



Scottish Justices Newsletter - September 2017

Welcome to the third edition this year of the Scottish Justice, the in-house publication of the Scottish Justices Association (SJA). This edition precedes the publication of the Annual Report, which will be in hard copy. Included is the report carried over from the last edition on "**Taking child and vulnerable witnesses' evidence out of court**", which is being considered and may affect the work of JPs. Also included is an important consultation request from the Scottish Sentencing Council for your views on Sentencing. We would urge members to consider and respond. There is also an article on the functions of the SJA.

As before, where you see a link given (starting [http:// ---](http://---)) you can access the information by opening a new window in your browser and cutting and pasting the link into the space.

Any communication to the Scottish Justice can be sent to our new email address

editor@scottishjustices.org

The contents of this edition are as follows:-

- 1) **SJA AGM 2017**
- 2) **Report on "Taking child and vulnerable witnesses' evidence out of court**
- 3) **Scottish Sentencing Council, request for consultations**
- 4) **The SJA Represents YOU!**

1) SJA AGM - 2017

I would like to give all members of the SJA advance notice of this years' Annual General Meeting. The 2017 AGM will be held on Sunday 19th November, and will commence at 2:00pm. The venue will be the same as last year, namely the Golden Jubilee Hotel and Conference Centre, at Clydebank. This hotel is part of the campus shared with the Golden Jubilee Hospital at Clydebank, and is well sign-posted in the local area.

The Executive recognise that to ensure a quorum for the AGM it has been necessary to hold it immediately following a Sheriffdom Training event. This has been the pattern for the past few years and will continue this year with the North Strathclyde Training weekend. There is one significant change this year however, in that recognising that this approach gives an imbalance to the number of representatives from all six Sheriffdoms, the Executive have agreed to meet the travelling expenses for up to TWO representatives from each of the other five Sheriffdoms. Accordingly, any member from any Sheriffdom (other than North Strathclyde) who wishes to attend the AGM and wishes to be reimbursed travelling expenses should e-mail the secretary at secretary@scottishjustices.org as soon as possible. The two funded representative from each Sheriffdom will be allocated on a first-come basis.

Dennis Barr - Secretary

2) **SCOTTISH SENTENCING COUNCIL - CONSULTATION**

The public is to have a say in the development of Scotland's first sentencing guideline which will influence the way offenders are sentenced in our courts.

The [Scottish Sentencing Council](#) is launching a [public consultation](#) on its first draft guideline, which sets out the principles and purposes of sentencing for all offences.

The Council, which is made up of judicial, legal and lay [members](#), was set up as an independent advisory body to promote consistency in sentencing across Scotland. An essential part of its work is to prepare guidelines for the courts.

Although some relevant guidance already exists in the form of court decisions in particular cases, this will be the first time that a comprehensive definition is provided for the principles underlying sentencing decisions and the purposes they seek to achieve.

The draft guideline sets out an overarching principle of 'fairness and proportionality' and a series of supporting principles which contribute to this.

Some of the supporting principles are:

similar offences should be treated in a similar manner

- sentences should be no more severe than necessary
- reasons for sentencing decisions should be stated clearly and openly
- people should be treated equally, without discrimination.

The draft guideline also outlines the purposes sentencing may seek to achieve, for example:

- punishment
- reduction of crime (including through rehabilitation)

- reflecting society's disapproval
- giving offenders an opportunity to make amends.

In order to prepare the draft guideline, the Council has carried out significant background research, consulting widely with judges across Scotland, considering previous research on this topic both in Scotland and in other jurisdictions, and engaging with interested organisations.

The draft guideline was designed to assist judges in court and to help the public better understand how sentences are decided. The consultation asks people to comment both on the principles and purposes identified, and on how easy the guideline is to understand.

Lady Dorrian, the Lord Justice Clerk and Chair of the Council, said:

“The fundamental principles and purposes of sentencing have never before been expressly defined in Scotland. We believe that creating this guideline will have significant benefits both to the public and the courts, increasing consistency and transparency in sentencing.

“We are committed to taking an open and transparent approach to developing sentencing guidelines and the public consultation process is a vital part of that – we cannot complete our work in isolation.

“I would urge anyone with an interest in how sentences are decided and in the overall aims of sentencing in Scotland to take this opportunity to participate in our public consultation.

“We welcome views and comment on all of our work, including on suggested topics for future guidelines.”

The Council is also currently developing general guidelines relating to the sentencing process - including the steps taken by judges when deciding sentences and the different factors they take into account – and on the sentencing of young people. As announced in the Council's [Business Plan](#), preparatory work is being undertaken in relation to offence specific guidelines relating to causing death by driving and wildlife & environmental crime.

In addition to this work, the Council has created a comprehensive website resource explaining how judges decide a sentence. This includes [videos](#) and an [interactive scenario](#) that lets people choose what happens next in a realistic court case, and then select the sentence they would give - if they were the judge.

To take part in the public consultation, visit the Council's [website](#).

The deadline for submissions is noon on 27 October.

3) Taking child and vulnerable witnesses' evidence out of court

The following is reproduced by kind permission of the Scottish Courts and Tribunals Service

"A Report, with recommendations aimed to improve the way evidence is taken from child and vulnerable witnesses, so that they are protected from potential trauma in court, was published on June 16, 201 by the Scottish Courts and Tribunals Service.

The [Child and Vulnerable Witnesses Project Report on Joint Investigative Interviews](#) forms the next stage of the Evidence and Procedure Review. It follows on from two previous documents, the 2015 [Evidence and Procedure Review Report](#) and last year's [Evidence and Procedure Review – Next Steps](#).

The Report makes a total of 33 wide-ranging recommendations that open the way to wider use of audio-visual recording of evidence from children and vulnerable witnesses.

SCTS Chief Executive Eric McQueen said: "The Evidence and Procedure Review is intended to take us towards a criminal justice system at the forefront of best practice in relation to children and vulnerable witnesses. This Report is part of that journey, identifying how best to capture complete, reliable and accurate evidence as soon as possible after an incident is reported.

"If we get that initial process right, the chances are increased of a child or vulnerable witness not having to give their evidence again if there are legal proceedings. It also increases the chance of a trial process that is fair to all concerned, and minimises the risk of further trauma to any alleged victim or witness."

This is at the heart of finding ways to improve the experience of vulnerable witnesses, and the quality of justice. Experience in Scotland and elsewhere suggests that the better the quality of the initial interview, the less likely it is that a witness will need to be brought back for further examination or cross-examination, meaning a lesser risk of further trauma. The recommendations in the Report published today are designed to promote and support achieving that consistently high quality of initial interview.

Visual recording of investigative interviews

The proposals build on the existing use of Joint Investigative Interviews (JIIs) – interviews presently carried out by police and social workers with under-16s who are victims of, or witnesses to, conduct that might be criminal and might indicate an ongoing risk to the wellbeing of the child. These interviews already can be and are sometimes used as a witness's evidence in chief in a criminal trial. They are also used in Children's Hearings.

The report explores why JIIs are not used as evidence as much as they could be, what improvements can be made to ensure their quality and consistency and how the system could change to make it easier to use them as evidence in chief. The report's recommendations include:

- Better training of police and social workers to improve skills in interviewing children;
- A standardised approach to training so smaller numbers of interviewers are trained to a higher standard;

- Funding to provide urgent replacement of existing recording equipment and the provision of encryption capacity;
- Funding for professional transcribers to transcribe JIIs;
- Legislative changes to allow earlier vulnerable witness applications and the taking of evidence by commissioner;
- Review and updating of the 2011 Scottish Government guidance on JIIs.

The second part of the report looks at how to extend the visual recording of investigative interviews and witness statements to a) child witnesses not covered by a JII and b) vulnerable witnesses. Its recommendations include:

- Visual recording of investigative interviews and witness statements should first be extended to child and adult vulnerable witnesses;
- Recording should take place when an investigating officer decides it is appropriate to allow a vulnerable witness not to attend court;
- Work should begin on detailed plans to introduce visually recorded evidence in summary courts.

Further issues

The report also looked at a number of other issues including the type of accommodation used to carry out recorded interviews and recommended improvements, and such things as examining the possibility of setting up vulnerable interview centres along the lines of the child's house (Barnehus) model developed in Scandinavia and adopted by a number of European countries.

The Working Group recognised that such wide-ranging and radical reform of evidence-giving has considerable resourcing, investment and legislative implications. The Group suggests a phased introduction of the recommendations with initial emphasis focused on improved training to create a pool of expert interviewers to improve the quality of JIIs.

Once this has been achieved, it proposes extending visual recording to child witnesses in cases tried under solemn procedure and then introducing it to adult vulnerable witnesses in solemn cases.

Background

The original Evidence and Procedure Review Report highlighted how Scotland could learn from other jurisdictions on how best to take the evidence of children and vulnerable witnesses, making the best use of pre-trial audio-visual recording. The Next Steps Report followed this with a recommendation that "there should be a systematic approach to the evidence of children or vulnerable witnesses in which it should be presumed that the evidence in chief of such a witness will be captured and presented at trial in pre-recorded form; and that the subsequent cross-examination of that witness will also, on application, be recorded in advance of trial".

The Scottish Courts and Tribunals Service was commissioned by the Justice Board to lead work on developing a system to achieve this. Two working groups were established, comprising experienced practitioners from the justice system, child welfare and third sector professionals.

One group looked at how to make it easier to use the initial police/social work interviews of children as their evidence in chief in criminal trials, and it is that group's report that is being published today for consideration by Scottish Ministers and other justice agencies. The other group's report, on pre-recording further or cross-examination for trial purposes, will be published in due course.

4) The SJA Represents YOU!

One of the most frequently asked questions to members of the SJA Executive is; 'What does the SJA do?' And whilst the objectives of the SJA are set out on our website and are detailed in our Annual Report each year, one of the most important functions of the SJA is to represent your views and interests as a Justice of the Peace in Scotland. The SJA is requested to nominate members for a range of Judicial Committees each year, and these are detailed below. In addition, the SJA is frequently asked to provide comments on a range of judicial and related issues, and again some recent examples are detailed below.

It is worth remembering that JPs in Scotland come from a diverse range of backgrounds, and have extensive experience in a wide range of businesses and professions, and that this experience and knowledge can provide valuable insight into some of the broader judicial matters that arise across Scotland. We do therefore have an important role to perform and our contributions are welcomed in all areas of the judiciary.

Judicial Committees

The SJA is represented at several Judicial Committees, the most important of which is the Judicial Council for Scotland. The Council, which is chaired by the Lord President, has set out its objectives as follows:-

- (a) To preserve the independence of the judiciary;
- (b) To protect and promote the due administration of justice;
- (c) To co-ordinate the views and actions of judges to those ends;
- (d) To promote the professional and pastoral interests of the judiciary;
- (e) To provide guidance to the judiciary on questions of ethics, and other matters of relevance to the due administration of justice;
- (f) To facilitate communication between the various branches of the judiciary and, where appropriate, collect and collate their views;
- (g) To provide information and advice to the Lord President so that he may be aware of the views of the judiciary;
- (h) To deal with all matters of concern to the judiciary.

The SJA has been allocated two places on this committee and are normally filled by the SJA Chairman and SJA Secretary therefore the current representatives are Tom Finnigan and Dennis Barr respectively.

The Judicial Council has a number of subsidiary committees which report to the Council, and again the SJA is asked to represent the views and interests of JPs in these committees. In each case the SJA sends one representative, and they are as follows:-

Welfare and Support Committee – this committee reviews and proposes issues and matters affecting the health and well-being of the judiciary, including the Judicial Health and Welfare Policy, which the SJA provided detailed comments on the draft. This Policy is currently under review and is to be expanded to cover non-salaried members of the judiciary, specifically JPs and Tribunal members. The SJA representative on the committee is Marella O’Neill.

Conduct Committee – this committee reviews the Rules and Code of Conduct for the judiciary across all levels in Scotland. It is currently reviewing in detail the complaint rules with the objective of making these simpler and easier to handle. The SJA representative on the committee is John Burns.

Information and Communication Technology (ICT) Committee – as the name implies this committee reviews how new technology can be best implemented to assist with all aspects of the courts and judiciary activities. The SJA has over the years been an important contributor to this committee and has sought improved communication facilities for JPs, an on-going activity! The SJA representative on this committee is John Lawless.

Other Representations

The SJA receives requests for input and comment on a number of judicial and related issues. Some of these have been reported in earlier editions of *‘The Scottish Justice’*, particularly matters such as the signing of utility warrants. On this matter, the SJA has been notably influential and our written comments seeking an improved standardised approach have been published by Ofgem and detailed discussions with the Energy Association are planned once the holiday season is over.

The SJA has also given detailed comments to the Sentencing Council in Scotland, and has provided detailed comments on their papers on the ‘Principles and Purposes of Sentencing’, and has completed their questionnaire on the same topic. The SJA also sent representatives to the Sentencing Councils first Stakeholder Event, which was on Sentencing Young Offenders. The SJA has been specifically thanked by the Chair of the Sentencing Council., Lady Dorrian, the Lord Justice Clerk, for the support and input that we have provided to them.

The SJA has also responded to the Scottish Government’s request for views on COPFS, and again our comments were included in the report published by the Government. More recently we did provide input and comments to the Working Group who prepared the Proposition Paper – A new Model for Summary Criminal Court Procedure. This Working

Group has now recognised the full importance of having JP representation on the Working Group to take full cognisance of what actually happens in the JP courts, and this is being addressed.

The SJA does therefore ensure that the views and interests of JPs are fully and properly represented across all levels of the judiciary in Scotland, and comments on all relevant matters on the work and activities of JPs. It is important therefore to make sure your views on such matters are known and shared across the JP community and beyond. We would encourage members to stand for election to the SJA Executive, but as a minimum do let your local member of the SJA Executive Committee know your thoughts and views so that they can be fully communicated. The SJA represents you so do please add your voice.

Expenses for attending SJA executive meetings are paid at the standard rates as used by SCTS..

The Executive do hope that we will have a wide a representation as possible at the AGM and we would urge you to attend.

Dennis Barr - Secretary