

MEETING OF THE SCOTTISH SENTENCING COUNCIL

10 DECEMBER 2018, SCOTTISH CRIME CAMPUS, GARTCOSH

MINUTES

Members present: Lady Dorrian QC, Lord Justice Clerk (Chair)
Lord Turnbull (judicial member)
Sheriff Principal Ian Abercrombie QC (judicial member)
Sheriff Norman McFadyen (judicial member)
Summary Sheriff Jillian Martin-Brown (judicial member)
David Harvie, Crown Agent (prosecutor member)
Chief Constable Iain Livingstone (lay member)
Sue Moody (lay member)
Professor Neil Hutton (lay member)

Attendees: Krista Johnston (observer)
Jessica Doran-Flynn (observer)
Jade Hooper (PhD intern)
Nikolaos Koukopoulos (PhD intern)

Secretariat: Graham Ackerman (Secretary)
David Dickson (Principal Legal Officer)
Andrew Bell (Principal Research Officer)
David Ross (Senior Policy 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 apologies had been received from Stephen O'Rourke QC.
2. The Chair welcomed Krista Johnston to the meeting. She advised members that Krista Johnston has been selected as the new solicitor member of the Council, replacing John Scott QC, and was attending as an observer in advance of her formal

appointment. The meeting was also advised that Susan Fallone JP, who was unable to be in attendance today, will be appointed soon as a judicial member, replacing Gillian Thomson.

3. The Chair welcomed Jessica Doran-Flynn, who will be taking up post as Business Manager on 21 January 2019, and Jade Hooper and Nikolaos Koukopoulos, two PhD interns who will be carrying out analysis work in respect of environmental and wildlife offences and sexual offences.
4. The Chair noted that Mike Wilson will be taking up a new post within the Scottish Government in January and thanked him for his contribution to the Council.

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

5. Minutes of the Council meeting of 03 September 2018 were provided at **Paper 1.2A**. The Council approved 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, 4.2, 4.3, 5.1, 6.1, 6.2, 6.2A, 6.3A, 6.3C.

2. COMMUNICATIONS AND ENGAGEMENT

Item 2.1: Communications Committee Paper [oral]

8. Sheriff McFadyen provided an update on the work of the Communications Committee. In particular, he noted:
 - media work around the publication of the Business Plan 2018-21 and the approval and coming into force of the principles and purposes of sentencing guideline, both of which attracted significant interest;
 - the creation of new sections of the Council website providing information about current guidelines and the guideline development process; and

- recent meetings with several MSPs from the Justice Committee and Justice Committee clerks, to provide an overview of the Council's work and progress to date.
9. Sheriff McFadyen canvassed views on whether, as in 2017 and 2018, a stakeholder conference should be held in 2019, or whether a number of smaller events and round table discussions to inform ongoing guideline development may be more helpful. Given the topics currently under consideration and the resource implications of hosting a conference, the Council agreed that the latter approach would be preferable. The secretariat was asked to consider further and to revert to the Council with proposals.

ACTION POINTS

AP1: Secretariat to develop proposals for small stakeholder events and/or round table discussions in 2019.

Item 2.2: Updates from recent engagement activity [oral]

10. The Chair and David Harvie provided an update to members on the recent SASO annual conference on responding to sexual abuse, at which the Chair gave a speech on sentencing sex offenders.
11. Sue Moody reported on the Making Scotland the World's First ACE-Aware Nation conference.
12. Graham Ackerman, David Harvie, and Sue Moody provided an overview of recent engagement at three sheriffdom conferences.

3. SENTENCING GUIDELINES

Item 3.1: Sentencing Young People – draft guideline [Papers 3.1, 3.1A]

13. The Council considered a revised draft of the guideline and suggested a small number of minor amendments. It was agreed that, subject to those amendments, the secretariat should commence work on engagement with the judiciary in respect of the draft guideline, and there was some discussion of the issues to be canvassed during

that engagement process. There was also some discussion around issues which may be of relevance to the development of the Sentencing Process guideline.

14. It was agreed that the revised guideline and proposed discussion paper for circulation to the judiciary could be agreed by correspondence. It was also agreed that the period for judges to provide views on the draft guideline should be 6 weeks.
15. The Council expressed its thanks to members of the Sentencing Young People Committee for their work on the guideline to date.

ACTION POINTS

- AP2:** *Sentencing Young People Committee and secretariat to revise the Sentencing Young People guideline as agreed and develop a discussion paper for the purposes of seeking views from the judiciary, circulating this to the Council for approval by correspondence.*
- AP3:** *Sentencing Process Committee to consider whether any points raised in the discussion about the draft Sentencing Young People guideline require to be reflected in the draft Sentencing Process guideline.*

Item 3.2: Guideline committee updates [Oral]

16. Sheriff Principal Abercrombie referred to the work undertaken by the Sentencing Young People Committee which had resulted in papers 3.1 and 3.1A, already considered by the Council. He noted the Committee has agreed to appoint former member John Scott QC as an advisor. The Chair formally confirmed the appointment.
17. David Harvie provided an update on the work of the Death by Driving Committee. While the Committee had not met since the last Council meeting, judicial research has now been completed (involving 22 interviews covering all 6 sheriffdoms) and a final report will be considered shortly. The secretariat is currently working on an initial draft of the guideline for consideration by the Committee.
18. Lord Turnbull provided an update on the work of the Sentencing Process Committee. He noted the Committee had not met since the last Council meeting, as the judicial consultation on the draft guideline was ongoing. This closed on 26 October and responses are currently being analysed. The Committee will meet in early 2019 to

consider the responses received and the extent to which the terms of the guideline require to be adjusted before moving on the public consultation process.

19. David Dickson, on behalf of the chair of the Environment and Wildlife Committee, provided an update on its work. The Committee has met once since the last Council meeting. It continues to consider the scope of the guideline and will meet again once a final version of the literature review is available. It is expected that former member Gillian Thomson JP will be appointed as an advisor to the committee at its next meeting.

4. RESEARCH AND INFORMATION

Item 4.1: Research Committee update [Oral]

20. Neil Hutton provided an update on the work of the Research Committee. In particular, he noted:

- the Committee met on 26 September 2018;
- external procurement exercises have been undertaken for work on public perceptions of sentencing and work on focus groups on the guideline topics of causing death by driving and sexual offences is now underway;
- as agreed by the Council the Committee met to consider research priorities and plans for the 2019/20 financial year. Full details are provided in **papers 4.2 and 4.3**.

21. It was also proposed that a press release be issued in due course (in collaboration with the Communications Committee), providing general details about research plans for the forthcoming financial year along with expected dates for procurement exercises, in order to provide advance notice to parties who may be interested in submitting bids. This was agreed by the Council.

ACTION POINTS

AP4: *Research Committee to develop a press release detailing research plans for 2019/20, in collaboration with the Communications Committee.*

Item 4.2: 2019/20 Research priorities [Paper 4.2]

22. The Council noted **paper 4.2** and agreed the research priority areas for 2019/20 which reflect topics set out the 2018-21 business plan. These are:

- Sentencing young people;
- Causing death by driving offences;
- Environmental and wildlife offences;
- Sexual offences;
- Sentence discounting; and
- Domestic abuse

Item 4.3: 2019/20 Research projects [Paper 4.3]

23. **Paper 4.3** provided details of proposed research projects for 2019/20, two of which require approval by the full Council. The Council discussed and agreed to the proposed research projects for 2019/20.

5. POLICY DEVELOPMENT

Item 5.1: Presumption against short sentences [Paper 5.1]

24. The Council discussed the Scottish Government's proposed extension of the presumption against short periods of imprisonment (PASS), and whether, and if so how, the presumption should be addressed in sentencing guidelines. The Council provided initial views to inform further consideration by the secretariat.

ACTION POINTS

AP5: *Secretariat to revert to Council with further advice on the proposed extension of PASS, liaising with relevant committees as required.*

6. REPORTS

Item 6.1: Review of standing orders [Paper 6.1]

25. The secretariat provided the Council with a list of proposed amendments to the standing orders. These related to:

- a revised process for agreeing items by correspondence (following a successful pilot of the process noted at the 11 June 2018 meeting);
- timescales for providing papers to members in advance of meetings;
- the ability of the Council to review and amend certain details about committees; and
- the process for agreeing items considered at any non-quorate meetings.

26. The Council agreed with the amendments. The revised standing orders will be published on the website.

ACTION POINTS

AP6: Secretariat to publish the revised standing orders on the website as soon as possible.

Item 6.2: Policy on expenses for guest speakers/attendees [Papers 6.2 and 6.2A-B]

27. The secretariat proposed a draft policy for meeting the expenses of guest speakers or attendees invited to Council meeting or events. The Council approved the draft policy, which sets out that the payments of expenses to guest speakers or attendees will be at the discretion of the Chair, and that travel and subsistence rates will be the same as for members (as provided for information in **paper 6.2B**).

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

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

Item 6.4: Update on secretariat resourcing [Oral]

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

7. AOB

Item 7.1: AOB [Oral]

30. It was noted that:

- The Scottish Government has recently published a consultation on proposed changes to hate crime legislation. The secretariat is preparing advice on whether the Council may wish to respond to the consultation.
- An independent expert review of mental health and other support for young people entering HM Prison & Young Offenders Institution Polmont has been announced by the Scottish Government. The findings may be of relevance to the Council's work around young people, and planned work around mental health.
- The first meeting of the Victims Task Force is due to take place on 12 December.

8. Future meetings

31. The next Council workshop will take place on Friday 08 February 2019.

32. The first Council meeting of 2019 will take place on Friday 01 March 2019.