

MEETING OF THE SCOTTISH SENTENCING COUNCIL
06 OCTOBER 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)
Joanne McMillan (solicitor member)
DCC Malcolm Graham (constable member)
Lynn Burns (victims expert member)
Dr Hannah Graham (lay member)

Secretariat: 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)

Attendees: Dr Suzy Houston (head of education, Judicial Institute for Scotland)

Apologies: Susan Fallone JP (judicial member)
Lindsey Miller (prosecutor member)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that apologies had been received from Lindsey Miller.
2. The Chair welcomed Lynn Burns to her first meeting since her appointment as the new victims expert member of the Council and noted that she will hold office until July 2028.

The Chair informed members that Lynn had personally been impacted by violent crime and has had a long standing interest in victims' issues. It was noted that Lynn has been the victim representative on the Scottish Government's Victims Taskforce since 2018. She also sits on the Scottish Parliament's Cross Party Group for Adult Survivors of Childhood Sexual Abuse.

3. The Chair also welcomed:

- Tom Hughes, who had joined the secretariat as interim senior research officer;
- Dr Nicole Vidal, who had re-joined the secretariat as interim principal research officer; and
- Dr Suzy Houston, Head of Education at the Judicial Institute for Scotland, who was observing the meeting.

4. The Chair informed members that Louise Arrol's term of office as the Council's advocate member had ended on 04 September 2023 as a result of her appointment as a sheriff on that date.

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

5. The Chair informed members that Andrew Bell had left his role as the Council's principal research officer in August in order to take up a new post elsewhere. It was noted that Andrew had been a member of the secretariat and principal research officer since the Council was established in 2015.

Note of thanks: the Council recorded its thanks to Andrew Bell for his contribution to the Council's work during his time as Principal Research Officer.

Item 1.2: Previous meeting [Paper 1.2]

6. The Council approved the minutes of the previous meeting of 9 June 2023 provided at **paper 1.2**.

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 [Oral update]

8. The Council agreed not to publish the following papers: 1.3, 1.5, 2.1, 2.2, 2.2A, 2.2B, 2.3, 2.3A, 2.3B, 2.4, 2.4A, 3.1, 3.2, 3.3, 3.4, 5.1, 6.1, 6.1A, 6.2, 6.3B, 6.3C and 6.4.

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

9. **Paper 1.5** provided the Council with an update on committee memberships.
10. The Council:
- confirmed the reappointment of Dr Hannah Graham to the Communications and Research Committees;
 - confirmed the reappointment of Susan Fallone to the Research Committee;
 - noted that the secretariat would revert to the Council to confirm, by correspondence, committee memberships prior to the March 2024 meeting, and that a similar exercise would be undertaken in respect of committee advisors; and
 - noted proposed new arrangements around committee appointments outlined in **paper 1.5**.

ACTION POINTS

AP1 Secretariat to revert to the Council by correspondence to confirm committee memberships and committee advisors prior to the March 2024 meeting.

AP2 Secretariat to finalise new arrangements around committee appointments and advise the Council on any changes to the standing orders necessary to give effect to these.

Item 1.6: Update on staffing [Oral update]

11. David Dickson provided an update on staffing, including the recent recruitment of Dr Nicole Vidal as the Interim Principal Research Officer following Andrew Bell's departure.

2. SENTENCING GUIDELINES

Item 2.1: Death by driving – update on publication of consultation report and communications [Paper 2.1]

12. David Ross provided an update, with reference to **paper 2.1**, on publication of the Council's report about the public consultation on the death by driving guideline. It was noted that reaction to the report had been generally very positive, and that the guideline had been broadly welcomed by Victim Support Scotland and Cycling Scotland.
13. It was also noted that the guideline had been submitted to the High Court for approval and that the approval hearing would take place on 31 October. An outline of future communications and awareness-raising activity around the guideline was provided.

ACTION POINT

AP3 *Secretariat to liaise with the Communications and Death by Driving Committees regarding future communications activity around the death by driving guideline.*

Item 2.2: Sentencing young people guideline – one-year review [Papers 2.2 and 2.2A-B]

14. David Ross and Tom Hughes gave a progress update on the ongoing one-year review of the sentencing young people guideline, with reference to **papers 2.2 and 2.2A-B**. It was noted that the operation of the guideline had been monitored since it came into effect in January 2022. A review expanding upon this work was underway in line with the methodology and formal structure agreed at the December 2022 meeting, involving analysis of data gathered on relevant cases by the Scottish Courts and Tribunals Service.
15. The Council considered and discussed **papers 2.2 and 2.2A-B** and offered views on approaches to explore qualitative data on the guideline's application.

ACTION POINTS

AP4 *Secretariat to provide a further update on the one-year review of the sentencing young guideline at the December 2023 meeting.*

AP5 *Secretariat to revert to the Council at the December 2023 meeting regarding approaches for exploring qualitative data on the operation of the sentencing young people guideline.*

Item 2.3: Draft rape guideline [Papers 2.3 and 2.3A-B]

16. Lord Matthews provided an update on **papers 2.3 and 2.3A-B**, which concerned proposed amendments to the draft rape guideline.
17. After discussion, the Council:
 - approved the amendments recommended by the Sexual Offences Committee to the draft rape guideline;
 - agreed to finalise the draft guideline for a judicial survey in line with the proposals set out in paper 2.3; and
 - agreed that a draft guideline covering offences under section 18 of the Sexual Offences (Scotland) Act 2009 (rape of a young child) should be considered by correspondence for use in the judicial survey.

ACTION POINT

AP6 Secretariat to revert to the Council by correspondence to consider and approve a draft guideline covering offences under section 18 of the Sexual Offences (Scotland) Act 2009 (rape of a young child) for use in the judicial survey.

Item 2.4: Draft judicial survey [Papers 2.4 and 2.4A]

18. Lord Matthews introduced **papers 2.4 and 2.4A**, which concerned a judicial survey on the draft rape guideline.
19. The Council:
 - approved the judicial survey in relation to the draft rape guideline; and
 - agreed that additional survey questions on rape offences relating to young children should be considered by correspondence.

ACTION POINT

AP7 Secretariat to revert to the Council by correspondence to consider and approve additional survey questions specific to the draft guideline covering offences under section 18 of the Sexual Offences (Scotland) Act 2009 (rape of a young child).

Item 2.5: Guideline committees update [Oral update]

20. Lord Matthews provided an update on the work of the Death by Driving and Sexual Offences Committees.

21. In respect of the Death by Driving Committee, he noted that:

- The Committee had not met since the last Council meeting.
- Over the coming weeks, the Committee would be considering future communications activity around the death by driving guideline.

22. In respect of the Sexual Offences Committee, he noted that:

- The Committee last met on 26 July 2023, when it considered the issues covered under items 2.3 and 2.4 at today's meeting concerning the draft rape guideline and judicial survey on it.
- In respect of the indecent images guideline, the secretariat was continuing to engage with key stakeholders on the current draft and an update on this would be provided to the Committee at a future meeting.
- The secretariat was also considering the terms of the initial draft guidelines on sexual assault and hoped to commence work on drafting soon.
- It was hoped that the Committee would next meet in late October or in November.

23. Lord Colbeck provided an update on the work of the Discounting and Domestic Abuse Committees.

24. In respect of the Discounting Committee, he noted that:

- The Committee had not met since the last Council meeting.
- Engagement with members of the judiciary to discuss current sentencing practice has commenced.
- The research project on public perceptions of sentence discounting was nearing completion.
- The Committee was likely to meet again when judicial engagement is further advanced.

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

- The Committee had not met since the last Council meeting.
- Substantial progress had been made in relation to the draft guideline and it was hoped that a draft for use in initial engagement would be finalised when the Committee next meets on 17 October.

3. COMMUNICATIONS AND ENGAGEMENT

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

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

- the Committee last met on 26 September 2023;
- the Council's newsletter, Spotlight on Sentencing Circular, had been launched; and
- the Council's Facebook page had been published.

27. The Council noted **paper 3.1**, which provided a general media and social media update.

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

28. The Council noted **paper 3.2**, which provided details of recent meetings and events attended by Council members and staff, including:

- The Commonwealth Magistrates' and Judges Association Conference 2023, which the Chair had attended in Cardiff in September
- Lord Matthews' presentation on the work of the Council to a delegation of Singaporean prosecutors in September
- A presentation on guidelines given by Joanne McMillan to the Public Defence Solicitors' Office on 27 September
- Doors Open Day events, which were facilitated by Vicky Weldon and David Dickson on 16 September in Glasgow and by Valerie MacGregor on 23 September in Edinburgh.

Item 3.3: Educational videos [Oral update with reference to Paper 3.3]

29. Summary Sheriff Elfallah provided an update on **paper 3.3**, which sought the Council's feedback on an educational video, and approval to commission further videos.

30. The Council:

- approved the educational video with intent to publish it as part of a series; and
- approved the commission of further videos and educational resources set out in Paper 3.3 to accompany them.

ACTION POINT

AP8 Secretariat to undertake the procurement and commissioning exercises necessary to begin development of the educational videos and related resources approved by the Council.

Item 3.4: Meetings with Council representatives [Paper 3.4]

31. The Council considered **paper 3.4**, which sought approval of a draft protocol on handling requests for meetings with Council representatives.

32. The Council approved the draft protocol provided at the annex to **paper 3.4** and noted the intention to develop related website content for future consideration.

ACTION POINTS

AP9 Secretariat to finalise the protocol for handling requests for meetings with Council representatives.

AP10 Secretariat to revert to the Communications Committee and Council in relation to potential website content about the protocol on handling requests for meetings with Council representatives.

4. RESEARCH

Item 4.1: Research Committee update [Oral update]

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

- The Committee last met on 08 August 2023 when it considered:
 - revised research projects for 2023/24
 - research priorities and projects for 2024/25
 - an update on the one-year review of the sentencing young people guideline
 - an update on current projects
 - the judicial survey on mental health and sentencing, and
 - the upcoming research seminar.

34. Hannah also informed members that:

- Arrangements for the research seminar were nearing finalisation, with speakers and topics for discussion identified.
- The Council had been approached about funding a PhD through the Scottish Graduate School of Social Science. The secretariat was exploring the feasibility of the proposal.

Item 4.2: Research projects update [Oral update]

35. Tom Hughes provided an update on the progress of various research projects underway or planned, including arrangements for the judicial survey on mental health and sentencing; the projects on victim-survivors' views of sentencing for rape and sexual assault, and domestic abuse; and the public perceptions work on sentence discounting.

36. It was also noted that two new projects would be getting underway shortly. These were an exploratory study on unwarranted disparities in sentencing in Scotland and focus groups exploring views on sentencing for environmental and wildlife offences.

5. POLICY DEVELOPMENT

Item 5.1: Policy update [Paper 5.1]

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

- The Bail and Release from Custody (Scotland) Act 2023, which had obtained Royal Assent on 01 August 2023
- Progress in respect of the Children (Care and Justice) (Scotland) Bill and the Victims, Witnesses, and Justice Reform (Scotland) Bill
- The recent publication of the Programme for Government 2023-24
- The Guideline Development Procedure published by Sentencing Guideline and Information Committee of Ireland, which explicitly acknowledged the Council's work as a particular influence, and as providing "a clear, logical and transparent approach to guideline development".

6. GOVERNANCE AND REPORTS

Item 6.1: Annual report 2022-23 [Papers 6.1 and 6.1A]

38. **Paper 6.1** sought approval of the Council's draft annual report for 2022-23. The draft annual report, covering the period 1 April 2022 to 31 March 2023, was provided at **paper 6.1A**.
39. The Council approved, in principle, the draft annual report at **paper 6.1A** and agreed that the report should thereafter be finalised by the secretariat in consultation with the Chair.

ACTION POINT

AP11 Secretariat to finalise the Annual Report 2022-23 in consultation with the Chair and arrange for its submission to the Scottish Ministers and publication thereafter.

Item 6.2: Freedom of information requests [Paper 6.2]

40. The Council noted **paper 6.2**, which provided an update on a change in administrative procedures for handling freedom of information requests.

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

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

Item 6.4: Decisions by correspondence [Paper 6.4]

45. The Council noted **paper 6.4**, which set out three decisions made by correspondence since the last Council meeting. These were to:
 - approve a written submission to the House of Lords Justice and Home Affairs Committee in relation to its inquiry into community sentences;
 - approve an amendment to the death by driving guideline; and
 - appoint Joanne McMillan to the Communications and Domestic Abuse Committees and DCC Graham to the Sexual Offences Committee.

7. AOB

38. No other business was raised.

8. FUTURE MEETING DATES

39. The Council noted that:
 - the workshop previously scheduled for Friday 10 November 2023 had been cancelled; and
 - the meeting on Friday 08 December 2023 will take place at Tulliallan Castle.

ACTION POINT

- AP12** *Secretariat to liaise with DCC Graham to finalise arrangements for the December 2023 meeting at Tulliallan Castle.*

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