

MEETING OF THE SCOTTISH SENTENCING COUNCIL
08 OCTOBER 2021
RADISSON BLU, EDINBURGH
DRAFT MINUTES

Members present: Lady Dorrian, the Lord Justice Clerk (chair)
Sheriff Principal Craig Turnbull (judicial member)
Sheriff Iain Fleming (judicial member)
Krista Johnston (solicitor member)
DCC Will Kerr (constable member)
Lesley Weber (lay member)
Dr Hannah Graham (lay member)

Attendees: Graham Ackerman – *until item 1.6*
Jennifer Stoddart – *until item 1.6*

Secretariat: Ondine Tennant (secretary)
David Dickson (principal legal officer)
Andrew Bell (principal research officer)
David Ross (senior policy officer)
Richard Smith (business manager)
Dr Nicole Vidal (researcher)

Apologies: Lord Matthews (judicial member)
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 Lord Matthews and Susan Fallone.
2. The Chair welcomed Graham Ackerman, the head of the Scottish Government's Community Interventions, Finance, and Sponsorship Unit, and Jennifer Stoddart, the head of the Scottish Government's Legislation and Future of Custody Unit, to the

meeting and advised members that they would provide an update on the Programme for Government 2021-22 and developments relating to community justice at item 1.6.

Item 1.2: Previous meeting minutes [Paper 1.2]

3. Minutes of the Council meeting of 11 June 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.

Item 1.4: Private papers [Oral update]

5. The Council agreed not to publish the following papers: 1.3, 1.6, 2.1, 2.1A, 2.1B, 2.2, 2.3, 2.4, 3.2, 3.2A, 4.2, 5.1, 5.1A, 5.2, 7.1, 7.1A, 7.2B, 7.2C, and 7.3.

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

6. The Council noted that:
 - Lindsey Miller, Deputy Crown Agent, had been appointed by the Lord Justice General as David Harvie's successor as the prosecutor member of the Council, following consultation with the Scottish Ministers; and
 - recruitment exercises are expected to launch imminently for recruitment of new advocate and summary sheriff members, to replace Matt Jackson QC (now Sheriff Jackson) and Sheriff Paul Brown, following their recent appointments as sheriffs.

Item 1.6: Programme for Government 2021/22 and update from Scottish Government Community Justice Division [Paper 1.6 and oral presentation]

7. The Council noted paper 1.6 which provided an update on matters of relevance to the Council contained in the Programme for Government 2021/22, including the consultation on the establishment of a National Care Service, which was later discussed under item 5.2 on the agenda.
8. Graham Ackerman and Jennifer Stoddart gave a short presentation on the Programme for Government and developments relating to community justice, including discussion of:

- proposed legislation to change the way that imprisonment is used, with consultation on initial proposals relating to bail and release from custody law expected this autumn; and
 - proposals for the expansion of community justice services supporting diversion from prosecution, alternatives to remand and community sentencing.
9. The Council considered and discussed the issues raised, and the Chair thanked Graham and Jennifer for their presentation and attendance.

2. BUSINESS PLANNING

Item 2.1: Business Plan and Communications Strategy 2021-24 [Papers 2.1 and 2.1A-B]

10. The Council considered revised drafts of its business plan and communications and engagement strategy for 2021-24.
11. In respect of the business plan, the Chair provided an update on the statutory consultation with the Lord Justice General, Scottish Ministers, and the Lord Advocate, including on her recent meetings with the Lord Advocate and the Cabinet Secretary for Justice and Veterans. The Council noted the revisions made to the business plan to take account of the statutory consultation and engagement that had taken place since June.
12. In respect of the communications and engagement strategy, it was noted that no substantive changes had been made since the last meeting.
13. The Council:
- noted the engagement carried out to date in respect of the business plan and that planned for the future;
 - approved the revised draft business plan for 2021-24;
 - approved the revised draft communications and engagement strategy for 2021-24; and
 - agreed to the arrangements for publication of both documents as set out in paper 2.1.

ACTION POINT

AP1: Secretariat, in consultation with the Chair, to finalise arrangements for the submission of the business plan 2021-24 to the Scottish Ministers and for publication of the plan and the communications strategy thereafter.

Item 2.2: Note of discussion at August workshop [Paper 2.2]

14. A note of the discussion at the August workshop of 20 August 2021, at which the Council had considered, among other things, potential activity beyond the next business plan period, was provided at paper 2.2. The Council approved the note.

Item 2.3: Establishment of Domestic Abuse Committee [Paper 2.3]

15. The Council:

- agreed to establish a working group committee on domestic abuse offences, to be known as the Domestic Abuse Committee;
- agreed to appoint Sheriff Principal Turnbull, Susan Fallone, and Lesley Weber as members of the committee;
- agreed the remit and terms of reference of the committee, as set out in the annex to paper 2.3; and
- agreed that the committee should remain in existence until 6 months after the domestic abuse guideline comes into force.

Item 2.4: Committee membership [Paper 2.4]

16. The Council noted an update on current and proposed membership within its committees and agreed to appoint Sheriff Principal Turnbull, Sheriff Fleming, Krista Johnston and Hannah Graham as members of the Discounting Committee.

ACTION POINT

AP2: Secretariat to take forward arrangements for the appointment of committee advisors where necessary.

3. SENTENCING GUIDELINES

Item 3.1: Sentencing young people – update on publication of consultation report [Oral update]

17. David Ross provided an update on the publication of, and reaction to, the Council's report on the sentencing young people public consultation exercise. In particular, he noted:

- stakeholder engagement carried out around publication of the report;
- interviews that the Chair gave to BBC Scotland, STV News and Bauer Media;
- discussion of the report during a meeting of the Scottish Parliament's Criminal Justice Committee on 15 September; and
- media and online coverage of the report's publication on 15 September and thereafter, which had been generally positive.

ACTION POINT

AP3: Secretariat to provide a note of, and links to, coverage of the publication of the Council's report on the sentencing young people public consultation exercise.

Item 3.2: Sexual offences – draft rape guideline [Papers 3.2 and 3.2A]

18. Lesley Weber provided an update on the work of the Sexual Offences Committee and in particular on the development of a draft guideline on rape, an early draft of which was provided for the Council's consideration. The Council was advised that given this was a very early draft, much of the content should be regarded as provisional.

19. The Council:

- noted the terms of the draft guideline;
- agreed that the scope of the Council's work on rape guidelines should include the offence of rape of a young child; and
- approved the proposals for stakeholder engagement set out in paper 3.2 and suggested some additional organisations or bodies, including the Scottish Child Abuse Inquiry, that should also be consulted.

ACTION POINT

AP4: Secretariat to begin engagement on the draft guideline on the sentencing of rape offences with key stakeholders.

Item 3.3: Guideline committees update [Oral]

20. Sheriff Principal Turnbull provided an update on the Sentencing Process Committee. In particular, he noted that:

- he had delivered a talk on the sentencing process guideline at a recent Judicial Institute shrieval induction course and would also be speaking about it to the Glasgow Bar Association next week; and
- Sheriff Fleming had delivered a talk on the sentencing process guideline to immigration tribunal judges in Glasgow.

21. Sheriff Principal Turnbull also provided an update on the work of the Sentencing Young People Committee. In particular, he noted that:

- the date for the High Court approval hearing on the sentencing young people guideline has been set for 09 November; and
- the secretariat was working on proposals for activities to raise public awareness and understanding of the guideline, which would be issued to the committee for consideration in due course.

22. DCC Will Kerr provided an update on the work of the Death by Driving Committee. In particular, he noted that:

- judicial views on the draft death by driving guideline are currently being sought;
- the secretariat hopes to provide an interim update on the views expressed at the December meeting, with a final report in January;
- work on the impact assessment will begin later in October with stakeholder engagement taking place;
- it is intended that a public consultation on the draft guideline will take place in 2022; and
- the committee is keeping up to date with plans by the Sentencing Council for England and Wales to review its motoring offences guidelines, including those for causing death by driving.

4. COMMUNICATIONS AND ENGAGEMENT

Item 4.1: Communications Committee update [Oral]

23. Krista Johnston provided an update on the work of the Communications Committee. In particular, she noted that:

- the position of Chair is absent following Sheriff Brown's departure from the Council on his appointment as a sheriff;
- the Committee will hold its next meeting in late October;
- there is a variety of work underway which the committee will consider by correspondence or when it next meets, including: development of a social media policy; a schedule of member, staff and third-party blogs; proposals for webinars; and collaboration with other organisations such as VSS and COPFS;
- she had delivered a presentation on the business plan proposals to the Law Society's Criminal Law Committee;
- in September the Council's website had the highest number of users and page views since January 2021. The website had 644 users and the news release on the publication of the sentencing young people consultation report received 268 views on 15 September. The total number of users from January up to the end of September shows an increase of around 7,000 compared to the same period last year;
- in September the Council's Twitter account had 155 new followers, 4027 visits to its page and 122 mentions. The Chair's video explaining the approach set out in the sentencing young people guideline had almost 70,000 impressions and 1,174 engagements.

Item 4.2: Updates on recent and upcoming engagement activity [Oral and paper 4.2]

24. The Council noted paper 4.2, which provided details of a number of recent and upcoming meetings and events attended by members and staff, including:

- a Council workshop on sentencing and the rights of children and young people at the National Youth Justice Conference on 17 June 2021;
- presentations on the sentencing process and sentencing young people guidelines delivered by members of the secretariat to justices of the peace from South Strathclyde, Dumfries and Galloway and Lothian and Borders on 16 and 17 August respectively; and
- a presentation by members of the secretariat at the UK Environmental Law Association Scotland Conference on the Council's work with a particular focus on the environmental and wildlife offences guideline on 23 September.

5. POLICY DEVELOPMENT

Item 5.1: Consultation on the mental element in homicide [Papers 5.1 and 5.1A]

25. The Council agreed to respond to the Scottish Law Commission's consultation on the mental element in homicide, and approved the draft response at paper 5.1A.

ACTION POINT

AP5: Secretariat to submit the approved response to the consultation on the mental element in homicide.

Item 5.2: Consultations on National Care Service and National Strategy for Community Justice [Paper 5.2]

26. The Council agreed to respond to the Scottish Government's consultations on the establishment of a National Care Service and a review of the National Strategy for Community Justice. It was agreed that Sheriff Principal Turnbull, Sheriff Fleming, Krista Johnston, and Hannah Graham would assist in drafting the responses.

ACTION POINT

AP6: Secretariat to draft responses to the consultations on the establishment of a National Care Service and a review of the National Strategy for Community Justice in consultation with various members.

6. RESEARCH

Item 6.1: Research Committee update [Oral]

27. Hannah Graham, the Chair of the Committee, provided an update on the work of the Research Committee. In particular, she noted that:

- a newly proposed project on comparing sentencing severity across jurisdictions is out to tender and will explore how best to compare sentencing when available disposals vary; and
- the committee will be meeting in late October to consider research priorities for the 22-23 financial year and beyond.

Item 6.2: Research projects updates [Oral]

28. Andrew Bell provided an update on the progress of recent research tendering exercises.

7. GOVERNANCE AND REPORTS

Item 7.1: Draft Annual Report 2020-21 [Papers 7.1 and 7.1A]

29. The Council considered its draft annual report for 2020-21. It was noted that the Chair's foreword would be drafted and the style and layout finalised once the content had been agreed.

30. The Council approved the draft annual report for 2020-21.

ACTION POINT

AP7: Secretariat to finalise the annual report for 2020-21 in conjunction with the Chair and take forward arrangements for it to be laid in the Scottish Parliament and published thereafter.

Item 7.2: Standing papers; correspondence, FOISA, and complaints; finance overview; guideline timetable [Papers 7.2A-C]

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

Item 7.3: Decisions by correspondence [Paper 7.3]

32. It was noted that four decisions had been made by correspondence since the last Council meeting. These were to:

- approve the final draft of the sentencing process guideline impact assessment;
- approve the final draft of the sentencing process guideline;
- approve the final draft of the sentencing young people guideline impact assessment;
and
- approve the approach to seeking judicial views on the draft death by driving guideline.

8. AOB

Item 8.1: AOB

33. The Chair noted that:

- the secretariat was dealing with correspondence in respect of the sentencing young people guideline and would provide her with advice on this in due course; and
- the Sexual Offences Committee was overseeing the drafting of a response to a request from the Scottish Parliament's Citizen Participation and Public Petitions Committee for an update on progress on the development of the sexual offences guidelines in light of a petition calling for longer sentences for sexual offences.

ACTION POINTS

AP8: Secretariat to provide the Chair with advice in relation to correspondence concerning the sentencing young people guideline.

AP9: Secretariat to draft response to a request from Scottish Parliament's Citizen Participation and Public Petitions Committee in conjunction with the Sexual Offences Committee.

9. FUTURE MEETING DATES

34. The Chair noted that the next Council meeting would take place on 03 December 2021 at the Risk Management Authority's headquarters after a visit to a Scottish Prison Service location. Lesley Weber provided an update as to the proposed content of a session being delivered by the RMA at the meeting.

35. The Chair noted that the first Council events in 2022 would be as follows:

- Council workshop: 25 February 2022
- Council meeting: 18 March 2022

ACTION POINT

AP10: Secretariat to finalise arrangements for the December meeting with SPS and RMA then issue itinerary to Council members.