

MEETING OF THE SCOTTISH SENTENCING COUNCIL
7 JUNE 2024
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)
Lindsey Miller (prosecutor member)
Victoria Young (advocate member)
Joanne McMillan (solicitor member)
DCC Bex Smith (constable member)
Dr Hannah Graham (lay member)
- Attendees:** Sheriff Amel Elfallah (advisor to the Council)
Cat Dalrymple (Director of Justice, Scottish Government) – *until item 2.1*
Teresa Medhurst (Chief Executive, Scottish Prison Service) – *until item 2.1*
- Secretariat:** Ondine Tennant (secretary)
David Dickson (principal legal officer)
Dr Nicole Vidal (interim principal research 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)
Hannah Downey (interim senior research officer)
- Apologies:** Lynn Burns (victims expert member)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that apologies had been received from Lynn Burns. The Chair then welcomed:

- Sheriff Amel Elfallah to her first meeting since her appointment as an advisor to the Council. This followed her installation as a sheriff in April 2024, which had brought her tenure as summary sheriff member of the Council to an end.
- Deputy Chief Constable Bex Smith, who was attending her first meeting since her appointment by the Scottish Ministers as the Council's new constable member. It was noted that DCC Smith holds responsibility for major crime, public protection, local crime, organised crime, counter terrorism, intelligence and operational support, and would serve on the Council until June 2029.
- Cat Dalrymple (Director of Justice, Scottish Government) and Teresa Medhurst (Chief Executive, Scottish Prison Service), who were attending until conclusion of item 2.1 on the agenda.
- Hannah Downey, who was attending her first meeting since joining the secretariat as interim senior research officer.

2. The Chair informed members that:

- David Ross, Valerie MacGregor, and Nicole Vidal have all now, following open and fair recruitment exercises, been recruited to their posts on a permanent basis.
- This was the last meeting to be attended by Vicky Weldon as Communications Manager to the Council, as her period of appointment to the secretariat to cover maternity leave had come to an end.

Note of thanks: the Council recorded its thanks to Vicky Weldon for her contribution to the Council's work during her time as Communications Manager.

Item 1.2: Previous meeting minutes [Paper 1.2]

3. The Council approved the minutes of the previous meeting of 22 March 2024 provided at **paper 1.2**.

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

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

Item 1.4: Private papers [Oral update]

5. The Council agreed not to publish the following papers: 1.3, 1.5, 2.2, 2.3, 3.1, 3.1A, 4.1, 4.1A, 4.2, 4.3, 4.3A, 5.2, 5.2A, 5.2B, 5.2C, 5.3, 5.3A, 5.3B, 6.1, 7.1B, 7.1C and 7.2.

Item 1.5: Update on committee membership [Paper 1.5]

6. The Council:
- noted the current and proposed committee memberships and the proposed committee advisors provided in **paper 1.5**; and
 - confirmed the appointment of Lynn Burns to the Communications Committee, effective from 30 November 2023.
7. The Chair noted that the secretariat would contact DCC Smith to discuss which committees she may have an interest in serving on and would arrange for her appointment to the relevant committees to be considered by correspondence in due course.

ACTION POINT

AP1 ***Secretariat to carry out the necessary arrangements for the appointment of DCC Smith to Council committees.***

2. BUSINESS PLANNING

Item 2.1: Update from Scottish Government and Scottish Prison Service [Oral update]

8. The Chair informed members that she met with Angela Constance MSP, the Cabinet Secretary for Justice and Home Affairs, on 29 May and provided an update on the matters discussed.
9. Cat Dalrymple provided an update on the Scottish Government's legislative programme and other policy developments in relation to criminal justice.

10. Teresa Medhurst provided an update on the Scottish Prison Service's current position and organisational priorities.
11. The Council considered and discussed the issues raised, and the Chair thanked Cat Dalrymple and Teresa Medhurst for their contributions, and invited them to leave the meeting.

Item 2.2: Funding requirements 2024-25 [Paper 2.2]

12. Ondine Tennant provided an update on the Council's anticipated financial requirements for 2024-25 with reference to **paper 2.2**. The Council had now received notification of its allocation for 2024-25 and it was noted that a bid for additional funding to ensure the Council's effective operation was in preparation.
13. The Council noted the update and **paper 2.2**.

Item 2.3: Business plan 2024-27 [Paper 2.3]

14. Ondine Tennant provided an update on the preparation of the Council's next business plan, covering 2024-27, and the accompanying communications and engagement strategy, with reference to **paper 2.3**.
15. It was noted that statutory consultation on the business plan was underway, with the Chair having met the Lord Advocate on 22 May and, as noted under item 2.1, the Cabinet Secretary for Justice and Home Affairs on 29 May, while a meeting with the Lord Justice General would be scheduled in due course.
16. The Council:
 - noted the discussions with statutory consultees that have taken place to date;
 - agreed the matters for inclusion in the 2024-27 business plan, subject to the conclusion of statutory consultation, as noted in **paper 2.3**; and
 - noted the plans for preparation of the draft business plan and accompanying communications and engagement strategy.

ACTION POINT

AP2 *Secretariat to revert to the Council with final drafts of the 2024-27 business plan and communications and engagement strategy as soon as is practicable.*

3. SENTENCING GUIDELINES

Item 3.1: Environmental and wildlife offences – consideration of scope [Papers 3.1 and 3.1A]

17. Sheriff Fleming gave an update on the last meeting of the Environmental and Wildlife Crime Committee.
18. This was the Committee's first meeting since 2018, due to the decision in May 2019 to defer work on environmental and wildlife crime in order to prioritise guidelines on sexual offences.
19. The Committee had taken a provisional view on scope, which was that environmental offences should be dealt with separately from wildlife offences, rather than cover both in a single guideline.
20. The Council agreed in principle that environmental offences should be addressed separately from wildlife offences, and directed some minor amendments to the Committee's remit and terms of reference to reflect this.
21. It was noted that the secretariat would carry out a scoping exercise on potential approaches for guidelines on these offences and present recommendations to the Committee and Council in due course.
22. The Council also agreed to appoint DCC Bex Smith to the Committee with immediate effect.

ACTION POINTS

AP3 *Secretariat to consider the precise scope and approach of guidelines on environmental and wildlife offences and revert to Council with a project initiation document in due course, following consideration of this by the Environmental and Wildlife Crime Committee.*

AP4 *Secretariat to update the Committee's remit and terms of reference in the terms discussed.*

Item 3.2: Guideline committees update [Oral update]

23. 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 and was unlikely to meet again as it is due to be wound-up on 16 July, six months after the guideline on death by driving offences took effect.
- An interactive case study on death by driving offences has been added to the Council's website and infographics on the offences of causing death by dangerous driving and causing death by careless, or inconsiderate, driving are being finalised.
- Application of the guideline was now being monitored through sentencing statements and media reports in accordance with the Council's methodology for monitoring and review of in-force guidelines.
- One decision not to follow the guideline had been reported to date, in respect of which there was a published sentencing statement. The reason given was a technical one: the offender had pled guilty to charges of causing death by dangerous driving and causing death by driving whilst uninsured under sections 1 and 3ZB of the Road Traffic Act 1988. As a custodial sentence was imposed for the section 1 offence, the court stated that it was impractical to follow the guideline in respect of the 3ZB offence, which provided for community orders within the sentencing range.

24. Lord Matthews provided an update on the work of the Sexual Offences Committee. He noted that:

- The Committee last met on 6 February.
- The launch of the public consultation on the draft rape guidelines was postponed due to the announcement of the general election. It has now been rescheduled.

25. Lord Colbeck provided an update on the work of the Domestic Abuse Committee. He noted that:

- The draft domestic abuse guideline has been updated following the last Council meeting, and is currently with the Domestic Abuse Committee for approval.
- Once the draft guideline is approved, key stakeholders will be approached in relation to initial, informal engagement.

26. Lord Colbeck provided an update on the work of the Discounting Committee. He noted that:

- The Committee had met twice since the last Council meeting, most recently on 30 May.
- Iterative drafting of the guideline has continued, and it is anticipated that a draft guideline will be circulated to the Council for consideration by correspondence. If the Council is content, this will allow for the commencement of stakeholder engagement on that draft.
- The Committee considers that there may be merit in using the term 'reduction', rather than 'discounting' in the guideline, and if the Council is minded to agree this might necessitate an amendment to the name of the Committee in due course.

27. Sheriff Fleming provided an update on the work of the Environmental and Wildlife Crime Committee. He noted that:

- In fulfilment of a commitment in the Council's 2021-24 business plan, the Environmental and Wildlife Crime Committee reconvened on 21 May, with Victoria Young and Sheriff Fleming as its new members. Sheriff Fleming was elected chair.
- Due to the complexity and technical nature of environmental and wildlife crime, the Committee is considering whether, and if so how, it might seek specialist input to assist its work.
- The Committee also considered:
 - an overview of the work carried out to date, including in respect of a research project underway which will explore public understanding of, and attitudes towards, the sentencing of environmental and wildlife offences;
 - recent stakeholder engagement with the Partnership for Action against Wildlife Crime in Scotland (PAW Scotland) and upcoming engagement with the Scottish Environmental Protection Agency (SEPA); and
 - recent legislative developments in relation to environmental and wildlife crime.
- A date for the next meeting has not been fixed yet, but it is unlikely to be any earlier than September to allow the secretariat time to carry out a detailed scoping analysis.

4. COMMUNICATIONS AND ENGAGEMENT

Item 4.1: Communications Committee update [Oral update with reference to papers 4.1 and 4.1A]

28. Joanne McMillan provided an update on the work of the Communications Committee with reference to **papers 4.1 and 4.1A**. In particular, she noted that:

- The Committee last met on 10 May 2024.
- A number of projects are completed or ongoing. Progress is being made on the commissioned educational video on prison sentencing. The podcast on community sentencing is complete and will be launched following the general election. The accessibility of the interactive case studies has been updated. The next newsletter will be published in July. Work is ongoing in relation to social media development.

Item 4.2: Recent and upcoming engagement activity [Papers 4.2 and 4.2A]

29. The Council noted **papers 4.2 and 4.2A**, which provided updates on recent and upcoming engagement activity.

Item 4.3: Information pack [Papers 4.3 and 4.3A]

30. Joanne McMillan introduced **papers 4.3 and 4.3A**, which related to the provision of a draft information pack on sentencing.

31. It was noted that feedback on the draft had been received and that the secretariat would take this into account when preparing a final version for consideration by the Communications Committee. The Council indicated that it was content for the draft information pack to be shared with stakeholders for further feedback, and with the proposals for publishing/issuing the pack outlined in **paper 4.3**. It was noted that the pack might be adapted for use more widely than had initially been envisaged and to that end that a slightly broader range of stakeholder organisations than suggested in **paper 4.3** should be contacted.

ACTION POINT

AP5 *Secretariat to finalise the information pack on sentencing under the direction of the Communications Committee and arrange for it to be published/issued as soon as is practicable.*

5. RESEARCH

Item 5.1: Research Committee update [Oral update]

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

- The Committee last met on 28 February 2024.
- A date for the next meeting has not been fixed yet.

Item 5.2 Research projects update [Papers 5.2 and 5.2A-C]

33. Nicole Vidal introduced **paper 5.2**, which provided updates on current research projects. In particular, she noted that:

- The bid for the second national survey on public perceptions of sentencing has been awarded to Ipsos MORI and the contract has now commenced.
- The secretariat has carried out amendments to the Research Framework with the aim to publish the final updated version.
- A number of projects have been completed or are ongoing.

ACTION POINT

AP6 *Secretariat to publish the revised Research Framework as soon as is practicable.*

Item 5.3 Mental health and sentencing [Papers 5.3 and 5.3A-B]

34. The Council discussed **papers 5.3 and 5.3A-B**. At the March meeting, the Council directed that targeted research and engagement should be carried out with key

stakeholders to gather further information to assist with its mental health and sentencing workstream.

35. The Council noted the engagement that had taken place so far. The Council discussed and agreed the approach to take for the issues paper as recommended in **paper 5.3**.
36. The Council indicated that it was content with the proposals for finalisation and publication of the draft issues paper at **paper 5.3A**, which it had first considered at the March 2024 meeting.
37. The Council discussed the proposed programme (provided at **paper 5.3B**) for the stakeholder conference on mental health, neurodivergence, and learning disability in sentencing, which has been fixed for Friday 30 August 2024. It was felt that the complexity of the subject might warrant exploration in more than one event, each examining different aspects of the themes under consideration. With that in mind, the secretariat was instructed to prepare an amended, more focussed programme for consideration.

ACTION POINTS

AP7 Secretariat to undertake targeted research and engagement with key stakeholders in line with the approach agreed by the Council.

AP8 Secretariat to revert to the Chair and Research Committee with a revised programme for the 30 August conference.

6. POLICY DEVELOPMENT

Item 6.1: Policy update [Paper 6.1]

38. The Council noted **paper 6.1**, which outlined a number of recent policy issues of relevance to the Council's work.

7. GOVERNANCE AND REPORTS

Item 7.1: Standing papers: correspondence, FOISA, and complaints; finance overview; guideline timetable [Papers 7.1A-C]

39. **Paper 7.1A** summarised correspondence, complaints, and FOI requests since the last meeting.

40. **Paper 7.1B** updated the Council on expenditure in the 2023-24 financial year to date.

41. **Paper 7.1C** set out the timetable for the development of each of the Council's guidelines.

42. The Council noted the content of **papers 7.1A-C**.

Item 7.2: Decisions by correspondence [Oral update]

43. The Council noted that two decisions had been made by correspondence since 19 March. These were to:

- approve the appointment of Sheriff Amel Elfallah as an advisor to the Council.
- approve the consultation paper on the public consultation paper for the draft guidelines on rape.

8. AOB

44. It was noted that section 5 of the Bail and Release from Custody (Scotland) Act 2023 would commence on 1 July 2024. This inserts new section 210ZA into the Criminal Procedure (Scotland) Act 1995 requiring a court, when passing a sentence of imprisonment or detention, to have regard to any time the offender has spent on electronically monitored bail awaiting trial or sentence, and to determine whether, and to what extent, this should be treated as a period of time spent in custody by the offender. The Council discussed the potential implications of this for sentencing guidelines.

9. FUTURE MEETING DATES

45. The Council noted the following meeting dates for 2024 and 2025:

- Council meeting: 4 October 2024
- Council meeting: 6 December 2024
- Council workshop: 28 February 2025
- Council meeting: 21 March 2025
- Council meeting: 6 June 2025

- Council workshop: 29 August 2025
- Council meeting: 3 October 2025
- Council meeting: 5 December 2025

Scottish Sentencing Council Secretariat

June 2024

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