

Scottish Sentencing Council

Annual Report 2017/18

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Chair's foreword

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



It is a pleasure to present the Scottish Sentencing Council's third annual report, covering the period 1 April 2017 – 31 March 2018, which tracks our progress and key achievements over the past year.

Throughout 2017/18, the work of the Council has continued to gain pace, particularly in relation to the development of sentencing guidelines. We held our first public consultation on the draft "Principles and Purposes of Sentencing" guideline, which attracted responses from a wide variety of individuals and organisations. This process was invaluable in informing our work to revise and finalise the guideline, which we aim to submit to the High Court soon. If approved, this will be Scotland's first sentencing guideline, and will be a significant milestone in the Council's work.

Good progress is also being made in developing a guideline setting out the sentencing process, which we expect to publish for public consultation during 2018/19, and work has commenced to develop guidelines on the sentencing of young people, causing death by driving, and environmental and wildlife offences.

Reflecting our commitment to work openly and collaboratively, we have engaged extensively with stakeholders, academics, and other interested parties throughout the year to discuss our work and seek views on our approach. We also held our first stakeholder conference, on the topic of sentencing young people. This event enabled us to discuss the issues and challenges inherent in sentencing young people with a range of organisations from across the criminal justice system and beyond. The information gathered is now being used to inform the development of a guideline and to assist in identifying areas for further research.

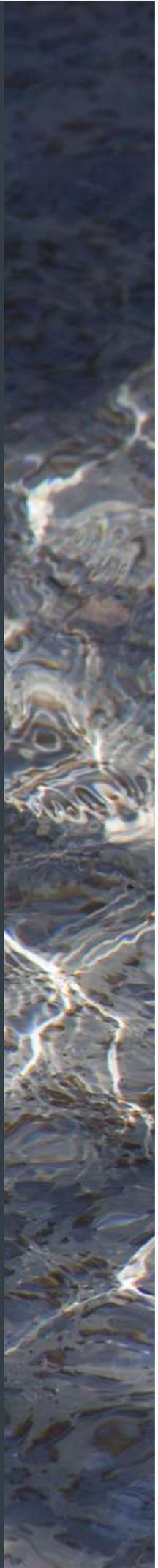
Our work in promoting awareness and understanding of sentencing continues, with a particular focus on the development of the Council's website as a comprehensive sentencing resource. The website now contains a series of animated videos aimed at explaining sentencing to a variety of audiences, interactive case studies allowing visitors to explore the factors judges may take into account when sentencing, and a "mythbuster" which addresses common sentencing misconceptions.

Looking to the future, we have begun to consider potential topics to include in our work programme for the next business plan, covering the period 2018-21, taking into account progress to date and the lessons learned in our work so far.

The progress made this year has been significant, laying the groundwork for an equally successful 2018/19, and I would like to thank the Council's members and its secretariat for their continuing commitment and enthusiasm.

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

Introduction



Introduction

The Scottish Sentencing Council was established on 19 October 2015 under Part 1 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (“the 2010 Act”).

This annual report, which covers the period 1 April 2017 – 31 March 2018, describes the Council’s work in relation to the development of sentencing guidelines, its key achievements and work in progress, its expenditure, and other information relating to its work over the course of the year.

Statutory objectives and functions

The Council is an independent advisory body with 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 do not have effect unless approved by the 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.*

Membership



The Scottish Sentencing Council is made up of **12 members**. The categories of membership are provided for in the 2010 Act.

One change in membership took place during 2017/18. Summary Sheriff Allan Findlay's tenure ended on 18 April 2017 and, following a recruitment exercise, Summary Sheriff Andrew McIntyre was appointed as the Council's new summary sheriff member on 21 August 2017. However, Summary Sheriff McIntyre was subsequently appointed as a sheriff in the sheriffdom of North Strathclyde on 15 January 2018, at which point his membership of the Council ceased, in accordance with the 2010 Act.

A recruitment exercise to appoint a replacement summary sheriff member was underway as of 31 March 2018.

Council membership during 2017-18 was as follows.

Category	Position	Title	
Chair	The Lord Justice Clerk, by virtue of that office	The Rt Hon Lady Dorrian	
Judicial members Appointed by the Lord Justice General, having consulted the Scottish Ministers	One first instance High Court judge	The Rt Hon Lord Turnbull	
	One sheriff	Sheriff Norman McFadyen	
	Two persons holding the office of summary sheriff or justice of the peace	Summary Sheriff Allan Findlay (until 18 April 2017)	Summary Sheriff Andrew McIntyre (until 15 January 2018)
		Gillian Thomson JP	
	One further eligible judicial member or a sheriff principal	Sheriff Principal Ian R Abercrombie QC	

Category	Position	Title
Legal members Appointed by the Lord Justice General, having consulted the Scottish Ministers	One prosecutor	David Harvie Crown Agent for Scotland
	One advocate	Stephen O'Rourke QC
	One solicitor	John Scott QC
Lay members Appointed by the Scottish Ministers, having consulted the Lord Justice General	One constable	DCC Iain Livingstone
	One person with knowledge of victims' issues	Sue Moody
	One other person who is not qualified as a judicial or legal member	Professor Neil Hutton

Committees

The Council has 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 and will generally focus on the development of a particular guideline, lasting only until this work is finished.

Standing committees

The Council's two standing committees, the Communications Committee and the Research Committee, were established in 2016.

The **Communications Committee** leads on promotional and public awareness work. A key part of this involves engaging with organisations and individuals to raise awareness and understanding of sentencing, and to encourage participation in the Council's work.

During 2017/18, the Communications Committee organised a conference on the topic of sentencing young people to help inform the scope and development of a guideline in this area. Other engagement activity

included attending the Modern Studies Association annual conference to discuss the provision of educational material about sentencing, and delivering presentations to student journalists and to organisations within the criminal justice system.

The Committee has also continued the development of the Council's website, which is an open resource for the public and other organisations to learn more about sentencing, adding a number of significant new features.

The Communications Committee met twice in 2017-18, in addition to carrying out work by correspondence.

Its membership comprises:

- *Sheriff Norman McFadyen (Chair)*
- *Summary Sheriff Andrew McIntyre (September 2017 – January 2018)*
- *John Scott QC*
- *Sue Moody*

The **Research Committee** advises the Council on the commissioning, progress and dissemination of research projects.

In 2017-18, the Research Committee managed two Ph.D. internships focussing on young people and environment and wildlife offences, oversaw the Council's first public consultation on the draft Principles

and Purposes of Sentencing guideline, developed the Council's first guideline impact assessment, and began work exploring available sentencing data. The Committee also considered and agreed research priority areas for 2018-19, with a detailed research plan in active development.

The Research Committee met three times in 2017-18, in addition to carrying out work by correspondence.

Its membership comprises:

- *Professor Neil Hutton (Chair)*
- *The Rt Hon Lord Turnbull*
- *Gillian Thomson JP*
- *Stephen O'Rourke QC*

In addition, Sheriff Frank Crowe currently acts as an advisor to the Committee.

Working group committees

In September 2017, the Council established four working group committees. These committees will support the development of specific sentencing guidelines, including making recommendations to the Council as to the scope, content and approach of its work, reviewing draft guidelines, supporting engagement with relevant stakeholders, and

overseeing the guideline consultation process.

Working group committees were established to support the Council's work to develop guidelines on the sentencing process, sentencing young people, causing death by driving, and environmental and wildlife offences.

The membership of each committee is as follows:

Sentencing Process Committee

- *The Rt Hon Lord Turnbull (Chair)*
- *Sheriff Norman McFadyen*
- *Professor Neil Hutton*

Sentencing Young People Committee

- *Sheriff Principal Ian Abercrombie QC (Chair)*
- *David Harvie*
- *John Scott QC*
- *Sue Moody*

Death by Driving Committee

- *David Harvie (Chair)*
- *Sheriff Norman McFadyen*
- *Professor Neil Hutton*

Wildlife and Environmental Crime Committee

- *Stephen O'Rourke QC (Chair)*
- *Gillian Thompson JP*
- *Summary Sheriff Andrew McIntyre (September 2017 – January 2018)*

Sentencing guidelines



Sentencing guidelines

Under the 2010 Act, the High Court and the Sheriff Appeal Court may require the Council to prepare or review sentencing guidelines when issuing a guideline judgment under the relevant provisions of the Criminal Procedure (Scotland) Act 1995.

The Scottish Ministers may also request the Council to prepare or review sentencing guidelines. The Council must have regard to such a request but is not obliged to comply with one.

No statutory requests for guidelines were made of the Council in the period to 31 March 2018.

Guideline development

The Council's business plan for 2015-18 indicated that it was our intention to prepare a general set of guidelines on the principles and purposes of sentencing, which have never been expressly defined in Scotland. We consider that creating these guidelines will have significant benefits to the public in particular, in explaining what underlies sentencing decisions, how

the sentencing process works, and what factors may be taken into account.

It is our intention to produce two general guidelines in this area. The first will focus on the overarching principles and purposes of sentencing. The second will focus on the sentencing process, including the steps taken by the court when deciding sentences and the various factors considered.

The Council consulted publicly on its first draft guideline, entitled "[The Principles and Purposes of Sentencing](#)", and an accompanying draft impact assessment, between 1 August and 27 October 2017. We also consulted with the Scottish Ministers and Lord Advocate, as required by the 2010 Act.

The draft guideline set out an overarching principle of 'fairness and proportionality' and a series of supporting principles which contribute to this. The draft guideline also outlined the purposes which sentencing may seek to achieve, including punishment; reduction of crime; reflecting society's disapproval; and giving offenders the opportunity to make amends.

Sixty responses were received to the public consultation, from a wide variety of individuals and organisations. In revising and finalising the guideline, the Council had regard to the comments made during the consultation process. The changes made to the guideline as a result of this include:

- Removing the “reduction of crime” purpose and, in its place, inserting “rehabilitation of offenders” and “protection of the public” as distinct purposes of sentencing.
- Re-drafting some parts of the guideline to assist clarity, in particular with regard to the purpose of sentencing relating to “reflecting society’s disapproval of offending behaviour”.
- Emphasising the lack of a hierarchy with regard to both the principles and purposes of sentencing, to make clear that these should apply as is appropriate in each individual case.

In addition, the Council intends to take into account some of the matters raised during the consultation when promoting and explaining the guideline

to the public – for instance, we are considering explaining how parts of the guideline may operate in practice through the development of a case study or studies.

At its meeting in March 2018 the Council agreed to submit the guideline to the High Court for approval as soon as practicable.

The Council has also been continuing to develop its second general guideline, on the sentencing process. As with all our guidelines, it will be the subject of public consultation, and our intention is that this should take place during 2018/19.

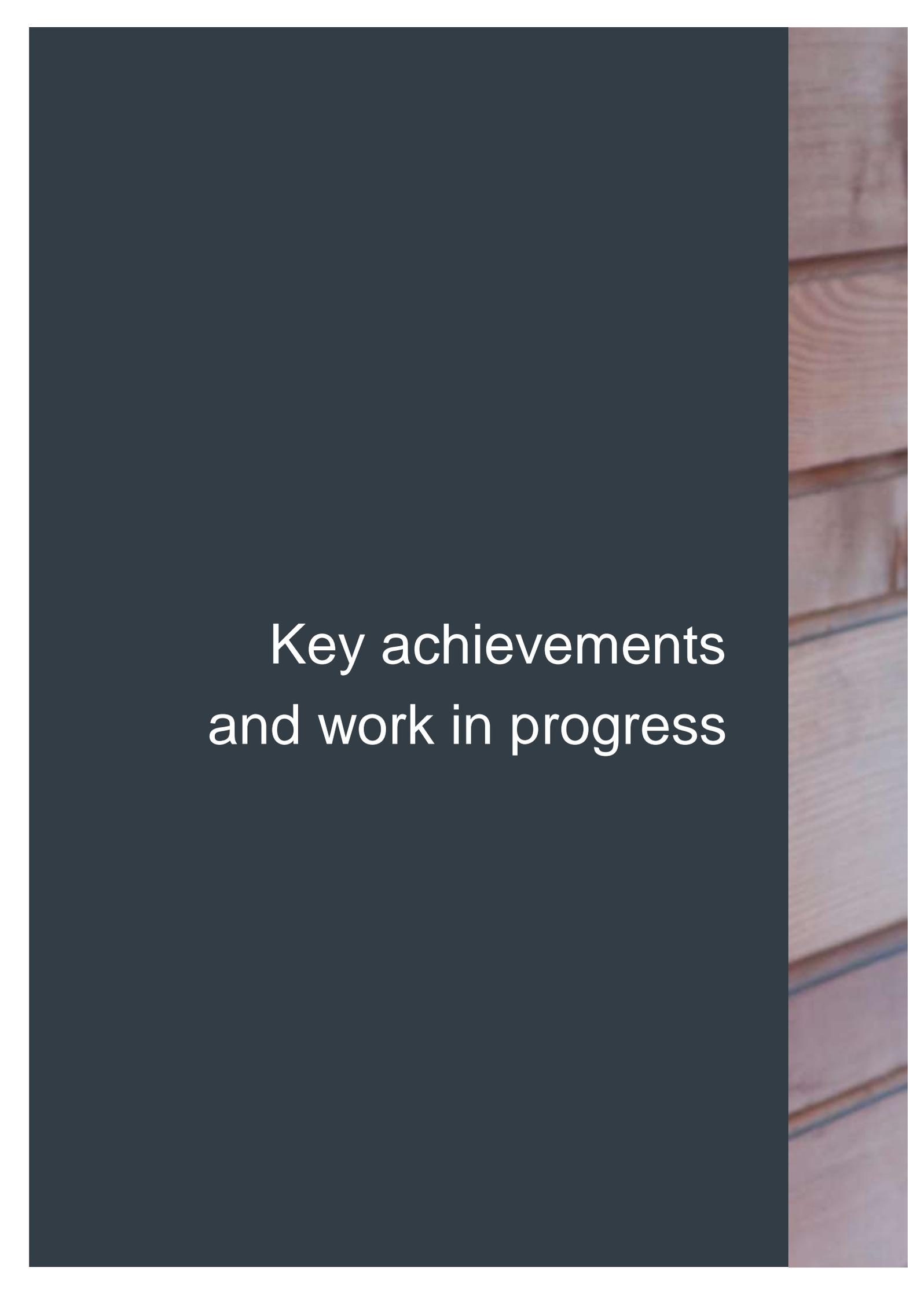
In addition to these overarching guidelines, the Council has commenced work on the development of a guideline on sentencing young people, together with our first offence-specific guidelines, which will relate to causing death by driving, and environmental and wildlife offences.

Methodology for guideline development

The development of sentencing guidelines is one of the Council's primary functions. The Council's methodology for the development of guidelines, setting out the process for their preparation and explaining the various steps taken to ensure guidelines are robust, evidence based, and useful to both the public and the judiciary, will be published on the Council's website soon.

The development of this methodology has involved consideration of systems operating elsewhere, including engagement with other jurisdictions to gain experience of different approaches and lessons learned, with specific reference to guidelines operating in England and Wales and Northern Ireland.

The Council is also carrying out work on the proposed form and style of its guidelines, to ensure that they will be of practical use to the judiciary and to other users.



Key achievements and work in progress

Key achievements and work in progress

During 2017/18, significant achievements and good progress were made in the following areas.

Research and information



As noted earlier, the Council has undertaken its first public consultation exercise as part of the development of the Principles and Purposes of Sentencing guideline, gathering and analysing responses to inform the finalisation of the guideline. The first impact assessment has also been carried out as part the same project, including engagement and data gathering with key stakeholders to examine the likely costs and benefits of the guideline and its likely effect on the criminal justice system more generally.

The Council has continued to engage with the Scottish Graduate School of Social Sciences' Ph.D. internship scheme, undertaking two three month research projects. These projects looked at the public perceptions of youth offending and the legislative landscape of environmental and wildlife offences. As well as providing important data to the Council, they provided opportunities to two early career researchers, giving them valuable work along with encouraging them to consider sentencing research as a professional interest. A further Ph.D. intern has been recruited for the first quarter of the 2018/19 financial year, undertaking early scoping work on sexual offences.

Engagement has continued with members of the academic and research communities through direct meetings and conference attendance.

The Council has undertaken direct research with judges across the country, seeking their views on sentencing. This research has fed in to the Council's work on principles and purposes, the sentencing process, and sexual offences.

The Council has begun to commission external research, with additional focus groups seeking the views of black and minority ethnic groups on

youth offending (to supplement an earlier project in this area) and a literature review of current academic work around death by driving offences being undertaken. More extensive external research is planned for 2018/19.

Promoting awareness and understanding

The Council continues to promote awareness and understanding of sentencing, through the ongoing development of its website and through its engagement activity.

Ongoing website development

A number of significant additions have been made to the Council website during 2017/18, to improve its functionality as a comprehensive sentencing resource.

Interactive [case studies](#) have been launched, allowing users to direct the outcome of fictional cases, learn about the sorts of factors which are taken into account, and select the sentence they would impose if they were the judge. A series of [animated videos](#) has also been finalised, providing an introduction to how sentencing works

to audiences including the general public, offenders and their families, people with learning difficulties, and victims of crime.

Further additions include a [“mythbuster”](#) which addresses some common sentencing misconceptions and provides information on topics including community sentences and prison release, and blog posts from Council members and external organisations.

Openness and engagement

The Council made an early commitment to demonstrate transparency and to work productively with others.

In April 2017, the Council held its first major stakeholder conference on the topic of sentencing young people, which included panel presentations and interactive workshop discussions. The event was attended by over 40 organisations from across the criminal justice system and beyond, and the discussions held (which are summarised in a [published report](#)) are assisting the Council’s current work in preparing a guideline on sentencing young people.

During 2017/18, the Council also:

- published details of its meetings including non-confidential and non-sensitive meeting papers;
- held a public consultation on its first draft guideline on the [principles and purposes of sentencing](#) and published an analysis of the responses;
- published a report on a discussion event relating to the [sentencing of parents](#);
- engaged with the judiciary to discuss the sentencing of sexual offences, in order to inform research in this area;
- attended the Modern Studies Association annual conference to share the Council's educational resources with teachers from across Scotland;
- gave presentations to Scottish journalism students, outlining the sentencing information and resources available on the Council's website; and
- continued engagement with sentencing bodies in other jurisdictions, including through meetings with the Sentencing Council for England and Wales,

and the Sentencing Advisory Council for Victoria.

To raise awareness of the Council's work and encourage engagement with interested parties, meetings have also been held with various stakeholders over the course of the year.

The Council recognises the need for input from all those with interest and expertise in its work and will continue to seek to engage with a broad range of stakeholders.

Presentations, conferences, seminars, and visits

The following details some of the presentations delivered and conferences, seminars, and visits attended by Council members or staff:

Conferences, Seminars, and Visits	Date
Reducing the Use of Imprisonment in Sentencing & Penal Decision-Making: A European Conference	June 2017
Economics of Penal Policy, <i>Scottish Prison Service</i>	July 2017
Transforming Lives Project steering group, <i>Prison Reform Trust</i>	July 2017
Communication Needs in Criminal Justice, <i>Scottish Universities Insight Institute</i>	October 2017
Visit to HMP Edinburgh, <i>Scottish Prison Service</i>	October 2017
Scotland's Choice: Using evidence to support a more progressive penal policy, <i>Scottish Government</i>	November 2017
Modern Studies Association Conference	November 2017
Sentencing Research - Centre for Penal Theory, <i>Sentencing Council for England and Wales</i>	December 2017
Visit to Friarfield House, Community Justice Services, Dundee	December 2017
What does desistance mean for convicted sex offenders in Scotland?, <i>Scottish Prison Service</i>	January 2018

Presentations/speeches delivered	Date
Reducing the Use of Imprisonment in Sentencing & Penal Decision-Making: A European Conference	June 2017
Parole Board for Scotland	June & September 2017
Scottish Centre for Crime and Justice Research	September 2017
Justice Board	September 2017
Victims Organisations Collaboration Forum Scotland	September 2017
Glasgow Clyde College	November/December 2017
Trinity Academy Edinburgh	December 2017

Assisting policy development

One of the Council's statutory objectives is, in carrying out its functions, to seek to assist the development of policy in relation to sentencing.

We consider this role to be distinct from the policy work the Council carries 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.

The Business Plan 2015-18 notes that the Council will consider questions of policy as they arise and will include details of such consideration in its annual report.

During 2017/18, the only substantive policy matter considered by the Council was in relation to the Scottish Government consultation "Electronic

Monitoring in Scotland - A Consultation on Proposals for Legislation". In general, the Council supported proposals which would allow a more flexible and tailored approach to electronic monitoring, while noting that careful consideration would be required around how best to use this technology most effectively to manage offenders in the community. The Council's full [response](#) to this consultation is available online.

The Council also gave further consideration this year to what its role in [assisting policy development](#) might involve. It published its views on this on the Council website, including setting out what factors will be considered in determining whether or not to carry out substantive work in relation to policy development.

Business Plan 2018-21

The Council's second business plan (covering the period 2018-21) must be submitted to the Scottish Ministers in October 2018. The Council began its consideration of potential topics to include in its work programme for the next business plan period in late 2017, taking into account progress to date and the lessons learned in its work so far.

The Council expects certain work contained in the first business plan to continue into the next period, particularly in relation to the development of guidelines relating to the sentencing process, the sentencing of young people, and the first offence-specific guidelines. The Council will also consider what new topics might be included in our future work programme.

In developing the business plan for 2018-21, the Council will be engaging with stakeholders to help inform its consideration. It will also consult in due course with the Scottish Ministers, the Lord Advocate, and the Lord Justice General, as required by the 2010 Act.

Expenditure



Expenditure

The Scottish Courts and Tribunals Service (SCTS) has the statutory function of providing, or ensuring the provision of, the property, services and staff for 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. 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.

The resources available to the Council during 2017/18 were **£525,754** made up of **£328,732** for staffing costs and **£197,022** for direct expenditure. As the Council is still at a reasonably early stage in developing guidelines, actual costs during 2017/18 were lower than the allocation. It is expected that costs will increase over time as the Council's activity increases.

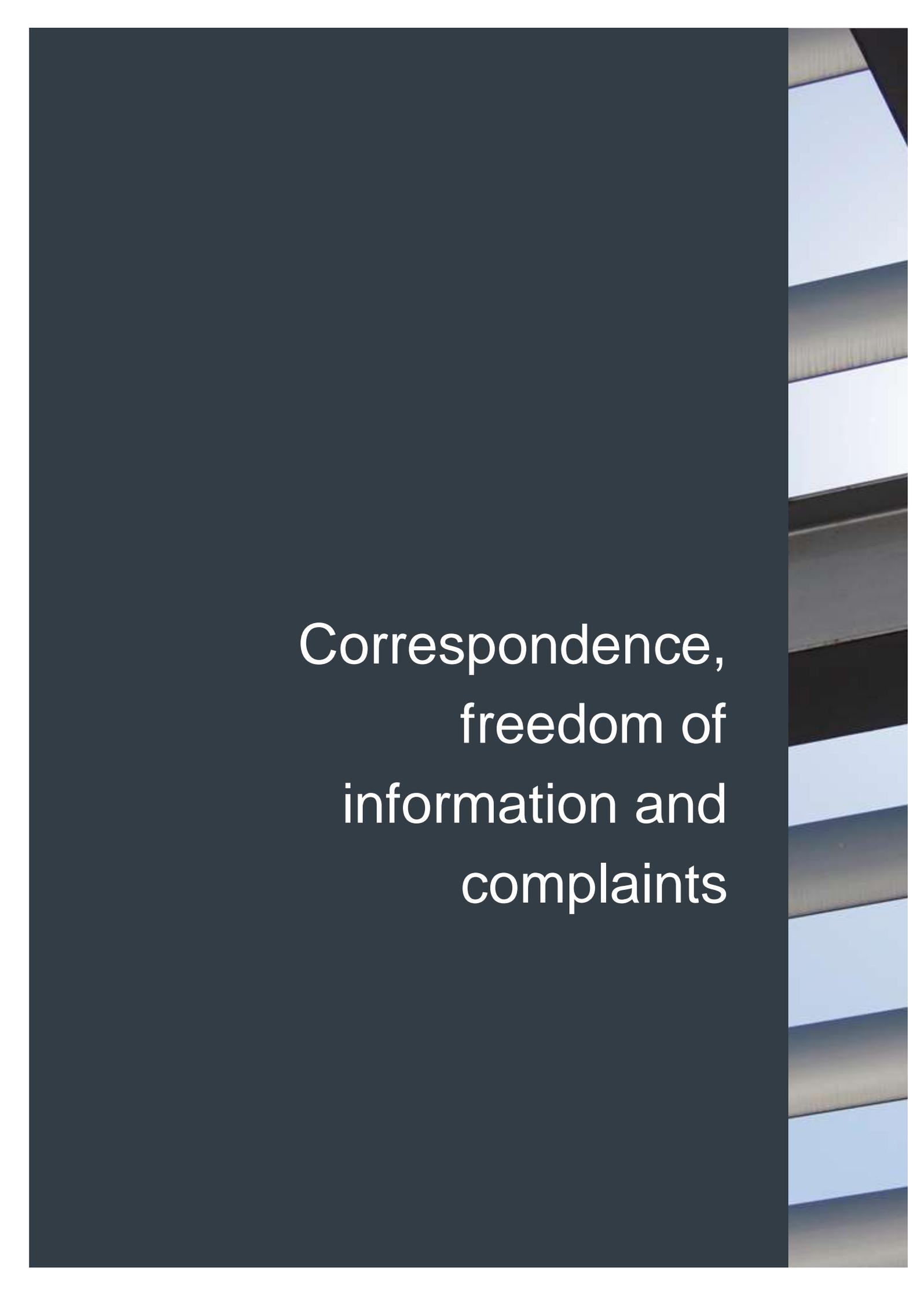
Actual expenditure, including staffing costs, during 2017/18, is detailed in the table on page 26.

Expenditure 2017-18

Category	Description	£
Staffing	Staff salary costs (including pensions and national insurance contributions)	318,866
General office expenditure	Printing costs, stationery etc.	2,093
Meetings and events	Venue hire, catering and conference costs	5,567
Training and expenses	Members' and staff travel & subsistence and costs of training associated with Council business	3,698
Promoting awareness and understanding	Website development, publications and educational resources	32,309
Research	Commissioned projects, consultation analysis etc.	17,593
Total		380,126

SCTS associated costs

Costs relating to services and accommodation provided by the SCTS are not included in the table, such as shared overheads, telephone charges, judicial travel & subsistence, and provision of data relating to sentencing.



Correspondence, freedom of information and complaints

Correspondence, freedom of information, and complaints

The Council is obliged to report on its complaints handling performance information, under schedule 2 to the SPSO Act. There were no complaints received during the period.

The following table provides information on the number of requests received under the Freedom of Information (Scotland) Act 2002 (FOISA) and the Scottish Public Services Ombudsman Act 2002 (the SPSO Act), along with the number of items of correspondence received.

Category	Number
FOISA requests	4
Complaints	0
Items of correspondence	63

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