

STATES OF JERSEY



COMMITTEE OF INQUIRY: HISTORICAL CHILD ABUSE (P.118/2012) – AMENDMENT

Lodged au Greffe on 5th February 2013
by the Council of Ministers

STATES GREFFE

COMMITTEE OF INQUIRY: HISTORICAL CHILD ABUSE (P.118/2012) –
AMENDMENT

PAGE 2, PARAGRAPH (b) –

For the words “(as set out in Appendix 1 to the Report of the Council of Ministers dated 5th November 2012)” substitute the words “(as set out in Appendix 1 to the Report on the amendment of the Council of Ministers dated 5th February 2013)”.

COUNCIL OF MINISTERS

REPORT

States Members will recall that the previous Council of Ministers commissioned Verita to seek the views of interested parties about the manner and conduct of a Committee of Inquiry into Historical Child Abuse in Jersey and to propose appropriate Terms of Reference for such an Inquiry (dated November 2011, see Appendix 3 of P.118/2012). Verita's recommended Terms of Reference subsequently informed the Terms of Reference outlined in Appendix 1 of Projet P.118/2012: Committee of Inquiry: Historical Child Abuse lodged au Greffe on 6th November 2012 by the Council of Ministers.

On 5th December 2012, the Chief Minister received a letter from Deputy M. Tadier of St. Brelade, *et al*, proposing a number of amendments to P.118/2012, which can be found in Appendix 2 to this Report. The Chief Minister subsequently sought advice and commentary on these proposed amendments from Verita. Verita responded in a letter dated 7th January 2013 which is contained in Appendix 3.

Following due consideration of the responses from Verita, the Council of Ministers propose amendments to P.118/2012 so as to largely reflect those outlined in Deputy Tadier's letter of 5th December 2012, and these are attached as Appendix 1. To assist States Members in identifying the changes to the original Terms of Reference outlined in P.118/2012, the amendments now being proposed by the Council of Ministers are shown with tracked changes and contained in Appendix 4.

In summary, the Amendments are as follows:

Terms of Reference 1

This is proposed on the basis that the rewording is for clarification and does not affect the meaning of the term.

Terms of Reference 2, 3, 4, 7, 8, 9, 12 (as numbered in P.118/2012)

These amendments are proposed as they are in keeping with the purpose of the Committee of Inquiry.

Terms of Reference 6 (numbered 7 in the Appendix to this Report)

No amendments to this term were proposed in the submission of the proposed amendments outlined in the letter dated 5th December 2012. However, following due consideration, the Council of Ministers propose this amendment on the basis that it largely reflects a limb of the Terms of Reference proposed by Verita in its Report dated November 2011.

This Amendment anticipates that evidence will be heard from those who suffered abuse or believed that they suffered abuse, and also from those who worked in the relevant services, together with any other relevant witnesses. The victims of abuse (the term is used in these comments to cover both those who have suffered abuse or believe that they have suffered abuse) will be able to give their evidence free of consequences because anything said by them will be privileged. Allegations or accusations may well be made against named individuals who have not been prosecuted in circumstances where the prosecution authorities have decided that there is insufficient evidence to

bring a prosecution. Any persons accused in this way will suffer damage to their reputation. Therefore, accused persons should have a full opportunity to challenge those who accuse them. That opportunity will only be effective if they are given full access to information necessary to prepare a defence and are permitted, through legal advisers, to challenge the evidence against them. This could be a lengthy and costly process given the legal fees that are likely to be incurred. If the hearing before the Committee of Inquiry takes place in public and, as common fairness demands, any accused person has the chance to robustly defend themselves, then it may be a highly confrontational and traumatic experience for all concerned.

A Committee of Inquiry generally sits in public but it has the power, in the interest of justice or in the public interest, to sit for all or any part of proceedings, in private. The Council of Ministers does not believe that Standing Orders permit, in the Terms of Reference, that the Committee sit in private in any particular circumstance. However, it is essential that the Committee of Inquiry balances the needs of the victims with both the public interest and the interests of justice.

Mr. Marsden of Verita said in his presentation to States Members on 26th October 2012, that a Committee of Inquiry should not try to discharge the duties of a public prosecution authority. Given that all the allegations of which the States of Jersey Police are aware have already been considered by the prosecution authorities for prosecution purposes, and given the irreparable damage that may be done to the reputation and life of a person wrongly accused, Ministers would strongly hope that a Committee of Inquiry would resolve to deal with all allegations of abuse in private and then determine what should be contained in any report made to States Members as a result.

There is nothing to stop a person who believes that they have been the victim of abuse in making that allegation in public. They would then bear the consequences, were that allegation to be falsely made, as they would not have the protection of privilege. Ministers believe that the fairest course would be for individuals to have the opportunity to talk about their experiences of abuse in private, but that they should not be in a position to make any allegation against a named individual in public, within the structure of the Committee of Inquiry, unless that named individual has been convicted of a criminal offence.

It is for these reasons that the Council of Ministers proposes this particular amendment to the Terms of Reference.

Terms of Reference 10

This Amendment raises an important matter of principle. The Proposition from Senator F. du H. Le Gresley in 2011 that requested the Council of Ministers to bring forward proposals for a Committee of Inquiry (P.19/2011) did not initially refer to a review of the prosecution process, but this element was added as a result of an amendment by Deputy Tadier which was adopted by the previous Assembly.

Whilst Ministers accept the decision of the previous Assembly, and have proposed Terms of Reference accordingly, the Council of Ministers has no knowledge of the extent, or basis, of any concerns about the prosecution decisions taken in the historical child abuse enquiry. There is little doubt that a number of individuals who made allegations of abuse which did not result in a prosecution were unhappy with that

decision. Ministers are not, however, aware of a reason for suggesting that prosecution decisions were taken other than on a proper basis and in accordance with accepted principles.

This is important, as there is a fundamental principle in a democratic society that prosecution decisions should be free from political interference. It seems that it could only be in the most exceptional circumstances that it could be appropriate to review prosecution decisions within the context of a Committee of Inquiry set up by a political assembly, where there is clear evidence that something had gone badly wrong in the prosecution process and Ministers are aware of no such evidence in connection with these cases.

Although Ministers know of no reason to be concerned about the prosecution decisions, it is accepted that if there were concern, it would be a matter of legitimate public interest to establish that any prosecution decisions were taken independently of any political consideration or pressure and were taken on a proper and professional basis. For that reason, the wording in Terms of Reference 10 has been suggested.

Some changes have been made from the proposal laid out relating to this Term of Reference in the letter dated 5th December 2012. The term “*consistent*” is problematic in that it should be asked “*What is the thing being measured to be consistent with?*”. Things can be consistently good or consistently bad. Accordingly, the amendments proposed to this term make it clear that the ambit of the enquiry to be undertaken by the Committee of Inquiry is as to the nature of the process, whether or not it was a proper process and whether or not there is any evidence that decisions taken were subject to political interference.

It should not be the case that a Committee of Inquiry should examine the details of individual prosecution decisions. The reasons for this are as follows –

1. A public examination of a prosecution decision infringes the principle of the independence of the prosecution decision-making process and may undermine that independence going forward.
2. The Committee of Inquiry, comprising a lawyer and 2 lay-persons, will not be best placed to give any proper evaluation of a prosecution decision without specialist expert guidance by a person who had access to all material available to the person who took the original prosecution decision.
3. A public scrutiny of prosecution decisions will amount, in effect, to a trial in public, not only of the decision itself but also of the individuals against whom allegations are made. This would be wrong and unfair.

A provision to Term 10 has been added so as to ensure that prosecution decisions, should they need to be examined at all, should be done confidentially by a specialist in criminal law who would then report to the Committee of Inquiry. The decision of the specialist would be definitive in terms of those decisions considered by him or her. It is anticipated that in the event that the Chairman of the Inquiry feels the need to have one or more prosecution decisions reviewed in order to establish precisely what the process was, or in some other way to discharge the other aspects of Term 10, then it should be done by the independent expert, who would provide an anonymised report.

This would enable the Committee of Inquiry to discharge Term 10 in a satisfactory manner and to be comforted that, where individuals giving evidence under Term 6 have raised concerns, those files have been looked at by the independent expert. This would create the correct balance between legitimate enquiry into the process under which prosecution decisions have been taken, whilst preserving the individual decisions from enquiry by a political assembly.

For these reasons, the Council of Ministers propose the amendments to Term 10.

Financial and manpower implications

States Members are reminded to refer to the financial and manpower implications outlined in the Report to P.118/2012.

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

9. Review the actions of the agencies of the government, the justice system and politicians during the period under review, in particular when concerns came to light about child abuse and establish what, if any, lessons are to be learned.
10. Consider how the Education and Health and Social Services Departments dealt with concerns about alleged abuse, what action they took, whether these actions were in line with the policies and procedures of the day, and whether those policies and procedures were adequate.
11. Establish whether, where abuse was suspected, it was reported to the appropriate bodies, including the States of Jersey Police; what action was taken by persons or entities including the police, and whether this was in line with policies and procedures of the day and whether those policies and procedures were adequate.
12. Determine whether the concerns in 2007 were sufficient to justify the States of Jersey Police setting in train 'Operation Rectangle'.
13. Establish the process by which files were submitted by the States of Jersey Police to the prosecuting authorities for consideration, and the process by which the prosecution authorities decided whether a prosecution should be brought and establish whether or not that process –
 - enabled those responsible for so deciding to take a professional and impartial approach;
 - was free from any political influence or interference at any level.

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

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

APPENDIX 2

5 December 2012

Dear Chief Minister,

A number of stakeholders met recently and have agreed to send the following letter to you concerning mainly the Terms of Reference of the Committee of Inquiry, as put forward in the Council of Ministers' P118/2012, but also the arrangements for the Inquiry.

We put it to you that the wording of the proposed Terms of Reference is in some places unclear or lacking in precision, in others it is unacceptable. Vital issues of great public concern have been omitted which were included in the Verita Terms of Reference, which you say "have been used as the foundation for Terms of Reference" (P118/2012, page 5). Verita's Terms of Reference, whilst not perfect, at least tried to cover all the relevant areas.

If this Committee of Inquiry is to satisfy the direct stakeholders, the Jersey public and the wider world, and if it is to achieve its goals, then it must be comprehensive as well as thorough and transparent. We have found that the Terms of Reference exclude some important matters, in particular, the following:

- a) The conduct of the Police investigation, the events around the handover from one investigation team to another, the suspension of Police chief Graham Power, and the impact these had on outcomes;
- b) The political and societal framework and environment and how this may have affected the reporting of abuse, the investigation itself and the outcomes.

This Committee of Inquiry must put all the relevant issues to bed, otherwise what is the point? We seek transparency and openness. Care leavers, staff at all levels, States members, concerned citizens, expect no less, and if the COM thinks that these issues can be somehow confined to Jersey, somehow "managed", somehow swept under the carpet, then they are sorely mistaken.

Here are two reminders of the fundamentals:

"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"

Verita report, cited on page 27 of P118/2012

"There will be no cover-up"

Frank Walker, Chief Minister, clip cited on BBC TV South West, The Politics Show, 02/03/08

The changes we are putting forward in the Appendix to this letter to the TOR make them clearer, more precise and more comprehensive. We believe that these changes are necessary to meet all the aims of the Committee of Inquiry, as set out by Verita, namely:

to understand what really happened to children cared for by the States and private foster care systems

to set this information in context

to understand what went wrong, what was done at the time and who was accountable

to ensure that current and future services are arranged so that children are protected

to ensure trust in children's services and the States' supervision of them

ensure the reputation of Jersey with respect to child care

(Verita cited in P118, page 14/15, abridged)

The Committee of Inquiry must establish the truth about every aspect and should resolve all the issues. Otherwise the question of historic child abuse will come back and back and back again to haunt us,

Do you agree to co-operate with us, as stakeholders in these matters?

Given the time critical nature of these amendments, we request a meeting with you before the end Monday 10th December 2012. This will allow States members time to consider lodging Amendments of their own, if they so wish, so any re-drafting has to be published before the Christmas break.

We would point out that it is by far preferable for the COM to bring these revisions than for them to be brought by backbenchers. It would show to islanders and the world at large a clear desire to tackle this issue head on, to "leave no stone unturned" in Frank Walker's phrase and to get to the bottom of what happened and how it could have happened.

Only then will this Committee of Inquiry have the confidence of the stakeholders, concerned citizens, the general public and the wider world.

Signed

F.J. (Bob) Hill, BEM
Carrie Modral, Jersey Care Leavers Association
Daniel Wimberley
Deputy Mike Higgins
Deputy Shona Pitman
Deputy Trevor Pitman,
Deputy Montfort Tadier,

APPENDIX

(Note that the full text of all amended paragraphs or Terms of reference are listed in the Endnotes)

PROPOSED CHANGE TO THE PROPOSITION AND PROPOSED NEW TERMS OF REFERENCE

A

To paragraph c) of the Proposition, ADD the words: **“who will involve key stakeholders, including, at the least, victims and staff”**¹

A promise was made by the former Chief Minister to involve the Care Leavers, the former Deputy of St Martin, Deputy Tadier and Senator Le Gresley in drafting the COI’s TOR. That promise has not been kept. If the COI is to have any credibility it is imperative that its selection process is transparent. Given the broken promise, it is proposed that at least one of the aforesaid people is involved in the selection or at least oversight of the appointment process.

B

ADD NEW TERM OF REFERENCE

- i. **“Examine the conduct of Operation Rectangle, including, but not limited to, the following issues: whether the decision to set the operation in train was justified, how the changeover of leadership was handled, the decision to close the inquiry and whether it was closed prematurely, and whether, at any stage, outcomes were adversely affected.”**²

For some reason Verita’s Term of Reference *“Determine whether the concerns in 2007 were sufficient to justify the States of Jersey Police setting in train Operation Rectangle,”* was omitted by the Council of Ministers. However this matter is of grave public concern, as are all the other matters mentioned.

C

ADD NEW TERM OF REFERENCE

“Examine the political and societal environment during the period under review and its effect on the oversight of children’s homes, fostering services and other establishments run by the States or by voluntary organisations, on the reporting

¹ Paragraph c) would then read: “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, who will involve key stakeholders

² “Examine the conduct of Operation Rectangle, including, but not limited to, the following issues: whether the decision to set the operation in train was justified, how the changeover of leadership was handled, the decision to close the inquiry and whether it was closed prematurely, and whether, at any stage, outcomes were adversely affected.”

or non-reporting of abuse within or outside such organisations, on the response to those reports of abuse by all agencies and by the public, on the eventual police and any other investigations, and on the eventual outcomes.” ³

The overall political and societal environment is clearly a factor determining the extent of abuse, how long it goes on for, and how entrenched it becomes. This Term of Reference (or something which covers the same ground) is ESSENTIAL if we are to find out the truth and if we are to be successful in the key aim of ensuring that this history is never repeated.

D

ADD NEW TERM OF REFERENCE

“Review the actions of agencies of the government, the justice system and politicians during the period under review, in particular when concerns came to light about child abuse and establish what, if any, lessons there are to be learned” ⁴

This is a more explicit, precise and inclusive version of Verita’s Term of Reference, which was: *“Review what actions the government took when concerns came to light in 2008 and what, if any, lessons there are to be learned.”* This TOR was omitted by the Council of Ministers.

Clearly this Term of Reference of Verita’s, as adapted here, is necessary to fulfil the purpose of the inquiry as stated by Verita and quoted in this letter on page 1

REVISIONS TO TERMS OF REFERENCE

Terms of Reference 1

ADD **“in the period under review, that is the”** ⁵

This makes some subsequent Terms of Reference easier to phrase, as they need only refer to “the period under review”

³ NEW TERM OF REFERENCE: “Examine the political and societal environment during the period under review and its effect on the oversight of children’s homes, fostering services and other establishments run by the States or by voluntary organisations, on the reporting or non-reporting of abuse within or outside such organisations, on the response to those reports of abuse by all agencies and by the public, on the eventual police and any other investigations, and on the eventual outcomes.”

⁴ NEW TERM OF REFERENCE “Review the actions of agencies of the government, the justice system and politicians during the period under review, in particular when concerns came to light about child abuse and establish what, if any, lessons there are to be learned”

⁵ TOR 1 would now read: “Establish the type and nature of children’s homes and fostering services in the period under review, that is, the post-war period, with a particular focus on the period after 1960. Consider (in general terms) why children were placed and maintained in these services.”

Terms of Reference 2

ADD **“in the period under review”** and ADD **“and consider whether these aspects of Jersey’s children’s homes were adequate”**

It is clear to us that the adequacy of the arrangements is as important as defining what those arrangements were.

ADD **“and any other establishments, whether States-run or voluntary”**

This addition corrects an obvious oversight. Clearly other establishments where abuse took place cannot be excluded ⁶

Terms of Reference 3

ADD **“in the period under review”** and ADD **“with a particular focus on”**

This is tidying up.

ADD **“and other”** and **“and other establishments run by the States or by voluntary organisations”** ⁷

This addition corrects an obvious oversight. Clearly other establishments where abuse took place cannot be excluded

Terms of Reference 4

REPLACE **“during this period”** WITH **“during the period under review”**

AND ADD **“and the professional norms”** ⁸

What is codified as best practice or “professional norms” are the standards which apply to the State acting as guardian of Looked After Children. These may differ from “social norms” – the standards which different groups in society feel it is right to apply in their own homes.

⁶ TOR 2 would now read: “Determine the organisation (including recruitment and supervision of staff), management, governance and culture of children’s homes and any other establishments, whether States-run or voluntary in the period under review and consider whether these aspects of those establishments were adequate”

⁷ TOR 3 would now read: “Examine the political and other oversight of children’s homes and fostering services and other establishments run by the States or by voluntary organisations, in the period under review with a particular focus on the various Education Committees between 1960 and 1995, on the various Health and Social Services Committees between 1996 and 2005, and by ministerial government from 2006 to the current day.

⁸ TOR 4 would now read: “Establish a chronology of significant changes in childcare practice and policy during the period under review, with reference to Jersey and the UK in order to identify the social norms and the professional norms under which the services in Jersey operated throughout the period under review.

Terms of Reference 5

REPLACE “Take into account” with “**Consider and appraise**”

There seems to us to be no good reason for weakening the wording in this way.

REPLACE “the independent investigations and reports” WITH “**the range of investigations and reviews that have been undertaken over the last 20-30 years with a particular focus on those**”⁹

Restricting the reports considered to 2007 onwards is unjustifiable considering what the period under review of this Committee of Inquiry actually is.

Terms of Reference 6 Agreed

Terms of Reference 7

ADD “**whether these systems were adequate, and any failings they had**”¹⁰

See comment on Terms of Reference 9

Terms of Reference 8

ADD “**and whether those policies and procedures were adequate.**”¹¹

See comment on Terms of Reference 9

Terms of Reference 9

ADD “**and whether those policies and procedures were adequate.**”¹²

In Terms of Reference 7, 8 and 9 the adequacy of the arrangements plainly needs to be assessed.

⁹ TOR 5 would now read: “Consider and appraise the range of investigations and reviews that have been undertaken over the last 20-30 years with a particular focus on those 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.”

¹⁰ TOR 7 would now read: “Identify how and by what means concerns about abuse were raised and how, and to whom, they were reported. Establish whether systems existed to allow children and others to raise concerns and safeguard their wellbeing, whether these systems were adequate, and any failings they had.

¹¹ TOR 8 would now read: “Consider how the Education and Health and Social Services Departments dealt with concerns about alleged abuse, what action they took, whether these actions were in line with the policies and procedures of the day and whether those policies and procedures were adequate.”

¹² TOR 9 would now read: “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, and whether this was in line with policies and procedures of the day and whether those policies and procedures were adequate.”

Terms of Reference 10

REPLACE EXISTING WITH

“Establish the process by which files were submitted by the States of Jersey Police to the prosecution authorities; and examine whether those responsible for deciding on which cases to prosecute took a consistent and impartial approach which was free from political influence or any other interference of any kind.”

This TOR needs to focus on what actually happened as well as the process within which decisions were taken. We have taken Verita as the foundation of this TOR.

In the last phrase we feel the original is ambiguous – that is the “interference” could be construed as only “political interference” whereas there may be other kinds.

We have removed the final paragraph. We feel that it is not within the remit of a Public Inquiry to adjudicate on individual cases, even by arranging for independent legal reviews of cases. It is, however, within their proper remit to say: “hey, given the evidence we have heard, there is a need for this or that case or set of cases to be reviewed/re-opened.”

Terms of Reference 11 Agreed

Terms of Reference 12

ADD **“and how these issues affect their safety into the future”**

Omitting this must have been an oversight. Any issue helping to prevent this abuse happening again is relevant.

DELETE “The Inquiry should make full use of all work conducted since 2007.”¹³

This is tidying up, as this repeats Terms of Reference 5

¹³ TOR 12 would now read: “Report on any other issues arising during the Inquiry considered to be relevant to the past safety of children in residential or foster care, and other establishments run by the States or by voluntary organisations, and how these issues affect their safety into the future”

VERITA

IMPROVEMENT THROUGH INVESTIGATION

Senator Ian Gorst
Chief Minister
States of Jersey
Cyril Le Marquand House
PO Box 140
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7 January 2013

Private and confidential

Dear Chief Minister

Committee of Inquiry: Historical Child Abuse - comments on proposed amendments to the terms of reference

Thank you for your email of 18 December 2012 asking for my comments on the suggested amendments to both the proposition and the terms of reference for the Committee of Inquiry: Historical Child Abuse (Col).

My colleague, Jess Martin and I have carried out the review you requested and it may be helpful if I explain how we have undertaken the work and the principles we have borne in mind.

As you know, Patricia Wright and I used our 21 meetings held on the island during September 2011 to inform the development of our terms of reference as set out in our report to the Council of Ministers. The meeting notes are our primary record of what we were told. Jess and I have therefore gone back to these in developing our advice to you. We have re-read our advisory report to the Council of Ministers of November 2011.

We have also taken account of other general points in offering our comments, including:

- The primary purpose of the Col is to inquire into historical child abuse in State and other institutions
- The Col needs a broad measure of support from across the community in order to achieve its aims

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- Politicians need to decide the scope and nature of the inquiry including whether seemingly contentious matters are included in the terms of reference
- The chair and the panel once appointed will interpret the terms of reference (and individual limbs) in their own way

I will set out our view of the suggested changes sent to you by Deputy Tadier on 17 December 2012. I will follow the order as set out in the appendix to his email.

Amendment to the proposition

Point A

Our report suggested that care leavers and other stakeholders are involved in the recruitment of the chair and that the recruitment is conducted in a transparent manner. The intent behind the proposal made in point A is therefore consistent with our original report albeit we did not specify how care leavers and stakeholders should be involved. The precise wording suggested in the amendment could cause some difficulty for the appointment process as it does not clearly state who the stakeholders are and it is not clear how their involvement would interact with the recruitment process run by the Greffier and overseen by the Jersey Appointments Commission. We suggest that these two issues be clarified in the wording of the amendment.

New terms of reference

Point B

In our terms of reference we suggest the following wording: "*Determine whether the concerns in 2007 were sufficient to justify the States of Jersey Police setting in train Operation Rectangle*". The amendment suggested in Point B widens the scope of our original wording to the management of Operation Rectangle, decisions about changes to the leadership and management of SOJP and the question of whether those decisions affected the outcome of the police investigation. Introducing these additional matters extends the purpose and workload of the Col beyond historical child abuse in State and other institutions. It may also impact on the selection of the chair and panel members as the skills and experience required to examine the management of a police operation could be different from those required to review historical child abuse.

Our September 2011 meeting notes show a range of opinions about the extent to which Operation Rectangle and decisions about the change of leadership should be examined by the inquiry. In our view there was certainly no clear consensus and we therefore expressed the matter in a limited way. However these wider questions are evidently a concern to some in the community and we suggest that you may wish to discuss this point with Deputy Tadier and colleagues. One option may be to commission a separate investigation into the management of Operation Rectangle which runs in parallel to the Col. We would nevertheless stress that it is not our role to comment on the political desirability or otherwise of doing this.

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Point C

Our impression is that the purpose of this new limb is to invite the panel to consider the affect of political and societal features of Jersey life on the matter of abuse. The chair and panel will want to put events in a broader context and should be encouraged to do so. When we visited the Jersey Archive in September 2011 we discussed with Linda Romeril the range of information including social histories and policy documents that were available to enable them do this. In short, we support the intention behind the new limb and made reference to social norms in the third limb of our original terms of reference. That said, it is a lengthy addition to the terms of reference and perhaps it could be simplified without losing its meaning.

Point D

This is a more elaborate and specific wording of our original limb. Including it would be consistent with the findings of our visit albeit we were suggesting the period from 2008. We therefore suggest that this new limb is included.

Revisions of existing terms of reference

ToR 1

We suggest this amendment is accepted on the basis that the rewording is for clarification only and does not affect the meaning of the term.

ToR 2

We suggest these amendments are accepted as they are in keeping with the purpose of the Col.

ToR 3

We suggest these amendments are accepted as they are in keeping with the purpose of the Col.

ToR 4

We suggest these amendments are accepted as they are in keeping with the purpose of the Col.

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ToR 5

We suggest that the amendment of the wording from “take into account” to “consider and appraise” is accepted. This alteration is consistent with our terms of reference.

On the face of it, the suggestion that the terms of reference should be amended so that the inquiry considers and appraises all investigations and reviews in the last 20-30 years appears to invite the panel to conduct considerable additional work. However our view is that the panel would, regardless, be likely to ask for and consider all relevant reviews in the course of the inquiry. The addition of the dates will simply ensure that they do so.

ToR 6

No change suggested.

ToR 7

We suggest this amendment is accepted as it is in keeping with the purpose of the Col.

ToR 8

We suggest this amendment is accepted as it is in keeping with the purpose of the Col.

ToR 9

We suggest this amendment is accepted as it is in keeping with the purpose of the Col.

ToR 10

The amended limb places more emphasis on the actions of individuals as distinct from matters to do with process. This wording is consistent with our terms of reference and we suggest that it is accepted.

The amendment also removes the section of the limb that suggests that the Col should appoint independent experts to review and report on individual prosecution files where they feel further review is needed. We advise that the amendment is discussed with Deputy Tadier and colleagues and HM Attorney-General.

ToR 11

No change suggested.

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ToR 12

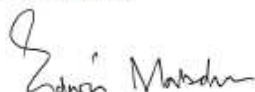
We suggest this amendment is accepted as it is in keeping with the purpose of the Col.

Summary comment

In summary, we think many of the suggested changes can be accommodated if you are minded to make amendments to the Council of Minister's proposition and terms of reference. We strongly recommend that Point B (page one of this letter) and ToR 10 (immediately above) are discussed with Deputy Tadier and colleagues and, in the case of ToR 10, HM Attorney General.

I hope that the above suggestions are helpful to you in considering the amendments proposed by Deputy Tadier and colleagues. I would be happy to discuss any of the above points or suggestions should you require any further advice. I am happy to attend a meeting if that would be helpful.

Yours sincerely



Ed Marsden
Managing partner

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APPENDIX 4

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

12. Determine whether the concerns in 2007 were sufficient to justify the States of Jersey Police setting in train Operation Rectangle.

13. Establish the process by which files were submitted by the States of Jersey Police to the prosecuting authorities for consideration and the process by which the prosecution authorities decided whether a prosecution should be brought and establish whether or not that process –

- enabled those responsible for so deciding to take a professional and impartial approach;
- was free from any political influence or interference at any level.

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If for these purposes, or as a result of evidence given under paragraph 6, in the opinion of the Chairman of the Committee, it would be of assistance that one or more of the prosecution files underpinning any prosecution decision 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.

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

15. Report on any other issues arising during the Inquiry considered to be relevant to the past safety of children in residential or foster care and other establishments run by the States, and whether these issues affect the safety of children in the future.

Deleted: The Inquiry should make full use of all work conducted since 2007