

Locality, legitimacy and the limits of diversion: Reviewing youth justice in Jersey

Jonathan Evans¹  | Peter Raynor² | Brian Heath³

¹Jonathan Evans is Professor of Youth Justice Policy and Practice, University of South Wales

²Peter Raynor is Emeritus Research Professor in Criminology and Criminal Justice, Swansea University and Visiting Professor in Probation Policy and Practice, University of South Wales

³Brian Heath, former Chief Probation Officer of Jersey Probation and After Care Service, is Visiting Lecturer in Applied Criminology, University College Jersey and Visiting Fellow in Probation Policy and Practice, University of South Wales

Correspondence

Jonathan Evans, Professor of Youth Justice Policy and Practice, University of South Wales.

Email: jonathan.evans1@southwales.ac.uk

Abstract

This article is based on the authors' involvement in two reviews of Jersey's youth justice system, carried out in 2010 and 2018. The reviews provide fresh insights into the process of moving towards a child-first, rights-informed youth justice system; the potential of traditional community justice to be used as a vehicle for diversion, particularly when such culturally embedded practices enjoy public support; and the need to adapt strategies to the limitations of local conditions and resources in order to ensure feasibility. These findings support and amplify the conclusions of recent research on how localities can shape youth justice.

KEYWORDS

diversion, Jersey, legitimacy, Parish Hall Enquiry (PHE), rights-based welfare, youth justice

1 | INTRODUCTION

The well-established concept of 'justice by geography' (Feld, 1991; Krisberg, Litsky & Schwartz, 1984; Thorpe et al., 1980; Tutt & Giller, 1987) has long challenged the notion that the practice of justice can be understood solely in terms of a top-down policy implementation model within 'national' jurisdictions. Although some governments may attempt to narrow the scope of professional discretion through the imposition of prescriptive national standards, practitioner discretion cannot be eliminated completely by the will of a 'Panopticon minister' (Jordan, 2000, p.128). Justice, as in other areas of policy implementation, is interpreted, operationalised, and mediated by street-level bureaucrats working at the local level (Lipsky, 1980). Musing on

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the future of youth justice in Wales within the context of an untidy constitutional devolution settlement, Drakeford (University of South Wales, 2021), speaking in his capacity as First Minister for Wales but also as a former practitioner, identified three key elements as being important in terms of delivering positive outcomes for young people in conflict with the law: 'culture'; 'resources'; and 'powers'. Of those three elements, he regarded culture as being the most decisive.

The importance of the sub-national level in large jurisdictions has received renewed attention in recent comparative research (Brangan, 2020; Evans, Jones & Musgrove, 2021; Goldson et al., 2021). How 'local penal cultures' are made at ground level in England and Wales is the subject of an important study conducted by Goldson & Briggs (2021). Six themes are identified by the authors: leadership; philosophy and service configuration; perceptions of diversion; perceptions of custodial detention; knowledge-informed approaches; and human rights consciousness. These themes provided a useful conceptual framework and inform this account of youth justice on the Channel Island of Jersey, a self-governing Crown Dependency with a jurisdiction that is constitutionally independent of the United Kingdom.

Small jurisdictions tend to be neglected, patronised or idealised; but useful lessons can be drawn from the way justice is done in 'small places', not least because they cast new light on the assumptions made in 'big places' (Scott & Staines, 2021). Moreover, in 'small places' the relationship between policymakers and practitioners is often more clearly discernible. Second, changes in policy and practice can be implemented and evaluated relatively quickly. In the case of Jersey, there are two areas that should be highlighted in the discussion on diversion and legitimacy: the relationship between local justice practices and the cultural values of the community within which they are embedded; and the potential role of rights-based welfare in enhancing children's rights and securing continuing support for diversionary practices.

The authors have been involved, with others, in two reviews of youth justice in the Channel Island of Jersey (Evans, Kennedy & Heath, 2019; Evans et al., 2010). Jersey offered an opportunity to study criminal justice in a small but internally complex community, often misunderstood by those who view it only through the lens of financial services. Tourism, agriculture and fishing are also important, and, like other European microstates, Jersey benefits from the opportunities provided by the commercial operations of larger neighbouring states. The two reviews were commissioned by Jersey's Government in 2010 and 2018. Additionally, in 2013 the authors independently assessed the impact of the 2010 Review and subsequently published their findings (Evans, Heath & Raynor, 2015). Two important policy drivers lay behind the commissioning of the 2018 Review. The first, and most significant, was the Independent Jersey Care Inquiry (IJCI) report (States of Jersey, 2017) which called for a move towards a 'welfare model' of youth justice. The second significant driver was Jersey's ratification of the United Nations Committee on the Rights of the Child (UNCRC) (United Nations, 1989) in 2016. One of the challenges of the 2018 Review, therefore, was to reconcile the recommendation of youth justice adopting a 'welfare model' while simultaneously embedding children's rights on the island. Welfare is a slippery concept which, as Smith (2018) has argued, can be interpreted from the vantage points of such value perspectives as '*laissez-faire*', '*family support*', '*child protectionist*' and '*children's rights*'. This continuum of welfare ranges from the paternalistic to the empowering.

2 | CONTEXT AND BACKGROUND: THE CHANNEL ISLAND OF JERSEY

The Bailiwick of Jersey is a self-governing Crown Dependency of the United Kingdom located in the Channel Islands. It is a remnant of the ancient Duchy of Normandy, of which it became a part in 933 when the neighbouring Cotentin Peninsula was annexed by William Longsword, son of Rollo the first Duke. In 1066, England also fell under Norman control. In 1204, after Normandy became French, Jersey elected to remain with the English Crown. It enjoyed self-determination in its own affairs, retained its own unique institutions, operated within Norman-French legal traditions (Le Quesne, 1856) and spoke the Jèrriais language, a dialect of Norman French. It is worth noting that the official language of Jersey was French until 1957, when English was also made an official language. In the intervening centuries Jersey has maintained its constitutional integrity and has never been colonised by the United Kingdom.

The relationship with the Crown has not always worked in Jersey's favour. In World War II the island was abandoned by British forces and occupied by Germany from 1940 to 1945 (Sanders, 2005). A more recent example is that the citizens of Jersey were not eligible to vote in the 2016 referendum on membership of the European Union. Such experiences help explain Jersey's preference for finding its own solutions to problems, seeking consensus through 'the Jersey Way' (Jersey and Guernsey Law Review, 2017), and recruiting outside expertise to address problems where consensus is hard to reach. Recommendations from outside the island are not always followed (such as proposals for statutory change), and sometimes suffer from difficulty in understanding the culture and expectations of the island community.

Jersey has a democratic constitution, with a Council of Ministers accountable to the States Assembly. The twelve parishes are an important and very ancient feature of Jersey life, and retain a number of administrative and legal responsibilities discharged by locally elected officials: in addition to the Connétables these include an elected honorary police force in each parish, made up of senior officers known as Centeniers (one of whom is chosen as Chef de Police) and other ranks known as Vingteniers and Constable's Officers. The honorary police system has existed in Jersey for many centuries ('Bagehot', 2012; Miles & Raynor, 2014a, 2014b) and still plays a very important part in policing and criminal justice, alongside the more recent island-wide States Police service which dates back to 1853. In particular, only the Centeniers can charge somebody with an offence, and the States Police are obliged to refer cases to them for charging. In addition, they operate the Parish Hall Enquiries (PHEs) which take decisions about prosecution and play a particularly important part in youth justice. These are described in more detail later in this article.

The current population of Jersey, just under 108,000 in 2019, is mainly Anglophone, although, as highlighted in relation to criminal justice matters, it is not necessarily always Anglocentric in outlook. Minority languages include Portuguese (spoken by the Madeiran population in Jersey) and Polish. Although Jersey is not associated with the type of social problems found in concentrated areas of urban deprivation, social inequality and child poverty are issues that have entered public discourse on the island (Children's Commissioner for Jersey, 2018; Parker, 2018). Affordable accommodation, meanwhile, is a pressing issue that affects young people particularly. Jersey has the full range of public services normally provided in Western European countries, although health care is funded partly by contributory public insurance. This means that primary care, such as general practitioner services, are not free at the point of delivery (although some practices do not require a payment from Carers for Children). In the field of higher education, University College Jersey awards degrees in partnership with British universities and many students study in the United Kingdom.

Despite being within the gravitational field of the United Kingdom, Jersey retains a distinctive way of doing things and this is evident in several aspects of criminal justice practice. Jersey has a hierarchical system of courts, in a pattern familiar in many European countries. At the apex of the system is the Royal Court, roughly equivalent to the Crown Court in England and Wales, staffed mainly by unpaid judges known as Jurats who are chosen by an electoral college. In addition, there is a magistrate's court with a full-time paid magistrate and assistant magistrate and a youth court dealing with people up to 18 years old, unless (in very exceptional cases) they are charged with an offence so serious that it has to be dealt with in Royal Court. In such cases the anonymity applied to defendants in the youth court can cease to apply, although this was an issue being actively considered at the time of the Review. The part of the Jersey system which will be least familiar to readers in other jurisdictions is at the lowest tier, where decisions about prosecution are made. In Jersey this frequently takes the form of a PHE, a process unique to the island and many centuries old, in which the Centeniers of each parish conduct preliminary hearings in the Parish Hall to determine whether a case originating in the parish can be diverted from prosecution (Miles, 2004). These are informal hearings and attendance is technically voluntary, in the sense that people who deny the offence or prefer not to be dealt with at parish level can opt to be sent to the magistrate's court or youth court instead, and Centeniers are required to explain people's right to decline to participate in the enquiry process. Many attendees at the PHE are young people in the youth court age range, and in these cases a representative of the probation service is usually present, as well as family members. To ensure a degree of consistency, the PHEs operate under guidelines provided by the Attorney General, and some offences are regarded as so serious that they must go to court.

The Centenier is not empowered to make findings of fact, and in a normal PHE the reported facts of the alleged offence will be put to the attendee to find out if they are agreed, and what the attendee has to say about the alleged offence and its circumstances. The informality of the proceedings, the absence (usually) of lawyers and the skilled and sensitive questioning style normally used by Centeniers, typically results in a genuine discussion, in which the attendee participates far more than is usual in a court setting (Miles & Raynor, 2005). Outcomes can involve no further action, 'words of advice', voluntary reparation or apology, voluntary supervision by the probation service, voluntary service to the community, a written caution, a voluntary financial penalty, a deferred decision, or charge and bail to court. Thus, the PHE possesses a number of features of the diversionary Bureaux, Panels and conferencing processes which have been introduced into many modern youth justice systems, but also shares with traditional justice systems around the world a perceived legitimacy derived from a long history of community practice (Miles & Raynor, 2014b).

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Centeniers typically regard the PHE as an opportunity to avoid unnecessary entry to the criminal justice system, seeing diversion as usually in the public interest: as one told a mainland

journalist in 2012, they try ‘not to turn neighbours’ children into criminals’ (‘Bagehot’, 2012, p.5). In practice, PHEs are subject to tensions between the strengths of localism and informality and their weaknesses, which can include inconsistency and a lack of procedural uniformity. Both can create uncertainty about how rights are upheld, particularly in the minds of people unfamiliar with the system. There is not space in this article for a full evaluation of the PHE: a thorough study (the first in their long history), which was carried out in the early part of this century and published in 2005, found generally high levels of satisfaction among attendees and victims and mostly high levels of compliance with guidelines (Miles & Raynor, 2005). Centeniers in a high proportion of PHEs were observed to express clear disapproval of offending while at the same time treating attendees with respect (Miles & Raynor, 2005). More recently the IJCI (States of Jersey, 2017, 2019), set up to investigate historic child abuse and the failure of Jersey authorities to respond appropriately, reported that some young people were unhappy with the PHE process as they lacked confidence in the honorary police, and a further report by the Children’s Commissioner suggested some procedural changes to show compliance with the UNCRC (Children’s Commissioner for Jersey, 2021). A further systematic evaluation of the PHE system is now underway as a follow-up to the 2005 report. It is important to recognise that the PHE is a way of making decisions about prosecution, not a court, so standards and expectations appropriate to a court will not always be relevant; however, children’s rights must still be upheld, and future evaluation should, in part, focus on this. In the research report by Miles & Raynor (2005), which included structured observation of 51 enquiries by 28 Centeniers, two areas of concern were that the role of the Centenier and the purpose and process of the enquiry were fully explained in only 43% of cases, and in 35% the Centenier did not explain that attendance was voluntary and that the attendee had the right to go to court instead.

As far as the position of children in Jersey is concerned, the age of criminal responsibility is ten years, although – because of the diversionary role of the PHE – it is rare for those below the age of 14 years to be prosecuted. For those who do enter the formal criminal justice system, the youth court deals with the overwhelming majority of cases, with the very few more serious cases falling under the jurisdiction of the higher Royal Court.

Statutory supervision is undertaken by youth justice specialists within the Probation and After Care Service. At the time of writing there are three youth justice specialists, including one Portuguese speaker. At this point it is important to underline the fact that the Jersey Probation and After Care Service (JPACS) has not been subject to the ‘reforms’ which the probation service in England and Wales experienced in recent years. In terms of its philosophical foundations and knowledge base, it has remained a service characterised by social work values and a strong commitment to welfare. Its work with young people below the age of 18 years is avowedly committed to welfare and a ‘child first’ philosophy rather than an ‘offender management’ model (Smith & Gray, 2019), although the practical detail of this approach is in the process of being developed. The service can be characterised as possessing a critical practitioner culture that is open to the key messages of evidence-based research from not only different parts of the UK (including Scotland and Wales), but also the rest of the world. Skills-based training is available to practitioners and the effectiveness of practice is evaluated independently (Raynor & Miles, 2007; Raynor & Vanstone, 2018). JPACS was, indeed, one of the services identified for praise by the IJCI (States of Jersey, 2017) for its ‘effective leadership’ and ‘relevant expertise’:

that can be drawn on to improve underperforming areas of children’s services. The Probation Service has recruited and developed a stable staff group, benefiting from regular professional challenge and supervision. The service has international links,

enabling staff to be exposed to and draw on good practice from other jurisdictions and to assist other island communities. (para. 12.31)

Ethical and effective practice cannot, however, be divorced from the institutions and leadership that nurture practitioner culture. As has been noted, Jersey is a small island with a small population. Inevitably, therefore, periodically there is need to recruit senior staff from outside the island. On the positive side of the balance sheet this can result in innovation, the introduction of new ideas, and healthy challenges to existing practices. On the negative side, however, there is a risk that established practices are not understood fully or are viewed with suspicion. Attitudes towards the PHE system, for example, can be viewed as a barometer of whether the culture of the island is understood and respected by the newcomer. Although some practices are legacies of Norman-French legal and cultural traditions, Jersey is an essentially Anglophone island with many of its citizens receiving their education and professional training in the United Kingdom. Consequently, although Jersey is constitutionally independent, it is not insulated from British policy discourses. It is not unusual, therefore, for newly-appointed public service leaders to announce a 'modernisation' agenda and seek to introduce policies made in the United Kingdom that are not always appropriate for Jersey. Indeed, such initiatives are sometimes regarded by local people as colonialist in nature. An example of this was the attempt to introduce a National Offender Management Service on the island; an attempt that has thus far been resisted on the grounds that it did not work well in the United Kingdom. Public services are therefore vulnerable to radical challenge from time to time, but some – such as the probation service – have proven to be particularly resilient in defending existing practice. A small place such as Jersey must adopt a position that is open to new ideas and peer challenge, but also be confident about defending what is of positive value. For the most part, the probation service leadership over the years has managed to maintain this balanced position. The youth service on Jersey occupies a similar position of trust, not least because of strong and consistent leadership.

A small jurisdiction such as Jersey is well positioned to implement systemic reforms and effect changes in professional practice comparatively swiftly. Moreover, their impacts can be evidenced and evaluated quickly. The 2010 Review was conducted at a time when there was a high number of children entering the youth justice system with many of them being deprived of their liberty for relatively low-gravity offences. The Review recommended a set of measures, which included changes in policing practices by the States Police, optimising diversionary measures within a systems management approach, and adopting a horizontal sentencing framework in the youth court. On the latter point, the 2010 Review found that sentencers' attitudes towards custodial sentencing were largely motivated by concerns about the welfare of children and lack of confidence in the capacity of children's social services to meet young people's safeguarding needs. When this came to light, discussion shifted first to highlighting the risks and deleterious effects of custody; and second to the need to improve children's services. The latter remains a live issue on the policy and practice agenda of the island.

By 2013, when the authors assessed the impact of the 2010 Review, there had been significant reductions in detected offences, court appearances and custodial sentences (Home Affairs Department, 2014). Between 2010 and 2013 youth court appearances fell from 253 to 62, while custodial sentences dropped from 20 to four in the same period. Detected crimes declined from 522 to 238, but as Bateman (2020) has commented: 'assessing the extent of offending is not like measuring the volume of a material object since crime is a "social construct"' (p.12). Statistics reflect not only the 'current state of legislative prohibition' (Bateman, 2020), which can fluctuate over time, but also the prevailing practice culture. In Jersey there was a move away from a reactive model of

policing towards a community-based approach. Given the emphasis placed on diversion in the 2010 Review, it is reasonable to speculate that greater use of discretion may also have been applied by police officers in their interactions with young people. This is not to suggest that a decline in youth offending did not take place, but the response to lawbreaking by the police and other agencies may also account in part for the decline in officially recorded detected offences.

3 | THE YOUTH JUSTICE REVIEWS AND THE INDEPENDENT CARE INQUIRY

As mentioned earlier, the main driver for commissioning the 2018 Youth Justice Review (Evans, Kennedy & Heath, 2019) emerged from the IJCI (States of Jersey, 2017) into historic child abuse and serious failures in the childcare system that stretched back decades. The Inquiry focused not only on residential care provision but also the circumstances in which children were removed from families. The publication of the report inevitably impacted profoundly on this small island community, resulting in public debate and collective critical self-reflection. Key Inquiry recommendations included establishing welfare as the paramount principle in all matters concerning children, embedding children's human rights, and ensuring that the child's voice is always heard. While the main focus of the Inquiry was on the children's service and public care system, wider relationships with other agencies and professionals were duly scrutinised. This included the role of the honorary police, whose role in the prosecution process was criticised. The Inquiry recommended that a Youth Justice Review should consider how a move to a welfare-based model could be accomplished and thereby ensure that young people in conflict with the law would be treated as 'children first and offenders second'.

In addition to the IJCI recommendations, there was another contextual factor that had an important bearing on the focus of the 2018 Review. Jersey's endorsement of the UNCRC had been a recommendation of the 2010 Review, although other factors also influenced the final decision. In any event, the clear implication of this development was that the States of Jersey would be held accountable for its implementation of not only the UNCRC, but also the wider international framework of children's rights in respect of juvenile justice. Jersey's accession to the UNCRC and the appointment of an independent Children's Commissioner has heightened human rights consciousness on the island. One of the key debates is how to align a children's rights approach with welfare.

Jersey's accession to the UNCRC (United Nations, 1989) means that there is an implicit commitment to the 'best interests' principle (Article 3.1) that: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. The IJCI's call for the adoption of a welfare approach to children in conflict with the law therefore needed to be aligned with the rights-based principles enshrined in the UNCRC. By 2018, the States of Jersey had appointed an independent Children's Commissioner and were actively engaged in discussions about how to interpret and embed the UNCRC into local statute and practice.

The 2018 Review was also asked to comment on progress made since the publication of the 2010 Review. Many of the 2010 Review recommendations were implemented and had a significant impact on outcomes: the policing style of the States Police changed; assisted by the probation service playing a proactive role in conducting light-touch assessments ahead of appearances at PHE, the Centeniers prosecuted fewer children and thus diverted more children from the courts; and the youth courts sentenced fewer children to custodial sentences, while those who were deprived

of their liberty were accommodated in a secure children's home managed by children's social services (welfare domain) rather than the young offenders' institution (criminal justice domain). However, some positive changes in practice introduced after the 2010 Review were becoming attenuated by 2018. This appeared to be largely due to changes in management, staff turnover and gaps in training.

Finally, there were four recommendations made by the 2010 Review that were not implemented: an explicit reference in statute to the welfare of the child being a primary consideration; raising the age of criminal responsibility to at least twelve years; ensuring that girls were not placed with adults in penal custody; and the development of a bail accommodation strategy. Instead of a clear welfare principle inscribed in statute, there was initially a commitment to a practice change that involved all stakeholders in the youth justice system agreeing to 'work under this ethos as far as this is possible under the existing legislation and issue a joint statement to this effect' (Evans, Kennedy & Heath, 2019, p.125). Reviewers in 2018 found good evidence of application of the welfare principle in all parts of the youth justice system, including the youth court, but no joint statement had been issued.

The age of criminal responsibility was not raised and remains at ten years. However, in practice, because of the Attorney General's guidelines (Evans, Kennedy & Heath, 2019, pp.98–100), prosecution of children below the age of 14 years is rare (Attorney General's Direction, States of Jersey, 2016). This guidance is reminiscent of the presumption of *doli incapax* for children between ten and 13 years that obtained in England and Wales prior to its abolition in the Crime and Disorder Act 1998. This was the rebuttable legal presumption that children in this age range would not be prosecuted because they were insufficiently mature to understand the full moral implications of their actions. Jersey therefore maintains a protection no longer available to children in England and Wales.

It remains the case that girls sentenced to penal custody can, in theory, be accommodated with adult female offenders. This practice occurred because of the low number of girls in the youth justice system, the even lower number sentenced to custody and the absence of a custodial institution for girls. Such an institution had not been built because of concerns over social isolation, since it would have very few residents, and sometimes one or none. However, the risk of girls being exploited or influenced by older and more sophisticated offenders was always appreciated. Current practice is that girls are typically accommodated in the secure children's home (no girl being placed in prison in the five years preceding the 2018 Review).

Finally, the recommended bail accommodation strategy was not developed. The result is that children are at greater risk of being accommodated in police custody or in the secure children's home. A new Bail Law also allows a custodial remand for under 18s for 'welfare reasons'. More positively, an intensive fostering scheme which includes children on remand has now been funded. It will be noted that three of the four areas in which progress has been limited or not been made relate to recommendations that required legislative change. The tendency to favour practice changes above statutory reform is clear. However, the 2018 Review found signs that there might be more appetite for legislative changes following the work of the IJCI.

4 | IMPLEMENTING AND EMBEDDING CHILDREN'S RIGHTS WITHIN A WELFARE-BASED MODEL OF YOUTH JUSTICE

The dilemmas and challenges of interpreting and applying the welfare principle in the context of Jersey highlights some issues that may be relevant in other jurisdictions. The IJCI (States

of Jersey, 2017, p.60) endorsed the philosophy and practice of 'children first', which was well summarised and expounded by Haines & Drakeford (1998) and subsequently developed by Haines & Case (2015) in the new incarnation of 'positive youth justice'. Responding to young people in conflict with the law rests on three presumptions. First, that children are in the process of maturing and cannot therefore be treated as fully competent rational actors. Second, notwithstanding their developing maturity, children possess 'personhood' and as rights-holders should be consulted in all matters that affect them. Third, their relative powerlessness and dependency on adults for the key necessities of life render them vulnerable and make it difficult for them to exercise their independent agency. The implications for policy and practice are clear: youth justice should be child-friendly, rights-based, empowering and committed to promoting positive outcomes.

In terms of providing positive welfare for children, the 2018 Review was influenced by principles derived from the Nordic model of youth justice. While it is important not to idealise the Nordic model (Haller et al., 2018), the foundational principles are worth restating:

Nordic youth justice must be seen in the framework of the Nordic Welfare State. It is an integral element of a wider system of universal social services which the state provides to *all* people as an entitlement. It follows that *all* children are covered by this system. Youth justice falls under the child welfare system, but the reach of the child welfare system extends well beyond problems related to youth crime and embraces all elements relevant to the well-being and safe development of the child. (Lappi-Seppala, 2019, pp.104–105, italics in original)

The Review was also influenced by the opportunity-focused Welsh youth policy, *Extending entitlement* (National Assembly for Wales, 2000), which embraces the principle of universalism and thereby seeks to reduce the risk of services being regarded by their recipients and wider society as stigmatising. The ten entitlements of citizenship for young people cover not only core provision in areas such as health and housing, but also leisure and recreation. In the context of Jersey, in recognition of children being rights-holders and citizens of the island, a Children's Charter of Rights that would set out clear entitlements was duly recommended by the 2018 Review in conjunction with a programme of awareness raising and clear signposting to advocacy services. Advocacy is important in facilitating access to services but is also crucial for populations, such as children, who 'lack the organisation or the muscle to upload their interests onto the policy agenda' (Grugel & Riggiozzi, 2018, p.529). The Charter needs to be read alongside two of the 2018 Review's recommendations: the need for an explicit statutory commitment to the welfare of the child; and the youth justice strategy.

The youth justice strategy involves being compliant with children's rights conventions (with participation rights being given salience), welfare being a primary consideration, maximum diversion from the criminal justice system, and services being held to account for addressing young people's needs. The Children's Charter would be one of the mechanisms by which the last aim could be realised. Children in conflict with the law would thus be assessed by practitioners in respect of whether the States of Jersey was meeting its Charter obligations. If it was not, then efforts would be made to reconnect them to their entitlements. In line with the principle of progressive universalism, this would include providing additional support services for those in the greatest need. Additionally, it was envisaged that this strategy should be led by a multi-agency panel (not limited to youth justice agencies) and implemented by a 'children's integrated support team' with a particular emphasis on connecting children to mainstream services.

5 | CHILDREN, WELFARE AND CRIMINAL JUSTICE

Having described how a positive and inclusive rights-based universal welfare model could work in the interests of children, consideration is now given to how the risks presented by the criminal justice system to children can be minimised. Diversion from that system, as represented in the third aim of the proposed youth justice strategy, is clearly a key element in minimising harm and is consistent with the Riyadh Guidelines (United Nations, 1990a) that the criminalisation of children should be avoided (para. 5) and 'formal agencies of social control should only be utilised as a means of last resort' (para. 6) as well as the Council of Europe's guidelines on child-friendly justice (Council of Europe, 2010, IV, B 24). Currently the PHE performs this important diversionary role. The opportunity of constructive diversion, including re/connection to universal and specialist services, is clearly present at this point in the system. Overall, the Review was impressed with the work of the PHE in relation to children. It is a good example of community-based informal justice based on reintegrative principles. It is also aligned with the Tokyo Rules' (United Nations, 1990b) principle of community involvement and community-based responses to crime. Suggested improvements included more consistency of practice across the island, and enhanced training for Centeniers.

The dramatic reduction in youth court appearances between 2010 and 2013 followed the first youth justice review and was the result of system-wide commitment to the principle of diversion that included stakeholders such as the States Police, Centeniers, probation officers and sentencers. The continuing commitment to diversion has subsequently been consolidated and codified by the Attorney General's guidance. This agreed strategy has been made possible in large part by widespread acceptance of the diversionary role of the PHE in Jersey life. Diversion from prosecution, for both children and adults, is culturally normative on the island. This long-established practice makes it easier to make the case for diverting children from court proceedings and the stigma of a criminal record.

Community support for diversion from the formal youth justice system has been somewhat neglected in youth justice literature. Haines & Drakeford (1998) argue that diversionary juvenile justice practice in England and Wales during the 1980s was accomplished through the establishment of a quiet consensus between academics, senior civil servants, sympathetic politicians, practitioners and magistrates. The wider public, and presumably Prime Minister Thatcher, were largely unaware of this quiet consensus of 'experts'. This, it could be argued, made it easier to sweep away diversionary measures when the 'punitiveness auction' (Drakeford & Vanstone, 2000) of the 1990s began with the intense media coverage of 'bail bandits' and the James Bulger case (Franklin & Petley 1996), and culminated in the populist tactic of telling people what they wanted to hear rather than what they needed to know. That cautionary experience should give cause to consider how best to engage with the wider public about the role of diversion.

One of the most obvious ways in which to divert children from the youth justice system is to raise the age of criminal responsibility. In the 2010 Review it was recommended that the age be raised to twelve years. This age was at the time consistent with statements by the UNCRC (United Nations Committee on the Rights of the Child, 2007), although it should be noted that in September 2019 the guidance was revised upwards to a minimum age of 14 years (United Nations Committee on the Rights of the Child, 2019). It should be recognised that such a change in Jersey would affect very few children in practice as it is rare for children below the age of 14 years to appear before the courts. In any event, the recommendation was not accepted and has, instead, been dealt with by way of written guidance by the Attorney General on restricting prosecution.

Although the authors support raising the age of criminal responsibility in line with the published guidance of the UNCRC, this needs to be implemented in a planned and appropriately resourced way. Context matters: the past failings and current shortcomings of Jersey's childcare system have been laid bare by the IJCI. There remains much work to be done in children's services and it may take some time before public trust is restored. Lappi-Seppala (2015) has pointed out that in the Nordic context, where the age of criminal responsibility is 15 years: '... the exclusion of children from criminal justice could be achieved only by establishing a concomitant child protection system that could take charge of misbehaving and mistreated children' (p.68). This means that in Jersey there would need to be investment and development of an appropriate alternative infrastructure that can both support and challenge young people. Second, despite the many disadvantages of dealing with children's transgressive behaviour in the criminal justice domain, the system does possess strengths: most notably the rigorous application of principles of due process, transparency and the protection of legal rights. One of the risks of dealing with children outside the criminal justice system is that it can lead to the development of a 'shadow youth justice system' (Pitts & Kuula, 2005) within which decision making by professionals can be opaque and sometimes unfair. In the worst cases this can result in welfare without justice. Indeed, comparative research in this area demonstrates that merely raising the age of criminal responsibility does not automatically deliver either welfare or justice (Abrams, Jordan & Montero, 2018). It can also disguise the real number of young people deprived of their liberty because 'therapeutic' institutions in the domains of welfare and health are often not included in the official statistics on child incarceration. Jersey was due to undertake a review of the age of criminal responsibility in 2021, but this has been delayed because of the pandemic. At the time of writing, this work is ongoing. The 2018 Review recommended that the terms of reference be widened to include an exploration of how a move to raise the age of criminal responsibility could be supported by an appropriate infrastructure. This infrastructure should include the development of a service delivery model based on welfare principles, the promotion and protection of children's rights, and appropriate judicial oversight.

Until such time as these more radical reforms are introduced to deal with children in conflict with the law, it is important to ensure that the current trends in diversion and children's rights-based approaches to working with young people are maintained. At the same time the stigmatising effect of criminal records and enhanced disclosure reports for offences committed below the age of 18 years should be minimised. Accordingly, it was recommended that guidance should be developed on the non-disclosure of contact with the PHEs and youth courts in line with the Council of Europe's guidelines on child-friendly justice (Council of Europe, 2010, IV, B 10).

6 | LEGITIMACY AND DIVERSION

Viewed through the framework of the six principles outlined by Goldson & Briggs (2021), there was a significant degree of confirmation when they were applied to the Jersey context. Additionally, our findings point to two further requirements of 'child first' diversionary practice: a high degree of perceived legitimacy in the wider community; and the availability of services to children and families outside the formal youth justice system, ideally underwritten by universal children's rights in the form of tangible local entitlements.

At the time of the 2018 Review, Jersey was in the process of dealing with the aftershocks of the findings of the IJCI. As a result, key personnel appeared receptive to considering reforms in all policy domains that touch the lives of children. Determining the direction of travel and calibrating

the precise pace of reform in Jersey, as in other jurisdictions, is not an exact science. What is clear, though, is that consensus must be built between all key stakeholders, which – crucially – includes children. For a ‘children first’ philosophy to be applied within a rights-based welfare paradigm, children need to be considered as ‘citizens first’. If children’s rights and welfare are to be meaningful, they must be translated from universal principles into clearly defined entitlements of citizenship guaranteed by the ‘local’ state, including access to substantive services, resources and opportunities.

The experience of these reviews confirms the importance of localities and the specificity of local solutions. In Jersey it has often been easier to change local practice than to change legislation, and the major role in delivering diversion is played by an institution which is clearly part of the criminal justice system, namely the PHE. This differs from the approach of researchers (such as Case & Haines (2021)) who see diversion as a route towards the abolition of youth justice systems, but it allows diversion in Jersey to benefit from the perceived legitimacy of a familiar and long-standing procedure with considerable support in the community. Without perceived legitimacy it is difficult to sustain a policy of diversion. In addition, successful diversion depends on having appropriate services or resources to which people can be diverted: it should not be a route to neglect.

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ORCID

Jonathan Evans  <https://orcid.org/0000-0002-9912-1704>

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