

Scottish Sentencing Council

Business Plan

2021-24



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Chair's foreword

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

This business plan sets out the Scottish Sentencing Council's priorities and planned programme of work for the period October 2021 to October 2024.

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 variety of interested organisations in order to inform our consideration.



The Council, like many others, encountered difficulties and delays in respect of the delivery of its work during 2020 and 2021 with a number of projects affected by the disruption brought about by the COVID-19 pandemic. However, I am pleased to be able to say that Council business has now fully resumed, with significant progress having been made in a number of key areas.

Two achievements in particular are worthy of note. First, the sentencing process guideline was approved by the High Court on 15 July 2021 and came into force on 22 September 2021. Second, following extensive consultation during 2020, the Council finalised and submitted to the High Court our guideline on the sentencing of young people. The Council's first guideline, on the principles and purposes of sentencing, came into effect on 26 November 2018. These guidelines represent the completion of the Council's first tranche of general guidelines and will provide the framework for offence guidelines, meaning that work can now begin on those in earnest.

The business plan describes, in more detail, the current status of the Council's various projects. This includes the progress that has been made on the development of draft guidelines on the statutory offences of causing death by driving, sexual offences (including rape, indecent images and sexual assault) and sentence discounting.

As well as a continuation of the projects currently underway, the business plan outlines several new areas of work which, subject to statutory consultation and engagement with stakeholders, the Council will begin during the next planning period.

In particular, I am pleased to announce that the Council has decided that it should prepare a guideline on the sentencing of domestic abuse offences, and that a committee has now been established to carry out the detailed development work. Domestic abuse continues to be an area of public concern, and the Council is conscious also of the increase in reporting of domestic abuse offences during the pandemic period.

In addition, now that the sentencing provisions within the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 have been commenced, it is intended to resume work on the environmental and wildlife offences guideline.

We have not lost sight of the important issue of mental health. While our focus during the next three years will be on the development of offence guidelines, we hope to also carry out research and engagement in this area to support awareness-raising and other activity in relation to the sentencing of those with mental health and welfare issues, and to assist with further consideration of a guideline in this area.

The Council has a statutory objective to promote greater awareness and understanding of sentencing policy and practice, and we consider this to be an important part of our work. Guidelines serve this objective to a significant extent but many other areas of our work also contribute to public understanding. As well as seeking to promote all research undertaken by, and on behalf of, the Council, our members and staff are involved in a range of outreach work, including the development and promotion of online resources which are freely available to the public and practitioners. Each of the strands of work identified within this business plan will support awareness and understanding of sentencing. However, we will focus our communications during the period on three key areas: explaining sentencing; community-based sentences; and sexual offences and gender-based violence.

Notably, the plan sets out the Council's intention to carry out increased activity in support of its statutory duty to provide assistance with policy development. The Council expects there will be a number of areas of planned activity with which we will be uniquely placed to assist. If involved at an early stage, the Council can help with efforts to ensure proposals with implications for sentencing are fully considered and practicable. It is our hope that our work in this area will also support efforts to improve awareness and understanding of sentencing among the general public, policymakers, and those working within the criminal justice system.

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
- 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
- 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
- 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, in addition to direct engagement or research with interested parties as appropriate.

variety of individuals and organisations in developing its content.

This document was submitted to the Scottish Ministers on 18 October 2021 and laid before the Scottish Parliament on 22 November 2021.

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 third business plan and describes the Council's programme of work during the period October 2021 to October 2024. The Council keeps its business plan under regular review and has engaged with a

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 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.



The Rt. Hon. Lord Matthews

Senator member

Lord Matthews will hold office until 7 November 2025.

Lord Matthews was appointed a judge of the Supreme Courts in 2007, having served as a temporary judge since February 2004, and was appointed to the Second Division of the Inner House of the Court of Session in August 2021. He graduated from the University of Glasgow LL.B (Hons), and was admitted to the Faculty of Advocates in July 1979. He was appointed as a Queen's Counsel in 1992 and practised at the Bar until his appointment as a sheriff in January 1997. He was Standing Junior Counsel to the Department of Employment in Scotland from June 1984 until March 1988, and served as an advocate depute from April 1988 until January 1993.



**Sheriff Principal
Craig Turnbull**

Sheriff Principal
member

**Sheriff Principal
Turnbull will hold
office until 11
July 2025.**

A graduate of the University of Strathclyde, Craig Turnbull was admitted as a solicitor in 1988, working for A.C. White in Ayr and Levy & McRae in Glasgow before joining MacRoberts in 1993.

He became a partner there in 1997, specialising in commercial and construction disputes and health and safety and environmental prosecutions, and served as the managing partner from 2011 to 2014.

Following his appointment as a part-time sheriff in 2011 and then a full-time sheriff in 2014, he was appointed as the Sheriff Principal of Glasgow and Strathkelvin in 2016.



**Sheriff Iain
Fleming**

Sheriff member

**Sheriff Fleming
will hold office
until 9 March
2026.**

Sheriff Iain Fleming was appointed as a part time sheriff in 2005 and as a full time sheriff in 2014, following a career as a solicitor and solicitor advocate.

He served in the Sheriffdom of North Strathclyde at Greenock Sheriff Court until 2017, and since then has sat in Glasgow Sheriff Court, conducting courts at summary and solemn level.

As part of his duties in Glasgow he has presided at the problem-solving Alcohol Court since February 2018. He has also been a shrieval member of the Mental Health Tribunal for Scotland since 2011.



Vacancy

Summary Sheriff
member

The summary sheriff
member position is
currently vacant.



Susan Fallone, Justice of the Peace

Justice of the
Peace member

**Susan Fallone will
hold office until
11 December
2023.**

Susan Fallone has been a JP in Edinburgh since 2013. She was admitted as a solicitor in 2006, and called to the Bar in 2021.

She was appointed as a safeguarder in 2013, and acts as a curator ad litem and reporting officer in Edinburgh. She has an extensive range of experience within the legal system, having worked within the areas of criminal defence, family, and housing law; for law centres; for local authorities; as a supervision solicitor at the University of Strathclyde Law School; and as an in-court advisor.

She sat on children's hearings from 1995-2001. As well as her legal qualifications – LLB, LLM, and the Diploma in Legal Practice – she has an MA in social science.



Lindsey Miller

Prosecutor member

Lindsey will hold office until 1 October 2026



Vacancy

Advocate member

The advocate member position is currently vacant.

Lindsey Miller is a graduate of the University of Aberdeen and joined the Crown Office and Procurator Fiscal Service in 1994.

She has held a number of operational and policy roles including responsibility for matters such as victims, vulnerable witnesses and sexual offences, as well as serious and organised crime and counter-terrorism.

She was appointed as secretary to Sir Anthony Campbell's Inquiry into Crown Decision-Making in the Case of the Murder of Surjit Singh Chhokar, and was tasked by the Lord Advocate with preparing recommendations about the investigation of all sudden and unexplained deaths in Scotland and military deaths abroad, which led to the establishment of the Scottish Fatalities Investigation Unit (SFIU).

For a number of years she had strategic responsibility in Scotland for the Disrupt Strand of the Serious and Organised Crime Taskforce and has a particular interest in community experiences, specifically those of children and young people, of organised crime.



Krista Johnston

Solicitor member

Krista will hold office until 11 December 2023.

Krista Johnston is a graduate of law from Edinburgh University. She joined More and Co, Dunfermline, in 1992, specialising in criminal defence work. Along with others she founded the firm of Martin, Johnston and Socha in 1998. Her firm continues to concentrate exclusively on criminal defence work and has expanded to include offices in Dunfermline, Kirkcaldy and Alloa.

In 2007 Krista became a solicitor advocate in the field of crime and has since enjoyed instruction from a number of solicitor firms across Scotland. She appears regularly in the High Court conducting criminal trials, and also appears in the appellate courts.

Krista is a member of the Society of Solicitor Advocates and Fortis Chambers.



DCC Will Kerr

Constable member

DCC Kerr will hold office until 30 December 2024.

Deputy Chief Constable Will Kerr joined Police Scotland in September 2018 following which he was appointed as Deputy Chief Constable for Local Policing. DCC Kerr had over 27 years policing service in Northern Ireland before moving to a Director's role in the NCA in January 2017.

In the PSNI, he held a number of key Command-level posts including, as ACC Belfast, where he was the Gold Commander for all of the key events and parades in the City over a three year period, and was the PSNI's lead Gold Commander for the overall parading season from 2012 to 2014.

DCC Kerr's last role in the PSNI was as ACC Crime Operations, where he was in charge of all serious crime and counter-terrorism specialist functions. DCC Kerr has had a varied policing career in Northern Ireland, having been a DCU (Divisional) Commander, a Senior Investigating Officer who led on a number of high profile murder and terrorism investigations, and has significant public order experience at Bronze (Unit Commander), Silver and Gold tiers.

In the National Crime Agency, DCC Kerr was the national lead for leading and co-ordinating the UK's response, both domestically and internationally, to

Child Sexual Abuse and Exploitation (with responsibility for the Child Exploitation and Online Protection Centre), Modern Slavery and Human Trafficking and Organised Immigration Crime.

DCC Kerr was awarded the OBE, for services to policing and the community, in the 2015 Queen's Birthday Honours list.



Lesley Weber

Victims expert

Lesley will hold office until 17 January 2026.

Lesley Weber is currently Head of Effective Practice at the Risk Management Authority (RMA), with key leadership responsibilities to advance evidence-based, effective and ethical practice. Her role involves programme leadership for RMA functions of policy, promoting effective practice, standards and guidelines, risk management plans, risk assessor accreditation and the implementation of education and training.

Ms Weber began her career as a social worker in 2007 and worked as a professional and clinical social worker for a number of years, specialising in children and families social work, domestic abuse, and Violence Against Women and Girls (VAWG). Ms Weber held roles in Local Authority, NHS and with the domestic abuse charity Respect. Ms Weber's experience ranges from expert assessments, implementation of evidence-based models and interventions, prevention and early intervention.

Ms Weber also practiced as an Independent social worker, undertaking expert risk and vulnerability assessments in relation to domestic abuse, for the family courts in London. From 2016 until 2019, Ms Weber was

the service manager for the Domestic Abuse Intervention Service (DAIS) with the London Borough of Hackney, a service that provides assessment and intervention for both victims and perpetrators of domestic abuse. Her role in Hackney held concurrent responsibility for the coordination of the Violence Against Women and Girls Strategy. Prior to commencing her role with the RMA, Ms Weber spent a year with Highland Council as the Executive Chief Officer for Health and Social Care.



Dr Hannah Graham

Lay member

Dr Graham will hold office until 3 December 2024.

Dr Hannah Graham is a Senior Lecturer in Criminology at the Scottish Centre for Crime and Justice Research (SCCJR) at the University of Stirling. Dr Graham has previously worked as a criminologist at the University of Tasmania, Australia. Throughout her career as a criminologist, she has conducted research and worked with a range of people and agencies, including police, procurators fiscal, judiciary, lawyers, court staff, prison staff, justice social work and community justice, charities, people with lived experience of the criminal justice system, and justice policymakers.

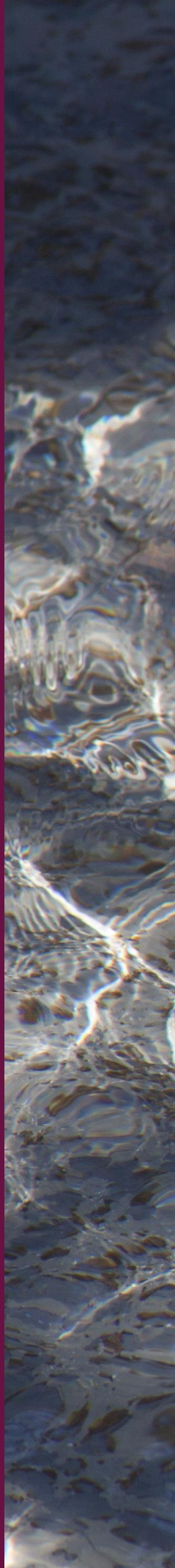
Dr Graham is the author or editor of four books, published internationally, on rehabilitation, criminal justice work, and innovative approaches to justice. She is an Editor of the European Journal of Probation, and a member of the Community Sanctions and Measures Working Group in the European Society of Criminology.

Dr Graham is a member of the national Council for the Scottish Association for the Study of Offending (SASO).

In 2017-2018, Dr Graham was part of a team of researchers to conduct an independent review of the Aberdeen Problem Solving Approach, in

collaboration with Aberdeen Sheriff Court and community justice partners. This approach specialises in working with people with complex needs and prolific offence histories to offer rehabilitative opportunities and address the underlying causes of their offending. In 2007, she conducted an independent evaluation of a mental health court diversion initiative for the Magistrates Court and Forensic Mental Health Services in Tasmania, Australia.

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
- 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
- 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
- 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 October 2021 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
- Sexual Offences Committee
- Discounting Committee
- Domestic Abuse 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

- 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.

We have published an [Expenses Scheme](#) which 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 Scottish Information Commissioner's Model Publication Scheme, the Council has produced a Guide to Information which provides more details on:

- the information we publish
- how to easily find that information
- what charges may be applied for producing information
- 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.

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 Dean of 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.

Staff

The Council Secretariat currently comprises the following posts:

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

The total estimated annual staffing costs including salary, pension and National Insurance contributions, are £435,000 (based on pay for 2021/22).

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. The SCTS Management and Information Analysis Team assists with data collection and provision.

SCTS also provides shared services, such as HR, procurement and ICT support to the Council.

Budget

The Council was allocated a direct expenditure budget (i.e. excluding staffing costs) of **£197,004** in 2021/22.

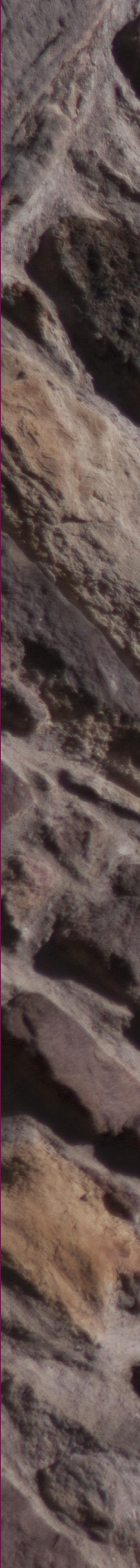
In 2021/22, it is expected that up to around £185,000 of the expenditure budget will be spent on research projects, including into public perceptions of sentencing for sexual offences and current practice in relation to sentencing of domestic abuse cases and sentence discounting. The remaining expenditure will be allocated to conference attendance, staff and member training, travel and subsistence and general office costs.

The table below summarises how we intend to spend our budget in the year 2021/22. Actual expenditure for each financial year will be recorded in our annual reports.

HOW WE SPEND OUR FUNDS 2021/22

Category	Description	£ (to nearest £1000)
General office expenditure	Printing costs, stationery etc.	2,000
Meetings and events	Venue hire, catering and conference costs	1,000
Training and expenses	Members' and staff travel & subsistence and costs of training associated with Council business	2,000
Promoting awareness and understanding	Website development, publications and educational resources	7,000
Research	Commissioned projects, consultation analysis etc.	185,000
Total		197,000

Work programme 2021-24



Work programme 2021-24



Our work programme for 2021-24 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.

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 28.

The work described takes time to get right. We are very mindful that small changes in sentencing practice could have significant consequences, both for those involved in individual cases and for the criminal justice system as a whole. Stages 2-4 in particular are critical to ensuring that guidelines are fit for purpose, achieve their aims, and that their potential effects are fully understood.

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.

Guidelines



The Council has to date focussed on the development of guidelines of general application, with guidelines on the principles and purposes of sentencing, the sentencing process, and sentencing young people all having been finalised. The first two of these guidelines will apply to every sentence imposed, in every court in Scotland. These, and the sentencing young people guideline, will apply to all young people being sentenced in Scotland, whatever the offence in question. Between them, these three guidelines set the foundation for all sentences handed down in Scotland, promoting consistency in approach and helping to explain to the public how sentencing decisions are made. The import of these guidelines is such that we have taken the necessary time to give their development very careful consideration.

These general guidelines provide a high level framework for the development of offence guidelines, some of which have been under development alongside the general guidelines and which can now be progressed at pace.

While we intend to prepare one further general guideline, on sentence discounts for early pleas of guilty, our focus will now turn to the development of offence guidelines.

Guideline projects in progress

Sentence discounting

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. We published a literature review on the available evidence on the topic in May 2020, a Discounting Committee has been established and research work has begun on establishing current practice.

Death by driving offences

With the High Court having approved the sentencing process guideline on 15 July 2021 a guideline addressing all statutory death by driving offences is now being progressed.

Death by driving offences are of significant public concern and, due to the loss of life involved, 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, having commissioned research to ascertain public expectations and perceptions of sentencing in these cases, consider that it will help to improve public understanding of sentencing practice.

We have developed a draft guideline on which, following some further research with the judiciary, we will carry out a public consultation in early 2022.

We note that the UK Government has proposed an increase to penalties for various death by driving offences in the Police, Crime, Sentencing and Courts Bill. 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.

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 guidelines would bring significant benefits to the judiciary, those who have been involved in such cases, and the wider public.

There is a broad range of sexual offences for which guidance may be suitable and following a stakeholder conference in June 2018, we announced our intention to prioritise the development of guidelines on the sentencing of rape, sexual assault and indecent images of children offences. A Sexual Offences Committee has been established to oversee this work, and a variety of research has been undertaken. This includes research into public perceptions, work which has also involved interviews with survivors; and into current sentencing practice.

We will aim to complete each of these guidelines during the 2021-24 business planning period, with the caveat that we expect a significant amount of resource will be required to deliver a sexual assault guideline within the period, the offence covering such a broad range of behaviour.

Environment and wildlife offences

In light of the decision to prioritise guidelines on sexual offences, and the changes to penalties for wildlife crimes under the Animals and Wildlife (Penalties, Protections and Powers)

(Scotland) Act 2020 work on an environment and wildlife offences guideline was deferred in 2019.

Offences in these areas are a matter of public importance, sometimes involving complex circumstances which may lead to a difficult sentencing decision. Sentencing in both types of case can be difficult, for example because the harm and culpability involved might be quite different from the majority of criminal offences - in some cases there may not be an identifiable victim, but instead 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. There may, therefore, be significant public policy issues for the court to consider. 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.

Subject to there being sufficient resource to allocate to this work, we will seek to reconvene the Environment and Wildlife Committee and undertake research and engagement activity within this business planning period to support the development of the guideline.

Domestic abuse

We stated in our last business plan that we would consider the case for a guideline on domestic abuse offences. Following the implementation of the Domestic Abuse (Scotland) Act 2018, which widened the scope for prosecution of domestic offending, we are now in a position to examine how judges are approaching sentencing in these cases.

Domestic abuse offending is a matter of public concern, involving a high number of victims and accounting for a significant proportion of crimes in Scotland. We note also the increase in reporting of domestic abuse offences during the pandemic period. The offences under the Act, which cover a broad range of behaviour and are aimed at increasing reporting, are relatively new and require consideration to be given to specific matters when sentencing, such as the involvement of any children in the offence. We consider that guidance on sentencing for these offences would be helpful to the courts and that it would help to provide transparency for the public and the families involved in these cases. We will be commissioning a literature review on domestic abuse sentencing in Scotland and other jurisdictions and examining practice to inform our development of this guideline.

Other work

A high proportion of offenders have experienced difficulties with mental health or mental illness. We published a report on our roundtable discussion event in June 2019 to explore the subject of sentencing people with mental welfare issues. While we have decided against preparing a guideline on this specific topic at this stage, considering it imperative to devote our attention to offence guidelines, when resources allow, we plan to carry out research and engagement which we hope will support awareness-raising and other activity in relation to the sentencing of those with mental health and welfare issues and to assist with further consideration of a guideline in this area.

We will also give specific consideration to whether and how guidelines should address these issues – and have done so in the development of our sentencing young people guideline.

We keep our business plan under regular review and other potential guideline topics will be considered throughout the 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. Research activity will be focussed in support of the development of guidelines in progress, namely those on:

- sexual assault
- rape
- indecent images of children
- sentence discounting
- environment and wildlife offences
- domestic abuse

The research required for guidelines will depend on the nature of the guideline in question and the evidence and information already available to us.

Research that we conduct or commission to support the development of guidelines 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 test guidelines' content and usability.
- Case analysis: to ascertain sentencing practice and identify factors which influence sentences.
- Public understanding research: we regularly 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 may 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.

We wish in particular to increase our activity in the area of public awareness and understanding to further support the development of guidelines as well as sentencing policy more generally. Research carried out on our behalf in the Scottish jurisdiction replicates

findings from similar research around the world: when given real-world scenarios, members of the public pass sentences similar to those imposed in actual cases, even though they perceive sentencing in general to be lenient. To gain a more nuanced understanding of the complexity of public opinion on these issues we therefore intend to carry out in-depth research into people's views on, among other things, comparative sentencing and what outcomes sentencing for specific offences should achieve.

In particular, research carried out on our behalf by Ipsos MORI into public perceptions of sentencing highlighted a lack of public knowledge of and confidence in community sentencing. Understanding and awareness of sentencing is vital to public confidence in the criminal justice system and community disposals account for a significant amount of sentences imposed in Scotland. We therefore intend to examine in detail public perceptions on this issue.

Promoting awareness and understanding

In line with the priorities outlined in this plan, we will seek to give particular focus to the following specific matters in our communications and education work.

Explaining Sentencing

The Council has published 3 general guidelines, which will apply to all offences. Guidelines on the sentencing process and the principles and purposes of sentencing apply to every person being sentenced in any court in Scotland. If that person is under the age of 25, the sentencing young people guideline will also apply. These guidelines will help to improve current knowledge and understanding around sentencing.

The sentencing process guideline provides a framework for all offence guidelines. We will seek to promote this and the sentencing young people guideline, as well as the specific offence guidelines being prepared, so that all of those involved in the criminal justice system and the wider public have a greater understanding of how courts arrive at a sentence.

Community-based sentences

Recent years have seen a number of developments aimed at expanding the role of community based sentences within the criminal justice system, including, among other things, the extension of the presumption against short-term sentences and legislation enabling greater use of electronic monitoring. However, a nationally representative survey carried out on our behalf exploring public perceptions of sentencing highlighted a lack of public knowledge of and confidence in community sentencing.

Understanding and awareness of sentencing is vital to public confidence in the criminal justice system. We will therefore examine in detail public perceptions on this and carry out activity designed to improve awareness of community-based sentencing options.

Sexual offences and gender-based violence

Sexual offending and gender-based violence have 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. Through the development of sentencing guidelines for offences involving rape, sexual assault and

indecent images of children, as well as a guideline on domestic abuse, we will raise awareness of the issues involved in sentencing these offences.

We will pursue this objective in the following ways, under the general auspices of our Communications Committee.

- **Development and promotion of guidelines:** effective promotion 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. As well as promoting issues of relevance to guidelines under development, we will raise awareness of the Council's existing guidelines on the principles and purposes of sentencing, the sentencing process and the sentencing of young people.
 - **Engagement and collaboration:** 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 or assisting with staff training.
 - **Policy assistance:** assisting in the development of sentencing policy is one of the Council's statutory aims. Where the Council undertakes activity to assist with
- the development of policy, such as contributing to consultations or giving parliamentary evidence, consideration will be given to how that activity can contribute to improved understanding and awareness of sentencing.
- **Website and digital media:** 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, particularly by producing them in more accessible formats such as videos, and to promote our website as a comprehensive and authoritative source of information on sentencing.
 - **Social media:** by building our social media presence, including on Twitter and LinkedIn, we will engage with the public and others to provide information on sentencing, guidelines and the work of the Council.
 - **Media:** the Council will seek to maximise opportunities for promoting its work programme through broadcast, print and online media.

- **Research:** A broad range of research and engagement activity supports our guideline development and other work. We hope the work of the Council will stimulate academic interest in sentencing matters and expand the knowledge base in relation to sentencing. 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.

Our Communications and Engagement Strategy 2021-24 provides further detail on the Council's approach to communications.

Assisting with policy development

One of the Scottish Sentencing Council's statutory objectives 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.

To date we have provided assistance with policy development on a case-by-case basis, focussing primarily on the development of guidelines. In 2021, we prepared an issues paper on the use of, and judicial confidence in, community-based disposals to contribute to the dialogue on the expansion of the use of community sentences. The exercise was illuminating and, we hope, useful to both policymakers and delivery agencies in their further development of community justice services.

We anticipate there will be a significant number of initiatives relating to sentencing in the coming years where we will be uniquely placed to help, particularly in relation to assessing the implications and practicability of proposals. Moreover, we believe that increased activity in this area will bolster our efforts to improve awareness and understanding of sentencing practice and policy.

The Council does, however, have limited resources available to it and its primary task will continue to be the preparation of guidelines. When considering whether to carry out substantive work in relation to assisting with policy development, we will consider a number of factors, including:

- whether resource can be allocated to the activity
- alignment with ongoing and planned work
- source of initiative or policy: priority will be given to requests received from Government, Parliament, and the courts, and thereafter to national public bodies or organisations

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.

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