

# Sentencing Council

**Sentencing Council meeting:** 17 July 2015  
**Paper number:** SC(15)JULY03 –Governance and Strategy  
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## **1 ISSUE**

1.1 To provide an update on progress and make recommendations relating to governance; and consider the Council's strategy and review the question of what the statutory duty to promote consistency means in practice.

## **2 BACKGROUND**

2.1 A review of the Council's ways of working, in particular governance and decision-making, was conducted by the Office and presented to the risk and audit (now governance) subgroup in February 2015. It concluded that the Council was not sufficiently focused on corporate governance and strategy matters and recommended that the Council decide the extent to which it wished to be involved in these matters and the extent to which they were delegated to its subgroups or the Office. The governance subgroup and the Chairman met to discuss these matters in May 2015; the conclusions of that meeting inform this paper.

2.2 The Council considered its future strategy in May 2014, following work conducted by the Office, the governance subgroup and the Chairman. The discussion focused on future work priorities, which have been kept under review and were considered as part of the business plan discussions in April. One of the Council's aims, and a central part of its current strategy, is to promote consistency in sentencing; this term remains undefined.

## **3 RECOMMENDATION**

3.1 That the Council:

- notes the areas in which it is responsible for ensuring good governance, the progress made and the action already taken in light of the May meeting between the governance subgroup and the Chairman (paragraphs 4.1 to 4.4);
- considers the recommendations raised at paragraph 4.5 and agrees that a small additional proportion of Council time should be devoted to governance;

- decides whether its current strategy is sufficiently clear, and whether it wishes to publish a strategy (paragraphs 4.6 – 4.7); and
- decides whether a definition of what it means by consistency is desirable and if so, what this might include (paragraph 4.8 – 4.9).

## 4 CONSIDERATION

### *Governance*

4.1 The Council operates as an expert body to develop guidelines and increase public confidence in sentencing. Its members are appointed largely on the basis of the contribution they can make to producing high quality guidelines and the vast majority of meeting time is focused on this core business, an approach reaffirmed by the Council in May 2014. However, the Council as an organisation is responsible for ensuring that it complies with governance best practice and that there is clear ownership of the following areas:

- Strategy and planning: setting the strategic direction, including long term planning and approach to cross-cutting issues, confidence and communications and analysis and research;
- Financial accountability and other compliance matters: oversight of the budget, accounts, compliance with processes and ensuring value for money; and
- Performance: delivery of core business and agreed priorities; monitoring officials' and management's performance and management information; resource decisions and oversight of risk management.

4.2 The governance subgroup and Chairman concluded that all of these areas were dealt with adequately. They noted that progress had been made in the following areas:

- Recruitment campaigns for members now target candidates with certain skills and experience in addition to the essential qualifications for the post, to fill identified skills gaps (e.g. communications, risk) or provide expertise in specific areas linked to the future work plan (e.g. youth).
- The action log now records actions agreed for both staff and Council members and tracks progress.
- There is a decision log for each guideline, to record the decisions taken and the rationale for and timing of each decision.
- Papers include questions identifying the issues on which the Council is required to take decisions, to assist members' preparation and improve the audit trail.

- The senior management team of the Office reviews the risk register and the budget on a monthly basis.

4.3 While the governance subgroup and Chairman concluded that the split of responsibility between the Council, its subgroups, the Chairman and Head of Office was broadly right, they agreed that governance matters required a higher profile and that further improvements could be made, without moving the Council away from its proper focus on guideline development and monitoring. They recommended that:

- There should be a short update at each meeting from the Head of Office, covering matters such as the budget, risk and progress against priorities.
- Decisions affecting the ability to deliver Business Plan commitments should be taken by the full Council: for example major changes to the work plan; or a new approach to analysis and research or confidence and communications.
- Operational decisions relating to performance and budget spend should be taken by the Head of Office, with oversight by the Chairman.
- Subgroups needed a refresh of terms of reference and membership.
- Subgroup chairs should report back to the Council immediately after each meeting, rather than twice a year.
- Clarification of the split of responsibilities would help everyone to understand their roles and responsibilities.

4.4 In light of this discussion, some immediate changes have been implemented:

- The terms of reference for the subgroups have been amended to refine their roles and to ensure that they align with each other. Their role as advisory rather than decision-making bodies has been clarified.
- Membership and timing of the subgroups has been reviewed and refreshed to ensure the right mix of skills and experience and telephone conferencing has been introduced (until video conferencing is available).
- Subgroup chairs have a dedicated slot at Council meetings to report on activity and escalate any issues requiring the full Council's input or a decision.
- A table setting out the roles of the Council, subgroups, Chairman and head of Office illustrates the responsibilities of each in relation to governance matters:

	<b>Financial</b>	<b>Strategy</b>	<b>Performance</b>
<b>Council</b>	Oversight of spend against forecast as part of Business Plan approval.	Approval of work plan and underpinning strategies (e.g. comms and confidence, analysis and research); reviewed at mid year.	Annual review of strategy and progress against objectives. Approval of Annual Report and Business Plan, including financial information.
<b>Chairman</b>	Oversight of Head of Office's management of budget.	Development of work plan and setting direction (with Head of Office).	Oversight of performance of Head of Office and delivery of plans. Signs off consultations. Council member annual reviews.
<b>Head of Office</b>	Management of delegated budget to ensure value for money.	Development and delivery of work programme and Business Plan (with Chairman).	Management of risks, including taking appropriate mitigating action. Takes resource decisions, in consultation with Chairman. Signs off Council papers. Performance management of Office.
<b>Governance subgroup</b>	Assesses adequacy of accounting policies, reviews management of budget and accounts and process for reviewing accounts. Oversight of non standard appointments or procurement.	Annual discussion with Chairman to review Council progress over preceding year, provide advice on effective governance and contribute to setting the strategic direction for the Council by providing support and challenge to Chairman and Head of Office.	Reviews risks identified on register with a view to ensuring that all risks to delivery of objectives and wider operating environment have been identified. Reviews mitigating actions for risks identified as black or increasing for two months.
<b>Analysis and Research subgroup</b>	Provides assurance that analysis and research budget is being reviewed regularly and managed effectively by the Office and that any procurement is appropriate, cost effective and ethical.	Advises on A&R work programme so that it aligns with Council's statutory commitments and work plan; and identifies research priorities.	Advises on scoping, design and methodology of analytical projects, assisting in the specification of these projects and comments on draft research reports, statistical bulletins and resource assessments. Provides assurance that A&R risks are being reviewed and managed effectively.
<b>Confidence and Communications subgroup</b>	Provides assurance that comms budget is being reviewed regularly and managed effectively by the office and that any procurement is appropriate, cost effective and ethical.	Advises on comms & confidence work plan so that it aligns with Council's statutory commitments and work plan; and provides comments on draft plans and strategies.	Plans and assists in specification of communications projects and provides assurance that comms risks are being reviewed and managed effectively.

4.5 It is proposed that the following changes are also introduced, with effect from September 2015. Combined with more frequent subgroup reporting, it is envisaged that this amounts to an average of an additional 15 minutes per meeting:

- There is a short update from the Head of Office at each meeting, dealing with operational matters such as budget, staffing, risk, and progress against plans, to ensure that the Council is aware of any difficulties at an early stage and to provide assurance that progress is being made.
- Significant in-year changes to the work programme (such as the decision to delay breach) must always be signed off by the Council.

**Question 1: Is the Council content with the changes already implemented?**

**Question 2: Does the Council have any observations on the recommendations at paragraph 4.5, or is it content with the changes proposed?**

**Question 3: Do Council members have any further comments on the Council's approach to governance and decision-making?**

### *Strategy*

4.6 In May 2014 the Council reviewed its strategy. It confirmed that its core function should remain the production of offence-specific guidelines, with the aim of being recognised as an authority and expert body in sentencing matters, which promotes greater consistency in sentencing and increased knowledge and understanding of sentencing matters in line with its statutory duties. It confirmed that the pace of guideline production should continue, but that this should include overarching guidelines as well as offence-specific ones. In light of the separate review of the CCSS it did not take decisions on analysis and research, but has subsequently agreed a new strategy. It agreed to give priority to confidence work, and additional resource in the communications team over the past year enabled the Office to deliver an event with Parliamentarians, to do more work to engage professional groups and to establish what level of interest different sectors of the public had in sentencing.

4.7 In April 2015, the Council reviewed the work plan and agreed its priorities for the next three years. However, although the Council publishes a Business Plan, which includes aims and objectives and a summary of the three year plan, it does not have a published strategy.

**Question 4: Are members content that the Council's strategy is sufficiently clearly understood and articulated through existing corporate reports, or do they see value in a written strategy?**

4.8 One question which has occupied the Council in the past is the definition of consistency it has in mind when describing its main aim (and indeed when considering whether it fulfils its statutory function). There is no statutory definition or other consensus on what this means. The Council has previously concluded that the consistency it is aiming for is consistency of approach rather than consistency of outcome, but even this is not easy to define. The question has arisen in the context of specific guidelines (e.g. sentencing outcomes for robbery cases in the transcript exercise, and theft) and as a more general question of principle. It has also arisen in the context of evaluation, although obtaining data for this is problematic and might not be possible in all cases.

4.9 There is value in all Council members and staff understanding consistency in the same way, in order to ensure that we are working towards the same goal, which may be explained in a straightforward way to our stakeholders, and to inform our future approach to evaluation of guidelines. The Council is invited to consider whether it can reach consensus that we are working towards any of the following points, which might be considered an informal definition. The least controversial are marked in green, the controversial in amber, and the radical in red, and are intended to prompt debate rather than be seen as firm recommendations.

- Consistency means judges and magistrates:
  - Approaching and working through the sentencing process in the same way, following the step by step approach set out in the guidelines and considering the issues in the same order.
  - Interpreting the guidelines in a predictable way, understanding the terminology in broadly the same way.
  - [In most cases] reaching the same category and starting point when presented with similar facts.
  - [In most cases] attaching the same weight to the factors they are considering, when presented with similar facts.
  - [In most cases] reaching the same sentence outcome and similar sentence lengths.

**Question 5: Do you agree that having a common understanding of consistency would be helpful?**

**Question 6: If so, what should this include?**

**Question 7: Do you agree that this should remain an informal definition, rather than a published definition?**

**Question 8: Is the Council content with this approach in light of the risk identified at paragraph 6.3 below?**

## **5 IMPACT**

5.1 There will be a limited impact on Council business arising from the changes to governance. It is due to consider and approve the annual report in September, and the work plan will be reviewed in October, at the mid year point. An update on the budget will be provided at that stage. A decision to publish either a strategy or a definition of consistency would have a greater impact on resources and potentially on public perception.

## **6 RISK**

6.1 There is a risk that “more governance” means less time for discussion of guidelines. The Chairman has expressed the firm view that the Council meetings should predominantly be about the guidelines; however he also considers it essential that the Council is more involved in the work of the subgroups and is aware of the broader issues. This risk will be mitigated by allowing short, focused time slots and continuing to provide information in writing whenever appropriate.

6.2 There may be a risk of delay to projects where the Council’s formal sign off is required. Where matters are time critical, it is proposed that Council members will be invited to make decisions between meetings (as currently happens with clearance of consultation documents).

6.3 There is a risk that having a clearer definition of consistency may lead to greater scrutiny of the Council’s success in delivering this element of its statutory duties. There is a further risk that the public will continue to view consistency as meaning consistency of outcome. On the other hand, having no such definition or common understanding also risks opening the Council up to scrutiny.

6.4 Depending on the scope of any definition, there may be a risk that we are unable to collect the data necessary to evaluate whether or not we are achieving it: this is a particular challenge in relation to quantitative evaluation.

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