

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**22 July 2022**  
**SC(22)JUL05 - Framework Document**  
**n/a**  
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## **1 ISSUE**

1.1 Finalising a draft framework agreement between the Sentencing Council and the Ministry of Justice.

## **2 RECOMMENDATIONS**

2.1 That Council notes the current draft of the proposed framework agreement at **Annex A**, and in particular sections 14 and 16 on the roles of the Council and its individual members.

## **3 CONSIDERATION**

3.1 Despite some attempts in previous years, there has never been a finalised and agreed framework document drawn up to set out the relationship and respective duties of the Sentencing Council and its sponsor department, the Ministry of Justice. This was one of the recommendations arising out of the Tailored Review of the Council conducted by the Cabinet Office, which reported in 2019.

3.2 Since then, we have worked with the Arms Length Body (ALB) Centre of Expertise in MoJ to develop such a document. The draft at **Annex A** is similar in structure to, and shares wording with, similar documents used to govern the working relationship between ALBs and their sponsor departments across Whitehall. However, we have been especially careful to ensure that there is no suggestion that the independence of the Council be compromised. For example, we have been clear that we can and should follow guidance from the department to the extent to which it relates to good governance, including financial and management practice, but this cannot extend into the policy sphere.

3.3 The Governance sub-Group has overseen several iterations of the document over time and in practice it is this group that will consider matters relating to the budget, risk and other governance issues on an ongoing basis. Section 14 of the attached draft sets out the composition and duties of the Council as a whole. Beyond its statutory functions, these include reviewing performance against the objectives we have set out in the annual business plan, making appropriate financial management decisions, and ensuring that effective arrangements are in place for risk management.

3.4 Paragraph 16.1 sets out the responsibilities of individual Council members, which are to:

- comply at all times with the Code of Conduct for Board Members of Public Bodies, which covers conduct in the role and includes the Nolan Principles of Public Life as well as rules relating to the use of public funds and to conflicts of interest;
- not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- comply with the MoJ's rules on the acceptance of gifts and hospitality, and of business appointments;
- act in good faith and in the best interests of the Council; and
- ensure they are familiar with any applicable guidance on the role of Public Sector Boards that may be issued from time to time by the Cabinet Office, HM Treasury or wider government.

3.5 Subject to clearance by the Chair, there will be a further process on MoJ's side, working with Cabinet Office, to finalise the document. Whilst nothing specific is asked of Council members, this meeting provides an opportunity to raise awareness of the document and the duties it sets out for the Council, and for Council members to raise any questions they may have on it.



**Framework Document between**

**THE MINISTRY OF JUSTICE**

**AND**

**THE SENTENCING COUNCIL**

**FOR ENGLAND AND WALES**

**Effective from XXXX 2022**



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## Introduction and Background

### 1. Purpose of document

- 1.1 This Framework Document (the “Framework Document”) has been agreed between the Ministry of Justice (“MoJ”) and the Sentencing Council of England and Wales (“the Council”) in accordance with HM Treasury’s handbook Managing Public Money (“MPM”) (as updated from time to time) and has been approved by HM Treasury.
- 1.2 The Framework Document sets out the broad governance framework within which the Sentencing Council and the MoJ operate. It sets out the Sentencing Council’s core responsibilities; describes the governance and accountability framework that applies between the roles of the MoJ, and the Sentencing Council, and sets out how the day-to-day relationship works in practice, including in relation to governance and financial matters. This framework maintains the independence of the Council whilst recognising the responsibilities of the Council, Ministers and the Permanent Secretary.
- 1.3 The document does not convey any legal powers or responsibilities but both parties agree to operate within its terms.
- 1.4 Copies of the document and any subsequent amendments have been placed in the Libraries of both Houses of Parliament and made available to members of the public on <https://www.sentencingcouncil.org.uk/>.
- 1.5 This Framework Document should be reviewed and updated at least every 3 years unless there are exceptional reasons that render this inappropriate that have been agreed with HM Treasury and the Principal Accounting Officer of the sponsor department. The latest date for review and updating of this document is [xxx] 2025.

### 2. Objectives

- 2.1. The MoJ and the Sentencing Council share the common objective of promoting greater transparency and consistency in sentencing, while maintaining the independence of the judiciary. To achieve this the Sentencing Council and the MoJ will work together in recognition of each other's roles and areas of expertise, providing an effective environment for the Sentencing Council to achieve its objectives in support of transparent and consistent sentencing.

### 3. Classification

- 3.1 For the purposes of administration and governance, the Sentencing Council is classified by Cabinet Office as a Non-Departmental Public Body with Advisory Function. Unlike most advisory NDPBs, however, the Council does not advise Ministers. The Council is independent of the Government, Parliament and of the Judiciary as regards the guidelines it issues to courts, its monitoring of their use, its resource assessments, its publications, its promotion of awareness of sentencing and in its approach to delivering these.

## **Purposes, Aims and Duties**

### **4. Purposes**

4.1 The Sentencing Council for England and Wales (referred to herein as 'the Council') was established by Part 4 of the Coroners and Justice Act 2009 (referred to herein as 'the 2009 Act').

### **5. Powers and duties**

5.1 The Council's powers and functions stem from Part 4 of the 2009 Act. Its primary statutory function is to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary.

5.2 The Council has three main areas of responsibility:

- preparing and revising sentencing guidelines, having regard to:
  - o the sentences imposed by courts in England and Wales for offences;
  - o the need to promote consistency in sentencing;
  - o the impact of sentencing decisions on victims of offences;
  - o the need to promote public confidence in the criminal justice system;
  - o the cost of different sentences and their relative effectiveness in preventing re-offending;
  - o the results of any monitoring it has carried out.
- Monitoring the operation and effect of its guidelines;
- Promoting awareness of matters relating to the sentencing of offenders by courts in England and Wales.

### **6. Aims**

6.1 The Council will set out its strategic aims in an annual business plan. The plan will include key targets and milestones for the year. The Council will publish this plan on its website and separately make it available to the Lord Chancellor, the sponsorship team in MoJ and its own staff.

### **7 Governance and Accountability**

7.1 The Council shall operate corporate governance arrangements that, so far as practicable and in the light of the other provisions of this Framework Document or as otherwise may be mutually agreed, accord with good corporate governance practice and applicable regulatory requirements and expectations.

7.2 In particular (but without limitation), the Council should:

- comply with the principles and provisions of the Corporate Governance in Central Government Departments Code of Good Practice (as amended and updated from time to time) to the extent appropriate and in line with their statutory duties or specify and explain any non-compliance in its annual report;

- comply with MPM;
  - in line with MPM have regard to the relevant Functional Standards<sup>1</sup> as appropriate and in particular those concerning Finance, Commercial and Counter Fraud; and
  - take into account the codes of good practice and guidance set out in Annex A of this Framework Document as they apply to the Council.
- 7.3 The Council Head of Office shall provide the MoJ functional leads with such information about their function's operation, performance and capabilities within the Council as may reasonably be required. In the event of any significant concerns being identified, the MoJ functional lead will draw these to the attention of the Council.
- 7.4 In line with MPM Annex 3.1 the Council shall provide an account of corporate governance in its Annual Report including the Council's assessment of its compliance with the Code with explanations of any material departures. To the extent that the Council intends to materially depart from the Code, the MoJ should be notified in advance and their agreement sought to this approach.
- 7.5 The lead officials responsible for managing each function in the Office of the Sentencing Council are accountable to the Council's Head of Office for:
- the delivery of the Council business plan objectives relevant to the function and the direction and control of associated resources;
  - the quality and value for money of the service provision; and
  - ensuring the Council adopts the relevant function's policies, controls and standards, so far as consistent with the other provisions of this framework document.
- 7.6 The lead officials responsible for managing each function in the Council are accountable to the respective Ministry of Justice function leads for:
- providing assurance over compliance with functional standards, so far as consistent with the other provisions of this framework document;
  - implementing consistent policies, systems, processes and capabilities that support and promote interoperability and efficiency; and
  - supporting the on-going development of the function.
- 7.7 The lead officials responsible for managing each function in the Council shall provide the Ministry of Justice function leads with such information about their operations, performance and capabilities as may reasonably be required and so far as consistent with the provisions of this framework document. In the event of any significant concerns being identified, the MoJ function lead will draw these to the attention of the Principle Accounting Officer (PAO).
- 7.8 The Ministry of Justice may provide additional functional services to the Council. The PAO may seek to change the precise nature of the delivery model for these functions during the lifetime of the framework document to support better delivery of the Council objectives, more consistency, increased innovation and enhanced efficiency. Where there is proposed to be significant change in the way these additional functions are delivered, the Council will be consulted. When considering the extent of the services that can be

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<sup>1</sup> <https://www.gov.uk/government/collections/functional-standards>



provided to the Council, its operational independence from Government will be a central consideration.

## **Role of the MoJ**

### **8. The Lord Chancellor**

8.1 The Lord Chancellor will account in Parliament for the Council's business.

8.2 The Lord Chancellor's statutory powers in respect of the Council are set out in Part 4 of, and Schedule 15 to the 2009 Act.

8.3 Responsibilities of the Lord Chancellor include:

- Appointing 6 members of the Council ("non-judicial members") with the agreement of the Lord Chief Justice. Appointments of non-judicial members are made under the Commissioner for Public Appointments [Governance Code on Public Appointments](#);
- Agreeing the appointment of 8 members appointed by the Lord Chief Justice ("judicial members"). The appointments of the Chair and judicial members are made by the Lord Chief Justice and are not subject to the Code of Practice (as they are not appointments under the Public Appointments Order);
- Laying the annual report of the Council before Parliament;
- Approving the resources framework within which the Council should operate; and
- Providing the Council with such assistance as it requests in connection with the performance of its functions, under the power provided in section 133 of the 2009 Act.

8.4 The Lord Chancellor will, unless other arrangements have been agreed, meet the Chair and the Head of Office at least once a year to discuss matters of mutual interest in relation to sentencing, and any other relevant issues.

### **9. The Principal Accounting Officer**

9.1 The Principal Accounting Officer ("PAO") is the Permanent Secretary of the MoJ. The PAO is also the Accounting Officer for the Council.

9.2 The PAO of MoJ designates the Head of Office as the Council's Budget Holder and ensures that they are fully aware of their responsibilities. The Senior Sponsor issues a letter appointing the Budget Holder, setting out his or her responsibilities and delegated authorities.

9.3 The respective responsibilities of the PAO and accounting officers for Arm's Length Bodies (ALB)s are set out in Chapter 3 of MPM.

9.4 The PAO is accountable to Parliament for the issue of any grant-in-aid to the Council. The PAO may delegate the exercise of their responsibilities to an appropriately senior official within the department to act as Senior Sponsor to the Council. Where these responsibilities are delegated to a Senior Sponsor, the PAO does so based on the continuing assurances provided by the Senior Sponsor, supported by the policy sponsorship team and the ALB Centre of Expertise (CoE) and MoJ functions (where applicable).

9.5 The PAO is also responsible, via the Senior Sponsor and policy sponsorship team, for advising the Lord Chancellor on:

- an appropriate budget for the Council in the light of the sponsor department's overall public expenditure priorities;
- whether the internal controls applied by the Council conform to the requirements of regularity, propriety and good financial management;
- how well the Council is achieving its objectives and whether it is delivering value for money; and
- the exercise of the Lord Chancellor's statutory responsibilities concerning the Council.

9.6 The PAO, via the Senior Sponsor and ALB CoE team (in collaboration with the MoJ policy sponsorship team) and MoJ's functions (where applicable), is also responsible for ensuring arrangements are in place in order to:

- monitor the Council's delivery against plans and expenditure within its budget allocations on a continuing basis, ensuring that such monitoring is relevant and proportionate;
- address any significant problems in the governance or management of the Council, making such interventions, with the agreement of the Council as are judged necessary;
- periodically and at such frequency as is proportionate to the level of risk carry out an assessment of the risks both to the department and the Council's objectives and activities in line with the wider departmental risk assessment process;
- inform the ALB of relevant government policy in a timely manner; and,
- bring Ministerial or departmental concerns on the governance and financial management (as set out in box 3.1 of [MPM](#)) of the Council to the full Council, and, as appropriate to the departmental Board, requiring explanations and assurances that appropriate action has been taken.

## **10 The Sponsorship Team**

10.1 The Senior Sponsor supported by the ALB Centre of Expertise and the policy sponsorship team in the MoJ and the department's functions (where applicable) is the primary contact for the Council. The responsible Senior Civil Servant for supporting this sponsorship relationship is the Head of the ALB Centre of Expertise. The Senior Sponsor is the main source of advice to the Lord Chancellor on the discharge of their responsibilities in respect of the Council. They also support the PAO in their responsibilities toward the Council. This sponsorship engagement will be guided by the principles set out in the [Cabinet Office Code of Good Practice: Partnerships between departments and arm's length bodies](#).

10.2 Officials of the ALB Centre of Expertise in the MoJ will liaise regularly with Council officials to review delivery against plans and expenditure against its budget allocations.

10.3 Liaison with the Council on matters of policy is led by the sentencing policy team within the MoJ. They will support the PAO, in advising the Lord Chancellor on the Council's activities. They will also liaise with Council officials to explain wider policy developments that might have an impact on the Council. In particular they will:

- act as an advocate for the Council in the MoJ and wider government;
- inform the Council of relevant government policy and prospective legislation in a timely manner
- ensure that, where relevant and appropriate, the Council's views are considered in policy development;
- encourage - as far as possible - policy colleagues to engage with the Council at the earliest possible opportunity in formulating policy and assist in facilitating this engagement when/where required; and
- maintain regular contact via meetings with Council officials to ensure there is ongoing dialogue around policy issues within the Council's remit;
- lead on Parliamentary Questions (PQs) related to policy relating to and affecting the Council, in consultation with the Council.

10.4 The ALB Centre of Expertise and the MoJ sentencing policy team will work closely together in matters relating to the work of the Council.

## **11 Resolution of disputes between the Council and MoJ**

11.1 Any disputes between the MoJ and the Council will be resolved in as timely a manner as possible. The MoJ and the Council will seek to resolve any disputes through an informal process in the first instance. If this is not possible, then a formal process, overseen by the Senior Sponsor, will oversee the dispute. They may then choose to ask the Permanent Secretary to nominate a non-executive member of the MoJ's Board to review the dispute, mediate with both sides, and reach an outcome, in consultation with the Lord Chancellor and Lord Chief Justice.

11.2 The above arrangement shall not prejudice the overall independence of the Council from Government, in particular with regard to conducting reviews and producing recommendations.

## **12 Freedom of information requests**

12.1 Where a request for information is received by either party under the Freedom of Information Act 2000, or the Data Protection Act 1998 or 2018, the party receiving the request will consult with the other party prior to any disclosure of information that may affect the other party's responsibilities.

## **13 Reporting on legal risk and litigation**

13.1 The Council shall provide updates when necessary to the Sponsor on the existence of any active litigation and any threatened or reasonably anticipated litigation. The parties acknowledge the importance of ensuring that legal risks are communicated appropriately to the Sponsor in a timely manner.

13.2 In the event of any substantial piece of litigation involving the Council, the parties will agree a litigation protocol which will include specific provisions to ensure appropriate and timely reporting on the status of the litigation and the protection of legally privileged information transmitted to the Sponsor to facilitate this. Until such time as a protocol is agreed, the parties will ensure that:

- material developments in the litigation are communicated to the Sponsor in an appropriate and timely manner;
- legally privileged documents and information are clearly marked as such;
- individual employees handling the legally privileged documents are familiar with principles to which they must adhere to protect legal privilege; and
- circulation of privileged information within government occurs only as necessary.

## Sentencing Council Governance Structure

### **14 The Council**

#### Composition of the Council

14.1 The Council will abide by standards of Corporate Governance consistent with the Government Code of Good Practice for Corporate Governance. The Council shall deliver its objectives, in accordance with the purposes as set out above, their statutory, regulatory, common law duties and their responsibilities under this Framework Document. Remuneration of the Council will be disclosed in line with the guidance in the Government Financial Reporting manual.

14.2 The Council will consist of 8 judicial members and 6 non-judicial members. The Lord Chief Justice is to have the title of President of the Council but is not a member of the Council.

#### Appointments to the Council

14.3 The appointment of all members of the Council are initially for a period of three years. The Chair of the Council is appointed by the Lord Chief Justice with the agreement of the Lord Chancellor also for an initial period of three years.

14.4 Under paragraph 9 of Schedule 15 to the 2009 Act the Lord Chancellor may pay —

- to any judicial member who is appointed by virtue of being a lay justice, such remuneration or expenses as the Lord Chancellor may determine, and
- to any other judicial member, such expenses as the Lord Chancellor may determine.

14.5 The Lord Chancellor may pay to any non-judicial member such remuneration or expenses as the Lord Chancellor may determine (except that, where the Director of Public Prosecutions is such a member, no remuneration may be paid to the Director).

- 14.6 Pursuant to paragraph 4 of Schedule 15 a person is eligible for appointment as a non-judicial member if the person appears to the Lord Chancellor to have experience in one or more of the following areas —
- criminal defence;
  - criminal prosecution;
  - policing;
  - sentencing policy and the administration of justice;
  - the promotion of the welfare of victims of crime;
  - academic study or research relating to criminal law or criminology;
  - the use of statistics; or
  - the rehabilitation of offenders.
- 14.7 The persons eligible for appointment as a non-judicial member by virtue of experience of criminal prosecution include the Director of Public Prosecutions.
- 14.8 Pursuant to paragraph 3 of Schedule 15 a person is eligible for appointment as a judicial member if the person is—
- a judge of the Court of Appeal,
  - a puisne judge of the High Court,
  - a Circuit judge,
  - a District Judge (Magistrates' Courts), or
  - a lay justice.
- 14.9 The judicial members must include at least one Circuit judge, one District Judge (Magistrates' Courts) and one lay justice.
- 14.10 When appointing judicial members, the Lord Chief Justice must have regard to the desirability of the judicial members including at least one person who appears to the Lord Chief Justice to have responsibilities relating to the training of judicial office-holders who exercise criminal jurisdiction in England and Wales.
- 14.11 All such appointments should have regard to the principle that appointments should reflect the diversity of the society in which we live, and appointments should be made taking account of the need to appoint boards which include a balance of skills and backgrounds.

#### Duties of the Council

- 14.12 The Council will deliver its statutory responsibilities as set out in the 2009 Act. Specific provisions engage communication between the Council and the MoJ. These are;
- a. the provision of an annual report to the Lord Chancellor (s 119);
  - b. consultation with the Lord Chancellor and others about draft guidelines (s 120(6));
  - c. consideration of any proposals made by the Lord Chancellor as to guidelines (s 124);
  - d. resource assessment of policy and legislative proposals referred by the Lord Chancellor (s 132);
  - e. requests for assistance from the Lord Chancellor (s 133); and

f. appointment of Council Members under Schedule 15.

14.13 The Council is also responsible for:

- establishing and taking forward its strategic aims and objectives within the resources framework determined by the Lord Chancellor;
- working within a framework of prudent and effective controls which enables risk to be assessed and managed;
- ensuring resources are used appropriately to ensure that the SC meets its objectives
- reviewing performance against its strategic objectives;
- demonstrating high standards of corporate governance at all times;
- regularly reviewing financial and management information concerning its management;
- informing the Lord Chancellor of any changes likely to impact on the attainability of its targets or the reputation of the MoJ, determining the steps needed to deal with such changes and where appropriate bringing such matters to the attention of the Responsible Minister and Principal Accounting Officer via the executive team, sponsorship team or directly;
- ensuring compliance with any statutory or administrative requirements for the use of public funds. The Council is responsible for its own expenditure and for operating within the limits of its statutory authority and any delegated authority agreed with the MoJ, as well as in accordance with any other guidance or conditions relating to the use of public funds;
- that, in reaching financial management decisions, the Council takes into account relevant and appropriate guidance issued by the sponsor department;
- ensuring that as part of the above compliance the Council is familiar with:
  - this framework document;
  - any delegation letter issued to the Council; and,
- determining all such other things which the Council considers ancillary or conducive to the attainment or fulfilment by the Council of its objectives.

14.14 The Council should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. The Council does not operate a separate Audit and Risk Assurance Committee. The Council is expected to assure itself of the adequacy and effectiveness of the risk management framework and the operation of internal control with reporting, by exception, provided to the Departmental Audit and

Risk Assurance Committee to ensure assurance is provided on governance and risk management where required.

- 14.15 The Council should make its own strategic choice about the style, shape and quality of risk management and should lead the assessment and management of opportunity and risk. The Council should ensure that effective arrangements are in place to provide assurance over the design and operation of risk management, governance and internal control in line with the Management of Risk – Principles and Concepts (The Orange Book). The Council is expected to assure itself of the adequacy and effectiveness of the risk management framework and the operation of internal control.

## **15 The Chair's roles and responsibilities**

- 15.1 The Chair is responsible for leading the Council in the delivery of its responsibilities. Such responsibility should be exercised in the light of their duties and responsibilities as set out in their appointment letter, the priorities in the Chair's appointment letter, the statutory authority governing the Council, this document and the documents and guidance referred to within this document.
- 15.2 Communications between the Council and the Lord Chancellor should normally be through the Chair.
- 15.3 The Chair is bound by the Code of Conduct for Board Members of Public Bodies<sup>2</sup>, which covers conduct in the role and includes the Nolan Principles of Public Life<sup>3</sup>.
- 15.4 In addition, the Chair is responsible for ensuring that by monitoring and engaging with appropriate governance arrangements the Council's affairs are conducted with probity.
- 15.5 The Chair has the following leadership responsibilities:
- formulating the Council's strategy;
  - ensuring that the Council, in reaching financial management decisions, takes proper account of guidance provided by the Responsible Minister or the department
  - promoting the efficient and effective use of staff and other resources;
  - delivering high standards of regularity and propriety; and
  - representing the views of the Council to the general public.
- 15.6 The Chair also has an obligation to ensure that:
- the work of the Council and its members is reviewed and is working effectively;

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<sup>2</sup> <https://www.gov.uk/government/publications/code-of-conduct-for-Board-members-of-public-bodies>

<sup>3</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

- the Council has a balance of skills appropriate to its business, and that the best use is made of the skills and knowledge of Council members in Council and in committees;
- with the Head of Office, Council members are fully briefed on terms of appointment, duties, rights and responsibilities;
- the Lord Chancellor and Lord Chief Justice are advised as appropriate of the Council's needs when Council vacancies arise;
- the work of the Council and its members are reviewed including ongoing assessment of the performance of individual Council members with an annual evaluation. These evaluations can be used when individual Council members are considered for reappointment; and that in conducting assessments the view of relevant stakeholders is considered.
- the Council is aware of this Framework Document and the role and responsibilities of Council Members under it;
- the Council has appropriate internal mechanisms for the monitoring, governance and external reporting regarding any conditions arising from the Framework Document and any delegation letter issued to the Council, and ensures that the Head of Office and the Sentencing Council as a whole act in accordance with their obligations under them; and
- Council members are aware of the Cabinet Office Code of Conduct for Board Members of Public Bodies.

## **16 Individual Council Members' responsibilities**

### 16.1 Individual Council Members should:

- comply at all times with the Code of Conduct for Board Members of Public Bodies, which covers conduct in the role and includes the Nolan Principles of Public Life as well as rules relating to the use of public funds and to conflicts of interest;
- not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- comply with the MoJ's rules on the acceptance of gifts and hospitality, and of business appointments;
- act in good faith and in the best interests of the Council;
- ensure they are familiar with any applicable guidance on the role of Public Sector Boards that may be issued from time to time by the Cabinet Office, HM Treasury or wider government.



## 17 The Head of Office

### Appointment

- 17.1 The Head of the OSC is a Civil Servant appointed by the MoJ after agreement with the Chairman.
- 17.2 The Head of Office is a member of the Senior Civil Service. The Head of Office's line manager for day-to-day purposes in terms of performance management and objective setting is the Chair of the Council. As the Chair is not a serving civil servant, he or she will be supported in the role of line manager by an appropriate Senior Civil Servant in the MoJ, agreed with the Head of Office. The Head of Office will be appointed on the basis of fair and open competition, per the terms outlined in the Civil Service Commission's Recruitment Principles.<sup>4</sup>

### Responsibilities of the Head of Office as Budget Holder

- 17.3 The Head of Office as budget holder is personally responsible for safeguarding the public funds for which they have charge; for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds; and for the day-to-day operations and management of the Council. In addition, they should ensure that the Council as a whole is run on the basis of the standards, in terms of governance, decision-making and financial management, that are set out in Box 3.1 of MPM. These responsibilities include the below and those that are set in the budget delegation letter by the Senior Sponsor.

### Responsibilities to Parliament and the public

- 17.4 Responsibilities to Parliament and the public include:
- ensuring that effective and proportionate procedures for handling complaints about the Council in accordance with Parliamentary and Health Service Ombudsman's Principles of Good Complaint Handling are established and made widely known within the Council and published on the Council's website;
  - acting in accordance with the terms of MPM and other instructions and guidance issued from time to time by the Department, the Treasury and the Cabinet Office;
  - ensuring that as part of the above compliance they are familiar with and act in accordance with:
    - o any governing legislation;
    - o this framework document;
    - o any delegation letter issued to the Council;
  - ensuring they have appropriate internal mechanisms for the monitoring, governance and external reporting regarding non-compliance with any conditions arising from the above documents;

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<sup>4</sup> <https://civilservicecommission.independent.gov.uk/recruitment/recruitment-principles/>

- being subject to the scrutiny of the House of Commons Justice Select Committee and giving evidence when called to do so; and
- giving evidence, normally with the PAO, when summoned before the Public Accounts Committee on the Council's stewardship of public funds.

#### Responsibilities to the MoJ

17.5 Responsibilities to the MoJ include:

- establishing the Council's corporate and business plans, and ensuring that they align with and support the delivery of the Council's statutory functions;
- informing the department of progress in achieving the Council's objectives and in demonstrating how resources are being used within its budget allocations to achieve those objectives; and
- ensuring that timely forecasts and monitoring information on performance and finance are provided to the department; that the department is notified promptly if over or under spends are likely and that corrective action is taken; and that any significant problems whether financial or otherwise, and whether detected by internal audit or by other means, are notified to the department in a timely fashion.

#### Responsibilities to the Council

17.6 The Head of Office is responsible for:

- supporting the Council in ensuring that effective systems and arrangements are in place to provide assurance on risk management, governance and internal control;
- working with the Chair to advise the Council on the discharge of the Council's responsibilities as set out in this document, in the founding legislation and in any other relevant instructions and guidance that may be issued from time to time;
- advising the Council on its performance compared with its aims and objectives;
- assisting the Council to establish and take forward the strategic aims and objectives consistent with its overall strategic direction and within the resource framework approved by the Lord Chancellor;
- regularly reviewing financial information about the management of the Council, ensuring they are informed in a timely manner about any concerns about the activities of the Council; and can assure MoJ that appropriate action has been taken on such concerns; and
- that they have appropriate internal mechanisms for the monitoring, governance and external reporting regarding any conditions arising from this Framework Document and any delegation letter issued to the Council, and ensure that they act in accordance with their obligations under those documents.
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Managing conflicts

- 17.7 Save as provided in paragraph 16.9, the Head of Office should follow the advice and direction of the Council.
- 17.8 If the Council, or its Chair, is contemplating a course of action involving a transaction which the Head of Office considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, is of questionable feasibility, or is unethical the Head of Office in their role as budget holder should reject that course of action and ensure that the Council have a full opportunity to discuss the rationale for that rejection.
- 17.9 Such conflicts should be brought to the attention of the Senior Sponsor and the PAO as soon as possible.
- 17.10 Furthermore, and if agreed with the Lord Chancellor, the budget holder must write a letter of justification to the Chair of the Council setting out the rationale for not following the advice and recommendation of the Council and copy that letter to the Treasury Officer of Accounts, and Lord Chief Justice as the President of the Council.
- 17.11 If the Lord Chancellor agrees with the proposed course of action of the Council it may be appropriate for the Minister to direct the budget holder in the manner as set out in Managing Public Money paragraph 3.6.6 onwards.

## Management and financial responsibilities and controls

### **18 Delegated authority**

- 18.1 The ALB's delegated authorities are set out in the delegation letter. This delegation letter may be updated and superseded by later versions which may be issued by MoJ, in agreement with HM Treasury. The Council's budget is delegated to it through its Senior Sponsor.
- 18.2 In line with MPM Annex 2.2 these delegations will be reviewed on an annual basis.
- 18.3 At all times, the Council shall uphold the principles and duties set out in MPM and it is the responsibility of the Council Budget Holder to ensure compliance is maintained. If the Budget Holder is intending to pursue a course of action that might conflict with those duties, before proceeding they should consult with the Senior Sponsor and where appropriate seek PAO and HM Treasury's prior written approval before:
- entering into any undertaking to incur any expenditure that falls outside the delegations or which is not provided for in the Council's annual budget as approved by the department;
  - incurring expenditure for any purpose that is or might be considered novel or contentious, or which has or could have significant future cost implications;
  - making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the department;

- making any change of policy or practice which has wider financial implications that might prove repercussive or which might significantly affect the future level of resources required; or
- carrying out policies that go against the principles, rules, guidance and advice in Managing Public Money.

## **19 Spending authority**

19.1 Once the budget has been approved by the MoJ the Council shall have authority to incur expenditure approved in the budget without further reference to the sponsor department, on the following conditions:

- the Council shall comply with the delegations set out in the delegation letter. These delegations shall not be altered without the prior agreement of the MoJ and as agreed by HM Treasury and Cabinet Office as appropriate;
- the Council shall comply with MPM regarding novel, contentious or repercussive proposals;
- inclusion of any planned and approved expenditure in the budget shall not remove the need to seek formal departmental approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed;
- the Council shall provide the MoJ with such information about its operations, performance, individual projects or other expenditure as the sponsor department may reasonably require.

## **20 Procurement**

- 20.1 Where the Council undertakes procurement activities, it shall ensure that its procurement policies are aligned with and comply with any relevant UK or other international procurement rules and in particular the Public Contracts Regulations 2015.
- 20.2 The Council shall follow MoJ procurement policies.
- 20.3 In procurement cases where the Council is likely to exceed its delegated authority limit, procurement strategy approval for the specific planned purchase must be sought from the Department's sponsor team.
- 20.4 Goods, services, and works should be acquired by competition. Proposals to let single-tender or restricted contracts shall be limited and exceptional, and a quarterly report explaining those exceptions should be sent to the Department.
- 20.5 Procurement by the Council of works, equipment, goods, and services shall be based on, a full option appraisal and value for money (VfM), i.e. the optimum combination and whole life costs and quality (fitness for purpose).

20.6 The Council shall:

- a) engage fully with Department and Government wide procurement initiatives that seek to achieve VfM from collaborative projects,
- b) comply with all relevant Procurement Policy Notes issued by Cabinet Office and
- c) co-operate fully with initiatives to improve the availability of procurement data to facilitate the achievement of VfM.

20.7 The Council shall comply with the Commercial and Grants Standards. These standards apply to the planning, delivery, and management of government commercial activity, including management of grants in all departments and ALBs, regardless of commercial approach used and form part of a suite of functional standards that set expectations for management within government<sup>5</sup>.

## 21 Risk Management

21.1 The Council shall ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and develop a risk management strategy, in accordance with the Treasury guidance *Management of Risk – Principles and Concepts (The Orange Book)*.

## 22 Fraud, Bribery and Corruption

22.1 The Council should adopt and implement policies and practices to safeguard itself against fraud, bribery and corruption. This includes staff fraud and theft.

22.2 The Council should act in line with guidance as issued by the Counter Fraud Function and in compliance with the procedures and considerations as set out in Managing Public Money Annex 4.9 and the Counter Fraud Functional Standard<sup>6</sup>. It should also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter a contract, outside of the work entered into on behalf of other government departments.

22.3 The Council should keep records of and prepare and forward to the department an annual report on fraud, bribery and corruption suffered by the Council and notify the sponsor department of any unusual or major incidents as soon as possible. The Council should also report detected loss from fraud, bribery, corruption and error, alongside associated recoveries and prevented losses, to the MoJ Counter Fraud Centre of Expertise in line with the agreed government definitions as set out in Counter Fraud Functional Standard.

## 23 Staff

### Broad responsibilities for staff

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<sup>5</sup> <https://www.gov.uk/government/publications/commercial-operating-standards-for-government>  
<https://www.gov.uk/government/publications/grants-standards>

<sup>6</sup> <https://www.gov.uk/government/publications/government-functional-standard-govs-013-counter-fraud>

23.1 Within the arrangements approved by the Lord Chancellor and HM Treasury the Council will have responsibility for the recruitment, retention and motivation of its staff. The broad responsibilities toward its staff are to ensure that:

- the rules for recruitment and management of staff create an inclusive culture in which diversity is fully valued; appointment and advancement is based on merit: there is no discrimination against employees with protected characteristics under the Equality Act 2010;
- the level and structure of its staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness;
- the performance of its staff at all levels is satisfactorily appraised and the Council's performance measurement systems are reviewed from time to time;
- its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the Council's objectives;
- proper consultation with staff takes place on key issues affecting them;
- adequate grievance and disciplinary procedures are in place; and
- whistle-blowing procedures consistent with the Public Interest Disclosure Act are in place.

#### Staff costs

23.2 Subject to its delegated authorities, the Council shall ensure that the creation of any additional posts does not incur forward commitments that will exceed its ability to pay for them.

#### Pay and conditions of service

23.3 The Council's staff are subject to levels of remuneration and terms and conditions of service (including pensions) within the general pay structure approved by the MoJ and the Treasury. The Council has no delegated power to amend these terms and conditions.

23.4 Civil Service terms and conditions of service apply to the rates of pay and non-pay allowances paid to the staff and to any other party entitled to payment in respect of travel expenses or other allowances. Payment shall be made in accordance with the Civil Service Management Code<sup>7</sup> and the annual Civil Service Pay Remit Guidance<sup>8</sup>, except where prior approval has been given by the department to vary such rates.

23.5 Staff terms and conditions should be set out in relevant sections of the MoJ Intranet.

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<sup>7</sup> <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>

<sup>8</sup> <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>

23.6 The Council shall abide by public sector pay controls, including the relevant approvals process dependent on the organisation's classification, as detailed in the Senior Pay Guidance<sup>9</sup> and the public sector pay and terms guidance.<sup>10</sup>

23.7 The travel expenses of Council members shall be tied to the departmental rates. Reasonable actual costs shall be reimbursed.

#### Pensions, redundancy and compensation

23.8 Compensation scheme rules and pension scheme rules should reflect legislative and HM Treasury guidance requirements regarding exit payments.

23.9 Council staff are eligible for the Civil Service pension scheme. Staff may opt out of the occupational pension scheme provided by the MoJ, but that employer's contribution to any personal pension arrangement, including stakeholder pension shall normally be limited to the national insurance rebate level.

23.10 Any proposal by the Council to move from the existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the prior approval of the MoJ. Proposals on severance must comply with the rules in chapter 4 of MPM.

## Business Plans, Financial Reporting and Management Information

### **24 Business Plans, Financial Reporting and Management Information**

24.1 The Council shall share annually with the ALB Centre of Expertise and the policy sponsorship team in the MoJ, a business plan setting out the objectives for the coming year, as well as information on plans and objectives for future years, which will be published on the Council's website. A draft will be shared by the Summer Recess. The plan shall reflect the Council's statutory and/or other duties.

24.2 The business plan shall be updated to include key targets and milestones for the year immediately ahead and where possible shall be linked to budgeting information so that resources allocated to achieve specific objectives can readily be identified by the department. Subject to any commercial considerations, the business plan should be published by the Council on its website and separately be made available to staff.

24.3 The following key matters should be included in the plan:

- key objectives and associated key performance targets for the forward years, and the strategy for achieving those objectives;
- key non-financial performance targets;

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<sup>9</sup> <https://www.gov.uk/government/publications/senior-civil-service-pay-and-reward>

<sup>10</sup> <https://www.gov.uk/government/publications/public-sector-pay-and-terms-guidance-note>

- a review of performance in the preceding financial year, together with comparable outturns for previous years, and an estimate of performance in the current year; and
- alternative scenarios and an assessment of the risk factors that may significantly affect the execution of the plan but that cannot be accurately forecast.

## **25 Budgeting procedures**

- 25.1 Each year, the MoJ will send to the Council as close as possible to the end of the preceding financial year a formal statement of the annual budgetary provision allocated by the department. This shall be agreed in accordance with the Departmental Allocations processes.
- 25.2 The approved annual business plan will take account both of approved funding provision and any forecast receipts and will include a budget of estimated payments and receipts together with a profile of expected expenditure. These elements form part of the approved business plan for the year in question.

## **26 Grant-in-aid**

- 26.1 Any grant-in-aid provided by the department for the year in question will be voted in the department's Supply Estimate and derive from the monies voted to the MoJ by Parliament.
- 26.2 The grant-in-aid will normally be paid in monthly instalments on the basis of written applications showing evidence of need. The Council will comply with the general principle, that there is no payment in advance of need. Cash balances accumulated during the course of the year from grant-in-aid or other Exchequer funds shall be kept to a minimum level consistent with the efficient operation of the Council. Grant-in-aid not drawn down by the end of the financial year shall lapse. Subject to approval by Parliament of the relevant Estimates provision, where grant-in-aid is delayed to avoid excess cash balances at the year-end, the MoJ will make available in the next financial year any such grant-in-aid that is required to meet any liabilities at the year end, such as creditors.

## **27 Annual report**

- 27.1 The Council must publish an annual report of its activities. A draft of the report should be submitted to the department at least two weeks before the proposed publication date.
- 27.2 The annual report must outline main activities and performance during the previous financial year and set out in summary form forward plans.
- 27.3 The report shall be laid in Parliament by the Lord Chancellor pursuant to section 119(2) of the 2009 Act and be made available on the Council's website.

## **28 Reporting performance to the department**

- 28.1 The Council shall operate management, information and accounting systems that enable it to review in a timely and effective manner its financial and non-financial performance against the budgets and targets set out in the business plan.



28.2 The Council shall report financial and non-financial performance, including delivery against plans and expenditure within its budget allocations, including in twice-yearly Business Assurance meetings with the Partnerships team.

28.3 The Senior Sponsor will meet the Head of Office at least once a year.

## **29 Information sharing**

29.1 The MoJ has the right of access to all Sentencing Council records and personnel for any purpose including, for example, sponsorship audits and operational investigations, with the exception of data pertaining to independent Sentencing Council work.

29.2 The Council shall provide the sponsor department with such information about its operations, performance, individual projects or other expenditure as the sponsor department may reasonably require.

29.3 The MoJ and HM Treasury may request the sharing of data held by the Council in such a manner as set out in central guidance except insofar as it is prohibited by law. This may include requiring the appointment of a senior official to be responsible for the data sharing relationship.

29.4 As a minimum, the Council shall provide the MoJ with information monthly that will enable the department satisfactorily to monitor:

- the Council's cash management;
- its draw-down of grant-in-aid;
- forecast outturn by resource headings;
- other data required for the Online System for Central Accounting and Reporting (OSCAR); and
- data as required in respect of its compliance with any Cabinet Office Controls pipelines or required in order to meet any condition as set out in any settlement letter.

## Reviews and winding up arrangements

### **30 Review of the Sentencing Council**

30.1 The Council will be reviewed in line with the Cabinet Office's Guidance or as per Cabinet Office requirements. These principles aim to ensure public bodies remain fit for purpose, well governed and properly accountable for what they do.

### **31 Arrangements in the event that the Sentencing Council is wound up**

31.1 The abolition of the Council, changes to its functions, or major changes to its structure would require the repeal or amendment of the 2009 Act.

31.2 If the Council were to be abolished, the MoJ shall put in place arrangements to ensure its orderly winding. In particular it should ensure that the assets and liabilities of the Council are passed to any successor organisation and accounted for properly. (In the event that

there is no successor organisation, the assets and liabilities should revert to the sponsor department.) To this end, the department shall:

- have regard to Cabinet Office guidance on winding up of ALBs;
- ensure that procedures are in place in the Council to gain independent assurance on key transactions, financial commitments, cash flows and other information needed to handle the wind-up effectively and to maintain the momentum of work inherited by any residuary body; specify the basis for the valuation and accounting treatment of the Council's assets and liabilities;
- ensure that arrangements are in place to prepare closing accounts and pass to the C&AG (Comptroller and Auditor General) for external audit, and that, for non-Crown bodies funds are in place to pay for such audits. It shall be for the C&AG to lay the final accounts in Parliament, together with his report on the accounts;
- arrange for the most appropriate person to sign the closing accounts. In the event that another ALB takes on the role, responsibilities, assets and liabilities, the succeeding ALB AO should sign the closing accounts. In the event that the department inherits the role, responsibilities, assets and liabilities, the sponsor department's AO should sign.

31.3 The Council should also pass to the MoJ details of any other forms of claw-back due to the Council.

Signatures

This Framework Document is agreed between:

Lord Justice Holroyde - Chair of the Sentencing Council

James McEwen – CFO and Senior Sponsor

Date: [day / month] 2022

## **Compliance with Government-wide corporate guidance and instructions**

The Sentencing Council shall comply with the following general guidance documents and instructions except in so far as they conflict with the Council's independence in discharging its statutory functions:

- appropriate adaptations of sections of Corporate Governance in Central Government Departments: Code of Good Practice <https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments-2017>
- Managing Public Money <https://www.gov.uk/government/publications/managing-public-money>;
- Public Sector Internal Audit Standards [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/641252/PSAIS\\_1\\_April\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641252/PSAIS_1_April_2017.pdf)
- Management of Risk: Principles and Concepts: <https://www.gov.uk/government/publications/orange-book>
- A guide to managing fraud for public bodies <https://www.gov.uk/government/publications/a-guide-to-managing-fraud-for-public-bodies>;
- Government Financial Reporting Manual (FRoM), <https://www.gov.uk/government/publications/government-financial-reporting-manual-2019-20>; Cabinet Office's Policy on Spending Controls.
- <https://www.gov.uk/government/publications/cabinet-office-controls-version-5/cabinet-office-controls-policy-version-5>
- Fees and Charges Guide, Chapter 6 of Managing Public Money;
- Departmental Banking: A Manual for Government Departments, Annex 5.6 of Managing Public Money;
- relevant Dear Accounting Officer letters;
- Regularity, Propriety and Value for Money, <https://esrc.ukri.org/files/about-us/governance-and-structure/regularity-propriety-and-value-for-money-hm-treasury-see-annex-21/>
- The Parliamentary and Health Service Ombudsman's Principles of Good Administration <https://www.ombudsman.org.uk/about-us/our-principles/principles-good-administration>;
- Consolidation Officer Memorandum, and relevant DCO letters;
- Model Code for Staff of Executive Non-departmental Public Bodies, Public Bodies: A Guide for Departments, Chapter 5 Annex A [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690948/Public\\_Bodies\\_-\\_a\\_guide\\_for\\_departments\\_-\\_chapter\\_5.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690948/Public_Bodies_-_a_guide_for_departments_-_chapter_5.pdf) (Cabinet Office) and
  - other relevant guidance and instructions issued by HMT in respect of Whole of Government Accounts.

**HM Treasury contacts**

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**Annex A**

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