the case of [Child, Family 8] (folder 7). This was brought to my attention last week. [Child, Family 8] has been fostered by a family since the age of [Age









**[REDACTED]**

**[REDACTED]**

He has heard the media coverage of the Hanks Police Commission inquiry and is concerned, obviously in view of his personal role, about allegations by current politicians of cover ups.

He would preferably like to speak to Mr HARRIS as soon as he can (explained that he is busy at present).

Mr ACCOARD now lives in the [REDACTED] He says that he will help the enquiry in any way that he can.

Person receiving handling: [REDACTED]  
Forwarded to:  
Action Required Y/N:  
Action No(s):  
Further Action Required Y/N:  
Other References:

Title/Job ID Number: [REDACTED]  
Supervisor: [REDACTED]  
Assignment Number:  
Project Number:  
Office Manager:  
Officer in Charge:

**[REDACTED]**

Page 92 of 117  
②

[REDACTED]

DOCUMENT FOUNDMENT

He has heard the media coverage of the Frank De La Guardia inquiry and is concerned, especially in view of his previous role, about allegations by current publisher of cover ups.

He would probably like to speak to Mr HARPER as soon as he can (explained that he is busy at present).

Mr RODHOUSE now lives in the [REDACTED] He says that he will help the inquiry in any way that he can.

Person Booking/Handling: [REDACTED]  
Form(s) Used:  
Action(s) Required: Y/N  
Action Note:  
Further Action Required: Y/N  
Other References:

File/Case ID Number: D0681  
Supplier: BA RT  
Assignment/Receiver:  
Registration/Status:  
Office Manager:  
Officer in Charge:

[REDACTED]



**INCIDENT REPORT**  
REGISTERED REPORT

**INCIDENT MESSAGE**

**N102**  
Security Unit 1

**Annex: Poucher's Summary**

Date: 1/10/2006 Time: 10:11 Priority: Low

Type: Problem

Class: IT Prod Code: Description:

Message From To: FROM

The Party ID Number:

Burntime: 00000000

Escalated(s):

Esc: NONE

Telephone Number(s): FROM: [REDACTED]

[REDACTED]

**INFORMATION**

was a director of Education Services

He stated he had to know what was happening and he checked and learned. He cannot understand how it was all kept quiet.

He was told nothing of events and he purchased a couple of reports of coverage all the way to the top, as he was the top and knew nothing. All he could say was that [REDACTED] had a drink problem but that did not solve [REDACTED] [REDACTED]

He is happy to help in any way and would be willing to give a statement.

cc: [REDACTED]

Call received from [REDACTED] the former Director of Education (was a Bishop town, years ago in Jersey)

TO: [REDACTED] FROM: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

**INCIDENT REPORT**





**CONFIDENTIAL**

**DOCUMENT RELEASE STATE**

He has heard the media coverage of the Home Depot Christmas tragedy and is concerned, especially in view of his previous role, about allegations by certain politicians of cover-ups.

He would preferably like to speak to [redacted] as soon as he can (explained that he is busy at present).

As [redacted] now lives in the [redacted] he says that he will take the necessary steps to try and be contacted.

Person speaking handling: [redacted]  
Reference(s): [redacted]  
Action Note(s): [redacted]  
Further Action Required: Y/N  
Other References: [redacted]

TRIP/Person ID Number: DC 00  
Call name: [redacted]  
Address: [redacted]  
Registration: [redacted]  
Office Manager: [redacted]  
Officer in Charge: [redacted]

**CONFIDENTIAL**

May 95 11:57 AM

**CONFIDENTIAL**

**PERSONNEL RECORD FORM**

He has heard the media coverage of the State (he is) because inquiry and is concerned, obviously in view of his previous role, about allegations by current politicians of cover ups.

He would probably like to speak to Mr HARPER as soon as he can (explained that he is busy at present).

Mr RODRIGUEZ now lives in [redacted] he says that he will help the inquiry in any way that he can.

Person doing background: [redacted]  
 Approved: [redacted]  
 Further Action Required: Y/N  
 Other Roles: [redacted]

Person doing background: [redacted]  
 Approved: [redacted]  
 Further Action Required: Y/N  
 Other Roles: [redacted]

**CONFIDENTIAL**

**Independent Jersey Care Inquiry**  
PO Box 551  
St Helier  
Jersey  
JE4 8XN

20 October 2015

Dear Mrs Oldham

**Independent Jersey Care Inquiry (the "Inquiry")**

**Data Protection (Jersey) Law 2005 (the "DPL")**

I write in relation to the above and, more particularly, regarding the day 67 documents (the **Day 67 Documents**)<sup>1</sup> which are the subject matter of Eversheds' letter to me dated 19 October 2015. I do so with the full knowledge of the [REDACTED].

Eversheds' letter raises some further issues on which I require to be addressed. Before I deal with those, it may be helpful to set out the background and issues surrounding the Day 67 Documents.

Background

I understand that on 16 April 2015, it became apparent during the course of that day's hearing that certain of the supporting documents which had been disclosed to the Interested Parties (and subsequently uploaded to the Inquiry website) had "lost" the yellow redaction provided by the [REDACTED] exposing the names of various individuals. I also understand that [REDACTED] raised his concerns with Eversheds later that day requesting an explanation as to how such sensitive information had lost its redaction. A copy of the original document forming part of [REDACTED]'s original complaint is enclosed at **Appendix 1**.

Following on from that incident, Eversheds responded to [REDACTED] (**Appendix 2**) to indicate that the reason that those redactions had been lost was due to a technical (and unforeseen) issue but that such had been resolved and would not happen again.

Whilst the date of Eversheds' response to [REDACTED] is not entirely clear, it appears from the Inquiry website that the link to the Day 67 Documents was last modified on 6 May 2015 (**Appendix 3**).

It became apparent late last week however that, in fact, the redaction issue regarding the day 67 documents was not resolved and that anyone downloading those documents from the Inquiry website remained able to remove those electronic yellow highlights exposing the names of certain individuals. I enclose at **Appendix 4** for your attention a copy of the documents with, and without the highlights.

As the Inquiry will be aware, the LOD has disclosed numerous documents to the Inquiry which contain the most confidential and sensitive personal data on children formerly in the care of the States of Jersey and their families. The yellow highlighting provided by the LOD sought to protect the identities of child victims of sexual abuse and it is inconceivable that notwithstanding the

<sup>1</sup> <http://www.jerseycareinquiry.org/Transcripts/Day%2067%20documents.pdf>

confirmations provided to the LOD that the initial error had been rectified the Inquiry purportedly failed to realise that there were certain other defects contained within the Day 67 Documents which had not, in fact, been remedied. This is all the more astonishing in light of the fact that the Inquiry team has liaised with the LOD on this very point and, in particular, the extremely sensitive nature of these records and the need to process same with the utmost sensitivity, caution and in accordance with the DPL (and indeed the Inquiry's own Protocol).

I consider that this is a clear breach of the DPL and you will be aware that [REDACTED] has already written to Ms Shurmer requesting that the Day 67 Documents are immediately removed from the Inquiry website (**Appendix 5**). Whilst Eversheds have since confirmed that they have removed the offending documents, it is noted that a link to those documents still appear if conducting a search in Google and the link directs users to <https://lici-public.sharepoint.com/forms/default.aspx?apr=1&wa=wsignin1.0>. A copy screenshot is enclosed at **Appendix 6** for your ease of reference.

#### Eversheds' Response

Eversheds' responded to [REDACTED] and me on 19 October 2015 (**Appendix 7**) with an explanation as to how such a problem had arisen. In particular, I note Eversheds' comment that:

*"The issue in April only related to circumstances where redline boxes abutted the opaque yellow boxes. The remaining opaque yellow boxes remained in situ and acted as a form of redaction, albeit that the boxes were yellow rather than black. As a result of this understanding, document WD005327 was not flattened in April (as per Opus' solution above) as the Inquiry believed that the redactions required had all been made and were not aware that the yellow opaque boxes which still remained in the document posed a further (but different) problem. This meant that the document was 'over-redacted' - i.e. that the yellow opaque boxes were covering up information which the team may not actually have redacted. It was thought that there was no risk as these words were hidden by the opaque boxes and could not be edited by anyone else".*

Whilst it is acknowledged that the issues raised by the LOD in April 2015 were slightly different it is extremely surprising that the entirety of that document was not checked for other issues and particularly once it was uploaded to the Inquiry website and I am not satisfied with Eversheds response that "...neither the Inquiry nor Opus were aware that documents could be exported by the Interested Parties and edited...Similarly, the Inquiry was not aware that documents could be downloaded from the Website and edited in Adobe Acrobat. As far as the Inquiry was concerned, the website only contained an 'image' of a document, rather than the document itself which is contained on Magnum..." The redactions which were capable of being removed allowed the sensitive data of third parties whom should have been afforded protection under the Inquiry's own Protocol and the DPL to be revealed to the world and in so doing identifying those parties as having been involved in child sexual abuse. It was (and remains) the duty of the Inquiry to ensure that they have adequate procedures in place ensure that documents which are available to the world at large are secure and, in particular, that they maintain the privacy rights of data subjects.

I consider that when the first issue was highlighted to the Inquiry in April 2015, that the Inquiry should have made certain that when such documents were re-published on the Inquiry website

they were compliant with the DPL and steps should have been taken to check the entirety of the Day 67 documentation for errors. Accordingly, I should be grateful to hear from you in response and with an explanation as to how this very serious breach has been allowed to continue for some 6 months notwithstanding the representations made by Eversheds previously that the error had been rectified.

I shall write to you separately regarding issues which have been identified with other documents.

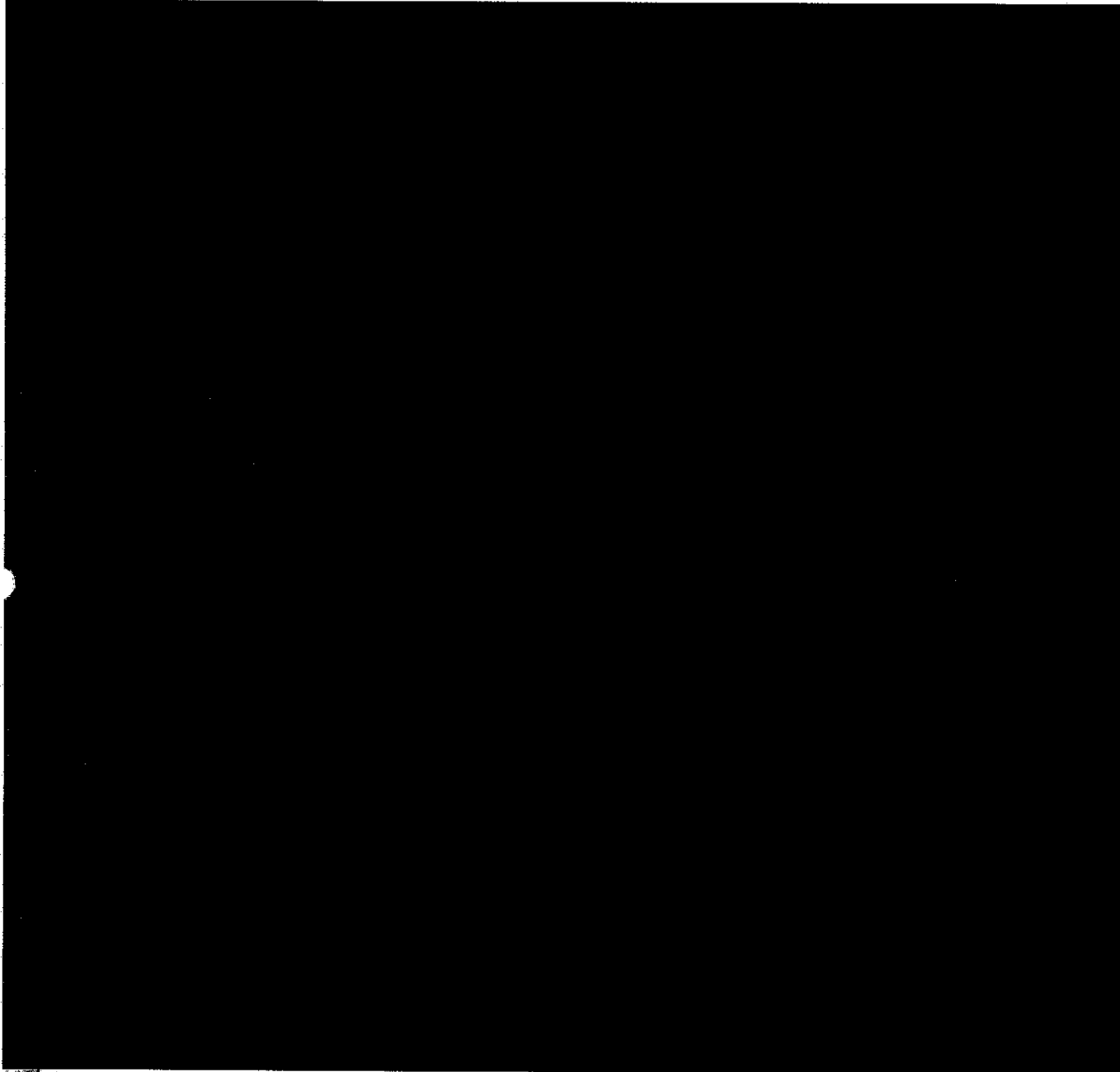
Yours sincerely

Mrs Emma Martins  
Information Commissioner

Encs

Cc

[REDACTED]



**From:** [REDACTED]  
**Sent:** 16 April 2015 16:35  
**To:** 'Jersey Care Inquiry'  
**Cc:** [REDACTED]  
**Subject:** DCI - 102-08.20140002 (FAO Angharad Shurmer and Natalie Minott)  
**Importance:** High

Dear Angharad and Natalie

Now that the dust has settled a bit from this morning's events, I have had time to review the various documents. We need to analyse what took place because, I am not now sure how we could have avoided the name of [REDACTED] being disclosed to all Interested Parties.

I am attaching two versions of the offending paragraph. The first which is headed "Page 12 of 45" (Page 1) is the document in the form in which it was received last week and in the form in which we approved redactions. The second page headed "Privilege Waived" (Page 2) is the version released to Interested Parties. The relevant



paragraph is the one which commences, "Yet another case..." The fact that the paragraph appears on different places on the page is attributable to a copying issue when I first copied it at the weekend.

On Page 1, [redacted] name and [redacted] name had been redacted by you in yellow. I am assuming that these are your yellow redactions as I understand that we have not routinely redacted LPP material. Whether the yellow was put in place by us or you doesn't really matter.

On Page 2, the version released to IPs not only has [redacted] name been unredacted but also the name of the victim, [redacted]

I am at a loss to understand why this happened or how we could have identified this change prior to its being released to Interested Parties. We had indicated that we were content with the proposed redactions but had no reason to believe that any of the yellow redactions would be removed. We need to be clear about why this happened and how it might be avoided in future.

I would appreciate an early discussion with you. I'm sure that you will agree that this is unsatisfactory.

Regards

[redacted]

[redacted]

to DI Fossey saying that CAMHS (ie [redacted]) were of the opinion that prosecution would not be in [redacted] best interest. This is a very serious allegation but the officer (DC Cornelissen) does not see what other interpretation he can put on the facts.

Yet another case earlier this year was [redacted]. He was a convicted sex offender living with a woman who has severe learning difficulties and her daughter, [redacted], who has equal, if not more severe problems. [redacted] was assessed as having a mental age of 6 although she was 15. [redacted] mother knew [redacted] was a sex offender. She was unable to protect her daughter. [redacted] slept in her daughter's room with the girl. Children's Service knew he was a sex offender living with two people of severely reduced mental capacity. They did not intervene. [redacted] repeatedly raped [redacted] and even filmed to acts himself. He is now serving 12 years. Even after [redacted] arrest Children's Service would not remove [redacted] from her mother's care, not because they didn't appreciate mother's inability to protect her daughter but because they didn't have anywhere to put a child with severe learning difficulties. This continued even after [redacted] tried to contact [redacted] from prison and mother sent him photographs of her.

**Williamson Enquiry**

When the enquiry was set up I contacted the Solicitor General and asked whether I should speak to Mr Williamson about the concerns we had had about Children's Service which led to our meeting last year. The SG said that I should do so and was aware that the Police still had problems with Children's Service and I spoke to DI Fossey who gave me the most recent examples of [redacted]

I would emphasise that I have no knowledge of the matters relating to the allegations Senator Syvret has made about Greenfields and I feel I have nothing to contribute to that aspect of Mr Williamson's enquiry. However, the enquiry was set up to look at child protection in its widest sense and I felt

under an obligation to bring the above matters to Mr Williamson's attention, which, with the agreement of the SG, I did last Thursday.



Bridget Shaw

red  
UC

## Privilege waived

Children's Service into the house and refusal to co operate is all the more reason for concern for these children, not less. DI Fossey's reply is also attached.

Another example is the case of [redacted] (folder 7). This was brought to my attention last week. [redacted] has been fostered by a family since the age [redacted]. He is now, around [redacted]. He has severe psychiatric problems. Recently he tried to strangle the [redacted] year old son of his foster parents. Children's Service seem only able to focus on what they think is best for [redacted] are ignoring the need to protect the [redacted] yr old in the family. They are adamant that [redacted] should not be prosecuted and should remain in the home. It was only the Police who asked in case conference what the mother's view was (she can no longer cope with him) and the effect on the [redacted] yr old (very fearful he or his parents will be killed by [redacted] in their sleep). There are two children here and the Police have actually alleged that Mr McVey of Children's Service tried to mislead them about whether to prosecute firstly in omitting Dr Williams' comments that [redacted] should be prosecuted from the minutes of the meeting and then writing to DI Fossey saying that CAMHS (ie [redacted]) were of the opinion that prosecution would not be in [redacted] best interest. This is a very serious allegation but the officer (DC Cornallisen) does not see what other interpretation he can put on the facts.

Yet another case earlier this year was [redacted]. He was a convicted sex offender living with a woman [redacted] and her daughter, [redacted], who has equal, if not [redacted] was assessed as having [redacted] she was 15. [redacted] mother knew [redacted] was a sex offender. She was unable to protect her daughter. [redacted] slept in her daughter's room with the girl. Children's Service knew he was a sex offender living with two people of [redacted]. They did not intervene. [redacted] repeatedly raped [redacted] and even filmed to acts himself. He is now serving [redacted] years. Even after [redacted] arrest Children's Service would not remove [redacted] from her mother's care, not because they didn't appreciate mother's inability to protect her daughter but because they didn't have anywhere to put a child with [redacted]. This continued even after [redacted] tried to contact [redacted] from prison and mother sent him photographs of her.

### Williamson Enquiry

When the enquiry was set up I contacted the Solicitor General and asked whether I should speak to Mr Williamson about the concerns we had had about Children's Service which led to our meeting last year. The SG said that I should do so. I was aware that the Police still had problems with Children's Service and I spoke to DI Fossey who gave me the most recent examples of [redacted].

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②

# Independent Jersey Care Inquiry

## Your email dated 16 April

We have now had the chance to investigate what happened with regard to the redaction of the document referred to as WD005327\_UR and have set out below an explanation. We apologise for the technical nature of the explanation and should you wish to discuss any of the detail over the telephone, our Natalie Minott be happy to talk this through with you to provide further information.

As you are aware, when documents have been disclosed to the Inquiry by the LOD, they included the LOD's proposed redactions using yellow, transparent highlighting which had been applied electronically using Adobe. With the document in question, when the document was uploaded to Magnum, because of the 'layering' of the document, the yellow highlighting moved on top of the text, creating an opaque yellow box over the text (instead of appearing as yellow transparent highlighting). With the majority of the LOD documents, the 'layering' is set up slightly differently, meaning that the yellow highlighting retains its transparency on upload. This was therefore an anomaly. Until this investigation into this issue, we were unaware of the layering within the document, or that your documents only include transparent yellow boxes rather than opaque boxes.

Although Magnum displays the documents as images whilst they are on Magnum, they revert to their original state on export, meaning that the yellow highlighting (or in this case opaque yellow boxes) becomes fully editable again when the document is exported for redaction and - crucially - becomes capable of being deleted. Magnum does not have the functionality to permanently convert documents into image format, so unfortunately there is no way around this.

When the document in question was exported from Magnum for redaction, the yellow, opaque boxes acted as a form of redaction, such that the text underneath was not visible. The Inquiry redaction team therefore treated these as redaction boxes and left them 'as was', adding redline redaction only to words which had not been marked with yellow. Due to an unforeseen feature of Adobe, where a redline box was drawn which touched a yellow box, that yellow box would disappear when the redactions were applied to the redline box. This is how it came to be that words which were obscured by yellow on the redline version were suddenly visible in the redacted version. The documents provided by the other IPs and used in the hearing room to date have had proposed redactions marked in pen, so this is the first time that the Inquiry team have burnt redactions to a document including electronic redaction. The yellow boxes disappearing was a new and unexpected occurrence for the redaction team and so no checks were in place to counteract this.

Going forwards, if the Inquiry team come across another document with opaque boxes, we will contact Magnum who are able to 'flatten' the document to remove the 'layering' and thereby ensure that the yellow boxes appear as transparent on upload and subsequent export. Further OPys, the company who run Magnum are now aware that should they encounter any opaque yellow boxes that these should be queried with us. We will then redact the yellow highlighted version in the usual fashion - obscuring with redline any content requiring redaction in accordance with our Protocols, and any

Freephone from JerseyUK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from JerseyUK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

# Independent Jersey Care Inquiry

remaining highlighted words will remain highlighted but visible. The risk of boxes inexplicably disappearing is rendered void, since all highlighting which requires redaction will be redacted, and any remaining words do not require redaction in any event.

We must stress that this is not a situation that had been encountered by us or Opus previously. However now that are aware of this risk, we hope that you are reassured that we able to avoid this anomaly occurring again.

If you think it would assist to meet in person to discuss the above, we would be happy to do so.

Yours faithfully

*Eversheds LLP*

**Eversheds LLP**  
**Solicitor to the Inquiry**

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

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## Transcripts

The Inquiry's public hearings will be recorded each day and a transcript prepared. These transcripts will then be posted on the website as soon as possible thereafter, and can be viewed and downloaded from here.

The Transcript from the Preliminary Hearing held on 16 June can be found [here](#).

### September 2015

Day 99 : 9 September 2015

[Day 99 \(1.31 MB\)](#) Last Updated 24 September 2015

[Day 99 documents \(18.3 MB\)](#) Last Updated 24 September 2015

Day 98 : 8 September 2015

[Day 98 \(294 KB\)](#) Last Updated 24 September 2015

[Day 98 documents \(16.8 MB\)](#) Last Updated 24 September 2015

Day 101 : 11 September 2015

[Day 101 \(362 KB\)](#) Last Updated 24 September 2015

[Day 101 documents \(9.41 MB\)](#) Last Updated 24 September 2015

Day 100 : 10 September 2015

[Day 100 \(386 KB\)](#) Last Updated 24 September 2015

[Day 100 documents \(9.57 MB\)](#) Last Updated 24 September 2015

### August 2015

### July 2015

### June 2015

### May 2015

### April 2015

Day 67 : 16 April 2015

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## Latest

Updates 

**5 October 2015**

The next phase of hearings will start on 20th October.

[Read more...](#)

**11 September 2015**

The Chair of the IJCI Frances Oldham QC has made a statement on the progress of the inquiry at the close of Phase 1 of the hearings.

[Read more...](#)

Day 67 (946 KB) Last Updated 23 April 2015  
Day 67 documents (36.7 MB) Last Updated 8 May 2015

Day 66 : 15 April 2015

Day 65 : 14 April 2015

March 2015

February 2015

January 2015

December 2014

November 2014

October 2014

Day 28 : 24 October 2014

Transcript (208 KB) Last Updated 24 October 2014  
Transcript (519 KB) Last Updated 1 December 2014

Day 27 : 23 October 2014

Day 26 : 16 October 2014

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**Children's Service Report**

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## **Children's Service**

### **Background**

In January 2006 DS (now DI) Alison Fossey assumed responsibility for what is now the Police Public Protection Team (PPU) formerly known as FPT.

DI Fossey began to present us with many more cases for advice than we had previously received from the Police. The number of prosecutions rose accordingly, indeed we have had some very successful prosecutions. However at the same time DI Fossey brought to my attention a number of issues concerning the way in which Children's Service officers were dealing with cases.

These can be summarised as delay in referring matters to the police; heavy reliance on Police to take action in cases where Children's Service should be acting and fail to do so; lack of understanding of Children's Service's primary role in Child Protection; reluctance to apply for Care Orders or Emergency Protection Orders for fear of failing, and poor handling of case conferences

The main issues at the time were with the long term care team who run the Children's Homes, not, I stress, anything to do with Greenfields, nor with any behaviour that could be considered criminal. It appeared to the Police that a number of members of staff did not appreciate the risks to children, did not act when they should to protect children and did not understand the respective roles of the Police and Children's Service.

### **Action by Legal Advisers' Office**

I raised the matter with the Solicitor General and DI Fossey subsequently sent me a report in April 2006 (attached folder 1 together with schedule of investigations and Children's Service chronologies)

My file note and my subsequent report to the Solicitor General outlining my concerns are also attached (folders 2 and 3).

### **Meeting with Police**

On 8<sup>th</sup> June 2006 The SG and I met with DCI Bonjour and DS Fossey to discuss the issues (please see folder 4).

DI Fossey has brought to our attention a number of cases which were symptomatic of the standards apparently applied by Children's Service such as shown by the family histories.

In many cases little seems to be done by Children's Service to intervene when in view of the Police, Children's Service should act. They rely too much on the Police and seem to think the Police can act when Children's Service can't -

rather than the other way around due to the different standards of proof. Frequently when a case was referred to the Police, Children's Service would ask what the Police were doing about it rather than taking action themselves. The details are in the attached reports.

There was frequently delay in reporting matters to the Police. A case in which delay could have had fatal consequences was the case of the (please see report DS Fossey folder 1) who was taken to A&E with a suspected fractured skull. Doctors were investigating this as a non-accidental injury and the parents were the sole carers and therefore the chief suspects. Children's Service did not inform the Police. The Child was admitted at approximately 17.00 one day and Police were not informed until 13.00 the following day, and then, only by chance. In the meantime the child had been allowed home for the night with her parents. I am not an expert in child care but one only has to apply a modicum of common sense to realise that the Police should have been informed at once and that the child should have been placed with someone other than her parents until investigations were complete. The next day, not one but two suspicious skull fractures were confirmed.

The second area of concern was that members of the long-term care teams did not seem to know what their roles were vis a vis the Police. They seemed to think that it was for the Police to act primarily to protect children. The Police's primary role is to investigate crime. In doing so they work alongside Children's Service but too often Police found Children's Service expected the Police to take action when they themselves did not act. They were reluctant to apply for Emergency Protection Orders or Care Orders, even in cases where children such as the such as appeared to be at considerable risk in her own home.

Another area of concern was the conduct of case conferences, which are meetings held between all agencies to decide whether a child should be put onto the Child Protection Register. This categorises children at the highest risk and a plan of intervention is formed. In the the chair of the conference was the parents former children's service officer who was clearly not impartial. Other concerns specifically surrounded a Manager named Danny Wherry. He would for example, start the conference by stating that he did /did not intend to put the child on the register. This was not conducive to an open discussion and joint working between the various agencies

Mr Wherry also told Police that if a Child on the Register was reported as missing, he did not want the Children's Service to be contacted about it out of hours - it could wait until the morning. Children are put on the register if they are thought to be at very high risk. One would have thought that Children's Service would be just the people the Police need to speak to in order to help find a very vulnerable child late at night.

**Meeting with Children's Service**

The SG and I met with Mamie Baudins and Tony Le Sueur, (a Children's Service manager). They accepted that Case Conferences were not always handled well and said they were short of people in the Island qualified to chair them (something Mamie is working to improve).

As far as the long term cases were concerned, they effectively said that the chronologies we saw reflected only part of the work that went on but admitted that cost was a factor in dealing with such families, they thought they would never get care orders as the bar is set too high and even if they applied, they would have to show that the care home was better than the family home, which wasn't necessarily the case as they would struggle to place such children.

We were told that incidents such as the baby case should not have happened and were exceptional.

We also brought up the case of [redacted] which came to light in [redacted] [redacted] was convicted of sexual offences against girls (aged 12/13) and sentenced to three years imprisonment. Before he was released he underwent a RAMAS assessment which assesses a person's risk of committing further serious offences. He was deemed to be at high risk. He also expressed his intention to return to live with his partner. This woman did not accept that he remained a risk ('He has paid his debt to society etc'). She had an 11 year old daughter. Clearly, the mother was in no position to protect her daughter if she did not accept that he posed a risk of offending. Children's Service did not intervene to protect the girl.

Two years later, the almost inevitable disclosure was made to the Police that [redacted] had been indecently assaulting the daughter from the moment he came home. This was a tragedy which could have been avoided. [redacted] is now serving another prison sentence. Children's Service said they were not able to establish that he was actually living at the partner's address and denied it when challenged.

Overall they believed they were doing a good job but that they felt unable to apply for Court orders to take children into care as the standards set by the Court were very high and applications even in such cases as [redacted] were likely to fail. The driving factor behind these decisions seems too often to be whether Children's Service have suitable accommodation for the child rather than whether the child is at risk of harm if he or she stays in the home.

I still find this hard to understand particularly as I successfully prosecuted [redacted] mother for neglect when she admitted allowing a known sex offender into her home on a daily basis and watched him indecently assault

on two occasions with out intervening. When parents cannot or will not protect a child surely the state has a duty to act.

**The Present Position**

The view of the Police is nothing has improved since our meeting with Children's Service. Indeed things have deteriorated as the problems were formerly to do with the long term care team and response from the emergency team had been good. Since then some members of the emergency team have left and things have not improved.

Delays in reporting matters to the Police and questionable judgement issues remain.

**Delays**

The delay in the case was clearly not an exception. There have been many instances in which there has been delay in informing the Police. A glaring example is the case (folder 5). I no longer have the full file but I enclose copies of the documents showing a referral from Health to Children's Service on 10.10.07.

was a young single mother with a disturbed background. On 10.10.07 she informed psychiatric nurse that she had tried to kill her old baby by smothering him. She stopped a time. However, she felt that the baby was better off without her but as she did not want anyone else to have the child it would be better for him to die.

The documents show that informed Children's Service at once. However, Children's Service did not inform the Police until 4 weeks later. In the meantime Children's Service had agreed with that her father should care for the baby but they did not tell him what had happened. The grandfather was therefore not in a position properly to protect the child as he did not know either that the child was at risk or what that risk was. The Grandfather in fact took the baby with him on a visit to UK where joined them. No authorities in UK had any idea that the child was at risk. Police were only informed 4 weeks after when the family returned to Jersey. One can only conclude that in this case there was an abject failure to follow basic procedures and in my view the child must have been put at risk by those failures.

**Poor Judgment**

Another recent example of what is wrong in Children's Service is the case of (folder 6). The letter on file is from a senior manager. The letter is self explanatory. The children were at so much risk that they were put on the Register in December 2006. By June 2007 Children's Service had had no intervention in the family, and had not even completed a core assessment as mother would not co-operate. The suggestion then, is that the children should come off the register! Surely mother's refusal to let

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Children's Service into the house and refusal to co operate is all the more reason for concern for these children, not less. DI Fossey's reply is also attached.

Another example is the case of [redacted] (folder 7). This was brought to my attention last week. [redacted] has been fostered by a family since the age [redacted]. He is now, around [redacted]. He has severe psychiatric problems. Recently he tried to strangle the [redacted] year old son of his foster parents. Children's Service seem only able to focus on what they think is best for [redacted] are ignoring the need to protect the [redacted] yr old in the family. They are adamant that [redacted] should not be prosecuted and should remain in the home. It was only the Police who asked in case conference what the mother's view was (she can no longer cope with him) and the effect on the [redacted] yr old (very fearful he or his parents will be killed by [redacted] in their sleep). There are two children here and the Police have actually alleged that Mr McVey of Children's Service has tried to mislead them about whether to prosecute firstly in omitting [redacted] comments that [redacted] should be prosecuted from the minutes of the meeting and then writing to DI Fossey saying that CAMHS (ie [redacted]) were of the opinion that prosecution would not be in [redacted] best interest. This is a very serious allegation but the officer (DC Cornelissen) does not see what other interpretation he can put on the facts.

Yet another case earlier this year was [redacted]. He was a convicted sex offender living with a woman [redacted] and her daughter, [redacted] who has equal, if not [redacted] was assessed as having [redacted] she was 15. [redacted] mother knew [redacted] was a sex offender. She was unable to protect her daughter. [redacted] slept in her daughter's room with the girl. Children's Service knew he was a sex offender living with two people of [redacted]. They did not intervene. [redacted] repeatedly raped [redacted] and even filmed to acts himself. He is now serving [redacted] years. Even after [redacted] arrest Children's Service would not remove [redacted] from her mother's care, not because they didn't appreciate mother's inability to protect her daughter but because they didn't have anywhere to put a child with [redacted]. This continued even after [redacted] tried to contact [redacted] from prison and mother sent him photographs of her.

## Williamson Enquiry

When the enquiry was set up I contacted the Solicitor General and asked whether I should speak to Mr Williamson about the concerns we had had about Children's Service which led to our meeting last year. The SG said that I should do so. I was aware that the Police still had problems with Children's Service and I spoke to DI Fossey who gave me the most recent examples of

I would emphasise that I have no knowledge of the matters relating to the allegations Senator Syvret has made about Greenfields and I feel I have nothing to contribute to that aspect of Mr Williamson's enquiry. However, the enquiry was set up to look at child protection in its widest sense and I felt

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under an obligation to bring the above matters to Mr Williamson's attention, which, with the agreement of the SG, I did last Thursday.



Bridget Shaw

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**MEMORANDUM**

**To: Bridget Shaw**  
**From: Detective Sergeant 671 Fossey**  
**Date: 18<sup>th</sup> April 2006**  
**Ref: Long Term Team, La Chasse**

This report outlines a number of issues which have come to my attention in dealing with the above team of child care officers since taking up the post of Sergeant, FPT in January 2006.

Firstly, there is the case of the [redacted] has a long history with Childrens Service [redacted] A chronology of Childrens Service involvement with the family is attached which dates back to 1993. Since 1998 there have also been a number of police investigations (summary attached), mostly into allegations made by [redacted] Only one investigation has resulted in a conviction.

Concerns about this family have been repeatedly expressed to social services over the years, indeed my predecessor Sergeant Underwood called a strategy meetings within a short period of time last year in an attempt to urge Childrens Service to take some action. The police service is extremely concerned for the welfare of [redacted] who is an extremely vulnerable victim. This is not helped by the fact that we cannot prove any of her allegations or alternatively disprove the veracity of them. Any attempts to urge Childrens Service to take action have been unsuccessful and my recent experience with the team manager Danny Wherry has been similarly unhelpful. During a strategy meeting to discuss the latest allegation made by [redacted] that she was having sex with [redacted] I made frequent references to the chronology provided by Childrens Service, which Mr Wherry freely admitted not having read. He felt, however, that he could make the decision that

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was not at risk and if she chose to leave La Preference nothing could be done. He did state that he would seek legal advice on the matter. This amounted to him speaking to a member of staff in the law officer's department who wasn't qualified to give legal advice and told him that he would not be successful in getting an emergency order should he apply. Mr Wherry also expressed opinion at that same strategy meeting that he would need a prosecution before he could act.

Three days prior to this latest allegation made by [redacted] against [redacted] a case conference was held at La Chasse chaired by Mr Wherry. Dc Carter attended and reported that Mr Wherry made it quite clear from the outset that [redacted] should not be put on the register and that his case must be considered separately [redacted] (who was having a case conference at a later date and would likely go on the register).

This is not the first time Mr Wherry has behaved irregularly at a case conference. Dc Coxshall reported that at a case conference for [redacted] Mr Wherry again in the role of chair made it quite obvious from the start that [redacted] would be removed from the register.

Other cases involving La Chasse which show little or no action on behalf of Childrens Service are the [redacted] Chronology attached. This has finally resulted in an assault being reported to the police and the legal advisor being left in the difficult position of having to decide whether to charge [redacted] for a minor assault after years of abuse.

Both the [redacted] and the [redacted] it could be argued are history and beyond re-verification. Indeed [redacted] the Child care officer for [redacted] put on her report to the latest case conference that it was not helpful to focus on past allegations or concerns. It is my opinion that these children are extremely vulnerable and that past allegations and concerns are very relevant in protecting these children in the future.

It has become increasingly obvious to myself that the team at La Chasse appear to have no idea how to deal with emergency child protection matters. Frequently reports of assaults on children open to the long term team are not referred to the police until a couple of days after the incident if at all. Obviously this affects the quality of the police response particularly in terms of gathering evidence forensically. A good

DELAY  
in Reporting



recent example of their shortcomings in this respect was the which involved a baby with a suspected fracture to the skull. This was reported to the Duty Child care officer (David Castledine at la Chasse) by at 2100hrs on The police were finally notified at 1300hrs the following day and even then only by chance because the family Child care Officer happened to be speaking to a senior member of the Emergency childcare team who advised her that she should inform the police. This was just the start of the problems with this case which was not helped when the Childrens' Service applied for an emergency order and provided the expert's report on the injury to the Law Officers who then disclosed it to the suspects prior to police interview.

Although this report may seem unduly negative it is my opinion that it is simply training that needs to be addressed plus an understanding of the police role in child protection. I have attempted to engage Mr Wherry on this following an incident earlier on this year but he informed me that I would be better meeting with the Emergency childcare team as I would have more dealings with them. I can report I have an excellent relationship with the emergency team and we work very well together and have a good understanding of each others roles.

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COPY

**Legal Advisers' Office  
Police Headquarters**

Rouge Bouillon, St. Helier,  
JERSEY, JE2 3ZA.

Telephone: (01534) 612590  
Facsimile: (01534) 612589

**Memorandum**

To: Stephanie Nicolle  
Solicitor General

From: Bridget Shaw  
Legal Adviser

Copy:

Date: 23 May 2006

Your Ref:

Our Ref: BS/A

**CHILDREN'S SERVICE REPORT**

You may recall that at the beginning of April this year we spoke about the concerns the Police Family Protection Team have about the operation of the Children's Service and, in particular, the Long Term Team at La Chapelle. You said then that in view of the Police's concerns, the proper way forward was that you would meet with the Police and thereafter convene a formal meeting with the Manager of Children's Services to discuss the Police's concerns. I have arranged a meeting for Tuesday, 6 June at 2.00 pm. I have invited DCI BONJOUR and DS FOSSEY to attend.

I have now received a report from Alison FOSSEY, who took charge of the Family Protection Team in January 2006. Her report has been seen and endorsed by Chief Inspector BONJOUR. I enclose a copy of Sergeant FOSSEY's report, with attachments showing the history of Children's Service involvement with a number of families. Children's Service handling of these cases is the cause of concern. I also enclose a copy of my file note prepared at the time the issues were raised with me by Sergeant FOSSEY.

In addition to the report, another matter where the Police and Children's Service appear to be at odds has arisen. The Police have been attempting to make contact with the Duty Out of Hours Childcare Officer when a child on the At Risk Register is reported missing. Mr WHERRY has expressed to the Police that he does not wish the Out of Hours Officer to be informed that such a child is missing. He believes that these matters can be dealt with the following day during normal office hours. The Police view is that it is a serious matter when any child goes missing but when a child already on the Child Protection Register goes missing there is further cause for concern. If the child is on the Register, Children's Service

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are likely to have recent contact with the child and know of the child's family circumstances and contacts. They may have very relevant information which would enable the Police to trace the child and minimise the risks faced by that child. They find Mr WHERRY's approach difficult to understand.

In order to protect children to the best of their respective abilities, it is imperative that Police and Children's Service work closely together and understand each others roles. It would seem from DS FOSSEY's report that there are no problems with the Emergency Child Protection Team but there are considerable problems with the long term care and protection of children offered by Children's Service. In particular (but not exclusively) Police have encountered difficulties with the Long Term Team at La Chasse and their Manager, Danny WHERRY.

Firstly, there seem to be a number of cases, of which the families are examples, where significant incidents concerning children in those families have come to the attention of Children's Service but little or no action appears to have been taken. In many instances, Police find themselves responding to referrals made to them concerning the treatment of children and when they ask Children's Service what action they intend to take, the reply is usually, "Nothing."

In a number of instances, Children's Service have told Police that they cannot act until the Police take action. It would appear that there is a lack of understanding of the standard of proof needed to pursue a criminal prosecution. The standard in civil proceedings is much lower, yet Children's Service feel unable to act. It may be that they are in need of guidance as to what degree of risk or neglect the Courts require before granting a Care Order.

The histories of the families make bleak reading. In the case, for example has shown inappropriate sexual behaviour from a very young age. There are current allegations against that he has indecently assaulted a boy at school and allegations by (now retracted) that she has had sexual intercourse with

It is known that there are three Schedule One Sex Offenders within the family circle. has been given advice to prevent certain people visiting her house: it is known to Children's Service that she is unable to do so. It is also known that has been indecently assaulted by an uncle by marriage and makes frequent allegations against many men with whom she comes into contact. These complaints are largely unsubstantiated, but the mere fact that she makes so many complaints, making her a thoroughly unreliable witness, makes her even more vulnerable to genuine assaults.

has now admitted to the Police that she has seen an man, named innocently assaulting her daughter on a number of occasions and yet she has taken no action. Children's Service say they have no grounds to apply for a Care Order. I intend to prosecute for neglect but surely better protection should have been afforded these children long before now.

A similar story can be told of the [redacted] family, where the chronology shows clear grounds for concern that the children are being both physically and emotionally abused. [redacted] says that he has repeatedly asked Children's Service for help with his children but has been refused. [redacted] recently became involved in an argument with his son, [redacted] who is aggressive, violent, is drinking and on drugs. [redacted] assaulted his son, inflicting an injury. Again, I am prosecuting [redacted] out, again, it is too little, too late. The report of [redacted] (School Psychologist) makes very sorry reading indeed. He concludes that it is probably too late, after fourteen years in this family, for there to be any hope of an improvement for this particular child.

It might be argued that these are isolated and exceptional cases but I cannot be sure that they are not the tip of the iceberg. Where a case is referred to my office for consideration, once the evidential test is passed we will prosecute where we believe it is in the public interest to do so. In some cases, effective intervention from Children's Service can mean that it is not in the public interest to prosecute. However, I need to have confidence that effective action will be taken by Children's Service when dealing with these families. If Children's Service believe that they need a criminal prosecution in order to act, I will find myself in the position of having to conduct prosecutions which would not otherwise be necessary, and should not be necessary.

DS FOSSEY has particularly drawn my attention to her dealings with Danny WHERRY who, I believe, is the Manager of the Long Term Team at La Chasse.

When Mr WHERRY chairs case conferences a number of Police Officers have told me that the outcome of the conference is clearly pre-determined by Mr WHERRY. He begins conferences with the words, *"I intend to do no, I intend to put this child on the Register . . . but, of course, if anyone has an objection . . ."* It is believed that this intimidates other members of the case conference and frequently they find themselves isolated as the only advocate of a child being put on, or remaining on, the At Risk Register.

WHERRY has also refused to consider family situations as a whole, such as the family. It is difficult to see how one can treat the case of one child in isolation if there are grave concerns pertaining to other members of the family. He has also admitted on a number of occasions that he has not read the Children's Service's own chronology of their involvement with a particular family. I find this quite extraordinary and wonder how a decision can be properly reached without consideration of such relevant information.

I have also heard concerns at the way other members of Children's Service conduct case conferences. In particular, the concept that the Chair is independent does not seem to be appreciated. The Police gave me the example of the [redacted] case conference, which was chaired by Jean ANDERSON. Before she retired, Mrs ANDERSON was the Children's Officer most closely connected with the [redacted]. It was, therefore, not appropriate, in the view of the Police, that she should chair this case conference. On a number of occasions they said she was overtly sympathetic to the views of [redacted] and did not maintain an independent position.



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I raise this point not to pick out individuals for criticism, but to illustrate that the way in which Mr WHERRY chairs case conferences is not confined to him and may be more prevalent throughout Children's Service.

The conduct of case conferences raises the question of what the Child Protection Register is for. The Children's Service's approach seems to be that they identify a child at risk. If they have a plan of action to help the child, they put the child on the Register. The child will remain on the Register whilst Children's Service are putting the plan in place. As soon as the plan is in place, the child is taken off the Child Protection Register. This happens regardless of how far the child may remain at risk. An example of this would be in the papers of which I referred to you on another basis. The mother is unable to protect these children and has access to them. Children's Service have put some measures in place to try to reduce unsupervised access to the children. However, they remain at risk from him but the children have been removed from the Register.

Police and Children's Service must be able to work well together to protect children. I am concerned that these issues may put that working relationship in jeopardy. These problems may be able to be solved by guidance and training those currently in post, but the lack of action in respect of other families over the years may signal a deeper problem.

I wish the Police to appraise you fully of their concerns in our meeting on 6 June so that you may pursue this matter with the Manager of Children's Service as you think fit.

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**File Note**

**Meeting with SG re Children's Service Concerns**

**Tuesday 6<sup>th</sup> June 2006 - 1400 hours**

**Present:** Solicitor General (SG)  
Mrs B Shaw (BS)  
DCI Bonjour (AB)  
DS Fossey (AF)

The meeting opened with BS giving background re recent history involving FPT / Children's Service and the view that there was in some longer term cases a lack of action on the part of Children's Service to action care orders when it was obviously necessary. The SG commented on the apparent friction this could create.

An example relating to the [redacted] was given and how the Children's Service had applied for an Emergency planning order once it was realised that the Police were going to prosecute, but this had been rejected. There had however been sufficient grounds to apply for a care order but this had not then been pursued. Similarly with the [redacted] family where there were three Schedule one offenders within the family and again it had come down to police having to prosecute for Neglect. Again there had been, in the view of BS, ample grounds for a care order and this had been heightened still further when the mother had refused to co-operate with Children' Service despite knowing of abuse. Nothing had been done.

The SG agreed that there appeared to be differing standards and referred back to the [redacted] ; which had resulted in a judgement by [redacted] identifying that care proceedings could have been instituted.

BS then referred to the appendices to a report compiled by DS Fossey and the obvious history of neglect and abuse contained therein in respect of three specific families. If anything were to happen to any of the children in those families and the Children's service were subjected to a Part 8 Review, it was probable that they would be found at considerable fault.

The SG queried whether the difficulties were endemic within the Children's Service and was assured by AF that this pertained solely to the long term team. The Emergency Team worked very well with FPT but she felt that there was a need for the long term team to review their options. It seemed that issues disappeared when forwarded and rather than action themselves, the question was always asked, "what action are the police taking".

It was the SG's view at this point that there was a need to raise this at Children's Service management level, i.e. Marnie Baudains. Specific reference was made to Danny Wherry who had been standing in on the long term team and there was a view that he might not be impartial to the demands of the long term team given his predominant responsibility for resources generally and the Homes into which at risk children might / could be placed.

There were further examples cited of lack of Children's Service action, i.e. [redacted] who was now to be prosecuted for another round of abuse on a young 13 year old girl over two years.

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This it was felt had been a preventable action if the appropriate support and action had been taken when he was released from prison following his previous conviction for similar offences.

The SG stated that she would take up these concerns with Marnie Baudains and wanted to work with her to resolve matters and not against the Children's Service. There was a need to be diplomatic. The SG did express the view that previously the Children's Service had had their fingers burned when dealing with one specific family and were perhaps now unclear as to way forward when there was insufficient for police action.

AB spoke of the SG's comments re friction and diplomacy. He felt it was important that the concerns had been raised but that there was also a need to ensure that AF was distanced from any comment in the SG's initial interaction with Marnie Baudains to safeguard the working relationship between FPT and Children's Service. AB also referred to the potential for a Part 8 review if there were a tragedy with one of the families at risk and that in that case he did not think, having reviewed the family histories the meeting had viewed, that the Children's service would come out of it very well. He also raised an issue of impartiality in respect of any review and felt it would clearly not be appropriate for any such review to be undertaken by the Children's Service locally. Therefore Jersey would have to invite in a review team.

The SG concurred with the above views and certainly did not want Children's Service to become entrenched or defensive when concerns were raised.

BS re-iterated that she was in a position where she was having to prosecute in cases where if the right action had been taken earlier, it may not have been necessary to do so.

The SG made comment on Human Right Law erosion relating to the manner in which such cases were dealt with and that there was perhaps an expectation from the Courts that the authorities could do more to make things work before care proceedings needed to be implemented.

In conclusion, the SG agreed to write to Marnie Baudains and set out the concerns and invite discussion with both SG and those present, excepting AF. She felt it would be good to discuss matters and ensure there was no compartmentalisation or lack of focus generally.

The meeting concluded at 1435 hours

**A Bonjour**  
**Detective Chief Inspector**

**Children's Service Report**

**Index of enclosures**

1. Report DS Fossey to Bridget Shaw 18.04.06
2. File Note BS
3. Report BS to Solicitor General 23.05.06
4. File Note CI Bonjour
5. Papers [REDACTED]
6. Papers [REDACTED]
7. Papers [REDACTED]

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## **Children's Service**

### **Background**

In January 2006 DS (now DI) Alison Fossey assumed responsibility for what is now the Police Public Protection Team (PPU) formerly known as FPT.

DI Fossey began to present us with many more cases for advice than we had previously received from the Police. The number of prosecutions rose accordingly, indeed we have had some very successful prosecutions. However at the same time DI Fossey brought to my attention a number of issues concerning the way in which Children's Service officers were dealing with cases.

These can be summarised as delay in referring matters to the police; heavy reliance on Police to take action in cases where Children Service should be acting and fail to do so; lack of understanding of Children's Service's primary role in Child Protection; reluctance to apply for Care Orders or Emergency Protection Orders for fear of failing, and poor handling of case conferences

The main issues at the time were with the long term care team who run the Children's Homes, not, I stress, anything to do with Greenfields, nor with any behaviour that could be considered criminal. It appeared to the Police that a number of members of staff did not appreciate the risks to children, did not act when they should to protect children and did not understand the respective roles of the Police and Children's Service.

### **Action by Legal Advisers' Office**

I raised the matter with the Solicitor General and DI Fossey subsequently sent me a report in April 2006 (attached folder 1 together with schedule of investigations and Children's Service chronologies)

My file note and my subsequent report to the Solicitor General outlining my concerns are also attached (folders 2 and 3).

### **Meeting with Police**

On 6<sup>th</sup> June 2006 The SG and I met with DCI Bonjour and DS Fossey to discuss the issues (please see folder 4).

DI Fossey had brought to our attention a number of cases which were symptomatic of the standards apparently applied by Children's Service such as shown by the [REDACTED] family histories.

In many cases little seems to be done by Children's Service to intervene when in view of the Police, Children's Service should act. They rely too much on the Police and seem to think the Police can act when Children's Service can't -

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rather than the other way around due to the different standards of proof. Frequently when a case was referred to the Police, Children's Service would ask what the Police were doing about it rather than taking action themselves. The details are in the attached reports.

There was frequently delay in reporting matters to the Police. A case in which delay could have had fatal consequences was the case of the [redacted] baby (please see report DS Fossey [redacted] folder 1) who was taken to A&E with a suspected fractured skull. Doctors were investigating this as a non-accidental injury and the parents were the sole carers and therefore the chief suspects. Children's Service did not inform the Police. The Child was admitted at approximately 17.00 one day and Police were not informed until 13.00 the following day, and then, only by chance. In the meantime, the child had been allowed home for the night with her parents. I am not an expert in child care but one only has to apply a modicum of commonsense to realise that the Police should have been informed at once and that the child should have been placed with someone other than her parents until investigations were complete. The next day, not one but two suspicious skull fractures were confirmed.

The second area of concern was that members of the long term care teams did not seem to know what their roles were vis a vis the Police. They seemed to think that it was for the Police to act primarily to protect children. The Police's primary role is to investigate crime. In doing so they work alongside Children's Service but too often Police found Children's Service expected the Police to take action when they themselves did not act. They were reluctant to apply for Emergency Protection Orders or Care Orders, even in cases where children such as the [redacted] children such as [redacted] appeared to be at considerable risk in her own home.

Another area of concern was the conduct of case conferences, which are meetings held between all agencies to decide whether a child should be put onto the Child Protection Register. This categorises children at the highest risk and a plan of intervention is formed. In the [redacted] case the chair of the conference was the parents' former children's service officer who was clearly not impartial. Other concerns specifically surrounded a Manager named Danny Wherry. He would, for example, start the conference by stating that he did /did not intend to put the child on the register. This was not conducive to an open discussion and joint working between the various agencies.

Mr Wherry also told Police that if a Child on the Register was reported as missing, he did not want the Children's Service to be contacted about it out of hours - it could wait until the morning. Children are put on the register if they are thought to be at very high risk. One would have thought that Children's Service would be just the people the Police need to speak to in order to help find a very vulnerable child late at night.

**Meeting with Children's Service**

The SG and I met with Marnie Baudins and Tony Le Sueur, (a Children's Service manager). They accepted that Case Conferences were not always handled well and said they were short of people in the Island qualified to chair them (something Marnie is working to improve).

As far as the long term cases were concerned, they effectively said that the chronologies we saw reflected only part of the work that went on but admitted that cost was a factor in dealing with such families, they thought they would never get care orders as the bar is set too high and even if they applied, they would have to show that the care home was better than the family home, which wasn't necessarily the case as they would struggle to place such children.

We were told that incidents such as the [redacted] baby case should not have happened and were exceptional.

We also brought up the case of [redacted] which came to light in [redacted] [redacted] was convicted of sexual offences against girls (aged 12/13) and sentenced to three years imprisonment. Before he was released he underwent a RAMAS assessment which assesses a person's risk of committing further serious offences. He was deemed to be at high risk. He also expressed his intention to return to live with his partner. This woman did not accept that he remained a risk ('He has paid his debt to society etc'). She had an 11 year old daughter. Clearly, the mother was in no position to protect her daughter if she did not accept that he posed a risk of offending. Children's Service did not intervene to protect the girl.

Two years later, an almost inevitable disclosure was made to the Police that [redacted] had been indecently assaulting the daughter from the moment he came home. This was a tragedy which could have been avoided. [redacted] is now serving another prison sentence. Children's Service said they were not able to establish that he was actually living at the partner's address and denied it when challenged.

Overall they believed they were doing a good job but that they felt unable to apply for Court orders to take children into care as the standards set by the Court were very high and applications even in such cases as [redacted] were likely to fail. The driving factor behind these decisions seems too often to be whether Children's Service have suitable accommodation for the child rather than whether the child is at risk of harm if he or she stays in the home.

I still find this hard to understand particularly as I successfully prosecuted [redacted]'s mother for neglect when she admitted allowing a known sex offender into her home on a daily basis and watched him indecently assault

██████████ on two occasions with out intervening. When parents cannot or will not protect a child surely the state has a duty to act.

**The Present Position**

The view of the Police is nothing has improved since our meeting with Children's Service. Indeed things have deteriorated as the problems were formerly to do with the long term care team and response from the emergency team had been good. Since then some members of the emergency team have left and things have not improved.

Delays in reporting matters to the Police and questionable judgement issues remain.

**Delays**

The delay in the ██████████ case was clearly not an exception. There have been many instances in which there has been delay in informing the Police. A glaring example is the case ██████████ (folder 5). I no longer have the full file but I enclose copies of the documents showing a referral from Health to Children's Service on 10.10.07 .

██████████ was a young single mother with a disturbed background. On 10.10.07 she informed psychiatric nurse Lynda Burke that she had tried to kill her ██████████ old baby by smothering him. She stopped in time. However, she felt that the baby was better off without her but as she did not want anyone else to have the child it would be better for him to die.

The documents show that Lynda Burke informed Children's Service at once. However, Children's Service did not inform the Police until 4 weeks later. In the meantime Children's Service had agreed with ██████████ that her father should care for the baby but they did not tell him what had happened. The grandfather was therefore not in a position properly to protect the child as he did not know either that the child was at risk or what that risk was. The Grandfather in fact took the baby with him on a visit to UK where ██████████ joined them. No authorities in UK had any idea that the child was at risk. Police were only informed 4 weeks after 10.10.07 when the family returned to Jersey. One can only conclude that in this case there was an abject failure to follow basic procedures and in my view, the child must have been put at risk by those failures.

**Poor Judgment**

Another recent example of what is wrong in Children's Service is the case of the ██████████ family (folder 6). The letter on file is from Linda Dodds, a senior manager. The letter is self explanatory. The children were at so much risk that they were put on the Register in December 2006. By June 2007 Children's Service had had no intervention in the family, and had not even completed a core assessment as mother would not co-operate. The suggestion then, is that the children should come off the register! Surely mother's refusal to let

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Children's Service into the house and refusal to co operate is all the more reason for concern for these children, not less. DI Fossey's reply is also attached.

Another example is the case of [REDACTED] (folder 7). This was brought to my attention last week. [REDACTED] has been fostered by a family since the age [REDACTED]. He is now, around [REDACTED]. He has severe psychiatric problems. Recently he tried to strangle the [REDACTED] year old son of his foster parents. Children's Service seem only able to focus on what they think is best for [REDACTED] are ignoring the need to protect the [REDACTED] yr old in the family. They are adamant that [REDACTED] should not be prosecuted and should remain in the home. It was only the Police who asked in case conference what the mother's view was (she can no longer cope with him) and the effect on the [REDACTED] yr old (very fearful he or his parents will be killed by [REDACTED] in their sleep). There are two children here and the Police have actually alleged that Mr McVey of Children's Service has tried to mislead them about whether to prosecute firstly in omitting [REDACTED] comments that [REDACTED] should be prosecuted from the minutes of the meeting and their writing to DI Fossey saying that CAMHS (ie [REDACTED] were of the opinion that prosecution would not be in [REDACTED] best interest. This is a very serious allegation but the officer (DC Cornelissen) does not see what other interpretation he can put on the facts.

Yet another case earlier this year was [REDACTED]. He was a convicted sex offender living with a woman [REDACTED] and her daughter, [REDACTED] who has equal, if not [REDACTED] was assessed as having [REDACTED] she was 15. [REDACTED] mother knew [REDACTED] was a sex offender. She was unable to protect her daughter. [REDACTED] slept in her daughter's room with the girl. Children's Service knew he was a sex offender living with two people [REDACTED]. They did not intervene. [REDACTED] repeatedly raped [REDACTED] and even filmed to acts himself. He is now serving [REDACTED] years. Even after [REDACTED] arrest Children's Service would not remove [REDACTED] from her mother's care, not because they didn't appreciate mother's inability to protect her daughter but because they didn't have anywhere to put a child with [REDACTED]. This continued even after [REDACTED] tried to contact [REDACTED] from prison and mother sent him photographs of her.

## **Williamson Enquiry**

When the enquiry was set up I contacted the Solicitor General and asked whether I should speak to Mr Williamson about the concerns we had had about Children's Service which led to our meeting last year. The SG said that I should do so. I was aware that the Police still had problems with Children's Service and I spoke to DI Fossey who gave me the most recent examples of [REDACTED]

I would emphasise that I have no knowledge of the matters relating to the allegations Senator Syvret has made about Greenfields and I feel I have nothing to contribute to that aspect of Mr Williamson's enquiry. However, the enquiry was set up to look at child protection in its widest sense and I felt

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under an obligation to bring the above matters to Mr Williamson's attention, which, with the agreement of the SG, I did last Thursday.



Bridget Shaw

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**MEMORANDUM**

**To: Bridget Shaw**

**From: Detective Sergeant 671 Fossey**

**Date: 18<sup>th</sup> April 2006**

**Ref: Long Term Team, La Chasse**

---

This report outlines a number of issues which have come to my attention in dealing with the above team of child care officers since taking up the post of Sergeant, FPT in January 2006.

Firstly, there is the case of the [redacted] family. [redacted] has a long history with Childrens Service as does [redacted]. A chronology of Childrens Service involvement with the family is attached which dates back to 1993. Since 1993 there have also been a number of police investigations (summary attached), mostly into allegations made by [redacted]. Only one investigation has resulted in a conviction.

Concerns about this family have been repeatedly expressed to social services over the years, indeed my predecessor Sergeant Underwood called 2 strategy meetings within a short period of time last year in an attempt to urge Childrens Service to take some action. The police service is extremely concerned for the welfare of [redacted] who is an extremely vulnerable victim. This is not helped by the fact that we cannot prove any of her allegations or alternatively disprove the veracity of them. Any attempts to urge Childrens Service to take action have been unsuccessful and my recent experience with the team manager Danny Wherry has been similarly unhelpful. During a strategy meeting to discuss the latest allegation made by [redacted] that she was having sex with [redacted], I made frequent references to the chronology provided by Childrens Service, which Mr Wherry freely admitted not having read. He felt, however, that he could make the decision that

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██████ was not at risk and if she chose to leave La Preference nothing could be done. He did state that he would seek legal advice on the matter. This amounted to him speaking to a member of staff in the law officer's department who wasn't qualified to give legal advice and told him that he would not be successful in getting an emergency order should he apply. Mr Wherry also expressed opinion at that same strategy meeting that he would need a prosecution before he could act.

Three days prior to this latest allegation made by ██████ against ██████, a case conference was held at La Chasse chaired by Mr Wherry. Dc Carter attended and reported that Mr Wherry made it quite clear from the outset that ██████ name should not be put on the register and that his case must be considered separate from his sister who was having a case conference at a later date and would likely go on the register.

This is not the first time Mr Wherry has behaved irregularly at a case conference. Dc Coxshall reported that at a case conference for ██████, Mr Wherry again in the role of chair made it quite obvious from the start that ██████ name would be removed from the register.

Other cases involving La Chasse which show little or no action on behalf of Childrens Service and the ██████ family. Chronology attached. This has finally resulted in an assault being reported to the police and the legal advisor being left in the difficult position of having to decide whether to charge ██████ father for a minor assault after years of abuse.

Both the ██████ case and the ██████ case it could be argued are history and beyond reification. Indeed Kerstee Norris the Child care officer for ██████ put on her report to the latest case conference that it was not helpful to focus on past allegations or concerns. It is my opinion that these children are extremely vulnerable and that past allegations and concerns are very relevant in protecting these children in the future.

It has become increasingly obvious to myself that the team at La Chasse appear to have no idea how to deal with emergency child protection matters. Frequently reports of assaults on children open to the long term team are not referred to the police until a couple of days after the incident if at all. Obviously this affects the quality of the police response particularly in terms of gathering evidence forensically. A good

DELAY  
in  
Reporting



recent example of their shortcomings in this respect was the [redacted] case which involved a baby with a suspected fracture to the skull. This was reported to the Duty Child care officer (David Castledine at la Chasse) by Dr Malpass at 2100hrs on [redacted] 2006. The police were finally notified at 1300hrs the following day and even then only by chance because the family Child care Officer happened to be speaking to a senior member of the Emergency childcare team who advised her that she should inform the police. This was just the start of the problems with this case which was not helped when the Childrens' service applied for an emergency order and provided the expert's report on the injury to the Law Officers who then disclosed it to the suspects prior to police interview.

Although this report may seem unduly negative it is my opinion that it is simply training that needs to be addressed plus an understanding of the police role in child protection. I have attempted to engage Mr Wherry on this following an incident earlier on this year but he informed me that I would be better meeting with the Emergency childcare team as I would have more dealings with them. I can report I have an excellent relationship with the emergency team and we work very well together and have a good understanding of each others roles.

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COPY

**Legal Advisers' Office  
Police Headquarters**

Rouge Bouillon, St. Helier,  
JERSEY, JE2 3ZA.

Telephone: (01534) 612590  
Facsimile: (01534) 612589

**Memorandum**

To: Stephanie Nicolle  
Solicitor General

From: Bridget Shaw  
Legal Adviser

Copy:

Date: 23 May 2006

Your Ref:

Our Ref: BS/nt

**CHILDREN'S SERVICE REPORT**

You may recall that at the beginning of April this year we spoke about the concerns the Police Family Protection Team have about the operation of the Children's Service and, in particular, the Long Term Team at La Chapelle. You said then that in view of the Police's concerns, the proper way forward was that you would meet with the Police and thereafter convene a formal meeting with the Managers of Children's Services to discuss the Police's concerns. I have arranged a meeting for Tuesday, 6 June at 2.00 pm. I have invited DCI BONJOUR and DS FOSSEY to attend.

I have now received a report from Alison FOSSEY, who took charge of the Family Protection Team in January 2006. Her report has been seen and endorsed by Chief Inspector BONJOUR. I enclose a copy of Sergeant FOSSEY's report, with attachments showing the history of Children's Service involvement with a number of families. Children's Service handling of these cases is the cause of concern. I also enclose a copy of my file note prepared at the time the issues were raised with me by Sergeant FOSSEY.

In addition to the report, another matter where the Police and Children's Service appear to be at odds has arisen. The Police have been attempting to make contact with the Duty Out of Hours Children's Officer when a child on the At Risk Register is reported missing. Mr WHERRY has expressed to the Police that he does not wish the Out of Hours Officer to be informed that such a child is missing. He believes that these matters can be dealt with the following day during normal office hours. The Police view is that it is a serious matter when any child goes missing but when a child already on the Child Protection Register goes missing there is further cause for concern. If the child is on the Register, Children's Service

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are likely to have recent contact with the child and know of the child's family circumstances and contacts. They may have very relevant information which would enable the Police to trace the child and minimise the risks faced by that child. They find Mr WHERRY's approach difficult to understand.

In order to protect children to the best of their respective abilities, it is imperative that Police and Children's Service work closely together and understand each others roles. It would seem from DS FOSSEY's report that there are no problems with the Emergency Child Protection Team but there are considerable problems with the long term care and protection of children offered by Children's Service. In particular ~~but~~ not exclusively, Police have encountered difficulties with the Long Term Team at La Classe and their Manager, Danny WHERRY.

Firstly, there seem to be a number of cases, of which the [REDACTED] families are examples, where significant incidents concerning children in those families have come to the attention of Children's Service but little or no action appears to have been taken. In many instances, Police find themselves responding to referrals made to them concerning the treatment of children and when they ask Children's Service what action they intend to take, the reply is usually, "Nothing."

In a number of instances, Children's Service have told Police that they cannot act until the Police take action. It would appear that there is a lack of understanding of the standard of proof needed to pursue a criminal prosecution. The standard in civil proceedings is much lower, yet Children's Service is unable to act. It may be that they are in need of guidance as to what degree of risk or neglect the Courts require before granting a Care Order.

The histories of the [REDACTED] families make bleak reading. In the [REDACTED] case, for example, [REDACTED] has shown inappropriate sexual behaviour from a very young age. There are current allegations against [REDACTED] that he has indecently assaulted a boy at school and allegations by [REDACTED] (now retracted) that she has had sexual intercourse with [REDACTED].

It is known that there are three Schedule One Sex Offenders within the family circle. [REDACTED] has been given advice to prevent certain people visiting her house: it is known to Children's Service that she is unable to do so. It is also known that [REDACTED] has been indecently assaulted by an uncle by marriage and makes frequent allegations against many men with whom she comes into contact. These complaints are largely unsubstantiated, but the mere fact that she makes so many complaints, making her a thoroughly unreliable witness, makes her even more vulnerable to genuine assaults.

[REDACTED] has now admitted to the Police that she has seen an [REDACTED] man, named [REDACTED] indecently assaulting her daughter on a number of occasions and yet she has taken no action. Children's Service say they have no grounds to apply for a Care Order. I intend to prosecute [REDACTED] for neglect but surely better protection should have been afforded these children long before now.

[REDACTED]

A similar story can be told of the [REDACTED] family, where the chronology shows clear grounds for concern that the children are being both physically and emotionally abused. [REDACTED] says that he has repeatedly asked Children's Service for help with his children but has been refused. [REDACTED] recently became involved in an argument with his son, now 14, who is aggressive, violent, is drinking and on drugs. [REDACTED] assaulted his son, inflicting an injury. Again, I am prosecuting [REDACTED] but, again, it is too little, too late. The report of Phil PAPWORTH (School Psychologist) makes very sorry reading indeed. He concludes that it is probably too late, after fourteen years in this family, for there to be any hope of an improvement for this particular child.

It might be argued that these are isolated and exceptional cases but I cannot be sure that they are not the tip of the iceberg. Where a case is referred to my office for consideration, once the evidential test is passed we will prosecute where we believe it is in the public interest to do so. In some cases, effective intervention from Children's Service can mean that it is not in the public interest to prosecute. However, I need to have confidence that effective action will be taken by Children's Service when dealing with these families. If Children's Service believe that they need a criminal prosecution in order to act, I will find myself in the position of having to conduct prosecutions which would not otherwise be necessary, and should not be necessary.

DS FOSSEY has particularly drawn my attention to her dealings with Danny WHERRY who, I believe, is the Manager of the Long Term Team at La Classe.

When Mr WHERRY chairs case conferences a number of Police Officers have told me that the outcome of the conference is clearly pre-determined by Mr WHERRY. He begins conferences with the words, "I intend/do not intend to put this child on the Register . . . but, of course, if anyone has an objection . . ." It is believed that this intimidates other members of the case conference and frequently they find themselves isolated as the only advocate of a child being put on, or remaining on, the At Risk Register.

Mr WHERRY has also refused to consider family situations as a whole, such as the [REDACTED] family. It is difficult to see how one can treat the case of one child in isolation if there are grave concerns pertaining to other members of the family. He has also admitted on a number of occasions that he has not read the Children's Service's own chronology of their involvement with a particular family. I find this quite extraordinary and wonder how a decision can be properly reached without consideration of such relevant information.

I have also heard concerns as to the way other members of Children's Service conduct case conferences. In particular, the concept that the Chair is independent does not seem to be appreciated. The Police gave me the example of the [REDACTED] case conference, which was chaired by Jean ANDERSON. Before she retired, Mrs ANDERSON was the Children's Officer most closely connected with the [REDACTED] family. It was, therefore, not appropriate, in the view of the Police, that she should chair this case conference. On a number of occasions they said she was overtly sympathetic to the views of [REDACTED] and did not maintain an independent position.

I raise this point not to pick out individuals for criticism, but to illustrate that the way in which Mr WHERRY chairs case conferences is not confined to him and may be more prevalent throughout Children's Service.

The conduct of case conferences raises the question of what the Child Protection Register is for. The Children's Service's approach seems to be that they identify a child at risk. If they have a plan of action to help the child, they put the child on the Register. The child will remain on the Register whilst Children's Service are putting the plan in place. As soon as the plan is in place, the child is taken off the Child Protection Register. This happens regardless of how far the child may remain at risk. An example of this would be in the [REDACTED] family, the papers of which I referred to you on another basis. The mother is unable to protect these children and [REDACTED] has access to them. Children's Service have put some measures in place to try to reduce [REDACTED] unsupervised access to the children. However, they remain at risk from him but the children have been removed from the Register.

Police and Children's Service must be able to work well together to protect children. I am concerned that these issues may put that working relationship in jeopardy. These problems may be able to be solved by guidance and training those currently in post, but the lack of action in respect of other families over the years may signal a deeper problem.

I wish the Police to appraise you fully of their concerns in our meeting on 6 June so that you may pursue this matter with the Manager of Children's Service as you think fit.

Enc

[REDACTED]

File Note

Meeting with SG re Children's Service Concerns

Tuesday 6<sup>th</sup> June 2006 -- 1400 hours

Present: Solicitor General (SG)  
Mrs B Shaw (BS)  
DCI Bonjour (AB)  
DS Fossey (AF)

The meeting opened with BS giving background re recent history involving FPT / Children's Service and the view that there was in some longer term cases a lack of action on the part of Children's Service to action care orders when it was obviously necessary. The SG commented on the apparent friction this could create.

An example relating to the [REDACTED] family was given and how the Children's Service had applied for an Emergency planning order once it was realised that the Police were going to prosecute, but this had been rejected. There had however been sufficient grounds to apply for a care order but this had not then been pursued. Similarly with the [REDACTED] family where there were three Schedule one offenders within the family and again it had come down to police having to prosecute for Neglect. Again there had been, in the view of BS, ample grounds for a care order and this had been heightened still further when the mother had refused to co-operate with Children's Service despite knowing of abuse. Nothing had been done.

The SG agreed that there appeared to be differing standards and referred back to the [REDACTED] case which had resulted in a judgement by V Tomes identifying that care proceedings could have been instituted.

BS then referred to the appendices to a report compiled by DS Fossey and the obvious history of neglect and abuse contained therein in respect of three specific families. If anything were to happen to any of the children in those families and the Children's service were subjected to a Part 8 Review, it was probable that they would be found at considerable fault.

The SG queried whether the difficulties were endemic within the Children's Service and was assured by AF that this pertained solely to the long term team. The Emergency Team worked very well with FPT but she felt that there was a need for the long term team to review their options. It seemed that issues disappeared when forwarded and rather than action themselves, the question was always asked, "what action are the police taking".

It was the SG's view at this point that there was a need to raise this at Children's Service management level, i.e. Marnie Baudains. Specific reference was made to Danny Wherry who had been standing in on the long term team and there was a view that he might not be impartial to the demands of the long term team given his predominant responsibility for resources generally and the Homes into which at risk children might / could be placed.

There were further examples cited of lack of Children's Service action, i.e. [REDACTED] who was now to be prosecuted for another round of abuse on a young 13 year old girl over two years.

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This it was felt had been a preventable action if the appropriate support and action had been taken when he was released from prison following his previous conviction for similar offences.

The SG stated that she would take up these concerns with Marnie Baudains and wanted to work with her to resolve matters and not against the Children's Service. There was a need to be diplomatic. The SG did express the view that previously the Children's Service had had their fingers burned when dealing with one specific family and were perhaps now unclear as to way forward when there was insufficient for police action.

AB spoke of the SG's comments re friction and diplomacy. He felt it was important that the concerns had been raised but that there was also a need to ensure that AF was distanced from any comment in the SG's initial interaction with Marnie Baudains to safeguard the working relationship between FPT and Children's Service. AB also referred to the potential for a Part 8 review if there were a tragedy with one of the families at risk and that in that case he did not think, having reviewed the family histories the meeting had viewed, that the Children's service would come out of it very well. He also raised an issue of impartiality in respect of any review and felt it would clearly not be appropriate for any such review to be undertaken by the Children's Service locally. Therefore Jersey would have to invite in a review team.

The SG concurred with the above views and certainly did not want Children's Service to become entrenched or defensive when concerns were raised.

BS re-iterated that she was in a position where she was having to prosecute in cases where if the right action had been taken earlier, it may not have been necessary to do so.

The SG made comment on Human Right Law erosion relating to the manner in which such cases were dealt with and that there was perhaps an expectation from the Courts that the authorities could do more to make things work before care proceedings needed to be implemented.

In conclusion, the SG agreed to write to Marnie Baudains and set out the concerns and invite discussion with both SG and those present, excepting AF. She felt it would be good to discuss matters and ensure there was no compartmentalisation or lack of focus generally.

The meeting concluded at 1435 hours

**A Bonjour**  
**Detective Chief Inspector**

[Redacted]

**From:** Jersey Care Inquiry <info@jerseycareinquiry.org>  
**Sent:** 13 October 2015 15:19  
**To:** [Redacted]  
**Cc:** Emma Martins (e.martins@dataci.org)  
**Subject:** RE: FAO Angharad Shurmer [Redacted]

Dear [Redacted],

I confirm that the documents have been removed from the inquiry website. I will look into the matter and respond in more detail following those investigations, however could you please confirm if you mean the black redactions could be removed when opened in Adobe?

Thank you.

Yours sincerely,

Angharad Shurmer  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

**Independent  
Jersey Care  
Inquiry**

**From:** [Redacted]  
**Sent:** 13 October 2015 15:15  
**To:** Jersey Care Inquiry  
**Cc:** Emma Martins (e.martins@dataci.org)  
**Subject:** FAO Angharad Shurmer [Redacted]  
**Importance:** High

Dear Angharad,

I write further to our telephone conversation a short while ago.

As indicated, I have been asked by the Commissioner to contact you to advise that when you click on the link to the Day 67 documents (<http://www.jerseycareinquiry.org/Transcripts/Day%2067%20documents.pdf>) certain of the yellow highlighting can be removed when those documents are opened in Adobe.

You confirmed that you would immediately remove the documents from the website and I should be grateful to receive your urgent confirmation that this has been done.

Yours sincerely,



[REDACTED]

---

**From:** Jersey Care Inquiry <info@jerseycareinquiry.org>  
**Sent:** 13 October 2015 15:23  
**To:** [REDACTED]  
**Cc:** Emma Martins (e.martins@dataci.org)  
**Subject:** RE: FAO Angharad Shurmer [REDACTED]

Thank you for the further information, [REDACTED] I will look into this.

Yours sincerely,

Angharad

**From:** [REDACTED]  
**Sent:** 13 October 2015 15:22  
**To:** Jersey Care Inquiry  
**Cc:** Emma Martins (e.martins@dataci.org)  
**Subject:** RE: FAO Angharad Shurmer [REDACTED]

Dear Angharad,

Thank you for that confirmation.

It is the electronic yellow highlighting which can be removed from the last 17 pages of the documentation when opened in Adobe.

Yours sincerely,

[REDACTED]

Appleby, Jersey Office  
Tel: +44 (0)1534 [REDACTED]

applebyglobal.com

**APPLEBY**

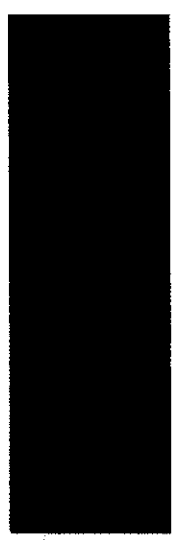
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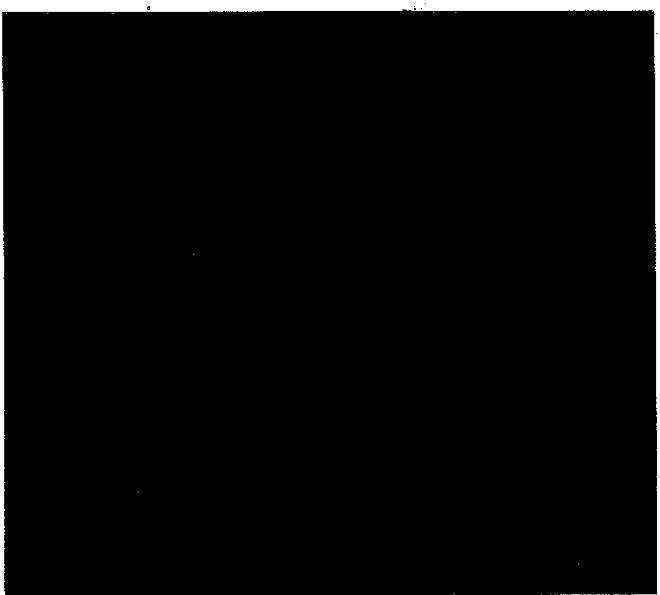
**Day 67 documents - Independent Jersey Care Inquiry**  
[www.jerseycareinquiry.org/tran:ipis/DJF%2067%20documents.pdf](http://www.jerseycareinquiry.org/tran:ipis/DJF%2067%20documents.pdf)  
Apr 26, 2019 | intend to prosecute [redacted] for neglect but such better protection should have been afforded these children long before Nov. 17



5 results (0.20 seconds)

per Day 67 documents - Independent Jersey Care Inquiry
www.jerseycareinquiry.org/transcripts/Day%2067%20Documents.pdf
Apr 23, 2016 - service - extremely - on 1 ad for the welfare of [redacted] who is an
discuss the latest allegation made by [redacted] that she was having sex with

per Day 86 Documents Optimised - Independent Jersey Care
www.jerseycareinquiry.org/Day%2086%20Documents%20Optimised.pdf
service - extremely - conGer ed for the welfare of [redacted] who is an 1 e - [redacted]
discuss the latest allegation made by Gemma that she was having sex with









**From:** Jersey Care Inquiry <info@jerseycareinquiry.org>  
**Sent:** 19 October 2015 19:57  
**To:** [Redacted]  
**Cc:** e.martins@dataci.org  
**Subject:** IJCI - Correspondence  
**Attachments:** document.pdf

Dear Sirs,

Please see attached correspondence.

Yours faithfully,

**Wersheds LLP**  
**Solicitors to the Independent Jersey Care Inquiry**  
**T: 0800 735 0100**  
**Int: +44(0) 1534 828 798**  
**E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)**  
**W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)**

**Independent  
Jersey Care  
Inquiry**



# Independent Jersey Care Inquiry

[REDACTED]  
Appleby  
PO Box 207  
13-14 Esplanade  
St Helier  
Jersey  
JE1 1BD

By e-mail only: [REDACTED]  
[e.martins@dataci.org](mailto:e.martins@dataci.org)

19 October 2015

Dear Sirs

## Independent Jersey Care Inquiry (the "Inquiry")

We write further to your telephone call of 13 October 2015 and emails of 13 and 16 October 2015 concerning an issue you had raised, on behalf of the Data Commissioner, in respect of a document related to Days 67 and 86 of the Inquiry's proceedings, whereby yellow highlighting could be removed from the document available on the Inquiry's website.

Thank you very much for drawing this to our attention. We would like to reassure your client that we are taking this issue very seriously; upon receipt of your correspondence, the document was immediately removed from the Inquiry's website and the issue has been, and continues to be, investigated (as confirmed in our e-mails of 13 October 2015 timed at 15:19 and 16 October 2015 timed at 13:32).

The affected document in question has a document identification reference (used by the Inquiry and its Interested Parties) of WD005327, which is derived from Magnum - this being the document management system that the Inquiry is using for its work. For ease, we will use this reference throughout the correspondence.

We understand that in respect of document WD005327, when the document is downloaded from the Inquiry's website, is saved and reopened in Adobe, the yellow opaque boxes in the document, which act to obscure data, can be deleted and data underneath those boxes revealed.

Our investigations have revealed the following:

- The document was supplied to us by the Law Officers' Department with transparent yellow highlighting, which revealed the text behind that highlighting. However, upon uploading the document to Magnum, because of the 'layering' of the document, the highlighting became opaque yellow and the data underneath

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0) 1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 6XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

# Independent Jersey Care Inquiry

was not visible. This appeared to be an anomaly as the majority of documents provided by the Law Officers' Department were not 'layered' in the same way.

- When the document was subsequently redacted, the opaque yellow boxes acted as a form of redaction and the Inquiry team left these boxes in place and redacted around this information. Unfortunately, due to a technical issue with the systems, when the redline boxes (which are created when a document is being redacted) abutted a yellow opaque box in the document, at the point that these redline boxes were 'burnt' (i.e. applied as blacked out redactions), the abutted yellow opaque boxes disappeared completely revealing the data underneath. This was the first time that the Inquiry and Opus (who are the company that manage Magnum) had come across this as an issue. The matter was immediately rectified and redactions were applied to the document where the yellow opaque boxes had disappeared. We believe that this is the issue [REDACTED] was referring to during her conversation with Angharad Shurmer on Tuesday, 13 October 2015, that [REDACTED] had previously informed the Inquiry of.
- It was agreed going forwards that if the Inquiry came across a document containing yellow opaque boxes and the document required redacting, Opus would need to 'flatten' the document, which would remove the 'layering' and thereby ensure that the yellow boxes appeared transparent. This would ensure that there was never a risk of a red box inadvertently removing an opaque box going forward.
- This issue in April only related to circumstances where redline boxes abutted the opaque yellow boxes. The remaining opaque yellow boxes remained in situ and acted as a form of redaction, albeit that the boxes were yellow, rather than black. As a result of this understanding, document WD005327 was not flattened in April (as per Opus' solution above) as the Inquiry believed that the redactions required had all been made and were not aware that the yellow opaque boxes which still remained in the document posed a further (but different) problem. This meant that document WD005327 was 'over-redacted' - i.e. that the yellow opaque boxes were covering up information which the team may not have actually redacted. It was thought that there was no risk as these words were hidden by the opaque boxes and could not be edited by anyone else.
- However, our recent investigations have revealed that these yellow boxes are editable outside of the Inquiry team, i.e. the Interested Parties can export the documents and delete the opaque yellow boxes if they wish and the documents can be downloaded into Adobe Acrobat and edited in the same way. Whilst the Inquiry was able to export and edit documents itself (which included being able to remove the opaque yellow boxes), neither the Inquiry nor Opus were aware that documents could be exported by the Interested Parties and edited in the same way. Similarly, the Inquiry was not aware that documents could be downloaded from the website and edited in Adobe Acrobat. As far as the Inquiry was concerned, the website only contained an 'image' of a document, rather than the document itself, which is contained on Magnum. For example, the hyperlinks

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0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)



## Independent Jersey Care Inquiry

contained in the transcripts which are uploaded to the website do not work, as they cannot be linked back to original documents on Magnum.

- Neither Eversheds nor Opus were aware that this was technically possible and no similar issue has arisen during the Inquiry's work to date. Opus has also informed us that they have not seen this in other cases they have dealt with and they would have informed the Inquiry if this had been the case.

We apologise if the explanation above is somewhat technical and it may be difficult to follow. Therefore please let me know if it would be useful to discuss this on the telephone.

As a result of our investigations, we can confirm that document WD005327 has been removed from the Interested Party replica in Magnum and the Inquiry's website. The document will be 'flattened' and the document re-redacted to ensure that all redactions appear in black and are therefore un-editable by anyone.

In addition, we are in the process of conducting a review of all documents on the website and the Interested Party replica to see if this issue affects other documents. The Inquiry team have also been fully briefed about this issue.

As can be seen, the issue that has arisen is very much a technical one and we thank you for bringing it to our attention, as it was not one that was foreseen either by the Inquiry or Opus. We can also confirm that the Data Commissioner is the only person to have raised this issue with the Inquiry. No contact has been made by any Interested Party or Document Provider.

If you do have any other concerns now or in the future, please do draw these to our attention as the Inquiry wishes to ensure that all possible steps are taken to protect data and we are unaware of any other potential issues.

Yours faithfully

*Eversheds LLP*

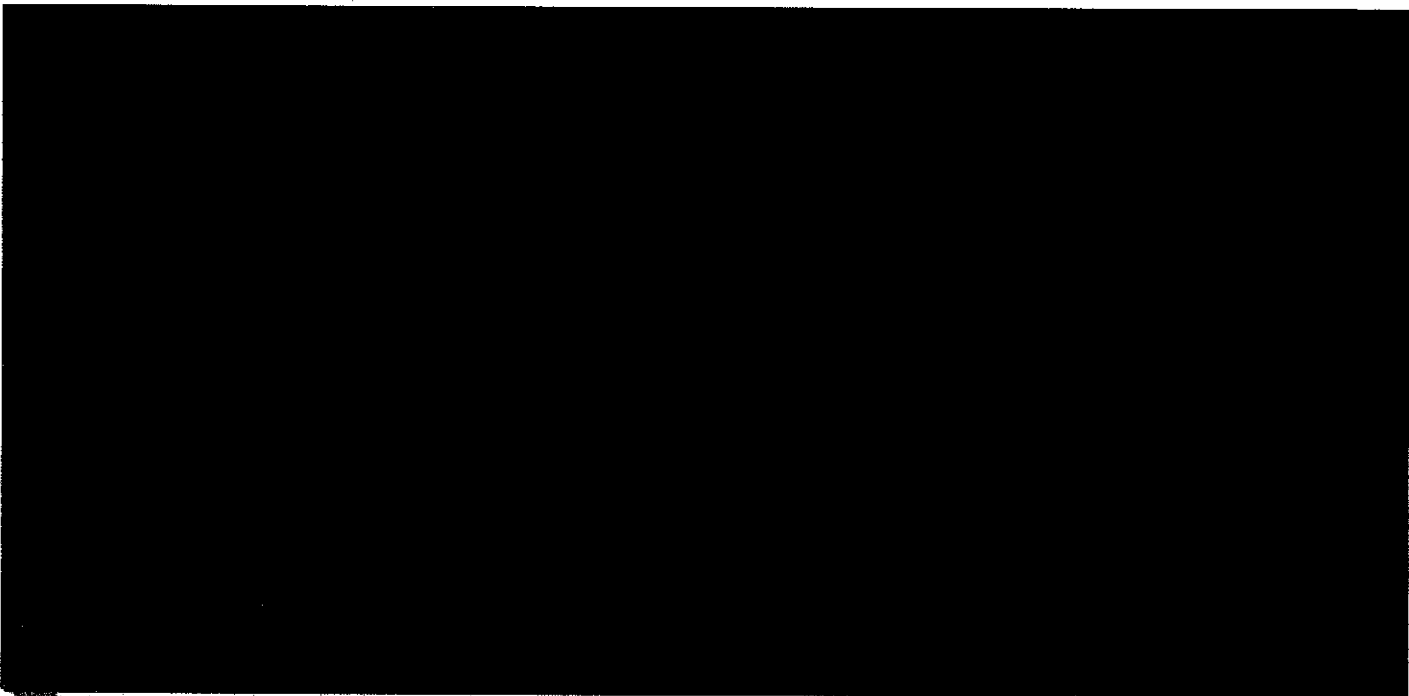
**Eversheds LLP**  
**Solicitors to the Inquiry**

Freephone from Jersey:UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey:UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828784

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)



**From:** Jersey Care Inquiry [<mailto:info@jerseycareinquiry.org>]  
**Sent:** 05 November 2015 10:37  
**To:** David Lawson  
**Subject:** RE: OIC correspondence  
**Sensitivity:** Confidential

Dear Mr Lawson,

The Inquiry has received the correspondence and a response will be sent to you by close of business tomorrow.

Yours sincerely,

Angharad Shurmer  
oversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

Independent  
Jersey Care  
Inquiry

**From:** David Lawson [<mailto:d.lawson@dataci.org>]  
**Sent:** 05 November 2015 10:36  
**To:** Jersey Care Inquiry  
**Subject:** OIC correspondence

**Importance: High**  
**Sensitivity: Confidential**

Dear Sir/Madam

On the 20<sup>th</sup> October 2015 two letters (and enclosures) from the Office of the Information Commissioner (OIC) were hand delivered to your premises at Seaton Place. As a fortnight has passed without acknowledgement or response, I would be grateful to receive confirmation of the safe receipt of these documents at the earliest opportunity.

I look forward to hearing from you.

Kind regards

**David Lawson**  
Office Manager/Personal Assistant  
Office of the Information Commissioner  
Telephone: +44 (0) (01534) 716530 (Jersey Office)  
+44 (0) ( 1481) 742074 (Guernsey Office)  
Website [www.dataci.je](http://www.dataci.je) (Jersey Office)  
[www.gov.gg/dataprotection](http://www.gov.gg/dataprotection) (Guernsey Office)  
E: [d.lawson@dataci.org](mailto:d.lawson@dataci.org)

**Independent Jersey Care Inquiry**  
PO Box 551  
St Helier  
Jersey  
JE4 8XN

17 November 2015

Dear Mrs Oldham

**Independent Jersey Care Inquiry (the "Inquiry")**

**Data Protection (Jersey) Law 2005 (the "DPL")**

I write in relation to the above and, more particularly, my two letters to you dated 20 October 2015 regarding 1) the day 67 documents and 2) various other issues. I am disappointed to note that some four weeks later and notwithstanding the very serious issues raised in those letters, no substantive response has yet been provided. This is unsatisfactory.

It is also disappointing to note that it was not until 5 November 2015 (following a prompt from this office) that an acknowledgment was even received from Messrs. Eversheds (**enclosed**) indicating that my correspondence was receiving attention. As can be seen from that response, I was advised by Ms Shurmer that a response to my correspondence would be sent to me by close of business on 6 November 2015 but as at today's date I have received no such response. Accordingly I shall presume that unless full responses to my earlier correspondence are received by close of business tomorrow, 18 November 2015 that none is, in fact, to be provided.

Yours sincerely

**Mrs Emma Martins**  
**Information Commissioner**

*Encs*


**From:** Jersey Care Inquiry [<mailto:info@jerseycareinquiry.org>]  
**Sent:** 18 November 2015 10:51  
**To:** Emma Martins  
**Subject:** IICI -Correspondence

Dear Sirs,

We refer to previous correspondence and your letter received by hand yesterday. We apologise for the delay in responding to you and now attach our detailed response to your letters of 20 October 2015.

Yours faithfully,

Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

 Independent  
Jersey Care  
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# Independent Jersey Care Inquiry

Office of the Information Commissioner  
Brunel House  
Old Street  
St Helier  
Jersey  
JE2 3RG

By e-mail only: [e.martins@dataci.org](mailto:e.martins@dataci.org)

18 November 2015

Dear Sirs

## Independent Jersey Care Inquiry (the "Inquiry")

We refer to your first letter dated 20 October in relation to the Day 67 documents.

Since our letter to you of 19 October, we have continued to investigate the issue concerning yellow opaque boxes contained in documents and can provide you with an update.

We explained in our letter that we were undertaking a review of all documents on the Inquiry's website to see whether this issue affected other documents. That review identified a limited number of further documents which contained yellow opaque documents. In all instances, these boxes were covering data which the Inquiry would not have redacted in any event. Therefore, these documents were 'over-redacted'.

We have however continued to investigate why this has happened. Our investigations revealed that although the documents were released to Interested Parties with transparent yellow highlighting in the documents, the documents were subsequently appearing on the website with this highlighting having been changed into yellow opaque boxes. After running tests, we have identified that on some occasions the yellow transparent highlighting turns to opaque yellow boxes upon optimisation. Optimisation is a process that is run before the upload of documents to the website to reduce the size of the document. This process is carried out because these documents can run to several hundred pages long.

We have spoken to Opus about resolving this issue and the solution is for the documents to be 'flattened' in Adobe by the Inquiry team (rather than Opus) to prevent the highlighting turning transparent upon optimisation. This will be carried out by the Inquiry going forwards to prevent 'over-redaction' with these documents.

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

# Independent Jersey Care Inquiry

Turning now to your letter, you refer to the fact that the redaction issue regarding the Day 67 documents was not fully resolved by the Inquiry after the issue was discovered on 16 April 2015 and the error was allowed to continue for some six months. You also state that it is inconceivable that the Inquiry failed to realise that there were certain other defects with the document. In this regard we refer to our letter of 19 October 2015 and the explanations contained therein. The Inquiry did rectify the issues with the Day 67 documents of which it was aware back in April 2015; these issues were immediately actioned. The document was also checked once uploaded to the website and the data in question was obscured by the yellow opaque boxes. The Inquiry also took steps to ensure that the same issue did not happen again.

The recent and, importantly, different issue which has now come to light with the Day 67 documents was not foreseen by either the Inquiry or Opus. Indeed, as mentioned in our letter, Opus has not previously seen this issue occur on any other projects they have worked on. It was therefore not even in contemplation by the Inquiry that redactions could be deleted if an individual chose to attempt to manipulate the document. As far as we are aware, [REDACTED] was also not aware that the yellow boxes could be removed, or we assume they would have raised this with the Inquiry at an earlier stage. If the Inquiry had any indication that this was even a possibility, it would have explored the issue and taken steps to ensure procedures were put in place to prevent this from happening.

Now that the Inquiry is aware of this issue, it has taken steps to rectify the documents affected, investigated the cause, tailored solutions to prevent this happening in the future and reviewed and enhanced its procedures to deal with this previously unknown issue.

Turning to the point made in respect of Day 67 documents being visible following a Google search. We have conducted a number of alternative searches and the link to the documents for day 67 does not work in the event that it is identified as a 'hit' on the results page. The documents have been removed from the website and will shortly be re-uploaded.

We hope that the above is of assistance and confirms the Inquiry's position. We also take this opportunity to repeat the request contained within our letter of 19 October 2015, that if you have any other concerns now or in the future that they are drawn to the Inquiry's attention as soon as possible so that the Inquiry can ensure all steps are taken to protect data.

Yours faithfully,

*Eversheds LLP*

**Eversheds LLP**  
**Solicitors to the Inquiry**

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Heller, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

# Independent Jersey Care Inquiry

Office of the Information Commissioner  
Brunel House  
Old Street  
St Helier  
Jersey  
JE2 3RG

By e-mail only: [e.martins@dataci.org](mailto:e.martins@dataci.org)

18 November 2015

Dear Sirs

## Independent Jersey Care Inquiry (the "Inquiry")

We refer to your second letter dated 20 October in relation to other documents on the Inquiry's website which you have drawn to our attention.

Upon receipt of your letter, we removed the documents you referred to from the Inquiry's website to allow us time to investigate each one. We have now conducted our initial investigations and have set out below our conclusions.

### Comments added by document providers

This issue relates to the documents you have identified at Days 31 (page 98), 36 (pgs 94 and 100), 57 (pgs 57 and 100), 61 (pgs 71 and 275), 91 (pgs 138 and 193), 92 (pgs 116 and 117) and 95 (pgs 674-675).

These documents contain comment boxes that have been entered onto the documents by the document providers. For example, the comments originate from the representatives of [REDACTED]

In order to provide some background, at the outset of the Inquiry's work, the Inquiry's protocols (specifically the Inquiry Protocol: Data Protection, Freedom of Information and Redaction) required document providers to disclose documents to the Inquiry with provisional redactions highlighted in yellow; the provisional redactions were to apply the terms of the Inquiry's General Protective Ruling and any other additional redactions that were being sought by the document providers beyond the terms of that Ruling. The Inquiry would then consider the provisional redactions and either accept them all or apply the redactions required under the Ruling and notify the document providers of the redactions that had been applied. In March 2015, the Inquiry's protocols were amended to remove the need for document providers to apply provisional redactions to documents before they were disclosed to the Inquiry (and subsequently redacted).

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828799  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)



# Independent Jersey Care Inquiry

As a result of the process adopted during the early stages of the Inquiry's work, in some cases, when applying provisional redactions in yellow, document providers also appear to have added comments to explain why the highlighting had been applied, or the comments indicate the date and time that the highlighting was added. Throughout the course of the Inquiry's work, the approach has been taken that documents disclosed by document providers should, as far as possible, be kept in their original form. Therefore, unless the comments contain information which should be redacted under the Inquiry's General Protective Ruling, these have been retained in the document.

## **Yellow, removable transparent highlighting**

This issue relates to the documents you have identified at Days 36 (pgs 94 and 100), 57 (pgs 57 and 100), 61 (pgs 71 and 275), 91 (pgs 138 and 193), 92 (pgs 116 and 117) and 95 (pgs 674-675).

As explained above, yellow highlighting (which will have been applied by document providers) will exist in some documents due to the original redaction process followed by the Inquiry. In some cases, document providers have continued to apply the yellow highlighting even though the process has changed. Where the Inquiry does not agree with the extent of redactions proposed by document providers, the highlighting will remain in the document and will not be 'blacked out' by the Inquiry's own redactions.

## **Comments originating from the redaction process**

This issue relates to the documents you have identified at Days 17 (pgs 46, 62 and 69), 19 (pg 75), 24 (pg 274), 51 (pg 89) and 97 (pg 10).

The comments which appear in these documents were applied as part of the redaction process which was adopted by the Inquiry in the early stages. The Inquiry originally adopted a two stage process when redacting - R1: when the redactions were applied by one person and R2: when the redactions were checked by someone else. On occasion, comments were added to documents when the individual applying redactions at R1 stage wanted to explain their thought process around the redactions for the R2 stage. Where these comments contained data which should itself be redacted (i.e. a victim's name) these comments would be removed. There is however one occasion where this did not happen, which relates to the document at Day 24 (pg 274). The comments on this document refer to an individual who may have worked in the Children's Office and therefore her name was redacted for reasons of caution. Unfortunately the comment which included a reference to her name was not deleted. We are now rectifying this to ensure the comment is removed.

The Inquiry no longer has a two stage redaction process due to the changes incorporated in March 2015. Instead, the Inquiry now applies redactions to documents, sends these documents to the document provider for them to check and comment on redactions, and these documents are then uploaded to the Inquiry's systems.

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
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[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 BXN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

# Independent Jersey Care Inquiry

## Yellow opaque boxes

This issue relates to the documents you have identified at Days 31 (pg 98) and 95 (pgs 674 and 675).

The yellow opaque boxes relate to the issue referenced in our first letter of even date. Whilst the documents contained yellow transparent highlighting prior to the optimisation process (and therefore the data was reviewed by the Inquiry in its entirety for redaction purposes), the highlighting changed to yellow opaque boxes upon optimisation. However, the data contained underneath these boxes is not information which would have been redacted. These documents are further examples of 'over-redaction'.

## Redline box

This final issue relates to the document you have identified at Day 60 (pg 41), where a redline box appears. This redline box is applied by the Inquiry when marking up documents for redaction. The documents are then 'burnt' which results in the redline boxes turning black. On this occasion it appears that the redline box which remains in the document was added subsequently to the rest of the redactions on the page. It was added to the redline version of the document and then separately to the redacted version of the document. It appears that the redactions were not then applied to the redacted version and the document was uploaded to Magnum in this way on 15 January 2015.

This document was redacted for Phase 1a witness 389 and it was sent to the document provider, [REDACTED] for comment on 17 February 2015. [REDACTED] responded on 20 February 2015 and made no comment on this particular document nor the fact that it contained a redline box. This witness was heard on Day 60, 27 February 2015. This particular document was not used in the hearing room.

The signature that has been left in this document is of Phase 1b witness [REDACTED]. This witness gave evidence to the Inquiry publicly on Day 76 and thus the name is already in the public domain. Furthermore the information in the redline box does not reveal anything about this witness that is not already in the public domain. However despite this we are rectifying the issue with this document as a matter of priority to replace it on Magnum and to remove it from the documents for Day 60 on the website.

We would like to re-iterate that the Inquiry takes the protection of data very seriously and remains committed to ensuring that its procedures are robust.

Yours faithfully,

*Eversheds LLP*

**Eversheds LLP**  
Solicitors to the Inquiry

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

**Independent Jersey Care Inquiry**  
PO Box 551  
St Helier  
Jersey  
JE4 8XN

20 November 2015

Dear Mrs Oldham

**Independent Jersey Care Inquiry (the "Inquiry")**

**Data Protection (Jersey) Law 2005 (the "DPL")**

I write further to your letter dated 18 November 2015 in respect of the Day 67 documents.

At page 2, paragraph 1 of that letter I note your comments that *"The Inquiry did rectify these issues with the Day 67 documents of which it was aware back in April 2015; these issues were immediately actioned. The document was also checked once uploaded to the website and the data in question was obscured by the yellow opaque boxes. The Inquiry also took steps to ensure that the same issue did not happen again"* (emphasis supplied).

Please confirm:

1. Who checked the Day 67 documents once they were uploaded to the Inquiry website;
2. Whether the entirety of the Day 67 documents were checked (rather than simply the part relating to the issue identified in April 2015);
3. What checks were actually performed i.e. was the document checked for errors as if being accessed by a member of the public with access to Adobe Reader; and finally
4. What checks are made once documentation is uploaded to the Inquiry website. Are all items manually reviewed to ensure that the redactions are correct and the document free for errors? If such checks are performed, who performs that check?

I should be grateful to receive a response to this letter by close of business on Wednesday, 25 November 2015.

Yours sincerely

Mrs Emma Martins  
Information Commissioner

# Independent Jersey Care Inquiry

Office of the Information Commissioner  
Brunel House  
Old Street  
St Helier  
Jersey  
JE2 3RG

By e-mail only: [e.martins@dataci.org](mailto:e.martins@dataci.org)

25 November 2015

Dear Sirs

## Independent Jersey Care Inquiry (the "Inquiry")

We refer to your letter of 20 November 2015 and respond as follows to the specific queries raised:

1. The Day 67 documents which contained the yellow opaque boxes was rectified and was checked again by a member of the redaction team when they were uploaded to the Inquiry website.
2. The entirety of the relevant document was reviewed when uploaded to the Inquiry website to ensure that there were no red boxes visible and no names revealed which should have been redacted in accordance with the Inquiry's Protocols, with specific attention being paid to the issues identified in April 2015. The entirety of the Day 67 documents were not re-checked (see point 4 below).
3. As stated in our letters of 19 October and 18 November 2015 nobody within the Inquiry team nor Opus envisaged that the documents were capable of such manipulation therefore the document was not checked to the extent of being downloaded from the website and tested within Adobe Reader to see if the redactions could be deleted.
4. As explained in our previous correspondence the process has changed over the course of the Inquiry. The initial process provided for documents to be reviewed twice by the Inquiry's redaction team: R1 review was conducted by a junior member of the team, with R2 being conducted by a more senior member of the team before being forwarded to the document provider for comment. The process was subsequently reduced by the Panel to remove the two internal lines of review. This was a decision based on budget and proportionality, as it was felt that this was a duplication of work since the document provider would also be

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+44 (0)1534 828798  
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PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
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# Independent Jersey Care Inquiry

reviewing the documents and the proposed redactions before they were used in the hearing room and uploaded to the Inquiry's website.

As you are aware from the correspondence exchanged earlier in the year, we sought your views on the process when it was changed. It was accepted by the Inquiry that ideally the two lines of review should continue but this was not possible for the reasons outlined above and discussed earlier this year.

For the avoidance of doubt, the current process is that the documents are redacted by the Inquiry team and sent to the document provider for comment. The document provider has five days to review the redactions and upon agreement of the redactions with the document provider the documents are used in the hearing room and subsequently uploaded to the Inquiry website. No further checks are carried out once the documents are uploaded.

This matter has been discussed with the Chair. The Chair is satisfied that there was no further action that could have been taken by the team in the circumstances and that the current processes are sufficient.

We trust that this now clarifies the position and again repeat the request made in our letters of 19 October and 18 November 2015 that if you are aware of any other concerns now or in the future that these are drawn to the Inquiry's attention as soon as possible. The Inquiry is unaware of any other potential issues.

Yours faithfully

*Eversheds LLP*

**Eversheds LLP**  
**Solicitors to the Inquiry**

Freephone from Jersey/UK:  
0800 735 0100  
international callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
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[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 15 January 2016 09:35  
**To:** info@jerseycareinquiry.org  
**Cc:** [REDACTED]  
**Subject:** Day 114 document [REDACTED]  
**Attachments:** Day 114 document [REDACTED]

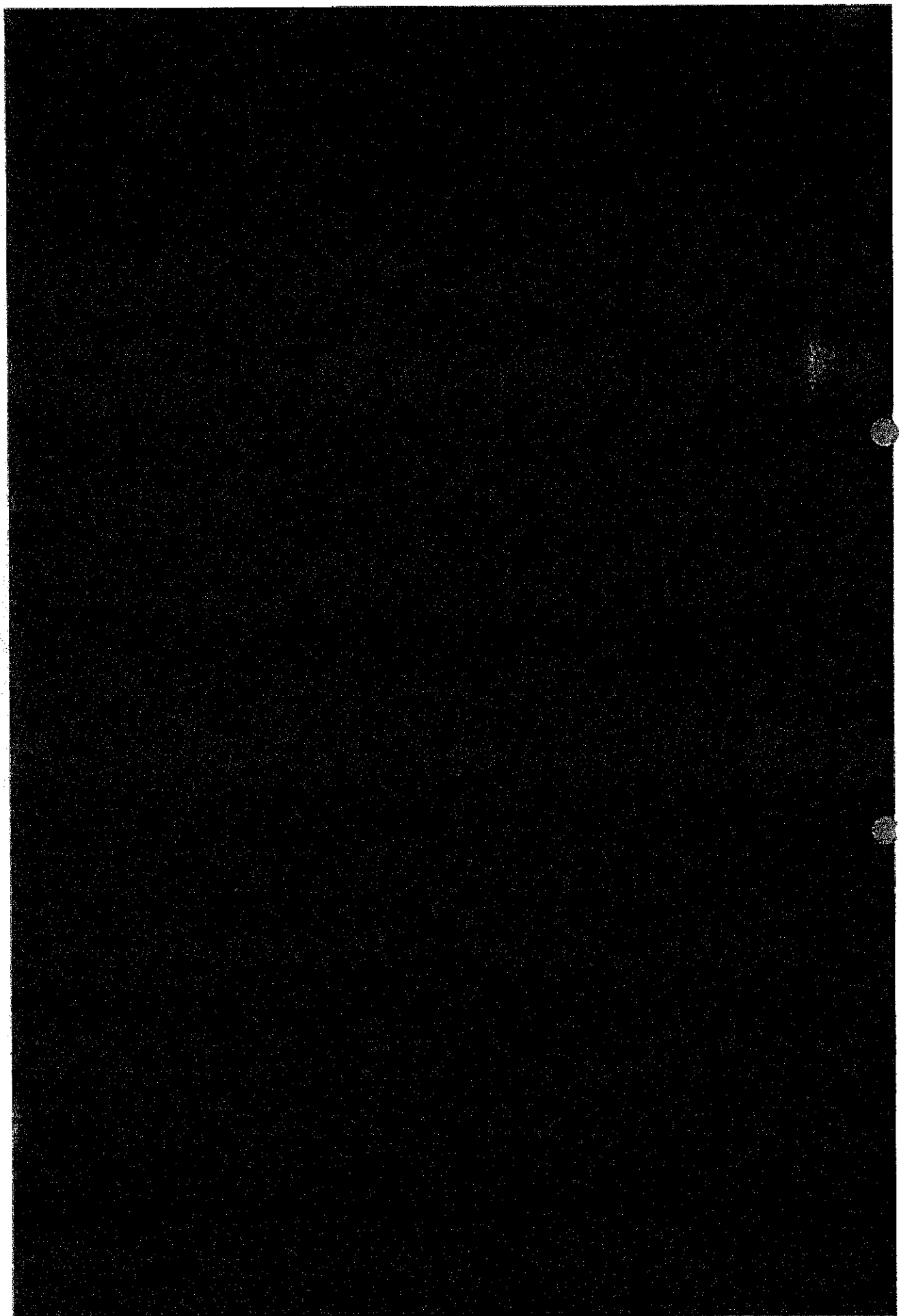
Dear Sirs,

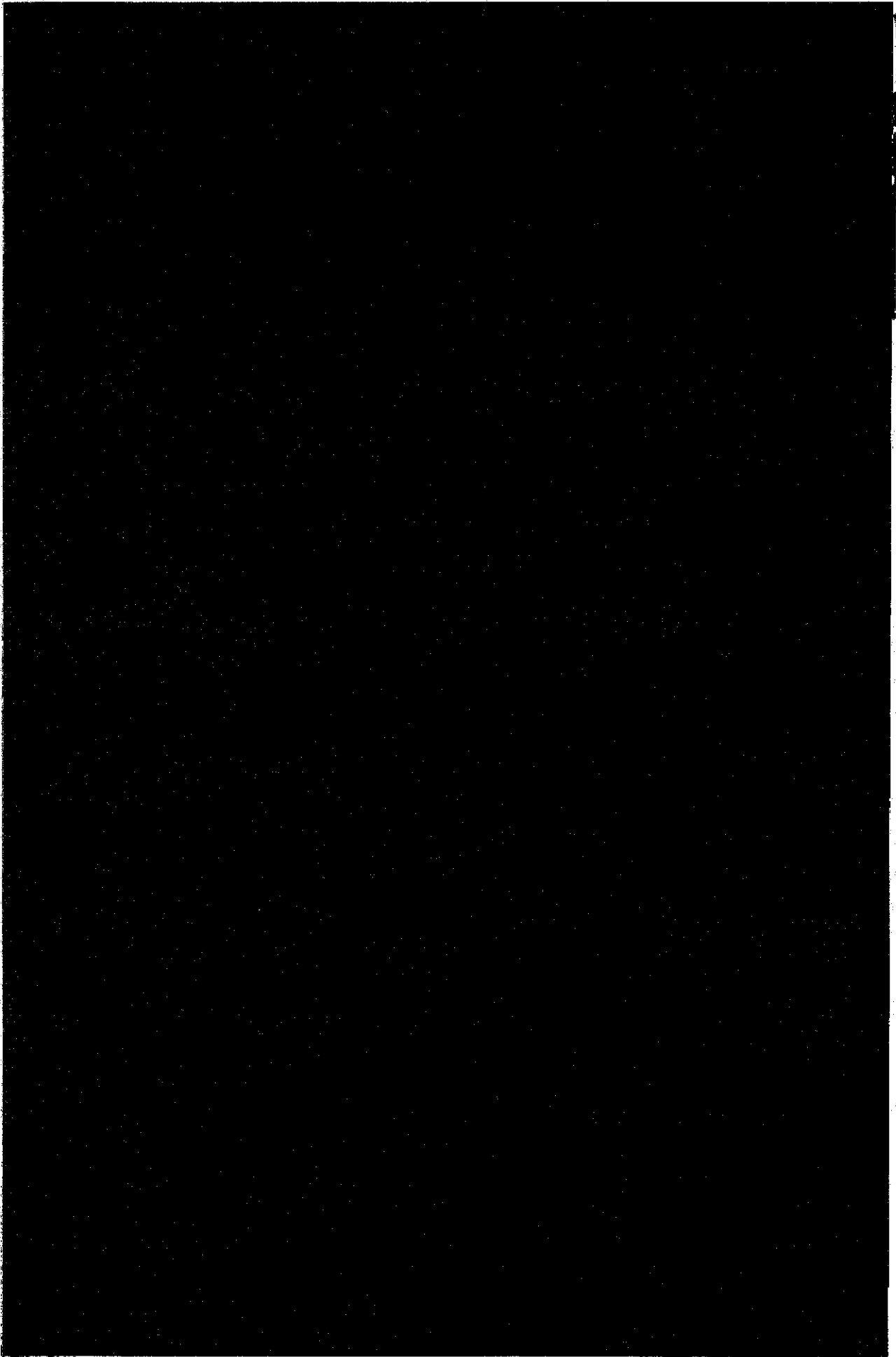
**Inadequate Redaction: Day 114**

I write further to previous correspondence and to draw to the Inquiry's attention an apparent error regarding the redaction applied to certain of the Day 114 documents (copy attached) such as appears on the Inquiry website at <http://www.jerseycareinquiry.org/Transcripts/Day%20114%20documents.pdf>. [REDACTED]

[REDACTED]

[REDACTED]







It appears that the redactions applied by the Inquiry are insufficient to prevent the identification of

[REDACTED]

I accordingly invite the Inquiry to remove the offending document from the Inquiry website and apply the appropriate redactions. I should also be grateful for confirmation that this has been done.

Yours sincerely,

[REDACTED]

[REDACTED]

Appleby, Jersey Office

Tel: +44 (0)1534 [REDACTED]

[applebyglobal.com](http://applebyglobal.com)

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[REDACTED]

---

**From:** Jersey Care Inquiry <info@jerseycareinquiry.org>  
**Sent:** 15 January 2016 09:55  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Day 114 document [REDACTED]

Dear [REDACTED],

Thank you for your e-mail. We have removed the documents for Day 114 and will look into your concerns as soon as possible.

Yours sincerely,

Angharad Shurmer  
Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

**Independent  
Jersey Care  
Inquiry**

[REDACTED]

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 15 January 2016 15:52  
**To:** 'Jersey Care Inquiry'  
**Cc:** [REDACTED]  
**Subject:** RE: Day 114 document [REDACTED]  
**Attachments:** RE: Day 114 document [REDACTED]

Dear Angharad,

Thank you for your swift response and I look forward to hearing from you in due course,

With kind regards,

Yours sincerely,

[REDACTED]

[REDACTED]

Appleby, Jersey Office  
Tel: +44 (0)1534 [REDACTED]

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**From:** Jersey Care Inquiry <info@jerseycareinquiry.org>  
**Sent:** 03 February 2016 09:58  
**To:** [REDACTED]  
**Subject:** ICI - Correspondence  
**Attachments:** document.pdf

Dear Sirs,

Please see attached correspondence.

Yours faithfully

Eversheds LLP  
Solicitors to the Independent Jersey Care Inquiry  
T: 0800 735 0100  
Int: +44(0) 1534 828 798  
E: [info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
W: [www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

**Independent  
Jersey Care  
Inquiry**

# Independent Jersey Care Inquiry

Appleby  
PO Box 207  
13 - 14 Esplanade  
St Heller  
Jersey  
JE1 1BD

By e-mail only: [REDACTED]

3 February 2016

Dear Sirs

## Independent Jersey Care Inquiry (the "Inquiry")

We refer to your email dated 15 January 2016 in which you raise concerns over the redaction of material relevant to Day 114; [REDACTED]

We have reviewed the [REDACTED]

[REDACTED] was however redacted by our Documents Team in accordance with our redaction policy, which means that the individual's name was redacted and ciphered, even though that material is publicly available elsewhere.

We recognise that, unfortunately, a limited number of members of the public may proactively attempt to translate the Inquiry's redaction and anonymisation method by running searches to identify other material. The Inquiry takes all reasonable measures to ensure this does not happen, although in some cases this is not impossible, particularly where the identity of an individual and the potential abuse they have suffered is already in the public domain.

We however accept the point you make in relation to someone being able to search for [REDACTED] if they so wished. Therefore, we will apply the additional redactions proposed.

Yours faithfully,

*Eversheds LLP*

**Eversheds LLP**  
**Solicitors to the Inquiry**

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828799  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

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**Extracts from BBC website**

## Jersey

# Jersey Care Inquiry: Lenny Harper details leak fears

9 October 2014 Jersey



**The details of child abuse victims may have been leaked after the Jersey Care Inquiry failed to post sensitive documents securely, a former senior investigator fears.**

Ex-Jersey police chief Lenny Harper looked into reports of child abuse on the island in 2007 and 2008.

Officials sent him his 200-page confidential statement to sign, but he said it appeared to have been opened and was not sent by recorded delivery.

The inquiry said it was investigating.

### 'Lot of distress'

Mr Harper has given evidence at the inquiry and said the document had contained "the most sensitive information".

He said the post office in the UK had resealed the package in a plastic bag because it had been damaged and inserted a letter of apology for the condition.

Mr Harper said: "There are details of alleged abusers, there are details of many victims and what victims were saying happened to them.

"There are details of allegations of corrupt behaviour by officials in Jersey and many other details of a sensitive nature.

"It could cause a lot of distress to a lot of people.

"My main concern obviously would be the victims who gave accounts of what had happened to them in confidence at that time."

The inquiry said it could not comment further at this stage.

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## More on this story

### **Timeline: Jersey's decades of abuse**

7 August 2014

### **Jersey care 'abuse victim tortured with electric shocks'**

9 October 2014

### **Jersey care inquiry: Carer abused girl, six, in group home**

3 October 2014

### **Jersey Care Inquiry hears girls 'sedated and raped'**

2 October 2014

### **Jersey care inquiry: Girl tells of rape by member of staff**

1 October 2014

### **Jersey care inquiry: 'Brutality and abuse at orphanage' claims**

24 September 2014

### **Jersey care inquiry: Church child labour records sought**

10 September 2014

### **Jersey care inquiry: Nuns 'hit children with spoons'**

9 September 2014

### **Jersey care inquiry: Resident 'heard boys screaming'**

5 September 2014

### **Jersey's children's services 'failed' victim**

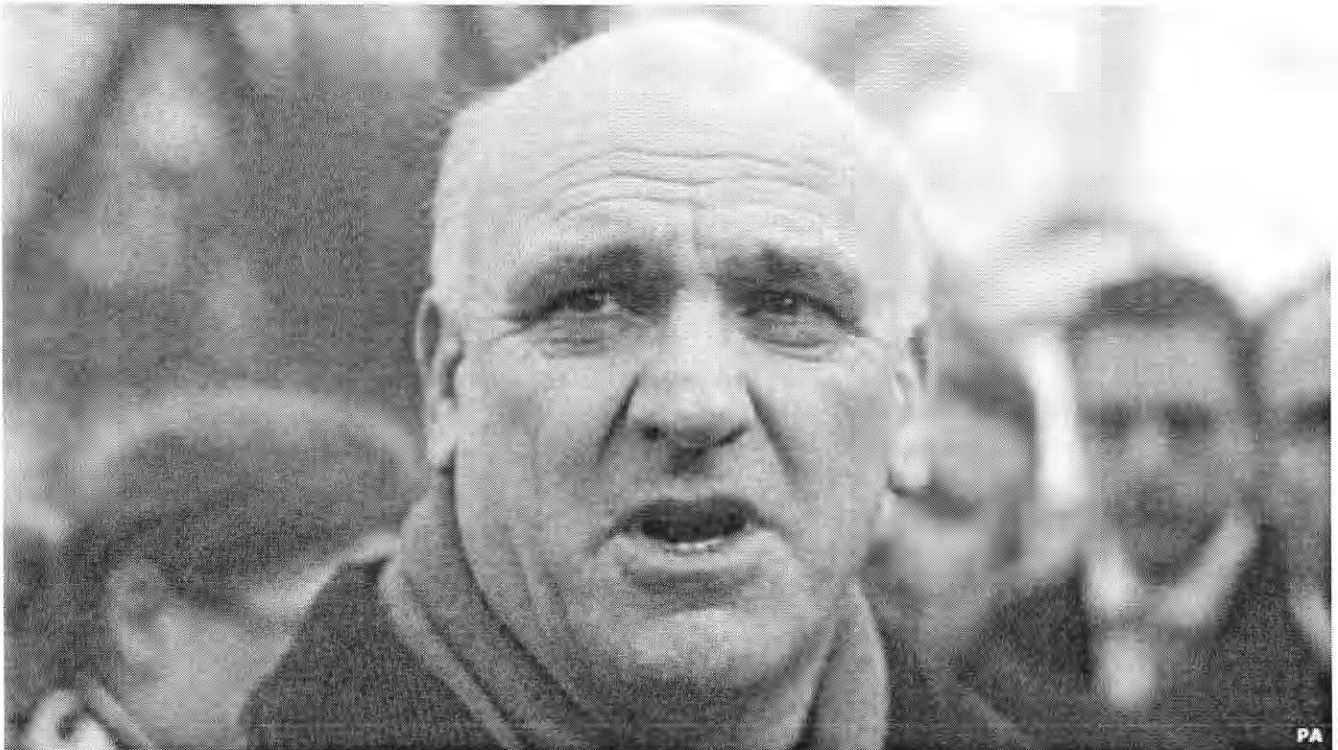
3 September 2014



## Jersey

# Jersey Care Inquiry: Evidence sent in normal post 'to avoid attention'

11 October 2014 Jersey



**The Jersey Care Inquiry said it sent evidence by normal post to avoid attention being drawn to it.**

Former police officer Lenny Harper told the inquiry his 200-page document on abuse appeared to have been opened and was not sent by recorded delivery.

The Jersey Care Inquiry is investigating historical abuse at island child care institutions.

**The inquiry said on its website** that sometimes it had no alternative to sending documents through the post.

Mr Harper looked into reports of child abuse on the island in 2007 and 2008.

Officials sent him his 200-page confidential statement to sign, but he told the inquiry it appeared to have been opened.

The inquiry said: "Much of our contact with witnesses is by telephone or electronic, but sometimes it is necessary to send documentation through the post, particularly to witnesses

who are not on the island.

"The inquiry has deliberately chosen not to draw attention to post, which is sent in plain, non-branded envelopes or plastic document bags in the normal post."

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## More on this story

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### **Jersey Care Inquiry: Lenny Harper details leak fears**

9 October 2014

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2 October 2014

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1 October 2014

### **Jersey care inquiry: 'Brutality and abuse at orphanage' claims**

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### **Jersey care inquiry: Church child labour records sought**

10 September 2014

### **Jersey care inquiry: Nuns 'hit children with spoons'**

9 September 2014

### **Jersey care inquiry: Resident 'heard boys screaming'**

5 September 2014

### **Jersey's children's services 'failed' victim**

3 September 2014

### **Jersey inquiry witness describes foster home sex abuse**

14 August 2014

### **Jersey abuse inquiry hears first care witnesses tell of abuse**

12 August 2014

## Jersey

# Jersey Care Inquiry: Witness says privacy probe 'red herring'

14 October 2014 Jersey



**A Jersey care inquiry witness whose address was published by a journalist says official focus on the reporter is "a red herring".**

The publication, on Twitter, followed news that sensitive inquiry mail to the witness, former deputy police chief Lenny Harper, was tampered with.

Leah McGrath Goodman, a US-based journalist, tweeted a picture of the envelope, showing Mr Harper's address.

Ms McGrath Goodman said the tweet was deleted "in a minute".

The damaged package contained Mr Harper's sworn affidavit to the inquiry, including names of abusers and victims, and had been sent to him to be signed and returned.

## Journalist apologised

On Tuesday, inquiry chair Francis Oldham issued a statement which read: "The inquiry is considering an alleged serious breach of privacy by which a journalist released into the public domain confidential witness information.

"We will not be responding to any questions at this stage until that is concluded."

Mr Harper, who took the original photo of the damaged envelope, told BBC News Ms McGrath Goodman had apologised.

"I'm not worried and I don't care," he said.

"Anyone in Jersey who wants my address, I'm not hard to find.

"I think it's a red herring. I don't see why she should be investigated and I'm not sure it's a matter for a committee of inquiry in any event.

"I think of greater concern is it would appear as if my statement might have been looked at on its way to me."

The inquiry said it used the regular postal service because it did not want to "draw attention" to packages.

Ms McGrath Goodman said the tweet controversy distracted from the damaged package and the inquiry had not contacted her.

"They should have called me if they're worried and they haven't," she said.

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## More on this story

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### **Timeline: Jersey's decades of abuse**

7 August 2014

### **Jersey Care Inquiry: Evidence sent in normal post 'to avoid attention'**

11 October 2014

### **Jersey Care Inquiry: Lenny Harper details leak fears**

9 October 2014

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### **Jersey care inquiry: Carer abused girl, six, in group home**

3 October 2014

### **Jersey Care Inquiry hears girls 'sedated and raped'**

2 October 2014

### **Jersey care inquiry: Girl tells of rape by member of staff**

1 October 2014

**Statement issued by the Inquiry on 9 October 2014**



February 2015

January 2015

December 2014

November 2014

October 2014

**9 October 2014**

There has been no security breach over mail sent by the Inquiry. Here is its statement:

"The Inquiry is in contact with a wide range of witnesses, some of whom are on the island and some are not. Much of our contact with witnesses is by telephone or electronic, but sometimes it is necessary to send documentation through the post, particularly to witnesses who are not on the island. The Inquiry has deliberately chosen not to draw attention to post, which is sent in plain, non branded envelopes or plastic document bags in the normal post. The Inquiry by necessity has to use the postal service on the island. The Inquiry views with concern the reports from Mr Harper that his private mail has possibly been tampered with and has been in contact with Mr Harper."

[< Back](#)

September 2014

August 2014

July 2014

**25 June 2014**

The Independent Jersey Care Inquiry is engaged in securing the documents necessary for its work. It will be taking stock of the position at the next Public Hearing on 2 July.

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**Extract from Transcript of Day 24 from the Inquiry**

1 Tuesday, 14 October 2014

2 (11.30 am)

3 THE CHAIR: Good morning, Mr Sadd.

4 MR SADD: Good morning, Madam Chair. In what's left of the  
5 morning we intend to complete the reading into the  
6 record of those witnesses who give accounts of being at  
7 Sacré Coeur. You may remember that last Thursday,  
8 Madam Chair, we heard evidence and effectively we ran  
9 out of time, for a variety of reasons. Interested  
10 Parties were notified last Thursday that we were reading  
11 in the Sacré Coeur evidence. That has had to go over  
12 and here we find ourselves completing that evidence,  
13 hopefully by midday today.

14 THE CHAIR: Before we do that, Mr Sadd, a matter has  
15 occurred over the weekend and I wish to say this: that  
16 the Inquiry is considering an alleged serious breach of  
17 privacy by which a journalist released into the public  
18 domain confidential witness information. We will not be  
19 responding to any questions at this stage until that is  
20 concluded.

21 With that, thank you, Mr Sadd, we can move to  
22 reading in.

23 Witness 150 (evidence read into the record)

24 MR SADD: So, Madam Chair, we go first to witness number 150  
25 and if we could have, please, up on screen WD175. If we



**Hansard: 6 March 2013**

		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		
		Deputy R.J. Rondel (H)		

## **2. Committee of Inquiry: Historical Child Abuse (P.118/2012) - as amended**

### **The Bailiff:**

Very well, we come next to Projet 118, Committee of Inquiry: Historical Child Abuse lodged by the Council of Ministers and I will ask the Greffier to read the proposition and I will also ask the Greffier to take over the Chair for this matter.

### **The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion - (a) to agree that a Committee of Inquiry should be established in accordance with Standing Order 146 to inquire into a definite matter of public importance, namely historical child abuse in Jersey and that the committee should be comprised of a senior legally qualified chairman of significant standing from outside Jersey and 2 other members from outside the Island with suitable skills and experience; (b) to approve the terms of reference for the Committee of Inquiry (as set out in the Appendix 1 to the report on the amendment of the Council of Ministers dated 5th February 2013) as amended; (c) to agree that the Chairman should be selected by a panel comprising the Greffier of the States and 2 independent persons from the United Kingdom, with the selection process being overseen by the Jersey Appointments Commission; (d) to agree that the 2 members of the committee should be selected by a panel comprising the proposed Chairman, the Greffier of the States and 2 independent persons from the United Kingdom, with the selection process being overseen by the Jersey Appointments Commission; (e) to agree that the proposed Chairman should be requested to recommend any final changes to the terms of reference for the Committee of Inquiry referred to in paragraph (b) above for approval by the Assembly and also to set out the proposed process for conducting the inquiry, having consulted with interested parties where necessary; (f) to request the Chief Minister to bring forward to the States the necessary proposition relating to the appointment of the Chairman and members and, if necessary, to the approval by the States of the final terms of reference if changes have been recommended by the proposed Chairman; (g) to agree that the Committee of Inquiry should be requested to complete its work within 12 months of commencing the inquiry.

### **The Greffier of the States (in the Chair):**

Very well, just before I call the Chief Minister to propose, just 2 preliminary matters; I would, first of all, ask Members to note that the Greffier of the States is given a role in the proposition in relation to the appointment, so I trust Members do not think that interferes with my presiding in the Assembly today. Secondly, Members will have noted that there are a number of amendments lodged to the proposition. The Council of Ministers has lodged, of course, an amendment to its own proposition which substitutes the terms of reference and, consequently, then lodged an amendment to those amendments, which makes certain further changes. Members will find on their desks, I think, a sheet which shows the effect of the terms of reference as amended. Do I take it Members are content, in the interests of simplicity, to invite the Chief Minister to propose the proposition as amended by those amendments? Very well, there is clearly an amendment from Deputy Tadier which will have to then be taken separately but I will ask the Chief Minister to propose the proposition as amended. Chief Minister.

### **2.1 Senator I.J. Gorst (The Chief Minister):**

Perhaps I could thank Members for ceding to take the proposition as amended and amended. A Committee of Inquiry to consider historical child abuse is the right and proper way to proceed. It

provides a clear acknowledgement that we know things have gone wrong in the past and that we want to learn lessons from previous failings in childcare provision.

[11:45]

Government first made an apology on 6th December 2010 in the following way: “On behalf of the Island’s Government I acknowledge that the care system that operated historically in the Island of Jersey failed some children in the States residential care in a serious way. Such abuse has been confirmed by the criminal cases that have been before Jersey’s courts. To all those who suffered abuse, whether confirmed by criminal conviction or not, the Island’s Government offers its unreserved apology.” More than 2 years has passed since that apology was first made and I am convinced that a Committee of Inquiry is now the correct course of action. It is the right thing to do for victims of abuse who want to recount their experiences to an independent inquiry. It is the right thing for our community, so we can be assured that we have done everything possible to establish what went wrong and then to ensure it does not happen again. Agreeing the Terms of Reference today is the next step, reflecting the Assembly’s decision in 2011 to hold an inquiry. Ministers have already set up the Historic Abuse Redress Scheme which is compensating victims of abuse; 31 claimants have already accepted offers under the scheme. Since 2008 there have also been a number of independent reports on our children’s services. These reports have informed Health and Social Services policy development and significant progress has been made in implementing many of the recommendations. Our children’s services today are very different from how they were just 10 years ago, let alone 30 years ago. Members are well aware of the process that has brought us to where we are today. The Verita review and the Williamson review have both helped us to arrive at today’s terms of reference. I would like to thank Verita, Andrew Williamson and the interested individuals for their help in producing and refining these terms of reference. I would also like to mention 2 Members of this Assembly whose participation I have particularly appreciated: Deputy Tadier, who has co-ordinated and represented views of stakeholders and Senator Le Gresley, without whose patient diligence we would not have reached the level of consensus that we have today. **[Approbation]** I am confident that today’s proposals answer the central purpose of establishing a Committee of Inquiry. I believe this inquiry will provide a trusted forum where witnesses can share their experiences where a healing process can begin and through which we can develop a shared understanding of the lessons which need to be learned from our past. A Committee of Inquiry is a significant undertaking which needs to be led by individuals of sufficient stature and experience to act impartially and to safeguard the interests of all involved. The Council of Ministers is proposing the committee should be led by a legally qualified Chair with a legal or perhaps judicial background who is independent of Jersey and of all interested parties. We are proposing that the selection panel should include yourself, Sir, and 2 independent people with appropriate experience from the United Kingdom. The Jersey Appointments Commission should oversee the appointment process of the Chair. The Chair should be supported by one or 2 panellists, also recruited from outside Jersey, with at least one lay member from an island community and one panellist with childcare experience. The proposed Chair should recommend any changes to the terms of reference for approval by the Assembly and set out the proposed process for conducting the inquiry, having consulted with interested parties where necessary and that the Committee of Inquiry should be requested to complete its work within 12 months of starting the inquiry. The main objectives of a public inquiry are to establish the facts, learn from past events and prevent their reoccurrence, provide an opportunity for reconciliation and resolution, to rebuild public confidence, to hold people and organisations to account and to demonstrate that something has been done and that government is transparent. This inquiry is not a court of law and will not be able to judge the guilt or innocence of individuals mentioned by witnesses. Its role is to understand what happened to cared for children, by allowing victims to describe what happened to

them, by allowing those accused of abuse, but not charged with a crime, to have their say and by collating information from past investigations and reviews, particularly from those carried out since 2007. This information will need to be set within the social norms of the relevant period to help us understand what went wrong, what was done at the time and who was accountable. I do not propose to go through each term of reference individually. A Committee of Inquiry generally sits in public. It can though, in the interests of justice or in public interest, sit for all or any part of its proceedings in private. It is essential that the committee balances the needs of the victims with both public interest and in the interests of justice, consequently Ministers hope that the committee will consider the comments of the Attorney General in this regard. I am aware that some Members have concerns about the possible financial implications of this inquiry. Members will know that an initial estimated cost of £6 million was identified. This figure was produced with help from Verita who have experience of similar inquiries. Further validation work has since been undertaken by your own department and by the Treasury Department and I would like to thank the Minister for Treasury and Resources for his detailed comment in this regard and I hope that Members have gained reassurance from this further detail. The main assumption with regard to finances is that this inquiry will take one year. Other key assumptions relate to the number of witnesses, named individuals and organisations to be interviewed. Allied to this is the level of legal support and costs that will be required to support those individuals and organisations. These estimates will be reviewed when the Chair and panel are appointed and have confirmed their approach to the conduct of the inquiry. The £6 million estimate includes a contingency provision of £1 million, recognising that there will inevitably be developments as the process continues. With regards to the budget management, the £6 million will be allocated to the States Greffe and you, Sir, the Greffier of the States, will act as a counting officer with financial management support through existing Treasury arrangements. Management of the budget will need to comply with the Public Finances Law and all relevant financial directions. The inquiry will operate over 2 financial years, 2013 and 2014, and ongoing forecasting will be undertaken as part of the budgetary control procedures. I understand that this inquiry needs proper funding but I am clear that spending should be rigorously controlled by Treasury's regular procedures. In conclusion, the Council of Ministers believes a Committee of Inquiry is the right thing to do. We want to acknowledge publicly that things have gone wrong in the past and we hope this Committee of Inquiry will help us to learn lessons from past failings in childcare provision. Ministers believe that by establishing a thorough, trusted and independent process of inquiry the experiences of all witnesses will be recorded their rightful importance and play a part in ensuring that Jersey has the correct framework to protect all Islanders, especially its most vulnerable. I would like to reassure Members that everything suggested by Verita and more is contained in the proposed terms of reference. This Assembly has already stated its position on the holding of an inquiry. Now is the time for all Members to support these comprehensive terms of reference so that work can start. It is my sincerest hope that this Committee of Inquiry will be the first step in the healing process for all of those who have suffered, as well as the whole community. I ask Members to support this proposition as amended.

## **2.2 Committee of Inquiry: Historical Child Abuse (P.118/2012) - Amendment (P.118/2012 Amd.) - Second Amendment (P.118/2012 Amd.(2))**

### **The Greffier of the States (in the Chair):**

Is the proposition seconded? [**Seconded**] There is one amendment remaining to deal with, which is the amendment in the name of Deputy Tadier. This is numbered P.118 amendment - second amendment and I will ask the Greffier to read that amendment.

### **The Assistant Greffier of the States:**

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, in

paragraph 13, for the words from “shall be examined by an independent expert” through to “all the circumstances” substitute the words “may be examined in a manner to be determined by the Committee”.

### **2.2.1 Deputy M. Tadier:**

If I can thank the Chief Minister for his speech, I thought that his speech was appropriate in its tone and content. I know there is a lot of interest being generated today, not simply by the police station but also about perhaps the more abstract proposition that we have in front of us, which is a Committee of Inquiry into a very important issue of public interest. The reason that there is only one amendment left from the table is because much of the work, in fact the vast majority of the work and I suppose you can compare it to an iceberg, has been done behind the scenes and below the surface, to mix the metaphors, because many meetings have been taking place, particularly in the last 2 months, between key stakeholders, interested parties, perhaps pivotal politicians like myself and Senator Le Gresley and the Council of Ministers in order to find a consensual way forward.

[12:00]

Many of the amendments that we have put forward have been adopted so that the intent of what we are trying to get on the table has been recognised. In some ways I would have been hopeful that if we had not been pushed so much to the wire with these amendments, and there are various reasons for that, not within our hands it has to be said, I would have thought that given another week or 2 we could have probably come to an agreement on this amendment being accepted. I do not think it is that controversial and I will explain why. But, first of all, the Greffier staff have been kind enough to circulate a sheet, akin to the one for the Council of Ministers amendments, simply showing the difference in what is being asked and it is fairly straightforward. I am simply asking, on behalf of other stakeholders, that we remove the part which is prescriptive about how the Committee of Inquiry should be looking, if they need to, at prosecution files simply to say that we should not be telling them how they do their job. We should be leaving them free to do their job in a way that they will and remember there will be very experienced, very professional people who will be doing things best practice. We have the Greffier who is going to oversee that process to make sure that the individuals we have are people that we can trust to do the job. Nonetheless, I will read from the report because it is quite short and I think it does encapsulate the purpose behind the amendment: “Of all the amendments this seems to be the only one that is still causing me and stakeholders I have been working with problems. The wording in the first part of paragraph 13 of the terms of reference agrees that, as part of its remit, the Committee of Inquiry will look at the actions of the States of Jersey Police and prosecuting authorities with regard to the way in which files were submitted from one to the other.” That is to say between the police and the prosecuting authorities: “And then to establish whether the prosecutions were conducted in a professional (including impartial) manner.” I will probably stop at that point just to say we settled on the wording “professional” after taking advice from Verita because we had originally agreed, I think back in 2011, the wording was “an impartial and consistent approach”. That then got changed to “professional and impartial” and then it was suggested by Verita that we do not need those 2 words because professional entails it but it should be understood that it will be looking at those areas: “To make sure it is free from undue interference, whether that was political or otherwise, this is very much the what and, as in the other current 15 terms of reference we are charging the committee to establish the facts and report back to us.” The key thing I would emphasise is that: “In none of the other terms of reference do we tell the Committee of Inquiry, who will be professionals with, one would imagine, a degree of experience but in fact a lot of experience in conducting these type of inquiries, we should not be telling them exactly how they should be conducting their work.” First

of all, it does not sound right and it has the potential to get the Committee of Inquiry off on the wrong footing: "I have engaged in much contact with relevant stakeholders, including the political originators of the Committee of Inquiry." That would have been Senator Le Gresley and the former Deputy of St. Martin, Bob Hill, but also the former Deputy of St. Mary, Daniel Wimberley, and they have been very helpful. Even though they are no longer States Members they have put in much time at their own inconvenience, which has to be appreciated: "We know the inquiry will necessarily have to be chaired by someone who is independent. He or she will also have likely extensive legal training. It would seem that in the first instance the Chairman may wish to look at the files, him or herself. As a professional and independent person it does not appear to me that that should be a problem. However, it is not clear whether those files would be able to be seen by the Chairman under the current wording or if they would be sent off straight to the independent experts." Remember we are going to be paying for the independent Chairman, who is an expert, and 2 panel members and I see from the costings that they will also have their own legal and specialist advice. I am just questioning whether we necessarily need to automatically go down that route straightaway and, if so, why? "The offer for outside independent legal advice is not a problem per se, indeed it may be desirable but it should be something that is available to the professional team that will make up the committee. We were, thus, disappointed that our very simple suggestion of amend 'shall' to 'may', so that it would read 'those files may be examined by an independent expert or experts' was not accepted. This would have put the discretion very much back where it belonged with the committee members. It should also be noted that there were concerns raised from some stakeholders who noted that the advice being given to Ministers on the process for looking at the prosecution files was coming from the same department whose decisions would be subject to scrutiny from the Committee of Inquiry. While there is no suggestion of impropriety we do know that perception is important, given the fact that in Jersey the State Prosecutor is also the legal adviser to the Council of Ministers. We feel, therefore, that this is another compelling reason that the Committee of Inquiry should be given the flexibility to act in a manner of its choosing without apparent undue limitation." I am going to be asking at the end of this proposition whether the Chief Minister will be accepting this amendment. I would like to feel he can do that and I will explain why. It is simply ... it does not mean that the very, what I would call, prescribed route for the Committee of Inquiry to take. It does not mean that they cannot do that, if that is seen to be the best or an acceptable way to do it. It simply means that they do not have to. We do not know who the committee Chairman or the other panel members are going to be yet. It may be that putting such a route in place may put some applicants off from doing that, because they will not want to necessarily come over to Jersey to take part in a Committee of Inquiry, where one or more of the areas have been stipulated - only one of the areas, it has to be said. It may put certain people off from doing that. I also think that the direction being proposed is unclear. We have to remember that the Committee of Inquiry are not reinventing the wheel. This may be something unusual for Jersey, something which has taken a long time to come about. But these things happen elsewhere. It is unfortunate, but they do occur. Committees of Inquiry happen elsewhere and there are experts who do the job. I do not really like to use analogies, because they are never quite perfect, but when you commission an architect to build a house for you, you give him the specifications and you tell him to go off and build that house. You do not get into the minutiae of telling him what kind of cement and sand mixture they should be using to build your house. You say: "I want a house which has got 4 rooms, 3 upstairs, one downstairs; 2 bathrooms. Go away and do it." You do not tell him who he is allowed to buy his supplies from. You give him a budget and he will go off and do that. I think this is very much the way of doing it. If the only way to do it is what is described here, any self-respecting Committee of Inquiry will adopt that process anyway. That is all I am saying. I do not want to labour the point, because it depends very much on the resistance and the arguments that will come back against this amendment. I will prepare for those in my summing-up. Simply to say, today is not about mudslinging. We have

come a long way. We know that it has taken a long time. There was, of course, a point at which there was not even going to be a Committee of Inquiry. That was turned around. I hope today, what I would like to leave with Members, is if we are going to do this Committee of Inquiry it is important that we do it properly or do not do it at all. That is the thing. It is better to not have any question marks over the Committee of Inquiry from the beginning. Because, there may be people out there who are never going to be satisfied with whatever the Committee of Inquiry comes back. But I think the vast majority of people are reasonable and rational. But those question marks will only increase if we cannot get 100 per cent consensus from the beginning about what the terms of reference should be. I give one last invite to the Chief Minister before the ensuing debate to accept what, I think, is a modest amendment. Just to put it in context. If you believe in synchronicity, about things happening at the same time for a particular reason, today's copy of the *Times* leads with the fact that prosecutors in the U.K. have been ordered to crack down on sex abuse. It has noticed the fact that the way we deal with things needs to change as they go on. I will not bore anyone with the copies, but there are some very far reaching and significant recommendations that are being put in place, which I think we all need to learn from. It is not simply about allocating blame, saying: "Decisions were wrong." I do not think it is that clear cut. It is also about establishing how we as a society should be dealing with these kinds of issues to make sure that the ones who are most vulnerable are not put through the mill unnecessarily. So, I do make the amendment and I would ask for Members to give it serious consideration.

**The Greffier of the States (in the Chair):**

Is the amendment seconded? [Seconded]

**Deputy T.M. Pitman:**

Sir, can I just raise an issue. I think it is a point of order.

**The Greffier of the States (in the Chair):**

Yes.

**Deputy T.M. Pitman:**

I have raised the concerns before, as you are aware, and I hope they have been listened to. Could I place on Hansard that I think it would be totally wrong that any Member should speak in this if he or she has got past links, where perhaps they have been in a role where they may find themselves at this Committee of Inquiry. I would ask that if those people are not going to recuse themselves, they will at least stand up and acknowledge for the record that: "I was the Attorney General" or: "I was a care worker" or whatever. I would like that recorded on Hansard, as I do think it is very important for the reasons Deputy Tadier has touched on.

**The Greffier of the States (in the Chair):**

Standing Orders 106 makes clear the circumstances in which declarations of interest will be made. I am sure Members will take account of that Standing Order, if it applies. This is a very narrow amendment on paragraph 13, so I would urge Members who are speaking to refine their comments to the amendment. There will be ample opportunity to speak on the proposition afterwards. Chief Minister?

**2.2.2 Senator I.J. Gorst:**

I would like to start by reiterating my thanks to Deputy Tadier, as I said, in my opening comments for marshalling, if I might use that words, stakeholders refinements that they wish to see to the terms of reference and the work that they put in to enabling the Council of Ministers to bring forward the 2 amendments which are now incorporated into the terms of reference. I think, as Deputy Tadier acknowledged in his moving this amendment, this is a particularly difficult area. It

is particularly difficult to understand quite what the process might be and quite what the implications of any process, which suggests that prosecution files should be reviewed, would be. It was a quite deliberate decision of the Council of Ministers in recognition that we were going into an area which I am not aware has happened in Jersey before. I am not aware that other Committees of Inquiry have proposed quite a review so broadly in these terms. Therefore, I was of the opinion and still am that Members need to have before them of how this might work. That is important because of the way prosecution decisions are made and the basis upon which they are made. That is itself important, because the Committee of Inquiry will be hearing evidence, people's stories about what happened to them, which may not form part of the evidence within a prosecution file, which was submitted by the police for the prosecuting authorities upon which they were then going to make a decision. The decisions, as Ministers have said in their comments, which I hope Members have taken the time to read - if they have not I would ask that they just turn to the penultimate paragraph, not the emboldened paragraph - where it outlines where it is important to have the process which Ministers are asking Members to support today. The evidence, the papers and the file that was available to the decision maker at the time was just that. One can only decide whether the decision taken was reasonable by looking at those files and not being coloured perhaps by other evidence or information which is provided to the panel.

[12:15]

Therefore, Ministers quite deliberately and carefully have suggested this process. The other point I would just wish to make is that the person doing the independent review of these files, should it be decided that it is required by the Chairman, I believe needs to be somebody who is experienced in making prosecution decisions. I think that it will be and it will be unlikely that the Chairman of the inquiry will be such a person, as I suggested in my opening remarks. It is expected that the Chairman will be a lawyer or somebody with judicial experience, but not necessarily with experience as a prosecuting authority. They are quite different. It might appear that a lawyer is a lawyer is a lawyer. That is not quite right. Experience of making those decisions is important because they will need to understand how those decisions are arrived at and upon what evidence. Deputy Tadier and myself and Senator Le Gresley have discussed this, I suppose, at length. While I stand by the position of the Council of Ministers and the comments, of course, it is for this Assembly to decide at this point. Members will also be aware that one of the limbs of the proposition this morning is that the Chairman and panel themselves, if they have any concerns about the terms of reference that we are going to approve today, will be able to ask me when I bring forward their appointment to this Assembly to make amendments at that time. It is for those reasons that unfortunately I do not think we were able to reach agreement. I hope that Members will see that it is from my perspective not quite as straightforward as Deputy Tadier might have suggested, although I do accept his reasons for bringing it forward, that he does not want to be prescriptive at this time. He wants the Chairman and the panel to make those decisions. I am of the view that because it is such a delicate and difficult area, going into grounds that we need to be absolutely certain of what the process is, that I would ask Members to not accept this amendment but to remain with the terms of reference as they are. The other thing perhaps I would say is that, as you rightly directed, it is quite a narrow amendment to the terms of reference. Therefore, I hope that the debate will not become personal or prolonged. In some ways it is quite simply whether Members would like to have it prescribed now as the Council of Ministers are proposing or to give it back to the Chairman to make an ultimate decision.

### **2.2.3 Senator F. du H. Le Gresley:**

I would like to share the Chief Minister's comments about the very valuable work that we have been able to do with Deputy Tadier, former States Members and the Jersey Care Leavers'



Association in arriving at these terms of reference. It has been a long haul. I do believe we have very robust terms of reference. But it is unfortunate that we cannot quite reach agreement on this particular term of reference, number 13. I would dearly have hoped that we could have done. I think the Chief Minister has made the right points and I just want Members to go back to ... because a lot of where we are today is to do with the original Verita report, which is appendix 3 of the original proposition. Throughout the process, drawing up terms of reference, we have always gone back to what Verita have suggested, not only in the wording of the terms of reference but the process of arriving at how we set up our Committee of Inquiry. I would like to draw Members' attention to page 21 of our original report and proposition, which is effectively appendix 3 of the report, and it is the Verita report. On page 21 we do see from Verita, it is the fourth bullet point, they are talking here about the legal fees. It says: "The legal fees could be significant. They may be incurred under 3 headings: legal advice for the panel, other than as above; legal costs of interviewees, if Chair agrees to allow such; and [and these are the key words] legal costs for a review of earlier decisions about prosecution." Now, I would interpret that as Verita saying that at some stage the Committee of Inquiry will require expert legal advice on earlier decisions about prosecutions. This would be a requirement of complying with Deputy Tadier's original request in the proposition that was debated 2 years ago. I do believe Verita were mindful that this would be a requirement. I back that up by asking Members to turn to page 23 of the same report, of Verita. In paragraph 2.24, they do say, and this clarifies: "The inquiry will also need access to independent expert advice, including from a senior experienced prosecutor from outside Jersey." So, I would submit that Verita knew quite well that we would require this process. It is not correct to say, as Deputy Tadier said, that the legal adviser to the Committee of Inquiry will have the same role as the experienced prosecutor from the U.K. that they would refer any prosecution cases for review. They are different roles and we must be careful to not confuse that. Some people have been perhaps, dare I say, disparaging of the role of Andrew Williamson in helping us draw up terms of reference. His report, although very brief, is appendix 4 of the same original proposition on page 39. He also made the same point: "It may be appropriate for the States of Jersey to commission an independent legal review of the decisions to prosecute or take no further action. This should be carried out by an independent non-Island-based lawyer and will involve the reviews of factual evidence." So, Williamson also was of the opinion that independent legal prosecution advice would be required to review files. For that reason, and probably that reason alone, that the Committee of Inquiry have felt that we should have prescriptive details in terms of reference 13, relating to the procedure for the review of files.

**Deputy T.M. Pitman:**

Sir, can I just ...? I think it is a verbal typo. I think the Senator said the Committee of Inquiry have asked for prescriptive. Yes, that is what I thought.

**The Greffier of the States (in the Chair):**

The Senator did inadvertently say "Committee of Inquiry".

**Senator F. du H. Le Gresley:**

I am sorry, Sir, I am not working from a script. **[Laughter]** I would also like to, again, draw Members' attention to our first amendment to the proposition, which Members hopefully have brought with them, on page 5, where we set out more explanation of why we feel that these additional clauses should be in the terms of reference. I will just read it because I think it is important we all understand where we are today: "It should not be the case that a Committee of Inquiry should examine the details of individual prosecution decisions. The reasons for this are as follows: (1) A public examination of a prosecution decision infringes the principle of the independence of the prosecution decision-making process and may undermine the independence

going forward. (2) The Committee of Inquiry, comprising a lawyer and 2 lay persons, will not be best placed to give any proper evaluation of a prosecution decision without specialist expert guidance by a person who has access to all materials available to the person who took the original prosecution decision.” That backs up the views of Verita and of Williamson: “(3) A public scrutiny of prosecution decisions will amount, in effect, to a trial in public, not only of the decision itself but also of the individuals against whom allegations are made. This would be wrong and unfair. A provision to term 10 [now number 13] has been added so as to ensure that prosecution decisions, should they need to be examined at all, should be done confidentially by a specialist in criminal law who would then report to the Committee of Inquiry.” I maintain that it was always intended that an independent prosecution expert from the U.K. would review any prosecution files as appropriate. That is why the Council of Ministers would prefer that Members support the conclusion of this in terms of reference 13 and not support Deputy Tadier’s amendment.

**Deputy J.A.N. Le Fondré of St. Lawrence:**

Sir, may I ask a point of clarification, as it were, from the speaker?

**The Greffier of the States (in the Chair):**

Yes.

**Deputy J.A.N. Le Fondré:**

I understand what was said, I think, but could I ask the speaker how much of a show-stopper this is?

**The Greffier of the States (in the Chair):**

I am not sure that is a point of clarification, Deputy.

**Senator F. du H. Le Gresley:**

Should I say something?

**The Greffier of the States (in the Chair):**

Briefly, if you wish to, but it is not really a point of clarification. It is asking you to say something you did not wish to say or decided not to say.

**Senator F. du H. Le Gresley:**

I would say it is not a show-stopper, but we have to remember the whole purpose of the Committee of Inquiry is to look into historical child abuse. This is a very small part of the whole process. We have to accept that this was Deputy Tadier’s amendment to my original proposition and he has every right to ask this Assembly to go with his preferred version.

**2.2.4 Deputy R.G. Le Hérissier:**

I do not know if other people like myself are feeling in a slightly Alice in Wonderland situation. On the one hand Deputy Tadier has said it is all very simple and once the Chief Minister started to speak and Senator Le Gresley, what I might call the nuanced nature of the opposition became more apparent in the sense of more confusing. What a web we do weave, not in order to deceive, but in order possibly to confuse. I suppose what I would certainly want as a Member was to ensure that all the parties involved - I have to broaden it out beyond the narrow - in this process, parties that have often not seen in the searchlight way the light of day in having their operations open to scrutiny, that that indeed does happen. We have only seen in the last week the issues before an organisation that goes into deep denial, when you look at what happened in the Scottish and other parts of the Catholic Church, where organisations resisted and resisted openness and it became more and more difficult, as we saw, to deal with the fundamental issues. I may be being simplistic,

as opposed to simple, and I would wish for an answer from Deputy Tadier, as I see it, while there may well be an analysis of individual decisions this is not necessarily so that they will be second guessed, as I see it. This is not necessarily that people will be, in the parlance of upholders of the law, fingered or identified as potentially guilty. Well, this is not even necessarily to prove things that are rampant in Jersey at the moment, notably the vast number of conspiracy theories that are going around. It is, in my view, partly to see whether there are systemic, in other words organisation-wide, issues as well as individual issues in the way that our major agencies in criminal justice work. I do not see anything wrong with that. Because Deputy Tadier alluded to the article in the *Times* and the publicity today about how the Crown Prosecution Service and indeed the police went about their business in dealing with child abuse cases. We know there are incredible issues there in how you get the balance right as between the victim and the accused, incredible issues. At our peril, even the most pro-victim person knows it is an enormously difficult balance to achieve. It strikes me that it is healthy to have that debate. I think no lesser person than the former director and indeed the current director of the Crown Prosecution Service made it very clear that there was an open admission that things had gone badly wrong. Now, what kind of evidence were those professional lawyers ... lawyers totally versed in the prosecution function. They obviously were prepared to look at themselves and come to some fairly damning conclusions about the way they worked. So, why are we playing around with these nuances?

[12:30]

I gather from the shaking of head of the Chief Minister that I may have spectacularly missed the point. Let that be proved. Because it strikes me, one of the things you have to do when you pursue inquiries, before you get into the highly nuanced debates - and there will be many of them, because this is obviously going to be a great legal *tour de force* in many ways - you have to accept the basic principles. As I have just said, and we have examples and we do not hold a proud position in the pantheon of denying organisations. We have, as I said, the Catholic Church and other bodies that have chosen to deny and have landed in an incredible mess as a result. The opening assumption must be: we will try to be as open as possible. All agencies of the government will co-operate with that openness. I think, insofar as I can read this, because I do get the feeling there are different agendas at work here and it is a bit hard to read between the rather nuanced way in which this is being presented, we have to go with Deputy Tadier's view. It does not remove the role of professional advisers. This is the way it has been put forward, that it is one or the other. It is not one or the other. It is quite possible to have professional advisers advising the committee. The committee or commission or whatever will make the decision and they will do the interpretation on the basis of presented professional advice. That strikes me as eminently sensible. The fact that they are lay-people and clearly be eminent lay-people makes it even better, because they can step away from the notion that lawyers are protecting lawyers, police are protecting police or whatever.

#### **2.2.5 Deputy T.A. Vallois of St. Saviour:**

Just listening to what was supposed to be an argument from the Chief Minister against this amendment, I am sitting here a little bit perplexed by what it is exactly we are trying to say that Deputy Tadier cannot do. Because I refer back to the main proposition, we are entrusting the Chairman to change the terms of reference to what he sees fit. I may not be a professional lawyer in that area, but from a Scrutiny perspective you would look at the information in the reports and the evidence that has been put before you and determine whether those terms of reference were right as to how you were going to set out and do that inquiry or review that you are going to do. I am sorry. I just think the Chief Minister is making a song and dance out of this. If this is so difficult and we cannot trust a professional Chairman to determine it appropriately for this

Committee of Inquiry to be carried out in the appropriate manner I want to hear the proper and hard evidence, arguments, against Deputy Tadier's amendment and I am not hearing those.

### **2.2.6 Deputy M.R. Higgins of St. Helier:**

I state from the very beginning, and I think we have all got to this point, that it is important that we lance this boil once and for all. If we do not, it will fester and will cause pain and suffering for many years to come. It is important we get this right now, so we do not have to revisit this time and time again in the future. I also happen to agree with the Chief Minister that we need to have transparent government. I believe that all public authorities, and that also extends to the Law Officers' Department and Judiciary and police also need to be totally transparent. I do not believe that the Chief Minister is correct in one sense that the decisions of the prosecutors are going to be heard in public. They are not. They are going to be heard by experts. I agree with them, it has to be people who have prosecution decision experience. The information will be assessed, not in light of current thoughts on it, but in light of the files and the information they contained at the time. There is nothing to fear from that. I do not believe that the law officers have to fear that someone is going to turn around and say: "You have it wrong." We all get it wrong at some point or other. But they also could have got it right. It is for the independent person with the prosecution experience to look at the evidence of the time and decide whether everything was fine. If that sort of scrutiny goes ahead I think everyone would be reassured by it. But the actual process in which it is done should not be prescribed. This is the key thing, because if we get too prescriptive then we could cause the thing not to be reviewed in the right way. I think it is vitally important that the Chairman of the panel should be allowed to do it. I would like to just mention one thing, Deputy Tadier mentioned that in the U.K. at the present time Keir Starmer, the Director of Public Prosecutions, is speaking at 4.30 p.m. this afternoon and is setting out what the U.K. are doing. They are not afraid to revisit previous decisions. In fact, one of the things they are going to do is set up a national scoping panel to review complaints of sex abuse not pursued by the police and prosecutors. This proposal is expected to be approved by Chief Constables. What it is going to do is review complaints made in the past, which were not pursued by police or prosecution, if requested. Now, we should not be afraid to go through and look at those things and allow this Committee of Inquiry to look at it in a proper way. What I would say is, it is not a case of people are criticising the law officers and therefore we have to be prescriptive in the way that these files are looked at. Let the panel get on, let the people review it in the proper context and then everybody knows it has been properly scrutinised and either what they have done in the past is upheld or it is not. No one would say that it is an easy decision, as Keir Starmer has said in some of his press releases. What they have said is - this is important and I know that this inquiry is looking at the time and the circumstances - obviously the Jimmy Savile sex scandal has opened this whole thing up again and people have really got to start looking at what we do. It could be they may say: "At the time that the decisions were made they were appropriate." But they also could say: "Well, if we are going forward, we need to take a much wider sort of view." So, for example, Keir Starmer has said he is going to criticise the police and prosecutors for an overcautious approach when he sets out the new policy on child sex abuse. He will admit that there are a larger number of victims than were previously thought. He will say that the strategy and response to the Jimmy Savile sex scandal shows a disturbing level of offending and basically he is commenting on the various bodies that have been revealing the sex scandals and the extent of it, such as the *Times*. Basically prosecutors and police are going to be encouraged to look beyond the traditional test of alleged victims' credibility and consider all the surrounding circumstances. Now, we may find that the law officers were correct with the evidence that they had at the time and looking at the credibility of the witnesses that maybe they reached the right decision. What is coming up now is that the test may have been wrong. We need to look at going forward a much wider test. They are stating that police and prosecutors should be encouraged beyond the traditional test of the alleged

victims' credibility and consider all the surrounding circumstances. They say that, for example, police and prosecutors need to face up to their shortcomings. They are scrapping the existing guidance that they give and they are going to come up with a new policy. There are 19 different policies on how they should approach all these cases. So, no one needs to be worried about how they made their decisions in the past, if they are following one set of guidance. The whole thing needs to be looked at. They are saying that the traditional test of credibility and sex abuse cases has not served the police or prosecutors well. The D.P.P. (Director of Public Prosecutions) believes leaving an identifiable group of vulnerable victims unprotected by the criminal law, says: "Police and prosecutors currently look at factors such as the compliance delay in reporting an offence." Many people are too ashamed to report or too fearful to have reported earlier. They say that the consistency of the account and whether the person drinks or is on drugs affects their credibility. If I was sexually abused like some of the people who have come to me and told me their stories, I would either be on drink or I would be on drugs or I would be in a mental institution in some cases. I think what they have been through is horrific. But, we need to say that these factors are taken into account. What he is saying, he favours the change - and there is going to be a public debate on this - in focus away from one that is victim specific to one that tests the subject, while also exploring the patterns of behaviour of the suspect who allegedly perpetrated the abuse. He is also bringing in protection to protect those people as well. So, what I am trying to say is, the Law Officers' Department and the law officers who took all these decisions in the past should not be fearful of their cases being reviewed. I think we should all have confidence in this Committee of Inquiry and give them the widest degree of, I would say, latitude in getting the advice and the information and not be too prescriptive, so we can finally get to the bottom of this particular case. I am not going to labour the point ...

**Senator I.J. Gorst:**

Sir, would the Deputy give way?

**The Greffier of the States (in the Chair):**

He appears to, yes.

**Senator I.J. Gorst:**

The Deputy is saying much with which I agree. He is talking about what is going on in the U.K. at the current time, which is about changing their policy and arrangements going forward. What this amendment is talking about is the process to be undertaken to look at past decisions. But, past decisions are not considered in light of current policy or guidelines, so they are 2 quite different things.

**Deputy M.R. Higgins:**

If I can just follow up on what the Chief Minister said, I have said that. All these cases will be reviewed with the law at the time, with the evidence that the law officers had at the time and so on. Yes, I accept that. But, what I do believe, and I believe this is about transparency ... okay, we have gone a long way on these terms of reference, from what they were to where we are now. Again, I complimented everybody who has been involved in doing it. I think we need to take that final step and just adopt Deputy Tadier's amendment. Then no one at any time in the future can turn around and say: "The Council of Ministers, again, are trying to be prescriptive. They are trying to hide something." Let us just get that out of the way. Let us accept the amendment, go forward with the Committee of Inquiry and find out what really went on. So, I am going to stop at that, but I do urge Members, please go with this amendment and we can put all this behind us and we get the inquiry underway and find out the truth of what went on, no barriers in the way to finding that information out.

### **2.2.7 Deputy J.M. Maçon:**

I am struggling with this one in the sense that what the Council of Ministers propose of the way forward and what Deputy Tadier is asking. They are not mutually exclusive. It is not the case of either/or. Because what Deputy Tadier is proposing, the Council of Ministers, when assembled, might come back and say: "What the Council of Ministers propose is how we wish to proceed." In which case I really am struggling to find what the objection to Deputy Tadier's amendment is. My big question here is: who should be making that decision? I believe it is more appropriate for the Chairman in that committee to be making that decision than us at this stage. Therefore, I will be supporting Deputy Tadier's amendment, because I do not think they are mutually exclusive. I think one can be included in the other and I do not have a problem with that.

### **2.2.8 Deputy G.P. Southern of St. Helier:**

Briefly, I am struggling as well to find any reason why the Chief Minister is strongly opposing and continues to oppose this amendment. I do so with reference to 2 factors really. One, in my time as chair of Scrutiny Panels I never wanted to be faced by anybody, any witness saying: "That is not in your terms of reference." We had a catchall phrase: "And any other matter that the committee decides is relevant on every set of terms of reference." Secondly, to repeat, Deputy Tadier's amendment does not eliminate any mechanism by which evidence could be gathered. It could well be that the committee say: "The appropriate thing to do is examine by an independent expert in the criminal law, et cetera, et cetera, exactly the way it is prescribed there, the committee could do that." It could say in every case: "That is what we want to do, follow that to the letter." Or it could say: "No, we want to examine evidence in a different manner." That is fine. That is up to the committee. That is what we should allow. I cannot see why we are stood here arguing the toss here today, because we should not be. We should be accepting this amendment as giving the committee full scope to conduct itself as it sees appropriate.

## **LUNCHEON ADJOURNMENT PROPOSED**

### **The Greffier of the States (in the Chair):**

Yes, the adjournment is proposed. The Assembly will reconvene at 2.15 p.m.

[12:45]

## **LUNCHEON ADJOURNMENT**

[14:15]

### **The Greffier of the States (in the Chair):**

The debate resumes on the amendment of Deputy Tadier. Chief Minister you have already spoken, but I understand you wish to briefly address the Assembly on a matter of procedure.

### **Senator I.J. Gorst:**

If I may, Sir. I sensed the mood of the Assembly this morning. I have been consulting over lunch and I would just like to make a comment on Deputy Tadier's amendment, if I may. I personally believe that the process outlined by the Council of Ministers for reviewing the prosecution files is the correct one. I believe it is the one envisaged, as Senator Le Gresley said, by Verita and Williamson in their reviews. The Members that I have spoken to generally tend to agree with that, but they feel, like Deputy Tadier, that now is not the time to prescribe that process into the terms of reference, that they would rather the committee and the Chairman make the ultimate decision about that process once they have been appointed and potentially prior to them [**Approbation**] bringing forward any recommended changes. So, in light of that, perhaps I could say, as I said 2 minutes ago, I believe this process is the right one. I hope that the Chairman and the committee will as well, but that will be a matter for them. In light of and on that basis, I am prepared to accept the

amendment. Because, as I said, in my opening remarks, what is important today is that we, as an Assembly, send a resounding message that we support this Committee of Inquiry, that it has a broad base support and that they can get on with their work. On those grounds, I am happy to accept. [Approbation]

**The Greffier of the States (in the Chair):**

Very well, the Chief Minister has indicated his stance. The amendment is technically still open for debate, but does any other Member now wish to speak?

**2.2.9 Connétable J. Gallichan of St. Mary:**

I was going to speak before. I will not do that now. I just wonder if it is possible to ask the Chief Minister to clarify what he just said. Are we to expect the Committee of Inquiry will decide this procedure before they begin work? Because, if that is the case, then I completely endorse what he has just said. I just think we have heard a lot about transparency and that is what I was going to touch on before the Chief Minister's intervention. I just think that transparency is something that all parties need to be sure of. I am sure that all the interested parties in this debate would want to know exactly how things will pan out before the inquiry has started.

**The Greffier of the States (in the Chair):**

I am not sure the Chief Minister can answer that question, because by definition this will be a matter for the Chairman.

**The Connétable of St. Mary:**

I just wanted to know what he said. I wanted clarity on that.

**Senator I.J. Gorst:**

Perhaps, Sir, I could help. You are quite right. It will be a matter for the committee. By accepting this amendment that is what the Assembly is accepting and approving. I did verbalise the hope that perhaps the process could be considered prior to bringing forward the selection of the Chairman for approval by this Assembly. That was quite simply because part (e) of the overall proposition says to also set out the proposed process for conducting the inquiry, having consulted with interested parties where necessary. I believe that what I said was in keeping with what I am asking the Assembly to approve.

**The Greffier of the States (in the Chair):**

That was about your third speech, Chief Minister. Now, do you wish to reply Deputy Tadier? I do not think any other Members wish to speak. Does any other Member wish to speak on the amendment? I call upon Deputy Tadier to reply.

**2.2.10 Deputy M. Tadier:**

I will indulge the Minister, even if he did make 3 speeches, because I know that they were probably solicited one way or the other. I thank the Council of Ministers, particularly the Chief Minister and Senator Le Gresley, because I know they were busy talking over lunchtime, to drop their resistance, which I think is the right thing for all of us to do. I do not need to do a laborious speech now, because I think we have come to a consensus. I will just simply ask for the appel.

**The Greffier of the States (in the Chair):**

Very well, the appel is called for on the amendment of Deputy Tadier. I invite Members to return to their seats. I will ask the Greffier to open the voting.

<b>POUR: 38</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
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Senator P.F. Routier				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

### **2.3 Committee of Inquiry: Historical Child Abuse (P.118/2012) - as amended**

#### **The Greffier of the States (in the Chair):**

Very well, the debate opens on the proposition of the Council as amended. Does any Member wish to speak on the proposition? Deputy Maçon?

#### **2.3.1 Deputy J.M. Maçon:**

Very, very briefly, I just want to echo the words of the Chief Minister when he says that these matters, to those involved, getting to where we are now is incredibly important, for the transparency and truth and being able to tell their stories in a way which they feel they will be able to illustrate some of the burdens on them and be able to inform the public on what sometimes they felt has been a blind eye turned towards them. I think this is incredibly important. I want to thank all the Members who have helped overtly and covertly to get us where we are today. I will most certainly be supporting this proposition.



### **2.3.2 Connétable M.P.S. Le Troquer of St. Martin:**

Following up from what Deputy Trevor Pitman said this morning, I had prepared notes and I do declare an interest as such. As Members are aware, and it follows on unfortunately from the previous debate, I was a police officer in the States of Jersey force between 1975 and 2003. But I do not believe I have a conflict of interest on this matter. I am not aware of being involved in any investigation or decision-making that relates to any of the prosecutions likely to be investigated. Furthermore, on my retirement in 2003 I took on a post in the Parish of St. Helier working in the Prosecutions Office, assisting the Honorary Police with their court case work, in particular the Centeniers, but in an admin position and not in a decision-making role as to whether individuals associated with children's care homes were to face prosecutions. Again, I do not believe I have a conflict of interest. I think I can just about understand, although I am not totally convinced, with the comments contained in the Council of Ministers' report that the establishment of a Committee of Inquiry into historical child abuse on Jersey is the right way forward, the correct course of action for the whole community. I accept, of course, that this was the will of the previous States Assembly following the approval of P.19 in 2011. That being the case, I am not quite sure why we are faced with paragraph (a) on the proposition again. Surely we have passed that stage and are now debating the terms of reference themselves that are featured further in the proposition and which, as we know, are subject to 2 amendments before we have even reached this stage. I suppose the latter parts of paragraph (a) of the proposition take it a bit further and relate to the chairman and 2 other members with suitable skills and experience coming from outside the Island. I believe it was just the terms of reference that were to be debated today. The Chief Minister and the Council of Ministers have attempted to produce a terms of reference that is acceptable to Deputy Tadier, including former Members of this Assembly who seemed to have maintained an interest with their past colleagues, as well as representatives from the interested parties, many are upstairs in the gallery this afternoon. Nevertheless, here we are apparently ready, or nearly ready, to go. I thank the Attorney General for his comments paper. That has been very helpful. Also, to the Minister for Treasury and Resources for his comments paper explaining how this is to be funded and with what appears to be an updated cost working analysis for the inquiry. I note that the Minister for Treasury and Resources comments paper is dated 4th March 2013 and is therefore dated after some of the amendments of Deputy Tadier's original proposition that were accepted by the Chief Minister and Council of Ministers some time ago. I am therefore assuming that the broadening of the terms of reference have been taken into consideration by the Minister for Treasury and Resources with his calculations. Because the initial estimates for the inquiry in the Verita report were considerably lower, just over £2 million, although I accept that those Members that attended the various presentations and the Council of Ministers' proposition also makes broad reference to possible additional costs, with broad comments like: "Experience has shown that witnesses, those named by witnesses and other organisations, will require legal support. This is in addition to the legal support provided to the inquiry team and all to be paid for by the States." It goes on elsewhere: "This does not include legal fees, which could be significant." I suggest the words "will be significant" would be more appropriate. Then further: "The best estimate for the total cost of a Committee of Inquiry, including legal costs, is likely to be in the region of £6 million. This is the first mention of £6 million and note that is in the November original proposition, before the amendments were made. Further on it states: "The cost estimate does not include officer time in departments, which have dealings with the committee. For example, if liaising with the inquiry team, recovering documents, taking legal advice about disclosure and supporting those who are witnesses. Further cost implications of temporary staff to do the jobs of those who are assisting the Committee of Inquiry doing those tasks." I wonder if the £6 million that I have mentioned is really a conservative and truly reflective figure, because this £6 million is indeed mentioned on 6th November 2012 with the proposition of the Council of Ministers that I have just quoted from. Deputy Tadier's accepted broadening terms dated 26th February 2013 and obviously an even more far-reaching investigation

that was originally further increased, than was originally agreed by the Council of Ministers on 27th February. My worry, my concern, is that I would like to know, as would I suspect many others, the public at large, how much this Committee of Inquiry, if approved, is finally going to cost. The simple answer is, we just do not know whether the estimates will now be in addition to the fees already paid for the Verita report, the Williamson report, the Williamson updated report, travel to the Island and, of course, officer time again. It is very difficult to start this debate all over again and seek to change a decision to hold this proposed Committee of Inquiry. It is even more difficult for those Members like myself to seek something that was agreed by a previous Assembly. This appears to have happened too many times in the past on other matters. This Committee of Inquiry is being brought forward by the Council of Ministers after what appears to be lengthy and thorough consultation. Even with the suggested late amendments to what occurred in the first place to be a quite thorough proposition, but has now been taken on board by the Chief Minister. As the proposition says, it is to investigate specific and often controversial events that have given rise to public concern. I accept that. However, I am sorry to say that I am really concerned that we need an inquiry to tell us something that may have occurred back in the 1960s, probably issues that we can do nothing about today or people that cannot answer. I hope after all the experiences that we as an Island have now gone through in the last decade and after the 8 reports we have had since 2008 that have been prepared in relation to Children's Services on Jersey. I believe the proposition is likely to be approved today with terms going back to 1960 as a starting date. The tills start clicking. I have no doubt that the Committee of Inquiry will cost this Island many, many millions. There are no other model costs shown, only the minimum. So we are unaware what we are going to be committing to spending. I am not an expert on costings, but I would like the Chief Minister to tell this Assembly, tell the public of the Island, to confirm that he just does not know what it will cost and that indeed it could cost far more than the £6 million conservative estimate. Tell the public, tell the taxpayer that it could cost £10 million. I do not wish to hear and read media reports tonight or tomorrow where we see the inquiry is going to cost £6 million if we do not know how much it is going to cost. If the media reports at the end of last month are true on the mid-Staffordshire hospital inquiry, which was released last month, on matters relating to a far shorter time, the period between 2005 and 2008, it cost in the region of £13 million. I think Mr. Williamson may have suggested £16 million at one presentation about the Staffordshire inquiry, not ours. But I might be mistaken on that.

[14:30]

Of course, the argument will be that the Committee of Inquiry will answer everything and that we will have a far better system of care for the children on this Island at the end of it. I very much hope so. I hope that it will show something new and that something new comes from it. Something that has not already been learned from all the police investigations that have taken place so far, the departmental inquiries that have followed, the 8 various reports commissioned or received in the last 4 years, the change in culture of everybody since 1960 and 1970 and, of course, the fear of the workers in the children's care homes that know that every single action that they take is closely scrutinised by employers, by individuals and by society. Deputy Higgins made comments yesterday morning during question time, I think, when he was putting questions relating to the compensation scheme and was worried that the only winners were likely to be the legal firms attempting to resolve the claims. I am very concerned that many people will make a lot of money from this inquiry when that money may have been better used to assist the victims or those children who are in care homes now. I suspect that Members might be aghast and surprised at my comments and think that I have no compassion for victims or desire to rectify wrongs. They could not be further from the truth. I would be the very first person to fully investigate something, seek and secure as much evidence and be a prosecution to a court. I like to think, to hope, like every

other Member here today that we all care about people, not just victims. I cannot imagine the hurt that some of the victims must be feeling on how they were dealt with in the past as children. However, I do believe that we have a duty to bring these aspects of the proposed Committee of Inquiry to the public's attention today. This has nothing to do with my previous career and indeed any colleagues that I may have worked with in the past. I was not working in 1960, believe it or not, I was still at school. But, at the end of it, I just hope the inquiry achieves what every interested party wants from it. I hope the Committee of Inquiry, if approved and I am sure it will be, sets out and achieves its role and satisfies this Assembly, the victims and the public alike, albeit, I suspect it is likely to be the next Assembly that eventually discuss the final Committee of Inquiry report. Even if it is in the term of this Assembly, then it will be the next Assembly that will endure the continued written and oral questions that will sadly follow. I very much doubt that everything will be answered to the satisfaction of all. Will everybody be reconciled? Will there be resolution between the different parties? Will there be reassurance by the public? I very much doubt it. I am sorry, but I very much fear the complaints and criticisms will continue long after the completion of the Committee of Inquiry. As the Council of Ministers state, the hope of the Committee of Inquiry will be the first step, and note the first step, in the healing process. Alas, it is just a hope of the Council.

### **2.3.3 Deputy G.C.L. Baudains:**

In his opening speech this morning the Chief Minister said that it would enable people to relive their experiences to the Committee of Inquiry or similar words. I must say I was somewhat concerned by that. Will this Committee of Inquiry turn out to be a second bite, albeit through the Committee of Inquiry rather than the previous police case? Because if that is the case I have major concerns. I believe that would simply open old wounds and those affected will be disappointed a second time. This and the costs involved I believe is a recipe for disappointment and bad feeling all round. I do not believe it will put the matter to bed. However, as this is an inquiry which seems to be mainly into the procedures and the process then it will have my full support. I do not want to see a rerun of the previous ... No new evidence is going to come to light. I do not want people to be more disappointed than they already are. So, I am going to rely on the clarification from the Chief Minister in his summing-up as to which way I go. Because I would like to support it, even if it is only to sort out the mess which has been the Children's Service over the last few years, but on the other hand I do not want to waste public money on causing yet more anguish.

### **2.3.4 Deputy A.E. Pryke of Trinity:**

Just 2 points of clarification, I am with the department who is administering the redress scheme and I am a trustee of Haut de la Garenne Trust, which looked ... mid-2005/2006 for the short time that it was a youth hostel. This has been a long journey to get to this point of debating the terms of reference for the Committee of Inquiry. The Council of Ministers acknowledge that there were failings in residential care. I hope the first step was the apology. I cannot begin to imagine what the victims went through and for some are still going through. The redress scheme is now in place and going through that process and will continue to go through the process until it is all sorted out and all the victims have gone through that process. Regarding terms of reference 3, looking at Children's Service up to the current day, I very much welcome that. I have every confidence in my Children's Service today. Indeed, I think over the last 3 or 4 years it has been very open and very transparent, having various investigations, the Williamson review, the Care Inspection report 2 years ago, to name but a few. The Care Inspection report will continue this year when they return for further inspection. All these reports have been put in the public domain. But, also the recommendations to be implemented have been overseen by the Children's Policy Group and the Jersey Child Protection Committee. I do not want the experiences of what happened in previous years to happen again. Indeed the service is much more open, again, with the Board of Visitors and

especially hearing the voice of the child ... but, I am sad to say, might have not happened in the past. The Committee of Inquiry is important so that victims do have a voice, a voice that needs to be heard and that their terrible experiences will never, ever be repeated. I am sorry that child abuse in residential homes did happen in the past. I cannot turn the clock back, but I can try and ensure that it will never happen again in children's residential homes. We need to hear what happened, understand from the past, learn lessons and put in place any recommendations that improve the services for all children in my care for the future.

### **2.3.5 Deputy J.H. Young:**

As a recent Member of the House I only know what I have read in the media and listened to and nobody cannot be moved by what we have heard. I am fully behind the need for this inquiry. It is very good that we have an inquiry of real substance here to investigate these matters. I was impressed by those 6 purposes of the inquiry, which are summarised on page 4 of the report of the Council of Ministers. I think they are worth just dwelling on: establishing the facts to make sure there is full and fair account of what has happened; learning from events and preventing their occurrence, really importantly providing an opportunity for reconciliation and resolution between parties; rebuilding public confidence; holding people in organisations to account and transparency. I think what I have read in the papers, for the first time, do that for me. I could not let the Treasury comments pass without comment, which is my real reason for speaking. I have here to declare an interest as being in a former life practice director of a local law firm. I know very well how legal costs can run, run completely out of control. I know that how for some lawyers, not all, these are seen as commercial opportunities and for other people they are a barrier to people getting proper legal advice. So, I think it is absolutely right that the arrangements we have here provide for legal costs to be available not just for the inquiry team who have got to manage all this, but for witnesses and others. It is absolutely right there is no doubt, and I have seen letters, that say that people in the past have had difficulty in getting legal representation. I know that our legal aid system in Jersey is full of defects and that many people who are deserving of legal advice do not receive it and there are many barriers. That is a story for another day. So I am very pleased that we have got an arrangement here that provides a more even situation for people, but I cannot let it go by without commenting on the danger of having open-ended costs. One has read of media reports of inquiries in the U.K., for example the disaster that was Bloody Sunday that is reported to have cost, I think, some £300 million or £400 million in legal fees which were absorbed by major London practices. Here, fortunately, we are much more modest. We have on the table a proposal. This will be £6 million and clearly there are risks that the costs will not stay there and I agree with the Constable of St. Martin, that it could well be a lot higher but I think it is a thing that we have to face. The issue for me is it is important that these costs are managed. I see in the spreadsheets that are produced in the Treasury paper, which I assume have come from Verita, there is £2.5 million worth of legal fees here and I would want some measures in place that this is not just what one would call a starter for 10, £750,000 for the inquiry team and £1.5 million for witnesses and those named and others. Of course the daily rates I found really surprising when I got my glasses off and looked at the small print. £3,000 a day is quoted for witnesses and others and £5,000 a day for the inquiry legal team. I was a bit relieved to see that the £5,000 a day is explained by the fact that they are proposed to be a team of 5, one Q.C. (Queen's Counsel), 2 other lawyers, and 2 paralegals, so that is a big team and that could explain the cost. I am aware that the Royal Court does have arrangements for public law work where it introduced lower rates. I think it is called the Factor A rates which is currently £232 an hour for a partner and £188 for lawyers, £154 for paralegals. Those rates are there to try and contain the costs for those sorts of legal aid matters. I do not think it is appropriate to suggest that this arrangement be imposed here, because the point is made in correspondence that people need to have their own choice of legal advisers. I think that is a different issue to the entitlement to full reimbursement of every cost, if they choose to use lawyers

which are of very high costs. So I would like very much to hear from the Chief Minister in his reply that, in addition to what he said, were the control and checks being run by the Minister for Treasury and Resources, that there will be some recognition by the committee itself of the means to manage these. For example, one possibility is, is the situation going to be open for lawyers practising in the U.K.? I know from practice that it is often much cheaper to get lawyers coming from that jurisdiction compared to local law firms. Often many local law firms contract to councils and others in the U.K. for precisely that reason. So I would like to think there are no artificial barriers for getting value for money here. Also, for example, the possibility being considered of having a panel of local lawyers and inviting lawyers to tender and go on that list, and obviously part of that would be their capability, their legal qualifications, but also the rates that they would charge. Also to have those bills subject to some taxing arrangement. Of course the overriding thing here is that none of these things that I am suggesting should get in the way of people having support for participation in the inquiry to ensure their legal rights are properly protected.

[14:45]

I am not objecting to that, but I do think there is a role, though, for perhaps the committee itself and/or their support team to exercise some thought about this as to how we can avoid the situation of runaway and open-ended costs. So that is an issue of management. By making these remarks I am trying to come up with some constructive suggestions to help think about how that minimum bill of £2.4 million does not become £5 million, £7.5 million, £10 million or whatever, and to make sure that we end up with a good process which is well managed and everybody is happy with and the cost is reasonably sustainable. I am not being negative. This inquiry is absolutely essential for all those reasons stated in the Council of Minister's report. I will support it wholeheartedly but I would like to see the Minister at least take on board some of my comments about cost management, which is quite normal in legal circles, and take that away and discuss that with the Minister for Treasury and Resources and find some way of managing that particular element of the cost. I make no comment on the other costs. We have got people of substance on the panels and therefore those people are an elite team and they do not come cheap. If we want well-qualified, able people we have to pay that. Thank you.

### **2.3.6 Deputy T.M. Pitman:**

This is not really a speech, it is just a few points as a response to the Chief Minister. Really, I start by saying - and I do not think I have said this since he persuaded me to vote for him - well done, Chief Minister, well done. Common sense, coming together, compromise, whatever the reasons, fair play. He has done the right thing for the Island and the right thing for people. I am sure normal service will be resumed next sitting, but on this case he deserves a lot of credit and I think we should all echo that. There was no problem with what Deputy Tadier was trying to do. A number of us, myself included, had worked with some of the victims, other stakeholders, careleavers to get to this place and I am assuming it is going to go through now. I hope so, and I think a lot of credit should also go to the Citizens Media campaigners out there, to the careleavers, because this is all they have been pushing for: justice. You have probably got to say to us, for once, it might be the last time in Assembly, well done to us if we pass this today, because if we do nothing else we will have done something important and something good, and something that might bring some closure to a lot of families of people. If we do pass this we can hold our heads up high. I have to say that we should not kid ourselves. I will say this now as Jersey's justice system, in my view, and many others - and I will be doing a major interview on this outside the Island next week - is an embarrassment in many aspects. That is a fact, and I appreciate the Minister for Home Affairs and Deputy Higgins said sometimes it is only when you go through things yourself you see how shocking the system is. Jersey's justice system, and I would suggest anyone who has not done

so because it is relevant to this, read Advocate Sinel's deconstruction of the Jersey justice system. It is not fit for purpose. It is not fit for the 21st century. Fact. I know, I have been there. I am really pleased that this has been widened so that other institutions will be looked at. We might get some answers with which questions are normally met with attacks that you are a wrecker or you are trying to undermine, and you have just got to look forward. Well, to understand and to know where you are going in the future you have got to understand the past, and if we do this properly we can truly put the past behind us, maybe, and move on. We have got a justice system that is not accessible to many, many people. I do not think there is one person in this Assembly who would deny that. How can people who have got next to nothing access justice? How can some of these victims access justice easily if even people earning good money cannot? I hope there are a few lawyers out there listening, because they need to look at themselves. It is pretty horrific that we know that the people who are going to really benefit out of this is not going to be the victims, it is going to be lawyers. What does that say about the sick society that we are? People charging £600 an hour. It is disgusting. Those people should be ashamed, they really should. Things that we need to look at, and now we probably can, is how did things get swept under the carpet in the past? How do people who refuse to look at evidence of child abuse be allowed to become Jurats? That is very relevant as a fact. How could a person like that be allowed to sit for 14 years? I am not going to apologise for mentioning that, because I know the victims feel strongly on it, because that is the message it sends out about Jersey. We do not really care, it is image, image, image for Jersey. Well, I am saying it is justice, justice, justice. That is all these people want. There is a concern here about independent lawyers in the last amendment. That, I have to say to you, Chief Minister, this thing about independence remains, because independent lawyers, if this is going to have any weight at the end of the day, have got to be independent, and not like we saw in the recent past when this investigation started where lawyers who are described as independent have been engaged by the State for about 6 or 7 years. That is an absolute farce and it is another sign of a justice system that is not fit for purpose. It is a very sick joke. I was speaking to an ex-pupil from Victoria College only last week. What he had to say to me was very interesting and what he felt, and some of his contemporaries at the time felt, about issues of child abuse not being dealt with. We have heard that things are different today from even 10 years ago. I think largely they are, but let us not kid ourselves at all. I have got a case which is so shocking, and I touched on it yesterday, that if it does not result in resignations or sackings within both the police and the Children's Service then there is something very, very wrong, still, with our Island. So vigilance is the key word. Now, well, I could say a lot more about some of this and I will be doing so, but today this is a chance to really focus on the people that matter here, and that is the victims. Some of them are up there. Because they are people who for years and years have been ignored, ridiculed, humiliated, bullied and it is time at this Assembly we can be the Assembly to say that is not going to happen any more. We may have different political leanings but on this we can all stand together. I would like to think that that is the case and certainly the Chief Minister's acceptance of Deputy Tadier's amendment would suggest that. I would just say, Members, do put those victims first. Credit where it is due to the Chief Minister and let us hope this can be the beginning of the end of the misery and hurt for those people. I share Deputy Young's concerns about cost. We all do, but surely that can be manageable. Surely it can. I think I will leave it there. Again, well done, Chief Minister. You probably will not hear me say it again, but credit where it is due.

**Deputy M. Tadier:**

Sorry, I think my light was obscured.

**The Greffier of the States (in the Chair):**

I do not think it was on, Deputy.

### **2.3.7 Deputy M. Tadier:**

Maybe it was not, Sir. I had forgotten with the amendment that the Chief Minister had already spoken, and I was waiting for him to speak, but clearly he can only do that at the end. I think it is important to acknowledge where we have come from in this whole process. I did touch on it earlier but strangely enough I was in a position 5 years ago where I was not a politician but nonetheless about almost this very day 5 years ago I was in the Royal Square with a whole number of other people who were very concerned to hear the revelations that had just come out for members of the public about what had happened historically, and there were some lovely daffodils in the Square and I think roughly about 300 or 400 people there showing solidarity with victims, often in disbelief and many of them not directly involved with what had happened, but knowing this was something that Jersey needed to deal with. That is what we have done and we have come from a position where 2 years ago we were presented with a report from the then Council of Ministers saying: "We are not going to have a Committee of Inquiry." A report, not a proposition, seeking States Assembly approval but simply a report and the clear thinking Senator Le Gresley who is even politically more young than he is now said: "This cannot be right. I want to rescind that." Of course we had the Deputy of St. Martin, Bob Hill, who said: "Let us set some terms of reference out" and it has really come on from there. It has not been an easy process. We have had to work diligently to make sure that this was kept on track, because we know that the Council of Ministers have been working in a coalition with those who do not have, let us be honest about it, any interest and do not want a Committee of Inquiry and those who have acknowledged the fact that it is important and I think that certainly, as we know from what has happened in the U.K. and elsewhere, things do develop and the more knowledge we have of things that happen the more we realise our processes do need to be scrutinised and do need to be changed. That is a very mature way for any society to deal with these kinds of difficult issues. We do now have a position whereby we are going to have under term of reference 2 the ability to look at non-States-run establishments providing for children where abuse has been alleged. That is very important because we have to remember that child abusers, no matter when it happens, do not discriminate between the public and private sector like we might. They do their heinous crimes and they do them towards those who are vulnerable, and they may move between the public and non-public domains, as we have seen in the very high profile case with Savile and that is still being revealed. We have to remember also the scope of this. There were 192 alleged victims that came forward following on from 2008 and around that period. There were 553 separate allegations that were made to the police. I can understand why this Assembly wants to make sure that money is spent correctly in a worthwhile way, but when we have people standing up comparing this perhaps to the Staffordshire Inquiry in which I think £30 million was quoted, are we saying that was not an important job to do? Are we saying that the money that has been spent here, what it is investigating, is not important? I do not think we can say that. I think what we have to say is that there are causes and consequences and we ran a system, albeit not necessarily under our control now, but in the past where systemic abuse did occur, where our most vulnerable were often put away and the correct checks and balances did not seem to be in place, so that even when children did come forward, and I have a constituent in my district who said to me: "We did go to the police. We ran away from our home where we were. We tried to tell people about that and they sent us back. They told us we were bad children and that we were lying and that we should behave ourselves" they no doubt got the required punishment when they went back to that place. This is where, of course, going forward, we will need to look at our legal system and the areas to do with time-barring, for example. This has been a massive issue which has led to our redress scheme, because we know in Jersey time-barring I would dare say, and I do not know a lot about it, but the test for it is a lot harder to meet, to bring back accusations in Jersey, than it would be in the U.K. How do we really expect somebody who has been in care perhaps 40 years ago, who may have been abused when they were 12 and tried to tell somebody at the time, who then leaves it, to have

gone straight to the police at the age of 18 or 20 and say: "This happened to me"? They simply would not have any faith in the system, especially if the same people were in the posts at the time when that was happening. It has to be said while we appreciate the redress scheme is trying to do a good job of this, firstly I think we put the cart before the horse. We should have done this before the redress scheme was up and running. Secondly, it seems to me that what we are going to be paying out to victims in terms of redress is going to be far outweighed by the legal costs, which is another contradiction. Why could we not just have put that money in and believed those coming forward, that what they said was true and give them the money, rather than giving it to expensive lawyers instead?

[15:00]

I think there is an issue which was raised by Deputy Young as well. It seems to me from correspondence I have been given, there was a letter written from a U.K. lawyer to the Acting Chief Executive, I do not know if I should name him. I probably do not need to, the Acting Chief Executive of the States on 5th March. I do not think he is acting any more, but it does say that at the top.

**The Greffier of the States (in the Chair)**

A lot of people know who you are referring to.

**Deputy M. Tadier:**

Thank you, Sir. He would wish to represent his clients over here at a Committee of Inquiry, if they so wish him to do so, but it seems to me that from the advice that has been given by the Chief Executive is that under the Interpretation (Jersey) Law 1954 an advocate or solicitor is an advocate or solicitor of the Royal Court of Jersey and accordingly there does not appear to be a provision within Standing Orders that would permit representation by any person who is not an advocate or solicitor in Jersey. There is an obvious issue here. We were talking earlier when we were discussing the amendment about the need to use independent lawyers for the Committee of Inquiry, but yet it does not seem that Jersey abuse victims who want to come forward and talk to the Committee of Inquiry will not be given a choice about using a U.K. lawyer, which seems very counterintuitive and possibly counterproductive in a sense that they may feel more comfortable employing a U.K. lawyer. They will not necessarily feel comfortable using a Jersey advocate, not to mention the cost. The cost may be different, so I would ask, and I do not know if this is the correct form, but I think it is important to state this on record so that when the Committee of Inquiry are putting their terms of reference to that they may be able to look at that. Perhaps this is an opportune juncture to ask for advice from the Attorney General on that issue?

**Mr. T.J. Le Cocq Q.C., H.M. Attorney General:**

The position is as stated by Deputy Tadier. The Standing Orders provide that a Committee of Inquiry can permit a witness to be represented by an advocate or solicitor, the Interpretation (Jersey) Law provides reference to an advocate or a solicitor must be an advocate or solicitor of the Royal Court. So as matters now stand the Committee of Inquiry could not authorise the representation of a witness before it by anyone other than an advocate or solicitor of the Royal Court. In fact that was mentioned in the comments that I lodged in connection with this discussion before the States and there was reference made to the possibility of an amendment to the Standing Orders to accommodate that difficulty.

**Deputy M. Tadier:**

Thank you. So if I got that last bit correctly, I would hope that there would be an amendment to Standing Orders so that that could be done. It seems entirely sensible to get that set up to give



those coming before the inquiry the flexibility. Hopefully that can be done. There is one last point that I want to make, and it is a general point. I think it came out in the comments. Nobody at any point has been suggesting that if and when the prosecution files or elements of prosecution cases are looked at nobody is saying that should be done in a public forum. There was a comment made, and I think it was the Attorney General's comments which I will try and quote from memory, but I do have them in front of me if I need to be corrected. It is basically saying it is not appropriate for a political assembly or a body appointed by a political assembly to be looking at the prosecution files. I half agree with that. It is completely inappropriate for politicians to be trying to determine the rights and wrongs of prosecution cases, but there is nothing wrong with a body which has been set up to be independent from the States or the Judiciary to scrutinise those. I think we have come to a point today where we understand that we are setting up an independent Committee of Inquiry. It will be by nature expensive, but it is a relative cost that we have to bear, and the *quid pro quo* for that is that we will have experts who we can have confidence in to do the job properly and it will now, at this point, take it out of the hands of politicians and leave it with the experts so that they can report back to us. I will finish just by referring again to the front page of the *Times* today and the editorial on the second page, which is that it is healthy that we should be looking at our processes in any jurisdiction so that we can make sure we move forward, and it is about providing justice, recourse and redress, as well as hearing the stories of those who were abused. It is also, I would say, more important that we as a society can move forward, understand what happened in the very difficult cases, and then move on. If I might say, just thank you to all those who have been working diligently in the background. If this were left to mere politicians, not simply left to the Committee of Inquiry, but even if it were left to the rest of us, without the pressure and the grassroots support from the careleavers in their group or those who have left care but not necessarily in their group, I have to echo the words of Deputy Trevor Pitman, without the constant surveillance - and that is not the right word - but the scrutiny of bloggers who have been putting pressure on us to make sure questions are asked and that processes are adhered to, we would not be in the position today, I dare say, of having a Committee of Inquiry, or certainly it would not have been as robust as it is now. I have to thank all of those people who have been involved, including former politicians, who have given up their time. They are not getting paid and they often get nagged by their wives for coming out at night when it is not even their job any more. These all have to be acknowledged, and I think this can be seen as a very good example of how grassroots democracy can work and how the decisions of governments can be changed so that complete U-turns are made, hopefully for the benefit of wider society.

### **2.3.8 Deputy M.R. Higgins:**

It is only a brief point. It is just for the Chief Minister. Would the Chief Minister please state categorically when he sums up, for the benefit of any abuse victim who has settled with the States under the Historic Abuse Scheme, that by accepting compensation they are not prevented in any way from talking about the abuse they suffered or from giving evidence to the Committee of Inquiry, despite any letters that they have received from the scheme lawyers? I know I have asked this question of the Chief Minister before, and he has said there was none, but I have been told today again that some people have been given letters which they believe prevents them, and I am just asking the Chief Minister to state categorically that it is not the case, they are free to speak out. Thank you.

### **2.3.9 Deputy R.G. Le Hérisier:**

I did not want to spoil Deputy Tadier's valedictory speech, but I shall have to in the sense that I was terribly disappointed by my very good friend, I hope, the Constable of St. Martin, Constable Le Troquer. Why I was disappointed, I think he did damn with faint praise, and he is absolutely right, as have been other people like Deputy Young, to refer to legal expenses and yes, the Bloody

Sunday inquiry was 10 years, I think it was £100 million largely to Northern Irish lawyers and it was an amazingly odd sort of procedure which brought closure of a kind, obviously, but at what expense and in what way. Why I am very disappointed with the Constable of St. Martin in particular, it has to be remembered if you have a structured process it is one overseen by people totally independent of our institutions who can go where maybe we would not want to go, who do not have the mind-set which either consciously or unconsciously we all develop. I have worked in one of these organisations, not here, elsewhere, and I know how mind-sets develop. It is unconscious, it is not malicious, but mind-sets develop, blinkers start growing around your judgments and it takes very brave people in organisations to stand up and say, even to know: "Something is going wrong and I am going to do something about it." Just to see it is often a very difficult thing because you get bogged down in minutiae, in details, and in peer pressures. You go to canteens and discussions are held and things are minimised *et cetera*. What I would like to tell the Constable, with a properly structured inquiry with properly, totally detached and independent people, remember also those wrongly accused will get their say as well. I have been approached by a couple of these people who feel that for various reasons they have been found guilty by blog sites or whatever and remember they will get a chance. It says something about the magnanimity of an organisation or a society that it is prepared, and I have got to be careful with the *Magdalene Laundries* case in Ireland, to wash its dirty linen in public. They are people who also want to say it is going to be very embarrassing, and it always is in a small society when these things are discussed in public, because these things get, as we well know, very personal. But it is important they have a say and therefore it is important that there be a proper structure. It is no good saying: "Well, this is too expensive, what are we really going to learn?" and so forth. I would also tell the Constable, what are we going to learn and if I may be grandiloquent and quote the American phrase, which I think I am losing now, but: "The price of democracy is eternal vigilance." Organisations always have to be looking at themselves. They do get complacent and they do do wrong things, and they do go off in wrong directions. You just cannot put a line under organisations and say: "Great, everything is wonderful, we are operating to modern standards, no need to go back" and so on. So those are some of the lessons I would say to the Constables. those are some of the lessons that we will learn and, as I said, remember that there are all sorts of people who want their say and I think if we are magnanimous, as I am sure we are, they will get their say and hopefully at long, long last they will feel they will get justice in the small "j" sense of the term, if not in the fully legal sense of the term.

### **2.3.10 Senator F. du H. Le Gresley:**

I would like to start my speech today with a quote: "We like to imagine ourselves as being some kind of model community; a safe, well-governed and happy group of people. While I cannot speak in detail of individual sufferings now nor of the many betrayals, I can say this: that as far as I am aware the coming months and years are going to require the most painful reconsideration of our communal values, our communal failure in the entire 800-year history of Jersey as a self-governing jurisdiction." Some Members will perhaps recall that these were the words of former Senator Syvret which I have taken from his Christmas greeting speech of 5th December 2007. At that time he was the Minister for Health and Social Services and the longest-serving Senator in this Assembly. This was a speech that struck a chord with the victims of child abuse, but shocked this Assembly to the extent that the then Bailiff decided to adjourn the sitting before Senator Syvret could complete his speech. Having replaced Senator Syvret in this Assembly, I have felt an obligation and later a determination to pursue his wish to have a full, public inquiry into historical child abuse which we now know did occur in State-run homes and in foster homes in our Island. When my proposition P.19 of 2011 as amended by Deputy Tadier and former Deputy Bob Hill was debated on the first 2 days of March 2011, I was delighted with the support it received from 37 Members of this Assembly. However, of the 11 Members who opposed the proposition, 6 are

currently in the Council of Ministers and 2 are Assistant Ministers. Fortunately our Chief Minister had a change of mind and has been steadfast in his resolve to set up a Committee of Inquiry. The fact that today this proposition is brought in the name of the Council of Ministers is testament to the unanimity that has been achieved, even though it has taken nearly 2 years to bring robust terms of reference for approval by this Assembly today. In common with the Chief Minister I would like to praise the work of Verita who have helped us understand the issues and focused our minds on the detail that needed to be included in appropriate terms of reference.

[15:15]

It was an astute move by the former Chief Minister to appoint Verita, as they have been able to consult with interested parties and have, in my opinion, correctly gauged what the process should be to appoint the Chairman and members of the Committee of Inquiry. It is paramount that victims of abuse and those who have been falsely accused of being perpetrators have absolute confidence in the appointment process and independence of the committee. The terms of reference proposed by Verita in their original report of November 2011 have formed the basis of the terms of reference we have before us today. We have consulted with the managing partner of Verita throughout the process of considering amendments proposed by Deputy Tadier and I believe that we have arrived at a position where victims of abuse, careleavers, bloggers, sceptics and even detractors can be confident that we will have a robust inquiry. Of course there will still be those members of our community who are opposed to the setting up of a Committee of Inquiry, but I urge the majority of Members to keep uppermost in their minds the undeniable fact that sexual and physical abuse of children in the care of the State did occur. We know that 168 inquiries were received by the N.S.P.C.C. (National Society for the Prevention of Cruelty to Children) from alleged victims, that the police brought 7 successful prosecutions and that there have been 130 claims under the redress scheme. In the same way that the doubting Members of the Council of Ministers have been persuaded that establishing a Committee of Inquiry is the correct course of action for the whole community, I sincerely hope that Members will agree that historical child abuse is definitely a matter of public interest and that the Committee of Inquiry will provide a trusted forum where witnesses can share their experiences. We have ensured in term of reference number 7 that witnesses who wish to give evidence in private may do so, as the Council of Ministers is aware that a number of victims and some former staff who worked with children have concerns about attending a public hearing. It will of course be for the Chairman of the committee to determine whether and to what extent all or any of the evidence should be given in private. Under part (e) of the proposition the Chairman is required to set out the proposed process for conducting the inquiry. Having consulted with interested parties where necessary Verita in their original report commented that any inquiry is by nature inquisitorial but a number of people they met stressed the importance of the work being conducted in a non-adversarial way. The potential for cross-examining of witnesses is a common concern in inquiries of this sort, and the managing partner of Verita had this to say in an exchange of emails I had with him in June of last year: "In my experience the usual way to deal with this issue is by the Chairman and the inquiry team developing robust inquiry procedures or rules of engagement, which are then agreed with all the interested parties. Indeed, there are a number of inquiries which have been conducted into abuse where no one has been allowed to ask questions directly of others. Rather, all questions have been routed through counsel or lawyer to the inquiry and he or she has decided whether or not they are relevant or appropriate to put to participants. Routing questions in this way dramatically reduces the tension and potential for hostility and also ensures the inquiry is kept on course. Such procedures would undoubtedly be needed for this inquiry." I believe we have produced robust terms of reference which set out the task ahead, but not the procedures explaining how the business needs to be done. The 2 need to fit hand in glove. We would have to place our faith in the Chairman, who will undoubtedly be a

person with a legal or judicial background to set out equally robust rules of engagement. Turning to the potential cost of the Committee of Inquiry raised by a number of speakers today, I believe the written comments from the Minister for Treasury and Resources should help to alleviate those concerns, but I understand the views expressed by Deputy Young in particular. It is accepted that the budget for legal fees for witnesses of £1.5 million may be understated, but the need for legal representation can be mitigated if the Committee of Inquiry resolve to deal with all allegations of abuse in private and then determine what should be contained in the final report. As is stated in terms of reference 7, it will be for the Committee to balance the interests of justice and the public interest. Very recently Members were circulated with a news release from the Department for Health and Social Services about a seminar being held in Jersey on the psychological and physical abuse of people with learning disabilities and autism. The news release included the following quote from the officer responsible in Health and Social Services for learning disabilities and autism: “We are not saying that this type of abuse is happening in Jersey, but constant vigilance about this issue when we as professionals deal with some of the most vulnerable people in society is absolutely essential. We know that this type of abuse is appalling and distressing, and there is no place for it in care, particularly as people in this group cannot speak out for themselves, but there are wider questions to consider, such as why it happens and more importantly when it does happen why do some staff speak out and others do not and above all, how can we prevent such abuse from happening? We all have a role to play in ensuring such abuse never happens and how those who might have concerns can raise them without fear.” Members will I hope agree with me that such enlightened and compassionate views were sadly lacking at Haut de la Garenne and other institutions run by the States. The departing Chair of the J.C.P.C. (Jersey Child Protection Committee) has recently given strong endorsement of the work of the J.C.P.C. and all its partners who ensure the safety and wellbeing of all children in Jersey today. However, we know that the care system that operated historically for children failed some of our children in a serious way. A Committee of Inquiry can start the healing process for those still alive today who suffered abuse when they were children in the care of the State. The founder of ChildLine, Esther Rantzen, recently stated in a television interview that child abuse is an attack on a child’s soul. We cannot change what has happened in the past but we can today show our support for the victims of child abuse by voting for this proposition. **[Approbation]**

### **2.3.11 The Dean of Jersey:**

I rise very briefly to endorse what Members have said about the welcome that should be given from all areas of society to this proposal and I am particularly glad that it has been enlarged to include the third sector, so that we are not simply saying this is about government-run institutions or government-run child care but is about all those who in any way provide things in which children and young people participate. Of course it is right that there must be justice for those who have suffered. There must also be justice for any who consider themselves to have been falsely accused or tried by innuendo and rumour. I rose some years ago when Haut de la Garenne first broke and asked the then Chief Minister, Senator Frank Walker, for 3 assurances. One was that there would not be any financial limits on the investigation. The second was that there would be no place to hide no matter what connections or influence anybody involved in this should have, and the third was that looking to the future Jersey would develop 5-star gold standard ways of dealing with children and young people. It seems to me that this proposition is where the answer to that finally lies. Of course when the report is made we will then have to think about how we implement recommendations and indeed how we evaluate those recommendations. But as somebody who did take an interest those years ago and indeed where we arranged the first service at St. Martin de Gouray for those who had been involved in any way and for the police who were conducting the investigation, it seems right that I should welcome, in the name of the charitable and third sector, this particular proposition and also to undertake on behalf of my colleagues who have any

leadership responsibility in that charitable and third sector our utmost wish to co-operate and encourage others to co-operate in whatever ways seem appropriate not only with the inquiry, but also to make sure that we genuinely achieve that 5-star gold standard for the future. We are not necessarily, in this Chamber now, responsible for what may have happened 20 or 30 years ago, but we are most certainly responsible for what happens in the next 20 and 30 years.

**The Greffier of the States (in the Chair):**

If no other Member wishes to speak I will call on the Chief Minister to reply.

**2.3.12 Senator I.J. Gorst:**

It may not come as a surprise to Members that I have thought about this day on many occasions over the course of the last 15 months and I think it is a testament to all those people who have been involved in whatever way that I never imagined it quite as it is now. I cannot say more clearly how grateful I am for Members of this Assembly and to members of our community who have joined together across the political divide to ensure that we could support a terms of reference for a Committee of Inquiry into what happened in our community in the way that we have today and I am personally grateful to all those people. I am not sure that I can sum up in any better way than Senator Le Gresley has done, however I do feel that I should touch on and endeavour to answer probably 2 or 3 questions that have been raised by Members who were perhaps still uncertain about which way they will vote this afternoon. Firstly, if I could turn to Deputy Baudains who was concerned that we were not, by setting up this Committee of Inquiry, going to allow people to have a “second bite of the cherry” to use his parliamentary term. He has said that he is supportive of a term of reference that looks at process and procedures, but has concerns when that is broadened out to allow victims to have this second opportunity. I have to be quite honest with him and say that the terms of reference before us today while not allowing a “second bite of the cherry” do allow most clearly and most purposefully victims to come forward and talk about their experience and I believe that that is the right thing and it is absolutely as should be with regards to this Committee of Inquiry.

[15:30]

But if I could just refer the Deputy back, which I hope will alleviate his concerns, to my opening comments and that is that the inquiry is not a court of law and will not be able to judge the guilt or innocence of individuals mentioned by witnesses. Its role is, however, to understand what happened to cared for children by allowing victims to describe what happened to them by allowing those accused of abuse, but not charged with a crime, to have their say and by collating information from past investigation and reviews and setting those within the societal norms and standards at that point so that we can understand what went wrong; so that we can understand what was done at the time and so that we can see who was accountable. So a number of Members also mentioned costs. Again I had hoped that my comments earlier and the comments of the Treasury Department would have addressed Members’ concerns in that regard and I believe that they do. The Connétable of St. Martin is right; I cannot stand here this afternoon with certainty and tell Members what the absolute cost will be, but I can stand here with certainty and say that the figure estimated of £6 million has got a good basis. It has been provided by Verita who, as I said, have experience of similar inquiries elsewhere. It has been reviewed by the Greffier’s Department and also further work has been undertaken by the Treasury Department and therefore I am confident that those figures are robust and, as I said earlier, it does include £1 million for contingency so there is latitude for perhaps changes. So I hope that no Member will decide to vote against this proposition today because of cost; the work has been done. Members can be confident that the proper processes of budget management will be put in place. Deputy Young makes very pertinent points and perhaps I could offer him assurance by saying that it is the nature of such inquiries that the Chairman and panel

members will consider what has been said today in supporting this proposition because that is what you would expect of independent, diligent individuals being tasked to do such an inquiry. Therefore they will have heard what has been said today and I have no doubt that they will take that into consideration in the way that they themselves manage their budget. Perhaps if I could turn to Deputy Higgins; we have sparred across this Assembly in relation to the historic redress scheme and I am sorry that we have done that because I believe that we both have the same aim in mind. I am not sure if he has seen the agreement that those receiving payment from the scheme are asked to sign, but it is quite clear and the Council of Ministers were quite clear that individuals receiving compensation under the scheme are absolutely free to speak out about their experience and to attend the Committee of Inquiry. What that agreement does say is that they will not talk about the amounts that they have received under the scheme and we were and have been quite clear from day one that that was the only perimeter in that regard. What I did not say to him yesterday, because he did not press me in that direction, but I will say it today, is that I understand that some lawyers have suggested to individuals who are making claims under the scheme not to sell their stories, as it were, until they have had their payment agreed, so that might be where there is some confusion, but there is no confusion with regard to the agreement that individuals are being asked to sign. Deputy Pitman right at the start of this debate suggested that some Members might have a conflict of interest. I do not believe that I have, but for the record I would like to say that a member of my family has in the past been in the care of the State in Jersey. I do not believe that that provides any conflict whatsoever, but in the interests of that transparency I would make that comment. I am grateful to Deputy Pitman for his kind words. Unfortunately that is about the only agreement I think that he and I share today, but we will leave that for another occasion. So I have acknowledged publicly this morning that things have gone wrong in the past and it is right for us today to approve this Committee of Inquiry, but I do not want Members to be shocked. Some of the stories that we as Government and members of the community will hear throughout that process will be shocking and will be surprising, but it is absolutely right that those individuals have the opportunity to talk about what happened to them and they will need our support through that process. I hope that this Committee of Inquiry will help us to learn lessons from those past failings. As I have said it may not be pleasant, but it is something that we as a Government and as a community must face up to. I believe that by establishing a thorough and trusted independent process of inquiry, which is what I believe we have before us, the experiences of all witnesses will be accorded their rightful importance and they will play a part in ensuring that we have the correct framework to protect all Islanders, especially our most vulnerable, into the future. Therefore I repeat as I said at the start, it is my sincerest hope and belief that this Committee of Inquiry will be that first step in the healing process for all of those who have suffered and I thank some of them for attending our deliberations today. I know that that has not been easy for all of them, but I thank them for that and I hope also that it will help the healing process which needs to take place across the whole community. I finish as I started my closing comments, and I hope that I will be proved right that we can come together and give these terms of reference our wholehearted support and thereby let the independent inquiry begin. **[Approbation]**

**The Greffier of the States (in the Chair):**

Very well, the appel is called. I will ask Members to be in their correct seats for the appel especially on the Connétables' benches. If all Members are in their designated seats I will ask the Greffier to open the voting.

<b>POUR: 38</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator A. Breckon				
Senator S.C. Ferguson				

Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

### **3. Draft Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 201- (P.2/2013)**

#### **The Greffier of the States (in the Chair):**

Very well, we come to the Draft Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 201- (P.2/2013) and I will ask the Greffier to read the citation.

#### **The Deputy Greffier of the States:**

The States, in pursuance of Articles 2 and 44 of the Control of Housing and Work (Jersey) Law 2012, have made the following Regulations.

#### **Senator I.J. Gorst (The Chief Minister):**

Perhaps I could ask my Assistant Minister who is the Chairman of the Migration Advisory Group to act as rapporteur for this and the following.

#### **3.1 Senator P.F. Routier (Assistant Chief Minister - rapporteur):**





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## EXECUTIVE SUMMARY

### Response to the Data Commissioner's Report (Undated)

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1. The Inquiry considers that **the Data Commissioner's Report is partial, inaccurate and misleading** in many respects. Some of **its claims are unfounded and simply untrue**.
2. It relies on unsubstantiated speculation and provides little factual evidence of data compliance errors.
3. **No formal complaint has been made about the Inquiry's compliance with data protection legislation.**
4. **The Panel takes seriously the need to balance the protection of individuals' information while conducting a robust, thorough, transparent and impartial inquiry.**
5. The Inquiry has had to balance sensitively the need to protect the privacy of individuals with its duty to be transparent in all it does and its responsibility to serve the public interest. This has often required finely balanced decisions to be taken, which have not always satisfied all **of the parties involved with and interested in the Inquiry's work. From its outset robust** measures have been in place, including rigorous data protection and management protocols, a secure online environment (Magnum) for sharing documents with Interested Parties provided by a company with experience in over 200 tribunals, data security guidance and instruction for staff and independently validated security systems. Throughout its work, the Inquiry has taken seriously its responsibility to protect personal data of individuals and considered this in all decisions made. The Inquiry has processed over two million pages of documentation and throughout its work has taken extensive precautions to safeguard that information.
6. The Data Commissioner has identified **10 "third parties" who have communicated concerns** to her. She has afforded these parties anonymity although she has stated that some are **"document providers" and** indicates some are Interested Parties to the Inquiry, who are in the main States of Jersey agencies. It is a matter of concern to the Inquiry if parties to the Inquiry have chosen to raise **"concerns" anonymously with the Data Commissioner rather than** openly by the means available to them under the Inquiry's protocols or by testing the Inquiry's decisions transparently through the route of judicial review.
7. The Inquiry legal team has engaged with the Inquiry since its arrival in Jersey in March 2014 and prior to that the States Liaison Officer had the role of liaising with the Data Commissioner on behalf of the Inquiry. Since then the Inquiry legal team has been in regular contact with **the Data Commissioner's office as evidenced by voluminous correspondence.** Members of the Panel have also met with the Commissioner and those who represent her. None of this extensive engagement is reflected in the Report. The Data Commissioner criticises the Inquiry for both lack of engagement with her and conversely for seeking her advice and input.
8. Concerns outlined by the Data Commissioner are mainly based on unparticularised accounts from unidentified parties. These criticisms lack specificity and evidence. In instances they have not previously been notified to the Inquiry by the Data Commissioner.

9. The Inquiry accepts that in dealing with millions of pages of documentation and hundreds of witnesses over a two year period there have been a small number of errors. Where these have come to light they have been rectified as soon as practicable. The Data Commissioner has criticised the Inquiry because redacted material in a document, under certain conditions, could be made visible due to a technical issue. **In its original version, the Data Commissioner's Report was affected by the same issue that enabled material she had redacted to be revealed.**
10. While a **full response is provided to the Data Commissioner's Report** in the attached Response and appendices, a **summary of the concerns she raises and of the Inquiry's responses follows:**

<b>Report Para No.</b>	<b>Concern or Example provided by Data Commissioner</b>	<b>Response by Inquiry</b>
31	<i>The Inquiry (and/or their legal counsel) has failed to implement, from the outset, clear policies as to how that data should be dealt with so as to comply with the DPL”.</i>	This is untrue. A detailed explanation of the robust processes the Inquiry has adopted is set out in the Inquiry Response. (paras 24-34)
34/44	<i>The Inquiry has requested quantities of documentation from providers without consideration of whether it was necessary or relevant</i>	The Data Commissioner makes no mention of the extensive exercises carried out by document providers in conjunction with the Inquiry to ensure only necessary documentation was provided. (para 37 onwards)
45	<i>Concerns raised about the manner in which the Inquiry has conducted the summons process.</i>	<b>The Data Commissioner misrepresents the Inquiry’s</b> processes. Her account contains several inaccuracies and misconceptions which the Inquiry addresses in its response. (paras 35-47)
47	<i>At the beginning of the Inquiry, a former director was purportedly contacted directly by solicitors to the Inquiry for C4 documents rather than through the proper channels. Documentation is purportedly requested at extremely short notice. On one occasion the documents (which were highly sensitive and located in a private area) were said to be required almost immediately and this was very problematic, on both an organisational and staff welfare basis.</i>	The Inquiry is unaware of any such occurrences. Both criticisms are based on unspecified assertions by an anonymous person. (para 47)
56a	<i>The Inquiry does not appear to advise the Interested Parties of proposed amendments with sufficient notice to allow the Interested Parties to properly consider those amendments.</i>	Under States of Jersey Standing Orders, the Inquiry is empowered to make its own rulings. The Inquiry is not required to seek the approval or views of Interested Parties when amending its Protocols. However, in the interests of natural justice and in maintaining its transparent approach, where appropriate, the Inquiry has considered input/views from the Interested Parties in relation to any such amendments. Examples of instances where the Inquiry has incorporated Interested Parties input are provided in the Response. (para 53)
56b	<i>The Inquiry refuses to accept submissions from the Interested Parties as to the adequacy of the proposed amendments. On 17 March 2015 the Inquiry wrote to the Interested Parties advising that the Inquiry Panel had decided</i>	The assertion that the Inquiry has refused to accept submissions from Interested Parties is simply untrue.

	<p><i>to amend the Protocol and a copy of the proposed amended Protocol was provided. The Inquiry advised that the Protocol was to come into effect on 24 March 2015. The Inquiry indicated that they would not entertain further submissions in respect of the proposed amended Protocol in light of the fact that they had received submissions in respect of "the proposed process previously circulated". The Inquiry concluded by stating that "In light of the Panel's decision to amend the Protocol and also the process, the Inquiry will not respond to those submissions previously made."</i></p>	<p>The Report has selectively quoted from a detailed Panel ruling.</p> <p>In respect of the March 2015 amendments, since October 2014, the Inquiry had been in discussions with the Interested Parties around further amendments to the DP Protocol, particularly surrounding the issue of redaction. Therefore, the Interested Parties were aware that changes were to be made and they had relayed to the Inquiry their views and concerns which were duly considered. On 17 March 2015, the Inquiry then sent an email to the Interested Parties attaching a copy of the revised Protocol, explaining that this would come into effect on 24 March 2015. No objections were received from the Interested Parties. (paras 56-58)</p>
56c (i)	<p><i>"At Appendix 8 is a copy of the Inquiry Ruling - Amendment to Data Protection, Freedom of Information and Redaction Protocol 25 which states that "The Panel, having reviewed a number of documents received from various providers, have made the following ruling of its own initiative. The protocol has been amended to include that any information already in the public domain will not be redacted"</i></p>	<p>This is a simply a factual quote from an Inquiry Ruling. It is not clear what point the Data Commissioner seeks to make. (paras 56-58)</p>
56c (ii)	<p><i>On occasions, witnesses' inquiry statements contain inaccurate facts or claims which are hearsay from third parties. This means that certain information being put into the public domain is potentially inaccurate.</i></p>	<p>It is not clear to what witness statements the Data Commissioner refers or what enables her to reach the view they contain inaccuracies. Statements from potential witnesses are prepared in advance of them giving evidence so they can be provided to Interested Parties, who can submit through counsel questions for the witness. Witness statements are only placed in the public domain alongside full transcripts of the hearings which will contain any questions raised on points of accuracy. (paras 56-58)</p>
56c (iii)	<p><i>In relation to the Protective Measures Protocol, the deletion of the former paragraph 18 had the effect that Interested Parties are now no longer to be informed when protective measures applications are being made, or have the chance to make submissions, taking away their right of reply in relation to those matters</i></p>	<p>The Protocol was amended to protect the privacy of individuals who did not want their identities to be known to Interested Parties. Interested Parties accepted this amendment. (paras 56-58)</p>

56c(iv)	<p><i>"Due to the sensitivity of the records, and the allegations being made, it is essential that the redactions are applied consistently and that there are no errors. It only requires one occurrence of a name left un-redacted to lead to the identification of an individual. Under the protocol, departments are meant to have 5 days' notice to check provisional redactions. Under the old protocol, when larger amounts of documents were being redacted, (which was unnecessary as they would not ultimately be utilised in a public hearing room), the compliance with the 5 days process and the error rate was unacceptably high"</i></p>	<p>This is a vague unspecified assertion by an anonymous agency. No examples are given of errors. (para 58)</p>
56c(v)	<p><i>There is a commitment to give notice of any future changes to the DP Protocol, but it is evident that this has not happened on a number of occasions. This means that any teams assisting the Inquiry often struggle to do so. Under the DP Protocol, the Inquiry should give 48 hours' notice with regards to any rejected redactions, or in relation to witnesses coming forward to give evidence. For example, notification of witness [X] coming forward to give evidence was only sent after close of business on the day before the witness was due to appear, meaning that many of those individuals' records were not available for the Inquiry hearing</i></p>	<p>Witness [X] did not provide oral evidence to the Inquiry. <b>This individual's evidence was read into the record</b> on 27 February 2015. An email was sent to the Interested Parties on 25 February 2015 to notify them of amendments to the timetable. Documents for this witness were released to all Interested Parties on 20 February 2015. (paras 58)</p>
61c(i)	<p><i>The Inquiry has apparently displayed a relatively high propensity to fail to redact personal data in documents that the Inquiry has generated or that it has received from elsewhere than the 'official' documents providers. One document provider estimates that the failure rate may be as high as 30-40%.</i></p>	<p>These speculations are made by an anonymous party and repeated by the Data Commissioner unsupported by any evidence. The figures are wholly inaccurate. (paras 60)</p>
61c(ii)	<p><i>The Inquiry is apparently resistant to the suggestions of certain document providers to redact certain identifying features of witnesses (for example month and year of birth). It is not clear why the Inquiry considers that such specific personal data should be left unredacted or why it assists the Inquiry's processes not to take the 'abundance of caution' approach to redaction apparently advocated by certain of the document providers.</i></p>	<p>This is factually inaccurate. In respect of redacting <b>individual's dates of birth, the dates and months of birth</b> are redacted on each occasion. However, the <b>Inquiry does not consider that retaining someone's</b> year of birth will identify them where all their other details are anonymised. Year of birth assists the Inquiry with context of the evidence it is hearing, for example of the age of a victim or alleged abuser. If an Interested Party suggests that the entire date of birth be redacted, the Inquiry will have considered this and if the suggesting is not accepted, the Inquiry will respond explaining the reasons for the approach taken to redactions. (paras 60)</p>

61c(iii)	<p><i>There have been numerous instances of careless disclosure of data to Interested Parties due to redaction errors by the Inquiry and this is an ongoing problem.</i></p>	<p>This is a vague and sweeping statement. This is a sweeping statement without any context, evidence or particularisation. (para 60)</p>
61c(iv)	<p><i>At least one Social Enquiry Report (SER) pertaining to an offender was disclosed to the Inquiry without the knowledge or approval of the Royal Court. The matter came to light when the prosecution bundle including the SER were to be uploaded onto the Inquiry website and there was dispute between the Advocate for the relevant document provider and the Inquiry Solicitor as to which parts should be redacted.</i></p>	<p>The document in question was disclosed to the Inquiry by a document provider, it appears by mistake or without authorisation. The document was ultimately redacted and exhibited to a witness' statement and then released to the Inquiry's document management system to which Interested Parties have access (it was not uploaded onto the Inquiry's website as suggested). As soon as a concern was raised by the legal representative of a different Interested Party, the document was removed from the system. (para 60)</p>
62	<p><i>The Commissioner understands that on 26 May 2015, two witness statements relating to witnesses who were to be examined on 27 May 2015 had still not been provided to the Interested Parties. It is further understood that one witness statement was received on 26 May 2015 at 19:52 but that witness did not ultimately give evidence until 28 May 2015. As for the remaining witness who was examined on 26 May 2015, their witness statement was not received until 26 May 2015 at 22:18.</i></p>	<p>This is factually inaccurate. Full details are provided at para 61 of the Inquiry response. The statements were sent to IPs as soon as they were signed by witnesses. The Inquiry would not, and did not pressurise witnesses, who were often very vulnerable and giving evidence in extremely difficult circumstances, to return their statements before they were comfortable in doing so. (paras 61)</p>
63 (i)	<p><i>A senior member of C4 has watched the enquiry on two occasions; both times a name was mistakenly un-redacted and was shown on the large screen in the presence of the public and journalists. On another occasion, a colleague's name was shown on the large screen simply because they had printed out the document in question and their name was not appropriately redacted.</i></p>	<p>The Inquiry is unable to respond without further information. The Inquiry can find no example of a senior member of an agency drawing any redaction problems to its attention during proceedings. (para 62)</p>
63 (ii)	<p><i>In April 2015 a document containing the name of an alleged victim was published on the Inquiry website. The Interested Party who had provided this document to the Inquiry had proposed redactions in yellow which they considered ought to be made to the document. Those redactions were apparently ignored/overlooked by the Inquiry and the document was published on the Inquiry website which contained the name of the alleged victim together with certain other sensitive data. The document purportedly remained on the Inquiry website for some hours prior to an independent third party contacting the Inquiry and advising them of the error. Despite</i></p>	<p>The circumstances described in this example are extremely misleading. The Inquiry has sent detailed correspondence to the Commissioner in relation to this issue, which has not been reflected in the Report. A copy of the Inquiry's correspondence is attached to this Response at Appendix B. The problems stemmed from a technical issue which has also been experienced by the Data Commissioner where redacted text in her</p>

	<p><i>Eversheds confirming that the error was unforeseen but remedied, this document remained on the Inquiry website until 13 October 2015 allowing any third party accessing such documents to remove certain of the redactions. The document was subsequently replaced at the insistence of the third party.</i></p>	<p>original report could be made visible under certain conditions. (para 62)</p>
63 (iii)	<p><i>There are instances where social care files of individuals (including of those who explicitly rejected the use of their records by the Inquiry) being uploaded to the Inquiry website<sup>39</sup>. The Commissioner remains concerned about the publication of such social care files, albeit with redactions, and making such available on the World Wide Web, due to their extreme sensitivity.</i></p>	<p>Whilst the social care files of individuals are very sensitive, this is the very nature of the material that <b>the Inquiry's work is concerned with. To ignore the gravity and seriousness of that information would be to avoid reality of the events that the Inquiry is concerned with, and which it has a duty to be transparent about.</b> All of these files have been redacted so as to anonymise the individuals involved and prevent any identification. (para 62)</p>
63 (iv)	<p><i>One complainant has expressed concerns that the mechanisms in place to protect individuals granted anonymity are not as robust as they necessarily could be. For instance, while an individual sits behind a screen, there is no mechanism to disguise their voice<sup>40</sup></i></p>	<p>No witness has made this request. When providing evidence to the Inquiry anonymously, all witnesses were informed that their voices will be heard in the public gallery Voice distortion technology is not routinely in courts save in extraordinary circumstances (e.g. when life would be at risk if a person were identified) Should a witness decide that the risk of identification is too great, they can make an application to provide their evidence privately when only the Panel are present (or indeed not provide their evidence at all). (para 62)</p>
63 (v)	<p><i>One complainant has noted that the Inquiry team has prepared redacted documentation for witnesses which also have a unique cipher number applied to it. During the public evidence, the witness is purportedly often shown a ciphered document, and told that number e.g. 123 refers to them. Therefore, anyone within the public gallery knows that 123 = for e.g. Mr Smith. The same document is then shown to Mr Smith when appearing as an anonymous witness Mr X. This further negates the anonymity protection<sup>41</sup></i></p>	<p>In using cipher numbers, rather than naming some witnesses, the Inquiry has struck a balance between protecting personal data and sensitive personal data against what is in the public interest and its duty of <b>transparency. Much of the Inquiry's evidence would have been rendered meaningless had there not been the ability to link an individual witness' evidence</b> throughout the proceedings, and the adoption of cipher numbers allowed that level of protection whilst meeting the public interest. If a witness was providing public and anonymous evidence, the Chair to the Inquiry would make a protective ruling to restrict the publication of the relevant cipher number. (para 62)</p>

68 a-0	<i>Fifteen errors are listed in respect of documentation which was disclosed only to IPs in the secure Magnum environment.</i>	Interested Parties are subject to confidentiality obligations and Interested Parties must take steps to preserve the confidentiality of material released to them and must not disclose or pass on to any third party, other than the Interested Parties own legal representatives, any material supplied to it by the Inquiry, save with permission of the Inquiry; all material disclosed to IPs must be stored in a secure place to prevent any unauthorised access; and must be used solely for the purposes of the Inquiry and any material must be returned or destroyed at the <b>Inquiry's requests.</b>  Detailed responses to point 68 (a) – (o) are given at pages 15-17 of the Inquiry Response. (para 65)
71	<i>Alleged breach of injunction</i>	The Inquiry was provided with a statement. It was not made aware an injunction was in place in relation to certain information in that statement. The statement was on the Magnum system for less than an hour and had not been notified to IPs when the Inquiry was made aware of the potential problem. Although the injunction did not prevent the naming / identification of certain parties to those proceedings, the Inquiry consulted with the Commissioner and removed the statement immediately. (paras 68-72)
73	<i>Counsel to the Inquiry incorrectly read aloud a detail which could have allowed the identification of a witness.</i>	Upon the matter being raised by an Interested Party, the transcript of the hearing was reviewed and the Inquiry accepted that the redactions relating to a particular third party had been incorrectly read aloud by Counsel on that occasion. Counsel to the Inquiry was reminded of the redaction policy and the Inquiry discussed the matter with the relevant witness who did not raise any concerns. (para 73)
76	<i>Certain tweets were published by the Inquiry and which detail allegations made by certain alleged victims against a former houseparent of Haut de La Garenne (HDLG)</i>	The Inquiry reviewed its tweets which are of necessity brief and accepted that in relation to a small number of tweets, a member of the public, without the benefit of context, might assume that the tweets were a



		<p>finding of fact, and would not know that the tweets simply repeated what a witness had told the Inquiry. The tweets did not contain any unredacted material. The Inquiry removed the tweets and changed its social media practice (paras 74-75)</p>
89	<p><i>This relates to correspondence following the Inquiry's notification to a document provider of the proposed disclosure to a witness of a copy of the records the provider had supplied to the Inquiry. The Inquiry had redacted the records and sought the provider's views on the redaction. The provider considered some documents had not been redacted sufficiently and others had been "over-redacted". The provider accepted that the Inquiry had applied the standard redaction approach in line with the Inquiry protocol, but had unspecified concerns the approach did not entirely accord with data protection law because of the nature of some documents.</i></p>	<p><b>No documents were disclosed</b> to the witness. The complaint seems to be that Inquiry took the correct course of action by approaching the document provider, seeking and responding, to their views. The Inquiry quite properly sought to work with the document provider to ensure that the documents were properly and appropriately provided to the relevant individual. The Data Commissioner does not seem to be clear what data breach, if any, is being alleged here. (para 77)</p>
95	<p><i>Concerns have been raised by C2, C3 and C4 regarding the Inquiry's use of court documents. For example it has uploaded liability reports for a case currently involved in live proceedings to all Interested Parties, contrary to a court order, and has also uploaded Probation Social Enquiry reports.</i></p>	<p>No specific details are provided. At para 79 of the Inquiry response details are given of a case where documents were provided to the Inquiry in redacted form. The documents were subsequently released to the Interested Parties for use in a hearing, as the Inquiry believed it had consent to do so. Upon notification that there was some confusion in respect of the terms of the court order and the basis upon which they could be used by the Inquiry at that stage, the redacted documents on the Magnum system were hidden from view of the Interested Parties and the documents were not used in the hearing. The documents were not made available to the public. (para 79)</p>
102	<p><i>An Eversheds employee took away from the Island the hard copy notes they had made in that interview; and the Eversheds employee subsequently left the employment of Eversheds and those original notes could not be located.</i></p>	<p><b>This is untrue.</b> No notes were lost. No former member of the legal team left with notes. No evidence to support this unfounded allegation is provided. The Inquiry has set out in the Response circumstances which have resulted in persons having to be reinterviewed, which have been due to the late disclosure of documents by providers. (para 84)</p>

104	<i>Allegation that insufficiently secure means were used to send papers to the UK.</i>	This assertion is based on incomplete information the Data Commissioner says she has obtained from a UK media website. There is no evidence of this or any other piece of mail sent by the Inquiry being tampered with. The Inquiry uses means of sending papers common to other Inquiries and tribunals. (para 85)
110	<i>The Commissioner is concerned that the Inquiry has apparently allowed hard copy documentation to be transmitted insecurely between Jersey and the UK.</i>	This is without foundation. There has been no loss of hard copy notes (see paragraph 84).
114	<i>the Inquiry appears to lack appropriate procedures</i>	This is also entirely without foundation. The <b>Commissioner has not asked for details of the Inquiry's</b> procedures. These are now appended to this Response. The Inquiry was well aware of the potential risks of data security and, there are significant measures in place. As the Commissioner recognises at paragraph 116, there is no evidence that damage has been caused by the transmission of data and any risk of this happening was addressed and managed from the outset of the Inquiry and throughout the course of its work to date. (para 87)
118	<i>Unsatisfactory redaction</i>	Paras 118-123 of the Report are a misleading explanation of the issue that arose. A full explanation has been given in the Response. The Data <b>Commissioner's Report itself has been subject to the</b> same unsatisfactory redaction. (para 88)
128	<i>Certain individuals who may have been the subject of police inquiries at various times but against whom no charges were brought/arrests made (such cases clearly, for whatever reason, not having passed the evidential threshold for prosecution) are being routinely named by the Inquiry notwithstanding the fact that they are still alive and where the specific information referred to in the Inquiry was not previously in the public domain.</i>	There is no foundation in the assertion the Inquiry <b>"routinely" names</b> alleged abusers. The Inquiry has the discretion to consider the naming (or not-naming) of individuals and makes determinations in accordance with its protocols. The Inquiry knows of no instance where an alleged abuser whose name is not in the public domain has been named. In the absence of specific details it cannot comment further. (paras 89-92)

130	<p>An individual made an application for protective measures in early 2015 [Appendix 16] under paragraph 1.1.4 of the Protective Measures Protocol. The individual's application was refused for the reasons set out in the Inquiry Ruling and on the basis that the panel was satisfied that allegations of physical abuse made against that individual were in the "public domain", such as defined by the Inquiry in a ruling on 24 October 2014. This finding was apparently on the basis that allegations purportedly originally aired in a television broadcast in 2010 by a member of the regulated media remained accessible online and that the information remained realistically accessible to the general public. The report relied on by the Inquiry has, in fact, been removed from the regulated media website and is only available via a social media website. The report had also been clearly edited from that as originally broadcast. The Inquiry's rationale for not granting that individual protective measures are unclear.</p>	<p>This assertion is inaccurate. The ruling in relation to the application referred to states the Inquiry's reasoning for refusing the application, although the detail behind the application (which was heard orally during a private hearing) has not been published in order to protect the privacy of a witness by not disclosing other relevant personal data. It may be that the media report is no longer available online, but at the time that the application was made (in February 2015), the report was available in the "public domain" as defined by the Inquiry in its ruling on 24 October 2014, the definition of which does not include non-regulated media (e.g. social media websites). (para 92)</p>
133 (i)	<p>Certain documentation pertaining to an alleged victim was projected onto a screen during the course of public hearings that it bore, in handwriting, the name of that victim in the top corner of the document (notwithstanding the fact that the victim benefits from anonymity). The document apparently remained on view for a significant length of time and also notwithstanding that the rest of the document had been appropriately redacted.</p>	<p>The Inquiry has no knowledge of its attention being drawn to such a problem and cannot respond without further details being supplied. (para 93)</p>
133 (ii)	<p>The Commissioner understands that the Inquiry does not always provide the 5 days' notice that particular document is going to be used in proceedings that it is required to do under paragraph 22.3 of the DP Protocol and this has given rise to significant failings in the redaction process which cannot be timeously address by the document providers.70</p>	<p>This is dealt with in detail at para 60 of the Inquiry Response. The Inquiry accepts there have been times when the usual five day timescale has had to be shortened e.g. late disclosure by providers of a document which is needed for a witness who is about to give evidence. If the five day timescale had been strictly adhered to on each occasion, this would have resulted in numerous adjournments, wasted hearing days and a significant extension of the Inquiry's hearings, with significant cost implications. (para 93)</p>
133 (iii)	<p>As by failing to operate within its own protocols in respect of the timeous disclosure of documents we are given little or no notice that the Inquiry is going to use particular documents, so we are concerned that redaction problems only become apparent after a breach may have been committed</p>	<p>This is a claim by an anonymised party. The Inquiry accepts that it has not always met the five day timescale for the reasons discussed above. (para 93)</p>

133 (iv)	<p><i>The Inquiry's rate of what we consider to be inappropriate disclosure of personal data appears to be unreasonably high and even when they have been identified by third parties, issues have not been remediated with due expediency.</i></p>	<p>It is not possible for the Inquiry to comment in any meaningful way in relation to this general and un-particularised comment without any specific details. However, whenever redaction concerns have been raised with the Inquiry, they have always been dealt with as quickly as possible and the examples used throughout the Report specifying the timescales in which responses were received demonstrates this. (para 93)</p>
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## **Response to the Data Commissioner's Report (Undated)**

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1. The Independent Jersey Care Inquiry has been given the Data **Commissioner's** undated report. The Inquiry understands that the Report was provided to the Chief Minister, Ian Gorst, in or around March 2016, and the Inquiry received a copy of the Report on 4 April 2016. **This document sets out the Inquiry's response to the findings of the Report.**
2. In this Response, where reference is made to paragraph numbers, this is to paragraph numbers contained in the Report, unless otherwise specified.
3. This Response is being made by the Panel to the Inquiry, with input from its legal advisers and media team.
4. The Inquiry recognises that this Response must be made public. Elements of this Response draw on details of evidence which are confidential and so are simply alluded to or summarised in this public document. Confidential Appendices containing identifying detail will be made available to the Data Commissioner if required.

## **BACKGROUND**

### **The Inquiry's responsibilities and obligations**

5. **Throughout the Inquiry's work, the Inquiry has taken its responsibility to protect personal data very seriously and considered this in all decisions made.** The Inquiry has processed over two million pages of documentation and it has taken extensive precautions to safeguard that information.
6. The Inquiry has also had to balance sensitively the need to protect the privacy of individuals with its duty to be transparent in all it does and its responsibility to serve the public interest. This has often required finely balanced decisions to be taken which have not always satisfied the range **of parties involved with and interested in the Inquiry's work. The Inquiry has** designed its practice and protocols around those previously used by other inquiries and tribunals, but taken into account the specific data challenges that it has faced in Jersey. The Inquiry is satisfied that it has fulfilled its task lawfully and without partiality. The Inquiry has also had regard to its responsibility to exercise fiscal prudence and has, where appropriate, had a regard to the principle of proportionality
7. The Commissioner has helpfully set out some of the legal framework in her Report. The legal framework is complex, and whilst the Inquiry does not propose rehearsing the legal arguments in this Response, an inquiry body which is constituted in order to serve the public interest by creating transparency and accountability around a major abuse scandal will generally be at liberty to disclose personal data, including sensitive personal data,

where this is 'necessary'.<sup>1</sup> In deciding what is necessary, it is the Inquiry Panel, and not the Commissioner, who is the arbiter of that.

8. The Inquiry has however had regard to the general imperative to act fairly in disclosing personal data and has therefore designed protocols (which are public documents) which set out clearly and transparently how data will be processed. This includes a General Protective Ruling to protect certain categories of personal data and sensitive personal data, where **such disclosure would automatically not be 'necessary'**.
9. As provided for under SO 147 of the Standing Orders of the States of Jersey, the Inquiry is at liberty to determine its own procedure to regulate the conduct and management of its proceedings.

### **Timing of the Report**

10. The Inquiry is concerned as to the timing of the production of the Report. The Report contains serious allegations and criticisms, the majority and detail of which the Commissioner has not notified the Inquiry of previously.
11. As explained at paragraphs 34 to 39 of the Report, the Commissioner and the Inquiry met in May 2015 to discuss some concerns that the Commissioner had concerning the Inquiry's obligations under the Data Protection (Jersey) Law 2005 (the "DPL") and the possibility of the Commissioner conducting a "voluntary assessment". The voluntary assessment was not **appropriate for the reasons explained later in this Response, so the Commissioner's legal representative explained (in a letter dated 15 May 2015) that instead the Commissioner would provide a detailed report, which could then be used to facilitate discussions with the Inquiry regarding the Inquiry's protocols and procedures. The letter of 15 May said that the report would be provided by 29 May 2015. The Inquiry has however only very recently received this report (which the Commissioner confirms in paragraph 39 is that intended report), over 10 months later.**
12. In various parts of the Report, it is clear that it was drafted some time ago. For example, paragraph 44 says, *"Given the apparent recent scrutiny upon the Inquiry regarding costs, the Inquiry may consider putting in place rules relating to the inspection of records in situ..."*
13. Despite the Inquiry having been in progress for over two years, the scale and gravity of the **Commissioner's concerns which are now set out in the Report were not communicated to the Inquiry until now.**
14. It is not clear why there has been such a significant delay in the provision of the Report. The Report is undated, but the Inquiry understands that it was provided to the Chief Minister **in March 2016. The Inquiry's substantive hearings ceased on 17 February 2016, with further hearings related to Phase 3 of the Inquiry's work (considering the future of child care in Jersey) taking place 1 – 4 and 18 March 2016.**
15. The criticisms made by the Commissioner are serious. However, because of the delay of the provision of the Report, the Inquiry has been denied an opportunity to consider the criticisms and work with the Commissioner to ease any ongoing concerns she may have **had during the course of the Inquiry's work, when gathering evidence and processing material for the hearings.**

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<sup>1</sup> To be 'necessary', a data controller would need to show that (i) processing met a pressing social need, and (ii) the measures adopted were proportionate to the achievement of the legitimate aim pursued.

16. If the Commissioner had serious concerns, the Inquiry believes the Report would, and should have been produced at a much earlier date, rather than allowing those concerns to continue.
17. When the production of a report was **mentioned by the Commissioner's legal representative** back in May 2015, no mention was made of any report being made public; rather the Inquiry had understood that the report would just be prepared to facilitate discussions with the Inquiry. The Inquiry is surprised and disappointed that the report which took 10 months to complete is being placed in a public forum before the Inquiry has had a chance to comment on its previously unaided allegations and serious inaccuracies.
18. It now appears that the Report is to be laid before the States of Jersey and made public. The timing of the Report (**after the conclusion of the Inquiry's hearings and at a time when** the Inquiry can no longer investigate and work with the Commissioner) and the incomplete and inaccurate picture it portrays are an unwelcome distraction to this important phase of **the Inquiry's work**.

### **Tone and content of the Report**

19. The Inquiry considers that **the Report is partial, inaccurate and misleading** in many respects. It relies on unsubstantiated speculation and provides little factual evidence of data compliance errors. Whilst further details are provided throughout this Response, general issues include the following:
  - 19.1 The Report rehearses matters which have been raised with the Inquiry by the Commissioner but nowhere does it include the very full and detailed responses that the Inquiry has provided to the Commissioner (one example being the issues identified at paragraph 63, example 2 of the Report); instead it selectively quotes some of the correspondence;
  - 19.2 The Report does not make clear that Interested Parties have been given access only to redacted information **during the course of the Inquiry's work**;
  - 19.3 The Report repeats and supports, on the basis of incomplete information, the arguments of Interested Parties seeking extensive redactions to documents; these arguments already having previously been ruled against by the Inquiry as contrary to its protocols, against the public interest or likely to compromise its commitment to transparency; none of these rulings have been challenged by any interested party or witness;
  - 19.4 The Report does not make it explicit, where it gives examples, that these relate to the **management of data within the Inquiry's secure internal data environment** (this system being known as Magnum), not the world wide web, nor that the area is one restricted to and licensed for use by representatives of Interested Parties and that all are bound by strict confidentiality undertakings;
  - 19.5 The Report contains some matters which have never been brought to the attention of the Inquiry and which are factually inaccurate. For example, the allegation that a former **member of the Inquiry's legal team removed documentation is entirely unfounded and untrue**. The Report is the first time that the Inquiry has been notified of this serious accusation and therefore it has not been provided with an opportunity to respond before **inclusion in the Report. The Inquiry considers that the Commissioner's failure to test** information provided to her by various third parties seriously undermines the credibility of her office and of the Report;
  - 19.6 The Report does not distinguish between fact and speculation. For example, paragraph 115 **speculates on material "being intercepted by unrelated third parties"** – which never happened, but it could give the impression that it did;

- 19.7 The language used in the Report is unhelpful and inflammatory. For example, the term “purportedly” is used numerous times, even in circumstances when this is superfluous (see paragraph 49 of the Report where it says “*The Data Protection Protocol purportedly sets out the manner in which the Inquiry will adhere to the DPL and the relevant Principles*”.);
- 19.8 The Report relies on the 2011 Verita Report “*Report to Council of Ministers: Historical child abuse Committee of Inquiry*”. The Verita report was prepared approximately 18 months prior to the Inquiry’s Terms of Reference being agreed. As the Chief Minister will now be aware, Verita vastly underestimated the scope and scale of the Inquiry’s documentation by a factor of at least ten. Nor did Verita appreciate the nature of legal support and representation that would be required, amongst other practicalities of running a public inquiry, or significantly, the scale of the response from Jersey people who had experienced or worked in the care system and who had important insights to contribute; and
- 19.9 The Report illustrates that the Commissioner does not understand the Inquiry’s operations. For example, paragraph 44 suggests that the Inquiry has been engaged in procuring documentation it does not need; the Commissioner makes no mention of the extensive exercises carried out by document providers in conjunction with the Inquiry to ensure only necessary documentation was provided (we refer to this in more detail below).

### Concerns / ‘complaints’ of third parties

20. **No formal complaint has been made** (paragraph 138). The Commissioner has prepared the Report “*as a consequence of various approaches which have been made to her office by those concerned by the Inquiry’s handling of (often sensitive) personal data and with general concerns as to the Inquiry’s adherence to and understanding of the DPL.*” The Commissioner also has relied on material she has read on a UK media website (paragraph 109). While no complaint has been made, the Report **describes the Data Commissioner’s sources as “third party complainants”**.<sup>2</sup> If no complaints have been received by the Commissioner then this language is deliberately misleading and unhelpful, and again gives a false impression to the reader.
21. It is also unclear whether all the sources cited actually raised these matters with the Data Commissioner. Further, the Report fails to indicate **the date that these ‘concerns’ were raised with the Commissioner**. Given the facts of some of the examples, it appears that some may have been raised with the Commissioner many months / years ago.
22. Whilst the Inquiry has received queries from third parties during the course of its work in relation to specific instances of the use of personal data, **it has not itself received any complaints** and therefore has not had the opportunity to investigate or respond to the matters that the Commissioner now refers to extensively in the Report. The Inquiry understands that it has been necessary for the Commissioner to anonymise some of the ‘concerns’ that have been received. Therefore, whilst the Inquiry has sought throughout this response to respond as fully as possible to the concerns and examples contained in the Report, in some circumstances the Inquiry has not been able to respond as a result of the anonymisation.
23. The Data Commissioner identifies 10 “third parties” who have communicated concerns to her. She has afforded these parties anonymity although she has stated that some are “document providers” and it appears some are Interested Parties to the Inquiry, and are

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<sup>2</sup> See paragraph 12 of the Report



therefore, mainly States of Jersey agencies. It is a matter of concern to the Inquiry that **parties to the Inquiry have raised "concerns" anonymously with the Data Commissioner rather than using the means available to them under the Inquiry's protocols or by testing the Inquiry's decisions openly through the route of judicial review.** The Panel believes it is essential that it is shown an un-redacted version of the report, including the names of **"complainants"** in order to be able to advise the Commissioner whether or not all the persons concerned have actually participated in the Inquiry.

## **SUBSTANTIVE RESPONSE**

### **The Commissioner's engagement with the Inquiry**

24. In respect of paragraphs 27 to 32, the Report makes criticisms as to the content of the guidance sought by the legal advisers to the Inquiry in their email of 10 March 2015. It is important to place this exchange of emails with the Commissioner in context:
- 24.1 The email sent on 10 March 2015 sought guidance from the Commissioner in respect of social services records which had been obtained by the Inquiry. In particular, the legal advisers wished to clarify whether or not (and if so to what extent) third party data could be provided to alleged abusers in order to seek their version of events and allow them an opportunity to respond to the allegations that had been made against them, in the interests of fairness to both the victims and alleged abusers. The email was sent to the Commissioner to ensure that the Inquiry was compliant with any all data protection requirements and also to ensure the next phase of evidence was dealt with as fairly as the first;
- 24.2 The sharing of data with third parties and the manner in which this was done had not yet **been an issue for the Inquiry; prior to this point, during the first phase of the Inquiry's** work, victims had provided their evidence based on their own evidence and witness statement. Therefore, there were no deficiencies in the way that the Inquiry had dealt with data protection issues up to this point, as the scenario had not arisen previously. The Inquiry quite properly therefore sought guidance at this stage; and
- 24.3 It was not the case therefore, as suggested at paragraph 31 of the Report, that the Inquiry had ***"failed to appreciate the effect that certain decisions taken at an earlier stage of the Inquiry may have on proceedings further down the line."***
25. As has been communicated previously to the Commissioner, neither the Solicitors to the Inquiry nor Counsel to the Inquiry have claimed to be experts in Jersey data protection law (**a fact of which both the Inquiry's Panel and the States of Jersey were aware at the time** of appointment). The experience of the Inquiry team in other jurisdictions has been that Data /Information Commissioner Offices have always been available for consultation and advice on such matters and have readily assisted inquirers in their work. It is in that spirit that guidance from the Commissioner was requested. However, the Inquiry took great care at the outset of its proceedings to design and publish detailed protocols governing its **procedures (the "Protocols"), which included the Inquiry's Protocol on Data Protection, Freedom of Information and Redaction (the "Data Protection Protocol"), which set out** clearly how data would be used. As referred to above, in designing the Protocols, the protection of data had to be finely balanced against the **Inquiry's need to be transparent** and open with the public.
26. The Inquiry therefore disagrees with the Commissioner's comments at paragraph 31 of the Report which state ***"that the Inquiry (and/or their legal counsel) has failed to implement, from the outset, clear policies as to how that data should be dealt with so as to comply with the DPL"***. The Protocols were published on the Inquiry's website on 3 April 2014, the date

of the Inquiry's first preliminary hearing and prior to the Inquiry receiving any documents from document providers. They have remained on the Inquiry's website since that date.

27. Whilst the DP Protocol has been amended during the course of the Inquiry's work, this was partly in order to improve the efficiency of the redactions process and ensure a proportionate and cost-effective approach was taken, rather than due to any deficiencies.
28. The Inquiry is comfortable that its Protocols were, and are, compliant with the DPL. Although the Report says that the way the Inquiry has dealt with data is inadequate, it fails to identify in what ways the Protocols are inadequate; the Inquiry submits that this is because the Protocols are not inadequate and the Inquiry has been following procedures which are entirely compliant and appropriate for its purposes.
29. **The Inquiry respectfully disagrees with the Commissioner's comment at paragraph 33 that it did not approach the Commissioner at any stage to discuss the manner in which data was to be handled by the Inquiry. Prior to formally opening the Inquiry's proceedings on 3 April 2014, the Inquiry engaged with the Commissioner -:**
- 29.1 In early 2014 as the Panel started its work, and before a team was in place in Jersey, the States Liaison Officer to the Inquiry was in contact with the Commissioner; and
- 29.2 On 31 March 2014, a member of the Eversheds team, met with the Commissioner at her office. The aim of the meeting was to introduce the Solicitors to the Inquiry to the Commissioner and to discuss generally the approach that the Inquiry was intending to take to requesting material from document providers and the redaction of that material. The **Inquiry's** Protocols had by that stage been drafted, but they had not yet been published, therefore, for reasons of fairness, impartiality and transparency, copies could not be provided to the Commissioner at that stage. However, during the meeting the solicitor **explained the general approach that was set out in the Inquiry's draft** Protocols and explained that the Protocols would be published following the preliminary hearing. The Commissioner did not raise any concerns at that stage or following publication.
30. Since that date, the Inquiry has had ongoing contact with the Commissioner, where it has properly sought her advice, as would be customary in other jurisdictions. This includes an exchange in November 2014, March 2015, and meetings in May 2015. However, the Inquiry is seemingly criticised for so doing (see paragraph 29) in intemperate and unprofessional language. The response has not been one that is designed to guide or assist the Inquiry, despite the criticisms that the Commissioner has now levied in relation to the **Inquiry's alleged unwillingness to accept any offer of assistance from the Commissioner to review and improve its processes.**
31. This is despite ongoing correspondence between the Commissioner, her legal representatives and the Inquiry. For example, in a letter from the Inquiry to the **Commissioner's legal representatives on 19 October 2015 (which relates to the issues discussed at paragraphs 118 to 123 of the Report)**, the Inquiry stated as follows:
- "If you do have any other concerns now or in the future, please do draw these to our attention as the Inquiry wishes to ensure that all possible steps are taken to protect data and we are unaware of any other potential issues".*
32. At paragraphs 34 to 39 of the Report, the Commissioner refers to her offer to conduct a **voluntary assessment of the Inquiry's processing of personal data. The Report suggests that this offer was refused by the Inquiry on the basis that it was inconvenient to the Inquiry's timetable. This is an inaccurate representation of the facts.** The Inquiry declined the Commissioner's proposal in May 2015 for a voluntary assessment because:

- 32.1 No formal complaint had been made or was being investigated. During the meeting the Inquiry was told that there had been no formal complaints and the issues raised within her **letter of 17 April 2015 were 'anecdotal'. The Commissioner's concerns were largely** unspecific. The review was also ill-defined, with little detail as to what it would focus on, involve or achieve. The exercise therefore appeared to be speculative;
- 32.2 Any concerns that had been raised by the Commissioner had been dealt with at the meeting with the Commissioner in May 2015 or were being dealt with, as far as the Inquiry was aware;
- 32.3 The Inquiry was informed that while an independent person from another jurisdiction had been approached to nominally undertake the review, this individual, based in the UK, was **unable to travel to Jersey or deal directly with the Inquiry's documentation (despite the Inquiry's offer for the review to be conducted at Eversheds' London office). Instead** the Inquiry was told that the individual would work through an intermediary who was a member **of the Commissioner's staff** and who would access Inquiry documents on his behalf. In the **Inquiry's view this arrangement was not** truly independent and given the nature of the material with which the Inquiry was working and the size of the community in Jersey, this was not a satisfactory or acceptable approach and would indeed have been detrimental to the approach the Inquiry has taken to the protection of data; and
- 32.4 The Data Commissioner indicated that the exercise would have required the Inquiry to delay its upcoming phase of hearings for an unspecified period. This would have resulted in considerable inconvenience and significant cost; not only for the Inquiry but also for the seven Interested Parties and their legal representatives, and, importantly for the 48 witnesses scheduled for that phase of the Inquiry hearings **The Inquiry's General Procedure Protocol** requires the Inquiry to:
- "7 In making any decision as to the procedure and conduct of the Inquiry, the Inquiry will act with fairness and with regard to the need to avoid any unnecessary cost."*
33. In light of the fact that there had been no formal complaint, the proposed arrangements for the voluntary assessment were not appropriate and the Inquiry understood that the **Commissioner's concerns had / were being addressed, the Inquiry believed that it was not** proportionate to waste money and inconvenience witnesses and Interested Parties.
34. The offer of the voluntary assessment was then withdrawn in the Commissioner's letter of 15 May 2015, a copy of which is attached at Appendix A to this Response. It was in that same letter that the Inquiry was told that they would receive a detailed report outlining the alleged deficiencies identified by the Commissioner, which could then be used to facilitate **discussions with the Inquiry regarding the Inquiry's protocols and procedures. The letter said "It is envisaged that the Commissioner will be in a position to provide you with this report by 29 May 2015"**. As explained above, that Report has only now been provided to the Inquiry in April 2016.

### **Summonses for information / documentation**

35. **Paragraphs 40 to 47 of the Report addresses the Inquiry's powers for procuring** evidence and documents, and the process (or alleged lack of process) by which the Inquiry identified and sought relevant material from document providers. There are several inaccuracies and misconceptions contained within this section, which the Inquiry addresses below.
36. **The scope of the Inquiry's Terms of Reference is extremely wide; much wider than that** suggested in the Report at paragraph 41. The Inquiry is tasked with:

- 36.1 **Examining children’s homes and fostering services in Jersey, including their organisation management, governance and culture between May 1945 and April 2014, as well as the political and other oversight of such homes and services;**
- 36.2 Examining the political and societal environment throughout this period and its effect on the oversight of **children’s homes and fostering services and on the reporting / non-reporting** of abuse, and response to such reports;
- 36.3 Taking into account investigations and reports conducted into concerns raised in 2007, including information arising from the Historical Redress Scheme;
- 36.4 Considering the experiences of those who suffered abuse, witnessed abuse and/or worked in care institutions;
- 36.5 Identifying whether systems existed to allow abuse to be reported, where abuse was suspected how was it reported, what actions were taken to such reports, were those actions in line with policies and procedures and were those policies and procedures appropriate; and
- 36.6 Establishing the process by which files were submitted for prosecution and whether the prosecuting authorities considered those files using a professional approach and free from political or other interference.
37. **The Report suggests at paragraph 41 that given the breadth of the Inquiry’s remit, “it is likely that there are thousands (if not hundreds of thousands) of paper, manual and electronic records that potentially fall within the scope of this time period”.** This is a huge under-estimate. By way of an example the legal representatives for the States of Jersey (who are an Interested Party to the Inquiry) agreed with the Inquiry to conduct a search of its e-documents (many potentially relevant documents are of course not stored electronically) across the relevant States Departments, based on search terms agreed with the Inquiry. The initial search resulted in 1.1 million documents (with an average of 21 pages per document) being identified by **the States’ legal representatives** as being potentially relevant to the work of the Inquiry. This is just one category of documents held and identified by one Interested Party. Further work by the Inquiry and the legal representatives reduced the number of necessary documents from 1.1million to 70,000.
38. **Whilst the Inquiry’s Protocols** do not specify how the Inquiry seeks access to relevant material, this is because the approach taken has varied amongst document providers and has developed over time as the Inquiry has become more familiar with the documents that are in existence and the nature of the issues to be explored; as should be the case with an inquiry whose outcome is not pre-judged. The Inquiry has taken the most appropriate approach in the various circumstances to ensure that only relevant and necessary material is provided to it.
39. **At the outset of the Inquiry’s work, the Inquiry did not know what documents would / would not be relevant to its work (and neither did the document providers to a certain extent).** This is common for all inquiries. The Inquiry is by its very nature inquisitorial and therefore **there was, by necessity, a process of requesting material that was relevant to the Inquiry’s Terms of Reference** and then reviewing and understanding that material before more informed requests could be made. In fact, even the States departments did not provide material to the Inquiry until many months after its commencement despite the Terms of Reference being settled on over a year before (on 6 March 2013).
40. At the beginning of the Inquiry, in order to commence work, the document providers were therefore **requested to provide documentation relevant to the Inquiry’s Terms of Reference**, in the hope that they, as the document providers, would have a better idea of what would

be relevant and necessary to allow the Inquiry to fulfil its Terms of Reference. When the work commenced it was clear that the volume of documentation by far exceeded the expectation of the Panel (and indeed the States) as it quickly surpassed the volumes identified in the Verita report. We suspect that even the document providers themselves were surprised by the volumes of relevant material, once they had begun their searches. As such, it was agreed that a revised approach was needed and that all documents that fell within certain categories specified by the Inquiry would be provided to the Inquiry and a sample of other potentially relevant material would be provided and considered. In order to assist with the filtration of documents, Inquiry team members also attended the Jersey Archive to review documents and discount certain categories in an attempt to limit the disclosure exercise.

41. **As the Inquiry's work has moved on, the Inquiry has moved to an almost exclusive process** of making specific document requests, rather than requests for categories of documents.
42. The Inquiry did make a decision to summons all documents relevant to the Terms of Reference in order to avoid the need to issue multiple summonses on a regular basis for various categories of information.
43. In respect of the legal representatives acting for the States, search terms were agreed with the Inquiry in advance of electronic searches being carried out, to narrow down the volume of material received by the Inquiry.
44. As regards paragraph 45, again this is factually inaccurate. It is not the case that the Inquiry **did away with a consent process. The Inquiry met the States of Jersey's legal** representatives on a number of occasions to discuss the disclosure of material from the Historical Abuse Redress Scheme. The issue of seeking consent was discussed and the Inquiry gave this option due consideration, but considered that it was not a tenable option as the consenting process would never be complete, as even where parties gave consent, their material would invariably contain material from non-consenting parties. The Inquiry recognised that the document provider would not be able to simply disclose the documents and therefore the material would need to be formally summoned by the Inquiry. That summons was issued on 23 April 2014.
45. Despite the meetings and **correspondence between the Inquiry and the States' legal representatives confirming the Inquiry's position that the consenting process would not be** workable, the legal representatives proceeded to write to the Scheme Claimants seeking consent. Unfortunately, although well intended, this resulted in concerns being expressed from distressed victims who were confused by the consenting process and whether the **States' legal representatives were acting for the Inquiry. The consent route (which was commenced without the Inquiry's approval, and in fact against its request) was beset with logistical problems, potentially compromising the Inquiry's ability to do its work. This is all** the more apparent given that the States departments did not provide material to the Inquiry until many months after its commencement.
46. It is completely inaccurate to say that the Inquiry forced potentially vulnerable individuals to have their sensitive personal data disclosed to the Inquiry and for the same to then be disclosed to the Interested Parties. **The Inquiry's General Protective Ruling, which is** referred to in the Report, makes it clear that any information which identifies alleged victims (which would include all of the Scheme Claimants) would be redacted; it is not the case that this sensitive personal data was provided to the Interested Parties. The information would only ever have been referred to in an anonymised form constructed in such a way as to protect the privacy of individuals
47. In respect of the two examples provided at paragraph 47 whereby it is alleged that the Inquiry (i) did not seek documentation through proper channels; and (ii) sought

documentation at very short notice, the Inquiry is not aware of such occurrences or of the circumstances described.

### **Changing of Inquiry protocols**

48. **It is not clear why the Report contains comments in relation to the adequacy of the Inquiry's** procedures for amending its Protocols, given this does not directly relate to data protection. The Data Commissioner is not an Interested Party to the Inquiry and has no role in respect of such issues.
49. As explained above, the Inquiry took great care at the outset of its proceedings to design and publish the Protocols governing its procedures, including the DP Protocol. The DP Protocol has evolved over time. In part, this was in order to improve the efficiency of the redaction process (the October 2014 amendments) and also to make the process more cost-effective (the March 2015 amendments).
50. As provided for under SO 147 of the Standing Orders of the States of Jersey, the Inquiry is at liberty to regulate its own procedure for the conduct and management of its proceedings. **The Inquiry's General Procedures Protocol also provides as follows:**
- "2.2 For the Inquiry to operate effectively and efficiently, it needs to operate flexibly. The procedures set out in this, and other protocols, may be subject to amendment by the Inquiry during the course of the Inquiry at its discretion. Where an amendment or clarification is made, an amended version of the relevant protocol will be made available on the Inquiry's website; and*
- 2.3 This Protocol is not intended to cover every eventuality that may arise. Where procedural decisions need to be taken, they will be taken by the Inquiry as and when necessary."*
51. The Commissioner has alleged that:
- 51.1 The Inquiry does not advise Interested Parties of proposed amendments with sufficient notice;
- 51.2 The Inquiry refuses to accept submissions from the Interested Parties; and
- 51.3 Insufficient reasons are provided behind the proposed amendments.
52. As can be seen from the Protocols, the Inquiry is not required to seek the approval or views of Interested Parties when amending its Protocols. However, in the interests of natural justice and in maintaining its transparent approach, where appropriate, the Inquiry has considered input/views from the Interested Parties in relation to any such amendments and has incorporated these on occasion.
53. In respect of the October 2014 amendments, the Interested Parties were notified of an intended change to the DP Protocol on 23 September 2014, the application was made orally by Counsel on 7 October with submissions from Interested Parties also being heard, and the matter was adjourned to 15 October for the Panel to hear further submissions, with a ruling being made on 24 October 2014.
54. The Report has selectively quoted the **Panel's** ruling on 24 October 2014. That Ruling considers in some detail the content of all submissions received, including those from the

Interested Parties **and explains the reasons for the Panel’s determination.** <sup>3</sup> The Inquiry has at each stage of its process allowed submissions by Interested Parties. In considering this, and every, submission the Panel has had regard to all the representations received on the matter, the law, the public interest and its duty under its Terms of Reference. Where the Panel has not accepted a particular submission, it has set out the reasons for its decision. It is unclear, therefore, why the Report alleges that *“the Inquiry refuses to accept submissions from Interested Parties as to the adequacy of the proposed amendments”.*<sup>4</sup>

55. **Given the above, it is not clear why the Commissioner has taken issue with the Inquiry’s procedures:** clearly sufficient notice has been given to the Interested Parties and submissions from Interested Parties were permitted and considered (as noted from the contents of the ruling), with the ruling explaining **the basis upon which the Inquiry’s decision** had been made. Notably, no Interested Party has exercised its right to seek judicial review **of any of the Panel’s rulings**, for example **its ruling that information “in the public domain”** should not be interpreted as information published only in Jersey media. In making its decisions on applications by Interested Parties to limit disclosure of information, the Panel has recognised its duty to conduct a robust, thorough and impartial inquiry whose processes are as transparent as possible, and balanced this always with the need to protect the privacy of certain individuals.
56. In respect of the March 2015 amendments, since October 2014, the Inquiry had been in discussions with the Interested Parties around further amendments to the DP Protocol, particularly surrounding the issue of redaction. Therefore, the Interested Parties were aware that changes were to be made and they had relayed to the Inquiry their views and concerns. On 17 March 2015, the Inquiry then sent an email to the Interested Parties attaching a copy of the revised DP Protocol, explaining that this would come into effect on 24 March 2015. No objections were received from the Interested Parties.
57. It is worth noting that no judicial reviews have been sought by the Interested Parties in **respect of the fairness of the Inquiry’s procedures, both in relation to amendments to the Inquiry’s Protocols and other decisions made.**
58. In respect of the various examples provided at pages 17 to 19 of the Report, the Inquiry comments as follows:

58.1	The detail around the March 2015 amendments is explained above;
58.2	The Inquiry is entitled to make rulings of its own initiative. As set out above, SO 147 of the Standing Orders of the States of Jersey, allows the Inquiry to regulate its own procedure for the conduct and <b>management of its proceedings and the Inquiry’s General Procedures Protocol provides that...</b> <i>“The procedures set out in this, and other protocols, may be subject to amendment by the Inquiry during the course of the Inquiry at its discretion. Where an amendment or clarification is made, an amended version of the relevant protocol will be made available on the Inquiry’s website”;</i>
58.3	<b>Inquiries are inquisitorial. The very nature of the Inquiry’s work is that it hears individual witness accounts of what they believe to be true.</b> There may be witness statements which contain possibly inaccurate facts, but that may be how the witness remembered events, and there will inevitably be hearsay evidence. The rules of evidence developed in criminal and civil proceedings do not in general apply to inquiries. Those rules of evidence have

<sup>3</sup> <http://www.jerseycareinquiry.org/Transcripts/JER%20INO%20%20-%20Day%2028%20Ruling.pdf>

<sup>4</sup> Paragraph 56(b) of the Report

	developed within an adversarial process and an inquiry is not a court of law; an inquiry does not make decisions with any binding (or indeed legal) effect and applying such rules of evidence might prevent it from taking into account all relevant information. It is of course a matter for the Inquiry Panel as to how much weight is then placed on that hearsay evidence or potentially inaccurate facts;
58.4	<b>The Inquiry's Protective Measures Protocol was amended in order to protect individuals.</b> If the protective measures applications were circulated to the Interested Parties it would immediately undermine the work of the Inquiry and the desire of certain individuals to remain anonymous or private. The Inquiry had to take this step in order to protect those individuals who requested protection. Initially, the Inquiry had anonymised all applications and these were circulated to the Interested Parties in order to facilitate submissions on such applications. The Interested Parties however complained that they were unable to make any meaningful submissions because of the anonymisation;
58.5	The Inquiry is unable to respond without further information. It is not clear in what context this comment was made. The criticisms and allegations are un-particularised; and
58.6	The witness referred to <b>did not provide oral evidence to the Inquiry; the witness' evidence</b> was read into the record on 27 February 2015. An email was sent to the Interested Parties on 25 February 2015 to notify them of amendments to the timetable. Documents for this witness were released to all Interested Parties on 20 February 2015.

59. In respect of the criticism at paragraph 61(b) that the Inquiry has not always provided five **days' notice that a document is going to be referred to during the hearing, there have** inevitably been times when this timescale has had to be shortened. This might be for a number of reasons, for example late disclosure of a document. The Inquiry is under a responsibility to conduct a thorough and searching examination of all issues relevant to its Terms of Reference; therefore simply not putting a relevant document to a witness of which the Inquiry is aware of is an unacceptable approach. However, if the five day timescale had been strictly adhered to on each occasion, this would have resulted in numerous **adjournments, wasted hearing days and a significant extension of the Inquiry's hearings.** This would all have had a very significant cost implication (not only to the Inquiry, but to Interested Parties as well), and the Inquiry does have to have regard to avoiding any unnecessary cost when making decisions as to the conduct of the Inquiry.<sup>5</sup> The Inquiry also has to have regard to the **well-being of its witnesses and the impact that delaying a witness' evidence will have on them** (in many situations, witnesses will have built up the courage to come to give evidence on a particular day). Therefore, there are circumstances when the Inquiry has had to shorten the five day timescale. However, to be clear, if an Interested Party has raised concerns about the redactions contained in a document, those have been addressed promptly. **In any event, the Commissioner's concern again relates to the Inquiry's procedures, which is outwith her role.** This is a matter for the Interested Parties and their legal representatives to raise with the Inquiry.
60. In respect of the various examples provided at pages 20 to 21 of the Report, the Inquiry comments as follows:

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<sup>5</sup> Paragraph 7 of the Inquiry's General Procedure Protocol says that "*In making any decision as to the procedure and conduct of the Inquiry, the Inquiry will act with fairness and with regard to the need to avoid any unnecessary cost.*"



60.1	The Inquiry is unable to respond without further information. We do not know on what basis these figures are reached therefore we are unable to comment. The figures seem wholly inaccurate and this allegation needs to be particularised;
60.2	<b>This is factually inaccurate. In respect of redacting individual's dates of birth, the dates and months of birth are redacted on each occasion. However, the Inquiry does not consider that retaining someone's year of birth will identify them where they are giving evidence anonymously. Further, the year of birth assists the Inquiry with context of the evidence it is hearing, for example of the age of a victim or alleged abuser. If an Interested Party has suggested that the entire date of birth be redacted, the Inquiry will have responded explaining the reasons for the approach taken to redactions;</b>
60.3	The Inquiry is unable to respond without further information. This is a sweeping statement without any context or particularisation; and
60.4	The document in question was disclosed to the Inquiry by another document provider, it appears by mistake or without authorisation. The document was ultimately redacted and <b>exhibited to a witness' statement and then released to the Inquiry's document management system to which Interested Parties have access (it was not uploaded onto the Inquiry's website as suggested).</b> As soon as a concern was raised by the legal representative of a different Interested Party, the document was removed from the system.

61. In respect of the further example referred to at paragraph 62 of the Report, again there are factual inaccuracies. Two witnesses provided evidence on 27 May 2015 (not on 26 and 28 May). One signed her statement on 26 May 2015 and it was released to the Interested Parties at 22:18 on 26 May 2015. The other signed his statement on 20 May 2015 and it was released to the Interested Parties at 11:14 on 21 May 2015. The statements were redacted and sent to Interested Parties as soon as possible. As explained above, in respect of the first witness that day, the other option would have been to adjourn the hearing to allow the Interested Parties further time, because the witness statement had not been provided to the Inquiry in good time. However, the Inquiry has to consider its duty to witnesses. While it sought to avoid adjournments, the Inquiry would not, and should not have pressurised witnesses, who are often very vulnerable and giving evidence in extremely difficult circumstances, to return their evidence before they are comfortable in doing so. Whilst the Inquiry would gently chase for the evidence to be provided in good time, pressurising witnesses in such a way would only have resulted in witnesses withdrawing from the process; these being the very people that the Inquiry needed to hear from. Additionally, adjournments would have had a significant costs impact. Therefore, in each case, including this one, the Inquiry had to balance its duty to the well-being of witnesses and the cost implications of an adjournment against the inconvenience and pressure placed **on the Interested Parties' legal teams in having to receive witness statements late in the day.**

62. In respect of the various examples provided at pages 21 to 22 of the Report, the Inquiry comments as follows:

62.1	The Inquiry is unable to respond without further information;
62.2	The circumstances described in this example are extremely misleading. The Inquiry has sent detailed correspondence to the Commissioner in relation to this issue, which has not been reflected in <b>the Report. A copy of the Inquiry's correspondence is attached to this Response at Appendix B.</b> However, in summary, that correspondence confirmed as follows:

62.2.1	The document in question was supplied by a document provider with transparent yellow highlighting (proposed redactions), which revealed the text behind that highlighting. However, upon uploading the document to Magnum ( <b>the Inquiry's</b> document management system), the highlighting became opaque yellow and the data underneath was not visible. When the document was redacted, the opaque yellow boxes acted as a form of redaction and these boxes remained in place. It was not the case that those proposed redactions were ignored / overlooked as suggested by the Commissioner.
62.2.2	Then, due to a technical issue with <b>the systems, when the redactions were 'burnt'</b> onto the document, under certain conditions the data underneath became visible. This was an unexpected and completely unforeseen technical issue and it was the first time that the Inquiry and Opus 2 (who are the company that supply and manage Magnum) had come across this. The matter was <b>immediately rectified and actions were put in place (as described in the Inquiry's</b> correspondence) to ensure this did not happen again.
62.2.3	The Inquiry was not aware that a further technical issue meant that in different conditions some redacted text could be made visible. This was only brought to <b>the Inquiry's attention in October 2015. Again,</b> neither the Inquiry nor Opus 2 were aware that this was technically possible and no similar issue has arisen <b>during the Inquiry's work to date.</b> Despite the Magnum system being used in more than 200 cases, its designer, Opus 2, had no awareness, until this matter arose, of the potential for some redacted text under certain conditions to become visible.
62.2.4	<b>Following these instances being brought to the Inquiry's attention it acted</b> immediately to remove the documents from Magnum and/or the Inquiry website and it provided a full response dated 19 October 2015 following an extensive investigation into the issue. It is misleading to say that the Inquiry only removed the document upon the insistence of a third party; the Inquiry removed the document as soon as it was notified of the issue.

62.3	Whilst the social care files of individuals are very sensitive, this is the very nature of the <b>material that the Inquiry's work is concerned with.</b> To ignore the gravity and seriousness of that information would be to avoid reality of the events that the Inquiry is concerned with, and which it has a duty to be transparent about. All of these files have been redacted so as to anonymise the individuals involved and prevent any identification.
62.4	At the outset of the Inquiry, it considered the use of voice distortion technology. But decided against this option on grounds of cost and proportionality. Voice distortion technology is not routinely used in courts save in extraordinary circumstances (e.g. when a life would be at risk if a person were identified). When providing evidence to the Inquiry anonymously, all witnesses were informed that their voices will be heard in the public gallery. No witness requested voice distortion technology. Should a witness decide that the risk is too great, it <b>is entirely the witness' choice whether or not they wish to continue to provide their evidence</b> on an anonymous basis or whether they wish to make an application to provide their evidence privately when only the Panel are present (or indeed not provide their evidence at all).
62.5	In using cipher numbers, rather than naming witnesses, the Inquiry has had to strike a balance between protecting personal data and sensitive personal data against what is in the public interest and its duty of transparency. <b>Much of the Inquiry's evidence would have</b> been rendered meaningless had there not been the ability to <b>link an individual witness'</b>

evidence throughout the proceedings, and the adoption of cipher numbers allowed that level of protection whilst meeting the public interest. If a witness was providing public and anonymous evidence, the Chair to the Inquiry would make a protective ruling to restrict the publication of the relevant cipher number.<sup>6</sup>

### **Inappropriate redaction of documents and careless disclosure to Interested Parties with access to Opus Magnum**

63. In addition to those listed at paragraph 65 of the Report, the Safeguarding Partnership Board and the Home Affairs Department are also Interested Parties.
64. As the report correctly highlights, the Interested Parties are subject to confidentiality obligations which means:
- 64.1 All material provided to Interested Parties is confidential and Interested Parties must take steps to preserve that confidentiality;
- 64.2 Interested parties must not disclose or pass on to any third party, other than the Interested Parties own legal representatives, any material supplied to it by the Inquiry, save with permission of the Inquiry;
- 64.3 All material must be stored in a secure place to prevent any unauthorised access; and
- 64.4 All material and information supplied by the Inquiry must be used solely for the purposes of the Inquiry and any material must **be returned or destroyed at the Inquiry's requests.**
65. In respect of the various examples provided at pages 25 to 28 of the Report, the Inquiry comments as follows:

65.1	As soon as the Inquiry was notified of the error, immediate action was taken. The document was only provided to Interested Parties in this form, and not the public;
65.2	The Inquiry responded expeditiously to this error. Again, The document was only provided to Interested Parties in this form, and not the public;
65.3	This document relates to a particular witness. Under the DP Protocol (in its post-March 2015 revised form), the document was redacted by the Inquiry and sent to the document provider for any comments on the redactions. The document provider identified an additional redaction that was required and this was actioned by the Inquiry. The document was then <b>released to Interested Parties on the Inquiry's document management system. This was</b> the process that was to be followed under the revised DP Protocol, so the Inquiry is not sure what the issue is in this case;
65.4	This issue is addressed above at paragraph 63.2 of this Response;
65.5	As soon as the Inquiry was made aware that other identifying details were contained in the witness statement, the redactions were widened;

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<sup>6</sup> See for example page 2 of the Inquiry's transcript for Day 77

65.6	As soon as the Inquiry was notified of the error, immediate action was taken (in just over an hour). The document was only provided to Interested Parties in this form, and not the public;
65.7	This concerns a document for a particular witness. In accordance with the procedures in place, the document was redacted by the Inquiry and sent to the document provider for any comments on the redactions. The document provider responded and no comments were received in relation to the redactions on this document. The document was then <b>released to Interested Parties on the Inquiry's document management system. It was only</b> following release to the Interested Parties that the same document provider notified us of a further redaction. The document was only provided to Interested Parties in this form, and not the public.
65.8	This issue does not relate to error in redaction as suggested; rather this was an issue concerning access to certain folders on Magnum, as a result of a manual error by Opus 2, the software provider of Magnum. The Inquiry had requested that Opus 2 consolidate a number of folders on Magnum. In relation to one witness folder, when carrying out this task, Opus 2 set the access permissions incorrectly, so that instead of the folder being accessible to the Inquiry only, Opus 2 incorrectly manually ticked the box which meant that one of the document providers also had access. The folder contained unredacted material from three document providers. This was addressed once it became known.
65.9	This concerns additional redactions required to a particular statement, which were brought to the attention of the Inquiry by an Interested Party. The Inquiry was notified at 12:55pm on 18 June 2015 and the additional redaction was made and the document replaced Magnum at 21:57 on 18 June 2015. The relevant party was notified of the same on 22 June 2015. The document was only provided to Interested Parties in this form, and not the public;
65.10	This related to a Magnum error whereby redactions were applied to a document, but the <b>redactions were not being 'burnt' onto the document in the correct way. This meant that</b> some of the black redactions boxes did not appear when the document was released to the Interested Parties on Magnum. As soon as the Inquiry was notified of the error, immediate action was taken to remove the document from the system and rectify the issue. The document was only provided to Interested Parties in this form, and not the public;
65.11	As soon as the Inquiry was notified of the error, immediate action was taken (in a matter of ten minutes). The document was only provided to Interested Parties in this form, and not the public;
65.12	As soon as the Inquiry was notified of the error, action was taken to correct the redactions; this was on the day that the witnesses were giving evidence. In accordance with the procedures in place, the document had been redacted by the Inquiry and sent to the document provider for any comments on the redactions. No comments were received in relation to the redactions on this document. The document was then released to Interested Parties on Magnum. It was only following release that an Interested Party notified us that there were two names un-redacted. The document was only provided to Interested Parties in this form, and not the public. Counsel to the Inquiry was aware of the position and the relevant pages were not displayed during the hearing;
65.13	As soon as the Inquiry was notified of the error, action was taken to correct the redaction. The document was only provided to Interested Parties in this form, and not the public;

65.14	In respect of the additional redactions that were required in November 2015, as soon as the Inquiry was notified of the error, action was taken to correct the redactions. The document was only provided to Interested Parties in this form, and not the public. In respect of the Commissioner's concerns, which were notified to the Inquiry on 15 January 2016, the Inquiry immediately responded by removing the document from the Inquiry's website and investigating the matter further. Proportionality is a factor in data security. Sound data protection practice does not require enterprises to guard against every eventuality, however, remote, including ciphers being deconstructed by intensive analysis and research; and
65.15	The Inquiry is unable to respond without further information.

66. In respect of the Commissioner's assertion that the Inquiry should have notified the Interested Parties when documents had been further redacted and replaced on Magnum, the Inquiry considers that this could work both ways; by drawing it to the attention of Interested Parties who may not otherwise be aware, it could alert them to such information and the identification of witnesses. There should be no risk that Interested Parties will have **'passed on' documents where the redactions have now been** amended, as the undertaking strictly forbids the Interested Parties from doing so.
67. It is absolutely not the case that the Inquiry has repeatedly placed the names of alleged victims / alleged abusers in the public domain due to inadequate redaction. In handling over two million pages of documents, a very small number of errors have occurred. Almost without exception these **have happened within the Inquiry's internal management system**, Magnum, some parts of which are accessible to the Interested Parties (the remainder being accessible to the Inquiry and Opus 2 only); there is no public access to this system. As referred to above, those Interested Parties are all subject to confidentiality undertakings. The Inquiry legal team has been in regular contact with Opus 2, the providers of the Magnum system, discussing data management and security. Additionally, the Panel has reviewed with Opus 2 on a regular basis the performance of the system. When technical issues arose, an immediate review was undertaken with Opus 2, including the Chair summoning the owner of the company to Jersey with technical experts to investigate immediately and resolve a problem. This led to Opus 2 adopting new protocols across all the tribunals they service.

### **Breach of injunction**

68. The Inquiry was provided with the witness statement which contained reference to a **'secret trial'**. The Inquiry was not aware that there was an injunction in place. The Inquiry was also not aware that certain parties relevant to those proceedings could not be named. Therefore, certain names were not redacted in the statement.
69. The statement was then released to the Interested Parties workspace on Magnum – this being the platform to which only the Interested Parties have access. The normal process is that once Opus 2 (the software provider of Magnum) confirm that a statement / document **has been released to the Interested Parties' workspace, the Inquiry will then send an email** to all Interested Parties notifying them that the statement / document is now available. However, prior to the Inquiry sending that email, the Inquiry received an email from an Interested Party notifying it that they had seen that the witness statement had been released onto the system and alerting the Inquiry to this issue with redactions.
70. As soon as the Inquiry was alerted to this potentially being an issue, the statement was immediately removed from Magnum (in less than an hour). The statement was only ever

uploaded to Magnum in this form, and therefore only viewable by the Interested Parties, who are subject to confidentiality undertakings and who were not actually notified that the statement had been released before the issue was identified.

71. Upon receiving guidance from the Commissioner as to the extent of redactions that were required, the Inquiry applied the additional redactions and re-released the statement to the Interested Parties.
72. Whilst a technical legal point, the Inquiry also notes that the injunction prevents the Respondent in those proceedings from processing the personal data of certain parties; the injunction does not prevent the naming / identification of certain parties to those proceedings.

### **“Reading through” agreed redactions**

73. Upon the matter being raised by an Interested Party, the transcript of the hearing was reviewed and the Inquiry accepted that the redactions relating to a particular third party had been incorrectly read aloud by Counsel on that occasion. Counsel to the Inquiry was reminded of the redaction policy and the Inquiry discussed the matter with the relevant third party, who did not raise any concerns.

### **The Inquiry’s use of Twitter**

74. In keeping with current practice, the Inquiry has used Twitter amongst other media, to communicate its news and progress. The Inquiry has had feedback that this approach has been welcomed by people unable to attend hearings. The Commissioner contacted the Inquiry in April 2015 in relation to a small number of specific tweets that had been made **by the Inquiry’s media team**. The Inquiry reviewed the tweets which are of necessity brief and accepted that in relation to a small number of tweets, a member of the public, without the benefit of context, might assume that the tweets were a finding of fact, and would not know that the tweets simply repeated what a witness had told the Inquiry. However, it is worth noting that the tweets did not contain any unredacted material.
75. Following the Commissioner raising the issue with the Inquiry, the Panel agreed an approach with the media team to prevent this from happening again.

### **Training and awareness**

76. As explained at paragraph 26 above of this Response, neither the Solicitors to the Inquiry nor Counsel to the Inquiry have claimed to be experts in Jersey data protection law (a fact **of which both the Inquiry’s Panel and the States of Jersey were aware at the time of appointment**), and it is for that reason that guidance from the Commissioner was requested. The Inquiry considers it was quite proper for it to seek such guidance.
77. In respect of the Inquiry dealing with the subject access request referred to at paragraph 89 of the Report, the Inquiry quite properly sought to work with the document provider to ensure that the documents were properly and appropriately provided to the relevant individual. No documents were disclosed and the Inquiry considers that it took the correct course of action by approaching the document provider. The Data Commissioner does not seem to be clear what data breach, if any, is being alleged here.

## Records management

78. In respect of paragraph 95 of the Report, the Commissioner has not previously requested **details of the Inquiry's Data Protection Officer. The Inquiry does not have a** named Data Protection Officer and understands there is no legal obligation to do so.
79. In respect of the example contained at paragraph 95, despite there being minimal particularisation in respect of this allegation, the Inquiry believes that it knows the incident to which this relates. The Inquiry was provided with copies of expert reports in an ongoing claim against the Minister for Health and Social Services. At the time the documents were disclosed to the Inquiry they were provided in an already redacted form. The Inquiry was not provided with a copy of the court order which provided for the release of the documents in certain circumstances. The documents were subsequently released to the Interested Parties for use in a hearing, as the Inquiry believed it had consent to do so. Upon notification that there was some confusion in respect of the terms of the court order and the basis upon which they could be used by the Inquiry at that stage, the documents on Magnum were hidden from view of the Interested Parties and the documents were not used in the hearing. The documents were not made available to the public.
80. Paragraph 96 of the Report comments that the Inquiry's DP Protocol fails to deal with data **security. The Inquiry's data security measures are an internal matter for the Inquiry. It was** not considered appropriate for such details to be included in the publicly available DP Protocol. **The Commissioner has not previously asked for details of the Inquiry's data** security arrangements. The Inquiry has taken measures it considers appropriate to independently test and validate its security arrangements. **As the Inquiry's work is** continuing it would not be appropriate to disclose specific security measures.
81. **The Inquiry's legal advisers, Eversheds LLP, have in place a security policy, a copy of which** appears at Appendix C to this Response.
82. Each member of the team is provided with a copy of the policy, it is discussed in detail during their initial training and then they are asked to read it in detail prior to signing a confidentiality undertaking confirming that they understand the contents of the document. The policy contains measures and procedures around working conditions, IT security, **travelling with documentation etc, to ensure the confidentiality of the Inquiry's material is** protected. All staff working on the Inquiry, whether in Jersey or in the UK, were made aware of their responsibilities **before they commenced work on the Inquiry's data.**

## Security of personal data

83. In respect of the security that is in place to prevent personal data from being accidentally or deliberately compromised, please see the relevant policy at Appendix C to the Response (as referred to at paragraph 81 above).
84. There is no factual basis for the allegation contained at paragraph 102. **It is untrue.** The Inquiry has no knowledge of this alleged incident as no such incident has occurred. **No notes went missing from any interview.** The Inquiry is aware of a case where an individual did need to be interviewed again due to the relevant documents not being provided in time for the original interview (given the delay and logistics of receiving disclosure from document providers), as was the case with a number of other witnesses. Therefore, once the Inquiry was in possession of further disclosure, a further interview was arranged to ensure the evidence obtained was as thorough as possible. No interviews ever

had to be repeated because notes had gone missing. Notes taken by any member of staff leaving Eversheds are all accounted for. For the Data Commissioner to make such an assertion in the absence of any evidence is as astonishing as it is outrageous.

85. In relation to paragraph 104, there is no evidence of this or any other piece of mail sent by the Inquiry being tampered with. **Following the report of a UK based witness' post having been repackaged by Royal Mail, all correspondence continued to be sent in robust, unbranded envelopes and substantial packages and confidential mail were sent in double bagged, plastic parcels, with the inner envelope containing a sticker marked "To be opened by the addressee only"**. In reality there was a limited amount of documentation posted as the majority of witnesses corresponded via e-mail. The Data Commissioner states her information about this incident was gleaned from a UK media website. She was not in full possession of the facts of the matter. The potential data protection breach with which the Inquiry was concerned resulted when a photograph of the package, which did not originate from the Inquiry, displaying **the witness'** address, was published online by a journalist. In another case, the Inquiry was informed by one witness that a piece of post did not arrive at her address. As a result of the postal policy and letters being sent by ordinary mail, there were limited investigations that could be carried out in respect of this missing post. The letter was re-sent and the witness received all future correspondence. There have been no other concerns raised or issues with documents not being received, whether sent to or from the Inquiry.
86. The comments at paragraph 111 and 115 of the Report are without foundation. There has been no loss of hard copy notes (see paragraph 84 above).
87. The comments at paragraph 114 of the Report, namely that *"the Inquiry appears to lack appropriate procedures which would prevent this type of contravention"* is also entirely without foundation. The Commissioner has not **asked for copies of details of the Inquiry's** procedures. These are now appended to this Response. The Inquiry was well aware of the potential risks of data security and as can be seen, there are significant measures in place. As the Commissioner recognises at paragraph 116, there is no evidence that damage has been caused by the transmission of data and any risk of this happening was addressed and managed from the outset of the Inquiry and throughout the course of its work to date.
88. Paragraphs 118 to 123 are a misleading explanation of the issue that arose. This is the same issue the Commissioner referred to at page 22 of the Report (the example set out at the top of that page). The Inquiry has already provided an explanation in relation to the circumstances (see paragraph 62.2 of this response) and the Inquiry engaged in detailed correspondence with the Commissioner at the time. Notwithstanding that, the circumstances have been misrepresented in several respects:
- 88.1 Paragraph 118 of the Report – **it is not the case that the documents "lost"** the yellow redactions on upload. Further details are supplied in Appendix D. Following investigation, new procedures were put in place to identify potential problem areas and eliminate them;
- 88.2 Paragraphs 120 and 125 of the Report – it is not the case that the issue which arose in April 2015 had not been resolved and remedied; it was resolved. What occurred in October 2015 was a new and different issue, albeit it affected the same document. This is explained in detail in Appendix D; and
- 88.3 Paragraphs 122 and 123 of the Report – the Commissioner comments that *"it is extremely surprising that the entirety of that document was not checked for other issues"*. It is not the case that the document was not checked; it was checked, but not for the later issue which occurred in October 2015 as this was unforeseen. It was not possible to check something that the Inquiry's software provider did not know was possible.



## **The naming of alleged abusers**

89. The Report says at paragraph 128 that the Inquiry has routinely named alleged abusers notwithstanding the fact that they are still alive and the information was not previously in the public domain. The Inquiry does not believe this is the case and it is not possible for the Inquiry to respond to this allegation without any specific named examples.
90. The Inquiry has the discretion to consider the naming (or not-naming) of individuals. The Inquiry agrees that the Inquiry is not a trial and its purpose is not to prove or dis-prove individual allegations in order to establish any liability. However, the Inquiry does have an obligation to conduct a full, open and transparent investigation, which may include naming individuals, in accordance with its protocols where the interests of justice and public interest requires it to do so. Representations by Interested Parties, when raised, have been considered, before such naming took place, and where Interested Parties' applications have not been accepted, it has been open to them to seek judicial review of the Panel ruling, before the individual was named in the hearing.
91. It is for the Inquiry Panel to decide whether certain individuals can be named beyond the **Inquiry's General Protective Ruling**. The Inquiry has internal criteria it considers, which includes (but is not limited) to:
- 91.1 The nature and circumstances of the issues which are the subject of the Inquiry and which are relevant to the individual;
- 91.2 The personal and/or professional circumstances of the individual which are said to warrant the making of an order granting protective measures;
- 91.3 The extent to which the material has – in connection with the matters under consideration by the Inquiry – already been disclosed, either to Interested Parties or to the public at large;
- 91.4 Why protective measures are considered necessary for the individual and the possible effect on the individual if they are not granted; and
- 91.5 Any other relevant circumstances.
92. In respect of the example at paragraph 130 of the Report, the ruling in relation to that **application states the Inquiry's reasoning for refusing the application, although the detail** behind the application (which was heard orally during a private hearing) has not been published in order to protect other personal data, which the Inquiry did not feel was necessary to include in the ruling. It may be that the media report is no longer available online, but at the time that the application was made (in February 2015), the report was **available in the "public domain" as defined** by the Inquiry in its ruling on 24 October 2014, the definition of which does not include non-regulated media (e.g. social media websites).

## **Inadequate protection afforded to the personal data of victims / administrative errors in public hearings**

93. In respect of the examples provided at pages 46 to 47 of the Report, the Inquiry comments as follows:

93.1	It is not possible for the Inquiry to respond in relation to the specific incident without further detail;
93.2	As explained at paragraph 59 above, there have inevitably been times when the usual five day timescale has had to be shortened. This might be for a number of reasons, for example late disclosure of a document which is needed for a witness who is about to give evidence (this has happened on numerous occasions, with document providers wanting to use documents for a particular witness, and therefore the Inquiry has had to redact documents at very short notice). Every effort was made in these instances to get documents to document providers for comment and then out to all Interested Parties to consider as soon as practically possible before evidence was given. As explained above, if the five day timescale had been strictly adhered to on each occasion, this would have resulted in numerous adjournments, wasted <b>hearing days and a significant extension of the Inquiry's</b> hearings, all with a very significant cost implication;
93.3	As above at paragraph 93.2; and
93.4	It is not possible for the Inquiry to comment in any meaningful way in relation to this general and un-particularised comment. However, whenever redaction concerns have been raised with the Inquiry, they have always been dealt with as quickly as possible and the examples used throughout the Report specifying the timescales in which responses were received demonstrates this.

### Concluding remarks

94. **Although paragraph 135 of the Report suggests that it was not the Commissioner's intention to undermine the Inquiry's work, unfortunately that appears to be the likely effect that the Report will have, in circumstances where the Inquiry is no longer able to 'cure' the Commissioner's concerns, given that the time to do so has passed, and the fact that no complaints have been received or challenges made to the Inquiry.**
95. It is not accurate that the Inquiry did not meet with the Commissioner. We have already explained above the contact which the Inquiry had with the Commissioner, including at the **outset of the Inquiry's work. However, given the need for the Inquiry to remain impartial, neutral and transparent in all that it does, it was not considered appropriate for the Inquiry to agree or prepare its approach to the use and protection of data with the Commissioner. The Inquiry still considers that approach to have been proper.**
96. The purpose behind the Report remains unclear. Paragraphs 38 and 39 suggest that the **purpose of the Report is as explained in the Commissioner's 15 May 2015 letter, namely: "to use to facilitate discussions with Eversheds and/or Counsel to the Inquiry regarding the Inquiry's protocols and procedures such as relate to the DPL".** However, the concluding remarks of the Report suggest that instead this Report now **"assists the Chief Minister in highlighting the perceived deficiencies in the Inquiry's data processing policies, and recording the difficulties experienced by certain parties to the Inquiry..."**. The Commissioner accepts that there have been no formal complaints received.
97. **Further, many of the Commissioner's criticisms are about the way that the Inquiry has operated in order to fulfil its Terms of Reference. Under the umbrella of data protection concerns (and in the absence of any complaints), it appears that the Commissioner has sought to reopen applications made by States of Jersey agencies and declined by the Panel, which have sought to restrict the scope and transparency of its enquiries. It is for the Inquiry Panel, and not the Commissioner, to determine how the Inquiry should be run.**

98. The Inquiry remains concerned about the timing of the Report (this being after the **conclusion of the Inquiry's hearings and at a time when the Inquiry** can no longer investigate and work with the Commissioner). It is surprised that the Commissioner has not consulted with the Inquiry during the 10 months it took her to complete the report and that she has been prepared to put into the public domain a report so misleading, incomplete and inaccurate.

**APPENDIX A**

**Response to the Information Commissioner's Report (Undated)**

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RECEIVED 20 MAY 2015  
APPLEBY

**Independent Jersey Care Inquiry**  
PO Box 551  
St Helier  
Jersey  
JE4 8XN

Email dblackmore@applebyglobal.com

Direct Dial +44 (0) 1534 818 101  
Direct Fax +44 (0) 1534 837 778  
Tel +44 (0) 1534 888 777  
Fax +44 (0) 1534 888 778

Attention: Mrs Frances Oldham

Your Ref

Appleby Ref 204644.0008/DB/DB

Private & Confidential

15 May 2015

Dear Mrs Oldham

**Independent Jersey Care Inquiry (the "Inquiry")**

**Data Protection (Jersey) Law 2005 (the "DPL")**

Jersey Office  
PO Box 207  
13-14 Esplanade  
St Helier  
Jersey JE1 1BD  
Channel Islands

I write further to previous correspondence in this matter and thank you, and the rest of the Panel, for taking the time to meet with me most recently on 13 May 2015.

Tel +44 (0)1534 888 777

I have now had the opportunity of discussing matters with the Information Commissioner (the "**Commissioner**") arising as a result of that meeting.

applebyglobal.com

Insofar as regards the provision to the Panel of specific concerns raised with the Commissioner by third parties on a confidential basis to the Inquiry, the Commissioner is not prepared to waive any confidentiality to those individuals.

Jersey Managing Partner  
Michael Cushing

In any event, the Commissioner notes that the Inquiry does not wish to delay, in any way, the commencement of the next stage of the Inquiry (namely the hearing of evidence from alleged abusers) and which is due to begin on 26 May 2015 (the "**next phase**"). Whilst she notes and respects the reasons given by the Panel for not wishing to delay the next phase, she considers that it would be undesirable to carry out any assessment into the Inquiry's handling of data protection issues whilst the Inquiry is in process and considers that any assessment can only be properly effective if it is done prior to the commencement of the next phase. There is clearly not enough time to carry out any assessment between now and the next phase and, the Commissioner considers that there is little benefit in progressing in the manner proposed by the Panel and running both the assessment and the Inquiry in tandem.

Jersey Partners  
Farah Ballands  
Wendy Benjamin  
James Gaudin  
Timothy Hart  
Victoria Myerson  
Michael O'Connell  
Fraser Robertson  
Andrew Weaver

That being so, and unless the Panel is willing to delay the next phase to allow an assessment to be carried out (given that any findings may have a direct impact on the manner in which the next phase of the Inquiry is handled) the Commissioner does not propose to provide assistance in the manner envisaged in her initial letter to you dated 17 April 2015.

3128337v1

Instead, she proposes writing to you in very short course with a detailed report as to the reasons why Ms Shurmer's original email highlights clear deficiencies in Eversheds' understanding of issues regarding the DPL which you may then use to facilitate discussions with Eversheds and/or Counsel to the Inquiry regarding the Inquiry's protocols and procedures such as relate to the DPL.

It is envisaged that the Commissioner will be in a position to provide you with this report by 29 May 2015.

Yours sincerely



Davida Blackmore  
**ADVOCATE & ASSOCIATE**

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**APPENDIX B**

**Response to the Information Commissioner's Report (Undated)**

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# Independent Jersey Care Inquiry

Ms D Blackmore  
Appleby  
PO Box 207  
13-14 Esplanade  
St Helier  
Jersey  
JE1 1BD

**By e-mail only: [dblackmore@applebyglobal.com](mailto:dblackmore@applebyglobal.com)  
[e.martins@dataci.org](mailto:e.martins@dataci.org)**

19 October 2015

Dear Sirs

## **Independent Jersey Care Inquiry (the "Inquiry")**

We write further to your telephone call of 13 October 2015 and emails of 13 and 16 October 2015 concerning an issue you had raised, on behalf of the Data Commissioner, in respect of a document related to Days 67 and 86 of the Inquiry's proceedings, whereby yellow highlighting could be removed from the document available on the Inquiry's website.

Thank you very much for drawing this to our attention. We would like to reassure your client that we are taking this issue very seriously; upon receipt of your correspondence, the document was immediately removed from the Inquiry's website and the issue has been, and continues to be, investigated (as confirmed in our e-mails of 13 October 2015 timed at 15:19 and 16 October 2015 timed at 13:32).

The affected document in question has a document identification reference (used by the Inquiry and its Interested Parties) of WD005327, which is derived from Magnum – this being the document management system that the Inquiry is using for its work. For ease, we will use this reference throughout the correspondence.

We understand that in respect of document WD005327, when the document is downloaded from the Inquiry's website, is saved and reopened in Adobe, the yellow opaque boxes in the document, which act to obscure data, can be deleted and data underneath those boxes revealed.

Our investigations have revealed the following:

- The document was supplied to us by the Law Officers' Department with transparent yellow highlighting, which revealed the text behind that highlighting. However, upon uploading the document to Magnum, because of the 'layering' of the document, the highlighting became opaque yellow and the data underneath

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)



# Independent Jersey Care Inquiry

was not visible. This appeared to be an anomaly as the majority of documents provided by the Law Officers' Department were not 'layered' in the same way.

- When the document was subsequently redacted, the opaque yellow boxes acted as a form of redaction and the Inquiry team left these boxes in place and redacted around this information. Unfortunately, due to a technical issue with the systems, when the redline boxes (which are created when a document is being redacted) abutted a yellow opaque box in the document, at the point that these redline boxes were 'burnt' (i.e. applied as blacked out redactions), the abutted yellow opaque boxes disappeared completely revealing the data underneath. This was the first time that the Inquiry and Opus (who are the company that manage Magnum) had come across this as an issue. The matter was immediately rectified and redactions were applied to the document where the yellow opaque boxes had disappeared. We believe that this is the issue Ms Blackmore was referring to during her conversation with Angharad Shurmer on Tuesday, 13 October 2015, that John Edmonds had previously informed the Inquiry of,
- It was agreed going forwards that if the Inquiry came across a document containing yellow opaque boxes and the document required redacting, Opus would need to 'flatten' the document, which would remove the 'layering' and thereby ensure that the yellow boxes appeared transparent. This would ensure that there was never a risk of a red box inadvertently removing an opaque box going forward.
- This issue in April only related to circumstances where redline boxes abutted the opaque yellow boxes. The remaining opaque yellow boxes remained in situ and acted as a form of redaction, albeit that the boxes were yellow, rather than black. As a result of this understanding, document WD005327 was not flattened in April (as per Opus' solution above) as the Inquiry believed that the redactions required had all been made and were not aware that the yellow opaque boxes which still remained in the document posed a further (but different) problem. This meant that document WD005327 was 'over-redacted' – i.e. that the yellow opaque boxes were covering up information which the team may not have actually redacted. It was thought that there was no risk as these words were hidden by the opaque boxes and could not be edited by anyone else.
- However, our recent investigations have revealed that these yellow boxes are editable outside of the Inquiry team, i.e. the Interested Parties can export the documents and delete the opaque yellow boxes if they wish and the documents can be downloaded into Adobe Acrobat and edited in the same way. Whilst the Inquiry was able to export and edit documents itself (which included being able to remove the opaque yellow boxes), neither the Inquiry nor Opus were aware that documents could be exported by the Interested Parties and edited in the same way. Similarly, the Inquiry was not aware that documents could be downloaded from the website and edited in Adobe Acrobat. As far as the Inquiry was concerned, the website only contained an 'image' of a document, rather than the document itself, which is contained on Magnum. For example, the hyperlinks

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)



## Independent Jersey Care Inquiry

contained in the transcripts which are uploaded to the website do not work, as they cannot be linked back to original documents on Magnum.

- Neither Eversheds nor Opus were aware that this was technically possible and no similar issue has arisen during the Inquiry's work to date. Opus has also informed us that they have not seen this in other cases they have dealt with and they would have informed the Inquiry if this had been the case.

We apologise if the explanation above is somewhat technical and it may be difficult to follow. Therefore please let me know if it would be useful to discuss this on the telephone.

As a result of our investigations, we can confirm that document WD005327 has been removed from the Interested Party replica in Magnum and the Inquiry's website. The document will be 'flattened' and the document re-redacted to ensure that all redactions appear in black and are therefore un-editable by anyone.

In addition, we are in the process of conducting a review of all documents on the website and the Interested Party replica to see if this issue affects other documents. The Inquiry team have also been fully briefed about this issue.

As can be seen, the issue that has arisen is very much a technical one and we thank you for bringing it to our attention, as it was not one that was foreseen either by the Inquiry or Opus. We can also confirm that the Data Commissioner is the only person to have raised this issue with the Inquiry. No contact has been made by any Interested Party or Document Provider.

If you do have any other concerns now or in the future, please do draw these to our attention as the Inquiry wishes to ensure that all possible steps are taken to protect data and we are unaware of any other potential issues.

Yours faithfully

**Eversheds LLP**  
**Solicitors to the Inquiry**

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Heller, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

# Independent Jersey Care Inquiry

Office of the Information Commissioner  
Brunel House  
Old Street  
St Helier  
Jersey  
JE2 3RG

**By e-mail only: [e.martins@dataci.org](mailto:e.martins@dataci.org)**

18 November 2015

Dear Sirs

## **Independent Jersey Care Inquiry (the "Inquiry")**

We refer to your first letter dated 20 October in relation to the Day 67 documents.

Since our letter to you of 19 October, we have continued to investigate the issue concerning yellow opaque boxes contained in documents and can provide you with an update.

We explained in our letter that we were undertaking a review of all documents on the Inquiry's website to see whether this issue affected other documents. That review identified a limited number of further documents which contained yellow opaque documents. In all instances, these boxes were covering data which the Inquiry would not have redacted in any event. Therefore, these documents were 'over-redacted'.

We have however continued to investigate why this has happened. Our investigations revealed that although the documents were released to Interested Parties with transparent yellow highlighting in the documents, the documents were subsequently appearing on the website with this highlighting having been changed into yellow opaque boxes. After running tests, we have identified that on some occasions the yellow transparent highlighting turns to opaque yellow boxes upon optimisation. Optimisation is a process that is run before the upload of documents to the website to reduce the size of the document. This process is carried out because these documents can run to several hundred pages long.

We have spoken to Opus about resolving this issue and the solution is for the documents to be 'flattened' in Adobe by the Inquiry team (rather than Opus) to prevent the highlighting turning transparent upon optimisation. This will be carried out by the Inquiry going forwards to prevent 'over-redaction' with these documents.

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
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+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)



## Independent Jersey Care Inquiry

Turning now to your letter, you refer to the fact that the redaction issue regarding the Day 67 documents was not fully resolved by the Inquiry after the issue was discovered on 16 April 2015 and the error was allowed to continue for some six months. You also state that it is inconceivable that the Inquiry failed to realise that there were certain other defects with the document. In this regard we refer to our letter of 19 October 2015 and the explanations contained therein. The Inquiry did rectify the issues with the Day 67 documents of which it was aware back in April 2015; these issues were immediately actioned. The document was also checked once uploaded to the website and the data in question was obscured by the yellow opaque boxes. The Inquiry also took steps to ensure that the same issue did not happen again.

The recent and, importantly, different issue which has now come to light with the Day 67 documents was not foreseen by either the Inquiry or Opus. Indeed, as mentioned in our letter, Opus has not previously seen this issue occur on any other projects they have worked on. It was therefore not even in contemplation by the Inquiry that redactions could be deleted if an individual chose to attempt to manipulate the document. As far as we are aware, the Law Officers' Department was also not aware that the yellow boxes could be removed, or we assume they would have raised this with the Inquiry at an earlier stage. If the Inquiry had any indication that this was even a possibility, it would have explored the issue and taken steps to ensure procedures were put in place to prevent this from happening.

Now that the Inquiry is aware of this issue, it has taken steps to rectify the documents affected, investigated the cause, tailored solutions to prevent this happening in the future and reviewed and enhanced its procedures to deal with this previously unknown issue.

Turning to the point made in respect of Day 67 documents being visible following a Google search. We have conducted a number of alternative searches and the link to the documents for day 67 does not work in the event that it is identified as a 'hit' on the results page. The documents have been removed from the website and will shortly be re-uploaded.

We hope that the above is of assistance and confirms the Inquiry's position. We also take this opportunity to repeat the request contained within our letter of 19 October 2015, that if you have any other concerns now or in the future that they are drawn to the Inquiry's attention as soon as possible so that the Inquiry can ensure all steps are taken to protect data.

Yours faithfully,

*Eversheds LLP*

**Eversheds LLP**  
**Solicitors to the Inquiry**

Freephone from Jersey/UK:  
0800 735 0100  
International callers:  
+44 (0)1534 828798  
[info@jerseycareinquiry.org](mailto:info@jerseycareinquiry.org)  
[www.jerseycareinquiry.org](http://www.jerseycareinquiry.org)

PO Box 551, St Helier, Jersey, JE4 8XN

Witness Support Team (based in N Ireland)  
Freephone from Jersey/UK:  
0800 735 0008  
International callers:  
+44 (0) 1534 828794

[support@jerseycareinquiry.org](mailto:support@jerseycareinquiry.org)

**APPENDIX C**

**Response to the Information Commissioner's Report (Undated)**

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# **Independent Jersey Care Inquiry**

## **Briefing Note on Security**

### **Introduction**

1. The aim of this briefing note is to ensure that, when working on the Inquiry, all Eversheds employees take all practicable measures to safeguard:
  - 1.1 Members of the public, participants, witnesses (both actual and potential), their families and the Inquiry's own staff from harm arising from the conduct of the Inquiry and the Inquiry's work;
  - 1.2 The Inquiry evidence and other data from unintended disclosure or unauthorised access. Although the Inquiry is a public inquiry and some of the evidence gathered may be made public at some stage, much of the information and material held by the Inquiry is of a highly sensitive nature and care needs to be taken at all times in its handling and disclosure; and
  - 1.3 The Inquiry's premises, equipment and assets from unnecessary damage or loss.
2. This briefing note sets out:
  - 2.1 The security measures that are in place during the course of the Inquiry's work; and
  - 2.2 Your obligations in ensuring that confidentiality and security of the Inquiry's work is protected at all times.

### **Document Security**

3. The Inquiry will operate a clear desk policy. Therefore, all Inquiry documents and other sensitive material should be locked away when not in use. This policy also covers photocopies and printers. Each individual is responsible for ensuring that their desk is clear of any Inquiry material when not in use, and that documents are collected immediately from the printers or photocopiers. The following guidelines will apply:
  - 3.1 When at the Inquiry's premises in Jersey, documents should be locked in the cabinets provided when not in use. This is not limited to overnight; it includes lunch breaks or extended periods away from your desk. Tina Wing and Stacey Knifton can provide details of the cabinets that should be used and how these can be locked and where the keys should be stored. The last person to leave the Inquiry's premises (at whatever time) should ensure before leaving that all cabinets are locked, keys are put into the key safe – which must be secured and that no sensitive material has been left out.

- 3.2 If you are working from a home office, again Inquiry materials must be locked away at all time when not in use, and the keys stored in a secure location. If you do not have access to a lockable cabinet / room, please speak to Tina Wing or Stacey Knifton who will be able to assist with making the necessary arrangements. If you are working with particularly sensitive material please note that we have secure working rooms in Birmingham and Cardiff.
- 3.3 Any documents related to the Inquiry's work that are no longer required must be confidentially shredded – this is a different process to the firm's usual policy for shredding confidential material. All documents to be destroyed must be placed in the Inquiry shredding bags, and this material will be securely shredded at the conclusion of the job (or sooner if necessary). Documents **must not** be placed in the general waste and **must not** be placed in the usual confidential waste bins in Eversheds' offices. If you are unsure how to dispose of material, again please speak to Tina Wing or Stacey Knifton about the process that you should follow.

### **Transporting Documents**

4. Staff should minimise, wherever possible, the need to take sensitive material out of the Inquiry premises or away from a locked and secure location.
5. If it is necessary to carry material with you when travelling, before doing so, please make sure that you are only carrying material that is needed. For example, there may be pages in your notebook which contains material that you do not need. **Please do not carry notes taken at witness interviews unless absolutely necessary. When you have dictated witness statements, original notes should be given to Stacey Knifton or Tina Wing for storage.**
6. If you do need to transport Inquiry material, for example if travelling to an interview, **the material must remain with you at all times** and where possible, documents should also be carried in a locked case.
7. If flying to or from Jersey with Inquiry material, this must be carried in your carry on luggage. Under no circumstances should Inquiry material be carried in your hold luggage, even if the bag is lockable. If you are on a train, papers must not be left in a bag at the end of your carriage.
8. You **must not** leave any documents unattended outside of the Inquiry premises. Staff should be extra vigilant when travelling on public transport.
9. Documents should **not** be couriered or sent via branch direct unless this has been approved and arrangements put in place by Tina Wing or Stacey Knifton.



## IT Security

10. The details of the Inquiry's IT set up are explained in more detail in the briefing note on IT. In addition to the IT processes, staff will need to comply with the following guidelines concerning IT security:
  - 10.1 Creating documents on DM5 should be avoided wherever possible. Instead documents should be created in the Proclaim file management system. However, there may be a need to occasionally create a document on DM5. If this is the case, the document **must** be saved under the file number (150114.000029). This way it will fall under the 'Daisy Information Barrier' that has been set up. All staff included within the information barrier will be required to agree to the terms of that information barrier. If you have not received an email from IT in relation to being added to the Daisy Information Barrier then please let Tina Wing or Stacey Knifton know and they will arrange for you to be added.
  - 10.2 No documents are to be saved to local desktops, computers or memory sticks.
  - 10.3 When preparing documents on the Eversheds system, please think about whether sensitive information needs to be included within the document. For example, can the information be anonymised in some way? Witness names should always be referred to using initials. Where possible, avoid sending any emails on the Eversheds system in relation to the Inquiry's work.
  - 10.4 When recording your time, please ensure that sensitive material is not recorded within your time entries. Witness names are not to be used in any circumstances. Witness initials only should be used.

## Confidential Nature of the Inquiry's Work

11. All members of staff will be required to keep the Inquiry's work confidential, as they would with any other client matter they would deal with whilst employed by Eversheds.
12. However, in addition to the usual confidentiality obligations placed on staff, it must be noted that the subject of the Inquiry's work is particularly sensitive in nature. The Inquiry is also operating in a very small community. Staff should note that discussion of the Inquiry's work in general, or references to witnesses names etc, should be undertaken with the utmost discretion and **must not** be discussed out in public, including in restaurants, on public transport, on the street etc.



## **The Inquiry's Premises**

13. For those of you that may spend time out in Jersey at the Inquiry's premises, there are various security arrangements in place. The effectiveness of the security depends on the proper use of the security systems by all.

### Broad St

14. The Inquiry is currently operating from temporary offices in Broad St, St Helier. Access to the premises at Broad Street is via keys through the main front door and the door to the office. The door to the office should be kept locked at all times. There is an intercom for visitors to request entry into the office.
15. There is a secure key pad on the door at the end of the office leading out to the documents room and a secure key pad on the documents room. The codes for these key pads will be provided to you once you are in Jersey.
16. Whenever the premises are left unattended, they must be secured. If you are the last to leave at night you **are responsible for ensuring that** all doors and cabinets are locked securely. A key cabinet has been provided and all keys must be locked away into this cabinet before leaving the office.

### Seaton Place

17. The Inquiry's permanent premises will be at Seaton Place, St Helier. This is a short walk from Broad St. Once the Inquiry's permanent premises are up and running, we will confirm the security arrangements for entry and exit, and for moving around the building.

### Visitors to the Inquiry's Premises

18. All visitors should be escorted while in the Inquiry's premises. If you have an interview at the office, the witness should be shown into the meeting room, or accompanied if allowed elsewhere.
19. Maintenance and repair personnel should be accompanied or kept in view at all times. Cleaners should also be supervised while in the Inquiry offices.
20. **DO NOT** let people you do not know into the offices.

## **Risk Register**

21. We are maintaining a risk register. If you become aware of any actual or potential risks in relation to security (or otherwise), please inform Sarah Jones, Izzy Mitchell or Tina Wing who will add an entry to the register if appropriate.

### Questions or Concerns

22. If you are in any doubt about the obligations that may apply in respect of the security arrangements for the Inquiry's work, or require any further guidance, please speak to Tina Wing, Izzy Mitchell or Sarah Jones.
23. All near or actual security breaches should be reported **immediately** to Sarah Jones.