

MEETING OF THE SCOTTISH SENTENCING COUNCIL
22 MARCH 2024
CITY CHAMBERS, EDINBURGH
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)
Lindsey Miller (prosecutor member) - by video conference
Joanne McMillan (solicitor member)
DCC Malcolm Graham (constable member)
Lynn Burns (victims expert member)

Attendees: Steve Wade (Sentencing Council for England and Wales)
Emma Marshall (Sentencing Council for England and Wales)
Dr Arun Chopra (Mental Welfare Commission) for item 4.3
Dr Gordon Skilling (The State Hospital, Carstairs) for item 4.3
Professor Liz Gilchrist (University of Edinburgh) for item 4.3
Antonia Besu (trainee) for item 4.3

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)
Tom Hughes (interim senior research officer)

Apologies: Victoria Young (advocate member)
Dr Hannah Graham (lay member)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that apologies had been received from Victoria Young and Dr Hannah Graham.
2. The Chair informed members that this was the last meeting to be attended by Summary Sheriff Amel Elfallah as a member of the Council, as she would take up her appointment as a sheriff on 22 April 2024.

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

3. The Chair informed members that this was also the last meeting to be attended by DCC Malcolm Graham as a member of the Council, as he was due to retire in April.

Note of thanks: the Council recorded its thanks to DCC Graham for his contribution to the Council's work during his period in office.

4. The Chair informed members that this was the last meeting to be attended by Tom Hughes, who is leaving the secretariat to take up a new post elsewhere.

Note of thanks: the Council recorded its thanks to Tom Hughes for his contribution to the Council's work during his time as interim senior research officer.

5. The Chair welcomed Steve Wade (Head of Office, Sentencing Council for England and Wales) and Emma Marshall (Head of Research, Sentencing Council for England and Wales) to the meeting.
6. The Chair also welcomed Dr Arun Chopra, Dr Gordon Skilling, and Professor Liz Gilchrist to the meeting to discuss **item 4.3**, which concerned the Council's work on mental and health and sentencing, and noted that Dr Skilling's trainee, Antonia Besu, would be observing the discussion. It was agreed to bring discussion of **item 4.3** forward to the beginning of the meeting to save the guests from waiting until the other business had concluded.

ALTERATION TO AGENDA

Item 4.3: Mental health and sentencing [Papers 4.3 and 4.3A-B]

7. The Chair outlined the Council's work in respect of mental health and sentencing and explained that this had most recently involved research with members of the judiciary,

which was still ongoing and which had sought their views in this area. The Chair noted that Dr Chopra, Dr Skilling, and Professor Gilchrist had been invited to discuss the initial findings of this research in order to inform the Council's consideration of the issues arising and what further work it might undertake.

8. The Council discussed its work in respect of mental health and sentencing with the guests and the wider legislative and policy context in this area.

9. The key issues discussed were:

- the terminology around mental health to be used in the Council's sentencing guidelines;
- the statutory framework in relation to mental health and sentencing;
- potential upcoming legislative developments;
- whether there is a broader need for education to aid understanding;
- resource and practical barriers;
- potential gaps in disposals for those who fall short of a hospital order/imprisonment;
- differences between criminal justice and medical approaches to dealing with individuals with mental health issues;
- the importance of both psychiatry and psychology in the context of mental health and sentencing; and
- approaches in other jurisdictions.

10. The Chair thanked Dr Chopra, Dr Skilling, and Professor Gilchrist for their valuable contributions and invited them to leave the meeting.

11. The Council then discussed **papers 4.3** and **4.3A-B** and agreed that a number of areas required further exploration and consideration to enable conclusions to be reached and an issues paper to be finalised. It was agreed this would be taken forward by means of a targeted consultation on the issues in the first instance, and that a discussion event should be arranged thereafter.

ACTION POINTS

AP1: Secretariat to carry out a targeted consultation in respect of mental health and sentencing and to finalise an issues paper to take account of this, under the direction of the Research Committee.

AP2: Secretariat to arrange a discussion event on mental health and sentencing.

12. The meeting then followed the order of items as set out in the agenda.

Item 1.2: Previous meeting minutes [Paper 1.2]

13. The Council approved the minutes of the previous meeting of 8 December 2023 provided at **paper 1.2**.

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

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

Item 1.4: Private papers [Oral update]

15. The Council agreed not to publish the following papers: 1.3, 1.6, 1.7, 2.1, 2.1A-D, 2.2, 2.2A, 3.1, 3.1A, 3.1B, 3.2, 4.2, 4.3, 4.3A-B, 5.1, 6.1B and 6.1C.

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

16. The Council noted with reference to **paper 1.5** that discussions around committee memberships were proceeding and that the secretariat would revert to the Council by correspondence to confirm proposals in due course.

ACTION POINT

AP3: Secretariat to revert to the Council by correspondence to confirm proposals for committee memberships.

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

17. Ondine Tennant provided an update on the Council's anticipated financial requirements for 2024-25 with reference to **paper 1.6**.
18. The Council noted the update and **paper 1.6**.

Item 1.7: Business plan 2024-27 [Paper 1.7]

19. Ondine Tennant provided an update on the preparation of the Council's next business plan, covering 2024-27, with reference to **paper 1.7**.
20. The Council noted the update and **paper 1.7** and offered initial views on potential items and activities for inclusion in the business plan.

ACTION POINT

AP4: Secretariat to revert to the Council at the June meeting with an update on the 2024-27 business plan.

2. SENTENCING GUIDELINES

Item 2.1: Draft rape guidelines [Papers 2.1 and 2.1A-D]

21. Lord Matthews gave an update on the draft sentencing guidelines on rape offences and the arrangements for public consultation on these, with reference to **papers 2.1A and 2.1B**.
22. The Council considered the papers and approved minor amendments to the draft rape guidelines for the purpose of public consultation.
23. The Council noted **papers 2.1 and 2.1A-D** and approved the public consultation at **paper 2.1C** in principle, subject to the agreed amendments being made.
24. The Council also approved the proposal to agree the final version of the consultation and draft impact assessments by correspondence.

ACTION POINT

AP5: Secretariat to amend the draft sentencing guidelines on rape offences as agreed, and to issue the final version of the public consultation

document and draft impact assessments to the Council for final agreement by correspondence.

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

25. The Council considered a progress update on the one-year review of the sentencing young people guideline with reference to **papers 2.2 and 2.2A**, and agreed on a number of steps to be taken in order to finalise the review.

ACTION POINT

AP6: Secretariat to finalise the one-year review of the sentencing young people guideline under the direction of Council members Lord Colbeck and Sheriff Fleming; other members wishing to also oversee the exercise to nominate themselves.

Item 2.3: Guideline committees update [Oral update]

26. 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 took effect.
- A webinar about the guideline aimed at practitioners took place on 16 January to coincide with the guideline coming into force. Lord Matthews hosted it and gave a presentation about the development and aims of the guideline. Committee advisor Sheriff David Harvie gave a presentation on assessing the seriousness of death by driving offences and former committee member Sheriff Louise Arrol gave a presentation on determining the headline sentence. Over 200 people attended, including KCs, advocate deputes, solicitors, and procurators fiscal. A recording of the webinar was made available on the Council's YouTube channel and has proved popular.
- The secretariat is preparing an interactive case study on death by driving offences for use on the Council's website, and infographics on the offences of causing death by dangerous driving and causing death by careless, or inconsiderate, driving.

- 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.

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

- The Committee last met on 6 February. The various matters it considered had been covered under item 2.1.

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

- The draft domestic abuse guideline, and engagement around it, were discussed at the Council workshop on 1 March. Drafting amendments were being made to the guideline for the Committee's consideration.
- Once the draft guideline is approved, organisations will be approached in relation to initial engagement.
- An update is expected in relation to research into victims' views of sentencing once it is finalised.

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

- The Committee is due to meet on 4 April.
- Judicial engagement has now concluded, and the committee will be considering the findings. It will also be considering a draft of the research on public perceptions.
- Iterative drafting of the guideline will continue thereafter.

30. Sheriff Fleming provided an update on work carried out in respect of the Environmental and Wildlife Committee. He noted that:

- It was hoped that the Committee will reconvene in May.
- Members of the secretariat met with members of the Legislation, Regulation and Governance Group of the Partnership for Action against Wildlife Crime in Scotland (PAW Scotland) on 26 February 2024. The secretariat would provide the Committee with an update on the discussion when it reconvenes.

3. COMMUNICATIONS AND ENGAGEMENT

Item 3.1: Communications Committee update [Oral update with reference to papers 3.1 and 3.1A-B]

31. Summary Sheriff Elfallah provided an update on the work of the Communications Committee with reference to **papers 3.1 and 3.1A-B**. In particular, she noted that:

- The Committee last met on 12 March 2024.
- Work is ongoing in relation to producing an infographic and an interactive case study for the death by driving guideline.
- Work is also ongoing in respect of developing a fact sheet on the Council and its work for interest groups to help them provide information to the people they support.
- The podcast relating to the community sentencing video has now been finalised.
- Progress is being made on the prison sentencing video, which is being developed to complement the community sentencing material.

32. The Council approved a proposal to publish website content about its protocol on handling requests for meetings with Council representatives and agreed to produce a blog that explains the differences in sentencing between Scotland, and England and Wales.

33. The Council noted **paper 3.1A** and proposed some changes to arrangements relating to the public consultation on the rape sentencing guidelines set out in **paper 3.1B**.

ACTION POINTS

AP7: Secretariat to publish website content about the protocol on handling requests for meetings with Council representatives.

AP8: Secretariat to update arrangements relating to the public consultation on the draft sentencing guidelines on rape offences as agreed.

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

34. The Council noted **papers 3.2 and 3.2A**, which provided updates on recent and upcoming engagement activity. The Council agreed to the proposal noted in that paper that the Chief Executive of the Scottish Prison Service attend the June Council meeting. **Paper 3.2** also notified the Council of a forthcoming visit to Scotland by the Compassion Project team and members were invited to contact the secretariat should they wish to be involved in the visit in any way.

4. RESEARCH

Item 4.1: Research Committee update [Oral update]

35. Sheriff Fleming provided an update on the work of the Research Committee. In particular, he noted that:

- The Committee last met on 28 February 2024.
- The exploratory study on unwarranted disparities in sentencing in Scotland and focus groups exploring views on sentencing for environmental and wildlife offences have both commenced. Inception meetings for both of these were held in January and the work commenced in March.
- The secretariat prepared invitations to tender for literature reviews on firearms offences, offences involving modern slavery, and stalking and related offences. Bids for two of three of these were successful; these have now commenced and were nearing completion as of the time of the Council meeting.
- Procurement is underway to re-run the national survey on public perceptions and attitudes towards sentencing, due to begin in April with expected completion date June 2025.
- The draft of the revised research framework is currently being considered and amended.
- Three research reports are due for submission before the end of the year: rape and sexual assault; domestic abuse public perceptions; and sentence discounting public perceptions.

Item 4.2 Update on collaborative PhD [Paper 4.2]

36. Nicole Vidal introduced **paper 4.2** which discussed progress in respect of undertaking a potential collaborative doctoral project to sit across Scottish Prison Service and the Council secretariat.
37. The Council noted the update in **paper 4.2** and agreed to consider and agree by correspondence updates to the PhD proposal.

Item 4.3 Mental health and sentencing [Paper 4.3 and 4.3A-B]

38. **Item 4.3** was discussed after **item 1.1** on the agenda.

5. POLICY DEVELOPMENT

Item 5.1: Policy update [Paper 5.1]

39. The Council noted **paper 5.1**, which outlined a number of recent policy issues of relevance to the Council's work. In particular it was noted that the Scottish Government had announced its intention to conduct a review into sentencing and penal policy and that further detail as to what that review would involve would be welcome.

6. GOVERNANCE AND REPORTS

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

40. **Paper 6.1A** summarised correspondence, complaints, and FOI requests since the last meeting.
41. **Paper 6.1B** updated the Council on expenditure in the 2023-24 financial year to date.
42. **Paper 6.1C** set out the timetable for the development of each of the Council's guidelines.
43. The Council noted the content of **papers 6.1A-C**.

Item 6.2: Decisions by correspondence [Oral update]

44. The Council noted that the Council had not made any decisions by correspondence during the period 24 November 2023 – 18 March 2024.

7. AOB

45. No other business was raised.

8. FUTURE MEETING DATES

44. The Council noted the following dates for 2024:

- Council meeting: 7 June 2024
- Council workshop: 30 August 2024
- Council meeting: 4 October 2024
- Council meeting: 6 December 2024

ACTION POINT

AP9: Secretariat to consider arrangements for the December 2024 meeting and revert to the Council with proposals.

Scottish Sentencing Council Secretariat

March 2024