



Royal Court of Jersey  
**Judicial Greffe**

Our Ref: AJC/kjh/RedressPanel

19 August 2020

F.a.o. Mr. Andy Harris,  
Care of Children in Jersey Review Panel  
States Greffe,  
Morier House,  
St Helier  
JE1 1DD

**By Email & Post**

Dear Panel

**Redress and Accountability Systems in Jersey - the Court System**

1. By letter dated 26 June 2020, Deputy Ward as Chair of the Care of Children in Jersey Review Panel wrote to me in my capacity as Judicial Greffier of the Royal Court to seek my written responses to a number of queries.
2. From the outset of these responses, it is appropriate to clarify the parameters of what the Panel describe as the “Court System”. The Judicial Greffe is part of the Court Service which, in tandem with the Viscount’s department, constitute the administrative and enforcement arms of the Judiciary. A copy of the Courts Service Annual Report detailing the extent of the work carried out by the two Departments is attached as **Appendix 1**. Please note that publication of the 2019 Annual Report is delayed due to the consequences of the Covid-19 pandemic.
3. The following responses are intended to be a comprehensive response from the viewpoint of the Judicial Greffe only and no doubt the Panel have approached and will receive

appropriate replies from both the Viscount's Department and the Bailiff's Chambers as part of their overall review.

4. For the sake of clarity, the Judicial Greffe has administrative oversight of the Court of Appeal, Royal Court, Family Division, Probate and Protection Departments, Property Department (dealing with the registration of contracts and wills of Jersey Real Estate, Powers of Attorney and hypothecs/charges on property), the Magistrate's Court, Youth Court, Petty Debts Court together with the Tribunal Services and Appeals.

***Query No.1:***

*"An overview of all complaints systems and processes with the Court System and any policies and documents that underpin them".*

***Response:***

5. An individual who wishes to raise a complaint regarding the service provided by the Judicial Greffe or a member of the Judicial Greffe's staff is requested to follow the complaint's procedure which is located on the Gov.je website. The website address is: <https://www.gov.je/Government/Comments/Pages/JerseyCourtServiceComplaints.aspx>. A copy of the procedure is attached as **Appendix 2**.
6. The webpage sets out the contact details by telephone, address and email that should be used by any complainant. The complaints process is so described so that complainants are aware of the process being undertaken and the timescales within which matters will progress. Where there is a requirement to extend the time periods, we undertake to inform the complainant of the extension and the reasons why.
7. In order to ensure that the Judicial Greffe have an appropriate record of the complaint and confirmation that the correct process has been followed, the Department has a number of internal documents which are employed when a complaint is registered. These include:
  - 7.1 A Customer Complaints Form (see **Appendix 3**) which we ask complainants to complete so there is clarity regarding the nature of the complaint, which member of

the Judicial Greffe was involved, when the incident took place and how the complainant wishes to pursue the matter.

- 7.2 A Complaints Management checklist (see **Appendix 4**) which is used to ensure that the stated procedure is followed.
- 7.3 A Complaints Register form (see **Appendix 5**) which is used to record the complaints and how it was dealt with and resolved.

**Query No.2:**

*“An overview of the various forms of redress available to people who have a complaint upheld within the Court System. We would be grateful for copies of any documents or policies (where applicable) which outline how these forms of redress are administered.”*

**Response:**

8. As is set out in the published Complaints Process, where a complaint is received, the Department attempts to deal with it to the satisfaction of the complainant. It is invested at Department Head level on a consideration of the evidence and having invited the complainant to attend a meeting to discuss the issues. We have found that it is important to encourage a meeting with the complainant for two reasons. First, complaints are often the result of miscommunication or misunderstanding and a great deal of this can be clarified and explained at the face to face meeting. Second, it is good to clarify with the complainant what they would like to see from the outcome of the complaint. Often the complainant may simply wish to receive an apology and the matter can be dealt swiftly. Conversely, the Department might fail to appreciate the depth of feeling held by the complainant when matters are only set out in writing. The face to face meeting aids in avoiding these aggravating factors.
9. Notwithstanding the above, where the complainant is dissatisfied with the result of the investigation at that initial level, they are entitled to request that the matter is reviewed once again. This would be carried out by the Judicial Greffier or his COO who would

again provide the complainant with a written decision within the stated timescale. In circumstances where the complaint involves a senior member of the Department, an arrangement has been reached with the Viscount's Department whereby the Judicial Greffier would ask the Viscount to investigate the complaint in order to avoid perceptions or allegations of bias.

10. If the complainant remains dissatisfied with the outcome of the investigation and wishes for the matter to be further reviewed, the Judicial Greffier would bring the matter to the attention of the Bailiff for a final review.
11. Ultimately, if the complaint is upheld against a member of the staff of the Judicial Greffe, there are two aspects that need to be considered. We seek to employ a "lessons learnt" approach which means that, whilst errors should always be kept to a minimum, when they do occur, we review how they came to arise and how they can be avoided in the future. Where that requires either policy change or individual training, that would be undertaken.
12. If the outcome of the investigation concludes that a member of the staff of the Judicial Greffe has acted in a manner that justifies disciplinary steps, then the Judicial Greffe will, with the assistance of the HR Business partner, commence the disciplinary process in accordance with the States of Jersey HR policies.

***Query No.3:***

*"An overview of all disciplinary processes within the Court System and copies of the relevant policies that underpin these processes."*

***Response:***

13. As referred to in the response to Query 2, where necessary, the Judicial Greffe would refer to and comply with the States of Jersey Disciplinary policy. A copy of that policy in its most recent iteration is attached as **Appendix 6**.



14. Following the completion of a full investigation, the outcomes that flow range from no action (where there is no case to answer), through written and formal warnings to, in the worst cases, dismissal and termination of employment with or without notice.

***Query No.4:***

*“For all of the above systems and processes, could you please provide information on all the places where they can be located by members of the public”.*

***Response:***

15. All the complaints procedures referred to herein are available to the public on-line and via the gov.je website on the pages referenced above.

***Query No.5:***

*“An overview of any future work programmes that you have in place in order to build trust and confidence in these systems of governance. We would also be grateful for any plans that you have to address the findings of the independent Jersey Care Inquiry in relation to the perceived fear and lack of trust in systems of government.”*

***Response:***

**a) Future programmes:**

16. Our experience within the Judicial Greffe is that there is often a blurring of the lines by complainants between dissatisfaction with the outcome of a court hearing (which should rightly be dealt with by way of an appeal) and dissatisfaction in the manner in which the staff of the Department interacted with them (which is the appropriate grounds for a complaint). Due to the nature of the work carried out by the Judicial Greffe, in most cases there will be parties who are content with the outcome and parties who are not. Being able to assist those who are not content and to direct their efforts to register dissatisfaction

in the correct manner (whether by way of Appeal against the decision, Judicial complaint to the Bailiff or complaint about a staff member of the Judicial Greffe), is a key starting point for our dealing with complaints.

17. Historically, the department has investigated the use of Customer Engagement and Feedback Surveys. However, given the private nature of the information relating to matters dealt with by the Judicial Greffe, it had been concluded that achieving this would be a difficult (in terms of customer engagement levels) and costly (in terms of work hours) activity. We have considered the paths taken by the UK Courts system to see what lessons can be learnt. The HMCTS undertook “citizen user experience” research during a 9 month period in 2018 to evaluate the areas of weakness and strength within the Court system in the UK (see report attached at **Appendix 7**). Given the resources available and the number of UK Court Users that exists, research based on just over 1000 survey responses was not comprehensive and was indicative of the difficulties that exists in obtaining cost effective data for service users.
18. Systems of governance extend beyond the ability of customers to satisfactorily register complaints about the actions of the department staff. The Judicial Greffe strives to be a proactive department that seeks to identify structural and procedural inefficiencies and correct them prior to an issue arising with a customer. The department has reinforced its managerial structure to facilitate this aim. Previously, the Department was autocratic in nature. The Judicial Greffier had ultimate responsibility for the running of the Courts and as such all decision making flowed through the office holder. This led to a limited breadth of expertise tasked with departmental decision making and underemployment of the knowledge base within the staff. The department has moved to a more structured management scheme, with the reintroduction of a Senior Management Team (SMT) and the empowering of the managers from the different teams within the Judicial Greffe. Information cascades down from the SMT meetings to the staff via their respective managers with the invitation to feed information back to the SMT through the same route.
19. This change in stance has facilitated a wider engagement with the staff, a swifter recognition of areas that need addressing and broader base of experience and knowledge to input into the creation of solutions. We believe that this supports improved governance and provides a better service for the end users.

20. The Judicial Greffe is also an active member of the Justice Department Efficiencies Group (which includes heads and senior members of the non-ministerial departments involved in the delivery of justice in the Island). This group meets regularly to discuss and facilitate efficiencies within this sphere – efficiencies that not only seek to reduce duplicated expense but also streamline the process of delivering justice to the public. Although the group had been in existence for some time prior to this, its current terms of reference were generated from the Comptroller and Auditor General’s Report on Non-Ministerial Departments (5<sup>th</sup> December 2019) which recommended that the Non-Ministerial department should:

*“Consider options for the enhanced oversight of the governance of Non-Ministerial Departments that does not impinge on their operational independence, including through the establishment of an advisory Audit Committee that.....reports to the Accountable Officers for the Non-Ministerial Departments”.*

21. It is also apt that this request from the Panel should come a time when the very processes by which customers to the Judicial Greffe will interact with the department are in the midst of being substantially changed. The Courts Digital Project launched in 2020 and, notwithstanding the natural retardation of the process caused by the Covid-19 pandemic, has made considerable strides in the analysis of the processes employed and systems used in each of the Courts and Tribunal in Jersey. The vision for the Project is to establish a Court and Tribunals service that is easier for the non-legally qualified users to navigate (thus leading to greater access to justice for all) and which is based on paperless hearings, electronic filing of papers, advanced and appropriate use of technology within the Court hearings and a central electronic case management system which holds the database of information for all cases before the Courts and Tribunals in Jersey. This case management system will also facilitate powerful data collection and reporting leading to accurate performance information that will be employed in the governance of the Courts Service.
22. In addition, it is worth noting that, although not formally accredited against the Customer Service Excellence standard, the Judicial Greffe has, for several years, adopted a number of the criteria in this industry standard. This has included being subjected to a diagnostic

review against the standard by a third party assessor. This led to an overhaul of the complaints procedure, a customer feedback survey and customer journey mapping in selected areas of the business. The ambition of the department remains to seek formal accreditation in due course.

**b) Plans to address the Care Inquiry recommendations:**

23. Having reviewed the Recommendations set out in Chapter 13 of the Report, the Judicial Greffe was only able to identify one particular area that referred to matters pertaining to the Courts.

At paragraphs 13.35 to 13.36, the Report states:

*“13.35 The Jersey youth justice system continues to be court based and, while some revisions to practice seem to have been made, **we recommend** that a thorough review be undertaken with a view to moving to a **welfare-based model** rather than a punitive one. We heard from witnesses that the Criminal Justice (Young Offenders) (Jersey) Law 2014 should have a section inserted into it recognising that the welfare of children should be a primary consideration. We agree with this, but our view is that this, in itself, would not be sufficient unless the whole system were amended to centre on the welfare of the child. **We recommend** that the Youth Justice System should consider how it can move to a model that always treats young offenders as children first and offenders second.*

*13.36 In our view, it is essential that those charged with dealing with children and young people in a judicial capacity should have a sound understanding of the needs of young people and of the issues that can impact on their lives. To that end, **we recommend** that a suitable programme of training be put in place for all those acting in a judicial capacity in the island, and that there should be a requirement for regular refresher training to ensure that all are kept briefed on the latest thinking and research on these matters.”*

24. There are three recommendation within this passage. The first is a recommendation for a review in respect of the manner in which the Criminal Justice (Young Offenders) (Jersey) Law 2014 should be amended to recognise that the welfare of the child is

paramount in their interactions with the Court. That is a recommendation that requires the action of the Legislature and is beyond the scope of the Judicial Greffe.

25. The second and third recommendations can be dealt with together. They desire the recognition of the child within the criminal justice system as a child first and an offender second (to support the welfare based model sought in the earlier recommendation). The Report also recommends a programme of training for the Judiciary (and ongoing training) to ensure that the Judiciary understand the latest thinking on dealing with children in the Courts. Both of these are recommendations relating to the manner in which the Judiciary carry out their judicial duties and as such fall to be overseen by the Bailiff (as the head of the Judiciary) and not the Judicial Greffe.
26. Nevertheless, and with apologies should this information be repeated in the responses from other departments, it may be useful to consider the following information regarding the training and guidance on these topics received by the Judiciary in Jersey.
27. Interaction between children and the Courts are predominantly limited to two areas: Public Law matters/Care proceedings and criminal proceedings in the Youth Court. In Public Law matters, the presiding court members are always guided by evidence provided both in writing and orally from experts in the professions of Children's care, social work and the specific fields of medical, psychological and psychiatric practice. Each of these witnesses are highly trained and supply the Court with the latest knowledge in all aspects of the dealing with the child or children in question and particularly what would be deemed to be best for their ongoing welfare.
28. In criminal matters, the vast majority of interactions between children and the authorities are found and dealt with within the triangle of the Police, Parish Hall Enquiry system and the Youth Court. It is extremely rare that the Royal Court find children (that is to say under the age of 18) before them on criminal matters although they do more often receive offenders between the ages of 18 and 21 and who are therefore affected by the sentencing provisions of Article 4 of the Criminal Justice (Young Offenders) (Jersey) Law 2014.
29. So far as the Youth Court is concerned, a review of Youth Justice was undertaken in 2018 following the findings of the Care Inquiry (I attach a copy of that Review as

**Appendix 8).** The implementation of the recommendations of the Review is being overseen by Chay Pike (formerly of JPACS and JMAPP and now seconded to SPPP). As part of his role, he has recently visited the Magistrates to discuss the recommendations in the Review.

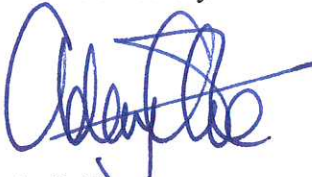
30. On the topic of Judicial training, the Magistrate (Mrs Bridget Shaw) and the Assistant Magistrate (Mr Peter Harris) have attended annual residential training with the Judicial College of England and Wales since they were appointed to their respective posts. Relief Magistrates (who are appointed to sit when the post holders are unavailable or conflicted) have also attended the Judicial College training on occasions. Every year there is a session within the Judicial College training on youth justice which the Magistrates attend. This includes training exercises, lectures and presentations from practitioners in the field of youth justice. By way of an example, on a recent Judicial College course, attending UK judges were introduced to the concept of informal reviews of Referral Orders given to young offenders – a project which was being piloted in parts of England & Wales. Informal reviews of Probation Orders (a near equivalent) have been a feature of the work of Jersey's Youth Court for several years. In this respect Jersey's Youth Court was ahead of the thinking in England & Wales.
31. The Youth Court also includes lay panel members. The Magistrates hold an annual training session with lay members of the Youth Court Panel. The sessions are varied but intended to provide the panel members with greater insight into the issues that children appearing before them are having to deal with. Examples of these sessions include: a registered Intermediary who lectured on communication skills and the head of Information Technology at Beaulieu School who led a session on the effect of social media on young people.
32. It is the view of the Magistrate that the Youth Court is, and should be, a court first and not a welfare panel but that in facilitating that role, the Youth Court does look at young offenders as children first. The Court receives detailed reports about young people and their backgrounds. The Court is well aware that many of the defendants have suffered adverse childhood experiences. At the same time the Court must comply with the overriding objective of the Criminal Procedure (Jersey) Law 2018 which requires that a case be dealt with justly. The Court must take account of the victims of crime, who are



often children, as well as the perpetrators. Rehabilitation and the prevention of further crime is central to the work of the Youth Court and this is in the interests of the defendant but also in the interests of young victims of crime. Sentencing to youth custody is governed by the Criminal Justice (Young Offenders) (Jersey) Law 2014 which ensures that custody is only used as a last resort. The 2018 Review praised the Youth Court for its welfare based approach and also its lateral, rather than vertical, sentencing approach. Custody is rarely used as a sentence or for remand in the Youth Court and when it is used, it is indeed as a last resort, again, a point made in the 2018 Review.

33. I hope that the Panel find these responses to the queries to be of assistance in their important work.

Yours sincerely



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**2018**

# **Jersey Court Service Annual Report**



*Supporting the Delivery of Justice  
through Professional  
Excellence*



**INVESTORS  
IN PEOPLE** | Gold

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## PURPOSE AND ORIGIN OF THE DEPARTMENTS

### Judicial Greffe

The Judicial Greffe is a Department of the Judiciary responsible for the provision of secretarial, administrative and interlocutory support to the Island's Courts and Tribunals. Associated services are provided to the legal profession and the general public. The Department in its present form was established in 1931 by the "Loi (1931) constituant Le Département du Greffe Judiciaire".

### Viscount's Department

The Viscount's Department is the executive arm of the Island's Courts and of the States Assembly. The Department is therefore principally required to execute orders of the Courts. In addition, the Department fulfils the duties of Coroner, administers *Désastre* (bankruptcy) and similar insolvency proceedings, serves legal process and enforces fines and judgment debts. The Department in its present form was established in 1930 by the "Loi (1930) constituant Le Département du Vicomte".

In this report, the Judicial Greffe and Viscount's Department are described collectively as the Court Service.

## 2018 OPERATIONAL AND ADMINISTRATIVE ACTIVITY

### Judicial Greffe

### Samedi Team



The Samedi Team is responsible for providing a full support service to the Royal Court, including attending sittings as a Clerk, issuing and enrolling the Acts of Court in relation to proceedings and providing advice on Court procedure. The Team is also responsible for the registration of professionals, deeds poll, company reinstatements, court of protection orders, guardianships, reciprocal enforcement of judgements, the taxation of costs, considering applications for disbursements in support of legally aided litigants, registering and indexing orders in council, fidéicomis applications and supporting the Liquor Licensing Assembly.

#### Highlights for 2018

Acts of Court produced: <b>1,855</b>	Criminal cases indicted: <b>76</b>	Assize trials: <b>5</b> (lasting 21 days)
Liquor Licences granted: <b>72</b>	Public Law children cases: <b>139</b>	Longest Inferior Number trials: criminal <b>19</b> days civil <b>23</b> days



## Public Registry



The Public Registry is responsible for the management and protection of all land deeds and associated documents enrolled for the purpose of evidencing title to, or charges against, land.

### Highlights for 2018

Stamp Duty received: <b>£29,508,000</b>	Value of property transactions registered: <b>£1,007 million</b>	Number of documents registered: <b>4,058</b>
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Availability rate for Public Registry Online (over full year): **99.90%**

## Family Team



The Family Team is responsible for providing a comprehensive service to the Royal Court for Family proceedings. These include causes for the termination of marriage (including nullity), dissolution of civil partnership, judicial separation cases, ancillary matters, and applications relating to children. The Family Team also deals with applications relating to legitimacy of children, adoption proceedings, care orders and child abduction. Reciprocal Enforcement of maintenance cases are also dealt with, involving liaison with foreign Courts. In addition, the Family Team deals with applications for the recognition and enforcement of Children Orders made in the UK.

### Highlights for 2018

Divorce and judicial separation petitions filed: <b>200</b>	Decrees Absolute granted: <b>195</b>	Free standing private children applications filed: <b>45</b>
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Matrimonial Acts issued: <b>431</b>	Preliminary directions hearings: <b>202</b>	Case review hearings: <b>211</b>
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**2** new Family Division Registrars appointed



## Interlocutory Services

The Master of the Royal Court deals with all disputed claims that are not criminal prosecutions and do not involve family or children matters. He is Jersey's civil procedural Judge and his function is to ensure that parties to a civil dispute take all necessary steps to ensure their cases are ready for trial before the Royal

Court. He also deals with claims or defences that have no merit and is the mediator for disputed civil claims in the Petty Debts Court.

### Highlights for 2018

Summonses issued: <b>132</b>	Applications heard: <b>169</b>	Acts produced: <b>433</b>
Judgments written: <b>28</b>	Case reports produced: <b>3</b>	Cases heard at mediation: <b>100</b>

## Probate Registry



The Probate Registry is responsible for examining, validating and granting to lawyers, trust corporations and members of the public the right to recover or receive any part of a Jersey estate.

### Highlights for 2018

Number of grants issued: <b>1,735</b>	Total estates value: <b>£702,209,100</b>
Number of Curatorships formed (to Sep): <b>77</b>	Number of Delegates formed (from Oct): <b>11</b>
Stamp Duty received: <b>£2,540,400</b>	

## Appellate Team



The Appellate Team is responsible for the administrative arrangements for the Court of Appeal and the Court of Appeal Judges. This includes arranging the annual sitting rota, listing of all appeals received and preparation of documentation for each sitting. The Appellate Team act as clerk to the judges, attend all sittings, draft Acts of Court and provide procedural advice where required. The Court of Appeal has 6 scheduled sittings each year, however, the Appellate Team arrange any additional special sittings that are necessary.

### Highlights for 2018

Appeals lodged with Court of Appeal: <b>14</b>	Superior Number appeals: <b>3</b>
Court of Appeal sittings (days): <b>19</b>	Special sittings: <b>1</b>



## Intellectual Property Registry



The Judicial Greffe is responsible for maintaining the Registers of Trade Marks, Patents and Designs. The Registry houses the three registers, and provides advice and associated services to industry specialists and members of the public. These are in the course of being transferred to the Jersey Financial Services Commission.

### Highlights for 2018

Number of Trade Mark registrations: <b>95</b>	Number of Patents (registrations and updates): <b>27</b>
Number of Trade Mark updates: <b>485</b>	Number of Designs (registrations and updates): <b>1</b>

## Tribunal Service



The Tribunal Service is responsible for the administration of the Jersey Employment and Discrimination Tribunal, the Social Security Income Support Tribunal, the Social Security Medical Tribunal, the Long Term Incapacity Tribunal, the Mental Health Appeals Tribunal, the Health and Safety Tribunal, Planning Appeals and the Charity Tribunal. The Jersey Employment and Discrimination Tribunal publishes an annual report available at [www.tribunal.je](http://www.tribunal.je).

### Highlights for 2018

Applications to Employment Tribunal: <b>154</b>	Applications to Discrimination Tribunal: <b>43</b>	Mental Health Appeals: <b>58</b>
Planning Appeals: <b>32</b>	Applications to Social Security: <b>12</b>	Total number of cases received: <b>299</b>
New website launched at <a href="http://www.tribunal.je">www.tribunal.je</a>		Charity Tribunal established



## Magistrate's, Youth and Petty Debts Courts

The Magistrate's, Youth and Petty Debts Courts service a constant daily throughput of Adult Remand Courts, Youth Courts, criminal trials, civil trials and Petty Debts Court hearings. The Magistrate's Court Greffe also provides a weekly mediation session for claims that fall within the Petty Debts Court jurisdiction and ad-hoc sessions for other mediation requirements.

## Highlights for 2018

Number of cases dealt with by Magistrate's Court: **4,518**      Number of cases dealt with by Youth Court: **131**      New actions before Petty Debts Court: **3,175**

Value of claims in Petty Debts Court:  
**£7,528,452**

Business case approved to convert Number 1 Court to dual purpose for assize trials

## Viscount's Department

### Enforcement Functions



The Enforcement Section carries out enforcement functions, including judgment and fine enforcement, maintenance enforcement, arrest of persons for non-attendance in Court, service of judicial documents, holding and administration of bail money, and enforcement of Court Orders under Proceeds of Crime and Drug Trafficking Laws. The Section also enforces civil matters including civil Injunctions and, if granted, has the power of arrest in order to fulfil this duty. In addition, the Section manages juror selection and juror custodian duties for Assize Trials in the Royal Court.

### Coroner's Functions



The function of Coroner is allocated to the Viscount although in most circumstances the Deputy Viscount actually functions as such. Relief Coroners also act from time to time. Coroners investigate sudden, unexpected and unnatural deaths which are reported to them via the Police. If someone dies when in a psychiatric nursing home, mental health establishment or children's home, the death must be reported to the Police, even if the death was expected by a doctor. If someone dies while held in custody by the Police or in prison, immediate notification must be made to the Coroner. The Coroner will authorise post-mortem examinations and hold inquests as needs be. Coroners also deal with enquiries from doctors in cases where the Coroner's authorisation is required for the doctor to issue a Medical Certificate of Fact and Cause of Death. Other duties include issuing permits for the removal of bodies from and into the Island, as well as exhumations.

## Highlights for 2018

Reported deaths: **160**  
(approx 19% of all registered deaths in Jersey)

Approvals for doctors to issue a certificate of fact and cause of death: **122**

Inquests held and completed: **46**

Import/export of body permits: **38**

Over a third of all deaths in 2018 involved the Viscount as Coroner

## Insolvency Functions



The Insolvency Team carries out a number of functions in addition to its core activity of administering the property of persons who have been declared *en désastre*. *Désastres* can be challenging, requiring the use of commercial and pragmatic solutions to improve the outcome for creditors. Assets under management in 2018 included disputed building construction debts and a 50% share in a large domestic property. Significant asset claims in complex, multi-party proceedings in London are currently being pursued. Overall, numbers of formal insolvency proceedings remain low.

## Highlights for 2018

New bankruptcies declared: **3**  
(involving creditor claims of over £3.25 million)

Contested adjudication decisions under Article 31(7): **2**

*Désastre* checks carried out: **14,000**

Personal bankruptcies discharged: **2**

Applications to Royal Court by liquidators (in BVI and USA) for recognition in Jersey: **2**

Statutory recognition of Republic of Ireland as prescribed country under Article 49 (for giving assistance by Royal Court in insolvency matters)

## Delegate/Curatorship Cases



The Capacity and Self-Determination (Jersey) Law 2016 came into effect on 1 October 2018, replacing the role of curator under the Mental Health (Jersey) Law 1969 with the new role of delegate. As a result of transitional provisions, the Viscount became delegate of all clients for whom she was curator. The powers and duties of a delegate differ from those of a curator. A delegate must act in the best interests of the client and seek their views on decisions, taking into account their capacity to participate in the decision-making process. During the year, the Curatorship Team attended a number of training events on the new law and have reviewed and amended procedures and working practices to reflect the Viscount's obligations as delegate, to ensure that all new responsibilities are fulfilled.



### Highlights for 2018

Cases at start of year: **24**    Cases closed: **6**    New cases: **4**    Cases at end of year: **22**

## Regulatory

The Capacity and Self-Determination (Jersey) Law 2016 and associated legislation also gave the Viscount powers to supervise delegates and to investigate and deal with complaints made about the conduct of delegates. Although no complaints were received between the introduction of the law and the end of 2018, the Regulatory Team has established procedures to deal with complaints if any arise.



## Court Services Team

The Court Services Team organises and manages juries for assize (jury) trials, deals with applications for exemption from court fees and stamp duty, issues convening notices for sittings of the Royal Court and other bodies and provides administrative support for the Coroner function and the Department as a whole.

### Highlights for 2018

Assize trial process started: <b>19</b>	Assize trials completed: <b>5</b> (lasting a total of 21 days)	Jury summonses: <b>867</b>
Witness summonses: <b>108</b>	Certificates of exemption from court fees: <b>113</b>	Convening notices: <b>11</b> (total distribution of 2,060)



## Accounts Team

The Accounts Team provides reception duties for the Viscount's Department, including receipt of fines, judgments, bail receipts and payments, and curatorship/delegate cash payments. All transactional duties relating to Viscount's Department third party assets (curatorship/delegate funds, maintenance, insolvency, compensation, criminal injuries compensation, proceeds of crime and drug trafficking offences) are also undertaken by the Accounts Team. Payment of all invoices and receipt of all income, for the Court Service as a whole, is undertaken on a daily basis, along with management of budgets.

## Highlights for 2018

Total Stamp Duty collected: <b>£32,049,000</b>	Court and Case costs expenditure: <b>£4,023,700</b>	Underspend of Court and Case costs, transferred to other departments: <b>£87,800</b>
Grant to Family Mediation Jersey: <b>£72,300</b>	Continued development of Plainsail software system for replacement of Phoenix	

## STRATEGIC ISSUES

### Law Reform

During the year, the Court Service identified and/or commented upon changes required in primary and subordinate legislation affecting the operation of the Courts or the core services provided by the Court Service. In particular, work on or review of the following items of legislation or consultation was undertaken.

- Mental Health (Jersey) Law 2016 (came into force on 1 October 2018).
- Capacity and Self-Determination (Jersey) Law 2016 (came into force on 1 October 2018).
- Criminal Procedure (Bail) (Jersey) Law 2017.
- Criminal Procedure (Jersey) Law 2018.
- Petty Debts Court Rules 2018.
- Jersey Law Commission: "Improving Administrative Redress in Jersey".

### International Dimensions

The Court Service has always represented the Island in a number of international fora (through participation in and hosting of conferences, attendance at regional meetings, and through secretariat membership) and continued to do so in 2018. These included:

- International Association of Insolvency Regulators.
- Free Access to Law Movement.
- Coroners' Society of England and Wales.
- Commonwealth Magistrates' and Judges' Association.
- Criminal Assets Management and Enforcement Regulators Association.
- United Nations Office on Drugs and Crime.

### Sick Leave, Flexi-time and Overtime Monitoring

Sick leave, flexi-time and overtime continued to be monitored and analysed in the Court Service throughout 2018. Sick leave reports are produced monthly for both Departments, broken down by section and analysed by application of the Bradford Factor formula.

<b>Court Service Data</b>	<b>2017</b>	<b>2018</b>
Combined absence figure	3.51%	3.17%
Average number of days of absence per staff member	8.83	7.96

## **Corporate Social Responsibility**

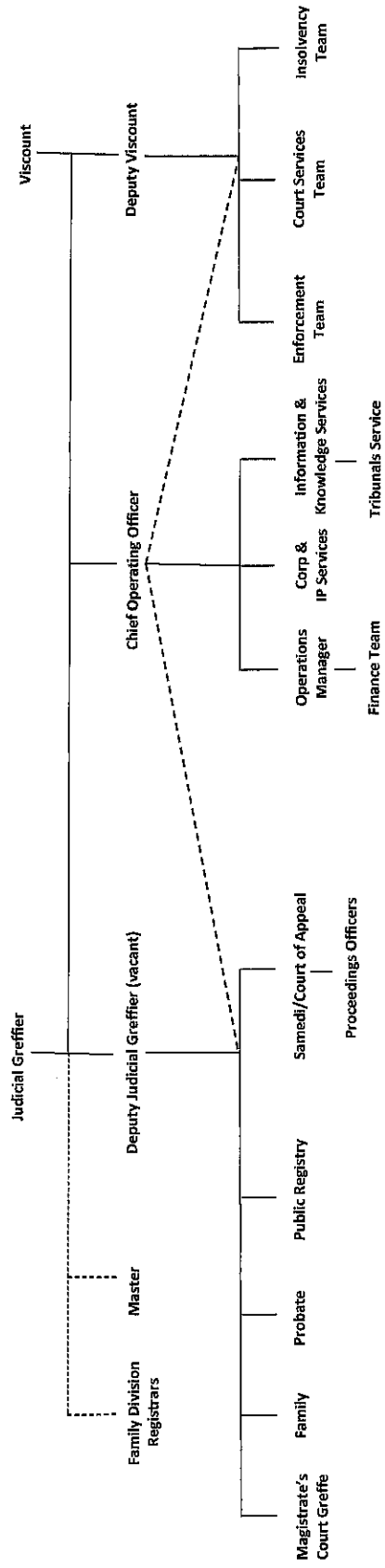
In 2018, the Court Service continued to maintain its Corporate Social Responsibility policy. The Court Service contributed to a number of charities throughout the year by various fund raising efforts, including dress-down days, a “bake-off” and cake sale, sponsored walks, and collections. Organisations that have benefited include Breakthrough Breast Cancer, Jersey Hospice, Headway, Comic Relief and Cancer Relief.

## **Complaints and Compliments**

During the year, the Court Service continued to maintain a register of complaints and compliments. In 2018, the Court Service received 5 formal complaints (2017: 7) and 15 formal compliments (2017: 13).



# APPENDIX A – COURT SERVICE FUNCTIONAL ORGANISATION



## APPENDIX B – JUDICIAL GREFFE STATISTICAL DIGEST

	2017	2018	% change 2017 to 2018
<b>Samedi Section</b>			
<b>Actions before the Royal Court</b>			
New Actions	365	340	-7%
Placed on the Pending List	66	75	14%
Acts of Court issued	1,965	1,855	-6%
Number of Court Sittings	778	823	6%
Orders in Council registered	33	31	-6%
Assize trials completed	16	5	-69%
Dégrévement Hearings	3	0	-100%
Applications for Remise de Biens	2	0	-100%
<b>Actions before the Greffier Substitute</b>			
Registration of professionals	49	31	-37%
Registration of Deeds poll	62	76	23%
Registration of Court of Protection Orders	72	40	-44%
Company reinstatements	56	70	25%
Inquests	47	46	-2%
Guardianships	2	1	-50%
Consent Orders	96	94	-2%
<b>Magistrate's Court Appeals</b>			
Lodged	7	11	57%
Heard	3	8	167%
<b>Liquor Licences</b>			
Licences Granted	77	76	-1%
Managers Registered	123	65	-47%
<b>Taxation of Costs</b>			
Civil bills of costs	16	27	69%
Criminal bills of costs	25	27	8%
<b>Legal Aid Disbursements</b>			
Occasions granted (invoices paid)	1,104	825	-25%
Legally aided litigants	245	203	-17%
Expenditure	£2,537,575	£1,694,053	-33%
<b>Public Registry</b>			
<b>Documents Registered/Cancelled</b>			
Contracts	2,175	1,988	-9%
Procurations	1,508	1,642	9%
Obligations	2,482	1,899	-23%
Cancellations	2,946	2,045	-31%
Stamp Duty received	£27,719,000	£29,508,000	6%
Contracts & Wills	£24,591,000	£25,767,000	5%
Judicial Hypothecs	£3,128,000	£3,741,000	20%
Documents registered in the Public Registry	4,657	4,058	-13%

	2017	2018	% change 2017 to 2018
Value of property transactions registered *	£934,000,000	£1,007,000,000	8%

\* Excluding value of properties transferred by Deeds of Gift or bequeathed in Wills of Immovable Estate

#### Probate Section

Number of Grants issued	1,893	1,735	-8%
Total estates value	£499,160,900	£702,209,100	41%
Number of Curatorships formed	71	77	8%
Number of Delegates formed	-	11	-
Stamp Duty received	£2,973,300	£2,540,400	-15%

#### Family Section

Free standing private children applications filed	61	45	-26%
Preliminary directions hearing	197	202	3%
Case review hearing	198	211	7%
Summonses heard (half day or more)	13	32	146%
Family/children Acts issued	285	262	-8%
Adoptions (2 Orders per child)	8	10	25%
Nisi Acts issued	205	200	-2%
Matrimonial Acts issued	416	431	4%
Reciprocal Orders	7	5	-29%
Parental Responsibility Agreements	60	38	-37%
Decrees Absolute filed	208	195	-6%
Petitions filed	219	200	-9%
Hearings vacated/settled	381	289	-24%

#### Interlocutory Services

Summonses issued	81	132	63%
Applications heard	85	169	99%
Judgments	31	28	-10%
Acts issued (including Consent Order)	323	433	34%
Cases heard at mediation	72	100	39%
Case reports produced	5	3	-40%

#### Appellate Section

Appeals lodged with Court of Appeal	17	14	-18%
Superior Number Appeals	2	3	50%
Court of Appeal sittings (days)	11	19	73%
Number of Unreported Judgments (published)	277	281	1%
Number of File and party Judgments (unpublished)	93	143	54%
Transcripts of evidence - transcripts produced	55	58	5%

#### Intellectual Property Registry

Trade Marks Registrations	79	95	20%
Patents (Registrations & Updates)	64	27	-58%
Designs (Registrations & Updates)	1	1	0%
Trade Marks Updates	581	485	-17%

#### Tribunal Service

JEDT Applications: Employment	236	154	-35%
JEDT Applications: Discrimination	55	43	-22%
Case management meetings	127	117	-8%

	2017	2018	% change 2017 to 2018
Interim hearings	18	11	-39%
Full hearings	46	44	-4%
Pending at year end	72	51	-29%
Social Security Tribunal applications	23	12	-48%
Social Security Tribunal applications pending at yr end	2	4	100%
Income Support Medical Appeal Hearings	1	1	0%
Social Security Medical Appeal Hearings	6	1	-83%
Social Security Appeal Hearings	3	0	-100%
Mental Health Appeal Applications	58	58	0%
Mental Health Appeal Hearings	22	34	55%
Health and Safety Tribunal Hearings	0	0	-
Planning Appeals	37	32	-14%
Total number of cases received	409	299	-27%
<b>Magistrate's Court</b>			
Non parking cases completed	1,119	1,015	-9%
Cases committed to Royal Court	96	84	-13%
Parking cases completed	1,013	919	-9%
Total completed cases	2,228	2,018	-9%
Non parking persons	918	866	-6%
Persons committed to Royal Court	92	78	-15%
Parking persons	592	432	-27%
Total persons	1,602	1,376	-14%
Non parking arrest	104	141	36%
Parking arrest	1,089	1,010	-7%
Total arrests	1,193	1,151	-4%
Total remands	1,734	1,557	-10%
Total volume of case work	4,791	4,518	-6%
<b>Youth Court</b>			
Total cases	103	58	-44%
Total Youths	62	42	-32%
Royal Court committals	2	2	0%
Remands	107	84	-21%
Arrests	1	3	200%
<b>Petty Debts Court</b>			
Actions	3,724	3,175	-15%
New actions	2,420	2,139	-12%
Judgments	1,730	1,435	-17%



	2017	2018	% change 2017 to 2018
<b>Taxation of Costs</b>			
Criminal Bills of Costs	31	31	0%
<b>Mediation Sessions</b>			
Sessions conducted before the Master	72	100	39%
<b>Contested cases</b>			
Direct to mediation	80	114	43%
Direct to pleadings	5	0	-100%
Cases settled	60	84	40%
Trials	1	3	200%
Tenancy	33	25	-24%
Family	14	1	-93%
Total Value	£6,731,528	£7,528,452	12%
Stamp Duty	£114,190	£110,549	-3%

## APPENDIX C – VISCOUNT’S DEPARTMENT STATISTICAL DIGEST

	2017	2018	% change 2017 to 2018
<b>Enforcement</b>			
<b>Fines imposed and amounts collected</b>			
Number imposed	1,148	1,622	41%
Value of fines imposed	-	£1,501,792	-
Amount collected	£652,895	£478,888	-27%
<b>Receipt of bail moneys</b>			
Persons bailed	276	459	66%
Money received	£76,463	£17,475	-77%
<b>Arrest Orders</b>			
Number of Arrest Orders	5,692	5,732	1%
<b>Service of Process</b>			
Service of Process	1,339	899	-33%
Value of fees collected	£35,560	£41,420	16%
<b>Costs</b>			
Number imposed	14	11	-21%
Value imposed	£31,500	£16,200	-49%
<b>Compensation Orders</b>			
Number imposed	93	46	-51%
Value imposed	£117,635	£34,823	-70%

	2017	2018	% change 2017 to 2018
<b>Judgments received and processed</b>			
Number lodged	1,742	3,582	106%
Amount collected	£785,029	£266,060	-66%
<b>Evictions</b>			
Number of evictions carried out	3	4	33%
<b>Maintenance Orders under enforcement</b>			
Number of Maintenance Orders under enforcement	35	63	80%
<b>Proceeds of Crime</b>			
<b>Non-Saisie Confiscation Orders</b>			
Local	19	12	-37%
External	0	0	-
Total	19	12	-37%
Approximate value of assets arrested	£121,394	£185,051	52%
<b>Proceeds of Crime - Saisies Judiciaires</b>			
<b>New cases (including Drug Trafficking)</b>			
Local	2	6	200%
External	2	0	-100%
Total	4	6	50%
Approximate value of assets arrested	£23,274,122	£1,809,577	-92%
<b>Confiscations (concluded cases): Proceeds of Crime</b>			
Number	5	7	40%
Value (net)	£193,391	£466,798	141%
Value (net)	\$0	\$7,500,000	-
Cases discharged	0	2	-
<b>Cases carried forward into following year</b>			
Local	14	9	-36%
External	23	11	-52%
Total	37	20	-46%
Approximate asset value	£59,558,422	£38,855,717	-35%
<b>Civil Asset Recovery</b>			
<b>New cases</b>			
Local	0	0	-
External	0	0	-
Total	0	0	-
Approximate value of assets arrested	£0	£0	-
<b>Confiscations (concluded cases): Civil Asset Recovery</b>			
Number	0	0	-
Value (net)	£0	£0	-
Cases discharged	0	0	-
<b>Cases carried forward into following year</b>			
Local	0	0	-



	2017	2018	% change 2017 to 2018
External	1	1	0%
Total	1	1	0%
Approximate asset value	£241,920,405	£257,946,623	7%
<b>Civil Proceedings Forfeiture of Assets</b>			
<b>New cases</b>			
Local	0	1	-
External	0	0	-
Total	0	1	-
Approximate value of assets arrested	£0	£90,797	-
<b>Assizes</b>			
Trial process started	30	19	-37%
Trials abandoned	18	13	-28%
Trials completed	16	5	-69%
Days	63	21	-67%
Juror exemptions	649	389	-40%
Jury summonses	1,703	867	-49%
Witnesses	181	108	-40%
Jurors given financial assistance	0	1	-
<b>Coroner</b>			
<b>Reported Deaths</b>			
Inquest cases	43	54	26%
Cleared after autopsy	52	59	13%
Cleared by doctor's cert etc	71	47	-34%
	166	160	-4%
Deaths reported as % of all registered deaths*	20%	19%	-5%
Approvals for doctor to issue cert (unreported)	86	122	42%
Permits for import/export of bodies	40	38	-5%
Exhumation	0	0	-
<b>Inquests Concluded**</b>			
Accident/misadventure	22	15	-32%
Drugs/alcohol	4	5	25%
Industrial disease	0	0	-
Lawful/unlawful killing	0	1	-
Natural causes	4	11	175%
Open	5	7	40%
Road traffic collision	2	2	0%
Stillbirth	0	0	-
Suicide	9	5	-44%
Total number of inquests held	46	46	0%
Inquest cases carried forward to following year	36	39	8%

\* Based on a total of 831 deaths registered in Jersey in 2018. Source: "Births, Deaths, Stillbirths, Marriages and Civil Partnerships registered in the 12 parishes of the Island of Jersey for the year 2018". <https://statesassembly.gov.je/assemblyreports/2019/r.21-2019.pdf>

\*\* The finding of an inquest in Jersey is given in a narrative form. However, for statistical purposes for the Annual Report, these findings are re-classified into the short-form conclusions used in England and Wales. The table above has been modified for this Annual Report to include all of the short-form conclusions in England and Wales which were revised by the coming into force of The Coroners (Inquest) Rules 2013.

	2017	2018	% change 2017 to 2018
<b>Désastre</b>			
Declared	4	3	-25%
<b>Discharges of personal bankrupts</b>			
Granted	1	2	100%
Deferred	0	0	-
<b>Sales of immovable property</b>			
Number of properties	1	0	-100%
Value	£1,807,500	£0	-100%
<b>Debt Remission Orders</b>			
Number of applications received	0	0	-
Orders granted	0	0	-
<b>Désastre Checks</b>			
Checks conducted	14,006	13,778	-2%
Charges invoiced	£236,755	£247,615	5%
<b>Remise de Biens applications</b>			
Applications received	3	0	-100%
Applications granted	1	0	-100%
<b>Article 49/Comity application</b>			
Applications granted	1	2	100%
Applications pending	0	1	-
<b>Request for assistance out of Jersey Court</b>			
Applications granted	2	0	-100%
<b>Curatorships</b>			
Appointments	6	4	-33%
Under administration at year end	24	22	-8%
<b>Other Functions of the Viscount</b>			
Attend sittings of the States	33	29	-12%
Bear Royal Mace and Seal on official occasions	11	9	-18%



The Departments of the Jersey Court Service:

Judicial Greffe, Royal Court House, St Helier, Jersey JE1 1JG  
Telephone: +44 (0) 1534 441300 Facsimile: +44 (0) 1534 441399  
Email: [jgreffe@gov.je](mailto:jgreffe@gov.je)

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Email: [viscount@gov.je](mailto:viscount@gov.je)

Websites: [www.gov.je/judicialgreffe](http://www.gov.je/judicialgreffe), [www.gov.je/viscount](http://www.gov.je/viscount), [www.jerseylaw.je](http://www.jerseylaw.je)

# Jersey Court Service

## Complaints handling procedure

### Our complaints handling policy

The Jersey Court Service, which comprises the Judicial Greffe and the Viscount's Department, is committed to providing an excellent service to all our customers. If something goes wrong, or if you are not happy with the service you have received from us, we would like you to tell us about it. This will help us to address your concerns and to improve our standards.

### How to make a complaint

If you have a concern or a complaint about the way in which we have dealt with your affairs, please contact us as soon as you are aware of the problem so this can be addressed. Our contact details are:

	<b>Elaine Millar Viscount</b>	<b>Paul Matthews Judicial Greffier</b>
Email	viscount@gov.je	jgreffe@gov.je
Telephone	01534 441400	01534 441300
Post	Morier House Halkett Place St Helier Jersey JE1 1DD	Royal Court House Royal Square St Helier Jersey JE1 1JG

If you wish, you can fill in a customer complaint form which can be obtained from our offices on request (please use the contact details above). If we need more information about your complaint, we may ask you to complete one of these forms.

### What will happen next?

1. We will always endeavour to resolve your complaint as soon as we can. However, if we need time to investigate your complaint, we will send you a letter acknowledging receipt of your complaint within three working days of your raising your concerns. We will send you a copy of this procedure so that you will know what to expect next. If we are aware that you have a disability

or have additional needs we will endeavour to contact you in a way that meets your needs.

2. We will investigate your complaint within five working days of receiving it. This will normally involve passing your complaint to the head of the Team about which you have complained (or to that person's line manager if your complaint is about the Team Head). The Team Head will investigate the circumstances relating to your complaint and speak to any relevant members of staff.
3. Depending on the nature of your complaint, the Team Head will either speak to you by telephone or will invite you to a meeting to discuss and, it is hoped, resolve your complaint.
4. Within three days of the telephone call or meeting, the Team Head will write to you to confirm what was discussed and any outcomes which have been agreed with you.
5. If you do not want or are unable to come to a meeting, or if it is not possible to deal with the matter by telephone, the Team Head will send you a detailed written reply to your complaint, including suggestions for resolving the matter, within ten working days of sending you the acknowledgement letter.
6. If you are still not satisfied, you should contact us again to explain why you remain unhappy with our response and we will review your comments. Depending on the nature of the matter, we may at this stage refer your complaint to another senior member of staff, to review the decision.
7. We will write to you within ten working days of receiving your request for a review, confirming our final position on your complaint and explaining our reasons.
8. If you are still not satisfied, we will advise you of the further steps that you can take.

If we have to change any of the timescales above in your particular case, for whatever reason, we will let you know and explain why.

## Jersey Court Service

### Customer complaint form

It is important to the Jersey Court Service to try and resolve complaints made by its customers. To help us to understand and investigate your complaint, please complete the form below. We aim to respond to your complaint within 5 working days of receiving your completed form.

#### Contact details

Title			
Surname		First name(s)	
Address including postcode			
Daytime telephone		Mobile telephone	
Email			

#### Information for the person reviewing your complaint

Member of Court Service staff involved in your complaint (if applicable)	
Case or matter reference (if applicable)	

#### Detail of the complaint

Please explain the nature of your complaint (please give dates, names of staff and all relevant information). Please continue on a separate sheet of paper if necessary.			
Please select as appropriate	I am happy for you to deal with my complaint in writing	<input type="checkbox"/>	
	I would like you to arrange a meeting to discuss my complaint	<input type="checkbox"/>	
	I would like you to telephone me to discuss my complaint	<input type="checkbox"/>	
	<b>Please state what your desired outcome is:</b>		
Your signature		Date	



# Jersey Court Service

## Complaints management checklist

The checklist below is a reminder for complaint handlers dealing with a complaint against the Jersey Court Service. It should be completed in all cases, so far as applicable.

	Completed	Date completed	Next action date
<b>1. Initial complainant contact</b>			
Start new complaints management checklist	<input type="checkbox"/>		
Acknowledge receipt of complaint within 3 working days (unless formal response to be sent within that time)	<input type="checkbox"/>		
Advise complainant who is considering their complaint	<input type="checkbox"/>		
Provide a timeframe for a response	<input type="checkbox"/>		
Provide internal complaints procedure	<input type="checkbox"/>		
Establish complainant's communication preferences	<input type="checkbox"/>		
<b>2. Investigate complaint</b>			
Identify and clarify all complaints raised	<input type="checkbox"/>		
Consider from complainant's point of view	<input type="checkbox"/>		
Discuss with relevant member of staff and their manager, if appropriate	<input type="checkbox"/>		
<b>3. Response to complainant</b>			
Respond in 10 working days	<input type="checkbox"/>		
Explain steps taken to investigate	<input type="checkbox"/>		
Demonstrate concerns have been considered	<input type="checkbox"/>		
Explain reasons for views held in respect of each complaint	<input type="checkbox"/>		
Apologise/offer remedy where appropriate	<input type="checkbox"/>		
Advise of availability of a review by another person in the Court Service	<input type="checkbox"/>		
<b>4. Complainant still not happy</b>			
Advise complainant of next steps (as advised by V/DV/JG/DJG) within 5 working days	<input type="checkbox"/>		





# Jersey Court Service

## Complaint register

Date complaint received			
Name of complainant			
Member(s) of staff involved			
Member of staff's supervisor			
Nature of complaint			
Date of start of investigation		Date of letter to client explaining process	
Location of letter on IT system			
Date of any meeting with client			
Outcome of investigation			
Date of letter to client at end of investigation			
Location of letter on IT system			
Is the complaint resolved?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Referral for a second review		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Brief overview of complaint and response			



# DISCIPLINARY POLICY



This policy is currently under review. This version should be used until further notice.

<b>Title</b>	Disciplinary
<b>Author</b>	Employment Relations
<b>Document</b>	Policy
<b>Effective Date</b>	01/07/2014
<b>Review Date</b>	01/07/2016
<b>Version</b>	1.2

This policy supersedes all previous policies, circulars and agreements connected with Equality & Diversity within the States of Jersey.

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Cases which solely involve allegations of Personal Misconduct against Medical Staff will be dealt with in accordance with this disciplinary procedure only after the procedure for investigating allegations of Personal Misconduct referred to in the States of Jersey Health and Social Services ***Policy for the Handling of Concerns and Disciplinary Procedures relating to the Conduct and Performance of Doctors and Dentists*** has been completed.



## 1 Policy statement for disciplinary

It is the policy of the States of Jersey to deal with all disciplinary matters promptly, fairly and consistently. Employees should maintain acceptable standards of job performance and behaviour. If they fail to do so, they will be managed under this Disciplinary Policy.

(The Capability Policy will apply when an employee, cannot maintain the performance standard expected of them.)

## 2 Policy aims

2.1 The purpose and aims of this policy are to:

- Provide clear guidance to managers and employees about the disciplinary procedure and how the associated investigation process should operate;
- Eliminate or reduce unacceptable behaviour and/or conduct;
- Ensure equality and consistency with regards to the management of breaches of the relevant codes of conduct applicable to the employee.

## 3 Key principles

3.1 A standard set of underpinning principles have been developed for this Policy and will apply to all States of Jersey Human Resources Policies, terms and condition of service. (See Policy Principles)

In addition the following principles also apply:

- No formal disciplinary action will be taken against an employee without a prior investigation (see glossary) and a hearing where appropriate
- No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct where the sanction may be dismissal without notice
- The employee may be accompanied or represented by a workplace colleague or a recognised Trade Union representative, at all stages of the procedure, including the investigation stage
- Legal Representatives are not recognised at any stage of this policy and associated procedure, save in exceptional circumstances relating to fitness to practice, which must be agreed with Employment Relations
- The procedure must be completed within a suitable timeframe and cannot be protracted due to a lack of availability of a person on either the Employer or employee side
- If the employee fails to attend a Disciplinary or Appeal Hearing, depending on the circumstances, the hearing may take place in their absence.

## 4 Links to other policies

4.1 Other policies and documentation to consider include:

- Code of Conduct (relevant to the employee)
- Capability
- Social Media: Email & Internet
- Conflict of Interest
- Dignity at Work

## 5 Who this policy applies to

5.1 This policy applies to the following at all times:

- Employees of the States of Jersey on permanent and non-permanent contracts of employment:

5.2 This policy does not apply to:

- Those employees subject to a separate disciplinary procedure, (e.g. Police)
- Workers who work for the States of Jersey through a contract for services on an interim, locum, self-employed or agency basis
- Voluntary staff or those on honorary contracts where there is no implied contract of employment
- Workers covered by Zero Hours Agreements.

## 6 Roles and responsibilities

6.1 **Employees** are responsible for:

- Complying with the relevant codes of conduct at all times;
- Maintaining confidentiality
- Acting in accordance with their terms and conditions and contract of employment at all times
- Carrying out their role to the expected and required standards
- Co-operating fully with any investigation held under this policy
- Attending meetings required
- Giving as much notice as possible if they or their representative are unable to attend meetings and be reasonable when alternatives are suggested
- Informing their Line Manager if they are involved or likely to be involved in any criminal proceedings (see glossary), as soon as they are aware
- Following the terms of any suspensions, or exclusion.

6.2 **Line Managers** are responsible for:

- Notifying the employee of any concerns relating to unsatisfactory conduct and/or behavior at the earliest opportunity
- Dealing with all disciplinary matters promptly, fairly and in the strictest of confidence
- Attempting to resolve minor issues informally
- Ensuring that appropriate disciplinary investigations are carried out;
- Informing HR of an formal disciplinary action
- Declaring any conflict of interest they may have when involved in any stage of the disciplinary process
- Maintaining confidentiality.

6.3 **Human Resources (HR)** are responsible for:

- Providing policy and procedural advice to Line Managers
- Being involved with all cases that are likely to result in gross misconduct and with earlier stages if requested by a Line Manager
- Informing the appropriate full time Union Officer or Head of the Association at the earliest possible opportunity where a recognised representative of a registered Trade Union or recognised staff representative body may be the subject of a disciplinary procedure

- Declaring any conflict of interest they may have when involved in any stage of the disciplinary process
- Maintaining confidentiality.

6.4 **Chief Officers (or their nominee)** are responsible for:

- Defining and providing clear standards of acceptable conduct and behaviour and ensuring employees are aware of the consequences of not complying with the relevant codes of conduct
- Ensuring that all disciplinary matters and associated procedures within their department are handled in accordance with this policy and 'Best Practice
- In liaison with HR, sanctioning the suspension or temporary redeployment of an employee from duty, where appropriate.

## 7 Unacceptable behaviour

This is considered to be anything outside the boundaries of the Code of Conduct relevant to their post which has adverse impact on other individuals, reputation or delivery of services.

7.1 Examples of behaviour which may be considered as either misconduct or gross misconduct are given in the Managers Guidelines covering disciplinary matters.

## 7 Investigation (See Glossary and Investigation Guidelines)

8.1 Criminal offences or charges are not automatic reasons for taking disciplinary action. Human Resources, in accordance with the States of Jersey Memorandum of Understanding Agreement will advise in potential criminal cases before proceeding with an investigation into a disciplinary matter and before any disciplinary action is contemplated.

This will determine whether the charge/offence is relevant to the person's employment and sufficiently serious to warrant investigation and action under this policy.

8.2 Subject to 10.2.1 below, before any formal disciplinary action is taken, an investigation will be promptly undertaken by management to establish the facts of the situation, taking into account relevant witness statements, associated documentation, and relevant States of Jersey Codes of Conduct, policies and procedures.

8.3 The length and depth of the investigation (determined by management), will be dependent upon the gravity and complexity of the allegation.

8.4 The employee should be kept regularly advised of the progress of the investigation.

8.5 Subject to 8.1 above, a disciplinary investigation may run in parallel to an external and/or criminal investigation. In these circumstances, other professional bodies may become involved. Care should be taken not to prejudice any criminal investigation and the officer responsible for a criminal investigation should be consulted prior to a disciplinary investigation.

## 9 Suspension (See Suspension Review Panel Code of Practice)

9.1 The States of Jersey reserves the right to suspend or redeploy an employee during any stage of the disciplinary procedure (although it is recognised that this normally precedes disciplinary action). Suspension is in itself a neutral act, does not constitute or imply guilt on the part of the employee and will be kept to a minimum.

9.2 Suspension may be appropriate:

- Where the employee is accused of gross misconduct, and in addition the following should be taken into consideration
- When it is necessary to allow a thorough investigation to be carried out
- Where there are potential risks to the employee, other employees, service users or the public.

9.3 Whilst suspended an employee will receive full pay and allowances, excluding non-contractual overtime. Annual Leave will continue to accrue during the period of suspension.

For conditions applicable to suspensions, refer to Suspensions Code of Practice.

9.4 Suspensions will be kept under regular review.

## 10 Outcome following disciplinary action

### 10.1 Informal Action and Outcome

10.1.2 In certain circumstances, breaches of the expected standards of work or behaviour are able to be dealt with informally at the discretion of the Line Manager. This should be managed at the earliest opportunity in a private one-to-one meeting, between the employee and Line Manager.

Informal action should not be confused with management of day to day issues.

A note should be made of the meeting, to include a brief summary of the outcome and details of any actions agreed; a copy should be given to the employee for their own records and the original should be placed on the employee's personal file.

10.1.3 The outcomes of informal action could be either one of the following:

OUTCOME	SANCTION
No action, where there is no case to answer	There is no sanction imposed.
Informal warning	Valid for 6 months, except in instances of safeguarding, where this remains indefinitely.

### 10.2 Formal Action and Outcome

10.2.1 An employee must be notified prior to being investigated and advised of any allegation made against them.

- 10.2.2 Formal action should be taken where the allegation is more serious (see glossary), or informal action has not brought about a significant or sustained improvement.
- 10.2.3 At least 10 working days (see glossary) notice must be given in writing to an employee prior to a Disciplinary Hearing. Where appropriate, both parties can agree to move the Hearing forward to an earlier date.

The notification should include the following:

- The allegation against them
- Whether the Hearing could result in dismissal
- Their right to representation.

**(See Formal Hearing and Appeal Procedure)**

- 10.2.4 The Disciplinary Hearing should be chaired by a Manager (determined by the Employer) appropriate to the severity of the allegation who should not have had any prior involvement in the investigation.
- 10.2.5 The rationale for the outcome;
- Where applicable, the improvement required, with any relevant timescales;
  - Any further action that may be incurred if there is no satisfactory improvement or if further misconduct occurs;
  - Their right to appeal.
- 10.2.6 All disciplinary warnings will remain in force for a fixed period, as defined in the outcome letter sent to the employee following the Disciplinary Hearing.
- 10.2.7 All records of Disciplinary Hearings, decisions and warnings will be kept on the employee's personal file in accordance with Data Protection legislation.
- 10.2.8 All warnings will be applied with effect from the date of the hearing irrespective of whether an appeal is pending.
- 10.2.9 The outcomes of a Disciplinary Hearing could be any one of the following:

<b>OUTCOME</b>	<b>SANCTION</b>
No action, where there is no case to answer	There is no sanction imposed
Written warning	Valid for 9 months, except in instances of safeguarding, where this remains indefinitely.
Final written warning	Valid for 12 months except in instances of safeguarding, where this remains indefinitely.
Dismissal	The employee's contract is terminated with or without notice

**10.3 Dismissal**

- 10.3.1 In cases where the outcome is dismissal (except in the case of gross misconduct) the employee will be paid in lieu of notice, at the rate of pay being paid at the date that notice is given, irrespective of whether an appeal is pending.
- 10.3.2 Dismissal following cumulative warnings will be normally with pay in lieu of notice.
- 10.3.3 Employees dismissed with pay in lieu of notice will not be required to work their notice.



- 10.3.4 In the case of gross misconduct, the employee will be dismissed with immediate effect and without notice, irrespective of whether an appeal is pending.
- 10.3.5 Criminal offences or charges are not automatic reasons for dismissal. The Line Manager together with HR should consider the facts and whether the charge or offence is relevant to the individual's employment.

## **11 Appeal (See Formal Hearing & Appeal Procedure)**

- 11.1 Employees have the right to:
- Appeal against all formal stages of the disciplinary process
  - Appear personally in front of an Appeal Hearing, either alone or accompanied by a recognised Trade Union representative or workplace colleague.
- 11.2 The appeal should be heard by the next level of management in terms of seniority to the Manager who conducted the original Disciplinary Hearing. In the case of dismissal, the appeal will be heard by their Chief Officer or their senior nominee.
- 11.3 An Appeal Panel may, in upholding an appeal, impose a lesser sanction.
- 11.4 An Appeal Panel cannot impose a greater sanction than that is being appealed against.
- 11.5 If an employee is reinstated following an appeal against dismissal, they will be reinstated from the date of dismissal and contractual pay will be restored taking into account any pay received in lieu of notice.
- 11.6 The decision of the Appeal Hearing is final.

## 12 Glossary (of Terms used in this Policy)

TERM	MEANING
<b>Gross Misconduct</b>	<p>Misconduct that is so serious that the bond of trust and confidence between employer and employee is completely broken or fundamentally breaches the contract of employment for example</p> <ul style="list-style-type: none"> <li>➤ Theft</li> <li>➤ Assault</li> <li>➤ Malicious or willful damage to property</li> <li>➤ Misuse of information</li> <li>➤ Breaches of the Data Protection Act</li> <li>➤ Bullying and harassment</li> </ul> <p>If established the employee maybe liable to summary dismissal for the first offence. <b>(see Disciplinary Rules)</b></p>
<b>Misconduct</b>	<p>Incidents that infringe rules and regulations, including unsatisfactory or irresponsible behaviour for example</p> <ul style="list-style-type: none"> <li>➤ Poor timekeeping</li> <li>➤ Misuse of Employer facilities</li> <li>➤ Failure to comply with departmental rules on clothing, safety or hygiene.</li> </ul> <p>These are generally not serious enough to warrant dismissal for a first offence. <b>(see Disciplinary Rules)</b></p>
<b>Codes of Conduct</b>	<p>Set out the standards of performance and behaviour at work. This includes:</p> <ul style="list-style-type: none"> <li>➤ The States Code of Conduct applicable to all public sector employees; and</li> <li>➤ Professional Codes of Conduct applicable to relevant professions.</li> </ul>
<b>Investigation</b>	<p>An exercise to establish the objective facts about an allegation or allegations. This may be a straightforward exercise to confirm facts which may not necessarily require an ACAS trained investigator. A more detailed investigation may be appropriate where, depending on the circumstances, the allegation(s) may be potentially more severe and complex.</p>
<b>Working days</b>	<p>Monday to Friday 9:00 am until 5:00pm, excluding Bank or Public holidays.</p>
<b>Workplace colleague</b>	<p>Normally someone you work with in the same area or department and this may not be a friend or relative. Lawyers are not permitted, save in exceptional circumstances relating to fitness to</p>

	practice, which must be agreed with Employment Relations.
<b>Serious disciplinary allegation</b>	An allegation or cumulative repeated minor allegations which cannot be resolved informally.
<b>Criminal Proceedings</b>	Any action being taken against an individual by the Police or Honorary Police
<b>Safeguarding</b>	Both for adults and children, means protecting them from harm. In relation to children, this may include preventing impairment of children's health or development; ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and taking action to enable all children to have the best life chances. In relation to adults, their circumstances may be such that they may be deemed to be 'at risk' of abuse or neglect and to require safeguarding from that risk. For example, adults requiring extra support, because of frailty, a learning disability, physical disability, sensory impairment or mental health problem which makes them unable to protect themselves against harm and abuse, may need to be safeguarded.



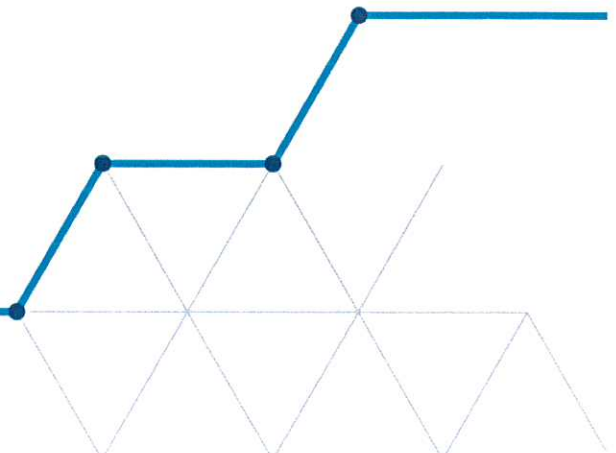
Ministry  
of Justice

# HM Courts & Tribunals Service

## Citizen User Experience Research

HMCTS Customer Insight Team  
2018

Protecting and advancing the principles of justice



## Disclaimer

The views expressed are those of the authors and are not necessarily shared by the Ministry of Justice (nor do they represent Government policy).

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This research was carried out by Kantar Public, on behalf of HM Courts & Tribunals Service. This report presents findings from an extensive piece of research with courts and tribunals' users to understand their needs and experiences so that we can improve our service where it matters most.

## **The authors**

This report was written by Kantar Public, with the support of staff from HM Courts & Tribunals.

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# 1. Summary

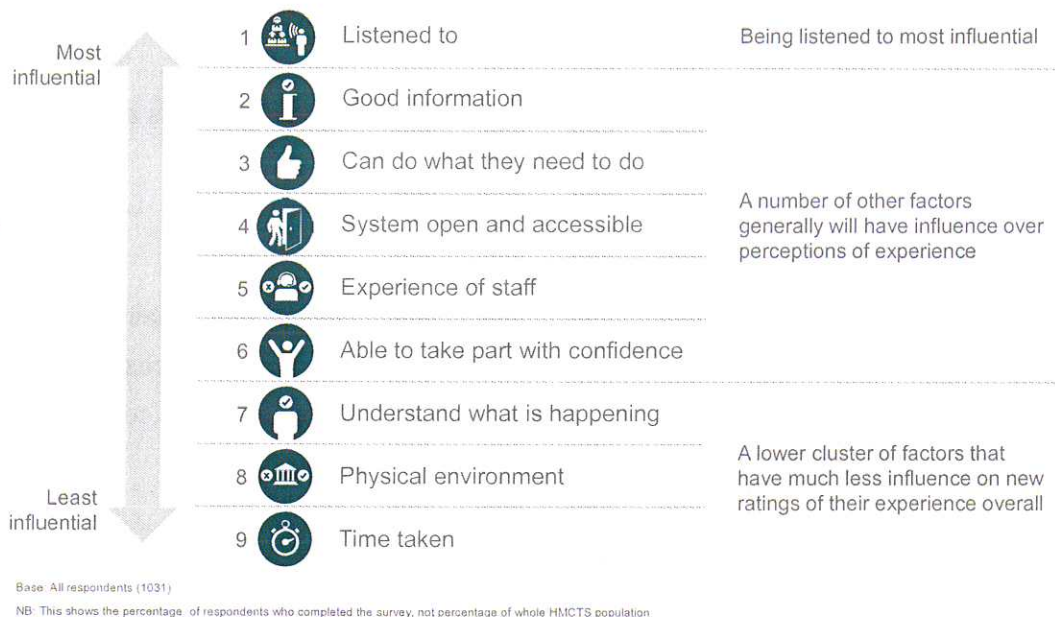
HM Courts & Tribunals Service (HMCTS) is responsible for the administration of criminal, civil and family courts and tribunals in England and Wales. HMCTS is an executive agency of the Ministry of Justice.

Kantar Public was commissioned by HM Courts and Tribunals Service to carry out research among court and tribunal users (citizen users) to understand their experiences and needs when accessing HMCTS services. The research was carried out between January 2017 and October 2017. Qualitative research (48 in-depth interviews and 8 follow-up focus groups) was conducted with HMCTS users to explore experiences and expectations of the courts and tribunals system in depth. A survey of 1,031 courts and tribunals service users was then conducted to quantify user experiences overall and by the four jurisdictions: criminal, family, civil, and tribunal. The key findings are:

- The qualitative research found that the key user need was increasing the visibility of the processes and stages in the user journey which can be achieved by providing the right information in a timely manner. Having sight of the whole journey and having information on progress, as well as information on what to expect was an important factor in perceptions of experience across all jurisdictions and at all stages of the user journey.
- Users in general expected the process of going through the courts and tribunals system to be emotionally difficult, formal, but fair. Those whose experience was better than or broadly in line with their expectations were more likely to rate their experience as good.
- The qualitative work found that users gained their expectations from a number of different sources; some directly related to the courts and tribunals system, like previous direct experience of friends and family, and some from wider sources, such as TV or internet searches. These sources also ranged in how realistic they were in informing expectations.

- The quantitative research found that just under three quarters of users interviewed said they trusted HMCTS to administer the justice system (73%); similarly, just over three quarters of users felt that they were treated with respect by HMCTS (77%).
- Key driver analysis was used to explore how different factors (drivers), influence user experience. Three clusters of factors were found to have an impact on users' overall rating of their experience. The most important factor was being listened to, which was found to be more than twice as influential on overall rating of experience than the other factors. There was some variation between jurisdictions, but being listened to was the most influential driver throughout.

**Figure 1: Key driver analysis model**



- To test the importance of satisfaction with outcome of their case in shaping overall perceptions of user experience, the key driver modelling was repeated with outcome added alongside the original 9 elements shown above. In this scenario satisfaction with outcome appears as the second most influential factor, still behind being listened to.
- Over half of users rated their experience as good (54%) and just fewer than 3 in 10 rated their experience as poor (28%). Users were most likely to say they understood what was happening (84%), and for each of the other drivers of experience, results are generally positive overall.



## 2. Research aims and methodology

### 2.1 Aims

The research aims were to understand:

1. What are the fundamental factors that drive user experience and satisfaction?
2. How these fundamental factors manifest themselves and/or vary across different circumstances, journeys, stages and user types?
3. Which of these factors most influence users' levels of trust and confidence in the way that the justice system is administered?
4. For those users, whose journeys reached a court or tribunal hearing, what influenced the decisions that took them that far?
5. What are the needs and expectations of users who use the services and settings outlined above?
6. Which aspects of their experience do users value most highly, across all jurisdictions and user types?

### 2.2 Methodology

The research was carried out between January 2017 and October 2017. Qualitative research was conducted with HMCTS citizen users in early 2017 to explore experiences and expectations of the courts and tribunals system in depth. A survey was then conducted to quantify these user experiences overall and by the four jurisdictions.

The qualitative stage involved 48 in-depth interviews and 8 follow-up focus groups. Interviews focussed on participants' expectations, journey, experiences, and perceptions of the courts and tribunals system. The follow-up groups allowed participants to share their experiences, discuss what is most important to them and to generate improvements. The qualitative stage provided a depth of understanding of user experiences and what matters, and helped shape the survey content.

The survey sample was generated from a nationally representative general population survey<sup>1</sup>. Fieldwork ran from February to July 2017, with a screening question used to identify individuals who had some experience of the courts and tribunals system within the last 5 years. Due to the low incidence of the target population (<5% of the general population), the

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<sup>1</sup> The Kantar TNS face-to-face omnibus

survey was run over several waves to identify users. Some groups were excluded: immigration tribunals, criminal defendants, jurors, high court cases and restraining order or Domestic Violence Protection Order cases. Those who work in the courts system or attended court in a professional capacity were also excluded.

Overall, 1,031 users took part in the survey, 334 involved in criminal cases, 205 in civil cases, 194 in tribunal cases, and 286 involved in family cases. The survey results provide insights into the experiences of courts and tribunals users, including at jurisdiction level.<sup>2</sup> Where percentages are shown, these represent the proportion of respondents who completed the survey, not the percentage of the whole HMCTS population.

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<sup>2</sup> Survey results do not provide service use figures, and due to exclusions and data being unweighted, the results are not wholly representative of the entire courts and tribunals system.



### 3. User expectations

Survey participants were asked to rate, on a scale of 0 to 5, their expectations of six elements before they went through the courts and tribunals system.<sup>3</sup> The elements included how:

- Formal /informal they expected the process to be
- Fair /unfair they expected it to be
- Easy /difficult to understand they expected it to be
- Affordable /unaffordable they expected it to be
- Fast /slow they expected it to be
- Emotionally easy /difficult they expected it to be

Users in general expected the process to be emotionally difficult and formal, but fair. Table 1 below presents mean scores for ratings on the 0 to 5 scale across all six elements.

**Table 1: User expectations - survey results (mean score)**

	User expectations
Formal – informal	1.4
Fair – unfair	1.7
Easy to understand – difficult to understand	2.1
Affordable – unaffordable	2.2
Fast – slow	2.9
Emotionally easy – emotionally difficult	3.3

*Base: (1,031) All respondents who have experience of the Courts and Tribunals Service in the past five years*

As well as asking about expectations, the survey also asked users about how their actual experience compared to what they had expected beforehand. The general pattern of results showed that those who were positive in their expectations<sup>4</sup> were more likely to say their experience was broadly as they expected. Those whose experience was better than or broadly in line with their expectations were more likely to rate their experience as good. This was consistent across all six elements.

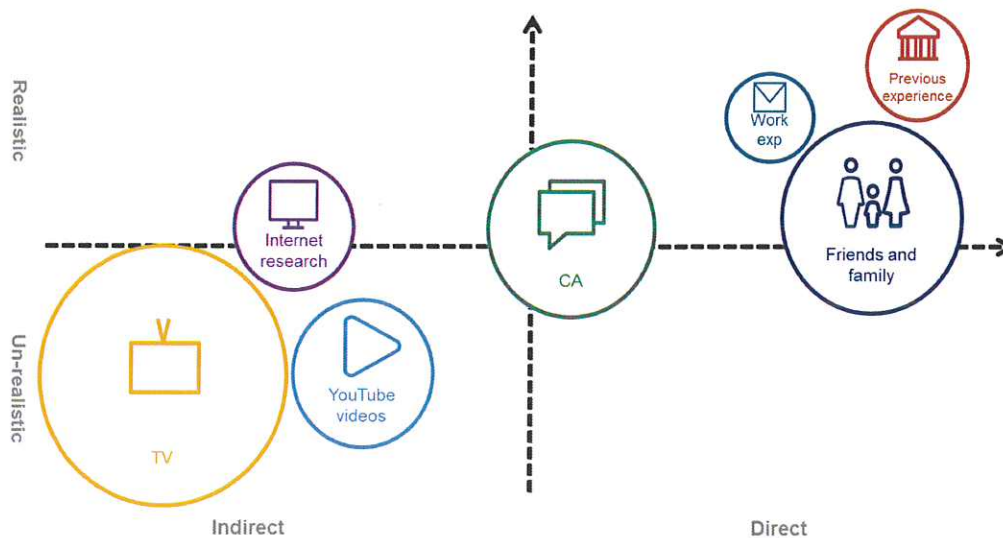
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<sup>3</sup> For affordability this excluded criminal cases.

<sup>4</sup> For formality and speed a positive and negative position is harder to define

The qualitative work found that users gained their expectations from a number of different sources, some directly related to the courts and tribunals system. Like previous direct experience of friends and family, and some from wider sources, such as TV or internet searches. These sources also ranged in how realistic they were in informing expectations.

**Figure 2: Expectation sources - qualitative findings**



The qualitative findings showed that, in most cases, users' expectations were focused intensely on the outcome of the case, but generally not knowing what to expect intensified anxiety about the process. This can be exacerbated by a lack of realistic expectations, meaning users can anticipate entering an alien environment, have fears of an unknown process, and uncertainty about expectations on them. It may also lead to concerns about how they will be treated by staff (and judges /magistrates). Expectations of the physical environment can also heighten anxieties.

*"I was worried about knowing what to expect when going in, who would be sitting in front of you and how many people would be in the room." (Family, Newcastle, Respondent)*

*"I don't know if I watch too much TV but, I thought gosh, it'll be this huge courtroom, there'll be a judge, I'll have to prepare notes on why I was behind on my rent and stuff. So, I really thought I'd have to go in there and stand and defend myself and the council on the other side." (Civil, London, Defendant)*

## 4. What drives the user experience?

The overarching question the research sought to address was what factors drive user experience. The survey was designed to measure experiences of a range of elements of the journey through the courts and tribunals system. To better understand what influences users' overall rating of their experience a statistical technique called key driver analysis was conducted.

In the remainder of this section we first explore results for how good or poor users rate their overall experience, before examining the key driver model and which elements of experience most influence perceptions overall.

### 4.1 Overall rating of experience

Over half of users rated their experience as good (54%), split fairly evenly between those who said it was very good and those who said it was fairly good. Just fewer than 3 in 10 rated their experience as poor (28%).

**Table 2: Overall rating of experience**

	%
Very good	26%
Fairly good	29%
Neither good nor poor	16%
Fairly poor	12%
Very poor	16%

*Base: (1,031) All respondents who have experience of the Courts and Tribunals Service in the past*

## 4.2 What drives experience?

A statistical technique called key driver analysis was carried out to explore how different factors influence user experience. The elements included in the analysis that factored into the overall user experience were:

- Being listened to
- Having good information
- The physical environment
- Experiences of staff
- The system being open and accessible
- Being able to take part with confidence
- Understanding what is happening
- Users can do what they needed to do
- The time taken

The analysis provides a relative weighting to each explanatory variable (driver).

As part of this we also tested the impact of the case outcome to determine how important case outcome was in shaping perceptions of experience.



## The model

Three clusters of factors were found to have an impact on users rating of their experience. The most important factor is being listened to. This is more than twice as influential on overall rating of experience than the other factors.

**Figure 3: Key driver analysis model**



Although being listened to was the most important element influencing overall ratings of experience, other elements were also influential in shaping perceptions of experience. These include having information that is good enough, elements related to being able to participate well, and staff. Understanding what is happening, the physical environment (e.g. court buildings and facilities), and the time taken had much weaker influence on overall ratings of experience.

## The role of satisfaction with outcome

Users were also asked how satisfied they were with the outcomes of their case. Overall, 61% of users were satisfied, with 29% saying they were dissatisfied and 10% saying they were neither satisfied nor dissatisfied with the outcome of their case.

Although survey participants were asked not to consider their case outcome when providing their overall rating of experience, case outcome may still have some influence. To test this, satisfaction with outcome was added into the modelling as a second stage to identify its

relative influence against the other elements. Once added into the model, satisfaction with outcome appears as the second most influential factor. This suggests that outcome does not explain the remaining influence on the rating of experience but may be a factor for some users.

### **4.3 Individual element results**

#### **Being listened to**

In the user survey, 60% of participants agreed that they felt listened to by the Courts and Tribunals system, with 36% saying they strongly agreed, and 24% saying they somewhat agreed. Being listened to has two elements to it. There is the literal interpretation which requires staff to be more responsive more available and more empathetic and then there is the conceptual interpretation which is about users feeling they have had the opportunity to present the best of themselves and get a fair outcome

Being listened to correlates with some elements more strongly than others. In particular, the elements related to participating in the process well – accessibility, being able to do what you feel is needed, taking part with confidence, and having good information. The strength of the relationship between perceptions of being listened to and other elements is weaker for experience of staff, understanding what is happening, physical environment, and time taken.

#### **Good information**

Just less than two thirds of users agreed the information they received was good enough (63%; 32% strongly agreed, 31% somewhat agreed), split evenly between those who strongly agreed and somewhat agreed. The qualitative findings suggest that users found the information from HMCTS lacking', apart from confirmation of hearing dates in the post, and received information they needed elsewhere through intermediaries or online research.

The most common form of information received from HMCTS was specifically about the individuals' case (46% of users had received that type of information), and least likely to be information about organisations who could help (16%). However, a quarter of users didn't receive any type of information (or at least do not recall receiving any from HMCTS). For each of the specific types of information, those receiving it were likely to say they found it helpful – around three quarters or more (73% - 81%).

**Table 3: Types of information received and whether helpful**

<b>Type of information</b>	<b>Whether received information</b>	<b>Whether found information helpful</b>
Information specifically about my case	46%	73%
Information about the courts and tribunals process	30%	81%
Information about what to expect at a hearing	24%	76%
Information about other organisations who could help	16%	80%
None of the above	26%	-

*Base: (1,031) All respondents; (base range from 169 to 473) those who received information from HMCTS*

The qualitative research found that the main user need across the whole journey was increasing visibility of the process, which can be achieved through high quality, targeted and timely information provision. Having sight of the whole journey and having information on progress and what to expect was an important factor in perceptions of experience across all jurisdictions and at all stages of the user journey.

Nearly three quarters of users felt well informed about what would happen in advance of attending a court/tribunal hearing (72%) and just over three quarters felt they were kept well informed about what was happening while they were in court /tribunal hearing (77%).

Three quarters of users say they would know where to get information from (76%). Users were most likely to want information about their case, what to expect in a hearing, and legal advice. When asked, 42% of users said they didn't need information, advice or guidance from HMCTS.



**Table 4: Information preferences**

<b>What information, advice or guidance would users like from HMCTS</b>	<b>%</b>
Information specifically about my case	25%
Legal advice	21%
Information about what to expect at a hearing	18%
Information about other organisations who could help	17%
Information about the courts and tribunals process	17%
Other	4%
None of the above	42%

*Base: (1,031) All respondents who have experience of the Courts and Tribunals Service in the past*

### Can do what they need to do

Two thirds of users agreed they could do what they needed to do (65%; 37% strongly agreed, 29% somewhat agreed). Qualitative findings suggest that some users lacked clarity on what they needed to do, particularly around progression of the case, when and what they should be submitting as evidence, and what they should be doing on the day of the hearing e.g. protocols, etiquette, process.

### System open and accessible

Two thirds of users agreed the courts and tribunals system was open and accessible (65%; 36% strongly agreed, 29% somewhat agreed). The qualitative research indicated that HMCTS correspondence and materials used legal jargon which can be difficult for users to understand, particularly for those with disabilities, so there was a reliance on liaison groups and solicitors to explain and provide information. Some users did not feel like their needs were taken into account at scheduling, such as disabilities or illnesses.

### Experience of staff

Users predominately have contact with HMCTS through the post (53%). For those who had spoken to HMCTS over the phone, the survey asked them to rate their experience of the staff they spoke to; 78% rated that experience as good. The survey also asked those who had attended a court or tribunal building (not necessarily a hearing) to rate their experience of staff; 90% felt they were treated very or quite fairly by staff. Just over three quarters (78%) of those who spoke to HMCTS on the phone rated their experience as good with the member of staff they spoke to; 90% of users who attended a Courts and Tribunals Service building or hearing felt treated very or quite fairly by staff.

**Table 5: Experience of staff**

Method of contact	%
By letter /post	53%
By telephone /helpline	24%
In person	22%
By email /via website	14%
None of the above	22%

*Base: (1,031) All respondents; (243) those who had contact by telephone; (776) those who attended a Courts and Tribunals hearing or building in person*

While users predominately have contact with HMCTS by post, staff interactions played a role in overall user experience and wider impressions of HMCTS. Users who had a good experience with staff on the telephone were also more likely to have trust in HMCTS to administer the justice system compared to users who had a poor experience (83% vs 26%). They were also more likely to have felt treated with respect (88% vs 44%).

Users who felt fairly treated by staff were more likely to have trust in HMCTS to administer the justice system (77% vs 19%) and to have felt treated with respect (87% vs 25%).

The qualitative findings suggest that when staff outside the courtroom were warm and friendly, it helped to put users at ease. Some users felt court staff could be doing more to put people at ease, to provide reassurance and manage expectations about timings.

### **Able to take part with confidence**

Two thirds of users agreed they were able to take part with confidence (65%; 36% strongly, 28% somewhat), but they wanted the court 'demystified' in advance, for example, advance information on court layout and people that would be present. Users in civil, family, and tribunal cases suggested pre-trial visits, but where pre-trial visits weren't practical, users suggested online videos to give a sense of the layout and feel.

### **Understand what is happening**

Over 4 in 5 users agreed they understood what was happening (84%). This splits out as 53% strongly and 32% somewhat agree. Users who received support and advice from HMCTS generally were more likely to agree they understood what was happening.

The qualitative findings suggested that during all stages of the process, particularly at the start of a case and while it was progressing, users found the process and language difficult. This meant that many sought guidance from solicitors, Citizens Advice and friends/ family to understand both the language used and process of the courts/ tribunal service.

## **Physical environment**

Three quarters of users attended a courts and tribunals building – and of these, 74% rated it as good (37% very good, 37% fairly good). The qualitative research showed many users expected the court room to be large, old, and formal. Users did not expect to sit in a waiting room with lots of people, and especially not with the other party. Dissatisfaction with the waiting areas was in many cases related to situations where participants felt unsafe, uncomfortable, and public, particularly when sitting with the other side of the case, which could be disconcerting and intimidating.

## **Time taken**

Half of users thought the time taken for their case was about right, versus 43% who said it was too slow, and 5% who said it was too fast. There were mixed feelings from the survey results about whether users expected the process to be slow or fast (slightly balanced more towards being slow). Participants in the qualitative research expected the process to take a long time, expecting hearings to be long, requiring several breaks and restarts.

The length of time a case takes can be a source of anxiety, particularly where users were unaware of progress made and there was a lack of visibility of the process at the outset. There also appears to be a link between unmet expectations and rating of experience: 75% of those who thought the time taken for their case to progress was worse than expected thought the process was too slow.



## **5. Trust and respect**

### **5.1 Trust in HMCTS to administer the justice system**

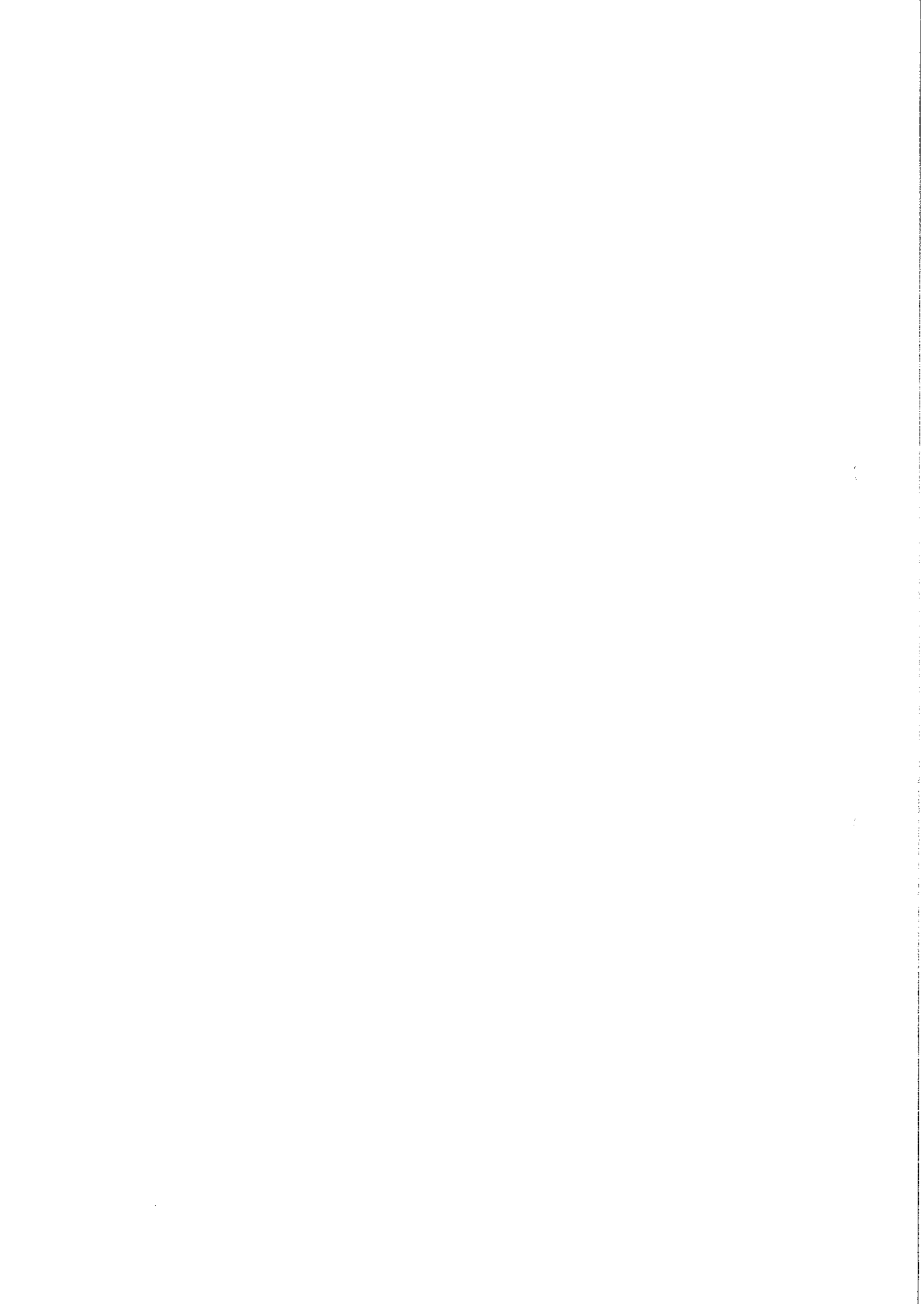
Three quarters of users trust HMCTS to administer the justice system (73%; 32% to a great extent, 41% to some extent). Users who had a good experience were more likely to trust HMCTS than those who'd had a bad experience (91% vs 34%). Users who were also satisfied with the outcome of their case were significantly more likely to trust HMCTS than those who were dissatisfied (92% vs 38%).

### **5.2 Treated with respect by HMCTS**

Just over three quarters of users felt respected by HMCTS (77%; 52% strongly, 25% somewhat). Users who had a good experience were more likely to have felt treated with respect (93% vs 51%). Users who were satisfied with the outcome of their case were also more likely to have felt treated with respect (93% vs 56%).

## **6 Next steps**

By understanding the needs of citizen users, and the impact a case may have on their lives, HMCTS will be better placed to build user centred services and to ultimately help people to participate in justice services with confidence.





## Jersey Youth Justice Review



OCTOBER 2018



# **Jersey Youth Justice Review**

## **October 2018**

### **Jersey Youth Justice Review Steering Group**

This Report has been produced by the Jersey Youth Justice Review Steering Group.

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#### **External Reviewers**

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### **Acknowledgements**

We would like to thank everyone who has assisted the work of the Jersey Youth Justice Review. The Steering Group would in particular wish to thank Bridget Shaw, Magistrate. Although she did not play a part in co-authoring the Report, it is important to acknowledge that as a consultee she consistently provided clarification on a number of issues that relate to the Youth Court.

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References

## Executive Summary

### 1.0 Introduction:

1.2 The Terms of Reference of the Jersey Youth Justice Review are produced in full in 1.3 of the main Report. Three main points of reference guided the drafting of these Terms of Reference: the Independent Jersey Care Inquiry (2017), which recommended Jersey move towards a welfare-based model of youth justice; the ratification of the United Nations Convention on the Rights of the Child (1989); and the Report commissioned by the States of Jersey, *Youth Justice: Options for Change* (Evans *et al*, 2010). Underpinning the Work of the Review is a commitment to children’s human rights and a philosophy that treats young people in contact with the law as ‘children first and offenders second’. It recognises that children who break the law should be held to account along with those adults who have responsibility for them. In most cases this will include parents, family members and carers. However, it should also involve holding to account those responsible for delivering services to children in such areas as education, health, social services and leisure.

1.3 The 2018 Jersey Youth Justice Review established a Steering Group comprising key stakeholders in Jersey and two external consultants to assist with the work. The membership of that Steering Group can be found in Appendix 1. The terms of reference were drafted and agreed in April 2018 and in May 2018 the two external members of the Steering Group were appointed.

1.4 The terms of reference of the Review are very wide and – given the available resources, capacity and time constraints – ambitious. This Report does not pretend to be the product of a full evaluation or comprehensive research project. Nevertheless, the process, which has been informed by a rapid assessment approach, has not been without a measure of rigour. The Steering Group has received relevant data from key agencies, along with both published and draft policy documents and guidelines. There has also been engagement with stakeholders and key informants via meetings, email exchanges and telephone conversations. Initial findings were presented to, and tested with, a wider audience of stakeholders and key informants on 3<sup>rd</sup> September 2018. On the basis of that discussion a set of draft recommendations was presented to a meeting of the Steering Group on 21<sup>st</sup> September. On 19<sup>th</sup> October a draft Report was submitted for discussion at a meeting of the same group. The final Report is the end product of an iterative process.

1.5 This Executive Summary highlights the main findings and concludes with a full list of the recommendations.

2.0 **Prevention, Early Intervention and Diversion:**

2.1 A few preliminary points should be made about the nature of offending by children. Lawbreaking, usually at the less serious end of the spectrum, is widespread amongst young people and should be understood in terms of adolescent development, boundary-testing and experimentation. Most offending does not come to the attention of the criminal justice system and most young people 'grow out of crime' without any formal intervention. For those that are apprehended, the lightest brush with the criminal justice system is usually sufficient to deter them from further involvement in crime. However, prolonged and intensive exposure to the criminal justice system is likely to extend and entrench offending behaviour. There is merit, therefore, in diverting young people from the criminal justice system wherever possible. Those young people who persist in offending are more likely to have experienced problems and disadvantages in their lives. This can include problems in their families, the experience of trauma, mental health issues and the disadvantages that result from unequal access to opportunities. On the latter point it is worth noting that the adverse impact of social inequality on children is now being discussed openly in Jersey political discourse. This is welcomed by the Review because youth justice is not solely about addressing young people's offending behaviour. It is also concerned with ensuring that support and social justice are brought into the lives of young people who are at a disadvantage.

2.2 In line with its Rights-based approach, the Review considers it is important that all children have equal access to a set of universal social entitlements in such areas as education, health, accommodation, social services and leisure. When children come to the attention of the criminal justice system it is an opportunity to check on whether they are in the process of becoming detached from such provision and, where appropriate, reconnect. The Review is pleased to note that the direction of social policy development being undertaken by the States of Jersey is in alignment with the approach advocated in this Report. The challenge is now to translate such aspirations into practical service delivery by removing the barriers that exclude some young people from accessing the services and resources they need to lead fulfilled, law-abiding lives.

2.3 Those young people with more complex needs (who may also exhibit challenging behaviour), require a more targeted approach. A good example of this approach was evident in the multi-agency initiative, Operation Porter (2018), which worked with a small cohort of young people who presented a range of needs and challenging behaviours, including those at odds with the law. The results of this initiative are impressive.

- 2.4 The States Police are the gatekeepers of the criminal justice system. The 2010 Review reported that a somewhat confrontational style of policing was prevalent on the island. The 2018 Review is pleased to report that considerable progress has been made in the intervening period. There has been a welcome change to the way in which young people are policed and there is evidence of good partnership-working with other agencies, most notably the island's excellent Youth Service.
- 2.5 Most young people who are apprehended for their offending are dealt with by the Parish Hall Enquiry. This unique institution, based on voluntary community involvement, provides a distinctive and effective first tier of intervention and diversion from prosecution. It is a good example of local informal justice based on the principle that those who have broken the law should make amends and be reintegrated into the community. The 2010 Review recommended that the Parish Hall Enquiry would be enhanced if the probation service undertook preliminary assessments on young people due to appear, and advise the Centenier in advance. That recommendation was accepted and we are pleased to report that this practice is well-established and seems to be working well. The Parish Hall Enquiry has its critics, but there was consensus that this well-established institution should remain; not least because it works for most young people in terms of diverting them from prosecution and the adverse effects of criminalisation. The positive role of the Parish Hall Enquiry in reducing the flow of young people into the Youth Court should be acknowledged.
- 2.6 One way to divert more children from the formal criminal justice system is to raise the age of criminal responsibility from the comparatively low of age of 10 years. The main arguments for raising the age of criminal responsibility relate to recognising the developing maturity of children, their relative powerlessness and position of dependency on adults. One of the implications of raising the age of criminal responsibility is that young people currently entering the formal criminal justice system will need to be dealt with by children's services, education and health. It is entirely feasible to move to a welfare-based Scandinavian style administrative tribunal model or Children's Hearings system akin to that operating in Scotland. However, the Review judged that the alternative infrastructure required for a new model along these lines are not yet in place. Given that the age of criminal responsibility is scheduled to be reviewed in 2021, the Review recommends that the feasibility of introducing a non-criminal justice alternative model of dealing with offending behaviour be considered at the same time.
- 2.7 In the meantime it should be acknowledged that due to guidance on prosecution issued by the Attorney General, it is extremely rare for children below the age of 12 years to be prosecuted. Indeed, it is also very rare for those aged below 14 years to be prosecuted.

### 3.0 **The Courts and Statutory Supervision:**

3.1 The Youth Court is not the most child-friendly forum within which to deal with young people's offending, but the Review was impressed with the commitment of sentencers to engaging with children and their families. Serious efforts are made to make the Court a forum where problems are addressed. Although the Royal Court is inevitably a more formal and potentially intimidating environment, the Review was encouraged to have sight of a Draft Practice Direction that would – if implemented - improve the experience of children in this setting.

3.2 Commitment to the welfare principle in practice was in evidence in the Youth Court. The Review nevertheless believes that this commitment to the welfare principle should be enshrined in statute in line with Article 3 of the United Nations Convention on the Rights of the Child.

3.3 One of the issues that concerned the Youth Court in 2010 was how best to deal with persistent, as opposed to serious, offenders. The pressure to move vertically up the sentencing tariff has seemingly been resisted and each offence is considered on its own merits in line with a commitment to a horizontal sentencing approach. The 2018 Review did acknowledge, however, that the Youth Court has limited community sentencing options.

3.4 Custodial sentences appear to be in line with international conventions in the sense that they are used as a 'measure of last resort' for the most serious offences. Custodial sentences have dropped significantly since 2010. The constraints of suitable accommodation in the community does, however, mean that some young people are at risk of being remanded in custody.

3.5 The courts are well-served by the probation service. Personal Information Forms are completed for children being sent to the Youth Court by the Parish Hall Enquiry. The Social Enquiry Reports, meanwhile, are of a high standard.

3.6 Children on statutory orders are supervised by youth justice specialists working in the probation service. Assessment and supervision appear to be child-appropriate and of good quality.

### 4.0 **The Deprivation of Liberty and Related Issues**

4.1 As has been mentioned, custodial sentences appear to be used as a measure of last resort. This has led to a reduction in the number of children deprived of their liberty. This success has, however, created a problem of social isolation for that minority of young people who are deprived of their liberty.

4.2 At the time of the Review, for example, there was only one young person serving a custodial sentence.

The Review welcomes the fact that the Placements Panel places most children in Greenfields Secure Children's Home rather than at La Moye Prison.

4.3 Review is concerned that education and training opportunities are limited while children are serving custodial sentences.

4.4 The Review is concerned that it is still possible for girls to be placed with adult female prisoners. Although this is a rare occurrence, this is clearly in breach of international conventions.

4.5 As has been mentioned, there is an issue of securing appropriate accommodation in the community for young people. As a result they are placed at risk of being kept overnight in police custody and/or being remanded in custody. This is an issue that should be tackled as a matter of urgency.

1.0

### **Summary of Recommendations**

Summarised below are the recommendations of the Jersey Youth Justice Review

#### **General: Youth Justice Strategy**

1.1 There should be an understanding promoted across all relevant professional staff that the reasons children and young people present with challenging behaviour are many, complex and often interacting. As part of this, there should be an awareness that the most vulnerable and disadvantaged often present the greatest challenge and that evidence-based approaches are likely to have the greatest impact.

1.2 To develop a multi-agency youth justice strategy that addresses the rights and needs of children as perpetrators and victims within the existing children's human rights framework. This strategy should include a statement of clear aims. These aims should enshrine principles that protect and promote children's rights in the youth justice system. Accordingly it is recommended that consideration be given to the following aims:

1.2.1 The Youth Justice system should be compliant with international children's human rights conventions.

1.2.2 Welfare should be a primary consideration and young people should always be treated as children first and offenders second.

1.2.3



- 1.2.4 Whenever possible children should be diverted from the criminal justice system with the expectation that their needs will be met.
- 1.2.5 Young people in the youth justice system should have the same access to their rights and entitlements as any other young person.
- 1.2.6 Children in the youth justice system are kept safe at all times.
- 1.2.7 Children in the youth justice system should be seen and heard.
- 1.2.8 Children in the youth justice system should be dealt with in the least restrictive way possible and only deprived of their liberty as a measure of last resort.
- 1.2.9 Victims should be heard, their needs met, and - where appropriate - provided with the opportunity to share their views and take part in restorative processes.
- Services should be held to account for addressing the needs of young people.

### 1.3

Establish a strategic multi-agency Governance Board to oversee and drive through implementation of the Youth Justice Strategy. The Governance Board should develop an agreed set of outcomes and measures in order to evaluate performance, including independent academic evaluation and independent inspection arrangements (ideally, both should be used in order to establish methodological triangulation).

### 1.4

It is recommended that a 'value for money' exercise be undertaken in order to estimate the costs of the different stages and elements of the youth justice system (e.g., Parish Hall Enquiries, court appearances, secure accommodation, etc.). This work will inform the priorities set by the Youth Justice Strategy.

### 1.5

The Youth Justice Strategy should sit within a broader child and youth participation strategy. This should be proactive in seeking the views of children and young people in relation to all of the key agencies and processes of the youth justice system. Children's voices should also be represented in the main governance structures of the system in order that young people can feedback on existing provision and contribute to the planning of future service delivery.

### 1.6

The *Children and Young People's Plan and Pledge to Jersey's Children and Young People* should be complemented by a *Children's Charter of Rights* that are linked to tangible universal entitlements guaranteed by the States of Jersey. The launch of such a Charter should be accompanied by,

#### 1.6.1

a rolling programme of education and awareness-raising

#### 1.6.2

amongst children, families and all relevant professionals; and clear signposting to advice and advocacy services for children and their parents/carers.

1.7

The Youth Justice Strategy should sit within a well-developed Early Help model that ensures children's holistic needs are identified and responded to at the very earliest opportunity. As part of this, a whole system commitment should be made to ensure children access the right help at the right time, minimising the need for specialist and statutory services. A panel comprising relevant professionals from key agencies should be established to identify and support the small number of children who may have become detached from universal services, with presenting and interacting difficulties in the areas of school non-attendance, exclusion and offending. Support would be provided by a virtual team (the Children's Integrated Support Team), working to the principle of minimum sufficient, and real time intervention. The panel should sit within a broader strategic framework that ensures all agencies are held to account in discharging their responsibilities.

1.8

Building on existing good practice, a Restorative Justice Strategy for Jersey should be developed. It should include developing appropriate practice in the domains of community, education, public care, Parish Hall Enquiry and criminal justice.

Changes to the Law, Guidance and Legal Practice:

1.9

In line with Article 3 of the UNCRC 1989, which states that 'the best interests of the child shall be a primary consideration', the Criminal Justice (Young Offenders) (Jersey) Law 2014 should be amended to include an explicit reference to this welfare principle.

1.10

Consideration should be given to a revision of the relevant legislation so as to give further powers to the Youth Court to deal with trials and sentencing involving allegations against children below the age of 18.

1.11

Notwithstanding the welcome guidance of the Attorney General on the prosecution of children, it should be noted that Paragraph 78a of the UN Committee on the Rights of the Child Report (2016) to the United Kingdom of Great Britain and Northern Ireland\* states that there is need to 'Raise the age of criminal responsibility in accordance with acceptable international standards'). Given that the UN Committee on the Rights of the Child has also stated is that the age of criminal responsibility should be no lower than 12 years, it is recommended that these views are taken into full consideration in the review of the age of criminal responsibility that is scheduled to take place in 2021.

\*Which now covers the Bailiwick of Jersey in its reporting

1.12

Given that a review of the age of criminal responsibility is scheduled to take place in 2021 and the Independent Care Inquiry has requested that

consideration be given to developing a welfare-based system of youth justice, we would recommend that the two issues be considered together. The terms of reference of the 2021 review should be widened to include an exploration of how a move to raise the age of criminal responsibility could be supported by an appropriate, welfare-based model that protects children's rights via appropriate judicial oversight.

1.13

In line with Paragraph 78d of the Report by the UN Committee on the Rights of the Child (2016), the possibility of a child being detained in custody with adults should be removed completely (this remains possible in the case of girls in Jersey).

1.14

Currently, applications under Article 5 (5) of the Sex Offenders (J) Law 2010 (application to no longer be subject to notification requirements) have to be made to the court that set the notification period. Where a Youth Court set the period a person may not be eligible to apply until he or she is an adult. It may be inappropriate for an adult to apply to the Youth Court, but the Magistrates' Court would not, by law, be able to deal with the matter. Moreover, a Magistrates' Court hearing would be in public whereas the offender as a child would not have been identified in public. This legislative anomaly should be addressed.

1.15

Review and amend current legislation and guidance to increase the opportunities for temporary release (see Recommendation 24.1).

1.16

The principle of a horizontal sentencing framework should be upheld, but it is recognised that the courts have limited sentences available to them in the youth court. In the circumstances a reparative condition as part of a probation order, and as an alternative to a financial penalty, could be made available in appropriate cases.

1.17

Recommendation 78b of the UN Committee on the Rights of the Child (2016) states that 'diversion measures do not appear in children's records' and Council of Europe guidance that advises 'criminal records of children should be non-disclosable on reaching the age of majority' (apart from in cases where serious offences have been committed). It is therefore recommended that guidance is issued to ensure that, a clear Criminal Records and Enhanced Disclosure Policy in respect of children should be developed.

*Parish Hall Enquiries:*

1.18

There is consensus that the Parish Hall Enquiry System works well for most children and should be retained, but improvements and enhancements should be considered without undermining the unique ethos of community-based informalism that it represents.

1.18.1

It is recognised that, since the 2010 Report, the probation service has taken a more proactive role in supporting the Parish Hall Enquiry. Although this development represents a clear improvement in practice, this is an opportune moment to review whether this supporting role could be improved or possibly even involve agencies such as the youth service. A task and finish group should consider how children can be better prepared for, and supported through, the PHE process; and how Centeniers can be best informed and prepared ahead of a child appearing before the PHE.

1.18.2

When appropriate, consideration should be given to making greater use of restorative resolutions and explore whether this process should be supported by a victim advocacy scheme.

Courts:

1.19

Consideration should be given to how the Youth Court and Royal Court can make further progress towards being more child-friendly. An element of formality in proceedings is not necessarily to be removed completely, but in some cases a more informal and sensitive approach is appropriate. The courts would clearly benefit from receiving some information and guidance about children's capacity and disposition in advance of hearings. We therefore recommend that the probation service be tasked with engaging with courts in order to review how the appropriate information and guidance can be better communicated in advance of hearings.

1.20

Where an adult and a child below the age of 18 years appear in the Magistrates' Court, the Magistrates' Court should be permitted to modify its procedures.

1.21

Membership of the Youth Appeal Court should be widened to include a judge sitting with Jurats or former Youth Court Panel Members (provided the latter were up-to-date with their training).

1.22

As part of a wider commitment to inclusivity and widening participation, the current age restriction of 60 years should be lifted on Youth Court Panel members.

1.23

Custody:

Although there does not appear to be a problem with excessive or inappropriate custodial sentencing, there remains a risk of children being deprived of their liberty due to the unavailability of appropriate

1.24 accommodation. This can potentially result in children being held overnight in police custody and inappropriate custodial remands. As a matter of urgency we recommend that a Bail and Accommodation Strategy is developed to ensure children are not subject to the inappropriate deprivation of liberty in police custody and secure accommodation. A Task and Finish Group should be established to explore innovative ways of providing a continuum of appropriate, safe and secure accommodation that takes full account of issues related to welfare, mental health and criminogenic needs. This should include specialist foster care as well as suitable residential units. Urgent attention should also be given to how to address late requests for remand. Finally, the Task and Finish Group should revisit and review the appropriateness of whether the Youth Court should enjoy equivalent powers in respect of the Secure Accommodation Order as those available in Family Proceedings under Article 29 of the Children (Jersey) Law 2002.

The decline in the use of custodial sentencing since the Review in 2010 is to be welcomed, but this has resulted in the risk of social isolation for some children in Greenfields Secure Children's Home. It is therefore recommended that the walls of secure accommodation are more permeable in terms of developing a more integrated approach to the use of the facility. This could include,

- 1.24.1 Greater use of properly risk-assessed day release in order for children to partake of community resources such as education and training; and
- 1.24.2 Access to Greenfields being given to community-based agencies that work with young people.

Training:

1.25 All professionals and volunteers who have contact with children in the youth justice system should receive high quality and ongoing specialist training on working with young people. The content of the training should include (a) an understanding of how children's rights should be applied in practice; and (b) Adverse Childhood Experiences, child development, and trauma-informed practice so that children currently at risk of being perceived as non-compliant are not unnecessarily criminalised. Those included in the training should be the States Police, Honorary Police, sentencers, advocates, probation officers and restorative justice practitioners.

Diversity, Recruitment and Monitoring:

1.26 It should be the aim of every public service to reflect the community it serves in all its diversity. Accordingly consideration should be given to taking positive action to encourage applications from the widest possible

range of potential candidates to all of the key voluntary and professional roles in the youth justice system.

- 1.27 In order to address diversity issues it is important to undertake monitoring in relation to recording the ethnic profile of children across all of the key domains of service provision, including youth justice. It is only through undertaking such monitoring that disparities and patterns of over-representation can be identified with confidence.

Research:

- 1.28 It is acknowledged that research on Adverse Childhood Experiences is currently being undertaken and we would urge Jersey to continue its work in this area. In particular it is important to establish the prevalence of Adverse Childhood Experiences (and related issues) in the general population.

## Jersey Youth Justice Review: Main Report

Introduction:

- 1.0 The Youth Justice Review was established against the background of the
- 1.1 publication in July 2017 of the report of the Jersey Care Inquiry, chaired by Frances Oldham QC. Although the main focus of the Inquiry was not criminal justice, some children do have contact with criminal justice agencies and a few enter the youth justice system. A number of vulnerable children will have contact with both children's services and the criminal justice system. Accordingly, in recommendations 13.35 and 13.36 of the report (States of Jersey, 2017: 60-61) made the following observations in relation to children who have contact with the youth justice system.

'The Jersey youth justice system continues to be court based and, while some revisions to practice seem to have been made, **we recommend** that a thorough review be undertaken with a view to moving to a **welfare-based model** rather than a punitive one. We heard from witnesses that the *Criminal Justice (Young Offenders) (Jersey) Law 2014* should have a section inserted into it recognising that the welfare of children should be a primary consideration. We agree with this, but our view is that this, in itself, would not be sufficient unless the whole system were amended to centre on the welfare of the child. **We recommend**

that the Youth Justice System should consider how it can move to a model that always treats young offenders as children first and offenders second.

In our view, it is essential that those charged with dealing with children and young people in a judicial capacity should have a sound understanding of the needs of young people and of the issues that can impact on their lives. To that end, **we recommend** that a suitable programme of training be put in place for all those acting in a judicial capacity in the island, and that there should be a requirement for regular refresher training to ensure that all are kept briefed on the latest thinking and research on these matters.'

1.2

A Steering Group was duly established in order to assume responsibility for undertaking the Youth Justice Review. The membership of the Steering Group is detailed in Appendix 1. It is worth noting here, though, that the Steering Group decided to seek external support for the Review: Jonathan Evans of the University of South Wales and Dusty Kennedy of Youth Justice Board Cymru were appointed. Jonathan Evans was to be lead author of the Report. Nevertheless, it was made clear at the outset that the Review would be a joint enterprise and the Report would ultimately be co-authored by the Steering Group.

1.3

The Terms of Reference of the Youth Justice Review are set out below.

'In 2010, the Report – Youth Justice- Options for Change was commissioned in response to the growing political and public concern about whether Jersey was 'getting it right' in relation to how it deals with adolescent offenders and other young people in need.

The Report made a number of recommendations for change.

In 2017, the Independent Jersey Child Care Inquiry noted that the youth justice system in Jersey continued to be Court based. Whilst some revisions to practice had been made in developing youth justice systems during the three year lifetime of the Inquiry, it recommended an independent assessment of progress to inform subsequent priorities for service improvement, policy and legislative development to ensure that young offenders are always treated as children.

As a result, a Steering Group has been established to take forward this recommendation and this review has been established to examine:



- The nature and characteristics of offending by young people aged between 10 and 17 in Jersey and the arrangements in place to prevent it;
- How effectively the youth justice system and its partners operate in responding to offending by children and young people, preventing further offending, protecting the public and repairing the harm to victims and the community, and rehabilitating offenders; and
- Whether the leadership, governance, delivery structures and performance management of the youth justice system are effective in preventing offending and reoffending and whether they provide value for money.

The review will consider the efficiency and effectiveness of the youth justice system in preventing offending, identify effective practice and make recommendations for improvement.

In particular, the review should acknowledge the Independent Jersey Care Inquiry recommendations and consider:

- Progress made towards the recommendations made in the *Youth Justice: Options for Change Jersey Report* in 2010;
- The responsibilities of local services, including Children's Services, Health, Education, Housing, Police and other partners in preventing children and young people from offending ;
- The effectiveness of the partnerships;
- Responses to offending by children and young people, including the informal measures available through the Parish Hall Enquiry system and how they are used;
- The operation and effectiveness of the models of supervision and rehabilitation of young offenders in the community;
- The operation and effectiveness of the model for detaining young people who are remanded or sentenced to custody;
- The leadership and governance of youth justice arrangements in Jersey including the arrangements in place to monitor and improve performance;
- Relevant domestic and international research studies and literature on youth crime and youth justice systems.

The review shall consider the views of key stakeholders including young people and their families and guardians.'

1.4

An additional contextual factor that should be mentioned here is that through its status as a Crown Dependency, the ratification of the United Nations Convention on the Rights of the Child (UNCRC) (1989) has been extended to the Bailiwick of Jersey; a development welcomed by the United Nations Committee on the Rights of the Child (2016: 1). In practice this means that, like all States Parties, the States of Jersey will be held to account for its implementation of the UNCRC and related international conventions. Those conventions that bear directly on children in conflict with the law include the Beijing Rules, Riyadh Guidelines, Havana Rules, Tokyo Rules and Vienna Guidelines. Relevant articles on all of these United Nations conventions are cited in Appendix 2. It should be noted, moreover, that due regard should be given to the Council of Europe's guidelines on child-friendly justice (Council of Europe, 2010). The implementation of children's rights is properly regarded as a process rather than event, but progress can be measured by tangible indicators such as statutory instruments, codes of practice, guidelines and significant appointments. Accordingly, it is important to record here that an independent Children's Commissioner has been appointed in Jersey and currently there are discussions about how best to progress ratification of the UNCRC: whether by adopting a 'due regard' model or by embracing full incorporation.

1.5

Given the background and context described above, the Youth Justice Review's terms of reference are extremely wide and – given the available resources, capacity and time constraints – ambitious. It has therefore been necessary to sharpen the focus of the Review and identify those areas where more work is required. Exaggerated claims for the robustness of the methodology of the Review are not made and the limitations should be made explicit: this document is neither a full evaluation nor comprehensive research project. Nevertheless, it has received and reviewed relevant data from key agencies along with both published and draft policy documents and guidelines. There has also been engagement with stakeholders and key informants. It should be noted, however, that some people with whom we met shared their insights on a non-attributable basis. This means that it has sometimes been difficult to cite the evidential basis for some of our judgements. It is worth mentioning, however, that initial findings were presented to, and tested with, an audience of stakeholders and key informants on 3<sup>rd</sup> September 2018. On the basis of that discussion a set of draft recommendations were shared and discussed at a meeting of the Steering Group meeting on 21<sup>st</sup> September 2018. This process, although by no means perfect, has enabled the Steering Group to reach broad agreement on the findings and recommendations of the Review. A fuller

summary of the methodology used by the Review is provided in Appendix 3. It is acknowledged that there remain lacunae in our knowledge base and unanswered questions, but it is hoped this Report represents progress in understanding the nature of policy and practice in relation to children in conflict with the law in Jersey. It is also hoped the recommendations will assist progress on the most important issues.

1.6 The salient issues that arise from the recommendations of the Independent Care Inquiry, the Steering Committee's Terms of Reference and the implications of UNCRC can be distilled and framed in terms of the following questions:

- i. What progress has been made in implementing the recommendations of the *Youth Justice: Options for Change* Report (Evans *et al*, 2010) published in 2010?
- ii. How can youth justice move to a welfare-based model that treats young offenders as children first and offenders second?
- iii. What are the training implications for the judiciary and others who have contact with children in conflict with the law?
- iv. What is the nature of offending committed by children?
- v. How can offending by children be prevented?
- vi. How appropriate and effective are current responses to offending by children? In particular, how effective and appropriate are the following: (a) Parish Hall Enquiries; (b) models of supervision and rehabilitation in the community; and (c) remands and sentences to custody?
- vii. How effectively does the youth justice system work with its partners in preventing offending and re-offending by children? Do the present arrangements deliver value for money?
- viii. How effectively and appropriately is the harm experienced by victims addressed?
- ix. To what extent is current policy and practice compliant with relevant international conventions?
- x. To what extent do key messages from research inform policy and practice?

1.7 The above questions are addressed in the main body of the Report and its appendices, but are answered succinctly and explicitly in the conclusion of this Report. This Report makes reference to the Report, *Youth Justice in Jersey: Options for Change* (Evans *et al*, 2010) and reviews the extent to which progress has been made in the intervening period. It may be worth mentioning here that a journal article (Evans *et al*, 2015) on the progress made between 2010 and 2014 identifies some positive impacts made in this period as well as highlighting areas in which action had not been taken at that point. It should be noted, though, that the 2018 Review formed the impression there had been slippage and retrenchment in

certain areas since 2014. On the positive side, there have also been fresh initiatives and promising developments in recent years.

1.8 In terms of the Report's structure, Chapter 2 focuses on findings in respect of prevention, early intervention and diversion; Chapter 3 presents the Review's thoughts on Courts and statutory supervision; chapter 4 addresses custodial remand and sentencing issues; Chapter 5, as has been mentioned, summarises the answers to the key questions posed in Section 1.6; and Chapter 6 presents the recommendations.

### **Prevention, Early Intervention and Diversion**

2.0 This chapter explores the 2018 Review's findings on the areas of  
2.1 prevention, early intervention and diversion.

2.2 The prevention of crime is a laudable aim to which everyone should be committed, but it should be borne in mind that if self-report studies are to be believed, most people have committed offences at some point in their lives. The methodologically robust Edinburgh Youth Transitions and Crime Study (McAra, 2018; McAra and McVie, 2007a, 2007b, 2010, 2012, 2016), which included a self-report element, found that 96% of a cohort of 4,300 young people admitted to committing at least one offence between the ages of 11 and 24 years. Most of these offences would be categorised at the less serious end of the offence gravity continuum, but 11% could be considered serious. Most of the offending was committed at the ages of 14 and 15 years. By the age of 18 years 56% reported desisting from offending and by 24 this figure had risen to 90%. Most young people, it would appear, grow out of crime. However, it would be a mistake to locate the explanation solely in terms of child and adolescent development. Social factors and processes should also be included in any account of desistance (for a fuller account of desistance, please see Appendix 8). Four key themes emerge from the Edinburgh data:

- Persistent serious offending is associated with victimisation (e.g., abuse and neglect), acute vulnerability and social adversity.
- Early identification of 'at risk' children is not an exact science. It also poses the risk of labelling and stigmatisation (thus increasing the risk of reoffending and criminalisation).
- Pathways into and out of offending are facilitated or impeded by 'critical moments' and 'key decisions' made by practitioners and others (e.g., social workers, teachers and parents).
- Diversionary strategies facilitate the desistance process.

Poverty, where most adverse childhood experiences are concentrated, and contact with the criminal justice system are arguably the most important predictors of persistent serious offending (McAra, 2018). In societies characterised by high levels of social inequality, positive outcomes are more difficult to achieve (in terms of health, education, employment, involvement in the criminal justice system, etc.) for those belonging to lower socio-economic groups (Wilkinson and Pickett, 2010). Jersey, like the United Kingdom, is a society that is characterised by social inequalities; a fact that is now openly acknowledged and discussed by politicians on the island. The Review heard from professionals who were concerned about the impact of inequalities on young people in education and health. A recommendation that there should be a fundamental redistribution of wealth on the island would go well beyond the terms of reference of this Review. Nevertheless, if preventing youth crime – or at the very least reducing the risk of serious offending by young people – is a serious aim, the worst effects of social inequality should be mitigated by ensuring all children have access to the services, resources and rights that will enable them to fulfil their potential. This includes supporting families where parents or carers may be struggling (UNCRC 1918, Article 18:2-3). The UNCRC 1989 represents a Human Rights framework that recognises four main categories of rights: survival rights (inherent right to life, food, healthcare, etc.); development rights (education, access to the arts, cultural rights, etc.); protection rights (protection from sexual exploitation, right to a fair trial rights, etc.); and participation rights (right to freedom of expression, freedom of association and assembly, access to information, etc.). The challenge for all States Parties is to translate those rights into tangible universal entitlements that young people and their families can access. The ten universal entitlements in Welsh Youth Policy are set out below as just one example of how this might be achieved (National Assembly for Wales, 2000):

- i. education, training and work experience – tailored to their needs;
- ii. basic skills which open doors to a full life and promote social inclusion;
- iii. a wide and varied range of opportunities to participate in volunteering and active citizenship;
- iv. high quality, responsive and accessible services and facilities;
- v. independent, specialist careers advice and guidance and student support and counselling services;
- vi. personal support and advice where and when needed and in appropriate formats – with clear ground rules on confidentiality;
- vii. advice on health, housing benefits and other issues provided in accessible and welcoming settings;
- viii. recreational and social opportunities in a safe and accessible environment;

- ix. sporting, artistic, musical and outdoor experiences to develop talent, broaden horizons and promote a rounded perspective including both national and international contexts;
- x. and the right to be consulted, to participate in decision-making and to be heard, on all matters which concern them or have an impact on their lives.

2.4 Three points should be made in respect of the above list. Firstly, these entitlements needed to be translated into more specific packages, services and opportunities offered at local authority level. Secondly, it is not being suggested that these entitlements have necessarily been applied effectively or evenly across the whole of Wales. Finally, it should be acknowledged that there are probably examples of better child and youth policies in other countries. The important underpinning principle of this approach, however, is that children and young people are recognised as rights-bearers and citizens with entitlements. It is an approach that shifts the balance of power away from a paternalistic state to one where children can exercise their citizenship rights (no doubt, in most cases, with the assistance of parents, carers, professionals and advocacy services).

2.5 There is sometimes a tendency to neglect the social rights of children who have broken the law as they are perceived as less deserving. The Beijing Rules 1985 (Article 1.4) remind us that juvenile justice should be located within '...a comprehensive framework of social justice for all juveniles.' Youth justice is often seen solely in terms of responding to the wrongdoing of a young person. Youth justice certainly holds young people to account for their actions, but it is also concerned with wider issues of social justice in the child's life. Also called to account are adults who have responsibility for the child, which typically include parents and carers, but also those adults who should be providing services and support: teachers, social workers and health practitioners. Children's rights and the associated entitlements of citizenship are especially important for young people in conflict with the law because in many cases they are very often likely to be detached, or in the process of becoming detached, from those services and resources that can assist them: typically, these will be in such areas as education, training and health. When a young person commits an offence it is an opportunity to check that all of the entitlements are being accessed. This can not only enhance the prospects of rehabilitation and reintegration into the community, but also promote their health and well-being. More widely, though, entitlements checks can be a way of helping to address young people who are presenting problems other than offending or challenging behaviour. A young person who is not accessing primary healthcare at the local General Practitioner may be building up health problems for the future – physical, emotional or mental – that will be more difficult to



address if they become acute. The holistic, rights-based and non-stigmatising approach described here does not preclude in any way the more specialist and targeted services a minority of children require. This is certainly true of those young people who, for whatever reason, inflict harm on victims and pose a significant risk to the public. It is helpful to think about child and youth policies being organised around a tiered approach. The first tier of intervention assesses whether children simply need to be re-attached to services. The second tier requires a more targeted and specialist approach because of underlying complexities.

2.6 A good recent example of targeted intervention with a small cohort of young people assessed as being vulnerable and troublesome has been provided by the multi-agency project, Operation Porter, piloted in 2018. The nature of the project is summarised by Alison Fossey, Superintendent of Operational Policing at States of Jersey Police (Fossey, 2018: 1) below.

‘Operation Porter wasn’t intended to replace or undermine any existing arrangements in place to support these young people, but rather supplement and provide for some intensive, problem solving and dynamic joined up co-ordinated activity.

It was and continues to be a multi-agency initiative involving the States of Jersey Police, Jersey Youth Service, Jersey Sport, The Bosdet Foundation, Children’s Service, Education and Probation.

A targeted approach was developed which focused on a team around the school and a team around the community. The team around the school was led by Education and focused on getting the young people into school and engaging and keeping them there. The team around the community was led by Youth Service and centred around the move on café, 1:1 work, a range of group activities and working in hotspots to improve relationships with young people and their communities.

Op Porter sought to achieve the following outcomes for those vulnerable young people identified:

- improved school attendance,
- reduced school exclusions,
- reduced criminal offending and anti-social behaviour
- reduced numbers of missing episodes’

2.7 The results of Operation Porter have been impressive in terms of the desired outcomes and a proposal based on the experience of this Operation involves the establishment of a Children’s Integrated Support

Team (CIST) (see Appendix 4). There are always ethical issues and related risks to operations that target young people in such interventions. Should, for example, the children and their families be informed? There clearly needs to be further discussion by stakeholders on the proposal, but the Review wishes to commend the excellent work undertaken and, subject to ethical safeguards, support the proposed establishment of a Children's Integrated Support Team. The Review particularly wishes to commend the proposed requirement that referring agencies should outline clearly how they have tried to address the presenting problem/s. This should reduce the risk of referring agencies 'dumping' their problematic children on the new Team.

### Children and Young People's Plans and Policies

2.8

At the time of the 2010 Review there was a promising Children and Young People's Plan in development. The embryonic policy document appeared to be opportunity focused and rights-based. It also appeared that it would provide a wraparound service for young people and their families. It was envisaged that a community of practice could be established in which there was not only clear role clarification between agencies, but also a common set of shared practice principles that would transcend organisational boundaries. Disappointingly, in 2018 we were told that the policy had lain dormant, under-funded and neglected. As a consequence the envisaged policy and community of practice had not materialised in the way that had been intended.

2.9

At the time of the 2018 Review a new Children's Plan / Children and Young People's Plan was in the process of being developed (*Children First: The plan for Jersey's children, young people and their families*). The Review has had sight of drafts of this developing policy and is greatly impressed by much of the content and general direction of travel. At the time of writing the Review would make the following respectful recommendations to the authors of the policy:

- i. Ensure that children's rights are central, explicit and integral to the policy.
- ii. A clear statement should be made of how services and agencies are to be held to account for delivering on the commitments made in the policy.
- iii. Make explicit reference to reducing young people's involvement in offending and perpetrating harm (the detail of which can be delineated in a Youth Justice Strategy policy).
- iv. The *Children and Young People's Plan* and *Pledge to Jersey's Children and Young People* should be complemented by a *Children's Charter of Rights* that describes explicitly the tangible universal entitlements guaranteed by the States of Jersey.

2.10 The Children's Plan quite rightly highlights the importance of children's participation. This is a principle the Review wishes to endorse wholeheartedly; particularly in relation to children in conflict with the law. Article 12 of the United Nations Convention on the Rights of the Child states that:

'Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

As well as being set out in international and domestic law, there are other, more practical, reasons for focusing on participation in youth justice. There are benefits both to the individual child and at an organisational level to listening to views and experiences of time spent in the youth justice system. Evidence suggests that children who are involved in the planning and structuring of their interventions are more likely to engage in services and that positive gains are made in relation to behaviour, respect and confidence (Brodie et al 2009, Creaney 2014). Very often areas for improvement are identified after organisations have sought the views of children engaged in their services. This can lead to co-production of policies and documentation with children themselves; with which they can better engage and for which they have more respect due to increased ownership. For example, during the review we were shown literature given to children in order to explain subjects such as restorative justice. The style and language used, while appropriate for adult levels of reading and comprehension, were less suited to children and young people. The production of more child friendly literature in collaboration with service users for use by the Jersey Probation Service would be an opportunity to trial and develop participation and consultation. The challenges of engaging children who have offended should not be underestimated. As suggested above, as well as finding themselves subject to the worry and stresses of being involved in criminal proceedings, they have often experienced multiple adverse childhood experiences that can make participation difficult. However, neither should these challenges be used as a reason for services to overlook participatory action. There are a number of examples in other jurisdictions where states and agencies have successfully captured the voices of groups of children who are perceived as being hard to reach. Progress on participation has been made in the jurisdiction of England and Wales, but further afield lessons can be drawn from Scandinavia.

#### The Risk of Criminalisation in Schools and the Public Care System

2.11 The 2010 Review conducted an in-depth case file review on a sample of eleven of the most troublesome young people appearing before the

youth court at that time. The children concerned were identified by the magistrates. The case file review revealed that the children concerned shared a number of common characteristics: early experience of disrupted attachment to a significant parental figure; maltreatment (abuse and neglect); disengagement from school; misuse of alcohol from an early age; exposure to violence, especially domestic abuse; and experience of the public care system. The 2010 Review questioned whether challenging behaviour in the domains of school and residential children homes was at risk of being re-framed as 'offending behaviour' and thereby resulting in inappropriate criminalisation. There was no significant evidence of children's challenging behaviour in school settings being dealt with outside the domain of education in the criminal justice system, but it is always important to question whether disciplinary measures are restorative or exclusionary in nature, and whether punishments are more or less likely to result in pupil disengagement. In the case of those with experience of public care there was evidence in some cases of relatively minor misdemeanours migrating to the youth justice domain rather than being dealt with 'in house'. It was against this background that it was recommended the expansion of the appropriate use of restorative justice should be explored in such settings. Good practice in restorative justice on the island had been cited, but there was clearly scope to increase capacity.

2.12 The 2018 Review was informed that some progress had been made in schools, but there was scope for further work. The unhealthy close relationship between the public care system and the youth justice system is well documented and has been analysed extensively in England and Wales (Prison Reform Trust, 2016; Evans, 2018). The residential children's homes introduced restorative measures following the publication of the 2010 Report, but the 2018 external reviewers formed the impression that there had probably been a decline in the use of restorative justice in children's residential units in recent years. This was attributed by some as being related to the departure of key staff members in leadership positions who were committed to de-escalating strategies and restorative approaches. It is worth noting here that the churn of staff has been cited as a potential risk factor in sustaining good practice in more than one area.

2.13 The Review met with the Intensive Support Team and received testimony from some practitioners that it provides an important service to children on the cusp of the Looked After Children Service as well as those returning to their families, carers or other appropriate community placements. A brief overview of the service provided is available in Appendix 5.

2.14 During the course of the 2018 Review both the Jersey Children First Practice Model and the Corporate Parenting Strategy were introduced. It

is envisaged that these initiatives will make a significant difference to vulnerable children in conflict with the law or at risk of becoming involved in the youth justice system.

### Policing

2.15 In 2010 the Review received evidence from young people and practitioners that elements in the Jersey States Police adopted a confrontational 'move on' strategy in respect of groups of young people gathered in public spaces. This was in part the result of an over-reliance on Operational Response Units and a style of policing that tended to be reactive rather than problem-solving. Senior police officers demonstrated awareness of this issue and indicated that there was to be a move towards a more patch-based, community policing model. The 2010 Review supported this shift in policing strategy and additionally recommended that the police would benefit from specialist training to support that change and, whilst it was important to maintain an appropriate demarcation of roles, develop closer working relationships with the high-functioning youth service whose street-based detached workers were a valuable resource. Moreover, it was recommended that young people should be consulted about issues of community safety, the use of public space, crime prevention issues and access to leisure, recreation and other facilities.

2.16 In 2018 we were pleased to learn that the police had undertaken training and established a close working relationship with the youth service. Despite some young people reporting negative experiences in their encounters with individual police officers, on the whole it would seem the police have improved their approach to interacting with young people in public spaces.

### Diversion and Parish Hall Enquiries

2.17 The 2010 Review found that the Parish Hall Enquiry provided a distinctive, community-based and effective first tier of intervention and diversion from prosecution. It was recognised that it is also well placed to identify when a child is disengaged from family, school and in need of being referred to other services. It is also in a position to judge whether it is appropriate to facilitate victim-offender mediation or restorative justice. Although there was a demonstrably good relationship between the Centeniers and probation service, an enhanced role by probation staff attending Parish Hall Enquiries was envisaged by the Review. It was thought that probation staff could provide more background information on the children due to appear. Initial information-gathering on educational background and whether the young person was known to other relevant agencies could thus be shared with the Centenier beforehand. Knowing something about a child ahead of an appearance

before the PHE can be invaluable in planning how to interact with them most appropriately. The 2010 Review recommended that the Parish Hall Enquiry could, on the basis of this information, (a) use one of its customary alternatives to prosecution, as already happened, or (b) defer a decision to allow a fuller assessment and plan to be put in place (which might require securing the co-operation of certain agencies and the commitment of resources). Such a plan would then be presented and endorsed at a second Parish Hall Enquiry in order to authorise the proposal. The 2018 Review has not had the capacity to undertake a formal evaluation of any part of the youth justice system, and this includes the Parish Hall Enquiry's role in that system. Nevertheless, we formed the overall impression that the information-gathering undertaken by the probation service for the Parish Hall Enquiry was working well and it enhanced the effectiveness of the process. We were told there were cases where schools had not been contacted beforehand, so this may be an area that requires further work. On closer investigation, it emerged that it is the practice for probation officers to use professional discretion in terms assessing whether the school necessarily needs to know about the less serious offences. It is also customary to seek parental consent before contacting schools prior to appearance before a Parish Hall Enquiry. In cases where parents considered that the school might misuse the information or label their child negatively, this was not pursued unless wider public interest considerations prevailed. This practice is not inconsistent with the principle of domain integrity management described in the 2010 Review, whereby information in one domain is not automatically shared with another domain: in other words, a case therefore has to be made for sharing information. Seemingly, a proportionate and nuanced professional judgement is currently made on the basis of offence seriousness, public interest and the best interests of the child. It is important to state that on the whole the practice of information-gathering seems to be working well and certainly appears to enhance the Parish Hall Enquiry process. It should perhaps be emphasised here that schools are contacted routinely ahead of court appearances. Details of education - along with other factual information on employment, home circumstances and welfare issues - are provided to the court in Personal Information Forms (PIFs) following children's appearance at Parish Hall Enquiry.

2.18 In order to support the enhanced role of the Parish Hall Enquiry, in 2010 it was recommended that Centeniers should undertake training on effective practice and how best to facilitate age-appropriate restorative approaches. We understand that some training has been undertaken by Centeniers. There is, moreover, an appetite for more training.

2.19 It was recommended that in cases where a child commits a relatively minor offence whilst being subject to a court order, the Parish Hall Enquiry be permitted to deal with the matter. The 2018 Review found



that the Youth Court and Attorney General were supportive of the principle of diversion and de-escalating strategies in such cases. Parish Hall Enquiries are thus able to exercise more discretion in such matters and deal with breaches involving minor offences.

2.20 It is important to state clearly that the Review is impressed by the role and work of the Parish Hall Enquiry in relation to children. It is a good example of community-based informal justice based on reintegrative principles. It is also well aligned with the Tokyo Rules' principle of community involvement and community-based responses to crime. Although the Parish Hall Enquiry has its critics, we did not meet anyone who proposed their abolition. Indeed, there would seem to be consensus that they should continue to play an important role. However, areas for improvement were identified: most notably in relation to issues of consistency of practice across the island and the need for enhanced training of Centeniers. One Centenier also took the view that there could be scope to make more extensive use of restorative resolutions; although it should be noted that all PHE cases are assessed for the possible use of Restorative Justice. It is understood that many victims do not wish to engage with restorative processes. Nevertheless, this is an area that could be revisited and explored further.

2.21 There has been a suggestion by some that there could be scope for conferring Parish Hall Enquiries with greater powers over the more challenging young people with whom it deals. The phrase 'Parish Hall Enquiry Plus' was used on occasions. The Review is open to specific recommendations on this subject. Any proposals should be consistent with the informal community ethos of the institution, though. It is also important to remember that the Parish Hall Enquiry is not a court. It is a pre-court process designed to deal with offences and resolve disputes outside of the formal criminal justice system. Additionally, and very importantly, it is an institution and process that makes decisions about prosecution; therein resides its greatest power. For a fuller exposition of the role of the Parish Hall Enquiry see Miles and Raynor (2014).

2.22 It will be well-known within Jersey that the honorary police force, including the senior members known as Centeniers, are elected. Ultimately, therefore, these community volunteers are accountable to their parish electorates. The Review questioned how, in operational terms, good standards of practice are maintained and how performance problems are addressed. The Attorney General provided a set of written guidelines, practice directions and letters that are available for perusal in Appendix 6.

## The Age of Criminal Responsibility and the Adoption of a Welfare-Based Model of Dealing with Children in Conflict of the Law

2.23 The main arguments for raising the age of criminal responsibility relate to recognising the developing maturity of children, their relative powerlessness and position of dependency on adults. There is also widespread recognition that the adolescent years for most young people will often be characterised by experimentation and boundary-testing. Whilst transgressions of the law should be subject to varying degrees of sanction and support, this need not involve criminalisation. Criminal convictions label children as offenders and risk damaging their future prospects in education, training and employment. Just as punishments and support are offered to pupils in well-managed schools, so the wider community needs to find ways to manage challenging behaviour without reference to the criminal justice system. The age at which criminal responsibility should be set is inevitably a somewhat arbitrary decision, although it can be more nuanced when judicial discretion is permitted for children above the set age (for example, through the use of rebuttable presumptions regarding non-prosecution, as used to be the case with *doli incapax* in England and Wales). Delmage (2013) sets out the respective rationales of the different options with reference to not only criminal and family law, but also the neuroscientific evidence on brain development. Another approach is to reflect on the age at which cognitive and moral competence is assumed to be present in equivalent areas of citizenship. For example, at what age should someone be considered suitable for jury service? Another example is the age of majority in terms of the right to vote for one's legislators. In the latter case, this would raise the age of criminal responsibility to 16 years; only a little above the European average of 14/15 years.

2.24 In the 2010 Review the issue of the age of criminal responsibility was discussed and it was recommended that the age be raised to 12 years. This age is consistent with statements by the UN Committee on the Rights of the Child in 2008. It should be recognised that such a change in Jersey would actually have affected very few children in practice. In any event, the recommendation was not accepted and has instead been dealt with by way of written guidance on prosecution by the Attorney General (see Appendix 6). In practice it is rare for children younger than 14 to appear in the youth justice system.

2.25 Given that a review of the age of criminal responsibility is due to be conducted in 2021 and the Independent Care Inquiry has expressed its wish that consideration be given to moving to a welfare-based model that treats young people as 'children first, offenders second', it is appropriate to revisit the main arguments for and against a change in the law in this area. It is important to acknowledge that Article 4.1 of the Beijing Rules

exhorts States Parties, 'To not fix the beginning at too low an age level, bearing in mind the facts of emotional, mental, and intellectual maturity.' Research on the effect on children of justice system contact would also suggest that criminal careers tend to be extended rather than curtailed (McAra, 2018; McAra and McVie, 2010). In the circumstances it makes sense to raise the age of criminal responsibility in order to divert children from the youth justice system and deal with them through welfare, educational, health and therapeutic measures. There are, however, challenges and risks that need to be addressed and managed.

2.26

Two main issues need to be considered. **Firstly**, if more children in conflict with the law are to be dealt with by agencies and services outside of the criminal justice domain then they need to be resourced accordingly and some staff are likely to require additional specialist training in order to deal with those young people who present challenging and transgressive behaviour. This means there needs to be investment and development of an appropriate alternative infrastructure that can both support and challenge young people. **Secondly**, despite the many disadvantages of dealing with children's transgressive behaviour in the criminal justice domain, the system does possess strengths; most notably the rigorous application of principles of due process, transparency and the protection of legal rights. One of the risks of dealing with children outside of the criminal justice system is that it can lead to the development of a 'shadow youth justice system' (Pitts and Kuula, 2005) within which decision-making can be opaque and sometimes unfair. This can sometimes result in welfare without justice. Indeed, comparative research in this area shows that merely raising the age of criminal responsibility does not, in itself, automatically deliver either welfare or justice (Abrams *et al*, 2018). It can also disguise the real number of young people deprived of their liberty because 'therapeutic' institutions in the domains of welfare and health are often not included in the official statistics on child incarceration.

2.27

The afore-mentioned risks do not represent an argument against raising the age of criminal responsibility. Rather, they point to the need to make careful plans before moving to a model of dealing with greater numbers of children outside of the criminal justice system. There is no reason why a partnership of children's services, education, health, youth justice specialists from probation, the youth service and others could not deliver welfare-based and child-appropriate interventions that address offending behaviour. As has already been stated, this requires planning, training and proper resourcing. It is also vitally important that children's rights are actively protected and promoted within this context. This means that transparent processes for challenging professional judgement are in place alongside accessible advocacy services. Judicial oversight of this domain would be desirable, although in practice most cases involving children breaking the law would not trouble the courts.

2.28 Another option is to adopt a hybrid bifurcation model in which those cases where a young people's offending seems closely related to their family background or personal experiences beyond their control (including those known to children's services and the care system), they are dealt with by the family courts. In practice, this might represent most children. It would, however, still give the power to deal with some of the more serious cases in the criminal justice domain.

2.29 The Review recognises that the overwhelming majority of children in conflict with the law are dealt with by the Parish Hall Enquiry and do not appear in the Youth Court. Nevertheless, the Youth Courts still play a significant role in the administration of justice; including those who appear for driving offences and those who have committed offences at the more serious end of the continuum. The Review does not consider Jersey is currently ready to abolish the Youth Court and move its work to the Family Court or replace it with either a new administrative tribunal model along Scottish or Scandinavian lines. The infrastructure to support a radically different model is not in place. Nevertheless, we would encourage a thorough exploration of the possible options, which should include the afore-mentioned welfare-based tribunal model. Given that a review of the age of criminal responsibility is being undertaken in 2021, we would ask that the terms of reference be widened to include an exploration of how a move to raise the age of criminal responsibility could be supported by an appropriate infrastructure. This infrastructure should include the development of a service delivery model based on welfare principles, the promotion and protection of children's rights, and appropriate judicial oversight.

2.30 In the intervening period the damagingly stigmatising effect of criminal records and enhanced disclosure reports for offences committed below the age of 18 years should be minimised. Accordingly, policy and guidance should be developed on the non-disclosure of contact with the Parish Hall Enquiries and youth courts in line with the Council of Europe's guidelines on child-friendly justice (Council of Europe, 2010: IV, B (10)):

'In order to promote the reintegration within society, criminal records of children should be non-disclosable on reaching the age of majority. Exceptions are permitted in cases of serious offences or in cases of employment with vulnerable adults or young people.'

### **The Courts and Statutory Supervision:**

3.0 This chapter addresses court-related issues, sentencing and the efficacy and appropriateness of statutory supervision.

3.1 The Youth Court and Royal Court

3.2 The 2010 Review was impressed with magistrates' and panel members' commitment to the welfare of children in the youth court. Three main issues were identified in the Youth Court: firstly, how best to sentence persistent offenders; when to remand or sentence to custody; and the provision of appropriate training for sentencers and court personnel. The second issue is considered in Chapter 4, but the other two are discussed here.

3.3 On the issue of sentencing persistent offenders (as opposed to those who were committing progressively more serious offences), the 2010 Report Review recommended the adoption of a horizontal rather than vertical sentencing tariff. It was argued that the pressure to issue increasingly more punitive sentences for repeated offences of similar gravity should be resisted. Instead, each offence should be dealt with on its own terms. Such an approach would also enable the court to adopt a problem-solving approach that engaged the young people concerned, their parents (where appropriate) and the professionals tasked with working with them. The temptation to overload Orders with additional requirements, it was recommended, should also be resisted in most cases as this could result in an increased likelihood of breach proceedings being issued by the probation service. It was argued that the probation service should be allowed to use professional discretion in terms of how it should work with children; particularly as children's level of maturity along with their needs and personal circumstances are likely to change over the course of an Order. In 2018 the Review was satisfied that a horizontal model of sentencing was in operation in the Youth Court. However, after consultation with sentencers, we were sympathetic to their expressed view that the sentencing options available to them are somewhat limited.

3.4 In light of the changes recommended in Section 3.3, it was proposed in 2010 that the move to a problem-solving model would be well-served by training for sentencers in 'child-appropriate' approaches to dealing with children in the Youth Court. In 2018 we formed the impression some training had taken place in the intervening period and that this is ongoing. However, as with all personnel who have contact with young people in the youth justice system, we took the view that there was scope for more specialist training.

3.5 In addition to the recommendation mentioned in Section 3.4, it was recommended in 2010 that there needed to be specialist training for Advocates representing children. In 2018 the Review learned that whilst things had improved, there remained scope for further specialist training.

We formed the impression that the quality of advocacy in respect of representing children remained uneven.

3.6

The 2010 Review was impressed with the Youth Court's commitment in practice to the welfare of the child. In 2018 we formed the clear impression that this commitment was still very strong. A Youth Court is not the most child-friendly problem-solving forum in terms of its layout and ethos, but the Review was impressed with the efforts of the Youth Court in engaging with the children appearing before them. This included cases where the young people could be disrespectful. We were also interested to learn of the system of Probation Reviews in which the sentencing Magistrate, Youth Panel members and young person return to court periodically in order to review the progress of those subject to statutory supervision. It is used as an opportunity to give praise when deserved and encouragement when the young person is struggling. This is a very welcome development we would wish to single out for commendation.

3.7

A child-friendly approach in the courts does not necessarily mean that formality should be abandoned completely. For many children an air of formality can help in conveying the seriousness of their actions and the gravity of the situation in which they find themselves. However, children should always be treated with respect and their dignity should be upheld. We encountered no evidence to suggest that young people were not being treated respectfully. However, the formality of the court can be oppressive and intimidating for some young people. In much the same way as Centeniers are given information in advance about the way a young person may present, such advance information may also be helpful for sentencers in both the Youth and Royal Courts (although it is recognised that the Personal Information Forms are of assistance). It is likely to help them to engage with a withdrawn or ostensibly truculent child who may be frightened, immature or have experienced recent personal trauma. Accordingly, we envisage a role for the probation service in briefing sentencers beforehand. This may be done verbally or in the form of brief reports. It is important to emphasise the point here that such information should not compromise due process. Sentencers and the probation service should therefore discuss and agree the best way in which this information should be conveyed. Finally, the Review should record that it has been encouraged by a Draft Practice Direction that, if implemented, would improve the experience of children in the Royal Court.

3.8

At the time of the 2010 Review youth justice supervision was undertaken primarily by the probation service, but additional support packages and activities were organised by a Youth Action Team. The Review considered that whilst the Youth Action Team's particular service model was not without merit, it was unsuited to the individual needs and circumstances of many challenging young people. It was also found to be duplicative of some of the work already undertaken by the probation service. Two recommendations were made. The first was that,

*Those children causing most concern to agencies because of their offending behaviour should be managed according to a multi agency model akin to that of the Child Protection Case Conference or RAMAS but with the focus being on the child's best interests. This process has been labelled CAST (Children's Assessment and Support Team) in this report. All Departments should undertake to co operate in this process and allocate resources as a priority to this group.'*

(Evans et al, 2010: 34)

It was envisaged CAST meetings could be convened by any agency and would be chaired by the Probation and After Care Service. The second recommendation was that,

*'YAT should operate at arms length from the criminal justice system working with those children at risk of school exclusion, who are looked after or who are at risk of coming to official notice. YAT can provide a valuable social work support in these circumstances and should be available to Probation, residential care staff and teachers as well as being able to accept direct referrals from parents. It is important for the reasons outlined earlier in this report, and its role as originally envisaged, that YAT is not seen as a Youth Offending Team (YOT), but as a key resource to the CAST process for our most needy children.'*

It should be noted that the proposed CAST model was not implemented and the Youth Action Team was disbanded. The probation service thus took sole responsibility for the statutory supervision of young people, but continued to work in partnership with other agencies.

3.9

At the time of the 2010 Review the standard of probation supervision practice was considered good, but it was recognised within the Service that it needed to continue to work on developing child-appropriate approaches and practices. Moreover, it was recommended that it was particularly important to work closely and effectively with families, schools and all of the other domains in which young people live their lives. This 'systems' approach was recognised as being complementary to individualised supervision. It was also important that practitioners



employed proactive strategies to encourage children to engage with the requirements of statutory orders rather than simply requiring young people to follow a routinised pattern of reporting. This was particularly crucial in cases where children had complex needs or were from backgrounds where parental and family support was weak. The 2018 Review found that this recommended approach had been adopted by the probation service in the intervening period. Training in Family Problem Solving (Trotter, 2018a), prosocial modelling (Trotter and Evans, 2012; Trotter, 2015 and 2018b) and restorative practices are undertaken by all probation staff. More recently youth justice specialist staff in probation have been accessing training on the implications of neuroscientific research. This has been provided by educational psychologists.

3.10 It was recommended in 2010 that no child should be labelled as a Priority Persistent Offender without consultation with the probation service and Children's Services. Exercising professional discretion that takes full account of the young person's circumstances was preferred over an approach that simply counted offences within a specified period of time. Those children causing most concern because of their offending behaviour should be managed in accordance with a multi-agency model. Children who were repeatedly before the court should be considered 'children in need' and be afforded the same level of service as those 'looked after'. The 2018 Review found that multi-agency arrangements had been put in place, but believed they could work more effectively.

3.11 It was recommended in 2010 that there should be increased use of indirect reparation and compensation in Probation Orders. Although the expertise of the Community Service Scheme could be used, it was recognised that as a stand-alone sentence, it would probably fail to address the underlying reasons for offending and overlook welfare needs. Accordingly, it was recommended that agreements to undertake indirect restitution should take place within the statutory framework of the probation order. In 2018 the Review found that this arrangement was in place, but little used.

3.12 In terms of evaluating the effectiveness and appropriateness of probation supervision by youth justice specialists, the Review read relevant documentation, met with staff, accessed a selection of files and observed officers operating in both Parish Hall Enquiries and the Youth Court. We also spoke to a limited number of young people who had experienced contact with the probation service. The Review is aware of the independent academic research undertaken with probation staff in Jersey, most notably the Jersey Supervision Skills Study (Ugwudike *et al*, 2014; Raynor *et al*, 2014); although it should be noted that the main focus of that work has been undertaken with those staff supervising adults. Nevertheless, it should be emphasised that all staff, including youth justice staff, receive skills training in core correctional practices and are

evaluated on their effectiveness. This includes video recording and feedback on interviews between supervisors and supervised. Due to issues of informed consent, interviews with children are currently under-represented. This was an issue identified during the course of the Review and is now being addressed. Current research on effective practice suggests that the development of appropriate practitioner skills is more impactful than the delivery of programmes. The ability of practitioners to individualise evidence-based interventions with young people is increasingly being recognised as being important. The core correctional practices involved in working with adolescents include prosocial modelling, problem solving, prosocial skills building (using structured procedures), effective use of authority, cognitive restructuring, relationship practices, motivational interviewing, and inter-agency communication/use of community resources (Ugwudike and Morgan, 2018). When meeting youth justice specialist staff it was very clear that they were committed to their own professional development and sought to apply these skills in their work with young people. It is understood that the probation service and its partners in Operation Porter are currently exploring the possibility of undertaking training on trauma-informed practice.

3.13 The YLS/CMI (Youth Level of Service/Case Management Inventory) is a robust, validated and internationally used instrument for assessing risk and identifying the needs of young people. The Review formed the impression that it is not applied mechanistically and is used as an aid to the assessment process. The Social Enquiry Reports we read were of a high standard and considered very useful by the courts. The factual Personal Information Forms (PIFs), meanwhile, appear to be a helpful aid to the Youth Courts in their initial dealings with children. We understand that care is taken to ensure that the use of PIFs do not compromise due process. The probation files we read were well maintained and appeared to reflect the work being undertaken.

3.14 There is evidence of good partnership working with some agencies. For example, we were interested to learn of the proactive partnership with the Department of Social Security, the youth service and Prince's Trust. More recently, of course, the probation service has been involved in Operation Porter.

3.15 In summary, Jersey is well served by its probation service. There are areas of staff development that should be prioritised, though: most notably, in children's rights and trauma-informed practice. However, these training priorities apply to everyone working in the youth justice system.

3.16 In terms of evaluating the effectiveness of supervision, it is important to recognise that as more children are diverted from prosecution and dealt

with according to the principle of minimum sufficient intervention, the remaining young people in the criminal justice system are likely to be more challenging and have more complex needs. This much smaller cohort will almost inevitably have higher rates of reconviction. Consequently, the measures of effectiveness should ideally be more nuanced and granular. Evaluations need to be able to measure whether the general direction of travel is towards desistance, less serious offending and positive progress in such areas as health, education, training, leisure and personal relationships.

#### **The Deprivation of Liberty and Related Issues:**

4.0

4.1

This chapter explores issues related to children being deprived of their liberty as a result of being remanded and/or sentenced to custody. The related issue of detention in police custody is also addressed.

#### **Sentencing, Remands in Custody and Bail**

4.2

In 2010 the Review found that sentencers understood and wished to apply the principle of using penal custody as a measure of last resort, but in practice some children who might reasonably be expected to be dealt with in the community were deprived of their liberty. This might be partly explained in terms of the pressures that may be experienced by sentencers when persistent offending by individuals results in frequent court appearances. Those that have already received community-based sentences and disposals are thus perceived as having exhausted non-custodial options. Such a reaction, whilst perfectly understandable and consistent with the intention of Articles 4 and 5 of the Young Offenders Law 2014, is not consistent with the 'measure of last resort' principle which should be reserved for that minority of young people who represent a clear threat to the public. To be clear, the present statute is not aligned with the principle of using custody as a 'measure of last resort'. This inconsistency would be worthy of review. The need to apply a horizontal model of sentencing was duly identified in 2010 and accepted in practice by the Youth Court. It is worth noting that in 2010 there were 20 children sentenced to custody, but in 2013 there were only 4 (Evans *et al*, 2015). This is indicative of court practice, although it should be acknowledged that there was a corresponding reduction in the number of young people being brought to the youth court; in large part as a direct result of changes in practice in terms of policing, prosecution and diversion. As has been noted elsewhere, reducing the flow of children into the formal youth justice system generally results in a corresponding decline in custodial sentencing. The trend in low numbers of custodial sentences has been maintained in the intervening period. Since January 2016, for example, four children have attracted custodial sentences with one being sentenced by the Royal Court. It should also be

noted there have been some serious offences that resulted in community penalties. Arguably, in other jurisdictions they may well have resulted in custodial sentences.

4.3 Another factor that appeared to be influencing sentencers was a concern that in some cases where children were vulnerable and/or at risk of reoffending, community resources were insufficiently supportive or robust. There was particular concern expressed about the appropriateness and quality of available accommodation. It was against this background that some young people were remanded or sentenced to custody. In 2018 many of the same concerns were raised. The 2010 Review responded with a number of recommendations. One was that the Youth Court should be empowered to make an Order equivalent to that available in Family Proceedings under Article 29 of the Children (Jersey) Law 2002 (whereby a child's welfare circumstances can be investigated and the process for applying for a Secure Accommodation Order under Article 22 of the Children (Jersey) Law 2002 can be initiated). This recommendation was not actioned. Another recommendation was that specialist emergency fostering and supported accommodation should be part of a continuum of options available to the courts when faced with children who are difficult to place. In 2018 there is need to revisit these issues and consider how to make the best and most flexible use of existing resources and commission new types of accommodation where there is need. Suitable accommodation as an alternative to a remand in custody should be an integral part of a clear bail strategy. However, such accommodation need not be confined to children who are in contact with the youth justice system. Placements should be sought on the basis of children's needs rather than being determined by the source of referral.

4.4 On reflection, the 2010 Review failed to give sufficient attention to the issue of children being detained in police custody. In 2018 the police custody suite was visited and we were impressed not only by the facilities, but also the commitment of police staff to their duty of care. Although the Review did not engage with as many young people in the youth justice system as it would have wished, one young person confirmed that his experience of staff at the custody suite had been positive. Having said that, of course, children should be kept in police cells for the shortest possible period of time. Concern was expressed that there were occasions when children could not access more appropriate accommodation and were kept overnight in the police custody suite. Greenfields was not accessible after 10.00 pm and there was often no appropriate secure accommodation available for young people with acute mental health issues.

4.5 In 2010 the overall conditions that obtained in La Moye YOI and Greenfields Secure Children's Home were good. The staff in both institutions were committed to the welfare of the young people. The

children with whom the Reviewers met were also positive about the staff. However, four issues required attention. **Firstly**, that unless there are compelling reasons to the contrary, the presumption should be that children are accommodated in Greenfields (subject to modifications to the layout and management of the building). It was recommended that a Vulnerability Panel be established to assess where children should be placed. A Placements Panel was established and the use of La Moye has declined sharply in the intervening period. **Secondly**, due to the low rates of occupancy at any given time, which can include periods when the facility is empty, there was a problem of social isolation for some children. Although interaction with staff was perceived as being positive, there was limited contact with peers. In 2018 the young person in Greenfields with whom reviewers met did not experience this as a problem, but acknowledged that others may struggle with this experience. **Thirdly**, in 2010 there was an issue with young people accessing education, training and meaningful opportunities. This problem remains in 2018; particularly for those aged 16 and above. **Fourthly**, in 2010 there was a problem of girls being held with adult women in the main prison. This is clearly in breach of international conventions (UNCRC 1989, Article 37c). Although this was not a common occurrence, this did happen on occasions. The possibility of this happening remains in 2018.

4.6

The use of custody in Jersey is laudably low and appears to represent a measure of last resort in line with the UNCRC and other international guidelines. Within the parameters of the 2018 Review, which had a very broad scope and did not allow detailed examination of every area of practice in great detail during the allotted time, it appeared to the reviewers that the environment, regime and culture existing in Greenfields Secure Children's Home are generally positive. Conversations with staff and the few children accommodated there at the time of the review indicated a caring and nurturing culture, albeit with procedural and logistical limitations that prevented the facility being used to its full potential, and with the very fact of its low usage being a potential risk to the best outcomes for both residents and staff. We were told that for long periods Greenfields can occasionally be empty, but is more often home to just one or two children. There is, therefore very little opportunity for children to associate, socialise or learn with their peers. When there is only one child in residence there is a risk that this could be experienced as *de facto* isolation. We spoke to a child who had indeed spent long periods of over a month as the only child in residence. While the child told us that the time in Greenfields had been settled and an opportunity to reflect and did not report any feelings of isolation, the possibility that a less resilient individual would not feel so settled cannot be ruled out. We were also told by this child that there had been a very limited curriculum within the unit which had led to repetition of lessons with consequent educational disengagement. When asked if efforts had been made to organise temporary release or mobility to enable

attendance at outside education or work experience, staff told us that this was not possible. Those with whom we spoke recognised that this is not a satisfactory situation. In other jurisdictions - for example Wales and England - release on temporary licence or mobility arrangements can be used for these purposes. It would appear that there is an opportunity for Jersey to explore the possibility for similar practice under current legislation and consider if this may need to be amended to allow children securely accommodated to access learning and enrichment opportunities in the community when properly assessed for risk.

4.7

When compared to similar secure environments in Wales, England, Scotland and Northern Ireland, the facilities and environment in Greenfields stand up very well. Bedrooms are bright and relatively welcoming, living areas are spacious and homely and teaching areas are well presented. We were also told of an interesting and progressive approach to behaviour management which enables physical restraint to be avoided. There is, however, an absence of the kind of lively interaction on the unit that one would expect in a residential or teaching establishment meant for children and young people. This has an inevitable impact upon the mood and morale of the staff; highly skilled individuals motivated to care for troubled children who are underutilised can begin to lose that motivation at work. It is interesting to note that the centre manager has sought to mitigate this by offering the impressive sporting facilities of the unit for use by a local gymnastics club. While this has no impact upon the children resident in the centre, it does show the potential for a more innovative use of Greenfields for youth justice interventions in general. We believe that options should be explored to make greater and more innovative use of the accommodation. Possibilities might include conversion of some of the living areas into supported accommodation for those on community orders where access to suitable accommodation is a challenge to their remaining at liberty or use of the teaching and sports facilities for groups of children supervised in the community which, if suitably risk-assessed could include children securely accommodated on the premises. Measures such as these could inject some much needed life into Greenfields, give wider roles for staff and improve the value for money offered by a costly provision currently very much under-utilised.

### **Conclusion: Revisiting the Key Questions**

5.0

A succinct summary of the answers to the key questions posed in Chapter 1 is presented below.

- i. **What progress has been made in implementing the recommendations of the *Youth Justice: Options for Change Report (Evans et al, 2010)* published in 2010?**

A summary of the progress made on the implementation of the key recommendations is presented in Appendix 9. It will be noted that no progress was made in terms of changes to statute, but there have been significant changes in practice. For the most part the changes in practice have been maintained over the intervening period. This has resulted, for example, in substantial reductions in first time entrants to the youth justice system and a marked decline in the use of custody.

In some cases there have been slippages in good practice. This seems to have associated with key personnel leaving their posts.

**ii. How can youth justice move to a welfare-based model that treats young offenders as children first and offenders second?**

In practice the principle of 'children first, offenders second' appears to have been embraced across the existing system. However, this should not prevent the exploration of models of juvenile justice that move away from a court-based approach to one that is explicitly welfare-based. This should be considered as part of the planned review of the age of criminal responsibility.

It would seem that the welfare principle is currently observed in practice in the courts. However, there is need to enshrine the welfare principle in statute in line with Article 3 of the UNCRC.

**iii. What are the training implications for the judiciary and others who have contact with children in conflict with the law?**

It is important to recognise that members of the judiciary already receive training, as do others working in the criminal justice system. However, there are two areas of training that should be undertaken: children's rights; and engagement with children who have experienced adverse experiences, including various forms of trauma.

**iv. What is the nature of offending committed by children?**

It is important to emphasise the point that Jersey is a safe society and, for the most part, children are engaged in less serious offending than their adult counterparts. More detail on the offences committed by children are presented in Appendix 7.

**v. How can offending by children be prevented?**

It is unrealistic to aim to eliminate all offending by young people, but this does not mean that there should not be investment in prevention measures. The children's policy currently in development aims to give



young people universal access to those opportunities, services and resources that are most likely to promote healthy outcomes. This is to be commended. It should, however, be complemented by a Jersey Children's Charter of Rights. This will empower children by constructing them as rights-bearers and citizens who, with the support of their advocates, can make entitlement claims on the States of Jersey.

Additional measures need to be taken to identify, and provide additional support to, those who have become detached from their entitlements and/or have more complex specialist needs. The proposed Children's Integrated Support Team is a commendable model to deliver this objective.

- vi. **How appropriate and effective are current responses to offending by children? In particular, how effective and appropriate are the following: (a) Parish Hall Enquiries; (b) models of supervision and rehabilitation in the community; and (c) remands and sentences to custody?**

Whilst there is always room for improvement, it is important to acknowledge that the Parish Hall Enquiry and probation service work effectively and appropriately with children in conflict with the law. The use of custodial sentences has been reduced significantly in recent years and the principle of imposing such sentences as a measure of last resort appears to be observed. There does remain a problem of children sometimes being remanded in custody inappropriately.

The presumption is that children will always be placed in Greenfields Secure Children's Home, which is a well resourced and comfortable environment. There are three issues that need to be resolved, however: the problem of social isolation typically experienced by children; inadequate access to education, training and other enriching experiences; and the possibility that girls can still be accommodated with adult female prisoners.

- vii. **How effectively does the youth justice system work with its partners in preventing offending and re-offending by children? Do the present arrangements deliver value for money?**

There is some very good work undertaken across Jersey. This includes examples of some good partnership work. The Review formed the impression, however, that communication and co-operation between certain partners could be improved. That said, there seems to be a shared commitment to work together.

Value for money and cost-effectiveness are slippery concepts in any context, but in criminal justice they need to be applied with caution. Nevertheless, it can be stated with certainty that reducing the number of

first-time entrants to the system, court appearances and custodial placements saves money. In these three areas the youth justice system has certainly saved public money. Given the commitment that the States of Jersey has made to children, it is important that a significant proportion of that money be invested in measures that are likely to prevent crime and promote positive outcomes for young people. It will be noted that one of the recommendations of this Report is that there should be an audit of the cost of the youth justice system.

**viii. How effectively and appropriately is the harm experienced by victims addressed?**

This is an area that the Review has not studied in depth. We were made aware of some very positive restorative justice work across different domains (i.e, not just criminal justice), but there is an under-capacity issue that needs to be addressed. It is recommended that a restorative justice strategy covering all domains occupied by children be developed. This should include criminal justice, of course, but also education and children's residential units.

One note of caution should be introduced in respect of restorative justice and children. If a 'children's first' philosophy is embraced by the island, then it should be acknowledged that there will be occasions when it is in the child's best interests not to participate in the process. This does not mean that victims' needs should be ignored, but they may sometimes require being dealt with outside of the restorative justice process.

**ix. To what extent is current policy and practice compliant with relevant international conventions?**

Jersey's adoption of the UNCRC represents a significant step in the right direction. The appointment of an independent Children's Commissioner is to be welcomed as is the current work being undertaken by the States of Jersey on the area of children's rights. At the present time Jersey is still in the early stages of working through the full implications of developing a children's rights based approach to service planning and delivery. This work needs to be undertaken sector by sector and service by service. Agencies and their personnel in the criminal justice system need to play an active part in this process. The first step is to ensure that a programme of training and awareness-raising is rolled out as soon as possible.

**x. To what extent do key messages from research inform policy and practice?**

The Review was impressed by a shared commitment to evidence-based policy and practice. The challenge is how best to translate research conducted in other countries and jurisdictions into the local context.

6.0

### **Summary of Recommendations:**

#### **General: Youth Justice Strategy**

6.1

There should be an understanding promoted across all relevant professional staff that the reasons children and young people present with challenging behaviour are many, complex and often interacting. As part of this, there should be an awareness that the most vulnerable and disadvantaged often present the greatest challenge and that evidence-based approaches are likely to have the greatest impact.

6.2

To develop a multi-agency youth justice strategy that addresses the rights and needs of children as perpetrators and victims within the existing children's human rights framework. This strategy should include a statement of clear aims. These aims should enshrine principles that protect and promote children's rights in the youth justice system. Accordingly it is recommended that consideration be given to the following aims:

6.2.1

6.2.2

6.2.3

6.2.4

6.2.5

6.2.6

6.2.7

6.2.8

6.2.9

6.3

The Youth Justice system should be compliant with international children's human rights conventions.

Welfare should be a primary consideration and young people should always be treated as children first and offenders second. Whenever possible children should be diverted from the criminal justice system with the expectation that their needs will be met.

Young people in the youth justice system should have the same access to their rights and entitlements as any other young person.

Children in the youth justice system are kept safe at all times.

Children in the youth justice system should be seen and heard.

Children in the youth justice system should be dealt with in the least restrictive way possible and only deprived of their liberty as a measure of last resort.

Victims should be heard, their needs met and, where appropriate, provided with the opportunity to share their views and take part in restorative processes.

Services should be held to account for addressing the needs of young people.

6.4 Establish a strategic multi-agency Governance Board to oversee and drive through implementation of the Youth Justice Strategy. The Governance Board should develop an agreed set of outcomes and measures in order to evaluate performance, including independent academic evaluation and independent inspection arrangements (ideally, both should be used in order to establish methodological triangulation).

6.5 It is recommended that a 'value for money' exercise be undertaken in order to estimate the costs of the different stages and elements of the youth justice system (e.g., Parish Hall Enquiries, court appearances, secure accommodation, etc.). This work will inform the priorities set by the Youth Justice Strategy.

6.6 The Youth Justice Strategy should sit within a broader child and youth participation strategy. This should be proactive in seeking the views of children and young people in relation to all of the key agencies and processes of the youth justice system. Children's voices should also be represented in the main governance structures of the system in order that young people can feedback on existing provision and contribute to the planning of future service delivery.

*The Children and Young People's Plan and Pledge to Jersey's Children and Young People* should be complemented by a *Children's Charter of Rights* that are linked to tangible universal entitlements guaranteed by the States of Jersey. The launch of such a Charter should be accompanied by,

- 6.7
- (i) a rolling programme of education and awareness-raising amongst children, families and all relevant professionals; and
  - (ii) clear signposting to advice and advocacy services for children and their parents/carers.

6.8 The Youth Justice Strategy should sit within a well-developed Early Help model that ensures children's holistic needs are identified and responded to at the very earliest opportunity. As part of this, a whole system commitment should be made to ensure children access the right help at the right time, minimising the need for specialist and statutory services. A panel comprising relevant professionals from key agencies should be established to identify and support the small number of children who may have become detached from universal services, with presenting and interacting difficulties in the areas of school non-attendance, exclusion and offending. Support would be provided by a virtual team (the Children's Integrated Support Team), working to the principle of minimum sufficient, and real time intervention. The panel should sit within a broader strategic framework that ensures all agencies are held to account in discharging their responsibilities.

Building on existing good practice, a Restorative Justice Strategy for Jersey should be developed. It should include developing appropriate practice in the domains of community, education, public care, Parish Hall Enquiry and criminal justice.

6.9

Changes to the Law, Guidance and Legal Practice:

6.10 In line with Article 3 of the UNCRC 1989, which states that ‘the best interests of the child shall be a primary consideration’, the Criminal Justice (Young Offenders) (Jersey) Law 2014 should be amended to include an explicit reference to this welfare principle.

6.11 Consideration should be given to a revision of the relevant legislation so as to give further powers to the Youth Court to deal with trials and sentencing involving allegations against children below the age of 18.

6.12 Notwithstanding the welcome guidance of the Attorney General on the prosecution of children, it should be noted that Paragraph 78a of the UN Committee on the Rights of the Child Report (2016) to the United Kingdom of Great Britain and Northern Ireland\* states that there is need to ‘Raise the age of criminal responsibility in accordance with acceptable international standards’. Given that the UN Committee on the Rights of the Child has also stated is that the age of criminal responsibility should be no lower than 12 years, it is recommended that these views are taken into full consideration in the review of the age of criminal responsibility that is scheduled to take place in 2021.

\*Which now covers the Bailiwick of Jersey in its reporting

6.13 Given that a review of the age of criminal responsibility is scheduled to take place in 2021 and the Independent Care Inquiry has requested that consideration be given to developing a welfare-based system of youth justice, we would recommend that the two issues be considered together. The terms of reference of the 2021 review should be widened to include an exploration of how a move to raise the age of criminal responsibility could be supported by an appropriate, welfare-based model that protects children’s rights via appropriate judicial oversight.

6.14 In line with Paragraph 78d of the Report by the UN Committee on the Rights of the Child (2016), the possibility of a child being detained in custody with adults should be removed completely (this remains possible in the case of girls in Jersey).

Currently, applications under Article 5 (5) of the Sex Offenders (J) Law 2010 (application to no longer be subject to notification requirements) have to be made to the court that set the notification period. Where a

6.15 Youth Court set the period a person may not be eligible to apply until he or she is an adult. It may be inappropriate for an adult to apply to the Youth Court, but the Magistrates' Court would not, by law, be able to deal with the matter. Moreover, a Magistrates' Court hearing would be in public whereas the offender as a child would not have been identified in public. This legislative anomaly should be addressed.

6.16 Review and amend current legislation and guidance to increase the opportunities for temporary release (see Recommendation 6.24.i).

6.17 The principle of a horizontal sentencing framework should be upheld, but it is recognised that the courts have limited sentences available to them in the youth court. In the circumstances a reparative condition as part of a probation order, and as an alternative to a financial penalty, could be made available in appropriate cases.

6.18 Recommendation 78b of the UN Committee on the Rights of the Child (2016) states that 'diversion measures do not appear in children's records' and Council of Europe guidance that advises 'criminal records of children should be non-disclosable on reaching the age of majority' (apart from in cases where serious offences have been committed). It is therefore recommended that guidance is issued to ensure that, a clear Criminal Records and Enhanced Disclosure Policy in respect of children should be developed.

Parish Hall Enquiries:

There is consensus that the Parish Hall Enquiry System works well for most children and should be retained, but improvements and enhancements should be considered without undermining the unique ethos of community-based informalism that it represents.

- (i) It is recognised that, since the 2010 Report, the probation service has taken a more proactive role in supporting the Parish Hall Enquiry. Although this development represents a clear improvement in practice, this is an opportune moment to review whether this supporting role could be improved or possibly even involve agencies such as the youth service. A task and finish group should consider how children can be better prepared for, and supported through, the PHE process; and how Centeniers can be best informed and prepared ahead of a child appearing before the PHE.
- (ii) When appropriate, consideration should be given to making greater use of restorative resolutions and explore whether this process should be supported by a victim advocacy scheme.

6.19 Courts:

6.20 Consideration should be given to how the Youth Court and Royal Court can make further progress towards being more child-friendly. An element of formality in proceedings is not necessarily to be removed completely, but in some cases a more informal and sensitive approach is appropriate. The courts would clearly benefit from receiving some information and guidance about children's capacity and disposition in advance of hearings. We therefore recommend that the probation service be tasked with engaging with courts in order to review how the appropriate information and guidance can be better communicated in advance of hearings.

6.21 Where an adult and a child below the age of 18 years appear in the Magistrates' Court, the Magistrates' Court should be permitted to modify its procedures.

6.22 Membership of the Youth Appeal Court should be widened to include a judge sitting with Jurats or former Youth Court Panel Members (provided the latter were up-to-date with their training).

As part of a wider commitment to inclusivity and widening participation, the current age restriction of 60 years should be lifted on Youth Court Panel members.

6.23 Custody:

6.24 Although there does not appear to be a problem with excessive or inappropriate custodial sentencing, there remains a risk of children being deprived of their liberty due to the unavailability of appropriate accommodation. This can potentially result in children being held overnight in police custody and inappropriate custodial remands. As a matter of urgency we recommend that a Bail and Accommodation Strategy is developed to ensure children are not subject to the inappropriate deprivation of liberty in police custody and secure accommodation. A Task and Finish Group should be established to explore innovative ways of providing a continuum of appropriate, safe and secure accommodation that takes full account of issues related to welfare, mental health and criminogenic needs. This should include specialist foster care as well as suitable residential units. Urgent attention should also be given to how to address late requests for remand. Finally, the Task and Finish Group should revisit and review the appropriateness of whether the Youth Court should enjoy equivalent powers in respect of the Secure Accommodation Order as those available in Family Proceedings under Article 29 of the Children (Jersey) Law 2002.

The decline in the use of custodial sentencing since the Review in 2010 is to be welcomed, but this has resulted in the risk of social isolation for some children in Greenfields Secure Children's Home. It is therefore recommended that the walls of secure accommodation are more permeable in terms of developing a more integrated approach to the use of the facility. This could include,

- (i) Greater use of properly risk-assessed day release in order for children to partake of community resources such as education and training; and
- (ii) Access to Greenfields being given to community-based agencies that work with young people.

6.25

Training:

All professionals and volunteers who have contact with children in the youth justice system should receive high quality and ongoing specialist training on working with young people. The content of the training should include (a) an understanding of how children's rights should be applied in practice; and (b) Adverse Childhood Experiences, child development, and trauma-informed practice so that children currently at risk of being perceived as non-compliant are not unnecessarily criminalised. Those included in the training should be the States Police, Honorary Police, magistrates, advocates, probation officers and restorative justice practitioners.

6.26

Diversity, Recruitment and Monitoring:

It should be the aim of every public service to reflect the community it serves in all its diversity. Accordingly consideration should be given to taking positive action to encourage applications from the widest possible range of potential candidates to all of the key voluntary and professional roles in the youth justice system.

6.27

In order to address diversity issues it is important to undertake monitoring in relation to recording the ethnic profile of children across all of the key domains of service provision, including youth justice. It is only through undertaking such monitoring that disparities and patterns of over-representation can be identified with confidence.

6.28

Research:

It is acknowledged that research on Adverse Childhood Experiences is currently being undertaken and would urge Jersey to continue its work in this area. In particular it is important to establish the prevalence of Adverse Childhood Experiences (and related issues) in the general population.



