

Scottish Sentencing Council
Business Plan
2018-21

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ISBN: 978-1-912442-05-8

Laying number: SG/2018/168

Provided to the Scottish Ministers in pursuance of section 12 (1) of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#) on 18 October 2018.

Scottish Sentencing Council
Parliament House
Edinburgh
EH1 1RQ

T: 0300 790 0006

E: sentencingcouncil@scotcourts.gov.uk

Published by the Scottish Sentencing Council

October 2018

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Chair's foreword

Rt Hon Lady Dorrian, Lord Justice Clerk, Chair of the Scottish Sentencing Council

I am pleased to introduce the Scottish Sentencing Council's second business plan, covering the period October 2018 – October 2021.



Building on our progress since the establishment of the Council in 2015, this business plan outlines our priorities for the 2018-21 period. It describes the sentencing guidelines we intend to prepare, the approach we will take with regard to our role in assisting policy development, and our continuing work to promote greater awareness and understanding of sentencing.

The Council's primary focus will remain on the development of sentencing guidelines, which we see as our most important function. In our first business plan, we set out an ambitious programme of work to develop Scotland's first guidelines, much of which will continue into this business plan period.

We expect our first guideline, setting out the principles and purposes of sentencing, to be approved by the High Court and to come into force in late 2018. Two other guidelines of general application will be completed during this period. Good progress is being made on a guideline setting out the sentencing process, including the various steps taken by judges and factors which may be taken into account. A guideline on the sentencing of young people is also under development, addressing the particular difficulties posed in sentencing such cases. Taken together, these general guidelines will form a strong foundation for sentencing in Scotland, promoting consistency in approach and helping to explain to the public how sentencing works.

We also aim to complete the Council's first offence-specific guidelines during this period, on causing death by driving and environmental and wildlife offences. Both of these topics continue to be of concern to the Scottish public, and we consider that guidelines will have significant benefits.

In addition to completing work already in progress, we intend to begin the development of guidelines in relation to sentence discounting and sexual offences.

We consider that a guideline on sentence discounting will have particular benefits in terms of improving public understanding and aiding predictability. The sentencing of sexual offences is also an area of great importance. Such offences have increasingly become an area of public concern in recent years, and account for a high proportion of sentencing in the High Court in particular. Sentencing decisions are often both difficult and complex, and we consider that a guideline or guidelines in this area will be of considerable assistance both to the judiciary and to the public.

While our focus will be on the development of guidelines, a wide variety of other work is also planned. In relation to our role in assisting policy development, we will consider any relevant matters as they arise, taking into account how changes in sentencing policy may affect our work and sentencing in general. In particular, we will take an active interest in the Scottish Government's plans to extend the current presumption against short-term sentences from 3 to 12 months, which is likely to have significant implications for the criminal justice system and for the Council's future work.

We will also continue our work in promoting greater awareness and understanding of sentencing, through further development of the resources available on our website, engagement with a wide variety of stakeholders, and ensuring that our guidelines are of assistance to the public and other interested parties as well as to the judiciary.

Looking beyond this business plan period, we will begin preparatory work in relation to domestic abuse, helping to inform a decision on whether to prepare a guideline on this topic in future.

In developing this business plan, we have consulted with the Lord Justice General, the Lord Advocate, and the Scottish Ministers, as required under section 12 of the Criminal Justice and Licensing (Scotland) Act 2010. We have also held discussions with a wide variety of interested organisations in order to inform our consideration.

Following the establishment of the Council, we made an early decision that all of our work should be evidence based, that we should work as openly and transparently as possible, and that we should collaborate effectively with others. This approach has worked well over the past 3 years, and we intend to continue working in this way as we deliver the work set out in this plan.

Rt Hon Lady Dorrian
Lord Justice Clerk and Chair of the Scottish Sentencing Council



About us

Introduction

The Scottish Sentencing Council is an independent advisory body, with the primary function of preparing sentencing guidelines for the Scottish courts.

The Council emanated from proposals by the Sentencing Commission for Scotland, chaired by the late Lord Macfadyen, which in 2006 recommended the creation of a body to promote consistent sentencing in Scotland. The Commission found that a perceived lack of consistency was damaging to public confidence, and concluded that “it would lead to a material improvement in the criminal justice system if there were a framework to promote, that could be seen by the public to promote, greater consistency in sentencing”.

The Scottish Parliament subsequently considered and passed a Scottish Government Bill which, among other things, provided a statutory framework for the creation of a Scottish Sentencing Council. The Council was established on 19 October 2015 under the [Criminal Justice and Licensing \(Scotland\) Act 2010](#).

Objectives and functions



The Council has the following **statutory objectives**:

- to promote consistency in sentencing practice;
- to assist the development of policy in relation to sentencing; and
- to promote greater awareness and understanding of sentencing policy and practice.

The Council’s **functions** include:

- preparing sentencing guidelines for the Scottish courts;
- publishing guideline judgments issued by the Scottish courts; and
- publishing information about sentences imposed by the courts.

It also has powers to **publish information** about, and **conduct research** into, sentencing and to **provide advice and guidance** of a general nature on sentencing matters.

Sentencing guidelines

The Council must prepare sentencing guidelines for the consideration of the High Court of Justiciary, Scotland's supreme criminal court. If the High Court approves the guidelines, it may do so in whole or in part, and with or without modifications. Guidelines only have effect if approved by the High Court.

The Council has broad discretion as to the format and subject matter of sentencing guidelines. In particular, guidelines may cover:

- the principles and purposes of sentencing;
- sentencing levels;
- the particular types of sentence that are appropriate for particular offences or offenders; and
- circumstances in which guidelines may be departed from.

When sentencing an offender, a court must have regard to any sentencing guidelines which are applicable in relation to the case. If the court decides not to follow the guidelines it must state its reasons.

Requests for guidelines

The High Court and the Sheriff Appeal Court, when issuing a guideline judgment under section 118 or 189 of the Criminal Procedure (Scotland) Act 1995, respectively, can require the Council to prepare or review sentencing guidelines. The courts must provide reasons when doing so. The Council must comply with any request from the High Court or Sheriff Appeal Court.

The Scottish Ministers may, at any time, request that the Council prepare or review sentencing guidelines on any matter. The Council must have regard to, but may decide not to comply with, a ministerial request. If the Council decides not to comply with a request by the Scottish Ministers it must provide them with reasons for its decision.

Subject to the High Court's approval, the Council must then publish the guidelines. It is required to review, from time to time, any guidelines it publishes.

Assessing the impacts of guidelines

When preparing sentencing guidelines, the Council must also prepare an assessment of the likely costs and benefits of implementing the guidelines and an assessment of the likely effect on the criminal justice system generally.

Consultation on draft guidelines

Before submitting guidelines to the High Court for approval, the Council must publish them in draft form together with any relevant draft impact assessments. The Council must also consult the Scottish Ministers, the Lord Advocate, and any other people it considers appropriate. The Council has decided to conduct a public consultation on all draft guidelines.

Business plan

The Council is required to prepare and submit to the Scottish Ministers on a regular basis a 3 year business plan setting out how it plans to carry out its functions. The Council must consult the Scottish Ministers, the Lord Advocate, the Lord Justice General, and any other persons it considers appropriate in preparing the business plan. The Scottish Ministers must lay the plan before Parliament and the Council must publish it. The plan can

be revised at any time during the 3 year period it covers.

This is the Council's second business plan and describes the Council's programme of work during the period October 2018 to October 2021. The Council keeps its business plan under regular review and has engaged with a variety of individuals and organisations in developing its content.

This document was submitted to the Scottish Ministers on 18 October 2018 and laid before the Scottish Parliament on 29 October 2018.

Who we are



Membership

The Scottish Sentencing Council is made up of **12 members**, reflecting a broad range of expertise and experience across the criminal justice system.

The categories of membership are provided for in the Criminal Justice and Licensing (Scotland) Act 2010, as follows.

Judicial members

- The Lord Justice Clerk (Chair)
- One first instance High Court judge
- One sheriff
- Two persons holding the office of summary sheriff or justice of the peace
- One further eligible judicial member or a sheriff principal

Legal members

- One prosecutor
- One advocate
- One solicitor

Lay members

- One constable
- One person with knowledge of victims' issues
- One other person who is not qualified as a judicial or legal member

Judicial and legal members are appointed by the Lord Justice General, in accordance with [The Scottish Sentencing Council \(Procedure for Appointment of Members\) Regulations 2015](#).

Lay members are appointed by the Scottish Ministers.

Our members



The Lord Justice Clerk
Chair

The chair of the Scottish Sentencing Council is the Lord Justice Clerk by

virtue of the office. Lady Dorrian QC took up appointment as Lord Justice Clerk on 26 April 2016.

The Rt. Hon. Lady Dorrian was appointed as a judge of the Supreme Courts in 2005, having served as a temporary judge since 2002. She was appointed to the Inner House in November 2012. She is a graduate of the University of Aberdeen and was admitted to the Faculty of Advocates in 1981 before becoming Standing Junior Counsel to the Health and Safety Executive and Commission between 1987 and 1994. She served as Advocate Depute between 1988 and 1991, and as Standing Junior to the Department of Energy between 1991 and 1994. In 1994, she was also appointed Queen's Counsel. Between 1997 and 2001 she was a member of the Criminal Injuries Compensation Board.

Lady Dorrian was installed as the Lord Justice Clerk on 26 April 2016 and by virtue of the office became Chair of the Council on this date. The Lord Justice Clerk also holds the office of President of the Second Division of the Inner House of the Court of Session.



The Rt. Hon. Lord Turnbull
Senator member

Lord Turnbull will hold office until 18 October 2020.

Lord Turnbull is a High Court judge. He was appointed as a judge of the Supreme Courts in 2006 and was appointed to the Inner House of the Court of Session on 1 September, 2016. Prior to his appointment to the Inner House, he was the Lead Preliminary Hearings Judge and Administrative Judge for First Instance Criminal Cases in the High Court.

He was admitted to the Faculty of Advocates in 1982 and took silk in 1996. He was mainly instructed as defence counsel in criminal cases until serving as an Advocate Depute from 1995 and as Principal Advocate Depute from 2001. He was one of two senior crown counsel in the Lockerbie bombing trial.

Lord Turnbull was a judicial member of the Parole Board for Scotland from 2011-2015.



Sheriff Principal Ian R. Abercrombie QC
Sheriff Principal
member

Sheriff Principal Abercrombie will hold office until 18 October 2020.

Sheriff Principal Abercrombie graduated with an LLB Hons from Edinburgh University in 1978 and was admitted to the Faculty of Advocates in 1981. He was a Curator of the Faculty Library (1981-1983), on the Institute of Chartered Accountants of Scotland's Disciplinary Committee (1996-2009) and a member of the Scottish Law Commission Advisory Group (2000-2003). He was appointed Queen's Counsel in 1993 and sheriff in 2009, before taking up his appointment as Sheriff Principal of South Strathclyde, Dumfries and Galloway in 2015. He is currently a judicial member of the Scottish Civil Justice Council.



Sheriff Norman McFadyen
Sheriff member

Sheriff McFadyen will hold office until 18 October 2020.

Sheriff Norman

McFadyen was appointed as a Sheriff in South Strathclyde, Dumfries, and Galloway, Scotland in 2010 and transferred to Lothian and Borders at Edinburgh in 2015. He has extensive experience of criminal trials and sentencing. He studied law at the University of Glasgow and joined the Crown Office and Procurator Fiscal Service as an apprentice solicitor in 1976, qualifying in 1978 and then undertaking a number of prosecution roles, rising to be Crown Agent and Chief Executive, the permanent head of the prosecution service in Scotland, in 2004.

Sheriff McFadyen is a board member of the International Society for Reform of Criminal Law and was a member of the reference group for the Criminal Justice System Objectives Review and the policy groups for the Civil Courts Review, chaired by the Rt Hon Lord Gill and, more recently, the Post-Corroboration Safeguards Review, chaired by the Rt Hon Lord Bonomy. He has lectured to a wide variety of audiences on criminal justice themes, including sentencing, nationally and internationally.



**Summary Sheriff
Jillian Martin-
Brown**

Summary Sheriff
member

Summary Sheriff

Martin-Brown will hold office until 5 June 2023.

Jillian Martin-Brown was appointed as a summary sheriff in Tayside, Central and Fife in 2016. She has particular responsibility for the Problem Solving Court in Forfar. Prior to her appointment, she was a solicitor in private practice, representing the Scottish Prison Service at fatal accident inquiries throughout Scotland. She later worked as an advocate, developing particular expertise in the fields of personal injury and medical negligence. She was appointed as Standing Junior Counsel to the Scottish Government and served as an ad-hoc Advocate Depute for the prosecution service.



Vacant

Justice of the Peace
member

A new justice of the peace member will be appointed in late 2018.



David Harvie, Crown Agent for Scotland
Prosecutor member

David will hold office until 30 August 2021.

David is a Solicitor Advocate and joined the Crown Office and Procurator Fiscal Service, following a spell in private practice, in 1996. He worked as a Procurator Fiscal Depute in Paisley until 1999, when he was seconded to the Lockerbie criminal trial team until after the trial, when he was promoted to Principal Depute, Aberdeen.

He was seconded to the Foreign and Commonwealth Office between 2001 and 2004, when he returned to Crown Office as Deputy, then Head of the National Casework Division with responsibility for Organised Crime, Financial Crime and Proceeds of Crime cases throughout Scotland.

In 2008, David was promoted to District Procurator Fiscal, Edinburgh and East Lothian. In August 2010 he was appointed as Area Procurator Fiscal for Central. In May 2011, he was appointed Interim Head of East Federation. He was promoted to Director of Serious Casework and PF North of Scotland in July 2011. He took up post as PF for the West of Scotland in April 2014. He was promoted to Crown Agent in April 2016.



Stephen O'Rourke QC

Advocate member

Stephen will hold office until 18 October 2019.

Stephen was called to the Bar in Scotland in 2002, served as an Advocate Depute from 2010 to 2013 and is currently a Standing Junior to the Advocate General for Scotland. He was appointed Queen's Counsel in 2017. He has a mixed criminal and civil practice which has included many appearances in the Criminal Appeal Court in conviction and sentencing matters acting for both the Crown and individual appellants. He has a strong interest in sentencing reform within the context of Scotland's new appellate structures. He studied at Edinburgh University where he obtained a First in Scots Law in 1998.



Vacant
Solicitor member

A new solicitor member will be appointed in late 2018.



Iain Livingstone QPM
Constable member

Iain will hold office until 30 November 2019.

Chief Constable Iain Livingstone graduated in law from the Universities of Aberdeen and Strathclyde. He worked as a solicitor in Glasgow, Edinburgh and London before joining Lothian and Borders Police in 1992. Iain served in Edinburgh and West Lothian as a patrol officer and detective and at HQ as Head of CID and Assistant Chief Constable Crime. He has commanded many serious crime investigations and major events.

He was appointed Deputy Chief Constable, Crime and Operations, for Police Scotland in 2012. In this role Iain headed national specialist policing capabilities, such as homicide, organised crime, counter terrorism, public protection, firearms and road policing.

Iain has studied in New York as a Fulbright Scholar and undertaken external attachments to the Police Ombudsman for Northern Ireland as a senior investigator and to Her Majesty's Inspectorate of Constabulary. He was a member of Lord Bonomy's review of corroboration.

He has been awarded the Queen's Police Medal and in August 2018 was appointed Chief Constable of Police Scotland.



Sue Moody

Victims expert

Sue will hold office until 18 October 2020.

Sue Moody has worked with and for survivors of crime for more than 30 years. She was the first Director of Victim Support Scotland and also the first Director of Victim Information and Advice (part of the Crown Office and Procurator Fiscal Service). As senior lecturer in the Law Faculty at Dundee University she undertook research on crime victims. Her most recent post before retirement in March 2015 was with the Survivor Scotland team at the Scottish Government, supporting survivors of abuse in care as children.

Sue is currently a board member of the Howard League Scotland. She also chairs a new charitable trust, McManus 168, promoting the work of the McManus Art Gallery and Museum in Dundee.



Professor Neil Hutton

Lay member

Neil will hold office until 18 October 2019.

Neil Hutton was educated at the University of Edinburgh (MA 1976, PhD 1983) and has worked at the universities of Edinburgh, Dundee and Victoria University, New Zealand. He was appointed as a lecturer in the Law School at Strathclyde in 1990, became a Professor in 2001, and was Dean of the Faculty of Law, Arts and Social Sciences from 2005-2009.

He was a member of the team which designed a Sentencing Information System for the High Court between 1993 and 2002 and was a member of the Sentencing Commission for Scotland between 2003 and 2006. He has published widely on sentencing and punishment and has been invited to speak in a number of international jurisdictions including Singapore, China, Australia and the USA.

How we work



Committees



Much of the Council's detailed work is carried out by committees made up of smaller groups of Council members. The Council has established two types of committee: standing committees and working group committees. Standing committees are established on a long term basis to handle particular areas of ongoing work. Working group committees are established for a defined period of time, focusing on the development of a particular guideline.

Committees can only be comprised of members of the Council. However, in order to benefit from the broadest range of expertise, committees will seek to engage with interested individuals and organisations in various ways. In addition, the Council may decide to appoint advisers to committees where appropriate, if there is a need for longer term expert advice on a particular subject.

The [current membership](#) of each committee is set out on the Council's website.

Standing committees

The Council has established two standing committees: the Communications Committee and the Research Committee.

Communications Committee

Remit

The Committee supports the Council in its communications activity, focusing in particular on its statutory objective to "promote greater awareness and understanding of sentencing policy and practice".

The Committee will assist the Council in delivering its Communications Strategy, in particular by:

- building the Council's public profile;
- identifying and overseeing promotional and public education projects and events;
- identifying areas for collaboration with others, including contribution to public education projects, and participating in / attending conferences and events; and
- overseeing the development of promotional and informational materials including further website development.

Consideration will be given to the following key areas:

- developing the website and other relevant material as accessible resources;
- raising awareness of sentencing policy and practice;
- developing a comprehensive strategy for communications around guidelines;
- engaging with the judiciary, practitioners, media, justice delivery organisations, stakeholders, and the wider public;
- preparing key messages on Council business;
- evaluating Council engagement and communications work; and
- providing helpful and accurate sentencing information on request and in collaboration with relevant organisations.

In preparing the Communications Strategy, the Committee will take due account of the needs of different audiences and tailor relevant communications accordingly.

Research Committee

Remit

The Committee is to support the Council in its research activity, particularly in the creation and oversight of a research commissioning framework and the tendering of research projects, to enable the Council to meet its objective of undertaking research on sentencing in Scotland. The Committee will deliver the Council's research programme by:

- managing the research and commissioning framework on behalf of the Scottish Sentencing Council and keeping it under review;
- reviewing specifications for commissioned research;
- assessing tenders for commissioned research and speculative applications for funding;
- overseeing research projects during their lifespan;
- providing support to working group committees;
- reviewing outputs from research projects;
- disseminating research findings; and
- reporting to the Scottish Sentencing Council with its

recommendations and, where applicable, referring significant or potentially controversial decisions to the Council.

Working group committees

As at 18 October 2018, the following working group committees have been established to develop detailed proposals for the sentencing guidelines currently being prepared:

- **Sentencing Process Committee**
- **Sentencing Young People Committee**
- **Death by Driving Committee**
- **Environment and Wildlife Committee**

Working group committees oversee all aspects of the development of a guideline, operating until it is submitted to the High Court, approved, and implemented. The committees' work includes:

- making recommendations to the Council as to its scope, content and approach;
- identifying knowledge and information gaps relevant to the guideline's development;
- reviewing draft guidelines;

- supporting engagement with relevant stakeholders at all stages of the guideline's development; and
- overseeing consultation, including the preparation of consultation documents and impact assessments.

Further committees will be established to develop guidelines or take forward other work as required.

A list of [current committees](#) is available on the Council's website.

Governance and accountability



Business plan and annual report

The Council is required to prepare and submit to the Scottish Ministers on a regular basis a 3 year business plan setting out how it plans to carry out its functions.

The Council must consult the Scottish Ministers, the Lord Advocate, the Lord Justice General and any other persons it considers appropriate in preparing the business plan. The Scottish Ministers must lay the plan before Parliament and the Council must publish it. The plan can be revised at any time during the 3 year period it covers.

The Council is required to submit an annual report to the Scottish Ministers after the end of every financial year. The Scottish Ministers must lay the report before the Scottish Parliament and the report must be published by the Council.

Standing orders and rules of conduct

The Council has the power to set its own proceedings. These are contained in our standing orders. The standing orders deal with matters such as the frequency of meetings, collective decision making, publication of Council papers, and public communications.

The standing orders also include rules of conduct to which all members have subscribed. This deals with subjects such as registration and declaration of interests and lobbying.

The standing orders and rules of conduct are available on our website and are subject to annual review.

How we spend our funds

We detail in each business plan what activity we propose to carry out during the period covered by the plan and set out in our annual report what has been carried out in the previous year. The plan and report will provide information on the Council's budget and expenditure. Both these documents are submitted to the Scottish Ministers and laid before the Scottish Parliament.

The [Expenses Scheme](#) details what Council members are able to claim for costs associated with the Council's business.

Information on our procurement exercises and contracts valuing £25,000 and over with external providers is available on our [procurement of goods and services](#) page.

Openness and transparency

We are committed to operating in an open and transparent way and understand that this is an essential part of good governance and achieving accountability. In line with this commitment, details of the way we work, and our governance arrangements and corporate information, are publicly available on our website. Our website also includes details of all [Council meetings](#).

In addition, the Council is subject to the Freedom of Information (Scotland) Act 2002. In accordance with the Information Commissioner's Model Publication Scheme 2015, the Council has produced a draft Guide to Information available through the Model Scheme. Our Guide to Information provides more details on:

- the information we publish;
- how to easily find that information;
- what charges may be applied for producing information; and
- how to request information that has not been published.

Relationship with other bodies

The Scottish Ministers

The Council must prepare and submit a 3 year business plan to the Scottish Ministers, after consulting the Ministers, the Lord Advocate, the Lord Justice General, and any other people it considers appropriate. It must also prepare and submit an annual report to the Scottish Ministers, including details on its activities, performance and what it has spent. The Scottish Ministers may direct that the Council provides certain information in its business plan or annual report.

The Scottish Parliament

Our annual report and the business plan are both laid before the Scottish Parliament.

In addition, from time to time, we provide evidence to parliament on matters under its consideration where that is appropriate and where they are within our remit.

Scottish Courts and Tribunals Service

The Scottish Courts and Tribunals Service (“SCTS”) provides staff, services and accommodation to the Council, under section 62 of the Judiciary and Courts (Scotland) Act 2008 and The Scottish Courts and Tribunals Service (Administrative Support) (Specified Persons) Order 2015. The costs of the Council fall to the SCTS and our budget is set by the SCTS Board.

Organisations involved in appointments to the Council

There are several groups involved in selecting individuals as Council members.

Judicial and legal members: are appointed by the Lord Justice General. The prosecutor member is appointed on the nomination of the Lord Advocate. The Faculty of Advocates and Law Society of Scotland, as the relevant professional organisations, must be consulted before the advocate and solicitor member, respectively, are appointed.

Lay members: are appointed by the Scottish Ministers, with the constable member being appointed by Ministers on the nomination of the Chief Constable of Police Scotland.

The Lord Justice General and Scottish Ministers must consult each other before making any appointments to the Council.

Complaints

The Council is subject to Schedule 2 of the Scottish Public Services Ombudsman (SPSO) Act 2002, which requires us to produce a complaints procedure and also to publish complaints information on a quarterly and annual basis. This information will be published on our website and in our annual report.

We have published a Complaints Handling Procedure detailing how we will deal with complaints, what constitutes a complaint, the different stages of the procedure and the timescales involved.

Resources

As noted earlier the SCTS has the statutory function of providing, or ensuring the provision of, the property, services and staff for the Council. As such, the costs of the Council are borne by the SCTS and its budget is determined by the SCTS Board, which is chaired by the Lord President.

Staff

The Council Secretariat currently comprises the following posts:

- Secretary to the Scottish Sentencing Council
- Principal Legal Officer
- Principal Research Officer
- Senior Policy Officer
- Communications Officer
- Business Manager

The total estimated annual staffing costs including salary, pension and National Insurance contributions, are £351,000 (based on average total costs of staff operating at relevant grade, based on 2018/19 figures, to the nearest £1000).

Associated costs

The development of sentencing guidelines and the preparation of accompanying impact assessments involve a significant amount of research and analysis. To assist with this, the Council requires a range of information which is not currently produced on a routine basis.

The SCTS is required under section 10 of the 2010 Act to provide such sentencing information as may be reasonably required by the Council. While it is intended to make use of existing resources across criminal justice organisations to assist with the Council's information needs, this is an additional function. The SCTS Management and Information Analysis Team assist with data collection and provision.

Budget

The Council was allocated a direct expenditure budget (i.e. excluding staffing costs) of **£197,022** in 2018/19. Decisions on future years' budgets will be taken by the SCTS Board in due course.

The table below summarises how we intend to spend our budget in the year 2018/19. Actual expenditure for each financial year will be recorded in our annual reports.

HOW WE SPEND OUR FUNDS 2018/19

Category	Description	£ (to nearest £1000)
General office expenditure	Printing costs, stationery etc.	5,000
Meetings and events	Venue hire, catering and conference costs	21,000
Training and expenses	Members' and staff travel & subsistence and costs of training associated with Council business	9,000
Promoting awareness and understanding	Website development, publications and educational resources	23,000
Research	Commissioned projects, consultation analysis etc.	139,000
Total		197,000

Work programme 2018-21



Work programme 2018-21



Our work programme for 2018-21 is set out below by reference to our statutory objectives to seek to promote consistency in sentencing practice, promote greater awareness and understanding of sentencing policy and practice, and assist policy development in relation to sentencing.

Promoting consistency

The Council's primary function is the preparation of sentencing guidelines. We believe guidelines will be key in achieving the Council's statutory objective to promote consistency in sentencing practice. Guidelines will also support our objective to promote awareness and understanding of sentencing policy.

Under the 2010 Act, the Council must prepare guidelines if asked to do so by the High Court or the Sheriff Appeal Court. It must consider any requests for guidelines made by the Scottish Ministers. If the Council decides not to fulfil a request by Ministers, it must provide reasons for that decision.

In the absence of any statutory requests, the Council has broad discretion as to what guidelines it should prepare. The following criteria will be taken into account when selecting topics for guidelines.

- Statutory request by the High Court or Sheriff Appeal Court: the Council will be obliged to prepare or review a guideline in the event of a request.
- Statutory request by the Scottish Ministers: the Council will have regard to any request by Ministers for the preparation or review of any guideline.
- Public value: particularly where a guideline is expected to improve awareness or understanding and/or public confidence and to what extent.
- Impact on sentencing practice: particularly in relation to the volume of offenders, offences or disposals, and/or the extent to which a guideline might be expected to promote consistency.
- Areas of particular difficulty or complexity: a guideline may be warranted as a result of the nature of the subject matter or the applicable law.
- New legislation or developments in case law: these may require an existing guideline to be revised.

- Resources required for the preparation of a guideline and the resources available to the Council.
- Other factors may need to be taken into account in selecting guidelines. For example, the interaction with other guidelines in existence or under development, or whether there are plans for legislation which may have implications for a guideline's content.

cases and for the criminal justice system as a whole. Stages 2-4 in particular will be critical to ensuring that guidelines are fit for purpose, achieve their aims, and that their potential effects are fully understood.

Methodology

Guidelines, once introduced, will become part of the Scottish criminal justice system and will have real effects on the people involved in criminal cases. Guidelines will therefore take time to deliver if they are to properly achieve their aims. One of the key tasks contained in our first business plan was the development of a methodology setting out how we will take forward the work to prepare individual guidelines. This has now been published and is available on our website.

Guidelines will be developed in 8 stages. The process is summarised on page 26.

The work described will take time to get right. We are very mindful that small changes in sentencing practice could have significant consequences, both for those involved in individual

Stage 1 – Initial consideration of the guideline topic

We will agree the aims and scope of a guideline and a plan for its development. We will also establish a committee to oversee the work involved.

Stage 2 – Development of a draft guideline

We will focus on stakeholder engagement and evidence gathering when developing early drafts of the guideline.

Stage 3 – Seeking the views of judges

We will seek the views of judges on current sentencing practice and any areas of difficulty in which guidance would be helpful. This will help to ensure that the guideline is useful and that potential impacts are identified.

Stage 4 – Consulting on the guideline

We will take a broad range of views into account in developing guidelines. To that end, we will carry out public consultation on all our guidelines. We are also required to consult the Scottish Ministers and the Lord Advocate.

Stage 5 – Finalising the guideline

We will take into account what we have heard during consultation, and make any necessary revisions to the draft guideline and accompanying impact assessment.

Stage 6 – Submitting the guideline for approval

The High Court requires to approve our guidelines before they can take effect. When approving a guideline, the High Court will also specify when it is to come into force.

Stage 7 – Raising awareness about the guideline

We will take steps to raise awareness of each new guideline once it has been approved. We will work to ensure that all those who have an interest in, or are affected by, a guideline are prepared for it.

Stage 8 – Monitoring and review

We must review each guideline from time to time. We will monitor the operation of guidelines to help us decide whether we need to review or update the terms of the guideline.

Guideline projects in progress



General guidelines

In our first business plan, we announced that our initial focus would be on the development of a general set of guidelines on the principles and purposes of sentencing, and on the sentencing of young people.

Subject to the High Court's approval, the **principles and purposes of sentencing** guideline will be published during the early course of this business planning period.

It had been our initial intention that this first guideline, being of general application, would also include a description of the sentencing process. However, during the development stages we decided it would be more appropriate to prepare these as separate but complementary guidelines. The Council is therefore currently working on a guideline setting out the **sentencing process**, including the various steps taken by judges and factors which may be taken into account.

A third guideline of general application, on the **sentencing of**

young people, is also in development. As well as the specific statutory arrangements in place, sentencing of younger people often requires a more individualistic approach, taking into account the particular personal characteristics of the young person concerned. For example, depending on the age and maturity of the young person, their culpability in relation to the offence might be lower than that of an adult. In addition, we recognise that many young people who have committed offences have experience of trauma, including higher than average experience of traumatic bereavement, and we will consider how that should be taken into account in sentencing.

Together, these general guidelines will provide a high level framework for sentencing in Scotland, promoting consistency in approach and helping to explain to the public how sentencing decisions are made. This will also support the future work of the Council by providing a strong, principled foundation for the development of other, more specific, sentencing guidelines in due course. The guidelines on the principles and purposes of sentencing and the sentencing process in particular will apply to all sentencing decisions. This first suite of guidelines will provide a framework for sentencing, promoting consistency in approach and helping to explain generally how decisions are made.

It is our intention that these guidelines will be completed during the period covered by this plan.

Offence-specific guidelines

We have begun work on the first offence-specific guidelines addressing death by driving and environment and wildlife offences. We consider both to be serious matters of public importance, sometimes involving complex circumstances which may lead to a difficult sentencing decision.

Death by driving offences are of significant public concern and, involving loss of life, are very serious in nature. The circumstances of these cases can be incredibly complex, often requiring sentencers to make difficult assessments about the level of an offender's culpability (which can vary significantly) in relation to the serious harm caused. We believe that a guideline would be of particular assistance to the judiciary, aiding consistency in sentencing, and would help to improve public understanding of sentencing practice in these cases. We note that the UK Government has announced its intention to increase penalties for various death by driving offences. Subject to the specific decisions taken in that regard, there could be implications for the timescales for development of this guideline and we will keep this under

review as work on the guideline progresses.

Sentencing **environmental and wildlife offences** can be difficult, for example because the harm and culpability involved in these types of offences may be quite different from the majority of criminal offences - there may be a public policy aspect to some cases, where there is not an identifiable victim, rather the harm caused (or risk of harm) is to the public at large. In addition, the offender may be a company rather than an individual. We believe that a guideline addressing environmental and wildlife offences would be of public benefit, these being matters of particular significance to Scottish communities and indeed the Scottish economy. The Scottish Government has indicated that it will take forward recommendations in the report of the Wildlife Crime Penalties Review Group to increase penalties for wildlife crime, which may have implications for that aspect of the guideline.

Our work in these areas will continue and, subject to any activity by the UK and Scottish Governments with implications for their content, we will aim to complete each of these guidelines during the 2018-21 business planning period.

During the 2018-21 period, we aim to finalise guidelines on:

- the sentencing process;
- sentencing young people;
- causing death by driving; and
- environmental and wildlife offences

Work on new guidelines

We stated in our first business plan that we would consider the case for preparing guidelines on sentence discounting, domestic abuse, and theft and property offences. We also indicated that we would begin research on the sentencing of sexual offences by 2018.

It is our intention to begin work on a sentence discounting guideline and on a guideline or guidelines on sexual offences, the scope of which we are giving consideration to following a stakeholder conference on 22 June 2018.

We will also carry out preparatory and scoping work in relation to the new domestic abuse offence once it is brought into force, to inform consideration of whether a guideline should be developed in future.

Sentence discounting

We believe a guideline on sentence discounting where a guilty plea has been tendered presents significant opportunities to improve public understanding of sentencing and to assist with predictability. Support and advocacy organisations tell us that victims and their families sometimes find it difficult to understand why a discounted sentence has been given in certain circumstances and there is anecdotal evidence from practitioners that a guideline would provide greater predictability for accused persons. Because of the high proportion of guilty pleas, the guideline is likely to have broad applicability and therefore has the potential to considerably impact practice.

Sexual offences

Sexual offending has increasingly become an area of public concern in recent years, with increased reporting, prevention and enforcement action. Sexual offences account for a high proportion of sentencing, particularly in the High Court, often involving difficult decisions in complex circumstances. This is an area of great public importance in which we believe a guideline would bring significant benefits to the judiciary, those who have been involved in such cases, and to the wider public.

There is a broad range of sexual offences for which guidance may be suitable and it may be appropriate to

prepare separate guidelines on different types of offence. We held a stakeholder conference in June 2018 with the aim of identifying issues arising in the sentencing of sexual offences and identifying priority areas for guidance. We are giving consideration to the precise scope of a guideline or guidelines following the feedback received.

Consideration of a domestic abuse guideline

We have already indicated our desire to consider sentencing of domestic abuse within a guideline and intend to carry out scoping and preparatory work once sentencing practice in respect of the new offence to be introduced by the Domestic Abuse (Scotland) Act 2018 is observable. We expect a guideline in this area would be of assistance to the judiciary in sentencing for the new offence, and would help to provide transparency for the public and the families involved in these cases.

We will begin work in 2018-21 to develop guidelines on sentence discounting and sexual offences. We will also carry out preparatory work on domestic abuse to inform a decision on whether to prepare a guideline in future.

Other work

A high proportion of offenders have experienced difficulties with mental health or mental illness. We are therefore interested in exploring the subject of sentencing people with mental welfare issues. To that end we will hold discussions with interested stakeholders to learn more about the issues arising with a view to considering what, if any, activity the Council might undertake in this area.

We have considered the case for a guideline on theft and property offences. The Scottish Government has announced its intention to legislate to extend the current presumption against short-term sentences from 3 to 12 months. While we remain eager to address high volume offences, we expect the extension of the presumption will affect a great many sentences for such offences. As much of the work in developing guidelines depends on establishing and evaluating current practice, we believe it prudent to await the change and monitor its impacts on practice before considering the development of a guideline in any areas which will be significantly affected.

We keep our business plan under regular review and other potential guideline topics will be considered throughout the 2018-21 period, to inform decisions on future business plans in due course.

Research and information



The Council may publish information about, and conduct research into, sentencing matters. Research priorities will be aligned with our business plan priorities and our statutory objectives. We will therefore focus our research activities in the following areas:

Current guidelines under development

- sentencing process;
- sentencing young people;
- death by driving offences; and
- environmental and wildlife offences.

New guidelines to be begun

- sexual offences; and
- sentence discounting.

Preparatory and scoping work

- domestic abuse.

The research required for each guideline will depend on the nature of that guideline and the evidence and information already available to us.

Research that we conduct or commission may include:

- **Data-gathering:** to determine what sentencing information is currently collected and whether any further statistical information is required, to assist with the development of a guideline and in assessing its potential impacts.
- **The preparation of literature reviews:** for example to establish the information currently available or to better understand practice in other jurisdictions to help inform the Scottish approach.
- **Research with the judiciary:** to ascertain current sentencing practice, identify areas in which guidelines may be particularly useful, and to test guidelines' content and usability.
- **Public understanding research:** we may carry out research to assess general public understanding and awareness of sentencing in relation to specific topics to assist with the development of guidelines and inform decisions on future business plans. This could take the form of targeted focus groups (for example with members of the public or with persons who have been involved in or affected by certain types of case) or wider-scale web or telephone surveys.

Promoting awareness and understanding



We believe that the preparation and successful communication of sentencing guidelines will be one of the main ways in which we will deliver on our statutory objective to promote awareness and understanding of sentencing policy and practice. While our primary focus will therefore remain on the preparation of guidelines during this period, we will seek to identify opportunities to improve awareness and understanding of sentencing through our other strands of work and will take forward specific projects in this area.

We will pursue this objective in the following ways.

- **Development and promotion of guidelines:** guidelines will be one of the Council's key means of promoting public understanding of sentencing. We will prepare a communications strategy for each guideline aimed at explaining what the guideline does, as well as raising awareness of the Council and its activities and ensuring the guidelines reach as wide an audience as possible.
- **Development of resources on sentencing:** we have developed the Council's website with explanatory material on sentencing, including a jargon-buster, interactive case studies and explanatory videos. All of these resources are free to use and available for support and advocacy organisations, justice agencies, and educators to help support and inform their work, or for training or wider purposes. We will continue to develop these resources under the auspices of our Communications Committee.
- **Collaborative projects:** we will identify opportunities to work in collaboration with individuals and organisations in the criminal justice system and beyond to help improve public awareness and understanding of sentencing. This may include participation in public events.
- **Simplified summaries of judgments:** the Council is required to publish any guideline judgments issued by the High Court or Sheriff Appeal Court and when doing so we will prepare summaries of these judgments in simplified terms.
- **Provision of information and general advice:** we will continue to provide public information, including responding in general terms to queries on sentencing matters.

- **Expansion of the knowledge base in relation to sentencing:** we hope the work of the Council will stimulate academic interest in sentencing matters. Subject to resource constraints, we will seek to carry out, commission and support research into sentencing matters and to inform the development of guidelines. Our research framework sets out how we will make decisions in this regard. Where appropriate, we will also seek to disseminate research carried out by us or on our behalf, or research carried out by others.

Assisting with policy development

One of the Scottish Sentencing Council's statutory objectives under the Criminal Justice and Licensing (Scotland) Act 2010 is to seek to assist the development of policy in relation to sentencing.

We consider this role to be distinct from the policy work we carry out in creating sentencing guidelines. While guideline development focuses on sentencing practice – considering what sentences should be imposed in certain circumstances – the Council's role in assisting policy development is potentially wider.

For example, this may include being asked to provide views on proposals

for legislative change (perhaps by a parliamentary committee or other body), to comment on the operation of existing legislation, or to carry out research or other work to assist in the development of new policy initiatives.

While we consider the Council's primary function to be the development of sentencing guidelines and the promotion of sentencing consistency, particularly in these early years, we will provide policy development assistance on a case-by-case basis. In determining whether to act on any such requests to comment on policy proposals or carry out substantive work in relation to policy development, we will consider a number of factors:

- **Significance and current state of development:** we view the Council's role as offering expertise and assistance to inform and strengthen the development of policy by Government and others, rather than taking a leading role in developing and driving new policy. As a result, we do not generally anticipate either leading on the development of new policy initiatives, particularly those requiring legislative change, or commenting in detail on significant proposals which are at a very early stage of development.

The Council's involvement may be most appropriate where policy proposals are under detailed and active development by Government or other bodies, or the proposals are relatively narrow in scope and relate primarily to sentencing practice.

It may also be appropriate for the Council to be involved at an early stage with regard to its statutory objective to seek to promote greater awareness and understanding of sentencing. In particular, this may be helpful in ensuring that discussion around relevant policy proposals can proceed on a suitably informed basis.

- **Alignment with current business plan:** the Council has limited resources available to it, therefore any requests to carry out substantive work will be considered in the context of the current business plan and may be declined if these are not aligned with ongoing and planned work.
- **Source of request:** while all requests for policy assistance will be considered, priority will be given to those by Government, Parliament, and the courts.

In addition to external requests, it is likely that policy matters will arise in the course of the Council's work which we may wish to highlight to other organisations; for instance, research findings, examples of best practice, or potential difficulties in the operation of current legislation. We will consider such matters as they arise.



Scottish Sentencing Council
Parliament House
Parliament Square
Edinburgh
EH1 1RQ

T: 0300 790 0006

E: sentencingcouncil@scotcourts.gov.uk

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ISBN: 978-1-912442-05-8

Laying number: SG/2018/168

October 2018

