

Sentencing in Scottish courts

Opening Slide - 1

This PowerPoint presentation is provided for use by the Scottish Sentencing Council. It takes about 20 minutes to deliver depending on the level of interaction, and covers examples of what sentences are available in Scotland, the different court types, and how sentences are decided by judges. Other resources to accompany this PowerPoint include a 9-question Kahoot quiz covering some of the material discussed, and a series of three, short, [animated videos](#) on sentencing young people.

Trigger warning – the following script includes reference to a fictitious ‘death by driving’ scenario.

Slide 2 – Sentencers

When someone is convicted of a crime in court, it is up to the judge to decide what sentence to give them. [Judges](#) are independent of government, but must follow the law. The [Scottish Sentencing Council](#) provides guidelines to assist judges in deciding sentences. The law says that judges must ‘have regard’ to these guidelines. However, if it is appropriate, they can decide not to follow the guidelines in particular cases. If a judge does not follow a guideline, they must give their reasons.

Slide 3 – Different sentences

There are [many different types of sentence](#) in Scotland. These include:

- an admonition, which means there is no punishment, but a warning is given and the offence is noted on a criminal record
- a fine, or a compensation order paid to a victim
- a community payback order which can include up to nine different requirements such as unpaid work
- an electronic tag which serves to keep an offender inside a named address (usually their home) during certain hours (usually evening and night)
- imprisonment
- in exceptional circumstances, a court can impose what is known as an absolute discharge: this is not recorded on a criminal record.

Slide 4 – Different courts (Glasgow Sheriff Court)

There are three types of criminal court in Scotland:

- justice of the peace, or JP, court
- sheriff court
- High Court.

The justice of the peace court deals with less serious offences such as speeding. More serious cases, including most assaults, are heard in the sheriff court. The most serious cases, such as murder, are heard in the High Court. In Scotland, most cases are heard at the sheriff court.

Slide 5 – Maximum sentences

The maximum sentences that can be given in each court are set by the Scottish Parliament. In the justice of the peace court, the maximum sentence of imprisonment is 60 days, while the maximum fine is £2500. The sheriff court can hear two different types of case: summary cases, which are heard in front of a sheriff sitting on her or his own, and solemn cases, which, if they go to trial, are heard in front of a jury. For summary cases, the maximum sentence of imprisonment is up to one year, while the maximum fine is £10,000. For solemn cases, which are more serious, the maximum sentence of imprisonment is up to five years, while the maximum fine is unlimited. In the High Court, a life sentence can be given, while the maximum fine is unlimited.

Slide 6 – Imprisonment

A lengthy prison sentence is the most severe sentence that can be handed down and should only be used if there is no other way of dealing with an offender. Such sentences can be used to mark the disapproval of society and to protect the public from the offender. Anyone under the age of 21 is sentenced to detention in a young offenders' institution instead of prison.

Slide 7 – Community Payback Order

A sentence served in the community, known as a community payback order, can also be very demanding. They can be even more demanding than a short prison sentence.

Community payback orders can include:

- up to 300 hours of unpaid work, the equivalent of 6 hours a day for 50 days, for example shovelling snow, gardening in a public park, or redecorating Council housing
- an order for supervision which can involve years of regular meetings with a social worker to challenge and change offending behaviour and address issues underlying offending
- a programme to address an issue such as drug or alcohol use
- compensation payment made to a victim.

Slide 8 – research

Research shows that the people tend to view community sentences as lenient. However, research carried out both in Scotland and in other countries suggests that people in focus groups tend to agree with sentences likely to be given by sheriffs in specific case scenarios.

Slide 9 – Newspaper headline

Research shows that this perception may be influenced by the media, for example by headlines that say an offender has ‘dodged jail’ or ‘escaped prison’¹. But community sentences can be more demanding than a short prison sentence, and research shows that many judges believe they offer a greater chance for rehabilitation². Rehabilitation means restoring a person to a useful place within society.

Slide 10 – Police

Now, I’d like you to imagine that you are a sheriff. You must sentence Jacqui, an 18-year-old offender from Stirling, who has pled guilty to causing death by careless driving. She has never been in trouble with the courts before. On the day of the offence, she had a job interview in Perthshire. She rented a car to attend the interview, but underestimated the time it would take to drive there. There was heavy rain. She realised she might be late and began to speed at 70mph on a 60mph road. A road sign indicated that she was approaching a bend. On the bend, the car skidded on the wet surface and clipped a cycle. The collision killed the cyclist. Jacqui stopped, called the emergency services and waited for the police to arrive. She was later charged with causing death by careless driving. As soon as she instructed a solicitor (lawyer), she made it clear that she wanted to plead guilty. The court received a victim statement from the partner of the deceased. A victim statement allows a victim or surviving family member to describe the impact a crime has had on them. In this case it described how devastated the family was by the loss. So, how would you decide the sentence? We’ll come back to this, but meanwhile we’ll cover some of the factors that a judge would consider, which might help you with your own decision.

Jacqui’s case is heard at Perth Sheriff Court. She pleads guilty to the charge. The Sheriff is told that she has never been in trouble with the police before.

The Sheriff must now decide what sentence to give her.

As I said earlier, the Scottish Sentencing Council produces guidelines to help judges decide sentences.

Slide 11 – The Council

The Council has produced three guidelines to date. They are overarching, general guidelines for the courts to use for sentencing all offences in Scotland. They are also currently consulting on their first offence guideline. This is on causing death by driving offences.

The Council is an independent body which is made up of 12 members with 6 judges from across the court levels, three legal members (prosecutor, advocate, solicitor), a police officer, someone with

¹ [Perceptions of sentencing of sexual offences \(scottishsentencingcouncil.org.uk\)](https://www.scottishsentencingcouncil.org.uk)

² <https://www.scottishsentencingcouncil.org.uk/media/2165/20211028-judicial-perspectives-of-community-based-disposals-ssc-issues-paper.pdf>

knowledge of victims' issues and one other person who is not qualified as either a judge or a legal member – currently this is an academic.

Slide 12 - Developing guidelines

The Council's first guideline is on the principles and purposes of sentencing. Preparing this guideline was not a matter of the members just sitting down and deciding what they felt these principles and purposes should be. The Council conducted research into what exists in other countries, interviewed Scottish judges, held focus groups, and analysed statistics. It engaged in wide consultation across the justice system, including with victims' groups and the wider public. Only then did the Council draft the guideline.

Slide 13 - Principles and Purposes guideline

The guideline's core principle is that sentences must be fair and proportionate. The guideline also lists some of the main purposes of sentencing:

- protection of the public
- rehabilitation of offenders
- giving the offender the opportunity to make amends
- punishment
- expressing disapproval of offending behaviour.

Returning to our scenario, have a think to yourself as to which purposes you would give most weight in this case, if you were the sheriff.

Slide 14 – Sentencing Process guideline

The second general guideline is on the steps judges should go through when deciding a sentence.

Slide 15 – Seriousness of offence

The first step of the sentencing process is to determine the seriousness of the offence. This is decided by determining the culpability (this is the level of blame of the offender) together with the harm caused, or which might have been caused, to a victim.

If we return to our scenario, we can say that the harm caused in cases where there is a fatality is always high.

In Scotland, causing death by dangerous driving and causing death by careless driving are two separate offences. In Scottish courts, it is the prosecutor who decides what offence is prosecuted. In this case, which is entirely fictitious, we are saying that the driver is charged and prosecuted with causing death by careless driving.

Slide 16 – Death by careless driving guideline table

The Scottish Sentencing Council is currently developing a sentencing guideline for death by driving offences. Offence guidelines follow the initial steps of the Sentencing Process guideline but provide specific guidance relating to the particular offence. The present draft death by driving guideline may change, but it currently puts culpability, or level of blame, into 3 categories for death by careless driving.

For our scenario which of the three levels on the slide would you choose?

A practising sheriff said that he would put this case at level A because speeding over the limit in rainy conditions falls not far short of dangerous driving. If the offender had been speeding faster she may have been charged with dangerous driving.

Slide 17 Death by careless driving sentencing ranges

The draft guideline currently says that for causing death by careless driving where the culpability is level A, the sentencing range falls between a level 2 community payback order and 18 months' imprisonment. A level 2 community payback order means that the requirement for unpaid work can be up to 300 hours, which is the equivalent of 6 hours a day spread over 50 days.

So, have a think to yourself as to what you would now sentence the offender to, and we'll come back to it again later.

The sentencing exercise isn't yet finished.

Slide 18 – Aggravating and mitigating factors

The sentencer must now consider factors which might make an offence more, or less, serious. There are some factors that, by law, will always make an offence more serious, such as racial abuse. And factors that will usually make an offence more serious, for example if Jacqui had committed offences before, especially if the offences were similar driving offences.

Going back to our draft causing death by driving guideline, some factors to be considered are listed and we can see them in the table in slide 18.

Would you say that any of these factors are relevant in our scenario?

If you were the Sheriff, you might decide that some of the mitigating factors are relevant including:

- remorse
- previous good driving record
- driving while inexperienced
- providing assistance at the scene.

Slide 19 - Sentencing process guideline

We now return to the Sentencing Process guideline for the final steps in deciding a sentence. These include taking account of a plea of guilty, if there is one. Where an offender pleads guilty, a judge will normally reduce the sentence because it:

- means the court has more time for other cases reducing overall waiting times, and

- saves public money.

We know that the offender pled guilty in our scenario and so we need to take that into account as well.

Slide 20 – Sentencing young people research

I've spoken about the first two general sentencing guidelines. The third general sentencing guideline published by the Council is on sentencing young people.

For the purpose of the guideline, a young person is someone who is under the age of 25 at the date of conviction. This guideline is based on academic research which shows that the brain continues to develop up until the age of at least 25. This means that, in general, a young person will have a lower level of maturity, and therefore a lower level of culpability. The research shows that young people also have a greater capacity for change and rehabilitation.

Slide 21 – Rehabilitation

Taking this research into account, the guideline focuses on rehabilitation as a primary consideration in sentencing. A judge is not prevented from imposing a sentence of imprisonment on a young person if the crime is serious enough, but the guideline says that such a sentence should be shorter than one which would have been given to an older person for a similar offence.

Slide 22 – Individualised approach

The Sentencing young people guideline provides for an individualised approach. This means that the judge should take into account the personal level of maturity of an offender, and their personal circumstances including how a sentence will impact them. Considering the offender in our scenario is under the age of 25, you need to consider this guideline as well in deciding your sentence. So now, for our exercise today, you can set your final sentence.

The legislation for causing death by careless driving states that an offender must be disqualified from driving for at least 12 months.

Slide 23 – Imprisonment or community sentence

What would your sentence be?

Slide 24 - Sentence

We asked a practising sheriff what sentence they would have given in this made-up scenario. They said, that depending on numerous other factors, they would probably have imposed a community payback order with a requirement for unpaid work of around 250 hours, with a one year driving disqualification. Of course this is a made-up case and all cases that call in court will be different.

Slide 25 - Difference

How did your initial sentence differ from your final sentence? What made you change your sentence?

Slide 26 – Website

The Scottish Sentencing Council has a wealth of resources on its website. These include:

- information on what sentences are available to judges
- what the law says about sentencing
- interactive case studies where you play the role of the judge
- series of videos including on sentencing young people
- myth and jargon busters.

Slide 27 – Kahoot quiz

A publicly available Kahoot quiz is available to play at: <https://create.kahoot.it/creator/40ebd466-26e0-4a25-9926-c928b1f8c253>

You can find this by searching for the Scottish Sentencing Council under the Discover menu on the Kahoot website.



Slide 28 - Contact slide

If you have any questions relating to sentencing matters, please email the Council at sentencingcouncil@scoutcourts.gov.uk, or follow us on Twitter @ScotSentencing, and on LinkedIn. We post information about statements made by judges in relation to sentences given in court cases on our social media sites. We are also keen to hear any feedback that you might have about our resources, or suggestions for additional material.

Video and educational links

[Classroom plans](#)

[Information about sentencing](#)

[Interactive scenarios](#)

[Videos about sentencing](#)

[Sentencing Young People videos](#)