

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* HEALTH & SOCIAL CARE**

REVIEW OF THE CHILDREN LAW AND OUTCOMES  
Improvements to the family care and justice system

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Review of the Children Law and Outcomes, dated 19<sup>th</sup> August 2022, they are of the opinion:-

1. To agree that the family care and justice system should be improved to reduce delays in determining outcomes for children and to remove duplication within the system and that these improvements will be delivered through amending the Children (Guernsey and Alderney) Law, 2008 ("the Law"), as set out in Propositions 3 – 20 below and through changes to be made by all agencies operating within the system.
2. To agree that the policy principles underpinning the family care and justice system agreed by the States of Deliberation in 2004 ("the 2004 policy principles") and set out in the Law, remain valid.
3. To direct that the Law and the Children (Miscellaneous Provisions)(Guernsey and Alderney) Ordinance, 2009 ("the Children Ordinance") should be amended, as set out in paragraphs 6.4 – 6.6 of the Policy Letter, so that the Law includes the duties of the States of Guernsey currently set out in the Children Ordinance, provides for the details of the duties to be set out in secondary legislation, and provides greater clarity on the duty on the Committee *for* Health & Social Care to investigate where compulsory intervention may be necessary.
4. To direct that the Law should be amended, as set out in paragraphs 6.7 – 6.14 of the Policy Letter, to better reflect the 2004 policy principles relating to the 'duty to co-operate', so that the duty to co-operate is applicable to all agencies when assisting children and their families who are in need of help.
5. To direct that the Law should be amended to include a Commitment to Safeguarding, as set out in paragraphs 6.15 – 6.19 of the Policy Letter.
6. To direct that the Law should be amended to enable cases to be remitted from the court to the Child, Youth and Community Tribunal in appropriate cases, as set out in paragraphs 6.20 – 6.22 of the Policy Letter.

7. To direct that the Law should be amended to empower the court to retain and dispose of cases where it determines the facts on referral from the Children's Convenor, in appropriate cases, as set out in paragraphs 6.23 – 6.26 of the Policy Letter.
8. To direct that the Law should be amended to enable the Child, Youth and Community Tribunal proceedings to be paused or stopped when a Community Parenting Order application is being made to the court, and to avoid concurrent proceedings in these instances, as set out in paragraphs 6.27-6.29 of the Policy Letter.
9. To direct that the Law should be amended to place an obligation on relevant responsible adults to attend hearings of the Child Youth and Community Tribunal, unless excused or where their attendance is not considered necessary, and to confer a power on that Tribunal to fine those who fail to attend without a valid reason, as set out in paragraphs 6.30 – 6.39 of the Policy Letter.
10. To direct that the Law should be amended on the basis set out in paragraphs 6.40 – 6.43 of the Policy Letter, to:
  - a. Require the Committee *for* Health & Social Care to notify the Children's Convenor within a defined timescale when it has made an application to court to remove a child from its carers;
  - b. Require the Child, Youth and Community Tribunal to notify the Committee *for* Health & Social Care within a set timescale if a case it is considering passes the threshold for a court order; and
  - c. Prohibit the Children's Convenor, on being notified, from undertaking any investigation or action in relation to a case, unless the Children's Convenor has evidence or information that might be relevant to the case that should be disclosed.
11. To direct that the Law should be amended to remove the requirements for applications for adoption and special contact orders to be notified to the Children's Convenor, as set out in paragraphs 6.44 – 6.47 of the Policy Letter.
12. To approve the changes set out in paragraphs 6.48 - 6.84 of the Policy Letter, in relation to the legal orders and order thresholds, and, for the purpose of giving effect to those changes, to direct that the Law should be amended to:
  - a. Provide for separate legal thresholds for referrals to the Children's Convenor and legal orders made by the Child, Youth and Community Tribunal, and the court;

- b. Confer power on the court to make a 'Supervision Order' placing a child under the supervision of the Committee *for* Health & Social Care while the child still lives in the family home (or is placed with a relative);
  - c. Confer power on the court to make a 'Child Assessment Order', including providing for the court having the power to treat the application as one for an Emergency Child Protection Order if the application for the order is not complied with by those with parental responsibility for the child concerned;
  - d. Introduce new threshold criteria for making a Community Parenting Order ("CPO");
  - e. Make such further amendments to the provisions in respect of CPOs to ensure they are consistent with the revised threshold criteria and the purpose of the order as envisaged in the 2004 States Report;
  - f. Introduce statutory criteria for the making of an interim Community Parenting Order in line with the amended test for the CPO;
  - g. Remove the provision that a Parental Responsibility Order is automatically discharged by the making of a CPO; and
  - h. Remove the provision that an Emergency Child Protection Order is automatically discharged when the Child, Youth and Community Tribunal first sits to consider the child's case.
13. To approve the changes set out in paragraphs 6.85- 6.102 of the Policy Letter, and, for the purpose of giving effect to those changes, to direct that the Law should be amended to bring the thresholds for making an Emergency Child Protection Order and an Exclusion Order, and the exercise of Police Powers (to protect a child), in line with comparable jurisdictions, including consequential changes in respect of Recovery Orders.
14. To direct that the Law should be amended where it relates to care requirements, as set out in paragraphs: 6.3; 6.103-6.118 of the Policy Letter, to:
- a. Replace the term 'compulsory intervention' with 'care requirement' in the new threshold criteria for the Children's Convenor and Child, Youth and Community Tribunal;
  - b. Clarify the purpose of making a care requirement with the intent that it is used only in cases where there is a reasonable prospect of positive change, so that the child can either continue living within the family or be reunited within a relatively short period;
  - c. Remove the requirement that "there is no person being able or willing to exercise parental responsibility..." from the list of conditions that form part of the threshold for both the temporary intervention of the Child, Youth and Community Tribunal through a care requirement and the more permanent intervention of the court through the making of a CPO;
  - d. Rename the 'conditions' for a care requirement as 'grounds'; and
  - e. Update the list of such grounds as set out in Appendix G; and

- f. Remove the 28-day review requirement for renewal of a care requirement and establish a requirement for a review at a minimum of six months in its stead.
- 15. To direct that the Law should be amended to enable the involvement of Family Proceedings Advisers pre-proceedings where required for the welfare of the child, as set out in paragraphs 6.119-6.123 of the Policy Letter.
- 16. To direct that the Law is amended, as set out in paragraphs 7.22-7.25 of the Policy Letter, to reflect changes to the names of the statutory agencies as follows:
  - a. The Safeguarder Service to be known as the Family Proceedings Advisory Service;
  - b. The officers appointed as Safeguarders to be referred to as Family Proceedings Advisers; and
  - c. The 'Islands Child Protection Committee' to be known as the 'Islands Safeguarding Children Partnership'.
- 17. To direct that the Law should be amended to provide greater clarity as to its legal effect and intention in relation to information sharing, including the ability to capture and share information, between relevant agencies, relating to improving the welfare of the child, in line with the Data Protection (Bailiwick of Guernsey) Law, 2017, as set out in paragraphs 6.124-6.130 of the Policy Letter.
- 18. To note the establishment of Information Sharing Protocols, and to direct all relevant responsible Committees to ensure these are maintained and complied with.
- 19. To direct that the Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009 be amended so as to include persons who have care of a child but do not hold parental responsibility within the scope of the child cruelty offence in the Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes 1917, as set out in paragraphs 7.26 – 7.28 of the Policy Letter.
- 20. To agree to amend the Children Ordinance as set out in paragraphs 7.3 – 7.21 of the Policy Letter, to:
  - a. Ensure the relevant sections are referred to in the Law;
  - b. Enable the Children's Convenor to suspend part of the conditions of a CR;
  - c. include a power for the Tribunal, to adjourn a CR hearing and make an interim variation of a CR;
  - d. Introduce a power for the Convenor to transfer a case to Her Majesty's Procureur;

- e. Amend the terms and conditions of the appointment of the President of the Tribunal;
  - f. Include an additional power for the Convenor to withhold information to protect any person from harm;
  - g. Recognise a wider range of family members as a party to proceedings, irrespective of their existing parental rights and responsibilities;
  - h. Grant discretion to the Tribunal to recognise wider persons who have had significant involvement in the child's upbringing as parties;
  - i. Enable the Convenor to make the decisions in relation to parties who can attend at the Convenor's Meeting, subject to a suitable right of appeal being established; and
  - j. Removal of upper and lower age limits for Tribunal member appointments.
21. To direct the Committee *for* Health & Social Care, in consultation with other relevant Committees, to scope the requirements of phase 2 of the Review Children Law, including the resource requirements, for consideration for inclusion in the 2023 Government Work Plan.
22. To direct the Committee *for* Health & Social Care, in consultation with the Committee *for* Home Affairs and the Committee *for* Education, Sport & Culture and all relevant agencies, to review operational procedures to ensure proportionate monitoring and reporting that will assist in determining the effectiveness of these changes on the family care and justice system and outcomes for children, as set out in section 9 of the Policy Letter.
23. To direct the Policy & Resources Committee to co-ordinate the work of the Committees *for* Employment & Social Security, Health & Social Care and Home Affairs, to:
- a. Frame and commission the review of the legal aid service set out in the Government Work Plan to also give due consideration to the systemic issues relating to the availability of Advocates and the use of alternative dispute resolution including mediation in the family care and justice system; and
  - b. Scope the resourcing requirements to respond to the recommendations of the review, for consideration for inclusion in the 2023 Government Work Plan.
24. To direct the Committee *for* Health & Social Care to establish a cycle of independent reviews of the family care and justice system, no less than every three to five years, starting from 2025, or a year after the commencement of the amended legislation, whichever occurs sooner.

25. To direct the preparation of such legislation as is necessary to give effect to the above decisions, including any necessary consequential, incidental or supplementary provision, and engagement with the court as to possible Practice Directions.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* HEALTH & SOCIAL CARE**

REVIEW OF THE CHILDREN LAW AND OUTCOMES  
Improvements to the family care and justice system

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

16<sup>th</sup> September, 2022

Dear Sir

**1. EXECUTIVE SUMMARY**

- 1.1 In 2004<sup>1</sup>, the States of Deliberation agreed the reforms to introduce a unique family care and justice system (“the system”) for Guernsey and Alderney. The system adopted some aspects of the Scottish Children’s Hearing system (the Tribunal and Children’s Convenor) and the court-based approach of England and Wales.
- 1.2 The reforms were set out in The Children (Guernsey & Alderney) Law, 2008<sup>2</sup> (“the Law”) which commenced in 2010. The reforms made significant changes to the system including the introduction of two new major and distinct bodies, the Children’s Convenor Board (“CCB”) and the Child, Youth and Community Tribunal (“the Tribunal”), which is similar to the Scottish Children’s Hearing system.
- 1.3 The introduction of the Law was a significant step in improving and modernising the legislation to protect the welfare of children. The Committee *for* Health & Social Care (“the Committee”) wishes to take this opportunity to commend the efforts and commitment of all those involved in the system for their contributions to improving the lives of children in often challenging circumstances.

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<sup>1</sup> [Billet d’État XVII, of 2004 – Matters Affecting Children, Young People and Their Families](#)

<sup>2</sup> [The Children \(Guernsey & Alderney\) Law, 2008](#)

- 1.4 As with any fundamentally important legislation such as this one, best practice evolves and there is a need to consider changes to policy in response. For example, since the Law was enacted a formative review of the family justice system in England and Wales in 2001 (known as the Norgrove Review) highlighted the significant and long-term negative impacts of long delays in determining decisions for children in the court system. Coupled with the Committee's and professional agencies' experience of how the Law operates and the findings of several reviews into the effectiveness of the system, it is recognised that there are some areas where amendments to the Law and improvements in how the system operates are needed.
- 1.5 The need to progress the changes to the system has been recognised as a priority of government since 2019, as has the fact that different Committee mandates are employed within the system.
- 1.6 In 2021, the Committee, as the responsible Committee for the Law, in consultation with the Policy & Resources Committee and the Committees for: Home Affairs and Education, Sport & Culture, agreed that a cross-committee group should be created to expediate the work. The Children & Young People's Board<sup>3</sup> ("the Board") has representation from across the responsible Committees and has successfully steered this work, alongside acting in the capacity of the Corporate Parenting Board.
- 1.7 The Board has considered the findings from the various reviews, including the two most recent reviews: the Committee's own Children Law Consultation and the Outcomes Report for Children and Young People ("the Outcomes Report")<sup>4</sup>. The Board recognised there were many stakeholders involved in this complex system whose views were of equal importance and so adopted a collegiate approach to its engagements.
- 1.8 The Board recommended, and the Committee agreed, that the work be phased given the scale of the proposed changes. Priority was given to changes which would make the greatest and have the most immediate benefit for the most vulnerable children. Acknowledging the impact of delay on children in these situations, informed by the Norgrove Review, reducing delay within the system became the primary objective to meet in the first phase.
- 1.9 The recommendations in this Policy Letter all seek to reduce delays and make improvements to the system for the welfare of the child. The impact of some of the changes proposed is demonstrated through the appended case study to the

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<sup>3</sup> [Update from cross-Committee Board steering improvements for vulnerable children and young people - States of Guernsey \(gov.gg\)](#)

<sup>4</sup> [Outcomes Report, 2021](#)

Policy Letter, alongside further supporting information and detail on each proposal for change and an indicative implementation plan.

- 1.10 While extensive consultation was carried out through the various reviews and to finalise the impact of the proposals, the Committee is aware that not all proposals set out in this Policy Letter will be welcomed by all stakeholders. However, the Committee is also of the view that regardless of the different positions on some of the proposed measures set out in this Policy Letter, it is imperative that the focus must be on improving outcomes for children.
- 1.11 It is accepted that the majority of changes can be resourced from within existing resources with some minor exceptions. Further work on scoping resource implications for some aspects are identified.
- 1.12 The Committee is grateful to the Board for its commitment and contributions to progressing this important work and would welcome its continued oversight of the completion of phase 1.
- 1.13 The changes recommended in this Policy Letter seek to:
- Ensure unnecessary delays are removed to improve outcomes for children;
  - Improve the operation of the Law by addressing some unintended consequences of the drafting of the Law and the resulting practices;
  - Provide greater protection to children by addressing identified gaps in provision in the Law;
  - Modernise and update the Law to reflect current best practice and compliance requirements with international conventions;
  - Establish a monitoring approach to track the impact of the changes to the system; and
  - Ensure more timely consideration of future changes needed to the system, by introducing a more frequent review cycle of every 3-5 years.

## **2. INTRODUCTION**

### **Background on the 2004 Reforms**

- 2.1 The current family care and justice system<sup>5</sup> (“the system”) in Guernsey and Alderney is unique to the islands. Its origins stem from policy decisions made by the States of Deliberation in October 2004, informed by the former Health and Social Services Department’s (HSSD’s) case for a new Children Law.

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<sup>5</sup> [Family Care and Justice System - States of Guernsey \(gov.gg\)](https://www.gov.gg/family-care-and-justice-system)

- 2.2 Significant work to develop this new legislative framework was carried out over an extended period of time and involved extensive consultation with partner agencies and children in Guernsey and Alderney. The review at that time provided an opportunity to consider the more effective practices world-wide, alongside the need to comply with international treaty obligations around human rights and children's rights including juvenile justice rights.
- 2.3 The resulting Law incorporated parts of the English model of family justice, as well as aspects of the Scottish Children's Hearing System. See glossary of terms in Appendix A.
- 2.4 The Law moved away from the court model used in England and Wales, as set out in the Children Act 1989<sup>6</sup> ("the Act"), retaining some aspects such as those that relate to private law cases where children are involved and emergency protection orders.
- 2.5 The Scottish Children's Hearing system was introduced in 1971 and is set out in the Children's Hearings (Scotland) Act 2011<sup>7</sup> ("the 2011 Act"). The system seeks to "take an integrated and holistic approach to care and justice, in which the child's best interests are the paramount consideration"<sup>8</sup>. The principles that underpin the Scottish system are built on those identified in the Kilbrandon Report of 1964<sup>9</sup>, and takes account of international rights conventions. The 2004 Guernsey reforms drew heavily on these principles, and those that inform the legislation in England and Wales.
- 2.6 Similar to the Tribunal, the Children's Hearing operates as a lay tribunal that hears almost all cases relating to children, except the most serious criminal cases which are dealt with by the court directly. The Children's Hearing does not make any distinction between children who have broken the law, those who are viewed as being beyond control, and those who are at risk of, or suffering from abuse or neglect i.e. it considers needs as well as deeds.

### **The Children (Guernsey & Alderney) Law, 2008**

- 2.7 The Law came into force in January 2010 and aims to protect children from harm and to promote their health, welfare and development. The Law sets out the duties of parents, other carers and the States of Guernsey ("the States"). It establishes the roles and responsibilities of the different agencies within the system, for example the Law places duties on the States in relation to children in its care and care leavers.

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<sup>6</sup> [Children Act 1989 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>7</sup> [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>8</sup> [Children's hearings - Child protection - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>9</sup> [INTRODUCTION - The KILBRANDON Report - gov.scot \(www.gov.scot\)](http://www.gov.scot)

- 2.8 The Committee has the mandated responsibility for oversight of the Law and the related service areas which have the authority to deal with children and family services. The Law also touches on the mandated responsibilities of other Committees including the Committee *for* Home Affairs and the Committee *for* Education, Sport & Culture.
- 2.9 The introduction of the Law substantially reformed the ways in which professionals work together to secure the best outcomes for children and established new processes for working with children and families across the system. Most notable of these changes was the establishment of the Office of the Children’s Convenor including the statutory role of the Children’s Convenor (“the Convenor”), the Tribunal and the CCB<sup>10</sup>. The Committee recognises that the successful introduction of the Law is a result of the collective efforts of all the agencies involved.
- 2.10 The introduction of these new agencies in the system created an interface of two, separate but interrelated pathways through the system, for public family law matters, to support outcomes for children i.e. the court (long-term, more permanent or emergency interventions) and the Tribunal (temporary, short term interventions).
- 2.11 The Law also applies to matters before both the Magistrates Court (including the Juvenile Court) and the Royal Court. The courts have a decision-making and judicial monitoring role in matters relating to children and their families which is ultimately driven towards resolving problems. The court has a role in matters of private family law (disputes between individuals) and public family law (state support for, or intervention into, the lives of children and families). The public law aspects involve matters relating to emergency child protection, permanent removal of a child from their families<sup>11</sup>, secure accommodation, the recovery of children in care and appeals against the decisions of the Tribunal.
- 2.12 The introduction of the Tribunal recognised that the court is not always the most appropriate place to deal with matters relating to children. It gives vulnerable children, and those in need, the opportunity to have their case heard outside of a court environment, by a panel made up of a Chair and volunteers from across the community who deliberate on cases. The premise behind the Tribunal is to work with families to help them resolve their issues by taking short term measures that are for the welfare of the child and so in the child’s best interests. As with the court the Tribunal is bound by the principles underpinning the Law.

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<sup>10</sup> [Convenor & Tribunal Board - Children’s Convenor - Children’s Convenor](#)

<sup>11</sup> Specifically this applies to those with parental responsibility for that child who could include grandparents, carers or guardians.

- 2.13 The primary principle of the Law is that the “child’s welfare is the paramount consideration”<sup>12</sup>, except where there is an immediate risk to the safety of another person. Where welfare is not paramount, then it should be a primary consideration. Furthermore this is the overriding principle that should take precedence over any other principle/s where there is a conflict.
- 2.14 The Law equally recognises that: some children will need additional services to achieve a reasonable standard of health and development; and some may need ‘compulsory intervention’. It recognises the difference between children who are ‘in need’ or ‘at risk’ and establishes a set of ‘child welfare principles’ and a ‘welfare checklist’, which guide decisions relating to a child’s upbringing.

#### **Previous reviews summary**

- 2.15 The Law has been in place for over ten years and has been subject to several reviews, the earliest of which was the internal review called the Children’s Services Diagnostic in 2014. A summary of the findings of the reviews is in Appendix B.
- 2.16 Consistent findings raised through the reviews include:
- Parts of the system work well;
  - There are opportunities to make improvements to the unique model used in Guernsey and Alderney;
  - There are unsatisfactory delays in the system that are negatively impacting outcomes for children, particularly in public family law cases;
  - Some parts of the Law have not been implemented as originally intended;
  - There are unintended consequences arising from its drafting that need to be addressed including gaps in the legislative framework that could usefully be filled to enable a timelier resolution for children and their families;
  - Further delays in agreeing amendments to the Law will not benefit outcomes for children;
  - To achieve better outcomes, it is imperative that all agencies in the system seek to remove delays and drive forward changes in their respective areas to meet this objective;
  - A collaborative and collegiate approach needs to be taken by all agencies so the system functions more effectively to the benefit of the children it serves;
  - Due consideration should be given to compliance with the relevant international treaties and conventions; and
  - The voice of the child and service users should be included in any proposals for change.

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<sup>12</sup> The child welfare principles and child welfare checklist are set out respectively in [s.3 and s.4 of the Children Law](#)

- 2.17 The findings of all the related reviews have informed the proposals set out in this Policy Letter.

### **3. STRATEGIC CONTEXT**

- 3.1 The Committee has responsibility for advising the States and developing and implementing matters relating to ‘the welfare and protection of children, young people and their families’. The Committee oversees the delivery of the States’ operational functions relating to Children and Family Community Services which includes services to children in care and care leavers from a Corporate Parenting perspective as set out in the Corporate Parenting Framework 2021-2023<sup>13</sup>.
- 3.2 The Committee signalled its intention to review the Law in June 2019 and the States of Deliberation directed the Committee to progress this work expeditiously<sup>14</sup>. This intention was informed by the enhanced understanding of the negative impact of delay on children which has been a significant area for research in recent years. This has resulted in many neighbouring jurisdictions taking radical steps to reduce delay in the system with a view to improving outcomes for children and reducing the associated cost to the state of such delay. Much of this research post-dates the drafting of the Law. The most influential of the reviews was the findings of the 2011 Family Justice Review (“the Norgrove Review”) (see section 3.11).
- 3.3 The predecessor Committee was mindful that duplication of process is an area where delay occurs and to address this concern undertook a targeted consultation on possible amendments to the Law with practitioners in 2019. The general consensus was that the Law would benefit from updating as suggested by the Committee. Although there were some intricacies in the feedback provided, all of the changes put forward for consideration were supported by the majority of professionals.
- 3.4 In approving the Policy & Resource Plan - 2018 Review and 2019 Update, the States of Deliberation also directed the Policy & Resources Committee to work with the Committee, and with the Committee *for* Home Affairs, to expedite work to remove delays from the systems and processes relating to the delivery of services to children in need. The Chief Officer’s Child Protection Group responded by commissioning a report by an external reviewer on the wider system, resulting in the Outcomes Report.

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<sup>13</sup> [Corporate Parenting Framework 2020-2023 - States of Guernsey \(gov.gg\)](https://www.gov.gg/Corporate-Parenting-Framework-2020-2023)

<sup>14</sup> [Billet d’État IX of 2019: Policy & Resource Plan - 2018 Review and 2019 Update](#)

### **Outcomes Report for Children and Young People (2021)**

- 3.5 This extensive review considered if there were any systemic obstacles preventing or impacting on beneficial outcomes for children. It aimed to make recommendations which:
- Reduce complexity and ensure each agency has clear roles, removing duplication or uncertainty of responsibilities;
  - Ensure a full and flexible suite of options were available for a child or young person entering the system to best meet their individual needs;
  - Ensure the judicial monitoring role of the court and Tribunal provided adequate protection of the rights of the child and the families; and
  - Remove unintended delay in the system.
- 3.6 The Outcomes Report, informed by the previous review's findings, included a substantial number of recommendations for change which ranged across policy, legislative amendments and operational matters that would affect more than one service area. The recommendations were not costed, and further work was recognised as being required to fully assess the impact of the recommendations.
- 3.7 Extensive consultation was carried out through the Outcomes Report, which documents in detail where there were differences of viewpoints and, in some cases, put forward potential alternative proposals for further consideration.
- 3.8 The Outcomes Report found that the current system 'worked for the majority of children' however, informed by the Committee's 2019 Children Law consultation, it supported the findings that unnecessary delays occurred in some cases, which should be addressed.

### **Government Work Plan**

- 3.9 In July 2021, the action Review Children Law and Outcomes was prioritised as a critical action of the Government Work Plan (GWP)<sup>15</sup> for progressing in the first six months. Policy resources were allocated accordingly to support this work.
- 3.10 The action seeks to "support vulnerable children through revision to the Children Law and action on the Outcomes Report", by finalising the amendments to the Law. Equally, through this action it is intended that any changes to operational matters which improve outcomes for children in the system will be developed and implemented. This may be in advance of the legislation reforms where practicable and where it can be delivered within existing resources. The work will align to the recently approved framework for justice (see 3.17-3.24 below).

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<sup>15</sup> [Government Work Plan | States Of Guernsey \(ourfuture.gg\)](https://ourfuture.gg/government-work-plan)

### **Family Justice Review, 2011 – The Norgrove Review**

3.11 The Norgrove Review<sup>16</sup> identified the harm caused to children by delay in the Family Justice System in England and Wales and considered what new arrangements might be put in place to tackle the causes of delay and ensure better long-term prospects for children. The Norgrove Review provides important analysis of the impact of delay and concluded that:

- I. Long proceedings may deny children a chance of a permanent home.
- II. The longer proceedings last, the less likely that a child will find a secure and stable placement, particularly through adoption.
- III. Long proceedings can damage a child's development.
- IV. The longer proceedings last, the more likely children are to experience multiple placements.
- V. Placement disruption does not just cause distress in the short-term. It can directly impact on a child's long-term life chances by damaging their ability to form positive attachments. This can cause multiple problems in adolescence and later life.
- VI. Long proceedings may put maltreated and neglected children at risk. If children remain in the home during proceedings they may be exposed to more harmful parenting with long-term consequences.
- VII. Long proceedings can cause already damaged children distress and anxiety. Children live with uncertainty while possibly experiencing multiple placements, continuous assessments and distressing contact arrangements.

### **Guernsey: Children Law Review: Professor Kathleen Marshall Report, 2015**

3.12 The first significant review of the Law was commissioned by the former Scrutiny Committee and carried out by Professor Kathleen Marshall in 2015<sup>17</sup> (known as the Marshall Report).

3.13 The report highlighted particular issues around the ways in which various child protection processes interact with each other, including the nature of the respective cases referred to the Tribunal and to the court, and the interplay between these functions.

3.14 Professor Marshall made 21 recommendations relating to both private and public law proceedings. Some of these recommendations are fulfilled by the recommendations of this Policy Letter, where they align to the objectives of this action, and are discussed in further detail at the appropriate stages.

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<sup>16</sup> [Family Justice Review](#)

<sup>17</sup> [The Guernsey Children Law Review, 2015](#) by Professor Kathleen Marshall

### **Children & Young People's Plan**

3.15 The Law places a duty on the Committee to prepare a Children & Young People's Plan ("CYPP")<sup>18</sup>, every three years, which sets out how services seek to meet the needs of children and their families. The CYPP sets out four priority outcomes for children, aligned to the United Nations Convention on the Rights of the Child ("UNCRC")<sup>19</sup>:

- Be Safe and Nurtured
- Be Included and Respected
- Achieve Individual and Economic Potential
- Be Healthy and Active

3.16 The CYPP captures the progress and impact of these changes to services which seek to improve outcomes for children. It recognises that early intervention and prevention, partnership working and a focus on outcomes are fundamentally important to improving the lives of children.

### **Justice Framework 2022-2029 and 2020 Guernsey Justice Review Report**

3.17 In April 2022, the States of Deliberation agreed the Justice Framework 2022-2029<sup>20</sup> ("the Justice Framework") presented by the Committee for Home Affairs. The Justice Framework sets out to guide and coordinate improvements to justice over the next seven years. It will be supported by the development of a Justice Action Plan which will include the actions being taken across the States and the community to reach the agreed justice outcomes.

3.18 This Framework sets out four justice pillars, one of which is family justice defined as:

"Support for families, parents and relationships that helps them avoid disputes as far as possible and which enables them to resolve disputes quickly should they arise, with minimum conflict and pain caused for all of those involved, particularly children.'

3.19 The Justice Framework seeks to respond to the findings of the 2020 Guernsey Justice Review Report<sup>21</sup> ("the Justice Review") which made 41 recommendations for change, some of which centred on the system and the Law.

3.20 The Justice Review recognised the inter-relationship of family justice matters across the justice system and the important role the Law had as part of that

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<sup>18</sup> Children & Young People's Plan 2019-2022 [Billet d'État III of 2019](#)

<sup>19</sup> [UN Convention on the Rights of the Child \("UNCRC"\) - UNICEF UK](#)

<sup>20</sup> [The Justice Framework Policy Letter - States of Guernsey \(gov.gg\)](#)

<sup>21</sup> [Billet d'État XV of 2020 - Justice Review Report](#)

system. With this in mind the Justice Framework includes the need to provide a greater emphasis on prevention and early intervention to improve wellbeing and life chances, delivering the right interventions at the right time, with a focus on improving outcomes for children.

- 3.21 The Justice Review echoes many of the Committee's own findings and experience in its review of the Law, in particular acknowledging the complex interrelationships within the family justice system and the important role played by a multitude of agencies and organisations. The Justice Review identified that improvements could be made by improving the co-ordination of effort of the multiple agencies in the system and the flow of data and information. Some of the recommendations of the Justice Review relate to those agencies that play a key role in the system and the implementation of the Law.
- 3.22 The Committee will work with the Committee *for* Home Affairs in future phases of the action to understand the broader impact of the youth justice provisions of the Law and the associated processes, in fulfilment of the relevant recommendation of the Justice Review.
- 3.23 There are further overlaps between these two areas of important work that could be mutually beneficial including:
- Exploring greater use of alternative dispute resolution ("ADR") measures which also featured frequently in different review findings;
  - Improved monitoring of outcomes for children in contact with the care system; and
  - Better data capture more generally.
- 3.24 The above considerations are included in the proposals covered in section 9 of this Policy Letter.

**Partnership of Purpose: Transforming Bailiwick health and care**

- 3.25 There are also many linkages between the CYPP, the Justice Framework and the strategic aims of the 'Partnership of Purpose'<sup>22</sup>, in the sense that they all recognise the need for a coordinated, multi-agency and multi-disciplinary approach and place greater emphasis on prevention by fully extending this principle into social care as for healthcare provision more generally.

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<sup>22</sup> [Partnership of Purpose: Transforming Bailiwick Health and Care](#)

### **Matrimonial Causes Reforms**

- 3.26 In February 2020, the States of Deliberation agreed the reforms to the legislation covering divorce, judicial separations and annulments of a marriage<sup>23</sup> and recently approved the resulting legislation<sup>24</sup>. Through the review of this legislation it was recognised that more needed to be done “to improve access to information and support services for family law matters” (extant Resolution 2<sup>25</sup>). This was comparable to the findings of the Justice Review which identified the need to “remove delay from systems and processes relating to the delivery of services to children and young people in need, and to ensure that such systems and processes are centred on the best interests of the child or young person concerned”.
- 3.27 The extant Resolution 2 will be addressed in part through some of the proposals set out in this Policy Letter.

### **Legal Aid Review – Proposition 23**

- 3.28 Through this action, the Marshall Report and the development of the Justice Framework, various touch points with the Legal Aid Service and family justice have been identified.
- 3.29 Of particular concern are the systemic issues relating to the availability of Advocates to support family law cases and the impact this has on delays in determining outcomes for children. Some of these cases receive funding from legal aid.
- 3.30 Increasing the access and availability of trained mediators for family law matters is another consideration raised which could remove delays and reduce the number of cases proceeding to court.
- 3.31 It is recommended that due consideration is given to the systemic issues relating to the availability of Advocates and the use of ADR including mediation in the system identified through this work.
- 3.32 It is further recommended that any resourcing requirements identified are captured in the 2023 GWP prioritisation considerations.

### **International Conventions and Frameworks**

- 3.33 In line with best practice, Guernsey, Alderney and other jurisdictions seek to comply with international treaty obligations wherever possible and where

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<sup>23</sup> [Billet d’État IV of 2020 - Reform of the Matrimonial Causes Law](#)

<sup>24</sup> [Billet d’État XII of 2022 - Reform of the Matrimonial Causes Law](#)

<sup>25</sup> [Resolutions Billet d’État IV of 2020](#)

extensions are sought or have been achieved. The 2004 reforms were informed by two international conventions as follows:

**European Convention on Human Rights and Fundamental Freedoms**

- 3.34 In 2004, it was recognised that the current family justice legal framework was insufficient in ensuring domestic law could meet its obligations under the European Convention on Human Rights and Fundamental Freedoms<sup>26</sup> (“ECHR”) that was soon to be legislated for under the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>27</sup>. The 2004 reforms brought about changes to ensure compliance with the ECHR and any future changes will have to take ECHR alignment into account.
- 3.35 Some orders set out in the Law involve significant interference with Article 8, the right to respect for private and family life. For example orders that result in the removal of a child from his or her parents’ care, either on an interim or permanent basis, and/or the cessation of contact between a child and their parent/s.
- 3.36 The other main ECHR Articles of relevance are Article 6, right to a fair trial and 13, right to an effective remedy, specifically when considering upholding people’s right to: a fair hearing; decisions being made based on appropriate evidence; and the appeals process.
- 3.37 In all considerations proportionality around the level of intervention consistent with the ECHR should be applied as appropriate to the circumstances of the case.

**United Nations Convention on the Rights of the Child 1989**

- 3.38 In 1990, the UK signed the UNCRC which sets out the rights of every child in the world to survive, grow, participate and fulfil their potential.
- 3.39 In 2016, the CYPP 2016-2022<sup>28</sup> set out a commitment to seek an extension of the UNCRC to Guernsey and Alderney which was formally confirmed in November 2020.
- 3.40 The UNCRC has a total of 54 articles covering every aspect of a child’s life and the various rights to which all children are entitled. The UNCRC equally sets out how adults and governments must work together to ensure that these rights are enjoyed by all children. Of the 54 articles four are known as ‘special’ general principles as follows:

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<sup>26</sup> [The European Convention on Human Rights](#)

<sup>27</sup> [Human Rights \(Bailiwick of Guernsey\) Law, 2000](#)

<sup>28</sup> [Children and Young People's Plan \(CYPP\) - States of Guernsey \(gov.gg\)](#)

- Article 2 - Right to non-discrimination;
- Article 3 - Best interests of the child;
- Article 6 - Right to life, survival and development; and
- Article 12 - Right to be heard.

3.41 While all rights set out in the UNCRC should be duly considered when developing States' strategies and policies relating to children, the above and the following are of particular relevance to the Law and have informed the proposals set out in this Policy Letter;

- Article 9 - Separation from parents;
- Article 18 - Parental responsibilities and state assistance;
- Article 19 - Protection from violence, abuse and neglect;
- Article 20 - Children unable to live with their family;
- Article 25 - Review of treatment in care; and
- Article 40 - Juvenile justice

3.42 More recently, some jurisdictions have incorporated some of these articles into policy, for example, the recent changes made to the Children (Scotland) Act 2020<sup>29</sup>, saw Scotland become the first UK country to directly incorporate the UNCRC into legislation. While it is not recommended that a similar change is needed here, at this time, it should continue to be a matter for consideration as part of future phases of work and updates needed to the Law.

#### **4. CHILDREN LAW AND OUTCOMES ACTION APPROACH**

4.1 Given the cross-Committee nature of the Review Children Law and Outcomes action the Board was established in October 2020. The Board has representation from the Committees for: Health & Social Care, Education, Sport & Culture and Home Affairs and is chaired by a member of the Policy & Resources Committee.

4.2 The Committee would like to extend its thanks to all the members of the Board, and in turn their Principal Committees, for their commitment and contributions to progressing this priority work.

4.3 The initial approach and means to prioritise, resource and take forwards the work were considered and agreed by the Board. The considerations were premised on the principle that not everything recommended in the reviews of the Law and the wider system, including the outstanding secondary legislation associated with the Law, would be deliverable, at the same time, or at all. It also recognised that the resource implications for the proposals were yet to be

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<sup>29</sup> [Children \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

determined and that this is an important element in informing the decisions for change, not least as the Board were aware of the significant pressures being experienced in Children and Family Community Services, as a result of a shortage of social workers in the UK<sup>30</sup>.

- 4.4 The Board recognised and shared the concerns raised through the reviews that unnecessary delays are unacceptable and cases should not take up to two years to reach an outcome. The Board were mindful that a day, week or month in the life of child has a much greater impact than the equivalent periods from an adult's perspective.
- 4.5 In Guernsey and Alderney, where instances of delay and duplication occur this results in children finding themselves:
- In the care of the authorities for longer than might otherwise be necessary;
  - Decisions on outcomes taking longer than is satisfactory;
  - Potentially, in at risk or harmful situations for longer; and
  - At risk of the disruption caused by statutory interventions in their daily lives having long-term consequences, as highlighted by the Norgrove Review.
- 4.6 It was also acknowledged that sufficient time must be allowed to enable due process to be followed and for the necessary information to be compiled so that decisions taken about children's welfare are not rushed. This in itself may cause further delays to rectify and/or pose a significant risk to the welfare of the child, for example if decisions need to be revisited or further evidence gathered.
- 4.7 It was also recognised that:
- Individual cases themselves are complex and often take their own unique paths through the system;
  - It is important to ensure that families are given the opportunity to work to effect positive change (within the child's timescale); and
  - Resources are often significantly stretched in some areas.
- 4.8 It was clear from the feedback received there is significant frustration that delay and duplication, at different stages, is a barrier to providing timely and satisfactory outcomes for children (see case study in Appendix C).

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<sup>30</sup> [Children's social worker shortage reaches five-year high | Local Government Association](#)

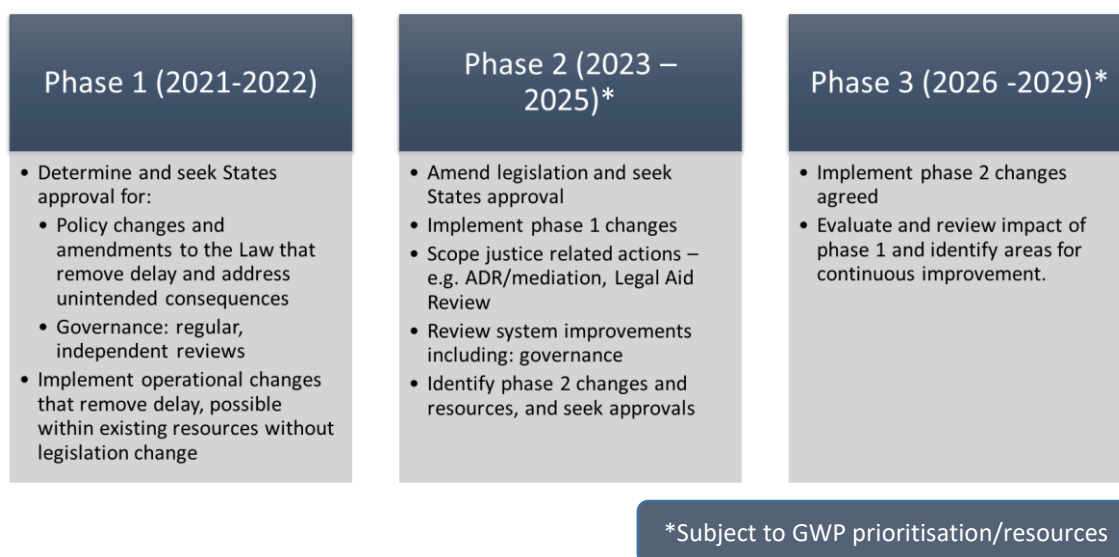
### Focus and objectives

4.9 The Board recommended to the Committee that the work was prioritised and phased on the basis of the outcomes to be realised by the amendments to the Law and the system. The outcomes and suggested weightings were:

1. Every opportunity is taken to remove the causes of delay to decision making for children in the system – 65%;
2. Any unintended consequences of the Law are addressed – 25%; and
3. Improved effectiveness of the governance of the system – 10%.

### Future phases of work – Proposition 21

4.10 The phases proposed for this programme of work are illustrated in image 1 below. It is recommended that the subsequent phases of the work are scoped and included for consideration in the relevant GWP discussions. The Committee is therefore committing to undertaking or supporting the scoping of phase 2, as set out below, and as relevant to its mandate, with a view to starting the work on phase 2 in 2024.



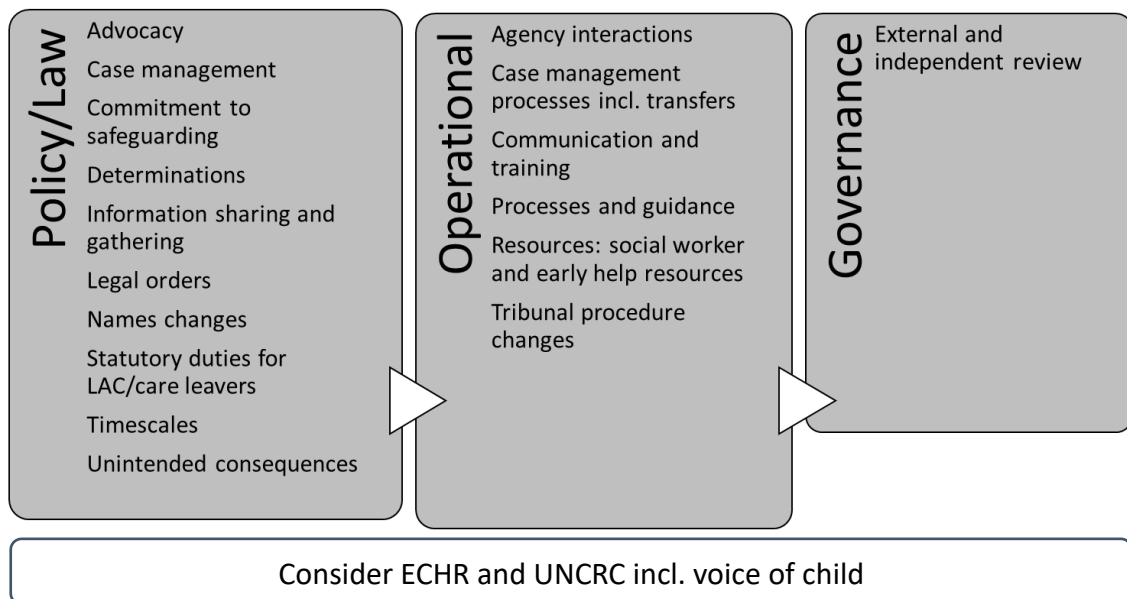
**Image 1: Review Children Law and Outcomes action phases**

### Sark

4.11 Alongside future phases of work a need has been identified for ongoing discussions with the Chief Pleas of Sark in relation to bringing forward and implementing in full its Child Protection Law. The Committee will continue to engage with Sark in this regard as and when Sark views this as necessary.

### Phase 1 - considerations

4.12 The matters considered by the Board are those proposals that address the main aims of phase 1, captured in image 2 below. These matters span policy and operational matters and have been subject to consultation.



**Image 2: Review Children Law and Outcomes actions – phase 1 proposals**

#### **Engagement and consultation**

- 4.13 The findings of the Committee’s consultation and the Outcomes Report raised further matters to be discussed in terms of new areas for improvement and some alternative proposals for consideration. It was also recognised that there was a need to fully assess the impacts of the changes including any resource implications. This latter consideration was an important one given the current international and domestic pressures on the States from a resource perspective.
- 4.14 To expediate the proposal impact assessment, a one day facilitated workshop with stakeholders was held in December 2021. The workshop explored the suggested proposals, other options for improvements and considered how best to implement the changes given the resourcing considerations.
- 4.15 While in the main there was majority support for most of the proposals, the Board were mindful that in some instances the views on specific proposals were divergent and strongly held in some cases. The Board agreed that it would take all views and responses into consideration including those of the Youth Forum, who were able to share their responses directly at a meeting of the Board.
- 4.16 The Board’s conclusions were presented to the Committee, who endorsed the proposals. The Committee then sought the views of the other lead Committees of: Policy & Resources, Home Affairs and Education, Sport & Culture, and the States of Alderney’s Policy & Finance Committee, who were supportive of the proposals put forwards.

4.17 In addition to the feedback received from the Committee's consultation exercise and the findings of the various reviews, the Board and the Committee have considered other sources of information (see Appendix D), as follows:

- The findings of the Jersey Care Inquiry in July 2017 and the resulting Jersey Law Improvement Programme<sup>31</sup>;
- The ongoing review of Scottish family law and development of a Family Justice Modernisation Strategy.
- The ongoing review of public and private family law in England and Wales (cross-professional working groups having published interim reports, final reports pending)<sup>32</sup>

## 5. POLICY PROPOSALS FOR CHANGE THAT ARE NOT RECOMMENDED

5.1 The Outcomes Report put forward two substantial proposals which were more far reaching in terms of reforms of the current system than the other changes. The Board and Committee are not recommending that these changes be progressed, but are of the view that it is important that the States of Deliberation are advised of the reasons for not supporting these changes, as they are relevant to the remaining proposals which are put forward for their approval.

5.2 The two proposals were:

**1) Revoke the Tribunal's powers to remove a child from those with parental responsibility or sets out where the child should reside.**

5.3 The Outcomes Report states that the court should be exclusively responsible for the making of legal orders that remove children from those with parental responsibility. This position is on the basis 'it is at this point of overlap between the temporary and the permanent outcomes where the problems have arisen, and this has directly contributed to the complexity of the system.' Adding that 'the difficult area is in relation to those cases that lie in the middle, the more so since, at the outset, the facts and circumstances are generally unclear and will only emerge over time. Key to removing delay and duplication in the system is making the right decisions at the right time and in the right place.' The point of duplication is where the child and families are subject to different applications and processes at the same time through the Tribunal and the court, creating unacceptable delay, uncertainty, confusion and frustration.

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<sup>31</sup> [Jersey Law Improvement Programme](#)

<sup>32</sup> <https://www.judiciary.uk/publications/consultation-children-cases-in-the-family-court-interim-proposals-for-reform/>

- 5.4 The data available suggests the majority of children subject to a Community Parenting Order (“CPO”)<sup>33</sup> during 2018-2020, were also at some point within the Tribunal system and subject to an Interim Care Requirement (“ICR”) or Care Requirement (“CR”)<sup>34</sup>. This would be expected as the decision to proceed to permanent removal is seen as a last resort and other attempts are made to provide the support necessary to enable the child to remain with their parents/carers where it is for their welfare to do so, and where it is not an emergency matter. The overlaps, conflicts and timing of when these cases are dealt with was an area identified for improvement. For example, the Tribunal can include a condition on a CR relating to where the child should reside, such as with someone other than the parents, including in the care of the Committee, whilst certain conditions or elements of the child’s plan are being worked out and resolved. This can overlap with an application for a CPO which may then be made, which must be made to the court not the Tribunal. In these cases, the child and its family could be subject to two different processes, in two different forums i.e. the Tribunal and the court.
- 5.5 The Outcomes Report review concluded that, as well as amending the thresholds, “any decision involving the removal of a child should only be taken by an experienced and qualified judge”. The main reason for this conclusion is that the temporary removal cases and/or the cessation of contact between a child and their parent currently dealt with by the Tribunal are often complex involving significant interference with the ECHR Article 8 rights of children and families (right to respect for private life, family life, home and correspondence).
- 5.6 The proposed change would remove that responsibility from the Tribunal so that it could not make a CR (including an ICR) or attach any conditions to a CR or ICR, in these cases i.e. it could not set a condition to remove a child from its carers on a temporary basis.
- 5.7 This proposal was viewed by some stakeholders as impacting the original 2004 intentions of the system and it would move away from the similar approach taken by the Scottish Children’s Hearing system, on which the 2004 reforms were partly based.

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<sup>33</sup> A CPO is an order made by a relevant court granting the Committee parental responsibility for a child. They are meant to be used when it is likely that a child will need to be placed away from their family long term. A CPO will remain in place until the child reaches the age of 18 or marries prior to this age. A CPO can be issued on an interim basis for no more than 3 months (Interim CPO).

<sup>34</sup> A Care Requirement / Interim Care Requirement is the legal order made by the Tribunal placing a child under the temporary supervisory care of the States. It aims to protect the child and promote their welfare and to assist the parents or carers to provide appropriate care, protection, guidance and control for the child. A care requirement can include conditions, for example: where a child should live or with whom they have contact.

- 5.8 When considering the legislation's guiding principles arguments have been made that this proposal inhibits the principles of enabling:
- 'young people and their families being fully involved in the decision-making' as it moves all removal decision-making to the court. It is often cited that the court is a more adversarial forum and it could result in less involvement and participation from parents, carers and children. It would see all parties being able to have legal representation which runs the risk of creating further delays as more matters could be contested; and
  - 'children under 16 who offend or who are in need of care and protection are not dealt with by the court but by a lay panel', as if progressed this change would result in cases, currently heard by the Tribunal, being heard in court.
- 5.9 It is not possible to determine exactly how many of the care and protection cases the Tribunal considers annually (an average of 40 cases per year) will involve some form of removal without parental consent<sup>35</sup>. It was viewed by those consulted that if it was 10 or less that this would be manageable within existing capacity across all relevant service areas, noting that in some cases the workload is the same regardless of which forum considers the case. If case numbers are likely to be higher than 10 then this would be more concerning, specifically for the judiciary who have advised that there is limited capacity in the system currently to manage many more additional cases. The additional cases would not include cases which progress to be heard by the court i.e. applications for permanent removal through a CPO.
- 5.10 Some data exists on the outcomes of the cases involving temporary removal by the Tribunal and the Outcomes Report suggests that these indicate the "actual outcomes for the majority of cases were satisfactorily resolved under the current arrangements". Enhanced reporting on outcomes for children across the system is recognised as an area to be addressed.
- 5.11 Some concerns were raised that this proposal might result in more children being removed on a permanent basis than would have been the case. However, should cases involving temporary removal move to the court, it is equally bound by the child welfare principles including the 'no compulsory intervention principle' and would not make any order unless it was necessary to do so.
- 5.12 If the court were to consider cases where temporary removal was a factor it is likely that these cases would take longer to conclude than they currently do

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<sup>35</sup> Where parents already consent to removal no legal order needs to be made, in line with the no compulsory intervention principle. It is understood that the arrangements for removal in these cases operates through a formal agreement with those with parental responsibility and the Committee for Health & Social Care, as opposed to a legal order being made.

through the Tribunal. The expected longer timeframes would be attributed to the current systemic issues which are outside of the scope of this action to address. The most pressing of these being constraints on the availability of Advocates and expert witnesses. There is a significant risk with this proposal in that the capacity of those who attend court proceedings (Advocates, Family Proceedings Advisory Service ("FPAS"), Judges etc.) is not sufficient enough to handle many more additional cases to disposal, in a reasonable timeframe, given current constraints. While it is noted that temporary removal decisions could be made more swiftly, the impact of increasing the overall numbers of cases heard in court is likely to result in more cases taking longer to reach a conclusion, incurring the associated negative outcomes for those children and so not meeting the objective of this review.

- 5.13 If this proposal were to proceed the availability of legal representation for court cases would need to be addressed before this proposal was implemented to avoid a bottleneck situation occurring in the court. Often these cases are funded by legal aid and is why it is recommended this issue be given due consideration as part of the Legal Aid Review (Proposition 23).
- 5.14 When the Board considered the impact assessment of this proposal it became apparent that the exact nature of the likely small number of cases where there were concerns would, in most cases, no longer be considered by the Tribunal once other amendments proposed were introduced. This is because, where permanent removal of a child was in question the case would not be heard by the Tribunal but would instead proceed more swiftly to court.
- 5.15 It was concluded that on balance the evidence suggests this proposal may not necessarily address the issues it intends to resolve and could in fact cause several unintended consequences. It was also noted that for this proposal to address the objectives of removing delays in determining outcomes for children the systemic causes of delays in the court system would need to be resolved so that unnecessary delays did not occur, otherwise this would not be in the child's best interests.
- 5.16 For those children with the greatest need and subject to the lengthiest delays it is suggested that other changes proposed in section 6 of the Policy Letter should resolve these issues, negating the need for such a substantial and fundamental change to the unique nature of the system.

5.17 **The Committee and the Board do not support the introduction of this proposal.**

## **2) Tribunal hearing findings of facts**

- 5.18 The Outcomes Report recommended that the "Tribunal should make its own findings of fact based on evidence presented to the Tribunal and the hearing of

the parties” so removing the requirement to refer the case to court to determine the facts.

- 5.19 Currently where parties do not agree on the statement of fact or the condition for referral, the Convenor or the Tribunal must refer the matter to the Juvenile Court to determine the statement of fact or whether the ground for referral is made out. If the facts are confirmed by the court the case reverts back to the Tribunal for disposal.
- 5.20 This process adds delay to determining the outcomes for children in these cases as time is needed to prepare for and hear the application in court. It is also possible that during that preparation period, the facts may have changed (for example new potential carers have come forward, or a relationship has broken up or been formed), resulting in more matters that may then not be agreed. In these instances the matter needs to be referred again to the court.
- 5.21 The current arrangement sees children and families moving between different legal forums, with different principles, approaches and processes, all of which contributes to the issues identified. There are also elements of duplication.
- 5.22 The proposal suggests that it would be preferable for the same forum (the Tribunal) to be used to determine facts and dispose of the hearings, to reduce delay.
- 5.23 The average number of cases where the Convenor’s statement of facts are disputed is 8, (based 2018-2022 data from the Convenor), of which an average of one case per year (over the last 12 years) has resulted in a court hearing. The majority of the disputes are resolved without the need for a court hearing.
- 5.24 It is suggested that to implement this change would require:
- Additional resources and legal training for Tribunal members to be sufficiently skilled to determine facts;
  - Measures to be put in place to compel witnesses amongst other practical requirements such as a suitable venue; and
  - It may also require the Tribunal to recruit a legally trained Chair who would oversee these hearings.
- 5.25 It is understood that it should be possible for the Office of the Children’s Convenor to provide any independent legal advice required in these circumstances.
- 5.26 From a values and principles perspective there is a concern that this proposal significantly alters the purpose and culture of the Tribunal to mirror the court’s

approach (seen as more adversarial by some) as opposed to the Tribunal's more inquisitorial approach. There is a view that the adversarial approach of the court is often recognised as perhaps the least favourable option for handling family law matters. This position is supported by the experience in private family law cases, as identified through the Matrimonial Causes Reforms, where disputing parties' positions can become entrenched leading to protracted cases where the child's welfare is not the primary consideration. However, there is a counter view that where the 'state' seeks to interfere in a person's fundamental human rights, for example removal of a child, that the court provides a more robust system of checks and balances.

5.27 It is understood that the majority of cases where the facts were disputed were those where removal was contested and many of those cases also resulted in a CPO being made at a later date. These cases are exactly those that the Outcomes Report sought to make improvements for through its recommendations as these are where the major concerns and delays sit.

5.28 It is likely that the change of responsibilities to enable the Tribunal to find facts would remove the priority issues of concern around delays, duplication and multiple forums. However, given the small number of cases identified it does not warrant the anticipated scale of investment and could have several unintended consequences.

5.29 **The Committee and the Board are of the view that other proposals under consideration, as set out below, more directly address the nature of the delay in these cases and so should be more effective in improving outcomes and meeting the objectives of this action.**

## **6. PROPOSALS PRESENTED FOR STATES APPROVAL REQUIRING LEGISLATIVE AMENDMENT**

6.1 The Committee is recommending the below proposals are taken forwards and the Law is amended to give effect to these decisions. Summary information on the proposals for approval and more detailed drafting instructions are in Appendices E and F.

### **Compulsory intervention - Proposition 14a**

6.2 Currently, the term 'compulsory intervention' is used to mean more than one thing within the Law. For example, in some instances it is used to mean a CR, including in section 35, which also applies to a CPO. This has caused issues with interpretation and was recognised by Professor Marshall as an area for improvement, to provide clarity around the criteria for referral to the Tribunal.

6.3 To address this cause of confusion, it is recommended that the term 'compulsory intervention' is amended to solely relate to intervention by the state in family

life and the Law makes the distinction clear between the different types of compulsory intervention i.e. temporary via a CR and permanent via a CPO.

### **Duties of the States of Guernsey and its Committees – Proposition 3**

- 6.4 The legal duties of the States in relation to children are found in both primary and secondary legislation (The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009 (“the Children Ordinance”))<sup>36</sup>. There is no obvious reason as to why this occurred.
- 6.5 It is proposed that the respective sections in Part V of the Ordinance are moved to the primary Law and that the detail of how the duties of the States and/or the Committee is exercised in the secondary legislation (Ordinance or Regulations as appropriate).
- 6.6 It is also recommended that the heading of s.24 (Part V) of the Children Law is amended from “Duty of the States” to “Duty of the States in relation to children in need.” and that the wording of the duty on the Committee to investigate is redrafted to set out clearly when that duty has been established, in line with other proposed changes to the Law.

### **Duty to co-operate - Proposition 4**

- 6.7 The Outcomes Report and the subsequent discussions have identified a need for greater agency co-operation that puts the child’s welfare at the centre. In the original 2004 reforms the Policy Letter included the following:

“There will be a general duty on States agencies to work together to identify and assist families who have children who are in need of help at an early stage, thus preventing problems from developing or escalating”<sup>37</sup>

- 6.8 Section 27 of the Law, sets out:

“It shall be the duty of –

- (a) each employee of the States, and
- (b) all other persons,

whilst they are working with any child whom they reasonably believe is in need, or at risk, to take such action in relation to that child, and his circumstances, as may be required of them under this Law.”<sup>38</sup>

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<sup>36</sup> [The Children \(Miscellaneous Provisions\) \(Guernsey and Alderney\) Ordinance, 2009](#)

<sup>37</sup> [Billet d’État XVII of 2004 - Matters Affecting Children, Young People and Their Families](#)

<sup>38</sup> [The Children \(Guernsey and Alderney\) Law, 2008.pdf](#)

- 6.9 In England this requirement is set out in legislation under the Children Act 2004, (section 10)<sup>39</sup> which includes an obligation on the local authority to promote co-operation between: itself; relevant partners; and appropriate person or bodies engaged in children's activities. This is with the aim of improving the well-being of children from multiple perspectives such as physical, educational and social.
- 6.10 This provision requires the local authority to have regard to the importance of parents and other persons caring for children. It specifies the specific relevant 'partners' (individuals, agencies and organisations) and what those 'partners' might do to improve well-being including providing staff, goods, services, accommodation or resources to another relevant person/body.
- 6.11 The duty in the Law, whilst broad in coverage, does not necessarily meet the 2004 policy intention agreed. The current duty is focused on action being taken in relation to the child, and not the family. It does not set out specifically the need for early help and intervention or that agencies should work together and co-operate to improve outcomes for children.
- 6.12 Professor Marshall highlighted that the intricacies of the system and the relative uniqueness of the Law in bringing together best practice from other jurisdictions presents challenges to fostering a shared understanding of the respective roles and duties under the Law.
- 6.13 The inclusion of this new duty should provide a greater emphasis and obligation on all agencies, States employees and individuals who work with children 'in need' or 'at risk', to work together for that child's welfare. Coupled with the 'commitment to safeguarding' proposal below and the preparation of detailed operational guidance, it should provide much greater clarity and understanding of the different roles and responsibilities of each agency and so provide greater and more efficient protection to children.
- 6.14 The Committee is in no doubt as to the commitment of all parties to work together; however, as highlighted by Professor Marshall, it considers that more could be done to support the effectiveness of the implementation of the Law through operational guidance and process (see section 9).

#### **Commitment to Safeguarding in the Law - Proposition 5**

- 6.15 A proposal put forward through the 2019 Children Law consultation, with professionals, was for a commitment to safeguarding to be included within the Law, in line with Section 11 of the Children Act 2004, in England.

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<sup>39</sup> [Children Act 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2004/31/section/10)

- 6.16 The purpose of setting out such a commitment on a statutory footing is to ensure greater collaboration and commitment from all the main agencies to work together for the welfare of children. To be effective this would need to translate into a Guernsey and Alderney equivalent framework similar to that of either the English 'Working Together'<sup>40</sup> framework or the Scottish Getting it Right for Every Child ("GIRFEC")<sup>41</sup> framework (see paragraph 9.14).
- 6.17 It is apparent that culturally the system does not operate as collegiately and collaboratively as the original 2004 reforms intended.
- 6.18 Whilst activity at the operational level is underway to make improvements in inter-agency working, it is at risk should individuals or priorities change. By including a statutory commitment it demonstrates and strengthens the intentions of the improvements proposed. It should improve system governance through identifying where there are gaps and issues to be addressed in practice.
- 6.19 The commitment in the Law, alongside the amended duty to cooperate, should encourage and demonstrate an expectation that agencies focus on safeguarding in all cases. The operational framework should provide greater clarity around processes and inter-agency working, which should reduce delays in some instances.

#### **Remit cases from the court to the Tribunal - Proposition 6**

- 6.20 A power for the court to remit cases to the Tribunal should be included in the Law so that it can refer the case to the Tribunal, in appropriate cases. This should reduce delays.
- 6.21 Where cases are remitted to the Tribunal from the court it should include the sharing of any facts established to prevent the evidence needing to be reheard by the Tribunal, causing duplication and delay.
- 6.22 This change will be supported by case transfer protocols but the powers to enable this to happen should be set out in the legislation, as necessary, to give it effect. A similar provision enabling the court to remit cases to the Tribunal already exists in relation to youth justice cases<sup>42</sup>.

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<sup>40</sup> This is a statutory framework that the UK has implemented which guides inter-agency working to safeguard and promote the welfare of children. [Working together to safeguard children - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>41</sup> [Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>42</sup> section 7(1) (b) of [The Criminal Justice \(Children and Juvenile Court Reform\) \(Bailiwick of Guernsey\) Law, 2008](#).

**Court to retain and dispose of cases where it determines the facts in appropriate cases- Proposition 7**

- 6.23 This proposal would see any cases appearing before the court to determine facts, on behalf of the Convenor, to continue to be disposed of by the court rather than the Tribunal if facts are established. It could be achieved through providing the court with the power to make a CR or ICR, in appropriate cases, with any necessary and relevant conditions, as is currently permissible in appeal proceedings from decisions of the Tribunal. In some instances the case could be referred back to the Tribunal once a decision has been made by the court and the Tribunal could continue the case.
- 6.24 This proposal has the benefit of ensuring that the case continues towards a conclusion with the fewest changes in forum and it should reduce the time it takes to reach a decision on the case. It will provide a more formal decision route for those cases where removal is an issue and where parties do not agree with the Convenor's statement. The court would need to adjourn after the finding of facts hearing and reconvene to hear the evidence on the case in full. To ensure that delays are minimised the court will need to list the case hearing for disposal as a priority, in line with the objective to remove delay.
- 6.25 The introduction of this proposal could risk these cases taking much longer than currently to dispose of through the Tribunal. However, data from the Convenor suggests a low number of additional cases per year (estimated 1-2 cases) could be retained for disposal by the court. This is understood as being manageable by the judiciary.
- 6.26 The impact of this change, and all the other changes agreed, on case disposal times will be captured through the monitoring and reporting approach (see section 10). Remedial measures will be considered under phase 2 if the impact of the changes inhibits the welfare of the child.

**Concurrent proceedings - Propositions 8**

- 6.27 If there are current proceedings within the Tribunal at the time when a CPO application has been made to court, it is recommended that these are paused or stopped and that no further steps are taken by the Tribunal until the case has been heard by the court, with some limited exceptions.
- 6.28 This proposal seeks to reduce the instances where a case is being heard in more than one forum at the same time. However, matters unrelated to the substantive application to court, such as offending or school attendance matters, would still be considered by the Tribunal. There are concerns that this approach will result in matters relating to a child not being considered together and in separate forums which is not in align with the original principles. It would be expected that the other changes proposed to improve case management, with all relevant

agencies involved, sooner in the process will minimise the impact on the child's welfare.

- 6.29 The proposed change to allow cases to be more easily remitted between the Tribunal and the court will mean that if the court does not grant the order, it has the option to refer the case to the Tribunal for ongoing management. This could be where a CR is viewed as a more suitable solution to support the child and its family.

**Compulsory Attendance at Tribunal hearings for adults – Proposition 9**

- 6.30 At present the Tribunal does not have power to compel parents or children to attend hearings or apply sanctions for non-attendance. Professor Marshall identified that the current lack of compulsion for children and adults to attend Tribunal hearings could undermine the status of its interventions and decisions. She recommended that children and those with parental responsibility should be required to attend meetings of the Tribunal unless excused from attendance.
- 6.31 While the Tribunal system is fundamentally different in nature and approach to a court, the involvement of the Convenor and Tribunal are still formal and significant steps of intervention for children and families. The absence of powers to require responsible persons and children to attend the hearing is viewed by some, including Professor Marshall, as tipping the balance towards voluntary engagement and persuasion rather than compulsion.
- 6.32 In Scotland, there is a legal right and duty upon the 'relevant person'<sup>43</sup> or child to attend a Children's Hearing unless excused in certain specified circumstances or when the attendance is not considered necessary. In some instances the child may be excused from attending where it is considered the attendance may be harmful to the child, such as where the child would be placed at risk by attending, or would not be able to understand the proceedings. If the child does not attend and is not excused from attendance, there is an option of a warrant to be issued to secure the attendance of the child. The child may be held in a place of safety for up to seven days until they can be brought to a hearing. For the relevant person, this obligation is supported by the creation of an offence of failing to attend a hearing which is punishable by a fine.
- 6.33 The Children Law consultation and the Outcomes Report suggested the introduction of suitable legislative provisions to place an obligation upon relevant children and responsible adults to attend Tribunal hearings unless

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<sup>43</sup> Equivalent to parties to the proceedings in Guernsey law, meaning those with parental responsibility who have duties to safeguard the child and promote their health, provide care and an upbringing, provide a home for the child and safeguard their property and, to maintain frequent and direct contact with the child (if they live separately).

excused or where their attendance is not considered necessary. It was further suggested that responsible adults should be subject to consequences for non-attendance through the introduction of penalties to be issued by the Tribunal.

- 6.34 The basis for this change was a need to emphasise the importance and seriousness of the Tribunal hearings to some parties in the case, as on occasion parties failed to turn up. When this occurs hearings may have to be adjourned to allow the party to attend, which causes a delay, wastes resources and is not in the child's best interests. The Outcomes Report noted this occurred most often in relation to educational absenteeism.
- 6.35 The case for introducing compulsory attendance and penalties at Tribunal hearings for children was not overwhelmingly supported by those consulted. There were concerns raised that compelling children in all cases could be detrimental to their welfare and there was little evidence to suggest that non-attendance by children was a significant cause of delay.
- 6.36 The more pressing concern was in relation to adults with parental responsibility not attending hearings and so the proposed change has been revised to apply to adults with parental responsibility only.
- 6.37 The revised proposal seeks to set out in the Law the requirement for those with parental responsibility to attend a Tribunal hearing, unless excused or not required to attend. The ability for the Tribunal to fine those who fail to attend without a valid reason would be enabled.
- 6.38 Those consulted, through the various reviews, who do not support compelling those with parental responsibility, were concerned it would encourage the wrong behaviours and attendance would be only to avoid a fine. Also, that it would most likely penalise those who are unable to afford a fine and could hamper the relationship with those with parental responsibility to a point that impacts negatively on outcomes for the child i.e. it could result in more delays as it creates resistance to the process overall. Other views included that it would go against the ethos of the Tribunal which seeks to work *with* parents and families.
- 6.39 While the concerns were noted, a deterrent such as compelling a parent to attend or be penalised could encourage the appropriate behaviours without having to actually be applied. The proposal includes the need for suitable safeguards to be in place to enable the Tribunal to use discretion on how it applies its penalty system, if at all. It would be expected that this would include consideration of the ability to pay and extenuating circumstances, amongst other considerations, which would be determined by the Tribunal.

**Notifications and referrals to the Convenor, Tribunal and Committee - Proposition 10**

- 6.40 Whenever either the Tribunal or the Committee recognises the need for a substantive application to be made to court, as the threshold for the permanent removal of a child is met, then the Tribunal and Committee should ensure that the other forum is appropriately notified.
- 6.41 Specifically, the Committee must notify the Convenor when it decides to apply to the court for an order that will have the effect of removing a child from their parents or family. When the Convenor is notified by the Committee that an Emergency Child Protection Order ("ECPO"), CPO or Interim CPO ("ICPO") application is being made it is recommended that the Convenor does not undertake an investigation or further action to avoid duplication, unless the Convenor has evidence or information that might be relevant to the case that should be disclosed. In instances where the Tribunal considers a case which it views passes the threshold for a court order, it should notify the Committee. The Committee can then take the necessary action.
- 6.42 This change supports and gives greater clarity to the effective sharing of information held by the Convenor that might be relevant to the child or family which could inform the court. As now, the sharing of relevant information would be subject to the necessary safeguards and further consideration will be given to the details of what information can be shared, with who and when (see paragraph 9.5).
- 6.43 The timescales within which these notifications should be made will be given further consideration through the proposal in paragraphs 9.6-9.10, to develop a system wide set of target timescales to meet based on the current capacity within the system.

**Adoption and special contact order notifications - Proposition 11**

- 6.44 The requirement to notify the Convenor of certain applications is set out in the Law, with the detail of how those notifications are to be made set out in Regulations.
- 6.45 The Law includes notifying the Convenor of some orders which the Convenor has, or will not be directly involved, so there is no clear reason why the notification is required. The specific applications are those relating to adoption and special contact orders.
- 6.46 It is suggested that these notifications are removed from the Law on the basis that notifying the Convenor of these matters is disproportionate and an unnecessary interference in private and family life.

- 6.47 It is understood that there are other notifications made to the Convenor, not set out in legislation. It is suggested that these notifications are reviewed and should form part of the discussions to be held in relation to the Information Sharing Agreements (see section 9).

### **Legal orders and thresholds incl. Police powers**

#### **Supervision order - Proposition 12b**

- 6.48 It is suggested that a Supervision Order ("SO") be introduced as an additional legal order a court can make in family proceedings. This would be along similar lines to a SO in England and Wales, whereby the local authority, through the court, supervises a child while they are still living in the family home (or placed with a relative), so as to ensure the child is well cared for. This order would provide the court with the power to make an order placing a child under the supervision of the Committee.
- 6.49 There was a SO that existed before the introduction of the Law which was not replicated in the current Children Law. Its removal is understood to be because the Law established the Tribunal giving it provision to make care requirements. CRs are temporary in nature and often provide a suitable short-term framework to provide the supervision previously provided through SOs. This shift in decision making from the court to the Tribunal was aligned to the intentions of the 2004 Policy Letter to remove cases from court, where appropriate.
- 6.50 It is understood there is approximately one case per annum in which the provision of a SO has the potential to provide timelier determinations and outcomes. Typically, these are cases where applications have been made to the court for a CPO, but the outcome is one in which the child could safely live with its parents or family members with some monitoring and support. At this time, the only option is to dismiss the application and for a subsequent application to be made to the Tribunal by way of a CR.
- 6.51 Effectively, a SO would be an additional power of the court to be considered when all other possible courses of action have been explored. This is important as the granting of a CPO is intended for use when it is likely that there is a need for a long-term placement for a child and represents a significant interference with their Article 8 Right (right to respect for private and family life).
- 6.52 The consultation responses received showed there were divergent views on the introduction of SOs and not all stakeholders agreed it was necessary to introduce such an order. The main reason given for not supporting this proposal was that the CR would be a better disposal route through the Tribunal in these cases. However, the purpose of a CR and the SO are subtly different in that, a CR (which temporarily grants parental responsibility to the Committee) is a much more significant intervention in family life than a SO (which does not grant parental

responsibility for the child to the Committee but enables the Committee to supervise the child as deemed necessary by the court).

- 6.53 On balance, it is suggested that there is merit in including this additional order within the legislation on the basis that it could result in more timely decisions for children who would have already been through the court process for the CPO. However, it is recognised that in some instances the case would be better managed through referral to the Tribunal, which will be an option also available to the court.

**Child Assessment Order - Proposition 12c**

- 6.54 It is suggested that a Child Assessment Order be introduced as an additional legal order, along similar lines to a Child Assessment Order in England, Wales and Scotland. This order allows a child to be seen by the relevant professionals and, where necessary, if there are concerns for a child, allows for an assessment of a child's health and development to be undertaken. This legal order will allow the Committee to conduct the necessary assessments to decide if further intervention is required to safeguard a child.
- 6.55 Currently, there is opportunity for delay and risk to children where a lack of cooperation from those with parental responsibility prevents the assessment of a child by suitable professionals to determine whether compulsory intervention is justified. For this reason, the introduction of this order has the potential to reduce delay within the system where there is a reasonable cause for concern about the child's welfare.
- 6.56 For example, a situation arises where there is professional concern that the child is not meeting its developmental milestones but the parents refuse to provide consent to the child being assessed by a medical professional, or for the child to meet with a social worker for the purpose of assessment of the child's need. This assessment might include a need for urgent intervention or safeguarding, or identify that there is no need for any further intervention much sooner and so minimise the possible disruption caused to the child, which is also important to consider.
- 6.57 It is proposed that the order will be a public law order which only the Committee would be authorised to apply to the court for in these cases. As an additional safeguard, if the application for the order is not complied with, by those with parental responsibility, the court may treat the application as one for an Emergency Child Protection Order.
- 6.58 An application for this order is still a significant interference in family life so it should be used proportionately. It would be expected that all attempts are made to work with the family before an application is made by the Committee. Those

with parental responsibility will be kept informed of their options at all stages of the proceedings and the findings of any assessments, as is the case now.

- 6.59 There was majority support for this proposal from those consulted.
- 6.60 It is understood that the use of this order would apply to very few cases but that it would provide the Committee with a useful legal option to ensure the welfare of the child is assessed so appropriate action can then be taken if it is proven to be needed.

**Community Parenting Orders - Proposition 12a, d and e**

- 6.61 A CPO is the appropriate order where there is no foreseeable prospect of a child being safely cared for by their family and so alternative provision is needed. Those with parental responsibility for the child (usually the child's mother and father) retain this, but the Committee is also granted parental responsibility and is responsible for planning the child's care in consultation with those with parental responsibility.
- 6.62 The threshold for the making of a CPO should be distinct to those of a CR, as noted in paragraph 6.3. With the CPO being recognised as a longer-term and more permanent order than a CR, the threshold to be met should be different and reflect its purpose.
- 6.63 Currently, it is not possible to apply for a CPO when extended family members remain under consideration as potential permanent carers, as evidence needs to be gathered first to meet the threshold as currently drafted. This can contribute to delay and cases remaining in the Tribunal when they might properly be before the court.
- 6.64 The proposals under consideration are that the legal threshold for the CPO is amended to ensure that it:
- Is distinct and separate from the criteria for referral to the Convenor or to make a CR, through removing the requirement for at least one of the conditions in the current section 35 to be made out, in line with Professor Marshall's recommendation 15;
  - Is comparable to the threshold in England and Wales but adapted as appropriate for Guernsey and Alderney, in line with the original intentions of the 2004 reforms; and
  - Removes the requirement for family assessments (reasonable prospect limb) having to be completed prior to an application being made to the Court. The requirement to complete these assessments prior to a final order being made will remain.

6.65 Those who do not support these proposals suggest that the test for any form of compulsory intervention resulting in removal of a child, regardless of whether it is temporary or permanent, should be the same as it involves such a significant interference in family life. Concern was also expressed that by changing the threshold for a CPO it may result in more cases being heard in court. The counter argument to these concerns are that wider safeguards exist, in that all agencies are bound by the consideration of the child welfare principles, i.e. no compulsory intervention and the ECHR in whatever decisions they make. All interventions should be proportionate and evidenced as being necessary. Removal of a child should be a last resort where nothing else will do. Amending the wording in the Law to make the thresholds distinct would not impact the wider parameters within which any legal decisions should be made.

6.66 In response to the concern of more cases being heard in court, it is suggested that this is a possibility but that this is because those cases should be heard in court and not by the Tribunal. This point was supported by Professor Marshall who advised that permanency cases should go direct to court and not pass through the Tribunal.

#### **Remove the reasonable prospect limb wording**

6.67 It is suggested that the CPO threshold is changed to remove the requirement to satisfy the reasonable prospect of the parents or family members being able to care for the child. This would allow for a CPO application to be made at an earlier stage and not waiting until after the family assessments have been completed. The requirement to fully assess all viable family members would remain one to be satisfied before the CPO order was made by the court, in line with the existing principle in the Law that a child's welfare is normally best served by being brought up within its own family.

6.68 Some concerns were raised about this change with some being of the view that this proposal seeks to address an operational issue with a structural change and argue that more could be done to instigate the assessment process sooner and manage their completion more effectively, for example. It would be expected that any operational improvements would take place regardless of any changes made to the Law. Any operational changes would not address the most pressing concern which is the stage at which a CPO application can be made to the court, which is governed by the threshold.

#### **Threshold changes summary**

6.69 In response to the issues raised it is recommended that the CPO threshold wording is amended, as follows:

- a. to remove the reference to section 35, which is also used for the making of CR;

b. to largely mirror the threshold test for permanent removal of children in other jurisdictions, where there are reasonable grounds to believe that:

- the child concerned is suffering, or is likely to suffer, significant harm; and
- that the harm, or likelihood of harm, is caused by:
  - the care given or likely to be given if not removed, by the parent or person with parental responsibility as would be reasonably expected of a parent; or
  - the child is beyond parental control.

and,

c. Remove the reasonable prospect limb wording; and

d. Retain the part of the threshold which enables a CPO to be made with consent (retaining the current provision).

6.70 Alongside the CPO threshold changes, the wider changes being put in place to make the transfer of cases between the Tribunal and court smoother and quicker should enable any case that is not in the most appropriate forum to be more easily transferred once that becomes apparent (see paragraphs 6.20-6.22).

6.71 In general, the changes proposed to the thresholds should ensure greater clarity and understanding of the different forum's roles and support cases being dealt with in the right forum at the right time. Combined with increased understanding and awareness of the purpose of the two forums, earlier referral to the Convenor and earlier intervention in general, should reduce overall the number of cases reaching the stage where permanent removal of children is a consideration.

#### **Interim Community Parenting Order - Proposition 12f**

6.72 Currently there is provision in the Law for the court to make an ICPO which is the same criteria as for the making of a CPO. However, there is concern that this does not reflect the position that an interim order is likely to be granted, at an earlier stage, as a protective measure pending resolution of the substantive issues at a CPO final hearing. It is recommended by some that the criteria test should be different which still takes account of the (amended) CPO test but properly recognises its interim nature.

6.73 This was recognised in the case of "re the S children"<sup>44</sup> where the Juvenile Court was satisfied that the test for an ICPO should be as follows:

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<sup>44</sup> [Judgement 13/2010 "re the S children"](#)

“is whether the department can establish that there are reasonable grounds for believing the circumstances with respect to the child are as made out as in section 49 of the Law<sup>45</sup>.”

- 6.74 The proposal is that this is an opportunity to set out a more detailed version of the interim test.
- 6.75 There are some concerns that the threshold should not be different as suggested. Some are of the view that the CPO conditions should be met, not just ‘reasonable grounds to believe they have been met’, which is a lower threshold.
- 6.76 This brings into question what the purpose of this order is given all of the other changes being made. It is understood the order is meant to provide protection to children who are understood to be at risk of harm but do not meet the ECPO threshold such as in periods of crisis. An ICPO should only be used in cases where the child needs to be removed as a short-term protective measure, as there is a risk of harm and there is a strong likelihood that a CPO is needed but the case is not yet ready for a final hearing.
- 6.77 This order recognises that it is possible that following a period of crisis or intervention parent/s may be able to parent adequately without further state intervention and so do not proceed to a CPO. It would be expected in these circumstances that the case could be transferred to the Tribunal if further support was needed.

#### **Parental Responsibilities Order - Proposition 12g**

- 6.78 Currently a Parental Responsibility Order<sup>46</sup> is discharged automatically on the making of a CPO for that child. It was never the intention that the person who holds parental responsibility for that child, and who may have discharged that responsibility actively and over a long period of time, would automatically lose that responsibility if a CPO were made without any consideration given to this by the court. The proposed amendment would remove the automatic element but the decision to discharge a Parental Responsibility Order would remain one to be made by a court.
- 6.79 This change provides greater protection for those who hold a Parental Responsibility Order.

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<sup>45</sup>Section 49 being the threshold test for a CPO

<sup>46</sup> Is a private law order made under s.17 of the Children Law granting “parental responsibility” to a person, usually a parent or carer.

**Emergency protection – automatic discharge by sitting of the Tribunal - Proposition 12h**

- 6.80 The Law introduced a number of powers designed to safeguard children in an emergency including the ECPO. This order is typically used for urgent situations where there is a high level of risk. It enables the Committee, with police assistance if necessary, to remove a child from a situation of serious harm (or potential serious harm) or to prevent their removal from a safe place. The order can only be applied for by the Committee and is dealt with by the court.
- 6.81 Under the Law the ECPO can remain in force for a maximum period of eight days unless it is terminated within the eight days because:
- a) 24 hours from the making of the order has passed and the Committee has not taken any steps to implement the order;
  - b) The Children’s Convenor with the consent of the Committee, releases the child from the order;
  - c) A relevant court discharges the order; or
  - d) The Tribunal first sits to consider the case of the child.
- 6.82 It is proposed that the provision for the automatic termination of an ECPO when the Tribunal sits to consider the case (d) is removed from the Law, as it has the potential to cause difficulties in that when the Tribunal sits the ECPO is effectively discharged and the protective arrangements for the child cease. This could potentially leave a child at risk without any legal protection in place. In practice this could mean that a parent could effectively leave the Tribunal and remove the child from any placement as there are no legal safeguards in place to prevent this happening.
- 6.83 In Scotland, the roles and responsibilities of the Children’s Hearing in these circumstances are very different and the act of the Children’s Hearing sitting does not in itself terminate the ECPO equivalent.
- 6.84 The majority of respondents were supportive of the proposal but some concerns were raised that this change might further confuse the distinct roles of the court and the Tribunal. It would be expected that the concerns could be alleviated through the improved clarity provided by the soon to be introduced operational guidance.

**Emergency Threshold changes: significant harm - Proposition 13**

- 6.85 The current wording in the Law sets out ‘that a child is suffering’ or that the child is ‘at imminent risk of suffering’, both of which require proof of the suffering or immediate risk of suffering, before an ECPO can be made. This results in a higher threshold for an ECPO in Guernsey and Alderney than in neighbouring jurisdictions and results in an apparent gap in the protection for children. This

gap can risk children being left in potentially unsafe care arrangements for too long before any formal intervention can be made.

- 6.86 The current protection available to these children has been through the making of a referral to the Convenor who determines whether to refer to the Tribunal who might make a CR. However, it was never the intention for the system to operate in this way i.e. the process for a CR is not designed to provide urgent protection in these cases.
- 6.87 It is possible that this was not a deliberate intention of the 2004 reforms and it would seem logical to amend the wording to include comparable terms used in other jurisdictions.
- 6.88 The proposal is to replace “serious harm” with “significant harm” in the threshold provisions for an ECPO, Exclusion Order and Police Powers (to protect a child). Equivalent provisions in the law in England, Wales and Jersey use the terminology “significant harm”.
- 6.89 The term ‘significant harm’ is used in other areas of the Law. Unlike other jurisdictions, the Law does not define either term. The absence of a definition in the Law and the different terms used to that in other jurisdictions could be a cause of confusion over what the threshold requires to be met. Also, the court and Tribunal do not have the ability to use the extensive case law and accompanying guidance from neighbouring jurisdictions to guide timely decision making.
- 6.90 The Act in England and Wales defines harm as the ill treatment or the impairment of health or development. It also introduced the concept of “significant harm” as the threshold that justifies compulsory intervention in family life in the best interests of children.
- 6.91 The Act recognises there is no absolute criteria for determining “significant” but outlines that harm can be considered such by “comparing a child’s health and development with what might be reasonably expected of a similar child”. This definition is similarly adopted by Jersey.
- 6.92 Scottish legislation has no legal definition of significant harm or the distinction between harm and significant harm. Similar to England and Jersey, the Scottish National guidance indicates that the extent to which harm is significant relates to the severity or anticipated severity of impact upon a child’s health and development. It is considered a matter of professional judgement, informed by assessments, frameworks and tools, as to whether the degree of harm is considered significant.

### **Reasonable grounds**

- 6.93 In addition to the amendment to the wording of the threshold to **significant harm**, it is proposed that additional amendments are made so that the threshold is comparable to that for the equivalent orders in England, Scotland and Wales.
- 6.94 In these jurisdictions the court needs to be satisfied there are **reasonable grounds to believe the child is likely to suffer**, or is suffering. Whereas the Law wording here sets out 'that a child is suffering' or that the child is 'at imminent risk of suffering', both of which require proof of the suffering or immediate risk of suffering, before an ECPO can be made. This results in a higher threshold for an ECPO in Guernsey and Alderney. It is possible that this was not a deliberate intention of the 2004 reforms and it would seem logical to amend the wording to include both terms that are used in other jurisdictions, as above.
- 6.95 The need to define these and other key terms in the Law remains an important change to increase clarity (See suggested definitions in Appendix F).

### **Imminent**

- 6.96 Removal of the word 'imminent' from the threshold test aligns more closely with other jurisdictions which consider the likelihood of significant harm being sufficient regardless of whether that likelihood is immediate or at some point in the future. This should provide greater protection for children in these circumstances.

### **Amend the Police Powers (to protect a child) and Recovery Order wording**

- 6.97 The Law also sets out the powers available to the Police to remove a child in cases of an emergency.
- 6.98 Through the consultation a further proposal was put forwards relating to the threshold for Police Powers to protect a child to bring the threshold in line with that of England, Wales and Scotland. The proposal suggests that additional wording of 'by force, if necessary' provides the police with greater power to use in instances where a child is believed to be at risk but where access to the child is being unreasonably refused.
- 6.99 The change, supported by the majority of those subsequently consulted, will ensure alignment to the other threshold changes proposed and provide greater clarity and protection for children by the Police in ECPO cases. The term 'by force, if necessary' is also applicable to cases where a child in the care of the Committee may need to be recovered, through the making of a Recovery Order. It is recommended that this wording is captured appropriately to give this effect.

### **Increase police powers of protection to 72 hours**

- 6.100 The Law sets out a test for the exercising of police powers of protection that is similar in nature to that in legislation in England and Wales, however the

timeframe is different. In England and Wales the time limit is 72 hours and it is 24 hours in Scotland.

6.101 Guernsey Police report that the fact that police powers are limited to 24 hours rather than 72 hours is a further significant barrier to them protecting children in emergency situations.

6.102 In summary, the proposals for changes to the thresholds are:

- a) Replace the term “serious harm” with “significant harm” in the threshold provisions for an ECPO, Exclusion Order and Police Powers (to protect a child) and add definitions in the Law.
- b) Remove the word ‘imminent’ in the threshold provisions for an ECPO, Exclusion Order and Police Powers (to protect a child).
- c) Remove the word ‘imminently’ and add the words ‘by force if necessary’ to the Police Powers (to protect (s.64) or recover a child (s.92));
- d) Increase the 24 hour limit for police protection to 72 hours once an ECPO has been made.

**Care Requirements – Distinct thresholds - Proposition 12a and 14b**

6.103 Currently, the Law sets out a list of conditions that form part of the threshold for both the temporary intervention of the Tribunal through a CR and the more permanent intervention of the court through the making of a CPO.

6.104 The use of the same conditions for two separate purposes has created an area of confusion. It is suggested that the Law is amended so that the criteria for the legal thresholds for CPOs and for the CR are separate and distinct, in line with Professor Marshall’s recommendations.

6.105 The 2004 Policy Letter sets out that “A care requirement will last for a maximum of a year, although it may be renewed. In general, it is intended for those cases where there is a reasonable prospect of positive change, which will enable the child either to continue living within the family or to be reunited within a relatively short period. Conditions attached to a care requirement may involve a substantial interference with parental rights and responsibilities, but these are only temporary, for as long as the care requirement and/or any conditions are in force.”

6.106 It is recommended that the term “compulsory intervention” is replaced with “care requirement” in the new threshold criteria for the Convenor and Tribunal to make this explicit (in line with the proposal in paragraph 6.3). The changes should improve clarity of the differences between a CR and a CPO, in line with the original intentions for a CR.

**Care Requirements - Remove no persons willing and able to exercise parental responsibility – Proposition 14c**

- 6.107 To address a cause of confusion over the existing threshold, the recommendation by Professor Marshall (2015), supported by subsequent reviews, is for the requirement to be satisfied that “there is no person able or willing to exercise parental responsibility...” to be removed.
- 6.108 Professor Marshall stated that this ‘has the air of permanence’ and sets ‘a high bar’ for temporary removal which is often difficult to satisfy. It is suggested that this similarity with the CPO threshold causes confusion for parents and in some cases suspicion that the Tribunal process will end in permanent removal of children. This latter point undermines the intentions and ethos of the Tribunal, to work with families and the children with the aim that they can remain with the family, and is understood to be a cause of delay, as parents do not agree to the conditions for referral on this basis.
- 6.109 The Committee supports the removal of this requirement from the Law.

**Care Requirements - Rename the ‘conditions’ for a care requirement as ‘grounds’ – Proposition 14d**

- 6.110 The Children Law consultation proposed the ‘conditions’ under s.35(2) of the Law be renamed as ‘grounds’ (term to be used from this point onwards) to better reflect the terminology in the comparable Scottish legislation and to remove any confusion with the term used in other parts of the Law to mean conditions attached to the CR. This proposal was supported by all those consulted.

**Care Requirements - Update the grounds – Proposition 14e**

- 6.111 The Children Law consultation and the Outcomes Report both identified the need for these grounds to be updated to more appropriately reflect the concerns which might lead to a referral for a child and to include additional grounds which could impact a child’s welfare such as a child being exposed to domestic abuse. There were recent revisions to the grounds in the 2011 Act which provided a useful template to inform changes to our grounds.
- 6.112 The proposed updates to the ‘grounds’ were determined in consultation with the Convenor, advice from St. James Chambers and the Committee. They are set out in Appendix G. The exact wording of the grounds may change, subject to the legislative drafters’ advice, but the changes proposed will:
- Amend the existing wording to align more closely to the Scottish legislation which was more recently reviewed and which better reflects the best practice (informed by case law) for referrals to be made to the Convenor;
  - Modernise the language and make it more explicit;
  - Make the wording of the grounds more trauma informed;

- Include new grounds which provide greater protection to children in instances where there are potential risks to their welfare, such as where they may come into contact with a person who has committed a 'specified offence' or domestic abuse; and
- Define and provide greater clarity on the terms used within the grounds to reduce ambiguity.

### **Specified offences**

6.113 In Scotland, the Law sets out 'specified offences'. These are certain criminal offences which have been determined to indicate that the perpetrator might pose a danger to children, for example murder, assault, indecent exposure and certain other sexual offences. They include offences against both children and adults.

6.114 The inclusion of a list of 'specified offences' is proposed in the revised grounds. The list would be a local equivalent to those in Scotland and other jurisdictions, suitably adapted for Guernsey and Alderney (see suggested list in Appendix G).

### **Close connection**

6.115 The new grounds proposed include that the child has, or is likely to have a 'close connection' with a person who has committed a 'specified offence' or has carried out domestic abuse. The intention is that this should provide greater protection for children in such circumstances. As with 'specified offences', 'close connection' will need to be defined in the Law. The ground is drawn from the updated Scottish legislation and so it is proposed that the definition is the same.

A close connection is defined as:

"a child is to be taken to have a close connection with a person if—

- a) the child is a member of the same household as the person, or
- b) the child is not a member of the same household as the person but the child has significant contact with the person."<sup>47</sup>

### **Interim Care Requirement - Remove the 28 day review requirement and set reviews at a minimum of six months – Proposition 14f**

6.116 There is strong support for the removal of the obligation to refer cases back to the Tribunal every 28 days for a renewal of a CR. The Outcomes Report suggests that a more appropriate timeframe for review would be a minimum of six months after the order was made. This would remove a cause of delay and enable the duration of the order to be tailored to the needs of the child. This

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<sup>47</sup> [Children's Hearings \(Scotland\) Act 2011 \(legislation.gov.uk\)](#)- Section 67(3)

change would not restrict the Tribunal from reviewing a case more frequently than six months should that be required.

6.117 While some stakeholders suggested perhaps three months instead of six was timely, this timeframe would reduce the flexibility the Tribunal has in setting appropriate timetables for the individual case and therefore it is not recommended.

6.118 The above changes alongside the extension of the renewal of CR to a minimum of six months should enable the Tribunal to have greater flexibility in applying the order to individual cases.

#### **Involvement of Family Proceedings Advisers pre-proceedings - Proposition 15**

6.119 Currently, a Family Proceedings Advisor ("FPA") (currently named Safeguarders in the Law) can only be appointed once proceedings have commenced. The suggestion is that it would be beneficial to involve FPA's before proceedings commence in some instances to enable:

- FPA's to be sighted in advance of any proceedings commencing and provide more timely support to the child; and
- FPA's to offer voluntary ADR such as mediation.

6.120 For an FPA to be involved with a family pre-proceedings in public law matters it would require agreement by all those involved that the FPA could work with the family and so access the relevant information. This change would affect only certain cases identified by the Committee, where the Committee is considering issuing proceedings and where there is merit in an FPA being involved to provide independent advice and recommendations prior to the issue of proceedings. It is envisaged that the same FPA would then be formally appointed in proceedings should matters proceed this way. This approach could reduce delays in cases reaching a conclusion as the FPA would benefit from having knowledge of the family and the relevant issues. It also enables the FPA to make their recommendations at a much earlier stage which may result in cases being averted, as well as assisting cases to conclude sooner.

6.121 In terms of ADR including mediation, this would be voluntary as it is widely recognised that mediation is only effective if both parties are willing to engage with the process. This could result in cases taking less time to conclude, either in court or the Tribunal, where disputes between those with parental responsibility is a factor. These types of disputes are a known source of delays, particularly in private law cases.

6.122 The need to enable greater access to ADR including mediation across the system has been recognised by several different reviews. However, there are obvious

resourcing impacts which need to be further considered. It is suggested that consideration to improving access to ADR within legal justice matters forms part of the proposed Legal Aid Review.

- 6.123 It is suggested that the Law is amended to add a further function of the Safeguarder Service (to be renamed Family Proceedings Advisory Service) to provide information, advice and other support when family proceedings have commenced, are proposed or in some cases when they have concluded.

**Information sharing- Proposition 17**

- 6.124 The sharing of information efficiently and clearly is a fundamental aspect of an effective child protection system. Information sharing is also vital to safeguard and promote the welfare of children to ensure they receive appropriate support to achieve positive outcomes whilst having due regard to individuals' rights to respect for their private life.
- 6.125 The Law created a duty "to share information and work together" and was intended to:
- a) Place a duty on those working with children and families where there is a child in need or at risk to take action (as provided for by the Children Law), including the sharing of information; and
  - b) Provide protection to those sharing information, subject to the information being shared in good faith and in accordance with relevant guidance.
- 6.126 The wording of the section has created confusion amongst professionals in determining who may be under a duty, in particular the meaning of the term "whilst they are working with a child", and the extent of any duty and its inter-relationship with the Data Protection (Bailiwick of Guernsey) Law, 2017.
- 6.127 It is widely recognised that children witnessing domestic abuse are exposed to harm and risk and may be victims in their own right. Currently there is no specific provision in the Law that enables statutory agencies (predominantly the police) to collect and share information relating to children who witness domestic abuse. This statutory provision exists in England (Section 12 of the Children Act 2004)<sup>48</sup>.
- 6.128 The introduction of a provision within the Law, to place a duty on statutory agencies to collect and share information relating to children who witness domestic abuse to greater protect their well-being, provides a legal basis for this specific information to be captured. It should:

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<sup>48</sup> [Children Act 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2004/31/section/12)

- Improve the support provided to children in these instances to protect their welfare and well-being; and
- Support the implementation of Operation Encompass<sup>49</sup> and the delivery of the Domestic Abuse Strategy.

6.129 The inclusion of such a provision would be for the welfare of the children generally. It would be a demonstrable change that enables agencies to share information with this aim in mind and support the child receiving the necessary interventions sooner, which aligns with the intentions of the original reforms.

6.130 It is recommended that the wording of section 27 be amended to clearly set out the parameters for information sharing under the Law including the capturing and sharing of information between agencies that relate to improving the welfare of the child. This would be with due regard to the Data Protection (Bailiwick of Guernsey) Law, 2017.

## **7. SUPPLEMENTARY AMENDMENTS TO THE LAW**

7.1 To bring the Law up to date with current practice and address some issues in the drafting a few minor amendments to the Law are proposed.

7.2 These supplementary and consequential amendments were fully supported by those consulted and should provide greater flexibility so that the Convenor and the Tribunal can respond in a timely way to changes needed for the child's welfare.

### **Ordinance changes - Proposition 20**

7.3 In addition to the above, there are a number of suggested legislative amendments required to the Children Ordinance including:

- Ensure the relevant sections are referred to in the Law;
- Enable the Children's Convenor to suspend part of the conditions of a CR;
- Include a power for the Tribunal, to adjourn a CR hearing and make an interim variation of a CR;
- Introduce a power for the Convenor to transfer a case to Her Majesty's Procureur;
- Amend the terms and conditions of the appointment of the President of the Tribunal;

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<sup>49</sup> Operation Encompass is a police and education early information safeguarding partnership enabling preschools, nurseries and or schools to offer immediate support to children experiencing domestic abuse. To find out more about Operation Encompass or look at further online training, <https://www.operationencompass.org/>

- f. Include an additional power for the Convenor to withhold information to protect any person from harm;
- g. Recognise a wider range of family members as a party to proceedings, irrespective of their existing parental rights and responsibilities;
- h. Grant discretion to the Tribunal to recognise wider persons who have had significant involvement in the child's upbringing as parties;
- i. Enable the Convenor to make the decisions in relation to parties who can attend at the Convenor's Meeting, subject to a suitable right of appeal being established; and
- j. Removal of upper and lower age limits for Tribunal member appointments.

7.4 Where the above proposals are not addressing matters of drafting or aligning to best practice for Tribunals, further information on the rationale for the recommendations are set out below.

**Convenor's power to suspend part of a condition of a care requirement – Proposition 20b**

7.5 The Children Ordinance makes provision for the Convenor to suspend any condition of a CR. There is, however, no provision to suspend part of the condition.

7.6 In practice circumstances have arisen where it is necessary to suspend part of the condition. Allowing this change would provide greater flexibility to meet the individual circumstances of each case.

**Interim care requirement variation – Proposition 20c**

7.7 A further proposed change is recommended to give the Tribunal the power to make an interim variation to a CR, enabling the Tribunal to make minor changes to an order in response to further information or evidence. This could include a power to adjourn the hearing when reviewing the CR and a power to make an interim variation of the CR, in line with the timeframe agreed for that case.

**Power to transfer a case to Her Majesty's Procureur - Proposition 20d**

7.8 The introduction of this provision would enable cases to be moved to HMP at an appropriate time should the Convenor establish evidence that suggests there is a need for criminal prosecution.

**Withholding information to protect a person against the risk of serious harm – Proposition 20f**

7.9 The Children Ordinance enables the Convenor to withhold information from a child or other person where the Convenor considers that it is for the welfare of the child or it is necessary to protect a person against the risk of serious harm. As presently drafted, information can be withheld from a person where it is necessary to protect **that** person against the risk of serious harm.

7.10 The current wording omits the possibility that information should be withheld from a person in order to protect **another** person from serious harm. For example, in cases of domestic abuse where disclosure of information to the abuser that a person is accessing a domestic violence service may result in risk of serious harm to the victim.

7.11 It is recommended that the wording be amended to protect **any person** from harm.

#### **Parties to Tribunal proceedings – Propositions 20g-i**

7.12 The Children Ordinance sets out the parties that can attend the Tribunal proceedings and further persons who may attend who are not party to the proceedings. The parties to the proceedings are defined as:

1. The child to whom the matter relates;
2. Any individual who has parental responsibility of the child;
3. Any person who appears to ordinarily care for the child; and
4. Where a CPO is in force, the Committee.

7.13 Attendance of family members who are not party to the proceedings is allowed on the basis of:

- “any person the Tribunal believes may be able to assist the Tribunal in its consideration and determination of the child’s case” to attend, and
- “any person not falling within subparagraphs (a) to (f) whose attendance the Tribunal believes to be desirable for any reason” to attend.

7.14 In Scotland, the law as to who can attend as parties to proceedings was updated in 2011 to widen the parameters to enable a wider group of persons to attend, such as a father without parental responsibility or a parent’s partner. It was defined so that parties were those who ‘have, or recently have had, significant involvement in the upbringing of the child’.

7.15 Who is entitled and has the right to attend a Tribunal hearing is subject to Human Rights considerations, specifically Article 5 of the UNCRC and Article 8 of the ECHR.

7.16 As currently drafted, the Law gives the Tribunal sufficient discretion to permit the attendance of any persons at the hearing, which might include siblings, grandparents, or other relatives of the child. However, there is much less discretion in relation to recognising relatives or wider family members as parties to the proceedings. Duties and obligations to parties to proceedings are set out in the Law.

- 7.17 It is suggested that the Convenor should be granted permission to determine the parties' eligibility to attend, as opposed to the court. This would be the most effective and efficient approach.
- 7.18 A suitable right of appeal against any decisions by the Convenor, in relation to parties to proceedings, would be made available through the court.
- 7.19 In consultation with the Convenor, it is suggested that the definition of which parties can attend the Tribunal is revised to:
1. Recognise all parents as a party to proceedings (other than those who have had parental rights and responsibilities removed); and
  2. Grant discretion to the Convenor to recognise as a party a wider range of persons who have had significant involvement in the child's upbringing.
- 7.20 It will be important to ensure that suitable safeguards are in place to retain the position of parties attending being those that are for the child's welfare, subject to the policy position being agreed.

**Removal of upper and lower age limit for Tribunal member appointment - Proposition 20j**

- 7.21 The suggestion is that the current wording in the Law, which precludes a person being a member of the Tribunal if they are aged under 21 years or 70 years or more is no longer appropriate or necessary. Removing these limits places a stronger focus on a persons' capability to fulfil the role, regardless of their age. It also removes a future potential challenge under the second phase of the Discrimination Ordinance.

**Name Changes: Family Proceedings Advisory Service/Safeguards - Proposition 16a and b**

- 7.22 The Safeguarder Service was renamed the FPAS in March 2016 and the officers were renamed Family Proceedings Advisers. The reason for the change was that the titles set out in the Law, "Safeguarder" and "Safeguarding Service", were sources of confusion, with many stakeholders confusing the role and service with that of children social workers and Children and Family Community Services. The new titles were intended to better reflect the role. However, the legislation still refers to the Safeguarder Service and to Safeguards.
- 7.23 Additionally, the Convenor and Tribunal processes have retained the use of the name Safeguarder and for the officers appointed in those proceedings, including in documentation, training materials and other published resources. It is considered confusing for service users that a different title is used for these officers who are undertaking the same functions whether in the court or Tribunal.

**Name Changes: Islands Safeguarding Children Partnership - Proposition 16c**

- 7.24 The Law establishes in statute the Islands Child Protection Committee (“ICPC”). In practice, the ICPC is now known as the Islands Safeguarding Children Partnership (“ISCP”). Therefore, it is suggested that a legislative amendment to the name is made.
- 7.25 Both proposed name changes would reflect terminology that has, for practical purposes, already been affected.

**The Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009 - Proposition 19**

- 7.26 The Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes 1917 (Law relating to the Protection of Children and Young Persons) made child cruelty an offence. This legislation was amended by The Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009 to align to the Law to update the legislation with modern definitions, including the move away from custody or care and control to parental responsibility.
- 7.27 The amendment unintentionally narrowed those persons falling within the scope of the offence. As a consequence, persons who have the care of a child but do not hold necessarily parental responsibility, such as a step-parent, unmarried father or a baby-sitter, now fall outside the scope of the law. This has put Guernsey and Alderney out of step with the United Kingdom.
- 7.28 An amendment to the legislation will allow for a return to the pre-amendment position. Doing so and widening those persons within scope of the child cruelty criminal offence will increase protection and ensure alignment with UK legislation.

**8. OTHER RELATED LEGISLATION MATTERS**

**Drafting of Secondary Regulations**

- 8.1 The Law was implemented in 2010 and makes provision for the development of secondary legislation where further detail is required for specific sections of the Law.
- 8.2 In 2015, Professor Marshall recommended that funding and personnel should be provided to draft the secondary legislation and guidance required to fully implement the Law.
- 8.3 Since the introduction of the Law, and due to competing priorities, the associated secondary legislation was developed but never finalised. These two sections are:
- **Section 25: The Duty of the States to Provide Accommodation for Children**  
Section 25 of the Law sets out that it is the duty of the Committee to provide,

or arrange for the provision of, accommodation for any child in accordance with regulations made under this section; and

- **Section 26: The Duty to Provide Services to Children and Others in the Care of the Committee**

Section 26 of the Law sets out that it is the duty of the States to provide services for:

- Any child who is in the care of the Committee, and
- Any person who has been in the care of the Committee (“Care Leavers”).

8.4 These two sections of the Law require Regulations to provide the necessary detail regarding the legal obligations for the States. In the absence of the Regulations service areas within Health & Social Care have followed the relevant equivalent laws and best practice guidance in neighbouring jurisdictions suitably adapted to the local context. However, this does not provide children and families with the same rights and security that Regulations would provide.

8.5 In line with the prioritised development of the Review Children Law and Outcomes action these two outstanding drafting matters have been progressed. Additional policy resource has been provided and it is expected that these two sets of Regulations will be considered by the Committee before the end of the year.

### **Additional outstanding secondary legislation for consideration under phase 2**

#### **Private fostering**

8.6 The other outstanding legislative workstream which relates to the Law concerns Private Fostering arrangements.

8.7 Private fostering relates to a care arrangement where a child is cared for and provided with accommodation by a person who is not a family member or legal guardian for more than 28 days. It does not relate to children who are in the care of the States of Guernsey and provided with foster care.

8.8 Privately fostered children are a particularly vulnerable group and private fostering arrangements are currently regulated by the Child Protection (Guernsey) Law 1972 to ensure that such children are safe and properly cared for. Guernsey has a number of private fostering arrangements as a consequence of children from other islands living in Guernsey to access education placements.

8.9 Section 107 of the Children (Guernsey and Alderney) Law, 2008 enables the States by Ordinance to provide for the legislation to be updated in this area. This is in order to bring the legislation into line with modern regulatory provisions and child protection concepts. To date, no Ordinance has been made pursuant to section 107 to modernise and regulate private fostering arrangements further.

This is creating operational challenges for the service area responsible who are keen for the new Ordinance to be drafted and brought into force as soon as practicable.

- 8.10 This matter remains outstanding and will be scoped further in phase 2.

**Child minders and day care providers – registration and inspection**

- 8.11 The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015<sup>50</sup> sets out the provisions under the Law relating to the standards for registration and inspection of childcare settings. Further work is required to revisit the standards and resources needed to introduce such a regime as it has not been possible to enact it as drafted.

- 8.12 The Committee *for* Education, Sport & Culture recognised in its consultation response to the Law proposals that consideration of this need would provide a further opportunity for more integrated service provision. This matter has been included for consideration as part of future phases of work relating to the Law.

**9. PROPOSALS FOR CHANGE – OPERATIONAL**

- 9.1 Further discussions with the respective agencies and their interfaces have identified various improvements that can be taken forwards now within existing resources. For example pre-hearing meetings can be established between the main agencies involved to consider the proposed intentions for the case and to set out the main steps to resolve the case in a timely way.
- 9.2 It is suggested that where changes have been identified that improve outcomes for children and that can be made within existing resources, these are being progressed at the earliest opportunity.
- 9.3 It will be important for any changes to be implemented in a coordinated way to minimise as far as is reasonable any disruptions to service provision. It will also be important to ensure that changes are communicated clearly across the system and that the necessary guidance and supporting information is prepared in advance and easily accessible. Any training requirements will need to be planned for and delivered in advance of any substantial operational changes and any additional costs to be incurred understood to a sufficient extent to inform decisions.
- 9.4 The main operational changes needed to support the implementation of the Law are set out below and in Appendix H.

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<sup>50</sup> [The Children \(Child Minders and Day Care Providers\) \(Guernsey and Alderney\) Ordinance, 2015](#)

### **Information Sharing Protocols – Proposition 18**

- 9.5 To support the revision of the wording in the Law, it is suggested that Information Sharing Protocols should be established between the relevant agencies so there is clear guidance around roles and responsibilities when sharing information.

### **Time limits and performance measures**

- 9.6 Various proposals were made for specific time limits to be included in the Law for various steps or stages of the process, as a means to address areas of delay. This included the suggestion that the court consider introducing the 26 week target, in line with the Public Law Outline for court cases approach used in England and Wales<sup>51</sup>.
- 9.7 After further consideration by stakeholders, it is suggested that while setting time limits in Law was possible, it may have unintended consequences, such as:
- It could have a restrictive effect and reduce flexibility to respond to the individuality of cases;
  - It may not be for the welfare of the child;
  - It could cause more delays through forcing errors; and
  - It risks the timescales not being achieved given the known resource constraints.
- 9.8 The use of a 26 week indicator was strongly supported.
- 9.9 For time limits at the system level, an alternative suggestion was put forward, in that all agencies should agree a set of performance metrics including average time limits for specific parts of the system. These would then be used to gauge the performance of the changes and identify any areas where there are significant issues in meeting the desired timeframes, so that solutions can be sought. This would also allow for the other amendments and changes to the system to be introduced which seek to reduce delays. The Key Performance Indicators (“KPIs”) would offer a route to monitor the impact of the wider changes once they are embedded. Should those changes not result in the desired reduction in case timeframes then further consideration to statutory timeframes could be introduced by amendment to the legislation.
- 9.10 It is suggested that suitable KPIs and baseline measures be determined and used to track progress.

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<sup>51</sup> [PRACTICE DIRECTION 12A - CARE, SUPERVISION AND OTHER PART 4 PROCEEDINGS: GUIDE TO CASE MANAGEMENT \(justice.gov.uk\)](https://www.justice.gov.uk/practice-directions/12a-care-supervision-and-other-part-4-proceedings-guide-to-case-management)

### **Data collection and monitoring performance**

- 9.11 Data collection across the different organisations in the system has improved but it is challenging to examine data in a holistic way, given the different paths that individual cases take through the system. The Justice Review report similarly identified the shortage of robust data in the justice system.
- 9.12 As referenced earlier, the development of CYPP and associated performance measures shows that even where work is carried out on a cross-Committee and multi-agency basis, performance measures can be successfully developed to review outcomes and guide decision-making.
- 9.13 Within Children and Family Community Services a recently established post exists which is responsible for leading the development and effective delivery of a pre-proceedings model, and to monitor cases timescales. Developing performance information on family proceedings as a tool to drive performance improvement is a key duty of this post, and should provide more robust data moving forward for all parties to identify and understand the causes of delay.

### **Commitment to Safeguarding operational guidance**

- 9.14 To put into effect the commitment to safeguarding it would be expected that relevant operational guidance setting out the roles and responsibilities of each agency within the system in this regard are developed. This guidance would be informed by the statutory guidance used in other jurisdictions but be on a non-statutory footing.

### **Children's Convenor**

- 9.15 The Outcomes Report proposed that the Convenor's Meeting (as required by the Law and Ordinance) should be widened to offer an opportunity in those appropriate cases for mediation or other dispute resolution, and or discussion on other issues, for example issues of abuse or co-parenting, at the earliest practicable stage and before positions have become entrenched.
- 9.16 This matter is being taken forwards by the Convenor.

### **The Convenor's Meeting**

- 9.17 The Convenor is giving consideration to the use of a planning meeting, held prior to the Convenor's meeting with a view to expediting cases.

### **Tribunal**

- 9.18 It is proposed that additional safeguards are put in place in relation to the Tribunal hearings including, that:
- The child should be provided with the same level of advocacy as would be guaranteed in a court (i.e. a FPA) or independent advocacy such as that provided by the Youth Commission. This links to the proposals to involve

FPAS in pre-proceedings and enhancing the advocacy support available (currently being scoped);

- The introduction of a new scheme to support adults who are required to attend Tribunal hearings, should they wish to access independent advocacy; and
- Regardless of whether the case involves removal, those with parental responsibility attending a hearing should be able to make a request for a hearing to be audio recorded.

9.19 These changes seek to strengthen the processes of the Tribunal when considering cases where removal, or setting out where a child should reside, is being considered, without undermining the informal nature of the forum.

## **10. GOVERNANCE, MONITORING AND REPORTING**

### **Children & Young People's Board**

10.1 The Committee is of the view that the cross-Committee steering group of the Board has proven a successful vehicle for moving forward at pace with a priority of government. The Committee is grateful to those Committees whose representatives are Members of the Board who have worked hard to familiarise themselves with a complex and challenging area of policy, and it values their individual and collective contributions to this work.

10.2 The Committee recognises that there are still several stages before the work to amend the Law and improve the system, as set out under phase 1, is complete. Equally, that there is further work under phases 2 and 3 to be progressed including in relation to the system's governance. The Committee therefore would welcome the continued support of the Board to oversee phase 1 to completion alongside its continued role as the Corporate Parenting Board.

10.3 In this capacity the Board would steer this phase of the work to a conclusion and report to the respective Committees whose mandates are engaged by this work, as appropriate. The Board would continue to be supported and advised by the lead agencies taking forward the changes agreed by the States of Deliberation.

### **Implementation plan**

10.4 An indicative implementation plan ("Plan") is set out in Appendix I and provides a basis on which the Board can monitor progress. The Plan includes and recognises the different agencies, resources and actions to be completed in phase 1. It is understood that this Plan can be resourced from within existing resources including pooling resources within the system, where required.

10.5 Progress will be reported to the Board on a quarterly basis and updates will be provided to the relevant Committees.

- 10.6 The development of suitable KPIs for the system will support the tracking of the impact of the changes agreed (see section 9). It would be expected that the impact of the changes will be reflected in these measures once the legislation has been amended and the changes embedded.
- 10.7 The estimated timeframe for the amended legislation to be commenced would be early 2024.

#### **External monitoring – Proposition 24**

- 10.8 The Outcomes Report also recommended that a regular and independent review of the system should be put in place. It is suggested that a regular time period of review is set and that funding is secured to enable this to happen. It is estimated that such a review would cost in the range of £10,000 to £15,000 per review. A review every three to five years would be sufficient to provide external assurance and challenge to the system. This is particularly important as regular reviews will inform the future phases of work that will consider the system's governance and how it is best scrutinised, as well as monitoring the impact of the changes implemented under phase 1.
- 10.9 This proposal is in line with best practice and is recommended to be supported. It is suggested that the next review takes place in 2025, or a year after the commencement of the amended legislation, whichever occurs sooner. This will enable the impact of the changes, including operational changes made since 2021, to be assessed.

### **11. FINANCIAL AND RESOURCE IMPLICATIONS**

- 11.1 The Committee is fully aware that the challenges to recruiting and retaining social workers remains a significant strategic risk to its work and is a cause of delay in some instances. It remains an ongoing issue that the Committee strives to address through various means with the support of several other Committees. The national shortage of social workers is well documented and other jurisdictions face similar challenges in managing their family care and justice systems.
- 11.2 The Committee has been cognisant of this system wide pressure when considering the proposals for change and the resourcing needs around implementation. The Committee recognises that resources have to be appropriately focused towards meeting day-to-day operational matters arising from heavy workloads, with practitioners understandably having to prioritise immediate pressures associated with providing the required support to children and their families. This often leaves little capacity in the system to take forward and implement substantial changes or reforms. The Committee is grateful to the States for recognising the need for and making available the additional resources, through the top-10 prioritisation of this action in the GWP.

- 11.3 The recommendations above should have the collective effect of freeing up capacity in the system by removing duplication and overlap, reducing unnecessary steps and processes which are not for the child's welfare and improving clarity and understanding of the system overall.
- 11.4 In line with the above recommendations, it would be expected that the resourcing implications identified would be met by existing resources in phase 1, in that they can oversee and prepare for the implementation of the changes to the Law.
- 11.5 Some additional policy resource is required to support the coordination of the implementation of phase 1 and prepare for and scope the requirements for phase 2. This resource will be provided from Strategy and Policy function.
- 11.6 Many of the changes under phase 1 apply to more than one agency and so resourcing of these should be spread across those agencies and not sit within a single area.
- 11.7 In relation to advocacy and other areas where the resourcing implications are not yet fully scoped it would be expected that any future resource requirements will be considered under subsequent phases of the work and captured within the GWP, as appropriate.
- 11.8 Legislative drafting resource will be required to support the amendments to the Law and secondary legislation and guidance including court Practice Directions and completion of the outstanding Secondary Regulations, noted in section 8.
- 11.9 It is acknowledged that some of the recommendations to be scoped in phase 2 could have revenue implications such as the move to more preventative approaches and earlier interventions. This would better support the delivery of the system's principles of early intervention and engagement with children and families to improve the chances of addressing difficulties at a much earlier stage. Evidence demonstrates that this approach results in better outcomes for the child and their families and a reduction in the associated cost to the public purse.
- 11.10 Due consideration will be given to how these changes could instead be met through underway and funded transformation programmes or other existing budgets. The Committee proposes to monitor the impact of the changes arising from this Policy Letter, with assistance from the Board, and any specific implications for the different agencies in the system. In doing so, it will continue to work closely with all those who operate within the system.
- 11.11 The Committee will report any significant resource challenges or suggested changes as part of phase 2.

## **12. CONCLUSION**

- 12.1 The Committee, informed by the findings of the Board and several reviews, sets out above a series of legislative amendments and operational changes that it recommends to the States to address some of the issues that have arisen from the implementation of the Law and to improve the functioning of the system.
- 12.2 The Committee recognises that further work is needed to continue to improve the system and will factor these needs into its future prioritisation of work, feeding these into the GWP discussions as required. It seeks the continued support of the Board as a steering group to support the completion of phase 1 and inform future phases of work.
- 12.3 While extensive consultation was carried out through the various reviews and to finalise the impact of the proposals to reach a conclusion, the Committee is aware that not all proposals set out will be welcomed by all stakeholders. However, the Committee is also of the view that regardless of the different positions on some of the proposed measures set out in this Policy Letter, the clear and unequivocal focus must be on improving outcomes for children. If the introduction of a new order, disposal option or legal definition adopted from elsewhere has the potential to lead to a timelier outcome in decision-making for a child, this should be progressed as a means of extending the range of tools available to support the full range of family proceeding matters.
- 12.4 The Committee recommends that the States approve the proposals set out in sections 6, 7 and 9.

## **13. COMPLIANCE WITH RULE 4**

- 13.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 13.2 The following information is provided in conformity with Rule 4(1):
  - a) The Propositions accord with the States' objectives and policy plans to 'keep the island safe and secure' by ensuring 'young people can achieve their potential'. The conclusion and implementation of the improvements to the Children Law and the family justice system is a top-10 priority of government agreed through the GWP 2021-2025. This action will 'support vulnerable children through revision to the Children Law and action on the Outcomes Report';

- b) The Committee has consulted with the Policy & Resources Committee, the Committees for: Home Affairs and Education, Sport & Culture, and the States of Alderney, as relevant to their responsibilities in this regard.
- c) The Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- d) The additional resources and potential resource requirements identified to implement these reforms are set out in section 11 of this Policy Letter. It is possible that future phases of work may require additional resources such as through the introduction of an adult advocacy service.

13.3 For the purposes of Rule 4(2)(a), it is confirmed that the Propositions relate to the responsibility of the Committee *for* Health & Social Care as set out in section (a) of its mandate, under its responsibility to 'protect, promote and improve the health and wellbeing of individuals and the community.

13.4 For the purposes of Rule 4(2)(b), it is confirmed that each of the Propositions is supported unanimously.

Yours faithfully

AH Brouard  
President

TL Bury  
Vice-President

ADS Matthews  
M P Leadbeater  
Alderney Representative AJ Snowdon

## **APPENDIX A: GLOSSARY OF TERMS**

- **Additional service** (s.23 of the Law)  
Services additional to the health, social, childcare and educational services that the States normally provide to, or in respect of, a child or family.
- **Adoption Order** (s.2 of the Adoption (Guernsey) Law, 1960)  
An application made to the court which enables the applicant to adopt an infant. They can be made by two spouses, as well as by the infant's mother or father.
- **Care Requirement (CR)** (s.43-47 of the Law)  
An order made by the Tribunal which places a child under the supervisory care of the States (Committee *for* Health & Social Care). A CR will impose conditions such as where and with whom the child shall or shall not live, who the child shall or shall not have contact with, the circumstances in which a person may have contact with the child and the placement of the child out of the jurisdiction. A CR will remain in force for no more than one year from the date of the final determination.
- **Child at risk** (s.23 of the Law)  
A child is at risk when there is reasonable cause to believe that grounds exist for compulsory intervention.
- **Child**  
A person who is under the age of 18 years of age.
- **Child Welfare Checklist** (s.4 of the Law)  
This is a list of factors that a public authority must pay regard to when determining any issue regarding the upbringing of a child or the application of the child welfare principles. These include; the child's wishes and feelings, the protected characteristics of the child, any harm the child has suffered or is at risk of suffering, the child's physical, emotional and educational needs, the parent(s)' (or anyone else with parental responsibility) capability of meeting the child's needs, the importance and effect of contact between the child and their family and the effect or likely effect of change in the child's circumstances including their removal from Guernsey or Alderney.
- **Child Welfare Principles** (s.3 of the Law)  
The Law sets out a number of child welfare principles which a public authority must take into account when exercising any of its functions. These welfare principles relate to the upbringing of the child, ensuring that no compulsory intervention is made unless it is necessary and that a child's welfare and upbringing is protected when a public authority carries out its function.

- **Child, Youth and Community Tribunal (Tribunal)** (s.33 of the Law)

The Tribunal deals with the majority of children when there is a need to protect them from harm or respond to concerns about their behaviour or welfare. Based on factual reports and information presented, Tribunal members decide what action is needed to assist parents in providing adequate care, protection, guidance and control for their child. It offers 'children in need' the opportunity to have their case heard outside of a court environment. If the Convenor decides compulsory intervention is needed the case will be referred to the Tribunal.
- **Children in need** (s.23 of the Law)

Where a child needs additional services to: achieve or maintain a reasonable standard of health or development; their health or development will be significantly or further impaired without additional services; they are disabled; or their parent or family member has a disability or illness which, without additional services, could adversely affect the child.
- **The Children's Convenor** (s.30 of the Law)

The Children's Convenor is a legally appointed individual who is the holder of the Office of the Children's Convenor. The Children's Convenor is responsible for investigating referrals where there is concern about a child and deciding whether they need to be referred to the Tribunal. The Convenor also has other legal responsibilities including drafting statement of the concerns, supporting the Tribunal process and conducting Tribunal related court proceedings.
- **Children's Convenor Board** (s.31 of the Law)

The Children's Convenor Board has the function of appointing the Children's Convenor and assists the Children's Convenor with carrying out their duties upon the request of the Children's Convenor. The Children's Convenor Board is comprised of between 5 and 8 individuals who are appointed by the Committee *for* Health & Social Care.
- **Community Parenting Order (CPO)** (s.48-54 of the Law)

An order made by a relevant court granting the Committee *for* Health & Social Care parental responsibility for a child. CPOs are used when it is likely that a child will need to be placed away from their family on a long-term basis. A CPO will remain in place until the child reaches the age of 18 years or marries prior to this age. A CPO can be issued on an interim basis for no more than three months.
- **Compulsory Intervention**

Intervention in the family life of a child by a public authority regardless of the consent of the child, their parents, or any person with an interest in the child amounting to family life.

- **Contact Order** (s.17 of the Law)  
An order which states a named person which a child must be allowed to visit, stay with or have contact with. This is a 'Section 17 Order'.
- **Duty of the States** (s.24 of the Law)  
Under the Law, the States has a duty to provide services to any 'child in need' that they are responsible for in order to promote their upbringing by their family and prevent them from becoming a child at risk.
- **Exclusion Order** (s.62 of the Law)  
This order provides an alternative mechanism to safeguard a child from serious harm by removing from the child's home the person presenting the risk rather than the child. For some children, this provides a more proportionate means of safeguarding their welfare but requires that there is a person remaining in the home capable of taking responsibility for the child's protection. The wording of the legal test (threshold) for an Exclusion Order has elements common to that for an Emergency CPO.
- **Family Care and Justice System**  
This is the justice system which supports children and their families in Guernsey and Alderney to try and resolve any disputes, observe and act on any welfare concerns for young people and children, and addresses youth offending. It includes a number of agencies including the courts, the Children's Convenor and the Tribunal amongst other agencies.
- **Family Proceedings Advisor (FPA)**  
An individual appointed by the Family Courts, Juvenile Court, the Tribunal or the Children's Convenor to advise and make recommendations on current applications to the courts. They work for the Court to safeguard and promote the interest of young people involved in Family Court proceedings. FPAs are currently called Safeguarders.
- **Father**  
This is the genetic father of a child (regardless of if he has parental responsibility) or, in the case of adoption, any man who is authorised under an Adoption Order to adopt the child.
- **Guardian**  
An individual who fulfils the role of a parent where a parent has died.
- **Interim Care Requirement (ICR)** (s.44 of the Law)  
An ICR is made when the Tribunal is not in a position to make a full Care Requirement (CR). These can be issued for no more than 28 days.

- **Islands Child Protection Committee (the Child Protection Committee)** (s. 29 of the Law)  
A committee made up of people from the public, private and voluntary sectors. Its primary purpose is to ensure agencies which provide services to children and families work co-operatively to enhance the safety of children and young people. The ICPC is now known as the Islands Safeguarding Children Partnership (ISCP).
- **Legal order**  
This refers to any order made under the Law.
- **Mother**  
This is the woman who gave birth to a child or, in the case of an Adoption Order, any woman who is authorised under the order to adopt the child.
- **Office of the Children's Convenor** (s.30 of the Law)  
An office established under the Law, of which the Children's Convenor is holder. This office carries out prescribed functions under the Law and appointment to the office is made by the Children's Convenor Board.
- **Parent**  
This is a father or mother who has parental responsibility for a child.
- **Parental Responsibility** (s.5-11 of the Law)  
Those with parental responsibility for a child have a duty to: safeguard the child and promote their health, education, development and welfare; provide care, direction, guidance and control; determine the child's upbringing; provide a home for the child; act as their legal representative and safeguard their property; and maintain frequent and direct contact with the child (if they live separately).
- **Parental Responsibility Order** (s.17 of the Law)  
An order granting someone parental responsibility of a child. This is a 'Section 17 Order'.
- **Powers of police officers** (s.64 and s.66 of the Law)  
The Law provides a police officer with certain powers to safeguard a child if they believe the child is suffering, or is imminently likely to suffer, serious harm. A child taken into police protection (in practice into care provided by the Committee) may be kept in protection for a maximum of 24 hours.
- **Private Family Law**  
Court cases involving two or more individuals who are trying to resolve a dispute involving family relationship such as marriage, adoption, divorce and custody of a child.

- **Public Family Law**  
Cases where the State intervenes in the lives of children and their families. This is usually the Committee *for* Health & Social Care where there are child protection concerns but it may be Education Services where a child is failing to attend school.
- **Public Law Outline**  
This is a legal framework which aims to provide guidance for the court and the local authority on how to manage cases involving care proceedings.
- **Relative**  
A grandparent, sibling, uncle or aunt (be it full or half blood or by marriage), a father of an illegitimate child and that father's relatives.
- **Safeguarder Service** (s.83-84 of the Law)  
A service created to safeguard and promote the welfare of a child. Its Safeguarders (known as Family Proceedings Advisors) provide advice to the relevant court or the Tribunal about any application made in proceedings, provide advice to the Children's Convenor regarding any investigation and carry out any other functions as the rules of court specify. This service is known as the Family Proceedings Advisory Service.
- **Secure Accommodation** (s.68-73 of the Law)  
Accommodation which has been designated by the Committee *for* Health & Social Care and is designed to prevent unauthorised entry or exit, enables supervision and minimises opportunities for self-harm. A child can only be placed in secure accommodation by virtue of a Secure Accommodation Order.
- **Special Contact Order** (s.50 of the Law)  
An order which requires the Committee *for* Health & Social Care to allow a child to visit or stay with a named person or which requires the named child and a person to have contact with one another.
- **Unmarried Father** (s.6 of the Law)  
When a child's mother and father are not married at the time of the child's birth, the father does not have parental responsibility under the Law. However, they can acquire parental responsibility under s.7 of the Law.

## **APPENDIX B: SUMMARY OF FAMILY CARE AND JUSTICE SYSTEM REVIEW FINDINGS**

Below is a summary of the relevant findings of reviews of the family care and justice system including the Children Law, related to phase 1.

<b>Review</b>	<b>Overview</b>
<b>Children's Service Diagnostic, 2014</b>	<p>An internal review commissioned in November 2014 by Health and Social Care to provide a clear, evidence-based evaluation of the effectiveness of Children's Social Care.</p> <p>Findings:</p> <ul style="list-style-type: none"><li>• The average time for a child to be permanently placed with a family was two years</li><li>• The re-referral rates for families back into the Family Intervention Service was 37% +</li><li>• There was an inadequate understanding of the thresholds for referrals to the Convenor</li><li>• There were differences and contradictions in social care practice</li><li>• The legal threshold for urgent removal was extremely high and the court waiting time too long</li><li>• Secondary legislation for care leavers was not in place.</li></ul>
<b>The 'Guernsey: Children Law Review' in 2015, Marshall Report<sup>1</sup></b>	<p>This report, conducted by Professor Kathleen Marshall in 2015, was commissioned by the Scrutiny Management Committee. The review concerned the implementation of the Children Law and sought to identify whether the policy objectives of the new Law had been achieved.</p> <p>Findings:</p> <ul style="list-style-type: none"><li>• There were issues around the ways in which various child protection processes interacted with each other, including the nature of the respective cases referred to the Tribunal and to the court.</li></ul>

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<sup>1</sup> ['The Guernsey Children Law Review, 2015'](#)

	<ul style="list-style-type: none"> <li>• Guernsey-specific guidance was not available causing issues with interpretation.</li> <li>• The thresholds for referrals to the Convenor and for permanency were too similar.</li> <li>• There were delays caused by timescales for Tribunal and court processes for the finding of facts.</li> </ul>
<b>FPAS inspection, 2017, carried out by Ofsted<sup>2</sup></b>	<p>As a result of a recommendation from Kathleen Marshall, an FPAS inspection was conducted and set out the strengths of the FPAS service and seven recommendations for service improvement, including wider system changes.</p> <p>The report states that ‘Delay is a complex phenomenon. All agencies across the family justice system contribute to it.’ and that ‘Too much delay for children is evident in Guernsey.’</p> <p>Ofsted noted that a quarter of current cases had a FPA involved for more than 12 months, with the average time that a case was open within the service was 18 months.</p>
<b>Committee for Home Affairs: Justice Review Report<sup>3</sup></b>	<p>The Justice Review Report (“the Justice Review”) was considered by the States as a green paper in 2020. Under the GWP, ‘scoping of the Justice Framework’ is a priority action. The Justice Review has 43 recommendations, some of which link to the wider family and criminal justice systems and should inform the work under the Children Law and Outcomes Report. The links and proposals identified predominantly focus on:</p> <ul style="list-style-type: none"> <li>• Alternative dispute resolution (ADR) including mediation</li> <li>• Youth justice including sentencing and links with the Children &amp; Young Peoples Plan</li> <li>• Use of restorative justice in family care and justice system</li> </ul>

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<sup>2</sup> [FPAS inspection, 2017, carried out by Ofsted](#)

<sup>3</sup> [Justice Review Report](#)

<b>Outcomes Report, 2021, Martin Thornton<sup>4</sup></b>	<p>An independent report commissioned by the Chief Officer's Child Protection Group and conducted by Martin Thornton. This review focused on the wider system for children and young people's services across Guernsey and Alderney and identified several areas for improvement.</p> <p>There were a range of recommendations aimed at:</p> <ul style="list-style-type: none"> <li>• reducing system complexity and duplication;</li> <li>• ensuring the role undertaken by the courts and Tribunal provides protection of the rights of children young people and their families;</li> <li>• ensuring children and young people entering legal system have access to range of options and support; and</li> <li>• that cases be dealt with without delay and in appropriate timescales.</li> </ul>
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<sup>4</sup> [Outcomes Report, 2021](#)

## **APPENDIX C – ILLUSTRATIVE CASE STUDY**

Children's Services received a referral from midwifery services. A 23-year-old young woman known to Children's Services had attended a midwifery appointment 12 weeks pregnant with her third child.

Due to extensive safeguarding concerns, the mother's two other children had been recently removed from her care. The concerns related to domestic abuse, risk of sexual abuse and substance and mental health related issues. Extensive involvement from professionals had taken place including the children being subject to a child protection plan and a referral was made to the Children's Convenor to seek a Care Requirement with conditions. However, it became apparent to social workers early in the case that given the level of risk it was likely that the children may need permanent care outside of their birth family. A serious incident followed, which led to the children being provided with emergency foster care.

Under the current Law all pre-proceedings work takes place before Tribunal. As such, a sexual risk assessment took place as well as a full psychological assessment of the mother and her partners ability to care for her children. It was concluded that she and her partner were not able to provide adequate care. The children's father did not wish to be considered to care for the children. The matter had been before Tribunal for some 15 months from the point of referral until all pre-proceeding assessments had been concluded including those of extended family members and friends.

Given the findings of the assessments it became necessary for an application to be made to court for a Community Parenting Order. The application before the court took nine months to conclude. The mother's lawyers requested a further psychological assessment, with the mother stating that she had ended the dangerous relationship and was no longer using substances. This was found not to be the case. A new extended family member, who had not previously wished to be considered to care for the children, then came forward. In total, the family proceedings had taken two years to conclude before a Community Parenting Order was granted allowing for the children to be placed for adoption.

Following the proposed changes to the Children Law, Children's Services would be able to apply for a permanent order much sooner in a child's journey through the family care and justice system where it considers there is reasonable cause to believe that the child cannot remain with their parent/families and long-term, more permanent arrangements are needed. For example, when it became apparent that it was more likely than not that the mother and her partner would not be able to provide adequate care, Children's Services would be able to make an application to court for an 'interim' Community Parenting Order. This change to the Law should have the effect of cases proceeding to court quicker and not first through the Tribunal, where more permanent arrangements for the children were likely. In doing so it is likely that considerable delay would be avoided. Pre-proceedings assessments would take place under the direction

of the court avoiding duplication and delay. All parties would be legally represented.

At the booking appointment for the mother's third baby, the mother reported that she had commenced a new relationship with another adult male who was believed to pose a sexual risk and that she was again a victim of domestic abuse. She was also continuing to abuse substances and was known to the Drug and Alcohol Team but was not engaging in active treatment. A pre-birth planning meeting was convened to consider the risk to the unborn baby which concluded that legal advice was required, and a legal planning meeting was called.

Under the current Children Law, despite extensive recent assessments, at this point a further referral to the Children's Convenor would be required to allow plans to be made to safeguard the unborn baby at birth. The unborn baby's father was different to that of the first two children and as such he was not previously assessed, so the legal test for an application for a Community Parenting Order would not be met. At this early stage the social workers had formed a view based on previous evidence and assessments that little had changed in relation to risk, and had reasonable cause to believe that the new baby may need a plan for permanence.

Following the proposed changes to the Children Law, Children's Services will be able to make an application to the court for an interim Community Parenting Order once the baby was born. The assessments on the baby's father and any of his family would then be carried out to determine if a final Community Parenting Order was required.

Given that care proceedings relating to the mother's two previous children had recently concluded and the social worker assessments had indicated that little had changed, an application to court at this point would seek to avoid the need for duplication of pre-proceedings assessments and reduce the delay in achieving an appropriate outcome for the new born baby.

## **APPENDIX D: OTHER JURISDICTIONS RECENT REVIEWS**

### **1. Independent review of Children's Social Care for England and Wales**

The Independent Review of Children's Social Care<sup>1</sup> sought to address the issues within the children's social care system in England and Wales. It concluded a 'radical reset' was required to address the current system of crisis intervention, which was delivering poor outcomes for children at a high cost.

The review sets out that the desired system is one that "provides intensive help to families in crisis, acts decisively in response to abuse, unlocks the potential of wider family networks to raise children, puts lifelong loving relationships at the heart of the care system and lays the foundations for a good life for those who have been in care."

It warns that without this reset outcomes will remain poor for children and families and estimates that more than 100,000 children will be in care within the decade (20,000 more children than now), costing £5 billion per year more than currently.

### **2. Independent Jersey Care Inquiry**

The Independent Jersey Care Inquiry<sup>2</sup> (IJCI) panel investigated the situation in Jersey's case system from 1945 to the present day. The panel presented its report to the States of Jersey on 3<sup>rd</sup> July 2017 which made recommendations for the future management and operation of Jersey's residential and foster homes to ensure the Island provides a safe and secure environment for the children in its care. The recommendations sought to address issues of the past but also the current provision of care for children in Jersey.

The inquiry found that eight basic lessons needed to be learnt:

- The welfare and interests of children are paramount and trump all other considerations;
- Give children a voice – and then listen to it;
- Be clear about what services are trying to do and the standards which they should attain;
- Independent scrutiny is essential;
- Stay connected
- Quality of leadership and professionalism are fundamental requirements; and
- Openness and transparency must characterise the culture of public services.

A follow-up review took place in 2019<sup>3</sup> which recognised the amount of work and improvements that had taken place over the previous two years and set out the prioritisation approach for future work through its Government Plan. The review

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<sup>1</sup> [Final Report - The Independent Review of Children's Social Care \(independent-review.uk\)](https://www.independent-review.uk/)

<sup>2</sup> [r.59-2017 independent jersey care inquiry report -complete-.pdf \(gov.je\)](https://www.gov.je/r.59-2017-independent-jersey-care-inquiry-report-complete-.pdf)

<sup>3</sup> [Jersey Care Inquiry 2 Year Review 2019 \(gov.je\)](https://www.gov.je/jersey-care-inquiry-2-year-review-2019)

resulted in the underway Children's Legislation Programme<sup>4</sup>.

### **3. Independent Care Review – Scotland**

The Independent Care Review<sup>5</sup> was commissioned in February 2017 to be an independent root and branch review of the care system, and to look at “the underpinning legislation, practices, culture and ethos” of the care system in Scotland.

In 2020, five reports responding to the Review were published:

- The Promise reflected what over 5,500 care experienced children and adults, families and the paid and unpaid workforce told the Care Review;
- The Plan explained how change must happen;
- The Money and Follow the Money explained how Scotland could better invest in its children and families; and
- The Rules demonstrated the current legislative framework and how it must change to achieve The Promise.

The Promise<sup>6</sup> concluded that five foundations must be at the heart of a reorganisation of how Scotland thinks, plans and prioritises for children and their families, these are:

- Voice
- Family
- Care
- People
- Scaffolding

Most relevant to the Phase 1 considerations were the findings relating the Children's Hearing system as follows:

- “The principles that underpin Scotland's unique Children's Hearings System [Kilbrandon principles] must be upheld but there must be a more active consideration of underlying structures so that The Children's Hearings System is best placed to truly listen and uphold the legal rights of children and their families;
- The Children's Hearings System must test structural changes and analyse their impacts to explore its role in listening better and responding to what children and families told the Care Review.”

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<sup>4</sup> [Children's Legislation Programme \(gov.ie\)](https://www.gov.scot/publications/childrens-legislation-programme/pages/default.aspx)

<sup>5</sup> <https://www.carereview.scot/>

<sup>6</sup> [The-Promise.pdf \(carereview.scot\)](https://www.carereview.scot/the-promise.pdf)

**APPENDIX E: CHILDREN LAW AND OUTCOMES PROPOSALS SUMMARY – as at 19<sup>th</sup> August 2022**

**1) POLICY CHANGES RECOMMENDED TO BE PROGRESSED**

The objectives to be met in Phase 1 are:

- 1) Every opportunity is taken to remove the causes of delay to decision making for children in the family justice system;
- 2) Any unintended consequences of the Law are addressed; and
- 3) Improved effectiveness of the governance of the system.

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
1.	Compulsory attendance at Tribunal Hearings for adults parties to proceedings	Reduce delays	The ability for the Tribunal to penalise parties to a hearing for non-attendance will improve engagement and reduce delays, as the need to reschedule hearings will be reduced.  Meets the Professor Marshall's recommendation 13 in part.	Y	Y
2.	Review requirements to notify the Convenor	More effective governance	By removing this requirement it addresses a matter of risk of sharing sensitive information with an agency without a justified purpose. Data on number of orders will still be captured and reported for governance purposes.	Y	Y
3.	Committee to notify the Convenor of certain decisions and act within a defined timescale (re applications to	Reduce delays	The notifications will allow for all those involved in a case to know which forum they are in at all times.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
	court to remove a child from their carers). Similarly the Tribunal must notify the Committee, within a defined period, if they are of the view the case in-front of them passes a court order threshold.		Links with Professor Marshall's recommendations 14 and 17 - in part.		
4.	When the Convenor is notified by the Committee, as set out in proposal 3 above, the Convenor will not undertake any investigation or action in relation to that case unless it is necessary and proportionate.	Reduce delays	This will avoid any concurrent proceedings, but retains the ability for the Convenor to share information that may be relevant the case.	Y	Y
5.	Pause or stop Tribunal proceedings where a substantive application is being considered by the court in appropriate cases	Address an unintended consequence	Provide a sufficient framework to manage / avoid issues of duplication between the court and Tribunal such as concurrent proceedings, will avoid parties being subject to two different forums at the same time, in most cases. This is with the exception of matters not relevant to substantive applications such as offending or school attendance matters.	Y	Y
6.	Enable family cases to be remitted from court to the Tribunal and ensure that any	Reduce delays	This change provides further flexibility within the system to respond to the needs of the particular case, quicker than currently. It would remove the	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
	facts established by the court are communicated to the Tribunal		need to rehear evidence and it could mean cases are disposed of sooner.		
7.	Appointment of FPAs pre-proceedings where required for the welfare of the child.	Reduce delays	<p>Allowing Family Proceedings Advisors (FPAs) (currently named Safeguarders) to be appointed before proceedings commence, or after a case has concluded, will enable families and children to be supported at a much earlier stage and throughout the case's journey, for example when a case moves from the Tribunal to the court FPAs could continue to support the case throughout this period. This could result in more cases being resolved sooner or averted.</p> <p>Through offering voluntary mediation/Alternative Dispute Resolution (ADR) where there is a dispute it could reduce conflict and improve outcomes for children.</p> <p>It aligns to the principle of 'no compulsory intervention' and it being better for cases to be handled outside of the court or Tribunal, where possible.</p>	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
8.	Court to retain and dispose of cases where it determines facts in appropriate cases.	Reduce delays	Tribunal cases in which the underlying facts are disputed are referred to the court for determination and then returned to the Tribunal for disposal if the facts are found (i.e. for the Tribunal to decide whether or not to make a Care Requirement (CR)). There will be some cases in which it will reduce delay and be for the welfare of the child for the court determining the facts to proceed to make a CR or interim care requirement (ICR) and any relevant condition e.g. for removal or to avoid the risk to the safety of the child of any delay in waiting for the Tribunal to sit. The court already has a similar power in appeal proceedings from the Tribunal. To reduce delays, the court would need to list the case hearing quickly so that it can consider all the relevant evidence to reach a decision. In some instances the case could be referred back to the Tribunal once a decision has been made by the court.	Not widely consulted  Supported by the Judiciary	Y
9.	Demonstrate a commitment to Safeguarding in the Law	Reduce delays	The commitment in the Law will encourage and demonstrate an expectation that agencies focus on safeguarding in all cases. It will be underpinned by an operational framework to provide greater clarity around processes and inter-agency working to assist in reducing delays.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
10.	Information sharing: capturing information relating to improving welfare	Reduce delays	Enabling agencies to capture and share certain information relating to improving the welfare or wellbeing of a child should improve the joined up working between agencies, so that the right support at the right time is made available to children who need it.	Y	Y
11.	Information sharing: redraft Section 27 of the Law	Reduce delays	To provide greater clarity as to its legal effect so that all agencies are clear on what information can be shared, when and with whom. To better support the efficient and timely disposal of cases.	Y	Y
12.	One meaning of ‘compulsory intervention’	Addresses an unintended consequence	To provide greater clarity and address an unintended consequence of the drafting of the Law where the term is used to mean different things within the Law.	Y	Y
13.	Legal orders: introduce Supervision Orders	Reduce delays	Provides an additional option for disposal for some cases in court where a Community Parenting Order (CPO) is not granted. This additional order should result in more timely determinations and outcomes for children.	Y	Y
14.	Legal orders: introduce a Child Assessment Order	Reduce delays	Removes the opportunity for delay and risk to a child caused by a lack of parental cooperation which can prevent assessments of a child taking place to establish if compulsory intervention is justified.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
15.	Legal orders: amend the legal threshold for CPOs and remove the 'reasonable prospect' limb	Reduce delays	<p>To address those issues that have arisen in relation to the hearing of cases, to better reflect the threshold used in comparable jurisdictions for cases where a longer-term, more permanent order is needed, in line with the original 2004 intentions, and to remove the requirement for family assessments having to be completed prior to an application being made to the court.</p> <p>This will provide greater protection to a child where permanent removal is a strong likelihood, as the court will be in a position to ensure its directions are complied with in a timely manner. This should reduce delays in decision making in these cases. The requirement to complete the family assessments will remain before a final order can be made.</p> <p>Meets Professor Marshall's recommendation 15</p>	Y	Y
16.	Legal orders: interim CPO test to be amended in line with CPO test	Reduce delays	This change will provide greater clarity around the threshold of an ICPO, in line with the proposed changes to the CPO threshold. It will provide a greater level of protection to children, at an earlier stage, where permanent removal from their	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
			families is likely, but time is needed to fully complete the assessments.		
17.	Legal orders: threshold changes – ‘Serious Harm’ to ‘Significant Harm’ and adding ‘reasonable grounds to believe’	Reduce delays / Addresses an unintended consequence	This change will align the threshold with that of comparable jurisdictions. It will provide a greater level of protection than currently.	Y	Y
18.	Legal orders: discharge of Emergency Child Protection Orders (ECPO) (in relation to the Sitting of the Tribunal)	Reduce delays	Removes the provision that automatically discharges an ECPO by the when the Tribunal sits to consider the case which removes a risk to there being no legal protection available to the child in these instances.	Y	Y
19.	Legal orders: amendment regarding Parental Responsibility Orders on the making of a CPO	Addresses an unintended consequence	Addresses what appears to be a drafting error.	Y	Y
20.	Legal orders: duration of police powers of protection in emergency situations.	Reduce delays	This will increase the time limit for police powers of protection from 24 hours to 72 hours, in line with the protection in England and Wales. It will enable the Police to provide protection to a child for longer in emergency situations where there is a justified need.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
21.	Legal orders: amend the ECPO, Police powers to protect a child and Recovery of Children – by removing the word ‘imminently’ and adding ‘by force, if necessary’	Addresses an unintended consequence	<p>The Law as drafted has created unintended consequences which can create delays in protecting children in an emergency. This can be resolved by amending the wording without fundamentally changing the objective of the provisions.</p> <p>The current wording sets out ‘that a child is suffering’ or that the child is ‘at imminent risk of suffering’, both of which require proof of the suffering or immediate risk of suffering, before an ECPO can be made.</p> <p>These changes will ensure alignment with comparable jurisdictions’ legislation and provide greater clarity and protection for children by the Police in ECPO cases.</p>	Y	Y
22.	Legal orders: amend the CR/ICR so the thresholds are distinct	Reduce delays	Amending the threshold for a CR/ICR will address a cause of confusion around the overlaps between the threshold for a CPO and ensure clarity of its purpose which is different to a CPO. There will no longer be a common element with the criteria for a CPO. This is in line with the original intentions for a CR and Professor Marshall’s recommendation 15.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
			Removing the 28 day review requirement meets the intentions of part of Professor Marshall's recommendation 17.		
23.	Legal orders: care requirements - rename the 'conditions' to 'grounds' and update the grounds.	Reduce delays and address an unintended consequence	Renaming 'conditions' to 'grounds' will ensure they are distinct from other uses of the term 'condition' in the Law.  Amending the grounds for referral i.e. threshold criteria will better reflect the nature of referrals and modernise these alongside best practice to provide a greater level of protection to all children where compulsory intervention is a question. The changes will address a known gap in cases where long-term neglect is a factor.	Y	Y
24.	Name changes: amend the names for the Safeguarder Service and Safeguarders in the Law	n/a	Updates the Law in line with practice.	Y	Y
25.	Name changes: amend ISCP name in Law	n/a	Updates the Law in line with practice.	Y	Y
26.	Amend the duties of the States of Guernsey to the children of Guernsey and Alderney	Addresses an unintended consequence	Addresses a drafting error, provides greater clarity and is consistent with other changes to the Law.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
27.	Duty to co-operate	Reduce delays and addresses an unintended consequence	More closely aligns to the original policy intention for there to be “a general duty on States agencies to work together to identify and assist families who have children who are in need of help at an early stage, thus preventing problems from developing or escalating.”	Not directly consulted	Y
28.	Child cruelty – unintended narrowing of the criminal offence	Addresses an unintended consequence	Returns the scope of persons falling within the offence of Child Cruelty back to the pre-2010 position, which aligns with the United Kingdom’s, increasing protection to children at risk.	Y	Y
29.	Provide the Tribunal with the powers to make an interim variation of a CR condition	Addresses an unintended consequence	The Tribunal will be able to make an interim variation to a CR condition where the existing arrangements may not be for the welfare of the child.	Y	Y
30.	Disposal and powers of the Tribunal on disposal	Addresses an unintended consequence	To address a drafting error.	Y	Y
31.	Provide the Convenor with the powers to suspend conditions of a care requirement, subject to suitable safeguards	Reduce delays	The Convenor can already suspend any condition of a CR, but it is not currently possible to suspend part of the condition. By enabling suspension of parts of a condition will provide greater flexibility to meet the welfare of the child.	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
32.	Introduce a power to transfer a case to Her Majesty's Procureur (HMP)	Reduce delays	This provision would allow the Convenor to transfer a case to HMP, where the report has been made to both the Convenor and HMP, where the Convenor considers that it may be necessary in the public interest to prosecute the child. This is in line with the principle behind the existing provision that the police can refer a matter to the Convenor alone rather than HMP and the Convenor in appropriate cases.	Y – HMP / St. James' Chambers and Convenor	Y
33.	Terms and conditions of the appointment of the President of the Tribunal.	Addresses an unintended consequence	To address a drafting error.	Y	Y
34.	Withholding information to protect a person against the risk of serious harm	Addresses an unintended consequence	The Convenor currently has the power to withhold information from a child or other person where the Convenor considers that it is for the welfare of the child, or it is necessary to protect a person against the risk of serious harm. As presently drafted, information can be withheld from a person where it is necessary to protect that person against the risk of serious harm. This is likely to be a drafting error as it is often the case that the information is withheld from a person to protect another person from serious harm. For example in cases of domestic abuse, disclosure of	Y	Y

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
			information to the abuser that a person is accessing a domestic violence service may result in risk of serious harm to the victim.		
35.	Parties to the Tribunal proceedings	Reduce delays	This change will extend and make clear who can attend Tribunal hearings as parties to proceedings or as interested parties to avoid any risk of unintentional discrimination. The change widens and updates the current parameters for the welfare of the child. It will include a suitable right of appeal to any decisions.	Y - Convenor, Law Officers and CfHSC	Y
36.	Removal of upper and lower age limit for Tribunal member appointment	Addresses an unintended consequence	Removes any age limit in the Law for Tribunal members. The basis on which a Tribunal member is recruited will be on their ability to fulfil the role's requirements.	Y	Y
37.	Complete the drafting of Secondary regulations	Reduce delays	<p>The relevant outstanding secondary legislation and guidance is drafted to support fully implementing the Children Law. It will provide greater clarity around rights of children in care and fulfils an objective of the Corporate Parenting Framework.</p> <p>Section 25 creates a duty on the Committee to provide, or arrange for the provision of accommodation for any child in accordance with regulations made. These regulations may include</p>	n/a	TBC

No	Proposals – as refined by the review	Objective met	Impact	Majority stakeholder support*	Within existing resources
			<p>the circumstances in which, and the children in relation to whom, the duty arises and the type and standard of accommodation.</p> <p>Section 26 creates a duty on the States to provide services for any child in the care of the Committee and any person who has been in the care of the Committee. “In the care of the Committee” is wider than children accommodated by the Committee and includes children who are or have been subject to a CR and children who are accommodated by the Committee either through a compulsory route or voluntarily.</p> <p>Meets Professor Marshall’s recommendation 11</p>		
38.	External review	More effective governance	Establish a regular cycle of independent review of the system, every three to five years. It is expected that the first review will be in 2025.	Y	N – est. £10-15K every 3-5 years

**Table 1. Policy proposals for revisions to the Children Law.**

\*Refers the combined majority view of stakeholders who were consulted through the Committee’s targeted consultation on the Law, those consulted through the Outcomes Report and the subsequent impact assessments.

## 2) POLICY CHANGES NOT RECOMMENDED TO BE PROGRESSED

Category	Changes under consideration	Description / rationale for not progressing	Within existing resources
Case management	Tribunal makes own finding of facts	Discounted as not supported by majority of stakeholders, would incur additional resources and removes independent appeals process from court.	N
	Changes to the Convenor's role – target for initial enquiries 21 days	To be included in the operational approach set out above to understand implications/achievability of a 21 day target. <b>Keep under review.</b>	N
	Changes to the Convenor's role – if parties agree on the circumstances and proposed outcomes, the Convenor may dispose of the matter by way of an agreed order with the parties which is then approved by the Tribunal.	While this seeks to speed up disposing of cases there was concern that the outcomes for children could be negatively affected. <b>Keep under review.</b>	Y
	Changes to the Convenor's role – Convenor acts as legal advisor on the Law to the Tribunal	Concerns were raised over compliance with European Convention on Human Rights (ECHR) Article 6 given that the Convenor brings cases to the Tribunal to be heard. The Convenor will already intervene if the Tribunal seeks to act in a way that is contrary to the Law or fails to act in accordance with the Law.	Y
Jurisdiction change	All removal cases are dealt with by the court and not the Tribunal	Further consideration suggests that many of the cases subject to a CR which then proceed to a CPO application will be presented directly to court instead once the threshold changes have been implemented. The	N

		changes to order thresholds will provide the Committee with more options on how to proceed where permanent removal is most likely.	
<b>Legal Orders</b>	Introduction of a “Child Arrangements Order”	To replace residence and contact orders with the introduction of a child arrangements order. Not viewed as being necessary.	Y
<b>Names changes</b>	Rename the Tribunal and the Juvenile Court (in Guernsey and Alderney)	Rename the Tribunal ‘The Family Proceedings Tribunal’ and the Juvenile Court (in Guernsey and Alderney) ‘The Family Proceedings Court’. Discounted as case was not made for change.	N
<b>Principles</b>	Explore the introduction of a “No Order” Principle	The need to introduce an enabling provision to introduce amendments to the legislation and accompanying Rules of Court, to bolster the principle that formal legal proceedings will be a last resort was not viewed as necessary given the current principle of ‘no compulsory intervention’ is wider in coverage i.e. no state or agency intervention unless necessary.	Y
<b>Timescales</b>	Appeals - list an appeal to a court decision on a CPO within 14 days of it being lodged	An appeal should be listed within 14 days of the Appeal being lodged. This will then be subject to directions being given by the court for the prompt disposal of the case. Part of operational target setting. <b>Keep under review.</b>	N
	Appeals - Tribunal decisions re: CR – targets	Setting timescales for the Convenor to lodge the application regarding the dispute, such as within a period of 7 days after it has become clear that the dispute cannot be resolved by amendment of the Convenor’s statement or withdrawal of grounds or facts. Alongside a timeframe for the court hearing.  Also, reduce the decision timeframe to 21 days from application and the first hearing to be within 7 days as opposed to the current 14 days.	N

		To be considered following baseline capture to establish an appropriate target that is achievable. <b>Keep under review.</b>	
	Appeals - permit a time extension in some instances	Provision to be made for enabling a time extension for all appeals to be brought where required in the interests of justice. If targets are not to be introduced then no extension is necessary.	N
	Appeals - Against Juvenile Court's decisions - determinations of Disputed Conditions or Facts - reduce to 28 days	Instead, manage as set out for other target timescales. <b>Keep under review.</b>	N
	Introduce a statutory Public Law Outline.	In-principle support for the proposal for the court to introduce a set target number of weeks for cases to be completed, by Practice Direction, but not set out in legislation. However, given systemic causes of delays and a lack of data this option is not supported. <b>Keep under review.</b>  An alternative approach is proposed through the system wide performance measures to establish, monitor and track Guernsey relevant and achievable targets. <b>Keep under review.</b>	N

**Table 2. Proposals considered by the Board and the Committee but not recommended to be taken forwards at this time.**

**APPENDIX F: CHILDREN LAW PROPOSALS SUMMARY WITH LEGISLATIVE DRAFTING DETAILS as at 19<sup>th</sup> August 2022**

The below table sets out the specific drafting instructions for the proposals for changes to the Law.

No	Proposals for change	Description	Change through*
1.	Compulsory attendance at Tribunal hearings for adults parties to proceedings	<ul style="list-style-type: none"> <li>• The introduction of suitable legislative provisions to place an obligation, right and duty upon relevant responsible adults to attend Tribunal hearings, unless excused or where their attendance is not considered necessary.</li> <li>• The Tribunal to implement a penalty system for non-attendance at its hearings.</li> </ul>	Amending the Law – new right and duty, and establish the necessary Tribunal Rules of Procedures
2.	Review requirements to notify the Convenor	Remove requirements that applications for adoption and special contact orders must be notified to the Convenor.	Amending the Law: S.36(3)
3.	Committee to notify the Convenor of certain decisions and act within a defined timescale (re applications to court to remove a child from their carers). Similarly the Tribunal must notify the Committee, within a defined period, if they are of the view the case in-front of them passes a court order threshold.	<ul style="list-style-type: none"> <li>• The Committee must notify the Convenor, within a to be defined timescale, when it decides to apply to the court for an order that will have the effect of removing a child from their parents or family (most likely a Community Parenting Order (('CPO') or Emergency Child Protection Order ('ECPO')).</li> <li>• The Committee must make the application to remove a child within a to be defined timescale of the above notification. The Committee must notify the Convenor if it decides it no longer wishes to proceed with the application.</li> <li>• If the Tribunal considers a case in their jurisdiction passes the threshold for an application to the court by the Committee, they must notify the</li> </ul>	Amending the Law: S.36(3)

No	Proposals for change	Description	Change through*
		Committee (within a to be defined timescale of coming to that view) so that the Committee can consider if an application should be made to the court.	
4.	When the Convenor is notified by the Committee, as set out in proposal 3 above, the Convenor will not undertake any investigation or action in relation to that case unless it is necessary and proportionate.	When the Committee notifies the Convenor that it has decided to apply to the court for an order that will have the effect of removing a child from his parents or family the Convenor will not undertake any investigation or action in relation to that case (as noted in 3) unless it is necessary and proportionate.	Amending the Law: S.37 – to ensure no investigation is undertaken unless parameters noted are met
5.	Pause or stop Tribunal proceedings where a substantive application is being considered by the court, in appropriate cases.	<p>If there are active proceedings within the Tribunal at the time when a CPO application has been made to the court:</p> <p>(i) these are paused and no further Tribunal hearings will take place (by operation of s.46(3)) until the substantive application has been determined by the court except for matters not relating to the substantive application such as offending or school attendance matters; and/or</p> <p>(ii) any existing Care Requirement (CR) or Interim Care Requirement (ICR) can be discharged by the court (further to s.54) if the court is satisfied that the care requirement would no longer serve any useful purpose; and,</p> <p>(iii) court proceedings are given precedence over any paused or continuing Tribunal proceedings by the introduction of a provision similar to that of s.22(5) i.e. a CR (or ICR) shall have no effect in so far as it is inconsistent with a CPO (or Interim CPO).</p>	<p>Amending the Law:</p> <p>Considering existing wording in the relevant sections to ensure clarity and amend to avoid issues of duplication between the court and Tribunal.</p>

No	Proposals for change	Description	Change through*
			Introducing a provision similar to that of s.22(5)
6.	Enable family cases to be remitted from the court to the Tribunal and ensure that any facts established by the court are communicated to the Tribunal	Amend the legislation to enable cases to be remitted from the court to the Tribunal, in appropriate cases, similar to the precedent in youth justice cases. Ensure that any facts established by the court are communicated to the Tribunal.	Amending the Law:  Practice Directions
7.	Appointment of FPAs pre-proceedings where required for the welfare of the child.	Amend the Law to allow Family Proceedings Advisors (currently named Safeguarders) to be involved at the earliest possible stage before proceedings commence or following their conclusion, where required, to better support the welfare of the child. This will be along the lines of the wording in s.12(5) of the Criminal Justice and Court Services Act 2000. The appointment will be on the recommendation of the Committee or the Convenor, and subject to consent from all parties.	Amending the Law: s.84
8.	Court to retain and dispose of cases where it determines facts in appropriate cases.	Amend the Law to enable the court to proceed to make a CR or ICR and any relevant condition where it is determining the facts. The court already has a similar power in appeal proceedings from the Tribunal. It should be possible for the case to be referred back to the Tribunal once a decision has been made by the court, should the court deem it appropriate. The Tribunal could then make any further condition for removal where it was required but as a distinct decision from the court's judgement on removal.	Amending the Law:  New provision similar to power in appeal proceedings relating to the Tribunal

No	Proposals for change	Description	Change through*
9.	Demonstrate a commitment to Safeguarding in the Law	Inclusion of a provision to demonstrate an organisational commitment to Safeguarding Practices for all individuals and agencies involved in safeguarding. This should include the requirement for all functions, including those commissioned or procured from a third party, to be discharged having regard for the need to safeguard and promote the welfare of children.	Amending the Law:  New provision
10.	Information sharing: capturing information relating to improving welfare	There is currently no requirement in the Law for the police (or other Committee partners/persons or bodies who exercise functions/activities relating to children) to capture information relating to improving the welfare or wellbeing of a child unlike in the UK. The legislation should be amended to give effect to this power.	Amending s.27 of the Law to give effect to this power  Update practice guidance
11.	Information sharing: redraft Section 27 of the Law	To redraft s.27 to provide greater clarity as to its legal effect and intention and to work alongside updated practice guidance to reflect changes made by the Data Protection (Bailiwick of Guernsey) Law, 2017.	Amending the Law: s.27  Update practice guidance
12.	One meaning of 'compulsory intervention'	Amend the Law so that there is one meaning of 'compulsory intervention' as set out in the principles used throughout the Law. This will provide greater clarity and address an unintended consequence of the drafting of the Law. The term should solely relate to intervention by the State in family life.	Amending the Law: s.35
13.	Legal orders: introduce Supervision Orders	Introduce a power for the court to grant a 'Supervision Order' placing the child under the supervision of the Committee as a disposal in a CPO case.	Amending the Law:

No	Proposals for change	Description	Change through*
		The threshold criteria for making the order would reflect the amended CPO criteria and test.	New court power
14.	Legal orders: introduce a Child Assessment Order	Introduce a Child Assessment Order along similar lines to a Child Assessment Order in England and Wales with the court having the power to treat the application as one for an ECPO in appropriate cases. The order will be a public law order with only the Committee authorised to apply for it.	Amending the Law:  New court power
15.	Legal orders: amend the legal threshold for CPOs and remove the 'reasonable prospect' limb	<p>The legal threshold for CPOs should be amended to:</p> <ul style="list-style-type: none"> <li>• largely reflect the wording used in other jurisdictions, suitably adapted for Guernsey and Alderney, in line with the 2004 policy intentions where a CPO is used in cases where longer-term and more permanent alternative provision for a child is needed, for example through adoption or long-term foster care. Suggested threshold wording is as follows; <ul style="list-style-type: none"> <li>➤ there are reasonable grounds to believe that the child concerned is suffering, or is likely to suffer, significant harm; and</li> <li>➤ that the harm, or likelihood of harm, is caused by: <ul style="list-style-type: none"> <li>○ the care given or likely to be given if not removed, by the parent or person with parental responsibility as would be reasonably expected of a parent; or</li> <li>○ the child is beyond parental control.</li> </ul> </li> </ul> </li> <li>• remove the requirement for at least one of the conditions in the current Section 35 to be made out;</li> <li>• remove the reasonable prospect limb in full; and</li> </ul>	Amending the Law: s.49

No	Proposals for change	Description	Change through*
		<ul style="list-style-type: none"> <li>retain the part of the threshold which enables a CPO to be made with consent (retaining the current provision).</li> </ul>	
16.	Legal orders: interim CPO test to be amended in line with CPO test	<p>The test for making an interim CPO is set out in the legislation to mirror the case law but will incorporate the amended test for the CPO.</p> <p>It should include that:</p> <ul style="list-style-type: none"> <li>The ICPO has the same effect as a CPO: <ul style="list-style-type: none"> <li>It is for a shorter period</li> <li>It can be used at an earlier stage and as a protective measure in risk of harm cases where permanent removal is likely but time is needed to fully complete all assessments</li> </ul> </li> <li>There should be reasonable grounds for believing the CPO grounds are met.</li> </ul>	Amending the Law: s.53
17.	Legal orders: threshold changes – Serious or Significant Harm and adding ‘reasonable grounds to believe’	To replace the terms “serious harm” with “significant harm” in the threshold provisions for an ECPO, Exclusion Order and Police Powers (to protect a child). And, add the wording ‘reasonable grounds to believe the child is likely to suffer <u>significant harm</u> .’	Amending the Law: s.55 s.59 s.64
18.	Legal orders: discharge of ECPO (in relation to the Sitting of the Tribunal)	To amend the Law by removing the provision that automatically discharges an ECPO by the administrative act of the Tribunal sitting.	Amending the Law: s.55
19.	Legal orders: amendment regarding Parental Responsibility Orders on the making of a CPO	To amend the Children Law so that a parental responsibility order is not automatically discharged by the making of a CPO.	Amending the Law: s.17

No	Proposals for change	Description	Change through*
20.	Legal orders: duration of police powers of protection in emergency situations	Increase the 24 hour time limit for police protection for children in emergency situations to a maximum of 72 hours.	Amending the Law: s.66
21.	Legal orders: amend the ECPO, Police powers to protect a child and Recovery of Children – by removing the word ‘imminently’ and adding ‘by force, if necessary’	Amend wording so that “by force, if necessary” is added, and remove “imminent” for ECPO (“imminently” in the case of Police powers). The other threshold changes noted above to introduce ‘reasonable cause to believe’ means the imminent risk of significant harm will remain a consideration when making an ECPO, without the need to prove imminence of risk of suffering, as currently.	Amending the Law: s.55 s.59 s.64
22.	Legal orders: amend the CR/ ICR so the thresholds are distinct	<p>The relevant sections of the Law to be amended so it more closely aligns with the original policy intentions where a CR was: “intended for those cases where there is a reasonable prospect of positive change, which will enable the child either to continue living within the family or be reunited within a relatively short period.”</p> <p>The changes should include:</p> <ul style="list-style-type: none"> <li>o Removing the need to demonstrate ‘no person willing and able’ limb; and</li> <li>o Make the threshold distinct and cover its purpose (as above) and to ensure it: <ul style="list-style-type: none"> <li>• Protects a child from harm and promotes their health, welfare and development;</li> <li>• Is temporary in nature;</li> <li>• Assists parents or carers to be able to fulfil their care, protection, guidance and control responsibilities adequately;</li> </ul> </li> </ul>	Amending the Law: s.44 s.47

No	Proposals for change	Description	Change through*
		<ul style="list-style-type: none"> <li>Enables the Tribunal to make interim variations to a condition of a CR on a time limited basis; and</li> <li>Removes the 28 day review requirement and set reviews at a minimum of 6 months (with discretion for Tribunal to list at shorter interval if required).</li> </ul>	
23.	Legal orders: CRs– rename the ‘conditions’, ‘grounds’ and update the grounds.	<p>Rename the ‘conditions’ for a CR as ‘grounds’.</p> <p>Update the list of ‘grounds’:</p> <ul style="list-style-type: none"> <li>Along the lines of the changes set out in Appendix G;</li> <li>To include a list of ‘specified offences’; and</li> <li>To define the terms ‘specified offences’ and ‘close connection’ along the lines of the Scottish definitions.</li> </ul>	Amending s.35 and all relevant sections
24.	Name changes: amend the names for the Safeguarder Service and Safeguarders in the Law	Legislative amendment to amend the name of the Safeguarder Service to the Family Proceedings Advisory Service and the officers appointed as Safeguarders to Family Proceedings Advisers.	Amending Part XII of the Law (s83 to 85) and secondary legislation as necessary
25.	Name changes: amend ISCP name in Law	Legislative amendment so that the name of The Islands Child Protection Committee is changed to its current name “The Islands Safeguarding Children Partnership”.	Amend s.29 the Law
26.	Amend the duties of the States of Guernsey to the children of Guernsey and Alderney	<p>To move the following duties from The Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009 (“2009 Children Ordinance”) to the primary legislation (the revised Children Law):</p> <ul style="list-style-type: none"> <li>S22 Duty to identify children in need.</li> </ul>	Amending the Law:

No	Proposals for change	Description	Change through*
		<ul style="list-style-type: none"> <li>• S23 Duty of Departments to publish information about services.</li> <li>• S24 Assessment of need</li> <li>• S25 Duty to investigate.</li> </ul> <p>To set out the detail of how the duties on the States and/or the Committee are exercised in the secondary legislation (ordinance or Regulations as appropriate).</p> <p>To redraft the wording of the duty of the Committee to investigate to provide greater clarity and reflect consistently other changes to the Law. This should include when the duty to investigate is established, for example this could be when “the Committee has reasonable cause to suspect that a child is not receiving adequate care, protection, guidance or control or is suffering or likely to suffer significant harm”.</p>	Move s. 22, 23, 24 and 25 from the 2009 Ordinance to the Law under s.24
27.	Duty to co-operate	The 2004 Policy Letter set out that there will be “a general duty on States agencies to work together to identify and assist families who have children who are in need of help at an early stage, thus preventing problems from developing or escalating.” This is covered in part by the current wording in the Law but not to the extent as intended by the policy. This section should be reworded to better reflect the intended duty as agreed in 2004.	Amend s.27 the Law
28.	Child cruelty – unintended narrowing of the criminal offence	To amend the Children (Consequential Amendments etc) (Guernsey and Alderney) Ordinance, 2009 (Amendments Ordinance, 2009) so as to put the scope of persons falling within the offence of Child Cruelty back to the pre-2010 position. This is one where persons who have the care of a child but do not hold parental responsibility, such as a step-parent, unmarried father	Amending the Amendments Ordinance, 2009

No	Proposals for change	Description	Change through*
		without parental responsibility or a baby sitter, are included in the scope of the law.	
29.	Provide the Tribunal with the powers to make an interim variation of a care requirement	Amend the Law to enable the Tribunal, when a review hearing is adjourned, to make an interim variation of the care requirement pending further investigation of the child's circumstances or to allow a party to attend.	Amending s.47 of the Law
30.	Disposal and powers of the Tribunal on disposal	Amend Section 8 of the Third Schedule to the Children (Miscellaneous Provisions) (G&A) Ordinance 2009 which currently refers to section 44 of the Law relating to the test for making of a CR, as opposed to 'Action after investigation by the Children's Convenor, under s.42(1)	Amending the 2009 Ordinance s.8 of the Third Schedule
31.	Provide the Convenor with the powers to suspend part of a condition of a CR, subject to suitable safeguards	Amend the Law to enable the Convenor to suspend part of a condition of a CR. There will be a need to ensure that sufficient safeguards are in place to support the good governance of this amendment.	Amending the 2009 Ordinance s.12 of the First Schedule
32.	Introduce a power to transfer a case to Her Majesty's Procureur (HMP)	Amend the Criminal Justice (Children and Juvenile court reform) Law, 2008 to allow the Convenor to transmit a report to HMP where the report has been transmitted under section 4 (1).	Amending Section 4 (4) of the Criminal Justice (Children and Juvenile court reform) Law, 2008
33.	Terms and conditions of the appointment of the President of the Tribunal.	Amend the Law to replace the words "the Committee" with "the Children's Convenor and Tribunal Board".	Amend s.32(3) of the Law

No	Proposals for change	Description	Change through*
34.	Withholding information to protect a person against the risk of serious harm	To amend these provisions so that it is for the protection of <b>any person</b> .	Amending s.6 of the 2009 Ordinance of the First Schedule
35.	Parties to the Tribunal proceedings	<p>To refine the definition of who are parties to the Tribunal proceedings to:</p> <ol style="list-style-type: none"> <li>1. Recognise all parents as a party to proceedings (other than those who have had parental rights and responsibilities removed); and</li> <li>2. Grant discretion to the Convenor to recognise a wider range of persons who have had significant involvement in the child's upbringing as a party.</li> </ol> <p>Empower the Children's Convenor to make the decisions in relation to parties at the Convenor's meeting. Provide for a suitable right of appeal against any decisions on parties or interested parties who can attend.</p>	Amending s.1 of the Third Schedule of the 2009 Ordinance
36.	Removal of upper and lower age limit for Tribunal member appointment	Remove from the current wording in the Law which precludes a person from being a member of the Tribunal if they are aged 70 years or more or under 21 years of age.	Amending s.33(4)(g) and (h) of the Law
37.	Drafting of Secondary Regulations	Complete the relevant outstanding secondary legislation and guidance to support fully implementing the Law.	Drafting Regulations under s.25 and s.26 of the Law

**Table 1. Policy proposals and details on revisions to the Children Law to be considered by the States of Deliberation.**

\* Details are suggestive and will require further consideration by the legislative drafters.

## SUGGESTED KEY TERM DEFINITIONS

The below table sets out suggested definitions for the key terms in the Law, informed and aligned to other jurisdictions definitions. These definitions will be subject to further consideration by the legislative drafters.

Term	Suggested definition
Child abuse	"A form of maltreatment of a child. Somebody may abuse or neglect a child by inflicting harm, or by failing to act to prevent harm."
Physical abuse	"A form of abuse which may involve hitting, shaking, throwing, poisoning, burning or scalding, suffocating or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child." <sup>1</sup>
Emotional abuse	"The persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's health or development."
Sexual abuse	"Forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening."
Neglect	"The persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development."
Suffer	"Experience or be subjected to (something bad or unpleasant)". <sup>2</sup>
Harm	"The ill-treatment or impairment of the health or development of the child". <sup>3</sup>
Significant	"Sufficiently great or important to be worthy of attention; noteworthy". <sup>4</sup>

**Table 2. Suggested definitions for key terms in the Law.**

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<sup>1</sup> [Working Together to Safeguard Children 2018](#), pp.106-107.

<sup>2</sup> [Merriam-Webster – Suffer](#): This definition has been drawn from the Merriam-Webster Dictionary, due to the absence of a clear legal definition in statute or legal guidance across the jurisdictions studied.

<sup>3</sup> Definition drawn from [Section 31\(9\) of the Children Act 1989](#) (England & Wales) and [Children \(Jersey\) Law, 2002, Article 24\(6\)](#) (Jersey).

<sup>4</sup> As defined by Oxford Languages. This definition was chosen as a consequence of the Convenor's Statement, 2022.

### APPENDIX G: PROPOSED CHANGES TO THE GROUNDS FOR REFERRAL TO THE CONVENOR

Current 'Conditions'	Proposed new 'Grounds'	Supporting rational
(a) the child has suffered, or is likely to suffer, significant impairment to his health or development,	(a) (i) the child has suffered <u>unnecessarily</u> , or is likely to suffer <u>unnecessarily</u> , or (ii) <u>the health or development of the child has been or is likely to be significantly impaired</u>	<p>The inclusion of 'suffer unnecessarily' aligns with the Scottish equivalent and reduces the current high evidential burden of requiring evidence of 'significant impairment'. Currently, cases where children have experienced suffering, either physical or emotional, is not covered as it does not meet the threshold to refer a case to the Convenor. This is a risk and a gap in protection e.g. neglect cases where the child is not clothed or fed appropriately, lives in an unhealthy environment or exposed to danger such as not obtaining medical care when it is needed.</p> <p>No case law exists to interpret 'significant impairment'. Adding in 'unnecessary suffering' as a separate limb removes any uncertainty and removes the need to rely on the Court adopting a wide/broad interpretation of significant impairment.</p>
(b) the child has suffered, or is likely to suffer, sexual or physical abuse,	(b) the child has suffered, or is likely to suffer, sexual or physical abuse.	Retaining this ground and adding in the new ground 'h' enables action to be taken to protect against abusive behaviours before a criminal conviction may be made i.e. it provides protection when criminal cases are progressing through the court and also where a conviction is not found. See example (h) below.
(c) the child has – (i) misused drugs or alcohol, or (ii) deliberately inhaled a volatile substance,	(c) the child has – (i) misused drugs or alcohol, or (ii) deliberately inhaled a volatile substance,	Retain as currently.

Current 'Conditions'	Proposed new 'Grounds'	Supporting rational
<i>(d) the child is exposed, or is likely to be exposed, to moral danger,</i>		<p>After further consideration it is suggested that this ground is removed as the revised wording in grounds (a) and (b) provide the same protection.</p> <p>In Scotland the same (a) and (b) grounds are only applicable to parents, so an additional ground is needed. However, this would not be the case in Guernsey as the proposed a and b grounds are not only application to parents.</p>
(e) the child – (i) has displayed violent or destructive behaviour and is likely to become a danger, to himself, or others, or (ii) is otherwise beyond parental control,	(e) - i) <u>the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person, or</u> <u>(ii) the child is otherwise beyond parental control</u>	The proposed wording has been amended to be less emotive and to provide protection for use in cases involving self-harm, eating disorders etc. The current wording is challenging to use as the child themselves may find it difficult to read and accept that they are considered a danger.
(f) the child, being of 12 years of age or more, has committed – (i) a criminal offence, or (ii) what would be a criminal offence if the child had the necessary capacity, or	(f) the child, being of 12 years of age or more, has committed – (i) a criminal offence, or (ii) what would be a criminal offence if the child had the necessary capacity, or	Retain as currently.
(g) the child (being under the upper limit of the compulsory school age) is failing to attend school without good reason.	(g) the child (being under the upper limit of the compulsory school age) is failing to attend school without good reason.	Retain as currently.

Current 'Conditions'	Proposed new 'Grounds'	Supporting rational
	<u>(h) a 'specified offence' has been committed in respect of the child,</u>	New grounds. See comments in (b) above. The Schedule 1 offences in the UK are generally all serious offences against children and the term 'Person posing a risk to Children' is now used when referring to offenders which clearly indicates the risk, or potential risk, to children where these offences have occurred or are alleged to have occurred. The offences listed include murder, child abuse, or causing bodily injury to a child and are used by UK statutory services to trigger an assessment for risk.
	<u>(i) the child has, or is likely to have, a close connection with a person who has committed a 'specified offence'</u>	<p>The commission of one of these offences would in itself give rise to concern about any children who had a close connection to the person who has committed the offence or is alleged to have committed one of these offences.</p> <p>It is considered that the addition of (h) and (i) are necessary because it removes the need to prove harm or risk of harm to the child referred where this child is not the victim of the offence.</p> <p>The offence does not need to have resulted in a conviction for this ground to apply.</p> <p>E.g. a parent of a 4 year old child is accused of sexually assaulting a young person aged 15. There is insufficient evidence to satisfy the criminal standard of proof and therefore no prosecution takes places. Children's services consider that the parent presents a risk to their own child. The parent denies all concerns and refuses to engage. Current ground open to the Convenor is (b). In order to satisfy this ground the Convenor would</p>

Current 'Conditions'	Proposed new 'Grounds'	Supporting rational
		have to prove the fact the parent committed a sexual assault on the 15 year old (on the balance of probabilities) and also prove that there was a likelihood that as a result their own child was likely to suffer sexual abuse. Were the (i) ground to be added it would be satisfied when the Convenor proves the sexual offence against the 15 year old. That fact alone would give rise to the question of risk to any child who has a close connection with the adult and would enable intervention when this was considered necessary.
	<u>(j) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse</u>	New ground to address the risk of domestic abuse specifically. The offence does not need to have resulted in a conviction for this ground to apply.
	<u>(k) the child is, or is likely to become, a member of the same household as a child in respect of whom a specified offence has been committed</u>	New ground which provides protection for other children of, or likely to become part of a household, where one child in a household has been the victim of an offence and the parents were unable to protect the child from this harm. This ground raises the question of whether other children in the same household are also at risk of harm so questioning if the parents can provide adequate care and protection.
	<u>(l) the child is being provided with accommodation by the Committee under section 25 or a community parenting order is in force in respect of the child.</u>	New ground which removes the need for another ground to be established when the child was already under the Committee <i>for</i> Health & Social Care's care and a care requirement was considered necessary. It is expected that the introduction of this ground would reduce delays in these instances.

**Table 4. Proposed changes to the grounds of referral to the Convenor.**

## SPECIFIED OFFENCES

The below table sets out the 'specified offences' in Scotland and England and Wales which trigger a referral to the Children's Reporter (Scotland) or for child protection purposes (England & Wales). Many of the offences are set out in The Sexual Offences (Bailiwick of Guernsey) Law, 2020 which is included and are recommended as a suggested list requiring further consideration by St. James Chambers to formulate an appropriate list of 'specified offences' relating to children and adults, from Guernsey's and Alderney's perspectives.

The 'specified offences' noted below relate to offences against children or sexual offences. Other offences specific to adults such as murder, manslaughter, assault and battery require further consideration.

	<b>Scotland</b> (applicable to children under 17 years unless specified) specified offences	<b>England and Wales<sup>1</sup></b> specified offences	<b>The Sexual Offences (Bailiwick of Guernsey) Law, 2020</b> (under 16 years unless specified)
<b>SEXUAL OFFENCES</b>			
Incest	X	X	X
Intercourse with step-child	X	X	X
Sexual touching of a child family member		X	X
Inciting a child family member to engage in sexual touching		X	X
Rape of a young child	X under 13	X	X under 13
Having intercourse with an older child	X 13 to 16	X 13 to 16	X
Sexual assault on a young child by penetration	X under 13	X under 13	X under 13
Engaging in penetrative sexual activity with or towards an older child	X	X	X
Sexual abuse of trust towards a child	X under the age of 17 / dependent on conditions	X	X
Sexual touching of a child		X	X
Causing a child to participate in a sexual activity	X	X	X under 13
Causing a child to be present during a sexual activity	X	X	X
Causing a child to look at a sexual image	X	X	X

<sup>1</sup> [Person Posing a Risk to Children - Guidance and Procedure \(proceduresonline.com\)](https://proceduresonline.com)

Communicating indecently with a child etc.	X	X	X
Grooming for sexual conduct with a child.		X	X under 16
Meeting a child following communication etc.		X	X
Sexual exposure	X	X	X
Voyeurism	X	X	X
Buggery		X under 16	
<b>OFFENCES INVOLVING AN ABUSE OF A POSITION OF TRUST</b>			
Position of trust: sexual touching of a child.	X	X	X
Position of trust: causing or inciting a child to engage in sexual activity.	X under 16	X	X
Position of trust: engaging in sexual activity in the presence of a child.	X	X	X
Position of trust: causing a child to watch a sexual act.	X	X	X
<b>PROCURING, PROSTITUTION ETC.</b>			
Procuring – paying for sexual services	X under 21	X under 21	X
Abduction and unlawful detention.	X	X	X
Permitting girl to use premises for intercourse.	X	X under 16	
Seduction, prostitution, etc., of girl.	X under 16	X under 16	X
Trading in prostitution and brothel-keeping.	X	X under 16	X
Allowing child to be in brothel.	X	X under 16	X
Living on earnings of another from male prostitution	X	X	
Indecent photograph or pseudo-photograph of a child.	X	X	X
Causing or inciting provision by child of sexual services or child pornography	X	X	X
Controlling a child providing sexual services or involved in pornography	X	X	X
Arranging or facilitating provision by child of sexual services or child pornography	X	X	X
Possession of prohibited item		X	X
Possession of child sex doll.			X
Burglary (by entering a building or part of a building with intent to rape a child)		X	
<b>OTHER SEXUAL OFFENCES NOT SPECIFIC TO CHILDREN*</b>			
Rape	TBC	X	X

Administering drugs to obtain or facilitate intercourse		X	X
Abduction (of adults under sexual offences)		X	X
Causing prostitution of women		X	X
Offences where abuse of trust occurs to vulnerable individuals		X	X
Assault by penetration		X	X
Sexual assault		X	X
Causing a person to engage in sexual activity without consent		X	X
Sexual activity with a person with a mental disorder impeding choice		X	X
Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity		X	X
Engaging in sexual activity in the presence of a person with a mental disorder impeding choice;		X	X
Causing a person, with a mental disorder impeding choice, to watch a sexual act		X	X
Inducement, threat or deception to procure sexual activity with a person with a mental disorder		X	X
Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception		X	X
Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder		X	X

OTHER OFFENCES SPECIFIC TO CHILDREN*			
Female Genital Mutilation	X	X	TBC
Any other offence involving bodily injury to a child	X	X	
Cruelty to persons	X under 16	X	
Causing or allowing persons to be used for begging.	X under 16	X under 16	
Exposing children to risk of burning.	X under 7	X under 7	
Failing to provide for safety of children at entertainments.	X	X under 16	

Any offence involving the use of lewd, indecent or libidinous practice or behaviour towards a child.	X		
Abandonment of children under two		X	
Child stealing / abduction including by parent		X	
Abduction of Child in Care/ Police Protection - take away/induce away/assist to run away/ keep away		X	
Recovery of missing or unlawfully held children		X	
Drunk in charge of a child		X under 7	
Give / cause to be given intoxicating liquor to a child		X under 5	
Supplying or offering to supply a Class A drug to a child, being concerned in the supplying of such a drug to a child, or being concerned in the making to a child of an offer to supply such a drug		X	
Aiding, abetting, counselling or procuring the suicide of a child or young person		X	

## **APPENDIX H: SUMMARY OF THE OPERATIONAL CHANGES TO BE MADE TO THE FAMILY CARE AND JUSTICE SYSTEM**

The below table sets out operational changes either made or to be made to the family care and justice system (system) by area. Where resource implications are known these are captured.

Area	Proposals – as refined by the review	Description	Within existing resources
System wide	Advocacy	Extend the current advocacy scheme to support all children in Tribunal hearings and introduce a new scheme to support adults who are required to attend Tribunal hearings, should they wish to access independent advocacy.  The exact scope of the schemes are to be determined as there could be wider requirements across other service areas such as under the new Capacity Law.	TBC
	Establish key performance metrics including average time limits for specific stages in the process by which performance will be measured.	An operational alternative to setting time limits in Law which gives due consideration to being achieved within existing resources. Agencies in the system will determine and agree a system wide set of measures and targets to track performance. This will inform any future statutory targets. To be used to support the Board in monitoring the impact of the changes and inform any future changes that may be required to reduce delays.  Links to Marshall recommendation 17 – in part.	Y
	External and independent review	A regular and independent review of the system should be put in place. A review every three to five years would be sufficient to provide external assurance and challenge to the system, if the other proposals around governance and particularly scrutiny of the system including the impact of the proposed changes are implemented.	N (est. £10-15k every three to five years)

	Establish information sharing protocols	The development of information sharing protocols between the agencies within the system will provide greater clarity on what information can be shared, when, between which agencies. This should help remove a known cause of delays and bring other causes of delay to light so they can be addressed.	Y
	Develop an operational process framework to operationalise the commitment to Safeguarding	The operational framework will provide greater clarity around processes and inter-agency working, which should reduce delays in some instances.  Links to Marshall recommendation 16.	Y
<b>Office of the Children Convenor</b>	Refer all cases to the Convenor, when not proceeding directly to Court, so the Convenor can investigate and triage cases	Those cases referred to the Convenor will be investigated, and triaged appropriately, including signposting cases to mediation or other dispute resolution support, and/or discussion on other issues, for example, issues of abuse or co-parenting, at the earliest practicable stage and before positions have become entrenched.  While this is the general practice there is a recognised need for cases to be referred earlier to the Convenor than currently. The intention being that this could better support children and their families to resolve any disputes or difficulties without needing to proceed to the Tribunal.	Y
	Develop a pilot for the use of dispute resolution and restorative practices within Tribunal related proceedings	Opportunities for dispute resolution already happen at the stage prior to the Convenor's meeting. This is often on a voluntary basis. There is an identified need to explore where dispute resolution (including mediation) and restorative practices could be used in more cases to better support some families to resolve their differences before proceeding to the Tribunal. This proposal aligns to the children welfare principle "that it is expected that parents and any others responsible for a child's welfare will consult and cooperate with one another, and where possible resolve matters by	Y

		<p>agreement, in an atmosphere of openness and non-confrontation, with recourse to formal proceedings (whether court or tribunal) only as a last resort.”</p> <p>Develop a pilot for the use of dispute resolution and restorative practices within Tribunal related proceedings, working with FPAS.</p>	
	Develop a pre-referral protocol with the Committee	<p>To support the reduction of delay and duplication in decision making, the Convenor and the Committee will develop a pre-referral protocol for all cases where compulsory intervention is a possibility.</p> <p>Links to Marshall recommendation 16.</p>	Y
	Introduce timescales and legislative amendments when the Convenor’s Statement is not agreed	An operational level performance and reporting system to be established to track progress of cases. Timescales will not be set out in legislation and will be feasible to address within existing resources.	Y
<b>Child Youth and Community Tribunal</b>	Tribunal procedure changes	<p>a. Parents should not be legally represented in hearings as a general rule, so retaining the balance of representation and the informal nature of the Tribunal. Some parties may require legal representation, in some instances, where it enables parents to fully participate in proceedings and ensure that there is a fair hearing. Access to an independent advocacy service (not necessarily an Advocate/legal advice) should be made available to all parents, should they wish to make use of it;</p> <p>b. The child will be provided with the same level of advocacy i.e. a Family Proceedings Advisor) or an independent advocate such as that provided by the Youth Commission currently to some children.</p> <p>c. To continue with the existing approaches set out for the Tribunal decisions in terms of how decisions are arrived at and communicated;</p>	TBC - advocacy could incur additional costs

		<p>d. Expert medical or other evidence to be called upon, including the existing advice of FPAS; and</p> <p>e. Regardless of whether the case involves removal, those with parental responsibility attending a hearing should be able to make a request for a hearing to be audio recorded.</p>	
	Support the development of Rules of Procedure for the Tribunal	To respond to the proposals for changes to the Law and also to provide greater clarity on procedures of the Tribunal.	Y
	Case management – court and Tribunal	<ol style="list-style-type: none"> <li>1. For the court to have greater visibility of the proposed direction of travel of a case, at the earliest opportunity i.e. case management hearing;</li> <li>2. To inform 1, develop an agreed protocol for managing cases pre-court hearings including the existing arrangement of meetings held with the main professionals/agencies: the Committee, Children’s Convenor, Law Officers, FPAS and legal representation (where relevant), to consider the proposed intentions and to put these forward;</li> <li>3. Introduce for all relevant cases (criteria to be determined) a pre-Convenor meeting and/or pre-Tribunal hearing meeting with key professionals to agree the proposed direction of travel based on case evidence. If at this point it is deemed to be a permanency case an application is made to the court at the earliest opportunity.</li> </ol>	Y
<b>Court</b>	Support the implementation of the amendments to the Law and explore further where delays can be reduced further	Develop the necessary Practice Directions and Rules of Court to support the implementation of the changes to the Law and continue to consider where delays in court proceedings could be further reduced.	Y

**Table 1. Operational changes to the system.**

## APPENDIX I - INDICATIVE IMPLEMENTATION PLAN FOR PHASE 1

Lead Area*	2022		2023			
	Quarter 3	Quarter 4	Quarter 1	Quarter 2	Quarter 3	Quarter 4
St James' Chambers	Draft amendments to regulations under s.25 and s.26 of the Children Law					
		Draft amendments to primary legislation				Royal Assent
				Draft amendments to secondary legislation		
The Committee	Develop information sharing protocols				States' approval of amendments to Law**	
	Establish data collection / KPIs	Implement and monitor performance				
	Establish a non-statutory form of a Public Law Outline – target timescales			Align operational guidance with Public Law Outline		
	Develop 'Commitment to Safeguarding' operational guidance					
Multi-agency			Prepare and deliver training on the new Law and processes			
	Scope extending the current Advocacy scheme		Implement the Advocacy scheme (subject to funding requirements)			
	Draft Practice Directions/ Tribunal Rules of Procedure and Rules of Court					
Children's Convenor	Children's Convenor to pilot dispute resolution service					
	Develop a pre-referral protocol with the Committee				Implement court and Tribunal pre-protocol	
	Tribunal to implement procedural changes					

\*The service area that has responsibility for leading and delivering the action, in consultation with other areas as relevant.

\*\*Drafts to the legislation will also need approval from the States of Alderney.