

David Liddemore  
Ministry of Justice  
Access to Justice Sponsorship and Performance Unit 3.18  
102 Petty France  
London SW1H 9AJ

19 November 2009

By email: [paroleboardconsultation@justice.gsi.gov.uk](mailto:paroleboardconsultation@justice.gsi.gov.uk)

Dear Sirs

## **THE FUTURE OF THE PAROLE BOARD**

We write this letter in response to Consultation Paper 14/09 produced by the Ministry of Justice (MoJ) in respect of proposed changes to the existing Parole Board system.

The Prisoners Advice Service (PAS) provides legal advice, assistance and information to prisoners in England and Wales regarding their rights, the application of the Prison Rules and conditions of imprisonment, and has extensive experience of representing prisoners before the Parole Board.

We wish to express our views on the proposed changes and have structured our response following the list of questions set out in the Consultation Paper. These are set out below.

### **Question 1**

How should the Parole Board's existing jurisdiction, functions and powers be clarified?

The Parole Board was originally set up in 1967 to advise the Home Secretary in relation to the exercise of the powers given to him under the Criminal Justice Act 1967 to release prisoners on licence and to recall prisoners to custody. It is clear that in time the Parole Board has evolved from an advisory to a decision making body and as such should be awarded full independence from the executive.

It is our view that the Parole Board would best be managed if reconstituted as an independent tribunal within the Tribunals Service. As a tribunal, the Parole Board would still be in a position to rely on the input of Parole Board members, as a variety of skills is

needed to manage different types of oral hearings. The mix of expertise would ensure fairness, whilst the question of the independence of the Parole Board would be resolved as it would form part of the Tribunals Service. Solicitors, who generally represent prisoners at oral hearings, would continue to have rights of audience before tribunals (which would not be the case if the Parole Board were merged into HMCS) benefiting both prisoners as well as the public purse by avoiding the instruction of barristers who are often not as familiar with details of prisoners' cases as solicitors are.

It is our view that Parole Board hearings should continue to take place in prisons, as this gives members the opportunity to see a little of how the particular prison and estate operates, whilst providing a more informal setting which prisoners are more at ease with. It would also seem highly costly and likely to lead to delays for hearings to take place in any other setting than prison. Further, the transport of prisoners to and from hearings would inevitably result in delays as well as potential non attendance resulting from security and/or staffing issues. Mental Health Review Tribunals always take place in hospitals. We do not feel that this aspect of Parole Board hearings should be altered.

## **Question 2**

Should there be alternative arrangements, other than judicial review in place to enable parties to proceedings to challenge Parole Board decisions? If so, what might those arrangements be?

It is our view that there should be alternative arrangements to enable prisoners to challenge decision of the Parole Board. At present, the only means by which prisoners can challenge Parole Board decisions is by way of judicial review. It is our position that judicial review is a limited appeals process as even when successful the only usual result is for the case to be referred back to the Parole Board for the decision to be reconsidered. The High Court is unable to make a fresh decision.

We endorse JUSTICE's view as expressed in their recent publication 'A New Parole System for England and Wales' and agree that the Tribunals, Courts and Enforcement Act 2007 provides a unified appeal structure whereby a decision made by a first-tier tribunal may be appealed to the upper tribunal (with permission either from the tribunal being appealed or from the upper tribunal). The grounds of appeal must raise a point of law, which should include errors in approach to evidence or decisive errors of fact. The latter would be especially relevant in the case of prisoners as it would include for example, cases in which risk assessments are misinterpreted. Any onward appeals would have to be before the Court of Appeal on points of law.

### **Question 3**

Has the move of sponsorship of the Parole Board within MoJ gone sufficiently far to protect the Board's independence; and does it provide the best means for ensuring the Board's effectiveness and efficiency?

In our view the move of sponsorship within MoJ has not gone sufficiently far to protect the Board's independence. As a result of the judgment in *Brooke* sponsorship was shifted from NOMS to the Ministry of Justice's Access to Justice Group to address the most immediate concerns of the Court of Appeal about the independence of the Board. The position of PAS however remains that such shift in sponsorship arrangements does not sufficiently secure the Board's independence either in practice or perception. By falling within the realm of the Ministry of Justice, a Government agency, the Parole Board inevitably lacks independence in both practice and perception as the two, in our view, go hand in hand. We welcomed the positive result of the *Brooke* judgment, but maintain that especially in cases deciding on prisoners' release the complete independence of the Parole Board must be paramount. To be truly independent, the Parole Board needs to be independent *from the executive*.

### **Question 4**

Do you think sponsorship by either HMCS or the Tribunals Service would provide the appropriate level of independence and sufficient access to judicial resource?

As set out in our response to Question 3, we are firmly of the view that the Parole Board should be entirely independent from the MoJ. Sponsorship by either HMCS or the Tribunals Service would partly resolve this problem, although it remains vital for the Parole Board to be adequately resourced to ensure its functions are carried out to its maximum potential.

There should be sufficient resources provided to the Parole Board to enable it to satisfy the state's duties under the Human Rights Act 1998, particularly article 5(4) of the European Convention on Human Rights, and to deal with cases as quickly and thoroughly as the interests of the public and inmate require.

### **Question 5**

In light of your views as to the jurisdiction, function, powers and place which the Board has within the Criminal Justice System, what is the appropriate mechanism for appointing members?

We are of the view that Parole Board members should continue to be drawn from outside the judiciary and that appropriate mechanisms should be in place to ensure

competent members continue to be appointed. In some cases it is crucial that one member has medical or other expertise. This requires specialist, trained chairs and panel members. However, the selection process should not merely seek competent members; it should also ensure that members are adequately representative of the community. We are concerned that the present composition of the Parole Board is not sufficiently diverse and that it should attract more members from ethnic minority groups. Preferably, there should also be full-time chairs.

### **Question 6**

What should the tenure arrangements be for members?

We endorse JUSTICE's view that the period of appointment should be broadly similar to that used by other tribunal jurisdictions.

### **Question 7**

In light of your responses to the previous questions, what status should the Parole Board hold within the Criminal Justice System? Should it be a court, tribunal or hold some other status such as its current NDPB status?

Please see our response to Question 1.

### **Question 8**

Do you think the type of work dealt with by the Parole Board would be compatible with becoming part of either the Tribunals or Courts structure?

PAS is of the view that the work of the Parole Board would be compatible with the Tribunals structure, as long as certain unique positive characteristics to the Parole Board setting were not altered, including, *inter alia*, oral hearings taking place in the prison setting rather than at an actual tribunal, and maintenance of the unique composition of Parole Board members.

The Parole Board should be an expert, specialist Tribunal. Members must have expertise in the assessment of risk, and in the inquisitorial procedures involved. Chairs should be able to address complex disputes of fact and law.

**Question 9**

Do you have any alternatives to the above models?

No.

**Question 10**

Do you have any views on the initial impact assessment, including any potential adverse impact on any particular group of people, what steps would be taken to mitigate this, and anything else the full impact assessment should cover?

We are concerned about the potential impact on solicitors should the Parole Board be merged within HMCS. Any impact assessment should therefore also consider how best to tackle the rights of audience of solicitors at oral hearings. In a setting such as the Crown Court solicitors would have to obtain higher court advocacy rights, or would have to instruct barristers more often resulting in the problems listed in our response to Question 1.

We are also concerned about the potential impact on public funding through the Legal Services Commission for prisoners' legal representation, as this should continue to be available in the case of prisoners before the Parole Board.

**Conclusion**

Finally, we endorse the view expressed by the Association of Prison Lawyers (APL) that once a decision is made concerning the future structure of the Parole Board, a further consultation exercise should be undertaken in relation to its functions and powers.

We ask the Access to Justice Sponsorship Unit to take our views as expressed above into account in their decision making process.

Yours faithfully

**PRISONERS ADVICE SERVICE**