



Ministry
of Justice

Tailored Review of the Sentencing Council of England and Wales



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Executive Summary

- 1.1 Tailored Reviews provide assurance to Ministers and the relevant Principal Accounting Officer about the ongoing need for the functions provided by an Arm's Length Body (ALB). Reviews are conducted in line with Cabinet Office guidance to ensure that an ALB's delivery contributes to departmental strategic priorities and to examine the body's efficiency, effectiveness, accountability and governance arrangements in a fair and transparent way.
- 1.2 The Sentencing Council is a Non-Departmental Public Body (NDPB) sponsored by the Ministry of Justice (MoJ); its remit is to issue guidelines on sentencing for the judiciary and criminal justice professionals and to increase public understanding of sentencing.
- 1.3 The review consulted key stakeholders (see Annex C) and considered a range of evidence including reports and advice published by the body. It was supported by a critical friend, the Chief Executive of the Law Commission, who provided input throughout the review and challenge to the assumptions and recommendations.
- 1.4 The review found that the current delivery model as a NDPB is still the most appropriate, that the Council's functions are still required, and that the Council is effective and efficient in the delivery of its responsibilities.

1.5 Key recommendations from this review are as follows:

Recommendations	Page Number
Form and Functions	
1. The Sentencing Council should continue to carry out the functions required by the Coroners and Justice Act 2009, including derivative functions.	p6
2. The Sentencing Council should continue to operate in its current form as a Non-Departmental Public Body (NDPB) at arm's length from government.	p7
Transparency	
<p>With a view to improving the transparency of the Sentencing Council it should:</p> <p>3. Consider widening public awareness of its work through cost-effective engagement with other criminal justice bodies;</p> <p>4. Consider how to make its website clearer regarding the information it contains and where on the site it is held;</p> <p>5. Ensure that the procedure for publishing its responses to all consultations is clearly set out on its website;</p> <p>6. Consider whether its meeting minutes provide sufficient explanation of its decision making and include more detail if required;</p> <p>7. Publish a description of how the Council's Business Plan is devised and its priorities set</p>	<p>p8</p> <p>p13</p> <p>p13</p> <p>p13</p> <p>p14</p>
Internal governance	
<p>With a view to improving its internal governance the Sentencing Council should:</p> <p>8. Collaborate with the Department to agree and implement a Framework Document. It should be published on the Sentencing Council website and reviewed every three years;</p> <p>9. Clearly define the role of the Senior Management Team in its Annual Reports and Framework Document; and</p> <p>10. Consider expanding the remit of its Governance Committee to include formal responsibility for the Council's risk register and Business Plan. This should include monitoring performance against Business Plan objectives with the appropriate authority for ensuring the Council's compliance with the risk register, and for meeting its Business Plan objectives.</p>	<p>p10</p> <p>p11</p> <p>p11</p>
Diversity	
<p>With a view to improving its diversity:</p> <p>11. The Sentencing Council should actively engage, and consult more widely, with Black and Minority Ethnic (BAME) groups.</p> <p>12. The Sentencing Council and the MoJ Public Appointments Team should continue to work together to maintain gender balance and ethnic diversity of non-judicial members. The Council should consider how to increase the ethnic diversity of judicial members.</p>	<p>p8</p> <p>p12</p>

Purpose and Scope of the Review

- 2.1 The Public Bodies Transformation Programme guidance 2016-20 notes that the government will review its ALBs at least once during the lifetime of Parliament. Tailored Reviews (TRs) provide assurance to government and the public on the continued need for a public body. Where appropriate, reviews make recommendations to improve the efficiency, effectiveness, and governance arrangements of the bodies under review.
- 2.2 Evidence for the review was gathered via desk research and a series of interviews with key stakeholders. The review was supported by a critical friend, the Chief Executive of the Law Commission, who provided input to the initial terms of reference and provided challenge to the assumptions and recommendations in the final report.
- 2.3 Further detail on what TRs are, the Terms of Reference (ToR) for this review and a full list of stakeholders can be found at Annexes A - C.

Context

Historical Context

- 3.1 The Sentencing Council has been in operation since April 2010 when it replaced the Sentencing Guidelines Council and the Sentencing Advisory Panel following the enactment of the Coroners and Justice Act 2009.¹ It was established to promote greater transparency and consistency in sentencing whilst maintaining the independence of the judiciary. Its remit is to issue guidelines on sentencing for the judiciary and criminal justice professionals, and to

increase public understanding of sentencing. There have been no major changes to the Sentencing Council's statutory duties since its creation.

- 3.2 This is the first time the Sentencing Council has been reviewed as part of the Cabinet Office mandated TR programme.

Current Context

- 3.3 For the financial year 2017/18, the Council published three definitive guidelines. These were:
 - Overarching principles – domestic abuse;
 - Bladed articles and offensive weapons; and
 - Terrorism.
- 3.4 The Sentencing Council continues to work towards its goals of issuing guidelines covering all the most frequently sentenced either-way² offences and to have replaced the guidelines issued by its predecessor, the Sentencing Guidelines Council, by the time of the Council's tenth anniversary in 2020.
- 3.5 During this review a new Chair was appointed who will have the responsibility for implementing the review's recommendations, which once published, will become MoJ policy.

Purpose and Structure of the Sentencing Council

- 4.1 The Sentencing Council is a NDPB sponsored by the MoJ. The Council itself is made up of the President and 14 members including the Chair³. It is supported by the Office of the Sentencing Council (OSC) which is made up of 18 members of staff who are civil servants.

¹ https://www.legislation.gov.uk/ukpga/2009/25/pdfs/ukpga_20090025_en.pdf

² An either way offence is a criminal offence that can be heard in the magistrates' or Crown Court

³ <https://www.sentencingcouncil.org.uk/about-us/council-members/>

4.2 The Sentencing Council operates with three sub-groups which have responsibility for supporting the Council in their respective areas. More detail on each group is provided in the governance section of this report; the sub groups cover the following areas:

- Governance;
- Confidence and communication; and
- Analysis and research.

Functions

4.3 The Coroners and Justice Act 2009 sets out the following functions for the Sentencing Council:

- Developing sentencing guidelines and monitoring their use;
- Assessing the impact of guidelines on sentencing practice. It may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the government; and
- Promoting awareness amongst the public regarding the realities of sentencing and publishing information regarding sentencing practice in Magistrates' and Crown Courts.

4.4 In addition, the Council has the following derivative functions:

- Considering the impact of sentencing decisions on victims;
- Monitoring the application of the guidelines; and
- Playing a greater part in promoting understanding of, and increasing public confidence in, sentencing and the criminal justice system.

Are these Functions Still Required by Government?

5.1 Evidence and stakeholder feedback suggests that the Council and its functions play a vital role in the administration of justice,

monitoring sentencing guidelines and helping to raise awareness amongst the public on sentencing issues. The review team support this view and conclude the functions of the Sentencing Council are still required.

Recommendation

The Sentencing Council should continue to carry out the functions required by the Coroners and Justice Act 2009 including derivative functions.

Classification

6.1 The Sentencing Council is a NDPB sponsored by the MoJ. The vast majority of stakeholders interviewed fully support this model and recognise that the Council's current form helps protect its independence from undue influence by politicians or the judiciary.

6.2 The review assessed the Sentencing Council against the Cabinet Office's Functional Review of Bodies Providing Expert Advice to Government⁴ to determine whether the Sentencing Council should remain as an NDPB or whether designation as an Expert Committee may be more appropriate. The Sentencing Council has several identifying factors which suggest that it should remain an NDPB, such as a larger dedicated secretariat which supports the Sentencing Council's core functions.

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638959/Functional_Review_of_Bodies_Providing_Expert_Advice_to_the_Government-Report__1_.PDF

- 6.3 In addition, there is a risk that if the Sentencing Council were reclassified to an Expert Committee, there could be a perception of a loss of independence. To ensure and maintain public confidence in the work of the Council it is essential that it must be, and be seen to be, independent of government.
- 6.4 Based on the evidence and stakeholder engagement, the review team considers the Sentencing Council's current form the most appropriate for the delivery of its functions and the safeguarding of its independence. As such, the review recommends that the Council retains its current form as an NDPB of the MoJ.

Recommendation

The Sentencing Council should continue to operate in its current form as an NDPB at arm's length from government.

Effectiveness and Efficiency

Remit

- 7.1 The majority of stakeholders who commented on the Council's remit noted that it is sufficiently wide and that the Council operates effectively and efficiently against an ambitious programme of work. The review team acknowledges the breadth and variety of work being delivered in a climate of stretched resources.
- 7.2 Evidence obtained suggested that the quality of the Council's guidelines (including its drafts) are well regarded and are useful, earning the respect and confidence of sentencers and system

users. One stakeholder commented that the Council would be better focusing on high-level principles rather than areas such as sentence length in its guidelines.

- 7.3 A third of stakeholders noted that the Sentencing Council delivers a significant amount of work in producing thorough and comprehensive guidelines. At the time of this review the Council had published 25 definitive guidelines and six guideline assessments. The review team notes the need to allow adequate time for guidelines to be implemented before an assessment is carried out.

Workplan

- 7.4 As part of its yearly Business Plan the Council produces an indicative workplan setting out the guidelines it intends to produce along with public consultations on guidelines, publications of guidelines and "in force" dates⁵. Overall, stakeholders considered the Council's workplan to be robust, but suggested that the Council could explain how the plan is devised and what degree of flexibility could be applied. It was also suggested that the workplan could go out to consultation with stakeholders and should include the regular review of guidelines; a view the review team share.
- 7.5 Comments from three stakeholders suggested that the Council would benefit from looking beyond its statutory requirements and focusing on a longer-term strategic plan. The review team notes that the Council's Business Plan⁶ sets out its objectives and how these are delivered. This includes the process for prioritising, developing, publishing and monitoring guidelines.

Electronic guidelines

- 7.6 The review notes the Sentencing Council's move towards digital working including piloting the availability of guidelines to magistrates

⁵ An "in-force" date is the date a guideline becomes effective

⁶ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Business-plan-2017-18.pdf>

via an iPad app. The review team also notes that a “lessons learned” exercise was conducted following the roll out of the iPad app to magistrates and prior to rolling this out to judges.

Consultation

- 7.7 The Sentencing Council is required to prepare and draft guidelines and seek public comment via consultation. Following a consultation, the Council makes revisions as appropriate and issues a definitive guideline. Consultations are open to the public, but are of particular interest to professionals in the criminal justice field, academics or those with experience of the criminal justice system.
- 7.8 Stakeholders place high importance on the legislative requirements for guideline consultation and most are supportive of the Council’s consultations, generally considering them to be of good quality. The Council considers its consultations to be well publicised and that it engages with the appropriate organisations. The review team acknowledges the OSC’s experience in identifying appropriate consultation groups but also found that there is scope to contact a wider selection.
- 7.9 This is supported by stakeholders who are keen for consultations to include community groups and for the Council to consider broadening the groups it approaches to ensure it captures a representative sample of feedback and comments. For example, stakeholders thought there should be more guideline consultation with professional bodies to avoid the concern that consultations have a narrow field of respondents.
- 7.10 The review team notes the positive feedback on the Council’s approach to consultations and the continuing need to consult with members of the public. However, evidence also suggests that the Council should consult more widely; in particular, actively engaging with the Black, Asian and Minority Ethnic (BAME) community, via focus groups, to ensure a broad and diverse set of respondent viewpoints. This is something the review team supports.

Recommendation

The Sentencing Council should actively engage, and consult more widely, with BAME groups.

- 7.11 One stakeholder proposed greater collaboration between the Sentencing Council and other criminal justice sector bodies, for example the Crown Prosecution Service about its outreach or community work. This could provide the Council with the opportunity to increase public awareness and understanding of its role and responsibilities at a relatively low cost.
- 7.12 The review team agrees that closer working with other, appropriate, criminal justice bodies offers a good opportunity for the Sentencing Council to widen public awareness of its work. Other stakeholders also commented on the benefits of focus groups covering both specific participants, such as judges and academics, and broader groups, covering the wider public. The review team also agrees that the Sentencing Council could benefit from closer working with specific criminal justice bodies to widen public understanding of their role.

Recommendation

The Sentencing Council should consider widening public awareness of its work through cost-effective engagement with other criminal justice bodies.

Research and Analysis

- 7.13 The Sentencing Council undertakes both research and analysis as part of its work, with a number of analytical obligations placed on it by the Coroners and Justice Act. It also conducts social research, to ensure the views of judges, magistrates, victims, witnesses and the public are taken in consideration on proposed new guidelines.
- 7.14 The Council's approach to research received mixed views. Whilst some stakeholders commented that it produces consistent and high-quality research, adding significant value to the development of guidelines, others suggested there were areas for improvement, including:
- undertaking more research on the effectiveness of sentencing on preventing reoffending and the impact on BAME groups; and
 - increased transparency in the use of research methods to allow for assessment of its research – for example, whether the Council is keeping up with developing trends in crime.
- 7.15 Stakeholders consider it important to ensure guidelines do not have a disproportionate impact on specific social groups. This further supports the recommendation for the Council to engage with a broad group of representative groups to ensure diversity of feedback.
- 7.16 The Coroners and Justice Act 2009 places several analytical obligations on the Sentencing Council including:
- Monitoring the operation and effect of its sentencing guidelines;
 - Publishing information regarding sentencing practice for the Crown Court and magistrates' courts;
 - The cost of different sentences and their relative effectiveness in preventing re-offending; and
 - Resource assessments in respect of any guidelines it produces.
- 7.17 Stakeholders commented that there was a lack of analytical evidence available on the effectiveness of sentencing and the need to analyse the implications of its guidelines. At the time of this review the Sentencing Council had published 24 final resource

assessments of its guidelines and 26 statistical bulletins detailing current sentencing practice with five published during 2017/18. The Sentencing Council also publishes on its website Guideline Assessments on the impact of its definitive guidelines.

Resources

- 7.18 The OSC receives its funding from Parliament via the MoJ. In 2018/19 it received £1.40m, a reduction from £1.45m in the previous financial year. Approximately 85% of funding equates to OSC staffing costs with the remaining 15% attributed to costs for research, publications and business as usual e.g. IT and training.
- 7.19 The budget is delegated from the relevant Policy Director General in the MoJ to the Head of the OSC who is responsible for its management and proper use. This includes compliance with MoJ's internal processes and with the principles set out in Managing Public Money and other relevant Treasury guidance.
- 7.20 The Justice Committee, in its response to the review, highlighted concerns over resourcing: "*The Council is inhibited in its research functions by lack of resources*". The Committee are of the view that with additional resourcing to fulfil its functions in engaging with, and educating the public and as promoting awareness of the cost of different sentences, it would contribute more effectively to the debate on sentencing and resources.
- 7.21 The Committee also observed that the Council should be more transparent in drawing to the attention of the government instances where the lack of resources inhibits the capacity of sentencers to adhere to guidelines and good sentencing practice. Other stakeholders interviewed shared these views, particularly on the points of engaging with the public and the Council's ability to commission external research. The OSC noted that its research teams are stretched. Most research, including consultations, is carried out internally but it does make use of external researchers, including academics, when it has financial resources available.

7.22 The review team acknowledges the concerns raised, by the Sentencing Council and stakeholders – including the Justice Committee with regards to funding including concerns that budget constraints often have an impact on the number of guidelines produced. The review team recognises the excellent work of the Council and notes this is against a backdrop of a reduction in its 2018/19 budget. The team would encourage the Council to continue to work closely with the MoJ on its funding requirements to ensure that resourcing issues are closely monitored and there is not a detrimental impact on the Sentencing Council’s ability to undertake its functions.

setting out the purpose, objectives, accountabilities and roles between both parties to be of great importance. This is supported by the principles set out in the Cabinet Office document “Partnerships between departments and arm’s length bodies: Code of Good Practice”.⁷ This would also address the Justice Committee’s comments highlighting the lack of a formal Memorandum of Understanding setting out the relationship between the department and the Council. The review team therefore recommends the Council and the MoJ work together to agree and implement a Framework Document.

Governance

Framework

- 8.1 As a NDPB, the Council is accountable to the Permanent Secretary of the MoJ as Principal Accounting Officer and to Ministers for the efficient and proper use of public funds delegated to the Council.
- 8.2 There is regular engagement between the OSC and its MoJ Finance Business Partners. The OSC and MoJ also undertake an annual Impact and Support Analysis (ISA) process which assesses the OSC’s compliance with relevant requirements in the following areas:
- Governance;
 - Risk management;
 - Financial management;
 - Operational management;
 - People management;
 - Policy and delivery environment alignment; and
 - Opportunity maximisation
- 8.3 The review team notes that there is no Framework Document in place between the Sentencing Council and the MoJ. The team considers the establishment of a robust Framework Document

Recommendation

The Sentencing Council should collaborate with the Department to agree and implement a Framework Document. It should be published on the Sentencing Council website and reviewed every three years.

Senior Management Team

- 8.4 Governance of the Sentencing Council is provided by the OSC. The OSC has a Senior Management Team (SMT) of 10 members (including the Chair) and includes the Head of Communications, Head of Legal, Head of Policy, Head of Analysis and their deputies.
- 8.5 The SMT meet monthly with standing agenda items covering the Council’s budget, risk register, communications and stakeholder strategies. It does not specifically look at the Council’s workplan as

⁷ <https://www.gov.uk/government/publications/partnerships-with-arms-length-bodies-code-of-good-practice>

this is covered in a separate SMT meeting, providing clear separation of responsibilities and decision-making authority.

- 8.6 Whilst the remit of the SMT is consistent with other NDPBs, one stakeholder noted that it was not always clear what decisions they made, suggesting there is potentially a need for the OSC to reconsider the remit and membership of the SMT. To ensure the role of the SMT is appropriate and clearly understood, the review team recommends that the Council clearly define the role in its Annual Reports and Framework Document with the MoJ, whilst also being transparent about the decisions made at SMT meetings.

Recommendation

The Sentencing Council should clearly define the role of the Senior Management Team in its Annual Reports and Framework Document.

Sub-Groups

- 8.7 As well as the SMT, the Council's governance structure includes the following three sub-groups, each chaired by a Council member:
- Governance sub-group
 - Confidence and Communications sub-group; and
 - Analysis and Research sub-group

Governance sub-group

- 8.8 The governance sub-group supports the Council in its responsibilities, by reviewing the comprehensiveness and reliability of assurances on governance, risk management and the integrity of financial statements.
- 8.9 The review team recommends that the Council considers giving the Governance Committee formal responsibility for the Sentencing Council's risk register and Business Plan, including monitoring performance against Business Plan objectives. This would require

appropriate authority to hold the Council to account for meeting its Business Plan objectives and managing its risk register. It was noted by one stakeholder that *"it wasn't clear where the discussion on risk went after the Governance Committee have spoken to the head of OSC"*. Giving the Governance Committee formal responsibility for the risk register and Business Plan will improve the transparency of decision making and clearly define where accountability lies in this area.

Recommendation

The Sentencing Council should consider expanding the remit of its Governance Committee to include formal responsibility for the Council's risk register and Business Plan. This should include monitoring performance against Business Plan objectives with the appropriate authority for ensuring the Council's compliance with the risk register, and for meeting its Business Plan objectives.

Confidence and Communication sub-group

- 8.10 The Confidence and Communication sub-group supports the Sentencing Council by providing advice and direction on areas of work including:
- the work programme for the Communications team and aligning it with the Council's statutory commitments and workplan;
 - planning communications projects;
 - providing guidance and feedback on draft plans and strategies; and
 - providing assurance that the communication budget and risks are being reviewed regularly and managed effectively.

Analysis and Research sub-group

- 8.11 The Analysis and Research sub-group supports the Sentencing Council by advising and providing direction in areas such as the analysis and research strategy. This includes:
- identifying research priorities in alignment with the Council's statutory commitments and workplan;
 - advising on the scoping and methodology of analytical projects; and
 - commenting on draft documents such as research reports and statistical bulletins.

Does the Sentencing Council comply with Principles of Good Governance?

- 8.12 In assessing the governance arrangements, the review assessed the Cabinet Office's Good Practice Indicators (set out in Annex D). The Council and sponsoring department comply with most of these principles, however, the review team found some areas requiring improvement, such as:
- Meeting Minutes - the Council should consider if its minutes provide enough information on its decision making and include more detail where required;
 - Publication of consultation responses - the Council should ensure the procedure for publishing its responses to all consultations is clearly set out;
 - Business Plan - the Council should publish a description of how its Business Plan is devised and priorities set; and
 - Framework Document - There is currently no Framework Document between the Council and the Ministry of Justice.

Diversity

- 8.13 The Sentencing Council is a consultative body that ultimately serves the interest of the public. It is, therefore, essential that its membership should represent those they consult with and those that they seek to serve.

- 8.14 Focusing on the membership of the Council, the Coroners and Justice Act 2009 specifies that the Council should consist of 14 members. The Chair is appointed by the Lord Chief Justice, with the agreement of the Lord Chancellor and must be a judicial member. Eight members are appointed by the Lord Chief Justice with the agreement of the Lord Chancellor (judicial members) and six members appointed by the Lord Chancellor with the agreement of the Lord Chief Justice (non-judicial members).
- 8.15 At the time of this review, the Council's membership, comprised 14 members (including the Chair) made up of:
- five male members (35%);
 - nine female members (65%); and
 - two members are from a BAME background (15%).
- 8.16 The review team considers the balance of the Council in terms of its judicial and non-judicial membership to be balanced (and in line with legislation) and includes representatives of appropriate interest groups such as victims and academics. It also found the Council's membership to have good gender diversity but BAME membership could be improved. Whilst the Council should continue to appoint members with the appropriate knowledge, background and experience necessary, it should also continue to work with the MoJ's Public Appointments Team to maintain gender diversity and increase the ethnic diversity of judicial and non-judicial members.

Recommendation

The Sentencing Council and the MoJ Public Appointments Team should continue to work together to maintain gender balance and ethnic diversity of non-judicial members. The Council should consider how to increase the ethnic diversity of judicial members.

8.17 Assessing any potential gender pay gap on the Council is difficult given its small membership and the fact that the judicial members, along with the police and Director of Public Prosecutions/Crown Prosecution Service members, do not receive any remuneration in addition to their salary for sitting on the Council. The Council's non-judicial members are public appointees and all receive remuneration of £12,000 per annum.

Transparency

8.18 There is an increasing focus on transparency throughout government. The Prime Minister has written to central departments outlining transparency data standards and urging departments to go further where they can, making data "as useful as possible to citizens, business, the voluntary sector and Government itself".

8.19 The Council publishes a wide variety of documents on its website however it was evident from feedback that some stakeholders were not aware of the depth of information available. The review team recommends that the Council considers how to make its website clearer regarding the information it contains and where this is held. Documents published on the website including:

- Consultations;
- Consultation responses;
- Corporate reports;
- Guidelines;
- Guideline assessments;
- Minutes; and
- Research reports.

Recommendation

The Sentencing Council should consider how to make its website clearer regarding the information it contains and where on the site it is held.

Guideline Consultations

8.20 Evidence suggests that the Council is reasonably transparent, however the review team consider there is the potential for further improvements. The Council publishes its responses to all consultations on its website however the review team believe it would enhance the understanding of the Council's work if the procedures around the publication of its responses was better understood. The team recommends that the Council ensures that the procedures for publishing its responses is clearly set out on its website.

Recommendation

The Sentencing Council should ensure the procedure for publishing its responses to all consultations is clearly set out on its website.

Internal Council meetings

8.21 Internal Council meetings include members of the Council, representatives of the Crown Prosecution Service, the Lord Chief Justice, the Lord Chancellor and members of the OSC. The Council's meeting minutes are published on its website, however one stakeholder expressed concern that the minutes do not provide sufficient evidence of the Council's decision making or deliberations and that more openness and transparency is needed. The review team believe there is scope for these to be more thorough and detailed providing more information on how the Council makes its decisions.

Recommendation

The Sentencing Council should consider whether its meeting minutes provide sufficient explanation of its decision making and include more detail if required.

- 8.22 In terms of the interaction the Council has with Parliament, the Justice Committee noted that it has informal discussions with the Chair and the OSC on how the Committee can best scrutinise sentencing guidelines.
- 8.23 The Committee noted that its relationship with the Sentencing Council is “*positive and constructive*” and that they are aware that the Council feels it would benefit from broader engagement with MPs. To help further interaction with MPs and with the support of the Committee, the Council held an engagement event for MPs; although attendance at the event was not as high as the Council would have hoped for, it noted its appreciation of the Committee’s regular engagement including the Committee’s Chair attending a court session with the Council’s Chair.

Website

- 8.24 The Justice Committee, in its response to the review, noted that the Council have acknowledged it could do more to educate the public about sentencing and that the Council’s website was in the process of being refreshed. The Committee drew reference to the Scottish Sentencing Council, and particularly its myth-busting section which helps to address public concerns, as a useful comparison.
- 8.25 The Council publishes its workplan as an annex to its Business Plan, although not all stakeholders interviewed realised this was the case. The review team believe that it would be beneficial if the Council published, on its website, a description of how its Business Plan is devised and priorities set.

Recommendation

The Sentencing Council should publish a description of how the Council’s Business Plan is devised and its priorities set.

Location

- 9.1 To encourage the movement and creation of jobs outside of London and in pursuit of the government’s Industrial Strategy, the Cabinet Office has established the Places for Growth Programme. In line with this strategy, the review team has explored whether London continues to be the most appropriate location for the Sentencing Council.
- 9.2 The Council is currently based within the Royal Courts of Justice as its work involves regular engagement with senior judiciary and the Court of Appeal Criminal Division although the Council’s membership is drawn from around the country. Determination of the longer-term location for the Sentencing Council will be considered as part of government’s Places for Growth Programme and it will be for the Sentencing Council to decide whether they submit a business justification if they believe they have a strong case to remain in London.

Devolution

- 10.1 The Sentencing Council provides sentencing guidelines for the judiciary and magistrates in England and Wales and does not include any members from Scotland or Northern Ireland. The Council does not provide guidelines outside of England and Wales and does not work with either the Scottish or Northern Irish devolved authorities. No issues relating to devolution have been identified during this review.

EU Exit

- 11.1 The Sentencing Council is accountable to the UK Parliament for the delivery of its statutory remit set out in the Coroners and Justice Act 2009 and therefore this review has identified no direct impact on the Council or its work following the UK’s exit from the European Union.

Annexes

Annex A - Scope and Purpose of Tailored Reviews

A Non-Departmental Public Body (NDPB) should only exist where there is clear evidence that this model is the most efficient and cost-effective way for the organisation to fulfil its statutory functions and only where these functions are still required. In February 2016, the Cabinet Office announced the Government's ALB Review Strategy 2016-2020 which states that all Arm's Length Bodies (ALBs) will undergo a substantive review during the lifetime of each Parliament.

Tailored Reviews have the following aims;

1. To provide a robust challenge to, and assurance of, the continuing need for individual organisations as well as assessing their function and form, and;
2. where it is agreed that an organisation is required, it is then necessary to consider its capacity for delivering more effectively and efficiently, and to evaluate the control and governance arrangements in place to ensure compliance with recognised principles of good corporate governance.

As the name suggests, the reviews are tailored to the organisation being looked at. The review team will consider how best to structure and carry out these reviews following discussions with sponsors, investigative work to understand the organisation's operating environment and mapping of the organisation's key stakeholders. The Review requires early engagement with senior leaders in the relevant organisation to facilitate a collegiate approach and to agree the process the review will follow.

These reviews are carried out in line with the Cabinet Office principles outlined in "Tailored Reviews: Guidance on Reviews of Public Bodies":

- I. **Proportionality:** Reviews should not be overly bureaucratic and should be appropriate for the size and nature of the organisation being reviewed.
- II. **Challenge:** Reviews should be challenging and take a first principles approach to whether each function is required, is being delivered effectively and still contributes to the core business of the organisation.
- III. **Being Strategic:** All NDPBs must be subject to a tailored review at least once in the lifetime of a Parliament. Departments should define the scope of the review depending on any wider policy or strategic reviews that are being conducted, and also consider combining the requirements of a tailored review within the scope of any other planned review or evaluation of the department's public bodies.
- IV. **Pace:** Reviews should be completed quickly to minimise the disruption to the organisation's business and should normally take no longer than 6 months, keeping in mind the principle of proportionality.

- V. **Inclusivity:** Reviews should be open and inclusive. The organisation under review should be engaged and consulted throughout the review and have the opportunity to comment on emerging conclusions and recommendations.
- VI. **Transparency:** The final report should set out any recommendations, including any that address areas of non-compliance with corporate governance. Any such issues of non-compliance should be considered by the sponsor. An implementation plan for the agreed recommendations should be agreed between the public body and the sponsor.

Process and Methodologies:

Cabinet Office guidance states that the Review should first identify the main functions of the NDPB. It should evaluate how these functions contribute to the core business of both the NDPB and the sponsor department and consider whether these functions are still required. Where the Review finds clear evidence that a particular function is needed, it should then explore how best to deliver this function.

When considering potential delivery models, the Review should explore a wide range of options, including;

- Whether the function can be better delivered by local Government or the voluntary sector;
- Whether the function should move to the private sector;
- If it would be beneficial to merge with another existing body;
- Whether the function can be delivered by the sponsoring department;
- If a less formal structure would deliver better results, or;
- Whether the function should transfer to a new Executive Agency or Government body.

Part Two looks to identify efficiencies, evaluate control and governance arrangements and assess the overall performance of the organisation under review.

Annex B - Terms of Reference

2018 Tailored Review of the Sentencing Council – Terms of Reference

OBJECTIVES

The Sentencing Council for England and Wales (the Council) produces guidelines on sentencing for the judiciary and criminal justice professionals and aims to increase public understanding of sentencing. The Council is based in London.

In line with Cabinet Office requirements, the Tailored Review (TR) of the Sentencing Council will provide robust challenge to and assurance on the continuing need for the organisation. The review will be “light touch” being shorter than a full review and more proportionate to the size and budget of the Council.

The Review will assess and challenge whether each function:

- is still needed;
- is still being delivered effectively; and
- contributes to the core business of the organisation, the MoJ and the government as a whole.

If the function/s are still required, the review will consider whether the existing model of delivery is still appropriate and test it against alternative delivery options.

The Review will also analyse the delivery model of the organisation by considering the ‘three tests’:

- Does the ALB perform a technical function?
- Does it need to be delivered with political impartiality?
- Does it need to be delivered independently of Ministers?

SCOPE

As a light touch review the scope will cover:

- **Functions:** the review will examine all current functions, including opportunities for streamlining;
- **Efficiency and effectiveness**
 - Explore the capacity of the Council to deliver more effectively and efficiently
 - Assess the performance of the Council and make sure that processes are in place for such assessments;
- **Governance:** evaluate the control and governance arrangements in place to ensure the Council and its sponsors are complying with recognised principles of good corporate governance as per Cabinet Office guidance (see Annex A);
- **Evaluate the diversity of the body**, including action to be taken in response to Gender Pay Gap Reporting.
- **Transparency:** assess the transparency of the Sentencing Council, its decision making and information/data in the public domain;
- **Location:** assess the extent to which the current location of the Council is appropriate.
- **EU:** consider the impact on the Council, if any, of the UK leaving the EU.
- **Devolution:** understand the impact, if any, of the devolved context.

METHODOLOGY

- Conduct desk research of key documents.
- Roundtable event with stakeholders including members of the Sentencing Council to gain an understanding of the body and the challenges it faces.
- Consult with private office and Partnership Leads to inform and support the TR and align with the departmental transformation and reform agenda.
- Work with MoJ experts to provide advice on analytical, financial, legal and policy aspects to make sure any recommendations are robust and achievable.

SIGNIFICANT DELIVERABLES

- Publication of Sentencing Council TR report (summer 2018).
- Lessons learned exercise completed and report delivered (autumn 2018).
- Deliver and put in place an Action Plan for implementation of the recommendations (for internal use only)
- The review **will not** consider how the Council’s functions may develop in the future, wider sentencing policy or recommendations, actual sentences or their impact on the prison population

ROLE OF THE Senior Responsible Officer

- Provide leadership and direction.
- Monitor delivery of the review.
- Scrutinise weekly updates from the TR Team.
- Empowered to authorise changes to the scope of the review.

ROLE OF THE CRITICAL FRIEND (Phillip Golding, Chief Executive of the Law Commission)

- Oversight of the reviews.
- Provide assurance on the quality of sponsorship and governance.
- Provide a robust challenge to the assumptions and recommendations of the review.

MINISTERIAL SIGN-OFF (Rory Stewart and Secretary of State)

The MoJ's Minister will have the opportunity to comment on the scope of the review and will sign off the final report and recommendations. The Minister for the Cabinet Office will sign off the terms of reference. As a Tier 3 review the final report will be cleared by the Cabinet Office at official level and emerging findings will be shared with them.

STAKEHOLDERS

- Sentencing Council staff and Board members
- Crown Court judges
- CPS and Police
- Magistrates association
- Other Government Departments
- Academics

ANNEX

Annex A:

Cabinet Office Tailored Review Guidance, 2016.
<https://www.gov.uk/government/publications/tailored-reviews-of-public-bodies-guidance>

Annex C - Stakeholder List

The review team approached several key stakeholders to participate in the review. Comments were received from the following:

- Academic
- Crown Prosecution Service
- High Court Judges
- Magistrates' Association
- Ministry of Justice policy sponsors
- Prison Reform Trust
- Sentencing Council Chair, members and Head of the Office of the Sentencing Council
- The Council of Circuit Judges
- The Howard League
- The Justice Committee
- Transform Justice



Annex D - Governance assessment against Cabinet Office's Good Practice Indicators

Good Practice Indicator	Assessment	Evidence
There is a clear, agreed remit for the body, including scope and coverage of advice and the priority work programme.	Green	<ul style="list-style-type: none"> The full functions of the Council are set out in the Coroners and Justice Act 2009.
Resources are available to support the body in fulfilling its remit.	Amber	<ul style="list-style-type: none"> Although stakeholder feedback notes the Council is operating effectively with their current resources comments also note the current level of resources may impact on the Council's research, focus, engagement, outreach work, guideline assessments, other pieces of work the Council could consider undertaking, and note the reduction in resource from the time the Council was created. The Council's research team are stretched
Advice and recommendations are based on objective analysis of the evidence available.	Green	<ul style="list-style-type: none"> Guidelines prepared by the Council are based on extensive public consultations and research by the Council.
Chairs and members of bodies visibly uphold high standards of personal and professional conduct	Green	<ul style="list-style-type: none"> The Chair of the Council and the judicial members are serving judges whose terms of appointment will be set out by the Judicial Appointments Commission. These will include behaviour and standards relating to outside activities and interests. Non-judicial members will be expected to abide by the seven Principles of Public Life, also known as the Nolan Principles.
There are clear rules and procedures in place for managing conflicts of interest.	Green	<ul style="list-style-type: none"> These are set out in the terms of appointment of the Chair and members.
There are clear liaison, reporting and escalation routes.	Green	<ul style="list-style-type: none"> The Head of the Office of the Sentencing Council meets with Ministry of Justice sponsors The Lord Chancellor is represented on the Council
Department-level assurance processes are clear and proportionate.	Green	<ul style="list-style-type: none"> The Ministry of Justice's assurance procedures are small, appropriately and proportionately reflecting the Sentencing Council's size and budget
Key supporting documents should be in place and up to date.	Amber	<ul style="list-style-type: none"> The Council's yearly Business Plan and Annual Reports are published on the Council's website. There is currently no Framework Document between the Council and the Ministry of Justice. This review recommends that such a document is drafted and implemented.
There is a proportionate approach to capturing impact, value and cost-effectiveness.	Amber	<ul style="list-style-type: none"> The Council undertakes assessments of its guidelines. The review recommends that the Council should regularly assess the impact of the sentencing guidelines and publish updates on assessment progress and its findings

Good Practice Indicator	Assessment	Evidence
There is a commitment to feedback and continuous improvement on both sides.	Amber	<ul style="list-style-type: none"> The Council consults widely on its draft guidelines before publication and considers the feedback it receives. The review has recommended that the Council ensures responses to all consultations are published on its website
The body collaborates proactively to add value.	Green	<ul style="list-style-type: none"> The Sentencing Council undertakes extensive research into its guidelines consulting the public and with interested groups. The review recommends the Sentencing Council should consider approaching specific community groups directly for their comments on consultations including the use of focus groups.
There is a recruitment and appointment strategy that promotes diversity and maintains the skills and capacity of the committee in both the immediate and longer term.	Amber	<ul style="list-style-type: none"> The membership of the Sentencing Council is defined by legislation which may impact on the diversity of the Council however non-judicial members are appointed following a public appointments competition. The review recommends that the Sentencing Council and the MoJ Public Appointments Team should continue to work together to maintain gender diversity and increase the ethnic diversity of non-judicial members. The Council should consider how to increase the ethnic diversity of judicial members.
Recruitment and appointment procedures are clear, transparent, robust and timely and designed to ensure that the best people, from the widest possible pool of candidates, are appointed.	Green	<ul style="list-style-type: none"> Judicial members of the Council are appointed by the Lord Chief Justice with the agreement of the Lord Chancellor; the non-judicial members are appointed by the Lord Chancellor with the agreement of the Lord Chief Justice following a fair and open competition run by the Ministry of Justice Public Appointments Team
There should be a presumption of openness and transparency.	Green	<ul style="list-style-type: none"> The Council publishes corporate documents on its website including annual reports, business plans, guidelines, research reports and consultations. The review has recommended that the Council should consider if its minutes provide sufficient detail and include more if required, ensure all responses to all consultations are published, publish and provide more detail on its workplan and publish details on the impact of its guidelines.