



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 CoI 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
November 2011

Patricia Wright
Associate

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 abuse¹ 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?

¹World 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, 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)

- 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.

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:
 - o D/J/N8/8 - St Helier Vauxhall Boys school Punishments Book, 1965 – 1975

- o D/J/N29/3 - Les Landes School, formerly St Ouens Parochial School- Punishment book, 14/09/1916 - 07/06/1962
- o 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

Appendix 3

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	£576,800	£342,000	£256,500

	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	£201,250	£55,000	£165,760	£144,000	£17,500

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

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

Proposed timescales

[illegible]

Commissioning the historical child abuse Committee of Inquiry	Month																													
	Nov-11			Dec-11			Jan-12			Feb-12			Mar-12			Apr-12			May-12			Jun-12			Jul-12					
Option Two																														
Present paper to Council of Ministers and reach agreement about the actions needed to commission the inquiry (discuss with interested backbenchers)																														
Draft and lodge a proposition about ToRs and next steps																														
Debate proposition containing proposed terms of reference with States Assembly and seek approval for recruiting chair																														
Informal discussion 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)																														
Appoint chair (subject to States approval)																														
Recruit panelists (subject to States approval)																														
Draft and lodge proposition containing chair and panelist nominations																														
Debate proposition containing nominations with States Assembly																														
Assuming approval, start CoI																														