

MEETING OF THE SCOTTISH SENTENCING COUNCIL
09 OCTOBER 2020
BY VIDEO CONFERENCE
MINUTES

Members present: Lady Dorrian, the Lord Justice Clerk (Chair)
Lord Turnbull (judicial member)
Sheriff Principal Craig Turnbull (judicial member)
Sheriff Norman McFadyen (judicial member)
David Harvie, Crown Agent (prosecutor member)
Matt Jackson QC (advocate member)
Krista Johnston (solicitor member)
Deputy Chief Constable Will Kerr (lay member – constable)
Sue Moody (lay member – victims expert)
Dr Hannah Graham (lay member)

Secretariat: Ondine Tennant (Secretary)
David Dickson (Principal Legal Officer)
Andrew Bell (Principal Research Officer)
David Ross (Senior Policy Officer)
Stuart Ritchie (Communications Officer)
Nicole Vidal (researcher)

Apologies: Susan Fallone JP (judicial member)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that apologies had been received from Susan Fallone, who had begun devilling training that week.
2. The Chair welcomed Matt Jackson QC to the Council as its new advocate member, and noted that he was appointed on 02 October 2020 by the Lord Justice General following consultation with the Scottish Ministers and the Dean of the Faculty of Advocates.

3. The Chair informed members that this was the last Council meeting to be attended by Lord Turnbull, Sheriff McFadyen, and Sue Moody, whose terms of office were due to end on 18 October 2020. The Chair thanked them for their valuable contributions to the work of the Council.

Item 1.2: Progress of actions since last meeting [Paper 1.2]

4. The Council noted the progress of actions provided at **paper 1.2**. It was noted that several actions had been outstanding for some time and had either become business as usual or superseded by events. The Council therefore agreed to remove the following as action points:
 - AP10 June 2018 meeting - Sentencing Young People Committee to explore engagement with NHS Lothian Child and Adolescent Mental Health Services at Royal Edinburgh Hospital, Morningside Place Edinburgh. This action is to be passed to the Committee to consider.
 - AP3 April 2018 meeting - Secretariat to provide advice on what decisions, and specifically what tasks within the project plans, may appropriately be taken by correspondence or delegated to committees, and which should be reserved for discussion at Council meetings. With remote working the current norm, this was thought no longer necessary.
 - AP7 April 2018 meeting - Secretariat to draft description of sheriff 'champion' role and work with SP Abercrombie to discuss with SPs. There is good engagement with all levels of the judiciary and this was thought no longer necessary.
 - AP16 March 2017 meeting - Secretariat to meet SG officials to discuss the Court's remarks in *Wood, Tennant & McLean v. HMA* [2017] HCJAC 2 and revert to the Council with further advice. The secretariat will keep this matter under review and revisit as necessary.
 - AP2 June 2016 meeting - Secretariat to take forward discussions on extending members' service on the Council. The secretariat will keep this matter under review and revisit as necessary.

Item 1.3: Private papers

5. The Council agreed not to publish the following papers: 1.2, 1.5, 1.6, 3.1, 3.1A, 3.1B, 3.2, 3.3, 3.3A, 3.3B, 3.3C, 3.4, 3.4A, 3.4B, 3.4C, 3.4D, 4.1, 5.1B.

Item 1.4: Council membership – update on recruitment [Oral]

6. The Chair noted that the senatorial vacancy arising from the end of Lord Turnbull's term of office has been advertised and that it was hoped an appointment might be made before the December meeting. Advertisement for the forthcoming sheriff vacancy will commence shortly. Selection of a summary sheriff member will take place with a view to completing that appointment before the next Council meeting. It was also noted that it was expected that the Scottish Government will commence recruitment for a new victims expert shortly.
7. One item was discussed by members but was determined to be confidential and is therefore not included in the published minutes under standing order 8.3.

Item 1.5: Membership of committees [Paper 1.5]

8. The Council considered various proposed appointments to Council committees and arrangements for their procedures in accordance with the Council's standing orders. The Council:
 - agreed to appoint Sheriff Principal Turnbull to the Sentencing Young People and Sentencing Process Committees, effective immediately;
 - agreed to appoint Matt Jackson QC to the Sentencing Young People and Sexual Offences Committees, effective immediately;
 - noted proposals for: Lord Turnbull and Sheriff McFadyen to become advisers to the Sentencing Process Committee; Sheriff McFadyen to become an adviser to the Death by Driving Committee; and Sue Moody to become an adviser to the Sentencing Young People Committee; and
 - agreed in principle to arrangements for appointing future Council members to committees, namely that proposed appointments would be put to the Council for agreement by way of correspondence after consultation with new members.

ACTION POINT

AP1: ***Secretariat to consider the procedure around the appointment of new committee chairs as part of the annual review of the standing orders.***

Item 1.6: Impact of Covid-19 [Paper 1.6]

9. Paper 1.6 updated the Council on the impacts of the Covid-19 pandemic on its work programme and advised of matters the Chair intends to raise with the Scottish Government in this regard.
10. It was noted that the March and June meetings were cancelled, and that the consultation on the sentencing young people draft guideline was extended by 3 months to allow more time for individuals and organisations affected by the pandemic to respond. A consequent delay to the delivery of this and other guidelines was therefore expected. The Council's programme of research had also been disrupted due to being unable to award contracts or carry out recruitment in the usual manner.
11. The Chair noted that it is intended to recruit two temporary members of staff (a research officer and policy officer), and provided an update on each of the Council's key work-streams, including the impact of the pandemic on the work of each committee.
12. The secretariat team was thanked for its efforts in continuing the work of the Council during the period.

2. COMMUNICATIONS AND ENGAGEMENT

Item 2.1: Communications Committee update [Oral]

13. Sheriff McFadyen provided an update on the work of the Communications Committee. In particular, he noted that:
 - The Committee had last met in February as the June meeting was cancelled due to the Covid-19 pandemic.
 - As of the start of October, the Council had featured in 49 articles so far this year. Just over 30 of them were linked to the public consultation on the sentencing young people draft guideline.
 - The launch of the public consultation attracted 8861 visitors to the website in February. This is by far the most visitors in any month since the website's launch.
 - The Court of Criminal Appeal's decision in *HMA v Lindsay*, a Crown appeal against sentence, contained guidance for courts on how to approach sentence discounting during the Covid-19 pandemic. A link to this judgment was published on the Council's Twitter account. Given the positive reaction, it is proposed to make more use of Twitter to highlight judgments which are relevant to sentencing.

- Education resources on the Council’s website continue to be popular with teachers and students. Many positive comments have been posted on social media about the lesson plans, which have been downloaded more than 180 times since schools re-opened mid-August.
- The Council was once again part of the Supreme Courts Doors Open Day this year, held during the last weekend of September. Due to restrictions it was held online with people invited to watch the videos and try the ‘If you were the judge’ interactive case studies on the Council’s website. This led to double the number of visitors to the website compared to other weekends.

Item 2.2: Updates on recent and upcoming engagement activity [Oral]

14. Hannah Graham gave an update about her attendance at an Audit Scotland/Scottish Policy and Research Exchange workshop on sentencing policy in January; and on the Apex Scotland Annual Lecture, which she delivered on 01 September.

15. David Ross gave a short update about the Secretariat’s participation in the following online events:

- Community Justice Scotland policy forum on the Scottish Government’s consultation on raising the age of referral, 20 August.
- Community Justice Scotland policy forum on The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, 30 September.

16. In relation to upcoming engagement activity, the Chair noted that the secretariat had arranged the following meetings:

- Meeting with Scottish Women’s Aid and ASSIST to discuss the case for a domestic abuse guideline, 12 October.
- Meeting with Scottish Government officials to discuss various matters, including the impact of Covid-19 on the Council’s work programme and policy developments (date TBC).

ACTION POINT

AP2: *Hannah Graham to explore whether further information on the Audit Scotland/SPRE event could be made available to the Council.*

3. SENTENCING GUIDELINES

*Item 3.1: Sentencing young people – update on public consultation and issues arising
[Papers 3.1 and 3.1A-C]*

17. The Council considered paper 3.1, which provided an update on the public consultation on the sentencing young people draft guideline. A summary of responses to the consultation was provided at paper 3.1A, although it was noted that the formal consultation analysis had yet to begin, and that it would explore the highlighted issues in more detail and perhaps raise others.
18. Sue Moody gave an update on a series of meetings with victims' and survivors' organisations to discuss the guideline and the Council's work, which took place in September. These had been cordial and constructive and the outputs would be helpful in considering the further development of the guideline.
19. The Council provided initial views on some key issues arising from the consultation and noted that these would be taken forward by the secretariat under the auspices of the Sentencing Young People Committee. It was noted that the qualitative analysis of the consultation would be particularly important when considering any amendments to the draft guideline.

ACTION POINTS

- AP3:** *Secretariat to prepare advice and recommendations to the Sentencing Young People Committee on issues arising from the public consultation on the sentencing young people draft guideline, pending completion of the formal consultation analysis.*
- AP4:** *Secretariat to test the 3 general guidelines with new judicial members to identify any potential conflicts between them.*

Item 3.2: Scottish Government consultation on raising the age of referral – consideration of Council response [Paper 3.2]

20. The Council considered a draft response to the Scottish Government's consultation on proposals for a legislative change to allow 16 and 17 year olds to be referred to the Principal Reporter. The draft response focussed on how the proposals would interact with or affect the sentencing young people draft guideline. Members indicated that they were content for the draft response to be submitted to the Scottish Government.

ACTION POINT

AP5: *Secretariat to finalise and submit the Council's response to the Scottish Government consultation on raising the age of referral as soon as is practical.*

Item 3.3: Sentencing process – analysis of responses to public consultation [Papers 3.3 and 3.3A-C]

21. The Chair invited Lord Turnbull to give an update on the Sentencing Process Committee's consideration of the analysis of responses to consultation on the sentencing process draft guideline.
22. Lord Turnbull noted that the Committee had met on 1 October 2020, and gave detailed consideration to the public and statutory consultation responses.
23. He advised the Council that the consultation responses were generally positive about the draft guideline, and that some constructive suggestions about the guideline's provisions had been made.
24. The Council discussed the terms of the consultation analysis, and provided additional thoughts on how the draft guideline might be refined.
25. Lord Turnbull confirmed that the Committee would reflect further on the views of the Council and of consultation respondents, and would provide the Council with a further draft of the guideline via email, in order to allow Council members to provide further suggestions for improvement,

ACTION POINT

AP6: *Secretariat to circulate a copy of the amended sentencing process guideline to members by email, with a view to allowing members to consider it and offer suggestions.*

Item 3.4: Offence guidelines – note of discussions at February workshop [Papers 3.4 and 3.4A-D]

26. David Dickson spoke to paper 3.4, which summarised the Council's workshop on offence guidelines which took place in February 2020. David outlined emerging thoughts about

some of the issues which the Council will need to address in developing offence-specific guidelines and finalising the sentencing process guideline.

27. The Council noted that further development of offence guidelines will be informed by consideration of the sentencing process guideline as a result of the public consultation. It was also agreed that offence committees should continue with iterative drafting and that draft guidelines can be tested with the judiciary.

ACTION POINT

AP7: ***Secretariat to arrange for draft offence guidelines to be tested with the judiciary.***

4. DECISIONS BY CORRESPONDENCE

Item 4.1: Decisions by correspondence [Paper 4.1]

28. It was noted that eight decisions by correspondence had been made since the last Council meeting in respect of the following matters:

- 1) Publication of a report of focus groups on youth offending and sentencing.
- 2) Approval of the draft impact assessment on the sentencing young people draft guideline, and of the draft guideline itself, for the purposes of statutory and public consultation.
- 3) Suspension of standing order 5.1, which requires it to meet at least 4 times in each financial year, due to the Covid-19 pandemic.
- 4) Extension of the sentencing young guideline public consultation by three months due to the Covid-19 pandemic.
- 5) Proposals for engagement with victims' and survivors' organisations.
- 6) Consideration of request from the Justice Committee for views on the Hate Crime and Public Order (Scotland) Bill.
- 7) Approval of draft minutes of the December 2019 meeting.
- 8) Approval of the Annual Report 2019-20.

5. REPORTS

Item 5.1: Standing papers: correspondence, complaints and FOISA reports; finance overview [Papers 5.1A-B]

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

6. AOB

Item 6.1: AOB

30. The Chair gave members an update about the Working Group on Restarting Solemn Trials, which she had been leading in her capacity as Lord Justice Clerk. The Chair noted that High Court trials had resumed in a remote jury centre at the Odeon cinema Fort Kinnaird retail park in Edinburgh and would shortly also resume at a remote jury centre in Glasgow. There was still a significant backlog of cases, however.

31. DCC Kerr then provided members with an overview of the Police Scotland response to the Covid-19 pandemic.

7. FUTURE MEETING DATES

32. The Chair reminded members that the next Council meeting is on Friday 11 December 2020 and would most likely take place by video conference.

33. The Chair also reminded members that the dates of Council meetings and workshops in 2021 are as follows:

- Council workshop: 19 February 2021
- Council meeting: 19 March 2021
- Council meeting: 11 June 2021
- Council workshop 20 August 2021
- Council meeting: 08 October 2021
- Council meeting: 10 December 2021