

Scottish Sentencing Council

Annual Report 2016/17

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Chair's Foreword

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



I am delighted to present the Scottish Sentencing Council's second Annual Report covering the period 1 April 2016 – 31 March 2017, which tracks our progress and key achievements during the past year along with how we performed against our statutory objectives and pursued our statutory functions.

The Council was established in 2015 to promote consistency in sentencing, to assist in the development of sentencing policy, and to improve awareness and understanding of sentencing practice. Now that the ground work necessary to launch a new organisation is complete, we have turned our focus to the preparation of Scotland's first sentencing guidelines.

As set out in the Council's Business Plan 2015-18, we have taken the decision to prepare our first guideline on the overarching principles and purposes of sentencing for all offences, providing a comprehensive definition for the first time. We are also preparing a related guideline focusing on the sentencing process itself, including the steps taken by judges when deciding sentences and the factors which may be taken into account. We consider that these guidelines will be of significant benefit in assisting the public to better understand how sentences are decided, as well as acting as a formal, principled foundation for sentencing in Scotland and underpinning the future work of the Council.

In addition to these general guidelines, the Council is carrying out preparatory work on a more specific guideline on sentencing young people, reflecting the complexities in dealing with such cases, and we will soon begin work in relation to several offence specific guidelines.

The Council took an early decision to base its work on research, evidence and consultation. To help inform our work, we have engaged with the academic and research communities through a variety of meetings, visits, conferences and

presentations, and have established links with colleagues from across the justice system both in Scotland and in other jurisdictions. Our first piece of significant research has already been carried out with judges throughout the country, and preparations are underway for the Council's first public consultation.

Another aspect of the Council's work is to raise awareness and promote understanding of sentencing practice. We have continued to develop our website as a comprehensive resource on this subject and, to improve accessibility, have commissioned a series of animated videos which will explain the sentencing process. The series, to be launched in 2017, is designed to engage different target audiences, namely victims of crime, offenders and their families, secondary school children and people with learning disabilities. A new Council blog has also been launched to host both internal and guest posts on a wide variety of relevant topics.

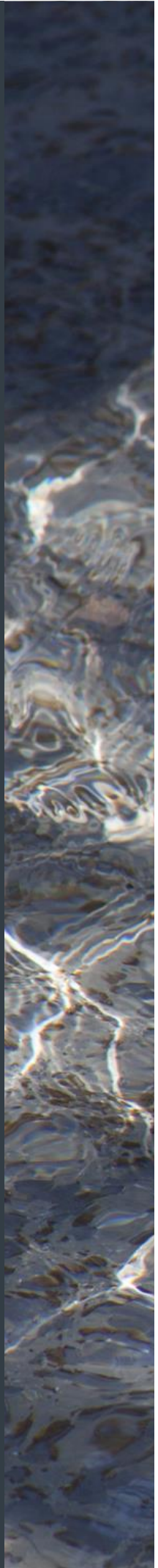
The work carried out over 2016-17 has been invaluable in building the Council's knowledge and in further developing its methodology for preparing guidelines, and I look forward to sharing our work more widely over the coming year.

The Council could not have made the progress it has achieved without the insight and enthusiasm of our members, for which I would like to express my thanks.

Leeona J Dorrian

**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 under Part 1 of the [Criminal Justice and Licensing \(Sc\) Act 2010](#).

This Annual Report, which covers the period 1 April 2016 – 31 March 2017, describes the key achievements, work in progress, expenditure, and how we have complied with our statutory obligations.

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, which may approve them 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 Criminal Justice and Licensing (Scotland) Act 2010 (the 2010 Act).

Some changes in membership have taken place during 2016/17.

The Council's first Chair, the then Lord Justice Clerk, Lord Carloway, was appointed Lord President, head of Scotland's judiciary, in December 2015. As the statutory Chair of the Council is the Lord Justice Clerk, Lord Carloway vacated his Council position and Lord Turnbull was nominated to act as Interim Chair while the office of Lord Justice Clerk was vacant.

The Rt Hon Lady Dorrian was appointed as Lord Justice Clerk in April 2016 and took up her position as Chair by virtue of the office.

Allan Findlay served as a stipendiary magistrate member on the Council until 31 March 2016, after which he

took up post as one of Scotland's first summary sheriffs. He remained on the Council during 2016/17 as a summary sheriff member by virtue of consequential modifications made to the membership provisions of the 2010 Act to account for the creation of the office of summary sheriff under the Courts Reform (Scotland) Act 2014.

David Harvie, Crown Agent for Scotland, was appointed in September 2016 as the prosecutor member following the retirement of Catherine Dyer, former Crown Agent for Scotland.

Deputy Chief Constable Iain Livingstone was appointed in December 2016 as the constable member, following the retirement of Assistant Chief Constable Val Thomson.

Council membership during 2016-17 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
		Gillian Thomson JP
One further eligible judicial member or a sheriff principal	Sheriff Principal Ian R Abercrombie QC	

Category	Position	Title
<p>Legal members</p> <p>Appointed by the Lord Justice General, having consulted the Scottish Ministers</p>	One prosecutor	David Harvie Crown Agent for Scotland (from September 2016) Catherine Dyer (to June 2016)
	One advocate	Stephen O'Rourke
	One solicitor	John Scott QC
<p>Lay members</p> <p>Appointed by the Scottish Ministers, having consulted the Lord Justice General</p>	One constable	DCC Iain Livingstone (from December 2016) ACC Val Thomson (to May 2016)
	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



Committees

In October 2016 the Council established two committees (under paragraph 8 of schedule 1 to the 2010 Act) to carry out work relating to communications and research.

The **Communications Committee** was established to lead on promotional and public awareness work.

One of the Committee's first tasks was to launch the Council's inaugural Business Plan, covering the period 2015–18 and announcing the topics on which the Council intends to prepare guidelines and carry out research. Coverage was received in the national press and broadcast news.

The Committee has also continued the Council's educational and public awareness work through ongoing development of its website.

It first met on 13 October 2016 in Parliament House, Edinburgh, and its membership comprises:

- *Sheriff Norman McFadyen (Chair)*
- *John Scott QC*
- *Sue Moody*

The **Research Committee** was established to advise the Council on the commissioning, progress and dissemination of research projects.

The committee took the lead in the creation and approval of the Council's first Research framework. The framework sets out the Council's research interests along with the decision making and supervisory structures involved when commissioning research. The research framework establishes a clear, transparent set of priorities, ensuring the Council follows best practice in procurement and can commission research swiftly and efficiently.

The Research Committee first met on 24 November 2016 in Parliament House, Edinburgh. Its membership comprises:

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

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



Key Achievements and Work in Progress

Key Achievements and Work in Progress

During 2016/17, significant achievements and good progress were made in the following areas.

Business Plan 2015-18



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 during that period. The business plan must contain details of the matters in relation to which the Council proposes to prepare sentencing guidelines, as well as any other information it considers appropriate. In preparing the business plan, the Council must consult the Scottish Ministers, the Lord Advocate, the Lord Justice General and any other persons it considers appropriate.

A Business Plan covering period 2015-18 was provided to the Scottish

Ministers on 26 September 2016. It was laid in Parliament and published shortly thereafter.

The Business Plan contains information on the history, establishment, objectives and functions of the Council, as well as details of its membership. It outlines the Council's governance and accountability arrangements, including in relation to how it manages its proceedings, its expenditure, and its relationship with other bodies.

In setting out a work programme for 2015-18, the Business Plan details how the Council will carry out its functions, particularly with regard to its three statutory objectives.

In relation to promoting consistency in sentencing practice, the Business Plan sets out the preparatory work which will be carried out to create a framework and methodology for developing sentencing guidelines, including the matters which the Council will take into account when selecting topics for consideration. The Business Plan notes the Council's commitment to make decisions on the basis of evidence, carrying out or commissioning research to inform the development of sentencing guidelines, the assessments of their impact and

sentencing policy and practice more broadly.

The first guidelines to be prepared will focus on the general principles and purposes of sentencing, which have not been expressly defined before in Scotland, and on the sentencing of young people. The Council intends to submit this first suite of guidelines to the High Court for approval by autumn 2018. Preparatory work on a number of offence specific guidelines, including on environmental and wildlife offences and causing death by driving, will also begin during 2015-18,

The Business Plan describes the role of the Council in relation to its objective to seek to assist policy development in relation to sentencing, noting the various forms this might take. During 2015-18, the Council intends to concentrate on the preparation of sentencing guidelines and putting in place the mechanisms to enable their development; questions of policy and requests for assistance will be considered as they arise.

Communications and engagement activity is also outlined in the Business Plan, addressing the Council's third statutory objective to seek to promote greater awareness and understanding of sentencing policy and practice. While the development and

dissemination of individual guidelines will in itself go some way to promoting greater awareness and understanding, the Council will carry out activity with the aim of public education and improving the knowledge base in relation to sentencing.

The Business Plan 2015-18 is available at:

<https://www.scottishsentencingcouncil.org.uk/publications>

Consideration of Guideline Systems in Other Jurisdictions

In support of work generally, and to assist with the development of the guidelines methodology, we are keen to **learn lessons** from the experience of other jurisdictions.

The Council continues to engage with colleagues and sentencing advisory bodies from other jurisdictions including:

- *Sentencing Council for England and Wales;*
- *Northern Ireland Sentencing Group;*
- *Sentencing Advisory Council for Victoria;*
- *Sentencing Advisory Council for Tasmania;*
- *National Association of Sentencing Commissions.*

Research and Information



The Research Committee took the lead in the creation and approval of the Council's first **Research Framework**. The framework sets out the Council's research interests along with the decision making and supervisory structures involved when commissioning research. It establishes a clear, transparent set of priorities, ensuring the Council follows best practice in procurement and can commission research swiftly and efficiently.

The Council has engaged with the Scottish Graduate School of Social Sciences' Ph.D. internship scheme to offer a three month research project with the Council. This opportunity will provide valuable work experience to an early career researcher, along with encouraging them to consider sentencing research as a professional interest. The project will commence in May 2017 and explore the public perceptions of youth offending.

Engagement has continued with members of the academic and research communities through direct meetings and conference attendance, such as the Tracking People series of seminars on electronic monitoring.

Work has begun to establish a data sharing agreement to enable the Council to access raw data on sentencing in Scotland. This agreement will ensure that the Council has access to the data required to make evidence based decisions while still complying with best practice in data storage and handling.

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

Promoting Awareness and Understanding

The Council continues to promote awareness and understanding of sentencing through the ongoing development of its website. This includes a comprehensive resource on guideline judgments issued by the High Court, bringing these together alongside helpful summaries and a selected list of other useful opinions.

The 'News & Media' page of the website was expanded to launch a 'Blog' section which hosts both internal and guest posts on relevant topics.

Following the formation of a Communications Committee, new resources were commissioned to expand the range of accessible website material. A series of animated videos, to be launched in 2017/18, will explain how a judge decides a sentence and what sentences are available in Scotland. The Council worked with justice partners to develop the four videos which are designed to engage different target audiences, namely victims of crime; offenders and their families; the general public & secondary school children; and people with learning disabilities.

A new website platform was also commissioned to host a variety of case scenarios reflecting the sentencing process in courts. Designed as an interactive resource, users will be able to direct the outcome of cases and select the sentence they would impose if they were the judge. This will also be launched in 2017/18.

Members of the Council Secretariat have also undergone 'easy read' training to better inform current website content.

The Council works to increase its understanding of all aspects of sentencing and engages with a wide range of organisations.

It hosted visiting colleagues from England & Wales; from Australia & Tasmania and from Northern Ireland to share information on best practice. It has also engaged with local groups with a relevant interest in sentencing and has hosted presentations from Families Outside; the Prison Reform Trust and the Children and Young People's Commissioner Scotland.

Openness and Engagement

The Council made a commitment at its inaugural meeting to demonstrate transparency and to work productively with others. During 2016/17 the Council:

- *engaged with stakeholders in the creation of the Business Plan 2015-18 which sets out clearly the Council's priorities and reasoning in choosing particular guideline topics;*
- *published details of Council meetings on the website including non-confidential and non-sensitive meeting papers;*
- *engaged with the judiciary during sentencing guideline methodology testing;*
- *developed the website functionality to better inform the public on sentencing topics;*
- *hosted a discussion event for stakeholders on Children and the Sentencing of Parents; and*
- *undertook a judicial consultation on the principles and purposes of sentencing.*

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.

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 the annual report.

During 2016/17, two substantive policy matters were considered by the Council following requests from the Public Petitions Committee of the Scottish Parliament. While the Committee sought comments on the relevant petitions prior to this reporting year, it was felt appropriate to consider these in detail once the Council had been fully established and the Business Plan developed.

Petition PE1572 (Occupational Disclosure in Trials and Sentencing) sought the removal of a person's occupation as a potential aggravating factor. In responding to the Committee, the Council noted its view that the question of whether occupation is a relevant consideration in relation to specific offences can be considered as individual guidelines are developed.

Petition PE1565 (Whole of Life Sentence for Violent Reoffenders) sought the introduction of 'whole of life orders' for violent offenders convicted of murder. The Council noted that it considered this to be a matter of substantive policy which would require a change in the law and that, as such, it was ultimately a matter for the Scottish Government and Scottish Parliament.

Presentations, Speeches and Conferences Attended

The following details the presentations, speeches and conferences attended by Council members or staff:

- **April 2016:** Council presentation at the Law Society of Scotland Criminal Law Committee; Council attended a Sentencing Roundtable event at the Centre for Penal Theory and Penal Ethics at the University of Cambridge.
- **May 2016:** Council presentation at a Scottish Association for the Study of Offending Glasgow Branch Day Conference on Transforming Scottish Justice.
- **June 2016:** Secretariat attended Scottish Prison Service International Symposium on Reimagining Custody, Community and Citizenship for 21st Century Scotland; Council members attended Youth Justice Conference.
- **August 2016:** Council presentation at Scottish Justices Association; Council and Secretariat attended National Association of Sentencing Commissions Annual Conference hosted by the Utah Sentencing Commission; Secretariat presentation to North Strathclyde Justice of the Peace Legal Advisers.
- **September 2016:** Secretariat presentation to Judicial Office for Scotland; Council and Secretariat presentation to the Faculty of Advocates Criminal Law Committee; Secretariat presentations to the Government Legal Service for Scotland and the Parliamentary Counsel's Office; Secretariat information stall at Doors Open Day in Parliament House, Edinburgh.
- **October 2016:** Council presentation at the Glasgow Bar Association Annual Conference.
- **November 2016:** Council members and Secretariat attended and contributed to the Scottish Association for the Study of Offending Annual Conference on Crime and Relationships; Council presentation to Maclay Murray & Spens litigation team.
- **December 2016:** Secretariat attended Electronic Monitoring Conference in Leeds.
- **January 2017:** Secretariat presentation at Howard League Scotland meeting.
- **February 2017:** Council and Secretariat attended Next Steps for Community Justice in Scotland and Just Us Professionals event.
- **March 2017:** Council member attended Judicial College for England and Wales training event on Sentencing at Warwick University and Scottish Universities Insight Institute event on Restorative Justice.

Visits

The following details the visits hosted and attended by Council members or Secretariat:

- **Northern Ireland - April 2016:** A group of Council and Secretariat members met with the Lord Chief Justice and Northern Ireland Sentencing Group members, observed the Crown Court and attended the Sentencing Group meeting.
- **HMYOI Polmont and HMP Low Moss – June 2016:** Council and Secretariat members engaged with the governors, staff and offenders to learn more about what happens after offenders are sentenced to custody.
- **Visit from Lord Justice Treacy and Professor Arie Frieberg - June 2016:** The Council received an update on the work of the Sentencing Council for England and Wales, and the Sentencing Advisory Councils for Victoria and Tasmania.
- **Visit from Attorney-General of the State Government of Victoria, Australia – September 2016:** A meeting was held to discuss the establishment of the Scottish Sentencing Council and to receive an update on the work of the Victoria Sentencing Advisory Council.
- **Sentencing Council of England and Wales – October 2016:** Visit by members of the Secretariat.
- **Bahrain Judicial Delegation – January 2017:** The Secretariat delivered a presentation on the work of the Council and members of the Bahraini delegation observed a Council meeting.
- **Visit by His Honour Judge McFarland and Paul Conway – March 2017:** The Council received an update on the work of the Northern Ireland Sentencing Group.

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.

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 2017.

Guideline Development

The development of sentencing guidelines is one of the Council's primary functions. A methodology, setting out what form and style guidelines should take and the process for their preparation is under development. This has involved a review of systems operating elsewhere, including engagement with other jurisdictions to gain first-hand experience of different approaches and lessons learned, with specific reference to guidelines operating in England and Wales and Northern Ireland.

Input from each level of the judiciary has also been sought using a variety of platforms, including electronic engagement and one-to-one meetings throughout Scotland, ascertaining what current judicial practice is in relation to sentencing, and seeking to test different guideline styles to determine which style would be of most assistance to the judiciary. The following sessions were held to test the proposed approach:

Date	Location	Tier
24 August 2016	North Strathclyde	JP Legal Advisers
12 September 2016	Inverness	Sheriffs
23 September 2016	Glasgow	Sheriffs, Summary Sheriffs
29 September 2016	Edinburgh	Sheriffs
06 October 2016	Glasgow	Sheriffs, Summary Sheriffs
10 October 2016	Aberdeen	Summary Sheriffs
08 December 2016	Dunfermline	Sheriffs
14 December 2016	Perth	Sheriffs
22 December 2016	Edinburgh	High Court Judge
29 December 2016	Edinburgh	High Court Judge
04 January 2017	Edinburgh	Sheriff Principal
05 January 2017	Edinburgh	High Court Judge
23 January 2017	Edinburgh	Sheriff Principal

In addition to these face to face events, the Council also received electronic feedback from a further 8 members of the judiciary. Further sessions were held with the Parliamentary Counsel Office and representatives of the Scottish Universities Insight Initiative.

The Council is actively considering this feedback and the review of systems in other jurisdictions, with a view to developing the draft methodology further to ensure that the style of guidelines is of practical use to the judiciary.

First Guidelines

As mentioned in our Business Plan 2015-18 we have decided to prepare a general set of guidelines on the principles and purposes of sentencing. These have never been expressly defined in Scotland and we consider that creating 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.

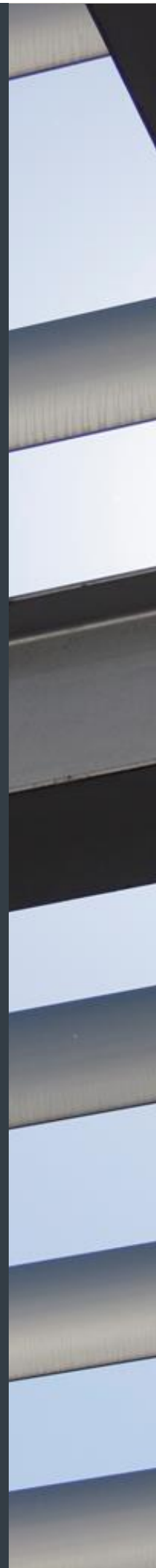
Two general guidelines will be produced in this area. The first will focus on the overarching **principles and purposes of sentencing**. The

second will focus on the **sentencing process**, including the steps taken by the court when deciding sentences and the various factors considered.

In addition to these overarching guidelines, the Council has announced that a guideline on **sentencing young people** will be developed, along with offence specific guidelines relating to causing death by driving and environmental and wildlife offences.

The Council, having begun its work in late 2015, has not yet consulted publicly on any draft guidelines or submitted any guidelines to the High Court for approval. However, we anticipate launching our first public consultation, on a draft guideline relating to the principles and purposes of sentencing, during 2017/18.

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 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 2016/17 were £477,000 made up of £280,000 for staffing costs and £197,000 for direct expenditure. As the Business Plan 2015-18 was agreed and published in late 2016, actual costs are 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 2016/17, is detailed in the table below.

Expenditure 2016/17

Category	Description	£
Staff	Staff salary costs (including pensions and national insurance contributions)	268,402
General office expenditure	Publishing, printing, stationery etc.	4,096
Accommodation	Venue hire for consultation events or ad hoc meetings	3,261
Training and expenses	Members' and staff travel & subsistence and costs of training associated with Council business, including attendance at conferences	22,785
Hospitality	Catering for meetings and events	1,391
Promotion	Website development and marketing and promotional materials	21,726
Total		321,661

SCTS Associated Costs

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

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 (Sc) 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	27



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