



Ministry
of Justice

Root and Branch Review of the Parole System:

The Future of the Parole System in England and Wales

March 2022

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of Justice

Root and Branch Review of the Parole System: The Future of the Parole System in England and Wales

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

March 2022



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Foreword



As Secretary of State for Justice, I am committed to protecting the public and improving victims' experience of the Criminal Justice System.

The parole system has a critical part to play in ensuring both aims are met – it prevents criminals that continue to pose a threat from leaving prison and helps victims to feel they have the information they need and a voice in the process.

So, it is paramount to maintaining public confidence that our parole process functions effectively.

In recent years, a number of decisions to release offenders who have committed heinous crimes have led to a loss of public confidence in the parole system.

People have questioned how safe it really is to release certain offenders and why those recalled to prison were allowed to leave in the first place.

I share these concerns, which is why I am determined to re-focus the system to put public protection at the forefront of all parole decisions.

The statutory release test states: *“The Parole Board must not give a direction [for release] ... unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined”*.

However, in the absence of further guidance from Parliament, the way the current release test has been interpreted and applied has moved away from Parliament's original intention. A court judgment in the case of *Bradley* in 1991 stated that the role of the Board is to “carry out a balancing exercise between the legitimate conflicting interests of both prisoner and public”. The statutory test has therefore changed over time to become a ‘balancing exercise’ between the rights of the prisoner to be considered for release and the responsibility of the state to protect the public. This was not the original intention of Parliament.

I want to make it absolutely clear that prisoners, who are being assessed by the Parole Board, should continue to be detained (or stopped from being transferred to open prison conditions), unless it can be demonstrated that the offender no longer presents a risk of further serious offending.

I want to see the parole process take a more precautionary approach when it comes to decisions affecting public protection.

In particular, in cases which involve those who have committed the most serious crimes, it is right that Ministers should provide a measure of oversight and be able to intervene more directly in decisions on release.

Victims wanting to challenge a decision to release a prisoner have the option of asking the Justice Secretary to apply for the decision to be reconsidered. There have been 39 interventions since the challenge mechanism was set up two years ago, but only four led to a change in a release decision.

Providing for Ministerial oversight of offenders who have committed the most serious crimes, representing the highest risk to the public, will help to ensure the Parole System has the safeguards in place to keep people safe, and can command greater public confidence.

The key proposed reforms set out in this review will rectify this and ensure public protection is the overriding consideration for release decisions.

First, the release test used by the Board will be amended to be more prescriptive and will therefore put beyond any doubt Parliament's intention on the test and criteria that must be applied.

Second, we'll ensure the Parole Board's membership includes more people with law enforcement backgrounds – as of last year, only 5% of all members come from the profession. This move will ensure a greater focus on risk and public protection, because of their first-hand experience in dealing with serious offenders and the risk they present.

Third, for a 'top-tier' cohort of high-risk offenders who have committed the most serious offences, we will add a measure to provide Ministerial oversight of parole decisions to release these offenders back into the community, before the end of their sentence. That top tier will include offenders serving sentences for murder, rape, terrorism and causing or allowing the death of a child and are parole eligible.

The Parole Board will be able to refer a particularly challenging 'top-tier' cohort case to the Justice Secretary, if they cannot confidently conclude - on the evidence available - whether the test for release has been met.

In addition to this, there will be a new review power to enable ministerial oversight of the release decision of any 'top-tier' cohort offender. We will further consider the details of the procedural mechanism and set out two options in this review.

Fourth, victim participation in Parole hearings will be increased, fulfilling our manifesto commitment to do so. Under our proposed reforms, it will be made possible for victims to

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attend a parole hearing in full for the first time, should they wish to do that. In addition, we will require the Board to take account of submissions made by victims and allow for victims to ask questions in those submissions.

Overall, the review shows the parole system is in need of further reform and suggests proposed improvements to ensure it is working as effectively as possible.

Protecting the public is the government's top priority and the proposals in this review will reinforce public safety and increase confidence in our justice system.

A handwritten signature in black ink, appearing to read 'Dominic Raab', with a stylized flourish at the end.

Rt Hon Dominic Raab MP

Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice

Introduction

1. This report delivers the government's 2019 manifesto commitment to conduct a root and branch review of the Parole System in England and Wales. It is a critically important part of the criminal justice system, responsible for risk assessing certain prisoners prior to their release. Public protection is the fundamental and overriding function of the parole system so it is important to ensure that it is operating in the interests of the public and public protection – and, crucially, that everyone has confidence in the system. The government believes that the system must take a precautionary approach to the release of offenders, to ensure that the Parole Board does not direct release unless there is evidence that the offender poses a low risk to the public.
2. The government undertook a root and branch review to examine whether all aspects of the parole system are working in the best way possible to deliver that function, to take stock of how the system is now performing in light of the reviews and changes that have taken place over the last few years, and to identify further reforms that will ensure we have a system that is fully fit for purpose and has the protection of victims and the public at its heart.

The Parole Board

3. The Parole Board is now responsible for much of the delivery of the parole system and for making decisions on the release of parole-eligible prisoners. It was originally established in 1968, as a small advisory body that made a comparatively small number of recommendations on the release of prisoners to the then Home Secretary. The Parole Board has since transformed into a body independently making quasi-judicial decisions about the release of certain categories of prisoner, in thousands of cases per year.
4. The parole process is aimed at those offenders who the courts have convicted of the most serious crimes and who receive one of the types of sentences that require release to be at the discretion of the Parole Board – mostly life and other indeterminate sentences, together with extended sentences for public protection. The vast majority of offenders who go to prison, however, receive standard determinate sentences, which means their release is automatic at a fixed point in their sentence and there is no role for the Parole Board in their *initial* release, though the Parole Board is involved when it comes to the process for re-releasing them if they are recalled to custody. Determinate prison sentences are for a fixed length of time, whereas an 'indeterminate' prison sentence does not have a fixed length of time. For indeterminate sentences, no date is set when the offender will be released and they have to spend a minimum amount of time in prison (called a 'tariff') before they are

considered for release by the Parole Board. Annex B sets out the sentence framework in more detail.

5. For those whose release is subject to a Parole Board assessment, it is a complex and sophisticated process, often taking several months, and taking account of a wide range of reports, assessments and other evidence – including from prison and probation professionals, the police and psychologists and psychiatrists where necessary – to make sure all relevant information about the prisoner’s future risk to the public is considered. Victims have the right to make Victim Personal Statements about the impact the offences had on them and continue to have, and to present any concerns they have about the future risks if the prisoner were to be released. Victims can also request that offenders are made subject to certain licence conditions if released, such as non-contact requirements and exclusion zones to provide protection and reassurance from unwanted contact.
6. The Parole Board provides an independent, impartial review of all of the evidence and uses it to make decisions on whether the prisoner is safe to release. They make directions on how the case should be dealt with, ordering additional evidence and reports if those are needed to make a proper risk assessment and directing an oral hearing in cases where the Board considers a need for the prisoner and other witnesses to appear in person to discuss their evidence. The key objective is to ensure that prisoners who have reached the point in their sentence when they have become eligible for release, are only released if it is safe to do so and that those who continue to pose a risk to the public remain detained.

Previous reviews and reforms

7. This review has been conducted in the context of a number of recent reviews since 2018 which have looked in depth at issues such as how Parole Board decisions are made, improving victim contact and experience of the parole system, a review of all the Parole Board Rules governing parole procedures, and the operation and performance of the Parole Board itself. These are:
 - Review of the law, policy and procedure relating to Parole Board Decisions (2018)
 - Review of the Parole Board Rules and reconsideration mechanism (2019)
 - Tailored Review of the Parole Board (2020)
8. Those previous reviews have led to reforms such as the introduction of Parole Board decision summaries which are now routinely provided, mainly to victims, to explain the reasons for its decisions; and the introduction of the reconsideration mechanism in 2019.

9. The Tailored Review fulfilled a standing requirement for government departments to review their arms-length bodies once every Parliament. It examined whether the Board was delivering its functions in an efficient and effective way and how its performance and operation of the parole process could be improved.
10. That resulted in a number of recommendations, including to establish a new senior-level 'Parole System Oversight Group' which would assume responsibility and accountability for the whole end-to-end parole system and the establishment of independent third party scrutiny of the parole process to provide additional checks and assurance that the system is operating effectively.
11. The root and branch review has taken account of the reforms recommended by the Tailored Review and considered how those changes could best support, and be integrated as part of, the future system of parole envisaged in this report.

Areas the root and branch review has examined

12. The broad conclusion is that the parole system works effectively for the majority of cases and the reforms that we have made over the last few years have achieved improvements, particularly around increased transparency. However, it is clear that further improvement is required. In recent years, the parole process has moved away from its intended purpose of public protection with the current release process seeming to hold a presumption of directing release unless it is demonstrated that there is risk to the public. The statutory release test applied by the Parole Board has not changed since 1991 and provides:
13. "The Parole Board must not give a direction [for release] ... unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined"
14. Over the years and in the absence of Parliamentary intervention, the application of this test has drifted from its original intention. Instead of the Board approaching their risk assessment as a public protection test to be met in order to direct release, the courts have interpreted the Board's task as a 'balancing exercise', considering the competing interests of the prisoner and the protection of the public.
15. The government believes that it is the prerogative and responsibility of Parliament to reset the approach to the parole process, reverting to the original intention of the statutory test and its operation in practice. In particular, we propose to adopt a more precautionary approach, for the most serious cases, i.e., *not* directing release unless there is evidence of low risk to the public. The onus should be on the offender to demonstrate that they can be trusted to be released in the community safely. This

reversal of presumption will make the system more robust when dealing with the most dangerous offenders.

16. The root and branch review has not looked at questions around the types of sentences that are appropriate for different offenders, how and when they should be eligible for release, or which offenders should be subject to a system of parole release – as those are sentencing issues that were explored and dealt with in the Sentencing White Paper 2020. This work complements the reforms subsequently taken forward in the Police, Crime, Sentencing and Courts Bill, setting out the government’s position on strengthening the way sentencing and release operates for the most serious offenders.

A new model for the top-tier of parole cases: applying a precautionary principle

17. The government has concluded that fundamental reform is required, particularly in relation to the most serious and high-risk cases which create significant public concern, and where release decisions or moves to open prison conditions have been seen to undermine confidence in the system. For that ‘top-tier’ of parole cases, we will introduce a new model which adopts a precautionary principle: to ensure the highest level of scrutiny and safeguards in those cases and with public protection as the overriding consideration. The proposals for the new model are set out in this review.

Increasing transparency and improving victim engagement

18. A key focus of the review has been to identify ways to increase transparency further and to improve victim participation and engagement in the parole process. At the beginning of the review, in October 2020, the government conducted a public consultation on the possibility of holding some parole hearings in public.¹ The government’s response was published in February 2021² announcing our intention to change the Parole Board Rules to remove the current requirement for all hearings to be held in private. We set out how those changes will be delivered; in particular, how applications for a public hearing will work and how the government will deliver on its manifesto commitment to allow victims to attend a hearing in full if they wish to do that.
19. It is critically important that victims are kept fully informed about every stage in the prisoner’s sentence, that they receive the support they need and feel they have a voice in the process. More recently from December 2021 to February 2022, the government conducted a public consultation on measures to include in our proposed Victims Bill. As part of that consultation views were sought on ways to improve further victim engagement in the parole process. The responses have helped to inform the

¹ Root and Branch Review Consultation

² Root and branch review of the parole system (publishing.service.gov.uk)

approach to victim engagement and participation in the parole system that are set out in this report. This includes proposals to allow victims to make written submissions to the Parole Board, to ask questions in those submissions; and to improve the information provided to victims.

Constitution and composition of the Parole Board

20. The review examined the constitution and status of the Parole Board, in particular whether it should remain an independent Arms-Length Body (ALB) sponsored by the Ministry of Justice or should become a tribunal. We think that it is unnecessary to legislate to change the Board's constitution in order to deliver the necessary improvements to the system.
21. However, the review concluded that the Board would benefit from having more members with a law enforcement background, such as former police officers. We therefore intend to legislate to make law enforcement one of the professions from which members should be drawn and plans to actively recruit such members. In addition, we propose that members with a law enforcement background should sit on the panels dealing with the release of the top-tier of parole cases.

Executive summary

Headlines	
	The government will legislate for a new precautionary approach to the release of a top-tier of the most serious offenders to ensure the highest levels of assurance and safeguards in those cases.
	Changes to refine the statutory release test will be introduced to make it more prescriptive: with a greater focus on protecting the public from the risk of further serious offending and setting out the criteria the Parole Board must consider.
	The Board will be required to apply a precautionary approach in the top-tier cases: meaning if they cannot confidently conclude the release test is met they must either refuse release or refer the case to the Secretary of State.
	A power to refuse the decision will apply in cases where the Board decides a top-tier prisoner should be released but a review by the Secretary of State disagrees that the release test has been satisfied.
	Changes in legislation will increase the number of Parole Board members from a law enforcement background and ensure such members sit on panels in top-tier cases.
	New Parole Board Rules will make it possible for public parole hearings in some cases and, for the first time, to allow victims to apply to attend hearings in full if they wish.
	New processes will be put in place on the transfer of life and other indeterminate sentenced prisoners to open prison conditions , to deliver greater Ministerial scrutiny of cases where prisoners have committed the most serious offences.
	The Secretary of State, as a party to parole proceedings, will make greater use of legal representation to present the strongest possible case to the Parole Board about a prisoner's risk in certain cases.

Overall conclusions and proposals for reform

22. This report sets out the outcome of the government's root and branch review of the parole system and the government's proposals for reform. The overall conclusion is that, for the majority of prisoners whose release is subject to Parole Board risk assessment, the current system effectively fulfils its primary function of protecting the public by keeping in prison offenders who continue to present a risk to the public and only releasing those whom it is safe to do so. However, there continue to be cases involving the most serious crimes which give rise to significant public concern, and seriously undermine confidence in the system.
23. The current approach appears to place the onus on the system to demonstrate that the offender poses a risk and should therefore not be released, rather than assuming that the offender should continue to be detained unless it can be actively demonstrated that there is no longer a risk to the public. There is a need for more fundamental reform in relation to these cases, with Parliament setting clear statutory guidance to enhance public protection and to reinforce trust in the parole system.
24. The following sections provide a more detailed summary of the findings and proposals. Part 1 focuses on those proposals designed to enhance public protection. Part 2 explores proposals for reform to improve transparency and the experience of victims in the parole process. Part 3 sets out the review findings following evaluation of the overall effectiveness of the system.

Part 1: Parole Board Decision-making and Composition

25. Part 1 focuses on proposals aimed at enhancing public protection. These include: making the release test the Parole Board must apply more prescriptive; a new model to establish a more precautionary approach to the release of the most serious offenders; revising the traditional role of the Parole Board in assessing the suitability of life and other indeterminate sentence prisoners for open conditions; increasing the membership of Parole Board members with a law enforcement background; and a new power to allow the Secretary of State to mandate which professional backgrounds should be represented on certain parole panels.

Changes to the statutory release test

26. The government proposes changes to the legislation governing the release of prisoners subject to Parole Board risk assessment. Firstly, the statutory release test the Board is required to apply will be made more prescriptive and set out the criteria the Board must consider. Currently, the legislation provides that the Board must not direct the release of a prisoner unless the Board is "*satisfied that it is no longer necessary for the protection of the public that the person should be confined*".

27. The government considers that the way this test has been interpreted and applied over the years, as reflected in the absence of clear legislative guidance and in various court judgements, has moved away from what Parliament intended and has constrained how the Parole Board approach the question of whether a prisoner is 'safe' to release. To rectify that, we will refine the test to put beyond doubt what is meant by "necessary for the protection of the public" with a greater emphasis on being satisfied that the public would not be put at risk from further serious offending if the prisoner were to be released.
28. In addition, the criteria the Board is required to consider in making that assessment will be set out in legislation, including: the nature and gravity of the original offending; evidence of wider alleged offending; and submissions from victims; as well as conduct and progress made while in prison.

A precautionary approach to the release of the most serious offenders

29. Secondly, there will be a new model for making decisions about the release of the top-tier of the most serious offenders. That top tier will be defined as offenders serving sentences for murder, rape, terrorism and causing or allowing the death of a child. We recognise that this category could be defined differently, but after careful consideration believe these offences capture the cases that comprise the highest risk and have the greatest impact on public confidence.
30. Given the particular gravity of these offences, and the severe consequences if the prisoner were to go on to commit further such offences, we will apply a precautionary principle when considering the release of offenders in these categories. This will mean legislating to provide that, where the Parole Board cannot confidently say that the release test has been met, it must apply that precautionary approach and direct that the offender remains in prison, or to refer the case to the Secretary of State.

Secretary of State power to become involved in a release decision in the most serious cases

31. Where a case is referred to the Secretary of State, there will be a new power for Ministers to review and be involved in the release decision. There are two circumstances where this Ministerial review could apply: either where the Parole Board cannot confidently say that the release test has been met, and in cases where the Parole Board directs the release of one of the 'top-tier' offenders. In both circumstances, the Secretary of State will be able to review and refuse this release decision. This review power will enshrine the precautionary principle in law. There are two alternative models by which this precautionary approach would be implemented. The first option would be for Ministers personally to take the decisions, with a route of appeal to the Upper Tribunal. The second option would be to create a new review panel to take the decisions, comprising the Secretary of State and two independent panel members.

32. The first option would include a power for the Secretary of State to review and refuse a decision by the Parole Board to release a prisoner who falls into the top-tier cohort on the basis that the Secretary of State disagreed with the Board that the statutory test has been met.
33. Under this option it would be necessary to create a new route of appeal to enable decisions to be challenged. We propose that such appeals would be heard by the Upper Tribunal and that this route of appeal would be instead of Judicial Review. The grounds for this appeal will be an error on a point of law, engaging the Judicial Review style grounds of irrationality, procedural unfairness and illegality, and an error of fact. The Upper Tribunal would have the power to reject the decision and send the case back to the Secretary of State or the Parole Board; or it would have the power to order the release of the prisoner.
34. An alternative option for ministerial involvement would be to create a new review panel which would review and take decisions on cases referred to the Secretary of State: either where the Parole Board cannot confidently conclude whether the release test has been met in a top-tier case; or where the Parole Board has made a decision to release and the review panel would have the power to review and refuse release in those cases. The review panel would comprise the Secretary of State and two independent members who would review the case and determine whether they consider the release test to be met. The panel would be constituted to fulfil an independent court-like function, so under this option it would be unnecessary to create a new and separate appeal mechanism to the Upper Tribunal.

The constitution of the Parole Board

35. The Parole Board is an executive non-departmental public body and one of the arms-length bodies (ALBs) sponsored by the Ministry of Justice. The review explored the question of whether, given the independent and quasi-judicial nature of the Board's decisions, it should be reconstituted to become a tribunal with the status and powers that other courts and tribunals have.
36. We do not think that reconstitution of the Board is necessary to achieve the improvements to the decision-making process that are necessary to better protect the public – and would not align with the proposed new model. Whilst it remains important for the risk assessments and decisions made by the Board to be made independently from government, protection of the public from the most serious offenders must ultimately be a matter for the government to ensure – and that is why the proposed model includes the ability for the Secretary of State to intervene in clearly defined cases involving the most serious offences. For that reason, the review concludes that the Parole Board will remain an ALB.

Composition of the Parole Board's membership

37. There are currently around 300 members of the Parole Board. They are public appointments made by the Secretary of State. Members are drawn from different professional backgrounds, primarily the judiciary, psychologists, psychiatrists and people with extensive experience of the criminal justice system. For each case referred to the Board to consider, a panel of members is convened to assess the dossier of evidence, conduct an oral hearing if needed to hear from the prisoner and witnesses and to make a decision on whether the test for release is met. The most experienced members will be assigned to the most complex and high-risk cases to ensure the right level and mix of expertise on the panel.
38. Currently, only 5% of Parole Board members have a law enforcement background,³ such as being a former police officer. Having reviewed the composition of the membership, the government would like to increase the number of members with that sort of professional background and expertise because of their particular first-hand experience of assessing the risk to the public. This is intended to help strengthen the diverse range of skills and experience among the Board's membership. In particular, we want to ensure that a member with a law enforcement background is included on panels dealing with the top-tier of the most serious offenders.
39. To achieve this, changes will be made to explicitly set out in legislation that law enforcement is one of the professional backgrounds from which Board members should be drawn and the Secretary of State may direct the composition of panels. There will also be targeted recruitment campaigns aimed to attract members from that profession.

Decisions on moving indeterminate sentence prisoners to open conditions

40. One of the roles performed by the Parole Board is to make recommendations to the Secretary of State on whether it would be safe for prisoners serving a Life or Imprisonment for Public Protection (IPP) sentence, to be transferred to open prison conditions. Historically, a period in open conditions has been considered important for certain prisoners, and for those prisoners who have spent many years in a closed prison, the period in an open prison has served to help prepare them for life in the community.
41. Whilst the Parole Board makes recommendations on moves to open in these cases, the decision is for the Secretary of State. As with release decisions for the most serious offenders, decisions to transfer them to open prison ahead of release can create enormous concern. We will therefore change the policy and process for making the decisions on transfers to open prisons.

³ Parole Board Membership 2020-21

42. Current policy in relation to the Parole Board's role to recommend that a prisoner moves to open conditions, states that the Parole Board's recommendation should be accepted unless there are exceptional reasons to reject it. These are currently considered by officials acting on behalf of the Secretary of State.
43. The government has decided that this approach will be changed to provide for direct ministerial oversight in cases where the prisoner is serving a sentence for murder, other homicide, rape or serious sexual offence against a child/child cruelty. A new threshold will be applied, such that the prisoner must not only be assessed as low risk of abscond, but that a specified and clear purpose for a time in open conditions must be articulated, including an explanation of why that purpose cannot be met in a closed prison. Equally, we will also consider the extent to which placing the prisoner in an open prison would undermine public confidence in the system of open prisons.

Secretary of State representation at parole hearings

44. Finally, on Parole Board decision-making, the review examined how the Secretary of State is represented at parole hearings and whether more could be done to strengthen that, particularly in the most serious cases. Currently, the Parole Board is provided with a dossier of evidence containing reports, assessments and recommendations from professional HMPPS staff who know the prisoner – mainly probation staff, both prison and community based, and in some cases from an HMPPS psychologist. Reports and evidence are also provided where required from other professionals, such as the police.
45. At a parole hearing, those report writers are called to give evidence and to be questioned by the Parole Board panel. They will explain their assessments to the panel and their reasons for why they support or do not support the release of the prisoner. In the majority of cases the Board will follow the evidence and recommendations of the professional report writers.
46. In some, more complex, cases a 'Secretary of State Representative' – usually a senior and highly experienced probation official – will attend to help the panel navigate the evidence and provide an overall view of the prisoner's risk. In rare cases, the Secretary of State may appoint legal counsel to attend the hearing, for example where there is evidence of wider alleged offending potentially involving difficult legal issues about the weight and relevance of that evidence.
47. We have reviewed this arrangement and how the Secretary of State is represented at hearings – particularly in light of the proposed new model for the release of the most serious offenders and the introduction of a more precautionary approach in those cases.
48. We intend to make greater use of representation on behalf of the Secretary of State in parole hearings for some of the most serious cases. It is intended that the

Secretary of State representative will have an enhanced role, to enable the Secretary of State to present the strongest case possible about the risks the prisoner presents.

Part 2: Victims and Transparency

49. Part 2 explores proposals for reform to improve transparency and the experience of victims in the parole process. It explains how the commitments announced in 2021, to allow for certain parole hearings to be heard in public and to facilitate victims attending hearings in full, will be implemented. This will involve making changes to the Parole Board Rules to remove the current legal requirement that all parole hearings must be held in private.
50. A further priority for the review has been to explore ways to make the parole system more open and transparent, to increase confidence in and understanding of what difficult and controversial decisions can sometimes be, particularly for victims.
51. One of the first steps in the review was to conduct a public consultation⁴ on the question of whether some parole hearings could be held in public and how to safely provide for the possibility of victims and others to attend parole hearings as observers – another of the commitments made in the 2019 manifesto. That consultation ran from October to December 2020. The government’s response was published on 8 February 2021,⁵ announcing the intention to change the Parole Board Rules to remove the requirement for all parole hearings to be heard in private. It was decided that the Rules should permit the Board to conduct a hearing in public where they decide it would be ‘in the interests of justice’ to do so. This follows the approach taken in mental health cases before the First-Tier Tribunal. It was also decided that the Rules should allow for greater attendance by victims and others as observers.
52. Since then, the Root and Branch Review has explored how those decisions could best be implemented by discussing the proposals with practitioners, victim and prisoner representatives and other stakeholders, to ensure their views were taken on board. Part 2 of this report sets out further detail on government plans to proceed with public hearings and victim attendance as observers.
53. We will initially test these new approaches and support arrangements in a small sample of cases, to make sure that they are safe and effective for victims. This section sets out further detail on the proposed application process for public hearings and how these might be conducted. It also outlines measures to improve

⁴ Root and branch review of the parole system - Public consultation on making some parole hearings open to victims of crime and the wider public (publishing.service.gov.uk)

⁵ Root and branch review of the parole system (publishing.service.gov.uk)

transparency further, such as plans to provide more information in decision summaries and for summaries in high profile cases to be published online.

54. The recent Victims Bill consultation sought views on how engagement with victims involved in the parole process could be improved and whether more could be done to increase victim participation. This consultation will inform the proposals to be introduced in the Victims Bill, a manifesto commitment made by the government in 2019.
55. We have also used the responses to that consultation to inform further proposals in this review for greater victim participation in the parole process. As part of the proposed changes to the release test, the criteria will include a requirement for the Parole Board to take account of submissions made by victims. We intend that victims will be able to make written submissions as part of their Victim Personal Statement to the Board, and that they will be able to ask questions in those submissions. We have also listened to the views of respondents who called for improvements to the information that victims are given about a prisoner's parole review. We will examine how that can be achieved by reviewing what additional information it would be appropriate and safe to share with victims as part of the Victim Contact Scheme.

Part 3: Evaluation of the Parole System

56. Part 3 evaluates the operation of the current parole system and identifies areas where further improvement is needed. It reviews the effectiveness of reforms introduced over the last few years in response to previous reviews. It reflects on victim and prisoner experiences, in particular, the need to provide better information about the parole process and to reduce delays in cases reaching a conclusion. Part 3 also takes account of the impact of the Covid-19 pandemic on the parole system over the last two years, how the parole system adapted, and what lessons can be learned to ensure the future resilience and efficiency of the system.
57. The review found that while positive steps have been taken across the system to improve timeliness and make the system more efficient, both prisoners and victims can suffer from a lack of information and understanding about the parole process. The steps being taken to make the process more transparent are set out in Part 2.
58. The review also evaluated the reforms made to the parole system over recent years and identified where these reforms have improved the system and made it more effective, particularly at dealing with more complex cases such as where there is alleged wider offending or terror-related offenders.
59. The final chapter of this section explores both the efficiency of the system in dealing with the significant number of parole cases, and its ability and flexibility to deal with

the complexity of these cases. It looks at the new ways of working that have been introduced to the system, specifically focusing on the impact of Covid-19 and how effectively the system adapted to the remote working model, and how best practice from this is being taken forward. It also looks at key elements of the parole process and where improvements may need to be made, including: dossier compilation; timetables for hearings; data sharing and performance management; the relationship between the Parole Board and MoJ; and quality assurance and feedback for parole panels.

60. Key to achieving further improvements in the effectiveness, efficiency and performance of the parole system will be the role of the new Parole System Oversight Group and the establishment of independent third-party scrutiny arrangements, as recommended by the Tailored Review. The Root and Branch Review has examined the role of those recommended new approaches in the context of the wider reforms now being proposed in this report. It concludes these measures will be useful and appropriate, playing a valuable role in the future of the parole system.

PART 1: Parole Board decision-making and composition

61. While this review has considered the parole system as a whole, including all component parts and how they interact, the Parole Board and its decision-making sits at the heart of the parole process. This section of the review looks at how the Parole Board takes release decisions and sets out the reforms we intend to make to this process to increase ministerial oversight and ensure public protection remains at the centre of these decisions.
62. This section also considers the constitution of the Parole Board as well as the composition of its members and their professional backgrounds, to ensure the right mixture of people are making the risk assessments and taking decisions.

Chapter 1: Parole Board release process and decision-making

SUMMARY

The wording of the **statutory release test** used by the Parole Board will be altered through legislation to make it more prescriptive

There will be a **new precautionary approach** to the release of the most serious offenders

The view of the **Secretary of State will be represented** at all Parole hearings for top-tier cases, where HMPPS are opposing release

The new Parole System Oversight Group will focus on improvements to the **recall process**

There will be ministerial oversight of moves to open conditions for Indeterminate sentenced prisoners

Introduction

63. The Parole Board is the body responsible for vigorously risk assessing prisoners and determining whether it is no longer necessary for the protection of the public that they be confined.
64. Their role is to obtain vital risk assessments of parole-eligible prisoners and use these to inform its release decisions in order to protect the public. The review has explored how the Board is making these decisions and whether it is able to deliver this function effectively. The review has also looked at how the process for offenders recalled to prison is functioning, and how parole-eligible prisoners are moved to open conditions.
65. This review concludes that the Parole Board is effective at performing its decision-making role in the majority of cases, as evidenced by the low rates of serious further offending following release of offenders by the Board. However, to ensure that public protection remains the central focus of parole decision-making, we have concluded that we need to take a different approach to the highest risk offenders and apply a

precautionary approach by introducing new Ministerial oversight to the release process to give the public confidence these highest risk offenders are only being released when safe to do so.

66. We also intend to reform how this decision-making process works for offenders recalled to custody and offenders moved to open conditions, to ensure this precautionary approach is being applied consistently.

Parole Board decision-making process

67. Most prisoners whose initial release is or may be subject to a Parole Board decision are eligible for a review or required to be reviewed to assess their suitability for release at least every two years. This review process begins when the Public Protection Casework Section (PPCS) in HMPPS, refers the prisoner to the Parole Board on behalf of the Secretary of State with a dossier of written evidence. PPCS are the team who manage the parole process for parole-eligible prisoners, manage the recall system and handle prisoner related casework. The Parole Board reviews the case, conducting a risk assessment and then decides whether to release or continue to detain the prisoner using the statutory release test (see paragraph 71). For indeterminate sentence prisoners, if they decide against release, the Board is asked to advise on whether the prisoner could/should be moved to open conditions (see paragraphs 107-111 for more detail on open conditions). Any decisions or recommendation is based on a dossier of information relating to the prisoner and, in some cases, a full parole hearing including witnesses, to ensure all decisions are grounded in evidence.
68. If the Parole Board deems that the statutory release test has been met, they then direct the release of the prisoner, and if not, the offender remains in prison. If either of the parties to proceedings, namely the prisoner or Secretary of State considers that the provisional decision made by the Parole Board was flawed, they can apply for the case to be reconsidered by the Board, on the grounds that this initial decision *irrational* or *procedurally unfair* through the reconsideration mechanism (see paragraphs 201-214).
69. If, either party is unsuccessful at challenging the decision through reconsideration, they can bring a Judicial Review in the High Court of the Board's decisions. The High Court will not consider whether the decision is the 'correct' one; instead the Court will consider whether the decision was made lawfully on one or more of the following three grounds: *irrationality*, *procedural unfairness* and *illegality*. The High Court may either determine that the decision was made lawfully and dismiss the Judicial Review or refer the case back to the Board to take the decision again. The Court may not substitute its own decision in place of the board's or direct a prisoner is released or

not. At the very end of the process, there is the option for the decision to be taken to the Court of Appeal, where the High Court's decision can be upheld, or be dismissed.

70. This chapter sets out proposed reforms to this release process at both the initial release decision stage and the route of appeal.

Statutory Release Test

71. At the centre of the Parole Board's decision-making process is the statutory release test, which it must use to ascertain whether an offender is safe to be released on licence into the community. It is therefore vital that this release test is fit for purpose and being applied correctly.

72. The wording of the statutory release test that has been applied by the Board for the release of prisoners has not changed since it was first introduced by the Criminal Justice Act 1991 [for the release of those persons serving discretionary life sentences]. The Criminal Justice Act 2003 extended this test to all parole eligible prisoners. That wording is as follows:

“The Parole Board must not give a direction [for release] ... unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined”

73. This test remains the correct one to apply in assessing the risk posed by a prisoner. However, we consider that in practice the Parole Board has shifted away from the original intention of Parliament when applying that test as a consequence of successive court decisions.
74. In *Bradley* (1991),⁶ the Divisional Court considered the *level* of risk required to justify continued detention of life prisoners past their tariff. While the court expressed the view that level of risk must remain 'undefined', it determined the role of the Parole Board was to “carry out a balancing exercise between the legitimate conflicting interests of both prisoner and public”.
75. The Court in *Watson* (1996)⁷ expanded further on this balancing exercise. In approaching its risk assessment, the Court provided that the Parole Board was to balance “the hardship and injustice of continuing to imprison a man who is unlikely to cause serious injury to the public against the need to protect the public against a man who is not unlikely to cause such injury”.

⁶ *R v Parole Board, ex p Bradley* [1991] 1 WLR 134

⁷ *R v Parole Board, ex p. Watson* [1996] 1 WLR 906

76. The government recognises and respects that this guidance on the application of the statutory test has been provided by our courts in the absence of clearer and more detailed criteria provided by Parliament in legislation. Nonetheless it is properly the prerogative and responsibility of Parliament to set out the conditions that help define the level of risk which a prisoner must present in order to keep the public safe and the Government to ensure that risk is met. While the focus of the release test will remain the same, it will be amended to amplify in greater detail its original purpose – to protect the public – and move away from the balancing exercise approach articulated by the courts. These amendments will make it absolutely clear what Parliament means by public protection and that this will be at the heart of all parole decision-making.
77. There will be a list of specific, statutory criteria that the Board must consider as part of the release test:
- the nature and gravity of the offence to which the sentence of imprisonment being served by the offender relates.
 - any offence of which the offender was convicted other than the offence to which the sentence of imprisonment being served by them relates;
 - the conduct of the offender while serving the sentence of imprisonment;
 - the conduct of the offender while in the community serving their sentence, whether on licence, including Release on Temporary Licence (ROTL), or otherwise;
 - the risk of the offender committing an offence when released;
 - the risk of the offender failing to comply with any conditions attaching to their release on licence;
 - any treatment, education or training the offender has undergone, or programs they have participated in, while serving the sentence of imprisonment;
 - any submissions made by or on behalf of the offender;
 - any submissions made by or on behalf of the relevant victim.
78. These specific criteria are intended to remove any ambiguity of the release test, and the factors the Board must take into account. This test will apply to all offenders that come under review by the Parole Board, in order to ensure consistency throughout the system.

‘Top-tier’ of highest risk offenders

79. The review found that overall the parole system works reasonably well, in most cases and the majority of decisions it makes are unproblematic (see Part 3 of this review). The Serious Further Offending rate for prisoners released by the Board was less than

1% in 2020/21.⁸ However, a small number of cases have demonstrated the need for more rigorous safeguards around the release of certain prisoners. It is clear that some offenders present a heightened risk to the public due to the seriousness of their crimes, and the release of these offenders should be approached with even greater caution. It is these cases that require greater scrutiny, to ensure a precautionary approach is being taken when they are being considered for release.

80. We intend to define this top tier cohort of parole-eligible offenders by reference to specified offences. Offenders in scope will be those who have committed offences in the following categories: Murder, Rape, Causing or Allowing the death of a child, and Terrorist or Terrorist connected offences.
81. The full reforms to the release process and greater scrutiny for these offenders are set out below.

Ministerial role in decision-making: Parole Board referral of decisions to the Secretary of State and the Power of Refusal

82. As set out above, the reforms to put in place a more precautionary approach will only apply to this 'top-tier' of offenders who have committed the most serious offences. These reforms will introduce new Ministerial powers into the parole release process. They will ensure the system is as robust as possible to keep people safe, and is a system the public and victims can have confidence in.
83. The government will introduce a new review power to enable the Secretary of State's involvement in the release decision for the most complex cases in this top-tier cohort in certain circumstances, ensuring that a review mechanism based on the precautionary principle of public protection is enshrined in law. For these cases, the Parole Board will be entitled to refer the decision on release to the Secretary of State, to enable Ministers to be involved in the decision.
84. There are two separate ways this Ministerial check could apply. It will apply where the Parole Board cannot confidently say that the release test has been met, and separately, in any cases where the Parole Board directs the release of one of the 'top-tier' offenders. In either circumstance, the Secretary of State will be able to review and refuse this release decision. In the former category of cases currently, as set out in paragraph 67, the Board can either direct release of a prisoner or issue a decision that the prisoner is not suitable for release because the release test has not been met. The proposed change would introduce a 'proviso' clause, stipulating that where the Parole Board cannot confidently say that the release test has been met

⁸ Parole Board Annual Report 2020/21 (publishing.service.gov.uk)

based on the evidence available, it must apply a precautionary approach and either direct the offender to stay in prison (as they can do now) or refer the case to the Secretary of State.

85. In applying the precautionary principle there are two potential models to implement the Ministerial check on release decisions for the top tier of offenders (as set out in paragraph 84 above). The first option is a role for the Secretary of State personally to take the decision. In cases where the Board concludes that the release test *has* been satisfied for a case in the ‘top-tier’ cohort, and that the prisoner should, therefore, be released, the Secretary of State would have the power to review and refuse this release decision. This rejection of the decision to release would be exercised on the basis that the Secretary of State disagrees with the Board that the statutory test is met.
86. HMPPS officials, on behalf of the Secretary of State, would review each case eligible for ministerial refusal to assess whether it requires Ministerial oversight.
87. These new powers would introduce a measure of executive oversight to the parole release process, allowing Ministers to either take release decisions where the Parole Board requests them to do so, or to refuse Parole Board release decisions where they believe the prisoner remains too high a risk. Offenders who are serving a sentence for any other offence will not be subject to this process.
88. This option would require the introduction of a new route of appeal. Owing to the legislation under which the current Parole Board operates, the Board has no set system of appeal to a superior judicial body. Instead, Board decisions are currently challenged through a combination of the ‘reconsideration mechanism’ and Judicial Review, as set out at paragraphs 68-69. This review considered how best to formalise and optimise the way that decisions are challenged; and how a new route of appeal to a superior court or tribunal could operate, whilst supporting the improvement of public confidence in the robustness of the Board’s decision-making. This formal route of appeal would also provide a route and grounds for appeal of Ministerial decisions, as part of the reforms set out above, as well as Parole Board decisions.
89. During the review, we engaged system stakeholders to look at how the current process for challenging parole decisions through the reconsideration mechanism is working. This is discussed in detail in Chapter 6 (paragraphs 201-214) and concluded that reconsideration works well to some extent but could benefit from a more formalised process and we assess that building upon this to create a stronger system that works better would be of greater advantage to all parties involved, than the current process of Judicial Review.

90. Under this option, we would therefore establish a new route of appeal to the Upper Tribunal. To challenge a decision of the Parole Board, prisoners and the Secretary of State will be required to use this route of appeal in place of Judicial Review. Likewise, prisoners will be obliged to use this route of appeal to challenge decisions of the Secretary of State. The appeal would be to a chamber of the Upper Tribunal, most likely the Administrative Appeal Chamber given that presently deals with appeals in mental health cases from the First-tier Tribunal. The grounds for this appeal will be an error on a point of law, engaging the Judicial Review style grounds of *irrationality*, *procedural unfairness* and *illegality*, and an error of fact.
91. If the Upper Tribunal considers the grounds for appeal are met, they would be entitled to reject the decision and return it to the original decision maker (the Parole Board or the Secretary of State), requiring them to take the decision again, or directly order the release of the prisoner. We are satisfied that this is proportionate, and would enable a straightforward, independent route of appeal.
92. The second, alternative, option to enshrine this precautionary approach in these top tier cases would be to establish a new, independent review panel consisting of the Secretary of State and two other appropriate independent panel members, who would consider the referral and determine the case. In cases where the Board concludes that the release test has been satisfied for a case in the “top tier” cohort, and that the prisoner should, therefore, be released, the review panel would have the power to review and refuse this release decision. As with the first option, the rejection of the decision to release would be in cases where the panel disagreed with the Board and concluded that the statutory test had not been met. The constitution of a panel to fulfil an independent court-like function would remove the need for creation of a new and separate appeal mechanism to the Upper Tribunal.
93. If the prisoner considers that the decision made by the review panel was flawed, they could bring a Judicial Review in the High Court of the panel’s decisions in the usual way.

Secretary of State representation at parole hearings

94. For the majority of parole cases, the Parole Board hold an oral hearing in order to ascertain the prisoner’s risk and therefore whether they are suitable to be released on licence. The panel can then ask questions of those in attendance, specifically the prisoner and the professionals who have produced reports for the hearing such as probation officers and often psychologists, in order to reach their conclusion.
95. Aside from the report writers, the Secretary of State is represented at hearings for particularly high profile or complex cases, in the following ways:

- a “Secretary of State Representative” (a highly experienced probation officer) to reviews of high profile and complex cases, as well as all cases involving terrorist offenders.
 - in certain legal complex cases, MoJ can engage Counsel to make representations on the Secretary of State’s behalf.
96. The Representatives do not currently offer a view on whether the prisoner should be released or be moved to open conditions. Instead, the Representative urges caution on the Parole Board panel, drawing their attention to aspects of the prisoner’s risk where assurance is needed that the public would not be exposed to undue risk if the prisoner were released. The representative makes a submission to the oral hearing and attends it, to answer questions from panel members.
97. In light of the reforms designed to introduce a precautionary approach to top-tier cases, under new proposals, the Secretary of State will have a representative or engage counsel in all top-tier cases (see paragraphs 79-81) where HMPPS is opposing release. This will strengthen the HMPPS report writers’ recommendation, and further the precautionary approach to be applied to these top-tier cases, emphasising that public protection must be central in parole risk assessments.
98. For the future, we are developing a model in which there will be one Secretary of State view presented to the Panel. There are two parties to parole proceedings – the Secretary of State and the prisoner. The Secretary of State’s view would reflect the assessments made by probation officers and psychologists and present one view on whether the prisoner is safe to be released.

Recall

99. The Parole Board also has a risk assessment and decision-making role with regards to making recall decisions. When prisoners are released before the end of the full length of their sentence they spend the remainder of their sentence on licence conditions in the community, and those with life sentences who are released always remain on licence. If the offender breaches these conditions, they can then be ‘recalled’ to prison. This decision is made by the Public Protection Casework Section (PPCS), under recommendations from the Probation Service.
100. As well as re-release under Parole Board discretion, certain offenders (not including indeterminate prisoners) can be subject to executive re-release by the Secretary of State. This, in practice, is carried out by PPCS, who apply a similar public protection test to the one applied by the Parole Board, when deciding whether the recalled offender could be safely managed back on licence in the community. Recall decisions make up a large proportion of the Parole Board’s caseload, taking up

significant time and resources, and so this review has considered how this process works and where improvements might be needed.

The initial recall decision

101. The review explored whether the Board should be involved in the initial recall decision-making, rather than assessing it after the fact. Some stakeholders suggested this might be more effective, as it removes the current 'two-stage' process of PPCS making the initial decision and the Board reviewing it. However, stakeholders also highlighted that initial recall decisions must be taken quickly in order to effectively protect the public. This is enabled through the PPCS 24/7 recall service. There is no evidence to suggest that this current process for initial decisions is ineffective; previous thematic reviews by HMIP and PPCS have concluded that the right offenders are being recalled for legitimate public protection reasons. We have concluded that this initial decision therefore should remain with PPCS to allow immediate public protection decisions to be taken as quickly as possible.

Case types to be referred

102. The review also considered the types of cases where it is beneficial and necessary for a recalled prisoner to be reviewed by the Parole Board. In particular, questions arose around whether the Parole Board should continue to review recalled Standard Determinate Sentence (SDS) offenders, given that they are not typically seen to be 'dangerous' offenders and their initial release is not a matter for the Board. However, these offenders have been assessed as a risk due to the behaviour that led to their recall, and so the review concludes they benefit from Parole Board oversight and should continue to be reviewed by the Board.

The operation of two re-release mechanisms

103. Under the current system, standard recall prisoners can be re-released either at Parole Board discretion, or through a Secretary of State executive re-release mechanism. This executive re-release was intended to speed up the release of recalled determinate sentence prisoners, using the same public protection criteria as the Board. The Parole Board raised several concerns about the operation of the two methods, and the delays and duplication that these parallel systems can lead to.

Improving the model for reviewing standard recall cases

104. The key concern raised by stakeholders was the length of time it takes for the Parole Board to review standard recall cases. The requirement is for cases to be referred within 28 days of the offender returning to custody, raising expectations a decision will be taken in this time. However the decision from the Parole Board itself takes significantly longer in most cases as a full dossier of evidence is required and the quality of this is often affected by the limited timeframes. HMPPS is currently running a trial, supported by the Parole Board, to allow probation more time to produce their recall reports, in the hope that this will improve their quality. The trial began in March

2021 and is due to take 6 months. The review concludes that further work should be done to streamline the standard recall process.

Next steps

105. While this review has identified and explored some of the key issues relating to the management of recall cases, this is a complex area and further work is required to understand the best way to improve recall processes. The review found that the issues around case types, executive re-release, and reviewing recall cases set out above require operational oversight and collaborative work that this review was not best placed to carry out. We conclude that these will be better explored at a whole-system operational level, between the Parole Board and PPCS, and recommends that the Parole System Oversight Group (Chapter 7, paragraphs 262-267) seek to examine the causes of such delays and duplication to generate potential solutions to issues surrounding recall,
106. The Parole Board will also be required to apply the expanded statutory release test (paragraph 76) when making recall release decisions, reinforcing the emphasis on public protection throughout the parole process and not just at initial release.

Open conditions

107. As part of the Parole Board's risk assessment role, it also assesses whether life and IPP prisoners are suitable to move to open conditions, either from a pre-tariff review (if HMPPS deem them suitable) or when they are assessed for release. This move is a key part of the progression in a prisoner's journey through their sentence, however the protection of the public must remain central to the decision to move to open and be considered at this stage of the parole process as well.
108. Whilst the Secretary of State can seek 'advice' from the Parole Board in relation to assessing the suitability of a prisoner for transfer to open conditions, they are not obliged to do so. As the question of a move to open conditions is considered at the parole hearing where release is considered, the information provided to the Board is of the same standard, including reports from HMPPS. The Parole Board uses this to assess risk and then advises the Secretary of State on whether it considers the prisoner safe to be moved to open conditions. The Secretary of State (in practice, HMPPS on the Secretary of State's behalf) then makes the final decision. The Parole Board's recommendations are accepted in the vast majority of cases.
109. Open conditions have benefitted some life and indeterminate sentence prisoners, particularly after a longer period of incarceration in closed conditions, by helping to re-familiarise them with life in the community, including by means of release on temporary licence. And in some cases evidence from a prisoner's time in open conditions can provide important evidence to inform the Parole Board's assessment

as to whether the prisoner may be safely released on licence. However, public confidence in open prisons is undermined whenever a life or IPP prisoner absconds. Despite the number of absconds decreasing from 361 in 2009, to 101 in 2021,⁹ the system is still in need of improvement to reduce this number even further. Therefore, we have looked afresh at how we assess risk and suitability for a move to an open prison.

110. As this review has set out, it is the perpetrators of the most serious offences which require greater scrutiny in the parole process. This applies not only to release decisions, but also on recommendation to transfer a prisoner to an open prison. Through reviewing the current process, it is the government's view that any recommendations for moves to open conditions for indeterminate sentenced prisoners (explained in Annex B) in the following categories, should be subject to greater ministerial scrutiny. These categories are: cases where the offender has committed murder; other homicide; rape; serious sexual offences or cruelty against a child.
111. There will be direct ministerial oversight of decisions on whether to move offenders in the above categories to open conditions. This greater scrutiny will create a stronger parole system, further ensuring the public are protected.

⁹ HMPPS Annual Digest, April 2020 to March 2021 - GOV.UK (www.gov.uk)

Chapter 2: Parole Board composition

SUMMARY

The Parole Board will continue to be **constituted as an Arm's Length Body** of the Ministry of Justice.

Legislation will be changed to include **law enforcement as a specified professional background** for Parole Board members

The Parole Board intend to **launch a recruitment campaign** to increase the number of members with experience in law enforcement.

Introduction

112. In order for the public to have confidence that the Parole Board is taking the right decisions, it is right that this review has considered the constitution and composition of the Board to ensure it is equipped to do so.
113. We conclude that that keeping the Parole Board as an Arm's Length Body (ALB) of the Ministry of Justice remains the most appropriate constitution of the Board. The other changes can be made with the Board in its current constitution.
114. However, we will make changes to the Board's composition alongside the other reforms proposed. The Board's membership is vital to its decision-making, and we therefore considered whether the existing statutory provisions that specify relevant backgrounds for board members are sufficiently broad to provide a full range of insight into serious offending. We will extend the statutory list to include a requirement for membership to include individuals with experience of law enforcement and introduce a power for the Secretary of State to determine panel composition, which will be used particularly in the top-tier cohort cases (see Chapter 1).

Keeping the current constitution

115. The question of the constitution of the Board is one that has been raised several times over the years. We explored whether the current constitution of the Parole Board, as an ALB of the Ministry of Justice, was appropriate and effective for the role it carries out largely as a decision-making body. As stated in the Tailored Review

(2020), the constitution of the Board should be one that best allows it to fulfil its role in an efficient and effective manner. The Tailored Review explored this constitution question, but did not reach a firm conclusion, which was referred to this review, which considered other potential models.

116. The main alternative to the Board remaining an ALB explored by the review was whether it should be reconstituted as a Non-Departmental Public Body Tribunal. However, in view of the other significant reforms we intend to make to the Parole Board's decision-making process (as set out in Chapter 3), we have concluded it would be better for the parole system to maintain the Board as an ALB. There is no compelling case to change the constitution of the Board at this time.
117. Maintaining the Board as an ALB also emphasises the importance of oversight of the Parole Board and its decision-making, in line with other reforms proposed in this review, to better allow the Board to work together with MoJ to ensure the most robust processes are in place to protect the public. Being sponsored by the MoJ also means that while the Parole Board makes its decisions independently, it is funded by the MoJ and is ultimately accountable to Parliament. Retaining the Board as an ALB will continue this level of accountability and scrutiny, and therefore maintain public confidence that the Board is fulfilling its role.
118. Given the other significant reforms proposed, reconstituting at this time would introduce unnecessary upheaval and remove the level of partnership and accountability required to successfully deliver parole reform.

Parole Board Membership

119. Parole Board members are the individuals who form the parole panels and are responsible for making risk assessments and release decisions. They are Public Appointees and members are from a variety of backgrounds. As set out in legislation, 'The Board must include among its members:
 - a person who holds or has held judicial office;
 - a registered medical practitioner who is a psychiatrist;
 - a person appearing to the Secretary of State to have knowledge and experience of the supervision or after-care of discharged prisoners; and
 - a person appearing to the Secretary of State to have made a study of the causes of delinquency or the treatment of offenders.'
120. Breadth of background, experience and expertise from all areas of the Criminal Justice System is important to have a wide range of perspectives while also ensuring closer working and a more efficient system.

121. However, only 5% of Parole Board members have experience of working in law enforcement, such as Police officers.¹⁰ Moreover, having this background is not currently something the Parole Board mandates. This means that there is only a small proportion of panels on which such members are involved in taking release decisions. This frontline experience can bring a different perspective on offending and offenders in the Criminal Justice System, so recruiting more Parole Board members with this experience will add to the wealth of knowledge and experience that the current memberships brings to the Parole Board. We will therefore change the law to add persons with law enforcement experience as one of the types that the Parole Board must include among its members. This change will enable the Ministry of Justice to run targeted campaigns, on behalf of Ministers, to appoint sufficient numbers of members with this experience to meet the requirements of the statutory framework.
122. In addition, we will enable the Secretary of State to determine that members with certain experience must sit on panels that deal with prisoners who have committed certain offences. The government intends to mandate the presence of a member with law enforcement experience on the panels that review cases of prisoners in the top -tier cohort (set out in paragraphs 79-81), to assist the risk assessment and decision-making of the panel, using their unique frontline insight from dealing with offenders in the community
123. A campaign for more independent members of the Parole Board will take place later in 2022. This campaign will also include outreach to people with law enforcement experience.

Powers

124. This review has also explored whether the Parole Board, while remaining an ALB, required additional powers to allow it to perform its role effectively and efficiently. In particular, relating to whether further powers were required to effectively manage public hearings (further detail in Chapter 2), and to increase efficiency and compliance with Parole Board directions for evidence.
125. The review spoke to various stakeholders about the potential benefits and drawbacks to increased powers for the board. Whilst feedback indicated that greater ability to enforce directions could lead to increased directions compliance, other stakeholders thought that this could lead to more tensions in the system, and that parties in the system should instead continue to work together to improve direction compliance.
126. We have therefore concluded that the necessary functions are in place to allow the Parole Board its operation as an ALB and for the new public hearings measures to

¹⁰ Parole Board Membership 2020-21

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work well. The major change to the release model needs time to become embedded into the parole process before further changes are made.

PART 2: Victims and transparency

127. The parole process can have a profound impact on victims. The Victim Personal Statement provides an important opportunity for the victim to explain the ongoing impact of the crime. Victims' organisations have told us that involvement in the parole process is just as important as involvement in the court process at sentencing. The government recognises this and has committed not just to improve accountability, but also to enable victims to attend parole hearings to allow for greater victim involvement in the parole process.¹¹
128. Greater transparency of the parole system is inextricably linked to the involvement of victims. The nature of the parole process and the sensitivity of the information discussed does not lend itself to openness. However, the government considers that greater transparency will not only lead to a better victim experience of the parole process, but also to an improvement in public understanding of and confidence in the parole system.
129. To reach its findings, the review assessed responses to the public consultation launched in October 2020. The consultation called for views on opening parole hearings to the public in limited circumstances. Following this, the government announced its intention to remove the requirement for all hearings to be held in private.¹² It also consulted extensively with various internal and external stakeholders and third-party organisations to ascertain how the current system is perceived and to identify any areas for improvement.
130. Further consultation was undertaken through the Victims Bill consultation, in order to assess what more could be done to increase the involvement of victims in the parole system. The results of this will be published in the Government Response to the Victims Bill consultation but have also informed the review's findings surrounding victims and transparency, as set out in the following section.

¹¹ Conservative Party Manifesto 2019 (conservatives.com)

¹² Root and branch review of the parole system (publishing.service.gov.uk)

Chapter 3: Public hearings and victim attendance

SUMMARY

New Parole Board Rules will make it possible for **public parole hearings** to be held in some cases.

For the first time, **victims will be able to attend hearings in full and will be able to make written submissions to the Parole Board.**

The Parole Board intend to build on the current decision summaries by **piloting a new decision letter** that will provide more detailed reasons for decisions.

The Parole Board intend to continue their **communications work to assist public understanding** of their function and explore the possibility of an independent webpage.

Introduction

131. Improving the openness and transparency of the parole system in order to enhance public understanding and confidence was a key consideration of this review. This was guided by the principles outlined in the terms of reference (Annex A).
132. The review considered the work already undertaken by the Parole Board to implement the previous recommendations as set out in the Tailored Review. The government welcomes the progress made by the Board in improving communications, transparency and public education and understanding. To avoid duplication, this review focused on building on that work with the additional aim of improving public (and victim) hearing attendance.
133. This chapter provides an overview of changes that will be implemented as a result of the Review, as well as an exploration of the work the Parole Board has undertaken already.

Public hearings

134. In October 2020, the Ministry of Justice launched a public consultation on whether parole hearings should be held in public in limited circumstances, and whether victims should be able to attend hearings as observers. There were 40 responses from individuals and organisations, including from the Parole Board and the Victims' Commissioner. These responses were analysed, and the Government response to the consultation was published on 7th February 2021.¹³ The response concluded that the blanket requirement for private hearings in the Parole Board Rules was unnecessary and a commitment was made to remove this requirement. We consider it right to allow prisoners, victims, the media or the wider public to request that a case be heard in public. It is expected that the application to do so will be made in a small minority of cases.
135. Whilst most consultation respondents supported the idea of more open parole hearings, many also pointed out the potential risks, including risks to the safety of prisoners, and the potential re-traumatisation of victims. In the consultation response, the Ministry of Justice acknowledged the importance of ensuring that open hearings could be conducted safely and fairly without compromising the Parole Board's ability to assess risk. This review considered how best to allow for public hearings and victim attendance whilst minimising the potential negative impacts.

Applications

136. Once the amended Parole Board Rules come into effect, anyone, including prisoners, victims and the media, will be able to ask the Parole Board that a case is heard in public. Applications will be made directly to the Parole Board and applicants will need to set out their reasons as to why it is in the interest of justice that the case should be heard in public as opposed to remaining private.
137. Victim Liaison Officers and specialist Secretary of State Victims' Representatives will be available to support and advise victims who are signed up to the Victim Contact Scheme. Public guidance will also be available on the Parole Board's web pages.
138. We considered whether the process for applying for a public hearing should mirror the reconsideration mechanism and be made by the Secretary of State on behalf of the victim. We have decided that victim requests for a public hearing should not be made via the Secretary of State because, unlike reconsideration, asking for public hearings should not require the submission of a technical legal argument. There may also be instances where the Secretary of State could not support a victim's request, such as where there are multiple victims who may hold opposing views. Allowing victims to directly apply to the Board also ensures that the Secretary of State is free

¹³ Root and branch review of the parole system (publishing.service.gov.uk)

to oppose such applications where the circumstances require it, for instance where the Secretary of State needs to protect against the disclosure of important information about the prisoner.

Criteria and decision-making

139. When an application for a public hearing is received by the Parole Board, the prisoner, Secretary of State and any victims signed up to the Victim Contact Scheme will have the opportunity to submit views in writing in response to the application before a decision is made.
140. Once views from each party have been received, the Chair of the Parole Board will decide whether it is in the interest of justice that the case should be heard in public. The Parole Board may also decide that a case requires a public hearing, at their own discretion. In these instances, the Board will invite representations, as described above, before reaching a final decision. While no one, including victims or prisoners, will have the outright ability to prevent a public hearing in any case, it is unlikely that the Board would consent to a public hearing if there is evidence that it would cause the victim or prisoner any undue emotional distress, or if it would adversely affect a prisoner's ability to safely resettle into the community.
141. Decisions will be given in writing with reasons. As the final decision on whether to hold a public hearing will be made by the Chair of the Parole Board, there will not be an administrative appeal system in place. However, decisions to allow or refuse public hearing applications can be challenged via Judicial Review. Decisions to hold a public hearing may be changed if relevant new evidence or information arises before the hearing takes place.

Logistics

142. The consideration of discharge of mental health patients by the First Tier Tribunal (Mental Health) is similar to the Parole Board's process as it also looks at questions of risk in reaching decisions on whether to discharge patients held in secure facilities. The Tribunal rules allow applications for public hearings but very few patients make applications. The only notable public Tribunal hearing involved the Moors murderer Ian Brady which took place in 2013. His hearing was broadcast live from Ashworth secure hospital to the Manchester Civil Justice Centre, where media representatives and members of the public were able to watch the proceedings. No observers were allowed to attend in person at the hospital. For parole cases, it will be for the Parole Board to manage the logistics of the hearing to meet the demands and needs of individual cases, but we expect a public parole hearing to operate in a similar fashion to the example mentioned above. Remote attendance has worked well for the Parole Board throughout the COVID-19 pandemic, and we expect those viewing a public hearing to do so remotely.

143. Remote attendance has a number of benefits that support the safe and efficient running of a hearing. It allows the Parole Board to mute or pause the livestream in order to hear particularly sensitive evidence in private and it is easier to prevent attendees from disrupting the hearing. Remote attendance could also help protect the identity of some individuals giving evidence where it is deemed necessary.
144. It will therefore be possible to watch a parole hearing on any internet-enabled device, but this will create risks that individuals could capture and mis-use images or clips of the hearing. The Parole Board may therefore adopt an approach similar to that used in the Brady case, requiring attendees to go to a specific location in order to watch the hearing. Decisions on the format and venue will be made on a case-by-case basis. Before each public hearing, the Board is likely to hold a case conference with the parties in order to decide how the hearing will be conducted. This will give the parties an opportunity to request that certain parts of the evidence or specific witnesses should give their evidence in private if necessary, or that steps are taken to avoid revealing personal information such as individuals' names or workplaces.
145. The government and the Parole Board are mindful that if too much of the evidence in a public hearing is restricted then it will make the eventual decision hard to understand and will undermine the objective of improving transparency. This may prove to be a difficult balance to strike but the safety, security and well-being of those involved in the hearing must be the priority. Due to the novel nature of parole hearings being opened to the public, the exact demand for cases to be heard openly is difficult to estimate. The majority of parole hearings will continue to be heard in private and we anticipate that there will be no more than around five public hearings per year.

Attending a public hearing

146. Once the Parole Board agree to hold a public hearing, the Board intend to publish details of the hearing on its website and those wishing to attend will need to apply to the Board. Applications will be necessary in order to plan for and control the number of potential attendees. Those attending the hearing will do so as passive observers and will not be permitted to interact with the panel or witnesses in any capacity. The only exception to this is where the panel have granted permission for the victim to read out their Victim Personal Statement. Victims may request to read out their statements in private if they prefer to do so. Amendments to the Parole Board Rules will allow the Panel chair to impose conditions on attendees and remove them from the hearing if it is deemed necessary.

147. Stakeholders felt that the tribunal rules for mental health cases were a good basis on which to develop the rules for public hearings. We will therefore largely replicate tribunal rules for parole cases. Amendments to the Parole Board Rules will provide for:
- Hearings to be held in private unless it is in the interests of justice for them to be held in public
 - The Parole Board's panel to be able to hold parts of a public hearing in private so that evidence that is especially personal or sensitive can be protected
 - Panels to be able to exclude any individual who they feel are being disruptive; or whose presence may prevent a witness from speaking freely; or in order to give effect to a direction under what is currently Rule 17 (Withholding information or reports).
148. The amendments to the Parole Board Rules will come into force later this year. They will include rule changes to deliver relevant measures introduced in the Police, Crime, Sentencing and Courts Bill (see paragraph 214).

Victims' attendance at hearings (observers)

149. The government made a commitment to introduce measures that will allow victims to observe parole hearings. Many responses to the public consultation agreed that this would be a positive step, provided the appropriate support was in place. As with public hearings, there were also some concerns raised about the potential impact on victims. These centred on the risk of victims becoming re-traumatised by attending hearings and potentially having their sensitive personal information in the public domain.
150. The government's response to the consultation detailed how we would explore the implementation of victim observance of hearings, separately to measures allowing for public attendance. Our further consultation with stakeholders has indicated that attending hearings would allow victims to see the thorough nature of the assessment carried out by the Board and has potential to build victims' confidence in the panel's decision. However, we recognise that not every victim will choose to observe. For those that do wish to observe a hearing, we are committed to ensuring the process works well and that proper support is available to them.
151. In order to ensure victim observance operates safely and effectively, there will be a period of testing before the option is made available to all victims. This testing phase will operate in the South West Probation Region.
152. By starting with a small number of test cases, the Parole Board and HMPPS will be able to ensure the process is working effectively without compromising the hearing,

and that victims are receiving the appropriate support. In addition, it allows victims to provide feedback after their experience, so that the appropriate changes can be made to ensure victim observance of hearings is safe and effective when rolled out in full. Lastly, it will provide some more insight into demand and enable HMPPS to allocate adequate resources for a full roll-out.

153. We recognise that not making the opportunity available to victims in every case from the outset may be disappointing to some, but this is a new process which we must get right for the benefit of victims.
154. The operating details of the process will not be finalised until the testing phase has been completed and evaluated. However, we have established that the Parole Board intend to operate on the presumption that victim requests will be accepted unless there are compelling objections from the prisoner or the Secretary of State. Victims who are signed up to the Victims Contact Scheme will not need to provide reasons or arguments in support of their application.
155. A range of factors will be taken into consideration when considering observer requests. These will include but not be limited to:
- The purpose/reasons for the request;
 - The views of the prisoner and any particular circumstances or characteristics of the prisoner or the hearing that indicate observers should be limited or refused – such as the prisoner’s mental health;
 - The ability to accommodate the observer(s) either physically in the hearing room or via remote attendance;
 - Any potential risks of allowing the observer to attend the hearing;

Logistics

156. The Parole Board has operated well throughout the Covid-19 pandemic by successfully adapting to the increased use of remote hearings. We anticipate that remote hearings will be used more frequently in the future and therefore, as with public hearings, those who attend parole hearings as observers will do so remotely as standard.
157. A number of respondents to the consultation made reference to the challenges, both practical and emotional, of attending a hearing in person at a prison and so we anticipate that remote attendance will make the experience easier for victims. In addition to the benefits already described in the previous section, by attending remotely, victims can be in more comfortable surroundings with their support on hand to answer any questions about the hearing and to aid their understanding but without disturbing the hearing itself. They can also temporarily drop out of the hearing easily if they become upset or if there are parts of the evidence they would prefer not to hear discussed.

158. Arrangements will be made for a victim to view the hearing in a safe and private location, so they feel at ease. Victims signed up to the Victim Contact Scheme will be assisted before, during and after a hearing by a Secretary of State Victim Representative – this is consistent with current practice of Secretary of State representatives assisting victims who choose to read their victim personal statement in person. Victims will receive observer guidance before a hearing, which will explain the process of a parole hearing, topics of discussion they are likely to hear, and some common acronyms often used throughout a hearing. In addition, the SoS representative will be on hand to answer any additional questions victims may have throughout the process.

Further victim participation in parole hearings

159. Respondents to the recent Victims Bill consultation, which closed in February 2022, were overwhelmingly in favour of greater victim participation in parole cases because it would allow their voices to be heard. As described in the section outlining proposed changes to the statutory release test, there will be a list of specific criteria that the Parole Board must take into account. This will include a requirement to consider any submissions made by or on behalf of a victim.

160. Victims signed up to the Victim Contact Scheme may submit a Victim Personal Statement (VPS) to tell the Parole Board panel how the crime has affected them but that is currently the limit of its scope. We intend as part of the reforms to the parole system to go further by allowing victims to make written submissions to the Board as part of their VPS or as a separate document, including their views on the offender's potential release. We think that victims should also be able to ask questions in those written submissions.

161. The consultation also highlighted that the main area where respondents considered there was need for improvement was in relation to the level of information and communication that victims receive. We will act on that feedback by identifying how that can be improved, as we recognise how important it is for victims to feel they are getting all the information that they would like to receive. As with the measures described above to allow for victims to observe parole hearings in full, there are sensitivities and risks involved with sharing greater levels of information about a case and there will be a balance to be struck between being more open on the one hand and, on the other, protecting certain information or details that could put people at risk or undermine the decision-making process.

162. We will, therefore, conduct a review to examine how far it would be possible to safely go in terms of the level and nature of the information that can be provided to victims, and how best that should be communicated. This will then inform what further

changes could be made to the Victim Contact Scheme to facilitate those improvements.

Decision summaries

163. Since their introduction in May 2018, Decision Summaries have been popular amongst the media and victims, with the number of summaries issued by the Parole Board each year increasing by almost 50% between 2018 and 2021.¹⁴ Our consultation with victims' representatives and others demonstrated that victims and others found summaries useful in conveying the decision, but feedback also indicated that victims feel they lack detail on the factors contributing to the decision. This means that victims are sometimes left dissatisfied and confused about the reasons for the decision made by the board.
164. There are difficulties in producing effective summaries, due to the sensitive nature of the information within them. The panel considers a variety of information, such as previous offending and personal circumstances, some of which may not be suitable for disclosure to the requestor. However, it is difficult to ensure a victim feels confident in the Parole Board's decision without being able to provide all the relevant information. The Parole Board recognise this issue and are working on a new decision letter, which they will pilot this year. The letter aims to provide the requestor with greater detail on the factors taken into account by the Board when making the decision. The new decision letter aims to demonstrate the Board's analysis of risk and the factors behind their decision more clearly, leaving requestors feeling confident in the decision-making process of the board. This will also allow victims to be more informed about the decision-process, a right which is laid out in the Victims Code.
165. At present, anyone can request a decision summary, with victims making the most requests, and a small number made by the media. However, in order to increase the transparency of the parole process, the Parole Board intend to proactively publish summaries of high-profile cases. It will be for the Parole Board to decide how this publication is completed; however, publishing summaries of decisions will assist in demonstrating the detailed level of risk assessment and scrutiny put into each decision and giving the public insight into the work of the Parole Board, with the aim of improving public understanding.

¹⁴ Parole Board Annual Report 2021 (publishing.service.gov.uk)

Improved information and communications

166. At present, if the media or a member of the public has questions relating to a prisoner and an upcoming hearing, they can enquire with the Parole Board about when this hearing is due to take place. If the hearing has been listed, the Parole Board inform the requestor that the hearing is due to take place, but do not give a specific timeframe in order to protect the privacy of those involved.
167. In order to shed some light on the process, the Parole Board intend to be more open with requestors around times of hearings, by providing the month in which the hearing will take place, with the caveat that these case times are subject to adjournments. With regards to public hearings, if an application for a public hearing has been granted, the Board will then publish this listing so those who are interested can apply to attend if they wish to do so.

Public understanding and education

168. All the changes outlined aim to make the system more transparent and open and contribute to a wider aim of improving public understanding of the parole system, and how it works to protect the public. To achieve this, it is vital to ensure there is clear, accessible and relevant information available to the public about the role of the Parole Board, and how it makes decisions.
169. Following the recommendations in the 2018 Review (see paragraphs 7-11) the Parole Board undertook several initiatives to increase public understanding of parole and the work of the Board itself. The Tailored Review 2020 commended the actions made by the Parole Board in this area such as: a YouTube guide on how parole works; increased information and statistics on their website; and the Board commissioning a TV documentary to explain the parole process.¹⁵
170. In the financial year 2019/20,¹⁶ the Parole Board also significantly increased its external engagement activities, with the Board being represented at 68 events, an increase from 34 in 2018/19.¹⁷ The Boards' Twitter following increased to over 5000 by March 2022, up from 2500 in 2019. The Board has created an extensive social media plan, utilising Twitter to highlight positive factual updates about parole, and explain common misconceptions about the system.

¹⁵ The Parole Board for England and Wales: Tailored Review (publishing.service.gov.uk) p.48/49

¹⁶ External activities were not possible in 2020/21 so 2019/20 represents the most recent representative data.

¹⁷ Parole Board Annual Report 2018/19 (publishing.service.gov.uk)

171. The Tailored Review also noted that media coverage indicated that public understanding of the role of the Parole Board remained an issue, and that the Board should continue to make efforts to improve this. As a result, the Parole Board has been actively working on improving public understanding through an extensive communications plan, which seeks to shed light on different issues that the Parole Board discuss and training a portion of their membership to act as spokespeople for the Parole Board on local radio and other public forums. This will allow the Parole Board to proactively increase public understanding of their work.
172. This review welcomes the on-going work by the Board to improve public awareness of the parole system, and in particular its proactive external engagement.
173. Feedback has indicated that it is often difficult for users to access the correct guidance and information on the Parole Board's website. To better help users and the public gain information about parole, we recommend that the Parole Board explores changes which could be made to make its website more user friendly. We will support the Parole Board to carry out user testing on their website, to assess whether a new design would improve user experience and allow for easier access to guidance. We will also put a consolidated version of the Parole Board Rules online, reflecting all amendments being made this year, so prisoners and victims can easily access and view the changes being made.
174. The February 2019 Review recommended that the Parole Board publish Standard Practice Guidance on its website to improve the public's understanding of the parole process. Since the Review, the Parole Board has undertaken a project to fulfil this recommendation and has published a range of new or updated guidance documents on its website. This Review welcomes the progress made by the Parole Board and HMPPS in developing the guidance and finds that the documents produced are clear and of high-quality. We recommend that the Parole Board maintains momentum in publishing new, relevant guidance and ensuring that existing guidance and relevant website pages remain up-to-date.

PART 3: Evaluation of the parole system

175. This section of the review assesses the overall performance of the parole system and whether any further measures would help to improve the efficiency and effectiveness of the system. It takes into account a number of reforms made to the parole process over recent years and the impact these have had. It considers how the learning and new approaches implemented in the system in response to the Covid-19 pandemic can be embedded in the future.
176. In order to get a complete picture of how the parole system is functioning, the review team conducted wide-ranging stakeholder engagement. It also conducted research on the parole system including international approaches to Parole, and recent papers from prominent academics, to inform the review as a whole. As the review covers a range of issues, some of which are technical in nature, they do not lend themselves to public consultation. Many of the issues in the review are long-standing questions that have been subject to previous consultation and reviews.
177. Stakeholder engagement took place between January and May 2021. We invited stakeholders who had direct experience with the Parole Board to workshops and roundtables, including practitioners; professionals who practise in this area of law; and observers of, and commentators on, the parole system and process. These explored the key areas identified by the review team and invited participants to identify other aspects of the parole system that require attention and improvement. The review has also drawn on data from the Parole Board's published statistics.
178. The evaluation of the system is a vital part of this review, as while significant reforms to some of the core elements of the parole system are being reformed it is of utmost importance that the rest of the system is functioning as effectively as possible. We also explored how the system is functioning for the key users of the system, both victims and prisoners.

Chapter 4: Victims' experience of the parole system

SUMMARY

The increased **flexibility and support** available to victims interacting with the parole process is reflected and formalised in the **Victims' Code**

The upcoming **Victims Bill** will seek to provide a legislative basis for the rights set out in the Victims' Code.

Public hearings will increase the transparency of the process for victims and, where desired, their participation will be supported by victims' services.

Introduction

179. For victims, the parole process can be distressing. It is crucial that they understand how the parole system works and receive support to effectively engage in the process, to ensure they receive the answers they need. This chapter explores how improvements could be made for these victims.

Victims' experience of the system

180. Over recent years, much has been done to improve victim experience of the parole process. The reviews in April 2018¹⁸ and February 2019¹⁹ identified issues with the consistency and quality of communications to victims on parole cases, and the experience of victims choosing to directly engage with, and make representations to, parole panels. Many of the resulting recommendations focused on the Victim Contact Scheme (VCS). Members of the scheme are allocated a Victim Liaison Officer

¹⁸ *Review of the law, policy and procedure relating to Parole Board Decisions* (April 2018) <https://www.gov.uk/government/publications/review-of-the-law-policy-and-procedure-relating-to-parole-board-decisions>

¹⁹ *Review of the Parole Board Rules and Reconsideration Mechanism: Delivering an Effective and Transparent System* (February 2019) <https://www.gov.uk/government/publications/review-of-the-parole-board-rules-and-reconsideration-mechanism>

(VLOs), whose role includes updating on an offender's sentence, and advising on how to make representations to parole panels (where desired).

181. The reforms implemented following these reviews included:

- Improving online guidance on the VCS and training for VLOs.
- Allowing victims to opt in or out of the VCS at any time, via a new, centralised, mailbox. This replaced the one-time offer of participation shortly after trial, which posed a challenging decision for victims at an already-distressing time.
- Ensuring victims receive accurate and timely case updates, through greater join-up between victims' services and the wider parole system (including through VLO training and the recent extension of access to the Parole Practitioner User database to victims' services and VLOs).
- Clarifying guidance on victims' ability to submit a Victim Personal Statement (VPS) to parole panels and improving training for VLOs supporting victims in doing so.

182. The new Victims' Code, implemented from April 2021, furthered and consolidated these reforms. In recognition of the flexibility advocated by stakeholders, including victims themselves, it sets out that victims can read or pre-record their VPS, or have it read to a parole hearing on their behalf. It also directs VLOs to advise victims on their right to submit a VPS, and/or an application regarding an offender's licence conditions, to a parole panel, and reiterates that victims can opt in or out of the VCS at any time.²⁰ The upcoming Victims Bill will provide a legislative basis for the rights set out in the Victims' Code. It will also further assure the implementation of these rights by setting out holding to account arrangements for the justice agencies responsible for their provision.

183. The reforms covered in the previous chapter will further improve victim engagement. Public hearings will make the parole process more accessible and open to victims, with their participation supported by VLOs through the VCS. The ability for victims to attend, and make representations to hearings remotely, will retain the flexibility desired by stakeholders – and recognised in the VPS arrangements in the Victims' Code – for the longer-term. We will also be allowing victims to make written submissions as part of their VPS or as a separate document, including questions. Finally, we are committing to a further review of how to provide victims with a greater level of information to increase their understanding of the process.

²⁰ <https://consult.justice.gov.uk/victim-policy/consultation-on-improving-the-victims-code/results/victims-code-2020.pdf> (accessed 24 May 2021).

Chapter 5: Prisoners' experience of the Parole System

SUMMARY

Provision in the parole system for **restricted patients and prisoners lacking mental capacity** has improved in recent years, with scope to continue building on this progress.

The new **offender management in custody** (OMIC) system will increase prisoners' interaction with the parole process and streamline reporting to the Parole Board on prisoner behaviour whilst in custody.

Introduction

184. To fully assess how the parole system is working, it must be viewed from the perspective of those that are most affected by it – prisoners. Parole hearings are a crucially important event for prisoners whose sentences are subject to discretionary release. This chapter explores how improvements could be made for prisoners in the system.

Prisoners' experience of the system

185. Parole hearings are not only a way for offenders to be risk assessed but are also an opportunity for the prisoner to represent their own views on their risk level, marking an important step in preparing them for life back in the community.

186. Concerns around prisoners' experiences of the parole process were raised during the review; in particular, their understanding of the process and the steps required for them to be recommended for open conditions or release, and the level of support they receive throughout. Delays and adjournments also have a significant impact on the prisoner experience of the parole system, particularly for offenders awaiting decisions.

Mental incapacity and restricted patients

187. The February 2019 Review considered the Parole Board Rules to ensure provisions are made for prisoners who lack mental capacity. Additionally, in response to recommendations from the Mental Health Act Review, the Board has reviewed and streamlined processes for a particular cohort of restricted patients who are transferred prisoners under the Mental Health Act.

Restricted patients

188. The Mental Health Act Review in 2018, highlighted a systemic issue in the parole process, whereby a small cohort of prisoners²¹ detained in hospital under the Mental Health Act experienced unacceptable delays of months or even years whilst waiting for decisions on their release. The Review recommended:

- Recommendation 138. The Government should consider giving the Parole Board Tribunal status and combining hearings where appropriate. At the very least the Government should streamline processes so that hearings could be convened back to back.

189. The February 2019 Review reiterated the latter part of this recommendation and in October 2019, a multi-agency Mental Health Streamlining Project was launched, involving representatives from the Parole Board, and the Public Protection Casework Section and the Mental Health Casework Section (both within the Public Protection Group of HMPPS). Although delayed by COVID, the first phase, which was to identify all existing cases, allocate members with appropriate expertise and experience to assess their current status, and make sure they were swiftly progressed, is in its final stages. The second phase is to develop a pilot to test alternative options for managing mental health cases based on an evaluation of findings and best practice so far. Phase two involves engagement with wider stakeholders to further develop the pilot proposal, which is likely to launch in Autumn 2022 and run for 12 months.

190. In October 2020, the Parole Board published revised Guidance on Restricted Patients and the Mental Health Act as part of its update of Standard Practice Guidance. This provides information on the types of transfers under the Mental Health Act 1983 (as amended 2007) and guidance for Parole Board panels sitting in secure mental health settings.

Mental incapacity

191. The February 2019 Review examined whether the Parole Board Rules adequately supported restricted patients and prisoners with mental health needs and learning difficulties. It recommended a change to the Rules by making explicit provision for the

²¹ I.e., prisoners serving a life or other indeterminate sentence (and some extended sentence prisoners) who are also detained under the Mental Health Act.

appointment of suitable representation where necessary which came into force in July 2019.

192. After the 2019 Rules came into force, the High Court considered the case of *EG* and found that:

- the rules do allow the Parole Board to appoint a litigation friend;
- the Official Solicitor should be the litigation friend of last resort; and
- a prisoner's legal representative cannot also act as a litigation friend without an appropriate accreditation scheme being put in place.

193. Following the judgement, the Parole Board, HMPPS, MoJ and the Official Solicitor worked together to develop a more robust casework procedure for prisoners who may lack capacity. As the number of impacted prisoners is so small, an accreditation scheme for legal representatives to also act as litigation friends will not be introduced.

194. The review is satisfied that this work will improve the parole process for prisoners who lack mental capacity to understand and participate in the process. The review also welcomes the work done so far to support restricted patients and prisoners with mental health or learning needs and recommends the Parole Board and HMPPS continue work to together – and with other relevant stakeholders – to further improve provisions for these individuals.

Offender Management in Custody

195. The OMiC model was designed to make transformational improvements in the way prisoners are supported and case managed through their sentence. These improvements were delivered through the following changes:

- Providing significant investment so that front-line staff can focus on building relationships with prisoners to support them to change their lives.
- Moving responsibility for case management into the prison for the duration of the custodial period for prisoners serving longer term sentences.
- Prioritising allocation of resources for case management based on risk, sentence length and complexity of need.
- Introducing the new role of Prison Offender Manager (POM) and Head of Offender Management Delivery (Senior Probation Officer) into prison offender management units, increasing risk management expertise and experience in the team. POMs are responsible for assessment, coordination and delivery of the sentence plan. They have contact with prisoners delivering one-to-one supervision that is structured and based on the latest effective practice techniques to support behavioural change and a reduction of risk of serious harm and reoffending.

- Ensuring POMs delivering offender management and key workers (in the male closed and women's estate) are suitably skilled and supported assisting in retention of staff.
 - Delivering a bespoke offender management model for women based on the different challenges and opportunities in the women's estate.
 - Delivering some bespoke features to support resettlement activity in the male open estate.
196. OMiC has introduced a dedicated handover period from prisons to the community to ensure relationships are developed between the Community Offender Manager (COM), Prison Offender Manager (POM) and the prisoner, but also to ensure that crucial public protection and resettlement tasks are completed in a timely manner. For parole eligible prisoners the responsibility for the management of the case transfers from the POM to the COM eight months prior to the Tariff Expiry Date (TED) or Parole Eligibility Date (PED).
197. A fundamental part of the OMiC Model was to introduce a more streamlined approach to the process of parole by reducing duplication through staff only providing information relevant to their role and the stage of the sentence, developing new parole reports and introducing new Quality Development Tools across HMPPS to ensure the Parole Board receive high quality assessments, reports and recommendations. A new Pre-tariff parole report for indeterminate sentences has been developed for POMs, as they alone are responsible for the prisoner at that stage in their sentence. The report focuses on progress to date and recommendations for a move to the open estate.
198. For on and post tariff reviews, both the POM and COM both continue to provide reports although only one HMPPS recommendation is presented to the Parole Board. The COM is responsible for the release and management of the prisoner in the community and will therefore provide the risk assessment and recommendation in their report. There is a requirement for the POM and COM to liaise with each other and the COM must ensure the POM's views are considered in their Parole report.
199. This review recommends that the implementation of the changes involved in OMiC Parole should be monitored by the Parole System Oversight Group, to assess its effectiveness for prisoners in the Parole system.

Chapter 6: Evaluation of reforms to date

Progress on previous parole system recommendations and changes

Key recommendations and decisions made on the parole system to date	How have these reforms/ decisions been implemented?
<p>The Urgent Review (April 2018) recommended introducing a reconsideration mechanism, as a more accessible way of challenging Parole Board decisions.</p>	<p>The new reconsideration mechanism was introduced in July 2019, making challenging decisions easier and more transparent.</p>
<p>The <i>Worboys</i> case and later High Court review resulted in future Parole Board decisions needing to account for a prisoner's unconvicted offences</p>	<p>Parole Board members have been given guidance and training on how to account for allegations of wider offending in their decisions. HMPPS issued guidance to its report writers on how to take account of alleged wider offending for the purposes of assessing a prisoner's risk. This evidence is now included as standard in the core dossiers for parole hearings.</p>
<p>The February 2019 review recommended improving engagement with third-parties to the parole system, particularly to ensure the fulfilment of Parole Board panel directions.</p>	<p>A new Operational Protocol was introduced in 2019, clarifying the Parole Board's and PPCS's specific responsibilities for engaging with third-parties. The Parole Board has also established effective relationships with individual agencies, particularly the Police.</p>

Key recommendations and decisions made on the parole system to date	How have these reforms/ decisions been implemented?
<p>The Tailored review (2020) recommended updating fee and tenure arrangements for Parole Board members, to ensure key roles attract sufficient resource and expertise.</p>	<p>New fee structures were introduced in April 2021, encouraging members to fill essential roles, notably chairing parole hearings. The maximum tenure length can also now be increased, enabling skilled members to be retained.</p>
<p>Following new legislation in February 2020, determinate sentence prisoners convicted of terrorist or terror-related (TACT) offences cannot be released without Parole Board approval.</p>	<p>The Parole Board and PPCS have swiftly introduced effective processes for dealing with TACT cases. This includes to recruit and train expert resource, manage cases, and liaise with relevant security agencies.</p>

Introduction

200. The parole system has been subject to significant reviews and reforms in recent years. Many of the changes were introduced to address concerns highlighted by the Worboys case in 2018 – in particular the issues of transparency, the way decisions can be challenged, how evidence of wider offending is taken into account and victim experience – but also to help improve the overall efficiency, timeliness and effectiveness of the parole system. In this Review we have examined whether those reforms have met their objectives, and whether further changes are needed.

Reconsideration mechanism

201. The introduction of the reconsideration mechanism was one of the most significant reforms to the parole system over recent years. Historically, the only way to challenge parole decisions was through Judicial Review, which can be costly and onerous, particularly for victims. The Urgent Review (April 2018) highlighted the need for a more accessible way to review parole decisions where they appeared to be seriously flawed.

202. The reconsideration mechanism was introduced by the Parole Board Rules 2019 and came into force on 22 July 2019. The grounds for Parole Board decisions to be

reconsidered are similar to Judicial Review – where the decision was irrational (in the legal sense) or where the correct processes and procedures had not been followed. However, decisions can now be reconsidered in a matter of weeks, whereas Judicial Review takes on average 6-8 months.

Analysis

203. This review has examined the implementation of the reconsideration mechanism and whether it has successfully achieved its objectives. Those objectives being: (i) to provide a quicker, simpler and less costly route to challenge compared to Judicial Review; (ii) to create a process for parole decisions to be checked quickly to identify any legal or procedural flaws that may need to be rectified, and (iii) to thereby improve confidence in the parole.
204. The Public Protection Casework Section (PPCS) in HMPPS now screens all eligible release decisions to check whether there may be grounds to apply for reconsideration. The Parole Board Rules provide that decisions are ‘provisional’ for a period of 21 days, to allow sufficient time for the parties to apply for reconsideration, while avoiding undue delay to release (where appropriate).
205. Training, information and guidance was provided to Victim Liaison Officers (VLOs) to ensure that victims are now provided with advice and support on how to make representations to PPCS about making a reconsideration application.
206. The process has been made as simple, quick and straight-forward as possible. Unlike Judicial Review, victims do not have to appoint lawyers to prepare detailed legal arguments for the courts. Instead, the victim simply writes to PPCS setting out their concerns and reasons why the decision should be reconsidered. PPCS examines the evidence to determine whether there is an arguable case to apply for reconsideration. If so, PPCS will prepare an application for the Parole Board and the victim will be notified via their VLO. If there is insufficient evidence or reasons to make an application, PPCS will write to the victim to explain why.
207. Prisoners may also apply, under the same criteria, for reconsideration of a Parole Board decision not to release them. Again, this provides an effective and quicker alternative to pursuing a Judicial Review. Parole Board data on the reconsideration mechanism shows that the number of pre-action letters more than halved in the year following the introduction of the mechanism (110 in 2020/21,²² compared with 300 in 2018/19²³). This suggests that prisoners and their representatives are using reconsideration to test the strength of Parole Board decisions, and once they’ve done so are less likely to consider Judicial Review proceedings.

²² Parole Board Annual Report 2020/21 (publishing.service.gov.uk)

²³ Parole Board Annual Report 2018/19 (publishing.service.gov.uk)

208. Applications to the Parole Board are considered by a judicial member who normally makes a decision within 2-3 weeks. We note that a range of operational issues have made making decisions within 3 weeks challenging. The Board are currently undertaking an internal review to consider process improvements. This Review is satisfied that the Parole Board has sought to address these challenges and has further contingency measures should this not suffice.
209. Decisions on reconsideration applications are published on BAILII which has established a body of case law and offered records and accounts of why a decision is said to have been rationally or fairly made. This has had an unforeseen benefit of enabling stakeholders to draw on decisions as a source of precedent, should a decision be further challenged through Judicial Review.

Conclusion

210. In terms of whether the reconsideration mechanism has met its objectives, the Review has concluded that the screening process and relatively small number of reconsideration applications indicate an acceptance that the vast majority of Parole Board decisions have been reached fairly, followed the correct procedures and are rational. This has contributed to the objective of increasing confidence. Transparency has been improved through the Parole Board publishing reconsideration decisions, providing clear and public reasons for these decisions.
211. It has achieved its aim of identifying and, where necessary, rectifying the cases where a decision was legally flawed without the need to pursue a Judicial Review. This meets the objective of providing a quicker, more efficient and far less onerous means of challenging decisions.
212. There have been very few cases where a victim's request for reconsideration is successful. However, the mechanism was only intended to be used in the very small number of cases and not provide general challenge. Where a victim's request for reconsideration is unsuccessful, they receive an explanation to confirm that the process and law was followed and full reasons as to why this is the case.
213. There were concerns that it might unduly delay the parole process, but these have not materialised. There is a quick and efficient process for checking eligible decisions and ensuring cases can progress without delay. The time and resources required to process a reconsideration application are proportionate. The courts have rejected all challenges to the lawfulness of the reconsideration mechanism.
214. Overall, the review concludes that the reconsideration mechanism set out in the Parole Board Rules achieved the objectives for which it was intended. The Police, Crime, Sentencing and Courts Bill currently before Parliament builds on the reconsideration mechanism, enabling the Parole Board to set aside and re-open its own decisions in a broader range of circumstances.

Evidence of wider and unconvicted offending

215. Another of the key reforms made in 2018 was the introduction of measures to ensure that the Parole Board is provided with, and takes account of, evidence relating to alleged wider offending for which the prisoner has not been convicted, following the Worboys case and subsequent judgement that wider alleged offending should be taken into account.
216. It is of critical importance that Parole Board panels review all evidence that is relevant to the prisoner's current and future risk to the public. In most cases the nature and extent of the prisoner's offending is fully reflected in the offences for which they were sentenced and their history of previous convictions. The Worboys judgment held, however, that where there is evidence of wider alleged offending that may help inform the assessment of risk, even where there was no conviction, that it should be taken into account.
217. In response, the Parole Board implemented mandatory training for members and published a 'Guidance on Allegations'²⁴ document outlining how and when members should take this information into account. The lawfulness of parts of that guidance are presently subject to an appeal to the Supreme Court but in substance the guidance remains effective for how the Board approaches allegations of wider offending. To ensure all relevant evidence is provided to the Parole Board, the Parole Board Rules detail the documents which must be included in every dossier. One of these documents covers detail of wider offending. HMPPS also issued guidance to report writers on how to weigh evidence of alleged wider offending when assessing a prisoner's risk. This guidance mandated that relevant evidence about wider offending is always included in the dossier.

Analysis

218. This review considers that these measures fully addressed the requirement for evidence of wider alleged offending to be provided to the Parole Board and appropriately taken into account. This is now well embedded in current practices.
219. The requirement to include evidence on wider allegations and unconvicted offending has, however, had some unforeseen impacts, particularly on recall cases. Where an offender has been recalled to prison for breaching their licence conditions, for prisoners serving a determinate sentence, there is a statutory requirement for the case to be referred to the Parole Board within 28 days. In many recall cases, the offender has been charged but not yet convicted of further offences, or the recall may have been based on evidence of alleged further offending. In such cases, information

²⁴ Guidance for Parole Board members on the consideration of allegations which have been made against a prisoner. - GOV.UK (www.gov.uk)

required for the dossier, such as judges' sentencing remarks and information relating to wider offences, is often not available within the 28-day statutory timeframe.

220. There is also a tension between the role of the Parole Board and the role of the court in cases where a recall is the result of being charged with further offending. The Parole Board in reviewing the recall is required to take the alleged further offending into account, but panels cannot make a finding of fact about guilt, as that is properly a matter for the court to determine. This is compounded by the fact that it is not uncommon for recalled offenders to have multiple allegations of unconvicted or wider offending.

Conclusion

221. There are some difficult questions that need to be resolved around: the provision of evidence in the parole dossier about alleged further offending and how that evidence should be treated by the Board; and how to meet the 28-day timeframe for referring recall cases to the Board where all the relevant evidence is not available in time. These issues form part of a wider need to examine how the parole system deals with recall cases more generally (as in Chapter 1). We conclude that this requires a consistent whole system approach to resolve, as opposed to one review, and recommend that the Parole System Oversight Group (see paragraphs 262-267 below for more detail) will be best placed to address them.

Parole system engagement with third parties and directions compliance

222. Third parties, such as the police, Crown Prosecution Service, local authorities, social services and other agencies play an important part in the parole process. They contribute to the evidence about the risk the prisoner presents and may assist with release planning to effectively manage the offender on licence, if directed by the Parole Board. One of the issues identified by previous reviews was that there are sometimes difficulties securing third party engagement in the parole process. This can mean delays and that cases need to be adjourned until the third party complies with directions, such as by providing evidence to the Board.
223. To help address this, changes were made to the Parole Board Rules and a joint Operational Protocol between the Parole Board and PPCS was published to clarify where responsibilities for the different elements of the parole process fall. The Parole Board is now responsible for directly pursuing all third-party directions. The aim was to give the directions more weight and priority by making it clear to the third party that these were judicial directions from the Board and should be treated with the priority afforded to any other court direction – rather than like a request from officials.

Analysis

224. The Review recognised the improvements that have been made in this area and identified where the system could be further improved. Third parties are often concerned that their evidence will be disclosed to the prisoner, particularly where it is sensitive or confidential. This risks leading to non-disclosure applications, setting out the reasons for which they do not wish to provide the evidence requested, which can cause delays, particularly where deadlines for submitting applications are not met.
225. Further improvements to communication would help address this issue. It is also important for third parties to understand how their information will be used and how it can be protected if it is sensitive, in order to give them the confidence to still submit it to the Board. It is also important that, where they wish to make a non-disclosure application, third parties understand and adhere to the timescales set out, so the applications can be decided without delaying the hearing itself.

Conclusion

226. Further work should be undertaken by the Parole Board to build on the improved engagement and communications with third parties so that they have a better understanding of what is required when they receive a Parole Board direction.
227. Given the long-standing and ongoing issues with directions compliance it is recommended that the new Parole System Oversight Group (see paragraphs 262-267) should have responsibility for monitoring progress in this area and ensure that all parts of the parole system are communicating and working effectively together to improve compliance.

Parole Board member fees and tenure

228. At the heart of the parole system are the Parole Board members who are responsible for assessing prisoners' risk and making the decisions on release. A successful system relies on attracting and retaining expert members in sufficient numbers. It is particularly important to have members with the experience, skills and willingness to take on chairing parole hearings. This requires an effective structure for members' fees which provides appropriate incentive and remuneration to secure and retain the most talented members.
229. The Tailored Review identified that the fee structure was failing to incentivise members to undertake the paper-based 'Member Case Assessment' (MCA) work or to chair oral hearings. This risked undermining the quality and affecting timelines for the increasing quantity of parole decisions that had to be made.
230. In response, the Parole Board introduced a new fee structure on 1 April 2021. This increases the overall fees for MCA work, and reflects the greater time required to

review determinate recall cases at MCA stage. In addition, it introduces a 'decision-writing' fee for panel Chairs to reflect the additional responsibilities associated with chairing an oral hearing.

Analysis

231. The new fee structure supports the Parole Board's efforts to improve efficiency and reduce delays. By better recognising MCA work, Members are encouraged, where appropriate, to decide cases at the earlier paper stage and are incentivised to 'own' a case until its conclusion. Continuity of ownership helps to ensure it is progressed as efficiently and consistently as possible.
232. Cabinet Office and the Parole Board have agreed provision for extending tenures, by exception, to a maximum of fifteen years (another recommendation of the Tailored Review). As a further method to address the shortage of panel chairs, members are strongly encouraged to train as chairs if granted extended tenure.

Conclusion

233. Early indications suggest these reforms will be effective at achieving their intended aims. The numbers of accredited or trained chairs rose by nearly 50% between 2019/20 and 2020/21.²⁵ The Review concludes that these changes should continue to drive positive improvements in terms of the Board's ability to manage caseloads, ensure there are sufficient panel chairs to meet demand and progress cases as quickly and efficiently as possible. It is recommended that the Ministry of Justice and the Parole Board continue to work together to monitor the impact of these changes.

Terrorism Act (TACT) cases

234. Legislative reforms over the last 2 years in response to terrorist attacks in the UK have strengthened the sentencing and release framework for this category of offender, increasing the role for the Parole Board in some cases. Whilst the number of such cases remains relatively small in comparison with the majority of prisoners reviewed by the Board, terrorist cases present particular challenges and sensitivities that require a specialist approach.
235. The government passed the Terrorist Offenders (Restriction of Early Release) Act in February 2020 to ensure that all prisoners convicted of terrorist or terrorist-connected offences who receive a standard determinate sentence (SDS) will not be released before the end of their sentence without Parole Board approval. The earliest point of release by the Board was set at two-thirds of their sentence. The provisions were also applied retrospectively to those already serving an SDS for terrorist or terrorist-connected offences, meaning there were some cases nearing their

²⁵ Parole Board Annual Report 2020/21 (publishing.service.gov.uk)

automatic half-way release date who were required to remain in custody and be reviewed by the Parole Board at the two-thirds point. This required new systems to deal with these cases to ensure they now receive a Parole Board review.

236. The reforms proposed in this review also go further in dealing with terrorist cases in the parole system, as terrorist offenders (as set out in paragraph 80) will be in the top-tier of cases to be subject to Secretary of State powers (paragraphs 82-93).

Analysis

237. As with all Parole Board decisions, panels hearing terrorist cases assess if a prisoner can be safely released based on their ongoing risk to the public. To effectively support the Parole Board to take these decisions, PPCS have set up a dedicated team, the National Security Casework Team, to centrally deal with the parole process for all TACT offenders. The Parole Board has also established a cohort of trained specialist members to deal with these cases. This includes judicial members with particular experience and expertise in managing complex terrorist trials. The Parole Board has proactively sought to increase the number of these specialist members, and successfully recruited a number of members specifically to handle TACT cases in Autumn 2021 (including a number from a law enforcement background).

238. These cases often require sensitive evidence and intelligence to be provided to the Parole Board about the nature of the risk the offender presents. Measures have been taken to develop effective working relationships with the police and security services to ensure such evidence is provided and is carefully and sensitively handled in order to prevent disclosure. Steps have also been taken to ensure that relevant staff and members have the necessary security clearances.

Conclusion

239. This review has found that robust and effective processes, arrangements and specialist expertise are now in place to deal effectively with the particular challenges presented by terrorist offenders who require a parole review. The Parole Board has continued to work with its specialist cohort of members by issuing specific guidance on producing dossiers, risk assessment, and decision-making for these offenders. They are also provided with specialist training on both the Parole Board's role in these cases and on terrorism itself.

240. This review welcomes the progress made in relation to management of terrorist offenders. It recommends that their effectiveness continues to be monitored, built on and adjusted where necessary to maintain the most robust approach possible for these cases.

Chapter 7: Performance of the parole system

Headlines

The parole system has **responded highly effectively to Covid-19**, sustaining and even improving on pre-pandemic caseloads whilst holding the majority of parole hearings remotely

Going forwards, the Parole Board intend to implement a **hybrid operating model**, whilst identifying and preserving elements of the hearing process which are more effective when delivered in person

There are long standing issues around **dossier production** for parole hearings which can be improved through effective co-ordination between the different parole system agencies

Two new boards – the **Parole System Oversight Group** and the **Rules Committee** – will consider potential for further improvements to the overall system and Parole Board Rules respectively

The **Parole Board's diversity strategy** has been a key focus for improvement and has been successful in increasing diversity of membership

A new feedback mechanism is now open to all users of the parole process and can be used by the Parole Board in designing future strategies for developing its membership.

Introduction

241. The review considered the efficacy of all recent parole reforms and has concluded that, overall, the system is performing effectively and efficiently. However, there are some areas where further improvement is recommended, which is why we are undertaking the necessary changes outlined earlier in the review. This chapter examines the timeliness, efficiency and effectiveness of the system – recognising in particular that it can take too long for some cases to be concluded. This chapter also

covers the quality of evidence used in decision-making and how the public can be confident that the highest standards are being met across the system.

242. The review agrees with the Tailored Review's recommendations to establish a senior level Parole System Oversight Group and an independent third-party assurance regime of the whole system. These recommendations remain relevant to ensure there is appropriate oversight and accountability for the end-to-end system at a senior level and that all component parts of the parole system work effectively together.
243. Where this review has identified the need for further operational improvements to the system, it recommends that these issues should be taken forward by the Parole System Oversight Group. Therefore, as soon as is practicable, Terms of Reference for the Oversight Group will be agreed, giving appropriate regard to existing governance structures, and identifying how best to deliver independent scrutiny of the parole system.

Efficiency and timeliness in the Parole System

244. A persistent issue that the parole system has faced is its high rate of deferrals and adjournments. The number of cases it deals with continues to rise, particularly following the Supreme Court judgement in the case of Osborn (2013) which resulted in a significant increase in demand for oral hearings rising from 4,216 in 20011/12²⁶ to 9,202 in 2020/21.²⁷
245. Despite these challenges, HMPPS and the Parole Board demonstrated their agility and effective leadership in responding to adverse developments with their response to the Covid-19 pandemic, implementing flexible ways of delivering reviews and avoiding a significant backlog of cases developing. During 2020/21 the Parole Board conducted 23,453 hearings, compared to 21,063 hearings during the previous year.

Deferral and adjournments

246. The Tailored Review assessed the work undertaken to improve efficiency of the parole system.²⁸ This included the COMPASS project, which was launched to investigate the causes of deferrals and adjournments and find solutions to reduce them significantly, particularly on-the-day deferrals. This has had a sustained impact on the levels of deferrals and adjournments and the Parole Board set a new KPI

²⁶ The Parole Board for England and Wales Annual Report and Accounts 2011/12 (publishing.service.gov.uk)

²⁷ Parole Board Annual Report 2020/21 (publishing.service.gov.uk)

²⁸ Parole Board Annual Report 2019/20 (publishing.service.gov.uk)

benchmark for on-the-day deferrals to remain below 10%, with a record low of 2% achieved in August 2019 and an average across 2020/21 of 3%.²⁹

Ways of working

247. Operational and administrative issues related to listings have posed a problem for the Parole Board in the past, due to high demand for hearings and practical difficulties with member and witness availability.
248. In response to restrictions imposed by the pandemic, new ways of working have been introduced across the system including telephone and video hearings. Remote delivery has increased the Board's capacity to hear cases more quickly and reduced the impact of availability of members and witnesses; the number of complaints the Board received regarding listing errors and delays dropped from 59 (48% of total) in 2019/20 to 33 (25% of total) in 2020/21.³⁰ Both the Parole Board and HMPPS agreed that the quality of decision-making has not been impacted by remote hearings. Holding hearings remotely can potentially improve the experience for attendees, as it creates a lower-stress environment, there is no travel required, and they have better access to relevant notes and files.

New challenges

249. This new model has, however, presented some issues. The Parole Board has introduced a new 'technical' category as a reason for adjournment. There are instances where parts of the parole process are better suited to taking place in-person. This is particularly true for psychological assessments.
250. HMPPS also highlighted the impact remote delivery can have on some offenders, raising concerns that some prisoners cannot be as effectively supported through the remote hearing process, particularly those attending hearings alone or prisoners who are less familiar with technology. Work has been undertaken to minimise the impact on offenders, and data shows release figures have stayed consistent with previous years.

Future ways of working

251. In April 2021, the Parole Board internally issued an updated Covid Recovery Strategy in response to the government's roadmap out of lockdown. This recognised the value of a flexible operating model and set out additional measures being taken to ensure remote working is as effective as possible. Following the lessons learned during the pandemic, the parole system is now moving into a hybrid delivery model, allowing for both face-to-face and remote delivery of hearings. This new model will deliver

²⁹ Parole Board Annual Report 2020/21 (publishing.service.gov.uk)

³⁰ Parole Board Annual Report 2019/20 (publishing.service.gov.uk); Parole Board Annual Report 2020/21 (publishing.service.gov.uk)

increased efficiency and timeliness while still enabling face to face hearings to take place where necessary.

Towards a more agile parole system

252. The cases that go through the parole system have become increasingly complex. This review finds that the Parole Board, HMPPS and the MoJ have successfully worked together to improve collaboration in order to successfully manage these complex cases and maintain public protection. This has resulted in a more efficient, effective and agile system which can better respond to the varying needs and complexity of individual cases.

Evidence process and dossier compilation

253. The quality and detail of evidence is crucial in making robust, legally sound and high-quality decisions. The compilation and submission of the dossier of evidence required for hearings has long presented specific difficulties in the parole process.

254. Positively, steps have already been taken to address this. A Joint Psychology Working Group set up as part of the COMPASS project (see paragraph 246) and attended by Psychologists, PPCS and the Parole Board meets regularly to discuss case delivery. The COMPASS project also introduced case conferences which have helped mitigate some issues in these reports, specific provisions for which will be made in the forthcoming Parole Board Rules. Combined with a pragmatic approach by members to addressing evidential gaps, this approach is supporting the delivery of timely, high-quality decisions.

255. There are some issues with dossiers which arise consistently, including: duplication in cases with multiple reviews; Risk Management Plans being of inadequate quality; recall dossiers being of a consistently poorer quality than in standard cases (see Chapter 1 for more detail on recall cases); and issues with specialist reports (as highlighted in the Tailored Review 2020) around sequencing and clarity of directions. In alignment with similar recommendations made in the Tailored Review (October 2020), we recommend that the Parole Board, HMPPS and the MoJ continue to work together to address issues in the dossier compilation process.

Timetables

256. The removal of the 26-week timeframe in the Generic Parole Process Policy Framework has been widely welcomed by parole practitioners interviewed for this review. HMPPS, Parole Board and MoJ representatives agreed that building greater flexibility into the parole process was more important than introducing a new timetable given how much the complexity of cases can vary.

257. However, offender managers noted that some form of schedule is useful to manage prisoner expectations and parole practitioners felt explanations for fixed deadlines in the schedule would help the system run more efficiently. There is a concern that without a fixed timeline some cases could drift without a resolution for long periods of time, which could cause offenders to not have their risk assessed within a reasonable timeframe. Like the Tailored Review, this review therefore emphasises that there needs to be appropriate and purposeful case management, suited to each individual case.

Data sharing and performance measures

258. In order to identify potential areas of friction before they create further issues, it is important that there are appropriate data sharing and measures of performance agreed across the system.

259. Currently HMPPS and the Parole Board have a shared database, the Public Protection Unit Database (PPUD), used to manage parole eligible prisoners on a shared platform. This facilitates collaboration across the system as it allows the Board and PPCS to access and share relevant information simultaneously. However, PPUD is separate to the main systems used by HMPPS and cannot be linked into these systems at present as it is not cloud-based.

260. The Parole Board currently have a project underway to replace PPUD with a new cloud-based system to allow for better data sharing between offender case management systems within the parole process. This Review recommends that the Parole Board and HMPPS also use the upgrade to the IT system to improve the capacity to share and agree data within the system and get a better understanding of system performance.

Conclusion

261. Whilst the parole practitioners interviewed generally agreed that the system performs well overall, difficulties arise where various components of the system fail to join up as well as they should, and issues can rapidly compound and create further delays in the rest of the system. This highlights the need for a whole system evaluation and approach to address the challenges, as set out in this section.

Parole system oversight

262. To ensure parole functions as a single, coherent system, there needs to be a way to measure, analyse and understand its performance, as well as identifying methods to improve it. In evaluating the coordination of the parole system as a whole, the Tailored Review recommended the introduction of a strategic Oversight Group, along with a system-wide third-party assurance regime. The February 2019 Review also

recommended that a Parole Board specific Rules Committee should be established, to advise the Secretary of State on future changes to the Parole Board Rules.

263. Both the Parole System Oversight Group and the third-party scrutiny should monitor the whole end-to-end system, ensuring that all component parts of the system work together effectively and continue to drive forward improvements where necessary. To maintain the independence of Parole Board decision-making, neither would comment on individual cases focusing instead on risks, issues and trends across the system.
264. The Rules Committee would be a non-statutory Expert Committee to advise the Secretary of State on future changes to the Parole Board Rules. It would comprise of Parole Board Members, parole practitioners, HMPPS, MoJ lawyers and representatives from offender and victim groups.

Conclusion

265. The February 2019 Review and the Tailored Review 2020 made these recommendations based on the current parole system. They have not yet been implemented pending the outcome of this review. The rationale for these improvements remains sound, and they will still form a useful, if not integral, part of the parole system.
266. The Parole Board, HMPPS and the MoJ have agreed on the proposals to establish the Oversight Group and the additional assurance regime. There will be a comprehensive review of existing governance structures in order to inform the Terms of Reference for both of these changes, which will be finalised in the coming months with a view to allowing the Group to take forward the recommendations made therein and ensure their timely implementation.
267. This review recommends that the Parole System Oversight Group should assume responsibility for examining the operational elements of the end-to-end parole process that have been identified as requiring further attention and improvement; and, working with partners across the system, should identify and implement appropriate solutions. That will include measures to tackle delays, initiatives to minimise the need for deferrals and adjournments, and driving up the quality and timeliness of the evidence gathered and presented to the Board to ensure as far as possible that it is 'right first time'.

Relationship with MoJ

268. As part of looking at how to ensure the system performs as a whole, it is also crucial to look at the relationship between the MoJ and the Parole Board which forms a key part of this system. The Triennial Review (January 2015) made four

recommendations to strengthen the Parole Board's governance and relationship with its Executive, which have been implemented.³¹

269. The Tailored Review 2020 re-examined the Parole Board's governance arrangements and relationship with the MoJ. It recommended exploring options for the Board to receive MoJ corporate support; and that the refreshed Framework Document setting out its relationship with the department is finalised and published.

270. The Board partly accepted the Tailored Review's recommendation regarding corporate support by welcoming MoJ analytical support, building on other areas of corporate support it already receives.

271. In parallel to this Review, the department, working with all of its ALBs, has embarked on a programme to update all ALB Framework Documents. The Parole Board's Framework Document will be published as soon as possible after this Review.

Diversity Strategy

272. In 2019, the Parole Board ran a campaign to recruit a new cohort of members, making concerted efforts to encourage applications from diverse backgrounds through extensive outreach and media work. As a result, the proportion of members from BAME backgrounds increased from 5% in February 2019 to 13% following the campaign, and in 2021 stands at 17%.³² The Board is now seeking to ensure diversity is reflected at all levels of the organisation, by actively encouraging BAME members to fill governance and leadership roles.

273. Working patterns during the pandemic have contributed to more diverse panels as remote hearings mean panellists can be appointed from anywhere in the country. Consequently, the more diverse 2019 cohort who are largely based outside of London, have been more widely represented on panels nationwide. The expectation is that these arrangements will continue post-pandemic. This is aligned with the Government's 'Places for Growth' Strategy, which seeks to increase public sector functions and personnel outside of London.

274. The Tailored Review commended the Parole Board for its work to monitor and publish decision outcomes by ethnicity, to identify and tackle any bias. Recent data does not indicate any bias in release outcomes. Notwithstanding, the Parole Board has identified outcomes for minority group prisoners as an ongoing research priority.

³¹ Triennial Review (publishing.service.gov.uk) p.48.

³² Provided by Parole Board.

Member training and quality assurance

275. In recent years, the Parole Board has implemented a mandatory training programme. Previously, learning was largely informal and mentor-based. This covers areas including Member duties, such as chairing and MCA work, and unconscious bias, as part of the wider diversity strategy.

276. The Tailored Review recommended the Parole Board continues to strengthen its already significant quality assurance processes. The Parole Board has responded proactively, implementing new policies on Member Conduct, Maintaining Member Standards, and Member Reappointment in April 2021. It also published a new MCA Quality Assurance Framework in December 2020.

New challenges

277. The Tailored Review highlighted concerns raised by offender representatives regarding the complaints and feedback processes. This was echoed by parole system professionals consulted for this review who reported that existing feedback mechanisms – particularly those below the level of formal complaint – are inadequate for dealing with issues when they arise. They also reported instances of ineffective questioning of specialist witnesses at hearings, which they attributed to some panellists lacking knowledge of the specific roles carried out by parole system practitioners. They praised instances where Members and parole practitioners have used regional forums to share experiences and lessons learned from hearings and welcomed the idea of further informal engagement of this kind.

Feedback mechanisms

278. The introduction of stakeholder response forms, available to all involved parties throughout the parole process, has gone some way to resolving case-specific issues before they get to the point of listing. The Parole Board is seeking to improve its complaints and feedback procedures further, by introducing two additional mechanisms:

- A panel-specific loop will enable Parole Board members to record issues that arise which impacted the effectiveness of a hearing and/or the progression of a case; and
- In July 2021 the Parole Board also introduced a new feedback mechanism. This is available on gov.uk to all users of the parole process,³³ adding to the insight already provided through the Parole Board's formal complaints procedure.³⁴

³³ <https://www.gov.uk/government/publications/feedback-and-complaints>.

³⁴ <https://www.gov.uk/government/organisations/parole-board/about/complaints-procedure>.

Conclusion

279. The range of ongoing projects in this area demonstrates the Parole Board's ongoing commitment to ensuring panels are fair, supported and diverse, and their decision-making robust. It is worth restating the overall high quality of panel decisions, and that stakeholders identified issues as the exception rather than the rule.
280. Nonetheless, there are still opportunities to make further improvements and so this Review therefore echoes the Tailored Review's recommendation that the Parole Board "proactively" seeks feedback from system users and supports further opportunities for informal engagement between Members and system practitioners. These changes will ensure issues are identified and addressed in a timely way, so the system best serves the needs of its users.

Annex A: Terms of reference

The Root and Branch review will focus on the following 4 areas:

- An evaluation of the parole reforms to date:
 - considering the overall performance of the parole process and identifying whether any further measures would help to improve the timeliness and efficiency of the process
 - the response to Covid-19 and its implications on the way parole reviews may be conducted in the future
 - examining the effectiveness of the reconsideration mechanism and whether there is a case for further reform of that process
 - identifying any additional legislative or Rule changes that would further improve the parole process including whether the current release test continues to be appropriate
- The constitution and status of the Parole Board:
 - examining whether the Parole Board should remain a non-departmental public body or should be made more visibly independent from the Ministry of Justice
 - whether possible alternatives, such as creating a new type of public protection tribunal, could deliver the parole function in a more efficient and cost-effective way
 - considering the need for any additional measures to strengthen the Parole Board's powers to reinforce its status as a court-like body
- Improving public understanding and confidence:
 - exploring whether further steps could be taken by the Board and other parts of the system to help explain and publicise what parole decision making is, how it works and what the assessment entails
 - ways to better communicate that parole decisions are not about ongoing punishment for the offences committed and that release is not a reward for good behaviour in prison
 - improving messaging that the parole system protects the public by authorising the continued detention of dangerous offenders and that only a minority of prisoners considered for parole are released
- Openness and transparency:
 - developing a way for victims to observe oral hearings in a safe and secure way without compromising the Board's ability to perform its function and obtain the best possible evidence from the prisoner and professional witnesses

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- considering the case for public hearings and whether this would be possible and appropriate in certain limited cases
- looking at ways to build on the work already done to improve openness and transparency

Annex B: Types of sentence

Determinate prison sentences are for a fixed length of time, whereas an ‘indeterminate’ prison sentence does not have a fixed length of time. For indeterminate sentences, no date is set when the offender will be released, and they have to spend a minimum amount of time in prison (called a ‘tariff’) before they’re considered for release by the Parole Board.

Determinate Sentences

Standard determinate sentences (SDS) are the most common custodial sentence, and an offender serving an SDS will generally spend the first half of their sentence in custody before being released automatically at the half-way point. The Parole Board are not generally involved in the release of SDS sentenced offenders.

Extended determinate sentences (EDS) are available for offenders convicted of certain specified violent, sexual, or terrorism offences who the court determines to be “dangerous”. **Sentences for certain offenders of particular concern (SOPC)** are available for offenders convicted of certain terrorism offences and the two most serious sexual offences against children. Under an EDS and SOPC, an offender is considered for release by the Parole Board between the two-thirds and end point of the custodial term. If not released earlier, they are automatically released at the end of their custodial term and serve an extended period (EDS) or an additional 12-month period (SOPC) on licence.

Indeterminate Sentences

Life sentences in almost all cases spend a minimum period in custody (a ‘tariff’, set by the court), before consideration for release by the Parole Board. Many offenders remain in prison beyond their tariff, and some may never be released. If an offender is released they will remain on licence for the rest of their life and be subject to recall to prison at any time. In a limited number of cases a whole life order will be imposed, whereby the person is never subject to consideration for release by the Parole Board. There are currently three types of life sentence available to the court:

- **Mandatory life sentences** must be imposed on anyone convicted of murder.
- **Discretionary life sentences** apply to a range of offences which carry a maximum penalty of life imprisonment (e.g. manslaughter, rape and robbery).
- **Life sentence for a specified second offence** is available for adult offenders who have been convicted of a second specified violent, sexual or terrorism offence.

The Imprisonment for Public Protection (IPP) sentence was introduced in 2005 as an indeterminate sentence targeted at serious offenders who, although they were thought to pose an ongoing risk to public safety, did not merit a life sentence. Under the sentence, offenders were given a minimum term which had to be served in full in custody. At the end of the term, they can only be released if the Parole Board is satisfied that they are safe to

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be released on licence. IPP sentences were abolished in 2012 however not retrospectively, so there are still IPP offenders in custody who are subject to Parole Board release (including both those who are awaiting first release and those who have been recalled).

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