

**REPLY BY THE PRESIDENT OF
THE COMMITTEE FOR HOME AFFAIRS
TO QUESTIONS ASKED PURSUANT TO RULE 14 OF THE
RULES OF PROCEDURE BY DEPUTY G ST PIER**

QUESTION:

“On 26th May 2021, in response to a Rule 11 question on adverse inference cautions, the Committee responded:

“The Committee understands that differences exist between the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (known as “PPACE”) and the UK equivalent legislation. We are now in a position where we can take advantage of the experience in the UK where adverse inference cautions have been in use for a significant period and the Committee is in agreement that its potential inclusion should be revisited.

In considering any change to PPACE the Committee recognises that it will be essential to seek the views of the Judiciary, Law Officers and the Guernsey Bar so that they might appropriately inform any legislative change.

During the last political term Bailiwick Law Enforcement identified the need for a full review of PPACE, however, it was not possible to resource such a review. Given that this is not currently captured in the Government Work Plan, the Committee is considering how it might be progressed in the context of the Justice Framework.

The Committee is seeking advice as to whether work on the adverse inference caution could reasonably be progressed as a discrete piece of work, outside a full review of PPACE, should resources allow.”

Adverse inference cautions have existed in many jurisdictions with similar systems of criminal law for many years (including, within the British Isles, England & Wales, Northern Ireland and the Isle of Man and Ireland.) Consequently, there is an extensive body of experience, codes of practice, jurisprudence and precedents on which to draw ensuring an individual’s human rights are not impeded, particularly the presumption of innocence and rights to a fair trial (including under Article 6 of the European Convention on Human Rights). Having regard to this experience and given the role which adverse inference cautions have played in successful prosecution in other jurisdictions, particularly in relation to sexual offences and financial crime, will the Committee agree to considering the introduction of adverse inference cautions and commence consultation with interested parties?”

ANSWER:

The Committee has previously agreed to consider how amendments to PPACE might be progressed in the context of the developing Justice Framework and Action Plan.

In the last 12 months since the Rule 11 questions on this matter, one of the areas that the Committee has focused on is the development of a Justice Framework, which the Assembly will be asked to consider on 25th May. Recognising the breadth of work identified to improve justice and our limited resources, the Framework proposes a seven-year timeframe for the delivery of justice outcomes.

Actions to deliver the justice outcomes identified in the Framework will be captured in a Justice Action Plan, which will be published once the States has agreed the Framework and following the Government Work Plan debate in June 2020, when as a government we have considered priorities and allocated resources.

A review of PPACE will be one of the actions identified in the Justice Action Plan, initially this will be a scoping exercise to fully understand the extent of the work; including whether any aspects can and should be prioritised and the resources required to progress.

The Committee recognises that there is rarely such thing as a quick legislative fix and has already emphasised that in considering a change to PPACE it will be essential to seek the views of the Judiciary, Law Officers, Guernsey Bar and victims. Further, work will need to be supported by subject matter experts, policy leads and drafting from the Law Officers Chambers.

As government we are collectively aware of the need to focus resources on priority areas, for this reason, we are unable to progress this work at this time. However, the Committee provides assurance that consideration of the introduction of adverse inference cautions, which will include consultation with interested parties, forms part of the Committees considerations.