

MEETING OF THE SCOTTISH SENTENCING COUNCIL

14 SEPTEMBER 2016, PARLIAMENT HOUSE, EDINBURGH

Members present: Lady Dorrian QC, the Lord Justice Clerk (Chair)
Lord Turnbull (judicial member)
Sheriff Principal Abercrombie QC (judicial member) (until the end of Item 5)
Sheriff McFadyen (judicial member)
Summary Sheriff Allan Findlay (judicial member)
Gillian Thomson, Justice of the Peace (judicial member)
Stephen O'Rourke (advocate member)
John Scott QC (solicitor member) (from Item 3)
Sue Moody (lay member)
Professor Neil Hutton (lay member)

Attendees: Assistant Chief Constable John Hawkins, Police Scotland representative
Edward McHugh, Deputy Legal Secretary, Lord President's Private Office
Eileen Grant, solicitor, GLSS
Janette Purbrick, Head of SCTS Management Information Analysis Team (Item 8)

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)

Apologies: David Harvie, Crown Agent for Scotland (prosecutor member)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair welcomed members to the meeting and advised that David Harvie, Crown Agent, had been appointed as the prosecutor member as of 29 August, though he had tendered his apologies for this meeting.

2. The Chair thanked ACC Hawkins, who was attending as Police Scotland's representative pending the appointment of a constable member, for participating in the meeting. The Chair had raised the importance of constable representation with the Cabinet Secretary for Justice and the Chief Constable.
3. Sheriff Principal Abercrombie would leave the meeting early as he was chairing another meeting at 12 noon. John Scott would arrive late due to a court appearance.
4. The Chair welcomed Eileen Grant, who would cover Andrew Ruxton's 6 month parental leave from October.

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 Points 16 of the 14 December 2015 meeting and 2 of the 20 June 2016 meeting, the Chair had issued a memo to the judiciary in August encouraging the publication of sentencing statements where appropriate.
7. In respect of Action Point 18 of the 20 June meeting, the Secretariat had noted concerns regarding awarding research grants through the Scottish Government's grant funding framework and would explore alternative additional routes for procuring research using Scottish Courts and Tribunals Service procurement processes in order to ensure flexibility of approach.

Item 1.3: Private papers

8. The Council agreed not to publish the following papers: 1.2B, 3.1A, 3.1B, 3.1C, 3.2A, 4.2, 4.2A, 4.2B, 5.1A, 5.1B and 5.2.

Item 1.4: Committees [Papers 1.4 and 1.4A-B]

9. **Papers 1.4** and **Papers 1.4A and B**, provided proposals on committees to be established, including proposed remits, which were agreed with a minor change to the proposed Research Committee's remit (**Paper 1.4B**).
10. A Communications Committee would be established with the following membership: Sheriff McFadyen, John Scott and Sue Moody.

11. A Research Committee would be established with the following membership: Lord Turnbull, Gillian Thomson, Prof. Hutton and Stephen O'Rourke. Shrieval input would be helpful in order to provide perspective from the sheriff court. The Chair suggested a particular sheriff who had previously expressed willingness to assist the Council be invited to participate in the Research Committee as an advisor.

ACTION POINTS

- **AP1** *Secretariat to take forward arrangements for establishing a Communications and Research Committee, including arranging meeting dates and updating any Standing Orders necessary*
- **AP2** *Secretariat to write to the particular sheriff mentioned, to invite input to the Research Committee*

2. VISITS AND EVENTS

Item 2.1: Report on the NASC Conference, Utah [Oral]

12. Sheriff Principal Abercrombie and Sue Moody provided feedback on the National Association of Sentencing Commissions Annual Conference, which they attended along with Ondine Tennant on 07-09 August. The Conference had been highly relevant and informative at this stage of the Council's work. Prof. Hutton was thanked for bringing the opportunity to the Council's attention.
13. A report of learning from the visit would be circulated to members in due course. A blog post would be prepared for the website in order to publicise the visit and learning from it, which could be helpful to others in the system.

ACTION POINTS

- **AP3** *Secretariat to circulate a report on the NASC Conference*
- **AP4** *Secretariat to publish a blog post on the website publicising the visit and learning from it*
- **AP5** *Council to retain links with the NASC and consider attendance at future conferences*

Item 2.2: Scottish Justices Association [Oral]

14. Gillian Thomson provided feedback on her presentation to the Scottish Justices Association on 05 August, which had been useful. It was thought that the Council should continue to engage with the Association as work progresses.

3. BUSINESS PLAN AND ANNUAL REPORT

Item 3.1: Final Business Plan [Papers 3.1 and 3.1A-C]

15. The Chair provided an update on amendments to the Business Plan (**Paper 3.1A**) since the last meeting, following statutory consultation with the Lord Justice General, Lord Advocate and Scottish Ministers which had been constructive and encouraging. A letter had been received from the Cabinet Secretary for Justice detailing his approval of the Council's proposed areas of work.
16. The summary of discussions with stakeholders on the business plan at **Paper 3.1B** was noted. It was agreed that the **annex to Paper 3.1** should only be published after the launch of the business plan. The suggested communications timeline for the plan's publication at **Paper 3.1C** was noted, with members agreeing the suggested change to the date of publication. The Secretariat would engage with a variety of newspapers and advise members of a publication date once arrangements were finalised. It would be important to ensure that all of the Council's communications made clear the rationale for the guideline topics selected as well as those to be considered for the future.
17. A letter had been received by the Lord President from Families Outside, a charity providing support to those with relatives serving custodial sentences, proposing an event with the judiciary on "an Intelligent Conversation About Children and the Sentencing of Parents". The matter had been passed to the Sentencing Council and the Chair had suggested that the possibility of holding the event with Council members be explored.
18. It was suggested that it would be important to undertake research into the technical reasons why custodial sentences are chosen. Sheriff Principal Abercrombie advised that targeted research was underway in Hamilton Sheriff Court on the reasons why custodial sentences are selected and he would be happy to discuss the detail of the project with other Council members.

19. Members expressed an interest in making links with soon to be established Community Justice Scotland (CJS) to understand better its work. The Secretariat would update members on progress for the establishment of the organisation and formally engage with CJS in due course.
20. Subject to amending the term 'sentencing youths' to 'sentencing young people' and some drafting points being addressed prior to submission, the business plan was agreed.

ACTION POINTS

- **AP6** *Business Plan to be amended and submitted to Scottish Ministers by 26 September*
- **AP7** *Secretariat to take forward communications planning as per the suggested timeline, advise members of the publication date and engage with a range of newspapers emphasising the key messages raise during discussion*
- **AP8** *Secretariat to take forward arrangements for an event with Families Outside*
- **AP9** *Secretariat to provide an update on the establishment of Community Justice Scotland and engage with this organisation in due course*

Item 3.2: Final Annual Report [Papers 3.2 and 3.2A]

21. Members approved the final Annual Report at **Paper 3.2A** which included some minor updates since the last meeting.

ACTION POINTS

- **AP10** *Secretariat to submit the final Annual Report to the Scottish Ministers*
- **AP11** *Secretariat to arrange for publication of the Annual Report along with the Business Plan*

4. GUIDELINES

Item 4.1: Guidelines Methodology: styles road testing [Oral]

22. Andrew Ruxton thanked those members who had tested different guideline styles and the format for road testing exercises for their input which had been most helpful. An update on the progress of the road testing exercises was provided. The first exercise

with sheriffs had taken place at Inverness Sheriff Court, with dates arranged for most of the other sheriffdoms. Feedback so far had been constructive and positive.

23. Road testing materials would be circulated to all members, for interest.

ACTION POINTS

- **AP12** *Secretariat to circulate road testing materials to all members, for interest.*

Item 4.2: General Principles and Purposes [Papers 4.2 and 4.2A-B]

24. **Paper 4.2** provided proposals for the development of a general principles and purposes guideline, and the development of a guideline on sentencing young people. **Paper 4.2B**, a note of discussion at the principles and purposes workshop on 20 June, previously circulated by correspondence, was noted.
25. Carmen Murray introduced **Paper 4.2A**, an outline general principles and purposes guideline and discussed initial options and proposals for specific principles and purposes based on the outcome of discussions at the 20 June workshop. Andrew Ruxton discussed the other aspects focussing more on the sentencing process.
26. Two workshops would be arranged for 05 October, one on the general principles and purposes and another on sentencing young people. While some initial views were discussed at the meeting, members would provide responses in writing to each of the questions in **Paper 4.2A**, by 25 September, to assist the Secretariat in preparing the workshops. A discussion paper for circulating to the judiciary seeking views would be prepared following the workshops.
27. Members had considered a specification for commissioning a literature review during August by correspondence and the Secretariat would update members on progress for procuring the independent review in due course. However, in the short term, Stephen O'Rourke would prepare a short review to accompany the discussion paper for the judiciary.

ACTION POINTS

- **AP13** *Secretariat to arrange two workshops on 05 October on the general principles and purposes guideline and on sentencing young people*

- **AP14** *Members to provide written views on questions 1-22 of Paper 4.2A, by 25 September*
- **AP15** *Stephen O'Rourke to prepare a short literature review on the principles and purposes of sentencing, to accompany the discussion paper for the judiciary*

5. REPORTS

Item 5.1: Work Tracker and Policy and Legislation Tracker [Papers 5.1A and 5.1B]

28. The Council noted the work tracker provided at **Paper 5.1A** and the policy and legislation tracker provided at **Paper 5.1B**. The Scottish Government's Programme for Government had recently been published and the Secretariat would circulate a short note on any areas of interest to the Council.

ACTION POINTS

- **AP16** *Secretariat to circulate a short note on the Scottish Government's Programme for Government*

Item 5.2: Correspondence, FOISA and Complaints [Paper 5.2]

29. The Council noted **Paper 5.2**, a report on the number of FOISA requests, complaints and items of correspondence received.

6. AOB

Item 6.1: Any other business

30. The Chair asked those members who had not done so already to submit their registrable interests by 30 September, in terms of section 5 of the Rules of Conduct as contained in the Standing Orders.

31. The Chair, Sue Moody and David Harvie would each be speaking at the Scottish Association for the Study of Offending Conference in November. Although they would not be speaking in their capacity as Council members, their attendance would ensure that the Council was well represented. It would be useful for a member of the Secretariat to attend. Any other members who wish to attend would submit a note of interest to the Secretariat.

32. Stephen O'Rourke would meet the Faculty's Criminal Law Sub-Committee and the Scottish Criminal Bar Association, most likely before the next meeting.
33. Summary Sheriff Findlay would meet the Glasgow Bar Association in October.

ACTION POINTS

- **AP17** *Members to submit registrable interests by 30 September*
- **AP18** *A member of the Secretariat to attend the SASO Conference*
- **AP19** *Members to provide notes of interest for the SASO Conference*

7. FUTURE MEETING DATES

34. The next meeting would be held at Airdrie Sheriff Court, on 12 December. Ondine Tennant provided an update on the arrangements, which would include the morning being spent observing the sheriff court's criminal business.
35. Dates for 2017 were discussed. The Secretariat would scope alternative dates for the September 2017 meeting and confirm all dates after the meeting.

8. MANAGEMENT INFORMATION ANALYSIS TEAM (MIAT) PRESENTATION

Item 8.1: MIAT Presentation

36. Andrew Bell provided the Council with an overview of what information is currently available, or could be made available, to the Council on Sentencing.
37. Janette Purbrick provided a presentation to the Council on the data available through MIAT's systems, including an update on improvements made to High Court data and how this data could be harnessed to support the Council's work. Janette advised that MIAT would soon begin recruitment for a new Deputy Head of Branch. The postholder will have responsibility for meeting the Council's data needs.
38. The Council discussed the data available through MIAT and agreed to consider at the workshops on 05 October the types of data which would be useful to its work and thereafter make a request to MIAT for that information. The Council thanked Janette for her contribution to the Council's work.

ACTION POINTS

- **AP20** *Council to provide MIAT with a 'wish list' for data following the workshops on 05 October.*

Scottish Sentencing Council Secretariat

September 2016