

**MEETING OF THE SCOTTISH SENTENCING COUNCIL  
06 DECEMBER 2019, TRIBUNALS CENTRE, GLASGOW  
MINUTES**

***These minutes were approved by correspondence in August 2020 following the cancellation of the Council's March 2020 meeting due to the Covid-19 pandemic.***

- Members present:** Lady Dorrian QC, the Lord Justice Clerk (Chair)  
Lord Turnbull (judicial member)  
Sheriff Principal Ian Abercrombie QC (judicial member)  
Sheriff Norman McFadyen (judicial member)  
Susan Fallone JP (judicial member)  
David Harvie, Crown Agent (prosecutor member)  
Deputy Chief Constable Will Kerr (lay member – constable) –  
excepting items 6.1, 7.1, and 7.2  
Dr Hannah Graham (lay member)
- Attendees:** Dr Johanne Miller (for item 3.1 only)  
Dr Sarah Anderson (for item 3.1 only)
- Secretariat:** Ondine Tennant (Secretary)  
David Dickson (Principal Legal Officer)  
Andrew Bell (Principal Research Officer)  
David Ross (Senior Policy Officer)  
Stuart Ritchie (Communications Officer)  
Jessica Doran-Flynn (Business Manager)  
Julie Brodtkorb (researcher)  
Nicole Vidal (researcher)
- Apologies:** Krista Johnston (solicitor member)  
Sue Moody (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 Krista Johnston and Sue Moody.
2. The Chair welcomed Deputy Chief Constable Will Kerr and Dr Hannah Graham to the Council. DCC Kerr and Dr Graham were both appointed to the Council on 04 December 2019 by the Scottish Ministers following consultation with the Lord Justice General.
3. The Chair informed members that the recruitment process for a new advocate member has not yet completed but it was hoped that an announcement would be made in the coming weeks. The process to recruit a new summary sheriff member to replace Jillian Martin-Brown will get underway in January.
4. The Chair also welcomed Nicole Vidal, who has been recruited as a temporary researcher for the Council until 31 March 2020.
5. The Chair noted that the presentation by Dr Johanne Miller and Dr Sara Anderson at item 3.1 on the agenda would now take place after item 9.

*Item 1.2: Previous meeting [Paper 1.2]*

6. Minutes of the Council meeting of 03 October 2019 were provided at **paper 1.2**. The Council approved the minutes.

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

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

*Item 1.4: Private papers*

8. The Council agreed not to publish the following papers: 1.3, 3.2, 3.2A, 3.3, 3.3A, 3.3B, 3.3C, 3.4, 4.3, 4.4, 5.1, 5.1A, 7.1, 7.2, 7.2B, 7.2C, 7.3, 7.3A, 7.3B, 7.4A, 7.4C.

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

9. This was covered earlier in the meeting during the Chair's opening remarks.

*Item 1.6: Membership of committees [Oral]*

10. The Chair noted that at the last meeting the Council had agreed in principle to a number of appointments to committees, but that these were subject to the views of new Council

members who were yet to be appointed. Following discussions with the two newly appointed members, members agreed to appoint DCC Kerr to the Death by Driving and Environmental and Wildlife Committees, and Dr Hannah Graham to the Research and Communications Committees.

## 2. COMMUNICATIONS AND ENGAGEMENT

### *Item 2.1: Communications Committee update [Oral]*

14. Sheriff McFadyen provided an update on the work of the Communications Committee. In particular, he noted that:

- The Committee last met on 20 November 2019, when it approved the communications strategy for the launch of the public consultation on the sentencing young people guideline.
- Following a meeting between the Secretariat and Justice Committee Clerks the Committee had considered a suggestion for engagement between Council members and the Committee, following a similar event hosted recently by the Judicial Institute. The Committee was of the view that such an event might be of mutual benefit.
- The Committee approved summaries of two recent guideline judgments from the Sheriff Appeal Court for publication on the website: *Foster v PF Edinburgh*, and *McLellan v PF Glasgow*.
- There is increasing interest in the website, which has now reached 1 million hits.
- Following the results of the Ipsos MORI survey the Committee is considering what further public awareness work should be carried out in the next 12 months.

### **ACTION POINT**

**AP1:            *Secretariat to explore the suggestion of engagement between Council members and the Justice Committee.***

### *Item 2.2: Updates from recent engagement activity [Oral]*

15. The Chair informed members that, since the last Council meeting, she had:

- travelled to Taiwan at the end of October to give speeches about the work of the Council and, separately, sexual offences;

- been interviewed on 28 November, as part of the Safeguarding Children when Sentencing Mothers project, for a film about the effect on children of sentencing primary carers; and
- given a talk about the sentencing young people guideline at a Judicial Institute training course on 05 December.

16. The Chair also noted that she is due to:

- attend, along with Sue Moody, an information sharing event on 18 December about the Shine Women's Mentoring service; and
- meet the Cabinet Secretary for Justice on 15 January, to discuss the work of the Council.

17. Lord Turnbull gave an update about his keynote address on the sentencing of violent offenders at the SASO annual conference on 01 November.

18. Sheriff McFadyen gave an update about a presentation he and David Dickson gave to the South Strathclyde, Dumfries, and Galloway sheriffdom conference on 22 November.

19. Ondine Tennant and David Dickson gave an update about their attendance at the Tayside, Central, and Fife sheriffdom conference on 25 October.

20. Ondine Tennant gave a short update about the Secretariat's attendance at the following events:

- Scottish Government consultation event of 01 November on extending the scope of the victim statement scheme, noting that the Secretariat had offered assistance in developing any guidance or information to be provided to victims or their families as part of the scheme;
- Presentations to the South Strathclyde, Dumfries, and Galloway and the Lothian and Borders JP conferences on 02-03 November;
- Transforming Offender Management Holyrood conference on 27 November;
- SSC Society's organised talk on rape sentencing in Scotland on 03 December;
- Howard League "Against Rehabilitation" event of 04 December.

### 3. SENTENCING GUIDELINES

*Item 3.1 was moved to the end of the agenda.*

*Item 3.2: Sentencing young people – cognitive maturity literature review [Papers 3.2 and 3.2A]*

21. The Council considered a draft literature review of the current understanding of the development of cognitive maturity in young adults. It was noted that further work was required in order to finalise the draft literature review for publication on the Council's website.
22. The Council made a decision in principle on the applicability of the draft sentencing young people guideline, but noted that this was subject to further analysis of the literature review by the Sentencing Young People Committee and Secretariat.

#### ACTION POINT

**AP2:** *Secretariat, under the auspices of the Sentencing Young People Committee, to carry out a detailed analysis of the cognitive maturity literature review and revert to the Council with recommendations if necessary.*

*Item 3.3: Sentencing young people – public consultation materials and timing [Papers 3.3 and 3.3A-C]*

23. The Council considered revised drafts of the sentencing young people guideline and public consultation paper, and a draft impact assessment. The Council indicated that it was content with the revised draft guideline, and agreed on the questions it wished to ask in the public consultation paper, subject to a minor amendment to the wording of one question. It was noted that the public consultation paper would need to be updated to take account of the literature review's conclusions.
24. In relation to the draft impact assessment, it was noted that data was still awaited from some key stakeholders. It was agreed that it would be helpful in the context of this guideline, and more generally, to make links with the Scottish Government's National Community Justice Leadership Group.
25. The Council also noted an update on the timing of the public consultation on the draft guideline.

## ACTION POINTS

- AP3:** *Secretariat, under the auspices of the Sentencing Young People Committee, to revise the draft public consultation paper to take account of the literature review on the age at which cognitive maturity is reached, and circulate this to the Council for clearance by correspondence.*
- AP4:** *Secretariat to contact the Scottish Government's National Community Justice Leadership Group regarding areas of mutual interest.*
- AP5:** *Secretariat to finalise the draft impact assessment and circulate this to the Council for clearance by correspondence.*

### *Item 3.4: Sentencing young people – communications strategy for public consultation [Paper 3.4]*

26. The Council noted a communications strategy for the public consultation on the sentencing young people draft guideline, which had been discussed and approved by both the Sentencing Young People and Communications Committees. It was agreed that it would be helpful to approach stakeholders in advance of the consultation to raise awareness and that victims' organisations and children and young people's organisations should be encouraged to respond to the consultation to encompass a well-rounded response.

## ACTION POINTS

- AP6:** *Secretariat to approach stakeholders in advance of the launch of the public consultation on the draft sentencing young people guideline to raise awareness.*
- AP7:** *Secretariat to approach the Victims Organisations Collaboration Forum Scotland (VOCFS) about engagement with victims' organisations.*

### *Item 3.5: Guideline committee updates [Oral]*

27. David Harvie provided an update on the work of the Death by Driving Committee. In particular, he noted that:

- The Committee has not met since the last meeting. It is expected to meet again when Julie Brodtkorb's research on death by driving cases has progressed further and following the workshop on offence guidelines scheduled for February 2020.
28. Lord Turnbull provided an update on the work of the Sentencing Process Committee. In particular, he noted that:
- The Committee has not met since the last Council meeting.
  - Dr Rachel McPherson's draft analysis of responses to the public consultation is still being considered. Once the analysis has been finalised, the Committee will meet to consider policy issues arising from, and proposed changes to the draft guideline in response to, the consultation. The final analysis is expected by the end of the month.
29. Sheriff Principal Abercrombie provided an update on the work of the Sentencing Young People Committee. In particular, he noted that:
- The Committee last met on 07 November. The issues it considered and the decisions it made at that meeting are set out in **papers 3.3** and **3.4**.
  - The Council's consultation workshop at the Scottish Youth Parliament's 70<sup>th</sup> national sitting took place on 27 October. The workshop focussed on some key questions which the committee has been considering in relation to the sentencing young people guideline. Members of the Secretariat helped to facilitate the workshop along with a member of the Scottish Youth Parliament, and are working on a blog about the event for publication on the Council's website.
30. Lord Turnbull provided an update on the work of the Sexual Offences Committee. In particular, he noted that:
- The Committee has not met since the last Council meeting but is due to meet again on 17 December to consider, among other things, proposals for literature reviews on sexual offences, the work Julie Brodtkorb has been taking forward on comparing the Scottish approach to indecent image sentencing to that of England and Wales, and how the guidelines should approach particular Scottish sentencing issues such as the presumption against short sentences and community payback orders as alternatives to custody.

## ACTION POINT

**AP8:**            ***Secretariat to finalise a blog about Scottish Youth Parliament consultation workshop for publication on the Council's website.***

### 4. RESEARCH AND INFORMATION

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

31. Susan Fallone provided an update on the work of the Research Committee. In particular, she noted that:

- The Committee has not met since the last Council meeting, but has considered the research priorities and projects for 2020/21 by correspondence, due to being inquorate at the previous meeting.
- The Committee will consider more detailed project plans where appropriate by correspondence subject to the Council's approval of items 4.3 and 4.4.
- The research budget is likely to have sufficient overhead to enable the commissioning of two literature reviews in the New Year on sexual offences. This will be taken forward by the Secretariat in correspondence with the Sexual Offences and Research Committees.

#### *Item 4.2: Research projects update [Paper 4.2A]*

32. Andrew Bell provided a brief update on the following:

- Final versions of the sexual offences and death by driving focus group project reports are expected shortly. These will be circulated to the Council for agreement to publish by correspondence.
- A short paper on internal work undertaken on sentencing young people has been prepared and will be circulated to the Council for approval to publish shortly.
- Drs Miller and Anderson will be speaking to the Council regarding their work with young people.

33. Julie Brodtkorb and Nicole Vidal gave a summary of the work they have undertaken so far on death by driving and sexual offences.



*Item 4.3: 2020-21 Research priorities [Paper 4.3]*

34. The Council noted **paper 4.3** and agreed the research priority areas for 2020-21, which are based on the Council's current work plan. These are:

- sexual offences;
- sentence discounting; and
- domestic abuse.

35. It was noted that should there be any reduction in the Council's budget the research budget, as the area with the most discretionary spend, would be the most affected. It was suggested that in that event and in any case, the Council should explore whether it might seek to input into the specifications of any planned research by other organisations, in particular the Scottish Government.

**ACTION POINT**

**AP9:**            ***Secretariat to contact the Scottish Government's Justice Analytical Services Division about the possibility of Council input into future research projects.***

*Item 4.4: 2020-21 Research projects [Paper 4.4]*

36. **Paper 4.4** provided details of proposed research projects for 2020-21. The Council discussed and agreed to the proposed research projects for 2020-21.

**5. POLICY DEVELOPMENT**

*Item 5.1: Mental welfare roundtable discussion report [Papers 5.1 and 5.1A]*

37. The Council considered a draft report of the mental welfare roundtable discussion even that took place on 14 June 2019. The Council approved the draft report, subject to an agreed amendment, and agreed that it should be published in advance of the launch of the public consultation on the draft sentencing young people guideline. Certain organisations with a particular interest should be made aware of the planned report in advance of publication.

## ACTION POINT

**AP10:** *Secretariat to revise the report of the mental welfare roundtable discussion as agreed; arrange for its publication on the Council's website in advance of the launch of the public consultation on the draft sentencing young people guideline; and make organisations with a particular interest aware of the plans for publication.*

## 6. DECISIONS BY CORRESPONDENCE

*Item 6.1: Decisions by correspondence [Oral]*

38. It was noted that no decisions by correspondence have been made since the last meeting.

## 7. REPORTS

*Item 7.1: Review of standing orders [Paper 7.1]*

39. The Council noted that following the annual review of the Council's standing orders, no amendments had been proposed by the secretariat, and no requests for amendment had been received from members. It was therefore agreed that no amendment to the standing orders was necessary.

*Item 7.2: Review of records management plan [Papers 7.2 and 7.2A-C]*

40. The Council noted an update on the implementation of its records management plan.

*Item 7.3: Reviews of complaints procedure and expenses scheme [Papers 7.3 and 7.3A-C]*

41. **Paper 7.3** updated the Council in respect of annual reviews of its complaints procedure and its expenses scheme for members. The Council approved revised versions of its internal complaints handling procedure and external customer facing complaints handling procedure. It was noted that the secretariat intended to make some minor stylistic and typographical updates to the expenses scheme for members, but that no substantive changes to it were required.

## ACTION POINT

**AP11: Secretariat to publish the revised customer facing complaints handling procedure and revised expenses scheme for members on the Council's website as soon as possible.**

*Item 7.4: Standing papers: finance overview; correspondence, complaints and FOISA reports; guideline timetable [Papers 7.4A-C]*

42. The Council noted the contents of the standing papers, and Ondine Tennant gave a brief update on discussions around the Council's budget for 2019/20 and 2020/21. It was noted that the secretariat would be taking forward discussions on the Council's budget with SCTS and the Scottish Government as part of any budget revision process

## **8. AOB**

*Item 8.1: AOB*

43. David Dickson provided members with an update on plans for the Council's February workshop on offence guidelines.

## **9. FUTURE MEETING DATES**

44. The first Council meeting of 2020 will take place on Friday 20 March. The first Council workshop of 2020 will take place on Thursday 13 February.

***Item 3.1 was held back until after item 9.***

*Item 3.1: Sentencing young people – update on research with young people [Oral]*

45. Dr Johanne Miller and Dr Sarah Anderson of the University of the West of Scotland delivered a presentation about their research to date exploring young people's attitudes to sentencing, including those of young offenders. It was noted that the research project is ongoing. The draft research report will be ready in the New Year.