

MEETING OF THE SCOTTISH SENTENCING COUNCIL
09 JUNE 2023
PARLIAMENT HOUSE, EDINBURGH
DRAFT MINUTES

- Members present:** Lady Dorrian, the Lord Justice Clerk (Chair)
Lord Matthews (judicial member)
Lord Colbeck (judicial member)
Sheriff Iain Fleming (judicial member)
Summary Sheriff Amel Elfallah (judicial member)
Lindsey Miller (prosecutor member)
Louise Arrol KC (advocate member), *by video conference*
Joanne McMillan (solicitor member)
DCC Malcolm Graham (constable member)
Dr Hannah Graham (lay member)
- Secretariat:** Ondine Tennant (secretary)
David Dickson (principal legal officer)
Andrew Bell (principal research officer)
David Ross (principal policy officer - corporate)
Valerie MacGregor (principal policy officer - engagement)
Julie Duran (senior policy officer), *by video conference*
Vicky Weldon (communications manager)
Richard Smith (business manager)
- Attendees:** Alannah McGinley (law clerk to the Lord Justice Clerk)
Becky Osborne (Scottish Courts and Tribunals Service)
Neil Rennick (Director of Justice, Scottish Government) (until item 2.1)
Patrick Down (Criminal Law & Procedure Team Leader, Criminal Justice Division, SG) (until item 2.1)
- 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. The Chair then welcomed:
 - Joanne McMillan to her first meeting since her appointment as the solicitor member of the Council and noted that she will hold office until 2028.
 - Deputy Chief Constable Malcolm Graham to his first meeting since being appointed as the constable member of the Council and noted that he will hold office until 2028.
 - Lord Colbeck, who was attending his first meeting of the Council since his installation as a Senator of the College of Justice on 19 May 2023.
 - Neil Rennick (Director of Justice, Scottish Government) and Patrick Down (Criminal Law & Procedure Team Leader, Criminal Justice Division, SG), and noted that they would attend until the conclusion of item 2.1 on the agenda.
 - Becky Osborne, the Council's former acting principal legal officer.
 - Alannah McGinley, law clerk to the Lord Justice Clerk.

Item 1.2: Previous meeting [Paper 1.2]

2. The Council approved the minutes of the previous meeting of 24 March 2023, which were provided at **paper 1.2**.

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

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

Item 1.4: Private papers [Oral update]

4. The Council agreed not to publish the following papers: 1.3, 3.1, 3.1A, 3.1B, 3.1C, 3.1D, 3.2, 3.2A, 3.2B, 3.3, 3.3A, 4.1, 4.2, 5.3, 5.3A, 6.1, 6.1A, 6.2, 7.2B, 7.2C and 7.3.

Item 1.5: Update on Council and Committee membership [Oral update]

5. The Chair invited Neil Rennick to provide an update on the progress of the recruitment exercise for the new victims expert member (administered by the Scottish Government). The Council noted the update.
6. The Chair noted that the secretariat would discuss possible committee appointments with Joanne McMillan and DCC Graham and would likely seek formal approval of these by correspondence following the meeting.

2. BUSINESS PLANNING

Item 2.1: Update from Scottish Government [Oral update]

7. The Chair informed members that she met with Angela Constance MSP, the new Cabinet Secretary for Justice and Home Affairs, on 17 May and provided an update on the matters discussed.
8. Neil Rennick provided an update on the Scottish Government's legislative programme and other policy developments in relation to criminal justice.
9. The Council considered and discussed the issues raised, and the Chair thanked Neil Rennick for his presentation and Patrick Down for his attendance, and invited them to leave the meeting.

3. SENTENCING GUIDELINES

Item 3.1: Death by driving - communications plan, key messages, and information pages [Papers 3.1 and 3.1A-D]

10. The Council:
 - considered and noted the communications plan for the publication of the Council's report on the death by driving guideline public consultation exercise;
 - considered and noted the key messages and discussion points at paper 3.1A and the messages for key stakeholders at paper 3.1B; and
 - agreed that the webpages 'Information for victims' and 'About sentencing guidelines' at papers 3.1C and 3.1D respectively should be published on the Council's website,

subject to an agreed minor amendment to the former.

ACTION POINT

AP1: Secretariat to publish the webpages 'Information for victims' (as amended) and 'About sentencing guidelines' on the Council's website, as soon as is practicable.

Item 3.2: Sexual offences – PID and project plan for guidelines on sexual assault [Papers 3.2, 3.2A and 3.2B]

11. **Paper 3.2** provided the Council with an update on the development of guidelines on sexual assault.
12. The Council noted the matters discussed in **paper 3.2**, approved the draft project initiation document at **paper 3.2A**, and noted the project plan at **paper 3.2B**.

Item 3.3: Sexual offences – revised draft rape guideline [Papers 3.3 and 3.3A]

13. The Council provided views on the current draft of the rape guideline and particular matters raised in **paper 3.3**.
14. The Council agreed there should be an exercise at a future date to consider consistency across the current suite of guidelines under development.

ACTION POINTS

AP2: Secretariat to carry out further research regarding the draft rape guideline.

AP3: Secretariat to put proposals for a consistency workshop to the Chair for consideration.

AP4: Secretariat to consider inviting the Risk Management Authority to a future meeting of the Council.

Item 3.4: Guideline committees update [Oral update]

15. Lord Matthews gave an update on the work of the Death by Driving and Sexual Offences Committees.
16. In respect of the Death by Driving Committee, he noted that:
 - The Committee had not met since the last Council meeting but has considered several matters by correspondence since then: the draft public consultation report and final impact assessment on the guideline, which the Council subsequently approved by correspondence; and the papers which were discussed under item 3.1.
 - The Committee will consider final briefing materials around the guideline ahead of publication of the consultation report.
17. In respect of the Sexual Offences Committee, he noted that:
 - The Committee last met on 9 May, when it considered a draft PID and draft project plan for sexual assault guidelines and changes to the draft rape guideline (items 3.2 and 3.3 respectively).
 - At its 9 May meeting, the Committee also considered and approved some minor changes to the draft guideline on indecent images of children offences and noted research into the offending pathways of individuals convicted of such offences.
 - The secretariat is carrying out engagement with key stakeholders in respect of the draft indecent images guideline. It will also be considering sentencing data with a view to assisting the Committee to decide on sentencing ranges for inclusion in the draft guideline.
 - It is hoped that the Committee will next meet in late June or in July.
18. Lord Colbeck gave an update on the work of the Discounting and Domestic Abuse Committees.
19. In respect of the Discounting Committee, he noted that:
 - The Committee is considering a revised draft guideline, following its consideration of an earlier draft at its last meeting.
 - The secretariat has commenced the process of inviting judicial engagement on the terms of a guideline, in line with the development of earlier guidelines.
 - The Committee will meet again once judicial engagement is further advanced.

20. In respect of the Domestic Abuse Committee, he noted that:

- The Committee is next due to meet on 20 June when it is planning to analyse a draft guideline - which has been prepared based on discussion at previous committee meetings - and to consider next steps.

4. COMMUNICATIONS AND ENGAGEMENT

Item 4.1: Communications Committee update [Oral update with reference to paper 4.1]

21. Summary Sheriff Elfallah gave an update on the work of the Communications Committee. In particular, she noted that:

- The Committee last met on 31 May. There has been significant media coverage of guidelines and their use in court.
- A news item was published on three newly commissioned research projects around consultation with victims of sexual offences and domestic abuse.
- Website and social media activity was noted.
- A Facebook page and Council newsletter are to be launched.
- A video on community sentencing was under development.

22. Note of thanks: the Chair noted that there had been a significant amount of communications activity undertaken in recent weeks and, on behalf of the Council, extended thanks to the Committee and secretariat in this regard.

Item 4.2: Updates on recent and upcoming engagement activity [Oral update with reference to paper 4.2]

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

- On 17 May the Lord Justice Clerk met the Cabinet Secretary for Justice and Home Affairs to discuss the Council's work. Topics discussed included progress of guidelines being developed, monitoring and review of guidelines, the Council's policy and public education work, funding requirements for 2023/24 and Council member recruitment.

- On 23 and 24 March members of the secretariat attended a conference on 'Unwarranted Disparities in Sentencing', organised by the EROS network in Ilkley.
- On 28 March members of the secretariat attended the Law Society of Scotland online seminar, 'Children and the Justice System'.
- On 28 March members of the secretariat attended the Scottish Criminal Justice Experiences of Survivors of Coercive Control conference at Glasgow Caledonian University.
- On 29 March members of the secretariat attended a Families Outside research report online launch, 'Paying the Price: The Financial Cost to Families of Imprisonment and Release'.
- On 29 March members of the secretariat attended the online conference, 'Towards a Balanced and Inclusive Sentencing Approach' hosted by Nottingham University.
- On 19 April Sheriff Fleming spoke about the Glasgow Alcohol Court at the 'Alcohol in(justice)' symposium. This was organised by Scottish Health Action on Alcohol Problems (SHAAP). Members of the secretariat attended the symposium.
- On 19 April members of the secretariat attended the launch of 'Clan Child Law - Rights in Justice' project in Glasgow.
- On 24 April members of the secretariat gave a presentation on the work of the Council and sentencing guidelines to a number of Edinburgh community councils.
- On 25 April Lord Matthews and Hannah Graham attended, 'The Norwegian Prison System: Book Presentation with author Nina Hanssen'. The event was hosted by Katy Clark MSP and held in the Scottish Parliament. Members of the secretariat also attended.
- On 19 May, Sheriff Fleming and members of the secretariat visited HMP and YOI Stirling for a presentation and tour of the new facility.
- On 5 June members of the secretariat attended, 'Restorative Justice: How can Active Victim Participation be Achieved? A Case Study of Sexual Abuse Crimes', hosted by Centre for Law, Crime & Justice, Strathclyde Law School.

24. The Council also noted a number of upcoming events set out in **paper 4.2**.

5. RESEARCH

Item 5.1: Research Committee update [Oral update]

25. Dr Hannah Graham gave an update on the work of the Research Committee. She noted that:

- The Committee had not met since the previous meeting but had contributed through correspondence to the interview and focus group schedules for the current research projects.
- Work has begun on the Sentencing Young People guideline one-year review. Data is expected from SCTS.
- Initial scoping of dates to undertake a sentencing seminar, hopefully in conjunction with colleagues in academia and the Sentencing Academy, is underway.

Item 5.2: Research projects update [Oral update]

26. The Council noted an update on the progress of various research projects underway. In particular, the Council noted that the projects on victim-survivors' views of sentencing for rape and sexual assault, and domestic abuse are in the fieldwork stage, while public perceptions work on sentence discounting is ongoing.

Item 5.3: Judicial research: survey on mental health and sentencing [Papers 5.3 and 5.3A]

27. The Council discussed the contents of **papers 5.3 and 5.3A** and agreed:

- to conduct a survey of judicial views on mental health and sentencing within the scope discussed in the final quarter of 2023, including pre-conviction matters which are relevant to sentencing; and
- that it was content for the secretariat to discuss the draft survey with key stakeholders in order to inform its precise scope and terms and consult on the appropriate terminology to be used.

ACTION POINTS

- AP5:** *Secretariat to contact key stakeholders to discuss the judicial survey on mental health to inform its precise scope and terms and to invite them to a future meeting of the Council.*
- AP6:** *Secretariat to obtain an update from the working group taking forward the recommendations of the Independent Forensic Mental Health Review.*
- AP7:** *Secretariat to arrange for the Research Committee to consider and finalise the terms of the judicial survey on mental health and sentencing, with a view to it being approved by the Council by correspondence over the summer/early autumn, subject to the progress being made on guidelines as the latter should take priority.*

6. POLICY DEVELOPMENT

Item 6.1: Consultation on reforming the criminal law to address misogyny [Papers 6.1 and 6.1A]

28. The Council discussed the contents of **papers 6.1 and 6.1A**, and agreed to respond to the Scottish Government's consultation on reforming the criminal law to address misogyny in the terms set out subject to some minor amendments.

ACTION POINT

- AP8:** *Secretariat to amend the draft response to the consultation on reforming the criminal law to address misogyny in the terms agreed by the Council and submit it as soon as practicable thereafter.*

Item 6.2: Policy update [Paper 6.2]

29. The Council noted **paper 6.2**, which outlined a number of recent policy developments and reports of relevance to the Council's work, including:

- the Victims, Witnesses, and Justice Reform (Scotland) Bill
- the Children (Care and Justice) Bill
- the Bail and Release from Custody (Scotland) Bill
- Families Outside , ‘Paying the Price: a Project on the Financial Impact on Families of Imprisonment and Release’
- Professor Nancy Lombard and Dr Katy Proctor of Glasgow Caledonian University released ‘Women’s Lived Experiences of Coercive Control, Stalking and Related Crimes, as they progress through the Criminal Justice System’
- Sentencing Academy, ‘Desistance and Sentencing: A Review of Research by Dr Annie Bunce’
- the Sentencing Council for England and Wales has published updated guidelines for animal cruelty offences
- the Centre for Justice Innovation has published Problem-solving courts – a guide to practice in the United Kingdom
- the UK Government’s Ministry of Justice has published its Female Offender Strategy Delivery Plan 2022-25
- the Scottish Government has published an independent review of the Victim Notification Scheme

7. GOVERNANCE AND REPORTS

Item 7.1: Records Management Plan [Oral update]

30. The Council noted the oral update with regard to its Records Management Plan.

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

31. **Paper 7.2A** summarised correspondence, complaints, and freedom of information requests since the last meeting.

32. **Paper 7.2B** provided the Council with an overview of its estimated final expenditure in the financial year 2023-24 and an update on its actual and planned expenditure in the current financial year to date.
33. **Paper 7.2C** provided an updated timetable for the development of each of the Council's guidelines.
34. The Council noted the content of **papers 7.2.A-C**.

Item 7.3: Decisions by correspondence [Paper 7.3]

35. The Council noted that three decisions had been made by correspondence since the last Council meeting. These were to:
- approve the recommendations reached at the inquorate Council meeting on 24 March 2023;
 - finalise the guideline on statutory offences of causing death by driving; and
 - approve the report about the public consultation on the statutory offences of causing death by driving guideline and the final impact assessment on the guideline.

8. AOB

36. No further business was raised.

9. FUTURE MEETING DATES

37. The Council noted the dates scheduled for the Council's meetings in 2023:
- Council meeting: Friday 06 October 2023
 - Council workshop: Friday 10 November 2023 (changed from September)
 - Council meeting: Friday 08 December 2023 (meeting may be held at Police Scotland, Tulliallan)
38. The Council noted the dates scheduled for the Council's meetings in 2024:
- Council workshop: Friday 01 March 2024

- Council meeting: Friday 22 March 2024
- Council meeting: Friday 07 June 2024
- Council workshop: Friday 30 August 2024
- Council meeting: Friday 04 October 2024
- Council meeting: Friday 06 December 2024

Scottish Sentencing Council Secretariat

June 2023

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