

MEETING OF THE SCOTTISH SENTENCING COUNCIL
08 DECEMBER 2023
POLICE SCOTLAND HEADQUARTERS, TULLIALLAN CASTLE
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)
Susan Fallone JP (judicial member)
Lindsey Miller (prosecutor member) – **until item 3.2**
Victoria Young (advocate member)
Joanne McMillan (solicitor member)
DCC Malcolm Graham (constable member)
Lynn Burns (victims expert member)
Dr Hannah Graham (lay member)

Secretariat: Ondine Tennant (secretary)
David Dickson (principal legal officer)
Valerie MacGregor (principal policy officer - engagement)
David Ross (principal policy officer - corporate)
Julie Duran (senior policy officer)
Vicky Weldon (communications manager)
Richard Smith (business manager)
Dr Nicole Vidal (interim principal research officer)
Tom Hughes (interim senior research officer)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that it was the 31st since the Council's inception.
2. The Chair welcomed Victoria Young to her first meeting as the Council's new advocate member. She informed members that Victoria had been appointed by the Lord Justice

General, after consultation with the Scottish Ministers, for a period of five years from 01 December 2023. The Chair noted that since calling to the Bar in 1995, Victoria had been instructed as junior counsel in many of the most complex and high profile criminal trials in Scotland, and was appointed as an ad hoc Advocate Depute in 2020.

3. The Chair congratulated Summary Sheriff Amel Elfallah on her recent appointment as sheriff. She noted that Summary Sheriff Elfallah would take up her new post on 22 April 2024, sitting at Paisley Sheriff Court, and would remain a member of the Council until then.
4. The Chair also informed members that this was Susan Fallone's last meeting as a judicial member of the Council as her tenure was due to end on 11 December 2023.

Note of thanks: the Council recorded its thanks to Susan Fallone for her contribution to the Council's work during her period in office.

Item 1.2: Previous meeting [Paper 1.2]

5. The Council approved the minutes of the previous meeting of 6 October 2023 provided at **paper 1.2**.

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

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

Item 1.4: Private papers [Oral update]

7. The Council agreed not to publish the following papers: 1.3, 1.6, 2.1, 3.1, 3.1A, 3.2, 4.2, 4.3, 5.1, 6.1, 6.2, 6.2A, 6.2B, 6.3B, 6.3C and 6.4.
8. The Council agreed to publish **paper 3.2A** on recent engagement activity.

Item 1.5: Update on Council and Committee membership [Paper 1.5]

9. The Chair informed members that it was expected that a recruitment exercise for a new judicial member would get underway soon.
10. The Council agreed to appoint Sheriff Iain Fleming, DCC Malcolm Graham, and Victoria Young to the Environmental and Wildlife Crime Committee with immediate effect.

11. It was noted that, per action point 1 from the October 2023 meeting, the secretariat would revert to the Council by correspondence to confirm committee memberships and committee advisors prior to the March 2024 meeting.

Item 1.6: Funding requirements 2024-25 [Paper 1.6]

12. Ondine Tennant provided an update on funding with reference to **paper 1.6**.

13. The Council noted the update and **paper 1.6**.

2. SENTENCING GUIDELINES

Item 2.1: Sentencing young people – update on one-year review [Paper 2.1]

14. The Council considered a progress update on the ongoing one-year review of the sentencing young people guideline, with reference to **paper 2.1**. It was noted that discussions had taken place with SCTS on the available data and consideration is being given to how this should be broken down in the report.

ACTION POINT

AP1: Secretariat to provide a further update on the one-year review of the sentencing young people guideline at the March 2024 meeting.

Item 2.2: Guideline committees update [Oral updates]

15. Lord Matthews provided an update on the work of the Death by Driving Committee. He noted that:

- The Committee had not met since the last Council meeting.
- On 16 January 2024, to coincide with the death by driving guideline coming into effect, a webinar would take place for practitioners to provide an overview of the guideline, which he would chair. It would feature presentations by former Council members Sheriff David Harvie and Sheriff Louise Arrol KC.
- The Chair of the Council would participate in further media work to coincide with the guideline coming into effect, including an interview with Hey Legal.

- The Communications Committee had approved, in principle, two online interactive case studies based on the death by driving guideline.
 - The Communications Committee had agreed the commission of infographics in relation to published guidelines and guidelines in development, the first of which would likely be based on the death by driving guideline.
16. Lord Matthews provided an update on the work of the Sexual Offences Committee. He noted that:
- The Committee last met on 16 October 2023.
 - Engagement work is underway with the judiciary on the draft rape guidelines and a discussion event with senior judiciary and Committee members is planned for March.
 - Further engagement on the draft indecent images of children guideline has also been carried out with a range of justice partners and academics.
17. Lord Colbeck provided an update on the work of the Discounting Committee. He noted that:
- The Committee had not met since the last Council meeting.
 - The secretariat is continuing to engage with individual sentencers, with this work likely to be concluded by the next Council meeting.
 - A draft of a research report about public perceptions of sentence discounting has just been received.
18. Lord Colbeck provided an update on the work of the Domestic Abuse Committee. He noted that:
- The Committee last met on 17 October 2023.
 - The Committee discussed an initial draft guideline, which will be circulated to the Council when ready.

3. COMMUNICATIONS AND ENGAGEMENT

Item 3.1: Communications Committee update [Oral update with reference to Papers 3.1 and 3.1A]

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

- The Committee last met on 30 November 2023.
- The community sentencing video received positive feedback at the recent research symposium and will be published in the new year.
- The Council's Instagram page launched on 23 October.
- The next edition of the Spotlight on Sentencing Circular newsletter is scheduled for January.

20. The Council noted **papers 3.1 and 3.1A**.

Item 3.2: Recent and upcoming engagement activity [Papers 3.2 and 3.2A]

21. The Council noted **papers 3.2 and 3.2A**, which provided updates on recent and upcoming engagement activity.

22. Ondine Tennant provided an oral update on recent engagement with Victim Support Scotland, which took place on 23 November.

23. Council members also provided feedback on the Scottish Sentencing Research Symposium, which took place on 24 November and saw academics and judiciary attend from across the UK. It was agreed that the event was a success and that it should be repeated.

24. The Council, having indicated under item 1.4 that it was content for **paper 3.2A** to be published, agreed that a paper on recent engagement activity should be a standing public paper at future meetings.

ACTION POINTS

AP2: Secretariat to consider the next steps in building on the success of the symposium and planning for future events.

AP3: Paper on recent engagement activity to be a standing public paper.

4. RESEARCH

Item 4.1: Research Committee update [Oral update]

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

- The Committee last met on 6 November 2023.
- Discussions are ongoing about part-funding a collaborative PhD.
- The Committee has approved a proposal from the secretariat on undertaking research interviews with the judiciary to supplement the recent survey on mental health and sentencing.
- Two new research projects will get underway shortly – an exploratory study on unwarranted disparities in sentencing in Scotland, and focus groups exploring views on sentencing for environmental and wildlife crimes.

Item 4.2 Victims views of sentencing [Paper 4.2]

26. Nicole Vidal introduced **paper 4.2** which discussed potential research into victims' views of sentencing.

27. The Council offered its views on the paper. It was felt that exploration of victims' views into sentencing of specific offences, or in relation to specific issues, would be of greater utility than research into general matters. It was decided not to undertake a project at this stage and considered that views, if sought, would be best garnered in relation to specific guidelines, for example as part of the three-year review process.

Item 4.3 Research projects and priorities 2024-25 and beyond [Paper 4.3]

28. **Paper 4.3** highlighted the Council's current research priorities and proposed research projects for 2024-25.

29. These included, among other items:

- Literature reviews on firearms offences and offences involving modern slavery.
- A national survey on public attitudes towards sentencing.

30. The Council discussed topic proposals for further literature reviews in the areas of stalking and cyber-enabled offences and offered their views. In relation to cyber-enabled crime, it was felt that any research should be designed to assist with decisions about which aspects of the matter, if any, the Council should turn its attention to.
31. The Council also approved the remaining projects for 2024/25.

ACTION POINT

AP4: Secretariat to consider further potential topics for future literature reviews and revert to the Research Committee in the first instance with proposals.

5. POLICY DEVELOPMENT

Item 5.1: Policy update [Paper 5.1]

32. The Council noted **paper 5.1**, which outlined a number of recent policy issues of relevance to the Council's work.

6. GOVERNANCE AND REPORTS

Item 6.1: Review of standing orders [Paper 6.1]

33. **Paper 6.1** advised the Council in respect of its annual review of its standing orders, and proposed certain amendments in relation to the procedures for appointing committee members and advisors.
34. The Council:
- Approved an amendment to paragraph 6.12 of the standing orders
 - Approved the deletion of paragraph 6.13
 - Approved amendments to paragraph 6.25
 - Noted that the paragraphs in section 6 will be renumbered accordingly.

ACTION POINT

AP5: Secretariat to revise the standing orders as agreed and publish the revised version as soon as is practicable.

Item 6.2: Review of records management plan and other governance documents [Papers 6.2 and 6.2A-B]

35. The Council noted **paper 6.2**, which provided an update in respect of the annual review of the following governance documents:
- records management plan and information asset register
 - privacy notice
 - complaints handling procedure
 - expenses scheme for members and policy on expenses for guest speakers
 - guide to information and publication scheme.
36. It was noted that no changes to any of the documents were proposed at this stage, but this would be kept under review by the secretariat.
37. It was noted that there may be a need to update the records management plan and information asset register as a result of the upcoming migration of all SCTS records to SharePoint. The Council agreed that unless any consequential changes are of a substantive nature requiring Council approval, decisions on amendments may be effected by the Secretary to the Council.

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

38. **Paper 6.3A** summarised correspondence, complaints, and freedom of information requests since the last meeting.
39. **Paper 6.3B** updated the Council on budgetary matters and expenditure in the financial year to date.
40. **Paper 6.3C** provided an updated timetable for the development of each of the Council's guidelines.
41. The Council noted the content of **papers 6.3A-C**.

Item 6.4: Decisions by correspondence [Paper 6.4]

42. The Council noted **paper 6.4**, which set out two decisions made by correspondence during the period 26 September 2023 – 24 November 2023. These were to:

- approve the terms of a judicial survey on mental health and sentencing; and
- approve draft guidelines on rape offences and an updated judicial survey document.

7. AOB

43. No other business was raised.

8. FUTURE MEETING DATES

44. The Council noted the following dates for 2024:

- Council workshop 1 March 2024
- Council meeting 22 March 2024
- Council meeting 7 June 2024
- Council workshop 30 August 2024
- Council meeting 4 October 2024
- Council meeting 6 December 2024