

MEETING OF THE SCOTTISH SENTENCING COUNCIL

22 SEPTEMBER 2017, 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)
David Harvie, Crown Agent for Scotland (prosecutor member)
Stephen O'Rourke QC (advocate member)
John Scott QC (solicitor member)
Deputy Chief Constable Iain Livingstone (lay member)
Sue Moody (lay member)
Professor Neil Hutton (lay member)
- Attendees:** Gordon Jack, former PhD intern
David Dickson, Scottish Government (taking up post as Principal Legal Officer on 25 October 2017)
- Secretariat:** Graham Ackerman (Secretary to the Scottish Sentencing Council)
Andrew Bell (Principal Research Officer)
Irene Permaul (Policy Officer)
Valerie MacGregor (Communications Officer)
Michael Wilson (Administrative Officer)
- Apologies:** Summary Sheriff Andrew McIntyre (judicial member)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that apologies had been received from Summary Sheriff Andrew McIntyre, who was recently appointed as the Council's new summary sheriff member. The Chair offered congratulations to Stephen O'Rourke QC, who has been made Queen's Counsel.

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

2. Minutes of the 06 June Council meeting were agreed as provided in **Paper 1.2A**.

3. The Council noted the progress of actions from the previous meeting as provided at **Paper 1.2B.**

Item 1.3: Private papers

4. The Council agreed not to publish the following papers: 1.2B, 3.1, 3.2, 3.2A, 3.2B, 3.3, 3.3A, 3.3B, 4.2, 4.2A-D, 5.1, 5.1A, 5.2A-C, 5.4, and 6.1

Item 1.4: Membership

5. As already noted, the Chair informed members that Summary Sheriff Andrew McIntyre has been appointed to the Council following a recruitment exercise earlier in the year.
6. The Chair noted various changes to the Secretariat. Irene Permaul has joined as Policy Officer, while Andrew Ruxton has departed to take up a promotion within the Scottish Government. He will be replaced by David Dickson, who is due to take up post as Principal Legal Officer in late October.

2. COMMUNICATIONS AND ENGAGEMENT

Item 2.1: Communications Committee update [Oral]

7. Sheriff McFadyen provided an update on the work of the Communications Committee, which met on 14 September. He noted various pieces of on-going communications and engagement work including the development of three additional interactive case studies for the Council's website and engagement with schools through adding a sentencing component to the 'mini trials' programme. It was also noted that the Council will be represented at the Parliament House doors open day on 23 September.
8. Members' views were sought on a proposal by the Committee to create a "myth-busting" section on the website, aimed at dispelling common sentencing misconceptions. This could then be highlighted when particular issues are raised in the media and elsewhere as a way of informing discussion and debate. Members agreed this would be useful.

9. It was proposed that the Council should hold a second conference following the success of the Sentencing Young People event in April 2017. An event focusing on sexual offences involving a broad range of organisations would be useful to inform the Council's work in this area and provide input on the scope of a potential guideline and on proposed research topics.
10. It was also suggested that a smaller engagement event with a workshop format, focusing on sentencing young people, could potentially be held in due course to further inform work in this area. Members agreed to both proposals.
11. In relation to the current public consultation on the Principles and Purposes of Sentencing draft guideline, it was noted that engagement with various stakeholder groups is on-going.

ACTION POINTS

- **AP1** *Secretariat and Communications Committee to develop a 'myth-busting' section for the Council website.*
- **AP2** *Communications Committee to further develop plans for a conference on sexual offences and a workshop on sentencing young people to be taken forward in 2018.*

Item 2.2: Engagement with the Scottish Prison Service (Economics of Penal Policy discussion event) and Prison Reform Trust (Transforming Lives steering group) [Oral]

12. John Scott QC provided feedback on his attendance at these events. Both were useful, particularly in raising awareness of the Council's work, and it was seen as positive for the Council's public presence that members had been asked to attend.

Item 2.3: Engagement with the England and Wales Sentencing Council and Howard League [Oral]

13. Graham Ackerman provided a brief update on a recent meeting with the England and Wales Sentencing Council Secretariat, which included discussion of the respective work programmes of both Councils. It was noted that an invitation had been offered

to observe a meeting of the England and Wales Sentencing Council; the Secretariat will explore this further in due course.

14. An update was also provided in relation to engagement with the Howard League and Barrow Cadbury Trust, which was arranged following publication of a recent research report exploring the role of maturity in sentencing young adults. This was useful in highlighting potential sources of information to inform the Council's work on the sentencing of young people.

ACTION POINTS

- **AP3** *Secretariat to arrange an opportunity for Council representatives to observe a meeting of the England and Wales Sentencing Council.*

3. SENTENCING GUIDELINES

Item 3.1: Update on guideline approval process [Paper 3.1]

15. Members noted on-going work to finalise the process by which guidelines will be approved by the High Court.

Item 3.2: Work programme [Papers 3.2, 3.2A, 3.2B]

16. **Paper 3.2** provided advice on two areas of potential government activity relevant to the business plan; a Ministry of Justice (MoJ) consultation on proposals relating to offences and penalties for dangerous driving (which was discussed previously at the March 2017 meeting) and a Scottish Government commitment to "*increase the penalties for wildlife crime and consider the creation of new sentencing guidelines in line with the recommendations of the Wildlife Criminal Penalties Review Group*".
17. In relation to the MoJ consultation, which has closed but with no indication as yet of whether any action will be taken, it was agreed to continue preparatory work for the development of a death by driving guideline and to review this again should MoJ clarify its intentions in relation to any proposed legislative changes.

18. In relation to potential Scottish Government action to alter penalties for wildlife offences, it was recognised that this may have an impact on the Council's ability to prepare a guideline on environmental and wildlife crime. Members agreed that a research project to examine the potential scope of such a guideline should continue, but should include consideration of whether a standalone environmental guideline would be viable should the proposed changes to wildlife penalties result in a delay to work in this area. The scope of this guideline will be reviewed again following this research.
19. **Paper 3.2** also provided a revised indicative timetable for guideline development, reflecting progress to date and lessons learned during the development of the Council's first guideline. The revised timetable was noted by members and it was agreed that an update should be published to reflect this, given that some likely timings differ from those in the current business plan.

ACTION POINTS

- **AP4** ***Secretariat to revert with further advice in relation to the death by driving guideline once MoJ has indicated whether any action will be taken following its consultation.***
- **AP5** ***Research to be undertaken in relation to the potential scope of an environmental and wildlife offences guideline, reflecting potential legislative changes in this area, to inform further Council consideration in early 2018.***
- **AP6** ***Secretariat to develop a suitable update to reflect the revised timetable for guideline development.***

Item 3.3: Methodology [**Papers 3.3, 3.3A, 3.3B**]

20. **Papers 3.3, 3.3A and 3.3B** noted progress in developing a methodology for guideline development once a topic has been selected and provided drafts for consideration. Members were content with the approach being taken and noted that development of these documents will continue.
21. There was some related discussion around the need to monitor compliance with guidelines once these are in force; Andrew Bell noted that discussions with the Scottish Courts and Tribunals Service in relation to data gathering are on-going.

4. RESEARCH AND INFORMATION

Item 4.1: Research Committee update [Oral]

22. Neil Hutton provided an update on recent work carried out by the Research Committee. In particular, the Committee has agreed to take forward research projects in the following areas:

- Public perceptions of youth offending and sentencing in hard to reach groups (extending the focus group work noted in item 4.2);
- Engagement with young offenders in relation to the sentencing young people guideline (in 2018/19);
- Youth offending literature review;
- Environment and wildlife crime PhD internship;
- Comparative fines analysis for environment and wildlife crime;
- Death by driving judicial engagement;
- Sexual offences shrieval engagement; and
- Sexual offences court observation.

Item 4.2: Sentencing young people – update on focus group research [Papers 4.2A-D]

23. Gordon Jack gave a presentation to members outlining the research undertaken around public perceptions of youth offending during his recent internship with the Council secretariat.

24. Themes identified included public views around the important role of rehabilitation in sentencing young people, as well as the potential for early intervention to prevent offending behaviour. It was noted that this research provides a good starting point to highlight areas the Council may want to explore more deeply through future work. The Chair thanked Gordon Jack for his extensive work on this project.

5. REPORTS

Item 5.1: Annual Report 2016/17 [Papers 5.1 and 5.1A]

25. The final Annual Report for 2016/17 was approved by the Council; this will now be submitted to the Scottish Ministers, laid in the Scottish Parliament, and published shortly thereafter.

Item 5.2: Work Tracker, Policy and Legislation Tracker and Finance Overview [Papers 5.2A-C]

26. The Council noted the work tracker provided at **Paper 5.2A**, the policy and legislation tracker provided at **Paper 5.2B**, and the Finance Overview provided at **Paper 5.2C**.

Item 5.3: Correspondence, FOISA, and Complaints [Paper 5.3]

27. **Paper 5.3**, a report on the number of FOISA requests, complaints and items of correspondence received, was noted.

Item 5.4: Review of Committee Structures [Paper 5.4]

28. Irene Permaul introduced **Paper 5.4**, which provided advice enabling the Council to review its committee structures as required annually under Standing Order 9.4.

29. In relation to the existing committees (the Research Committee and Communications Committee) it was agreed that both are performing well and that the current remits do not require any amendment. It was also agreed that an additional member should be appointed to the Communications Committee; Summary Sheriff Andrew McIntyre was nominated.

30. Members also agreed to a proposal to create four new guideline-specific committees to carry out focused work on particular guidelines, as follows:

- Sentencing young people
- Death by driving
- Environmental and wildlife offences
- Sentencing process

31. With the Council's guideline development work increasing, it was agreed that this will provide a more flexible and efficient way of working. Members agreed to the approach set out in **Paper 5.4** with regard to the administration of the committees,

including that formal papers and other support will need to be kept to a minimum given limited resources.

32. Members agreed to submit expressions of interest to the Secretariat indicating which committees they would like to participate in (though it was noted that the Sentencing Process Committee will likely be comprised of the current working group members). Final memberships will be agreed by the Council either by correspondence or at the December meeting. The Secretariat will prepare draft committee remits for consideration.
33. There was some discussion around the role of the Research Committee after subject-specific committees have been established. It was agreed that this should continue to oversee the Council's research programme and should work closely with other committees in identifying what research is required, and that it may be useful to develop a template outlining the information to be provided to the Committee in relation to research requests.

ACTION POINTS

- **AP7** *Summary Sheriff McIntyre to be invited to join the Communications Committee.*
- **AP8** *Members to submit notes of interest in guideline specific committee membership to the Secretariat.*
- **AP9** *Secretariat to prepare draft remits for the new guideline specific committees.*
- **AP10** *Research Committee to produce a template outlining the information required in relation to research requests.*

6. Assisting Policy Development

Item 6.1: Assisting Policy Development [Paper 6.1]

34. A draft description of the Council's policy role was circulated in August following discussion at the June 2017 meeting. **Paper 6.1** noted various suggested amendments from members; the revised approach was agreed though some drafting alterations may be suggested by the Secretariat, subject to the approval of the Chair.

ACTION POINTS

- **AP11** *Secretariat to consider drafting of policy description and submit any changes to the Chair for approval.*

7. AOB

Item 7.1 AOB [Oral]

35. The Council noted the recent announcement by the Scottish Government of its intention to extend the presumption against short sentences to 12 months; this will be discussed further in due course.

8. Future meetings

36. The next Council meeting will take place on Monday 11 December in Dundee. The Council agreed to the proposed programme for the day.

37. The first Council meeting of 2018 is scheduled for Monday 05 March in Edinburgh.

38. Members will be contacted shortly by the Secretariat to identify potential dates for workshops during 2018.

ACTION POINTS

- **AP12** *Secretariat to circulate proposed dates for workshops in due course.*