

**MEETING OF THE SCOTTISH SENTENCING COUNCIL  
01 MARCH 2019, PARLIAMENT HOUSE, EDINBURGH  
MINUTES**

**Members present:** Lady Dorrian QC, Lord Justice Clerk (Chair)  
Lord Turnbull (judicial member)  
Sheriff Principal Ian Abercrombie QC (judicial member) (from item 2.2)  
Sheriff Norman McFadyen (judicial member)  
Summary Sheriff Jillian Martin-Brown (judicial member)  
David Harvie, Crown Agent (prosecutor member)  
Stephen O'Rourke QC (advocate member)  
Krista Johnston (solicitor member)  
Sue Moody (lay member - victims expert)  
Professor Neil Hutton (lay member)

**Attendees:** 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)  
Jessica Doran-Flynn (Business Manager)

**Apologies:** Susan Fallone JP (judicial member)  
Chief Constable Iain Livingstone (lay member - constable)

## **1. PROCEEDINGS**

### *Item 1.1: Introduction and welcome*

1. The Chair opened the meeting and noted that apologies had been received from Chief Constable Iain Livingstone and Susan Fallone.

2. The Chair welcomed Jade Hooper and Nikolaos Koukopoulos, two PhD interns, who have been carrying out analysis work in respect of environmental and wildlife offences and sexual offences.

*Item 1.2: Previous meeting [Paper 1.2]*

3. Minutes of the Council meeting of 10 December 2018 were provided at **Paper 1.2**.  
The Council approved the minutes.

*Item 1.3: Progress of actions since last meeting [Paper 1.3]*

4. The Council noted the progress of actions provided at **Paper 1.3**.

*Item 1.4: Private papers*

5. The Council agreed not to publish the following papers: 1.3, 3.1, 3.1A-D, 3.2, 3.2A-C, 5.1, 5.1A-B, 5.2A, 5.2C-D

*Item 1.5: Committee membership [Oral]*

6. The Chair noted that the departure of John Scott and Gillian Thomson from the Council had resulted in vacancies on the committees dealing with communications, research, young people, and environmental and wildlife offences.
7. Further to discussions with the relevant committee chairs and with Krista Johnson and Susan Fallone, the Council's most recently appointed members, the Chair proposed to fill these vacancies by appointing:
  - Krista Johnston to the Communications Committee and Sentencing Young People Committee; and
  - Susan Fallone to the Research Committee and Environmental and Wildlife Committee.
8. The Council confirmed that it was content to make these appointments.

## **2. COMMUNICATIONS AND ENGAGEMENT**

*Item 2.1: Communications Committee update [Oral]*

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

- the Committee's meeting on 27 February has been postponed until the end of March (as it was scheduled to take place at the same time as the debate in Parliament, discussed below under item 2.2);
- at its next meeting, the committee will discuss the latest media enquiries, a report on its activities in 2018, and its priorities for 2019; and
- it will also consider further development of the Council's website as a sentencing resource for the public, and the approach to communications around the upcoming judicial consultation on the sentencing young people guideline and the public consultation on the sentencing process guideline.

*Item 2.2: Updates from recent engagement activity [Oral]*

10. The Chair provided an update on her meeting with the Cabinet Secretary for Justice on Tuesday 26 February 2019 (which had been re-scheduled following an unavoidable cancellation in January). The meeting was constructive and included discussion about:

- the overall role of the Council;
- progress in developing guidelines, with particular reference to the sentencing of young people and sexual offences;
- the Council's work to raise awareness and understanding of sentencing, in respect of which the Chair noted that the Cabinet Secretary had given positive feedback on the Council's website; and
- the motion for debate in the Scottish Parliament on Wednesday 27 February 2019, concerning sentencing policy in general and the Council's work programme.

11. In respect of the latter point, the Chair discussed recent correspondence with Daniel Johnson MSP and a subsequent debate in the Scottish Parliament. The following points were noted:

- Mr Johnson had written to the Chair on 14 February 2019 to raise concerns about the sentence passed in a recent sexual offences case and to ask about the Council's planned work in this area.
- The Chair's reply of 20 February 2019 noted that sexual offending, particularly where children or young people are involved, is a matter of significant public interest and concern. It noted that the Council had committed to initiate work to develop a guideline or guidelines on sexual offences during the 2018-21 period, and described the work carried out to date in this area.<sup>1</sup>
- Mr Johnson subsequently lodged a motion for debate in the Scottish Parliament on 25 February 2019, which made reference to the work of the Council, raising concerns about the pace of its work and the likely timetable for a guideline on sexual offences. The debate on the motion took place on 27 February 2019.<sup>2</sup>
- Prior to the debate, the Council issued a statement relating to the subject matter of the motion, which has been published on the Council's website (along with the Chair's earlier reply to Mr Johnson)<sup>3</sup>. In particular, this highlighted the potential impact of introducing sentencing guidelines which have not been properly considered and tested, and stressed the importance of taking an evidence-based approach, involving appropriate levels of research and consultation.
- During the debate, a number of questions were raised about the time taken to produce guidelines, particularly with reference to the likely timetable for those dealing with sexual offences, and comparisons were drawn with the pace of work of the Sentencing Council in England and Wales (though no reference was made to its significantly greater resources).
- The final motion agreed by Parliament "draws to the attention of the council its views as to the importance of work on sexual offences", in addition to noting the likely timetable for this work and stressing the importance of transparency and consistency.

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<sup>1</sup> The Chair's reply to Daniel Johnson MSP can be found here:  
[https://www.scottishsentencingcouncil.org.uk/media/1942/0225\\_001.pdf](https://www.scottishsentencingcouncil.org.uk/media/1942/0225_001.pdf)

<sup>2</sup> The official report of the debate can be found here:  
<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11963&mode=pdf>

<sup>3</sup> <https://www.scottishsentencingcouncil.org.uk/news-and-media/news/council-offers-views-ahead-of-parliamentary-debate-on-sentencing/>

12. Members discussed various points arising from the debate, reflecting in particular on views expressed by MSPs about whether the development of guidelines in relation to sexual offences should be prioritised. It was agreed that there would be merit in asking the secretariat to consider whether work on sexual offences could be brought forward without causing significant delays to other guidelines (such as those dealing with causing death by driving and the sentencing of young people) which are currently being developed. This matter could then be discussed further at the next Council meeting.

### **ACTION POINTS**

**AP1: *Secretariat to consider the feasibility of expediting the development of a guideline or guidelines on sexual offences, and the impact this would have on the Council's other work.***

13. The Chair provided an update on other recent engagement activity, and some upcoming events:

- The Council's response to the Scottish Government's consultation on hate crime legislation was submitted on 21 February, after members approved the submission by correspondence.
- The Victims Taskforce, which is chaired by the Lord Advocate and Cabinet Secretary for Justice, would be holding its next meeting on 06 March in the Judicial Institute, Parliament House. The Chair had been invited to discuss the work of the Council, and intended to focus in particular on transparency and engagement.
- The Chair is due to meet with two visiting US judges (Judge Ginger Lerner-Wren and Judge Victoria Pratt) on 14 March 2019 at Parliament House. Both judges are keen to learn about our system and to discuss their experiences of comparative justice.
- Scottish Women's Aid was holding a conference on Friday 08 March on "The Blame Game – Domestic abuse in society, policy and practice".

14. The Chair asked any members wishing to attend either the meeting with the US judges or the Scottish Women's Aid conference to contact the secretariat.

### **ACTION POINTS**

**AP2:** *Members to contact the secretariat as soon as possible if they wish to attend the meeting with US judges or the Scottish Women's Aid conference.*

### **3. SENTENCING GUIDELINES**

#### *Item 3.1: Sentencing process – revised guideline [Papers 3.1 and 3.1A-D]*

15. The Council considered a revised draft of the sentencing process guideline. The revision was primarily in response to the recent judicial consultation exercise, an analysis of which was provided at paper 3.1A. The Council suggested a number of amendments to the draft guideline.
16. It was agreed that, subject to those amendments and the development of a draft impact assessment and consultation paper, the draft guideline could go forward to public consultation. In relation to the development of the impact assessment, it was agreed that both the draft guideline and draft impact assessment could be shared with those organisations which contribute to it, in order to inform their comments.

#### **ACTION POINTS**

**AP3:** *Sentencing Process Committee and secretariat to revise the Sentencing Process guideline as agreed and develop a public consultation paper.*

**AP4:** *Secretariat to develop a draft impact assessment for the Sentencing Process guideline, involving the Sentencing Process Committee and Research Committee as appropriate.*

#### *Item 3.2: Sentencing young people – revised guideline and judicial consultation [Papers 3.2 and 3.2A-C]*

17. The Council considered a further revised draft of the guideline on sentencing young people. This reflected changes proposed by the Council at its meeting on 10 December, and some further minor amendments subsequently suggested by the Sentencing Young People Committee. A draft judicial consultation paper setting out the rationale behind the guideline, the approach taken, and the questions for consideration was provided at paper 3.2.

18. The Council approved the revised draft guideline for the purpose of judicial consultation, and offered views on the overall approach taken in the draft judicial consultation paper. It was noted that the consultation paper was a work in progress, and that the Sentencing Young People Committee and secretariat would aim to finalise it as soon as possible after today's meeting.

### ACTION POINTS

**AP5: *Sentencing Young People Committee and secretariat to finalise the judicial consultation paper and circulate this to the Council for approval by correspondence.***

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

19. David Harvie provided an update on the work of the Death by Driving Committee. The Committee had met once since the last Council meeting. Although work is still at an early stage, the Committee has started to consider what a guideline – which would be the Council's first on a specific offence – would look like, and has considered some early drafts prepared by the secretariat. The Committee has also discussed progress on two research projects currently underway, seeking the views of the general public and the families of victims on sentencing in causing death by driving cases.
20. Lord Turnbull referred to the work undertaken by the Sentencing Process Committee which had resulted in papers 3.1 and 3.1A-D, already considered by the Council.
21. Sheriff Principal Abercrombie provided an update on the work of the Sentencing Young People Committee. He noted that although the Committee had not met since the last Council meeting, it had commented on the revised draft of the guideline, and had considered the draft judicial consultation paper, as noted in paper 3.2. The Committee had also approved a proposal to hold a workshop with the Scottish Youth Parliament on the sentencing of young people. This is the first step in meeting the Committee's desire to involve groups of children and young people in the guideline development process. The secretariat is taking steps to engage with other stakeholders in this area.
22. Stephen O'Rourke provided an update on the work of the Environmental and Wildlife Committee. He advised that the Committee has not met since the last Council meeting. A comparative fines analysis in respect of environmental and wildlife offences has been

carried out by one of the Council's PhD interns. The final version of the literature review is still awaited.

#### **4. RESEARCH AND INFORMATION**

##### *Item 4.1: Research Committee update [Oral]*

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

- The committee has not met since the last Council meeting, but intends to meet in March to discuss detailed specifications for the 2019/20 research projects.
- Progress is underway on projects exploring public perceptions of sentencing, both in the form of a national telephone survey and subject specific focus groups covering death by driving offences and sexual offences.
- Work has begun on a literature review on sentence discounting.

##### *Item 4.2: PhD intern updates [Oral]*

24. The Council noted updates from its two PhD interns, Jade Hooper and Nikolaos Koukopoulos, concerning their work on, respectively, a comparative fines analysis in respect of environmental and wildlife offences, and a court observation study on sexual offences. Final research reports in respect of both are being finalised and will be shared with the Research Committee in due course.

25. The Chair thanked Jade and Nikolaos for their contribution to the Council's work.

#### **5. REPORTS**

##### *Item 5.1: Records Management Plan and Guide to Information [Papers 5.1 and 5.1A-C]*

26. The Council considered a draft records management plan which had been prepared to meet its obligations under Part 1 of the Public Records (Scotland) Act 2011. The Council approved the draft records management plan, including the records management policy statement set out at element 3 of the plan, and agreed to its publication as an annex to the Scottish Courts and Tribunals Service's overall records management plan. The Council also approved the proposed transmission of certain categories of information to National Records of Scotland.

27. The Council noted a revised version of the guide to the information published by the Council at paper 5.1C. The guide had been updated to take account of the latest version of the Model Publication Scheme produced by the Scottish Information Commissioner, and had been published on the Council's website.

*Item 5.2: Standing papers: finance overview; correspondence, FOISA, and complaints; guideline timetable [Papers 5.2A-D]*

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

29. In particular, it was noted that since the last meeting, the Council had made one decision by correspondence. This was to approve a submission on behalf of the Council to the Scottish Government's consultation on hate crime. The approved submission was sent to the Scottish Government on 21 February 2019.

## **6. AOB**

*Item 6.1: AOB*

30. It was noted that the secretariat is preparing a position paper on the Scottish Government's intended extension of the presumption against short prison sentences for consideration at the Council's next meeting in May.

## **7. FUTURE MEETING DATES**

31. The next Council meeting will take place on Thursday 02 May 2019.

32. The next Council workshop will take place on Friday 14 June 2019. It was agreed that the secretariat should explore whether it may be possible to use this workshop to hold a round table discussion with relevant stakeholders about sentencing people with mental welfare issues (which is noted as a topic of interest in the current business plan).

33. It was noted that at the Council meeting on 11 June 2018 there was discussion of an offer from the Scottish Prison Service to host a future Council meeting at a prison. The

Council indicated that it was still content to explore this proposal with Scottish Prison Service.

34. Members also indicated that they would favour holding some future meetings outwith Edinburgh, and asked the secretariat to contact SCTS regarding the possibility of using the new Tribunals Centre in Glasgow for future dates in 2019 and 2020. It was also agreed that any suggestions from members for other future meeting venues would be welcome, and should be sent to the secretariat.

#### **ACTION POINTS**

- AP6:** *Secretariat to explore the possibility of holding a round table discussion with relevant stakeholders about the sentencing of people with mental welfare issues on 14 June.*
- AP7:** *Secretariat to explore the possibility of holding future Council meetings or workshops at a prison and/or at the new SCTS Tribunals Centre in Glasgow.*
- AP8:** *Members to send any suggestions for future meeting venues to the secretariat.*