

## MEETING OF THE SCOTTISH SENTENCING COUNCIL

06 MARCH 2017, RADISSON BLU HOTEL, 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)  
Summary Sheriff Allan Findlay (judicial member)  
Gillian Thomson, Justice of the Peace (judicial member)  
Stephen O'Rourke (advocate member)  
John Scott QC (solicitor member)  
Deputy Chief Constable Iain Livingstone (lay member)  
Sue Moody (lay member)  
Professor Neil Hutton (lay member)
- Attendees:** Hon. Judge McFarland, Sentencing Group for Northern Ireland  
Paul Conway, Secretary to the Sentencing Group for Northern Ireland  
Edward McHugh, Deputy Legal Secretary, Lord President's Private Office
- Secretariat:** Graham Ackerman (Secretary)  
Carmen Murray (Policy Officer)  
Andrew Bell (Principal Research Officer)  
Eileen Grant (Principal Legal Officer)  
Andrew Ruxton (Principal Legal Officer)  
Valerie MacGregor (Communications Officer)  
Michael Wilson (Administrative 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 was currently on parental leave and so had tendered his apologies.

2. The Chair welcomed His Hon Judge McFarland and Paul Conway (Secretary) from the Sentencing Group for Northern Ireland and thanked them for attending the meeting in order to provide an update on, and maintain links with, the Group.
3. The Chair also welcomed Edward McHugh (Deputy Legal Secretary, Lord President's Private Office), who is a permanent observer of Council meetings to allow links with the High Court of Justiciary to be maintained.
4. As Summary Sheriff Allan Findlay's tenure would be ending on 18 April 2017, he would not attend any further Council meetings. Membership was discussed further at item 1.4.

*Note of thanks: the Council wished to record its thanks to Summary Sheriff Findlay for his assistance with the Council's work since its establishment*

5. The Chair advised that Graham Ackerman, whom members previously met at the February workshop, took up post as Secretary on 13 February.
6. The Chair advised that Carmen Murray, Policy Officer, had succeeded in gaining a position within the Scottish Government's Serious Organised Crime Unit and that she would be taking up post on 27 March.

*Note of thanks: the Council wished to record its thanks to Carmen for her work and support to date and that it was regretful she would be leaving the Secretariat.*

7. Andrew Ruxton, currently on parental leave, was welcomed to the meeting as an observer. The Chair noted that he would return on 11 April and so Eileen Grant, who had been covering Andrew's post, would not be attending any further Council meetings.

*Note of thanks: the Council wished to record its thanks to Eileen for her work and support during her time with the Secretariat.*

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

8. The Council agreed the minutes from the previous meeting as provided at **Paper 1.2A**.
9. The Council noted the progress of actions arising from the previous meeting as provided at **Paper 1.2B** and agreed that Action Point 11 of the March 2016 meeting was no longer a priority and should be discontinued.

## ACTION POINTS

- **AP1** *Action Point 11 of the March 2016 meeting to be discontinued*

### *Item 1.3: Private papers*

10. The Council agreed not to publish the following papers: 1.2B, 2.3 and 2.3A-B, 3.3 and 3.3A, 4.1 and 4.1A-C.

### *Item 1.4: Membership [Oral]*

11. The Chair advised that the recruitment process for a new Summary Sheriff member would begin in April following the new intake of summary sheriffs to ensure as wide a pool of candidates as possible, with the aim of appointing the new member in time for the next meeting on 06 June.
12. With regard to Action Point 2 of the June 2016 meeting, the Chair noted that there were no plans to legislate to extend members' service on the Council and that a further update on this matter would be provided to members in due course.

## 2. COMMUNICATIONS AND ENGAGEMENT

### *Item 2.1: Sentencing Group for Northern Ireland [Oral]*

13. The Chair invited Judge McFarland to speak about the work of the Sentencing Group for Northern Ireland and in particular any updates since the Council's visit to Belfast in April 2016.
14. Judge McFarland thanked the Council for inviting himself and Paul Conway to the meeting and noted that it was important for the Council and Sentencing Group to continue to maintain links. An open discussion followed on the following topics in particular:
- a. differences in the sentencing process between Northern Ireland and Scotland, such as how delay is taken into consideration, totality, mandatory minimum sentences, indeterminate custodial sentences, the use of victim impact statements and the minimum period of licence in Northern Ireland (50%);
  - b. format of guidelines in Northern Ireland and elsewhere, including the use of sentencing ranges and starting points;
  - c. impact of guidelines on court proceedings;

- d. consistency in sentencing of reserved offences across the UK jurisdictions;
- e. the role of agents in suggesting appropriate sentencing range with reference to guidelines in Northern Ireland
- f. the Group's experience in consulting on guidelines; and,
- g. the Sentencing Group's next guideline topics.

*Note of thanks: the Council recorded its thanks to Judge McFarland and Paul Conway for attending and providing useful insight and information.*

*Item 2.2: Communications Committee Update [Oral]*

15. **Sheriff McFadyen** provided an update from the Communications Committee, which had not formally met since the previous Council meeting but had been fully engaged electronically. An animated series of videos for the website was under development and an early excerpt was viewed by members. It was agreed that the format and general approach taken was suitable and that the final videos would be beneficial to people without knowledge of the criminal justice system and sentencing.
16. The Council's website capabilities were being developed (for example to include case studies). The Secretariat had recently undertaken easy-read training and would review the website in light of this in due course.
17. It was noted that the Secretariat were in discussion with the Faculty of Advocates around potentially contributing to its mini-trial programme. Council members were also encouraged to either volunteer to write, or provide suggested topics for, blog posts.

**ACTION POINTS**

- **AP2**     **Secretariat to review website content in light of easy-read training**
- **AP3**     **Members to consider volunteering to write, or provide suggested topics for, blog posts**

*Item 2.3: Stakeholder Event – Sentencing Young People [Papers 2.3 and 2.3A-B]*

18. **Sheriff McFadyen** introduced **Paper 2.3** which discussed proposed arrangements for the Council's stakeholder event on *Sentencing of Young People*, scheduled to take place on Friday 28 April. The draft programme, **Paper 2.3A**, was considered and approved subject to a minor amendment regarding the order of the afternoon workshops. The Secretariat would take forward the more detailed arrangements. The

workshop topics were agreed as being appropriate. Each Council member would facilitate a table of delegates during the afternoon workshops and the Secretariat would provide a detailed facilitator's brief to assist with this.

19. Stakeholders had been keen to accept the Council's invitation to attend and the event, which was expected to reach maximum capacity. The update on invited and confirmed attendees at **Paper 2.3B** was noted.
20. Anticipated costs for the event, as noted at **Paper 2.3**, were appropriate and within the expected budget for the next financial year. It was approved in principle that attendees not employed or funded by a public body would be able to claim for reimbursement of travel and subsistence costs, in line with the Council's own policy for members, as assessed by the Secretariat on a case by case basis.

#### **ACTION POINTS**

- **AP4**     ***Secretariat to circulate facilitator's brief for the Sentencing Young People event to members***

#### *Item 2.4: Community Justice Scotland Event [Oral]*

21. **Stephen O'Rourke** provided feedback following his and Val MacGregor's attendance at the Holyrood conference on *Next Steps for Community Justice in Scotland*, which took place on 09 February. An online video of a mock interview for a criminal justice social work report had been circulated to members along with the resultant mock report. It would be beneficial for the Council to receive a briefing session on how the risk of individual offenders is assessed.
22. Ondine Tennant had met Karyn McCluskey, Chief Executive of Community Justice Scotland, in December 2016 and Graham Ackerman would arrange to meet Jean Couper, Chair, in due course.

#### **ACTION POINTS**

- **AP5**     ***Secretariat to take forward arrangements for the council to receive a session on how risk is assessed for individual offenders***

#### *Item 2.5: Howard League Scotland meeting [Oral]*

23. **Eileen Grant** provided feedback following her attendance at the Howard League Scotland (HLS) meeting on 12 January, along with Ondine Tennant. Sue Moody had also attended the meeting in her capacity as a board member of HLS. HLS had been

grateful to Eileen and Ondine for attending to provide an update on the Council and had noted with interest the potential for future research and the upcoming event on *Sentencing of Young People*.

*Item 2.6: Just Us: professionals event [Oral]*

24. **Sheriff McFadyen** provided feedback following his and Graham Ackerman's attendance at the *Just Us* event at Edinburgh Sheriff Court on 13 February, which had been informative. A video had been shown at the event on the difficulties faced by women in the criminal justice system, particularly those experiencing mental health issues. It was agreed that it would be beneficial for members to be able to view this video, if available.
25. **Sue Moody** noted that a project had been planned previously to monitor the appearance of women in court; **John Scott** confirmed that this had taken place and provided details to the Secretariat.

**ACTION POINTS**

- **AP6** *If available, Secretariat to circulate the video from the Just us event on the difficulties faced by women in the criminal justice system*

*Item 2.8: NASC Conference 2017 [Oral]*

26. The Chair advised that the next Conference of the US National Association of Sentencing Commissions ("NASC") had been set for 27-29 August and that in terms of Action Point 5 of the September 2016 meeting the Council had agreed to retain links with this association and consider attendance at future conferences. The programme for the 2017 conference was not yet available.
27. It was agreed that the Council could not make a final decision on attendance at the 2017 Conference until the topics to be covered in the programme were known. However, unless the programme was of immediate and direct relevance to the Council's current work programme, no representatives would be sent and attendance would be revisited next year in relation to the 2018 Conference.
28. In terms of Action Points 3 and 4 of the September 2016 meeting, the report and blog on the NASC Conference 2016 were incomplete. Sue Moody and Sheriff Principal Abercrombie agreed to assist the Secretariat to complete these items.

#### ACTION POINTS

- **AP7** ***Council to consider attendance at the 2017 NASC Conference once the programme is available***
- **AP8** ***Sue Moody and Sheriff Principal Abercrombie to assist the Secretariat to complete the report and blog post on the 2016 NASC Conference***

#### *Item 2.7: Evidence and Procedure Review [Oral]*

29. The Chair provided an update on the *Evidence and Procedure Review*, particularly in light of the recent position paper *A New Model for Summary Criminal Court Procedure* and the proposals relating to digital sentencing.
30. **Part of item 5 (AOB) was brought forward.** It was noted that the Scottish Government (SG) had recently launched a consultation on electronic monitoring in Scotland and that the Secretariat would circulate this along with advice in due course.

#### ACTION POINTS

- **AP9** ***Secretariat to circulate the SG consultation on electronic monitoring in Scotland along with advice on this***

### 3. RESEARCH AND INFORMATION

#### *Item 3.1: Research Committee update [Oral with reference to Papers 3.1 and 3.1A]*

31. **Professor Hutton** provided an update from the Research Committee, which had met on 15 February, with reference to **Paper 3.1** which summarised the Committee's recommendations to the Council. In particular, the Council was advised that advert for the Scottish Graduate School of Social Sciences internship scheme for the research into public perceptions on young people who offend was published in December 2016 and closed on 22 February. Andrew Bell would provide an update in due course.
32. **Paper 3.1A** provided details on a request for support from Dr Sanchez on research into the extent and origins of unwarranted disparities in sentencing in England and Wales, with the aim to make the sentencing process more transparent. The Council agreed that this research would be beneficial and that a letter of support should be provided to Dr Sanchez.

### ACTION POINTS

- **AP10** *Secretariat to provide an update on the outcome of the Council's advert for research into public perceptions on young people who offend*
- **AP11** *Secretariat to provide letter of support to Dr Sanchez for his research into the extent and origins of unwarranted disparities in sentencing in England and Wales*

#### *Item 3.2: Impact Assessments [Papers 3.2 and 3.2A]*

33. **Andrew Bell** introduced **Paper 3.2** which discussed and sought views on a proposed draft impact assessment for the Principles and Purposes of Sentencing guideline [**Paper 3.2A**] and a suggested approach for engagement with key stakeholders prior to public consultation.
34. The structure of the draft impact assessment at **Paper 3.2A** was agreed as a template for future impact assessments, subject to minor amendments to ensure that equality impacts are made more overt. The material provided in **Paper 3.2A** relating to the Principles and Purposes Guideline should be made more concise. The arrangements for early consultation on draft impact assessments were agreed with minor amendments.

### ACTION POINTS

- **AP12** *Secretariat to update the draft impact assessment template in line with discussion*
- **AP13** *Secretariat to amend draft impact assessment for the Principles and Purposes of Sentencing Guideline in line with discussion*
- **AP14** *Secretariat to take forward arrangements for early consultation on the draft impact assessments as discussed*

#### *Item 3.3: Research Framework [Paper 3.3 and 3.3A]*

35. **Andrew Bell** introduced **Paper 3.3** and **Paper 3.3A** on a proposed research framework as recommended by the Research Committee, which would provide structures for in-house, commissioned projects and open calls for research. **Paper 3.3A**, the proposed research framework, would be updated to include the additional paragraphs as suggested by the Secretariat at paragraph 15 of **Paper 3.3** (in relation to the decision

making framework), and to include as a core research interest *the operation of guidelines*.

36. Subject to those amendments the proposed research framework at **Paper 3.3A** was agreed.

#### ACTION POINTS

- **AP15** *Secretariat to update the research framework in line with the Council's discussion and finalise arrangements for it to be adopted and published*

#### 4. REPORTS

*Item 4.1: Work Tracker, Work Programme Overview and Policy and Legislation Tracker*  
**[Papers 4.1 and 4.1A-C]**

37. **Paper 4.1** provided advice on two recent developments relevant to the business plan; a Court of Appeal judgment (*Wood, Tennant & McLean v. HMA* [2017] HCJAC 2) suggesting that the SG or Council may wish to consider whether there should be legislative changes to expand the circumstances in which a court can impose an extended sentence for the completion of rehabilitation programmes in cases involving the possession of indecent images, and a Ministry of Justice (MoJ) consultation on proposals relating to offences and penalties for dangerous driving.
38. In relation to the former, the SG was giving consideration to the issues raised. The Secretariat would meet SG officials to discuss the Court's remarks further and revert with advice in due course.
39. In relation to the MoJ consultation, it was agreed to continue preparatory work as planned for the development of a death by driving guideline but to review the matter once the MoJ had clarified its intentions and timescales for any legislative changes following the consultation.
40. The Council noted the work tracker provided at **Paper 4.1A**, the work programme overview provided at **Paper 4.1B** and the policy and legislation tracker provided at **Paper 4.1C**.

### ACTION POINTS

- **AP16** *Secretariat to meet SG officials to discuss the Court's remarks in Wood, Tennant & McLean v. HMA [2017] HCJAC 2 and revert to the Council with further advice*
- **AP17** *Secretariat to revert with further advice on the MoJ consultation on proposals to increase penalties for dangerous driving offences, once the MoJ had clarified its intentions following consultation*

#### *Item 4.2: Correspondence, FOISA and Complaints [Paper 4.2]*

41. **Paper 4.2**, a report on the number of FOISA requests, complaints and items of correspondence received, was noted.

### 5. AOB

42. **Paper 5.1** proposed changes to the Council's standing orders to allow for a formal delegation process for approving Council statements to the press in the absence of the Chair, which were agreed.
43. The Council's budget for 2017/18 had not yet been confirmed, but should be finalised shortly.
44. The Chair advised that the judicial consultation on the Principles and Purposes of Sentencing Draft Guideline had been published and would close on 14 April. Judicial members were asked to encourage colleagues to respond to the consultation.

### ACTION POINTS

- **AP18** *Judicial members to encourage colleagues to respond to the consultation on the Principles and Purposes of Sentencing Draft Guideline*
- **AP19** *Secretariat to update standing orders, as agreed, to allow for a formal delegation process for approving Council statements to the press*

## 7. FUTURE MEETING DATES

45. The next event would be the *Sentencing of Young People* stakeholder event on Friday 28 April. The next workshop would be Friday 26 May, which would focus on the outcome from the judicial consultation.
46. The next Council meeting would take place on Tuesday 06 June. The 25 September meeting had been confirmed following the previous meeting but was being reconsidered. The Secretariat had circulated alternative dates to members would confirm a September meeting date as soon as possible.

### ACTION POINTS

- **AP20** *Secretariat to confirm September 2017 meeting date*

Scottish Sentencing Council Secretariat

March 2017