



CRIMINAL JUSTICE COUNCIL FALKLAND ISLANDS

MINUTES

**A Meeting of the Criminal Justice Council and Sentencing Guidelines Committee
Thursday 11th February 2021 at 10am
The Court Room, Town Hall, Stanley**

Present: Sarah Whitby (Chair), Steve Dent, Ros Cheek, Simon Young, Jeff McMahon, Laura Bennett, Dick Sawle, Nicola Robinson, Phil Axon (via link), Emma Fulton

In attendance: Stuart Walker

1. Apologies for absence.

SW: Alison Inglis

SW: Welcome extended to the new Secretary, Emma Fulton and to new lay member Laura Bennett.

Thanks recorded to Laura Clarke for undertaking role of secretary in the absence of a Head of Courts.

2. Minutes of the meeting held on 23rd November 2020

SW outlined changes made since circulation, namely added some wording to section 6 in conjunction with Ros Cheek in relation to the Prerogative of Mercy and section 9, in relation to the courts power to recommend deportation.

Those present agreed and approved the minutes as an accurate record.

Criminal Justice Council

3. Annual Report 2020 and Action Plan 2021/22

Report approved as accurate by those present.

Action plan

SW ran through the contents.

Sentencing Guidelines Committee

It was noted that the overarching guidelines had been drafted and the action may be continued this coming year to review and monitor but that there may not be any additional work.

SWa outlined for offence specific guidelines the approach agreed is to use England and Wales offence specific guidelines and FI overarching guidelines. SY said practitioners to raise if any issue with offence specific guidelines.

EF asked if there is mechanism for periodical review and DS suggested the mechanism to review to be via EF and then it is picked up at the time.

ACTION- EF to make a standing point on agenda

Review of Criminal Procedure Rules

SW asked the Council if they were content for there to be rolling programme for AG to keep an eye on. SY confirmed that he is happy to support and will bring forward matters for change, SWa considers amendments to CrimPR, and when things are highlighted as suggested changes these are added to list and when sufficient on the list he can bring it forward for consideration of amending.

Prerogative of Mercy

RC updated the Council that the working group has not met yet, the 1st meeting is scheduled for Monday.

SW asked how important this was in everyone's minds to get this action sorted. SY responded that it is important, even though already established rules, can function in terms of constitutional role, what precisely the role is and there are issues with legislation and criminal procedure legislation and prisons legislation. The Constitutional element perfectly functional would be ideal to put further guidance; there are established rules which are followed.

SW questioned whether this should this be a priority? And in response RC outlined it is a statutory requirement, there are gaps and issues to be addressed. It is not preventing the committee meeting and this is not often. It is about improving effectiveness, the work is desirable not critical.

Performance Information

SW stated that the Council had signed up to needing data to know if we are performing properly, slightly warping views as does not necessarily reflect what we do. Do we need this? Agreed to remain on action plan and this includes probation.

SD said that his view is it important gauge of how is things are working, if there are unavoidable delays but if unavoidable as lay people allows us to call into question.

SW commented that it is almost like KPIs for the court.

Added on other actions we might need eg keep under review issues of representation on both sides prosecution and defence, issues of judiciary and how we provide judiciary for islands eg should the Senior Magistrate be part-time or full-time, number of JPs

SY said that he considered it was not directly a function of Council and it is only if something not functioning effectively that we could make recommendations.

SW questioned whether were anticipating problems with full time judiciary on islands? We should mention now as beginning to look at recruitment for Senior Magistrate. The time is now to make suggestions.

DS said for recruitment we need process to be streamlined and the CJC may not aid this.

If was noted by SY that there had been improvements from 4-5 years ago and we have got professional court advisers, the criminal law was codified to huge extent. Some of problems and when 2014 legislation drafted have improved hugely.

RC raised that reviewing representation would be legitimate if there are problems and SY responded that there is not a problem currently, but there is potential as very small numbers. It is fragile. SW suggested that it is not put on action plan but may put it on agenda dependent on when we meet again.

DS noted that members can flag up with EF if there is problem. Previously there was that is why FIDC set up FILS and CAB set up. SY advised the Council's remit includes system fair and just, proper independent advice is part of this, not a problem to address as yet.

DS CAB and other lawyers give advice for free of 15 minutes. It was raised there had been issues in calls being answered by the CAB and whilst some may know to contact Mark or Karen directly, those most in need may not. CAB deals with things not in the remit of legal aid which may prevent people going into crime, such as debt.

ACTION- EF to add representation and general access to justice to next agenda

ACTION- SW to send action plan and report to ExCo to look at and note.

4. Lay member applications (SM)

LB had filled the vacancy but SD indicated he would like to stand down. SW made a plea to help in identifying a lay member.

ACTION: SW to provide advert for penguin news and website for Laura Clarke.

5. Procedural Guidance for the Council and the Sentencing Guidelines Committee (SM)

Nothing to note.

6. Probation Officers report as to the statistics for breaches of orders and the effectiveness of sentencing. Standing item (NR)

NR outlined her report provides an update and snapshot of those on probation over a 3 month period. NR is focussing on voluntary intervention and as part of this has been talking to the police and Social Services. SW asked how NR knew who to approach and NR advised that was the difficulty, as the individuals may not know they are on the police radar. NR provided an overview that she is receiving referrals from Social Services and she is providing intervention of healthy relationships, noted to include domestic violence and sexual offending regarding boundaries.

JM advised there was a recent example of where there was intervention and advice and the CSE sub-group, which looks at driver to stop, is working with schools to get information to Social Services and police so can target those who might get into trouble to push prevent agenda.

SW asked whether there had been a good uptake on the CSE course and JM confirmed it had been really good, he has asked for data on strategy meetings as he believes there may be a fall off on referrals, not occurring at same levels.

It was also noted that there was an education campaign for people arriving on the islands, age of consent, drink driving and doing same at MPC.

SY commented that the work NR is pushing is in line with international self-practice of self-referral if people are at risk of offending. NR said this is evolving and a lot of the work the police are doing is successful and that she thinks it is very beneficial to develop. The People engaging on voluntary basis are those who have been on probation and don't want to finish, NR's idea of how it would work is getting volunteers at the other end to prevent them entering the criminal justice system.

RC commented that it sounds to be incredibly positive and from CJC perspective it is how to see how good practices can be embedded. She suggested the council could do piece of work of how do we make ourselves less vulnerable and keeping this work going. NR replied that there aren't any probation policies and that she is trying to embed these for when I go.

7. Guidelines for the Advisory Committee for the Prerogative of Mercy

Working group scheduled for Monday

8. Review of Statistics produced by the Courts (SD)

SD advised the numbers are arbitrary and for discussion as to whether they are fair.

Date of Offence to Charge	28 days
Date of Charge to 1 st Hearing	28 Days
Date of Offence to trial	90 days
Date of Offence to Sentence	120 days
Date of 1 st hearing to plea	14 days
Date of 1 st hearing to Trial	90 days
Date of 1 st hearing to sentence	120 days
Date of trial begin to sentence	14 days

There was a discussion on whether information and statistics should be gathered and if so, what use could or should be made of them.

SY stated that there are too few cases to set targets. EF commented that without information we cannot measure if we are being effective and have to determine what effective looks like.

SW asked for a vote round the table as to whether timelines needed.

JM- we refer cases to SWa that do not proceed to charge which gives indication of traffic between police and AG.

SY- definitely measure, don't set targets or notional as once get them people work to them. Not a good thing.

SWa- not target but way of measuring, don't know if we could monitor

Do statistics have a format which allows to monitor points at which things happen.

EF- Yes, need a measure to identify if effective.

SD- to look at table of numbers is nothing, if don't set targets, will take the professionals view

RC- really useful to monitor, need to not to get into individual cases, perhaps

SY- even though not target, de facto they become target, housing benefits introduced target to process within 28 days study done by organisation could have got it down to 7 days, could have improved systems should try to minimise looking at averages and how things have changed could lead to less optimal outcomes than could have otherwise have changed.

JM- more than happy to monitor.

LB- monitor but avoid use of targets

DS- need statistics, if got FIG statistician involved and veering off in other direction.

NR- helpful to monitor, not targets get statistician involved.

Would be helpful to know what this data is used for and how this compares to next year – are we doing better or worse than last year?

PA- echo everything SY said about this. I would be very concerned about putting a number on it that people will use as target.

SW- not clear vote to have one way or another, boundary between monitor and target.

Suggest small sub-group to look at this including statistician and Maeve.

Sub-group of EF, SD, JM and AI to be asked.

SD to speak with Maeve.

In meantime continue to collect stats

Aim is stats to be produced to see if we are being efficient.

ACTION- sub-group to meet and report back at next meeting.

Sentencing Guidelines Committee

9. Consultation and Overarching Guideline/principles (PA and SWa)

SW advised the suggested amendments have been made to the draft and now we have final version of over arching version, reviewed changed. She invited any other views.

All present approved the draft.

ACTION:

SW to provide copy to Chief Justice and liaise with him and Laura regarding website.

SW to make request of CJ that Secretary can make minor changes.

SWa and PA to take forward with press.

SY to contact MLAs with a view to a briefing.

10. Any other business/ Date of next meeting

NR asked whether there was an expectation that all practitioners attend CSE training.

SW advised the expectation everyone from court will attend.

The next meeting was scheduled for 20th May 2021 10:00am in the Court Room, Town Hall, Stanley.