



## **BOARD TERMS OF REFERENCE**

### **1. General**

- 1.1 Community Justice Scotland (referred to hereafter as CJS) is a body corporate established by schedule 1 of the Community Justice (Scotland) Act 2016 (hereafter referred to as the 2016 Act). The body corporate is Community Justice Scotland. CJS is not part of the Scottish Government, it has an appropriate degree of operational autonomy and independence. In terms of its status as a Scottish public body, it may be referred to as a “non-Departmental Public body” (NDPB).
- 1.2 This Terms of Reference, for regulation of the conduct and proceedings of the Board of CJS is made in accordance with Schedule 1 of the 2016 Act which enables CJS to regulate its own procedure.
- 1.3 The members of the body corporate, who are appointed by the Scottish Ministers under section 3(1) of Schedule 1, will be known as “the Board of CJS” or simply “the Board”. The Chair of CJS, appointed by Ministers under section 3(1) of Schedule 1, may be referred to as the “Chair of the Board” or “the Chair”. A Deputy Chair will be elected by the members of CJS on the recommendation of the Chair.
- 1.4 These Terms of Reference should be read in conjunction with:- start with the Act as:
  - (a) the CJS Board Code of Conduct
  - (b) the CJS Schedule of Delegated Authority, under paragraph 7(1) of Schedule 1 to the 2016 Act; and
  - (c) the CJS Framework Agreement Document with the Scottish Government
  - (d) Letters of appointment for the Chair and Board members
- 1.5 These Terms of Reference are made by and can be altered, suspended or revoked, in whole or in part, by decision of the Board. They remain in force unless and until so altered, suspended or revoked.

- 1.6 These Terms of Reference should be reviewed at least be reviewed every two years or earlier if circumstances require.
- 1.7 Where these Terms do not make specific provision, the Chair, in consultation with the Chief Executive, will have discretion to determine all questions of procedure for the conduct and proceedings of the Board.

## **2. Membership of the Board**

- 2.1 The Chair and Members of the Board are appointed by Scottish Ministers in accordance with the Code of Practice issued by the Commissioner for Ethical Standards in Public Life in Scotland. Members are appointed to and hold office in CJS in accordance with the provisions of Schedule 1 of the 2016 Act.
- 2.2 The Board should consist of the Chair and at least 5 but no more than 8 Members, including a deputy Chair.
- 2.3 The Chief Executive and CJS secretariat will normally attend Board Meetings; other members of staff will attend as required. Only Members of the Board will take decisions.
- 2.4 Members are appointed to the Board in their individual capacity and they do not hold office as representatives of any personal or professional group or any professional or corporate body. Members of the Board are expected to subscribe to and comply with the Code of Conduct.
- 2.5 Members of the Board will participate actively in collective decision making; be sensitive and respectful of the views of other board members and staff in and out of meetings; challenge supportively and rigorously, proposals put to the board; and accept collective responsibility for the decisions of the Board.
- 2.6 Where required, members of the Board will participate in committees, working groups and wider activities of the Board.
- 2.7 Members of the Board will require to register their interests within one month of the date of their appointment to the Board, in a register kept by the CJS Secretariat, and published on the CJS website. Ensuring the Register is up to date and reflects any changes in personal circumstances is the responsibility of each member.
- 2.8 Where a dispute arises as to whether a conflict of interest arises in respect of any Board member (other than the Chair), the following procedure will apply:-
  - (a) in the event of the potential conflict arising during the course of a meeting, the Chair will determine whether such a conflict exists. If a conflict exists,

the Board member concerned will not be permitted to be further involved in that part of the meeting affected by the conflict;

- (b) in the event of the potential conflict arising outwith a meeting, the Chair will determine whether such a conflict exists. If a conflict exists, the Board member concerned will not be permitted to be further involved in the business affected by the conflict, whether in discussion, in secure electronic communication or by any other means;
- (c) before reaching a conclusion in either of the circumstances set out in (a) or (b) above, the Chair may consult the Chief Executive and other Board members as they consider necessary;
- (d) A record of the area of potential conflict and of the action taken under (a) or (b) above will be retained by the Secretariat.

### **3. Chair of CJS**

- 3.1 The Chair of CJS, or in their absence the Deputy Chair, will preside at meetings of the Board in accordance with these terms. Any power or duty assigned to the Chair in relation to the conduct of a Board meeting may be exercised by the Deputy Chair when they are chairing a meeting.
- 3.2 In the event that the Chair is unable to attend a meeting, and the Deputy Chair is also unable to attend, a temporary deputy will be selected by the Board members present. Any power or duty assigned to the Chair in relation to the conduct of a Board meeting may be exercised by the temporary deputy at the meeting.
- 3.3 The Chair will regulate discussion and debate at Board meetings and will ensure that all present enjoy equality of opportunity to express their views.
- 3.4 The Chair will undertake the appraisal of individual board members and the Chief Executive. In addition to these formal performance monitoring meetings, the Chair will also meet once per year with each board member, and also with the Chief Executive, to discuss learning and development.
- 3.5 If in the opinion of the Chair any person present at a meeting is incapacitated, behaving inappropriately or without due consideration for other Board members or persons present, the Chair may require that person to leave the meeting.
- 3.6 The Chair is bound, in the same way as are all Board members, by the provisions of the Code of Conduct and of parts 4.1 and 4.2 of these terms, in respect of the registration and declaration of interests. Where a conflict of interest arises during the course of a meeting, as determined by a majority of Board Members, the Chair will not be further involved in that part of the meeting which is affected by the conflict, and the deputy chair will preside at that part of the meeting until conclusion of the relevant business. Where a conflict arises outwith a meeting, the Chair will not be involved in the business affected by the

conflict, whether in discussion, in secure electronic communication or by any other means. Before reaching a conclusion in either of these circumstances, the Chair may consult other Board members and the Chief Executive as they consider necessary and appropriate. A record of the area of potential conflict and of the action taken will be retained by the CJS Secretariat.

- 3.7 The role of the Deputy Chair will be to undertake the duties of the Chair as required in their absence; to act as a support and sounding board for the Chair and to lead on particular themes and activities as agreed with the Chair, dependent on their skills and knowledge.

#### **4. Responsibilities**

- 4.1 The Board, led by the Chair, has corporate responsibility for ensuring that CJS fulfils the aims and objectives set by the Scottish Ministers, acts to promote and further the National Strategy for Community Justice in Scotland, and for the effective and efficient use of staff and other resources by CJS in accordance with the principles of Best Value. To these ends and in pursuit of its wider responsibilities, the Board shall:

Establish the overall strategic direction of CJS -

- Keep Scottish Ministers informed of any changes likely to impact on CJS's strategic direction or achievement of targets
- Monitor that statutory and administrative requirements in respect of funds falling within its stewardship are complied with
- Receive and review regular financial information concerning the management of CJS
- Receive and review policies and performance management
- Demonstrate high standards of corporate governance at all times, including the establishment of an audit committee and assuring itself on the effectiveness of the internal control and risk managements systems
- Provide commitment and leadership in the development and promotion of Best Value principles throughout the organisation
- Appoint, with the Scottish Ministers' approval the Chief Executive to CJS, setting appropriate performance objectives and remuneration terms: and
- Not give the Chief Executive instructions which conflict with her duties as the CJS Accountable Officer

## **5. Ordinary Meetings of the Board**

5.1 The Board will usually meet six times in each financial year. A rolling schedule setting meeting dates for the year ahead will be maintained and circulated by the Secretariat as agreed with the Chair. Additional ad hoc meetings may be convened as necessary as detailed in Section 6.

5.2 Where possible, seven calendar days prior to the date of a Board meeting the following documents will be issued electronically by the Secretariat to each Board member;

- (a) an agenda detailing the business to be transacted ; and
- (b) reports and other documents referred to in, or to be read with, the agenda.

Late papers will be issued or tabled at the discretion of the Chair.

5.3 CJS is committed to minimising its use of hard copy papers. Any Board member who wishes to receive the agenda and papers for meetings in paper copy must ensure that the Secretariat receives notice to that effect.

5.4 In exceptional circumstances, a Board member may raise at the start of a Board meeting a matter not set out in the agenda. Subject to the Board member providing appropriate reasons for the urgency or delay, the matter may be discussed or decided upon, either as a substantive agenda item or under Any Other Competent Business, if the Chair agrees to the addition of that matter to the agenda. Where business to be transacted has not been completed within the time allotted for a Board meeting:-

- those present may resolve to continue the meeting in order to deal with the business; or
- the Board may adjourn any meeting to another date, time and place by majority agreement of Board members present; or
- any business not completed may become part of the agenda for a subsequent Board meeting.

5.5 All decisions must be made by the Board unless it has, under section 6 (1) of Schedule 1 of the 2016 Act, authorised an individual Board member, a Board Committee, the Chief Executive or any other member of staff to exercise a function or deal with a specific issue. In so doing, the Board remains responsible for the exercise of the function.

5.6 Decisions of the Board will normally be by consensus. If consensus cannot be reached on a particular issue by Board members attending including any member attending via video or teleconference (per 5.12), the Chair or another Board member may ask for a vote to be taken. Any matter put to the vote is

decided by a simple majority. In the event of a tie, the Chair has a second or casting vote. Only Board members present (including via video or teleconference) at a meeting may vote and proxy voting is only allowed if agreed in advance with the Chair. Notwithstanding the above, Board members departing early will be treated as non-attending for the purpose of any decision taken after the time of their departure.

- 5.7 Decisions of the Board are binding on all Board members and are expected to support any decision of the Board even where they disagree with it under the principle of collective responsibility.
- 5.8 A Board member may have their dissent to a decision of the Board recorded, provided that they have attended for the whole of the discussion and decision, and asks to record his or her dissent immediately after the decision is concluded. The recording of any such dissent shall not affect 5.7.
- 5.9 The quorum for meetings of the Board is three Board members of CJS. If any meeting is not quorate, then business discussed may be homologated at the following Board meeting.
- 5.10 Where a Board Member has submitted apologies in respect of the meeting, but wishes to provide comment in respect of any of the papers tabled, these comments should be submitted to the Chair, who will highlight them to Members as part of the main discussion.
- 5.11 Should a Board member fail to attend three board meetings within a year, or a series of consecutive meetings, without a reason which was known to the Chair beforehand, eg. long term illness; maternity or paternity leave; then the Chair may discuss with the Board member the circumstances surrounding their unplanned absence and, if need be, their suitability for remaining a member of the Board. In such circumstances the Chair may raise with the Scottish Ministers the potential removal of that member.
- 5.12 Attendance at Board meetings may be by way of physical presence or remotely.
- 5.13 Board and committee meetings are usually private, although at least once a year an open meeting to which the public may come, will be held. The Board (or its Committees) may invite individuals, bodies or organisations to attend its meetings or parts of its meetings, provide information and/or make representations to it about particular issues. In the event of a vote, these individuals, bodies or organisations do not have a vote. The Board (or its Committees) may also invite individuals, bodies or organisations to provide written submissions for consideration in advance of its meetings.

## **6. Agenda**

- 6.1 The agenda for Ordinary meetings of the Board will be prepared by the Secretariat and circulated to the Chair for approval usually two weeks in advance of the date of the meeting. The final decision on the agenda will rest

with the Chair.

6.2 The order of business at Ordinary meetings of the Board may be varied by the Chair, but will normally include :-

- (a) Declarations of interest
- (b) Apologies for absence
- (c) Minutes of the last meeting and matters arising (if not otherwise on the agenda)
- (d) Business in the order in which it is noted on the agenda
- (e) Other competent business.

6.3 A schedule of (annual) standing items will be developed by the CJS Secretariat, and be accessible to all Members. The following will be standing items on the Agenda for Ordinary meetings:-

- Minutes of the last meeting and matters arising
- Update by the Chair
- CEO/Operational Report
- Horizon scanning by Members
- Performance Management Report
- Corporate risk (Risk registers)
- Future Business
- Finance report

Other items will be added to the Agenda of Ordinary meetings as the need arises.

6.4 Any Board member wishing to raise an urgent item at a Board meeting must give notice to the Chair at the start of the meeting. The Chair will decide whether any such item will be discussed at the meeting (see section 5.5 above) or held over to a subsequent meeting.

6.5 Following meetings of the Audit and Risk Committee and Human Resources and Remuneration Committee, the Board will receive and consider oral and/ or written updates from each, on matters relating to each Committee's areas of delegated responsibility. The Board will receive an annual written report from each Committee summarising its activities during the year, and giving an overall assessment in respect of its impact and effectiveness. The Board will also undertake an annual self-assessment review of its performance.

## **7. Special or other Meetings of the Board and Board decisions taken outwith meetings**

7.1 The Chair, a Board member or Board members, or the Chief Executive may at any time propose a special meeting of the Board to deal with an urgent matter of business which has unexpectedly arisen. The special meeting will proceed as long as the majority of members respond to the chair confirming that they are content for it to do so and the meeting would be quorate.

7.2 Decisions of the Board and transaction of business at special meetings will be subject to the requirements of paragraph 5.11 (quorum) in the same way as at ordinary Board meetings.

7.3 In addition to considering the urgent matter of business which has arisen, other Board business (usually consequential to the urgent matter) may be transacted. Special Board meetings are subject to the requirements of standing order 5.11.

## **8. Minutes**

8.1 Minutes will be kept from each Board meeting (including special Board meetings) and following consideration and approval by Members, published on the CJS website and subject to the CJS publication scheme.

8.2 Following each Board meeting, the Secretariat will prepare a draft minute and action log which will be sent to the Chair within five working days of the meeting, and circulated to all Board members within fifteen working days, where possible. The draft minutes will be tabled at the next Board meeting for approval. (As detailed in 6.2)

8.3 Where part of the business conducted is confidential, that part of the proceedings will be minuted separately and will not be published under paragraph 8.3 below.

8.4 Once approved, minutes will be published on the CJS website in final form. Where appropriate, published minutes will indicate where conduct of confidential business has been recorded in separate unpublished minutes.

8.5 Decisions on issues of immediate importance or urgency may be disseminated to interested parties following the Board meeting, notwithstanding that the minute of the meeting which records the decision may not have been approved or published.

## **9. Committees**

9.1 Committees or sub-committees may be established by the Board under paragraph 11(1) of Schedule 1 of the 2016 Act.

9.2 When establishing Committees or sub-Committees, the Board will agree the terms of reference, including the frequency of meetings and arrangements for reporting to them on progress being made in the Committee's areas of delegated responsibility;

(a) The Board Chair will appointment each Committee or sub- Committee Chair and in consultation with the Committee or sub-Committee Chair determine membership

(b) The Chair of the Board has responsibility for ensuring that appropriate succession planning arrangements are in place, for each committee.

- 9.3 Committees or sub-Committees may comprise members of the Board and individuals who are not members of the Board. They must contain at least two Board members. No business will be transacted at a meeting of any committee unless at least one Board member is present.
- 9.4 Members of a Board Committee who are co-opted are bound by the provisions set out in the CJS Board Code of Conduct.
- 9.5 Members of a Board Committee who are not Board members are not entitled to vote at meetings of the Committee or sub-Committee
- 9.6 The Board may delegate to its Committees or sub-committees such of its functions as it considers appropriate. The Board however remains responsible for the exercise of all functions.
- 9.7 The Board may organise, as appropriate, business planning meetings, strategy days and working groups to consider specific tasks or to respond to emerging issues. Such meetings will be discursive and will not be decision-making fora; they may be minuted if appropriate, and a decision on whether to publish the minutes or, as the case may be, the outcome of the discussion will be taken by the Board.
- 9.8 The following will be standing committees of the CJS Board:-
- (a) Audit and Risk Committee
  - (b) Human Resources and Remuneration Committee

Any other Committees to whom the Board decides to delegate any of its functions.

9.9 The Board will review its Committee structure annually.

## 10. **Decisions Reserved for the CJS Board and Schedule of Internal Delegation**

10.1 The following decisions are reserved for the Board:-

- (a) CJS standards and values
- (b) strategic direction, corporate and business plans and budgets;
- (c) Board terms of reference, including a Schedule of Internal Delegation;
- (d) Consideration and approval of terms of reference, reporting arrangements and membership (except Chairing) of Committees;
- (e) corporate financial, audit and risk reporting arrangements;

- (f) corporate performance management reporting arrangements;
- (g) Approval of Corporate strategies and policies

Other decisions reserved to the Board under the Schedule of Delegated Authority approved by the Board e.g. approval of decisions not covered by delegations to the Chief Executive; approval of high and medium risk projects

## **11. Correspondence**

- 11.1 All incoming correspondence to the CJS body corporate is for the attention of the whole Board, whether addressed to an individual Board member or to the secretariat.
- 11.2 The Secretariat will file all correspondence to and from the Board. Any correspondence received or sent by an individual Board member in relation to CJS should be copied, normally electronically, to the Secretariat for this purpose.

## **12. Urgent actions**

- 12.1 The Chair, or in his or her absence the Deputy Chair, has the authority to require or permit the Chief Executive or other senior member of staff to take urgent action (on matters that are permitted to be delegated to an individual) or to reply to correspondence.
- 12.2 If the issue in relation to which the urgent action relates is not one permitted to be delegated to an individual, agreement to take such action should be sought and obtained through secure electronic means of communication from a majority of the members of the Board.
- 12.3 On every occasion on which paragraph 12.1 or 12.2 is invoked, the circumstances will be reported to all members of the Board at the earliest opportunity, and reported to the next meeting of the Board.

## **13. Public statements**

- 13.1 Public statements concerning CJS will normally be made by the Chair or Chief Executive or alternatively by a member of staff authorised by them. Roles and responsibilities in connection with statements relating to novel or contentious matters and matters having potential reputational or legal impact on CJS, and other communications functions, are set out in the Schedule of Internal Delegation.

## **14. Signing of Documents**

- 14.1 Where any documents are required to be executed on behalf of CJS, they shall be signed:-

- (a) by the Chair; or
- (b) by any person operating within their remit under the Schedule of Internal Delegation.

## 15. Confidentiality

15.1 All Board members, the Secretariat and any other person present at a meeting of the Board, have a duty not to:-

- (a) discuss items of business agreed as being confidential, with any person who was not present at that meeting, unless authorised to do so by the Chair or the Chief Executive; or
- (b) comment on any matter in any way that undermines the principle of collective responsibility for decisions reached at such meetings.

15.2 The above is without prejudice to the terms of the Public Interest Disclosure Act 1998.

## 16. Papers and Documents

16.1 Board members will be held personally responsible for the safe custody of any papers or documents which may be issued or entrusted to them in the course of their duties. The loss of any such documents must be reported immediately to the Chair, Chief Executive, and the Senior Information Risk Owner (SIRO) and, in the absence of either the Chief Executive or the SIRO, the Secretariat.

## 17. Duty of the Board in relation to the Accountable Officer

17.1 The Chair and Board members of CJS must ensure that they are fully aware of, and have due regard to, the responsibilities and statutory duties placed upon the Chief Executive as the Accountable Officer. These are set out in full in the [memorandum to accountable officers other public bodies](#) published in the Scottish Public Finance Manual (SPFM).

17.2 In particular, the Board must at all times bear in mind that it is incumbent on the Chief Executive to combine his or her Accountable Officer responsibilities to the Scottish Parliament with responsibilities to the Board. The Chief Executive may consult the Director for Justice, Scottish Government on any aspects of his or her duties as Accountable Officer. The Accountable Officer must consult the Director on any action which he/ she considers is inconsistent with his/her duties on financial, regulatory or propriety grounds.

## 18. Interpretation

18.1 In these Terms of Reference and their Annexes:-

“CJS Secretariat” or “Secretariat” means any officer or officers appointed by the Chief Executive of CJS to act in this capacity;

“financial year” means the period beginning on 1 April in one year and ending on 31 March the next occurring year.

<b>Date approved</b>	<b>May 2020</b>
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