

## MEETING OF THE SCOTTISH SENTENCING COUNCIL

11 JUNE 2018, PARLIAMENT HOUSE EDINBURGH

### MINUTES

- Members present:** Lord Turnbull (Chair)  
Sheriff Principal Ian Abercrombie QC (judicial member) (*until item 3.5*)  
Sheriff Norman McFadyen (judicial member)  
Summary Sheriff Jillian Martin-Brown (judicial member)  
Gillian Thomson, Justice of the Peace (judicial member)  
David Harvie, Crown Agent (prosecutor member)  
Stephen O'Rourke QC (advocate member)  
John Scott QC (solicitor member)  
Deputy Chief Constable Iain Livingstone (lay member) (*from item 2.1*)  
Sue Moody (lay member)  
Professor Neil Hutton (lay member)
- Attendees:** Neil Rennick, Director of Justice, Scottish Government (*for item 3.5 only*)  
Philip Lamont, Head of Criminal Law, Practice and Licensing Unit, Scottish Government (*for item 3.5 only*)  
Leah McCabe, Ph.D. intern
- Secretariat:** Graham Ackerman (Secretary)  
Ondine Tennant (Secretary)  
David Dickson (Principal Legal Officer)  
Andrew Bell (Principal Research Officer)  
Stuart Ritchie (Communications Officer)  
Michael Wilson (Administrative Officer)
- Apologies:** Lady Dorrian QC, the Lord Justice Clerk (Chair)  
Edward McHugh, Lord President's Private Office

## 1. PROCEEDINGS

### *Item 1.1: Introduction and welcome*

1. Lord Turnbull opened the meeting as Chair in the absence of the Lord Justice Clerk as per section 1.6 of the standing orders.
2. The Chair noted that apologies had been received from the Lord Justice Clerk and Edward McHugh.

3. The Chair welcomed Summary Sheriff Jillian Martin-Brown to the Council. Summary Sheriff Martin-Brown was appointed to the Council by the Lord Justice General on 4 June 2018 following a recruitment process and statutory consultation with the Scottish Ministers.
4. The Chair welcomed Stuart Ritchie who has been appointed as the Council's Communications Officer.

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

5. Minutes of the Council meeting of 05 March 2018 were provided at **Paper 1.2A**. The Council agreed the minutes.
6. The Council noted the progress of actions provided at **Paper 1.2B**.

*Item 1.3: Private papers*

7. The Council agreed not to publish the following papers: 1.2B, 3.1, 3.1A-C, 3.2.0-3.2.7, 3.4, 3.4A-B, 4.3, 4.3A-E, 5.1.

## **2. COMMUNICATIONS AND ENGAGEMENT**

*Item 2.1: Communications Committee update [Oral]*

8. Sheriff McFadyen provided an update on the work of the Communications Committee. In particular:
  - An overview of the Sexual Offences Conference to be held in Edinburgh on 22 June 2018 was provided.
  - Recent parliamentary questions on the Council's work programme were noted along with a forthcoming meeting with Daniel Johnson MSP.
  - Lesson plans for secondary school have been developed and will be circulated once placed on corporate templates.

9. Stephen O'Rourke provided an update on a recent presentation delivered to Scottish Prison Service staff at a May knowledge sharing event, and their offer to host the Council at a future meeting or workshop.

**ACTION POINTS**

- AP1:** *Communications committee to explore arranging introductory meetings with other justice spokespeople as part of engagement programme.*
- AP2:** *Secretariat to circulate lesson plans to Council in due course.*
- AP3:** *Secretariat to explore options for holding a future meeting or workshop at a prison.*

*Item 2.2: Update on visit to England and Wales Sentencing Council [Oral]*

10. Ondine Tennant provided an update on a visit to an England and Wales Sentencing Council meeting in April 2018.

**ACTION POINTS**

- AP4:** **Secretariat to circulate a note of the recent visit to the England and Wales Sentencing Council with suggested points for the Council to consider.**

*Item 2.3: Methodology for guideline development [Oral]*

11. David Dickson provided an update on the work to revise the guideline development methodology paper, which is intended for publication on the Council's website in due course, following the Council's April workshop.

**ACTION POINTS**

- AP5:** **Communications Committee to consider the revised methodology prior to it being circulated to the full Council for agreement.**

*Item 2.4: Justice Committee appearance [Oral]*

12. Lord Turnbull provided an update on his appearance at the Justice Committee on 05 May 2018, on behalf of the Council, to provide oral evidence in respect of the electronic monitoring aspects of the Management of Offenders (Scotland) Bill.

*Item 2.5: NASC Conference 2018 [Oral – with reference to Paper 2.5]*

13. The Council discussed attendance at the US National Association of Sentencing Commissions conference in 2018. It was agreed that attendance may be useful given the relevance of the programme and opportunities to engage with a significant number of sentencing bodies.

**ACTION POINTS**

- AP6:** *Members to provide notes of interest in attendance at NASC Conference and Secretariat to arrange attendance thereafter.*

**3. SENTENCING GUIDELINES**

*Item 3.1: Item 3.1 Principles and purposes – public consultation response [Papers 3.1, 3.1A-C]*

14. **Paper 3.1** noted the decision taken at the January workshop to publish a report setting out the Council's views on the issues raised in the public consultation on the Principles and Purposes of Sentencing guideline, and to respond separately to the comments offered by the Scottish Ministers and Lord Advocate during the statutory consultation. A draft of the report [**Paper 3.1A**] and letters to the statutory consultees [**Paper 3.1**] were discussed.
15. Members agreed the responses to the statutory consultees and, subject to some amendments, to the publication of the report.

**ACTION POINTS**

- AP7:** *Secretariat to circulate a revised version of the report to members for agreement; take forward arrangements for contacting statutory consultees; and thereafter publish the report on the public consultation on the principles and purposes guideline.*

*Item 3.2: Guideline styles [Oral with reference to Papers 3.2.0 – 3.2.7]*

16. The Council was provided with a set of draft guideline style options. Members offered feedback on these options.

#### **ACTION POINTS**

- AP8:** *Secretariat to commission a design for the principles and purposes guideline based on feedback provided.*
- AP9:** *Secretariat to test styles with the judiciary before tendering more widely for design of subsequent guidelines, under the auspices of the Communications Committee.*

#### *Item 3.3: Guideline committee updates [Oral]*

17. Lord Turnbull provided an update on the work of the Sentencing Process Committee, which has now agreed a draft guideline and consultation document for judicial engagement. This will be circulated to the rest of the Council for approval.
18. Sheriff Principal Abercrombie provided an update on the work of the Sentencing Young People Committee, which is considering feedback from a round table discussion with various experts in May and is now considering a draft guideline.
19. David Harvie provided an update on the work of the Death by Driving Committee, which would meet that afternoon to discuss, among other things, plans for data gathering and research with the judiciary.
20. Stephen O'Rourke QC provided an update on the work of the Environment and Wildlife Committee, which has begun to consider a structure for the guideline and its potential scope.

#### **ACTION POINTS**

- AP10:** *Sentencing Young People Committee to explore engagement with NHS Lothian Child and Adolescent Mental Health Services at Royal Edinburgh Hospital, Morningside Place Edinburgh.*
- AP11:** *Secretariat to explore engagement with the Scottish Government's Health and Justice Collaboration Improvement Board regarding the sentencing young people guideline and links to mental welfare issues.*

*Item 3.5 was brought forward*

*Item 3.5: Update from Scottish Government [Oral]*

21. Neil Rennick, Director of Justice, and Philip Lamont, Head of Criminal Justice, Practice and Licensing Unit, Scottish Government, joined the meeting and provided an update on current Scottish Government activity, followed by a general discussion about the work of both the Scottish Government and the Council.

*Item 3.4: Development of Business Plan 2018-21 [Papers 3.4, 3.4A-B]*

22. **Paper 3.4** provided members with an overview of the draft business plan [**Paper 3.4A**] and stakeholder engagement [**Paper 3.4B**].
23. Members agreed to the recommendations set out in paragraph 13 of **paper 3.4**, including to the draft Business Plan 2018-21 (subject to some changes discussed), the stakeholder engagement plans, and the arrangements for statutory consultation with the Scottish Ministers, Lord Advocate, and Lord Justice General.

**ACTION POINTS**

- AP12: Subject to some amendments in respect of terminology, Secretariat to proceed with arrangements for statutory consultation on the Business Plan 2018-21.**

*Item 3.6: Update on the High Court approval process [Oral]*

24. David Dickson provided an update on the procedure for guideline approval and a proposal for the court rules to govern the process. These will be put before the Criminal Courts Rules Council at its meeting on 18 June 2018.

**4. RESEARCH AND INFORMATION**

*Item 4.1: Research Committee update [Oral]*

25. Neil Hutton provided an update on the work of the Research Committee, including arrangements for the 2018/19 PhD internship scheme and participation in several sheriffdom conferences arranged towards the year's end.

### **ACTION POINTS**

**AP13:** *Secretariat to circulate details of the sheriffdom conferences and canvass members for availability to attend.*

#### *Item 4.2: 2018/19 Research priority areas [Paper 4.2]*

26. The Council agreed to the proposed research priority areas.

#### *Item 4.3: Research projects for approval and information [Papers 4.3, 4.3A-E]*

27. Andrew Bell sought approval for three specific research projects which require full Council approval as a result of anticipated costs, and provided an overview of a proposed package of smaller scale research projects..

28. The Council approved the three specific projects and noted the proposed package of smaller scale research projects . Decisions on the detail of these projects were delegated to the Research Committee.

29. The Council discussed a recently received speculative research proposal. The Council decided not to fund this project; while members felt the project was worthwhile, they considered that it did not sufficiently align with the current business plan to justify contributing funding at this time.

### **ACTION POINTS**

**AP14:** *Secretariat to decline the speculative research proposal on behalf of the Council.*

**AP15:** *Secretariat to proceed with arrangements for the approved research projects under the auspices of the Research Committees.*

#### *Item 4.4: Research Committee revised remit [Papers 4.4]*

30. The Council agreed a revised remit for the Research Committee which incorporates a reference to the newly introduced working group committees.

## 5. REPORTS

### *Item 5.1: Finance Overview [Paper 5.1]*

31. Graham Ackerman provided an update on the budget allocation for 2018-19.
32. Graham also provided an update on the other papers which usually accompany the finance overview, which are being reviewed following the discussions around working arrangements at the April workshop. Members agreed that the policy and legislation tracker should be provided by exception only, and that the action tracker is no longer necessary given that actions for attention by members are now recorded and provided separately (in **Paper 1.2B**).

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

33. **Paper 5.2**, a report on the number of FOISA requests, complaints and items of correspondence received, was noted.

### *Item 5.3: Process for agreeing items by correspondence [Oral]*

34. Graham Ackerman outlined a detailed proposal for agreeing items by correspondence following discussion at the Council workshop in April, expanding on that already provided by the standing orders. This will be tested over the coming months; consideration will then be given to whether an amendment to the standing orders may be useful. The Council agreed that the procedure should be as follows:
  - Items will only be circulated for agreement by correspondence with the consent of the Chair (or, in the Chair's absence, those identified in the standing orders as being able to discharge the Chair's functions in such circumstances).
  - Members will be given a minimum of 2 weeks to respond (unless the Chair considers any matter to require urgent consideration).
  - If a member does not respond, it will be assumed that they are content with the proposal.

- Any matter subject to consideration by correspondence will be tabled for discussion at the next Council meeting in the following circumstances:
  - Any member requests that the matter is so tabled.
  - Any significant changes to the proposal are suggested which, in the view of the Chair, cannot be resolved without further discussion.
- In advance of a matter being tabled for discussion at a Council meeting, the Chair may request that a relevant committee consider any issues raised.
- The outcome of consideration by correspondence will be recorded in the minutes of the next relevant meeting.

## 6. AOB

### *Item 6.1 AOB [Oral]*

35. Graham Ackerman provided an update to members on changes made to ensure the Council is GDPR compliant.
36. Following recent discussion around meeting dates, the next Council meeting date in September will be retained but the Secretariat will explore whether it may be possible to change the December date based on proposals to combine it with a potential visit to a problem-solving court.
37. Members agreed to appoint Summary Sheriff Martin-Brown to sit on the Communications Committee and Environment and Wildlife Committee, to replace former member Sheriff McIntyre.
38. Graham Ackerman provided an update on a recent review of the secretariat resourcing and structure, with a view to ensuring that the Council's forthcoming business plan can be delivered effectively. The Council agreed with the various matters discussed, including some potential changes to the secretariat.
39. Graham Ackerman provided an update on a planned visit to the Council by a group of Taiwanese judges on 26 September 2018.

## **ACTION POINTS**

- AP16:** *Secretariat to provide options for a December meeting and visit.*
- AP17:** *Secretariat to explore a visit to Gartcosh.*
- AP18:** *If the Council meeting date in December changes, Sentencing Young People Committee meeting scheduled that date to be rearranged.*
- AP19:** *Secretariat to circulate details of the potential changes to the team structure.*

## **7. Future meetings**

40. The next Council meeting will take place on Monday 03 September 2018. The next Council workshop will take place on Monday 15 October 2018.

41. The December 2018 Council meeting will be held in Glasgow, subject to members' availability on alternative dates. Until this is confirmed, members should continue to hold 10 December as the meeting date.