

# **STATES OF JERSEY**



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

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

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**STATES GREFFE**

## **PROPOSITION**

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

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

### **COUNCIL OF MINISTERS**

## REPORT

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

#### Background

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

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

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

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

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

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

### **A Committee of Inquiry**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **Composition of Committee**

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

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

- **Process for gaining States approval**

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

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

### **Financial and manpower implications**

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

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

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

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

### **Conclusion**

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

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

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

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

5th November 2012

## APPENDIX 1

### Terms of Reference

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

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



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

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

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

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

## PROPOSITION

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

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

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

- (1) What measures were taken to address inappropriate behaviour from staff when it was discovered, and if those measures were insufficient, what other measures should have been taken?
- (2) How did those in authority at political and officer level deal with problems that were brought to their attention?
- (3) Were there any mechanisms in operation to allow children to report their concerns in safety and what action was taken if and when concerns were voiced?
- (4) Was a consistent and impartial approach taken when deciding on which cases to prosecute; and was the process free from political influence or interference at any level?

# VERITA

IMPROVEMENT THROUGH INVESTIGATION

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

**November 2011**

## **Introduction**

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

## **Purpose of our consultative work**

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

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

## **Structure of this report**

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

## **Preface**

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

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

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

## Part 1

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

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

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

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

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

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

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

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

1.5 We found a general consensus that the Col should:

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

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

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

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

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

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

## **The inquiry process**

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

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

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

## **Recruitment of the chair**

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



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

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

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

### **Recruitment of the panel**

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

## **Part 2**

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

### **Terms of reference**

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

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

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

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

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

### **Scope of the inquiry**

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

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

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

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

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

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

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

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

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

### **Cost of the inquiry**

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

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

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

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

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

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

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

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

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

### **Disclosure and data protection**

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

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

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

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

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

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

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

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

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

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

### **Handling the next steps**

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

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

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

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

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

## **Recommendations**

**2.29** We recommend:

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



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

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

Ed Marsden  
Managing partner

Patricia Wright  
Associate

November 2011

### Part 3

This section contains the appendices.

**Draft terms of reference**

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

**Commissioner**

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

**Context**

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

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

## Terms of reference

The Committee of Inquiry is asked to do the following:

### *Establishing the facts*

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

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

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

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

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

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

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

#### *Government*

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

#### *General*

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

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

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

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

**List of documentation held at Jersey Archive**

**Information provided by Linda Romeril, head of archives and collections**

**Children's Home Inquiry**

The following records are held at Jersey archive:

**Social services**

**Haut de la Garenne**

**Admission registers**

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

**Case file sheets**

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

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

**Client files c.400 boxes**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

### **Judicial Greffe**

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

### **Law officers' department**

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

### **Education sport and culture**

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

### **General background archives**

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

## Costing calculations

## Panel

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

## Inquiry support team

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

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

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

Proposed timescales

Appendix 4

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



## APPENDIX 4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Conclusions**

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

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



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

**Andrew Williamson**