



CRIMINAL JUSTICE COUNCIL FALKLAND ISLANDS

Criminal Justice Council and Sentencing Guidelines Committee Report for 2022

ANNUAL ACTION PLAN FOR 2023/24

1. Report and Action plan summary

1.1. The purpose of this document is to report on the functions of the Criminal Justice Council (CJC) during the previous year 2022 and make recommendations as to the Council's action plan for 2023/24. This report will then bring the Council and Committee reporting obligations to date. Reports are scheduled to be made annually at the beginning of each calendar year. However, due to the position of Head of Courts being vacant for about 9 months, the obligation in January 2023 was missed. The Head of Courts usually acts as Secretary to the Council and is responsible for assisting the Chair with preparing this report.

1.2. This report covers the actions of both Council and Sentencing Guidelines Committee.

2. Legislative Background

2.1. 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 criminal justice system more effective and efficient' with specific purposes set out in s776(ss a-d)

2.2. 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.*

2.3. 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

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

3. Previous Reports

3.1. The Council was established in 2017. Reports have been filed since that date, the last in December 2021. This report covers the continuing work in 2022 and 2023, by both the Council and Sentencing Guidelines Committee.

4. Recommendations

4.1. That the Council agree the action plan for 2023-2024.

The Council discussed the action plan for 2023-2024 at its meeting of 20 July 2023 and was approved by round-robin on 30 October 2023.

4.2. The action plan for 2023-2024 is enclosed with this report. It identifies areas of work for the next financial year, with the resources required, the financial implications, a risks and benefits analysis and an assessment of how each area fulfils the Council's aims.

5. Report for the year 2022-2023

5.1. The CJC met in January and April 2022 and in January and July 2023. The Sentencing Guidelines Committee met on the same dates. No additional separate meetings were required. The Action plan prepared for 2022/23 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) Acting via the Sentencing Guidelines Committee to develop sentencing guidelines for use in the criminal courts of the Falkland Islands

5.2. 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.

5.3. The Falkland Islands Overarching Sentencing Guidelines were approved by the Chief Justice on the 30th April 2021 and then gazetted. For specific offences, the courts refer to the sentencing guidelines of England & Wales and where there is no created offence specific guideline, case law will guide. There is no short-term need for further guidelines.

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

5.4. The Criminal Procedure Rules (CPR) 2018 were prepared by Crown Counsel Stuart Walker. The CPR 2018 came into force on the 28th February 2018.

5.5. 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.

5.6. Amendments to the CPR 2018 were approved by the Chief Justice and were gazetted and in force from May 2021.

5.7. The need to amend the rules as changes are made to substantive law is recognised in the Action plan for 2023/24 and this is a rolling process overseen by the Crown Counsel. The Crown Counsel is not a member of the Council but provides expert advice. A further amendment to the CPR is currently under review.

(iii) 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

5.8. In the last annual report, the CJC reported that the preparation of Guidelines for the Advisory Committee for the Prerogative of Mercy were :

“unlikely to be achieved quickly because the need is not present due to the number of cases that arise and changes to the Constitution [that] may need to be made first.”

5.9. There has been no progress on this since the last annual report. The Council agreed at its meeting on 20 July 2023 that the matter is not pressing. It was recognised that the similar power in England & Wales was rarely used; and in the last 5 years in the Falkland Islands, was invoked rarely and unsuccessfully. This will be added instead to the Criminal Law Review conducted annually by the Crown Counsel. It will not be on the action plan for 2023 to 2024 and the Council’s focus will be on more pressing matters.

(iv) Produce a Victims Charter that develops the commitments to victims that are currently in place, drawing in all relevant agencies and forming on coherent comprehensive document

5.10. A Victim and Witness Working group was created in September 2021 and met once in March 2022.

5.11. Leaflets on **Coming to a Court or Tribunal to give Evidence** have been prepared and are available. In addition, a diagram has been produced depicting the layout of the courtroom and providing guidance on who sits where. The purpose is to assist with orienting witnesses and other new court users. The leaflet and diagram have been distributed to legal practitioners are also available at court and on the court website.

- 5.12. The court service will produce a Victims Charter for discussion at the next CJC meeting which is scheduled towards the end of 2023.

(v) Consider how to ensure that the CJC and SGC are resilient and able to achieve statutory objectives, despite changing membership

- 5.13. It is considered that the actions of the CJC are evidence of this goal being achieved.

(vi) Produce an appropriate Policy and then Guidance that can be provided by Probation and other Agencies to employers or others as required, on how to provide information on spent convictions and rehabilitation periods on sentence.

- 5.14. This was not completed and continues to be on the Action Plan for 2023/24.

(vii) The Council will continue to review the performance data that is being collected, in order to assess if the correct data is collected, in the correct way and to ensure it is being used effectively.

- 5.15. As referred to in the last CJC Report, the number of cases coming before the court makes evaluating performance data problematic.

- 5.16. At the 20 July 2023 meeting, it was recognised that attempting to make deductions/conclusions from a very small case load may be unhelpful as an anomaly may skew the statistics. It was agreed at the meeting that timeliness is not a concern in the Falkland Islands and that it is likely to be more practicable to address issues of efficiency as they arise.

- 5.17. In terms of goals from criminal justice institutions, the court service aims to list a matter from the issue of summons or charge to first hearing within 14 to 21 days, and the prosecution service aims to process files received from the police within 10 working days. The last report submitted by the probation service in June 2022 stated that the average caseload since October 2019 is 23.

6. Other matters not included in the Action Plan but which were considered by the CJC in 2022/23

(i) Forms updated

6.1. After the 18 January 2022 meeting, the means form used in criminal matters was updated to include clarification that net (and not gross) income is to be provided; clarification that 50% contained in joint saving account to be disclosed and space for providing partner's income.

(ii) Membership

6.2. In 2021, Laura Bennett, Director of Falklands Legal; Adam Smyth, Journalist; and Yvette Sheriff, Nurse, all joined as lay members in 2021. Steve Dent resigned as a lay member in 2021. Dick Sawle resigned as JP representative in 2022. Laura Bennett resigned as lay member in 2023. Emma Fulton demitted office as Head of Courts in 2022 and in 2023, Aisha de Four arrived into office as Head of Courts and took over as Secretary to the Council. Roxanne Crowie, Case Work Manager, acted as Secretary to the Council between Heads of Court.

Chairperson
Senior Magistrate

7 November 2023