



| **The Criminal Justice Council** |



| **The Sentencing Guidelines Committee** |

MINUTES

**Of a Meeting relating to the Criminal Justice Council and Sentencing Guidelines
Committee**

**Monday 23rd November 2020 at 10am
The Court Room, Town Hall, Stanley**

Present: Sarah Whitby SM (Chairperson), Ros Cheek RC, Phil Axon PA (from by live link) Stirling Marcus SH (for Alison Inglis), Jeff McMahon JM, Derek Clarke DC, Steve Dent SD (live link), Nicola Robinson NR (Probation Officer), Dick Sawle DS (live link) Simon Young SY

In attendance: Stuart Walker SW in advisory capacity

Apologies: Alison Inglis, Laura Clarke

CRIMINAL JUSTICE COUNCIL

1. Minutes of the meeting held on the 3rd September 2020 were AGREED.
2. **Lay member applicants.** After the Penguin News advert and the interview on the radio with the SM and SD there had been one expression of interest from [redacted] who has not yet sent his details in nor reasons why he wants to be a member. The SM thinks he is likely not to progress. SM asks if personal approaches could please now be made to any person who might be interested. SD continues as a lay representative.

ACTION: NONE

3. **Procedural Guidance for the Council and Sentencing Guidelines Committee.** The draft guidance was discussed at the meeting on the 3rd September. The SM has amended the draft Procedure rules and re-distributed.

Decision The Council members agreed the Rules save for the clarification and amendment needed about the council meetings being open. It was accepted that the SM would clarify and distribute as an agreed final document.

ACTION : SM TO FINALIZE AND DISTRIBUTE

4. **Criminal Procedure Rules.** The Rules have now been signed by the Chief Justice deemed date of signature 19th October 2020. SM has sent these to Barbara Steen and asked that they be Gazetted. Accepted that these are effective once published in the Gazette. SW confirmed that he will advise when CPRs need to be updated.

ACTION: NONE

5. **Probation Officers report.** An update report on statistics has been presented to the Council together with an overview of Community Orders as requested by AI. The offender statistics show little change from the previous report. The breakdown indicates still that half the offenders have been convicted of sex offences involving children. SY comments our overall offending levels are small and the stats are masked by a lack of other general offences. NR manages 29 offenders at the moment, workload is fine. Her work is more concentrated on those in prison for the one to one work which is directed programme work in another form. We do not have directed programme as the numbers are too small. NR gives a description of directed programme work which has been replicated in an e mail sent by NR to SM as repeated below.

SM asks if there is a reporting system for improvements that have been made in the course of a sentence. NR replies yes, if for example a PSR is requested and it can be sent to an appropriate recipient NR will give an update on any progress an offender may have made in aspects of concern highlighted in the report.

- Prior to sentence (as part of the pre-sentence report) a person is assessed for suitability for a programme, this tends to be based on type of offence and risk of further offending. There are a number of programmes available depending on the offence, for example specialist thinking skills programmes, those for men who have committed sexual offences and offences of a domestic nature. As part of the requirement the individual would be directed to attend a programme, either once or twice a week. This is delivered in groups of up to ten by two programme tutors and consists of group work and someone to one sessions. Programmes are of different lengths with the sex offender programmes being the longest, lasting over six months. When the programme is finished the tutors complete a report and feed this back to the individual's offender manager. They used to comment in risk of serious harm and risk of further offending, but they don't tend to do that so much anymore, all programmes are moving towards being strengths-based.

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 s 71 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 CPEO then it is impractical not to also cover procedure under any other legislation, the Constitution, CPEO and Prisons Ordinance that now covers licensing. SH and DC were concerned as to the 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 why this came under the ACPMs umbrella, 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.
- b.
- c.

ACTION: RC, NR and SW TO MEET BEFORE THE NEXT COUNCIL MEETING AND GIVE A PRELIMINARY VIEW AS TO WORK FLOW

9. s501 Courts power to recommend deportation(SW)

SW has reviewed the history of use of the mirror section to s501 in E and W. The reason this is on the agenda is because the Overarching Sentencing Guidelines refer to how courts might approach the possibility of deportation of an offender. s501 allows the court to make a recommendation for deportation.

10. Review of Statistics produced by the Courts (SM)

The statistics have been updated in the format previously produced. RC said that a summary of the information would be useful. SD offered his services to look at the data and try to enable an analysis to be produced of anything out of the ordinary, and why. SD is able to produce such a summary. This is delayed because SD is off island unexpectedly.

Decision SD to look at the statistics and consider how to analysis to produce data on the the system.

ACTION; SD TO CONSIDER HOW TO ANALYSE THE COURT STATISTICAL DATA

SENTENCING GUIDELINES COMMITTEE

11. Consultation and Overarching Guideline/principles (PA and SW)

SW outlines the current position. The draft Guideline has been sent to professionals for comments as agreed by the Committee on the 22nd September. The professionals have a couple of weeks to respond to the 9th December. SY says that we must publish the draft guideline as part of the consulting process. It is agreed that the version amended after workshops and professional comments, will be published on the court website and an advert put into the Penguin News to say it is there and invite any comments over a two week period. SW advises that advice has been taken from the Communications advisor for FIG Rhian Burgess. The suggestion of consulting the public through 5 simple directed questions was explored, it was suggested that the take up response would be very limited. LC had suggested as an alternative directed workshops with specific people representing groups invited to attend. SW and SM had identified two days for the workshops 14th and 15th December. The workshops would be directed to all businesses through the Chamber of Commerce, Community Groups, Rural Business, Fishing and schools and ask for representatives to attend.

The MLAs and Governor need to be consulted and that should be through ExCo as was agreed at the meeting of the SGC on the 22nd September.

SY had reservations about approaching the MLAs too soon with a draft document. Council agreed it would be appropriate to warn them of the public engagement by a briefing or introducing the Guidelines at ExCo with an explanatory ExCo paper that SY had prepared. This could be presented at the ExCo meeting on the 9th December. The Sentencing Guidelines are on the forward planner already. SM says that such a briefing to the MLAs is needed prior to wider publication of the guidelines as already agreed.

SY agrees to take the matter to ExCo on the 9th or brief the MLAs in some way. The aim is to avoid the MLAs considering at a later stage that more public engagement should have taken place and to ensure they had knowledge of the Sentencing Guideline before the public engagement takes place

DS raises a question on why a need for public engagement when it is clearly seen as a document that must follow E and W so limited change can be tolerated. SM says there is merit in the engagement to promote open justice and educate as well as test how understandable the Guidelines are. In any event we are bound by the statute. DS suggests most people will use a lawyer to interpret the Guidelines.

SH is concerned that after the public engagement we will need to engage the public further after a final draft, and this is noted as likely. The Guideline can be on the court website and advertised as there.

SM summarises the next actions;

- a. after the professional engagement ends the responses will be collated and a polished document will be produced by SW. This will be distributed as soon as possible and it is hoped before ExCo on the 9th December by SW
- b. SM will arrange for that to be put on the court website and an advert put in the Penguin News and radio publication to that effect and that the public can make comments in the following two weeks

- c. The public engagement workshops will take place on the 15th and 16th December organised by SW and SM.
- d. Responses will be considered and a final draft for approval produced for the next SGC meeting on the 9th February 2021 by SW.

12. Date of next meeting and A.O. B.

SGC will meet on the **9th February 2021 at 10am at the Court house**

CJC will meet on the **11th February 2021**