



**THE FUTURE OF THE PAROLE  
BOARD  
MINISTRY OF JUSTICE  
CONSULTATION**

**RESPONSE BY  
THE ASSOCIATION OF PRISON LAWYERS**

**To:**

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**Introduction**

1. This response to the Consultation Paper *The Future of the Parole Board* is submitted on behalf of the Association of Prison Lawyers (APL). The Association of Prison Lawyers (APL) was formed by a group of specialist prison lawyers in 2008 to represent the interests and views of practitioners in prison law.
2. APL members have extensive experience of representing prisoners before the Parole Board and have witnessed and played a part in the

development of the Parole Board over the past three decades. Some of our members have been representing prisoners for well over twenty years.

3. We have conducted an internal review with our members concerning this consultation paper and our members have attended events hosted by the Parole Board and the Centre of Public Law at the University of Cambridge at which the consultation paper was explored in detail.
4. We have a great deal to say about the future development of the Parole Board but we have sought, at this stage, to largely confine our comments to the most pressing issue which is the future “landing place” of the Parole Board. The clear majority of our members, of those who have expressed a view, were in favour of the Parole Board being fully integrated into the Court Service.
5. This response has been structured around the questions set out on page 26 of the consultation document. We have not sought to answer each question individually because many of the issues arising from individual questions overlap and we wanted to avoid unnecessary repetition.

### **Jurisdiction, Functions and Powers**

6. We believe that the Parole Board has outgrown its current place as it is no longer an administrative, advisory, body as was the case when it was established in 1967.

7. We regard the proper role of the Parole Board as making decisions, independent of the Executive, concerning the release and progression towards release of convicted prisoners. The source of the loss of liberty for convicted prisoners is the sentence imposed by a criminal court. It is our view that this core concept is the main reason why the Parole Board should

be identified as being properly placed within the Court Service and, in particular, as part of the criminal justice process. In this regard, we believe that there should be recognition of the dual role of the Parole Board. They are exercised with the responsibility for protecting the public by making reasoned decisions about the release and progression towards release of convicted prisoners but, at the same time, they are responsible for safeguarding the liberty of the individual against arbitrary or unreasonable detention.

8. The context in which this consultation has taken place is extremely important. The Parole Board has, for a considerable period of time, been experiencing great difficulty in delivering timely hearings for prisoners serving indeterminate sentences. In the course of judicial review claims pursued by many of our members, on behalf of their clients, it has become clear that the main problem facing the Parole Board has been a lack of resources and the most important resource is access to judicial members. It is our view that the placement of the Parole Board within the Court Service will be crucial in enabling the Parole Board to recover to a position in which it can provide proper protection of the article 5 rights (to a speedy review of continued detention) of indeterminately sentenced prisoners.

9. Once the decision concerning the future status of the Parole Board has been made, we believe that a further consultation exercise should be undertaken in relation to its functions and powers. As part of this process, we would hope that the following list (which is not intended to be exhaustive) of issues will be explored: -

- The power to direct, as opposed to recommend, open conditions.
- The timing of Parole Board Reviews.
- The extension of its jurisdiction to make any relevant observations and recommendations regarding security category and risk reduction interventions.

- The responsibility for formulating its own Directions for the factors to be taken into account in reaching decisions.
- Appropriate rules of evidence.
- The power to direct witnesses and to impose sanctions for the failure of witnesses to attend and for the failure to provide information which has been requested without good reason.
- The burden of proof
- The development of expertise in methods of risk assessment including the evaluation of research and offending behaviour programmes.
- Rights of audience for advocates

The APL would welcome the opportunity to be consulted on these and other matters in the future.

### **Challenging Parole Board Decisions**

10. We believe that the current arrangements by which the only means of challenging Parole Board Decisions is by way of judicial review in the Administrative Court are inadequate. There should be a dedicated route for appeal against Parole Board decisions. Prisoners should be able to seek leave to appeal against Parole Board decisions which are arguably wrong in law, based on a material error of fact or plainly unreasonable in light of the available evidence. The appellate body should have the necessary expertise to review decisions which have been made by Parole Board panels. A properly constituted appeal court should lead to greater consistency in decision making and a reduction in the number of judicial review claims.

### **Sponsorship of the Parole Board**

11. We are firmly of the view that it is crucial that the Parole Board is wholly independent from the Ministry of Justice. The Parole Board is exercising a

judicial role and, as such, must be entirely independent from the executive. Sponsorship of the Parole Board within the Ministry of Justice does not protect the Board's independence. We believe that the legitimacy of the Parole Board in the eyes of prisoners is extremely important. Prisoners are more likely to accept decisions made by the Parole Board if the system is seen as legitimate and the independence of the Parole Board is key in this regard.

12. We do not believe that sponsorship arrangements will meet the needs of the Parole Board either in the present or the future. The central problem which the Parole Board needs to address is access to resources and in particular judicial resources. It needs to be positioned in the best way possible to ensure that Judges can be deployed as and when required. The most favourable option would be for the Parole Board to be a properly constituted, independent Court within HM Courts Service.

## **Membership**

13. We believe that this is a subsidiary issue to the main question of the location and status of the Parole Board. We recognise that Parole Board members are and should continue to be drawn from outside the judiciary and that appropriate arrangements will need to be put in place to ensure that sufficiently competent members are appointed (and, equally importantly, receive an appropriate level of ongoing training). Membership criteria and methods of appointment need to be designed so as to attract members who have or can quickly develop appropriate expertise. This needs to be balanced against the danger of setting eligibility criteria so high that insufficient members can be recruited to meet the predictable need to provide speedy reviews for all those who need them.

14. Regard should also be had to the needs of diversity. We have concerns that the present makeup of the Parole Board is insufficiently diverse and needs, in particular, to attract more black and ethnic minority members.

### **Tribunal or Court Structure**

15. For the reasons we have set out above, we believe that the Parole Board should have the status of a Court within HM Court Service. We believe that the tribunal model is a civil forum; the Tribunal Service has been expanded and developed to serve that civil legal function whereas the Parole Board can only be seen today as being an integral part of the ongoing criminal sentencing function. It derives its law and purpose from the criminal code. It makes criminal sentencing decisions. It is simply not a civil forum although current recourse in failed cases by definition can only go to the Administrative Court.

16. To place the Parole Board within the Tribunal Service would in our view be misconceived and detrimental to the effective management of sentences and ultimate release for both determinate and indeterminate sentenced prisoners.

17. Decisions made within the Parole Board are criminal law decisions. Flowing from those decisions are criminal law derived sanctions and conditions, such as licence conditions restricting free movement in some offenders; often for life. These decisions have the effect of being criminal sentencing akin to orders made in the Crown Court.

18. The Parole Board should not be one of a number of different tribunals jostling for resources. There is no common thread within the tribunals placed within the Tribunal Service. The comparison with the mental health review tribunal system is understandable but misguided. Mental health

tribunals, in common with a number of different courts and tribunals, deal with the assessment of risk but none of these operate within the criminal justice system. The key difference with the Parole Board is that it deals with people who have been convicted by criminal courts and have lost their liberty as a result of a criminal sentence.

19. We foresee a number of benefits attaching to the Board being a part of HM Court Service:

- Timetables for oral hearings could be settled with there being potential for meaningful directions hearings and consequences on all parties for non-compliance;
- The witness summons procedure could be simplified from its current time consuming form and become enforceable with sanctions;
- Contempt proceedings could be formalised with sanctions to avoid witnesses refusing to follow judicial orders both inside and out of proceedings;
- A more appropriate appeals process could be developed in order to provide a more meaningful, timely and relevant route for appellants, reducing pressure on the Administrative Court, and providing a more pertinent and effective recourse where needed.
- It would greatly assist in the provision of judges. The shortage of qualified judges appears to be the major cause of the appalling backlog of cases waiting to be heard and this needs to be rectified in the most efficacious and timely manner.

20. We do not believe that the reconstitution of the Parole Board as a Court within HM Courts Service would require any changes to be made to the current system whereby parole hearings take place within prisons. There

are good reasons why this system has evolved and, particularly in the present economic climate, there is no pressing need for any additional costs to be borne by the public purse in setting up new facilities or having to hold hearings in Crown Courts. The Impact Assessment within the consultation paper is misleading as it appears to suggest that the incorporation of the Parole Board into existing HMCS structures may entail increased costs relating to courtroom availability and transporting prisoners. There is no reason why a Parole Court should not hold its hearings within prisons, as is presently the case, and with such representation as the prisoner wants.

**Association of Prison Lawyers**

**19 November 2009**