

4<sup>th</sup> June 2013

## Parole Board response to the Government's Consultation on Transforming Legal Aid

The Parole Board is an independent body that works with its criminal justice partners to protect the public by making fair, rigorous and timely risk assessments of prisoners to decide whether they can be safely released into the community.

### Overview

This response focuses on the section devoted to proposals concerning those who represent serving prisoners whose cases are considered by the Parole Board.

It takes as its starting point the thesis set out at Chapter 3.1 and confines itself to the probable impacts of the proposed changes on the Parole Board

### Background

The Parole Board operates in a very different way to a criminal court. Its decisions are based upon an investigative process and not an adversarial one. The skills required on all sides, including the prisoners' representative bear little relation to those employed by a criminal trial advocate. Over time a body of specialist prison lawyers has grown up which understands the nature of the process and contributes to the quality of the eventual decisions and the ability to of the Parole Board to make those decisions in a timely manner.

The nature of the relationship between that specialist cadre and the Board means has led to:

- Active and co-operative input into planning and implementation of those plans to improve the parole process
- A significant contribution from prison law practitioners into the training of members and staff of the Parole Board
- An ability to give firm advice where appropriate as to whether to press for release or re-categorization because of their knowledge of the Parole Board's general attitude to risk

We are concerned that the proposed changes may have a significant detrimental effect on these attributes, thus making the parole process slower, less efficient and more expensive.

Particular areas in which the current cadre adds significant value which may be put at risk by the proposed changes are:

1. The ability of experienced lawyers to engage local authorities and others with the problem of resettlement of those with special needs such as young people, women and those with mental health problems or disabilities is critical to making fair, timely decisions which make best use of resources. Putting a realistic resettlement plan together will making savings down stream for example, enabling a young person to progress towards safe release at a point when they can still turn their lives around rather than into the adult estate and becoming more institutionalised and resistant to rehabilitation.
2. The fact that at present long term prisoners frequently maintain the same representation throughout their sentence. This means that work is done by the lawyer in the interval between hearings which enables subsequent hearings to be conducted much more effectively than if a new lawyer started afresh with the case each time the prisoner was referred to the Parole Board for review.
3. If every Cat A lifer was to ask for release at every hearing the cost to the system generally and the Parole Board in particular would rise rather than fall. A skilled and experience lawyer would be able to advise prisoners and take a realistic approach and seek alternative ways to enable the prisoner to progress through their sentence at less cost to the system.
4. Deferred hearings are a significant problem for the Parole Board, in that they waste precious resources. The time spent preparing the case, the cost of travel to the prison, and the day spent there doing nothing represents public money spent without a result. The Parole Board has undertaken an analysis of on the reasons for deferrals. The Parole Board is concerned that that figure may rise when lawyers without the background in prison law appear before panels in greater numbers than at present.
5. If the publicly funded representation of prisoners is to come exclusively from firms which are awarded one of the proposed 400 criminal law contracts with the geographical and other limitations on the work that they may do, the risk is that the prison law work, no doubt a tiny fraction of the work undertaken by such large organizations, will be done by inexperienced criminal lawyers who will conduct the proceedings more like a criminal trial than an investigative process, resulting in more and longer contested hearings with consequent additional costs to the system.
6. If it is thought that public confidence requires some cuts to be made in this field they might be better targeted elsewhere within the legal aid framework. The proposed cuts could be made to the current framework without effectively destroying it and in the process running the risk of consequences which would themselves reduce public confidence. In that context we have concerns too regarding the consequences of a withdrawal of legal aid from "matters relating to categorisation, resettlement issues and planning and licence conditions" which may well result in a greater recourse to oral hearings before the Parole Board as the only way to obtain legal representation to argue such points. Prisoners who are re-categorised "upwards" are likely to spend longer in prison at public

expense so the cost saved on legal representation may be equalled or outweighed by the costs of longer and more expensive imprisonment.

**Q1. Do you agree with the proposal that criminal legal aid for prison law matters should be restricted to the proposed criteria? Please give reasons.**

The Parole Board disagrees with this proposal. The removal of treatment, categorisation and resettlement issues from the scope of legal aid will have a dramatic effect on the ability of the Parole Board to make effective and timely decisions. There is also evidence that it will considerably increase the cost of the Criminal Justice System overall. The change in scope will increase the cost of conducting parole reviews and will increase the number of offenders who remain in prisons or higher security prisons than they might otherwise have needed, longer than previously with consequent cost of imprisonment overall.

The Parole Board recently conducted an analysis of the high rate of deferrals in parole reviews. It assessed the level of wasted costs to the Parole Board of approximately £1.57m a year. This does not include the cost to prisons, probation and others involved in the process. Significant contributory factors included the late or non-completion of relevant offending behaviour work or releases on temporary licence and the lack of adequate risk management plans including provision of appropriate accommodation and support in the community. The latter is of particular concern to the Parole Board as this disproportionately affects young people, care leavers, women, offenders with mental health or learning or physical disabilities.

The removal of these aspects of prison law from the scope of legal aid is likely to increase the chances of these issues arising and remaining unresolved at the point at which parole reviews commence. The Parole Board recognises the work which lawyers undertake to avoid such a situation arising thereby saving resources across the system.

The Parole Board anticipates that the change in scope is likely to lead to an increase in the number of cases referred for a decision. At present, a significant proportion of cases such as those where an indeterminate sentence prisoner is challenging the reasons for his/her return from open to closed prison, will now result in the case having to be referred whereas historically a skilled prison law practitioner could address this without recourse to the Parole Board.

**Q5. Do you agree with the proposal that providers should only be paid for work carried out on an application for judicial review, including a request for reconsideration of the application at a hearing, the renewal hearing, or an onward permission appeal to the Court of Appeal, if permission is granted by the Court (but that reasonable disbursements should be payable in any event)? Please give reasons.**

The Parole Board is very concerned about any attempts to limit the access which offenders will have to judicial review. The parole process is unusual in that it is a judicial process for which there is no formal appeals mechanism. As such, judicial review is the only avenue for offenders to formally challenge the decisions of the Parole Board. Whilst our aim is to avoid legal challenges, the Parole Board is committed to a system which provides justice for all those affected by it and the opportunity to challenge parole decisions legally is an essential aspect of that.

**Q7. Do you agree with the proposed scope of criminal legal aid services to be competed? Please give reasons.**

The Parole Board considers that, whilst this is likely to increase the cover, it is likely to reduce the quality of the service provided. The Parole Board anticipates that this is also unlikely to result in savings and indeed may result in an increase in costs to the system as firms seek to make the work viable by focusing on volume of work. For example, by firms seeking to increase the proportion of adjudications where prisoners are represented from their present low level.

The Parole Board performs a unique role which is quite distinct from that of any other court and as such is quite different in terms of the rules, procedures and practices which apply in other jurisdictions. As such, the Parole Board values the very skilled and experienced practitioners who have specialised in prison law and particular the conduct of parole reviews. The Parole Board recognises the very significant impact which these practitioners have in ensuring the system works as efficiently as possible. The Board has worked hard to develop closer and more effective working relationships with specialist practitioners, particularly through the Association of Prison Lawyers and this has seen improvements in the system including the reduction in the backlog of cases and reduction in the deferral rate.

The Parole Board is concerned about the impact of the cap on criminal work and lack of cap on prison law work will impact on the quality of the latter as firms seem to build volume of work to ensure a viable business model.

**Q8. Do you agree that, given the need to deliver further savings, a 17.5% reduction in the rates payable for those classes of work not determined by the price competition is reasonable? Please give reasons.**

The Parole Board regards this further reduction in rates presents a threat to the quality and level of provision of adequate legal representation in parole work. This reduction comes shortly after a significant previous reduction. The Parole Board is particularly concerned that in this context, pressure may be applied to remove the requirement for prison law practitioners to fulfil the requirements of the supervisor standard which provides the Parole Board, offenders and the tax payer with assurances about the quality of the legal representation being funded.

**Q34. Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper? Please give reasons.**

The Parole Board accepts that the paper (at Annex K) identifies the imbalances within the prison population and the likelihood of undue impacts on sections of that population. However, the Parole Board is anxious that the changes in respect of prisoners without the required lawful residence should not unfairly impact on them, albeit that we assume that any foreign prisoner who has been detained either on remand or under sentence or both for 12 months will be deemed to be "lawfully resident" for these purposes.

The Parole Board is also concerned – see paragraph 1 of our preliminary submissions - at the potential impact of the reduction in scope in prison law on vulnerable groups of prisoners. As we have said our concerns relate specifically to questions of re-categorisation and the creation of viable sentence and release plans and we wonder whether the comprehensive screening etc described at Annex K 5.1.3 will adequately fill the gap for prisoners with learning disabilities and young people generally.