

**MEETING OF THE SCOTTISH SENTENCING COUNCIL**

**20 JUNE 2016, PARLIAMENT HOUSE, EDINBURGH**

**MINUTES**

- Members present:** Lady Dorrian QC, the Lord Justice Clerk (Chair)  
Lord Turnbull (judicial member)  
Sheriff Principal Abercrombie QC (judicial member)  
Sheriff McFadyen (judicial member)  
Gillian Thomson, Justice of the Peace (judicial member)  
Stephen O'Rourke (advocate member)  
John Scott QC (solicitor member)  
Sue Moody (lay member)  
Professor Neil Hutton (lay member)
- Attendees:** Lord Justice Treacy, Chairman of the Sentencing Council for England & Wales  
Professor Arie Freiberg, Chair of the Tasmanian and Victorian Sentencing Advisory Councils  
David Harvie, Crown Agent for Scotland
- 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)  
Valentina Jakopic, law student, Croatia (via videolink)
- Apologies:** Summary Sheriff Allan Findlay (judicial member)  
ACC John Hawkins, Police Scotland representative  
Edward McHugh, Deputy Legal Secretary, Lord President's Private Office

**1. PROCEEDINGS**

*Item 1.1: Introduction and welcome*

1. The Chair welcomed members to the meeting and thanked Lord Turnbull for his stewardship as interim Chair during the period which the office of LJC was vacant.

2. The Chair welcomed David Harvie, who had succeeded Catherine Dyer as Crown Agent and was attending the meeting as the Crown Office and Procurator Fiscal Service representative. Catherine Dyer had stepped down from the Council and a prosecutor member would be appointed in due course.
3. The Chair welcomed Lord Justice Treacy, Chairman of the Sentencing Council for England and Wales, and Prof. Arie Freiberg, Chair of the Victorian Sentencing Advisory Council and Chair of the Tasmanian Sentencing Advisory Council.
4. Apologies were noted from Summary Sheriff Allan Findlay, and from ACC John Hawkins and Edward McHugh of the Lord President's Private Office, who had both been invited to the meeting.

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

5. The Council agreed the minutes from the previous meeting as provided at **Paper 1.2A**.
6. The Council noted the progress of actions arising from the previous meeting as provided at **Paper 1.2B**. In respect of Action Point 16 of the 14 December 2015 meeting the Chair would issue a memo to the judiciary on the publication of sentencing statements.

**ACTION POINTS**

- **AP1** ***Sheriff Principal Abercrombie undertook to alert the Sheriffs Principal to this development.***

*Item 1.3: Private papers*

7. The Council agreed not to publish the following papers: 1.2B, 2.1A, 2.1B, 3.1, 3.1A, 3.1B, 3.2, 3.2A, 3.2B, 3.3, 3.3A, 4.1, 4.2, 5.1, 5.1A, 6.1, 6.1A, 6.2A, 6.2B, 6.3.
8. Following the meeting, the Council also agreed not to publish Paper 1.4.

*Item 1.4: Membership [Paper 1.4]*

9. Carmen Murray introduced **Paper 1.4** which sought the Council's agreement for the Secretariat to explore options for the extension of members' service on the Council so as to ensure continuity and corporate memory. The Council was content for the Secretariat to take forward the necessary discussions.

## ACTION POINTS

- **AP2** *Secretariat to take forward discussions on extending members' service on the Council.*

### *Item 1.5: Committees [Oral]*

10. Carmen Murray discussed two potential committees which had been proposed under item 4.1 (research) and 5.1 (communications), along with options for other committees which may be required for individual guidelines. It was agreed that the principles and purposes guideline work would be carried out by the full Council, rather than a committee, given its significance and breadth. A final decision on committees to be established was deferred until the September meeting, for which the Secretariat would prepare a discussion paper. Members would provide notes of interest for any committees which they wish to join.

## ACTION POINTS

- **AP3** *Secretariat to prepare for the September meeting a discussion paper on options for committees*
- **AP4** *Members to provide notes of interest for individual committees which they wish to join*

## 2. VISITS AND EVENTS

### *Item 2.1: Reports on the Republic of Ireland and Northern Ireland visits [Oral, with reference to papers 2.1A and 2.1B]*

11. **Paper 2.1A**, a note of the Republic of Ireland visit for which there was an oral update at the previous meeting, was noted.
12. Gillian Thomson, Stephen O'Rourke and Sue Moody provided feedback on the visit to Northern Ireland in April which proved to be informative and beneficial. Members noted **Paper 2.1B**, a report on the visit. The Chair thanked members for their input.

### *Item 2.2: Sentencing Council for England and Wales and Sentencing Advisory Councils of Victoria and Tasmania [Oral]*

13. The Chair invited Lord Justice Treacy and Prof. Freiberg to speak about their respective Councils and any observations or advice they had for this Council in its early stages of

work. An open discussion followed and the Council was provided advice on the following topics in particular:

- a. Police engagement is important from the outset, as constables are the first point of contact in the criminal justice system for victims and witnesses, and their families, as well as offenders. It is important that constables are educated on and aware of the sentencing process.
- b. Fliers or leaflets in court about sentencing are likely to be popular and beneficial to members of the public, as well as online information.
- c. All under 18s are treated as children in Tasmania and Victoria and are dealt with in the Children's courts. England & Wales have existing guidance for youth offenders and are currently consulting on an updated guideline; there is a different principled approach to sentencing youths there.
- d. The Council should have a clear plan at the outset of what work it will undertake.
- e. The Council can help to increase transparency in sentencing by providing information to the public which isn't currently available (such as statistics), in an accessible way.
- f. The format of sentencing guidelines should be considered early on in the Council's work as this is one of the main ways in which it will communicate with stakeholders and members of the public.
- g. It is essential for the judiciary to have confidence in the Council's work.
- h. Guidelines need to be of practical use to the courts and offence specific guidance is essential.
- i. Research into and understanding of current practice is key.
- j. Be as digital as possible from the start, as any updates can be made quickly and cost-effectively.
- k. Sub-groups, or committees, are useful to free up the Council for more substantive work.
- l. It is important to ensure corporate memory and expertise is developed and retained
- m. Full public consultation is beneficial, as is road testing draft guidelines with members of the judiciary, to tease out any issues.
- n. Guidelines might result in an increase in the number of appeals.
- o. Media reports and public opinion on guidelines is complex and may not always be consistent – guidelines may be seen as both good and bad simultaneously.

*Further discussion under item 2.2 was suspended to allow other the other items of the meeting to proceed. Discussion resumed after item 8.*

*Item 2.4: LSS Criminal Law Committee [Oral]*

14. John Scott provided feedback on his update to the Law Society of Scotland's Criminal Law Committee on the work of the Council and noted that he expected it to mark the first step in continuing dialogue with the profession.

*Item 2.5: Prison visits update [Oral]*

15. Sheriff McFadyen and Professor Hutton provided feedback on the visits to HM Polmont YOI and HMP Low Moss.
16. Ondine Tennant advised members of an employability event which was being held by the Scottish Prison Service (SPS) on 28 June which the Council had been invited to. The Secretariat would circulate further details after the meeting.
17. David Harvie advised members that Polmont YOI had prepared research which covered topics such as repeat offenders and the significance of bereavement and postcode, which was expected to be available in the next 6 months.
18. Ondine Tennant advised that she had attended an SPS Symposium 'Reimagining Custody, Community and Citizenship for 21<sup>st</sup> Century Scotland' on 2-3 June and that a report on the discussions would be circulated once available.

**ACTION POINTS**

- **AP5**      **Secretariat to circulate further details of the SPS employability event**
- **AP6**      **Secretariat to circulate Polmont YOI research once available**
- **AP7**      **Secretariat to circulate report on SPS Symposium once available**

*Item 2.6: NASC Conference [Papers 2.6 and 2.6A]*

19. The Chair introduced **Paper 2.6** which sought members' views on Council attendance at the US National Association of Sentencing Commissions 2016 Annual Conference, to be held in Utah between 7-9 August 2016. The draft programme for the event, at **Paper 2.6A**, was noted.

20. It was agreed that attendance would be beneficial and timeous, given the Council is at the start of its work. It was also thought that it would be helpful to build links with Councils and Secretariats in a number of other jurisdictions. It was agreed that one judicial member, one lay member and one member of the Secretariat would attend.

#### **ACTION POINTS**

- **AP8** *Judicial and lay members to provide notes of interest for the NASC conference to the Secretariat as soon as possible following the meeting*
- **AP9** *Secretariat to take forward arrangements for Council representation at the NASC conference and to arrange discussions with members of staff.*

### **3. SENTENCING GUIDELINES**

#### *Item 3.1: Guidelines on reserved matters [Papers 3.1, 3.1A and 3.1B]*

21. Members noted **Papers 3.1, 3.1A and 3.1B**, which provided advice on whether the Council is able to prepare and issue guidelines on reserved offences. The Council agreed its position and the Secretariat would take forward discussions with the Scottish and UK Governments on that basis.

#### **ACTION POINTS**

- **AP10** *Secretariat to take forward discussions with the Scottish and UK Governments on Council's position*

#### *Item 3.2: Draft Business Plan 2015-18 [Papers 3.2, 3.2A and 3.2B]*

22. Members approved the draft Business Plan 2015-18 at **Paper 3.2A** and noted **Paper 3.2B**, a note on the Council's discussions at the Topics Workshop on 24 May. Statutory consultation on the draft Business Plan would take place over the summer. Further engagement on the draft Business Plan with selected organisations as listed at the annex of **Paper 3.2** would also take place over the summer. Members would advise the Secretariat of any other organisations that it would be helpful to engage with.
23. An updated draft Business Plan 2015-18 would be provided at the September meeting for approval, following consultation and engagement.

## ACTION POINTS

- **AP11** *Members to advise the Secretariat as soon as possible of any other organisations which it would be helpful to engage with on the draft Business Plan*
- **AP12** *Secretariat to prepare final draft of Business Plan 2015-18 for approval at the September meeting.*

### *Item 3.3: Guidelines Methodology [Oral with reference to Papers 3.3 and 3.3A]*

24. **Paper 3.3A**, an early draft of the review of other jurisdictions' guidelines systems, was noted. Members would provide any specific feedback or suggestions to the Secretariat following the meeting via email.
25. **Paper 3.3** was noted, which provided an update on plans to road test different guideline styles over the summer. Road testing exercises would first be held with members before sessions with external stakeholders was organised. The Secretariat would approach the Judicial Institute for assistance to develop the materials. Case studies for road testing guidelines would be based on both statutory and common law offences. Members would submit notes of interest to the Secretariat to be involved in the road testing exercises.

## ACTION POINTS

- **AP13** *Members to provide any feedback or suggestions to the Secretariat on the early draft of the review of other jurisdictions' guideline systems*
- **AP14** *Secretariat to approach the Judicial Institute for assistance in developing road testing materials*
- **AP15** *Secretariat to develop road testing exercises on common law as well as statutory offences*
- **AP16** *Secretariat to arrange road testing exercises with members in the first instance*
- **AP17** *Members to submit to the Secretariat notes of interest in road testing guideline styles*

## 4. RESEARCH FRAMEWORK

### *Item 4.1: Research framework and proposals [Paper 4.1]*

26. Andrew Bell updated members on developments regarding establishing a research framework, with reference to **Paper 4.1**. The Secretariat would pursue a grant funded research framework in conjunction with the SG's Justice Analytical Services. Jointly funded research would be considered for any specific proposals and the independence of the Council would be a paramount consideration. Proposals for a research committee were deferred to the September meeting under item 1.5.

#### **ACTION POINTS**

- **AP18** *Secretariat to pursue a grant funded research framework in conjunction with the SG's Justice Analytical Services*

#### *Item 4.2: Baseline study on public perceptions of sentencing [Paper 4.2]*

27. **Paper 4.2**, which provided options for undertaking research on public perceptions of sentencing, was noted. The Secretariat would explore options for commissioning bespoke research on public attitudes of sentencing for individual guidelines.
28. The Secretariat would explore the possibility of including specific questions on attitudes to sentencing in future tranches of the SG's Crime and Justice Survey. The Survey already includes information which would be useful to plot over time.

#### **ACTION POINTS**

- **AP19** *Secretariat to explore options for commissioning bespoke research on public attitudes of sentencing for individual guidelines*
- **AP20** *Secretariat to explore the possibility of including specific questions on attitudes to sentencing in future tranches of the SG's Crime and Justice Survey, and consider if any current information from the Survey could be usefully plotted over time*

## **5. COMMUNICATIONS AND ENGAGEMENT**

#### *Item 5.1: Communications Strategy [Papers 5.1 and 5.1A]*

29. Val MacGregor introduced **Paper 5.1A**, a draft Communications and Engagement Strategy on how the Council might deliver on its objective to promote awareness and understanding of sentencing policy and practice, build and maintain its public profile, engage productively with other organisations, and ensure effective communications

activity to support implementation of individual guidelines. The Council approved the draft Communications and Engagement Strategy.

30. The Secretariat should arrange media training for members for specific pieces of work. Proposals for a communications committee were deferred to the September meeting under item 1.5.

#### **ACTION POINTS**

- **AP21** *Secretariat to arrange media training for members for specific pieces of work*

## **6. REPORTS**

### *Item 6.1: Draft Annual Report [Papers 6.1 and 6.1A]*

31. **Paper 6.1A**, a draft Annual Report for 2015-16, was approved. An updated draft Annual Report would be provided to the Council, styled for publication, at its September meeting.

### *Item 6.2: Work tracker and policy and legislation tracker [Papers 6.2A and 6.2B]*

The Council noted the work tracker provided at **Paper 6.2A** and the policy and legislation tracker provided at **Paper 6.2B**.

### *Item 6.3: Correspondence, FOISA and Complaints [Paper 6.3]*

32. The Council noted **Paper 6.3**, a report on the number of FOISA requests, complaints and items of correspondence received.

## **7. AOB**

### *Item 7.1: Any other business*

33. There was no other business raised.

## 8. FUTURE MEETING DATES

34. Members noted the meeting dates as scheduled for 2016 and that the next meeting would take place on 14 September, which had been changed from 12 September. It was agreed that the December 2016 meeting would be held at Airdrie Sheriff Court.
35. Meeting dates for 2017 were proposed and members were asked to advise the Secretariat of any diary conflicts as soon as possible. The 2017 meeting dates would be confirmed at the next meeting.

### ACTION POINTS

- **AP22** *Secretariat to take forward arrangements with Sheriff Principal Abercrombie for the December meeting to be held at Airdrie Sheriff Court*
- **AP23** *Members to advise Secretariat of any diary conflicts for the proposed 2017 meeting dates as soon as possible.*

## 2. VISITS AND EVENTS *[continued]*

*Item 2.2: Sentencing Council for England and Wales and Sentencing Advisory Councils of Victoria and Tasmania [Oral]*

36. Open discussion continued with Lord Justice Treacy and Prof. Freiberg and the Council was provided advice on the following topics in particular:
  - a. Making available facts and information on sentencing can obviate many queries from the press and public.
  - b. While data from independent sources is useful it is advisable to build in-house statistician / research capacity to conduct the Council's own analysis and to build up expertise.
  - c. An in-house multi-disciplinary team (policy, communications, legal and research) is also advisable, as guidelines are a collaborative enterprise.
  - d. Sentencing is a sensitive area and courage is required, particularly when dealing with a matter of significant political interest.
  - e. Protocols with other organisations (courts/ justice department) are necessary but judicial input is essential in determining what specific factors are considered when sentencing.

- f. Think about how data and statistics are presented – visuals are powerful and can be much easier to understand than mere numbers.

#### **ACTION POINTS**

- **AP24** *Secretariat to advise Council on what sentencing information can currently be gathered from the Scottish Courts and Tribunals Service to assist with determining current sentencing practice in particular areas*

**Scottish Sentencing Council Secretariat**

**June 2016**