



Children's Commissioner for Jersey Promoting and Protecting Children's Rights

PAC Review of Government of Jersey Performance Management

This briefing is prepared and submitted in response to the PAC Review of Jersey Performance Management. January 2022

The Government of Jersey's use of performance management processes has little impact, if any, on the Office of the Children's Commissioner. The nature of us as an independent organisation means that we do not align with the implementation of the Jersey Performance Framework.

1. Please explain how you work with the Government of Jersey to support your organisation?

The Office of the Children's Commissioner is established in the **Commissioner for Children and Young People (Jersey) Law 2019**. The Office is a National Human Rights Institution for children (NHRI) with a mandate to monitor, promote and protect the human rights of children and young people.

As the Children's Commissioner I have a key public role in protecting and representing children's interests and promoting regard for children's rights. I also have a role to assist Government and other entities in identifying where more can be done for children. One of the functions of the Commissioner is to monitor their performance where it relates to children's human rights and to report to the Committee of the United Nations Convention on the Rights of the Child.

The primary objective of the Law was to bring forward legislation establishing a Children's Commissioner for Jersey, demonstrating that Jersey has not only responded to Independent Jersey Care Inquiry (IJCI) recommendations, reflected international best practice and lessons learned from other jurisdictions, but has also established an independent Children's Commissioner who can act as a champion for the rights of children and young people in Jersey.

Article 3 of the Law establishes the office of the Commissioner for Children and Young People and includes a number of provisions aimed at ensuring the independence of the Children's Commissioner. In doing so, the Law fulfils recommendations made by the IJCI and reflects international standards for children's commissioners emphasised by the Paris Principles, General Comment No.2, and the European Network of Ombudspersons for Children (ENOC) standards.

The independence of a Children's Commissioner from Government has been described by UNICEF as a "defining feature" of the success of the role, giving the role its "main strength and source of legitimacy and authority." Important features of the Children's Commissioner's independence provided for in the Law are:

- Exercise of the Children's Commissioner's functions must not be subject to the direction or control of any administration of the States, the Chief Executive Officer, a Minister, or the States. (Schedule, paragraph 2 (1))
- An obligation on the States to respect, uphold and defend the independence of the Children's Commissioner. (Schedule, paragraph 2 (2))

'Corporation sole' is a form of legal personality distinct from the person holding the office in question, providing that corporation with legal capacity. It enables the office to, for example, hold property and enter contracts, and ensures that obligations and liabilities, both statutory and contractual, continue notwithstanding any change in office holder. A corporation sole status is an important feature of the independence of the Children's Commissioner's role.

It is essential that the Children's Commissioner has sufficient and sustainable financial, staffing and other resources, and financial autonomy, to carry out the mandate of the office. The link between independence and infrastructure, in particular funding, is emphasised by the Paris Principles, UN Committee General Comment No.2 and ENOC standards.

To address these standards and concerns, the Law provides, at paragraph 9 of the Schedule, that the States must ensure that the Children's Commissioner is provided with such financial resources, administrative resources, and other support for the proper and effective discharge of the Children's Commissioner's functions under the Law. These arrangements are set out in a Framework Agreement signed by the Accountable Officer, Department for Strategic Policy and Performance (SPPP), the Chief Minister and the Children's Commissioner.

The Agreement sets out:

- the principles underlying the working relationship between the Children's Commissioner and the Government of Jersey (GoJ);
- arrangements to ensure that effective corporate governance arrangements are in place, supported by effective internal controls that demonstrate value for money;
- arrangements with regard to the provision and management of resources; and
- provides that these are in fulfilment of the statutory remit to ensure the Commissioner's independence and the obligations placed upon the Department for the good governance of arms-length bodies.

The Agreement is subject to a full review In July 2022. The formal review dates do not, however, preclude the Agreement being amended with the agreement of both the Department and the Children's Commissioner in the intervening period.

Four key principles¹ underpin the partnership between SPPP and the Children's Commissioner. All partners to this Agreement must pay heed to these principles in all their interactions and in communications with other parties. These principles mirror those of the UK Cabinet Office's Code of Good Practice relating to partnerships between departments and arms-length bodies (the "Code of Good Practice Principles").

The establishment of an independent body does not relieve the Government of its responsibility to ensure, on behalf of the public, that good governance is demonstrated, that effective internal control is in place and that value for money is secured by that body. Likewise, the Children's Commissioner, as an independent body, is not relieved of its responsibility to ensure that robust governance arrangements are in place.

The accountability and assurance arrangements set out in the Framework Agreement are intended to reflect the Code of Good Practice Principles (as noted above) and accord with the requirements of the Public Finances Manual. They reflect an approach to accountability and assurance that is proportionate and based on a mutual understanding of the Children's Commissioner's purpose and of associated risk.

2.What would improve both your relationship, and the level of support you receive?

¹ Four key principles are based on the UK Cabinet Office Code of Good Practice 2017: *Partnerships between departments and arm's length bodies*.

The Framework Agreement states that the Children's Commissioner and Government will engage with each other in a manner which is open, honest and constructive. They will work to ensure a mutual understanding of each other's objectives. This engagement will include regular meetings, annual meetings and Annual Reporting.

The Children's Commissioner and the Accountable Officer engage with each other regularly regarding all relevant matters affecting the work of the Children's Commissioner, as and when these matters arise, to ensure they are aware of any significant issues and that there are no surprises. This includes consulting the Children's Commissioner about emerging relevant policy and legislation matters or proposed changes to GoJ service provision. The Commissioner for Children and Young People (Jersey) Law established a duty on the Minister to consult with the Commissioner:

A Minister –

- (a) must consult the Commissioner upon any proposals for the preparation of any enactment directly concerning children or young people; and
- (b) may consult the Commissioner upon any other matter concerning children or young people generally, including the provision of services to, or directly in respect of them.

Engagement with Officers is generally very good, however engagement with the Children's Minister and the Education Minister since 2018 has, until more recently, been poor. This is partly due to the changes of Ministerial Office during this time. Since Deputy Wickenden took up office formally, engagement with the Minister and his Private Secretary has been much improved.

Engagement with the Council of Ministers and the Chief Minister has been less successful; however, the Council of Ministers have recently committed to inviting the Commissioner to their meetings more regularly.

During the course of the pandemic there have been instances where the Minister did not consult the Commissioner when required to. On other occasions when the Commissioner was consulted, it was not in a timely fashion, with propositions lodged without the Commissioner having sufficient time to respond fully. Whilst the pandemic undoubtedly meant that it was necessary to pass legislation urgently, that is all the more reason to ensure that there is independent oversight where it affects children.

3. Have you noticed any changes to your relationship with the Government of Jersey since the introduction of Target Operating Models and/or the Jersey Performance Framework in 2018?

The TOM and Performance Framework has had no impact on our relationship with the Government of Jersey, however we have seen operational issues that are an impact of the TOM. For example, in CYPES, specifically in the education area, there have been a number of changes to staffing and in some areas significant staffing issues with vacant posts.

4. If you had any complaints or issues, how did you raise it, what was the outcome, and were you satisfied?

The Framework Agreement sets out a complaints process: *'Where a dispute arises between the Department and the Children's Commissioner then all efforts should be made to reach an agreed position without the need for further escalation. Should resolution not be achieved, then escalation should be undertaken to the next level of seniority in the Department with the final level being that of the Accountable Officer.'* This process only considers a dispute between SPPP and the Office of the Children's Commissioner, and in the next review (July 2022) will need to include broader disputes. However, in the past I have been able to have an audience with the Chief Minister, Accountable Officer and Children's Minister to resolve a complaint.

5.How could that service be improved?

The process set out in the Framework Agreement is adequate to deal with complaints but should be broadened to all departments.

6.Please can you provide an indication of your level of confidence in the department that supports you, and tell us how that could be improved?

Confidence in SPPP is good. The Accountable Officer is the Director General and responds swiftly to concerns that I raise. He has been able to deal with finance and HR issues promptly. There are issues with using Government HR and finance services, particularly in relation to recruitment and purchasing, however the Commissioner Law allows for me to seek alternative providers for such services. The Framework Agreement states that *'when procuring supplies or services from a third party, raising or paying invoices, the Children's Commissioner will, unless otherwise agreed with the Accountable Officer, use GoJ supplier systems (for example, Supply Jersey) and act in accordance with procurement guidance. Where the Children's Commissioner wishes to deviate from this course, the Accountable Officer will consider any proposals for providing appropriate exemptions. In the event the Children's Commissioner does not use GoJ suppliers, the Children's Commissioner will need to demonstrate best value decisions.'* This provides me with the flexibility I require to meet the functions and duties of the statutory role. Moving forward, as the Office of the Children's Commissioner grows, we will rely less on the Government to provide those functions for us, and that will enhance our independent status.