

# HOUSE OF COMMONS SPEAKER'S CONFERENCE CALL FOR EVIDENCE ON THREATS TO CANDIDATES AND ELECTIONS

## SCOTTISH SENTENCING COUNCIL: WRITTEN EVIDENCE

1. The Scottish Sentencing Council is pleased to provide evidence to the Speaker's Conference to assist with its inquiry into the factors influencing the threat level against candidates and MPs and the effectiveness of the response to such threats. This is an important matter, and the Council welcomes the Conference's interest in the experience within the Scottish jurisdiction.
2. The Council was established in 2015 under the Criminal Justice and Licensing (Scotland) Act 2010. The 2010 Act provides that the Council's objectives are 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.
3. The Council is an independent, advisory body. Its membership is governed by the 2010 Act. It is chaired by the Lord Justice Clerk, Scotland's second most senior judge, and (including the Chair) it has twelve members in total, six of whom are members of the judiciary, and three of whom are members of the legal profession. The other three members are an expert on victims' issues; a police officer; and one other person.
4. The Council has not carried out or commissioned any work to date explicitly examining the specific matter of threats and enforcement of responses to electoral candidates. The Conference may wish to note, however, the terms of the Council's general guideline setting out the sentencing process, which came into force in September 2021 and which applies to all offences sentenced in Scotland.
5. [The sentencing process guideline](#) describes how courts reach sentencing decisions through an eight-step process. Steps 1-4 cover determination of the headline sentence. This involves, first, assessing the seriousness of the offence with regard to the culpability of the offender and the level of harm caused, or which might have been caused, by the offence; second, selection of the sentencing range; and, third, consideration of any aggravating and mitigating factors, which may move the case out of the range selected at step 2. The headline sentence is selected at step 4. Steps 5-7 cover other issues which will not apply in every case, such as the need to take into account a plea of guilty or any time spent in custody. Finally, step 8 involves the court imposing the sentence and giving reasons for its decision.<sup>1</sup>
6. The guideline includes as an example of an aggravating factor which might be considered at step 3 "[a]n offence against a public official which arises out of the victim's status as a public official" (see Annex B of the Sentencing process guideline). The list of aggravating factors within the guideline is not an exhaustive one, and it would be open to a court to treat an offence against candidates as aggravated for sentencing purposes.<sup>2</sup>

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<sup>1</sup> The closest equivalent guideline applicable in England and Wales is the [General guideline: overarching principles](#), issued by the Sentencing Council for England and Wales.

<sup>2</sup> See for example [HMA v. Docherty \[2024\] HCJAC 36](#), a Crown appeal against sentence imposed for attempting to pervert the course of justice and various firearms offences, including an offence under section 16A of the Firearms Act 1968 (possession of firearm with intent to cause fear of violence), in which the appellate court

7. The guideline also provides that the court’s consideration of the level of harm is integral to the assessment of the level of seriousness, which is an integral part of the sentencing process. Harm is to be interpreted broadly, and as well as the specific harm caused to any victim it can include the harm caused to society. Although it would of course be a matter for the sentencing court, it would be open to a court to take the view that an attack on, or a threat against, a participant in a democratic process (such as a candidate in an election) carried with it a level of societal harm.
8. As of September 2026 the sentencing process guideline will have been in effect for five years. The Council intends to carry out a focussed review of this framework guideline with a view to considering whether it requires any adjustment to ensure that it remains aligned with developments in legislation (such as the creation of new statutory aggravations), case law, and sentencing practice.
9. The Council has considered the specific question posed to it by the Conference as to whether guidelines might be amended in order to “strengthen the deterrent effect of the criminal justice response to individuals who engage in threatening behaviour or communications” in the context of the inquiry.
10. The concept of deterrence is included within the purposes of sentencing in Scotland as part of the purpose of public protection, as set out at paragraph 5 of the [Principles and purposes of sentencing guideline](#): “Protection of the public. Sentencing may seek to protect the public from offending behaviour through preventative measures and by deterring offending behaviour.”
11. As a general point, the Council understands that the evidence available on the efficacy of deterrence via sentencing is, at best, limited, and it offers no specific comment on the effectiveness or otherwise of potential changes to sentencing guidelines in this regard.
12. The Council is aware of two pieces of research carried out for the Sentencing Council for England and Wales examining the evidence on the effectiveness of sentencing. The first, [The Effectiveness of Sentencing Options on Reoffending](#), explored the efficacy of sentencing options with a “focus on reoffending and related matters such as desistance and reintegration, deterrence, cost-effectiveness, and equality”.<sup>3</sup> The second, [Reconceptualising the effectiveness of sentencing options: four perspectives](#), is a review of research on the effectiveness of sentencing in relation to the different perspectives of sentencers, offenders, victims and the public.<sup>4</sup>

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stated (at para. 16) that, among other things, the court of first instance had not appeared “to have reflected properly on the most serious aggravating factor of this offence, namely a threat to a uniformed police officer acting in the execution of his duties”; in another example, [two men were convicted in 2023 of assaulting and abducting a sheriff](#), with one of the men further convicted of three charges of threatening and abusive behaviour, including against the First Minister Nicola Sturgeon and Stewart Stevenson MSP. In passing sentence for the abduction and assault the judge stated “What you did wasn't just an assault on [the sheriff], it was an assault on law and order.”

<sup>3</sup> [The Effectiveness of Sentencing Options on Reoffending](#), Dr Jay Gormley (University of Glasgow), Prof Melissa Hamilton (University of Surrey), Dr Ian Belton (Middlesex University) for the Sentencing Council for England and Wales (2022)

<sup>4</sup> [Reconceptualising the effectiveness of sentencing: four perspectives](#) Dr Jay Gormley (University of Glasgow) for the Sentencing Council for England and Wales (September 2024) (last accessed 27 January 2025)

13. Both reviews suggest that there is limited evidence on the deterrent value of sentence severity and that the likelihood of apprehension and punishment are more likely to be of significance in deterrence. The 2022 review does note, however, that there are challenges in researching the direct impact of sentence severity on deterrence. The Conference may wish to consider the evidence presented in these reviews.
14. Irrespective of the effectiveness or otherwise of deterrence as a purpose of sentencing, a court may select a sentence designed to achieve other purposes when sentencing offences against candidates or elected representatives, such as punishment, or to express disapproval of the offending behaviour.
15. The Council hopes this information is of assistance to the Conference and looks forward to learning of its recommendations in due course.

**Scottish Sentencing Council**

**February 2025**