

MEETING OF THE SCOTTISH SENTENCING COUNCIL
24 MARCH 2023
PARLIAMENT HOUSE, EDINBURGH
MINUTES

NOTE: this meeting was inquorate. The members present agreed to proceed with the meeting, and to make recommendations requiring the approval of the Council, in terms of the Council's standing order 3.12.

- Members present:** Lady Dorrian, the Lord Justice Clerk (Chair)
Lord Matthews (judicial member)
Sheriff Principal Craig Turnbull (judicial member)
Summary Sheriff Amel Elfallah (judicial member)
Susan Fallone JP (judicial member)
Lindsey Miller (prosecutor member)
Dr Hannah Graham (lay member)
- Secretariat:** Ondine Tennant (secretary)
David Dickson (acting secretary)
David Ross (principal policy officer - corporate)
Valerie MacGregor (principal policy officer - engagement)
Julie Duran (senior policy officer)
Vicky Weldon (communications manager)
Richard Smith (business manager)
Hannah Marshall (researcher)
- Apologies:** Sheriff Iain Fleming (judicial member)
Louise Arrol KC (advocate member)
DCC Malcolm Graham (constable member)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that apologies had been received from Sheriff Fleming, Louise Arrol KC, and DCC Malcolm Graham. This meant that only seven members were present, two of whom were non-judicial members. As the quorum is seven members, of whom at least three must be non-judicial members, the meeting was inquorate.

2. In accordance with paragraph 3.12 of the standing orders, the members present agreed to proceed with the meeting and consider the items on the agenda, noting that the recommendations reached would be put to the Council using the procedure for consideration by correspondence.

ACTION POINT

AP1 ***Secretariat to carry out the necessary arrangements for the Council to consider the recommendations reached at today's meeting in terms of paragraph 3.12 of the standing orders.***

3. The Chair welcomed Ondine Tennant to the meeting, noting that this was part of Ondine's phased return to work after maternity leave, with David Dickson remaining acting secretary meantime.
4. The Chair also welcomed:
 - Julie Duran, who had joined the secretariat as the new senior policy officer and would be the policy lead for the guidelines on sexual assault and environmental and wildlife offences
 - Vicky Weldon, who had taken over the communications manager role in the secretariat as maternity cover
 - Hannah Marshall, who had joined the secretariat as a temporary researcher to assist in the analysis of sentencing data in relation to rape offences.

Item 1.2: Previous meeting [Paper 1.2]

5. The members present agreed to recommend that the Council should approve **paper 1.2**, the draft minutes of the meeting of 09 December 2022.

Item 1.3: Progress of actions since last meeting [Paper 1.3]

6. The members present noted the progress of actions provided at **paper 1.3**.

Item 1.4: Private papers [Oral update]

7. The members present agreed to recommend that the Council should not publish the following papers: 1.3, 1.7, 2.1, 2.1A, 2.2, 2.2A, 2.3, 2.3A, 2.3B, 3.1, 3.2, 4.3, 4.3A, 4.3B, 5.1, 6.1B, 6.1C and 6.2.

Item 1.5: Update on Council and Committee membership [Oral update]

8. The Chair informed members that recruitment exercises for both the new solicitor member (administered by the Lord Justice General's office) and the new victims' expert member (administered by the Scottish Government) were underway.
9. The Chair also informed members that the Scottish Ministers, after consultation with the Lord Justice General, had appointed DCC Malcolm Graham as the Council's new constable member for a five-year term, meaning he would serve on the Council until March 2028.
10. In respect of committees, the members present agreed to recommend that:
- Louise Arrol should be appointed to the Death by Driving Committee
 - Lindsey Miller should be appointed to the Sexual Offences Committee.

Item 1.6: Update on staffing [Oral update]

11. It was noted that staffing changes in the secretariat had been covered under item 1.1.

Item 1.7: Update on budget bid [Paper 1.7]

12. The members present considered the Council's funding requirements for 2023-24 and agreed that discussions with the Scottish Government should be taken forward on the basis of the proposals outlined in paper 1.7.

2. SENTENCING GUIDELINES

Item 2.1: Death by driving - revised draft guideline [Papers 2.1 and 2.1A]

13. **Paper 2.1:**
- provided the members present with a revised draft sentencing guideline on offences of causing death by driving

- provided advice on matters arising from the discussion of the guideline at the Council's workshop in February
 - invited the Council to finalise the guideline for submission to the High Court.
14. After discussion, the members present agreed to recommend that the Council should finalise the guideline in line with the proposals set out in **paper 2.1**, subject to one outstanding drafting issue to be addressed by correspondence after the meeting, and that it should thereafter submit the guideline to the High Court for its consideration and approval, together with supporting documentation.
15. It was noted that work is under way to prepare a final version of the impact assessment on the guideline, and that this would be issued to the Council for approval by correspondence as soon as is practical.

ACTION POINTS

- AP2:** *Secretariat to adjust the draft death by driving guideline in terms of the proposals in paper 2.1 and the recommendations reached at today's meeting.*
- AP3:** *Secretariat to continue preparation of the impact assessment on the death by driving guideline and issue it to the Council for finalising, via approval by correspondence, as soon as is practical.*
- AP4:** *Subject to approval and finalisation of the guideline and impact assessment by correspondence, secretariat to prepare the death by driving guideline, impact assessment, and associated documentation for submission to the High Court, together with a petition as prescribed in the relevant Act of Adjournal, as soon as is practical.*

Item 2.2: Death by driving – draft report on public consultation exercise [Papers 2.2 and 2.2A]

16. The members present considered a draft report on the public consultation exercise on the death by driving guideline. It was noted that this was a work in progress, which would be updated and revised following the meeting to take account of the recommendations reached under item 2.1.

ACTION POINT

AP5: *Secretariat to finalise the draft report on the death by driving public consultation exercise and issue it to the Council for approval by correspondence as soon as is practical.*

Item 2.3: Sexual offences – revised draft guideline on indecent images of children [Papers 2.3 and 2.3A-B]

17. **Paper 2.3** concerned a revised draft of the sentencing guideline on offences relating to indecent images of children, with the revised draft guideline provided at **paper 2.3A**.
18. It was noted that the introduction of the revised draft had been rewritten to provide more information about the sentencing process and the effect of guidelines in general; and that structural changes had been made to give more clarity around the assessment of seriousness.
19. Engagement with stakeholder organisations regarding the draft guideline would commence shortly and inform further iterative drafting. With a view to determining sentencing ranges, the secretariat would also commence consideration of current sentencing practice.
20. The members present considered and commented on the revised draft guideline.

Item 2.4: Guideline committees update [Oral update]

21. Lord Matthews gave an update on the work of the Death by Driving and Sexual Offences Committees.
22. In respect of the Death by Driving Committee, he noted that:
 - The Committee had met twice since the last Council meeting, on 26 January and 14 February 2023, when it considered the analysis of responses to the public consultation on the draft death by driving guideline.
 - Its decisions at those meetings were taken into account by the Council at the February workshop.

- The Committee would consider the revised report on the public consultation exercise and draft final impact assessment in due course, prior to these being issued to the Council for approval by correspondence.

23. In respect of the Sexual Offences Committee, he noted that:

- The Committee had met three times since the last Council meeting, on 31 January, 28 February, and 09 March 2023.
- It had considered a number of matters at each meeting related to the draft guideline on offences relating to indecent images of children, which had resulted in the revised draft provided under item 2.3.
- At the 09 March meeting, it had also considered the scope of guidelines on sexual assault and an update on stakeholder engagement on the draft guideline on rape offences.
- The Committee would next meet in April or May.

24. Sheriff Principal Turnbull gave an update on the work of the Discounting and Domestic Abuse Committees

25. In respect of the Discounting Committee, he noted that:

- The Committee last met on 07 March 2023 when it considered the first draft of a sentence discounting guideline.
- Work would now commence on research and initial engagement with the judiciary and others.
- The Committee would next meet once this work was at a more advanced stage.

26. In respect of the Domestic Abuse Committee, he noted that:

- The Committee last met on 9 February 2023 when it discussed the scope of a guideline.
- It would now go on to consider a draft guideline and what engagement should take place. Its next meeting would be on 19 April.

3. COMMUNICATIONS AND ENGAGEMENT

Item 3.1: Communications Committee update [Oral update with reference to paper 3.1]

27. Summary Sheriff Elfallah gave an update on the work of the Communications Committee. In particular, she noted that:

- The Committee last met on 08 February 2023. It discussed the launch of Facebook and Instagram accounts. A communications report showed an increase in social media followers on both Twitter and LinkedIn. It also showed a high number of views on Twitter relating to the Council's university lectures published on its website. This led to invitations for the secretariat to provide several live lectures at Glasgow University and to the Open University.
- A new blog written by David Dickson explaining the operation of notification requirements for sex offenders had been published on the Council's website.
- Work is ongoing in relation to the public education video on community sentencing.
- The communications manager dealt with a media enquiry from the Daily Mail and secured a correction in relation to a report referencing the Sentencing Young People guideline.
- The Committee is next due to meet in May.

Item 3.2: Updates from recent and upcoming engagement activity [Oral update with reference to paper 3.2]

28. The members present noted **paper 3.2**, which provided details of a number of recent meetings and events attended by Council members and staff, including:

- The Chair's speech at the Sentencing Academy event, 'Current Issues in Sentencing Policy and Research', which was held at the City Law School, University of London on 13 January
- The secretariat's engagement with the Sentencing Council for England and Wales on 12 January, where they presented about the work of the Council and on the Scottish legal environment

- A lecture delivered by David Dickson at Glasgow University for law students on 17 January explaining the role and work of the Council including on sentencing guidelines
- An interactive session with advanced higher modern studies pupils at an Edinburgh secondary school on 23 February; an online lecture to Open University students on 7 March; and an online presentation to a national community council forum and associated organisations in the week commencing 20 March; all of which were delivered by Valerie MacGregor and focussed on the role and work of the Council.

29. The members present also noted a number of upcoming events set out in **paper 3.2**.

4. RESEARCH

Item 4.1: Research Committee update [Oral update]

30. Dr Hannah Graham gave an update on the work of the Research Committee. She noted that:

- The Committee had not met since the last Council meeting.
- It would be working on providing oversight and input to the research projects underway, along with taking forward discussions on holding a Scotland based sentencing seminar.

Item 4.2: Research projects update [Oral update]

31. The members present noted an update on the progress of various research projects underway.

Item 4.3: Methodology for evaluation of in-force guidelines [Papers 4.3 and 4.3A-B]

32. **Paper 4.3** sought approval of a revised guideline methodology document, which included details of the guideline monitoring and review plan agreed at the Council's December 2022 meeting.

33. It was noted that the guideline methodology was published in 2018 both as a page on the Council's website and as a document, "How guidelines are developed". A revised version of the "How guidelines are developed" document was provided at **paper 4.3B**.

34. The members present recommended that the Council should agree to publish the revised “How guidelines are developed” document and make the relevant updates to the methodology on the website.

ACTION POINT

AP6: *Secretariat to publish the revised “How guidelines are developed” document and update the guideline development methodology on the website as soon as is practical.*

5. POLICY DEVELOPMENT

Item 5.1: Policy update [Paper 5.1]

35. The members present noted the contents of **paper 5.1**, which outlined a number of recent policy issues of relevance to the Council’s work, including:

- The Scottish Government’s consultation ‘Reforming the criminal law to address misogyny’
- A call for views on the Children (Care and Justice) (Scotland) Bill by the Scottish Parliament’s Education, Children and Young People Committee
- The Scottish Government’s intention to provide free, independent legal representation for sexual offence victims faced with potential questioning in court about their sexual history
- The establishment of the Emma Ritch Law Clinic
- The latest quarterly statistics bulletin on recorded crime in Scotland
- Miscellaneous publications by the Sentencing Council for England and Wales.

6. GOVERNANCE AND REPORTS

Item 6.1: Standing papers: correspondence, FOISA, and complaints; finance overview; guideline timetable [Papers 6.1A-C]

36. The members present noted the content of the standing papers.

Item 6.2: Decisions by correspondence [Paper 6.2]

37. The members present noted that one decision had been made by correspondence since the last Council meeting. This was to agree to approve the recommendations reached at the inquorate Council meeting on 09 December 2022.

7. AOB

38. One item was raised which the members present determined to be confidential in terms of standing order 4.3. It is therefore not included in the published minutes.

8. FUTURE MEETING DATES

39. The members present noted the dates scheduled for the Council's meetings in 2023:

- Council meeting: Friday 09 June 2023
- Council workshop: Friday 01 September 2023 (likely to be moved to November)
- Council meeting: Friday 06 October 2023
- Council meeting: Friday 08 December 2023