

## CHAPTER 6

### Changes in Child Care Practice and Policy over the Years

6.1 In opening to the Inquiry in July 2014, Counsel to the Inquiry presented a summary of the major legislative changes in Jersey and in the UK alongside developments in policy reflecting changes in society. This was subsequently substantiated by a report commissioned by the Inquiry, “*A review of services for children in care in the UK since 1945 and a comparison with the situation in Jersey*”, by Professors Roger Bullock and Roy Parker (the “Bullock Report”).<sup>1</sup> The Bullock Report discusses major societal changes and the legislation that followed, comparing England and Wales with Jersey social legislation. The Report is at Appendix 6. It should be read in tandem with the evidence of Richard Whitehead, which complements it. Richard Whitehead conducted a review of child care legislation in Jersey from 1945 (see Appendix 7).<sup>2</sup>

#### Legislative development

6.2 The consideration of UK legislation serves several ends. First, it may be taken as a reflection of child social policy in the UK at the time. Secondly, it may be viewed in comparison with Jersey legislation in force at the time. Thirdly, the relative frequency of legislative change in England and Wales may be seen as a reflection of changing societal norms influencing policy, which in turn initiates legislative change.

6.3 Richard Whitehead<sup>3</sup> provided a statement to the Inquiry on the history and development of Jersey child care legislation from 1945.<sup>4</sup> His statement and a chronology of Jersey child care legislation since 1945 are provided at Appendix 7. The following points emerge from his evidence to the Inquiry.

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<sup>1</sup> EE000136

<sup>2</sup> EE000261 and EE000262

<sup>3</sup> Principal Legal Adviser, Director of the Civil Division of the Law Officers' Department

<sup>4</sup> EE000261

The development of child care legislation in Jersey, although independent of the UK, has been influenced by and is modelled on UK legislation. As Richard Whitehead noted: “*There are many examples showing that Jersey closely follows UK legislation where appropriate ... in some cases changes to UK legislation provide a specific trigger for changes in Jersey legislation, in other cases there has been a general recognition that Jersey legislation requires updating.*” He told the Inquiry that, as a matter of “good practice”, Jersey departments keep under review prospective changes in the UK, saying: “*almost all child care legislation in Jersey mirrors UK child care legislation to some extent*”.

- 6.4 The introduction of legislative change in the island has tended to be behind that of the UK; for instance, the *Children (Jersey) Law 1969* mirrored in certain respects the UK’s *Children Act 1948*. The need for all-encompassing children’s legislation was first raised in 1960 by Patricia Thornton. It was recognised that the island’s child care legislation was “*so inadequate for modern needs*” and that the proposed law was “*based on United Kingdom legislation*”. At the time, the Attorney General (AG) was concerned that “*our existing laws on children are extremely inadequate and we find that we are continually having to try to improvise in order to keep in step with modern ideas on child care and treatment*”.<sup>5</sup> The delay was due in part to the UK Home Office giving advice to Jersey on the effects of the abolition of approved schools in the UK, with no corresponding provision in Jersey.
- 6.5 Another example of mirroring legislation was the introduction of the *Children (Jersey) Law 2002*, planning for which began in 1989, in the light of the UK *Children Act 1989*. A review of existing Jersey law was finalised in 1991. The initial approach was to bring in piecemeal amendments to the *1969 Law*. This was seen as “*risky*” by the Law Draftsman. When the draft *Children (Jersey) Law* was presented to the States in 1991, it was described as being “*a comprehensive new Law, based on the United Kingdom Children Act 1989 ... [creating] a framework capable of responding to the wide variety of child care arrangements that exist today*”. One of the debates in Jersey over the draft

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<sup>5</sup> EE000184

Bill was the extent to which the Jersey law would mirror the shift away from parental rights over children to parental responsibility for children.<sup>6</sup> It did, in fact, do so.

- 6.6 The 2002 Law did not come into force until 2005: Richard Whitehead told the Inquiry that “*considerable subordinate legislation*” was needed and the Law Officers’ Department was stretched. He said that, as a very small jurisdiction, “*some major changes just take a long time because there are not very many people working on them ... in Jersey it is a small administration dealing with almost the same amount of issues, it is purely and simply a lack of resources*”.<sup>7</sup> Part of that subordinate legislation included the prohibition of corporal punishment in voluntary homes.<sup>8</sup>
- 6.7 In explaining the time lag between UK and Jersey legislation, Richard Whitehead suggested that “*for various reasons some of the complexities found in the UK model will be unnecessary in a smaller jurisdiction such as Jersey*”. He reflected: “*It takes quite a long time to get to the position where the legislation is ready to be introduced in Jersey, only for the Jersey authorities to learn that there is change about to take place in the UK*” and then deciding whether to go ahead or wait.<sup>9</sup>
- 6.8 Until the mid-1970s, policy and legislation were promoted by the Committees; in the mid-1970s, a Policy Advisory Committee was appointed, becoming the Policy and Resources Committee in 1989 (now the Legislation Advisory Panel). In the early 1990s, Jersey drew up its first legislative programme. As set out by William Bailhache,<sup>10</sup> the Law Draftsman is not accountable to the AG but has a close relationship with the Law Officers’ Department. Drafting instructions would be provided by the relevant department to the Draftsman.

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<sup>6</sup> Day 15/132

<sup>7</sup> Day 15/99

<sup>8</sup> Day 15/174; Children (Voluntary Homes) (Jersey) Order 2005

<sup>9</sup> Day 15/76

<sup>10</sup> WD009017/7

- 6.9 Richard Whitehead’s personal impression was that the change to ministerial government brought about a more personal engagement by politicians with particular areas of responsibility and greater political impetus.<sup>11</sup>
- 6.10 Wendy Kinnard, former Home Affairs Minister, said that legislation relating to the financial industry would “*definitely*” take priority due to the influence of outside agencies (such as the IMF).<sup>12</sup> William Bailhache QC thought that financial legislation was a priority, but doubted that it took priority over other pieces of legislation.<sup>13</sup> John Edmonds said that criminal law and procedure did not receive sufficient drafting time compared with, for example, financial services legislation, and that Jersey continued to play “catch-up” with the position in England and Wales, often lagging 20 years behind. However, he went on to say that this had been addressed, to an extent, as a result of a better structure for criminal justice policy introduced in 2013.<sup>14</sup> Deputy Mike Higgins thought that legislation relating to financial regulation was certainly “*top of the pile*”.<sup>15</sup> Frank Walker, former Chief Minister, explained that they were able to get financial legislation through the States “*relatively quickly*” and with “*virtually no opposition*”.<sup>16</sup>
- 6.11 Despite the above, Ian Gorst (Chief Minister) told us<sup>17</sup> that it was not fair to suggest that financial legislation received greater priority than child care legislation. He said that they had put extra resource into law drafting departments, and created a social policy unit in the Chief Minister’s Department.

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<sup>11</sup> Day 15/182

<sup>12</sup> Day 135/16

<sup>13</sup> Day 127/8

<sup>14</sup> Day 126/134

<sup>15</sup> Day 130/78

<sup>16</sup> Day 123/6

<sup>17</sup> Day 144/175–177

## Child care practice and policy

- 6.12 Professor Bullock gave evidence to the Inquiry over two days. A large number of reports and papers were supplied to the Inquiry, providing necessary reference points for an understanding of the social and professional norms.
- 6.13 The Bullock Report (Appendix 6) and its accompanying documents, which we accept, meet, in large part, the requirements of Term of Reference 5. They set out, as we also find, a chronology of significant changes in child care practice and policy over the relevant period in Jersey and in the UK as well as the “social and professional norms which services operated” in Jersey.
- 6.14 The *Children and Young Persons Act 1933*, in England, from which the *1935 Jersey Law* was derived,<sup>18</sup> introduced, for the first time, a form of child care proceedings. It also rendered into statutory form an offence of cruelty to children. In creating the concept of a “*fit person*” to whom a child “*in need of care or protection*” could be committed by order of the court, the role of the State in the care of a neglected child was further crystallised, moving away from the criminalisation of those children on society’s margins. It meant that an individual, local authority or voluntary organisation could be appointed a “*fit person*” to take care of a child, as an alternative to the child being placed in a custodial institution. This is what came to be known by the shorthand of a “*fit person*” order. The *1933 Act* also provided for supervision orders, placing a child under the supervision of a probation officer. The Act brought together the criminal law and the law relating to child protection. A “*fit person*” order was seen as a direct alternative to an Approved School order, which in turn was seen as a substitute for a remand home.
- 6.15 When, in 2007, the Scottish Government published “*Historical Abuse Systemic Review – Residential Schools and Children’s Homes in Scotland 1950 to 1995*”, the report reflected on the *Children and Young Persons*

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<sup>18</sup> LG000001

(Scotland) Act 1937,<sup>19</sup> which followed, in similar terms, *section 1 of the 1933 Act* (cruelty to children):

*“To suggest that what society accepted as normal should determine practices that we consider abusive today, is to overlook that children in state care were entitled to protection by law. The Children and Young Persons (Scotland) Act 1937, for example, provided most of the fundamental regulation for the welfare and protection of children and young people during the 1950s and 1960s, making it an offence to harm children. Importantly, this Act shows what was known to be harmful to children in 1937.”<sup>20</sup>*

6.16 Across the Channel, at the end of the War, child care figures in England and Wales revealed that 4,000 war orphans were being supervised in the community, of which 411 were in care. Out of the 500 hostels set up during the War for evacuated children, 114 remained, accommodating 1,000 evacuees and 500 others under various legal frameworks. Further, 33,000 children were in local authority Poor Law care, spread across a wide variety of accommodation: nurseries, large homes, cottage homes, Family Group Homes, barracks and receiving homes. There were 141 approved schools, housing over 12,000 children. Also, 33,500 were in voluntary homes; 1,500 were in remand homes; around 10,000 were on “fit person” orders; and 14,000 children were in private fostering. In all, just under 125,000 children were in some form of care. Of course, the scale and complexity of the issues inherent in these statistics were entirely different from those faced by Jersey’s far smaller community.

6.17 In England, the Government commissioned the Care of Children Committee, chaired by Dame Myra Curtis, to report on the future of services for children in care. At the time, the system was complex, with little or no uniformity of approach. The Committee reported in 1946. It was the first Inquiry of its kind into children in care.

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<sup>19</sup> See section 12

<sup>20</sup> GD000207/29

- 6.18 The Committee visited 451 institutions, as well as foster homes. A passage from the report resonates, in the light of the evidence we have heard in this Inquiry:

*“We found in many places where the standard of childcare was no better, except in respect of disciplinary methods, than that of say thirty years ago; and we found a widespread and deplorable shortage of the right kind of staff, personally qualified and trained to provide a child with a substitute for a home background. The result in many Homes was a lack of personal interest in and affection for the children which we found shocking. The child in these Homes was not recognised as an individual with his own rights and possessions, his own life to live and his own contribution to offer. He was merely one of a large crowd, eating, playing and sleeping with the rest, without any place or possession of his own or any quiet room to which he could retreat. Still more important, he was without the feeling that there was anyone to whom he could turn who was vitally interested in his welfare or who cared for him as a person.”<sup>21</sup>*

- 6.19 The 1946 Curtis Report made 62 recommendations. The Report emphasised that staff training was highly important in improving the quality of residential care. It attached *“great importance to establishing and maintaining a continuing and personal relationship between the child deprived of a home and the official of the local authority responsible for looking after him”*. In practice, it was intended that the delegated Child Officer (predecessor to the social worker) would *“be the friend of those particular children through their childhood and adolescence”*.<sup>22</sup> This issue of contact would be of particular importance to children in residential or foster care.

- 6.20 The Report identified the risk of harm to children in institutions at the hands of those in charge. Witnesses from whom the Committee heard:

*“ ... did bring home to us the danger even in an organisation under an authority with an enlightened policy that individuals in charge of groups of children may develop harsh or repressive tendencies or false ideas of discipline, and that children in their care may suffer without the knowledge of the central authority. A code of rules which sets the proper standard is one necessity but it is plain that no code will suffice without regular inspection and constant watchfulness that the right atmosphere of kindness and sympathy is maintained”*.

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<sup>21</sup> EE000096/68, paragraph 418

<sup>22</sup> EE000096/74, paragraph 445

6.21 The emphasis in the 1946 Report is on the excessive use of physical force. No mention is made of sexual exploitation of children. At that time, society was not alive to the risk of sexual abuse of children in care. In hindsight, the recommendations made about the importance of personal relationships must carry at least as much, if not more, weight in relation to the possibility of sexual abuse.

6.22 The Committee recommended the abolition of corporal punishment in children's homes:

*"We think that the time has come when such treatment of boys in these homes should be as unthinkable as the similar treatment of girls already is, and that voluntary homes should adopt the same principle. It is to be remembered that the children with whom we are concerned are already at a disadvantage in society. One of the first essentials is to nourish their self-respect: another is to make them feel that they are regarded with affection by those in charge of them. Whatever is to be said for this form of punishment in the case of boys with a happy home and full confidence in life, it may in our opinion be disastrous for the child with an unhappy background. It is moreover liable to grave abuse. In condemning corporal punishment we do not overlook the fact that there are other means of enforcing control which may have even more harmful effects. We especially deprecate nagging, sneering, taunting, indeed all methods which secure the ascendancy of the person in charge by destroying or lowering the self-esteem of the child."*<sup>23</sup>

6.23 The Report was hopeful that, if its recommendations were adopted, there would be fewer children going to Approved Schools. Means of discipline in Approved Schools continued to include corporal punishment and rooms provided to separate one boy from others; both were subject to statutory regulation.

6.24 The Curtis Report was published in the wake of a Home Office Inquiry in 1945, chaired by Sir Walter Monckton, into the tragic death of 12-year-old Dennis O'Neill in foster care. One of the criticisms in the Monckton Report had been the lack of co-ordination regarding visits to the foster home by those responsible for the boy's placement.<sup>24</sup>

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<sup>23</sup> EE000096/84-85, paragraph 493

<sup>24</sup> Home Office: Report into the circumstances which led to the boarding out of Dennis and Terence O'Neill – Sir Walter Monckton 1945 Cmd 6636

- 6.25 The consequence of the Monckton and Curtis Reports in England and Wales was the enacting of the *Children Act 1948*,<sup>25</sup> the *Administration of Children's Homes Regulations 1951*<sup>26</sup> and the *Boarding Out Regulations 1955*.<sup>27</sup>
- 6.26 Up to the late 1960s, in England there had been only been one inquiry into the abuse of children, and that related only to physical abuse. That was the Court Lees Inquiry in 1965 – where boys in an approved school had been subject to excessive corporal punishment. A teacher at the school had contacted a newspaper to voice his concerns. In his Report into Court Lees, Edward Brian Gibbens QC set out his approach to accounts provided by boys:

*"I was informed that almost every boy at Court Lees School had been sent there by the courts for some offence but it does not follow of course that the boys are necessarily to be expected to give false evidence: indeed I thought most of the boys were trying to be truthful in the witness box. However appearances are deceptive, not least the demeanour of children and I consider that I ought not to accept the evidence of any boy, if contradicted by a member of staff, unless it was particularly convincing or corroborated by other evidence."*<sup>28</sup>

- 6.27 This may be a reflection of what witnesses to this Inquiry felt at the time of their mistreatment: that they would not be believed because of their standing – children in care in a home.
- 6.28 In their book "*Public Inquiries into Abuse of Children in Residential Care*" (2001), the authors note that:

*"Physical abuse and neglect of children in residential care has simply not been a major consideration in history. Excessive cruelty in such institutions has only rarely been subject to external response over many centuries. This is probably because in the past harsh regimes were thought necessary and no more than children deserved. Poor and unstimulating environments were very much in evidence in the findings of the Curtis Committee in 1946. While there were no doubt improvements on the quality of residential care after that it is somewhat surprising that between 1945 and the late 1980s there was only one public inquiry into physical ill-treatment of children in care – at Court Lees in 1965. It is of course possible that little such ill-treatment*

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<sup>25</sup> GD000011

<sup>26</sup> GD000007

<sup>27</sup> GD000008

<sup>28</sup> GD000014: Administration of Punishment at Court Lees Approved School, Report of Inquiry by Edward Brian Gibbens QC, Cmnd 3367 HMSO 1967, p.12

*existed. However it is more likely that there was a fair degree of acceptance of physical means of control of a kind which is now no longer seen to be acceptable in care settings ... the relatively late arrival of residential care abuse on to the social policy agenda is probably accounted for by the heavy focus on intrafamilial abuse throughout most of the 1970s and 1980s and the relatively low level of visibility of children in residential care ... without the prior focus of intrafamilial abuse there would have been little chance of abuse of children in residential care coming to light at all.*<sup>29</sup>

- 6.29 Awareness and understanding of sexual abuse did not emerge until the mid-1980s on the mainland. The report of the Cleveland Inquiry in 1988 emphasised the need to take seriously the child's account and to exercise particular care in the way in which children were interviewed. This, and the Clyde Report into the removal of children from their homes in Orkney following allegations of child abuse, focused on sexual abuse – albeit within the family home.
- 6.30 Two reports came out, in 1985 and 1986, looking at the sexual abuse of children in residential care. The Leeways Report, commissioned by the London Borough of Lewisham in 1985, followed the conviction of the officer-in-charge of offences involving indecent photography of children in the home. The report concluded that children had not spoken out because they had associated their social worker with those responsible for removing them from their homes and because they feared that they would not be believed.<sup>30</sup> The report found that there had been poor management, poor staff selection procedures and poor training.
- 6.31 The Kincora Report,<sup>31</sup> published in 1986, looked at sexual abuse in nine children's homes in Northern Ireland between 1960 and 1984. Young male staff in different homes had sexually assaulted boys in the homes over a long period of time. As with Leeways, the Report found that children did not disclose because they felt they would not be believed. There was no complaints procedure. Children were not seen alone by their social workers.

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<sup>29</sup> Pp.50–51

<sup>30</sup> EE000113/25–26

<sup>31</sup> EE000127

Such complaints were a constant refrain in inquiries and reports throughout the 1990s.

- 6.32 In 1989, in England, the *Children Act*<sup>32</sup> completely overhauled child care law. It was accompanied by 10 volumes of official guidance and regulations issued by the Department of Health. These are still updated periodically.
- 6.33 While Jersey established a Child Protection Team in 1989, it did not introduce legislation equivalent to the *Children Act* until 2002, with the *Children (Jersey) Law 2002*. The law came into force in 2005. Jersey did not adopt guidelines equivalent to those that accompanied the UK Act.
- 6.34 The *1989 Act* in the UK reflected societal change towards the place of the child. In his introduction to "*The Care of Children: principles and practice*",<sup>33</sup> accompanying the *1989 Act*, Sir William Utting, the Chief Inspector of the Social Work Inspectorate, explained the importance of the Act:

*"The principle that the welfare of the child comes first is the foundation of the responsibilities of social services authorities towards children ... Developing a detailed understanding of a child's needs and best interests enables us to take the action required to meet and fulfil them ... [the Act] both reflects and requires major changes in attitudes and practice."*

- 6.35 Detailed guidance was provided on residential care<sup>34</sup> and on fostering. The residential care guidance contained a section on "*Child Abuse in Children's Homes*", addressing the possibility that "*children in a children's home can be abused by a member of staff*". The "Working Together" Guidelines noted:

*"It must also be recognised that there may be abuse by staff in a residential setting which pervades the whole staffing fabric with the involvement and collusion of several, possibly senior members of staff."*

- 6.36 In a subsequent report, "*Children in the Public Care*",<sup>35</sup> Sir William Utting was instructed to carry out a review on the monitoring and control of residential child care. He noted that in a residential children's home:

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<sup>32</sup> GD000067

<sup>33</sup> EE000143

<sup>34</sup> EE000146

<sup>35</sup> EE000143

*" ... No child should be allowed to have an exclusive relationship with one member of staff. A climate needs to be created in which the possibility of abuse by staff is realistically acknowledged by children, staff, management and indeed the general public."*

- 6.37 As part of the societal change in England, the *Children's Homes Regulations 1991* banned corporal punishment in community, registered and voluntary children's homes as well as prohibited the deprivation of food and drink and visits as a means of punishment. A ban was also placed in 1991 on the use of secure accommodation in voluntary and registered children's homes. Some 10 years later, in 2001, the UK passed the *Children's Homes Regulations* to provide for the registration and inspection of homes by the newly formed National Care Standards Commission.
- 6.38 In Jersey, the same prohibitions (except in relation to the use of secure accommodation) were introduced in voluntary homes 14 years later, under the *Children (Voluntary Homes) (Jersey) Order 2005*.<sup>36</sup>
- 6.39 The Staffordshire "Pindown Report"<sup>37</sup> and the Leicestershire Beck Inquiry led to the setting up of a Committee of Inquiry into the Selection, Development and Management of Staff in Children's Homes. It reported in 1992.<sup>38</sup>
- 6.40 Inquiries continue to be held throughout the 1990s, culminating in the North Wales Inquiry report "Lost in Care" in 2000. Common themes from Inquiry reports continued to include poor staff training and the difficulty children had in making disclosure. The concluding paragraph of the "Lost in Care" report stated:

*"The accounts we have given of the residential establishments reveal not only how sexual and physical abuse of children can arise and fester but also the extent to which many of the establishments failed to provide an acceptable minimum standard of care children in dire need of good quality parenting ... The Children Act 1989 has provided a springboard for many improvements in children's services but the need*

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<sup>36</sup> LG000040

<sup>37</sup> LG000040

<sup>38</sup> EE000147: Choosing with Care

*for vigilance and further positive action remains if the ever present risk of abuse is to be minimised.*<sup>39</sup>

- 6.41 The *Children Act 1989* was replicated in Jersey to a significant, but not entire, extent by the *Children (Jersey) Law 2002*. The Jersey Law echoes the paramountcy principle but there is less emphasis on the requirement for a multi-disciplinary approach. Comparisons between the Act and the Law are discussed in the Bullock Report.
- 6.42 An issue in Jersey is that there is no policy unit to draft child care legislation if it is needed.

### **Findings: Changes in child care practice and policy over the years**

- 6.43 The physical and sexual abuse of children in care poses significant problems for any society. Problems relating to the recruitment and retention of suitable staff and the provision of appropriate supervision occur again and again. However, the number of times that the problem was addressed in the UK in the period under review, compared with the number of times that it was addressed in Jersey, must, it seems to us, be a matter of concern. The delay in adopting in Jersey what was plainly good practice being adopted elsewhere can be explained only by a lack of political and professional will. It is difficult to escape the conclusion that child care was low on the list of priorities for legislative or administrative change.
- 6.44 Legislation for children in Jersey almost invariably lags behind positive developments in the UK. There is no separate policy division to deal with this within the Civil Service. The development of new legislation is dependent on operational managers being able to devote time to the task amid their other duties. It should be the responsibility of a dedicated policy unit or legal specialist.
- 6.45 Priority is given within the States to legislation related to the financial life of the island. One result is that children's legislation can take a considerable

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<sup>39</sup> Lost in Care, p.825, paragraph 55.09:  
[http://webarchive.nationalarchives.gov.uk/20130124064403/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_134777.pdf](http://webarchive.nationalarchives.gov.uk/20130124064403/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_134777.pdf)

time to be agreed. It is unacceptable that the well-being of vulnerable children and young people is not given sufficient priority. Our view is that the principle of “paramountcy” must lie at the heart of the States’ corporate parenting responsibility.