



CRIMINAL JUSTICE COUNCIL FALKLAND ISLANDS

Criminal Justice Council and Sentencing Guidelines Committee– Reports for the latter part of 2020

Annual Action plan for 2021/22

1. Report and Action plan summary

The purpose of this document is to report on the functions of the Criminal Justice Council (CJC) during the previous 6 months and make recommendations as to the Council's action plan for 2021-22. This report will then bring the Council and Committee reporting obligations to date having had a period of no reporting from 2018 to 2020. Reports will now be made annually at the beginning of each calendar year. The next report will be due in January 2021. This report covers the actions of both Council and Sentencing Guidelines Committee.

2. Legislative Background

The Criminal Justice Council and Sentencing Guidelines Committee (SGC) were established in 2017 as statutory bodies, by the Criminal Procedure and Evidence Ordinance 2014. The general aim of the Council, of which the Sentencing Guidelines Committee is a committee, is to;

'seek to make the the criminal justice system more effective and efficient' with specific purposes set out in s776(ss a-d)

This report and action plan satisfies Part 35, Chapter 13 section 776 (ss4) of the Ordinance, which says that the Council has the obligation;

(g) at the beginning of each calendar year to prepare an action plan setting out a programme for continuing review and development of the criminal justice system in the Falkland Islands;

(h) to ensure that the action plan-

(i) meets the needs of victims and the public; and

(ii) develops and makes policy recommendations in accordance with the aims set out in this section.

In addition s 778 says in relation to both Council and the Sentencing Guidelines Committee,

S 778 Annual Reports;

- (1) The Council must as soon as practicable after the end of each calendar year, make to the Governor a report on the performance of the Councils functions during the year.*
- (2) The committee must, as soon as practicable after the end of each calendar year, make to the Council a report on the performance of the Committees functions during the year.*
- (3) The Councils annual report required by subsection (1) must incorporate, with any comments the Council wishes to make, the report of the committee required by subsection (2)*
- (4) The Governor must lay a copy of the Councils annual report before the Legislative assembly.*
- (5) The Council must publish its report once a copy has been so laid.*
- (6) Schedule 13 makes further provision about the contents of reports required by this section*

A copy of Chapter 13 and Schedule 13 is attached to this document.

2. Previous Reports.

The Council was established in 2017. Reports have been filed since that date, the last in mid 2020 covering the previous 2 years, and the first part of 2020. This report covers the continuing work in 2020, by both the Council and Sentencing Guidelines Committee.

3. Recommendations;

- (i) That the Council note the report in relation to the Council's activities in 2020.
- (ii) That the Council agree the action plan for 2021-22

The Council approved both reports and action plans at the meeting on the 11th February 2021

4. Reports for the year 2020

a. The CJC met on three occasions in July, September and November. The Sentencing Guidelines Committee met separately on two more occasions in September. The Action plan prepared for 2020/21 had five areas of work. The areas of work are described below with individual paragraphs describing progress made. The remainder of the report deals with other matters considered by the CJC and SGC.

(i) Formalising arrangements for the Criminal Justice Council-in particular to confirm rules of procedure to be followed by the Council and Sentencing Guidelines committee

Draft procedural rules for both Council and Committee were produced by the Chairperson. These have been agreed save for one final change confirming that meetings of the Council and committee are open meetings. A copy of the procedural rules is attached to this report and will be published on the court website.

(ii) Acting via the Sentencing Guidelines Committee to develop sentencing guidelines for use in the criminal courts of the Falkland Islands

The statutory obligation of the CJC in relation to producing sentencing guidelines is found in section 482 of the Criminal Procedure and Evidence Ordinance 2014.

s482. Sentencing guidelines

(1) The Criminal Justice Council, on the recommendation of the Sentencing Guidelines Committee given after consulting as required by Part 'B' of Schedule 13, must publish guidelines relating to the sentencing of offenders ("sentencing guidelines"), which may be general in nature or limited to a particular category of offence or offenders.

The CJC whilst recognising their statutory obligation identified some issues. Two core issues were;

a. The criminal law of the Falkland Islands derives its substance and detail, from the criminal law of England and Wales. The procedure is also so derived reflected in the criminal procedure rules approved by the CJC. Whilst it could be possible to simply put a different title on the England and Wales sentencing guidance to introduce it into our jurisdiction, the need to ensure the guidance was consistently updated in line with the E and W guidance would draw on resources that may not always be available, if at all.

b. The Sentencing Guidelines Council of England and Wales has significant access to resources and data to enable it to produce, amend and update its guidelines on a regular basis. The data upon which it relies is derived from many thousands of criminal cases. The Falkland Islands has limited data due to a limited number of cases. Whilst it is desirable to have Falkland Island Guidance for all offences in the islands the data is not present to underpin sentencing guidance for all offences.

With the above issues in mind, the SGC decided to target two areas of offending, road traffic offences and assault offences.

The SGC have discussed and prepared draft guidelines addressing targeted road traffic offences and assault offences. These offences were identified as needing specific offence guidelines because of the prevalence of assault offences coming before the courts and particularly for road traffic offences the need to address the differences in road conditions and speed limits in the Falkland Islands compared to England and Wales. In the absence of Falkland Island guidelines, those for England and Wales are used in default.

Final drafts of the Assault Guidelines were produced for consultation with the wider public in March 2019 and discussed by the SGC in March and May. No progress was made to commence a consultation as the nature of the consultation was not resolved. Initially it was thought that a public face to face consultation was needed, but then a more directed approach was considered. In November 2019 the SGC decided that it was not appropriate to target individual offences in the absence of first producing Falkland Island overarching sentencing principles.

In July 2020 the Committee with Council agreement, decided to forge ahead with an Overarching Sentencing Guideline. This would reflect the overarching guidelines used in England and Wales so as not to be in conflict with individual guidelines that would continue be used. The Sentencing

Guidelines Committee met on two occasions in September to consider a draft produced by two criminal practitioners. The draft was a comprehensive document covering stages of sentencing, including the effect of a guilty plea and totality, ancillary orders, reasons, financial penalties, prosecution costs, community orders, custodial sentences, maximum sentences, prevalence and community impact, previous offences, offenders leaving the jurisdiction, domestic abuse, offenders with mental disorders, and children and young people.

Consultation took place with professionals to include past and present criminal practitioners, JPs and Senior Magistrates and Chief Justices.

A revised draft was then presented to two workshops with invitees from across the community. Over 25 people participated in the workshops which were facilitated by the Senior Magistrate and Crown Prosecutor. The Attorney General's chamber has consulted with the MLAs and the chairperson with His Excellency the Governor in accordance with the statute.

A final draft will be presented to the Council and Committee meeting in February 2021. This will then be made available for public comment, before being approved by the Chief Justice and gazetted.

(iii) Preparation of Criminal Procedure Rules ; Review of the Criminal Procedure Rules, picking up any issues identified in preparation of the rules and any matters arising in practice

The CPR 2018 were prepared by Crown Prosecutor Stuart Walker. Mr Walker attended the CJC meetings on a number of occasions to assist the CJC in its consideration of the Rules in 2017. The Rules were amended by the CJC, approved at the final meeting of 2017 and sent to the President for final approval in February 2018 which was given. The CPR 2018 came into force on the 28th February 2018.

On the 8th November 2018 Mr Walker was asked by the CJC to consider amendments to the CPR 2018 following any changes to the criminal procedural rules in England and Wales.

Amendments to the CPR 2018 were approved at the meeting on the 6th November 2019 and after a new version of the Rules was circulated for final comment by the Council, were sent to the President for approval on the 28th May 2020. These have been approved and were gazetted and are now in force.

Save for the above no matters have been raised by practitioners as to issues identified in preparation of the rules nor any matters arising in practice.

The resources used to complete the rules both in original form and as amended, were found within the Council and the Courts and Tribunals Service and the Attorney General's chambers. A key aim to make the criminal justice system more effective and to comply with a statutory obligation to develop the criminal procedure rules has been achieved. The need to amend the rules as changes are made to substantive law is recognised in the Action plan for 2021/22 and this will be a rolling process overseen by the Crown Prosecutor. The Crown Prosecutor is not a member of the Council but provides expert advice.

(iv) Develop guidelines for the Advisory Committee on Prerogative of Mercy and the Governor in respect of the exercise of the discretion conferred by section 71 of the Constitution

The approach to be taken by the Council in addressing the need for guidelines has caused some debate and a cautious approach. The law Commissioner produced a report for the Council meeting in November 2020 that highlighted that to introduce new procedural rules for the ACPM might appear straightforward at first sight but was not because of the myriad roles that the ACPM has. A note of the discussion at the meeting in November is reproduced in italics below.

6. *Guidelines for the Advisory Committee for the Prerogative of Mercy. (ACPM)*

RC has produced a comprehensive overview of the current position. Her report dated 23.11.2020 forms part of these minutes. Her suggestion is that there is a sub-committee which takes the rewriting of the procedure for the Advisory Committee and its remit forward as a project. The paper RC has produced highlights whether it is appropriate for the Advisory Committee to have under its responsibility licence type decisions about indeterminate sentences. Should legislation be brought in to amend the extent of its duties? SW says that the reason the Advisory Committee has the spread of duties is because the availability of organisations such as the Criminal Cases Review Commission and Parole Board. It was agreed that there was some urgency in the need for procedure Rules for the areas that the ACPM are more likely to deal with, such as release of prisoners under s71 of the Constitution that covers determinate and indeterminate sentences. The Council statutory obligations does not extend the release under the Constitution, we are only obliged to help the ACPM where release on an indeterminate sentence is proposed and that is unlikely to happen as indeterminate sentences are so rare in this jurisdiction. However it is the view of RC that if procedure rules are being considered under the PPEO then it is impractical not to also cover procedure under any other legislation CPEO and Prisons Ordinance that now covers licensing. SH and Dc were concerned as to reference to an appeals system under the ACPM system that was outside the courts structure. SW explanation of the broad scope of the ACPM explained this with RCs emphasis as to the narrow circumstances that the ACPM might be engaged.

Decision. Council agreed. To have a subcommittee of RC, NR and SW delegated to by SY to address the issue of procedure rules short term and long term so that the system is coherent and fit for purpose.

Agreed that the subcommittee will meet before the next CJC and have a preliminary view as to work flow at least if not procedure rules in broad outline for the immediate needs of the ACPM for the council meeting on the 11th February 2021.

The priorities of the subcommittee are;

- a. identify the objectives of the subcommittee*
- b. Allocate work, priority to be given to the immediate need of good procedures for the most likely applications. Set realistic time limits that will be achieved.*

c. If legislative change is required advise the Council and give guidance as to a realistic time frame.

The Action plan reflects that the work on a procedural guidance is ongoing.

(v) Determine what information is required to enable the Council to review performance and consider whether reforms are having the desired effect and recommend what further changes are necessary. Determine how the information is to be provided in terms of format and frequency.

The Council have an obligation to monitor their effectiveness in carrying out their general and specific aims and obligations. The Council have accessed specific data on all cases that have come before the criminal courts and made use of the data to monitor efficient management of cases. This data will continue to be collated because it will assist the management of court staff both judicial and administrative to know what number of criminal cases come before the courts, how many are dealt with in each court, how quickly they are dealt with, the type of case, and the result. In addition the type of sentences need to be monitored to look at the effectiveness of sentencing, and any resources required. However the number of cases coming before the court makes evaluating that data problematic. This has already been referred to under the issues that have troubled the SGC in the decision not to introduce individual sentencing guidelines.

In particular, in relation to a concern raised as to delay, the Council looked specifically at time taken to bring a matter to court and resolution from date of charge or laying of information.

There is still a lack of clarity as to how data should be proactively managed, to monitor how effective the justice system is in managing cases. It was agreed at the meeting on the 11th February that a subcommittee would be formed to meet with The FIG statisticians to ask for their assistance in marshalling the data in order to provide an effective monitoring system without setting unhelpful targets that are not required.

The evaluation of data is a matter that will be brought forward into the 2021/22 Action Plan.

The probation officer as a standing item in Council Agendas provides a report on the number of offenders being managed and whether in prison or in the community. The use of data is a matter of concern for the next year.

Council have agreed that KPIs are for the court administration to apply.

Other matters not included in the Action Plan but which were considered by the CJC in 2018/19.

The report for 2018/19 and 20 highlighted the view that work needed to be done on the Police codes of conduct.

The Chief Police Officer stated at the Council meeting on the 15th August 2018 that the PACE Codes had been amended in E and W and that he was proposing that they be reviewed by RFIP and the CPO prepare an ExCo paper, before they were presented to the CJC. The amendments have been raised at CJC meeting on a number of occasions. Unfortunately due to difficulties with personnel at RFIP the amendments have not been finalised to an extent that the CJC can consider them.

A system of using photographic finger printing was approved, after confirmation was received from RFIP that photographs of fingerprints are destroyed after being used.

The use of Fixed Penalty Notices was reviewed by the CJC. Prior to the CJC giving any view as to whether their use was an improvement to the system of dealing with road traffic offences the CJC was told that FPNs had been withdrawn for the time being.

In September 2020 the Council heard from the CPO and the Crown Prosecutor that reviews of the Codes had led to changes being made in race relations, ID procedures, finger printing and use of technology. There should be an annual cycle of reviews of the Codes which had not been achieved but that had not led to issues as in the view of the CPO and Crown Prosecutor the codes were appropriate for key factors. The review of the Codes are not on the forward action plan.

One of the councils lay members has resigned. An advert was agreed for a new lay member which appeared in Penguin News and was endorsed in a radio broadcast on FIRS. Some limited interest in the position was expressed but no new lay member was then forthcoming. This was of concern as lay members add a valuable contribution to discussions and decision making. Since then a new lay member has come forward, was approved by members in early February and sat at her first meeting on the 11th February.

February 2021

Chairperson

Senior Magistrate

Approved by the CJC and SGC on the 11th February 2021