

**MEETING OF THE SCOTTISH SENTENCING COUNCIL**  
**11 JUNE 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)  
Matt Jackson QC (advocate member)  
Krista Johnston (solicitor member)  
Dr Hannah Graham (lay member)

**Attendees:** Neil Rennick (*for item 2.5 only*)  
Philip Lamont (*for item 2.5 only*)

**Secretariat:** Ondine Tennant (secretary)  
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)

**Apologies:** DCC Will Kerr (constable member)  
Lesley Weber (lay member – victims expert)

## **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 and Lesley Weber.

2. The Chair informed members that this will be the last full Council meeting attended by David Harvie, whose term of office on the Council expires on 30 August. The Chair thanked him for his valuable contributions over the last 5 years and for his willingness to continue to be involved in Council work in future.

*Item 1.2: Previous meeting minutes [Paper 1.2]*

3. Minutes of the Council meeting of 19 March 2021 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. It was noted that it was intended to take forward arrangements for the outstanding action to run a session for members on risk.

*Item 1.4: Private papers [Oral update]*

5. The Council agreed not to publish the following papers: 1.3, 2.1, 2.1A, 2.2, 2.3, 2.3A, 2.3B, 2.4, 2.4A, 2.6, 2.7, 3.2, 3.2A, 3.2B, 3.2C, 3.2D, 3.2E, 3.3, 3.3A, 4.2, 4.2A, 5.2, 5.2A, 5.2B, 6.1B, 6.1C, 6.2.

## **2. BUSINESS PLANNING**

*Item 2.1: Funding model [Papers 2.1 and 2.1A]*

6. The Council agreed a proposed new funding model which has been developed following discussions with the Scottish Government and SCTS.
7. The Council:
  - noted the position on the current direct running costs of the Council; and
  - indicated it was content with the proposed funding model arrangements as outlined in paper 2.1.

### **ACTION POINT**

**AP1: Secretariat to continue discussions with the Scottish Government and SCTS in respect of the new funding model.**

*Item 2.2: Policy update [Paper 2.2]*

8. The Council noted paper 2.2 which advised the Council of the following recent issues in respect of policy development:

- Scottish Parliament and manifesto commitments
- Prison population
- Counter-Terrorism and Sentencing Act 2021
- Independent Forensic Mental Health Review
- Scottish Government publications
- Scottish Law Commission – homicide
- Women offenders and head injury
- Young people and guilty pleas
- Sentencing Council for England and Wales
- Police, Crime, Sentencing and Courts Bill
- Safeguarding Children films
- UNCRC incorporation

*Item 2.3: Business Plan and Communications Strategy 2021-24 [Papers 2.3 and 2.3A-B]*

9. The Council provided views on a draft business plan for 2021-24 and a draft communications and engagement strategy for the same period. It was noted that the secretariat will revert to the Council with final drafts of both documents at the October meeting following the conclusion of statutory consultation on the business plan.

**ACTION POINT**

**AP2: Secretariat to revert to the Council with final drafts of the business plan and communications and engagement strategy for 2021-24 in October.**

*Item 2.4: Funding bid [Papers 2.4 and 2.4A]*

10. The Council considered and approved proposals for a draft business case for additional funding to support a new staffing structure to deliver the work outlined in the draft business plan.

## ACTION POINT

**AP3: Secretariat to continue work on the draft business plan and draft funding bid.**

### *Item 2.5: Update from Scottish Government [Oral update]*

11. The Chair welcomed Neil Rennick, the Scottish Government's Director of Justice, to the meeting. Neil was accompanied by Philip Lamont, Head of Criminal Law within the Criminal Justice Practice and Licensing Unit. Neil gave a short presentation on the Scottish Government's post-election justice priorities, discussing:

- the Scottish Government's commitment to consult on the abolition of the "Not Proven" verdict;
- continuation of implementation of legislation in respect of hate crime and domestic abuse;
- the legacy of the COVID-19 pandemic and its impacts on the justice system; and
- the incorporation of the United Nations Convention on the Rights of the Child into Scots Law and its impact on the justice system.

12. The Council considered and discussed the issues raised, and the Chair thanked Neil Rennick for his presentation and Philip Lamont for his attendance.

## ACTION POINT

**AP4: Secretariat to make arrangements for further engagement with the Scottish Government to discuss justice priorities and how they relate to the work of the Council.**

### *Item 2.6: Establishment of Discounting Committee [paper 2.6]*

13. The Council:

- agreed to establish a working group committee on sentence discounting, to be known as the Discounting Committee;
- agreed the remit and terms of reference of the committee, as set out in the annex to paper 2.6;
- agreed that the Discounting Committee should remain in existence until 6 months after the guideline comes into force.

*Item 2.7: Committee membership [Paper 2.7]*

14. The Council noted the update on current membership within the Council's committees provided in paper 2.7.
15. The Chair invited Council members to express interest in membership of the proposed discounting and domestic abuse committees (the latter being subject to final decisions to be taken on the 2021-24 business plan) and indicate whether or not they have an interest in chairing the committee(s) when doing so.

**ACTION POINT**

**AP5:        *Members to submit expressions of interest in membership of the proposed discounting and domestic abuse committees to the secretariat.***

**3. SENTENCING GUIDELINES**

*Item 3.1: Sentencing process guideline [Oral update]*

16. David Dickson provided an update on the arrangements for submission of the sentencing process guideline, and associated documentation, to the High Court. In particular, he noted that:
  - the impact assessment on the guideline had been circulated to the Council for approval by correspondence, and has now been approved and will therefore be submitted to the High Court along with the guideline; and
  - the guideline itself has also been issued to the Council for consideration by correspondence to approve minor amendments made since the last Council meeting.

*Item 3.2: Sentencing young people guideline [Papers 3.2 and 3.2A-E]*

17. The Council considered a revised draft of its guideline on the sentencing of young people, the associated impact assessment, the proposed approach to submitting the guideline to the High Court for approval, and a draft of the Council's response to the public consultation on the guideline.
18. The Council:
  - finalised the sentencing young people guideline subject to some minor amendments;

- approved the impact assessment in principle and agreed to it being shared on a confidential basis with key stakeholders in order to help with a final determination of potential costs;
- agreed that the revised impact assessment should be circulated to the Council for approval and finalisation by way of correspondence as soon as possible after discussions with key stakeholders have taken place;
- agreed that thereafter the sentencing young people guideline 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;
- approved in principle the Council’s report on the public consultation, subject to some minor amendments, noting that any final updates will be agreed by the Chair and Sheriff Principal Turnbull; and
- agreed to arrangements for publication of the consultation report and associated documents.

#### **ACTION POINTS**

- AP6:**     ***Secretariat to take forward arrangements for finalising the impact assessment in consultation with other agencies as appropriate and to issue it to the Council thereafter for approval by correspondence.***
- AP7:**     ***Subject to approval of the impact assessment, secretariat to take forward arrangements for submitting the guideline and associated documentation to the High Court as soon as practicable.***
- AP8:**     ***Secretariat to liaise with the Chair and Sheriff Principal Turnbull to finalise the Council’s consultation report and arrangements for its publication.***

#### *Item 3.3: Guideline committees update [Papers 3.3 and 3.3A]*

19. David Harvie provided an update on the work of the Death by Driving Committee, which had last met on 26 April. Iterative drafting of the guideline has been continuing and a further revised draft will be considered at its next meeting in July following judicial testing

and some analysis work being carried out by COPFS. The Committee wished to bring some matters to the attention of the Council, these being of relevance to offence guidelines generally. Members were content with the general approach adopted by the Committee and noted that further thought was being given to the interaction of general guidelines and offence guidelines, including whether, and if so how, this should be addressed within offence guidelines.

20. Lord Matthews provided an update on the work of the Sexual Offences Committee. In particular he noted that the Committee will next meet on 23 June to consider the outcomes of the range of research and engagement that has been carried out in relation to the development of the guidelines. This will include Nicole Vidal's report on her fieldwork with the judiciary, a report on focus groups held with members of the public and survivors into public perceptions of sentencing for sexual offences, and a case analysis of indecent image cases. Some drafting work has begun, with more detailed development work to begin towards the end of summer.

#### **4. COMMUNICATIONS AND ENGAGEMENT**

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

21. Summary Sheriff Brown, the newly elected Chair of the Committee, provided an update on the work of the Communications Committee. In particular, he noted that:

- He and Lesley Weber have been appointed to the Communications Committee;
- The Committee held its last meeting on 20 May, at which the draft communications and engagement strategy 2021-24, communications plans for forthcoming guidelines, and a proposal to add appeal decisions to the website had been agreed.
- Up until the end of May there had been just over 32,000 visitors to the Council's website this year. The Council's Twitter account has had 100 new followers while tweets have been viewed over 85,000 times. Videos on You Tube have been viewed over 2,000 times this year.

##### *Item 4.2: Updates from recent and upcoming engagement activity [Oral and papers 4.2 and 4.2A]*

###### *Recent engagement activity*

22. The Council noted paper 4.2, which provided details of a number of meetings and events attended by members and staff in recent weeks. Members noted that the secretariat is

giving thought to how more formal engagement between the Council and the Scottish Government, Scottish Prison Service and Audit Scotland might best be taken forward.

*Upcoming engagement activity*

23. The Council noted the update at paper 4.2A in respect of the Council's workshop at the National Youth Justice Conference.

**ACTION POINT**

**AP9: *Secretariat to consider how more formal engagement between the Council and the Scottish Government, Scottish Prison Service and Audit Scotland might best be taken forward.***

**5. RESEARCH**

*Item 5.1: Research projects update [Oral]*

24. Hannah Graham, the newly elected Chair of the Committee, provided an update on the work of the Research Committee. She discussed:

- current and planned research projects, including further public perceptions research with survivors of sexual offences, a literature review on domestic abuse, and a further national survey exploring, among other things, attitudes towards sentencing of sexual offences, discounting, domestic abuse, community disposals, and repeat questions from the previous survey to form part of a longitudinal dataset on this topic;
- plans to bring in advisors with specialist knowledge as appropriate, rather than a standing advisor or advisors; and
- early plans to undertake a sentencing research engagement session with relevant academics and researchers, to enable stronger links between the Council and academia as well as to increase the number of organisations which may bid for tendered research projects.

*Item 5.2: Community-based disposals [Papers 5.2 and 5.2A-B]*

25. The Council considered a draft issues paper on community sentencing, which had been informed by direct engagement with sheriffs and other work carried out by the Council and which was intended for future publication. Members noted that Audit Scotland were

also considering community justice and agreed that documentation could be shared with Audit Scotland to ensure any cross-cutting issues could be identified.

#### **ACTION POINT**

**AP10: Secretariat to finalise the issues paper under the direction of Council members Dr Hannah Graham, Krista Johnston, Sheriff Principal Turnbull, Sheriff Fleming and Summary Sheriff Brown.**

### **6. GOVERNANCE AND REPORTS**

*Item 6.1: Standing papers; correspondence, FOISA, and complaints; finance overview; guideline timetable [Papers 6.1A-C]*

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

*Item 6.2: Decisions by correspondence [Paper 6.2]*

27. It was noted that one decision had been made by correspondence since the last Council meeting. This was to appoint Sheriff Fleming as a member of the Research Committee and Summary Sheriff Brown as a member of the Communications Committee, both with effect from 04 May 2021.

### **7. AOB**

*Item 7.1: AOB*

28. Ondine Tennant informed members of a policy proposal which the secretariat had recently been made aware of. Members would be provided with fuller details following the meeting.

#### **ACTION POINT**

**AP11: Secretariat to circulate further details following today's meeting.**

## **8. FUTURE MEETING DATES**

29. The next Council event is a workshop on 20 August 2021. The workshop was expected to provide an opportunity to consider further the community sentencing issues paper and death by driving guideline as well as a specific session focussing on the Council's medium to long-term priorities.

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

- Council meeting: 08 October 2021
- Council meeting: 03 December 2021 (rescheduled from 10 December 2021)