



# **CODE OF CORPORATE GOVERNANCE**

## 1. INTRODUCTION

- 1.1 Community Justice Authorities (CJAs) were established by the Management of Offenders etc. (Scotland) Act 2005 and have been operating since April 2006, with 2006/07 as a shadow year. From April 2007 they assumed their full responsibilities as set out in the Act and supporting regulations.
- 1.2 North Strathclyde Community Justice Authority (NSCJA) operates in a framework set out in law which determines its status role and, through Regulations, specifically The Community Justice Authorities (Establishment, Constitution and Proceedings) (Scotland) Order 2006 (SSI 182), some aspects of how it must operate.

## 2. Governance, Roles and Relationships

- 2.1 Governance concerns the processes by which organisations are led, managed and held to account. Good governance requires these processes to be robust and transparent.
- 2.2 There are many documents available about governance, some of which are specific to the public sector. These include the “Good Governance Standard for Public Services” published by CIPFA in 2004 and “On Board – A guide for Members of Public Bodies in Scotland” published by the Scottish Executive. This latter document states that all public bodies must have at their head a group which is responsible for:-
  - giving leadership and strategic direction;
  - defining control mechanisms to safeguard public resources;
  - supervising the overall management of the body's activities; and
  - reporting on stewardship and performance.
- 2.3 This then is the governance role of the NSCJA. It has decided to delegate some of the activities necessary to fulfil its role to the Chief Officer, and through the Chief Officer to other staff. It has also decided to delegate some activities to others appointed for specific purposes, for example it has delegated the details of financial stewardship to a Treasurer. NSCJA has a scheme of Delegation which specifies delegated activities. However, the overall responsibility lies with the CJA itself. The scheme of delegation is available on our website [www.nscja.co.uk](http://www.nscja.co.uk).
- 2.4 NSCJA must be aware of and take appropriate steps to address their statutory obligations as a corporate body. This includes having appropriate insurances, including Public Liability Insurance and Employers Liability Insurance, as well as ensuring that other policies and procedures are in place to cover all aspects of the legal responsibilities of the CJA, both as a corporate body and as employers, and to protect the rights of employees.
- 2.5 There are three fundamental principles of corporate governance:

*Openness* This is required to ensure that stakeholders can have confidence in the decision-making processes and actions of public bodies in the management of their activities, and in the individuals within them. Being open through meaningful consultation with stakeholders and communicating full, accurate and clear

information can lead to effective and timely action and helps ensure that there is full scrutiny of activities.

*Integrity* This comprises both straightforward dealing and completeness. It is based upon honesty, selflessness and objectivity and high standards of propriety and probity in the stewardship of public funds and the management of a body's affairs. It derives from the effectiveness of the control framework and on the personal standards and professionalism of the individuals within the body. It is reflected in the body's decision-making procedures and also in the quality of its financial and performance reporting.

*Accountability* This is the process whereby public bodies and the individuals within them are responsible for their decisions and actions, including their stewardship of public funds and all aspects of performance, and submit themselves to appropriate external scrutiny. It is achieved by all parties having a clear understanding of those responsibilities, and having clearly defined roles through a robust structure.

- 2.6 Applying the principles of good corporate governance within NSCJA will require members to operate within the agreed Code of Conduct and the Register of Members' Interests to be maintained. Both these documents are available on [www.nscja.co.uk](http://www.nscja.co.uk).
- 2.7 Core to good governance is an awareness of the risks faced by the organisation. Service related risks will be borne by the service provider but there will be organisational risks which the CJA needs to be aware of and ensure that they are appropriately managed. For example, NSCJA will struggle to achieve its objectives if it loses the confidence of key partners, its ability to plan would be seriously hampered by an IT system failure and its ability to operate would be jeopardised by a serious cut in infrastructure funding. NSCJA therefore has developed a risk management process, embracing business continuity, and a risk management plan which is regularly monitored and updated.

### **3. Legal and Constitutional Issues**

- 3.1 Community Justice Authorities are established in terms of the Management of Offenders, etc. (Scotland) Act 2005. Section 3(1) gives power to the Scottish Ministers to establish Community Justice Authorities and it is specified that such authorities will be corporate bodies.
- 3.2 The significance of the reference to authorities being corporate bodies is that they are created as legal entities in their own right. However, Section 3(2) provides further clarification in that an authority is not to be regarded as a servant or agent of the Crown, its members or employees are not to be regarded as civil servants and that the Authority does not have immunity or privilege of the Crown. The CJA, as a corporate body and having its own legal personality can enter into contracts, it can sue and be sued; and it is responsible for its own debts and liabilities.
- 3.3 The extent to which individual members of an authority might be personally liable for the actions of the Authority is not specified in either the Act or the Community Justice Authorities Establishment, Constitution and Proceedings (Scotland) Order 2006.

- 3.4 There is a presumption that the individual members of such a corporate body will not assume liability for the actions, obligations or debts of the body. However, there is a further presumption with a corporate body that in certain circumstances individual members might assume personal liability:
- Where there has been a failure of a duty of care by the body.
  - Where there has been fraud.
  - Where the body has acted outwith the scope of its constitution; and
  - Where personal sanctions arise from other legislation, e.g. health and safety, etc.
- 3.5 In terms of mitigating risk it would be important for members of authorities to exercise good governance and to be aware of their responsibilities:
- To use reasonable skill and care;
  - To act within the constitution; and
  - To act in good faith in the interests of the authority.

#### **4. The Duty to Co-operate**

- 4.1 The duty to co-operate referred to in Section 1 (1) of the Management of Offenders (Scotland) Act 2005 includes the exchange of information and concerns CJAs, Local Authorities and Scottish Prison Service (SPS) within the context of their particular strategic and operational relationship.
- 4.2 The type of activities co-operation may involve can be broken down into four areas:
- Providing a point of contact for other agencies
  - Providing general and/or specific advice about the agency's role and the services it provides
  - Co-ordination: this key partnership function requires each agency to perform its role and to carry out its responsibilities, in a way which at best complements the work of other agencies
  - Joint planning: providing a framework and leading a process for the active involvement and co-operation of partners in preparing the NSCJA plan
  - Service delivery: reviewing service delivery arrangements and facilitating the efficient and cost effective delivery of services across its area and between agencies
  - Information sharing: one of the most important means by which co-operation is achieved.

#### **5. The accountability of NSCJA and the Chief Officer to Scottish Ministers**

- 5.1 NSCJA's accountability to Scottish Ministers is enacted principally through the requirements to submit an Area Plan and an Annual Report. In addition NSCJA must provide Ministers with a copy of each Local Authority's report on its arrangements to assess and manage the risks posed by certain specific offenders.

- 5.2 The Chief Officer is required to report to Scottish Ministers on any issues regarding under-performance by NSCJA itself, a constituent Local Authority or Scottish Ministers, in practice the SPS, in fulfilling the requirements of the Area Plan. Also, the Chief Officer is required, upon request by Scottish Ministers, to report at any time upon activity and performance in North Strathclyde CJA over a specified period.

#### *Area Plans*

- 5.3 Area Plans must be prepared and submitted at a frequency specified by Ministers. At the present time Area Plans are required to cover a 3 year period.
- 5.4 It will be particularly important that NSCJA establishes effective arrangements for consulting statutory and other partners in preparing their Area Plans. We will seek to involve other bodies at as early a stage as possible and statutory partners' consultation will be restricted to commenting upon draft plans. NSCJA will in particular work closely with SPS and local authorities as the bodies which have the principal statutory function in relation to offender management.

#### *Annual Reports*

- 5.5 Annual Reports must be submitted to Ministers as soon as possible after the end of each financial year. The Scottish Government will be publishing guidance on Annual Reports in due course.

## **6. The accountability of Local Authorities and SPS to NSCJA**

- 6.1 Section 3 subsection (5) (c) of the Act specifies one of the functions of NSCJA to be issuing directions to a Local Authority or making recommendations to SPS in so far as it considers their performance to be unsatisfactory in complying with the Area Plan.
- 6.2 NSCJA has therefore put in place effective measures to record, measure and manage their performance and that of Local Authorities and SPS against specified targets and indicators. These targets and indicators will reflect national outcomes and measurements and the performance framework and the performance management arrangements established will build on those currently being developed.
- 6.3 Performance management arrangements should include:

*Setting outcomes* – a set of clear outcomes should be specified that represent the higher level objectives of NSCJA in achieving the aims of the Area Plan. These will cover such aspects as; partnership working, developing good practice, user outcomes achieved, monitoring and evaluating the performance of services, reporting to the public etc.

*Monitoring performance* – explicit performance indicators will be established for each aspect of the work for which authorities are responsible. They will be

designed to establish the extent to which NSCJAs outcomes are being achieved. These indicators will be subject to an ongoing programme of monitoring and reporting as specified in the Act and applied, as appropriate to all other partner bodies.

*Managing performance* – suitable arrangements will be put in place to ensure that NSCJA is able to address any shortcomings in its own arrangements and those of relevant local authorities in delivering on specified indicators and outcomes.

- 6.4 The effectiveness of these arrangements will be influenced by the timing and manner in which issues are raised and the working relationship that underpins communication between key officers of NSCJA and its partner bodies. Any matters of concern should be discussed as soon as they are identified in order that agreement regarding the way forward can be reached wherever possible.
- 6.5 The issuing of directions or recommendations reflects NSCJA's role as a regulator of its partner bodies within the context of the Area Plan. As such it provides a means of ensuring a focus and compliance with the overall strategic direction that has hitherto been absent.
- 6.6 A decision to issue directions or recommendations relating to unsatisfactory performance will be based upon sound information and in the normal course of events will only occur after every appropriate effort has been made through ongoing dialogue to address the relevant issues.
- 6.7 However in circumstances where there is considered to be a significant and imminent risk to service users or members of the public NSCJA is not required under the Act to issue any notice or advice prior to issuing a Direction to a Local Authority or making a recommendation to the SPS. In these circumstances the appropriate notice may be issued as soon as it is deemed necessary.
- 6.8 Directions will contain a clear statement of the nature of the unsatisfactory performance and of the (remedial) action that the Local Authority is required to take. It will contain a timetable or deadline for achieving the specified change or action and specify the arrangements for monitoring progress. The direction will make it clear how NSCJA will determine if and when the direction has been satisfactorily fulfilled.
- 6.9 Recommendations to Scottish Ministers will concern their responsibilities for Scottish Prisons and the SPS under the Prisons (Scotland) Act 1989. These will also contain a clear statement of the nature of the unsatisfactory performance and of the (remedial) action that it is recommended they should take. An indicative timetable for achieving the recommended change or action related to any time-sensitive considerations regarding the impact of the unsatisfactory performance and the arrangements for monitoring progress will also be set out. The recommendation will also make it clear how the CJA will determine if and when the recommendation has been satisfactorily fulfilled.

- 6.10 In the event that NSCJA receives a Preliminary Notice from Scottish Ministers regarding an appropriate Local Authority that is failing or has failed to exercise its functions under Section 27 of the Social Work (Scotland) Act 1968, the normal means for ensuring that the issues detailed in the notice will be addressed is by the issuing of a Direction by the CJA to the relevant Local Authority.

## **7. The accountability of other statutory and non statutory partners to NSCJA**

- 7.1 The accountability of other partner bodies to NSCJA is related to their commitment to deliver specified outputs or outcomes under the Area Plan. These may involve a service that is delivered directly by the partner body such as in the case of the police, or a service that is commissioned from a third party provider such as in the case of a voluntary organisation that has a service contract with a Local Authority.
- 7.2 In order that it can assess the impact and effectiveness of services to deliver on its Area Plan, the CJA will monitor the activity and effectiveness of interventions and services delivered by the wider group of partner bodies. This monitoring activity will need to extend beyond its statutory partner bodies but the extent of monitoring activity relating to each partner will be proportionate to the level of service involved and the extent to which meeting the Area Plan objectives is a central feature of each partner body's overall activity.
- 7.3 In the context of preparing its Area Plan and discussing the alignment of funding and services across a suitable wide range of agencies, NSCJA will consult widely and will aim to be as influential as possible in ensuring that any necessary change or re-alignment is achieved in services beyond those that they fund directly.

## **8. The duty of Local Authorities and the role of Chief Social Work Officers**

- 8.1 The duty of Local Authorities is set out in the Social Work (Scotland) Act 1968 as being: '.....to enforce and execute within their area the provisions of this Act with respect to which the duty is not expressly, or by necessary implication, imposed on some other authority.' The Act goes on to specify that: 'For the purposes of their functions under this Act (viz.) a Local Authority shall appoint an officer to be known as the chief social work officer.'
- 8.2 Local Authorities may make arrangements with a voluntary organisation or other Local Authority for the provision of assistance in the performance of these functions.

## **9. The duty of NSCJA and the role of the Chief Officer**

- 9.1 The principal duties of CJAs are set out in Sections 3 and 4 of The Management of Offenders etc. (Scotland) Act with the special duties of Chief Officers being covered in Section 5.
- 9.2 There are two basis for the authority and responsibilities associated with the post of Chief Officer of NSCJA;

Firstly, their status as the most senior employee of the CJA carries with it a range of duties and responsibilities, as approved by members of the NSCJA, by means of the scheme of delegation, regarding the administrative and management arrangements of a statutory body. In this context, requirements under the Act relating to NSCJA as a corporate entity will fall to the Chief Officer to deliver, as determined by members of NSCJA. Since NSCJA will be responsible for the performance of the Chief Officer, the Convenor will ensure that there is a process in place to monitor the Chief Officers performance, and that the process is reviewed to ensure that it remains relevant to the challenges facing the organisation.

Secondly, the Act details specific instances when the Chief Officer is required to act in particular ways independently of the authority that is vested in them through the corporate governance arrangements of CJAs. These instances have been detailed above and concern the requirement to report to Ministers when NSCJA itself, an appropriate Local Authority or the SPS are failing to act satisfactorily in complying with the Area Plan and to report to Scottish Ministers on activities and performance in their area at any time.

- 9.3 In this second case, whilst the special duties relate to the Chief Officer and not NSCJA as a corporate body, it is only by virtue of the status as the Chief Officer of NSCJA as a corporate body that these special duties are applicable. It is important therefore to be clear that the Chief Officer remains directly accountable to NSCJA – for meeting all of the requirements of their position – including reporting to Ministers as specified in the Act.
- 9.4 The Chief Officer already has a Job Description which, with the contract and the terms and conditions of service, forms the legal basis for his employment. The NSCJA Scheme of Delegation is consistent with these basic documents but it also specifies in more detail the scope of the Chief Officer’s responsibility. In accordance with the principles of subsidiary, most decisions should be delegated to the Chief Officer, with those reserved to the CJA being clearly defined and limited to strategic and governance issues. It should also be noted that the CJA cannot delegate decisions to any committees it may choose to establish since the legislation is clear that no committees of the CJA can have decision making powers.

- 9.5 There are some things the CJA has not delegated to the Chief Officer and others which it cannot delegate, for example the appointment of the Chief Officer, the approval of the budget and the Area Plan for submission to Ministers, an oversight of the risk management process and details about where and how often the CJA itself meets. The CJA will also need to agree its disciplinary policy and procedures and these in turn will involve the delegation of some aspects of disciplinary procedures to the Chief Officer with others reserved to the CJA itself.
- 9.6 NSCJA may wish to delegate the operation of the disciplinary procedures in respect of all staff except the Chief Officer to the Chief Officer with a right of appeal, at least for more senior staff, to the CJA itself. The disciplinary policy and procedures also need to cover the possibility that disciplinary issues may arise concerning the Chief Officer. The procedures for managing such a situation need to ensure that there is not only a procedure for hearing and investigating the situation but also that there is a mechanism for the Chief Officer to appeal to a different group of CJA members to those who conducted the original hearing or investigation.

## **10. The role of NSCJA members/convenors and attendance of others at meetings**

- 10.1 The legislation makes it clear that NSCJA as a whole is the body empowered to make decisions. It explicitly precludes the delegation of decision making to any committees the CJA might choose to establish and there is also no power to delegate decision making to the convenor or any other NSCJA member. However, just as NSCJA has almost certainly wish to delegate implementation of its decisions to the Chief Officer, so it might choose to delegate implementation of certain types of decision to the convenor, or another specified member, for example the authorisation of expenditure covered by the budget, and thus approved by the CJA, as an alternative or an addition to the delegation of such authority to the Chief Officer.
- 10.2 The governance arrangements for NSCJA make it clear that in their capacity as CJA members, Local Authority elected representatives are required to put the interests of NSCJA first and foremost in their considerations.
- 10.3 In a formal setting, such as a CJA meeting, where decisions are being made and perhaps issues being carefully weighed in the balance, the challenge and import of this requirement should be fairly clear. Particularly where the NSCJA Convenor is also Convenor of their Local Authority Social Work Committee, the requirement to separate and prioritise these functions is central to the effective operation of both agencies' respective governance arrangements.
- 10.4 It is important to emphasise that when a Local Authority is reporting to NSCJA this should be undertaken by a Council Officer and not the local councillor who is a CJA member. Whilst CJA members may be well informed and knowledgeable about their Local Authority's position on a given matter, it is important to recognise and respect the proper separation of their functions when they are sitting as NSCJA members.

- 10.5 In order to minimise any potential difficulties it is important to establish and determinedly maintain clear and firm boundaries as to the role of each party within each agency. This means establishing a clear divide between officer-led and member-led processes and responsibilities. These should be set out in the Standing Orders of Local Authorities and the NSCJA and in both cases further clarification should be available within each agency's Scheme of Delegation. Both documents are on our website [www.nscja.co.uk](http://www.nscja.co.uk).
- 10.6 Beyond these formal mechanisms it will be for NSCJA members, CSWOs and Chief Officers to be sensitive to the importance of their mutual relationships and at all times to maintain what they believe to be their proper and correct role in fulfilling their respective responsibilities.
- 10.7 NSCJA has a Communication Strategy in place for dealing with the press and media which provides a clear statement of the type of situations or contacts that the Chief Officer and Convenor respectively are each responsible for handling. The Communications Strategy is on our website [www.nscja.co.uk](http://www.nscja.co.uk).

#### *Attendance at meetings*

- 10.8 The following may attend or be represented at a NSCJA meeting and, at the discretion of the Convenor, participate in discussions but may not vote:
- The NSCJA's statutory partners
  - The Chief Social Work Officers of each relevant Local Authority
  - Others as specified in NSCJA's approved standing orders
- 10.9 Meetings of NSCJA should be open to the public unless the CJA resolves that any meeting, or part of the meeting, should be held in private. In passing such a resolution NSCJA may also resolve to exclude any or all of those listed in paragraph 10.8 who would otherwise be entitled to attend.

## **11. The relationship between Local Authorities, SPS and NSCJA.**

- 11.1 The role of Local Authorities is to deliver or to make local arrangements for the delivery of all of the services specified in the Social Work (Scotland) Act 1968 and subsequent amending legislation.
- 11.2 The role of SPS is to deliver, or make local arrangements for the delivery of, the relevant services as specified in the Prisons (Scotland) Act 1989.
- 11.3 The role of NSCJA is to develop a plan with the objective of reducing re-offending, to monitor the performance of partners in complying with the Area Plan and to direct them as required if their performance proves to be unsatisfactory.

- 11.4 NSCJA will have to develop new approaches to ensuring that they are best able to deliver on the agreed objectives of the Area Plan. These approaches will need to take more direct account of the resources that are available from other partners and extensive consultation with the wide range of statutory and non statutory partner bodies will be central to this process.
- 11.5 As regards the allocation of Section 27 grant to each Local Authority, Chief Social Work Officers will continue to have a responsibility to ensure that the level of funding provided to them by NSCJA is sufficient to enable them to deliver the required level of service and mix of service elements to achieve what is expected of them in the Area Plan. Where they consider this not to be the case this should be communicated formally to NSCJA. NSCJA will draft and agree with Chief Social Work Officers a document which sets out the conditions attached to this grant.
- 11.6 Local Authorities and SPS will already have in place the arrangements necessary to deliver their current services, but bringing as they do a strengthened focus on the benefits of partnership arrangements, NSCJA will ensure during the compilation of the Area Plan that considerations relating to the effectiveness and efficiency of all relevant services occurs when alternative service models are being contemplated. It is likely to be the case that Area Plans will include proposals to develop new services or deliver existing services in different ways that will result in changes to existing arrangements in any one Local Authority area or SPS establishment.
- 11.7 The three year Area Plan, following approval by Ministers, will provide the template against which NSCJA will monitor the performance of Local Authorities and SPS. 'Performance' in this context will include not only the quality, volume, consistency and outcomes achieved by the delivered service, but also progress made in planning and introducing new services or delivery arrangements.