



OFFICIAL REPORT

OF THE

STATES OF GUERNSEY

SCRUTINY

COMMITTEE

Children Law Review

HANSARD

The Royal Court, Guernsey, Wednesday, 2nd December 2015

No. 1/2015

*All published Official Reports can be found on the
official States of Guernsey website www.gov.gg*

*Published by Her Majesty's Greffier, The Royal Court House,
St Peter Port, GY1 2PB. © States of Guernsey, 2015*

Members Present:

Chairman: Deputy Robert Jones
Vice-Chairman: Deputy Paul le Pelley
Deputy Chris Green
Deputy Lester Queripel
Deputy Arrun Wilkie
Deputy Laurie Queripel
Deputy Peter Sherbourne
Deputy Garry Collins
Deputy Barry Paint

In attendance:

Mr Mark Huntington (*Principal Scrutiny Officer*)

Business transacted

Procedural – Remit of the Committee	3
EVIDENCE OF Kathleen Marshall, Independent Reviewer	3
<i>The Committee adjourned at 10.31 a.m. and resumed at 10.46 a.m.</i>	<i>18</i>
<i>The Committee adjourned at 11.58 a.m.</i>	<i>35</i>

Scrutiny Committee

Children Law Review

The Committee met at 9.30 a.m. in Room 6, The Royal Court

[DEPUTY ROBERT JONES *in the Chair*]

Procedural – Remit of the Committee

The Chairman (Deputy Robert Jones): Elected representatives, our witness and members of the public, our session today forms part of the Committee's review into the implementation of the Children Law 2008. Please note that filming and photography are strictly prohibited, and can I ask anybody who has a mobile device to please put them to silent. It is essential during our session
5 that the Committee is able to hear from our witness without any interruption from the Public Gallery.

You should note that the meeting will be recorded and a full *Hansard* transcript will be published.

This hearing will be followed by a second event, which will be announced shortly, where the
10 Committee will question the relevant Government Departments.

I should also make clear for the avoidance of all doubt that this is a parliamentary committee hearing, and our focus will be clearly on the implementation of the Children Law.

I would like to welcome Kathleen Marshall. Kathleen has extensive experience in children's issues and amongst her previous roles she was the first Commissioner for Children and Young
15 People in Scotland from 2004 to 2009, and a visiting Professor at the University of Strathclyde. She has published widely, and has undertaken extensive research into children's participation, both in general and within the court system, and has written extensively on child protection issues.

Kathleen has no previous connection to the Channel Islands before commencing this work, and was seen as an ideal candidate to undertake this independent review with a wealth of experience,
20 an international reputation in this area.

The Committee believe that five years after the inception of the Children Law it was appropriate time to review its implementation – the first independent review of this important area. The Committee therefore welcomes the publication of the Marshall Report. The purpose of the hearing today is for the Committee to have the opportunity to question Kathleen Marshall in
25 public, on her findings and her recommendations.

EVIDENCE OF Kathleen Marshall, Independent Reviewer

The Chairman: Good morning, Kathleen.

Kathleen Marshall: Good morning.

30

Q1. The Chairman: I will kick off this morning with a few questions which cover the general observations of the report. So the first question I would like to explore with you is: could you explain the level of engagement you encountered by interested third party organisations, voluntary support groups and individuals providing information to the review?

Kathleen Marshall: I would say I had excellent engagement with third party groups. I think that shows a very worthy commitment to working together to protecting the interests of children and young people in Guernsey and Alderney. As the report indicates, for example, I had a lot of association with the Youth Commission who were really helpful. I spoke to their staff, I met their Youth Forum, they arranged a visit to Alderney for me, and I spoke to young people there and a whole variety of people in Alderney. Action for Children allowed me to attend their drop-in where the young people made a meal, which I was allowed to participate in so I could speak to them.

Barnardo's; I visited the Hub Citizens' Advice Bureau gave a very helpful briefing; I met advocates who were exceptionally helpful, their insight into the workings of the Law; disability organisations, foster carers. So I really had exceptional ... people were very willing to talk and to give their view on the implementation of the Law.

Q2.The Chairman: Excellent.

Did you come up against any specific barriers to gathering your information for the review?

Kathleen Marshall: Barriers? Well, from the beginning we knew there was a barrier in that some people felt not able to talk to the review. They were concerned that either from the general law or from court orders, they would be breaking the law if they spoke to the review about their experiences in court. That was something that I think we tried to deal with from the very beginning, in drafting an ethics code, etc. and how we would deal with this and how we could allow people to speak to us in a way that did not compromise them.

There were also some constitutional issues about how much the review could look at court-related issues, in terms of the separation of powers. That was quite a challenge, because if you are talking about implementation of the Law, the court provides both a kind of context and also the interfaces with how the Law is implemented, so I had to negotiate that.

There were also issues about lack of data and about few people having experience of the old law and the new Law that would allow a comparison to be made. So I think they were the main barriers to the review.

Q3. The Chairman: I think a little bit later on, we will have questions relating to certain rules of the court and I think some of my colleagues will question you on the data issues.

You say people were reluctant to talk. Do you think their fears were justified? We will talk about that in depth later.

Kathleen Marshall: Well, yes, because I do think ... I was surprised when I was first approached about this, and there were issues about court-related processes. When I looked into it, and I read the Rules of Court, I could see that the restrictions on speaking about court processes appeared to be more comprehensive than I had come across before, so yes, I think their fears were justified in that respect.

Whether action would have been taken, I do not know, but I could understand, when I read the Rules of Court, why people were concerned.

Q4. The Chairman: Compared to other reviews that you have conducted elsewhere, do you feel there were any missing components to this review, in terms of some of the barriers and the reluctance to talk to you?

Kathleen Marshall: I suppose the reluctance ... I do not know what people would have told me –

The Chairman: Of course.

85

Kathleen Marshall: – who did not speak to me, so that isn't an omission. That is just a question mark.

I think I did get a lot of information from people who had gone through the processes, and it was a challenge in that respect to do it.

90

I think one of the difficulties also, always, with having a review of this is just like consultations: ordinary people with busy lives do not normally engage with them, and people are not going to come and tell you about positive experiences. It is natural that people will come and tell you about experiences that have not been very happy ones.

95

So I was very keen that we would go out into the community and actually meet people in a more general basis, and that provided a bit of balance to the review – and if anything, I suppose I would have liked to have done more of that. Just meeting people in their own space and finding out what their experiences were from their perspective and young people as well. I got a huge amount of information from the few young people that I met, and I thought that was useful and the sort of area that could be expanded.

100

Q5. The Chairman: Could you then generally just sum up your overriding opinion regarding the current position of the Children Law?

105

Kathleen Marshall: Well, generally, people were very much in favour of the Law itself, and I think that reflected the huge amount of work that went into creating it. I was very impressed when I saw the huge amount of consultation with young people as well, and the reflection and looking at other systems. So it was a very carefully considered Law. In the private law, people were appreciative of the fact that it had opened up the processes to wider groups of people, and that it helped unmarried fathers, for example.

110

So I think generally, the Law is good. There were issues about practice and private law, as you will see from the report issues, a lot of concern about the Safeguarder Service transparency and accountability, about supporting access to mediation. In public law, the issues about the Tribunal system not being fully understood or fully integrated; about sharpening the interfaces of different processes – it was not always clear what separated one process from another. And that impacted on families, because they were not clear either, and they found themselves drifting.

115

So there were issues about that, and I think I summarised it by saying that there was unfinished business on the public law side.

Q6. The Chairman: That is right.

120

You talk about implementation and bedding in. Do you feel there is a difference?

125

Kathleen Marshall: Well, yes, you are not going to have it ... it cannot bed in if there is not the infrastructure that actually joins together all the high level statements of the Law with actual practice. Because of that, and because you have a big turnover of social workers, and they come often from England, and there are not the regulations and guidance that support the new system, they fall back on what they know, quite understandably.

130

So that is what I am saying: it has not bedded in, in the way it should, and it is experienced as a bit of an add-on, and I think that came out very much of the diagnostic report that was done for HSSD, and it also has an impact on families, because if professionals do not understand how one process differs from another, how are families going to? So they experience it as a whole multiplicity of processes as well.

Q7. The Chairman: We have touched on some of the issues that might have helped. Is there anything else that you would like to expand on that might have been done to help the system bed in a little bit more easily?

Kathleen Marshall: I think more training as well. I think because you have got a particular issue in Guernsey with the personnel at the very front line and the turnover of staff, who need to be constantly trained and made aware of the place of the Tribunal in the system. I think the general view is that the implementation group was stood down too early, and then people moved on, etc. So I think that work should have been sustained and with a constant process of reflection of how it was bedding in and how people were understanding it, and that did not happen.

Q8. The Chairman: You arrived at 21 different recommendations. I guess one of the questions that might well be asked, and I think was raised in the HSSD diagnostic report, is that in the current strained economic climate, where financial resources are minimal, could you maybe inform the Committee of your opinion of which recommendations might well be prioritised at this stage?

Kathleen Marshall: A lot of the recommendations actually are not going to have financial implications: things like putting minutes on the website and things like that to increase transparency.

I think the secondary legislation and guidance has to be a priority. From the point of view of public confidence, inspection of the Safeguarder Service, which I think would help the Safeguarders as well to feel that somebody external has had a look at it.

I think the issues in Alderney have to start very shortly; really ... I was surprised that there were only five responses from Alderney to the Children and Young Persons' Plan consultation. I spoke to more people than that during my day visit!

Also Rule 58, allowing people to seek an independent avenue for complaints, but also I think one of the ones that is going to cost money is services for children in need and family support. That is one of the reasons too for the way the different processes meld into each other, because people look at the increase of children on the Child Protection Register, but one of the reasons for that is there is nothing to step down to, and so people will use more formal systems than are required, in order to get accesses to services for children.

So I think that service provision at the basic level is probably one of the things that will cost money, and whether that can be done in conjunction with charities or not is one thing to look at. That can be quite a good way of doing it, because people who are resistant to social work intervention can be more open to charities. But there were some very good examples of HSSD projects that I visited. I really enjoyed my contact with the parents and children there, and that was very much a positive, and I think trying to move to developing more of that would be very helpful.

The Chairman: Deputy Queripel.

Q.9 Deputy Laurie Queripel: Yes, Kathleen, could I just ask you, in regard to those missing links as it were, are there any models in other jurisdictions that you think you could look at that could help to guide us, to fill in those gaps?

Kathleen Marshall: Which missing links are you...?

Deputy Laurie Queripel: You were talking about some of the services and the children in need situation.

Kathleen Marshall: Well, there should be ... Because there are duties, certainly in Scotland – the local authorities who provide the services have to produce information on services for children

185 in need, so that should be accessible. I think it is a challenge for all agencies – all jurisdictions – it is not just here, but the problem is if you do not get that support at the early stage, then your people are going to move up the system, which is going to be more costly, but also more intrusive in family life.

I know years ago, I remember reading something about Norway, I think, where they had put huge investment in early intervention and family support, etc. in order to try and cut off the drift into more intrusive intervention in children's lives, and I think that had some effect.

But you do have to go through a period where you are actually both doing fire prevention and firefighting. Because you can't stop fighting fires in order just to start preventing them; you have actually got to do both at the same time.

195 So I think there is some experience of that elsewhere that could be looked at.

Deputy Laurie Queripel: Yes, thank you.

The Chairman: Thank you.

200 Deputy Paint.

Q10. Deputy Paint: Yes, as you may know, next week, there should the debate in the States on gender equality regarding marriage between two same-sex people. Have you experienced anything of that sort where you have been, that the laws have to be adjusted to suit it?

205

Kathleen Marshall: Well, I mean ... *(Interjection by Deputy Paint)* I think actually the Children Law has gone some way to doing that, because gender equality is one of the principles that was added into the child welfare principles after consultation. One of the recommendations I made, which may seem quite minor, it is just that that principle does not appear on the face of the template for the Safeguarders' reports, and whether that constant reminder will help, that this is actually one of the things you should be addressing.

210

So gender equality is already there, whether the people are married or not, and I think if you are looking at it from the point of view of the child, then the legal status of their parents is probably irrelevant to them. It is their relationship with their parents that is actually important.

215

Deputy Paint: I was actually meaning when things go wrong, because if nothing goes wrong, there is no point in going to law. So if you have got a mother and father living together, and of course you have got same-sex people living together, can you envisage anything there, to the favour or detriment of that? Again, I think from a child's point of view, they know they have got their carers, they know the people that they are close to, and from a child's point of view, it is relationships that count, and it is up to us adults who shape systems to ensure that we do not impose their own prejudices on that, but that we look at it from the child's point of view, and these are the people who have nurtured the child.

220

I think a lot of systems have had a difficulty with dealing with that, and it is only in recent years that we have actually had things like adoption and foster care, etc. from the point of view of children. It is not that long ago where people were afraid to disclose their sexuality on a relationship break-up for fear that that would have an adverse impact on their decisions about taking care of their children.

225

I think we are moving forward with that.

230

The Chairman: Thank you.

Deputy Sherbourne.

Q11. Deputy Sherbourne: Guernsey has not traditionally done data, **(Kathleen Marshall: Yes!)** and that has been a problem which whatever this Assembly has actually done over the last three and a half years, the successive reports that actually are now producing data, and actually

235

alerting the public to all sorts of gaps in provision. This is probably one thing that I think you may well have achieved. We know the problems are there. Ruby Parry's diagnostic, which you have mentioned, highlighted quite a lot of issues that I think a lot of the Guernsey public were shocked by, or will be shocked by. Those have worked within care, education, health, have been aware of those problems for many years, and have been alerting, not the public so much, but the States to that.

Now, we have got, as I say, a lot of very good reports which we need to respond to. We have this implementation issue which the States has to grapple with. When coming to prioritising, what sort of evidence can you provide that that early intervention, spending to save long-term, early investment in people ... where should that be in the priority of the States?

Kathleen Marshall: I think it has to be a huge priority, especially in the early years. There is a lot of ... There are early years and early intervention, which have an overlap but are different things.

But I know, certainly in Scotland, there has been a huge emphasis recently on the sort of new research about how children's brains develop and things like that, and the huge importance of the very early years, before damage is done that is very difficult to repair. So there is a huge body of research about that. Of course there is always with research sometimes things come and go, but you have to go on the best evidence that is available.

I think one of the issues in Guernsey that people have mentioned to me a few times is, 'We don't have corridors full of policy officers keeping up to date with things like that.' That is one of the issues, and it is really kind of a full-time job trying to keep up to date with all of the research that is going on.

So a couple of points in the report – I have mentioned things like ... and I suppose you would say, 'Well, she would do that!' is a Children's Commissioner or Children's Ombudsman. If you can't have policy officers in every Department, you could have some kind of focus of someone whose job it was to keep abreast of international standards as well, when children's policy could have an input into different Departments of the States, etc., and comment on that from a policy point of view.

So I think there does need to be some kind of focus like that, whatever it is. There are different models of it or sometimes ... I know in my early days at the Scottish Child Law Centre, it was before there was a Children's Commissioner, and I actually did a lot of that then, at that point, on a non-statutory basis, so sometimes, voluntary organisations can take on that role.

But that is something I think is very worth looking at in Guernsey.

Q12. The Chairman: Thank you.

If I may, I will move on to one of the areas that you state in the report that you had received the most written submissions, and that was related to individuals' experience of the Safeguarder Service. You make recommendations that aim to increase the transparency and accountability of the Safeguarder Service. You suggest that one avenue might be an independent complaints procedure. Could you expand on some of the issues that were raised in relation to the Safeguarders, and then explain your opinion on why an independent avenue for a complaint might be necessary?

Kathleen Marshall: I suppose there is nothing more intimate than your family life and your relationship with your children. It is a very intense time for people, and people want to get it right. If someone is examining it, it is obviously going to be quite difficult for you from a personal point of view.

But I think there was a constant message; the issues that had come up in the media were reflected in what people told us. People felt that there were issues about attitude, there were issues about the perceived power that Safeguarders had, and that made it very difficult to complain or express concerns, because there was always this feeling that, although technically the

role of the Safeguarder is to advise the courts, courts rarely depart from them, and if you complained, or expressed dissatisfaction, that was somehow going to come back on you in terms of their recommendation to the Court.

This was not just an issue for Safeguarders; it was an issue for social workers as well. One of the families said to me, you are told that if you challenge something, you are not being co-operative, and that this would have an impact.

So that is why, as I say, although there was an issue there for Safeguarders, this whole issue about how you express concerns to people who are perceived as having power over your family life, is something that actually spreads more widely than that.

Often, even the word 'complaint' can actually be quite difficult. I know that again, with experience with young people, especially young people in care. Some of them used to say they would get angry, and they would just write out a complaint and send it off, but if they had a real issue, they were really quite scared of making a complaint because of the come-back on them.

So there was a different way for example, in that context, what happened in Scotland was, developing Children's Rights Officers who you could go to, to talk to about issues. You would explore with them, and one of the ways you might tackle the issue would be by submitting a complaint, with the support of your Children's Rights Officer; but there might be other ways you could do it.

So there is this whole issue about how people can express concerns within what is a *de facto* power relationship, whether it is in law or not. How people can express concerns in a way that they feel supported, and they feel it is going to be taken seriously.

I did think that in terms of like in the Safeguarder Service, for example, there was a kind of assumption that expressions of concern were because people were dissatisfied with the outcome, and I did not think that was always the case. I think people were sometimes talking about the process, not the outcome, and I don't think that was really taken seriously.

So there needs to be some ... One person said they would have made a complaint if there had been an independent person to go to who would take it forward. Another person said they had written one, and they had ripped it up because they were afraid of the come-back, so it is a very real issue for people.

The Chairman: But of course, as you say, there are concerns and there are complaints. (Kathleen Marshall: Yes.) It may be that not every concern leads to a full complaint (Kathleen Marshall: That's right.) and that individual, I guess needs to obtain information, not only the consequences of them making a complaint, but what will happen towards the end.

So I think you also state that this is not a problem just with these particular services, but this is a problem across the States as a whole and any other public service users.

Kathleen Marshall: Yes, and I think particularly, in a small community like Guernsey, where you do not have many options for services, if you fall out with somebody ... and if somebody makes a complaint against you, it is naturally quite hurtful, to be at the receiving end as well, whether it is deserved or not. And if relationships are ruptured within a small community, who do you then go to?

So I think the emphasis has to be in trying to maintain the relationships as far as possible. That might end up mediating about it, with an external person, before it is allowed to escalate.

The Chairman: Deputy Queripel.

Q13. Deputy Laurie Queripel: Kathleen, the report alludes to the defensive posture that the services sometimes adopt when subject to criticism or complaint. Do you feel an independent complaints procedure may help to overcome that, not only in regard to complaints, but to the attitude of the services at an earlier stage before a complaint is made – just when a concern is raised?

Kathleen Marshall: Well, I think the thing is, if there are concerns and there is a pattern of concerns, that can raise the issue ... it is like the attitudes, that may be training issues. There may even be training in body language. One woman almost acted out how a professional reacted when she was trying to make a point. The body language of people, looking around and showing that they obviously want just to get this over with and get you out the room. So there are issues like that, about how people listen and are taken seriously and reflect back.

So yes, it could get earlier ... if there are training issues. And I think the people who are in charge of training would want to know that as well, so things like expressions of concern, etc., can also help services to develop, get that feedback. I think that is a very valuable part of the process.

Q14. The Chairman: You quote in your report, 'We had a normal family life. We just got divorced.' What do you think that says about the culture, not only of Safeguarders and the other services? What do you think that says about the culture that causes so much difficulty for some families?

Kathleen Marshall: I think it is partly with people get the feeling that they are being inspected. When people split up, whether or not they have got children, things often tend to polarise. People will look back on things that happened, and interpret them differently, and make them more significant than perhaps they appeared to be at the time.

With children, that can have very unfortunate effects. I suppose there is this process that it is almost as if people are looking ... a feeling that people are looking for faults. No family is perfect. Every family has got ... No relationship is perfect. No parent is perfect. And there is a question ...

I always think back to the dissolution of the monasteries, Thomas Cromwell. What he did before he dissolved them was he inspected them! (*Laughter*) If you inspect families, you are always going to find problems, and there is a question about having a realistic approach to that, and what those problems actually mean.

I suppose it is just that because social work is associated with problems, and problems within families, there is a feeling that your family is being put into that category; whereas you may just be a family with ordinary problems that are not critical and not child protection.

So you have to have a process that is able to pick up on any child protection concerns and pass them on – like you have in schools, for example.

When you give child protection training to teachers, you are not trying to turn them into social workers, but you are trying to give them the awareness so that they can identify where there is something that really should be passed on.

I think I could see the same with Safeguarders. The question is - are they seen as being child protection? I know the Safeguarder Service feels that themselves - that even the name confuses people, and people think there is an association with child protection, but perhaps there is a case for having a different culture that starts more from the mediation side than as if it is starting off as a child protection investigation.

I am not saying that Safeguarders set out to do that. I think I am partly agreeing with what the Safeguarders say about this unhelpful confusion between the role of Safeguarders and social workers. But I do think that is a real thing for some families.

So we just have to expect that families are not perfect, and when it comes to making decisions after parents split up, then a normal family is not a perfect family.

The Chairman: Okay, thank you.
Deputy Lester Queripel.

Q15. Deputy Lester Queripel: Kathleen, somewhere in your report, you say that Safeguarders felt themselves accountable to their clients (**Kathleen Marshall:** Yes.) but my understanding is that Safeguarders are accountable to the Home Department. So what is your view of that, please?

Kathleen Marshall: Yes, that's right. I think that was the point I quoted, it came out from the Safeguarder Adviser Service minutes, possibly, when people were talking about accountability, and they said they were accountable to the courts, the advocates and the clients. I thought that was perhaps a bit unrealistic, quite honestly.

Technically, they are part of the Home Department. They are accountable to them. There is a bit of confusion, because the Safeguarder Service Advisory Committee has got some responsibilities for processes that monitor effectiveness etc. As I said, a couple of people that I had contact with had done their research and had noticed that, and wanted to find out who this Advisory Committee were, because they wanted to contact them, and they could not find any information – I couldn't find any information, without actually going to the Safeguarder Service itself – so they concluded that this Committee did not exist.

The Committee themselves, when I met the Chair of the Committee, he acknowledged that there was some confusion about lines of accountability, and had taken legal advice on it. The advice was that the accountability was actually to the Home Department. But I do think that is something that really needs to be clarified. There is confusion in there about how they are held to account.

Deputy Lester Queripel: Thank you, Chair.

Q16. The Vice-Chairman (Deputy Le Pelley): It has been put to me, in conversation that they (staff) are working on a Scottish model but with English-trained staff. Could you identify any or talk about any problems or conflicts that that might throw up?

Kathleen Marshall: Yes, because it relates to the fact that we do not have the guidance and some of the regulations that were supposed to be put in place. In fact I am told that some people write their own procedures, but if they mostly come from England, they are going to be writing it within an English context. The procedures that they either refer to from England or devise themselves won't have a place for the tribunal system in them. In Scotland, the regulations and guidance will acknowledge that, but they won't from England.

So that exacerbates the difficulties about bedding in the children's tribunal system. In the English system, social workers are much more the instigators of things when it comes to compulsory measures of care, whereas in the Scottish system, the forum for compulsion is the Children's Hearing system, which is your Tribunal, so that social workers will be providing information to this hearing, who will be the people who make the decisions – which is separate from when you are moving on to decisions about permanency.

The Children's Hearing is looking at relatively short-term intervention, the idea being the aim is that the children are rehabilitated with their families, and if they are taken out of their families, it is not for an indefinite period. The idea is to get them back in, whereas if you move to permanency, that is something for the courts - if children are being permanently removed from their families.

But that kind of separation of process – we may get into this later – it is not clear enough, I would say, in the Law at the moment, and because of the practice issues, the lack of regulations and guidance, and where frontline staff are often coming from, it is not clear in practice. So there are a number of ways in which that could be addressed.

Q17. Deputy Green: Kathleen, good morning, first of all. The first question I will ask is: one of your key observations in your report, and Deputy Sherbourne touched upon this just a moment ago, is that the lack of data collection and performance measures make it difficult to make conclusions on whether outcomes for children have actually been improved by the new Law, which of course is the whole point of having the new Law. How do you think that could be addressed practically in this jurisdiction, in terms of what data should we collect and what

445 performance measurements should we be looking at to make sure that this new Law is actually improving outcomes for children?

Kathleen Marshall: Well, I do not think you are going to get over the fact that the comparative bit is not going to be possible, because you cannot retrospectively provide that data. I do think the Children and Young Persons Plan – or the draft I have seen of it, which is quite a developed draft but obviously it is not complete yet – will help in that, because it has got the identification of outcomes and actions that are going to achieve those outcomes. They will, of course, have to be translated into some very specific things in the different departments. There is evidence that some of that is happening and that key performance indicators ... In terms of saying what should they be, I think that is probably a piece of ... I do not think I could sit there and list what all the key performance indicators would be. One of the things I am keen on though is that children and families should be asked, 'What difference has this made to your lives? Has this made anything better from your point of view?' That is a thing that I think we are not often good enough at doing, looking at it from the point of view of the children and families themselves. I think there is a sense in which, as professionals, we always want to believe that our intervention has had an impact, but do the families think that is has? So I think that is one of the key things that I ... There are performance indicators all over the place and all sorts of different systems, but getting that view is critical.

465 **Deputy Green:** Were you actually surprised by that lack of data collection etc.?

Kathleen Marshall: I think I was surprised, but I think it is something that perhaps I would have come across some years ago in other parts of the UK, and I think Guernsey is kind of catching up.

470 I think in terms of one of the boosts to the data collection etc. as well in the UK – we have had the Freedom of Information Act and everything, and there is an awful lot of information that is floating around, and sometimes you can be submerged in it almost in trying to work out what is relevant, what is critical and what is not. So I think that that just has not happened here yet.

475 I was surprised. I was surprised, for example, even at the lack of information available on the web. I am used to going to a public authority's website and getting a lot of information from that because they have to have a publication plan and set out what they are publishing, so I found that quite strange.

Q18. Deputy Green: Can I ask you about another area. One of the points you picked up in your report was that some commentators had expressed a certain concern about the developing practice of including referrals to the Convener and information about offending history that is presented to courts dealing with criminal matters. What would your view be on that and whether that is consistent with the ethos of the Law?

485 **Kathleen Marshall:** Either you decriminalise youth offending behaviour or you do not, and part of the process of decriminalising as well, apart from the Tribunal system, is even where there is the ground of referral, the condition for referral, for example, is that the child has offended, if the young person does not accept it and it goes to court to get proven, that is in the balance of probabilities. It is not on the high standards that you would have in a criminal prosecution, so you are actually using information that has not been proven to a criminal standard to inform the decisions of the court when a young person comes up later.

490 I did have some discussions with the Crown Advocate about that and about the form in which she received information about referrals, and I think there is something to be explored there because what I took from that was that, for example, the way the referral sheets come from the Police is not disaggregated into what kind of referral it was and whether it was accepted or proved or whatever. There maybe needs to be a sharpening up there as well, so there is a bit

about if there is a social inquiry report or looking into a young person's history or something like that, but it should not be regarded as a criminal offence, because it has not been through that vigorous process.

500

Deputy Green: And presumably there are human rights implications, potentially.

505

Kathleen Marshall: Yes, that is right, about if it has not been proven to a criminal standard and then it has been regarded as a conviction in later processes... or else a young person might agree to something. We have had issues with that, with young people sometimes at the urging of their parents – 'Just agree with it and we'll get it over with and it won't go to court,' that sort of thing, and then it bounces back at you and it comes up in a later forum.

So it is not fair, quite honestly. I think that is what I am saying: it is really not fair, and if it is not fair it is breaching rights in a criminal process.

510

Q19. Deputy Green: Thank you.

515

You touched upon one of the most dramatic effects of the new Law, which is the effect of decriminalisation of children, in effect. Some people say ... I am not sure I necessarily believe this myself, but some people might say that the lack of any consequences for particular actions could be a system or a scheme that does not properly address the consequences of poor behaviour. In other words, that you are departing from people taking personal responsibility for their actions by having this kind of system. Did you find any evidence for that, or not?

520

Kathleen Marshall: No, and you know this is one of the issues that I am sure would have been gone into exhaustively before Guernsey decided to adopt the Tribunal system, and it has been a debate in Scotland as well. Certainly in Scotland the impression is, 'Well, it certainly hasn't made things worse.' We do not have rampant criminal behaviour. If anything, crime has been falling and youth crime has been falling as a result of it. I tried to get some information on reoffending rates and there was not much formal verified information, although the information the Convener gave – and she emphasised it had not been verified – seemed to show that Guernsey actually fared quite well on reoffending rates compared with other parts of the UK.

525

I think, though, in terms of there not being consequences, some people expressed a view that the Tribunal is a soft option and is regarded as that by families. I have made some recommendations about saying the status of the Tribunal should actually be highlighted: things like there should be compulsion to attend. I was quite surprised that there was no compulsion to attend the Tribunal, given its powers and its status. It should be made clear, as a state intervention, that this is actually something that is quite significant, because the Convener has got very wide powers not to refer to the Tribunal and to divert, and I think that is used very frequently. So even attending the Tribunal is a consequence – you are being called to account.

535

But also there were some very strong comments on the role of restorative justice processes, which can be used as a diversion or as a condition, and some of the comments in the report about that are that that seems to be having a very positive effect. I would think that in the long term that sort of restorative process, where someone has to actually face up to the victim and the impact of that on the victim, is probably likely to be more beneficial. It is often harder for young people ... I have heard that as well: it is often harder for them than just going to a court and getting some kind of sentence that they can wear as a badge of honour.

540

So I think there are consequences, but there is still some more that we could do to actually emphasise that.

545

Deputy Green: Thank you.

I think my colleague, Deputy Laurie Queripel, will ask the next question.

550 **Q20. Deputy Laurie Queripel:** I just want to touch on some issues in regard to rule 58. Rule 58 says:

'No person may communicate information relating to proceedings held in private to which these rules apply, whether or not such information is contained in a document filed with the relevant court unless permitted to do so in accordance with this rule.'

555 The rule allows the court to give directions regulating what information may be communicated, to whom and under what conditions. You observe that many of these provisions have equivalence in other jurisdictions; however, rule 58, about communicating information, seems to go further than other jurisdictions. Strictly speaking, it forbids parties from discussing the proceedings with families, friends or advisers from whom they may need personal support, understanding or advice. Do you consider rule 58 as it currently stands to be appropriate?

560 **Kathleen Marshall:** I have not come across this kind of rule before. When it was first mentioned I was quite taken aback, because I have spent a lot of my career in child law listening to people telling me what happened in court at the end of a telephone advice line, from people who have been involved, or working with professionals. I used to do postgraduate work in child protection for a range of professionals and they would bring me their issues and we would discuss them etc. and they would provide dossiers of cases. So it had never occurred to me that people would not be allowed to talk about it.

570 I can understand, and it is perfectly reasonable, that you are not publicising it, publishing it, and certainly when people did dossiers for cases there was a huge emphasis on confidentiality if you actually identified the person you had failed. So that is understandable, but I think not being able to talk about it, both from the point of view of the individuals involved and from the point of view of the system, is not particularly helpful because individuals who are highly stressed by situations need to talk it over. Some people just wanted to let off steam when they talked to me, to try and help them understand what had gone on etc. I am talking about in previous work as well. But also what people said helped to inform changes in the system, getting their experience.

580 So I would say that something like that, that says people are not allowed to talk about something, has to be positively justified. It should not be the fall-back position. There may be circumstances in which courts want to, in a particular case, make a particular order, as they do in some cases, but it has to be very positively justified. I would think that people should be asking why is this rule there? My understanding is that there was a rule like that in England some years ago that has actually been changed. There was a lot of concern about it and it is not the case anymore. I have not ever met it in Scotland.

585 So I do think that it does need a rethink. It also feeds people's ... You read people writing in the media and all that about dark and lawless courts etc. It gives ammunition for criticising the court process, which ... we actually want to uphold the integrity of the court process, so I suppose the question is why is it necessary if it is causing all of this concern and if it is not replicated in other jurisdictions.

590 **Q21. Deputy Green:** Is there a case, Kathleen, for saying ... because Guernsey is a small place, isn't it, as you know ... Is there any merit really in saying you actually need stronger safeguards on confidentiality because it is a small place? Is there merit in that?

595 **Kathleen Marshall:** I can understand that might be the case, and I know it was an issue I raised myself during the Orkney inquiry many years ago, the Orkney child abuse inquiry, where I was concerned that details of abuse were being reported in the media and a lot of people knew who these children were. So yes, there certainly is an issue in a small community, but I do not think that takes away from the basic principle that this thing has to be positively justified, and if there was a case where there were very strong reasons why it should not be communicated, then

that would have to be set down as a matter of principle, but I think at the moment in Guernsey it is the fall-back and there are difficulties with that being the fall-back.

So I think it does need a rethink and a question on why is it actually ... Nobody has actually explained to me why it is there. Nobody has given me any positive justifications, and certainly in talking with professionals as well, my impression is that there is a kind of acknowledgement that maybe this is a bit over the top and maybe there needs to be another look. So I do hope that that will be taken forward.

The Chairman: Deputy Le Pelley, and then Deputy Sherbourne.

Q22. Deputy Le Pelley: My question links into that: do you have a view on how human rights compliant rule 58 is?

Kathleen Marshall: I do not want to make a big statement on that, but I would say that it has to be examined from a human rights point of view, the right to ... Some human rights are qualified, and obviously the rights of free speech and all that are qualified, and you would have to go through all these qualifications. If I was actually coming to a conclusion on how human rights compliant it is, I would be looking at the jurisprudence of the European Court of Human Rights etc., which I have not done in this context. So I am raising the question rather than coming to the conclusion, and I do hope that the courts will look at that.

The Chairman: I always found it a little bit odd that we are elected representatives, we have implemented as a parliament certain Laws, and the people we represent cannot talk freely to us about those types of Laws that we have implemented. I find that quite odd.
Deputy Sherbourne.

Q23. Deputy Sherbourne: Yes, I wondered if we could perhaps return to one of the Chairman's opening questions, really, which was in regard to the barriers for your report. From what I am hearing now it seems to me as though rule 58 actually is quite a restrictive element in your report, and I think that that needs to be registered very strongly.

Kathleen Marshall: Yes. I think if you have a situation where people feel they cannot talk when they feel they have got information to give to you, then that is a problem.

Deputy Sherbourne: Thank you.

The Chairman: Deputy Le Pelley will move on to Alderney.

Q24. The Vice-Chairman: Thank you, yes, I would like to move to Alderney, if I may.

You concluded that there was very little, if any, confidence that the child protection system was robust in the Island of Alderney. Could you expand on your recommendation 18 on how the States of Guernsey and the States of Alderney can work together to instil greater confidence in that process?

Kathleen Marshall: I think, for a start, any consultations that take place have to actually go to Alderney and engage with the people there and get their concerns.

I think the bit about the child protection processes, a lot of that was to do with the small community issue magnified and people feeling that if they make a referral it will be known who made the referral. That is an issue in other places, but it is certainly magnified there because you are living in this kind of environment. In order to help people to make referrals, they often need their hands held by somebody they trust. Again, it is a bit like teachers. People are afraid. They come across something and they are afraid of pressing the alarm bell that sets everything off in

motion – and then maybe it turns out that it was not quite right, they got it wrong and everything then comes against them, everyone comes against them and they get the cold shoulder and everything.

So it does lead into this other recommendation about Alderney. It is a very specific one, which is about trying to develop a stronger link with a trusted social worker, because if you have confidence that that person will not just press all the alarm buttons but will actually listen to what you are saying and take a measured approach and keep you informed of what is happening, you are more likely to report concerns, and also that that person will not dismiss your concern and make you feel stupid for raising something. So there is a big trust issue there.

Sometimes you can do it as well with intermediaries. I know that again, from work I did in schools, there was one local authority where I did a lot of work with teachers all across Scotland about child protection, and some of the most agonised people I used to meet were teachers who did not know what to do about things. There was one local authority where they had somebody there the teachers could phone, and she would mediate with them as well with social work and say, 'Well, yes, there is an issue there,' or 'We'll do this,' and all that. So there are ways you can do it. Whether you want that intermediary in the Alderney thing or you want just to have a trusted social work person who gets to know them and who is going to be there long enough to actually get known in the Island and form relationships and understand the dynamics in the Island ... I think would be the first step forward.

It is amazing, even with the young people and all that as well ... I just had one meeting with young people in Alderney. I got a huge amount of information out of that, and visiting family projects etc. and people talking to me. It is amazing the amount of information that you get, so I think if you are going to have a strategy you have got to go out and talk to people in their own terms and in their own environment, where they feel at home, and they will basically tell you what is on their minds.

The Vice-Chairman: Do we visit Alderney enough?

Kathleen Marshall: I would have to pass that back to you. Really, it is very easy for places like that to become marginalised, and they do have, as well as all the other issues and all the services that they need ... there are some very specific ones.

The people I spoke to in Alderney were very proud of their Island, and when I said this bit about lack of confidence, people were saying that against the background of pride. They were not saying there is a huge big thing that has to come out. They were saying, 'If there was a big thing, we are not confident we would know about it.'

Q25. The Vice-Chairman: Somebody who lives in Alderney told me – and I am not sure if this is true or not, but he has told me that there have been no referrals in the last three years. Would that be a matter of concern for you?

Kathleen Marshall: Yes, I would think so, because no community is without its problems. I did ask HSSD whether there were separate statistics for Alderney and they said there were not, but I have also ... Anecdotal, I think there is some concern about the lack of referrals from Alderney. So it would be a concern if there were no referrals and you would have to ask why. You just have to create the channels of communication.

I was particularly concerned about it too from the young people's point of view. What does a young person in that kind of small community do if they feel unsafe?

Q26. The Vice-Chairman: It is a very, very small community.

Could you expand on your comments regarding the Alderney safe house? This does seem to be very worrying.

Kathleen Marshall: This leads on to the issue about where young people go. A few people mentioned this about safe houses in Alderney, and once I had heard it I started asking about it. I was told that there had been two safe houses at one point and maybe one now. I think there is one for domestic abuse, actually, but certainly at least one for young people, where their parents would not know where they would go when they had a problem. There was a kind of assumption that they were run or sanctioned by HSSD, but when I asked HSSD they did not know anything about them. So there is a concern there. I think part of it shows that there is an issue, and maybe somebody has tried to have a pragmatic response to this issue, but you do have to ...

There are refuge provisions, for example, in other parts of the UK, where young people can go in precisely these circumstances, but they are regulated – the kinds of places they go to and how long they can stay there, like seven days or 14 days in an emergency, and their parents will be told that they are safe but not where they are. There are all sorts of things around that. I am not suggesting that a formal refuge provision would be appropriate for Alderney but I think you have to look into ... if not that, then what. I did refer to the position that used to be in existence in Scotland before the formal refuges were introduced, whereby the law said children could take refuge in a place of safety, which was basically of their choice, but then it was notified to HSSD, the Department, and sometimes that would be a friend's family, for example, and what it meant was that the parents could not insist on having them back but it gave a bit of space, and then the Social Services could either formalise it or remove the child, or something like that.

When the formal refuge provision came up in Scotland I was a wee bit worried about it. I do not think it has ever worked very well, quite honestly; the politicians were nervous about children choosing their place of refuge. I think there is a discussion that has go on and young people have to be involved in that discussion, young people who know Alderney: what would make you feel safe; where do you think you could go and how?

I was really surprised when young people were saying they had not been off the Island for three years – school trips – and I thought also the other thing I mentioned about older young people going to Guernsey, not being able to stay there and sofa surfing, potentially with undesirable people, is a real worry. I think all these issues about residence rights and young people being born and educated in Guernsey as well – there is maybe an issue that has to be looked at there so that young people can go somewhere and they are not just going to be sent back, and they do not have to form inappropriate relationships in order to stay.

Again, young people have to be involved in those discussions about what would help to make them safe and what mechanisms would actually be practicable. You do not have to ask ... You can do it in the sense of scenarios and things, so they are not talking about themselves: this is a scenario and what can they do, what would be helpful, what would not be helpful. So there is a big debate that has to go on about that.

The Vice-Chairman: My last question was going to be about sofa surfing – you have covered that, so I will hand you back to the Chairman.

The Chairman: Thank you, Deputy Le Pelley.
Deputy Sherbourne has a question.

Q27. Deputy Sherbourne: Yes, I would love to pursue that, because I have some personal experience of working and living in Alderney and I think that actually we are living with the legacy of the 1948 agreement that actually defers a lot of responsibility to Guernsey. My experience is that there is almost like a wall there, that the services that Guernsey manage are nothing to do with the States of Alderney and therefore there is not the joined-up thinking and the support maybe from the Alderney government, as much as anything, and I think there needs to be that joined-up planning and thinking, especially in this area. Would you agree with that?

755 **Kathleen Marshall:** Yes, I would, and I think, again, where you have got this wall and this sort of accountability, monitoring lines are not clear, and the States of Alderney mentioned that themselves, that they feel they have got some responsibility for it but they do not have any means of monitoring it – they do not have service level agreements or anything like that. So that certainly is an issue that really should be explored in greater depth, and who has ownership, who has knowledgeable ownership, understanding Island life, understanding what is going on – who is
760 actually able to monitor what is happening. So there is definitely a discussion that has to happen there, because what is appropriate for Guernsey might not be appropriate for Alderney – you might need something else.

765 **Deputy Sherbourne:** Can I just add that from my experience the Police have had the same issues. It takes a very special person to actually police Alderney. It is an issue. But again there will be experience in the Home Department that needs to be shared with HSSD and it is that sort of joined-up thinking I would like to promote.

770 **Kathleen Marshall:** Yes, I agree with that.

Deputy Sherbourne: You agree, thank you.

The Chairman: If there are no further questions we are going to take a very short break, 15 minutes, and then we will resume at quarter to 11. Thank you.

*The Committee adjourned at 10.31 a.m.
and resumed at 10.46 a.m.*

775 **The Chairman:** Okay. We will reconvene with Deputy Lester Queripel.

Q28. Deputy Lester Queripel: Well, Kathleen, my first question focuses on the updated version of the Children and Young People's Plan because our Health & Social Services Department will soon be publishing that plan, as required by Children's Law.

780 You tell us on page six of your report that you believe the updated plan will:

'...go some way towards better implementation of the States' duty to provide services for children identified as "in need."

I understand you have seen a draft version of that plan (**Kathleen Marshall:** Yes.) but bearing in mind that some of us on this panel have not seen that plan – I have not seen it – can you tell us please why you came to the conclusion that the updated plan is actually an improvement on the current plan that is in place?

785 **Kathleen Marshall:** Well the current plan was reviewed and criticised as being, I believe, 'high ambition, low delivery' and I think there were about 64 workstreams in it, so it was very complex and did not make a huge amount of impact.

790 I think the draft I have seen of the new one is simpler and is formulated around specific outcomes for children. There are actions related to that in terms of what needs to be done to measure whether these outcomes have been achieved. So I think it is trying to take a kind of prioritising approach and focusing on outcomes. Hopefully that will then catalyse within the Departments, work within each Department to identify what they have to do. There is a duty in the Law for all the Departments ... Although HSSD prepare the Plan; the duty is for *all*
795 Departments to implement it. So, they are going to have to work together on this. If they are all working towards one master plan and have indicators as to whether they are achieving their aims, I think that can only be better than what has happened up until now. Obviously, along with other initiatives, I think it will help the working together. As I said, even in the period of this year, there

have been developments that have changed the landscape of working together: the MASH, Multi-Agency Support Hub, that meets daily to discuss working together for particular cases and the move towards a single Children and Young People's Plan, that all agencies will buy into. All of these things together with the focus on outcomes and indicators will be helpful.

I did make a comment about it is not the same as children in need. The Children and Young People's Plan is wider and I think we still have to make sure that the state implements its duty to identify children in need and provide services for them. Some of these will be provided for by the services that are in the Children and Young People's Plan, but almost by definition, there will be some others that will not. So there is still another issue about children in need. I am saying that the Plan, as I have seen it, will go some way to doing that, but that does not abnegate the responsibility to focus on children in need as well.

Q29. Deputy Lester Queripel: My second question actually focuses on the Multi-Agency Support Hub, otherwise known as MASH – which reminds us all of a television programme from the 1980s. **(A Member: Speak for yourself.) (Laughter)**

On page 75 of your report, we are told that our Housing Department:

'...are not always invited to [MASH] case conferences ... even when housing [and accommodation] is a key factor in the case [where a child is involved].'

But you do not actually make a recommendation that our Housing Department be included in MASH. Instead, you just say:

'It might be helpful if representatives of the Housing Department were included...'

So my question is: could you tell us why you did not feel it necessary to actually make a recommendation, please?

Kathleen Marshall: Well the Housing Department comments were not specifically related to the MASH. They were related to not being involved in case conferences and feeling that some of their concerns were not taken seriously or as quickly as they thought were justified. So I was suggesting that being included in the MASH might be one way ahead, but I have not discussed that with our Housing Department or HSSD. So I suppose what I was showing there was a direction of travel and one thing that might be considered. But I did not want to be as specific as making a recommendation because it is a very detailed thing, a very concrete thing and there might be better ways of doing it. I think that is really what I was saying. I did not feel strongly enough that incorporation in the MASH was either *a* or *the* way to address this issue; to put that as a specific recommendation, but I think it is something that they need to discuss. I think the MASH is still developing, so I was, if you like, pushing that information in their direction and saying, 'Well, this is one of the things that you might consider, but basically, there is a case for involving Housing more in whatever way is appropriate.' I did not feel strongly enough that the MASH was the appropriate way; to make it a recommendation. That was really: I am putting it over to them to discuss.

Q30. Deputy Lester Queripel: My next question focuses on the United Nations' Convention for the Rights of the Child. We are told on page 90 of your report that:

'Guernsey and Alderney have yet to sign up to the ... Convention ...'

You also say in the same paragraph that:

'The commitment to this in the draft Children and Young People's Plan is encouraging ...'

Just bearing in mind that I have not seen the draft version; some of this, other Members on the panel have not seen that either. Can you tell us, please, does the Plan actually state that Guernsey

and Alderney *are* going to sign up to the Convention? And does it give a specific date regarding the intention to sign up?

845 **Kathleen Marshall:** No. It has it as a priority action. In fact the very first one of the priority actions is moving towards it. But I think the process is: my understanding is it would have to be the UK who extended it, I think, to Guernsey, but Guernsey would approve that. So there is a process that has to be gone through. I also seem to recall, I think there was actually a commitment to it in the 'Billet'? (**Deputy Lester Queripel:** Billet.) I think there was even before the
850 Law. So it has been a longstanding thing. I do not think the people who are operating the Children and Young People's Plan can do it themselves. They want to work towards it. So there is not a date.

I was really surprised when I discovered that Guernsey was not covered by it – or Sark for that matter – because for years we have been saying, speaking at conferences about the UN
855 Convention and saying, 'Everyone in the world has signed up to it apart from the USA and Somalia.' Nobody added Guernsey or Sark. In fact, Somalia has signed up to it now and South Sudan is the other one that has not. So I was really surprised that it was not signed up to it.

It is actually very important, because I do think things actually did happen as a result of it. When it was first passed by the United Nations in 1989, there were loads of conferences about it –
860 many of which I spoke at – about whether this Convention was going to be any use or whether it was going to be a paper tiger was the thing. But actually it really has fuelled developments in child law and policy and to a marked extent.

Also every few years the government has to appear before the UN Committee on the Rights of the Child and be questioned on its progress in implementation of the Convention – and I have
865 been part of that process as well at the UN, attending it. What is significant is that in the run up to that all sorts of things happen because governments want to be seen to be compliant with the Convention. So it is actually a very useful thing and I would hope that that would go forward as soon as possible, but I do not know. I suppose I am passing it over to the politicians here to take that forward as an urgent matter.

I think there is also a misunderstanding sometimes, which the UK government had at the beginning when the UN Convention was passed, because some of their early statements, before they ratified it, they were saying, 'Well we will ratify it once we are sure all our laws comply with it.'
870 But nobody is in a situation where all their laws comply with it. It is not a stamp of good housekeeping. It is an aspiration and so everyone is working towards full implementation of the Convention, but you are constantly met with new challenges and everything as well. When you go before the UN Committee, the Committee prefers it if you are not complacent and say, 'Everything is okay' but if you say, 'Well, look. We have done this and this is good. We have got a problem with this for this, that and the next reason and this is how we are trying to overcome it.' So you do not have to wait until all your laws comply with it. But a lot of the things that you have got in the
875 Children Law actually do take forward the principles of the Convention. So that is very helpful.

Q31. Deputy Lester Queripel: Thank you and that was my next question: how important do you think it is that we do sign up to it? So thank you for elaborating on that.

My last question: on page 90, the second paragraph in your report, you say, 'You were
885 encouraged to hear of HSSD's plans to establish a Corporate Parenting Board.' Of course that may sound impressive to us who have very little knowledge of childcare issues. So can you tell us, please, what do you envisage would be the actual role of the board? In other words, what is their primary purpose as you understand it?

890 **Kathleen Marshall:** I have not seen a mission statement for the Corporate Parenting Board, but corporate parenting is a big issue in other parts of the UK at the moment and it is basically taking seriously a commitment that is actually already set out in the principles of the Children Law, which is that children who are in the care of the state should, as far as possible, receive the same

level of care and protection as children who are in the care of their families and what do you have to do to make that a reality? So there has to be some forum for promoting that principle and monitoring it and taking action where things fall short. I think again it is related to the fact that there is unfinished business in that there should have been regulations about children in care and responsibilities to children leaving care and they do not exist. I would think that one of the first things a corporate parenting board would do would be to try and flesh out what those responsibilities are and to make sure that they are real.

People have taken different approaches to corporate parenting. Some people have made it very real. There was one local authority a few years ago – I do not know if they still do it – where the politicians actually took a sort of responsibility for each child in care. It was not a personal relationship, but they got told whether this young person was achieving educationally and whether there was an issue. So if there was an issue with the school, that politician would actually go and push it. That was a very personal one and I am not sure if anyone has copied that, but I think the point is it is actually taking it seriously. We are taking these children out of their families and we really have to make sure that they are getting the best care possible and that somebody is actually monitoring that care and taking things forward where it falls short. So that is what I would say would be the kind of focus of that: making sure they do not get lost. I mean, young people leaving care as well are *very* vulnerable. They need all sorts of support and they need to be able to feel that they have not just been cut off and that they have got somewhere they can go for that kind of support. So I would say it is taking forward that kind of role; making real the commitment that is actually already expressed in your law but has not been fleshed out in detail.

Deputy Lester Queripel: So my understanding then: that provision is not there already. There is no support for a child leaving care –

Kathleen Marshall: No. I think there is some, but not very much.

Deputy Lester Queripel: – and also is there any danger of duplication?

Kathleen Marshall: Yes, not very much and partly because the duties have not been spelled out. (**Deputy Lester Queripel:** Right.) It is just very general in the Law and it has not been spelled out in practice. So the responsibility will be to make sure that that actually does happen.

But this is one of these evolving things. I think it will be a question to ask HSSD about, if they appear before you, because since I started doing this Review people have told me things and updated me in some things as time has gone on, but it may be that there has been progress on that that I do not know about. I think it would be appropriate to ask them how far they are with developing the Corporate Parenting Board and what that is going to mean in practice.

The Chairman: Deputy Sherbourne.

Q32. Deputy Sherbourne: Yes.

I mentioned Ruby Parry's diagnostic before. (**Kathleen Marshall:** Yes.) And of course there is reference in that to the sort of disadvantages that children in care face throughout their life in Guernsey, whether it is at school, home or whether. Would you like to elaborate just a little bit on the ... You explained what corporate parenting means, but practically how it could manifest itself? With regard to performance at school, for example, what sort of links needs to be made? Who needs to work together on those issues?

Kathleen Marshall: Well I think there is even a bit about communication flow. Again, some of these questions will be for HSSD because they will know more what the specific issues are for children in Guernsey. But in the past I have come across issues about children having multiple placements; moving around; changing schools or they have maybe been expelled from school;

suspended from school and there is nobody there pushing the boat out to try and make sure that they get back into school or that they get some form of education otherwise – that sort of thing. So it is really that. It is a squeaky wheel gets the grease and who is doing the squeaking for these children, quite honestly? If they are in this institutional setting, who is actually taking the personal responsibility of making sure that these children's rights are respected and that their needs are fulfilled, etc.? So it is that sort of issue.

And if they have left care where are they staying? Are they in an appropriate place? Again, I do not what the issues here are. We have had issues in the past of young people being sent to bed and breakfast establishments which are not appropriate or hostels. Is there somebody that they have got they can go to for advice and support? What do they do just when they are miserable and have got a terrible cold and there is nobody to look after them? I met a young person before – again, not in Guernsey – she spent her dinner money on chocolate and Jelly Babies and stuff like that. Young people of 16 or 17 just need somebody to actually care for them. I think we use that word 'care'; we bandy it about a lot on the assumption that it means they are cared for, but it does not always mean it. Also leaving care, really it should be more continuing care. Certainly in other jurisdictions and Scotland have really extended the responsibility up to 21 or 25. So looking at all that sort of thing, but also making sure that there are personal links: people and places that these young people can go to for support. But I do not think there are as many ...

Why I am a bit hesitant in answering that very concrete is I understand there are not as many placement changes in Guernsey. I have got the feeling that placements tend to be a bit more stable, so that it may be that there are other issues that the corporate parenting would need to address, which I think HSSD would be able to answer.

Deputy Sherbourne: But the diagnostic did actually indicate that those that have left care (Kathleen Marshall: Yes.) and left the institutions that care within are even more vulnerable. (Kathleen Marshall: Oh, yes. Yes.) A higher rate of suicide (Kathleen Marshall: Yes.) and this sort of thing. Now that is really where there are some really good initiatives going on collectively, throughout the Island, on things like mindfulness (Kathleen Marshall: Yes. Yes.) and that has got an important role to play within the institutions when we are thinking a little bit ...

Kathleen Marshall: But also different kinds of support for young people who have left care. You know... a variety. Even what age are they leaving care? Should they be staying in longer? Do you have supported foster care while they go through education, further education and all of that? There are all sorts of different resources that you can have in supported foster placements, supported lodgings, halfway houses. So looking at all of that and making sure that you have the range of possibilities to respond to the needs of particular young people.

The Chairman: Thank you.
Deputy Wilkie.

Q33. Deputy Wilkie: Good morning, Kathleen. (Kathleen Marshall: Good morning.)
On page 11, you stated that:

'I have not attempted to address every provision of the Children Law, but only those that have been the subject of positive or negative comment ...'

Does it explain the focus on the Safeguarder Service in your report and that these were the most vocal parents? And do you think you may have a gap where the children in need and their parents, who do not have the loud voice or the ability to express their concerns?

Kathleen Marshall: I think you are right that there was a sense in which, like with the Safeguarder Service, the feeling was that these people needed to be heard in a kind of official way and not just through the media; so that they were strong voices and they came to me and I felt a responsibility to reflect what people had said. I think you are right, there are other voices who

995 should be helped to come forward. I think I met some of them when I went to visit things like
family projects and that is the reason I was very keen to do that. So I did get some of that view,
but I think if you had more of those kind of places where these people would be accessible and
where they felt comfortable, it would be easier to get that view. I think you are right, there are a
lot of people whose voices do not get heard and within the terms of this review, I tried to go out
1000 and meet them, because I know that is important and I got both positives and negatives from
them and again I think that is important to get a balanced approach. But, if you had more of that
– and it is places where people are comfortable – then I think those voices would be helped to
surface more.

The staff at these places say they are often ... They are able to give ... For example, where
1005 families like that do get involved in formal processes, staff at projects like that are able to give a
more rounded view of the families' circumstances, etc. because the families will open up to them
in a way that, if you have got formal process intruding on you and you are really scared stiff, quite
honestly, you give answers to questions, but they can give a more rounded view. So when you talk
about the voice of people, they are often not going to make submissions. They are going to talk
1010 to people and it is a question of how you get their voice.

I suppose what I am saying is, I think you are right that the voices that were loudest were the
ones that were about the Safeguarder Service. I think I said there were 19 of the 24 were about
that. So the others, there was some crossover. Some talked about the Safeguarder Service and
social work and others were focused only on social work services. I did reflect that, but I also have
1015 tried to reflect in the report the fact that I do understand that it is often people who have got the
problems with the services who are the ones who are going to be heard and, if we had a better
way of getting feedback generally from people – I know that is always a problem – or you had a
kind of regular inspection, so that you had objective people looking at confidential reports and
everything and able to give a view of the service from that basis, you are going to get a more
1020 balanced view as well.

Q34. Deputy Wilkie: Okay.

On page 10 I note that the HSSD and the Island Child Protection Committee made a joint
representation over the call for evidence. Do you have any comment about the independence of
1025 the ICPC and how this needs to be developed?

Kathleen Marshall: I think the ICPC at that point was going through a transition period where
I think the Chief Officer of HSSD was actually Chairing it. So I think there was issue about
independence at that point. I think that reflects the fact, as everyone acknowledged, that there
1030 were difficulties with the ICPC, some of which I have put out in the report: difficulties in the way it
was operating and that it is now moving to an independent off-Island chair and a different
committee structure. I think you are probably right about that submission, at that point in time. If
it had been a different point in time that this review was being held, then I would have expected
that we would have got two separate submissions. So, hopefully this is going to ... Well, it will. It
1035 should improve.

Deputy Wilkie: Thank you.
I am finished, Chair.

The Chairman: Thank you.
Deputy Queripel, did you have a question on the external inspection of safeguarding?

Q35. Deputy Laurie Queripel: I do, sir. Yes, thank you.

Kathleen, you referred to the ... You make some comments in regard to the Safeguarders and I
1045 just wanted to refer to that. You say, in Recommendation 4, on page 28 of the report that:

'The Safeguarder Service should be subject to regular external inspection.'

Can you explain how often you think this should occur and why?

Kathleen Marshall: Well I think first of all the commitment to external inspection appears in the Safeguarders' Vision Statement, but it just does not seem to have happened. It actually says, 'We are open to external inspection'. So it has been on their agenda. I am basically saying that that commitment should be taken up and should be implemented.

There are always going to be difficulties and criticisms and a lot of emotion about something like the kind of role that the Safeguarders play. That is natural and some people will always feel that they have been unfairly treated because a decision has not gone the way that they want it to; although as I pointed out some of the concerns were not related to that. They were related to process. I think if you had an external inspection by people who were able to look at confidential records – that I, for example, would not have been able to look at – and who are trained in inspection methodology and have standards against which to measure it, that could perhaps be a response to some of the criticisms from public and media and could also help the Safeguarders, because I know they cannot respond on individual cases. That is always the difficulty that people face in that situation. From my point of view, I cannot conclude on whether some of these criticisms are justified. I have not investigated them. We were not investigating individual cases. So, you need actually somebody who is able to look at that and come out with an objective report and an inspection report that people can access.

In terms of how often: I think normally inspections like that would be three to five years, I would think; although what often happens at inspections is, if there are concerns, then the inspectors will do a follow up report, maybe a year after. You want something that is proportional as well, because people have to be able to get on with their jobs and I would expect that we would be looking at equivalent inspections. We do not have anything like the Safeguarder Service in Scotland. So there is not an inspection. I assume that ones in England have some kind of inspection that you could maybe look to that process for some guidance.

Deputy Laurie Queripel: Thank you.

The Chairman: Deputy Sherbourne.

Q36. Deputy Sherbourne: Yes. I would like to just dwell on the complaints procedures; your recommendations on that. Do you think it maybe is an appropriate time to wrap this up with an overall ombudsmen facility in Guernsey? Now it would have to be proportionate of course given the scale of the Island. But, is this the time?

Kathleen Marshall: I could see that there would be a case for that because I think as I said before, across all services in the Island: the public interface; there are problems in people raising concerns for various reasons, even more so than in other jurisdictions. I did have, late on in the process, some contact with the Policy Council who said – and I have inserted some of that – we did a factual accuracy check and they said they are actually auditing complaints processes at the moment. I think there is some consideration of whether there is a need for something wider. So I think that is already on the agenda here and I can see that there would be merit in that rather than having a specific one for every service which probably would be more disproportionate.

Q37. Deputy Sherbourne: We have been talking *ad nauseam* about links with Jersey over all sorts of issues. Is this an area that could well actually be quite profitable for both Islands?

Kathleen Marshall: Yes, it possibly could be, because then you have ... Obviously, that is up to the politicians to decide, but that could provide a kind of proportionate response to this sort of scenario where you are sharing the costs of it and you also have elements built in of

independence if necessary. I know the HSSD complaints process ends up with a panel in Jersey already – that sort of thing. So I could see that there could be a way forward in that.

1100 **Q38. Deputy Sherbourne:** I will change direction just a little bit and look at the sort of make-up of the Safeguarder Service and the personnel that are involved: very committed people, but social workers, predominantly. You make a recommendation that maybe the service should be extended to embrace maybe other skills. Can you elaborate more on that?

1105 **Kathleen Marshall:** Yes. Well I suppose this goes to what the culture of the service is. Is it a social work service or is it broader than that? Certainly in Scotland we have Safeguarders, but they do not operate in the same way in the private law field. Our Safeguarders operate in the tribunal type system and in cases of permanency, adoption, etc. But our Safeguarders, they safeguard the interests of children. I think this is the point that the Safeguarder Service keeps trying to
1110 emphasise: that they believe the name has too many child protection connotations. It is about safeguarding the interests of children. Certainly in Scotland, they are not just social workers. They can be teachers, psychologists, ministers of religion, other people and there is a training service for Safeguarders. So you could have a wider pool of skills in Safeguarders that could be adapted to cases with the appropriate training, etc.

1115 Also another thing that has been said is – again it is small island thing and it must be very difficult for the Safeguarders involved but – sometimes the Safeguarder Service, people might have had contact ... The former social workers, people might have had contact with them in the social work capacity before, etc. so ... I know they try to avoid conflicts of interests and they bring externals from the UK in at certain points, but then you will get the point that sometimes the
1120 externals do not fully appreciate Guernsey law and how it differs from UK law, etc. So, I do think there is a case for looking at extending it and it has actually ... It did crop up when I was looking at the Safeguarder Services Advisory Committee minutes. I think it was a point of discussion at one point or somebody had suggested it, so it is not an unknown concept and I think it would be worthwhile looking at that again.

1125 **Deputy Sherbourne:** I think that is all for the moment.

The Chairman: Thank you, Deputy Sherbourne. Deputy Collins.

1130 **Deputy Collins:** Good morning.

Kathleen Marshall: Good morning.

Q39. Deputy Collins: Firstly, thank you very much for your report, I found it excellent.
1135 I just want to go over perhaps a comment you mentioned earlier about temporary or permanent removal of children. You came across, the impression, that people were just sort of signing up to something and then perhaps later regretting what they signed up to. So do your findings lead us to believe that in certain circumstances families are clear or not clear about what is happening to them?

1140 **Kathleen Marshall:** I do not think they are very clear about what is happening to them in many cases.

I think I mentioned that the whole business about going into voluntary care, signing in to it, some families did say that they felt kind of put under pressure to do it and with the kind of
1145 implication behind that if you do not do this you will be regarded as a non-co-operative parent, but then once they do it, it becomes something that acts against them because of a perceived inability to care for their children. I know one person that I talked to was saying if they had told us

that the consequences of that decision would have been this they would have done something different.

1150 The law officers have given guidance on that, on the voluntary care issue, I think as a result of the court case, but I think it is just one part of this whole process and if you challenge things you are not a co-operative parent. I do think that families need to be really clear about each stage of the process. And that is why too, in the report, before I get into the issues I tried to set out what those categories meant, what they were meant to be.

1155 Voluntary care is a family support measure, it is not compulsory intervention and then if you get in to the Tribunal that is compulsory – people should know that, they should have to go. But they should also know that the aim of this is not to remove their children permanently. Now some of that is fudged in the process, partly because getting the grounds proven to get compulsory intervention, they are so similar to the grounds for permanent removal, in a different process, that families are afraid and are maybe advised not to accept them because they are then giving the Department an easy ride in permanency. Someone else also told me about permanency through the back door, through rolling care requirements, where a child has so many care requirements that although they are not basically permanently removed from home, they more or less are in practice. So there really needs to be a lot more clarity about this.

1165 I think part of it is too, I do not think professionals are always clear about it, for the reasons that we have said about the difficulties in embedding the Tribunal system. And if they are not clear about it how can families ever be clear about it?

I would say there has to be a very staged process and families have to know, right, this is voluntary. And if they had the guidance, the regulations in voluntary care, that would all be set out what the implications, are etc., but they are not. This is voluntary, these are the implications, and then later on the state may say – look, this voluntary measure is not working, we are going to move into compulsory care and that means you are going to the Tribunal. You have to attend the Tribunal, and they can do A, B, C, and D, but you should understand that the aim of the Tribunal is to keep your family together – because they do not always remove children – and get them on the right track. If your children have been removed, the aim is to get your children back into the family, and then if that is not working you say, 'Look, we are moving on to permanence.' And hopefully not too many people would have to go through two processes. There are some, like new-born babies for example, some of them where permanence is going to be the option from the beginning. They should not have to go through the Tribunal; they should go to the court.

1180 So there is a lot of this... there is just too much confusion, and it needs to be staged and very clear about where people are in the process and what the consequences are of whatever decisions or actions they take.

Q40. The Chairman: Was there evidence that even members of the Tribunal themselves were not aware of the status and were not clear about...?
1185

Kathleen Marshall: Yes, there was one case that was mentioned where apparently in a Tribunal, I think the Chair had said, 'This is not a legal forum', and was quickly corrected by the Convener to say, 'It is a legal forum'. And I think that is a training issue because it is a legal forum; it is not a court in the sense of a courtroom but the Tribunal has got very strong powers of intervention in family life and it is important that people know that. So it was picked up, but yes, that is definitely a training issue.

Q41. Deputy Collins: Just moving on to emergency protection. Can you perhaps state the amount of cases you are referring to and perhaps generally explain a little more when you say:
1195

...were not being used often enough because of difficulties in establishing the 'imminent' nature of the risk of serious harm to the child, leading social services to look to the Child, Youth and Community Tribunal as a mechanism for removing the child.

Kathleen Marshall: Yes, again, like permanent removal, emergency removal is a matter for the courts. The Children's Tribunal was never set up to deal with emergency removal; it was set up to deal with... I mean, if a child is removed on an emergency basis then the case will be referred to the Convener, who will decide whether it needs to go to the Tribunal, but really that is something that the courts should do.

Now, the problem has been with the wording of the Act and it has got the word 'imminent' in it. Apparently the understanding has been that it has to be very imminent and that basically, it is a word we took out in Scotland I think, actually because it was difficult to prove imminence. But it is a question of whether it is practice or understanding or maybe HSSD acting on advice, but the understanding has been that they would often not reach the high standard that was required for imminence and therefore they have been going to the Tribunal with a view to the tribunal removing the child, which the tribunal can do. But the Tribunal works on a different timescale, it is not emergency removal and the procedures are not really set up to deal with that.

When you come to numbers it is difficult to give the numbers of a negative, because it was cases that did not happen. Although the Convener did give some cases that had gone to the Tribunal following an Emergency Child Protection Order and there were very few, in most years there was only one, and in the other case it would be two or three families, and you would anticipate, I think, that it would be more than that. So this is really an inappropriate use of the tribunal and it is obviously frustrating for everyone involved because of the time.

Although I did hear again, in my last visit, when I visited in September, I was advised by HSSD that there had been a very recent case which seemed to show that things were moving on in that and that this was hopefully going to be a precedent for the future, so a kind of reinterpretation of that, so hopefully that will happen. If not, then there would have to be an amendment to the Law or something, to take the word 'imminent' out and look at the wording in other jurisdictions.

Q42. Deputy Collins: But are you saying that perhaps you feel the police are not really using that at the moment where they could, or are you saying actually it is happening but in a different timescale?

Kathleen Marshall: Well, there are two different things: the Emergency Child Protection Orders are applied for by HSSD to the court. As with other jurisdictions there is another provision whereby the police can take children into police protection for 24 hours. Now that is a fall-back and I would not actually anticipate ... If the systems are working well, the police should not have to use that very often. If could be, for example, they attend a situation of domestic violence and there is no one else there and there is this child that is clearly in need of protection and they remove the child.

Deputy Collins: And as you say, that is only 24 hours anyway, isn't it?

Kathleen Marshall: Yes. I mean most of the police – we have this provision in Scotland as well – and generally what the police do is phone social work and get them to do it. So it is not something that I would anticipate would be used a lot but the point that I was making in the report was that there should be regulations to back up that provision.

In Scotland, for example, the regulations say the place of safety to which the child is taken should not be a police station. The police would have a duty to notify A, B, C and D and issues about the care of the child and what responsibilities the police had. So it was just this bit about the practical implementation of it that would safeguard everyone in the situation and help police in the situations when that arose. But it is not something that I am saying the police should be going out and doing more of this. Ideally, they should not and I would imagine if they are like our police, if at all possible they would phone social work and get them to deal with it from the start off.

Deputy Collins: Thank you.

Q43. The Chairman: Thank you.

We often hear that justice delayed is justice denied, and you refer to the delay in your report. How do you believe this issue of delay can be tackled?

Kathleen Marshall: Delay certainly featured very highly in the HSSD submission and I think in the diagnostic as well and they gave a big list of issues and referred to research about the impact of delay on children.

They did say how they were trying to tackle it and there was an update on that in the submission that they made to the review which talked about discussions that were going on. There is always – when you have got issues about delay – there is always this issue about where does the delay sit and somebody will say, ‘Well the delay might seem to be us but it is only because *you* have not done this and *you* have not given us that in time’, so there is always a dispute, and people can get quite sensitive about being accused of being the focus of delay.

The Convener also gave me a paper where she had analysed a number of cases and to show that the time periods between when it got to the Convener and when it went to the Tribunal and then the ones that obviously took the most time were the ones that had to go to court for an evidential hearing.

So there are potential blockages at different parts of the system. The update from HSSD said they had had some dialogue with the courts about this but also some of it really has to be with discussion between agencies and getting their acts together. I think things too like the single child’s plan and all that will probably help. Some of it will be about capacity. I mean the issues about... The Convener needs the child’s plan from HSSD, and maybe that does not come in in time, and then maybe there is some negotiation about the grounds for referral.

And I think a lot of the recommendations that I have made could feed in to reducing delay, like greater clarity about process, trying to avoid duplication of process. Because some of the case studies that HSSD gave there were ridiculous delays and you could see the clear impact on children where there would maybe be a new-born child who was destined for permanent removal for the family but it would go through the Tribunal and the permanent processes and there would be all sorts of different hearings etc. And in a couple of cases it was kind of two or three years before the permanence was finally decided on. In one case the child was with presumably a short-term foster family, and had bonded with that family before moving on to the adoptive parents. I mean, that is clearly unacceptable.

The principle of avoidance of delay is already in the law but we have not delivered on that. So I think a lot of the things that are going on and a lot of the discussions, I think there is a lot of energy being put into this just now.

Q44. The Chairman: So in terms of that child welfare principle, could that be underpinned by legislation? And if so how would you envisage that?

Kathleen Marshall: Yes, that is right; I have recommended ... I think there are some timescales actually. I was looking at the Rules of Court literally before I came in, but I think timescales which can help focus minds and also monitoring where the cases are going and making sure that children are given priority for court time and things like that as well, which I think they do. I think the courts do try to do that but having expectations with timescales and with how the cases are dealt with. Again, this gets into court-related issues, but I think the courts take a different approach to evidential hearings in Guernsey than they do in the Scottish model which it was decided on so that is an added time factor.

So it is a multi-faceted approach to reducing delay.

The Chairman: Thank you.

1300 Deputy Paint, you had a question.

Q45. Deputy Paint: Yes.

Obviously you have done an awful lot of work here in Guernsey, and an awful lot of work in other places. If you were to make a scoreboard where would you put Guernsey?

1305

Kathleen Marshall: *(Laughter)* Where would I put Guernsey?

Deputy Paint: With regard to children's rights and problems in comparison to other places in the UK? I know it is a difficult question to answer.

1310

Kathleen Marshall: It is.

I would say with children's rights, I think because we have not got the UN framework, Guernsey is definitely behind on that and we need that to have these analyses of children's rights impact. I think the Law has actually anticipated it and has got some of the same principles in it but because of the difficulties in implementation and the lack of the infrastructure to implement it etc. some of that has not really had an impact and I think the issue of delay is one of them.

1315

So I would not like to give a figure on this but I think the component parts are there for having a very good system but they need to be joined together and I think a principle ... I mean there are things like, in my office, we piloted children's rights impact assessments and other people have done that now, so that you take either an issue or a particular case and you actually go through it in a process to see where we have done well and where we have fallen short.

1320

I think there is a lot more that has to be done along those lines, and involving children and young people. One of the great things that has developed over the past couple of years is the HUB in Guernsey and it is amazing how quickly it has become established amongst young people. I was asking young people about it, in fact one of the groups of young people were saying, 'If we had a problem we have got the HUB, but parents don't have that, parents should have something like that as well', and they mentioned the HUB's confidentiality policies and all that sort of thing. So there are things like that that are developing, but I think embodying children and young people's voices particularly. I got a huge amount out of the few contacts I had with the children and young people because sometimes they just say something and you go, 'Gosh, that is right'. Their response to the scenarios I gave them about children in need – one had a drug-abusing mother, they were saying, 'Well, it is going to be up the child to look for help because the mother will be afraid to do so in case the children get taken away and she gets put in jail.' They know that as well.

1325

1330

So, yes, the component parts are there but it really needs to be brought together.

1335

The Chairman: Deputy Sherbourne.

Q46. Deputy Sherbourne: Yes, I would like to return to Safeguarders again and focus on the actual reports. It has been said to be by many people that as well as, obviously, a genuine attempt to solve an issue for a child you can, and what is actually said, destroy another life and that is actually said. I would like to know first of all if any of those reports have ever been overturned by the Court?

1340

Kathleen Marshall: I asked that and I got the impression that there were sometimes modifications made but that generally the reports had a huge amount of weight, but there were not statistics that were kept on it. But I think I was told that sometimes there were changes made. I was told, and certainly the advocates I spoke to seemed confident that they were rigorously interrogated.

1345

But I think it is true, and in a sense you can understand that, because they have asked a professional to go out and make a report in the interests of the child. I would imagine a judge

1350

who consistently went against those reports, people would be criticising them for that as well but I think it comes to the quality of the reports and the amount of oversight there is and I think that is where a kind of inspection could come in as well. The reason I put the template at the back of it was just to let people – because we are not allowed to see Safeguarders’ reports, court reports – show people how they were set out and that they actually did have both sides of the story in it, so to speak.

But I think they do, in principle they should carry a lot of weight, if you have confidence in the system and the report writing. I think it is just instilling and underpinning that confidence that actually is the issue here.

Q47. Deputy Sherbourne: Can I ask you to express a view with regard to the actual presiding officer in those courts; whether in fact that person should have a child law background or specialism?

Kathleen Marshall: There is a debate across the UK about the pros and cons of having child law or family law specialists in the courts and moves towards family courts in some areas and not in others. I have spoken to judges about this as well, and some of them are very much in favour of that specialisation and others are not. What I would say is that obviously they should be knowledgeable of the principles and the advocates are the ones that are presenting the cases. There is a case, I think, for making sure that advocates are appropriately trained in child law and I mentioned that, I cannot remember who had suggested that to me, like there are in some cases where there are child law panels etc. of advocates. So I think that is the case.

I am not going to make a comment on any particular judge but I think people need to be knowledgeable about child law and advocates need to be knowledgeable about child law and about the ethos of the tribunal system and everything as well. I think there is a lot that has to be done there. But generally the advocates are the ones who present the law to the judge.

Q48. Deputy Sherbourne: So can I press you on that and ask you whether you thought, from your review, that there is evidence that that is the case. That the advocates are, if you like, up to speed on family law?

Kathleen Marshall: Well, of course, the advocates I spoke to were specialising in this and they did seem very knowledgeable, so it is a question of who you get, I suppose.

I do not actually think it would be fair of me, on the basis of the way I heard evidence and almost a kind of self-selecting nature of some of it, to come to a conclusion on that. So really I would not want to come to a conclusion on that.

I think there is a case, I would say you have to make sure that advocates are involved in these cases and in tribunal cases and all that, are up to speed on their law and maybe there is a question about compulsory professional development. In Scotland we have got a child law specialism acknowledge by the Law Society, and I think there is a case for that.

Certainly, ensuring that those who are involved in the legal process are up to speed on the Law, that almost goes without saying but I am not making any judgement on particular people.

Deputy Sherbourne: No, I was not asking that.

Can I assume then that you are comfortable that those mechanisms are in place with regard to our legal system to ensure that the advocates and those involved in making these decisions are up to speed?

Kathleen Marshall: I think there is not a requirement, as far as I am aware, in advocates who are involved in child law cases to have the child law focus and there is maybe something to look at along those lines. It has been suggested to me that if you do that, given that there are so few advocates on the Island anyway, that you might actually reduce the pool of advocates that are

available to do it. So there is an exploration to be done there, so I am saying there would be benefit in that. You would have to put the costs against the benefits of it and I think that is something, obviously, that the advocates have to be involved in in that discussion as well.

But I think particularly, although the tribunal system, the advocates do not get involved at the tribunals except in particular cases where there is a specific need, but possibly they could do with more understanding of where the tribunal system fits into the process. I think some advocates have got concerns about it and about human rights issues related to the tribunal.

In Scotland we have had a whole host of human rights challenges that the system has met and it has evolved also in response to them, I am not saying it has stayed the same. So we have got a history of that and there could be some merit in instilling confidence in the tribunal system, in having someone like an Advocate from Scotland who has been involved in all these human rights challenges, coming to talk to the legal professions here, and answering their questions and concerns about it.

The Chairman: Deputy Lester Queripel.

Q49. Deputy Lester Queripel: Kathleen, did you ever look into who actually compiled the Children Law and what their role and their input was in that?

Kathleen Marshall: I have a feeling it was ... When you say 'compiled', there are different things. There is what were the policy objectives, what the broad system was, and then who actually wrote it.

The policy objectives were very much a big Guernsey project. I was very impressed at all the consultation that went on before it. It took a long time and a lot of people were involved – the voices of children and young people as well – and they went and looked at different systems. So if you are looking at that part, that was a Guernsey-based one and they were not mimicking them. Even though, for example, they took on board partly the children's hearing system as a model, they '*Guernseyfied*' it and they made ... there were some differences and some improvements etc., so it was not adopted wholesale.

When you then move into how that was translated, there was of course the Billet etc. and then I think ... I am open to correction but somebody told me, I think, that the actual drafting of it was outsourced. I am not sure about that, so that would have to be checked with the Law Officers or someone. I am not really sure about that. But the policy objectives came from Guernsey.

I am not sure, basically, if I am answering your question, because I do not know what part of the process you wanted to focus on there – if it was the policy objectives or the actual drafting of the Law.

Deputy Lester Queripel: It is simply that I have got the short guide here and towards the front of it, it says that several bodies were involved in compiling it, and then it is signed off by Jackie Gallienne, Director of Services for Children and Young People, who does thank various bodies for contributing but there is no actual list of who those people were, so I was a trying to clarify that.

Kathleen Marshall: Well, the consultation papers would be able to tell you that. I have had sight of them. It is a bundle of papers that I have not brought with me – I have brought lots of papers with me – but I have looked at the consultation papers and there were a lot of people involved. There was a lot of consultation involved in it from various sources within Guernsey and looking beyond. But that will be available if you want to check it.

The Chairman: Lester, do you have another question?

Q50. Deputy Lester Queripel: Thank you, Chair.

1455 My next question is a two-part question, actually. I apologise if you have already covered this, but I am busy writing a lot of the time.

The first question is: are the States of Guernsey relying too much on charities to provide services for children? I ask that because I think you said, in response to my earlier question in relation to the Corporate Parenting Board, that the support for a child leaving care is currently lacking within our system and that support will be provided once that Board is established.

So the second part of my question is: where does a child in need of support go now, as you understand it?

Kathleen Marshall: First of all, are the States relying too much on charities: I do not think they are. I think there is a lot to be said for partnership with charities. Charities are very professional organisations these days and I think that is beginning to be recognised and I think there is a compact that the States have with the third sector now. There are a lot of advantages to using charities because it does not have the same ... For people who have had a relationship of authority with the statutory sector, they can often be suspicious of the statutory sector and prefer to work with charities. And that is not just here; that is across the board – I have come across that elsewhere as well, as standard and understandable. So I do not think they are.

In terms of leaving care, for example, Action for Children do some work in that and they have got some residential stuff and a drop-in, which is where I attended and was served my meat and potatoes cooked by the young people. I got the impression there too that the young people valued that, and even when they had bad experiences with statutory services – and I am not criticising the statutory services, but if you are in an authority role, then young people ... some of them have been through the system for a long time. So that was valued and I think that is one of the sources that they would go to just now, but...

I think there is a leaving care team, but I think you are better asking HSSD about that because there is a question too about how accessible it is. I know in Scotland when we had a specific leaving care team in the city centre of Glasgow it was very successful, and then it was split up and just moved to the nominated person and area teams and the young people felt very let down because these people had other things to do, whereas when they went to the leaving care team it was only them. So I do not know the exact configuration of that, but I think if young people know there is ... Again, of course, you have got proportionality here, in terms of providing that support and whether you have got a team for young care leavers in Guernsey or not, but I think that would be worthwhile asking HSSD about when they come before you.

Deputy Lester Queripel: I will do that.

Kathleen Marshall: But charities are good, yes.

Deputy Lester Queripel: Thank you.

The Chairman: Deputy Le Pelley, then Deputy Queripel.

The Vice-Chairman: I would just like to say that I think Guernsey is to a degree enlightened, as is Scotland, in that we allow our youngsters to vote at 16.

Kathleen Marshall: Oh, yes, very good.

Q51. The Vice-Chairman: But I am a little bit concerned about the 18 cut-off, and I think you have already alluded to it and touched upon it but in many of the things that I have come across I have been aware that at 17 years 11 months a young person is in care with all sorts of back up and official things to help them, and on their 18th birthday they are suddenly cast adrift and they are on their own.

I was hoping that somewhere within your recommendations there might have been something about discretionary powers given to be able to extend it past the 18th birthday. I do not know if you would like to say anything about that.

1510

Kathleen Marshall: I agree that discretionary powers or in fact even statutory powers to ... I was looking at the implementation of the Law as is. If you were asking me to do children's rights analysis, then I might have come up with some different issues, so –

1515

The Vice-Chairman: You've got five minutes!

1520

Kathleen Marshall: In fact, you are actually ahead of us, because in Scotland a big battle has been to stop the perception that the age of leaving care is 16. I did a lot of work on that and it keeps on ... You get a wee bit of progress and then, when the finances get bad, it slips back to it again. So even 18 would have been good for us. But now I think we have extended the support up to 21 and 25 etc., and I do think that if that could be put in statute, if that was an amendment rather than an implementation of the current Law ... because when you have times of scarce resources, all of these things get cut back. And it really is an investment for the future because, apart from anything else, you get young people who have been through the care system as children, then get caught up in the care system as well, so to support them over the difficult periods ... Also, when young people do leave care, sometimes people say, 'Oh, well, they wanted to leave care.' I am not saying this ... People have not said this to me in Guernsey, but I know this from other experiences and young people will be desperate for their independence, but then they want to come back to something –

1530

The Vice-Chairman: It is a cliff-edge, isn't it?

1535

Kathleen Marshall: – and they should not have to come back with their tail between their legs, saying, 'Oh, yes, it failed, it didn't work out – I told you so,' sort of thing. There has to be some way of giving them ongoing support that sits in.

The Vice-Chairman: Thank you.

1540

Deputy Sherbourne: Mr Chairman, can I just interject? I think the Children and Young People Plan actually does state from birth to 25.

Kathleen Marshall: Oh, yes, I think it does. I think you are right, actually, yes.

1545

Deputy Sherbourne: So, in fact, when that comes to the States, those issues will.

Kathleen Marshall: Yes, that is a good point.

The Chairman: Deputy Queripel.

1550

Q52. Deputy Laurie Queripel: Kathleen, you mention in your report you received some submissions from service users to suggest that there could be a gender bias in regard to the way that some service users are treated, and in fact one of the more striking quotes in the report is of someone saying, 'Blokes get angry, but that doesn't mean that they are wrong.' Is there enough cultural sensitivity to angry blokes, and should there be? And did you find any evidence to suggest that there is a gender bias, particularly in regard to men?

1555

Kathleen Marshall: The gender bias thing, for a start, came out very strongly with many of the men I spoke to, although it did also come out the other way round in a couple of cases. There is

not any information, in that there are not any court statistics to show whether the gender dimensions of cases have changed since the implementation of the new Law. So there is not anything that shows that.

Some of the legal professionals I spoke to thought that courts were very keen to avoid gender bias, so I think again that comes to ... and given that courts also tend to follow Safeguarder reports, the question is whether ... and some people thought Safeguarders were gender biased. Again, that is where the only thing ... Someone says yes and someone says no. And again, I have heard it both ways, although the loudest voices were from the men. Again, a kind of inspection might help to show whether there was any visible bias in the reports – because we do not see the reports.

The bit about when blokes get angry people dismiss them, I was keen to put that in, but actually that can apply to women as well. I have come across this in the past and it is always people who have got something to say that is actually really important, but often, through the process and all that they have become so frustrated they get angry and people dismiss it and the message gets lost. I have had so many discussions with people about that in the past, and sometimes ... It would usually be a man, but not always – people who are troublesome, you know?

I was saying to someone before this meeting about when years ago I chaired an enquiry into child abuse in children's homes in Edinburgh, and in one of those cases there was a family of girls who had been put into a home and been sexually abused. They had told their parents, who were alcoholics but still loved them. The parents tried to tell the local authority and the local authority dismissed them because these were troublesome people who were only wanting to make difficulties for the authority.

It is that kind of same dynamic – how people can get written off, when actually they have got something really important to say. It feeds into all the things about attitudes and everything as well about respect for people. I was actually impressed when I went to the two family projects I visited, where I got the impression people did feel respected and did feel they had a contribution to make to the services etc. But it is this bit about people who are angry or troublesome and just being aware of the fact that you cannot write them off because of that. You have to try and see through it to what they are saying and what their personal experience is. That is why I put that in, because I think it is an important point.

Q53. The Chairman: Thank you.

In the remaining few minutes ... We are clearly mindful that you have stated that clearly more needs to be done to successfully embed the Law in practice. What is going well, but you feel there is not perhaps enough of it?

Kathleen Marshall: I think that gets back to some of the family support services. No family is perfect. No one is born a perfect parent. I think all of us who have been through the situation would have benefited from some support at some time or another. If you get support for families early... where they feel comfortable going there, not just in going there but in expressing what the problems are in the knowledge that they will get help ... it comes down to the clarity of things as well, that they will get support and advice. That is the kind of early intervention where you can stop things spiralling.

I know that HSSD ... I think it might have been in the diagnostic. I cannot remember if it was that or their submission to us, but I think it may have been the diagnostic, talked about the need for more community-based services for families, and I would really support that proposal. That is something, as I said, that is going to need an investment – but this is not a poor society and it is a question for this society and its politicians to identify how they are going to spend the resources. And what better can you spend it on than children and families? (**All Members:** Absolutely.) So that is really over to you guys, I would say.

1610 **The Chairman:** On behalf of the Committee I would like to thank you for your report, and the Committee hopes that your recommendations will be acted upon and influence positive change within children's lives and that the Children Law will finally be fully implemented.
 Thank you very much for attending today.

1615 **Kathleen Marshall:** Thank you very much.

The Committee adjourned at 11.58 a.m.