

MEETING OF THE SCOTTISH SENTENCING COUNCIL
02 MAY 2019, PARLIAMENT HOUSE, EDINBURGH
DRAFT MINUTES

Members present: Lady Dorrian QC, the 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)
Susan Fallone JP (judicial member)
David Harvie, Crown Agent (prosecutor member)
Krista Johnston (solicitor member)
Sue Moody (lay member – victims' expert)
Professor Neil Hutton (lay member)

Attendees: Mairi MacNeil (observer)

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: Stephen O'Rourke, QC (advocate 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 Iain Livingstone and Stephen O'Rourke.
2. The Chair welcomed Mairi MacNeil, acting sheriffdom legal advisor for North Strathclyde, who was in attendance as part of the secretariat's promotion of work shadowing

opportunities with the Council for SCTS staff.

Item 1.2: Previous meeting [Paper 1.2]

3. Minutes of the Council meeting of 01 March 2019 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, 2.1A, 3.1, 3.1A, 3.1B, 3.2, 3.2A, 3.2B, 3.2C, 5.1, 5.1A, 5.1B, 6.1, 7.1B, 7.2, 7.2A

Item 1.5: Committee membership [Oral]

6. The Chair noted that the terms of office of three Council members (Stephen O'Rourke, Iain Livingstone, and Neil Hutton) will expire later in the year. The secretariat will contact the Lord Justice General regarding the recruitment of a new advocate member to replace Stephen O'Rourke, and will also liaise with Scottish Government officials about arrangements to appoint new lay members to replace Iain Livingstone and Neil Hutton.

ACTION POINT

AP1: Secretariat to liaise with the Lord Justice General and Scottish Government officials regarding, respectively, the recruitment of a new advocate member to replace Stephen O'Rourke, and the appointment of new lay members to replace Iain Livingstone and Neil Hutton.

2. COMMUNICATIONS AND ENGAGEMENT

Item 2.1: Communications Committee update [Oral]

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

- The Committee last met on Thursday 21 March when it discussed the latest media enquiries, a report on communications activities in 2018, and priorities for 2019. This included plans for the roundtable discussion event with stakeholders on 14 June regarding the sentencing of offenders with mental welfare issues.
- The Committee discussed plans to announce any Council decision to develop guidelines on particular sexual offences, and the publication of the sexual offences conference report.
- It also discussed the approach to be taken regarding communications around the upcoming judicial consultation on the sentencing young people guideline, and the public consultation on the sentencing process guideline.
- There have been over 22,000 visitors to the Council's website this year, which is a 27% increase on this time last year.

Item 2.2: Updates from recent engagement activity [Oral]

11. The Chair informed members that she attended the Victims Taskforce meeting on 06 March where she gave an update on the work of the Council. She also discussed the importance of judicial independence and the role of the High Court and the Sheriff Appeal Court in dealing with criminal appeals.
12. The Chair informed members that she, along with Council members Sheriff McFadyen and Stephen O'Rourke, met US Judges Victoria Pratt and Ginger Lerner-Wren on 14 March to discuss their experiences in relation to procedural justice, problem-solving courts, and mental health courts.
13. Sue Moody provided an update on her attendance at the "Delivering Effective Justice in Scotland" conference on 21 March.

3. SENTENCING GUIDELINES

Item 3.1: Sexual offences– prioritisation, focus and approach [Papers 3.1 and 3.1A-B]

14. **Paper 3.1** invited the Council to consider whether its work programme could be re-prioritised in order to expedite the development of guidelines on sexual offences. It also asked members to confirm the initial topics on which the Council will focus, following in-depth discussion about this at a workshop earlier in the year, to consider whether a new

working group committee should be established, and to provide views on several related issues.

15. In relation to the Council's work programme, members agreed that work on sexual offences should be expedited, given the significant potential for sentencing guidelines to both assist the judiciary and increase public understanding of a complex and sensitive topic. Within the resources currently available to the Council, it was noted that the only realistic way of achieving this would be to de-prioritise work on another guideline. Of the guidelines in development, it was proposed that work on environmental and wildlife offences could most appropriately be deferred. This guideline is still at an early stage of development and, given indications that the Scottish Government is likely to increase penalties for wildlife offences (as a result of the recommendations of the Wildlife Crime Penalties Review Group), this may have had to be delayed in any case. By contrast, it was noted that guidelines on the sentencing process, sentencing young people, and causing death by driving are at a relatively advanced stage, and that delaying work on these would likely not be justified.

16. The Council agreed, therefore, that work on environmental and wildlife offences should be de-prioritised in order to expedite the development of guidelines on sexual offences.

17. The Council considered a note of its workshop in February 2019 (**Paper 3.1A**), at which members discussed the overall approach to preparing guidelines on sexual offences, and the topics which should be addressed initially. Members confirmed the view taken at that workshop that separate guidelines on particular aspects of sexual offending should be developed, rather than a single guideline encompassing the entirety of the subject, thus allowing individual sexual offences to be given in-depth consideration and for the first guidelines on sexual offending to be produced earlier than would be possible with a single guideline. Members agreed that, following extensive discussion at the February workshop, the first guidelines in this area should be developed in relation to rape, sexual assault, and indecent images of children.

18. The Council also agreed that:

- research funding in 2019/20 should be reallocated from environmental and wildlife offences to sexual offences;

- a new working group committee should be established to lead on work relating to the development of guidelines on sexual offences; and
- the Council's decision in respect of sexual offences should be communicated to the Scottish Ministers, the Lord Advocate, and the Lord Justice General (as it expands on the information provided in the Council's business plan, on which they are consulted), and publicly announced via a news release.

ACTION POINT

AP2: *Any members interested in joining the new sexual offences committee to contact the secretariat.*

AP3: *Secretariat to prepare a news release and letters to the Scottish Ministers, the Lord Advocate, and the Lord Justice General regarding the Council's decision in respect of sexual offences.*

Item 3.2: Sentencing Process – public consultation [Papers 3.2 and 3.2A-C]

19. The Council considered a revised draft of the sentencing process guideline, along with a draft public consultation document, and a draft impact assessment, which sets out the likely costs and benefits arising from implementation of the guideline. It was agreed that the draft guideline and draft impact assessment can be published in due course (most likely in early summer) for the purpose of formal public consultation. It was also agreed that the statutory consultees (the Scottish Ministers and the Lord Advocate) can now be consulted on the terms of the draft guideline and impact assessment.

20. It was noted that the secretariat will provide a further update on the exact timing of the public consultation launch and related communications activity in due course.

ACTION POINTS

AP4: *Secretariat to contact the Scottish Ministers and the Lord Advocate regarding the terms of the draft sentencing process guideline and impact assessment.*

AP5: ***Secretariat to make preparations for the publication of the draft sentencing process guideline, public consultation document, and impact assessment.***

AP6: ***Secretariat to provide an update to members on the public consultation timing and planned communications activity.***

Item 3.3: Guideline committee updates [Oral]

21. David Harvie provided an update on the work of the Death by Driving committee. A meeting has been arranged for 10 June to discuss next steps, specifically around developing further drafts of the guideline on causing death by driving and testing these with the judiciary in due course.

22. Lord Turnbull provided an update on the work of the Sentencing Process Committee, which, as discussed under item 3.2, has considered and approved a revised draft of the sentencing process guideline and a draft public consultation document for the purpose of public consultation.

23. Sheriff Principal Abercrombie provided an update on the work of the Sentencing Young People committee. In particular, he noted that:

- the judicial consultation on the draft sentencing young people guideline was launched on Friday 05 April and will run until 17 May;
- members of the secretariat attended a workshop with members of the Scottish Youth Parliament on 27 March which focussed on some key aspects of the draft guideline on sentencing young people; and
- the [literature review of youth offending and sentencing in Scotland and other jurisdictions](#) has now been published on the Council's website.

24. The Chair provided an update on behalf of Stephen O'Rourke on the recent work of the Environment and Wildlife committee. The final literature review of the sentencing of environmental and wildlife crimes was received at the end of March and is being considered by the committee.

4. RESEARCH AND INFORMATION

Item 4.1: Research Committee update [Oral]

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

- the committee met on 25 March and, while it was inquorate, it agreed to consider the items before it and subsequently agreed these by correspondence;
- work on the focus group projects considering death by driving and sexual offences is underway;
- the national survey project has completed fieldwork and a draft report is expected to be available in early May;
- the committee considered the possible impacts of re-prioritisation of the Council's work, as discussed at item 3.1; and
- procurement for the Council's 2019-20 research programme is underway.

5. POLICY DEVELOPMENT

Item 5.1: Extension to presumption against short sentences [Papers 5.1 and 5.1A-B]

26. The Council considered a draft written submission to the Scottish Parliament's Justice Committee on the impact of the proposed extension of the presumption against short prison sentences from 3 to 12 months. The Council suggested amendments to the draft submission and agreed that the revised draft should be cleared by the Chair for submission to the Justice Committee.

ACTION POINTS

AP7: *Secretariat to revise the draft written submission on the impact of the proposed extension of the presumption against short prison sentences and seek the Chair's clearance to submit it to the Justice Committee.*

6. DECISIONS BY CORRESPONDENCE

Item 6.1: Decisions by correspondence [Paper 6.1]

27. It was noted that since the last meeting, the Council had made one decision by correspondence. This was to approve the revised judicial consultation paper on the draft

sentencing young people guideline.

7. REPORTS

*Item 7.1: Standing papers: Correspondence, FOISA, and complaints; guideline timetable
[Papers 7.1A-B]*

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

29. Graham Ackerman provided a brief overview of the Council's finances. He advised that final expenditure figures for 2018-19 and a confirmed budget for 2019/20 were not yet available, but would be provided to members as soon as possible.

ACTION POINT

AP8: *Secretariat to provide members with final details of the Council's expenditure in 2018-19 and the confirmed budget for 2019/20 once figures are available.*

Item 7.2: Draft annual report 2018/19 [Paper 7.2 and 7.2A]

30. **Paper 7.2** sought the Council's initial views on a draft annual report for 2018-19, which was provided at **paper 7.2A**. The Council indicated that it was content with the substantive content of the draft report, and agreed that the secretariat should issue a final draft for approval by correspondence in due course (in particular, once final expenditure figures for 2018/19 are available and have been added).

ACTION POINT

AP9: *Secretariat to finalise the draft annual report 2018/19 and issue it to the Council for approval by correspondence.*

8. AOB

Item 8.1: AOB

31. No other business was raised.

9. FUTURE MEETING DATES

32. The next Council event will be a roundtable discussion on mental health and will take place on Friday 14 June 2019.

33. The next Council meeting will take place on Thursday 03 October 2019.

34. The final Council meeting of 2019 will take place on Friday 06 December 2019.

Scottish Sentencing Council

May 2019