

MEETING OF THE SCOTTISH SENTENCING COUNCIL

14 DECEMBER 2015, PARLIAMENT HOUSE, EDINBURGH

MINUTES

- Members present:** Lord Carloway, the Lord Justice Clerk (Chair)
Lord Turnbull (judicial member)
Sheriff Principal Abercrombie QC (judicial member)
Sheriff McFadyen (judicial member)
Allan Findlay (judicial member)
Gillian Thomson (judicial member)
Catherine Dyer, Crown Agent for Scotland (prosecutor member)
Stephen O'Rourke (advocate member)
John Scott QC (solicitor member)
Assistant Chief Constable Val Thomson (lay member)
Sue Moody (lay member)
Professor Neil Hutton (lay member)
- Attendees:** Peter Conlong, Scottish Government, Justice Analytical Services Unit (item 2)
Janette Purbrick, SCTS, Management Information Analysis Team (item 2)
Sheriff Duff, Director of the Judicial Institute for Scotland (item 6)
Judge Jazeela Aslam, Punjab Judicial Academy, Pakistan (item 6)
Judge Nusrat Yasmeen, Federal Judicial Academy, Pakistan (item 6)
- Secretariat:** Ondine Tennant (Secretary to the Scottish Sentencing Council)
Andrew Bell (Principal Research Officer)
Andrew Ruxton (Principal Legal Officer)
Carmen Murray (Policy Officer)
Valerie MacGregor (Communications Officer)
Carley Murphy (Policy Officer)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair welcomed members to the first meeting of the Scottish Sentencing Council and introduced Andrew Ruxton and Andrew Bell, who were to take up appointment in January 2016.

Item 1.2: Standing Orders [Papers 1.2 and 1.2A]

2. The draft Standing Orders at **Paper 1.2A** were adopted subject to one minor amendment in respect of the quorum of any committees. The Council subscribed to the Rules of Conduct as provided in the Standing Orders. Both the Standing Orders and Rules of Conduct would be reviewed on an annual basis.
3. Under the terms of the Standing Orders the following papers were agreed to be treated as private:
 - **Paper 1.2A**
 - **Papers 1.3 and 1.3A-B**
 - **Papers 1.4A and 1.4B**
 - **Papers 1.5 and 1.5A-B**
 - **Paper 2.2 (as a draft)**
 - **Paper 3.1**
 - **Papers 4.1 and 4.1A-B**
 - **Paper 5.1**

Item 1.3: Freedom of Information (Sc) Act 2002 (FOISA) and records management [Papers 1.3, 1.3A and 1.3B]

4. The Council noted its duties in terms of the FOISA and in relation to records management. The Scottish Information Commissioner's Model Publication Scheme 2015 (**Paper 1.3A**) was adopted. The Council approved the draft Guide to Information available under the Model Publication Scheme (**Paper 1.3B**). All Agendas, Minutes of Meetings, as approved by members under the Standing Orders, and selected papers would be published on the Council's website.
5. The Secretariat would update the Council's Guide to Information as information becomes available, with further iterations only being presented to the Council where substantial changes are proposed.
6. The Council should be incorporated into the SCTS Record Management Plan at a future date. In the meantime, the Council's records would continue to be managed in line with the principles of good records management as prescribed by the National Records of Scotland.

Item 1.4: Complaints handling procedure [Papers 1.4 and 1.4A-B]

7. The Council's duties in terms of the handling of complaints under the Scottish Public Services Ombudsman Act 2002 were noted. **Paper 1.4A**, a draft internal complaints handling procedure and **Paper 1.4B**, a draft external customer facing complaints handling procedure, were considered.
8. Members discussed the desire for other forms of feedback on the Council's work. It was agreed that the draft external customer facing complaints handling procedure, as well as the website, be updated to direct and encourage members of the public to provide feedback of a more general nature. The draft internal complaints handling procedure and the draft external customer facing complaints handling procedure were agreed.

Item 1.5: Statutory framework and resources [Papers 1.5 and 1.5A-B]

9. The Council's work tracker and policy and legislation tracker at **Papers 1.5A and 1.5B** respectively were noted.
10. The Council's statutory objectives, functions and available resources were noted. The Secretariat was instructed to prepare for consideration at the March meeting a draft 3 year business plan for the purposes of statutory consultation thereafter.
11. Guideline judgments, issued under the Criminal Procedure (Scotland) Act 1995, should be published on the Council's website, accompanied by an easy to read summary.

ACTION POINTS

- **AP1** *Secretariat to prepare a draft 3 year business plan for the purposes of statutory consultation for the March meeting*
- **AP2** *Secretariat to arrange for publication of guideline judgments*

Discussion having proceeded ahead of schedule, item 3 was brought forward to allow for the arrival of speakers under item 2.

3. SENTENCING GUIDELINES

Item 3.1: Sentencing Guidelines [Papers 3.1 and Papers 3.1A-D]

12. **Paper 3.1**, which provided information on various guideline systems operating in other jurisdictions sought views on various options for the preparation of sentencing

guidelines, was considered. **Papers 3.1A-D**, which provided background information from various sources on sentencing systems elsewhere and the parliamentary consideration of general principles and purposes of sentencing during the passage of the Criminal Justice and Licensing (Scotland) Bill in 2009 and 2010, were considered.

13. The Council provided initial views on topics for guidelines and options for the approach to take in developing guidelines. The discussion was wide ranging. Although the Council has a broad discretion (under the Criminal Justice and Licensing (Scotland) Act 2010) to determine its priorities, and as to the subject matter and form of guidelines, it would also be reactive, in terms of responding to statutory requests for guidelines in particular. The Government was giving consideration as to whether to make a request for the preparation of guidelines. It would be helpful to enter into dialogue with the Government on the terms of any request and to assist with identifying what information the Council might need so as to give any request full and proper consideration. The Secretariat should discuss these matters with Government officials in the first instance.
14. Work should begin to explore whether a definition of the principles and purposes of sentencing would be appropriate and whether that should be produced as a guideline or a statement. The Secretariat was asked to circulate a paper for comment ahead of the March meeting. Subject to a final decision, judicial input should be sought in the first instance, with further consultation to take place thereafter. Consideration of guidelines on reserved matters should be deferred until the Secretariat had provided further advice on the issue.
15. Initial options on potential areas for guidelines should be prepared for the March meeting. This should include advice on possible criteria to assist with the selection process. Members were invited to provide suggestions and comments to the Secretariat following the meeting.

ACTION POINTS

- **AP3** *Secretariat to discuss terms of ministerial requests for guidelines with Scottish Government officials in the first instance*
- **AP4** *Secretariat to circulate a paper on the principles and purposes of sentencing for comment ahead of the March meeting*
- **AP5** *initial options on potential areas for sentencing guidelines to be prepared for the March meeting and to include advice on possible selection criteria*

- **AP6** members to provide suggestions and comments to the Secretariat to assist in the formulation of options
- **AP7** Secretariat to provide further advice on guidelines on reserved matters

Further discussion under item 3 was suspended until the presentations under item 2 were complete.

2. RESEARCH AND INFORMATION

Item 2.1: Data availability [Oral]

16. Peter Conlong, of the Scottish Government's Justice Analytical Services (JAS) Unit and Janette Purbrick, of the SCTS Management Information Analysis Team (MIAT), addressed the Council on the availability of data in relation to sentencing in Scotland. The Council was invited to consider its information needs in this regard. Continued engagement with both teams would be of assistance. Janette explained that the next suite of MIAT reports would be circulated to the Council and welcomed feedback from members on the content.

ACTION POINTS

- **AP8** *SCTS MIAT reports to be circulated to the Council*

Item 2.2: Judicial views on sentencing [Paper 2.2]

17. Peter Conlong spoke to **Paper 2.2**, a literature review carried out by the JAS team on the judiciary's views on sentencing. Members discussed the findings. Publications such as the review would be appropriate to link to from the Council's website, in terms of its statutory function to publish information about sentencing.

18. The suggested areas for further research, as identified in the report, would be worthwhile, particularly in relation to compliance and judicial independence. It would be helpful in future for the Council to learn more about the make-up of the current prison population and those in young offenders' institutions in terms of recidivism, first offenders and various other factors. Peter agreed to share the current work on the prison population with the Council in due course.

ACTION POINTS

- **AP9** *Paper 2.2 to be linked to from the Council's website once published by JAS*

- **AP10 JAS to share current work on prison population with the Council**

Note of thanks

19. *The Chair thanked Peter and Janette for their helpful contribution to the Council's meeting.*

3. SENTENCING GUIDELINES [continued]

20. The Council instructed the Secretariat to take forward arrangements for visits and engagement with other sentencing bodies described in Paper 3.1.
21. Members considered the outline general process for developing guidelines in general terms and endorsed a project management approach.
22. The aspiration for the Council to engage actively with as wide an audience as possible was discussed. A stakeholder mapping exercise should be carried out. Full public consultation would be carried out on all draft guidelines.

ACTION POINTS

- **AP11 Secretariat to take forward arrangements for visits and engagement with other sentencing bodies described in Paper 3.1**
- **AP12 stakeholder mapping exercise to be carried out**

4. RESEARCH FRAMEWORK

Item 4.1: Research framework [Paper 4.1]

23. **Paper 4.1** advised members of two research proposals of relevance to the Council's remit and proposed that a research and commissioning framework be developed for consideration at a future meeting.
24. A research and commissioning framework should be developed to allow research projects to begin timeously and to facilitate research in areas of priority. It was important to follow open and transparent procurement processes. The Council should have the opportunity for input into the specifications for any research for which its endorsement is sought.

25. The Council noted the research proposal from Jose Pina-Sánchez. The Council noted the proposal from Javier Velasquez. The Secretariat and representatives of the Lord President's Private Office would hold further discussions with him and Professors Fergus McNeill and Fiona Leverick as to the further detail in due course.

ACTION POINTS

- ***AP13 Secretariat to develop a research and commissioning framework***
- ***AP14 Secretariat and representatives of the Lord President's Private Office to hold further discussions with Javier Velasquez and Professors McNeill and Leverick on research proposal***

5. POLICY DEVELOPMENT

Item 5.1: Policy development [Paper 5.1]

26. **Paper 5.1** sought member's views on the Council's statutory objective to assist with policy development in relation to sentencing and advised of requests made by the Public Petitions Committee in relation to its consideration of two petitions: Petition PE1565, Whole of Life Sentence for Violent Reoffenders and Petition PE1572, Occupational Disclosure in Trials and Sentencing.
27. There was some discussion on the extent of the Council's remit to assist with policy development and how that should be fulfilled. It would be appropriate to respond to consultations on legislative proposals in relation to substantive sentencing matters, for example, but specific consideration would also be required as individual matters arise.
28. In relation to the Petitions, the Council would consider whether the matters raised should form part of its work programme in the development of its business plan. The Secretariat would reply to the correspondence from the Public Petitions Committee to this effect.

ACTION POINTS

- ***AP15 Secretariat to prepare a reply to the Public Petitions Committee on behalf of the Council***

6. COMMUNICATIONS AND ENGAGEMENT

Item 6.1: Promoting understanding and awareness of sentencing [Oral]

Item 6.2: Communications plan, visits and events **[Oral with reference to Paper 1.5A]**

Item 6.3: The Judicial Institute for Scotland **[Oral]**

29. The Chair welcomed Sheriff Duff, Director of the Judicial Institute for Scotland, Judge Jazeela Aslam, Senior Instructor, Punjab Judicial Academy, Lahore, Pakistan and Judge Nusrat Yasmeen, Director, Federal and Judicial Academy, Islamabad, Pakistan to the meeting.
30. Valerie MacGregor delivered a presentation on the opportunities for the Council to undertake promotional and educational work in reference to its statutory objective of promoting greater awareness and understanding of sentencing policy and practice. A Twitter Policy for the Council was circulated.
31. The role of sentencing statements was subject to some discussion. Feedback was provided on the process for publication of sentencing statements on the Judicial Office website. Gathering evidence on the benefit of publishing sentencing statements would be useful before considering the matter further.
32. The Sentencing Council website should include a 'jargon-buster'. Easy-read publications and communications should be produced where possible. Members were also in favour of providing website information explaining the sentencing process generally.
33. The Secretariat was instructed to prepare a communications strategy for consideration at a future meeting, including a media training programme for Council members.
34. Sheriff Duff provided an overview of the role of the Judicial Institute for Scotland and discussed opportunities for engagement between the Institute and the Council. It would be beneficial to build links with the Judicial Institute. A member of the Secretariat should observe a session of judicial training on sentencing. A member of Secretariat could address the summary sheriff induction training in April next year. There was discussion around the extent to which the Council should be directly involved in the delivery of training to judicial office holders. Involvement in training events would be helpful in the context of raising awareness of the Council and its work.
35. The Chair invited Judges Aslam and Nusrat to provide views on their visit to Scotland. Discussion focussed on some of the key differences observed between Scotland and

Pakistan, particularly in relation to the Scottish system of jury trials and the arrangements for mandatory written opinions in Pakistan.

ACTION POINTS

- **AP16 Secretariat to consider evidence on benefits of publishing sentencing statements**
- **AP17 ‘jargon-buster’ section to be included on the Council’s website**
- **AP18 explanatory feature on the sentencing process in general terms to be added to the website**
- **AP19 Secretariat instructed to prepare a communications strategy**
- **AP20 Secretariat to observe a session of judicial training on sentencing**
- **AP21 Secretariat to attend the summary sheriff induction training in 2016 to raise awareness of the Council**

Note of thanks

36. *The Chair thanked Sheriff Duff and Judges Aslam and Nusrat for their contributions to discussion under this item.*

7. BUSINESS PLAN

Item 7.1: Discussion of business plan [Oral with reference to Paper 1.5A]

37. Members were invited to discuss any further items for inclusion in the Council’s business plan which had not been covered so far, with reference to the work tracker at **Paper 1.5A**.
38. Some items not covered under discussion of item 6.2 were raised. A range of future communications activities were provided in **Paper 1.5A** (the Council’s work tracker). It was agreed that: Sheriff Principal Abercrombie QC and Sheriff McFadyen should address the Sheriffs’ Association Annual General Meeting on the work of the Council; an informal briefing session to the Parliament’s Justice Committee during the next parliamentary session should be offered; Sue Moody and the Secretariat should meet Mary Munro to discuss restorative justice in the new year following correspondence on the matter; and proposals should be prepared for consideration at the March meeting on visiting other justice organisations and projects throughout Scotland. It was important to consider both local and national initiatives.

ACTION POINTS

- ***AP22 Sheriff Principal Abercrombie QC and Sheriff McFadyen to address the next Sheriffs' Association Annual General Meeting***
- ***AP23 an informal briefing session to be offered to the Parliament's Justice Committee during the next parliamentary session***
- ***AP24 Sue Moody and Secretariat to meet Mary Munro to discuss restorative justice***
- ***AP25 proposals on visiting other justice organisations and projects to be prepared for consideration at the March meeting***

Item 7.2: Committees [Oral]

39. The Council noted its statutory ability to establish committees formed from its own membership. Members were in favour of an approach to form small committees with the purpose of considering and developing the detail of draft guidelines in the first instance, which was to be given further consideration in due course.

8. AOB

40. The Council was informed that several USBs issued to members had not in the event been delivered and that Royal Mail were investigating the incident. [*Since the meeting Royal Mail has informed the Secretariat that the USBs were retrieved and have now been returned.*]

9. FUTURE MEETING DATES

41. Members noted the meeting dates as scheduled for 2016. The 20 June meeting may be postponed to July to coincide with a possible visit from a representative of a Sentencing Council from another jurisdiction.

42. Future meetings were scheduled to be held in Parliament House. The location of future meetings could be flexible. Members were invited to submit any suggestions they may have as to alternate locations to the Secretariat.

Scottish Sentencing Council Secretariat

December 2015