

Scottish Sentencing Council

Annual Report 2015/16

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Contents

Chair’s Foreword	4
Introduction	7
Statutory Objectives and Functions.....	7
Sentencing Guidelines	7
Membership	8
Establishment	12
Key achievements and work in progress	15
Implementation of Governance Arrangements	15
Consideration of Guideline Systems in Other Jurisdictions	15
Research and Information.....	16
Promoting Awareness and Understanding	16
Openness and Engagement	16
Presentations, Speeches and Conferences attended.....	17
Sentencing Guidelines	19
Expenditure	21
Expenditure 2015/16.....	23
SCTS Associated Costs.....	23
Correspondence, Freedom of Information and Complaints	25

Chair's Foreword

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



I have pleasure in presenting the first Annual Report of the Scottish Sentencing Council. This report provides information on the work undertaken in establishing the Council along with how we performed against our statutory objectives and pursued our statutory functions during the period 01 April 2015 to 31 March 2016.

The Council was established as an independent advisory body on 19 October 2015, following the Sentencing Commission for Scotland's recommendations in its report [*The Scope to Improve Consistency in Sentencing*](#). The creation of the Sentencing Council is significant. Historically, there has previously been no systematic method of producing sentencing guidelines in Scotland, although the High Court does have the power to issue guideline judgments on sentencing under the Criminal Procedure (Scotland) Act 1995.

The Council has had a remarkable beginning. We have endeavoured first to listen to and learn from others. The formal launch of the Council was held in November 2015 and was well attended by a broad range of individuals and organisations with an interest in sentencing. A series of engagement events has been carried out, involving representatives from sentencing advisory bodies elsewhere, which will assist with the development of a guidelines methodology. For this I am grateful to my colleagues in England and Wales, Northern Ireland and the Republic of Ireland, as well as Tasmania and Victoria, whose advice has been invaluable.

One of the Council's main achievements was the launch of its website as a hub for communicating all Council activity, and, for the first time, providing a platform for information on sentencing in Scotland. It has been designed to assist the understanding of the public, as well as legal practitioners and organisations within the criminal justice system. We have received excellent feedback and continue to encourage suggestions for development and improvement. Guideline judgments made by the High Court have been identified and published on our website along

with easily read summaries and a blog was recently launched to explore in more detail specific sentencing issues. Our website will continue to expand in pursuit of our statutory objective of promoting greater awareness and understanding of sentencing policy and practice.

As set out in the Council's Business Plan 2015-18, we will soon begin preparing the first tranche of sentencing guidelines. These guidelines will be novel in, and unique to, the Scottish system. I am confident that we have made the best of beginnings to ensure our work is successful.

I am grateful to my predecessor the Rt. Hon. Lord Carloway, Lord President and Lord Justice General and Chair of the Council until January 2016, and to Catherine Dyer CBE, former Crown Agent of Scotland, and Assistant Chief Constable Val Thomson, who have now retired from their posts.

I also wish to express my gratitude to the current members of the Council for their enthusiasm, commitment and insight.

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](#). It was formally launched at an event in Parliament House in November and held its inaugural meeting on 14 December 2015.

This Annual Report describes the work to date in establishing the Council, key achievements and 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 since the Council's creation.

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.

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 will remain on the Council as a summary sheriff 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.

Council membership during 2015-16 was as follows.

Category	Position	Title
Chair	The Lord Justice Clerk, by virtue of that office	The Rt Hon Lord Carloway, until January 2016 after which Lord Turnbull became Interim Chair pending the appointment of a new Lord Justice Clerk
Judicial members Appointed by the Lord Justice General, having consulted the Scottish Ministers	One first instance High Court judge	The Hon Lord Turnbull
	One sheriff	Sheriff McFadyen
	Two persons holding the office of summary sheriff (stipendiary magistrate until 31 March 2016) 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	
Legal members Appointed by the Lord Justice General, having consulted the Scottish Ministers	One prosecutor	Catherine Dyer, former Crown Agent for Scotland
	One advocate	Stephen O'Rourke
	One solicitor	John Scott QC

Lay members Appointed by the Scottish Ministers, having consulted the Lord Justice General	One constable	ACC Val Thomson
	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

Establishment



Establishment

The Council was established on 19 October 2015 as an independent advisory body. It grew out of recommendations made by the Sentencing Commission for Scotland, a judicially-led group set up by the Scottish Executive in 2003. The

Criminal Justice and Licensing (Scotland) Act 2010 was later passed and the Scottish Government determined to establish the Council within the current parliamentary session (i.e. by spring 2016).

Key aspects of the preparatory work carried out to bring the Council into being are detailed in the table below.

Task / event	Timing and details
Recruitment of staff	Work to bring the Council into being began with the appointment of a Secretary in November 2014 and a Policy Officer in February 2015. Further staff were recruited during 2015 and the Secretariat now comprises a Secretary, Principal Legal Officer, Principal Research Officer, Policy Officer and Communications Officer.
Recruitment of members	Open recruitment exercises were carried out for several positions over summer 2015. All appointments were made by October 2015.
Subordinate legislation	<p>The following legislation was passed by the Scottish Parliament, paving the way for the Council to come into being and enabling it to perform its functions:</p> <ul style="list-style-type: none"> – The Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No.13) and the Courts Reform (Scotland) Act 2014 (Commencement No. 4) Order 2015 brought the Council fully into being on 19 October 2015 and enables the new Sheriff Appeal Court to require the Council to prepare and review guidelines in the same way as the High Court.

	<ul style="list-style-type: none"> – The Criminal Justice and Licensing (Scotland) Act 2010 (Supplementary Provision) Order 2015 was made on 17 November 2015 and gives the Scottish Courts and Tribunals Service power to make payments of expenses to Council members. – The Scottish Sentencing Council (Procedure for Appointment of Members) Regulations 2015, which regulate the process for appointing judicial and legal members to the Council, entered into force on 27 June 2015. – The Scottish Courts and Tribunals Service (Administrative Support) (Specified Persons) Order 2015, which gives the Scottish Courts and Tribunals Service responsibility for providing staff, services and property to the Council, entered into force on 27 June. – The Criminal Justice and Licensing (Scotland) Act 2010(Commencement No. 12) Order 2015 established the Council as a legal entity on 7 May 2015. – The Public Records (Scotland) Act 2011 (Authorities) Amendment Order 2015 makes the Council subject to Part 1 of the Public Records (Scotland) Act 2011, which provides for the management of public records, and entered into force on 17 September 2015. – The Scottish Sentencing Council (Submission of Business Plan) Order 2016 requires the Council to submit a three-year business plan to the Scottish Parliament.
Website	Initial launch in June 2015, with further development carried out on a staged basis as Council activity increased.
Official launch event	Held at Parliament House on 17 November 2015, with addresses by the Cabinet Secretary for Justice, Michael Matheson MSP, the then Lord Advocate Frank Mulholland QC; and the then Chair of the Council, Lord Carloway.
First meeting	The first meeting took place on 14 December 2015.



Key Achievements and Work in Progress

Key Achievements and Work in Progress

In the period from the Council's establishment on 19 October 2015 to 31 March 2016, significant achievements and good progress were made in the following areas.

Implementation of Governance Arrangements



Implementation of good governance arrangements, including adoption and implementation of:

- *standing orders and a code of conduct for members;*
- *the Scottish Information Commissioner's Model Publication Scheme 2015 and Guide to Information, in accordance with obligations under the Freedom of Information (Scotland) Act 2002; and*
- *a complaints handling procedure, in accordance with the*

requirements of the Scottish Public Services Ombudsman Act 2002.

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. A review is being carried out, which includes a series of **engagement events** involving representatives from sentencing advisory bodies elsewhere.

Prior to the establishment of the Council, the then Lord Justice Clerk and members of staff visited England and Wales on 14 and 15 May 2015 to learn about the Sentencing Council.

Following establishment, a delegation of members and staff visited the Republic of Ireland on 04 March 2016 to learn about Irish Sentencing System and meet the Steering Committee. Further arrangements were made in respect of the following planned visits and events:

- *Visit to Northern Ireland to meet the Lord Chief Justice's Sentencing Group on 07 April 2016;*
- *Lord Justice Treacy (Chairman of Sentencing Council for England and Wales) attending the Council meeting on 20 June 2016; and*

- *Professor Arie Freiberg (Chair of Victoria Sentencing Advisory Council and of the Tasmanian Sentencing Council) attending the Council meeting on 20 June 2016.*
- *Members' attendance at a Cambridge University Sentencing Roundtable discussion event 18 April 2016.*

Research and Information



A **research commissioning framework** is under development, with regard to the principles of fairness, transparency and best practice in procurement. This will enable the Council to launch commissioned projects swiftly on sentencing practice, and the effects and efficacy of different disposals.

Promoting Awareness and Understanding

The Council's **website**, along with a Twitter feed, was launched in June 2015 as a hub for communicating all Council activity. It supports the Council's objective to promote awareness and understanding, acting as a platform for providing information

on sentencing matters. The website has been subject to several updates since its launch and now includes full details of Council membership and operations, meetings, and a dedicated section on 'About Sentencing' which provides comprehensive information all in one place on: sentences, the sentencing process and what is taken into account when deciding a sentence, and the applicable law. It is designed to assist the understanding of the public, as well as legal practitioners and organisations within the criminal justice system, by explaining sentencing to those involved in court proceedings.

Openness and Engagement

At its inaugural meeting, the Council made a number of decisions demonstrating a clear commitment to transparency and to working productively with others, which include the following:

- *a commitment that all sentencing guidelines will be subject to full public consultation before being finalised;*
- *easy-read publications and communications should be prepared to help explain the sentencing process generally and the Council's work in particular;*
- *details of Council meetings to be published on the Council's website,*

including non-confidential or sensitive meeting papers; and

- *further website developments to provide public information on sentencing, including a jargon-buster.*

Presentations, Speeches and Conferences Attended

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

- **Autumn 2015:** *Secretariat presentation at 6 individual Sheriffdom Conferences*
- **November 2015:** *Scottish Association for the Study of Offending Annual Conference 2015 Crime and Justice: Past, Present and Future*
- **November 2015:** *Secretariat presentations at JP Training events for the Sheriffdoms of Lothian and Borders*
- **January 2016:** *Secretariat presentation at Justice of the Peace induction event for the Sheriffdom of North Strathclyde*
- **February 2016:** *Holyrood.com Conference: Reducing Reoffending*
- **March 2016:** *University of Leeds Conference: Electronic Monitoring in Europe: UK and European Perspectives*
- **March 2016:** *Secretariat presentation at Justice of the Peace training event for the*

Sheriffdom of South Strathclyde, Dumfries and Galloway

- **March 2016:** *Sheriff Principal Abercrombie and Sheriff McFadyen presentation at Sheriffs' Association AGM*

To raise awareness of the Council's work and encourage engagement with interested parties and the public generally, members and staff have also written press articles in various local and national publications, and legal and academic journals.

Introductory meetings between the Secretariat and various individuals and organisations with an interest in sentencing and the Council's work have been held, including with the following:

- *Scottish Government*
- *Scottish Prisons Service*
- *Crown Office and Procurator Fiscal Service*
- *Convention of Scottish Local Authorities*
- *Victim Support Scotland*
- *Scottish Universities Insights Initiative*

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

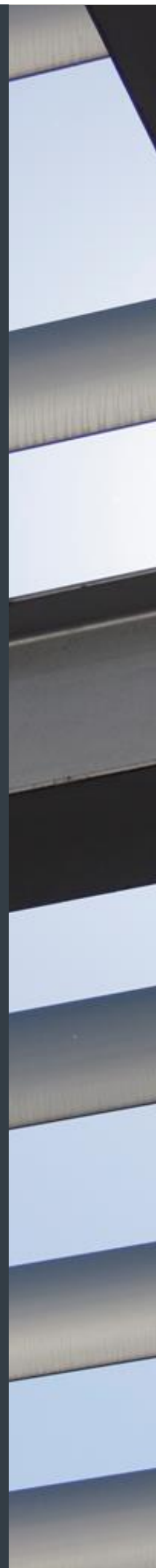
Under the 2010 Act, the High Court and the Sheriff Appeal Court may require the Council to prepare or review sentencing guidelines when issuing a guideline judgment under the relevant provisions of the Criminal Procedure (Scotland) Act 1995.



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 2016. The Council, having begun its work in late 2015, has not yet consulted on any draft guidelines or submitted any guidelines to the High Court for approval.

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 2015/16 were £394,500 made up of £280,000 for staffing costs and £114,500 for direct expenditure. The Council having operated for a part-year in 2015/16 and the staffing having reached full complement in January 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 205/16 is detailed in the table below.

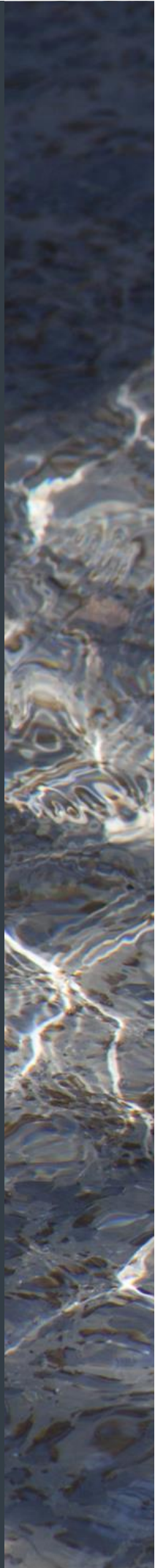
Expenditure 2015/16

Category	Description	£
Staff	Staff salary costs (including pensions and national insurance contributions)	147,102
General office expenditure	Publishing, printing, stationery etc.	3,835
Accommodation	Venue hire for consultation events or ad hoc meetings	582
Training and expenses	Members' and staff travel & subsistence and costs of training associated with Council business	3,213
Hospitality	Catering for meetings and events	3,305
Promotion	Website development and marketing and promotional materials	40,598
Total		198,635

SCTS Associated Costs

Costs relating to services and accommodation provided by the SCTS are not provided in the table above, such as: shared overheads, telephone charges, judicial travel & subsistence and backfill.

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	1
Complaints	0
Items of correspondence	25

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