

ANNEX A

Extract from Letter from Lord Justice Clerk Lady Dorrian to Cabinet Secretary for Justice and Veterans Keith Brown MSP dated 11 November 2021

Subject: Scottish Sentencing Council Annual Report 2020-21

Extract:

“The report notes that we were able to carry out some early testing of the draft death by driving guideline with sentencers in Spring 2021.”

“We also published a report on public understanding of and attitudes to sentencing for death by driving offences.”

Extract from Letter from Cabinet Secretary for Justice and Veterans Keith Brown MSP to Lord Justice Clerk Lady Dorrian dated 4 March 2022

Subject: Response to letter of 11 November 2021

Extract:

“I welcome the Council’s ongoing work in the development of a guideline on death by driving, sentence discounting and sexual offences as well as the development of a guidelines on domestic abuse, which forms the Council’s new Business Plan for the period 2021-24. I do not underestimate the challenges inherent in this ambitious task, which will provide guidance to our courts in complex and difficult areas of law that will bring significant benefits not only to the judiciary, but to those involved in criminal cases and the wider general public.”

“I note a number of important pieces of work have been published during the last year as part of the research and preparatory work on the development of new guidelines, including literature reviews on sentencing for rape, sexual assault and on sentence discounting, as well as a report on public understanding of and attitudes to sentence for death by driving offences.”

Subject: FW: Scottish Sentencing Council - statutory consultation - draft guideline
Attachments: Causing death by driving guideline - consultation paper.pdf; Causing death by driving guideline - draft impact assessment.pdf; Statutory death by driving offences - draft sentencing guideline.pdf; Keith Brown MSP 3008.doc

From: [REDACTED]@scotcourts.gov.uk>
Sent: 29 August 2022 17:58
To: Cabinet Secretary for Justice and Veterans [REDACTED]
Cc: [REDACTED]
Subject: Scottish Sentencing Council - statutory consultation - draft guideline

Hi there,

I attach a letter from the Lord Justice Clerk in her role as chair of the Scottish Sentencing Council, together with associated documents, all for the attention of Mr Brown. This is in respect of the Council's statutory obligation to consult the Scottish Ministers on our draft guidelines, and it would therefore be greatly appreciated if receipt could be acknowledged. Happy of course to discuss.

Kind regards,

[REDACTED]
[REDACTED]
Scottish Sentencing Council

Judicial Office for Scotland | Parliament House | Edinburgh | EH1 1RQ

<https://www.scottishsentencingcouncil.org.uk/>

 **Protect the environment...please don't print this e-mail unless you really need to**

E-MAIL DISCLAIMER

This e-mail, and any files transmitted with it, are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this e-mail in error please notify your local Court. Contact details for each Court location can be found on our website at www.scotcourts.gov.uk.

Please note that any views or opinions presented in this e-mail are solely those of the author and do not necessarily represent those of the Scottish Courts and Tribunals Service (SCTS). Finally, the recipients should check this e-mail and any attachments for the presence of viruses. The SCTS accepts no liability for any damage caused by any virus transmitted by this e-mail.

www.scotcourtsribunals.gov.uk



The Rt Hon Lady Dorrian
Lord Justice Clerk

Parliament House
Edinburgh, EH1 1RQ

30 August 2022

Keith Brown MSP
Cabinet Secretary for Justice and Veterans
The Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Dear Cabinet Secretary,

**SCOTTISH SENTENCING COUNCIL
STATUTORY CONSULTATION ON DRAFT GUIDELINE – OFFENCES
OF CAUSING DEATH BY DRIVING**

The Scottish Sentencing Council's first three guidelines – on the principles and purposes of sentencing¹, the sentencing process², and the sentencing of young people³ – have all been approved by the High Court and are all in force. These are all general guidelines which apply to every offence. In our most recent business plan⁴ we indicated that our attention would now turn to the development of guidelines intended to provide guidance in respect of specific offences.

I am therefore pleased to inform you that the Council has now developed its first offence guideline, which if approved will become our fourth guideline overall. It covers the statutory offences of causing death by driving, specifically the offences of causing death by dangerous driving; causing death by careless driving when under the influence of drink or drugs; causing death by careless, or inconsiderate, driving; and causing death by driving: unlicensed, uninsured, or disqualified drivers.

¹ <https://www.scottishsentencingcouncil.org.uk/media/1964/guideline-principles-and-purposes-of-sentencing.pdf>

² <https://www.scottishsentencingcouncil.org.uk/media/2118/the-sentencing-process-guideline-d.pdf>

³ <https://www.scottishsentencingcouncil.org.uk/media/2171/sentencing-young-people-guideline-for-publication.pdf>

⁴ <https://www.scottishsentencingcouncil.org.uk/media/2177/scottish-sentencing-council-business-plan-2021-24.pdf>

Under the Criminal Justice and Licensing (Scotland) Act 2010⁵, the Council is required to meet a number of statutory obligations in respect of the preparation of guidelines. Under section 3(5), the Council must, on preparing sentencing guidelines, also prepare –

- (a) an assessment of the costs and benefits to which the implementation of the guidelines would be likely to give rise, and
- (b) an assessment of the likely effect of the guidelines on the criminal justice system generally.

The Council must also consult such persons as it considers appropriate on the guidelines, and is today commencing a full public consultation.

In addition, under section 4(1)(b), the Council must consult the Scottish Ministers and the Lord Advocate about its draft guidelines and draft impact assessment before submitting any guidelines to the High Court for approval.

I am pleased, therefore, to start this statutory consultation process by providing you with copies of the draft guideline, draft impact assessment, and our public consultation paper. The consultation paper sets out the background and context to the guideline, and explains the Council's approach to the guideline itself.

The guideline

In starting this new phase in the Council's work, we considered it appropriate to focus on these offences. Although they are relatively uncommon, they are very serious in nature, and of significant public concern. They can have a devastating effect on the families of victims and others affected by the offence. However, circumstances can vary widely between cases, and they often present significant challenges for sentencers. There can be a large difference between the harm caused – someone's death – and the level of culpability, or blame, of the offender, particularly in careless or inconsiderate driving offences. It follows that cases involving death caused by driving can be among the most complex and emotive dealt with by our courts.

We believe, therefore, that a guideline that explains how sentences in such cases are decided, listing some of the factors to be taken into account, will help to increase public understanding about the issues involved. We also hope that it will aid with the predictability of sentencing for those involved in

⁵ <https://www.legislation.gov.uk/asp/2010/13/contents>

these cases and assist the courts in reaching what, at times, can be challenging sentencing decisions.

When developing this, our first offence guideline, we gave careful consideration to its style and structure. As with all of our guidelines, it is intended to be concise, easy for sentencers to refer to in court, and accessible to the public.

The structure follows the first four steps in our sentencing process guideline. A table at step one (or two tables for offences of causing death by careless driving when under the influence of drink or drugs) lists features to be considered in the case based on their level of seriousness (A, B, or C). A table at step two sets out sentencing ranges for each level of seriousness. A table at step three lists factors which may aggravate (increase) or mitigate (reduce) the seriousness. This leads the sentencer to step four in the sentencing process, determination of the headline sentence. As this guideline will help to shape the approach we take in our future offence guidelines, we are particularly keen to receive comments on its style and structure, as well as its content.

The impact assessment

We have engaged with a range of justice agencies and Scottish Government and COPFS officials on the anticipated impacts of the guideline's implementation and these are set out in detail in the draft impact assessment. As already indicated, this guideline covers offences which are relatively uncommon. It is assumed it will influence judicial approaches to sentencing and increase consistency, but it is not anticipated that it will generally result in an overall change in sentencing severity, or in overall sentencing outcomes. In addition, although it is not possible to estimate with any degree of certainty whether there will be an impact on appeal procedures, any additional costs in that regard are likely to be minimal.

As far as benefits are concerned, we intend that the guideline will increase transparency and understanding of how courts reach sentencing decisions in these cases, leading to a greater public understanding of the sentencing process, particularly on understanding the ways in which seriousness is arrived at in cases where a fatality is involved but where culpability may be very limited. The guideline will also promote consistency in sentencing, contributing to one of the Council's statutory objectives. It is expected to be of particular benefit to sentencers in relation to offences involving careless driving.

I welcome your views on the proposed guideline and the draft impact assessment. The public consultation is due to close on 22 November 2022 and it would be helpful to receive your views by then.

Following the public and statutory consultation, the Council will analyse the responses received and will use these to inform further work on the guideline prior to submitting it to the High Court for approval.

I would be happy to meet with you to discuss the content of the guideline, the impact assessment, and consultation paper further if that would be helpful.

I look forward to hearing from you and to discussing this matter further as the guideline continues to develop.

Yours sincerely,

A handwritten signature in black ink, reading "Keona J. Souza". The signature is written in a cursive, flowing style.