

Prison Reform Trust response to the Parole Board for England and Wales Triennial Review - January 2014

The Prison Reform Trust works to create a fair and decent prison system. We do this by looking at how a prison is working, giving information to prisoners, staff and people outside and by asking the government and officials to make changes. We welcome the work the Parole Board is doing to make the process clearer and fairer and the chance to respond to this consultation. Alongside our public education, applied research and policy work, we have an advice and information service that deals with over 5,000 queries from prisoners a year. We do not give legal advice or represent at parole hearings and therefore we have not given detailed answers to the consultation questions. However, we respond to general queries on the parole process from people in prison, and monitor the impact of any potential changes to the Parole Board. We therefore welcome the opportunity to respond to this review.

Background

We recognise the work that the Parole Board has already done in trying to streamline the parole process, survey prisoners' views, become more transparent and engage with stakeholders. We are very much aware of the pressures on the Parole Board, the current changes to legal aid and the resource pressures on the prison and probation services. These all present challenges for timely parole reviews. We welcome the improved joint working systems between the Parole Board and Public Protection Casework Section. However, within these systems it is important that the Parole Board is able to retain independence.

We note that the Parole Board has evolved, often in response to case law. The Board has often needed to be reactive rather than proactive in managing systems and resources. Initially the Board was set up to advise the Home Secretary on release prisoners. However, the role has developed over the years and alongside functional changes the Board has gradually become properly established as a non-departmental public body.

We believe that there are currently three main challenges facing the Parole Board. The first is maintaining independence in an arena of cuts and changes. The second is managing resources, particularly in light of the Osborn decision that will significantly increase the number of oral hearings. The third is that the Parole Board does not currently have all the powers it needs to fulfil its functions

We believe that the Parole Board's efforts to manage resources effectively have led to many constructive changes. Parole Board staff are clearly committed to a process of continuous improvement including savings to the public purse. We appreciate that the Parole Board remains under resourced. We are also impressed by the stakeholder culture and the effort to involve groups and individuals including victims groups.

The Parole Board is fundamental to the operation of a fair and decent criminal justice system and it is vital that it continues to exist.

Section 1 Function of the Parole Board

There is clearly a need for the functions of the Parole Board, which are:

- 1) Directing release of indeterminately sentenced prisoners
- 2) Recommending indeterminately sentenced prisoners for open prisons
- 3) Reviewing recall decisions
- 4) Advising on compassionate release

The Board has the characteristics of a court like body and high standards of procedural fairness. This is essential because ongoing detention and rights to liberty are engaged in Parole Board decisions. The outcome of a Parole Board hearing can be further deprivation of liberty, which is a fundamental human right and part of common law. Therefore, the decision making process must be beyond executive control and influence.

Indeterminate detention, as the most extreme power of the state, needs oversight and review. People serving sentences for public protection need access to a fair system that will assess whether their detention remains necessary for protecting the public. As this is the most extreme power of the state it must have independent review. The function needs to continue and is essential for the administration of criminal justice.

This function contributes to the core business of the Ministry of Justice by making release decisions based on rigorous risk assessments, protecting the public, providing fair oversight of the progress or otherwise of indeterminately sentenced prisoners and by improving public confidence

The Board's work contributes to the wider government policy objectives of protecting the public, reducing reoffending, and also by not keeping people incarcerated at public expense where this is no longer necessary. There is clearly a need and demand for the function or activity from users, i.e. prisoners and also all other criminal justice agencies.

The effect of not having an independent review of prisoner's ongoing detention for public protection or following recall would breach rights and would result in challenges and judicial reviews. Economically, the function is a justifiable use of taxpayers' money, particularly in light of the cost of detention. It is impossible to assess the ongoing cost of not releasing people who are safe to be released but this would be substantial. In addition, costs could be saved if the system could further reduce delays and if people were reviewed as soon as they were safe to be released.

Section 2: How should this function be delivered?

Should the function of the Parole Board continue to be delivered by a non-departmental public body?

The Parole Board's function fits well with this model. It is technical (risk assessment) and does require external expertise and independence. It is also a function that should be delivered with political impartiality and at arm's length from ministerial decision making.

We consider on balance that a non-departmental public body, as long as it has appropriate distance from the executive safeguarded and sufficient resources, is an efficient model to deliver these functions.

Does the Parole Board have the right powers and levers to fulfil its functions?

The National Audit Office Report of March 2008 revealed the administrative costs of the failure to provide reports to the Board in a timely manner. The NAO calculated the costs of the admin delays as nearly £3 million in 9 months. Since then, the Parole Board has worked hard to coordinate systems so that hearings are not listed when reports are unavailable. However, there are still delays because reports have not been completed. Currently the Parole Board has no power to compel witnesses or statements. We note that the CCRC has the power under section 17 of the Criminal Appeal Act 1995 to obtain documents or material from public bodies which may assist it in undertaking any of its functions. The Parole Board can give directions but has no way of enforcing these. We would argue that the Parole Board should have the power to compel witnesses to appear and to give orders for the production of documents and directions.

In addition, the Parole Board acknowledges that members are not representative of the community and is making efforts to address this. Reflecting the make-up of the community is important to maintain public confidence and we would like to see further work in this area.

The Parole Board is managing a set of difficult challenges fairly effectively.

Should the Parole Board be merged with another body?

We cannot see any agency within government with a similar enough function to the Parole Board. Again, as impartiality is crucial to the effective functioning of the Parole Board we would be concerned that a merger could potentially compromise this.

Does the function duplicate work undertaken elsewhere?

The Parole Board has been looking at its systems to ensure that it is not duplicating work undertaken elsewhere. Improvements to the administration of casework and joint work with NOMS PPCS have certainly led to less duplication. However, there are a few areas where there is potential duplication. We consider that work could be further coordinated. We would suggest that the coordination of mental health tribunals and the Parole Board for people detained under both systems is reviewed to assess areas of overlap and see if coordination could take place. We appreciate

that they are two different systems; however, the current system does appear resource intensive

Should the Parole Board take on other functions?

Yes, we would recommend that the Parole Board determines, rather than advises on, moves to open conditions for indeterminate sentenced prisoners. We would also recommend that requests for compassionate release (for all prisoners) go directly to The Parole Board and that their decision is final. These functions seem compatible with the functions of the Parole Board at the moment, and although they would increase powers they would not be a significant drain on resources. This is because the Parole Board currently reviews these cases and advises and makes recommendations on these matters without having the final decision.

Under the current system, following the Parole Board recommendation for open conditions or compassionate release, NOMS staff then review and determine these cases on behalf of the Secretary of State. We believe there are strong arguments for ending this duplication and moving these decisions out of ministerial influence and under the sole authority of the Parole Board. They would not be a matter of executive judgement but would be decided independently by a body with expertise in assessing risk. We believe that another outcome of this could be that compassionate release decisions were taken more speedily. We would not recommend that the Parole Board take on any further functions but we would recommend changes to powers that would mean the Board carries out functions more effectively and would reduce NOMS PPCS workload somewhat.

2.3 Should the function of the Parole board be delivered in-house by the Ministry of Justice?

No. We are already concerned that the Parole Board shares a building with PCCS and that there is potential for mission creep. The function needs to be delivered at least at arm's length from Ministers. There are no benefits to bringing the function in house and we are sure that if this happened the decision would be challenged in the courts

2.4 Should the function of the Parole Board move out of central government?

No. It could not be delivered effectively, consistently or fairly by local government. It would not be politically impartial if local councils set budgets and direction for the Parole Board. We also believe that this function is incompatible with voluntary sector providers and we include mutual community interest companies and social enterprises within this. This function is also incompatible with private sector providers. All of these models would involve funding and operating models that would impact on transparency, independence and governance. The risks of moving this function out of central government are substantive.

2.5 Are there any other possible delivery options?

The most obvious alternative delivery option is to move the Parole Board to within the Courts and Tribunal Service. The benefit to applicants for parole could be that a

Parole Tribunal would allow for an appeal to a dedicated chamber (upper tribunal) and that judges could be found through the Judicial Appointments Commission. This would need to be set up following primary legislation. This could retain the flexibility and informality of the current system and would not need to move from an inquisitorial to adversarial system. We are aware that this was under discussion two years ago and believe this idea should be revisited.

Conclusion

In conclusion, the difficulties encountered by the Parole Board are considerable but the Board is doing an effective job of meeting challenges, given the limits of its resources. It is essential that this function continues. The Parole Board also needs to be financially sustainable as well as independent from government and having appropriate powers to operate. If this were to happen, the Parole Board would not only support procedural fairness and public safety but potentially create savings for the Ministry of Justice across not only its own budget but that of other agencies too. It is essential to the operation of justice that the Parole Board remains and that it is properly resourced.