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Report on Outcomes for Children and Young Persons

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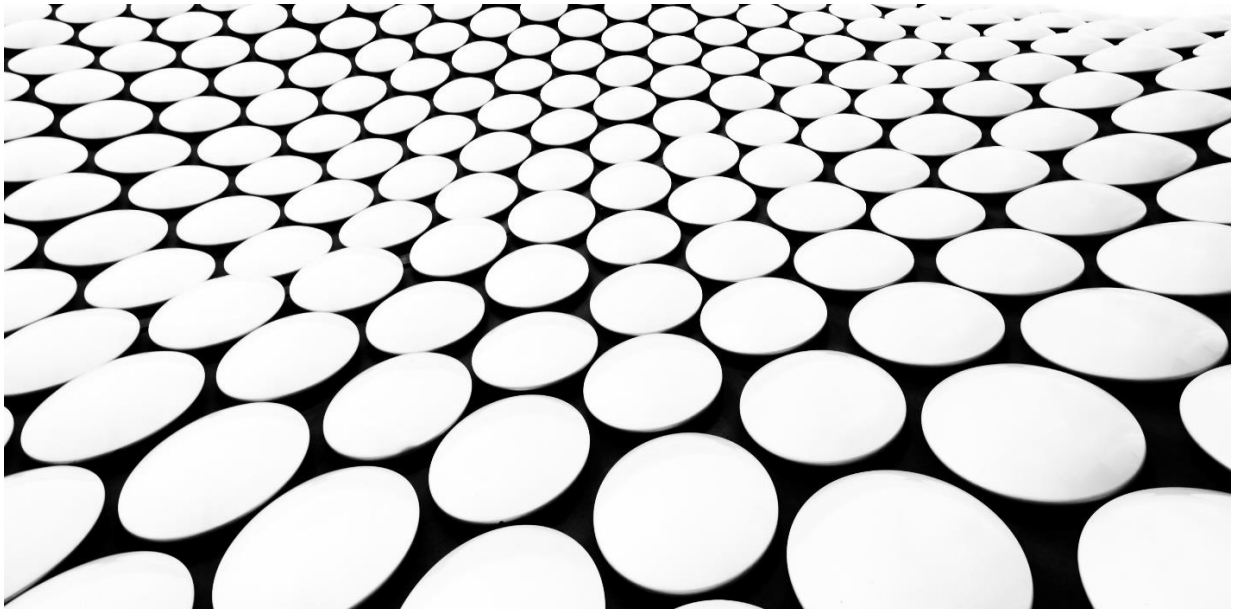

1. Introduction

This Report was commissioned by the Chief Officer's Group, chaired by the Chief Executive of The States of Guernsey to look at whether there were systemic issues and misalignment of functions impeding progress to improve the welfare and safeguarding of children in Guernsey and Alderney and, if so, what could be done to remedy them. All the Presidents (or representatives) of Committees delivering services for children agreed that work to improve the welfare and safeguarding of children should be given political priority and that was incorporated by way of an update to the Policy & Resources Plan that had been approved by the States of Deliberation in June 2019.

Various steps have been taken to implement this agreement. A consultation exercise was launched by the Committee *for* Health and Social Care,[1] (and as at the time of writing this Report, was still continuing) into a review of The Children (Guernsey & Alderney) Law, 2008 ('the Law') which should lead to some key issues that have arisen during the ten years since the Law was passed being resolved and some technical difficulties being improved. Whilst for shorthand I have referred usually to Guernsey, unless otherwise apparent from the context, a reference to Guernsey applies equally to Alderney.

The Committee *for* Home Affairs is also conducting a review of its Justice Strategy and which looks at its approach to youth justice.

Aims and objectives

This Report is therefore addressing a more fundamental issue. It is looking at whether there are systemic obstacles in the way of the various agencies working with children and young people, which prevent families and, in particular, children and young people from achieving the best solution to resolving the problems that have arisen. Its aim, in response to the terms of reference, is to make recommendations:

- to reduce where it is possible to do so, complexity, to ensure that each agency has clear roles and that there is no duplication of function or uncertainty over the boundary of their jurisdiction;
- to ensure there are a full and flexible range of options available for a child or young person entering the legal system, including the ability to engage the necessary support (including therapeutic support);
- to ensure that the judicial monitoring role undertaken by the Court and the Tribunal provides adequate protection of the rights of the child or young person and their families and carers, particularly in cases where intervention into that family is being considered; and
- to ensure that those children and young people entering the legal system have their cases dealt with, without unintended delay and within appropriate timescales.

[1] The Committee *for* Health & Social Care is, in this Report, called the 'Committee' or where the context requires the child care team of the Committee.

Those are lofty aims and objectives, and it should be remembered that all the agencies are working with families and children with multiple difficulties and deprivations, including in a great many of the cases (but not all) economic, social, educational, employment, housing, and health disadvantages. These cases also are likely being addressed in emotionally charged circumstances.

I have had the benefit of reading Kathleen Marshall's Report for the Scrutiny Committee[2] and fully agree with her observations and comments and this report seeks to build on her recommendations. Similarly, the Consultation on the Review of the Children (Guernsey and Alderney) Law, 2008 proposes changes and the vast majority of the responses to that Consultation Document are, not surprisingly, fully consistent with the answers given to me by the key stakeholders. Whereas their focus was on a review of the substantive law, this report seeks to look at changes to the system and to provide a workflow with the relevant thresholds, but which incorporates some of Kathleen Marshall's recommendations and the proposals in the Consultation Document.

Key issues that emerged

One of the key elements to be considered is the respective role of the Court or Tribunal, when making decisions that will impact on the life of families and in particular the child or young person concerned. Their role, whilst clearly decision making, might also be described in more general terms as judicial monitoring, and resolving problems. A practical difficulty is that when undertaking this wider role, the Court or Tribunal cannot direct that the necessary resources must be made available by the agency concerned especially where a systemic problem has been identified in the case. It can only recommend. It is important therefore, that underpinning the system, there should be established a mechanism in which the overall system is subject to regular holistic review. All the relevant agencies must recognise the importance of, and fully commit to, supporting such a process in order that any gaps or shortcomings can be properly addressed and resourced. This would allow a comprehensive view to be taken over the future development and improvement of outcomes for children and young persons. In order to achieve this a method for capturing and collating all relevant data should be implemented since this is crucial in identifying and properly directing what are increasingly becoming scarce resources.

A second key element is the need to promote all the aspects of this work with children's outcomes as an integrated single service and a common identity rather than a series of separate individual agencies.

Finally, the issue of the governance of the system is a key concern and in need of urgent review. During the compiling of this Report this emerged as perhaps the most important point that needs to be considered in implementing some or all of these recommendations.

The need to be open and learn from experience

[2] Dated November 2015

There will always be situations where mistakes are made, or circumstances conspire from time to time to create delay and uncertainty. Those working in the system are invariably driven by a strong desire to do what is best for the child or family but know that despite that aim, problems and mistakes will sometimes occur. The system must encourage the open acceptance of mistakes or problems so that the appropriate measures can be taken, and lessons are learned. A duty of candour, similar to that operating in health care, and already applying in some areas of social care, should be made a requirement within the system and might prove to be a useful tool. However, it is essential to ensure that as far as possible the system itself is not the cause of a problem and the aim of this report is to look at some of the issues that have emerged in conversations with key stakeholders.

Underpinning legal foundations

Sections 3 & 4 of the Children (Guernsey & Alderney) Law, 2008 (the 'Law') applies when any public authority (including the Committee, the Convenor, the Tribunal and the Court) carries out, in respect of a child, any function under the Law. Even if these sections are not specifically referred to in certain parts of this Report, the overriding application of them should not be overlooked. Similarly, the Human Rights (Bailiwick of Guernsey) Law, 2010 places a duty on public authorities, as a matter of public law, to act in such a way as to comply with the duty owed to individuals under the European Convention on Human Rights. In the matters that are the subject of this Report, Articles 6 and 8 are most likely to be engaged. The Convention requires that any interference with those rights must be justified as necessary and proportionate. Therefore, the wide-ranging obligation and application of this duty should be recognised, even if they have not been expressly referred to in a specific context.

In December 2020 the States of Guernsey extended the United Nations Convention on the Rights of the Child (UNCRC) to Guernsey and Alderney. The Convention covers every aspect of a child's life covering the rights to which a child is entitled and sets globally accepted standards. Outcomes for children and young persons within the system must be consistent with these standards. Care must also be taken to ensure that there is consistency in the application of UNCRC across the Bailiwick. The way in which it is taught in schools, for example, should not conflict with the view taken of how UNCRC is to be applied, or its implications, in the Tribunal, the Court or in professional practice. This report seeks to ensure that its recommendations are consistent with the UNCRC.

No criticism intended.

Finally, I wish to make a clear statement that there is no criticism, implied or intended in any part of this report of any person or organisation and any commentary should not be read in that way. In contrast, I have been impressed by the openness and passion of all the people that I have had conversations with, and all of whom wish to see the system operating in the best way possible for the benefit of the child or young person passing through it.

2. Terms of Reference and credentials

The terms of reference and my credentials are set out in full in Appendix 1.

3. Methodology

Appendix 2 describes the methodology used in this report. Following the writing of my first draft, feedback was sought both as to accuracy and the draft recommendations. That feedback provided me with a much deeper understanding of the issues, particularly in the difficult area of the division of responsibility between the Tribunal and the Court (with a clear polarity of views) and on points of governance. As a consequence, I believe that I have been able:

(a) to identify, in relation to the Tribunal and Court, more specifically where the issues lie and therefore the questions that need to be answered, and

(b) get a better understanding of the issues around system governance and clarify some of my recommendations in this regard.

I would like to thank all those who gave me their time and feedback, although I accept that, due to the polarity of views expressed in certain areas, some of my proposals will be a disappointment to a number of people.

I have also reorganised the layout of this report in order to remove some duplication and make it easier to find the discussion on the various topics.

4. Summary of Recommendations

4.1 General Summary

Much of the current structure of the system as established by the Law and the work of the agencies concerned, appears to be working well. Some general conclusions can be drawn from this:

1. Any recommendation for change need not involve a fundamental restructuring of the system.[3] What is required however are adjustments to some key components of the system and to the way it works in order to resolve some clear and important shortcomings. It was noticeable that the same issues surfaced time and time again in my conversations with key stakeholders.

2. These adjustments should only be regarded as first steps. The process of a continuous and meaningful review of the system should be a feature of the process going forward.

3. This continuing review process should be annexed to a regular and continuing program of education and training for all people working within the system, in order that each agency and its employees understand:

[3] It is important that the changes do not result in fundamental change that go further than is necessary to address the issues that have been identified. Some concerns have been expressed to me that this may be the case.

(a) how the system as a whole operates and interfaces, its benefits and advantages and an understanding of the different cultural approaches within it (and which I explain in detail later);

(b) how it works together; and

(c) the need to promote the system as an integrated service with a common identity.

This program of education and training should inform the need for any changes and improvements to be introduced in the future.

In particular, and as a starting point, it was suggested that if the proposals in this Report are adopted, then on completion of the consultation exercise being undertaken by the Committee *for* Health and Social Care on the Law, a workshop should be organised bringing together all those working on outcomes for children and young persons. This workshop will cover any changes to be made to the Law or the system, any key aims and objectives for integrating the system and for better working together, a presentation on the approach to UNCRC and any other relevant topics. The aim is to promote understanding and emphasise the integrated nature of the system, with reference in particular to those matters referred to in the following paragraph 4.

4. It is crucial that all persons understand and appreciate that they are all part of a single system with the objective of delivering the key principles (which I refer to later). The system should not be seen as a fragmented set of agencies each operating in their own area, but as a complete whole, with:

(a) clearly defined pathways through the system;
(b) clearly defined gateways and thresholds to any part of the system or for a particular course of action;
(c) with proper monitoring and follow up of all cases within the system;
(d) supported by the collection and management of data that benefits users including future users and ensures that resources are directed to the appropriate needs;
(e) with well-defined and achieved outcomes; and
(f) clear and effective governance of the system.

These objectives must be signed up to by everyone operating within the system. In my conversations with stakeholders, I found that without exception everyone agreed these objectives. They all wished to see improvements to the system and welcomed the production of this report which is encouraging.

5. However, when it comes to looking at how the system was working in practice, this was not always the experience or reality of those I spoke to. That is because, quite understandably, a person or agency will have their focus and loyalties to their own area of operation which can, in some measure, obscure and be an obstacle to the system properly operating together as a whole.

6. Recommended changes must crucially involve a reduction in the complexity of the system and not increase it. 'Complex' does not equal 'better'. Complexity can be a real obstacle to better outcomes. The current system is too complex and, in my view, can be simplified whilst:

   (a) not losing the benefits and advantages that are currently found in the system; and
   (b) being able to maintain the key checks and balances.

   Reducing complexity can also relieve some key people from unnecessary obligations and requirements enabling those persons to better spend their time and resources in undertaking their duties.

7. Some problems cannot be easily overcome. A global shortage of social workers with experience in children's work is one such example. All that can be done in such cases is to mitigate the impact of the problem as far as possible and not allow a feeling of being defeated by the problem. This report contains recommendations where appropriate.

4.2 Specific Recommendations

This Report is divided into 11 sections and each section contains my specific key recommendations and a discussion of the reasons for those recommendations. The sections are as follows:

Section (& clause) Number	Heading	Page numbers
1	Interface between The Guernsey Magistrates Court and The Child, Youth and Community Tribunal	8-44
2	Changes to the procedures relating to the Office of the Children's Convenor and The Child, Youth and Community Tribunal	44-58
3	Data Management and the use of documents in The Child, Youth and Community Tribunal and The Guernsey Magistrates Court	58-63
4	The Court's approach	63-66
5	Legal Aid	66
6	Private Law Proceedings	66-67
7	Social Workers	67-70
8	Advocacy Scheme	70-71
9	Governance of the System; Director of Children's Services, lessons learned, duty of candour	71-83
10	Law Officers and Social Workers Interface	83-84
11	Family Proceedings Advisory Service	85-87

Section 1	Interface between The Guernsey Magistrates Court (the Court) and the Child Youth and Community Tribunal (the Tribunal)

1.1 Summary of Recommendations in this Section 1

1.1.1 The Tribunal should not have jurisdiction to make a care requirement (including an interim care requirement) or attach a condition to a care requirement or interim care requirement under s 43 of the Law, to authorise the removal of a child from its carers without the consent of those who hold parental responsibility for that child. This jurisdiction should be reserved exclusively for the Court[4].

1.1.2 All cases, where some compulsion may be required, such as those relating to youth justice, school attendance, and neglect cases potentially requiring the intervention of the Tribunal must be referred to the Convenor.

1.1.3 If a child is deemed in immediate risk of harm the case need not be *referred* to the Convenor, and an application is made directly to the Court by the Committee (as is currently provided by the Law).

1.1.4 There should be a requirement to *notify* the Convenor at the same time as any action in the Court is commenced, and whether or not there has been any previous involvement of the Convenor or the Tribunal in relation to that child or family, on the basis that the Convenor does not undertake any investigation or take any action in relation to that case. However,

(a) the Convenor may have information at that time that might be relevant to that child or the family, and which, subject to safeguards, should be disclosed; and

(b) in any event, notification makes the Convenor aware of legal action in relation to that child or the family which may be relevant to her function at some later time whether in respect of that child, the family or in some other context.

1.1.5 For information and data collection reasons, notification should also be required to be made to the Children's Proceedings Case Manager (see later).

1.1.6 Except for those cases that involve an application to authorise the removal of a child from its carers without the consent of those who hold parental responsibility for that child, and where the Convenor has not previously been involved, (or where the Law otherwise currently provides) the process is a linear process and must be referred to the Convenor. Referrals may (as now) be made by:

(a) by the police, (including for youth justice matters);
(b) schools' attendance officers (or other education personnel);

[4] In this Report the 'Court' means the Guernsey Juvenile Court or the Alderney Court unless the context otherwise requires.

(c) MASH or other multi agency organisations;
(d) Children and Family Community Service, and
(e) members of the public.

1.1.7 Other than for those cases proceeding directly to Court the Convenor carries out an investigation, triages cases and decides on future action including whether or not this requires the management of each case before the Tribunal.

1.1.8 If, at any time when a case has been referred to the Tribunal, the Committee intends to make an application to the Court or circumstances arise that may reasonably be considered to pass the threshold test for removal of a child from the parent or family (substantive application):

(a) the Committee must notify the Tribunal that it intends to make the substantive application to the Court, and must issue the substantive application at the Court within 21 days of notifying the Tribunal; or

(b) the Tribunal of its own volition may at any time, if it considers that a substantive application to the Court is warranted, reasonably considers that a case currently within its jurisdiction will pass the threshold test for an application to the Court, and is in all the circumstances proportionate, notify the Committee that any further steps in the case must be brought in the Court and not the Tribunal, and refer any relevant proceedings currently before it to the Court,

and in those circumstances any further proceedings in the case in relation to the removal of a child from the parent or family must be heard by the Court and not the Tribunal. (See also Part 1 - paragraph 29)

1.1.9 If there are ancillary matters to be dealt with, those are to be heard and dealt with by the Court at the same time as the substantive application. Any current proceedings in the Tribunal concerning the child the subject of the substantive application and which relate to the substantive application are automatically stayed pending the outcome of the substantive application and no applications may be made to the Tribunal during those Court proceedings. This is to avoid concurrent proceedings. For the avoidance of doubt those aspects of the case not relating to the substantial application, (for example youth justice or educational attendance matters), would continue to be dealt with in the Tribunal.

1.1.10 If the Court does not make the order to remove the child or young person, it may either refer the case back to the Tribunal for further directions and appropriate ongoing management of the case or retain conduct of the case if the circumstances make it in the best interests of the child and prevents delay in doing so.

1.1.11 The Tribunal and the Court should establish suitable protocols and agreed requirements so as to enable a smooth transfer of cases between them (in either

direction) including the removal of any procedural or other obstacle (whilst remaining consistent with any necessary legal duty).

1.1.12 The Committee should establish, jointly with the Convenor, a pre-referral protocol to enable case conferences to be held between social workers and the Convenor's office, before any referral is made, the intention being to mitigate problems caused by late referral.

1.1.13 The Tribunal should be renamed the Family Proceedings Tribunal and the Juvenile Court, the Family Proceedings Court.

1.1.14 A review and further consideration should be given to a requirement to automatically deregister a child from the child protection plan upon the making of a care requirement. Pending completion of this review, where there is a case in which a child is subject to both a care requirement and a child protection plan there should be a process in which the frequency of meetings to address risk is identified and agreed on a case-by-case basis and that the core group meeting and Tribunal hearing should be a combined hearing.

1.2 **Discussion**

1.2.1 This was the primary area of concern affecting current practice, that emerged in my discussions with stakeholders.

1.2.2 What was clear was that the culture of the Tribunal's decision-making process was different from that of the Court. This difference is not one simply of style. The Tribunal sees its approach as working with families, not judging them. The Convenor and Tribunal works on the philosophy and principles for an authority dealing with troubled children set out in the Kilbrandon Report[5]. It also seeks to link those families with difficulties into the available support networks and such an approach may take more time and be much less formal than that required in Court. Nevertheless, this does not mean that it is the wrong approach. In the great majority of cases, as reported below, it works very well and is able to reach pragmatic and flexible solutions that may be a better option than an order of the Court.

1.2.3 In contrast, the Court's approach is one based on evidence, and a judgement on whether that evidence meets the relevant legal requirements and thresholds (although it is appreciated that the Court's approach is, in practice, more nuanced). It is not primarily about resolving issues, although clearly that is hopefully accomplished, but is providing judicial oversight to ensure that the requirements of the law are met.

1.2.4 Outcomes for children and young people require in some cases a pragmatic, problem solving approach and in others an evidential based assessment as to whether the circumstances support the outcome applied for. In the Guernsey system there is an

[5] Report by the Committee Appointed by the Secretary of State for Scotland published April 1964

overlap between the role of the Tribunal and that of the Court and it is inevitable that the different approaches will cause issues. These issues need to be removed.

1.2.5 Further, this overlap creates duplication in proceedings, unintended delay and with that delay uncertainty. These all impact the finding of satisfactory outcomes for the child at the heart of the process.

1.2.6 Duplication is the point at which most tension between the Tribunal and the Court is currently experienced and subjects the child and the family potentially to a number of different applications before the Tribunal and the Court, creating unacceptable delay and uncertainty. For example, an application to the Tribunal for a care requirement may include a condition to place the child with someone other than the parents, including the States, whilst certain conditions or elements of the child plan are being worked out and resolved. During the time that the care requirement is in place, an application for a final community parenting order may then be made which must be made to the Court not the Tribunal.

1.2.7 Different thresholds apply to each set of proceedings – Section 35 of the Law applies to the Tribunal and Section 49 applies to the Court. In either forum an assessment of sections 3 and 4 of the Law and Articles 6 & 8 of the European Convention on Human Rights is required. Accordingly, the choice of forum will be influenced by an assessment as to whether the higher threshold in Section 49 can be made out.

1.2.8 A case in the Court will often be relitigated separately from any consideration of previous proceedings in the Tribunal and new issues may be raised. Advocates for the family may be instructed for the first time in relation to an application for a community parenting order. Documents and statements may well need to be re-prepared in a different format for the Court from those in the Tribunal and expert evidence may need to be refreshed.

1.2.9 Not only is this a waste of time for those concerned (particularly for hard pressed social workers) and a waste of scarce resources, more importantly it creates delay and uncertainty for the child at the centre of the case and confusion and frustration for parents. It creates a process that is unnecessarily complex and potentially raises an inherent conflict between the jurisdiction of the Tribunal and the Court.

1.2.10 These differences in approach (and which might be termed a cultural difference – although some objected to this characterisation) reflect the fundamental differences between a care requirement and a community parenting order, as originally intended and as described in the Billet d'Etat in 2004 (referenced in the Consultation Document).

1.2.11 The care requirement within the jurisdiction of the Tribunal was intended for those cases where there is a reasonable prospect of a positive change, and which envisages the child to continue living within the family or to be reunited within a relatively short period. Interference with parental rights and responsibilities in those cases may be substantial but temporary. A Community Parenting Order is designed for those cases where there is no foreseeable prospect of the child living safely within the family and

requires more permanent provision to be made. Following the experience of the last ten years since the passing of the Law, it is now important to ask whether this remains the correct delineation of the respective jurisdictions of the Tribunal and the Court.

1.2.12 It is at this point of overlap between the temporary and the permanent outcomes where the problems have arisen, and this has directly contributed to the complexity of the system. There is no disagreement that the Tribunal should continue to undertake those cases such as school absenteeism or youth justice or that the Court should deal with emergency cases and community parenting orders, being those that involve the permanent removal of the children from the parents or family. The difficult area is in relation to those cases that lie in the middle, the more so since, at the outset, the facts and circumstances are generally unclear and will only emerge over time. Key to removing delay and duplication in the system is making the right decisions at the right time and in the right place. There are a number of areas where the problems surface.

1.2.13 Kathleen Marshall in her report highlights her concern about the duplication and overlap between the work of the Tribunal and the permanency related work of the Courts and recommended that this be looked at. It is essential for this conflict to be resolved and for the duplication and overlap to be removed.

1.3. Thresholds and complexity

1.3.1 Those who favour no significant change, contend that at the heart of disagreement are issues over which thresholds determine those cases to be considered by the Tribunal and those by the Court. Whilst I agree, I consider that there are also other significant questions to be resolved, which I refer to later (at paragraphs 1.4.2 & 1.10.1).

1.3.3 The complexity of the current system reflects the complex nature of the issues that the system is seeking to address. Many of the more difficult cases do not follow a linear path through:

(a) voluntary intervention (early help), then to

(b) temporary compulsory intervention (Tribunal); then

(c) to permanent compulsory intervention (Court).

1.3.4 I have been referred to data compiled by the Convenor. These show that some cases appear to be permanent cases at the outset but then circumstances alter, and changes are made to enable the child to remain in their family. Other cases start out with a plan to reunite children and parents, but the necessary changes are not made, or assessments reveal that the parents will not be capable of providing the child with adequate care, protection, guidance or control. In other cases, it is unclear at the outset whether or not the child's removal from their parent's care will be temporary or permanent. This observation will not be a surprise to those working in the system.

1.3.5 What it means however, is that it is not always possible to identify the appropriate outcomes of the intervention including whether a child's removal is appropriate, at the point when a decision on intervention needs to be made.

1.4 On what basis should jurisdiction be determined?

1.4.1 Those supporting the current arrangements say that as long as the underpinning policy is to retain the distinction between temporary intervention and permanent intervention (being the policy set out in the original policy letter) there will always be a need for an interface between the Court and the Tribunal. As a result, it is to be expected that given the complexity of this area of law and that cases are addressing complex family issues, some cases will inevitably have started in the wrong forum. If that is so, then the objective must be to ensure that a case is not live in both the Court and the Tribunal at the same time. Arrangements are needed to allow cases to be readily transferred to the Court where a permanent order is required or transferred to the Tribunal if the remedy sought is more temporary in nature. This will be dependent on the circumstances as they emerge.

1.4.2 Those advocating change say that the appropriate basis for the division of jurisdiction is no longer whether it is a temporary or permanent remedy sought. The correct basis is that any decision involving removal, including a condition attached to a care requirement, is of such importance that it should only be taken by an experienced and qualified judge in the Court, not by lay persons, no matter how committed or experienced they are.

1.4.3 Whilst these positions may appear to be significantly different, those undertaking the review into the Law in December 2019 take the view that the original guiding principles (described in paragraph 1.4.1) remains valid and that the wording of the thresholds were, in large part, the source of unintended confusion and duplication. Those undertaking the review take the view therefore that the guiding principles could and should be maintained but that the thresholds should be redrafted to better deliver those principles so as to remove the duplication, confusion and delay. Therefore, the point that any decision involving the removal of a child should only be taken by an experienced and qualified judge (as described in paragraph 1.4.2) should be viewed simply as an outworking of the guiding principles and not as an alternative to them. This report, (to assist understanding) describes and discusses the two views as alternatives, but those proposing the reservation of sole jurisdiction to the Court for removal of a child, whether temporary or permanent, would say that this is consistent with, and not contrary to, the guiding principles.

1.5 Do the current arrangements work satisfactorily?

1.5.1 If the current policy governing the division of jurisdiction in the Court and the Tribunal is to be retained, do the current arrangements work satisfactorily? Those supporting the current arrangements say they do and directed me to data compiled by the Convenor's Office on cases considered by the Tribunal between 2018 - 2020. These show that:

- A significant majority of cases were care and protection cases.
- In many of them, decisions were made that resulted in children residing somewhere other than with their main carer.
- Orders made included the residence of the child with one or other parent or a family member, and in other cases with the Committee.
- The majority of cases were temporary arrangements, in which the child returned to the care of the parent when the areas of concern had been satisfactorily addressed.

This would appear to indicate that the actual outcomes for children in the majority of cases were satisfactorily resolved under the current arrangements.[6]

1.5.2 The circumstances of many of the families that require compulsory intervention are complex. Many children are removed from their parents' care for short periods of time, for example, to enable assessments to be undertaken, in periods of crisis, or when parents need to access help for their own issues. The data shows that whilst many may need compulsory intervention during periods of crisis, they can parent adequately without state intervention at other times.

1.3.5 In the majority of these cases therefore, those contending for the current policy to be retained conclude that no issues have arisen that requires any change to the current jurisdictional division and therefore no need for change. On the contrary, a change would be worse since this would result in children being exposed to the Court process when there was no need to do so.

1.3.6 In terms of the process however, those advocating no change stated that three situations arise where tension can arise between the jurisdiction of the Court and Tribunal and which, whilst retaining the current policy, need to be addressed.

1.6 Interface between the Tribunal and Private Law Proceedings

1.6.1 The first area of tension is when the Tribunal makes a care requirement that includes a condition stating where the child shall reside, and this results in a change to the established arrangements between the parents or a previous residence and contact order made by the Court in private law proceedings.

1.6.2 The view has been expressed by some practitioners that the Tribunal should not be able to interfere with existing private law orders made by the Court. The Law makes provision for the public law decisions of the Tribunal to supersede the general right of a parent to determine their child's residence and also any private law decisions of the court when the two are inconsistent[7]. This reflects the position in other jurisdictions where the decisions in public law proceedings override decisions made in private law proceeding where they conflict.

[6] The logical conclusion of this and paragraph 1.5.2 would be therefore that the current problems concern *the process* involved in reaching an outcome not the outcome itself.

[7] Section 22(5) of the Children Law

1.6.3 The Tribunal may only make a condition of residence where it is necessary to do so having regard to the appropriate legal tests in the Law and ECHR considerations. Since the provisions of the Law are clear in this respect there is no requirement to amend this (subject to the overall conclusions and recommendations of this Report). I consider that the balance in the Law is the correct one, namely that a public law order should continue to take priority over a private law order when they are inconsistent. If compulsory intervention is not required then the child's residence falls to be decided by the parents and where they cannot agree, by the Court under the section 17 provisions.

1.7 Supervision Order

1.7.1 A second area of tension in the interface between private law proceedings and Tribunal proceedings are cases in which child protection concerns come to light or allegations are made during private law proceedings that may require compulsory intervention. Prior to the introduction of the Law the court was able to make a public law order, if it was appropriate, within private law proceedings. The policy intention on the introduction of the Law was to remove cases from Court, where appropriate, and, in consequence, the ability of the Court to make a supervision order was removed.

1.7.2 Accordingly, those advocating the continuation of the present policy, contend that introducing an ability of the Court to make a supervision order would blur the boundaries of decision-making between Court and Tribunal. It would result in the Court making public law orders that are similar in effect to a care requirement and could have the potential to increase duplication for a significantly larger number of children.

1.7.3 It is also argued that granting the Court the power to issue a supervision order would undermine some of the principles that underpin the current approach and needs to be balanced against the benefits of the inquisitorial holistic nature of decision-making within the Tribunal.

1.7.4 As an alternative to the introduction of supervision orders, those wishing the present policy of assigning jurisdiction on the basis of whether it is a temporary or permanent remedy to be retained, propose that this could be remedied by the Court having the ability in private law applications to remit matters to the Tribunal for disposal in the same way as they can do in criminal matters (with facts established where they amount to a section 35 condition) and/or the Court having the ability to direct the Convenor to undertake an investigation as to whether or not compulsory intervention may be required. Similar provisions work satisfactorily in Scotland.

1.7.5 The purpose of a supervision order is set out later in this Report, but it will arise at the point where it is the last possible option before the grant of a community parenting order. It will require that the conditions of a community parenting order have been made out. Therefore, this additional power of the Court will only be considered when all other possible courses of action have been explored and is the final opportunity for resolution before a community parenting order is granted. It is serving a different

purpose to a care requirement. Whilst there may be similarities between the 'look of' a care requirement granted by the Tribunal and that of a supervision order in the Court, there will be no overlap in the process by which they are obtained. The route chosen will be dictated by the circumstances of each case.

1.8 Identifying the point at which reunification is no longer in the child's best interests and a permanent decision is required.

1.8.1 The third area identified by those seeking no change where there is tension is at the point of transition of those cases where a temporary resolution is sought and the point at which a permanent solution is needed. Decision-making in the Tribunal is intended for those cases where there is a reasonable prospect of change. A community parenting order is designed for those cases where there is no foreseeable prospect of the child living safely within the family.

1.8.2 It was asserted that much of the delay and duplication in cases results from decisions made by the Committee. It is the Committee who makes the decision as to when a case transitions from the Tribunal to the Court or whether or not it starts in Court without first being referred to the Convenor. It is only the Committee that can apply for a community parenting order and therefore decision-making about the appropriate time to seek a permanent outcome for a child or young person rests with the Committee.

1.8.3 It is agreed that decision making is not an easy task. Circumstances in a case can be constantly changing. It is, often only with the benefit of hindsight, that the quality of the decision making is able to be assessed.

1.8.4 Since all applications for a community parenting order must be notified to the Convenor there is data available on all cases where community parenting order applications have been made. Between 2017 and 2020 the Convenor was notified of 25 applications made for a community parenting order relating to 52 children. A significant number of these children (22) were at that time subject to an *interim* care requirement at the time the application was made.

A decision has therefore been made in those cases to seek the permanent removal of the child from family care *before* the conclusion of the Tribunal proceedings to consider temporary intervention.

Those contending for the retention of the current policy say that this indicates that clearly there are issues with the decision-making or the timing of either the referral to the Convenor or the application for a community parenting order. This was also reflected in the data for cases in 2016.

1.8.5 It ideally ought to be the case that the majority of children will, at the time of an application for a community parenting order, be either subject to a *full* care requirement, or not subject to any care requirement. Section 46(3) of the Law seeks to remove any issue of duplication between the Tribunal and Court in those cases where a care requirement is in force. It does so by extending the duration of a care

requirement for the period during which a community parenting order application is under consideration by the Court. Further, there is no requirement for the Convenor to arrange hearings to review the care requirement. The intention of the legislation is to avoid duplication of hearings.

1.8.6 So what causes the duplication of process? The evidence suggests that this will generally arise when the Committee makes a referral to the Convenor for consideration of compulsory intervention, by way of a care requirement, too late in addressing problems in the family. This results in an application for a community parenting order being made when the Tribunal proceedings have not reached a final decision and at this point children are likely to be subject to *interim* care requirements.

1.8.7 Practical considerations may also be a factor. The Committee may well use the Tribunal as a holding measure until they have completed their investigations, for example in order to rule out the parents and family as being suitable for the child to live with. With the difference in thresholds between the Court and Tribunal, it may be thought that the Tribunal is an easier route by which the Committee can remove a child.

1.8.8 I have carefully considered these points. The Committee may feel that they are in an impossible position in circumstances where there is a need for compulsory intervention to safeguard the child's welfare, but the legal thresholds for making an interim or final community parenting order or an emergency child protection order cannot be met. The only alternative is to make a referral to the Convenor to pursue compulsory intervention through a care requirement granted by the Tribunal. I do not see anything wrong in this given that it will take time to examine the issues and is at the heart of the original policy of enabling temporary action to be taken whilst matters are being investigated.

1.8.9 However, the complaint is that many of these cases could and should have been referred to the Convenor much earlier. This would create a clear distinction between a temporary intervention and a permanent intervention by either allowing the completion and operation of a full care requirement in those cases where there is an option that is short of a community parenting order, or moving directly to a community parenting order where, following investigation, there is no other option.

1.8.10 The proposed changes to sections 35 and 44 of the Children Law may assist with cases being referred earlier. Other changes may also help. However, those advocating retention of the Tribunal's power to making conditions of residence, say that these are the problems that need to be tackled, not the change of the jurisdiction of the Tribunal and Court.

1.8.11 In support of this, the following points are made. First, it is often not clear to the Convenor, on receipt of a referral, that the Committee is holding legal planning meetings for these children and that permanent placement away from family care is being considered. The Tribunal process is then commenced.

1.8.12 If, at this point, the Committee is requesting immediate compulsory intervention and there are areas of dispute, for example over the acceptance of the Convenor's Statement, the only option open to the Tribunal is to make (or not make) an interim care requirement on the basis that any removal, where this occurs, is temporary. The data seems to find that a significant number of care and protection cases involve the making of an interim care requirement.

1.8.13 Although not a statutory obligation, Tribunal members are, in practice, prompted to give active consideration to the question of whether or not the child's parents have been ruled out as potential carers for the child. The checklist for Members states:

"*Where the recommendation made by the Committee does not include a plan to rehabilitate the child with one or both of their parents or another family member, Tribunal members should query whether the CYCT is the appropriate forum for the decision on removal to be made. An adjournment to allow the Committee to consider whether an application to the Juvenile Court is more appropriate may be necessary*".

1.8.14 There can be a significant period between the Committee notifying the Convenor that the Committee intends to pursue a community parenting order and the application itself being made. This leaves the Tribunal in the position of making decisions until the matter is placed before the Court.

1.8.15 It was put to me that once the community parenting order application has been made to the Court, the Committee cannot seek an interim community parenting order, and neither can the Court make an interim community parenting order on the basis that an order (the interim care requirement) is already in place. This then results in the proceedings continuing in two forums simultaneously. It also leads to the perception that the Tribunal is making decisions that will result in children being removed permanently from the care of their parents.

This is not strictly correct. The Committee is able to apply for a community parenting order and an interim parenting community order at any time and there are no restrictions in the Law. Section 54 allows the court to discharge a care requirement including an interim care requirement) upon the disposal of an application for a community parenting order if it is satisfied that in all the circumstances, the care requirement would no longer serve any useful purpose. The court has interpreted this to also include an interim community parenting order under provisions of section 53(3) which states that the court can exercise all the powers that are exercisable on the making of a community parenting order when making an interim community parenting order.

However, in certain cases, the Committee will apply for an interim community parenting order on issuing community parenting order proceedings where there is a care requirement or interim care requirement in place. Some cases can therefore be in two forums simultaneously, and this is not ideal.

1.8.16 Whilst ensuring that the respective thresholds are key to ensuring that the right children are in the right forum at the right time, an ability for the Court and Tribunal to easily transfer cases to each other will ensure that this duplication is avoided. In this regard I recommend that the Court and Tribunal should seek to review the basis upon which cases are transferred and how this is done procedurally so as to remove any unnecessary procedural obstacles, whilst remaining consistent with the relevant legal duties. This is an opportunity to streamline this process and would be of benefit.

1.8.17 Further, ensuring that the Tribunal and Court have the right threshold, should result in more cases correctly starting in the Court or transitioning to the Court at the earliest opportunity.

1.8.18 My recommendation that the Tribunal of its own volition may transfer the jurisdiction of a case to the Court (and for the Court to transfer a case to the Tribunal) together with amendments to the thresholds for a care requirement, community parenting order and emergency child protection order may assist in remedying a significant majority of the issues that currently arise.

1.8.19 These proposals do not directly impact upon whether there should be any change as to where a decision to remove a child from its carers without consent is to be taken. Further, whether it is appropriate to significantly lower the threshold for the CPO raises different considerations and is considered later in this report.

1.9 Interface with Child Protection Plan

1.9.1 There is a further and significant area in which duplication arises which I consider to be an unintended consequence of the wording of the Law. It may be viewed as illustrative of the issues highlighted above, but one which is experienced in practice and creates issues. Where problems have been identified in relation to a child or family by the Committee's Children Services team not requiring immediate compulsory intervention, a child protection plan may be prepared, and a child protection conference might be called.

1.9.2 The child protection register is a list of names of children who live in Guernsey and Alderney who are considered to be at risk and who are subject to a child protection plan. The child protection plan details how the child will be protected from serious harm and who is responsible for carrying out specific tasks. It is a means of co-ordinating information and support. The plan is a voluntary plan and for some children where risk of harm has been identified, their parents will take the necessary action to reduce risk and work with professionals to address the concerns.

1.9.3 A child protection conference cannot, however, make the decision to remove a child from the care of their parents or carers. If the risk is significantly high and / or the family are either not willing to co-operate or are unable to make the changes necessary, then some form of compulsory intervention may be required. It is at this point that a decision is required as to the most appropriate forum in which to conduct that intervention. The child protection conference can request that a referral is made to the

Children's Convenor and/or that a meeting (known as a legal threshold meeting) is called if a child is not able to be protected from serious harm through a child protection plan. Often it emerges during the investigation of the case that there has been a significant delay between making the decision to refer to the Convenor and the referral actually being received.

1.9.4 The ISCP (The Islands Safeguarding Children Partnership) to monitor the use of the child protection register (through the Monitoring and Evaluation Sub Committee).

1.9.5 The Law places a duty on the States to provide services to children in need so as to prevent them becoming a child at risk (section 24 of the Law) and a child protection plan might be one way of planning the delivery of these services.

1.9.6 If the child protection plan is successful and continues to be successful there is unlikely to be a reference to the Convenor.

1.9.7 If, there is a referral to the Convenor, the Convenor is then under a statutory obligation to carry out an investigation, agree a fact find and so on. Duplication might then arise between the Child Protection Register (CPR) process and the child protection plan and the Convenor and the Tribunal. The consequence can be confusion for the parents, delay in the process and on occasions tension between the ISCP, the Tribunal and others over the de-registration of the child from the CPR. This raises the question as to whether there is sufficient integration in the system of the CPR with the functions of the Convenor or whether this needs to be reviewed and strengthened. These two processes, serve a different purpose but can exist simultaneously, often involving the same professionals.

1.9.8 I understand that it was decided by the Committee that when a child is made subject to a care requirement, they would be deregistered from the child protection register, but that in the absence of statutory or written guidance and with the frequent turnover of staff, this does not necessarily happen and gives rise on occasion to tension. This systemic issue places both the Tribunal and the ISCP in a difficult position since they each have a legal duty to consider any risk or harm to which the child is exposed. If this cannot be better resolved, at the very least, where there is a case in which a child is subject to both a care requirement and a child protection plan there should be a process in which the frequency of meetings to address risk could be identified and agreed on a case-by-case basis[8] and that the core group meeting and Tribunal hearing should be a combined hearing so as to the address the elements that concern both forums at the same time.

1.9.9 This should also help address the further issue that where a child protection plan has been registered there is a requirement for this to be considered for de-registration or renewal every six months and will give rise to more integrated decision making.

[8] In those cases where children are at greater risk, they would have more frequent visits by social workers, and this would be an agreed case management process between the social workers under the child protection plan and the Tribunal (acting through the Convenor).

1.10 Who should be entitled to authorise the removal of a child from its carers without the consent of those with parental responsibility?

1.10.1 Having outlined the current systemic difficulties in the division of jurisdiction between the Tribunal and the Court, there is one further significant point to be considered in the division of responsibility. This was the point referred to in paragraph 1.4.2. Those seeking change say that the appropriate basis for the division of jurisdiction is no longer whether it is a temporary or permanent remedy sought but that any decision involving removal, including a condition attached to a care requirement, is too significant an interference with the rights of the child and the parents to be exercised by lay people however committed and experienced they may be, and that this decision requires judicial management.

1.10.2 This argument is countered by those resisting that change saying that the lay element and characteristics of the Tribunal process is precisely the way in which such decisions should be made and who, in support of their argument, point to Kilbrandon, the success of the Scottish system and more recently published proposals in other jurisdictions to strengthen and support this system. It was also put forward that a change to the Law in removing jurisdiction from the Tribunal would be a retrograde step since it would put more children before the Court in the place of the more family friendly atmosphere of the Tribunal, damage the ability to look holistically at solutions for troubled children and their families and, as stated above, was not in keeping with developing current practice in other jurisdictions. There is a significant difference with the process adopted in England.[9]

1.10.3 I was further advised that there were also significant practical implications if a change is made. I was informed that residence conditions made under s43 of the Law, as part of a care requirement, are a feature of approximately 40% of the cases that currently are referred to the Convenor and Tribunal. Removing those cases and placing them in the jurisdiction of the Court would materially reduce the work of the Tribunal and create added work pressure on the Courts and likely to be a source of delay. Not only that, but it was argued that any interference with the current arrangements would not decrease duplication but rather increase it since children might still have to be dealt with in the Tribunal for other matters such as youth justice or educational absences whilst the Courts were at the same time dealing with issues of removal from the family.

[9] In England and Wales, the local authority plays a significant role. The jurisdiction for a legal remedy in the more serious cases is through the Courts. There is no Tribunal system. The court can consider whether to make an Interim Care Order which places the child temporarily under the care or supervision of the local authority whilst care proceedings are ongoing. An Interim Care Order will be made where the court has reasonable grounds for believing the threshold criteria have been met. An Interim Care Order can last up to 8 weeks on the first occasion and can be renewed for periods of up to 28 days. There is no limit to the number of interim care orders that can be made. The Local Authority acquire Parental Responsibility for the child when there is an Interim Care Order is in place.

1.10.4 It was also argued by those in favour of not making changes to the power of the Tribunal, that in reviewing those cases decided by the Tribunal and appealed to the Court, the substantive decision for the outcome for the child has not been found to be wrong. I was told that in those cases where an appeal has been successful, this has been on the question of procedure not the substantive decision taken. Similarly I was advised that there have also been no concerns identified in this regard in any of the serious case reviews undertaken by the ISCP over the last eleven years.

1.11 Jurisdictional boundaries - conclusions

1.11.1 As a consequence of these system difficulties, I have given careful consideration as to where the boundary between the jurisdiction of the Tribunal and the jurisdiction of the Court should lie. The current division is governed by the different legal thresholds that apply to the Tribunal and the Court underpinned by the policy that the Tribunal should deal with those cases where a temporary intervention may be required and the Court where a permanent solution is needed. The forum selected therefore is dictated by the question of whether an application will satisfy the relevant threshold, and this may not be apparent at the time the decision is taken.

1.11.2 One option, based on the philosophy and culture which has its foundations in the Kilbrandon Report, and which is a deep-rooted characteristic of the Scottish system is that the original division of jurisdiction should at the least be retained, so that all decisions, (excluding those in relation to Emergency and final Community Parenting Orders, that would continue to be reserved to the Court), should continue to fall within the jurisdiction of the Tribunal. Some (but not everyone) think that the Tribunal's powers should be extended even further so as to include community parenting orders and I had a sense that those contending for this option felt that Guernsey had not fully committed to what they believe, genuinely and passionately, was the best system for dealing with children in trouble. The Court's role if that were implemented would be restricted to hearing appeals from any Tribunal decision.

1.11.3 The alternative view put forward was that the development of the Scottish system had been greatly different from that in Guernsey and was the reason why it had not adapted as well to the Guernsey context. The Scottish system had, for years, accepted a tribunal process whereas in Guernsey responsibility in dealing with children's cases historically lay with the two Crown Law Officers which responsibility had then subsequently transferred to the Courts. It was put to me that it was these differing historical origins that was the reason why the Scottish system had not translated in the same way within Guernsey, and which is more suited to the English approach.

1.11.4 In looking at this objectively and dispassionately, it is clear that Guernsey currently has a process which neither operates in the way that the Scottish system was designed to do, nor does it adopt the same process in England where the responsibility and decision making is divided between the local authority and the Courts. This hybrid model introduces two tiers for intervention which inevitably creates difficulties for those within the system, particularly the child and their families. It also has a real

impact on social workers coming into the Island and their ability to understand the system. Being hybrid, it also generates duplication and unnecessary complexity.

1.11.5 It can be seen that this is not an easy matter to resolve, and I appreciate that there are strongly held professional views on both sides.

1.11.6 There is no issue in those cases where the persons with parental responsibility have consented to the residence arrangements. In those cases, the usual approach is to enter into a written agreement with those persons, and therefore would not be a case for the Tribunal in any event. The further consultation exercise required me to give further serious consideration of a condition of residence as part of a care requirement, and whether there was any alternative solution, perhaps by prescribing how residence conditions could be used by the Tribunal.

1.11.7 In my judgement, the correct starting point must be to focus on the outcome for the child, how that decision should be properly reached, within a single, simplified and integrated system, making the relevant decision in the right forum. As a result, any impact upon the Tribunal or the Court and / or available resources is only of secondary consideration.

1.11.8 In my view, there is a material difference in the legal nature of an application to remove a child or young person from the family, and the remainder of those cases that are dealt with by the Tribunal. It is well understood that the removal, or proposed removal, of a child from the care of his parents whether this is at an interim stage or by final order following the conclusion of proceedings, must only be considered as the last possible remedy. Removal for one, three or six months may be as equally as traumatic for a child and the family as a permanent order.

1.11.9 Except only where there is a genuine emergency and an immediate risk of harm to the child, the child should not be removed from his carers without the consent of those who hold parental responsibility for that child, unless there has been a robust analysis of the evidence, including, where appropriate, cross examination of witnesses, and that it has become clear on the evidence that the legal thresholds in the Law have been met. These are minimum legal safeguards that the child and their parents are entitled to receive. This process requires, in my view, full scrutiny by a Court and a legally qualified judge. In separating this out, it removes the possibility of duplication.

1.11.10 In my view it is not appropriate that lay people should bear that responsibility, or fair to those members required to make that decision, no matter how committed or experienced they are. One alternative would be to appoint a legally qualified chair of the Tribunal but to do so would still retain the unnecessary complexity of the current arrangements, when these should be simplified. More importantly it risks changing the ethos of the Tribunal proceedings to those of a Court and therefore would lose much of the advantages of the Tribunal as they have been described to me.

1.11.11 In those cases where a residence order is required, the Tribunal would still to continue to hear those cases if the persons with parental responsibility agreed to the conditions

of residence. The driver in those cases which appear at the outset to require temporary intervention, must be to attempt to achieve consent. The recommendation to separate the jurisdiction so that any dispute on residence must be referred to the Court, might make those with parental responsibility agree to a residence condition to avoid the case being transferred to the Court. Further the residence condition attached to a care requirement must be subject to a limitation in its duration reinforcing the point that this is only temporary, whereas any case being transferred to the Court may well bring with it a perception of the possibility of a longer or more permanent condition being made.

1.11.12 This may[10] enable a reputation to develop, that cases involving the Tribunal are a better way to address particular, and hopefully temporary, problems and benefit from a flexible and pragmatic approach than that available by judicial resolution. The division of jurisdiction may act as a driver for cases to be consented and thereby retained in the Tribunal with its reputation for flexible, supportive and imaginative solutions.

1.11.13 The Tribunal has demonstrated that in the majority of the cases before it, it can operate in this way whilst still upholding the human rights of the parties including a right to a fair trial, a right to family life and the application of principles of natural justice. The Tribunal has the advantage of being able to be innovative and flexible in its decision making, to provide access to support services and to be able to deal with a wide range of issues that might involve the same child, including youth justice, school attendance as well as care for their wellbeing.

1.11.14 However, in any event, the following issues must be addressed:

(a) There should be a more structured consultation process between the Committee and the Convenor so that cases are referred to the Convenor at an early stage. This could be achieved by way of a pre-referral consultation for social workers when a new case arises. This would not seek to remove the decision making away from the social worker team but would help mitigate the difficulties highlighted above when cases are referred late. The Committee will be undertaking case conferences on clients in any event and a pre-referral protocol for certain types of cases with the Convenor may be helpful. This should be a feature of an integrated system in which the different components should be working together to improve progress within (or entry into) the system so as to improve outcomes.

(b) Discussions should take place between the Tribunal and Courts to identify and facilitate ways in which cases can be transferred between them more easily, remove existing obstacles and streamline the process, implemented through practice notes and so as reduce any delay and enable quicker listing of cases.

[10] I fully accept that many people will disagree with this.

1.11.15 Separating out the work of the Tribunal from that of the Court will remove some complexity and duplication. It will also clarify the appropriate threshold to be applied depending on the nature of the remedy sought.

1.11.16 The linear process proposed will also mean that cases will start by referral to the Convenor who will carry out her investigation and fact find, work with the families and the Committee to seek to resolve the issues at an early stage and identify whether it is a case that can be suitably referred to the Tribunal or should be referred to the Court.

It is hoped that the proposals will also act as an incentive to the parties to work together for an agreed outcome.

1.11.17 It is also important not to fall into the trap of the Tribunal's work being considered as of less importance than that of the Court. The issue at stake is the nature of the application, the way that the application should be approached and the appropriate forum in which it should be heard. The Convenor's role in this matter becomes of even greater significance.

1.11.18 Consideration should also be given to renaming the Tribunal 'The Family Proceedings Tribunal' and the Court (in Guernsey and Alderney) 'The Family Proceedings Court' as opposed to the Juvenile Court. This may strengthen the point that these are all parts of the same overall system albeit with different responsibilities in decision making.

1.12 Access to the System

1.12.1 Except for those cases that are initially made directly to the Court, (i.e., where there has been no previous referral to the Convenor) the process will be a linear process. This means that all cases where intervention of any kind is required (other than for those case reserved to the Court and the application is made directly to the Court before any intervention has been made by the Tribunal) are *referred* to the Convenor for consideration. This includes referrals by:

(a) the police, including youth justice matters;
(b) the schools' attendance officers (or other education personnel);
(c) MASH or other agencies or organisations;
(d) the Committee;
(e) the public.

1.12.2 For those applications that are made directly to the Court, and no referral has previously been made to the Convenor there is a requirement to *notify* the Convenor but there is no requirement for the Convenor to carry out any investigation or take the other steps required under the Law.

1.12.3 The objective is that all those who are involved in an outcome know precisely at all times which forum they are in. A child and his family may find themselves in both the

Court and the Tribunal at the same time but this will for different and non-overlapping purposes. So, a child may be required to attend the Tribunal for youth justice or educational absenteeism, whilst being in Court for proceedings authorising his removal from his parents or family without the consent of the person with parental responsibility. That is a completely different position to circumstances where the Tribunal and the Court may be considering the same issues as to where that child is to live and with whom – which is duplication. This makes it important that there is a readiness for the transfer of cases between the Tribunal and the Court and vice versa depending on the outcome being sought and that this should be a simple straightforward process.

1.12.4 Where the case is referred to the Convenor (and has not been made directly to the Court), the Convenor and the Tribunal have jurisdiction and the referral is subject to the requirements of the Law to be undertaken following referral unless and until an application is subsequently made for one or more of the orders that are reserved to the Court including a dispute over the terms of a condition of residence as part of a care requirement.

1.12.5 If a child is deemed in immediate risk of harm (meaning in practice an application for an Emergency Child Protection Order under section 55) or the threshold for a Community Parenting Order (or other application reserved to the Court) is met the case (as now) will be referred directly to the Court through an application made by the Committee.

1.12.6 There is also a need to revise the threshold for an application to address those cases where the risks of harm are imminent but are not of sufficient significance or immediately pass the threshold for an emergency child protection order. This is addressed later.

1.12.7 However, the Convenor (and the Children's Proceedings Case Manager) must be *notified* at the same time as an action referred to in paragraphs 1.12.2 and 1.12.5 is commenced. This will also enable the Convenor to provide any information as to whether or not there has been any previous or current involvement of the Convenor or the Tribunal in relation to that child, its' siblings or family in liaison with the Committee and its legal advisors; ensure that the case has been noted and recorded in relation to any future proceedings, and also as part of the monitoring, data collection and oversight process.

1.13 Safeguarding and the interface between the Committee and the Office of the Children's Convenor

1.13.1 If there are safeguarding concerns, those will usually, in the first instance, be referred to the Committee.

1.13.2 MASH[11] is a non-statutory committee which seeks to identify the need for support and help to families. Whilst its establishment is not about child protection as such, if there are safeguarding concerns identified by MASH these will be referred to the Committee and or the Convenor.

1.13.3 MASH has shown itself to be a valuable and effective multi agency approach to identifying children at risk or families in need of support. It was viewed by all the stakeholders interviewed as a means by which a child or its family may be given access to support. Its main objective, therefore, is not safeguarding or a means by which the process to remove a child from its family is commenced.[12] It does however seek to identify those children at risk of harm or neglect or who are in an environment that presents a risk to them. All stakeholders that were interviewed considered to some degree or other that MASH was an effective body. However, there were some areas where improvements around communications might be made.

1.13.4 First, if a case is referred to MASH, but MASH do not consider that the case meets their criteria, there is no automatic onward referral and the child and its family or parent that clearly have some issues (since they would not have been referred) can sometimes be left in a vacuum. Currently, the majority of cases that are presented to MASH would not meet the section 36 threshold for an onward referral to the Convenor.

1.13.5 Section 22 of the Children (Miscellaneous Provisions) (Guernsey & Alderney) Ordinance, 2009 (the 2009 Ordinance) places a duty on the States to identify children who are in need of a Child in Need intervention. A further category of intervention, Child Protection intervention, arises under section 29 and 30 of the 2009 Ordinance, in respect of those children whose circumstances places them between a Child in Need intervention and a referral to the Convenor as being a child at risk.

1.13.6 MASH is therefore an important mechanism in identifying these children who may fall into either of these categories. Once identified a child will move from MASH to the locality social care services of the Committee.

1.13.7 The Committee also has a statutory obligation under section 25 of the 2009 Ordinance to refer a case to the Convenor if, following investigation, it concludes that compulsory intervention may be necessary to ensure the provision of adequate care, protection, guidance or control for a child.

1.13.8 Accordingly, this is a key safeguarding mechanism, and it is essential that there is an awareness of the comprehensive statutory provisions that currently exists to ensure that where any case is referred to MASH, which MASH determines does not meet their criteria, is referred to early help services tasked to work with the family or parent and the child. Sections 22, 29 and 30 of the 2009 Ordinance are therefore engaged in order to consider whether intervention is required, and, ultimately, if the early help services

[11] The Multi-Agency Support Hub

[12] Its main function is to signpost, triage and refer on safeguarding concerns to the appropriate agencies.

consider at any time that section 36 of the Law is satisfied, they are then able to refer the case to the Children's Convenor under section 25 of the 2009 Ordinance.

1.13.9 Concerns were raised during the initial conversations that a child or their family referred to MASH, but whose circumstances do not satisfy MASH criteria may not always be linked into the Committee early help services and may as a consequence slip below the radar. It is important therefore that a referral is made and that there is effective onward monitoring and governance of that referral. This may require further resources to be provided. In other words, the mechanisms are in place but may not always work as intended. It is not known whether this is a frequent occurrence or simply an occasional problem. It may simply be a case of reinforcing on a regular basis an awareness of how the provisions work together to all involved.

1.13.10 Second, there were some concerns as to whether the social worker team working as part of MASH was fully resourced and that, on occasions, avoidable delays had occurred. It is not clear as to whether this is a systemic issue, and the team is not currently fully resourced or that simply on certain occasions there had been specific reason that had caused the delay. There should be a review of the performance of that team to ensure that there were proper resources to meet the significant responsibilities that are placed on that team including the need to take timely action.

1.13.11 Several specific comments were received in relation to the MASH pro forma on-line referral form, which, unless fully completed, will not be accepted by the website, and was described as not user friendly. Sometimes not all the information, for example a date of birth, will be available to the referrer and this will prevent the referral being made. Whilst it is understood that incomplete referrals will create problems, that itself should not prevent the referral being made. The online referral process should therefore be looked at to make it more user friendly.

1.14 Action following Referral to Convenor

1.14.1 Other than in those cases simply notified to the Convenor, upon a referral the Convenor is currently required to carry out an investigation, hold a meeting with the interested parties and decide on any future action. The Convenor is responsible for the management of all cases before the Tribunal. This is an important part of the system. This meeting with the interested parties provides an important opportunity for the triaging of cases. In appropriate cases and at an early stage this meeting may enable the parents to be pointed towards mediation or other dispute resolution of the issues, (linking them to The Family Proceedings Advisory Service mediation services), discuss co-parenting, and is also a means to identify cases where there may be domestic abuse and seek to deal with them in the appropriate way.

1.14.2 The Convenor may, on the facts available to her at that time, conclude that the case is suitable for management by the Tribunal. This will be the default position in the absence of, or pending the completion of, other conflict resolution solutions. If, at any time when a case has been referred to the Tribunal, the Committee intends to make an application to the Court or circumstances arise that may reasonably be considered to

pass the threshold test for removal of a child from the parent or family (substantive application) whether on a temporary or permanent basis including a condition for residence:

(a) the Committee must notify the Tribunal that it intends to make the substantive application to the Court, and must issue the substantive application at the Court within 21 days of notifying the Tribunal; or

(b) the Tribunal of its own volition may at any time, if it considers that a substantive application to the Court is warranted, reasonably considers that a case currently within its jurisdiction will pass the threshold test for an application to the Court and is in all the circumstances proportionate, notify the Committee that any further steps in the case must be brought in the Court and not the Tribunal, and transfer any proceedings currently before it to the Court,

and in those circumstances any further proceedings in the case in relation to the removal of a child from the parent or family must be heard by the Court and not the Tribunal.

1.14.3 If there are ancillary matters to be dealt with, those are to be heard and dealt with by the Court at the same time as the substantive application. Any current proceedings in the Tribunal concerning the child the subject of the substantive application and which relate to the substantive application are automatically stayed pending the outcome of the substantive application. This is to avoid concurrent proceedings. For the avoidance of doubt those aspects of the case not relating to the substantial application, (for example youth justice or educational attendance matters), would continue to be dealt with in the Tribunal.

1.14.4 It is important to recognise that the decision to transfer the case to the Court is one of jurisdiction and therefore does not fall within the Convenor's discretion. The trigger is the making of the application not a decision of the Convenor.

1.14.5 Alternatively, the Tribunal may be managing a case in which no application has been made, but that it becomes aware of certain facts or circumstances in which the Tribunal considers that it does not have jurisdiction to properly deal with the case, then it may of its own volition require any further proceedings to be brought in the Court by notifying the Committee. This is likely to arise only on rare occasions and the decision as to whether the substantive application is brought must remain the decision of the Committee and which is governed by the paramount interests of the child. Nevertheless, this power will prevent cases remaining in the Tribunal that are properly within the jurisdiction of the Court. The process by which a case is transferred to the Court will usually be a notification to the Tribunal by the Committee.

1.14.6 If there are ancillary matters to be dealt with at the same time, those are to be heard and dealt with by the Court at the same time as the substantive application. The Court should retain the power to impose conditions for ongoing monitoring and

management of the outcomes from that application by the Tribunal if they consider it more appropriate than retaining that responsibility within the Court process.

1.14.7 If the Court does not make the order to remove the child or young person, or in cases where it has decided on a condition of residence as part of a care requirement, it may either refer the case back to the Tribunal for further directions and appropriate ongoing management of the case (and in which case jurisdiction transfers back to the Tribunal) or retain conduct of the case if the circumstances make it in the best interests of the child and the reduction of delay in doing so.

1.14.8 One of the causes of avoidable delay is the portability of documents between the Tribunal and the Court. System procedures should be amended so that reports statements and documents should be freely useable and transferrable, with the necessary confidentiality protections, between the two jurisdictions. This is addressed later.

1.15 Thresholds to be achieved during the process

1.15.1 It is worth at this point restating the objectives of this report:

- To reduce complexity where possible to do so; (complexity does not equal 'better').

The current interface between the Court and the Tribunal is complex and can be simplified in a number of areas without losing the special character of the Tribunal or the need for a robust and resilient judicial monitoring role. The clear division of responsibilities between the Court and the Tribunal is one way of reducing complexity.

- To ensure each agency (including Court and Tribunal) has clear roles;
- To ensure that there is no duplication of functions or uncertainty over boundaries;

The division of responsibility in the manner proposed clarifies to both children and family who for whatever reason are within the system and those professionals working in the area of children's outcomes, the distinct roles of the Court and the Tribunal whilst promoting the fact that 'family proceedings' is a single integrated system. It also removes duplication, creates a linear process and by simplifying, and setting clear thresholds removes many of the uncertainties.

- To provide a full and flexible range of options for children/young person entering the system, with access to support;

Retaining the Tribunal with its family friendly approach and opportunities for creative solutions to be found and enabling access to family support continues the existing full and flexible options for children and young people entering and travelling through the system. It also avoids, in the area of youth justice, criminalising disruptive behaviour. The Tribunal should be encouraged to develop and seek pragmatic solutions to those cases coming before it.

- To ensure the protection of the rights of the child or young person, their families, and carers;

Both the Tribunal and Court system ensures the protection of the rights of the child and their families. By separating the requirement for any action involving the removal of a child and reserving this to the Court, this strengthens the rights of the child and the family by ensuring that no order removing a child from its carers without the consent of the person with parental responsibility will be granted without it having been fully tested and evidentially supported and with all relevant parties having access to legal advice.

- To reduce 'avoidable' delay and operate within realistic timescales;
- To provide for clear governance structures;
- To provide for the proper capture of data so as to enable continuous improvements.

These three requirements are specifically addressed later in this report.

1.15.2 However, as the Consultation Document clearly spells out, some of the current thresholds in the Law also create delay and would benefit from amendment. The following table sets out the steps and thresholds for entry and travel through the system. The narrative on the detailed thresholds including some of the necessary changes is then set out. Note that sections 3 & 4 and Articles 6&8 of ECHR apply to *any* function under the Law carried out by any public body and so are not referred to specifically in the following table and discussion.

Step	Threshold
Referral to Convenor	Section 36
Requirement for Compulsory Intervention	Section 35
Action by Convenor on Referral	Section 42
Definition of Care Requirement	Section 43
Grant of a Care Requirement	Section 44
Court Orders:	
Community Parenting Order	Section 49
Interim Community Parenting Order	Section 53
Emergency Child Protection Order	Section 55
Exclusion Order	Section 59
Supervision Order	New
Child Assessment Order	New

1.15.3 Orders permitting contact with a child under Section 50 including a Special Contact Order, which is an application by a person in relation to a child that is subject to a community parenting order, (and orders refusing contact set out in the same section) will also be reserved to the Court since they are ancillary to the community parenting order.

It is not proposed to set out the details of section 50.

Accordingly, the process into and through the system and the relevant threshold is as follows.

1.15.4 The proposed referral to Convenor into the system.

It has been suggested that this provision can be simplified to avoid the need to read this alongside section 35 as follows:

Section 36 The Children (Guernsey and Alderney Law, 2008

Any person who believes that a child is in need of care, protection, guidance and control, and that a care requirement may be necessary to ensure the provision of adequate, care, protection, guidance or control may refer the matter to the Children's Convenor.

Section 25 of the 2009 Ordinance would follow similar wording:

If the Committee is of the opinion that a child is in need of care, protection, guidance and control, and that a care requirement may be necessary to ensure the provision of adequate, care, protection, guidance or control, the Committee must refer the matter to the Children's Convenor.

1.15.5 Compulsory intervention

Both Professor Marshall and the Consultation Document consider that the threshold for the Tribunal is in need of reform. The proposal for the separation of the jurisdiction of the Tribunal and the Court assists in the consideration and implementation of this. Section 35 is the criteria for determining if the case should be referred to the Tribunal. It currently applies to community parenting orders where a section 35(2) condition is the foundation for a ground under section 49. It is proposed that section 35 will no longer apply to the Court.

I have considered the comments put forward in the Consultation Document (building on Kathleen Marshalls observations) and the following is proposed for section 35. Whilst it may be argued that some of the grounds in subsection 35(2) may no longer be relevant to the Tribunal since those grounds are more likely to apply in the context of a Community Parenting Order, in my view it is not necessary to remove them since the more comprehensive the grounds on which intervention may take place, (and which will always involve an element of degree) the more flexible the system will be. (The final wording would benefit from further discussion with the Children' Convenor.)

Section 35

(1) The question of whether *a care requirement* may be needed in respect of a child shall only arise if:

(a) *the making of a care requirement is necessary to provide the child with adequate care, protection, guidance and control*; and

(b) at least one of the *grounds* referred to in subsection (2) is satisfied, in respect of that child.

(2) The *grounds* for the purposes of subsection (1) are, that on a balance of probabilities:

(a) The child has suffered *unnecessarily* or is likely to suffer, significant impairment to his health or development'

(b) The child has suffered, or is likely to suffer, sexual or physical abuse,

(c) The child has –
(i) misused drugs or alcohol, or
(ii) deliberately inhaled a volatile substance

(d) The child is *being* exposed, or is likely to be exposed to *persons whose conduct is (or has been) such that it is likely that –*
(i) the child will be abused or harmed; or
(ii) the child's health, safety or development will be seriously adversely impacted

(e) The child -
(i) has displayed violent or destructive behaviour and is likely to become a danger to himself or others;
(ii) is otherwise beyond parental control,

(f) The child, being of 12 years of age or more, has committed –
(i) a criminal offence, or
(ii) what would be a criminal offence if the child had the necessary capacity, or

(g) The child (being under the upper limit of the compulsory school age) is failing to attend school without good reason,

(h) a specified offence has been committed in respect of the child,

(i) the child has, or is likely to have, a close connection with a person who has committed a specified offence,

(j) the child has, or is likely to have, a close connection with a person who has committed domestic abuse.

(2A) in subsection 2:

(a) a specified offence means: [to be drafted]

(b) a child is to be taken to have a close connection with a person if –

(i) *the child is a member of the same household as the person, or*

(ii) *the child is not a member of the same household as the person but the child has significant contact with the person.*

1.15.6 Proposed action by Convenor on a referral

Section 42

Where, *in the opinion of the Committee an intervention by an application to the Court* may be necessary to ensure the provision of adequate, care, protection, guidance or control for a child *the Committee* shall:

(a) *in relation to any application under:*

(i) *Section 48, Community Parenting Order;*
(ii) *Section 53, Interim Community Parenting Order;*
(iii) *Section 55, Emergency Child Protection Order;*
(iv) *Section 59, Exclusion Order;*
(v) *Section [▪], Supervision Order,*
(vi) *Section [▪] Child Assessment Order, or*
(vii) *that seeks to impose a condition as part of a care requirement specifying where the child shall reside and the person or persons with parental responsibility has not consented to the terms or imposition of that condition,*

and any other application that is to be made in connection with any of those Orders at that time, refer the matter to the Juvenile Court; and[13]

(b) in all other cases the Convenor shall in cases *where intervention may be necessary* refer the matter to the Tribunal, for consideration and determination.

It was suggested during feedback that sections 42(3) and 42(4) should also be amended along the lines of the following wording (but which I have slightly adjusted):

Section 42(3)

Where any person of a class or description prescribed in an Ordinance made under section 34 ("a prescribed person") does not accept any –

(a) condition for referral stated by the Children's Convenor under section 35(2), or

(b) statement of fact made by the Children's Convenor in support of any such condition,

[13] Proposed insertion

the Convenor shall, unless he withdraws any such condition or statement, refer the matter for determination by the Tribunal in accordance with the provisions of an Ordinance made under section 34.

Section 42(4)

Where the Tribunal has begun to consider a case referred to it under subsection (1) and is satisfied that a prescribed person does not accept –

(a) a condition for referral stated by the Children's Convenor, or

(b) a statement of fact made by the Children's Convenor in support of any such condition,

it shall, unless the Convenor withdraws the condition or statement, or the Tribunal discharges the condition or statement, determine any such condition or fact for determination in accordance with the provisions of an Ordinance made under section 34.

1.15.7 Definition and making of a Care Requirement

The definition of a care requirement needs to be amended to exclude community parenting orders and other orders reserved for determination by the Court.

Section 43 to be amended to read:

(1) A care requirement is an order made by the Tribunal placing a child under the supervisory care of the States *but excludes:*

(a) a Community Parenting Order, under section 48;

(b) an Interim Community Parenting Order, under section 53;

(c) an Emergency Child Protection Order, under section 55;

(d) an Exclusion Order, under section 59;

(e) a Supervision Order, under section [▪]; and

(f) a Child Assessment Order under section [▪].

(2) The purpose of a care requirement is –

(a) to protect the child from harm and promote his proper and adequate health, welfare and development, and

(b) to assist the parent, or any other person who is for the time being caring for the child, to provide adequate care, protection, guidance and control for the child.

1.5.8 The Threshold test for a Care Requirement

Upon a referral by the Convenor to the Tribunal the threshold test for a care requirement is whether Section 44 is satisfied.

Section 44

(1) A care requirement may only be made in respect of a child where –

(a) after consideration of the child's case the Tribunal is satisfied that

(i) the question of whether *a care requirement* may be needed arises under section 35

(ii) *a care requirement* is necessary to ensure the provision of adequate care protection guidance or control for the child

(iii) the provisions of subsections (4) and (5) are met, and

(b) the Tribunal has approved a child's plan for the child which sets out such arrangements for the child as may be specified by rules of the Tribunal.

Existing subsection 44(2) to be repealed and replaced by **new subsection (2)**.

(2) A care requirement may be made on an interim basis for a period *not exceeding 6 months*[14] at any one time where the Tribunal is not in a position to make a final care requirement and the Tribunal is satisfied that the welfare of the child requires immediate compulsory intervention to ensure the provision of adequate care, protection, guidance or control.

Existing subsection **44(4) shall be amended** to read:

(4) A care requirement may only be made where *the Tribunal* is satisfied that the Committee, and any other person who or which the Tribunal believes may have an interest have taken all reasonable steps to assess the needs of the child and provide services on a voluntary basis and either –

(a) voluntary provision has not been sufficient, or

(b) there is no reasonable prospect that voluntary provision will be sufficient,

to provide adequate care, protection, guidance or control for the child.

[14] This has been increased from 28 days. See Part 2.

(5) A care requirement which includes a condition as to where the child shall reside may only be made where *the Tribunal* is satisfied that the terms of that condition have been consented to by the person or persons with parental responsibility or the Court has approved the terms of the care requirement including that condition.

1.15.9 Threshold test for Court Orders

Upon referral to the Court, the threshold test for an order shall be;

Approval under Section 44(5)

The Court is satisfied that the requirements of Section 44 are met.

A community parenting order – section 49

A community parenting order is an order made by the Court granting the Committee parental responsibility for a child. Its purpose is to protect the child from harm and promote his proper and adequate health welfare and development, and to enable the Committee to make adequate plans for the care of the child, until he has reached age 18 or completed studies or training.

The proposed amendments are those set out in the Consultation Document and provide the benefits referred to, including closing a gap for those cases where the risks of harm are imminent but not sufficiently significant or immediate to meet the threshold for an Emergency Child Protection Order (for example in cases of neglect or emotional abuse).[15]

Further consideration should be given when redrafting this section to provisions that allow for a discharge from care to be at a greater age than 18, up to a maximum age of 23, where it is appropriate and in the interests of that young person.

Consideration should also be given when redrafting this section (so as to deal with current obstacles)that there is no unintended consequence that more children are drawn into the Court for a community parenting order as opposed to working with families to otherwise address the issues. Current data would indicate that the great majority of cases are resolved by temporary intervention rather than a permanent order.

Section 49

(1) A [relevant] Court shall not make a community parenting order in respect of a child unless

(a) it has first approved the contents of a child's plan for the child, and

(b) the circumstances described in subsection 2(a) or 2(b) apply.

[15] Pages 17 and 19 Consultation Document.

(2) The circumstances for the purposes of subsection 1(b) are

(a) where *it is satisfied –*

(i) that the child concerned is suffering or likely to suffer significant harm;[16] *and*

(ii) that the harm, or likelihood of harm, is attributable to –

(A) the care given to the child or likely to be given to him if the order were not made was not what it would be reasonable to expect a parent to give to him; or

(B) the child being beyond parental control

(b) where in respect of every person who has parental responsibility for the child-

(i) that person consents to the making of the order, or

(ii) that person –

(A) is not known

(B) cannot be found, or

(C) is incapable of giving consent.

In addition, the Court must be satisfied that the requirements of

(a) **Section 3** – Welfare of the child and child welfare principles; and
(b) **Section 4** – The child welfare checklist,
(c) **Article 6** (right to a fair trial) and **Article 8** (right to family life) of the European Convention on Human Rights

have been met.[17]

1.15.10 Interim Community Parenting Order – section 53

An interim community parenting order is an order which satisfies the requirement for a community parenting order under section 49 for a period not exceeding 3 months and is generally sought where the removal of a child is needed but that final arrangements have not yet been completed. There is currently no legal test for the making of an order. The current

[16] The Consultation Document suggests that the Law be amended to consistently refer to 'significant harm' and that a definition be included. This is a sensible proposal and has been adopted throughout this Report.
[17] These also apply to all the Orders but have not been repeated.

approach is based on the judgement in the case of Re S[18] in which the Court decided that the appropriate test is

> 'whether the [Committee] can establish that there are reasonable grounds for believing the circumstances in relation to the child are as made out in section 49 of the Law.'

I agree with the Consultation Document that the section should therefore be amended.

Section 53

(1) Where *a relevant Court finds that there are reasonable grounds for believing that the circumstances with respect to the child for making a community parenting order under* section 49 are satisfied, *it* may, upon application made by the Committee, make an interim community parenting order.

(2) An interim community parenting order shall have the same effect as a community parenting order for such period (not exceeding 3 months) as the relevant court may order

(3) When making an interim community parenting order, a relevant court may exercise all the powers that are exercisable upon the making of a community parenting order.

(4) An interim community parenting order may be made subject to such conditions as the relevant court thinks fit.

(5) Any conditions attached to an interim community parenting order may be varied or discharged upon the application of any person referred to in section 52(2).[19]

1.15.11 Emergency Child Protection Order – section 55

An emergency child protection order is an order, often made ex-parte where there is an imminent risk of harm to the child. It cannot be made for a period in excess of 8 days and decisions of the UK Court have made it clear that:

- this is a maximum period (subject to renewal); and
- is not to be treated as an automatic period (but should be less); and
- requires the Committee to progress arrangements and applications without delay; and
- requires implementation within 24 hours.

Since it is proposed that the jurisdiction of the Tribunal should be completely separated from the Court, it is no longer appropriate that the Tribunal should have power to discharge the ECPO or that it is automatically revoked if the Tribunal sits to consider the case of the child. This is, in any event, an unintended consequence of the current drafting. I agree with the Consultation Document that Section 57(2) (d), containing that power should be revoked.

[18] Juvenile Court Judgement 13/2010

[19] This is either the Committee, the child or other class or description of persons specified in rules of court

This does however raise an issue over the duality of jurisdiction. Is there any circumstance in which a case in which the Court has granted an ECPO will revert to the Tribunal? It might be thought unlikely that where a child has been exposed to the risk of significant harm justifying the granting of an ECPO the case is likely to return to the Tribunal for a care requirement. It is however possible, perhaps where the identified risk has been removed from the child, for example by the breakup of a relationship. The underlying principle is that if, in those circumstances the appropriate application is for a care requirement and not a permanent order, then it should be the Tribunal that takes on the management of that case.

Accordingly, it has to be recognised that there may be circumstances where the Tribunal will have jurisdiction of the case following the discharge of the ECPO, but this discharge can be more appropriately accomplished under one of the other remaining provisions of Section 57(2). This point does highlight however that the complete separation between Tribunal and Court is not absolute, nor should it be, since what dictates the forum is the nature of the application, whether it is temporary or permanent, and therefore where the particular issue is best managed within an integrated single system.

The addition of the words shown in the square brackets may assist with decision making as to whether the threshold has been met.

Section 55

(1) Where a relevant court is satisfied, on the application of the Committee, that [there is reasonable cause to believe that] a child is

(a) suffering or

(b) at imminent risk of suffering,

significant harm, it may make an emergency child protection order.

(2) For the avoidance of doubt an application under subsection (1) may be made ex parte.

Sections 56 to 58 makes further provisions in relation to the grant of an ECPO.

Section 57(2) should be amended to delete the power of the Tribunal to discharge an emergency child protection order.

There is merit in ensuring that a link remains with the Tribunal in such cases. This may be achieved by adopting the following procedures:

(a) The making of an ECPO remains one of the matters to be notified to the Convenor and will be treated by the Convenor as a referral. The investigation of that referral should not commence or, if commenced, should come to an end if the Convenor is notified by the Committee that an application for a CPO or ICPO has been made. If a condition of residence (as part of a care requirement) is required and those with parental

responsibility have not consented, the investigation should continue subject to a requirement that a Court approval is required. This should avoid duplication of process but will allow the Convenor to progress without delay in all other cases.

(b) Where the Court or the CHSC consider that immediate compulsory intervention may need to continue beyond the duration of the ECPO and the Committee does not intend to make an application for a CPO, ICPO or that a condition of residence is not required or those with parental responsibility have consented, the Court should be able to remit the matter to the Tribunal. Alternatively, upon the Committee notifying the Convenor that it does not intend to apply for a CPO or ICPO and a condition of residence is not required or has been consented by the persons with parental responsibility, the Convenor is required to arrange a hearing of the Tribunal before the ECPO comes to an end.

(c) Where the matter is remitted or referred to the Tribunal, where the Court has heard evidence in respect of the ECPO application, the remittal includes reference to any section 35 (2) condition that the Court considers has been established. This would avoid the need to rehear this evidence for the purpose of any Tribunal proceedings.

1.15.12 Exclusion Order – section 59

An exclusion order is an alternative remedy to a community parenting order in which the Court may exclude a person from residing in the same family home as the child where there is a risk of the child suffering or is in imminent risk of suffering significant harm.

Section 59

(1) Where a relevant Court is satisfied, on the application of the Committee, that

(a) a child is

(i) suffering or

(ii) at imminent risk of suffering

significant harm, and

(b) the child will be safeguarded from that harm, if –

(i) the person named as respondent in the application is excluded from the child's family home,

(ii) there is a person specified in the order who is

(A) residing in the family home, and

(B) capable of taking responsibility for the care and protection of the child, and

(iii) an exclusion order would better safeguard the welfare of the child than removing the child from the family home,

it may make an exclusion order in relation to the person named in the order.

(2) No application for an exclusion order shall be finally determined unless the person named as respondent in the application has been afforded an opportunity of being heard in court.

(3) For the avoidance of doubt, an application under subsection (1) for an exclusion order may be made ex parte.

(4) On any adjournment of the hearing of an application under subsection (1), the relevant court may make an interim exclusion order.

1.15.13 Supervision Order

With the separation of the jurisdiction of the Tribunal from that of the Court, it becomes more necessary and helpful for the Court to have the power to make an order placing the child under the supervision of the Committee as an alternative to the making of a Community Parenting Order. There is no such provision in the current legislation.

Where for example in the course of an application for a Community Parenting Order circumstances have emerged in which the child could safely live with its parents or family members but require monitoring and support in the care for the child, the only current option is to dismiss the application and for a subsequent application to be made to the Tribunal by way of a care requirement. That creates delay, duplication of proceedings and uncertainty for the child and its family. A Supervision Order would allow the Court to complete the hearing of the application and reduce delay in the best interests of the child and in many cases enable care arrangements to be finalised. The provision of this power does not prevent the making of a care requirement through the Tribunal to achieve a similar result, although it is envisaged that this would most likely be in exceptional circumstances only where there was a genuine confidence that the present circumstances were temporary, as opposed to the supervision order which would be considered in being in the context of the only alternative to a community parenting order.

The Consultation Document outlines the benefit of supervision orders and details the arrangements that exist in England and Wales for this type of order. I agree with those proposals.

The Consultation Document sets out the parameters for the drafting of a new section[20] and would be an alternative order to a Community Parenting Order. However, the requirements

[20] See page 24

for granting a CPO would have to be met, including the thresholds, modified only as necessary to give effect to the intentions behind their use. Importantly, if it were to be the case that the supervision arrangements were not working satisfactorily in the interests and for the welfare of the child, an application could subsequently be made to seek a community parenting order. In such a further application there would be no requirement to relitigate whether the test for a CPO had been originally reached, only whether in the light of new evidence over subsequent events and circumstances the requirements for Section 49 still apply.

The application for and the granting of a Supervision Order would be reserved to the Court and the monitoring of the arrangements will be the responsibility of the Committee.

1.15.14 Child Assessment Order

The Consultation Document also highlights a potential for delay in deciding whether or not further intervention is required to safeguard a child[21]. A lack of co-operation by the parents can prevent the assessment of a child by suitable professionals to determine whether intervention is justified. This creates an opportunity for delay and risk for the child in progressing cases that need to be investigated. Accordingly, the Consultation Document proposes the introduction of a Child Assessment Order along the same lines as that existing in England and Wales authorising the Committee (but only the Committee) to apply for the assessment of the child if the Court is satisfied that

(a) the Committee has reasonable cause to suspect that the child is suffering or is likely to suffer significant harm;

(b) an assessment of the child's health or development or of the way he has been treated is required to enable the Committee to determine whether or not the child is suffering or is likely to suffer, significant harm; and

(c) it is unlikely that the assessment will be made or be satisfactory in the absence of an order under this section.

It is further proposed that if by making the application it is clear that the order will not be complied with by the person with parental responsibility, the Court may treat the application as one for an Emergency Child Protection Order and make that order.

I am mindful that this represents yet another significant intrusion into the family life and that any proposed intervention therefore has to be proportionate. It is however the welfare of the child that is of paramount importance and to be considered and is in the context of there being a reasonable suspicion of significant harm. This context therefore makes this proposal an appropriate one, especially since it is limited only to the Committee being able to apply, and the family's interests will also be protected by the independent judicial monitoring of the Court. I believe that such a power will have the potential to reduce delay within the system.

[21] See page 26

Section 2	Changes to the procedures relating to the jurisdiction of the Convenor and The Child, Youth and Community Tribunal.

2.1. Recommendations

To reduce complexity, the following changes in procedures are recommended:

2.1.1 The Tribunal should make its own findings of fact based on evidence presented to the Tribunal and the hearing of the parties, and the requirement to refer the matter to the Court where the facts are disputed should be abolished. However clear rules and procedures should be established for the Tribunal, both for finding of fact and other proceedings addressing such matters as

- on whom the burden of proof rests;
- the standard of proof required;
- taking and admissibility of evidence;
- evidence on oath;
- witness attendance procedures (including compulsion);
- obtaining and the use of expert evidence;
- recording of proceedings (which may be required in any appeal);
- number of Tribunal members to hear the factfinding or other applications;
- who are entitled to attend hearings, as to factfinding and other cases;

and access to legal representation in appropriate cases.

2.1.2 The requirement to refer cases back to the Tribunal every 28 days for a renewal of a care requirement should be abolished. The Tribunal will, instead, case manage those cases before it, including the setting of timescales for the disposal and hearing of cases. An interim care requirement must be reviewed not later than 6 months after it has been made and may continue for a maximum period of 12 months. An interim care requirement can be renewed or varied at both the 6 months and 12 months point.

2.1.3 The Convenor, when carrying out the preliminary investigation and enquiry into the circumstances of those cases referred to it, undertakes an inquisitorial process.

(a) A target of 21 days should be fixed for completion of the initial enquiry. If a party wishes to challenge a finding of fact or a ground for referral, the matter is to be referred by the Convenor to the Tribunal for determination.

(b) The Convenor's Meeting (as required by the Law and Ordinance) should be widened to allow for the triaging of cases, and to offer an opportunity in those appropriate cases for mediation or other dispute resolution, and or discussion on other issues, for example, issues of abuse or co-parenting, at the earliest practicable stage and before positions have become entrenched.

(c) Where there is agreement between the parties on the circumstances and proposed outcomes, the Convenor may dispose of the matter by way of an agreed order with the parties which is then approved by the Tribunal.

(d) Where facts or issues are in dispute the Convenor should present a statement of her findings on matters of fact. The statement should highlight any matters that are not agreed but the Convenor does not decide on any disputed fact or issue which is a matter for the Tribunal. Timescales are to be introduced governing the time for referral to the Tribunal (and these recommended timescales are set out in Part 1 of this report).

(e) Where cases are referred to the Tribunal, the Convenor acts as legal advisors and clerk to the Tribunal and provide legal advice on the law, or procedural matters to Tribunal members.

(f) Following a decision of the Tribunal, the Tribunal should issue a reasoned decision as to its findings. The Convenor should be responsible for drawing up the Order of the Tribunal.

(g) The sitting members of the Tribunal should be entitled to retire, confer together, and issue a collective decision. Their decision must be evidentially based. (There is no conflict between this and the culture they are seeking to promote). The Regulations should be modified to permit this.

(h) An appeal lies from the decision of the Tribunal on a matter of law but not of fact except where there is manifest error.

(i) In a case that comes before the Court in respect of which proceedings in relation to those parties have previously been before the Tribunal, for example where a care requirement has been imposed but the removal of the child from his carers without the consent of those who hold parental responsibility for that child is now being proposed, those earlier proceedings and findings of fact to the extent they are relevant, will be adopted by the Court, and not reheard, subject:

    (i) to any fresh relevant evidence being adduced that has arisen subsequently to those earlier proceedings; and / or

    (ii) there is a manifest error.

(j) Proceedings before the Tribunal should be family friendly but the parties to the proceedings should understand that the Tribunal is decision making and undertaking those statutory functions set out in the Law. The parties will not be legally represented unless the Tribunal exceptionally agrees otherwise[22].

[22] Please see paragraph 2.1.4. For the reasons set out in that paragraph the use of Advocates should be discouraged except in those cases where the Tribunal considers that it may assist them in determining the case,

Those persons attending the hearing should be permitted to take notes of the proceedings and the proceedings should be recorded.

(k) Those persons entitled to be heard at the proceedings before the Tribunal will be those, who at any relevant stage, have a legitimate interest in the outcome of the hearing, so that might include parents, other members of the family (for example where a grandparent may be providing a home for the child or young person) and the Committee.

(l) Expert medical or other evidence may be called, such as a Children's psychologist or paediatrician. The Family Proceedings Advisory Service may also be heard where appropriate and have been appointed by the Tribunal on behalf of the child or young person.

(m) The Tribunal should be assiduous in keeping the length of the proceedings to a reasonable time, thereby reducing attendance times by social workers and others. Measures that can be deployed to assist in reducing hearing times include:

(i) using statements from parties and witnesses which can be adopted where appropriate as evidence in chief;
(ii) preparing short summaries of the issues in dispute and the outcomes sought;
(iii) using document bundles of key relevant material (to be prepared by the Convenor) for the Tribunal and each party's use;
(iv) adopting user friendly template forms of application and responses. This is to assist those parties who do not have access to legal support in the preparation of their case;
(v) not granting adjournments, unless there are unavoidable or exceptional circumstances, in the light of the strengthened case management powers of the Tribunal; and
(vi) adopting an inquisitorial approach to Tribunal proceedings rather than being adversarial.

2.1.4 The Tribunal should discourage the appearance of advocates at its proceedings so as:

(a) to ensure that the process does not adopt the character and inflexibility of formal legal process; and

(b) to allow the Tribunal to control the inquisitorial character of the process in a way that best enables them to resolve issues.

This does not prevent:

for example by having a clear explanation of a person's position. Representation in complex fact-finding hearings may also be necessary to ensure compliance with human rights principles.

(i) parents or any other interested person from taking legal advice and receiving assistance in the preparation of their case, including producing documents and statements, or

(ii) advocates appearing where it may be of assistance to the Tribunal, provided this does not constrain the inquisitorial nature of the proceedings; or

(iii) the use of appropriate adults as McKenzie Friends to assist any person.

Whether Legal Aid is available for these purposes is a policy matter and consideration principles governing the law on human rights.

2.1.5 A target time limit should be introduced for cases to remain before the Tribunal in order that there is a defined end point.

2.2 Discussion – Procedural changes

When interviewing stakeholders, it became clear that some of the current provisions of the Law in relation to the Tribunal procedures add to the complexity of the system and might be changed to improve the process. The following recommendations to changes in procedures are therefore proposed:

2.2.1 Statement of fact and Condition for referral

(a) Under the Law as it presently stands, the Convenor, upon a referral, is required to investigate the facts and seek to agree these with the parties. This is a crucial step since it forms the basis upon which the Tribunal will have jurisdiction to proceed with the resolution of the care requirement.

(b) However, if the parties do not agree the statement of fact or the condition for referral (under section 35(2), it is necessary for the Convenor under section 42(3) or the Tribunal (under section 42(4) to refer the matter to the Juvenile Court to determine the statement of fact or whether the ground for referral is made out. This process adds delay to the proceedings. Inevitably there will be delay in preparing for and hearing the application. Further, during that period, the facts may have changed (for example new potential carers have come forward, or a relationship has broken up or been formed), with the result that yet further matters may then not be agreed. This would again require a referral to the Court.

(c) There are also opportunities for those who may wish to 'play the system' to prolong the case, which runs contrary to the principle that delay is harmful to the child[23].

[23] This is not to imply that a party is not acting properly (although it is inevitable that on some occasions it may sadly be the case). It is simply to make the point that the system provides an opportunity for avoidable delay to arise.

(d) Also, it is not entirely clear why there is merit in the matter being referred to the Court for determination of the facts or grounds. Whilst I can see that for the Tribunal to have to determine matters of fact might make it appear more judicial and less in keeping with its culture than it would like, there seems no good reason why the Tribunal (as with every other Tribunal) should not be able to make its own findings of fact and/or make a finding as to whether the ground in Section 35(2) is made out. It is exercising important functions set out in the Law and therefore should have the ability to make decisions on the facts. The current requirement to refer the matter to the Court creates unnecessary complexity and delay to the detriment of the child at the centre of the process.

(e) Allegations of abuse is often a cause for the statement not being agreed. All allegations of abuse are serious and need proper examination. With the transfer of jurisdiction of any power which has the effect of authorising a child's removal from a care arrangement by, or with the agreement of, those with parental authority, to the Court, it is expected that some of the disputes over allegations of abuse in the statement prepared by the Convenor may not arise in the Tribunal. However, if they do, there is still no good reason why the Tribunal should not properly decide on the matter. It will be a material consideration in the case falling with the Tribunal's jurisdiction. It may be that the Tribunal may need to assign a fact find to those of its members with a specific skill set.

(f) It would be possible to have safeguards in place arising from a determination by the Tribunal on a finding of fact or the existence of section 35 grounds, by allowing an appeal to the Court from a decision of the Tribunal on these two points. I would not advise this, except on very restricted grounds of either the Tribunal being in manifest error or in making an error of law, which is the minimum requirement in order to comply with Article 6 ECHR. It would not be acceptable for there to be any incentive for a party to pursue what might otherwise become an automatic appeal, on every case to the Court and would defeat the purpose of the change in procedure which is to reduce delay. The Court on an appeal would need to be robust, perhaps with the use of wasted costs orders, with any party and their advisors, who brings an appeal without merit or any real foundation but is merely seeking to relitigate the Tribunals findings or to create delay for tactical reasons.

(g) The recording of Tribunal proceedings would assist in the hearing of appeals and in appropriate cases would allow an appeal to be made on the papers only thereby reducing delay and saving cost.

(h) It is hoped that by giving the power to the Tribunal to make its own determination on the facts and or section 35(2) grounds, this might help reduce the potential for disputed issues over fact finding and avoid unintended delay to the process.

(i) Further, where a party does not actively dispute the condition or facts but has not specifically agreed that condition or fact, it is now recommended that there should be no requirement to refer this to the Tribunal. The current requirement means that there is an obligation to refer the matter to the Court [now to be the Tribunal] when there

may not be any need and simply creates delay and forces the parties into adopting a position which endangers a positive working relationship. This proposal is also consistent with my proposal for triaging of cases explained later.

(j) Finally, I agree with the Consultation Document's proposal to introduce timescales for the Convenor to:

(i) lodge the matter with the Tribunal within 7 days of the date when the Convenor reasonably determines that the statement of fact or the section 35(2) grounds are not agreed and are unlikely to be agreed within a reasonable period; and

(ii) that the first hearing by the Tribunal must be held within 7 days (not 14 days) from the date of the lodging of the application by the Convenor.

(k) Characteristics of the process will therefore be:

- The Tribunal will make its own findings on the statement of fact and any determination on whether a ground of referral under Section 35(2) has been made out, based on evidence presented to the Tribunal and hearing representations from the parties, and the requirement to refer any dispute over these matters to the Juvenile Court under section 42(3) or 42(4) should be abolished.

- Section 42 is amended so that subject to safeguards there is no requirement to refer the statement of fact or ground of referral to the Tribunal where:

    - the prescribed person cannot be found;
    - is incapable of giving their acceptance;
    - does not actively dispute the statement or grounds of referral; and

- Timescales are introduced for the Convenor to:

    - lodge the matter with the Tribunal within 7 days of the date when the Convenor reasonably determines that the statement of fact or the section 35(2) grounds are not agreed and are unlikely to be agreed within a reasonable period; and

    - that the first hearing by the Tribunal must be held within 7 days (not 14 days) from the date of the lodging of the application by the Convenor.

2.2.2 Renewal of an interim care requirement

(a) The requirement to refer cases, where an interim care requirement has been made, back to the Tribunal every 28 days for a renewal of the care requirement should be abolished. There may be sound reasons as to why the final arrangements cannot be completed. For example, provisional arrangements may be being trialled to see whether there are improvements in the wellbeing or behaviour of the child or reports

on the well-being of a child that may for good reason need to be written at a later date. This might be termed 'unavoidable delay'.

(b) To have a requirement to bring the case back to the Tribunal in these circumstances may simply therefore be a box ticking arrangement rather than for a specific purpose. As a consequence, the Tribunal and Convenor's time may be wasted, social workers who are required to attend will be diverted from other work, noting especially that there is already significant pressure on them. The family and child may also wonder what is the purpose of the hearing?

(c) It is well understood that the objective behind this provision in Section 44(2) is to ensure that cases are properly monitored and are not allowed to drift. That same objective can be achieved by the Tribunal being given more flexibility in case managing the matter and making directions that are appropriate to the particular circumstances before it. Additionally, I am suggesting that there is external monitoring of cases (whether before the Tribunal or the Court) which provides a further safeguard. (See Section 9).

(d) The Tribunal with its greater flexibility may be able to achieve a better time frame which is more readily understood and relevant to the circumstances, particularly by the parents, who will understand the directions being given and importantly the reasons for those directions and the time frame being set.

(e) There should however be a maximum period by which the interim care requirement must be reviewed, which I propose should be 6 months. This will set an operational framework within which progress towards a final resolution can be achieved. The Tribunal can then use this flexibility to better ensure that there is no avoidable delay caused by a party not completing whatever it is they are directed to do to achieve a final resolution. This interim period will also form part of the overall time target referred to later in this report. Both the interim review within 6 months and the overall maximum period of 12 months for an interim care requirement may be extended where the circumstances require.

(f) For the sake of clarity, I propose these arrangements in place of proposal 12.5 of the Consultation Document.[24] My recommendation is therefore:

- The Tribunal should be given greater powers to case manage those cases before it which includes the setting of timescales for the disposal and hearing of cases and the review of an interim care requirement.

- An interim care requirement should be granted for no longer than a maximum period of 6 months, when it shall require review. An interim care requirement may not continue for more than a maximum of 12 months. However, both the initial period of six months and the overall period of 12 months may be renewed or varied by application to the Tribunal.

[24] Page 38 of the Consultation Document

2.2.3 Compulsory Attendance at Tribunal Hearings

(a) In some conversations I had, a number of different matters attributed to delay in the system were raised. One such concern was a need to emphasise the importance and seriousness of the Tribunal Hearings particularly to some parties in the case.

(b) In some cases, parties had failed to turn up and others appeared not to appreciate the importance of Tribunal hearings. This can lead to hearings being adjourned in order to allow a party to attend and therefore creates delay and wastes resources. It was an issue across the whole of the Tribunal system but was highlighted especially in relation to educational absenteeism.

(c) A lack of a power to compel attendance at Tribunal hearings was also identified by Kathleen Marshall as a shortcoming in the system and a cause of delay. Accordingly, I support the reasoning, conclusion, and proposal 13 set out the Consultation Document.

2.2.4 The Convenor's Role

(a) All the people that I interviewed were impressed, as was I in my conversations with her, by the way in which the current Convenor carries out her role and responsibilities. Her knowledge and experience were highly regarded and her belief in the work that she was doing was very evident. It was also generally felt that for a large majority of the cases before the Tribunal the system worked well.

(b) In the course of my conversations with various stakeholders, some issues were highlighted, and comments made as to whether the system was always operating in the way that it was originally designed to work. It was suggested to me that where this was the case, this had been in part caused or contributed to by an absence of written guidance, practice manuals or practice notes in support of the legislation as had been originally promised. I should make it clear that it is neither the fault, nor the responsibility of the Convenor or her staff to have produced this guidance, manuals or notes.

(c) Accordingly, it was felt that some of the custom and practices that had arisen should be looked at again to see whether they should be changed in order to better achieve the original intentions behind the legislation and reduce complexity and delay.

(d) The Convenor's role is tasked with the following responsibilities. In the light of some of the comments received, and which I stress were made constructively, I have added some recommendations which are, in the main only nuances on the current practice or that present opportunities for improvement. It should be remembered that the Convenor and her staff are dependent on information being supplied to them in accordance with published targets. It is disappointing if this does not happen and may reflect the pressure on resources in the system.

(e) On receiving a referral (other than under section 55) the Convenor carries out all preliminary investigation and enquiries into the circumstances of those cases referred to the Convenor and takes such action as is prescribed by The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009 (the Ordinance) and the Children (Children's Convenor) (Guernsey and Alderney) Regulations 2010 (the Regulations) and in particular Sections 3-5 of those Regulations. To the extent that it is currently not, this should be an inquisitorial process. In other words, an enquiry into the facts or circumstances. This then results in the publication of a statement of fact and grounds for referral and which in turn leads to the first meeting required by the Law and Ordinance.

(f) This process and the first meeting required under the Law should, first, be subject to timescales, and second, nuanced so as to take the opportunities that might be available at this very early stage in the process.

(g) On the issue of timing, as part of the overall governance and monitoring arrangements (referred to later in this Report) the Convenor should publish a standard target for completion of the initial enquiry and the publication of the statement of fact. Whilst the actual standard period is a matter for the Convenor to determine, I suggest that this should be a challenging target to which all parties should be contributing. I recommend that this should not be longer than 21 days from the initial referral to the Convenor.[25] Following the preparation of that statement of fact if a party wishes to challenge any part of it, or whether the ground under section 35(2) is made out the matter must be referred by the Convenor to the Tribunal for determination by an initial hearing in accordance with the timescales (referred to in paragraph 36.9), namely 7 days from the date when the Convenor reasonably determines that the matters are not agreed with the hearing by the Tribunal 7 days later. Of course, this hearing will not now be required if there is no active dispute over the particular fact or ground.

(h) The second point is to take advantage of any opportunity presented at this early stage.

(i) Where there is agreement between the parties on the circumstances and proposed outcomes, the Convenor should be able to dispose of the matter by way of an agreed order with the parties, drafted by the Convenor and then approved by the Tribunal.

(j) In England and Wales, the use of early meetings is encouraged since it has been identified that solutions are often found before the parties have become entrenched in their positions. This first meeting presents that opportunity to explore those matters.

(k) Where cases are referred to the Tribunal, the Convenor acts in accordance with the functions conferred by the Law, the Ordinance, and the Regulations.

[25] There are dangers in setting targets, and this must not lead to poorer outcomes. A target is a performance measuring tool so that if they are not being regularly met, an analysis as to the reason and consideration of whether further resources are required, and where these are deployed can be carried out.

(l) This includes those functions detailed in the Ordinance including the detailed requirements of Schedules 1 & 3 of the Ordinance. It is apparent from these statutory provisions that the legislation seeks to balance a number of different functions, including a direct involvement in the substantive matters of a particular case as well as the general administration of the Office of Convenor and the Tribunal. In the light of the recommendations in this report some of the specific details in these provisions will need to be reviewed and amended but in broad terms the legislation properly reflects the unique nature of the Office of Convenor.

(m) One issue is to provide clarity as to whether the Convenor should provide legal advice and act as clerk to the Tribunal and provide advice on procedural matters to Tribunal members. The Convenor's role is independent of the Tribunal and should remain so. It is however the pivotal role. Given this unique nature of the office I cannot see any reason or conflict in the Convenor so acting and the Tribunal would have the benefit of experienced advice and guidance in reaching their decision. This role should be embraced, and specific provision contained within the legislation. This is so, even though the Convenor has a prior duty in determining whether there should be a reference of the case to the Tribunal. That advice is given to Tribunal members and not to any interested party. This also fits better with the inquisitorial nature of the proceedings. Any ECHR concerns are properly addressed by the ability of the party to appeal a decision of the Tribunal.

(n) I have already referred to the change in arrangements for the statement of fact or whether the grounds under section 35(2) are met. Where facts or issues are in dispute the Convenor should present a statement of her findings to the Tribunal. The statement should highlight any matters that are not agreed, and the Convenor does not decide on any disputed fact or issue, which is a matter for the Tribunal.

(o) When the facts or grounds are agreed, the Convenor holds the first meeting within the target date and again this should be a challenging timescale. I propose that this should be 14 days. Section 42 of the current Law only requires the meeting if there is to be a referral to the Tribunal. It would be my view that the default position would be for a meeting to be held whether or not at that point the Convenor has decided on a referral (so as to take advantage of the opportunities for a possible disposal of the case at that meeting) unless she decides that it is not necessary to do so – in the light of the facts – and her option then would be simply to refer it to the Committee for further liaison with the family under section 42(5) or take such other action permitted by that subsection.

At the first meeting the possible use of the Family Proceedings Advisory Service mediation services could be explored or deployed if required to enable the parties to reach agreement. In order to maintain momentum and avoid drift, a failure to reach agreement on the outcomes within a set agreed target (I suggest 4 weeks from the agreement of the Statement of Facts, however that arises, either voluntarily or by a hearing by the Tribunal), will require the Convenor to refer the matter to the Tribunal for determination under section 42.

(p) Accordingly, the timescales on a referral to the Convenor would look like this:

- Referral to the Convenor under section 36;
- Enquiry into the facts and grounds for referral – **21 days**;
- Any failure to agree facts or section 35(2) grounds, is referred to the Tribunal within **7 days** of the Convenor reaching that conclusion;
- Tribunal hearing on the facts or grounds is held **within 7 days** of the referral.
- Holding of the Convenor's meeting upon determination of facts or grounds and triaging of case **within 14 days** of the date upon which the facts or grounds are agreed;
- When facts and grounds are agreed, either voluntarily or determined by the Tribunal, and the parties agree the proposed outcomes, whether or not with the aid of mediation, the Convenor can prepare the outcome order and Tribunal asked to approve that order.
- If the facts and grounds are agreed, either voluntarily or determined by the Tribunal, but the parties do not agree the proposed outcomes **within 4 weeks** of the Convenor's meeting, the case is referred to the Tribunal.

2.2.5 Tribunal Procedures

(a) Following a decision of the Tribunal, the Tribunal should issue a reasoned decision as to its findings. It is recommended that the Convenor should be responsible for drawing up the Order of the Tribunal decision.

(b) Paragraphs 11 (1) and (2) of the Third Schedule of the Ordinance provide specific requirements as to how the decision is arrived at and communicated to those present. It is well understood why these provisions were included given the distinct nature of the Tribunal proceedings, and that the Tribunal prefers to see its approach as 'doing with' and 'not doing to', the family.

(c) However, I do challenge whether there is any greater merit in subparagraphs (1) and (2) as against the usual practice adopted by tribunals in members retiring to consider the matter together. The usual practice gives more time for the Tribunal members to discuss between themselves their views on the case and possibly challenge conclusions and identify issues that may have not been understood by Tribunal members or are ambivalent. Whilst the current approach may have a 'philosophical' correct feel about it I do wonder whether it does lead to better decision making, and I am concerned that problems might arise over the basis of the decision making.

(d) The sitting members of the Tribunal should be entitled to retire, confer together, and issue a collective but single decision. This should promote greater clarity in the decision being given and the reasons for it. When delivering the decision under subsection 3 the chairperson may, if they so wish, advise whether the decision was unanimous and if not, provide details of any minority view. In my view there is no conflict between this practice and the culture being promoted in the hearings.

2.2.6 Appeals from Tribunal decisions

(a) As previously stated, an appeal should lie from the decision of the Tribunal on a matter of law but not of fact except where there is manifest error.

(b) I note the Consultation Document's proposals on appeals[26]. Given the recommendations in this report, some of those issues are not now relevant, save that any appeal from the Tribunal's decision on a matter of fact or law should be heard promptly, given the potential impact upon the child. Court Practice Rules setting out shorter timescales would help prevent delay. The proposal for an appeal to be lodged within 21 days and heard within 56 days from the original decision is a useful target given the limited extent of any appeal permitted.

(c) It is recognised however at this point the families may be instructing advocates for the first time (since they are unrepresented before the Tribunal). It is important to ensure that the Tribunal issue is not relitigated, with fresh points being raised on the original application, in the appeal itself, and that there are no tactical attempts to delay outcomes. An appeal however does remain an important safeguard, for the rights of the parties. It is the responsibility of the Judge to ensure that there is no attempt to relitigate 'by the back door'.

2.2.7 Appeals from decisions of the Court

A separate but important point relates to appeals against the decision of the Juvenile Court to grant or refusal to grant a community parenting order. Where an appeal is to be made it is important that it is listed quickly since any delay will cause uncertainty to the child in the case or his family. The Consultation Document[27] proposes that an appeal should be listed within 14 days of the Appeal being lodged. This will then be subject to directions being given by the Court for the prompt disposal of the case.

2.2.8 Avoiding duplication of documents

(a) Frustrations were expressed by a number of stakeholders during their interview over the current practice that where a case has been before the Tribunal and then for whatever reason comes before the Court, the case may be relitigated afresh. The position on appeals is discussed in the preceding paragraphs. However other circumstances may arise, for example where a care requirement has been dealt with by the Tribunal, but then an application for a community parenting order is made to the Court. At that point current practice means that documents and statements may be required to be prepared afresh for those hearings. This creates delay, expense and wastes resources and does not add to the sense of there being one integrated system.

(b) It is appreciated that there are sensitivities that need to be considered here. The Court will wish to retain its judicial independence and will not wish to be constrained when considering matters that come before it. A parent may be willing to make a concession

[26] At page 43

[27] At page 43

at one stage of the process for example in agreeing to a care requirement but not if a community parenting order is at issue.

(c) Further with the proposed division of jurisdiction there may be less duplication or overlap between the Tribunal and the Court and this concern may not arise so frequently. Nevertheless, it is incumbent to ensure that the system itself is not adding to delay or expense or creating an unnecessary drain on resources.

(d) Provided that the reason for any decision or concession, or the purposes for which a document has been prepared is made clear, there should be no constraint in that information or finding being made and accepted in subsequent proceedings without the need for retrying the point, or having to redraft the document, unless new information has come to light after the date of that decision or finding.

(e) It is therefore recommended:

- In a case that comes before the Court in respect of which proceedings in relation to those parties have previously been before the Tribunal, for example where a care requirement has been imposed but the removal of the child from the family is now being proposed, those earlier proceedings and the statement of fact to the extent they are relevant, will be adopted by the Court, and not reheard, subject to any fresh relevant evidence being adduced that has arisen subsequently to those earlier proceedings.

- Any documents generated for previous hearings in the Tribunal will be available for those Court proceedings.

2.2.9 Character of the proceedings before the Tribunal

(a) One of the strengths of the Tribunal approach, as previously noted, is that it is less intimidating for children and their families. Accordingly, proceedings before the Tribunal should continue to be promoted as being family friendly and 'lawyer free'. However, in balance to that character, the parties to the proceedings must be aware and understand that ultimately the Tribunal is decision making and is undertaking a statutory function. The Tribunal should, in discharge of that role, continue to adopt an inquisitorial approach in exploring and investigating all relevant circumstances.

(b) Persons will not usually be legally represented but see paragraph 16.11.

(c) The persons to attend and be heard at the proceedings before the Tribunal will be those who have a legitimate interest in the outcome of the hearing, so that might include parents, other members of the family (for example where a grandparent may be providing a home for the child or young person) and the Committee. The Tribunal will wish to balance the need for clarity as to who is legally entitled to participate in the proceedings with a flexible approach to hearing from those persons with relevant information or interest.

(d) Expert medical or other evidence may be called, such as a children's psychologist or paediatrician. Again, such evidence should be called only when it will actually contribute towards reaching the appropriate outcome for the child, or to provide evidence of any relevant fact or circumstance. The Tribunal can therefore be flexible in deciding when it wishes to hear reports rather than have any prescriptive requirements.

(e) The Family Proceedings Advisory Service may also be instructed where appropriate on behalf of the child or a young person being the subject of the proceedings.

(f) The Ordinance currently sets out a comprehensive list of those entitled to be part of the proceedings and is wide and flexible enough to allow all relevant people to be present even if they are not directly a party to the proceedings.

(g) The Tribunal should be assiduous in keeping the length of the proceedings to a reasonable time, thereby reducing attendance times by social workers and other professionals.

(h) There were some complaints that the proceedings were too long and also involved attendance by professionals out of normal work hours. This second issue was sometimes caused by the hearing starting time being set late in the day presumably to accommodate working families or school hours, but which in turn created issues for the professionals, especially if it was happening on a regular basis. Having looked at data supplied by the Convenor I am not sure that this is a significant issue, but it was raised by a number of persons to whom I spoke.

(i) This is a matter that was not itself creating delay in the system, but my recommendation is that the times and hours of hearings is something that could be usefully looked at in the Tribunal's procedures so as to ensure that these accommodate, where possible, both the requirements of families and the professionals involved.

(j) Measures that might be deployed to assist in reducing hearing times include:

- Agreed statements from parties and witnesses and which can be adopted as evidence in chief;
- Short summaries to be prepared of the issues in dispute and the outcomes sought;
- Consolidated document bundles of key relevant material to be prepared by the Convenor for the Tribunal and each party's use;
- User friendly template forms of application and responses to be used to assist those parties who do not have access to legal support in the preparation of their case;
- Adjournments should not be granted, unless they are unavoidable or there are exceptional circumstances, in the light of the strengthened case management powers of the Tribunal; and that
- (by reason of the parties not being legally represented) the Tribunal proceedings are inquisitorial in nature rather than adversarial and so as to keep the proceedings focused on the relevant issues.

Section 3	Data Management and the use of documents in the Child Youth and Community Tribunal and the Guernsey Magistrates Court

3.1 Summary of recommendations in this Section 3

3.1.1 Documents should be transportable between the Tribunal and the Court and so as to avoid the necessity of preparing fresh documents if a case has to move from the Tribunal to the Court or vice versa. This is particularly the case where expert or professional evidence or reports are being used.

3.1.2 Accordingly where a report or statement is being prepared, those providing it must understand that it might be used in a wider context than anticipated at the time of preparation and any clear limitations or boundaries on its scope or as to the extent to which the report can be relied on should be included where it is necessary. It should be the default position that documents can be used in any relevant proceedings unless there is proper justification not to do so.

3.1.3 Confidentiality over reports and statements is important but should not create additional work or delay where this can properly be avoided.

(a) Consent to data processing should be wide enough to cover all proceedings whether in the Court and Tribunal;

(b) The interface between section 27 of the Law and Data Protection legislation should be clarified in order that there is no misunderstanding as to the ability of those parties properly interested to have access to all necessary documentation.

(c) The Tribunal and the Court currently have the power to order the non-publication of information, whether relating to individual parties or persons referred to in proceedings, decisions and judgements of the Tribunal and Court. However, it is a principle of natural justice, and therefore one that underpins the Tribunal and the Court, that properly interested parties in proceedings in the Tribunal and or the Court should be given access to all relevant documents unless the usually accepted rules for non-disclosure apply including privilege and in cases where the Tribunal or Court has a discretion.[28]

3.1.4 Technology solutions should be investigated to see whether a better solution for managing and distributing documents could be employed. The creation and use of data rooms containing all relevant documents with different levels of accessibility, to

[28] This might apply for example where a report discloses the personal data of another person who is not party to the proceedings or where the disclosure of the information might not be in best the interests and well -being of the person to whom that information relates. If disclosure was invariably required, the report's author might omit the information, and this would prevent important and relevant information being made available to the Tribunal or the Court.

which parties can be given security access, with all documents uploaded to the data room and available for whatever proceedings were in contemplation would be a more efficient use of time, and at the same time improve accessibility to, and the security of, documents

3.2 Discussion on the recommendations in this Section 3

3.2.1 For the reasons that include:

- Demonstrating that there is one single integrated process;
- Reducing the need for professionals including social workers to spend unnecessary time simply redrafting statements and or reports because of the different forum, (other than any updating);
- Preventing the re-litigating of issues that have previously been decided;
- Enabling capture of useful data,

it is sensible to ensure that documents are able to be used, subject to reasonable security and data management protection in any part of the system whether they have been produced for the Tribunal or the Court.

3.2.2 To enable this, and generally to improve data management and capture, technology can now be used. There are a number of document management-based systems that would improve portability of documents and data between agencies. This would also at the same time enable the integration of those current database systems used by some of the agencies that are not compatible with each other.

3.2.3 The relevant issues that would need to be resolved (and drilled down to the specific issues of confidentiality and security between agencies and which is currently very unclear and not understood within the system) are

- What are the sources of the information / documents, where are they authored and by whom;
- Who is entitled to see which documents – should there be complete disclosure to anyone authorised or will this be case specific;
- Can or should some or all of the documents be templated or pro forma style documents;
- What level/depth of categorisation is required (in terms of classifying the type of document and other relevant metadata) - is it enough to say "it's a document" and work out what it is by its filename, or be more specific for example - Document > Report > Committee > Assessment;
- Nature and level of encryption;
- What restrictions will be placed on those people with access on what they are able to do with them. For example, will there be restrictions on it being viewed, but not able to print it, or if sent to someone else, the recipient would not be able to view it at all, unless they had been granted the appropriate permissions;

- Who is in charge of the future of the documents (data controller) once the case has completed? Will there be a permanent archive? Or should there be a self-destruct option;
- What controls / audit / 4-eye approval will be required by the data controller to ensure that a person requesting access is properly authorised; and finally
- Would this support multiple devices (i.e. web / tablet / laptop / phone / mobile, etc.) as opposed to only allowing access through a single 'tunnel'.

3.2.4 Just posing those questions makes the technology solution appear more attainable. None of the questions are too difficult to resolve and there would be many advantages not least in data capture for introducing such a solution and would provide the technological back up to governance of the system and of each individual case. The introduction of a system is also consistent with the wider information technology policy aims of the States of Guernsey.

3.2.5 It is recommended therefore

- Documents should be transportable between the Tribunal and the Court (and vice versa) so as to avoid the necessity of preparing fresh documents if a case has to move from the Tribunal to the Court or vice versa. This is particularly the case where expert or professional evidence or reports are being prepared.

- Technology solutions should be investigated to see whether a better solution for managing and distributing documents could be employed. The creation and use of data rooms containing all relevant documents with different levels of accessibility, to which parties can be given security access, with all documents uploaded to the data room and available for whatever proceedings were in contemplation would be a more efficient use of time, and at the same time improve accessibility to, and the security of, documents and management of data.

3.2.6 Consequent upon this, a party commissioning or preparing a report or statement, must make clear to those providing it, that it might be used in a wider context than anticipated at the time of preparation and any clear limitations or boundaries on its scope or as to the extent to which the report can be relied on must be included where it is necessary to do so. However, the point must be emphasised that the whole process or system from start to finish is an integrated one, and not separate non-linked parts (for example the Tribunal and the Court). There should be no artificial constraints placed on any document being produced, which should be made available where it is appropriate and helpful to the decision making at any stage.

3.2.7 The clear exception to the principle of disclosure is where the report might make observations or express an opinion relating to any person and which may cause significant harm or distress to them or others and it is reasonably judged not in their best interests to see it. What must be avoided is the creation of any constraint or reluctance on the part of any author of a statement or report to express appropriate (and robust) opinions on the grounds that the report may be seen by persons who are

the subject of the document or referred to in it and which may result in a watering down of their opinions.

3.2.8 It should also be noted that there is a distinction between confidentiality and disclosure. Confidentiality in relation to reports and statements must be preserved but may be subject to a legal duty in relation to disclosure. The two concepts should not be confused. A report might be confidential but subject to an obligation to disclose it in relation to proceedings or other activity within the system. In other words, confidentiality is not of itself a ground for non-disclosure of the information where the obligation to disclose is a legal requirement (see paragraph 46) and in the interests of the child at the centre of the proceedings.

3.2.9 Constraints on the preparation, confidentiality and disclosure of reports statements or other documents should therefore not be imposed so as to cause the work of the Tribunal or the Court or those working in the system in the interests of the child or young person to be inhibited or create unnecessary additional work or delay where this can properly be avoided.

3.3 Data Protection

3.3.1 In my discussions I received a number of comments and frustration expressed regarding the data protection legislation and its role in the system. It is an inevitable feature of the work in relation to outcome for children and young persons that personal data will be processed including special category data (in the previous data protection law called 'sensitive data').

3.3.2 Section 27 of the Law makes it a duty of any person working with a child (including States employees) to take action 'as may be required' under the Law. That includes any obligation to disclose information relating to any individual to any other person or to retain or otherwise deal with that information. That equates to the concept of processing under the data protection legislation. However, the section provides that this obligation must not infringe any 'enactment' 'rule of law' or 'rule of professional conduct'. There is clearly some uncertainty amongst stakeholders whether Section 27 is subject to the provisions of the Data Protection (Bailiwick of Guernsey) Law, 2017. Upon a plain reading of section 27 it would seem to be so.

3.3.3 There are no specific exemptions in Schedule 8 of the Data Protection (Bailiwick of Guernsey) Law 2017 that apply to the processing of information under section 27.

3.3.4 Clearly the protection of personal data and especially special category data is extremely important. Data protection is an important aspect in the spectrum of human rights and also has a direct relevance and connection to the Bailiwick's international obligations. Therefore, any exemptions must be carefully justified and narrowly defined.

3.3.5 However, there is anecdotal evidence that data protection is currently being used to prevent the disclosure of information that is needed in order for decision making in

relation to a child to be informed and in the best interests of that child. Notwithstanding that, even a feeling of uncertainty over whether data may be processed, given the significant penalties that may now be imposed under data protection law, is unhelpful and a disincentive to proper decision making and this is an area that should be clarified.

3.3.6 Section 27 has a legitimate aim. Any disclosure under that section has to be properly justified and the disclosure is always within a limited class of recipients and is not 'at large'. Therefore, there seems no good reason why it should be subject to the restrictions under the data protection law as opposed to being an exemption from the provisions of the data protection law.

3.3.7 My recommendation therefore is that the Data Protection (Bailiwick of Guernsey) Law be amended by Ordinance to permit processing of personal data (including special category data) in accordance with the provisions of section 27 of the Law.

3.3.8 The Consultation Document[29] also recommended changes to the communication of information from family proceedings. I agree with the proposal since the collection of information and data, whilst subject to appropriate safeguards over confidentiality, is essential to the on-going monitoring and improvement of the system and to ensure that resources are being applied effectively. The information on family proceedings is a very significant element to this information and data.

Section 4	The Court's Approach; the Use of Experts

4.1 The Court

4.1.1 The culture of the Tribunal is different from that of the Court. This difference is not one simply of style. The Tribunal's approach is to seek to work with families and not judge them. It seeks to link those families with difficulties into the available support networks rather than simply making decisions on the outcome. Such an approach may take more time and be much less formal than that required in Court. Nevertheless, this does not mean that it is the wrong approach. In the great majority of cases, it works very well and is able to reach pragmatic and flexible solutions that are a different option than an order of the Court. The Court is required, under the Law, to apply the welfare principles and these lie at the core of its decision making. The Court must adopt an evidential basis, adjudicate on the facts and make orders to ensure the welfare of children which is of course its paramount concern. In doing so, it will encourage parties to resolve matters by consent where that is possible, but inevitably the Court will be faced with long, complex and difficult cases that are not readily resolved through compromise.

4.1.2 The reservation of jurisdiction to the Court over the authorisation of the removal of a child from its carers without the consent of those who hold parental responsibility for that child, particularly that of the making of community parenting and similar orders,

[29] Page 53 and 54

and the consequential need for a single legal threshold might avoid much of the current tension between the Tribunal's approach and the Court.

4.1.3 It is of course a matter solely for the Court to decide how it conducts its proceedings and manages its priorities. It is also recognised that, as elsewhere in the system, there are limited resources and difficult decisions have to be made between competing interests. Nevertheless, in my conversations, delays were reported from a number of sources. Whether this is purely uninformed anecdote or have some merit I am unable to judge and there is no criticism, either express or implied, intended. It would, I believe, be helpful for the Court to review whether there is any evidence of any systemic delays, and, if so, whether these might be able to be mitigated, or additionally resourced, for example by looking at:

(a) Priorities for the listing of cases to reduce the period between the making of the application and the hearing;

(b) The issue of the availability of advocates and experts appearing in a case to avoid delay and uncertainty for the child.

(c) Expansion of the use of part time judges with experience in public law cases, if needed, to support the full-time judges, which may allow more flexibility and quicker listing of cases.

Additionally, the setting of time limits in the Law for the disposal of cases might assist in the speeding up of cases since it will place the responsibility on those with the obligation to bring the proceedings.

4.1.4 The legal threshold for Community Parenting Orders should be amended to address those issues that have arisen in relation to the hearing of cases. By ensuring that the Court is seized of cases authorising the removal of a child from its carers without the consent of those with parental responsibility and providing resources to ensure that its directions can be complied with in a timely manner, the Court will be enabled to give early and effective directions to minimise delay.

4.1.5 Judges must understand the ethos and working practices of the Tribunal i.e., that although the process is a statutory function, their objectives and how they reach decisions is more inquisitorial and involves conflict resolution / mediation skills than a formal Court process.

4.1.6 The most likely occasion when this clash of culture might become an issue will be on appeals from Tribunal decisions. In those circumstances the Court must make their decisions in the right context and an understanding of the context and principles[30] underpinning the Tribunal processes. This approach must be respected, and any decision reviewed accordingly on this basis.

[30] Such as the principles that underlie the findings of the Kilbrandon Report.

4.2 Court Delays

4.2.1. In interviews, I received some but not an overwhelming number of comments over delays in the Court. Generally, where emergency hearings were required, these were listed and heard quickly. However, in relation to other applications some comments were made about the length of time between the hearing of those applications. It is important to keep these complaints in context. A delay may be an unintended or a purposeful one.

4.2.2 *Purposeful delays* occur where the management of the case requires there to be an appropriate period between applications, for example to allow an assessment of whether care arrangements were working acceptably or not or whether there was any improvement in behaviour or development. Professionals therefore might properly require an adequate period to pass before being able to update their reports.

4.2.3 There are other factors. It is recognised that in Guernsey there are only a limited number of professionals working in this area. Advocates who undertake these types of cases also generally combine it with other areas of the law such as criminal work. The lack of legal aid and the legal aid rates, (whilst significantly better than those in England) and the difficult emotional and other aspects of the work makes this type of work unattractive to many advocates as a career choice. Additionally, there are few medical specialists such as psychologists, psychiatrists and paediatricians working in childcare and the shortage of social workers adds further pressure within the system.

4.2.4 *Unintended delay* may arise from a number of reasons, for example:

- A failure by either of the parties to produce the necessary documents or reports in a timely fashion;
- The unavailability of judges, advocates, experts, social workers or other professionals or witnesses in the case;
- A failure of a party to keep momentum on a case;
- The deliberate obstruction or deployment of tactics to prevent the case moving forward.

4.2.5 Further there is no identifiable mechanism being currently deployed to ensure that cases are resolved within a reasonable and acceptable timeline, and each case currently takes its chance on how long it takes to be finally resolved. The Consultation Document proposes the introduction of a more formal case management approach by the Courts, and which sets out timescales for the management and disposal of cases. It refers to the Public Law Outline, a practice direction for the Courts in England and Wales which sets a target of 26 weeks for the completion of a case. The average time for completion of a case in Guernsey is significantly in excess of that target.

4.2.6 From my conversations with members of the judiciary it is believed that there would be no opposition to a more formal case management approach being taken. Judges currently consider that they already have an obligation to case manage by the issue of appropriate directions. However, a more formal requirement through the issue of a practice direction in Guernsey and Alderney would provide a greater focus on keeping

timescales short and empower the judges to require parties and those others engaged in the process to meet those targets unless there were exceptional circumstances.

4.3 Experts

4.3.1 The issue of experts, delay and some shortcomings in the system relating to experts arose in my conversations with some of the stakeholders. The role of an expert is key to the outcomes for a child in some cases and is therefore extremely important. The Consultation Document[31] highlighted the concerns over delay experienced in the UK where the instruction of experts will not add significantly to the information available and also adding to the cost of the proceedings. It is worth pointing out that in cases before the Court, leave is required from the Court to adduce expert evidence, and the Court will make that decision on the circumstances of the case.

4.3.2 I agree that this may be a further systemic delay which can be mitigated and endorse proposal 19.

Section 5	Legal Aid

5.1 Given the seriousness of a Court application to remove a child, any proceedings before the Court will be eligible for Legal Aid, on a no means / no merit basis (since the parents or other parties will usually be responding to an application by the Committee).

5.2 Proceedings before the Tribunal will not be eligible for Legal Aid, except in relation to fact -finding hearings.

5.3 Legal Aid for any preparatory work is a policy matter .

Section 6	Private Law Proceedings

6.1 With a move to no fault divorce signalled by the States of Deliberation in February 2020, following the policy letter from the Policy & Resources Committee, serious consideration should be given as to the jurisdiction for residence and similar access and contact issues, known as Section 17 Orders. Philosophically, if there is no major dispute between the divorcing parents or it is simply a matter of approving arrangements there may be some merit in having this dealt with in the Tribunal with its less formal setting rather than subjecting the child to the Court arena. In such a case these arrangements would be dealt with/approved by the Tribunal as a precursor to a grant of a divorce decree. The Court would be left to consider only the property and financial matters.

6.2 However I am conscious that in many cases section 17 Orders are hard fought over, and the child can be left seriously damaged by those battles including through the

[31] At page 49

Court process itself. Residence Orders, contact orders and prohibited steps orders are more closely aligned to the matter that I propose are reserved to the Court and to suggest that this should be transferred to the Tribunal will blur the separation of functions that is so importantly required.

6.3 At this stage therefore I am not able to make any recommendation on this and therefore the current legal obligation for this to fall within the jurisdiction of the Court should remain. However, I do consider that this issue should be looked at again to assess what the impact would be on a transfer of jurisdiction of section 17 orders (or at least some of them, such as those by consent) to the Tribunal.

6.4 As a separate issue, options requiring the parties to mandatorily enter into dispute resolution or mediation process (offered by the Family Proceedings Advisory Service) prior to Court action, should be reviewed to assess whether this would be beneficial, in what is undoubtedly a difficult area. Space has been made available to FPAS by the Court to conduct mediation / conflict resolution alongside the Domestic Proceedings Court which it is hoped will divert cases away from the Court system. The use of compulsory mediation before proceedings (except where there is evidence of domestic violence or abuse of children) was also supported by practitioners.

Section 7	Social Workers

7.1 Recommendations on Resources

7.1.1 A scheme should be introduced to resolve the double taxation issue for agency workers who work for more than three months. Brief details are set out in Appendix 3.[32]

7.1.2 It is recommended that agency workers must commit to work for the States of Guernsey for a minimum fixed term of 3 years which is then renewable for periods of 12 months. (This provision is to address those social workers who are content to work in Guernsey on a longer-term basis but prefer an agency worker status rather than being employed direct[33] and to screen out those appointments which are short term and disruptive to the Committee.)

7.1.3 This may require education and negotiation with those recruitment agencies appointed to work with the States.

7.1.4 Consideration should be given to the recruitment of more family liaison workers, trained on Island, to undertake some specific social worker roles. Training should be designed (in conjunction with an accredited University or College) so as to comprise a first step towards achieving formal social worker qualifications.

[32] This scheme, however, will only provide a minor gain. Agency workers should not be encouraged and rather should be seen only as a necessity to plug the gaps.

[33] Policy consideration should be given as to whether to require an agency worker willing to work for longer than three years to be employed under a contract of employment, so as to avoid unnecessary cost.

7.1.5 Regular targeted recruitment campaigns promoting social work as a career amongst local people should be undertaken, including those currently working as volunteers, with incentives to train and together with the provision of more available placements.

7.1.6 Consideration should be given as to what further resources are available in the third sector to help with matters currently being undertaken by social workers and commission those services where available and practicable. There is in this respect an overlap with the Children and Young People's Plan, (CYPP) which identifies that further investment in both Children's Services and Family Community Services is crucial to the success of the CYPP.

7.2 Discussion on recommendations as to resources; tax; agency workers ; family liaison workers

7.2.1 A number of issues were identified in relation to social workers in my conversations and most of the comments identified the same problems. These were the shortage and high turnover of social workers leading to a lack of continuity in working with families, so that a family might see a large number of different social workers during the process, which itself was unsettling and unsatisfactory. Unsurprisingly, new social workers assigned to a case had a tendency to wish to start again with the family rather than continuing the strategy and work plans that had gone on before. This process was unsatisfactory. There were issues of new social workers being unfamiliar with Guernsey procedures (in the main by Guernsey not following the England and Wales model). Trying to fill the gaps with those coming in from abroad might lead to language and cultural difficulties.

7.2.2 Because of a global shortage of social workers, there was a sense of helplessness over this problem, and a feeling that there was little that could be done about it. I did not get any sense that the issues were caused by a lack of resources being made available and I am told that the terms offered to social workers were commensurate with and, in some cases, better than those offered elsewhere.

7.2.3 This is too important an issue to feel defeated over, although I do not under-estimate the scale of the problems. The following measures, (which, I accept, may have already been tried in the past), are suggested to seek to improve the issues.

7.2.4 One current disincentive to agency social workers arises out of the tax legislation. If an agency worker is supplied who works for more than three months in Guernsey tax is required to be deducted in Guernsey and at the same time also deducted under UK tax law. It is true that at the end of each tax year there is a right to recover the UK tax, but of course there is a shortfall in the salary paid and delay and inconvenience in claiming a tax rebate at the end of each year.

7.2.5 This will impact on very few people in number but makes recruitment more difficult, especially in the longer term or leads to social workers leaving after just a few months with all the disruption that creates. A financial scheme should be introduced to resolve the double taxation issue for agency workers who work for more than three months. Brief details are set out in appendix 4.[34]

7.2.6 The use of short-term agency workers should be discouraged, and it is suggested that as a condition of recruitment an agency worker must commit to work for the States of Guernsey for a minimum fixed term of 3 years which could then be mutually renewable for periods of 12 months. (This provision is to address those social workers who are content to work in Guernsey on a longer-term basis but prefer an agency worker status rather than being employed direct[35] and to screen out those appointments which are short term and disruptive to the Committee.).

7.2.7 However, the current evidence is that it is said that many agency workers are often unwilling to commit for such a period. This issue should therefore be the subject of negotiation and discussion with the appointed recruitment agencies, rather than a mere acceptance of the agencies' terms of business. There are considerable advantages in working on the Island and linked with a competitive financial package and guaranteed access to secured housing should make the option for social workers to come to the Island more attractive.

7.2.8 A further disadvantage was described as 'the Island factor' namely that with a small close community it was more likely that a social worker who had very difficult decisions to make might well come across their clients outside the office. Whilst this concern is not to be minimised, and some difficult decisions have to be made, it is no different from any other professional working in Guernsey, and it could be argued that working in the island community may not be as challenging as say working in an inner-city environment. To the extent that this is a real issue, there is little that can be done.

7.2.9 Consideration should be given to the recruitment of more family liaison workers, trained on Island, to undertake some specific social worker roles. This would enable qualified social workers to be released from some of their roles in order to concentrate on the more specialised and difficult aspects of their jobs. Additionally, training of family liaison workers could be designed (in conjunction with an accredited University or College) so as to comprise a first step towards achieving formal social worker qualifications if that were to be an attractive career option for a potential family liaison worker.

7.2.10 Regular targeted recruitment campaigns promoting social work as a career amongst local people should also be undertaken, including those currently working as

[34] This scheme, however, will only provide a minor gain. Agency workers should not be encouraged and seen only as a necessity to plug the gaps.

[35] Policy consideration should be given as to whether to require an agency worker willing to work for longer than three years to be employed under a contract of employment, so as to avoid unnecessary cost.

volunteers. Incentives to train could be offered including the option of more available placements.

7.2.11 Consideration should also be given as to what further resources are available in the charity and volunteer sector to help with matters currently being undertaken by social workers and to commission those services where available and practicable.

7.3 Recommendations as to Practice

7.3.1 There needs to be a review of the arrangements and formal procedures established for the transition of young persons' exit from care. This was identified to me as a need, although I understand that proposals on this have been captured within the refreshed Corporate Parenting Strategy, which is to be the subject of a policy letter.

7.3.2 The practice of automatically ceasing support to a young person upon reaching the age of 18, should be amended and a more flexible approach adopted to continuing that support until the young person is considered mature and able to manage without support (subject to a final cut-off date at age 25). Support for this initiative must be multi agency and cross committee if it is to achieve the kind of outcomes that these young people are entitled to.

7.4 Discussions on recommendations as to Practice

7.4.1 I received a number of comments that the current arrangements for exit from care by young persons are often left to the last minute with insufficient forward planning and follow up.

7.4.2 A young person leaving care may not have had opportunities to learn those life skills that most of us take for granted and as a consequence are unsuited for independent living. Suggestions were made by a number of stakeholders as to the need for some form of intermediate housing, for example with house mothers to enable young persons to learn those skills. From my own experience whilst in practice, I am aware of the training flats managed by Action for Children, but these flats would require skills that a person leaving care might not have acquired. Accordingly, for all these reasons I suggest that there should be a review of the arrangements and to establish formal procedures for the transition of young persons' exit from care. The new corporate parenting strategy and revised contractual arrangements with Action for Children and Housing seeks to address this issue.

7.4.3 I received further comments (not from the same sources) that a young person leaving care does not immediately become mature on achieving their 18th birthday and of course some young people will mature at a different time from others. Accordingly, a cut-off date at 18 for leaving care might in some cases be inappropriate. There appears to be little flexibility in the system and will impact upon the outcome for that young person not equipped or mature enough to cope. I suggest that this report may be an opportunity to make the system more flexible and to amend practice so that a young person receiving support does not automatically cease to receive it upon reaching the

age of 18, and that a flexible approach to continuing support in whatever form is appropriate is adopted until the young person is considered mature enough to be able to manage without support. I accept that there has to be a final cut-off date which I suggest should be at age 25. For some, exit from care might still be 18, but for others a more tapered removal of support would be more appropriate.

Section 8	Advocacy Scheme

8.1 The advocacy service, currently provided by the Youth Commission on a pilot basis, should be confirmed and extended so that the right is embedded within the system for any child or young person referred into the system to be linked into a children's advocate[36] whose job is to sit alongside them in helping them to make decisions and navigate the system. This *may*:

8.1.1 enable more mature, informed, timely and sensible decision making;

8.1.2 ensure better attendance at key meetings and reduce wasted meetings;

8.1.3 make it easier to look at available options (even if at first sight they may not be what the young person wants);

8.1.4 provide moral support; and

8.1.5 enable better access for the supported person to the educational work that the Youth Commission undertakes.

8.2 A young person would not have to take up this option but would be encouraged to do so.

8.3 It is hoped that by having a mentor alongside the young person, outcomes will be better, and some avoidable delays mitigated (for example, better engagement with the process, key meetings attended and the importance of attending and engaging understood).

Section 9	Governance of the System; Director of Children's Services; lessons learned; duty of candour

9.1 Recommendations on Governance of the System

9.1.1 There are two aspects of governance of the system that need to be considered and reviewed. Governance is both:

Internal

[36] For the avoidance of any doubt this is not a legal advocate.

This relates to the internal governance of the system, including risk management, safeguarding and operational management within each constituent part of the system. This governance addresses risk and accountability within the specific operations of each of the individual agencies. There are some multi-agency, and multi-disciplinary structures within internal governance. An organogram of the governance within Health & Social Care (being the largest agency) the Children & Family Community Service Governance Framework is set out in Appendix 5 by way of example.

Systemic
This describes the governance which seeks to manage risk and the effective operation of the whole system for outcomes across Guernsey and Alderney and which sits above the internal structures. This includes cross committee responsibility.

9.1.2 It has become clear, in compiling this Report, that system governance is a priority issue that needs to be looked at. I have therefore set out my preferred model for system governance together with my reasons. There will, inevitably, be a resource implication and this Report is not a costed report. Following the impact of the Covid pandemic on Government resources it is clear that any proposals will need careful scrutiny both as to any potential additional cost and also whether savings can be found elsewhere in the system.

9.1.3 This report also now coincides with important safeguarding proposals that are being put forward by the current Chair of the Islands Safeguarding Children Partnership and it is sensible that these two elements are aligned. My recommendation therefore is that there should be a further review of a proposed model of system governance in order:

(a) to simplify and integrate the present system;

(b) to address what I consider are the clear current risks; and

(c) to provide more effective system governance.

This review should as a result complement the work already in progress to effect change to the safeguarding arrangements for both children and vulnerable adults and the wider review of the organisation of government and the civil service in Guernsey, the objective being to strengthen risk management and assurance within the system as a whole.

9.1.4 The appointment of the Children's Proceedings Case Manager (CPCM) is to be welcomed. This post should report direct to the Director of Children's Services (if appointed).

9.1.5 There is a need to improve data collection and management and overall monitoring of progress of cases outside of the system itself. There should be a requirement embedded within the system:

(a) to notify all new cases to CPCM

(b) CPCM is to monitor and be the regulator for progress, or lack of progress, wherever it is, whether pre-proceedings, in the Tribunal or in Court, to ensure that it is not stalled and to be able to require resolution to move it along.

(c) It is recognised that there will be cases where proceedings are placed in abeyance for good reason, for example to allow monitoring of arrangements, or to allow an assessment of the development of the child.

(d) Once a case is closed the relevant details need to be captured into a new database so as to enable

(i) lessons to be learned;

(ii) better strategic decisions to be made; and

(iii) ensure that resources are being deployed in the right areas.

9.1.6 The requirement in paragraph 9.1.5 is a means to ensure that the focus for Children and Young Persons is on **outcomes**, (suitable, focused, and timely), properly resourced and system efficiency. This work should be undertaken in close liaison with the Office of Children's Convenor.

9.1.7 At practitioners' level the Family Court Users group needs to be revitalised so that there is a regular meeting three times a year, proper feedback into future law changes and Court Practice Rules. See Appendix 4 for a proposed standing agenda and attendees. Currently, it has been felt that this is not fit for purpose with an increased reluctance therefore to take issues and respond to challenges. This group therefore is not to be a talking shop, but one in which there are proper objectives for the benefit of all those in system. This is a Court organised group and I understand that the Court is in the process of reviewing its composition and purpose. Two new joint heads have been appointed to the Family Bar and I understand that the working of this group is also on their agenda.

9.1.8 For all practitioners working within the system (including external agencies) there should be introduced a duty of candour, similar to that operating in the health and social care system. A red flag system to be introduced so as to highlight vulnerabilities for children and young persons (or their families) and issues that have emerged in any particular case. A duty of candour is already embedded in the registration of social workers, and the quality assurance therefore sits within the subgroup structures. Therefore, this recommendation seeks to extend this duty across all those within the system and to make the duty more explicit.

9.1.9 Case reviews should be conducted on all instances where there has been a serious safeguarding incident (including the death of a child where an external investigation may be required) or where the system or an agency has failed.

9.2 Discussion on Governance

9.2.1 The Terms of Reference (in paragraph 4) includes a specific requirement to look at governance issues as it relates to the system.

9.2.2 Governance currently operates at two levels. There is what might be termed **internal governance.** Appendix 5 shows the current Children & Family Community Service Governance Framework (as the lead agency). It can be seen that this is a comprehensive series of expert groups feeding into the Operational Central Governance hub which meets monthly. The Operational hub is itself accountable to the Committee *for* Health & Social Care.

9.2.3 Other component agencies within the system will each have their own internal governance arrangements. I have not looked at the internal governance structures of the other agencies involved in the system such as the Tribunal or the FPAS but have assumed that there will be carefully considered risk management structures and clear lines of accountability within each agency.

9.2.4 Some of these other agencies, but not all, will also provide input and representatives on a multi-disciplinary and multi-agency basis to the Children and Family Community Framework meetings. The Framework however is primarily an HSC structure and is accountable through the Operational hub to the HSC Governance team and the Medical Director. Whilst consideration of the Framework is not specifically within the Terms of Reference it appears to be comprehensive and covers a wide range of issues. It is, however, also complex and, for those who may have to attend several of the team meetings, very time consuming. Having such a structure will also inevitably duplicate the same issues as they are passed up through the hierarchy. The structure could therefore be vastly simplified (in parallel with the development of the new system governance described in this Report).

9.2.5 Currently the Island Safeguarding Children Partnership (ISCP) feeds into this Framework (shown by the green boxes). The ISCP was established under section 29 of the Law. The ISCP mandate in section 29 is to co-ordinate the various organisations represented on the ISCP. This mandate is therefore wider than HSC governance arrangements set out in the Framework. ISCP is about the management of risks, the setting of quality assurance and compliance with various professional and statutory obligations relating to safeguarding across the system. There is therefore an awkward fit between its mandate and its current position in the Framework. Its positioning also creates other issues such as where vulnerable adult safeguarding should sit in the structure, and also how and where the setting of quality assurance requirements for the Children and Family Community Service should be undertaken.

9.2.6 Each of the internal governance procedures, should be designed to integrate with each other and with governance for the system as a whole.

9.2.7 Internal governance looks at only the component agency's perspective of the system. It does not address the whole of the system. For example, the Convenor and the Tribunal being created by statute does not come within the Children and Family Community Service Framework. I am aware that on occasions there has been tension between the two organisations as to the management of specific cases.

9.2.8 Further, internal governance does not include direct ownership or governance of the Children and Young People's Plan (CYPP) which operates as a separate States' strategy. The CYPP should be regarded as being part of the system governance. The Law (Section 28) requires the Committee to produce and submit to the States a Children and Young People's Plan every three years (it is understood that in practice this is a six -year plan with a review after three years). The CYPP has its own governance.

9.2.9 **System governance** operates at a higher level and relates to the management of the whole system, how it manages, both individually and holistically those children and young persons' moving through the system and their outcomes. It cuts across Committees and agencies. System governance should continually ask the question as to whether the system as a whole is fit for purpose and whether it continues to deliver the best process for identifying children at risk wherever that may arise and best outcomes.

9.2.10 There are system governance structures in place, but the impression is that these are not properly integrated but operate as separate arrangements, although undoubtedly liaison does take place.

9.3 System Governance Structures currently in Place

9.3.1 **Islands Safeguarding Children Partnership** (in the Law called The Islands Child Protection Committee)

(a) As stated above, ISCP was established by section 29 of the Law, with the main objectives to co-ordinate the various organisations represented on the Committee for the purpose of safeguarding and promoting the welfare of children. This was to be achieved by promoting effective co-operation between all persons involved in safeguarding and the welfare of children, issuing guidance to those working in the sector and to review serious cases. This is therefore, also regulatory in character. Detailed regulations governing the constitution and operation of the ISCP are contained in The Islands Child Protection Committee Regulations, 2010 (the 2010 Regulations).

(b) The ISCP is comprised of senior officers and representatives of various bodies across the States of Guernsey and Alderney. Representatives are

- senior officers from HSC, the Committee *for* Education, Sport & Culture the Committee *for* Home Affairs;
- the Children's Convenor;

- the Chief Officer of Police;
- the lead paediatrician for child protection;
- a GP;
- an Alderney States Representative (not being an elected member); and
- a representative of a voluntary agency.

An independent Chair is appointed by HSC on the recommendation of the Chief Officers Child Protection Group.

9.3.2 **Chief Officers Child Protection Group**

(a) The Chief Officers Child Protection Group was established by the 2010 Regulations (Section 8). This is a committee of the Chief Officers (since renamed Chief Secretaries) of HSC, Home and Education Sport & Culture. The Regulations permit the appointment of a Chair for the Group independent of those three Committees. In practice meetings are now chaired by the States' Chief Executive.

(b) This Group appoints the independent chair of the ISCP; receives the ISCP annual report and also carries out the specific functions set out in the 2010 Regulations. Its function may be described therefore as to oversee and hold the ISCP to account in the discharge of its functions.

9.3.3 **Children & Young People's Plan Supervisory Group**

(a) Section 28 of the Law created a duty for the States to publish the Children & Young People's Plan (CYPP) and to make regulations as to how this duty is to be undertaken.

(b) The Committee *for* Health & Social Care (HSC) remains the lead political committee for the CYPP. The Children & Young People Plan (CYPP) Supervisory Group is made up of political members across committees together with invited members across the community to provide governance and strategic oversight of the Plan.

(c) The powers of the supervisory group derive from the legal duty of the States to publish and implement the CYPP.

9.4 Observations on the current structure of system governance

9.4.1 It may be that in practice the set-up of the current structure works. I am not aware of any specific issues that have been raised other than reports of some tension. From a systemic perspective, however, it does not fit together into a single integrated and co-ordinated governance arrangement. Each of the three bodies operating at this level have their own mandates, but inevitably their roles will overlap or alternatively operate independently from each other such that there is no single vision, driver, or accountability for outcomes for children and young persons.

9.4.2 Most of the persons involved at every point in the system governance have other important jobs or responsibilities and there is no one person or group whose sole responsibility is to focus on outcomes for young people, however they arise, to ensure:

- best up to date professional practice;
- identify and resolve policy issues and new developments;
- identify potential system risks; and
- maintain regulatory oversight.

9.4.3 It is therefore recommended that further work be undertaken to look again at how governance might be structured, and in respect of that I make the following observations.

What is missing?

9.4.4 There is no one body or person with overall responsibility for the system. Without that, there is no comprehensive integrated governance of the system. This results in a lack of clarity.

9.4.5 Second, there is no one with the overall task of co-ordinating, cross committee, cross discipline responses and for driving best practice, training and education, collection and application of data and establishing, and requiring compliance with, regulatory standards.

9.4.6 Some, but not all of these functions, are in the mandate of the ISCP, but currently this is operating at a level beneath the political committee structure and is technically within the internal governance Framework of the Committee *for* Health and Social Care.

9.4.7 There was some concern expressed in my conversations with stakeholders that the mechanism in the Law relating to the ISCP was not working. For example, concern was raised by a number of stakeholders as to how effective the ISCP was in the discharge of its functions. Specific issues were also raised. There had, under its previous Chair, been serious concerns expressed over the contents of a report compiled by the Chair in respect of a vulnerable child and the relevance of some comments in that report to the law in Guernsey. It was also reported, as a separate issue, that the ISCP had failed to undertake an investigation into another potentially serious incident that had been reported to it. These concerns are well known, the consequences have been previously looked at and the ISCP will probably be frustrated to read that these concerns have been raised yet again, considering them to have been resolved.

9.4.8 I should also make it clear that the current chair was appointed after the publication of the report referred to above and that the ISCP has already made some important changes to some of its practices including the introduction of the 'Rapid Review' which has, as one of its objectives, the intention to learn lessons and effect improvements within the system.

9.4.9 These matters highlight the serious responsibilities entrusted to the ISCP under the Law. The question that arises is whether it is realistic to expect these functions to be discharged by a Committee which has as its members, persons with other full-time major commitments, and which of necessity means that their time, attention, and availability will be limited? There is unquestionably no suggestion that the members of the ISCP are not fully committed to the discharge of its responsibilities. On the contrary, there is a real sense within the current ISCP of a positive drive for improvement across the safeguarding system through the benefits that a partnership approach brings, especially if governance can also be strengthened and greater alignment with other key governance groups achieved.

9.4.10 As indicated above, the current positioning of ISCP within the Children & Family Community Service Framework is not the correct line of accountability. It brings it within internal governance whereas its primary function is system governance. Its main responsibility is co-ordination of the different agencies for the purpose of safeguarding and promoting the welfare of the children of Guernsey and Alderney *and* 'such other class or description of the population of Guernsey & Alderney as may be prescribed'. This could, for example, include safeguarding of vulnerable adults. It should therefore, in any event, come out of the Framework.

9.5 Interface with CYPP

There is also a need to join up the system governance with the wider strategy and direction of the CYPP, and any reform presents an opportunity to address some concerns over duplication, possible confusion, and tension around the different processes. In particular, this is observed in the respective roles of the ISCP and the governance of the CYPP. In the UK, statutory guidance surrounding the Working Together 2018 initiative has led to more integrated partnership approaches being adopted by local authorities. The governance proposals recommended in this Report therefore additionally seeks to bring together the governance of the system and the wider aims and governance of the CYPP.

9.6 Features of Good Governance

9.6.1 Good governance, including safeguarding practice, needs to be multi-agency to ensure children and families can receive targeted support which is co-ordinated. A safeguarding partnership brings together all the agencies that have a shared responsibility to safeguard and promote the wellbeing of children.

9.6.2 Although there are many agencies that have a responsibility to safeguard children, children's services, education and the police are the principal ones and therefore need to have a shared and equal responsibility to ensure that the arrangements are effective.

9.6.3 This responsibility operates at two levels:

Strategic

Responsibilities include setting out the overall strategic direction and priorities for the system (including safeguarding[37]), taking account of, and being responsible for, key plans such as the Children and Young People's Plan, standards, assurance.

Operational

This responsibility includes the implementation of, and accountability for, the strategic direction and priorities through multi discipline and cross committee working within all the agencies concerned, including not just children's services, education and the police but also the Convenor, the Family Proceedings Advisory Service, the Probation Service , the Prison Service, sports organisations and third sector agencies. It will also feed back to the strategic level, case incidents, complaints, recommendations for changes, budgetary issues and other relevant operational issues.

Director of Children's Services

9.6.4 My recommendation is that needing to make this work would be the appointment of a Director of Children's Service.[38] This would be a State's executive appointment, delivering on the States corporate governance obligations for the protection and welfare of its citizens. It is a senior, full time role, operating cross-committee (particularly those of Health and Social Care, Education and Home Affairs) at a high level and whose function is to ensure that proper priority and direction is given to the welfare of children and young people and their outcomes and that Bailiwick children's interests are maintained at the highest priority level within Government.

9.6.5 The role will be to oversee holistically and strategically Children's work in all its aspects for the States.[39] This role seeks to reap the benefits set out in the Statutory Guidance on roles and responsibilities of the Director of Children's Services and the Lead Member for Children's Services, published by the UK Director of Education in 2013.[40]

9.6.3 Being a full-time appointment, this would be the load carrier and a key driver for:

- compliance with and development of best practice,
- ongoing system review & the monitoring of cases,
- carrying out review & investigations where necessary for serious incidents and deaths;
- the development of the CYPP.

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[37] This raises a question of how widely the term 'safeguarding' is defined. I have taken the view that safeguarding should be given a wide definition encompassing neglect, education, social and economic deprivation, youth justice, and public and personal health and not just restricted to 'safety' issues.

[38] It should be noted that this is NOT an independent role for the protection of children such as the Children's Commissioner in Jersey nor is it the same role that was previously a Health and Social Care appointment.

[39] This appointment is intended to increase the profile for Children's Work and give it a voice at a senior level. There may also be some long-term savings that might arise out of that strategic overview. The senior monitoring officer (see later) should report to the Director.

[40] For clarification, because of the nature of Government in the Bailiwick I do not consider it necessary to additionally appoint a Lead Member as referred to in that guidance.

The Director would work with a repositioned ISCP and be accountable to, and attend all meetings of, a renamed Chief Officers Child Protection Group. For the avoidance of doubt the Director would not be part of the Committee *for* Health & Social Care.

9.6.4 Clearly such an appointment will need to fit into other structural changes within the States of Guernsey. It may well be consistent with other changes being implemented within the current program of reform. It is understood that further consideration will be needed to work out how a cross committee head of service might best fit in the States of Guernsey governmental structure. Additionally, it is understood that as a consequence of the recent pandemic there is a serious strain on public monies and consideration needs to be given as to how this post could be funded.

9.7 Governance Structure

9.7.1 Appendix 6 sets out a simple organogram of the proposed system governance structure. In this model, the ISCP would be reconstituted to work with the Director on both strategic and operational matters. The ICSP would be accountable to the Director and monitored and regulated by the renamed Chief Officers Group. This group called Chief Officers Children, Young Person and Adult Wellbeing and Safeguarding Group (CYPAWS) with a suitably amended set of Regulations would be the top level of governance. The respective function of each constituent is described in Appendix 6. Since the CYPAWS is monitoring the operation and strategic development of the system it is appropriate that it is an officer group rather than a political group.

9.7.2 The Director of Children's Services and its staff will be providing professional direction and services to the ISCP . Strategic development of policy will remain with the respective political committees in so far as it falls within their respective mandates, but where this involves children and young persons will be channelled to the Director of Children's Services.

9.8 External Monitoring

9.8.1 One objection to the recommendation of the appointment of a Director of Children's Services will be that it brings responsibility 'in house' to the States of Guernsey and loses the benefit of external monitoring. This is a valid objection in that it removes the perception of external accountability. Accordingly, in my view, if the recommendation is accepted to appoint a Director of Children's Services, and reposition the ISCP as the accountable body, monitored by the CYPAWS, it would be good practice for there to be properly established external monitoring and regulation.

9.8.2 This might be undertaken by a reputable and respected organisation external to the States and contracted in the same way that currently happens in Education with Ofsted and with other professional bodies elsewhere in Health and Social Care. Alternatively, and perhaps preferably, it could be with a suitably experienced and qualified

individual[41]. This would also open up possibilities for a jointly commissioned monitor with Jersey. This appointment should ensure that the whole system is monitored, remains subject to challenge and operationally up to date with latest best practice.

9.9 Risk

9.9.1 The principal risk to this model and the appointment of a Director of Children's Services is that it places a great deal of responsibility into the hands of the person appointed. Finding the right person might be difficult and, of course, there would be serious issues if the wrong person were appointed.

9.9.2 My own view is that this risk is considerably outweighed by the current disparate nature of the governance structure and the lack of any single office that is driving through standards, outcomes, and continual review, and that the appointment should therefore strengthen governance.

9.9 Other possible models

9.9.1 There are of course a number of other possible models of governance that could be adopted. Ultimately, there needs to be further discussion particularly within the Chief Officers Group so as to emerge with a final recommendation. If changes are to be adopted, it is probable that this will require the preparation of legislation.

9.9.2 One obvious alternative is simply to reposition ISCP as shown in Appendix 6 but without the appointment of a Director. Note however, that there are two separate issues being addressed by this proposal, one is to get the overall structure right and the other is to introduce a driver for continued development and improvement of the system. Not to appoint a Director would under this model remove that driver for change.

9.10 Conclusion

9.10.1 What is very clear to me from preparing this report is that there is currently a significant need and opportunity for developing a new integrated system of governance:

- operating at the highest reach of Government;
- focused on children and young people and outcomes;
- subject to external independent monitoring;
- acting in a regulatory capacity;
- being cross Committee;
- with statutory powers,

to ensure a robust and comprehensive oversight of both the system and those children and young persons who are travelling through it.

[41] One obvious candidate would be the current chair of the ICSP.

9.10.2 This system governance must also be able to capture relevant data in order to ensure a process of continual improvement.

9.11. Children's Proceedings Case Manager (CPCM) and data collection

9.11.1 The appointment of the Children's Proceedings Case Manager (CPCM) is to be welcomed. This post should report direct to the Director of Children's Services (if a Director is appointed). This post will fit in well with the system governance that I am advocating.

9.11.2 There is a need to improve data collection and management and overall monitoring of progress of cases. The role of CPCM is best suited to take charge of this responsibility. There should therefore be a requirement embedded within the system, and subject to appropriate confidentiality safeguards:

(a) to notify all new cases to CPCM

(b) that CPCM is to monitor and be the external regulator for progress, or lack of progress, wherever it is, whether in pre-proceedings, in the Tribunal or in the Court, to ensure that it is not stalled and to be able to require resolution to move it along.

(c) It is recognised, as already set out in this report, that there will be cases where progress is halted for good reason.

(d) Once a case is closed the relevant details need to be captured into a new database so as to enable:
  (i) lessons to be learned;
  (ii) better strategic decisions to be made; and
  (iii) ensure that resources are being deployed in the right areas.

9.12 Focus on Outcomes

9.12.1 The requirements set out in the above paragraphs are a way to ensure that the focus for Children and Young Persons is on **outcomes**, (suitable, focused and timely) and system efficiency. This work should be undertaken in close liaison with the Office of Children's Convenor who has a key statutory role to play in ensuring that outcomes are met.

9.12.2 Overall targets for the completion of cases and the effectiveness of outcomes are a useful tool by which progress can be measured and a process of continuing development implemented, driving out avoidable delay. It would be the responsibility of the Director (if appointed) to set and monitor the achievement of those targets and to report to the States on whether those targets have been achieved.

9.13. The Family Court Users Group

9.13.1 The Family Court Users group needs to be revitalised so that there is a regular meeting of practitioners. I suggest that this should be three times a year, with proper feedback into future law changes and Court Practice Rules.

9.13.2 See Appendix 4 for a proposed standing agenda and attendees. This is not simply to be a talking shop, but one in which there are proper objectives for the benefit of all those in system. A person with enthusiasm and a recognition of the real benefits to be derived from the group should be appointed as secretary.

9.13.3 This group is run by the Court and I am advised that there is currently a review being undertaken of its composition and purpose.

9.14. Duty of Candour

For all persons working within the system (including external agencies) there should be introduced a duty of candour, similar to that operating in the health care system. A red flag system to be introduced so as to highlight vulnerabilities for children and young persons (or their families) and issues that have emerged in any particular case. There should be a positive duty to report safeguarding issues to the safeguarding officer (or if appointed the Director of Children's Services).

Section 10	Law Officers and Social Workers Interface

10. 1 Law Officers and Social Workers Interface

10.1.1 I am advised that this relationship needs to be improved but that steps are already in motion to help with this. I set out in Part 10 those realistic expectations that the Law Officers and their client social workers should have in their relationship.

10.1.2 The threshold criteria for the various applications or orders have been looked at in the Children Law Review and I have included most of the key provisions in this report, but at practitioner level the parties should ensure that there are clear guides, templates, a simple menu of options and their respective requirements. The suggested thresholds are included in Part 1 of this report.

10.1.3 Regular refresher and induction training should be provided by the Law Officers particularly whilst the turnover of social workers is still high. The Family Bar have also recently provided training to social workers and would be willing to continue to assist with training.

10.1.4 In addition there should be regular review meetings so as to improve communications between the Law Officers and Social Workers and the capture of lessons learned.

10.2 Relationship between Law Officer Team and Social workers

I was advised in my conversations with the key parties involved that this relationship needs to be improved and that steps are already in motion to help with this. Having listened to those comments and observations I believe that the issues have already been recognised by both the Law Officers Team and Social Workers. However, both sides accept that there is a continued need for good communication and better understanding of the respective responsibilities and obligations of each of the parties, and I consider it would be helpful therefore for me to set out the respective expectations and suggestions for ensuring that the relationship works at its optimum:[42]

10.2.1 Social Workers need:

(a) to appreciate that the Law Officers will not refuse to take a case to Court when instructed to do so, where there are real concerns as to the safety and welfare of the child;

(b) to be aware of the requirements of the Court in order to bring a case, that this has to be an evidence-based approach and to carefully consider and evaluate the advice that they are being given by the Law Officers;

(c) to understand that the Law Officers must give robust advice. (Advice that is not robust is of no value); and

(d) that the Law Officers owe a duty not just to the Social Worker and the child or young person but also as officers of the Court to the Court itself. This may well involve having to advise the Court of any shortcomings of which they are aware in the case they are putting forward.

10.2.2 Law Officers must in return:

(a) demonstrate their understanding of the concerns of social workers (who carry a heavy sense of responsibility in dealing with difficult circumstances) where it is considered by the Social Worker that the child is at risk (whether requiring an emergency application or otherwise); and

(b) not give the impression that it is only about winning. In certain cases, it may be a matter of placing the responsibility for a decision with the Court even if all the information is not available and /or it is not certain as to whether the application will be successful;

(c) encourage a team working approach so that for Social Workers, instructing the Law Officers for advice should not be seen as daunting, but rather a way of

[42] For clarity In this section 'Law Officers' mean the lawyers in the Child Care Team at St James Chambers not the Law Officers (i.e. HM Procureur and HM Comptroller) themselves.

ensuring that the approach being adopted by the Committee in a case is the correct one; and

(d) confirm that they will take cases as required by social workers, even if on some occasions this is contrary to the advice that they have given, meaning that the final decision whether or not to proceed is with the client social worker.

10.2.3 The threshold criteria have been addressed but there is a need for clear guides, templates, a simple menu of options and the respective requirements. The suggested thresholds forms part of Part 1 of this Report.

10.2.4 Regular refresher and induction training should be provided by the Law Officers particularly whilst the turnover of social workers is still high.

10.2.5 In addition there should be regular review meetings so as to improve communications between the Law Officers and Social Workers and the capture of lessons learned.

Section 11	Family Proceedings Advisory Service

11.1 Family Proceedings Advisory Service – Independent Agency

11.1.1 The FPAS should be established as an independent agency line managed directly by Home Affairs.

11.1.2 Resourcing of this Service should be looked at to allow FPAS earlier intervention both in public law and private law cases.

11.1.3 There should be better use by all those in the system and clearer understanding of the mediation / conflict resolution services provided by FPAS so as to try and resolve cases before they become contentious. This service could be undertaken as an offshoot to private family law cases on access and contact being resolved in the Tribunal. Conflict in this area causes significant harm to children and the importance of this proposal should not therefore be seen as inconsequential but as an important tool in improving outcomes.

11.2 Independent Agency Service – reporting line to the Court Service

11.2.1 The Family Proceedings Advisory Service (FPAS) was until recently managed as part of the probation service, which whilst administratively convenient may give the wrong perception as to its role. Following the retirement in late 2020 of the head of the FPAS line management has since transferred to Home Affairs. Prior to the Probation Service it was formerly managed as part of the Court Service, and I understand that these arrangements did not work particularly smoothly and there were concerns that the FPAS was perceived to be part of the Court system. It is recommended that the FPAS should have independent agency status, in order to demonstrate its independence. Independent agency status would assist with the public perception of

the role of the FPAS and to the extent needed, its accountability and line management, could then continue to remain directly line managed by Home Affairs.

11.2.2 The role undertaken by the FPAS was widely recognised and appreciated by those I spoke to, and the mediation service offered by FPAS is a useful and potentially valuable tool for preventing cases being referred to the Tribunal or the Court. However, the availability of this service is not widely used, whether because it is not widely known about or, more likely, practices have grown up since the introduction of the Law that have resulted in professionals not giving consideration to the role that mediation can play.

11.2.3 Additionally, I was informed that resourcing was a serious issue.

11.3. Promotion of FPAS Mediation Services

11.3.1 There are two distinct areas where the FPAS dispute resolution service may be better used:

(a) In public law cases, there is limited opportunity for mediation in the more serious cases which are dealt with, but I have previously noted that the Convenor's meeting may be a point at which those cases falling with the Tribunal's remit and being triaged by the Convenor could be considered for voluntary mediation.

(b) In private law cases, there is a greater opportunity for use where section 17 orders addressing residence and contact (which it is proposed will be renamed child arrangement orders) are under consideration. Currently these are usually determined by the Court rather than being dealt with by mediation.

Consideration should be given to a requirement directing the parties to mediation before an application is heard in Court. Of course, mediation is a usually a voluntary step and there is reduced benefit if an unwilling party is required to go to mediation. However, it might be that if a party is unwilling to engage in mediation a costs sanction could be applied by the Court, the purpose being that advocates will be encouraging their clients to seek mediation.

11.3.2 The benefits of mediation are clear. It enables parents to arrive at their own solutions, assists them to establish a better future relationship between them for the benefit of the child, and most importantly reduces possible trauma to the child, as a consequence of the processes involved in a Court hearing. It is recognised that this will only apply to some suitable cases, not all, and some parties are engaging in mediation already. This approach should improve outcomes for the child where it can be deployed successfully.

11.3.3 In my view, a better use and understanding of the mediation / conflict resolution services provided by FPAS would provide opportunities to resolve cases before they

become contentious both in public and private law cases, and, in so far as it relates to private law, such a move is consistent with the move to no fault divorce arrangements.

11.3.4 I am advised that the Court is making space available to FPAS to conduct mediation / conflict resolution alongside the Domestic Proceedings Court and it is hoped that this early intervention will enable cases to be resolved earlier and divert cases away from the Court system.

11.4 Instruction of Advocates

11.4.1 The main area of the work of FPAS is to provide advocacy and representation for children in cases before the Court and the Tribunal. This was regarded as a vital service and one which improved outcomes for the child. However, the limited number of advocates available to be instructed where necessary by the FPAS was a concern. One possibility might be for FPAS to have its own inhouse advocate if the demand justified it and there were available resources to permit this.

11.4.2 On the assumption that currently resources would not be available, and that the demand does not presently justify recruitment, the alternative is to establish a panel of two or three named and retained Advocates, including a designated advocate within the Law Officers team, who would be the 'go to' advocates for FPAS. This panel would have or develop the knowledge and understanding of the FPAS and which should be sufficient to prevent conflicts of interest arising in most cases.

11.4.3 The Consultation Document[43] makes the useful observation that currently the FPAS can only be appointed in existing proceedings and that it would be beneficial to enable them to be appointed before proceedings are commenced. This will create greater flexibility and allows opportunities for cases to be dealt with in more proactive ways and is in keeping with the principle that it is better to keep cases away from the Court or Tribunal, if at all possible, in the specific circumstances.

Appendix 1 Terms of Reference and Credentials

Report into hastening the determination of outcomes for Children and Young People.

Despite the best efforts of all involved and much positive progress there is increasing concern regarding what appear to be unintended consequences of the Children's Law that result in delays in determining outcomes for children and young people.

This report has been commissioned to address these concerns and recommend ways in which outcomes for children and young people can be achieved within the UK national target of 26 weeks.

The report should be cognisant of a previous review of the 2008 Children Law undertaken by Professor Marshall, relevant Court Judgements of family and public Law proceedings and Court of Appeal

[43] At page 51

findings, annual reports of the Tribunal as well as other local sources and reports and which together will provide evidence in support of any recommendations.

In particular, any recommendations must ensure:

1. The voice of children and young people is heard and that they are at the centre of all considerations;

2. They will help reduce unintended delays created by the system;

3. They identify alternative dispute resolution process, such as mediation, to achieve more timely determination of outcomes, and wherever possible negate the need to resort to the formal public or private processes set out in law;

4. They refresh the governance arrangements associated with the Children's Law that:
   a. Reflect the 2016 changes to the political structure of Government and those made more recently to the Civil Service in support of it;
   b. Support the establishment of pan-Channel Island ICPC assurance and the role of its independent chair;
   c. Establish a system through which effective corporate parenting may be achieved; and
   d. Determine a mechanism to empower those charged with political oversight to discharge their duties, including strengthened governance arrangements being enshrined within the amended legislation.

Associated with this report is a commitment by government to effect changes to the legislation and associated guidelines which will be afforded priority.

In addition, it is clear that many services such as the Family Proceedings Advisory Service continue to operate under an unsustainable demand which in itself leads to delay in outcomes which may be distressing and harmful to children and those who care for them. The Island is therefore additionally seeking a justice strategy that recognises both criminal and social demands.

The Policy & Resources Committee is working in partnership with the Committee *for* Home Affairs to undertake a review to develop this justice strategy. In the light of this pressing identified need, that review will also be recommending work that removes delay from systems and processes relating to the delivery of services to children and young people in need.

Credentials

Martin Thornton is a Deputy Judge in the Magistrates Court in Guernsey. He was for a number of years director of commercial law with the Law Officers of the Crown having joined Chambers in 2004.

Before that he was a partner in a large regional practice in the UK specialising in commercial, corporate and public sector law and acted on behalf of many health authorities, trusts and other bodies within the NHS including the Secretary of State for Health. He qualified as a solicitor in 1974.

He holds a degree in law from the University of London and an MA in Environmental Law from De Montfort University in Leicester. He is an accredited mediator with the Chartered Institute of Arbitrators.

Appendix 2 Methodology

In preparation for this report I had meetings with the following persons:

Richard McMahon QC – Bailiff
Gavin St Pier – First Minister
Neil Hunter – Alderney
Karen Brady Children's Convenor
Megan Pullum QC HM Procureur
Sarah Elliott – Chair Islands Child Protection Committee (Island Child Safeguarding Partnership)
Ashley Rawles – President Child Youth and Community Tribunal
Gill Couch Child Youth and Community Tribunal
Janet Gaggs Child Youth and Community Tribunal
Nicola Gallienne Head of Service Children and Family Community Services
Charlie Cox. Youth Commission
Aaron Davis Youth Commission
Kareena Hodgson Action for Children
Ruari Hardy Chief of Police
Judge Gary Perry
Judge Cherry McMillen
Advocate Sara Mallet
William Simmonds Law Officers Family Law Team
Rupert Sewards Law Officers Family Law Team
Karen Hill-Tout Law Officers Family Law Team
Sarah Smith Law Officers Family Law Team
Jane St Pier (with Ashley Paxton) Youth Commission
Sandy Bohin MSG
Anna Guilbert Family Proceedings Advisory Service
Jackie Batiste Family Proceedings Advisory Service
Lucy Heywood Guernsey Legal Aid Service

I took notes of the meeting and used these as an aide memoire in writing the report. I was unable to meet any children or young persons who had been through the system due to Covid 19 difficulties.

I read or re-read all the relevant legislation including:

- The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 (Consolidated text)
- The Children (Guernsey and Alderney) Law, 2008 (Consolidated text)
- The Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009
- The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009
- Practice Direction No 7 of 2009 – Children and Family Proceedings – Proceedings Forms and Relevant Court
- X Council v B [2004] EWHC 2015
- Judgments in 29 cases in the Juvenile Court and Royal Court in Guernsey
- Review and lessons learned, report by Gay Whitfield on Guernsey Judicial decisions.
- The Family Proceedings (Guernsey and Alderney) Rules, 2009
- The Children (Children's Convenor) (Guernsey and Alderney) Regulations, 2010
- Out of Hours duty Pack
- The Kilbrandon Report

- The United Nation Convention on the Rights of the Child
- Statutory Guidance on the roles and responsibilities of the Director of Children's Services and the Lead Member for Children's Services (Department for Education April 2013)
- Committee for Health & Social Care Consultation on Review of the Children (Guernsey & Alderney) Law, 2008, and the consolidated responses to that consultation.
- Pre-proceedings and s20 Children Act 1989 Article by Margaret Parr 7 Harrington Street Chambers
- Job Description Family Proceedings Case Manager – Children and Family Community Services
- Report by Kathleen Marshall for the Scrutiny Committee of the States of Guernsey (November 2015)
- Ofsted Report: The States of Guernsey Committee for Home Affairs – Inspection of the Family Proceedings Advisory Service.
- States of Guernsey Revenue Services: Tax Treatment of Locums
- Justice Review: Extract relating to Children and Young Persons
- Independent Care Review: Scotland's Care System (February 2020)
- Private Law Working Group (England and Wales) Family Disputes: Second Report March 2020

The draft Report was written in June 2020, but due to the Covid 19 Pandemic, and the Guernsey election, this was not able to be considered until the early part of 2021. Once initial political approval had been obtained the draft Report was sent to key stakeholders for comment both as to factual accuracy and for an initial response to the recommendations. I was grateful to all those who took the time to look at the Report and offered helpful feedback. I have carefully considered those comments and feedback, made changes where it was necessary or appropriate, and the final publication copy of this Report was issued in April 2021. In particular, this has resulted in some changes to the text and recommendations on the relationship between the Court and Tribunal, Tribunal procedures and the governance structures.

Appendix 3: Agency Social Workers Tax Scheme

1. For those agency workers who are appointed for a period of 12 months or more, the States pay to the social worker each month, the amount to be deducted under PAYE, and certified by the Recruitment Agency the amount deducted for and accounted to UK Tax. This does not include social security payments.

2. The agency worker at the commencement of their engagement executes a form of undertaking to the States of Guernsey agreeing that at the end of each tax year they will

   (a) repay to the States of Guernsey the amount of the UK tax deducted which the States have paid the agency worker;

   (b) to be repayable:

      (i) within 14 days of receiving it from the UK Revenue Service; or

      (ii) twelve months following the end of the current tax year

      whichever is earlier, and

   (c) apply for a refund of their UK tax not later than three months following the end of the current tax year

Appendix 4: Standing Agenda and Attendees Family Court Users Group

Attendees:

Judges sitting in the Juvenile Court
Law Officers Child Care Team
Officers at the Children's Convenor
Practitioners at the Private Bar dealing with Child Care Cases.

Standing Agenda:

1. Review of the minutes of the last meeting and actions arising.

2. Practice points (on an anonymised basis) arising out cases, and suggestions for changes to practice and procedure – including Practice Directions or legislation.

3. Problems experienced causing delay or other difficulties and any suggested resolution.

4. Notification of any changes to policy, procedure or personnel:

    4.1 At the Tribunal (or within the Convenor's Office);

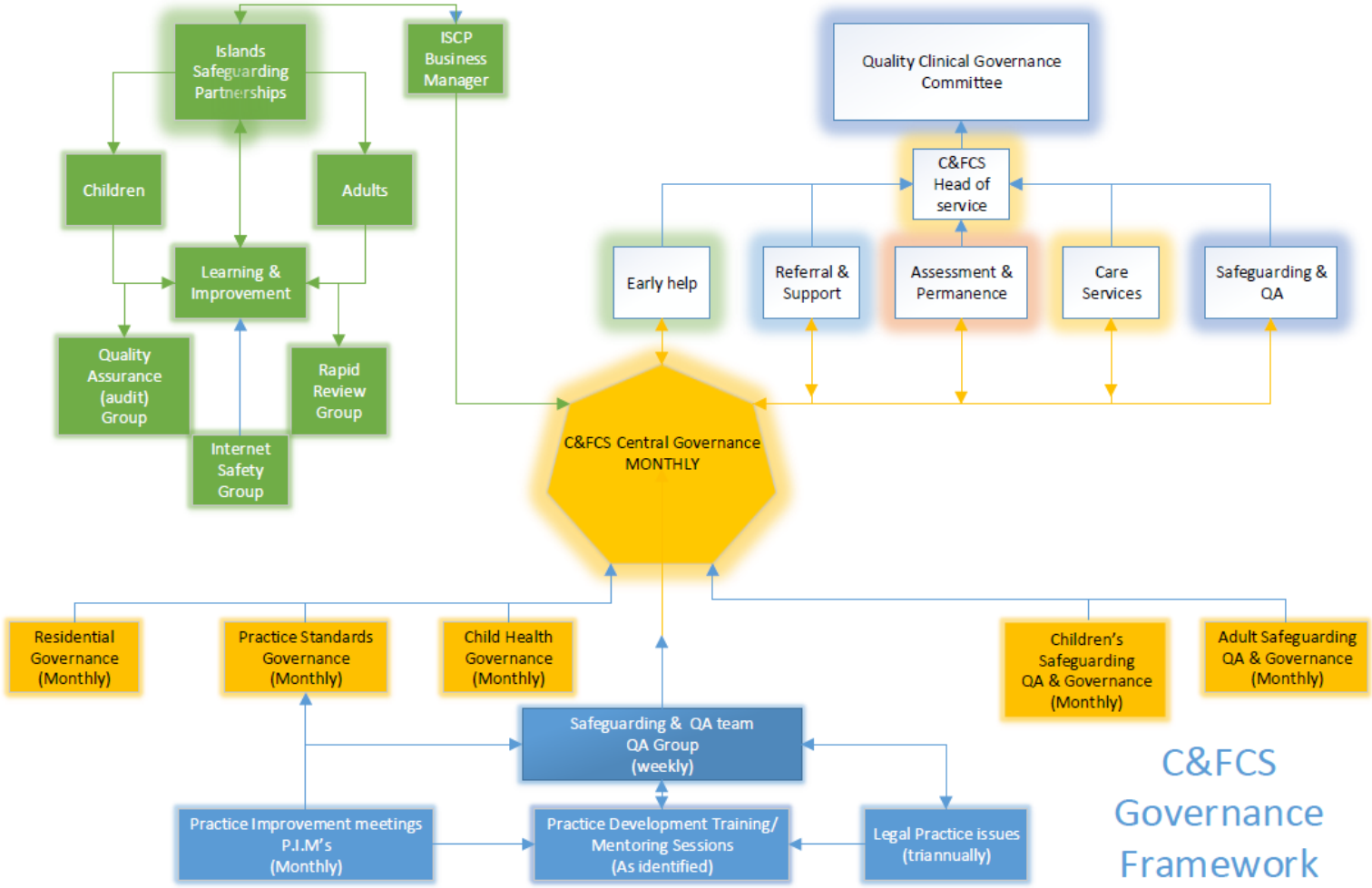
    4.2 The Court

    4.3 Within the public law team at the Law Officers.

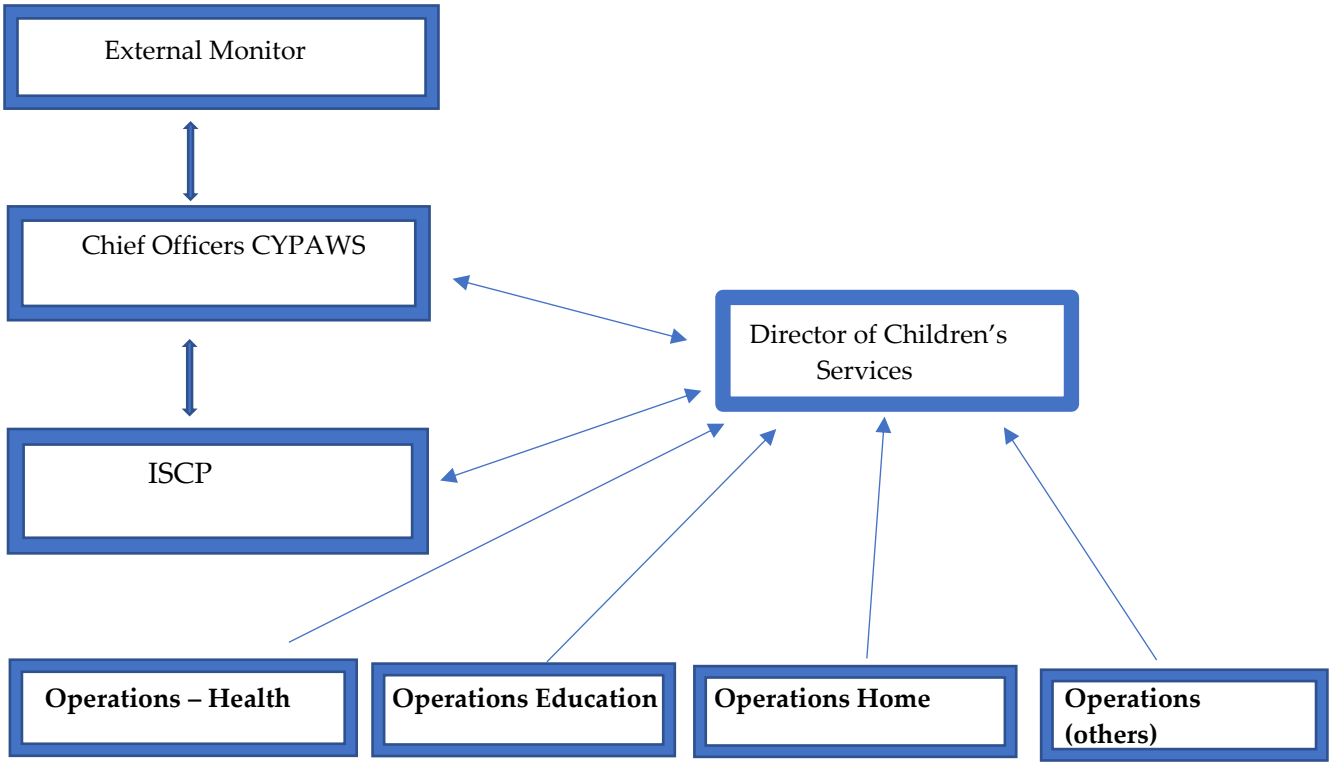
5. Training or other CPD offered or proposed.

6. Any other matters to be raised.

Appendix 5: Governance Organogram (within HSC)



Appendix 6: The Proposed Governance Structure



1. Island Safeguarding Children Partnership (ISCP)

This structure would continue to be constituted as presently under the Law but is moved out of the Children & Family Community Service Governance Framework and operates as a multi-disciplinary and multi-committee group.

The mandate of ISCP is the safeguarding of children and vulnerable adults. Specific responsibilities are those currently entrusted to it under the Law.[44]

ISCP is monitored by the Chief Officer CYPAWS Group as part of that Group's overall assurance obligations. The current regulations would, subject to any necessary amendments to implement these recommendations, continue to govern the oversight of ISCP.

ISCP works with, reports, and is accountable to, the Director of Children's Services for safeguarding. Implementation of the work of ISCP is undertaken through the DCS office. Although final authority (as between the two) is vested in the DCS, ISCP is 'the subject matter expert' on safeguarding.

[44] It is important to appreciate that ISCP is only *part* of system governance, being responsible for that part of system governance that relates to safeguarding (including vulnerable adults). Overall responsibility *including safeguarding* is at the next COCPG level and facilitated by the DCS.

DCS is entitled to attend and participate in all ISCP meetings (including initiating, updating, and reporting back on the agenda), but is not a formal member of that Group.

2. Chief Officers CYPAWS Group

This is the renamed Chief Officers Child Protection Group. The Chief Officer's Children, Young Person and Adult Wellbeing and Safeguarding (CYPAWS)[45] Group is the top group in the system governance structure. It is chaired by the Chief Executive. It holds final responsibility and accountability for system governance. The DCS is a member of the CYPAWS Group, and acts as facilitator of that group.

Membership of CYPAWS needs to be of sufficient seniority but in touch with operational delivery of services. This is likely to include (in addition to the Chief Executive and the DCS), Chief Police Officer or designate, and senior Health and Education Officers. The Chief Executive in chairing this Group will give it the political weight needed and provide a direct link to Policy and Resources. The Presidents of Health, Education and Home are entitled to attend meetings of CYPAWS should they wish to do so, but it is not expected that they would attend every meeting.

Key roles for this leadership group include:

- Setting out the overall direction and priorities for the system, taking account of, and responsibility for, work produced by ISCP and key States' plans such as the Children and Young People's Plan;
- Ensuring key policies are in place such as information sharing/escalation;
- Ensuring staff can access training, policies and procedures;
- Developing and maintaining key strategies-neglect, sexual abuse, child exploitation and similar;
- Reviewing serious child safeguarding incidents that have been investigated by an independent person and learning disseminated;
- Arranging for all child deaths to be reviewed;
- Provide a mechanism for the wider network of partners to contribute;
- Responsibility for data collection and recommendations on resource allocation.

This work is effectively initiated and carried out as part of the DCS function. The CYPAWS group will therefore usually be acting by way of challenge and monitoring of the system, rather than themselves initiating the agenda. These senior officers are well placed to do this as they have operational responsibility for large groups of staff undertaking safeguarding work and are likely to be the strategic safeguarding lead in their own organisation. They understand how services need to work together and can agree multi agency approaches to improve outcomes, can commit resources and make decisions on behalf of their organisation.

3. Director of Children Services

[45] Unfortunately, this was the best name I could come up with.

This is a States executive appointment with the overall responsibility for the strategic and operational direction and performance of work with children and young people.

Those responsibilities will include:

- Initiating, developing and the continual review and any amendment of the overall strategy, direction and priorities of the system and any issues arising, responsibility for effective governance of the system and the governance and implementation of all other key plans relating to children and young people, including the Children and Young People's Plan.
- Accountable to and facilitating CYPAWS.
- Working with, receiving reports from and implementation of strategic safeguarding decisions and policies of ISCP (as the subject matter expert).
- Establishing operational integrated groups at committee level with Health Education and Home Affairs and relevant agencies (see below) on operational issues within the system and which groups will also lead on the "keeping safe" section of governance;
- Ensuring key policies are in place such as information sharing/escalation;
- Ensuring staff can access training, policies and procedures;
- Developing and maintaining key strategies-neglect, sexual abuse, child exploitation and similar;
- Reviewing serious child safeguarding incidents that have been investigated by an independent person and learning disseminated;
- Arranging for all child deaths to be reviewed (by an external party if appropriate);
- Provide the mechanism for the wider network of partners to contribute;
- Responsibility for data collection and recommendations on resource allocation.

Functions are carried out by DCS, through effective cross committee structure(s) but allowing for other activities including one-to-one meetings where appropriate.

4. Operational Integrated Groups - Safeguarding

Good governance (including safeguarding) practice needs to be multi-agency to ensure children and families can receive targeted support which is co-ordinated. An operational safeguarding integrated structure, co-ordinated by the DCS, brings together all the agencies that have a shared responsibility to safeguard and promote the wellbeing of children.

Although there are many organisations that have a responsibility to safeguard children, children's services, education, and the police are those with primary shared and equal responsibility to ensure arrangements are effective operationally.

This shared and equal responsibility will be discharged through the respective designated officers' accountability to the DCS whose primary function at operational level is to facilitate that multi discipline and cross committee working. Other operational agencies working with the DCS will include the Convenor, the Family Advisory Service, the Probation Service, the Prison Service, sports organisations and third sector. These designated officers will be the lead officer for their organisations' internal governance structure.

In addition to establishing operational accountability, the DCS will also be responsible for working with those operational groups to implement approved strategic and policy direction, including best practice and regulatory standards and compliance. This covers a wide range of policy matters as well as incorporating safeguarding responsibilities.

5. External Monitor

The CYPAWS Group are held to account through independent scrutiny of the arrangements by an external monitor. This suitably experienced person is contracted by the States and should regularly liaise with the DCS and Chief Executive so that there is line of sight to safeguarding arrangements at the highest level.

CYPAWS should produce and publish an annual report and an annual statement of assurance which is to be reviewed by the external monitor. Inspection arrangements should include a methodology that assesses the effectiveness of multi-agency working. The Annual Report (suitably anonymised if required) should be published by the States.

6. The Children and Young Peoples Supervisory Group

This group should be abolished, its functions being subsumed into the structure described in this Appendix 6.