

MEETING OF THE SCOTTISH SENTENCING COUNCIL
19 MARCH 2021
BY VIDEO CONFERENCE
MINUTES

Members present: Lady Dorrian, the Lord Justice Clerk (Chair)
Lord Matthews (judicial member)
Sheriff Principal Craig Turnbull (judicial member)
Sheriff Iain Fleming (judicial member)
Summary Sheriff Paul Brown (judicial member)
Susan Fallone JP (judicial member)
David Harvie, Crown Agent (prosecutor member) (*until item 4.2*)
Matt Jackson QC (advocate member)
Krista Johnston (solicitor member) (*until item 3.3*)
Lesley Weber (lay member – victims expert)
Dr Hannah Graham (lay member)

Attendees: Sheriff Alistair Duff (*for item 3.3 only*)

Secretariat: David Dickson (principal legal officer)
Andrew Bell (principal research officer)
David Ross (senior policy officer)
Stuart Ritchie (communications officer)
Richard Smith (business manager)
Dr Nicole Vidal (researcher)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that apologies had been received from DCC Will Kerr.
2. The Chair welcomed Lesley Weber and Sheriff Iain Fleming to their first meeting as Council members. She advised that Sheriff Fleming's appointment as the new sheriff member of the Council had recently been confirmed by the Lord Justice General

following consultation with the Scottish Ministers, and that Lesley Weber had been appointed as the Council's new victims expert member in January.

3. It was noted that Sheriff Alistair Duff, Director of the Judicial Institute, would be joining the meeting for item 3.3 to discuss engagement between the Council and the Judicial Institute.

Item 1.2: Previous meeting minutes [Paper 1.2]

4. Minutes of the Council meeting of 11 December 2020 were provided at paper 1.2. The Council approved the minutes.

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

5. The Council noted the progress of actions provided at paper 1.3.

Item 1.4: Private papers [Oral update]

6. The Council agreed not to publish the following papers: 1.3, 1.5, 2.1, 2.1A, 2.1B, 2.1C, 2.1E, 2.2, 2.2A, 2.2B, 2.2C, 2.2D, 5.1, 6.1, 6.1A, 6.1B, 6.1C, 6.1D, 6.1E, 6.2B, 6.2C, 6.3

Item 1.5: Council membership – update on recruitment [Paper 1.5]

7. The Council noted an update on the current membership of its committees, and considered various proposed appointments to committees.

8. The Council:

- agreed to appoint Lesley Weber to the Communications and Sexual Offences Committees, effective immediately; and
- noted that Sheriff Andrew McIntyre has been appointed as an advisor to the Communications and Sexual Offences Committees.

ACTION POINT

AP1: ***Secretariat to revert to the Council to confirm, by correspondence, further proposed committee appointments when it is in a position to do so.***

2. SENTENCING GUIDELINES

Item 2.1: Sentencing process guideline [Papers 2.1 and 2.1A-E]

9. The Council considered a revised draft of its guideline ‘The sentencing process’, the associated impact assessment on the guideline, and the proposed approach to submitting the guideline to the High Court for approval.

10. The Council:

- agreed with minor amendments, to finalise the guideline ‘The sentencing process’;
- agreed on a final revision of the impact assessment, and for the revised impact assessment to be circulated to the Council for approval and finalisation by way of correspondence after the meeting;
- agreed that thereafter the guideline ‘The sentencing process’ and the impact assessment should be submitted to the High Court for consideration and approval;
- noted and agreed the proposed approach to guideline submission, including accompanying documentation – the public consultation paper, the analysis of public consultation responses, and the Council’s report on the public consultation exercise, setting out what action it intends to take in response - and the proposed coming-into-force date; and
- agreed to publish consultation responses where permission to do so has been received, along with the Council’s report on the consultation.

ACTION POINTS

AP2: *Secretariat to revise the impact assessment on the sentencing process guideline as agreed and issue it to the Council for approval and finalisation by correspondence.*

AP3: *Subject to approval and finalisation of the impact assessment by correspondence, secretariat to submit the sentencing process guideline, impact assessment, and associated documentation for submission to the High Court, together with a petition as prescribed in the relevant Act of Adjournal, as soon as practicable.*

Item 2.2: Sentencing young people guideline [Papers 2.2 and 2.2A-D]

11. The Council considered the analysis of responses to the public consultation on the draft sentencing young people guideline, along with a draft of the guideline which had been revised by the Sentencing Young People Committee in response to issues raised in the consultation.
12. The Council indicated that it was content with the consultation analysis. A number of issues raised by the Committee in paper 2.2 were discussed. In particular, the Council agreed in principle that the guideline should refer to “the court” rather than “the judge” for consistency with the sentencing process guideline. It was agreed that the Committee should consider a number of further changes before the next Council meeting. An indicative timeline for finalisation of the guideline was noted.
13. The Council also considered a research report by the University of the West of Scotland on the results of focus groups exploring the opinions of young people across Scotland, including young people with convictions, on sentencing and the draft sentencing young people guideline. The Council welcomed the report and approved its publication on the Council’s website before the start of the pre-election period.

ACTION POINTS

- AP4:** ***Sentencing Young People Committee to consider further changes to the draft guideline.***
- AP5:** ***Secretariat to publish of the University of the West of Scotland research report on the Council’s website in the week commencing 22 March 2021.***

Item 2.3: Guideline committees update [Oral update]

14. David Harvie provided an update on the work of the Death by Driving Committee. In particular, he noted that:
 - The committee is due to meet on 26 April.
 - The Council has now published research, carried out by ScotCen, on public perceptions of sentencing for death by driving offences.
 - The committee will be able to commence iterative drafting of a guideline, with a view to judicial consultation in due course.

15. Lord Matthews provided an update on the work of the Sexual Offences Committee. In particular, he noted that:

- Since the last Council meeting the Council has published two pieces of research in this area: literature reviews in relation to rape and sexual assault, carried out by academics from the Universities of Glasgow and Strathclyde.
- The secretariat will revert to the Council to confirm, by correspondence, further appointments to this committee when it is in a position to do so. The committee can then elect a chair.

ACTION POINT

AP6: *Secretariat to liaise with members of the Sexual Offences Committee to arrange the next meeting.*

3. COMMUNICATIONS AND ENGAGEMENT

Item 3.1: Communications Committee update [Oral update]

16. Hannah Graham provided an update on the work of the Communications Committee. In particular, she noted that:

- As was covered under item 1.5, Sheriff Andrew McIntyre has been appointed to the Committee as an advisor.
- The committee discussed a communications plan for the sentencing process guideline.
- 5 research papers have been published on the updated research page on the website since the December meeting.
- The Committee is beginning work on the Council's 2021-2024 Communications Strategy.
- The Council's Twitter account has had 200,000 views.
- The Council's website has been shown as a result to 1.6 million Google searches which generated 50,000 clicks to the website.

Item 3.2: Updates from recent and upcoming activity [Oral update]

17. The Chair informed members that she met with the Cabinet Secretary for Justice on 15 March and provided an update on the matters discussed.

18. The Chair provided an update on recent engagement activity undertaken by members of the Council. In particular she noted that:

- David Harvie and Summary Sheriff Paul Brown participated in the ‘Tackling Crime and Delivering Justice in Scotland: The Scottish Government’s long-term vision’ online conference on 11 February. Ondine Tennant and David Dickson also participated on behalf of the secretariat.
- Susan Fallone and Krista Johnston attended the online conference ‘Recover, Renew, Transform: Delivering Scotland’s Post-COVID Justice System’ on 17 March. David Dickson also attended this event on behalf of the secretariat.

Upcoming engagement activity

19. The Chair noted that the Law Society of Scotland’s Annual Conference 2021 would include a panel discussion on “Trauma Awareness within Criminal Justice” on Thursday 29 April. She invited any members who wished to attend this to contact the secretariat.

Item 3.3: Engagement with the Judicial Institute [Oral]

20. The Chair welcomed Sheriff Alistair Duff, Director of the Judicial Institute, to the meeting. Sheriff Duff gave a short presentation on engagement between the Council and the Judicial Institute. In particular, he discussed:

- the nature of the sentencing and Council material covered by the Judicial Institute at present, particularly at the induction of new members of the judiciary;
- potential Council involvement with Judicial Institute training events; and
- what sort of engagement may be required as part of the launch of both the sentencing process and sentencing young people guidelines.

21. The Council considered and discussed the issues raised, and the Chair thanked Sheriff Duff for his presentation.

4. RESEARCH

Item 4.1: Research projects update [Oral]

22. Andrew Bell provided an update on research plans for 2021-22. He advised that the Council had given approval for the 2021-22 research projects at its last meeting in December 2020. Initial project work would be undertaken in-house by Dr Nicole Vidal

where possible, and a further update on which projects this would involve, along with staffing approaches, would be provided at the next meeting.

Item 4.2: Update on shrieval survey on community-based disposals [Oral update]

23. Dr Nicole Vidal provided an update on the Council's survey of shrieval attitudes to, and confidence in, community-based disposals. She advised that the survey got underway in February and was due to close that day. The secretariat would report back to the Council on the findings in due course.

ACTION POINT

AP7: *Secretariat to report back to Council on the outcome of the survey of shrieval attitudes to, and confidence in, community-based disposals.*

5. POLICY DEVELOPMENT

Item 5.1: Policy update [Paper 5.1]

24. The Council noted paper 5.1 which advised the Council of the following recent issues in respect of policy development:

- The introduction of regulations to reduce the current backlog of hours of unpaid work which have been imposed as part of community payback orders, but not performed as a consequence of Covid-19 restrictions.
- The Counter-Terrorism and Sentencing Bill.
- The publication of guidance on the use of structured deferred sentences.
- Publications and research by the Sentencing Council for England and Wales, including its new guideline on firearms offences and its revised guideline on drugs offences.
- Miscellaneous Scottish Government /Scottish Parliament consultations, including on the retention period for evidence collected in the course of self-referral forensic medical service, and the criminal law dealing with dangerous dogs.
- Death by dangerous driving legislation.

- The Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill, was has passed stage 3 in the Scottish Parliament.
- A recent High Court opinion (McMahon v HMA [2021] HCJAC 14) which provides guidance to courts in applying a sentence discount where there is a statutory minimum sentence.
- The publication by the Scottish Government of its analysis of the responses it received in respect of its consultation on widening the scope of the victim statement scheme.
- The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, which has passed stage 2 in the Scottish Parliament.
- Citations of the Council’s research on the cognitive maturity of young people.

6. GOVERNANCE AND REPORTS

Item 6.1: Revised complaints handling procedure [Papers 6.1 and 6.1A-E]

25. The Council noted paper 6.1 which advised the Council about the requirement for the Council to adopt and implement the Scottish Public Services Ombudsman’s (“SPSO”) revised Model Complaints Handling Procedure (“MCHP”) for the Scottish Government, Scottish Parliament and Associated Public Authorities in Scotland, and to publish a revised ‘customer facing’ complaints handling procedure (“CHP”).

26. The Council:

- approved the revised MCHP at papers 6.1A-D and the revised CHP at paper 6.1E; and
- agreed that any further changes to the MCHP and CHP as may be suggested by SPSO will be considered and cleared the Chair.

ACTION POINT

AP8: *Secretariat to liaise with the Chair to finalise the MCHP and CHP, and publish the CHP, by April.*

Item 6.2: Standing papers; correspondence, FOISA, and complaints; finance overview; guideline timetable [Papers 6.3A-C]

27. The Council noted the content of the standing papers.

Item 6.3: Decisions by correspondence [Oral update]

28. It was noted that one decision had been made by correspondence since the last Council meeting. This was to appoint Lord Matthews as a member of the Death by Driving and Sexual Offences Committees with effect from 01 January 2021.

7. AOB

Item 7.1: AOB

29. No other business was raised.

8. FUTURE MEETING DATES

30. The next Council meeting will take place on Friday 11 June 2021.

31. The dates of the other Council events in 2021 are as follows:

- Council workshop: 20 August 2021
- Council meeting: 08 October 2021
- Council meeting: 10 December 2021