

MEETING OF THE SCOTTISH SENTENCING COUNCIL

03 SEPTEMBER 2018, PARLIAMENT HOUSE EDINBURGH

MINUTES

Members present: Lady Dorrian QC, the Lord Justice Clerk (Chair) (*for items 1, 3, 6.1*)
Lord Turnbull (senator member) (*Chair following departure of Lady Dorrian*)
Sheriff Principal Ian Abercrombie QC (judicial member)
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)
John Scott QC (solicitor member)
Chief Constable Iain Livingstone (lay member) (*from item 2.3*)
Sue Moody (lay member)
Professor Neil Hutton (lay member)

Attendees: Edward McHugh, Lord President's Private Office (observer)
David Ross, Scottish Civil Justice Council (observer)
Andy Wagstaffe, Scottish Courts and Tribunals Service (observer)
Vari Anderson, Scottish Courts and Tribunals Service (observer)

Secretariat: Graham Ackerman (Secretary)
David Dickson (Principal Legal Officer)
Andrew Bell (Principal Research Officer)
Stuart Ritchie (Communications Officer)
Michael Wilson (Business Manager)

Apologies: Stephen O'Rourke QC (advocate member)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that, as she would not be present for the whole meeting, items 1, 3, and 6.1 would be discussed first. Lord Turnbull would take over as Chair thereafter as per paragraph 7(2) of Schedule 1 to the Criminal Justice and Licensing (Scotland) Act 2010.
2. The Chair noted that apologies had been received from Stephen O'Rourke QC.

3. The Chair noted this was the last formal Council meeting to be attended by Gillian Thomson JP and John Scott QC, as their terms of office end on 18 October 2018. On behalf of the Council, the Chair thanked both members for their valuable contribution to the work of the Council over the past 3 years. The Chair advised that the recruitment process for their replacements had commenced, with the aim to have new members in place for the December meeting.
4. The Chair congratulated Iain Livingstone on his recent appointment as Chief Constable of Police Scotland.
5. The Chair advised that the secretariat had advertised work shadowing opportunities for Scottish Courts and Tribunals Service staff, in order to increase knowledge of the work of the Council and to encourage staff to consider applying for secretariat positions in future. In consequence, Andy Wagstaffe, Relief Administrative Officer from Inverness, and Vari Anderson, Sheriff Clerk Depute from Airdrie, were in attendance, and were welcomed to the meeting.
6. The Chair welcomed David Ross, who will be taking up post as Senior Policy Officer on 18 September.
7. The Chair noted that Ondine Tennant, Secretary to the Council, is now on maternity leave and is not expected to return until mid-2019.

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

8. Minutes of the Council meeting of 11 June 2018 were provided at **Paper 1.2A**. The Council agreed the minutes.
9. The Council noted the progress of actions provided at **Paper 1.2B**.

Item 1.3: Private papers

10. The Council agreed not to publish the following papers: 1.2B, 2.3, 2.3A, 3.1, 3.1A-C, 3.2, 3.2A-F, 5.1, 6.1, 6.1A-C, 6.2, 6.2A, 6.3A and 6.3C

Item 3.2 was brought forward

Item 3.2: High Court approval process and submission of first guideline [Paper 3.2, 3.2A-F]

11. **Paper 3.2** noted that, following engagement with the Lord Justice General and consideration by the Criminal Courts Rules Council, a process for the submission of guidelines to the High Court has been developed and agreed. The relevant Act of Adjournal (Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Approval of Sentencing Guidelines) 2018¹) will come into force on 04 September 2018.
12. This process will involve the following steps:
- When the Council has finalised a guideline and accompanying impact assessments, it will submit them (along with any other relevant information) to the High Court for approval by petition, using Form 68.2 as set out in in the Act of Adjournal.
 - The High Court will appoint a diet for consideration of the application to take place as soon as practicable. The Court will be chaired by the Lord Justice General or, in his/her absence, by the most senior judge of the High Court other than a judge who is a member of the Scottish Sentencing Council.
 - If the High Court is considering doing anything other than approving the guideline in its entirety (for example, if it is inclined to amend the guideline), it must inform the Council of this in writing; the Council will then have 8 weeks to respond.
 - Approval or rejection of the guideline will take place in open court.
13. With this process now agreed, the Chair noted that the Council's first guideline, which sets out the principles and purposes of sentencing, could be submitted to the High Court for consideration. The Council discussed various practicalities relating to the submission of the guideline.
14. In particular, it was agreed that when formatting the final version of the guideline, a short statement setting out its applicability should be added (i.e. that it applies to all offenders sentenced on or after a particular date); that a proposed date for the

¹ <http://www.legislation.gov.uk/ssi/2018/229/contents/made>

guideline to come into effect should be included in the petition and that this should be approximately one month following approval; and that various documents relating to the public consultation on the guideline (all of which are already in the public domain) should be provided to the High Court to inform its consideration.

15. The Council agreed that the submission of the guideline and its approval (subject to the views of the High Court) should take place as soon as practicable. The Council agreed on the format of the final guideline as set out in **Paper 3.2B**.

16. The Council also discussed plans to raise public awareness of the guideline in due course, and the need to liaise with the Judicial Institute and the Scottish Courts and Tribunals Service (“SCTS”) to ensure that any judicial or staff training needs are addressed.

ACTION POINTS

- AP1:** *Secretariat to finalise the ‘Principles and purposes of sentencing’ guideline, petition, and associated documentation, for submission to the High Court as soon as practicable.*
- AP2:** *Secretariat to investigate submission and entry into force timings for the ‘Principles and purposes of sentencing’ guideline with relevant parties, including the Judicial Institute and SCTS, with regard to any training or awareness-raising needs.*
- AP3:** *Secretariat to work with Communications Committee to finalise plans relating to the approval and commencement of the ‘Principles and purposes of sentencing’ guideline.*

Item 6.1 was brought forward

Item 6.1: Business Plan 2018-21 [Papers 6.1 and 6.1A-C]

17. **Paper 6.1** introduced the final draft of the business plan for 2018-21. The Chair informed the Council that the required statutory consultation on the proposed business plan (with the Scottish Ministers, Lord Advocate, and Lord Justice General) is now complete. It was noted that the secretariat has also engaged with a variety of stakeholders since the last meeting to discuss the Council’s work programme. No

significant issues relating to the proposed work programme were raised during either the statutory consultation or discussions with stakeholders.

18. Members agreed to the recommendations set out in paragraph 19 of **Paper 6.1**, including approval of the Business Plan 2018-21 (subject to minor drafting and formatting changes, which will be cleared by the Chair) and agreement to it being submitted to the Scottish Ministers before 19 October 2018.

ACTION POINTS

AP4: Secretariat to produce final version of Business Plan 2018-21 for submission to the Scottish Ministers before 19 October 2018.

Item 3.1 was brought forward

Item 3.1: Project initiation documents [Papers 3.1, 3.1A-C]

19. **Paper 3.1** noted that the first stage of the guideline development process (agreed previously by members) involves the relevant committee giving detailed consideration to the aim of the proposed guideline, its likely scope, and how it will be developed. These matters are captured in a project initiation document and stage 1 ends with consideration of this by the Council, enabling members to consider whether they are content to proceed with the development of a guideline on a particular topic following initial preparatory work.
20. The Council discussed the two project initiation documents relating to guidelines on the sentencing of young people and causing death by driving, and agreed to proceed with the development of guidelines on both topics. The Council also agreed that the creation and consideration of these documents, which have not previously been used, is useful and should be continued for future guidelines.

Item 3.3 was brought forward

Item 3.3: Guideline committee updates [Oral]

21. The Chair provided an update on the work of the Sentencing Process Committee. She advised that the draft guideline has been circulated to the judiciary for views,

and that the period of judicial consultation will run until the end of October. Thereafter responses will be analysed.

22. Sheriff Principal Abercrombie provided an update on the work of the Sentencing Young People Committee. The Committee plans to provide a draft guideline to the Council soon, with a view to discussing this at the workshop on 15 October. The Committee is giving particular consideration to the scope of the guideline and to how best to engage with young people in its development.

23. David Harvie provided an update on the work of the Death by Driving Committee. He noted that judicial research is currently being undertaken and should conclude within the next month or so. Further research is planned to gather data on current practice, primarily by engaging with SCTS and other justice organisations.

24. Gillian Thomson JP noted that the Environment and Wildlife Committee had been unable to convene prior to the meeting. A meeting has been fixed for late September, at which point the committee will resume its consideration of the scope of the guideline, and what further research and stakeholder engagement will be required.

The Chair departed following item 3.3; Lord Turnbull chaired the meeting from item 2.1 onward.

2. COMMUNICATIONS AND ENGAGEMENT

Item 2.1: Communications Committee update [Oral]

25. Sheriff McFadyen provided an update on the work of the Communications Committee. In particular, he noted:

- ongoing work to support the launch of the Business Plan 2018-21 and the publication of the first sentencing guideline;
- planned meetings with justice spokespeople from the various parties represented in the Scottish Parliament, in order to raise awareness of the Council's role and work;
- ongoing consideration of how best to engage with the public in the context of individual sentencing guidelines; and

- continuing work to monitor and develop website resources to promote greater awareness and understanding of sentencing.

Item 2.2: Update on 2018 NASC Conference [Oral]

26. Andrew Bell provided an update on the recent visit to the National Association of Sentencing Commissions conference in Columbus, Ohio, that was also attended by Stephen O'Rourke QC. The conference was felt to have been an excellent opportunity to engage with and learn from other sentencing bodies, and to discuss areas of relevance to the Council's work programme.

27. It was agreed that a report of the visit will be produced, and that the secretariat will continue to monitor future conference agendas and provide advice on whether attendance may be warranted.

ACTION POINTS

AP5: *Andrew Bell and Stephen O'Rourke to produce a report on their visit to the 2018 NASC Conference, for dissemination to members and publication on the Council website.*

Item 2.3: Methodology and guideline tracker [Papers 2.3 and 2.3A]

28. The Council reviewed a revised draft of a public facing document describing how sentencing guidelines are developed, and a new draft section of the website which indicates the stage of development of each of the guidelines currently in progress. Subject to minor drafting changes, the Council agreed that the document and website section should be published, and that both would be useful in increasing the transparency of the guideline development process.

ACTION POINTS

AP6: *Secretariat to make the agreed drafting revisions and publish the methodology paper and new section of the website as soon as practicable.*

Item 2.4: Sentencing of sexual offences conference – feedback and discussion [Oral]

29. The Council discussed the recent stakeholder conference on the sentencing of sexual offences, which was felt to have been useful both in enabling members to engage with a wide variety of organisations and individuals, and in suggesting areas for further consideration in relation to ongoing work on sexual offences. Members also reflected on how future events might be improved, taking into account lessons learned from this and previous events.

3. SENTENCING GUIDELINES

Items 3.1, 3.2, and 3.3 were discussed earlier in the meeting.

4. RESEARCH AND INFORMATION

Item 4.1: Research Committee update [Oral]

30. Neil Hutton provided an update on the work of the Research Committee. In particular, he noted that Sheriff Crowe has been reappointed as an advisor to the committee, and that workflows for guideline specific research oversight have been agreed. Andrew Bell provided an update to Council on the plans for recording departures from guidelines.

Item 4.2: Approval of research publications [Oral]

31. Andrew Bell presented a proposal that the final approval and publication of research reports be delegated to the relevant committee, rather than requiring full Council agreement. He also provided an update on research procurement and sought Council approval to create a call off contract for consultation evaluations, should this appear to be effective and appropriate following further discussion with SCTS procurement colleagues. The Council agreed to both proposals.

ACTION POINTS

AP7: *Secretariat to proceed with a call off contract for consultation analysis, subject to further discussion with procurement.*

5. DECISIONS BY CORRESPONDENCE

Item 5.1: Decisions by correspondence [Paper 5.1]

32. **Paper 5.1** noted the various decisions the Council has made by correspondence since the last meeting which, under standing order 5.11, must be recorded in the minutes of the subsequent meeting. These decisions are as follows:

- The Council approved the publication of the report on the public consultation relating to the principles and purposes of sentencing guideline.
- The Council approved the draft sentencing process guideline for the purposes of judicial consultation, along with the accompanying consultation paper. Members also agreed the proposed timing and period.
- The Council approved the publication of the literature review on causing death by driving offences, which will be placed on the Council website soon.

6. REPORTS

Item 6.1 was discussed earlier in the meeting.

Item 6.2: Annual Report 2017-18 [Paper 6.2]

33. The Council approved the Annual Report 2017-18 for submission to the Scottish Ministers, subject to any minor formatting and drafting changes required.

ACTION POINTS

AP8: Secretariat to produce final version of Annual Report 2017-18 for submission to the Scottish Ministers as soon as practicable.

Item 6.3: Standing papers: finance overview; correspondence, FOISA, and complaints; guideline timetable [Papers 6.3A-C]

34. The Council noted the contents of the standing papers.

Item 6.4: Update on secretariat resourcing [Oral]

35. Graham Ackerman provided an update on continuing discussions relating to the secretariat resourcing and structure.

7. AOB

Item 7.1 AOB [Oral]

36. Graham Ackerman provided an update to members on plans for the December meeting. A visit to the Scottish Crime Campus at Gartcosh was proposed; members agreed this would be useful.

37. Graham Ackerman reminded the Council that a judicial delegation from Taiwan will be visiting the Council in September.

AP9: *Secretariat to proceed with arranging a visit to the Scottish Crime Campus at Gartcosh on 10 December 2018.*

8. Future meetings

38. The next Council workshop will take place on Monday 15 October 2018.

39. The final Council meeting of 2018 will be held on Monday 10 December 2018.