

scottish justice matters

CYBERCRIME



SCOTTISH SENTENCING COUNCIL: THE WORK PLAN AND PRIORITIES FOR 2015-2018

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THE SCOTTISH SENTENCING COUNCIL was established to improve consistency in sentencing across Scotland and promote a better public understanding of the sentencing process (see March 2016 issue of *Scottish Justice Matters*). It is achieving this by preparing guidelines on sentencing for the courts and developing accessible resources for a wide range of audiences. The Council has now launched its inaugural Business Plan in which it announced its selection of the first sentencing guidelines.

Guideline selection

Its first task was to select its initial guideline topics. By law, the Council must act on a request to prepare or review guidelines made by the High Court or the Sheriff Appeal Court, and must consider any request made by the Scottish Ministers. However no such requests have yet been received.

In its selection, the Council decided to consider, in particular, the following:

- ❖ *public value*, particularly where a guideline is expected to improve awareness or understanding and/or public confidence and to what extent
- ❖ *impact*, particularly in relation to the volume of offenders, offences or disposals, and/or the extent to which a guideline might be expected to promote consistency
- ❖ *areas of particular difficulty or complexity*, for example because of the nature of the subject matter or the applicable law
- ❖ *new legislation or developments in case law* requiring a guideline to be reviewed
- ❖ *the resources required and available* for the preparation of a guideline
- ❖ *other relevant factors*, for example interaction with other guidelines.

Changes in sentencing practice can have significant impact on various parts of the justice system and guidelines must be accompanied by an assessment of the costs and benefits of their implementation and likely effects on the criminal justice system

Business Plan 2015-18

The Plan sets out the Council's priorities from October 2015 to September 2018, including initial guideline topics and beginning with a guideline on the **general principles and purposes of sentencing**.

Court decisions on appropriate sentences in particular cases do already exist in Scotland, but the fundamental principles and purposes which lie at the heart of the sentencing process have never before been comprehensively defined in a single document. This overarching guideline will help to explain to the public the sentencing process in general and what factors are taken into account by a judge when determining a sentence. It will also assist the judiciary in making sentencing decisions.

In tandem, the Council will focus on the more specific topic of sentencing young people. This is a complex area for sentencers and the public and there is room to improve understanding and build confidence. Different legal frameworks apply when sentencing young people of various age ranges and there can be difficulties in decision making because factors particular to younger people, such as maturity, may not be directly linked to age. Members will also look at whether further characteristics particular to other types of offender should be dealt with in the same broad principles and purposes guideline. This initial work will be invaluable in helping to develop a template for future guidelines in a format best suited to Scotland.

This work will be submitted to the High Court for approval by autumn 2018. In the meantime, the Council will also begin work on offence-specific guidelines.

Offence-specific guidelines

The first two offence-specific areas will be **causing death by driving** and **environmental and wildlife offences**.

Causing death by driving is a serious matter, often involving complicated circumstances that can lead to extremely difficult sentencing decisions. Fatalities can have a huge impact on families and local communities and sentencing in such cases can provoke strong emotions. Development of guidelines that reflect the offence and its consequences appropriately will be complex and challenging. As well as assisting judges with sentencing in these cases, the guideline will also help to convey to the public the reasons underlying the decisions.

Environmental and wildlife issues have particular resonance in Scotland relevant to our tourism and rural industries and are of significant importance to our economy. Guidelines on environmental offences will be particularly helpful in setting

down an approach to how corporations should be sentenced. The Council will consider, and hopes to benefit from, previous work in these areas, such as that of the independent Wildlife Penalties Review Group that reported in November 2015. It is anticipated that these offence-specific guidelines will be submitted to the High Court in 2019.

Meanwhile, the Council will begin research into the sentencing of **sexual offences**, especially those involving children, which has increasingly become an area of public concern in recent years (see also Quayle on page 17).

The Council recognises that all new guidelines will impact a range of people and organisations. Views will be sought from interested groups and their input will be considered.

Members recognise that a wide range of other offences, such as crimes of violence and house breaking, are of significant concern to the public and they are committed to addressing these areas. However, any extension of the presumption against short-term sentences would need to be taken into account before a guideline on **high volume offences** such as these could be prepared. Guidelines for these offences will therefore be considered for inclusion in the next Business Plan (2018-21).

Members also anticipate looking at **domestic abuse** once the Scottish Parliament has considered the proposed new offence currently being consulted upon. Another key issue will be **sentence discounting** where an offender receives a reduced sentence for pleading guilty.

This next Business Plan is under development and the Council very much welcomes views on its content.

Assessing the impacts of guidelines

Changes in sentencing practice can have significant impact on various parts of the justice system and guidelines must be accompanied by an assessment of the costs and benefits of their implementation and likely effects on the criminal justice system. It will be vital to ensure that these assessments are based on accurate and relevant information, in order that other organisations are able to anticipate and prepare for change. It will be helpful to establish information sharing arrangements, whether in general terms or in respect of the development of individual guidelines, with other justice agencies to support this work. Impact assessments will accompany all guidelines, whether in consultation or final form.

As well as having direct resourcing implications for the criminal justice system, sentencing has significant impact on offenders and their families, on victims and their families, on local communities and on society more generally. Research requires to be carried out to consider the effects or effectiveness of sentencing in this wider sense.

Research Committee

One of the first decisions taken by the Council was to consult widely on all guidelines and allow sufficient time to gather evidence in a systematic way. It is developing a research framework to take this forward, while also establishing a consultation processes for the judiciary, the public and interested groups. To date, different guideline styles have been tested with members of the judiciary with a view to establishing the most appropriate style for the Scottish jurisdiction.

Some of the Council's work will be conducted internally but it will also seek to work with others.

A Research Committee has been tasked with developing and managing the Council's research framework, including assessing tenders, considering speculative proposals and disseminating research findings to appropriate audiences.

A key strand will be **researching sentencing practice** throughout Scotland. To take this forward, the Committee is keen to hear from interested researchers and academics who specialise in any aspect of the sentencing process. Members would like to engage with current research relevant to sentencing and welcome anyone publishing results to contact them to highlight their work. They would also like researchers to contact them with any ideas they may have for potential projects on sentencing practice or policy.

Recent engagement with other jurisdictions

An ongoing programme of engagement has included visits to England and Wales, the Republic of Ireland, Northern Ireland and a conference on sentencing in the United States which brought together a range of representatives from numerous state sentencing commissions and justice experts. This has enabled members to build productive links with colleagues elsewhere and take away valuable information based on experience.

The Council also benefited from a visit from Lord Justice Treacy, Chair of the Sentencing Council for England and Wales, and Professor Arie Freiberg, Chair of Australia's sentencing advisory councils in Victoria and Tasmania who shared their advice on matters such as transparency, accessibility and technology.

As well as learning from others, it will be essential for the Council to obtain a comprehensive picture of current practice in Scotland itself. Members have embarked on a series of visits and events designed to broaden understanding of different aspects of the sentencing process. One of the first visits was to HMYOI Polmont and HM Prison, Low Moss to find out more about what happens after offenders receive a custodial sentence. Details of what was learned can read on the Council's blog.

Communications Committee

The Council is continuing to build its website as a comprehensive and accessible resource on sentencing in Scotland. A Communications Committee has been established to take public education forward and will work to raise awareness of how sentences are decided and what the sentencing process entails.

Onidine Tennant is secretary to the Scottish Sentencing Council. She is part of the senior management team of the Scottish Courts and Tribunals Service and previously had responsibility for establishing the Scottish Civil Justice Council.

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

Scottish Sentencing Council (2016) *Business Plan 2015-18*
<http://bit.ly/2eCL9c5>