

MEETING OF THE SCOTTISH SENTENCING COUNCIL
30 SEPTEMBER 2022 AT 10:00
PARLIAMENT HOUSE, EDINBURGH
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 Amel Elfallah (judicial member)
Lindsey Miller (prosecutor member)
Deputy Chief Constable Will Kerr (constable member)
Dr Hannah Graham (lay member)

Attendees: Stephan McAlpine (Scottish Prison Service) – item 2.2 only

Secretariat: David Dickson (secretary)
Andrew Bell (principal research officer)
Valerie MacGregor (principal policy officer - engagement)
David Ross (principal policy officer - corporate)
Caroline Bellinger (communications manager)
Richard Smith (business manager)
Dr Nicole Vidal (researcher)

Apologies: Susan Fallone (judicial member)
Louise Arrol (advocate 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 and Louise Arrol.
2. The Chair welcomed Summary Sheriff Amel Elfallah to her first meeting since her appointment as a judicial member of the Council and noted that she will hold office until 2027.

3. The Chair also welcomed Becky Osborne and informed members she had been appointed as the Council's acting principal legal officer to backfill for David Dickson during Ondine Tennant's maternity leave.
4. The Chair congratulated:
 - DCC Will Kerr on his appointment as Chief Constable of Devon and Cornwall Police, noting that his replacement as the constable member would be appointed by the Scottish Ministers after consultation with the Lord Justice General.
 - Sheriff Principal Turnbull on his appointment as a Senator of the College of Justice, which will take effect in May 2023.
 - Krista Johnston, in her absence, on her appointment as a sheriff from 26 September, which had ended her term of office as the Council's solicitor member.
 - Louise Arrol, in her absence, on the recent announcement that she has been recommended for the rank and dignity of King's Counsel.
5. *Note of thanks: the Council recorded its thanks to Krista Johnston for her contribution to its work during her period in office.*
6. The Chair informed members that Stephan McAlpine of the Scottish Prison Service would join the meeting for item 2.2 to give a presentation on the rehabilitation programmes available for sexual offenders in custody. It was agreed that item 2.2 would be held back until after item 8 to allow the presentation to take place after the other business had concluded.

Item 1.2: Previous meeting minutes [Paper 1.2]

7. The Council agreed the minutes from the previous meeting provided at **paper 1.2**.

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

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

Item 1.4: Private papers [Oral update]

9. The Council agreed not to publish the following papers: 1.3, 2.1, 2.1A, 3.1, 3.2, 3.3, 3.3A, 5.1, 6.1B, 6.1C and 6.2.

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

10. The Chair informed members that:
- recruitment for the new victims' expert member is underway
 - as already mentioned, a replacement for DCC Will Kerr would be appointed once the date he will take up his new post is confirmed.
11. In respect of committees, the Chair informed members that:
- Summary Sheriff Elfallah had been appointed to the Communications and Domestic Abuse Committees
 - Louise Arrol had been appointed to the Research and Sexual Offences Committees
 - DCC Kerr's upcoming departure would create vacancies on the Death by Driving and Environmental and Wildlife Committees
 - Krista Johnston's departure had created vacancies on the Sexual Offences, Discounting, and Communications Committees.

ACTION POINT

AP1 *Secretariat to liaise with the Chair regarding filling vacancies on the Council's committees and thereafter put proposals for committee appointments to the Council for approval.*

Item 1.6: Update on staffing [Oral update]

12. David Dickson informed members that a recruitment exercise for a new senior policy officer was underway.

2. SENTENCING GUIDELINES

Item 2.1: Sexual offences – draft guideline on sentencing rape offences [Papers 2.1 and 2.1A]

13. **Paper 2.1** concerned the most recent draft of the sentencing guideline on rape offences, with the draft guideline itself provided at **paper 2.1A**.
14. The Chair noted that iterative drafting of the guideline had continued under the supervision of the Sexual Offences Committee. The draft followed the structure of the sentencing process guideline, with determinants of culpability and harm listed to assist the court in its assessment of seriousness, leading to a sentencing range, although the latter had yet to be determined.

15. It was noted that the secretariat has started to engage with stakeholder organisations regarding the draft guideline. This engagement would be ongoing and would feed into further iterative drafting.
16. With a view to determining sentencing ranges, the secretariat would also commence consideration of current sentencing practice.
17. The Council noted the content of the draft guideline and the proposed next steps.

Item 2.2: Sexual offences – presentation by the Scottish Prison Service on rehabilitation programmes available in custody [Oral update]

18. As noted under **item 1.1**, it was agreed to hold this item back until after item 8 on the agenda.

Item 2.3: Guideline committees update [Oral update]

19. Lord Matthews gave an update on the work of the Sexual Offences Committee. He noted that:
 - The Committee last met on 11 August 2022, when it considered:
 - a revised draft guideline on sentencing rape offences, and agreed on further changes to this – these were included in the latest draft provided at **paper 2.1A**.
 - the work that had been carried out in respect of mapping common law offences to the offences under the Sexual Offences (Scotland) Act 2009, which had been undertaken as part of the development of the Act. The Committee had agreed that no further work in this regard was necessary.
 - an update on the programmes available to sexual offenders serving custodial sentences in Scotland – this would be the focus of the presentation by the Scottish Prison Service under item 2.2 at today's meeting.
 - As noted under item 2.1, initial stakeholder engagement regarding the draft guideline on sentencing rape offences had been carried out.
 - The Committee would next meet on 26 October 2022 when, among other things, it would consider a progress update on the indecent images guideline.

20. DCC Kerr gave an update on the work of the Death by Driving Committee. He noted that:

- The Committee had not met since the last Council meeting.
- The public consultation on the draft guideline on statutory offences of causing death by driving launched on 30 August and will run until 22 November 2022.
- A number of responses had been received to date but it was expected that most would be submitted in the closing stages of the consultation.
- Media coverage of the consultation and draft guideline had been largely positive so far.
- A webinar for practitioners to raise awareness of, and encourage participation in, the consultation would take place on 13 October 2022 and was being overseen by the Communications Committee.

21. Sheriff Principal Turnbull provided an update on the work of the Discounting and Domestic Abuse Committees. He noted that:

- Neither committee had met since the last Council meeting as most of the secretariat's resources over the summer had been focussed on finalising arrangements for the public consultation on the draft guideline on statutory offences of causing death by driving.
- The secretariat had recently carried out a planning exercise in relation to the timetables for each guideline under development, and therefore hoped to fix dates for each committee soon.

3. COMMUNICATIONS AND ENGAGEMENT

Item 3.1: Communications Committee update [Oral update with reference to paper 3.1]

22. Hannah Graham gave an update on the work of the Communications Committee. In particular, she noted that:

- The Committee last met on 04 August, when it had selected 'Spotlight on sentencing' as a suitable name for the blog on the Council's website, but agreed that the final decision should be put to the Council.
- There had been fairly extensive media coverage of the launch of the public consultation on the draft guideline on statutory offences of causing death by driving, including publication of a number of articles by Council members DCC Will Kerr and Louise Arrol, and former Council member David Harvie.

- The webinar for practitioners to raise awareness of the draft death by driving guideline and consultation, which was mentioned by DCC Kerr under item 2.3, would be chaired by Summary Sheriff Elfallah and feature Professor Cyrus Tata of the University of Strathclyde and Sheriff Frank Crowe as guest speakers. Louise Arrol would also take part in a Q&A during the event.
- The Council will be giving two presentations at this year's International Society for the Reform of Criminal Law Conference, which will take place online between 19-21 October: one on neuroscience and the sentencing young people guideline, and one on victims' rights. Sheriff Principal Turnbull has agreed to deliver the first and Louise Arrol has agreed to deliver the second.
- Summary Sheriff Elfallah has agreed to record two separate lectures for Scottish universities, one on the general governance and work of the Council, the other on sentencing guidelines. These will be made available to universities once finalised.
- A proposal to deliver a presentation on the work of the Council at the Modern Studies Association annual conference in November 2022 has been accepted.

23. An overview of social media analytics and media coverage was also provided to members in **paper 3.1**.

24. **The Council:**

- **noted the update and paper 3.1; and**
- **agreed that 'Spotlight on sentencing' should be the name of the blog on the Council's website.**

ACTION POINT

AP2 Secretariat to update the name of the blog on the Council's website to 'Spotlight on sentencing'.

Item 3.2: Updates from recent and upcoming engagement activity [Oral update with reference to paper 3.2]

25. The Council noted **paper 3.2**, which provided details of a number of recent meetings and events attended by members and staff.

26. Lord Matthews noted that he had attended an event which was not listed in the paper. This was the Commonwealth Magistrates' and Judges' Association (CMJA) Conference in Ghana between 04-09 September 2022. He informed members that there would be a

CMJA conference in Cardiff in September 2023. The Council agreed that it would be worth exploring whether it could take part in that event in some fashion.

27. The Council also noted a number of upcoming events set out in **paper 3.2**. In particular, members noted the arrangements for the Four Corners Conference due to take place in Edinburgh on 24-25 November 2022, involving the Council and its counterpart sentencing bodies for England and Wales, Northern Ireland, and Ireland. There was discussion of potential topics to be covered on day 2 of the conference.

ACTION POINTS

- AP3** ***Secretariat to explore the possibility of Council participation in the Commonwealth Magistrates' and Judges' Association (CMJA) conference in Cardiff in September 2023.***
- AP4** ***Secretariat to finalise arrangements for the Four Corners Conference in consultation with the Chair, including the topics for discussion on day 2 and any arrangements for guest speakers to be invited to speak about these.***

Item 3.3: Draft report on community sentencing stakeholder event [Papers 3.3 and 3.3A]

28. **Paper 3.3** advised the Council of the position in relation to the report on its community sentencing stakeholder event, which took place on 31 March 2022. A draft report was provided at **paper 3.3A**.

29. **The Council discussed the draft report and:**

- **offered views on what the next steps should be;**
- **approved the contents of the draft report, subject to final clearance by the Chair; and**
- **approved distribution of advance copies to key stakeholders prior to publication.**

ACTION POINT

- AP5** ***Secretariat to finalise the report on the community sentences stakeholder event in consultation with the Chair and to arrange for its publication thereafter, including distribution of advance copies to key stakeholders.***

4. RESEARCH

Item 4.1: Research Committee update [Oral update]

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

- The Committee has not met since the last Council meeting.
- It is working by correspondence on revised research commissioning plans for the year.
- A number of research reports have been published since the last meeting, namely literature reviews on the sentencing of domestic abuse and indecent images of children offences, with a literature review on the sentencing of assault offences due to be published soon.
- The Committee will meet in October, subject to availability, to discuss research priorities for 23/24, with these being brought to Council at the December meeting, as in previous years.

ACTION POINT

AP6 Secretariat to arrange for the publication of the research report on assault.

Item 4.2: Research projects update [Oral update]

31. Andrew Bell gave an update on the status of ongoing research projects. He noted that:

- A project plan has been agreed with the Open University Open Justice Centre for students to undertake work on mental health in sentencing. This project will approach data gathering from a number of directions to ensure a broad picture of current practice can be drawn.
- Revised timings have been agreed for research projects to accommodate other financial priorities in the 22/23 year.

5. POLICY DEVELOPMENT

Item 5.1: Policy update [Paper 5.1]

32. **Paper 5.1** advised the Council of two consultations on criminal justice issues and sought the Council's views on whether and, if so, how, to respond to these consultations.
33. The first of the two consultations was on a proposed Domestic Abuse (Prevention) (Scotland) Bill. This consultation was by Pam Gosal MSP and related to a draft proposal she has lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament.
34. The second consultation was by the Scottish Government and concerned changes to the Parole Board (Scotland) Rules 2001.
35. **Paper 5.1** also advised the Council of a number of recent policy issues of relevance to its work:
- Publication of the analysis of responses to the Children's Care and Justice Bill consultation
 - A consultation by the Sentencing Council for England and Wales on miscellaneous amendments to sentencing guidelines
 - The Programme for Government 2022-23
 - Justice Analytical Services: Safer Communities and Justice Statistics Monthly Data Report, August 2022 edition
 - Recorded Crime in Scotland bulletin 2021-2022.
36. **The Council:**
- **noted paper 5.1; and**
 - **agreed not to respond to the consultations on the proposed Domestic Abuse (Prevention) (Scotland) Bill, and changes to the Parole Board (Scotland) Rules 2001.**

6. GOVERNANCE AND REPORTS

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

37. **Paper 6.1A** summarised correspondence, complaints, and freedom of information requests since the last meeting.

38. **Paper 6.1B** provided the Council with an overview of its expenditure in the financial year to date.
39. **Paper 6.1C** provided an updated timetable for the development of each of the Council's guidelines. The Council considered a revised version of this paper, which superseded the version originally issued. This was the result of a planning exercise recently carried out by the secretariat in order to get a clearer idea of the likely milestones for each guideline.
40. The Council noted the content of the standing papers.

Item 6.3: Decisions by correspondence [Paper 6.2]

41. The Council noted **paper 6.2**, which set out three decisions made by correspondence since the last Council meeting. These were to:
- approve a draft response to the Scottish Government's consultation on policy proposals in respect of the Children's Care and Justice Bill
 - approve the recommendations reached at the inquorate Council meeting on 10 June 2022
 - agree to appoint and Summary Sheriff Elfallah to the Communications and Domestic Abuse Committees and Louise Arrol to the Research and Sexual Offences Committees.

7. AOB

42. It was noted that the Council's annual report for 2021-22 was close to being finalised and that the secretariat would seek the Chair's clearance of the final draft soon.

ACTION POINT

AP7 ***Secretariat to seek the Chair's clearance of the Council's Annual Report 2021-22 and to arrange for its submission to the Scottish Ministers and publication thereafter.***

8. FUTURE MEETING DATES

43. The Council noted the dates of its upcoming events:

- Council meeting: 09 December 2022
- Council workshop: 24 February 2023
- Council meeting: 17 March 2023
- Council meeting: 09 June 2023

ALTERATION TO AGENDA *(By agreement this item was held back until after item 8.)*

Item 2.2: Sexual offences – presentation by the Scottish Prison Service on rehabilitation programmes available in custody [Oral update]

44. The Chair welcomed Stephan McAlpine of the Scottish Prison Service to the meeting. She informed members that Stephan is a registered forensic psychologist and Head of Psychology at HMP Edinburgh.

45. Stephan gave a give a presentation on the following programmes for sexual offenders in custody:

- Self-change programme (SCP) – this is designed for adult men identified as presenting a high-risk of violent re-offending. It aims to reduce the risk of violence, whether that violence is general, sexual or against an intimate partner.
- Moving Forward 2 Change (MF2C) – this is the new format for a programme (previously called Moving Forward: Making Changes, or MF:MC) for adult men identified as presenting a moderate risk of sexual reoffending. MF2C is currently being piloted in HMP Edinburgh and HMP Barlinnie, and in the community at North Lanarkshire, East Dunbartonshire and Renfrewshire. Until MF2C is implemented across Scotland, the current MF:MC programme will continue to run at other community sites.

46. The Council considered and discussed the issues raised, and the Chair thanked Stephan for his presentation.