

MEETING OF THE SCOTTISH SENTENCING COUNCIL

07 MARCH 2016, PARLIAMENT HOUSE, EDINBURGH

MINUTES

- Members present:** Lord Turnbull (interim Chair, judicial member)
Sheriff Principal Abercrombie QC (judicial member)
Sheriff McFadyen (judicial member)
Allan Findlay, Stipendiary Magistrate (judicial member)
Gillian Thomson, Justice of the Peace (judicial member)
Catherine Dyer, Crown Agent for Scotland (prosecutor member)
Stephen O'Rourke (advocate member)
John Scott QC (solicitor member)
Sue Moody (lay member)
Professor Neil Hutton (lay member)
- Attendees:** Peter Conlong, Scottish Government, Justice Analytical Services Unit (item 3.1)
Andy Bruce, Deputy Director for Community Justice, Scottish Government (item 3.2)
Jennifer Stoddart, Team Leader, Alternatives to Prosecution and Community Sentences, Scottish Government (item 3.2)
Edward McHugh, Deputy Legal Secretary, Lord President's Private Office
- 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)
- Apologies:** Assistant Chief Constable Val Thomson (lay member)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair welcomed members and noted that he will continue to act as interim Chair until a Lord Justice Clerk had been appointed. Apologies were noted from Assistant Chief Constable Val Thomson.

2. The Chair informed members that Carley Murphy, Policy Officer, had succeeded in gaining a position with the Scottish Child Abuse Inquiry and would be leaving the Secretariat on 08 March.
3. The Chair welcomed Edward McHugh to the meeting who was to be a permanent observer at future Council meetings on behalf of the Lord President's Private Office in order to maintain links with the High Court of Justiciary.

Item 1.2: Previous meeting [Papers 1.2A and 1.2B]

4. The Council agreed the minutes from the previous meeting as provided at **Paper 1.2A**.
5. The Council noted the progress of actions arising from the previous meeting as provided at **Paper 1.2B**.

Item 1.3: Private papers

6. The Council agreed not to publish the following papers: 1.2B, 2.2, 4.1, 5.1, 6.1, 6.3, 6.4, 6.4A, 7.1, 7.2, 7.3, and Advance Paper 1.

Item 1.4: Membership [Oral]

7. The Chair congratulated Catherine Dyer on being awarded a CBE for her services to law and order and advised members of her upcoming retirement as Crown Agent for Scotland. After her retirement, Catherine will continue as a Council member as a prosecutor under the terms of the Criminal Justice and Licensing (Sc) Act 2010.
8. The Chair congratulated Allan Findlay on recently being appointed as one of Scotland's first summary sheriffs and advised members that this would not alter his membership of the Council as a result of The Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2016.

2. COMMUNICATIONS AND ENGAGEMENT

Item 2.1: Website development [Oral]

9. Val MacGregor delivered a presentation on the newly developed website pages and the structure of the developed website.

10. Andrew Ruxton discussed the development of a webpage which would detail guideline judgments under section 118(7) and 189(7) of the Criminal Procedure (Scotland) Act 1995 and accompanying easy read summaries. The identified guideline judgments would be circulated to members for comment, particularly to ensure all relevant judgments had been identified. Any guideline judgment which referred to an England and Wales sentencing guideline that is no longer in force should be flagged on the relevant website page.

ACTION POINTS

- **AP1** *Secretariat to take forward further developments to the website*
- **AP2** *Identified guideline judgments and easy read summaries to be circulated to members for comment*
- **AP3** *Secretariat to flag on the website any guideline judgment which refers to an England and Wales sentencing guideline that is no longer in force*
- **AP4** *Council to consider whether a review of guideline judgments is necessary (perhaps as a specific guideline topic) to take account of changes to legislation or England and Wales guidelines referred to*

Item 2.2: Stakeholder mapping and future meetings and events [Oral with reference to **Paper 2.2**]

11. Carley Murphy presented **Paper 2.2**, a draft stakeholder map. Feedback was provided on its content and additional organisations were to be added. Sue Moody would provide additional information on survivors' groups.
12. Carley provided an update on meetings being arranged with stakeholders and upcoming events which Council members and the Secretariat were to attend. Recommendations for future visits were provided and a survey seeking members' preferences was circulated. Members and the Secretariat were to consider upcoming conferences and events which would be useful to attend.

ACTION POINTS

- **AP5** *Secretariat to update the stakeholder map with additional organisations*
- **AP6** *Sue Moody to provide additional information on survivors' groups*
- **AP7** *Secretariat to arrange visits and events in line with members' preferences.*
- **AP8** *Members and Secretariat to scope upcoming conferences which would be useful to attend*

- **AP9 John Scott QC to attend the Law Society of Scotland's Criminal Law Committee to provide an update on the Council's work**

Item 2.3: Feedback from meetings and events [Oral]

13. Sue Moody provided feedback on the meeting with Mary Munro from the Restorative Justice Forum, which was arranged to discuss restorative justice. Sue highlighted that the purpose of the meeting was to raise awareness with the Council of various issues around restorative justice, including what restorative justice is understood as and where it best sits in relation to criminal proceedings and also to explore how restorative justice might relate to the Council's remit. A note of the meeting with Mary would be circulated and a briefing note on restorative justice issues would be issued once further literature from the Forum was received.

Further discussion under item 2.3 was suspended following the arrival of Peter Conlong, Andy Bruce and Jennifer Stoddart to allow the Scottish Government's update under item 3 to be brought forward.

3. SCOTTISH GOVERNMENT UPDATE

Item 3.1: Trends in crime, sentencing, and the prison population [Oral]

14. Peter Conlong, of the Scottish Government's Justice Analytical Services (JAS) Unit delivered a presentation on *Trends in crime, sentencing and the prison population* following the Council's request for this information at the last meeting. Peter's presentation would be circulated to members.
15. Peter was asked to clarify how remand affects the statistics presented, particularly in relation to the prison population serving short term sentences, which he would provide information on following the meeting.

Note of thanks

16. *The Chair thanked Peter Conlong for his presentation which was helpful to the Council and informative.*

ACTION POINTS

- **AP10 Secretariat to circulate Peter Conlong's presentation on trends in crime, sentencing and the prison population**

- **AP11 SG Justice Analytical Services to consider whether it would be possible to provide a breakdown of the remand population in terms of those who go on to serve short sentences**

Item 3.2: Presumption against short-term sentences [Oral]

17. Andy Bruce, Deputy Director for Community Justice, Scottish Government, addressed the Council on the Government's penal policy priorities, developments in relation to community justice and progress in relation to consideration of the proposed extension of the presumption against short-term sentences, following the conclusion of the Government's recent consultation on the matter, particularly in relation to potential implications of any extension arising for or from the Council's planned programme of work. There was some discussion of the options under consideration and the potential implications of any extension of the presumption. The Secretariat would circulate the evaluation of the presumption applicable at present.

ACTION POINTS

- **AP12 Secretariat to circulate evaluation of the presumption applicable at present**

2. COMMUNICATIONS AND ENGAGEMENT [continued]

Item 2.3: Feedback from meetings and events [Oral]

18. Sheriff Principal Abercrombie and Sheriff McFadyen provided feedback from the Sheriffs' Association AGM at which they presented a session on the work of the Council, which included suggested guideline topics and possible preferences as to format. They noted that the discussion was broadly positive and that among other things, an evidence base around the effects of guidelines would be important and that the Council might play a role in public education around sentencing practice.

19. The Chair, Sheriff Principal Abercrombie and Neil Hutton provided feedback on the recent visit to the Republic of Ireland to meet the Irish Sentencing Committee and others, which had proved to be very instructive. A report on the visit would be circulated.

ACTION POINTS

- **AP13 Secretariat to circulate a note of the meeting with Mary Munro**

- **AP14 Secretariat to circulate a briefing note on restorative justice once further literature is received**
- **AP15 Secretariat to prepare a report of the Council's visit to the Republic of Ireland**

4. POLICY DEVELOPMENT

Item 4.1: Domestic abuse offence consultation [Papers 4.1 and 4.1A]

20. **Paper 4.1** advised members of the Scottish Government's ongoing consultation paper on *A criminal offence of domestic abuse*, provided at **Paper 4.1A**, which was noted. The Council agreed not to issue a response to the consultation in these early stages of its work.

5. RESEARCH AND INFORMATION

Item 5.1: Research and information [Oral, with reference to Paper 5.1]

21. Andrew Bell updated the Council on the research proposal from Mr Javier Velásquez, provided at **Paper 5.1**, and provided recommendations. The Council noted the research proposal and the Secretariat would keep members informed of its progress.
22. Andrew updated the Council on the Scottish Universities Insight Institute (SUII) initiative and possible engagement opportunities arising from its criminal justice workstream. Andrew Ruxton and Carmen Murray were to attend the upcoming SUII conference on *Progressing Scottish Justice and the Problem of 'others'*. The Secretariat would take forward further discussions with SUII on workshops and events following the conference. Members were keen to seek engagement with other academics and academic initiatives. The Secretariat would encourage engagement and participation through the website.

ACTION POINTS

- **AP16 Secretariat to keep the Council informed of Mr Velásquez's research**
- **AP17 Secretariat to take forward further discussions with SUII on workshops and events, following its conference**
- **AP18 Secretariat to encourage participation and engagement from academics and other academic initiatives, via the website**

Item 5.2: Research Framework [Oral]

23. Andrew Bell addressed the Council on initial concepts and ideas around a research framework. Further development of the framework would be considered after the Council had finalised its business plan.
24. The Council discussed the usefulness of a baseline study on public perceptions of sentencing. The Secretariat would prepare options for a baseline study at the next meeting.

ACTION POINTS

- ***AP19 Secretariat to provide options on a baseline study on public perceptions of sentencing at the next meeting***

6. SENTENCING GUIDELINES

Item 6.1: Guidelines methodology [Oral with reference to Paper 6.1]

25. Andrew Ruxton introduced Paper 6.1, which provided advice on the preparatory work necessary to develop a methodology for sentencing guidelines, including format of guidelines and methodology for their development. The Council discussed the proposals and instructed the Secretariat to circulate examples of other jurisdictions' guidelines for consideration and comment before the next meeting. This would inform the development of an exercise for trialling different formats, which could be tested with members in the first instance before carrying out with a wider pool.
26. The Council noted the Secretariat's intention to carry out a review over the summer on guideline systems in other jurisdictions and to continue work on the methodology for the development of guidelines.

ACTION POINTS

- ***AP20 Secretariat to circulate to members examples of other jurisdictions' guidelines for comment before the next meeting***
- ***AP21 Secretariat to prepare sentencing exercises for testing different guideline styles***
- ***AP22 Secretariat to carry out a review of the approach in other jurisdictions to the format of guidelines and the methodology for their development***

Item 6.2: Principles and purposes of sentencing [Oral with reference to Advance Paper 1]

27. Ondine Tennant introduced **Advance Paper 1**, which set out proposals for a definition of the principles and purposes of sentencing, provided background information on the policy development to date and set out a proposed plan and timeline.
28. Carmen Murray circulated and discussed a paper which summarised members' comments on the proposals, which had been received in advance of the meeting. The Council's preference was for a definition to be prepared in the form of a sentencing guideline, rather than a statement. A workshop would be arranged before the next meeting to allow members to explore the proposals in more detail. The workshop should take place after the 18 April Sentencing Roundtable being organised by Prof. Anthony Bottoms of the University of Cambridge, which Lord Turnbull and Neil Hutton would be attending, so that discussions may be informed by learning from that event.
29. The Council discussed whether it would be useful to commission a literature review on jurisprudence to date on the principles and purposes of sentencing, along with approaches taken in other jurisdictions. Neil Hutton would provide a short summary of current jurisprudence prior to the workshop to help inform discussion. Thereafter, the Secretariat would provide options on commissioning a literature review for publication by the Council.
30. The proposals for seeking judicial input in the first instance, and a subsequent consultation, were discussed. Members would submit suggestions for areas to be explored.

ACTION POINTS

- ***AP23 Secretariat to arrange a workshop for members to discuss in detail the proposals for a guideline on the principles and purposes of sentencing***
- ***AP24 Neil Hutton to provide a short summary of current jurisprudence on the principles and purposes of sentencing prior to the workshop***
- ***AP25 Secretariat to take forward the commissioning of a literature review after the workshop***
- ***AP26 Members to submit suggestions for areas to be explored when seeking judicial input and in a subsequent consultation***

Item 6.3: Guideline topics [Paper 6.3]

31. Ondine Tennant introduced Paper 6.3, which set out options for the selection and prioritisation of guideline topics and advice on suggested selection criteria, as requested by the Council at the last meeting. Guideline topics which had so far been suggested to the Council were listed. The Council noted the suggestion that 3 guidelines could reasonably expect to be completed in the Council's first reporting period (to October 2018), with it being possible to begin more than 3 in that timescale.
32. The Council instructed the Secretariat to: arrange a workshop to allow for detailed consideration of guideline topics, provide further briefing on matters raised in discussion, consider other potential topics for guidelines, and collate any available data which could form an evidence base for the selection of guideline topics.

ACTION POINTS

- ***AP27 Secretariat to arrange a workshop to allow for the detailed consideration of guideline topics***
- ***AP28 Secretariat to provide further briefing on matters raised in discussion***
- ***AP29 Secretariat to consider other potential topics for guidelines***
- ***AP30 Secretariat to collate any available data which could form an evidence base for the selection of guideline topics***

Item 6.4: Business Plan [Papers 6.4 and 6.4A]

33. The Council noted the draft Business Plan as provided at **Paper 6.4A**, and that an updated version would be provided at the next meeting.

7. REPORTS

Item 7.1: Work tracker [Paper 7.1]

34. The Council noted the work tracker provided at **Paper 7.1**.

Item 7.2: Policy and Legislation tracker [Paper 7.2]

35. The Council noted the Policy and Legislation tracker at **Paper 7.2**.

Item 7.3: Correspondence, FOISA and Complaints [Paper 7.3]

36. The Council noted **Paper 7.3**, a report on the number of FOISA requests, complaints and items of correspondence received. Members noted that a FOISA request on staff salaries and expenses had been received since the report had been prepared.

8. AOB

Item 8.1: Any other business [Oral]

37. Allan Findlay noted that it would be beneficial to gain a better understanding from persons involved in the delivery of services for convicted offenders to serve their sentence. This would be taken forward under the programme of proposed visits and events.

9. FUTURE MEETING DATES

38. Members noted the meeting dates as scheduled for 2016 and that the next meeting would take place on 20 June.
39. The Chair advised members that Professor Frieberg from the Victorian and Tasmanian Sentencing Councils, Lord Justice Treacy, Chairman of the England and Wales Sentencing Council and Claire Fielder, Head of Office of the England and Wales Sentencing Council, had accepted the Council's invitation to attend the 20 June 2016 meeting.

Scottish Sentencing Council Secretariat

March 2016