



Ministry  
of Justice

# **Review of the Parole Board Rules and Reconsideration Mechanism:**

Delivering an effective and  
transparent system

February 2019

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of Justice

## **Review of the Parole Board Rules and Reconsideration Mechanism:**

Delivering an effective and transparent system

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

February 2019



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## **Foreword**

When I published the *Review of the law, policy and procedure relating to Parole Board decisions*, I committed to go further than the measures proposed in that document. I launched a public consultation seeking views on a new mechanism that would allow Parole Board decisions to be reconsidered, as well as a review of all Parole Board Rules – to explore further opportunities for reform. I am now pleased to publish the Government’s report on that review and our response to the consultation.

One of the main criticisms levelled at the parole system was a lack of transparency, with too many processes undertaken behind closed doors; as well as a failure to properly engage and communicate with victims. Much has since been done to address those issues and I am pleased in this report to set out those changes – together with a programme of further reforms.

I am very grateful to everyone who responded to the consultation on the creation of a new Reconsideration Mechanism for Parole Board decisions. I am pleased to confirm that I intend to make provision for a mechanism that will make it possible for decisions to be reconsidered in cases where it appears they may have been legally or procedurally flawed.

Steps to increase transparency have already been taken. To allow more disclosure of information concerning how decisions are made, victims and others can now request summaries of decisions. I am grateful to the Parole Board for embracing this new role and for their work in producing the summaries.

I am determined to go further in making the parole system more transparent. For example, the Parole Board will produce and publish a series of Standard Practice guidance which will open up and improve public awareness of the approaches the Board follows in reaching its decisions. This will support greater consistency in how the Board reviews cases and provide a greater degree of accountability as it will be clear where the standard approach has not been followed.

In September the government published the Victims Strategy. Improving the experience of victims, the information they are given and how we communicate with them is crucial – not just during the parole process but throughout the whole criminal justice journey. This report sets out a range of measures on engagement with victims and further commitments to enhance their experience in the parole process.

The reforms contained within this report will be implemented over the coming months.

We will also now conduct a Tailored Review of the Parole Board to consider whether there is a case for further, more fundamental reforms that would require primary legislation – including whether to change the powers or responsibilities conferred on the Parole Board or whether it should be reconstituted to deliver its functions in a different way.

Having put a spotlight on the system of parole and examined all the Rules which govern the procedures that the Parole Board follows, it is important to emphasise that this has not revealed profound deficiencies in the way that decisions are reached. I am satisfied, therefore, that the parole system serves its primary purpose of releasing prisoners who

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have completed their minimum tariff only after a thorough and independent risk assessment and where the Board is confident they can be safely managed on licence in the community.

Nonetheless, I do recognise that improvements need to be made – particularly by making the parole system more open and accountable and to address the recent issues that have understandably shaken public confidence. I believe the reforms set out in this report will make this important part of the criminal justice system more effective and more transparent.

**Rt. Hon David Gauke MP**  
**Secretary of State for Justice**

## 1. Executive Summary

Headlines	
	We will change the Parole Board Rules to create a new <b>reconsideration mechanism</b> so if there is a seriously flawed decision it can be looked at again without the need for judicial review.
	The Parole Board will publish new <b>Standard Practice documents</b> which will make more transparent the considerations and approaches to decision making that should normally be followed.
	<b>Improved engagement and communication with victims</b> will be delivered through changes to the Victim Contact Scheme, the commitments in the Victims Strategy published on 10 September 2018 and a revised Victims' Code following consultation in 2019.
	We will replace the current Prison Service Instruction on the parole process with a new <b>Policy Framework</b> which will make improvements to timeliness and efficiency as well as ensure the published instructions are up-to-date and support the other reforms.
	A new <b>Operational Protocol</b> between the Parole Board and HM Prisons and Probation Service will be published which will clarify and make more open everyone's roles and responsibilities; support better joint working; and reduce duplication.
	Provision will be made in the <b>Rules for prisoners with mental health needs and learning difficulties</b> , who lack mental capacity, to ensure a fair hearing, including the appointment of suitable representation if necessary.
	A <b>Rules Committee</b> will be created to oversee future Rule changes, ensuring the rules keep pace with wider developments, with input from key stakeholders including victim representatives.
	A <b>Tailored Review</b> of the Parole Board will examine the future constitution of the Parole Board and whether more fundamental reform requiring primary legislation is needed.

## **Introduction**

1. On 28 April 2018, the Secretary of State published a report on the *Review of the law, policy and procedure relating to Parole Board decisions* (the ‘first review’). This was undertaken in the wake of the decision by the Parole Board to direct the release of John Worboys. That release decision was subsequently overturned by the High Court following judicial review. The case raised a number of serious concerns and shone a light on aspects of the parole system where changes needed to be made. In particular, the way that victims were engaged and communicated with and the lack of transparency and openness in the system.
2. That ‘first review’ made a number of commitments:

### ***Parole Board Decision Summaries***

- We undertook to remove the blanket prohibition on the disclosure of information about Parole Board proceedings and replace it with a presumption that victims who want one should be provided with a summary of the reasons for Parole Board decisions. This commitment was met on 22 May 2018, when Rule 25 of the Parole Board rules was revised to allow decision summaries to be sent to victims and any other parties who request them. These decision summaries are now regularly produced by the Parole Board.

### ***Reconsideration Mechanism (Chapter 3)***

- A public consultation on proposals to create a new reconsideration mechanism, which would provide for Parole Board decisions to be reconsidered in certain circumstances, took place between April and July 2018. We have decided to proceed with the implementation of such a mechanism. Taking account of the 74 responses received, we have developed a model for how that should operate. The Government’s response to the consultation, which sets out the detail on how this will be delivered, is being published at the same time as this report – but the key features of the reconsideration mechanism are explained in Chapter 3. This will be the main change that we will be making to the Parole Board Rules.

### ***Review of the Parole Board Rules***

- The Secretary of State announced a comprehensive review of all the Rules governing the Parole Board to ensure that the procedures and processes that are followed are robust and fair – and so that other opportunities for reform could be identified. Terms of Reference for the review were published on 28 April 2018 (and can be found at Annex A). This report sets out the findings of that review and the measures and reforms that have been identified which will deliver further improvements to the parole system. This is not limited to changing the statutory procedural Rules but extend to other operational reforms and new approaches which, together, will address the areas identified in the Terms of Reference.

### ***Victim Engagement and Communication (Chapter 4)***

3. The first review recognised the need to make improvements to the **Victim Contact Scheme (VCS)**. A great deal has since been done to identify ways to improve engagement and communication with victims – and further commitments have been made in the Victims Strategy that was published on 10 September 2018. Chapter 4 of

this report sets out the measures being taken forward to improve the system for victims, including: training and guidance to improve the way Victim Liaison Officers (VLOs) communicate with victims; changes to the VCS to make it easier to opt in and opt out; and allowing VLOs to offer contact to a broader range of victims.

4. Additional measures in the **Victims Strategy** include consulting on changes to the Victims' Code, including the intention to enshrine the current presumption that at parole hearings, victims will be able to read, or have read, their victim personal statement (VPS); and to provide greater assurance and protection to victims about the disclosure of information to prisoners regarding their reasons for requesting licence conditions.
5. There will be a consultation this year on a revised **Victims' Code** and wider victim legislation including strengthening the enforcement of the Code to make sure victims receive the services they are entitled to, and criminal justice agencies are held to account if they do not. Once it has been established what rights and entitlements for victims will be included in the revised Victims' Code, we propose to consider further changes to the Parole Board Rules to reflect those victim entitlements relating to the parole process within the Rules.
6. Ahead of the consultation, work will continue on the improvements to the VCS and that will include making sure VLOs are fully equipped with guidance, information and training on the changes and reforms we are making to the parole system. VLOs will play a key role, for example, in providing guidance and assistance to victims on the new reconsideration mechanism – so we will make sure they are supported with the guidance, leaflets, and training they need.

### Transparency and openness (Chapter 5)

7. Chapter 5 focuses on the measures that have been taken and the further reform that will be delivered to make sure that the parole system is as transparent and open as possible.
8. The changes to Rule 25 and the introduction of **Decision Summaries** from 22 May 2018 has gone a long way to make parole decisions more open, with reasons now routinely being provided by the Parole Board to victims and others who request a summary. Chapter 5 provides further information about how the provision of decision summaries has been working since the Rule change came into force. We will keep the operation of new Rule 25 under review to ensure it continues to deliver the intended degree of transparency.
9. This review has explored what more can be done to build on this. We were mindful of the judgment in the *Worboys* judicial review case where the court found the blanket prohibition on disclosure of information about parole proceedings to be an unlawful infringement of the principles of open justice. We concluded that the changes made to Rule 25 were sufficient to rectify this and that there are no further changes on transparency to the procedural Rules themselves that we consider necessary. There are, however, further operational changes that are being made to ensure more information is put into the public domain about the parole process and how decisions are reached. This includes a Parole Board video outlining the parole process, better on-line information and a regular blog by the Board's Chief Executive explaining key developments and changes.

10. Further transparency will be achieved by the Parole Board producing and publishing **Standard Practice guidance** and Standard Practice directions. These will strengthen the current internal guidance to members setting out the Board's approach to its statutory functions and how it should meet the procedural requirements in the Rules. This will cover the range of guidance, procedures and approaches adopted by the Parole Board.
11. Not only will this ensure consistency in the review of cases and compliance with the new Rules, it will make the practices and approaches followed by the Board more transparent and support greater accountability as standard practice documents will be published.

## **Evidence requirements (Chapter 6)**

### ***Evidence relating to unconvicted offences***

12. One of the main issues to arise from the *Worboys* case and the first review was the question of the evidence that the Parole Board should consider in order to decide whether a prisoner is safe to be released. The High Court found that the Parole Board should have probed further into evidence relating to the wider circumstances of John Worboys' offending and taken into account what was known about other offences for which he had not been convicted. It was the failure to do this that led to the release decision being overturned.
13. This is a difficult area but one where it has been important to fully address the findings of the *Worboys* judgment to ensure that other cases are not subject to similar criticisms. Both HMPPS and the Parole Board have taken steps to address this. New guidance and instructions have been issued to HMPPS staff compiling dossiers for the Board to make sure that all relevant evidence is always provided – including evidence relating to unconvicted offences and the judge's sentencing remarks. Additional management checks have also been introduced to make sure this is done.
14. The Parole Board has also produced guidance and conducted events for its members on how evidence relating to unconvicted offences should be approached. It remains up to individual panels to assess what evidence is relevant and what weight to give to it in the particular circumstances of the case before it; but this will now be considered in the light of the further guidance and steer to members that has been provided.
15. It is further intended that the guidance and approach on evidence used in the parole process – including that relating to unconvicted offences – will be published.

### ***Non-disclosure of evidence***

16. Chapter 6 also covers the review's assessment of the Rules relating to the disclosure and non-disclosure of evidence in proceedings. We believe the Rules allow for the right balance to be achieved between what should be disclosed in the interests of an open and fair hearing and what should be withheld in the interests of protecting individuals, public protection and maintaining security where necessary.
17. Problems can arise, however, where requests for non-disclosure are made late, because this can lead to hearings being delayed and cause additional frustration and stress to victims and prisoners. We propose, therefore, to introduce a requirement that non-disclosure applications should be made eight weeks before the hearing

which would avoid those problems. The panel Chair would, however, have the discretion to allow late applications where that is appropriate.

### **Quality assurance and panel composition (Chapter 7)**

18. The review was tasked with considering whether the Rules should set requirements for the composition of panels and to look at the way Parole Board decisions and processes are quality assured to ensure a robust and consistent approach. This is covered in Chapter 7.

#### ***Panel composition***

19. The review concluded that it was not appropriate or useful for the Rules to attempt to dictate what the composition of panels should be for a particular class or category of case. That will depend on the individual circumstances and nature of each case and it must be for the Board to determine which members should be appointed to which cases. Setting requirements on this in the Rules would also seriously restrict the Board's ability to deploy its members to best effect in response to the cases they are having to list at any given time.
20. The Parole Board Chair and Chief Executive have measures in place to make sure that panels comprise members with the right experience and expertise for the case. The most experienced or judicial members are appointed to deal with the more complex, high profile or legally challenging cases.

#### ***Quality assurance***

21. There are also robust measures in place to check that the right procedures and processes are being followed and to ensure high quality is maintained throughout the process (for example, checks on the quality of reports and dossier content before they are submitted to the Board). Amendments or additions to the Rules are not considered necessary to supplement this or to mandate further changes to the process.
22. The Parole Board already reports to Parliament on all aspects of its performance; is subject to independent investigation by the National Audit Office; and provides evidence when requested by the Justice Select Committee. This provides a high level of scrutiny and assurance.
23. However, in the interests of improving confidence in the parole system and being more transparent, it is proposed that more will be done to publicise the quality assurance measures that are in place. We have, for example, published the policy on when a Secretary of State representative should attend a hearing. Broadly speaking, they should be present where this would assist with particularly complex or challenging cases to ensure that evidence is presented and explained as effectively as possible.

## **Efficiency and effectiveness (Chapter 8)**

24. Making sure the parole system is as efficient and effective as possible is not just about ensuring resources are used to best effect and achieving good value for money. It is intrinsically important to delivering justice. Prisoners are legally entitled to a swift, independent and regular review of their ongoing detention once they have served the minimum custodial term imposed by the courts. It is also in the interests of victims to ensure that parole proceedings are not subject to delays or uncertainty as that can prolong the anxiety and distress caused by not knowing if or when the prisoner will be released.
25. Timeliness and effective processes and procedures are vital for these reasons. The review has, therefore, explored how well the parole system is currently performing in this regard and identified measures to deliver further improvements. These are explained in Chapter 8.

### ***A new Operational Protocol***

26. To further strengthen joint approaches to tackling issues affecting the parole system, and to support the delivery of other changes and reforms, a new **Operational Protocol** between the Parole Board and HMPPS will be agreed and published. One of the issues identified by the Review was the need for greater clarity and understanding of the roles and responsibilities performed by the different participants in the parole process. The Operational Protocol will address this and provide a shared commitment on how the two organisations will work with each other on each element of the parole process, while also maintaining the independence of the Parole Board.

### ***Timescales and a new Policy Framework on the Generic Parole Process***

27. Part of the Terms of Reference for the Review was to look at the timescales required for each stage of the process. We have identified ways in which the time taken and the resources required could be better utilised to deliver a more efficient process. For example, by shifting responsibility for managing the dossier from the Public Protection Casework Section (PPCS) in HMPPS to the Parole Board after it has been submitted, where currently there is duplication of effort. This will not require a change to the Rules but will be achieved through the Operational Protocol.
28. More generally on timescales and what is required for each stage of the parole process, HMPPS will produce a new **Policy Framework** that will replace the current Prison Service Instruction on the Generic Parole Process (GPP). This will implement the improvements to the timescales we have identified – such as PPCS referring cases to the Parole Board only once the reports for the dossier have been completed, so that the Parole Board's deadline is not set until the Board has what it needs to proceed with the case. The new Policy Framework will also ensure that the mandatory requirements for HMPPS staff and the guidance they follow is up-to-date and supports the delivery of the other reforms and improvements to the parole system that are being taken forward – including the new reconsideration mechanism.

### **Offenders with mental health needs and learning difficulties (Chapter 9)**

29. In light of the High Court judgment in the *Worboys* case, which found one of the Rules to be unlawful (because its blanket prohibition on disclosure of information breached the principles of open justice), the Review undertook an examination of all the other Rules to check there were no other potential legal deficiencies or risks of similar breaches being found.
30. No other potential flaws of this nature were identified. But the Review concluded that the Rules would benefit from an additional provision – because this is not explicitly provided – to set out the procedure that should be followed in cases where the prisoner is found to lack mental capacity to participate in the parole process.
31. We propose, therefore, to introduce an additional Rule which will ensure that for prisoners with mental health needs or learning difficulties who are assessed by relevant professionals to lack capacity, the Board will have an explicit power to appoint the representation they need for a fair hearing. Chapter 9 explains why we have decided to do this and how it will be implemented.

### **Rules Committee**

32. To make future changes to the Rules quicker and easier – and to ensure the Rules can more easily keep pace with other changes in the system – we are establishing an informal Rules Committee which will oversee this and take forward further changes as and when necessary. The Committee will include input from the Parole Board and representatives of victims and prisoners to ensure that all views are represented – and again contributing to a more open, inclusive and responsive approach to how future changes to the Rules are made.

### **Tailored Review of the Parole Board**

33. Alongside the publication of this report, the Secretary of State has also announced the launch of a Tailored Review of the Parole Board. There is a requirement for Government departments to conduct reviews of their Arms-Length Bodies (ALBs) once every Parliament. This is to examine whether the functions performed by the ALB remain necessary; whether any changes are required to the functions that are performed; and whether the existing structures and arrangements are the best model for the delivery of those functions.
34. The Tailored Review has the remit to explore more fundamental options for changes to the Parole Board's form, constitution or statutory functions, which may require primary legislation. It provides the opportunity to look at the work of the Board in the context of the changes and improvements to the parole system contained in this report and to consider, in light of that, whether there is a case for going further in the longer term.
35. The Review of the Parole Board Rules – and the consultation on the creation of a reconsideration mechanism – have been conducted to identify what could be achieved in the short term (i.e. within the current primary legislation) by making changes to the Rules and through operational and policy improvements. This has been important and necessary to address the immediate concerns and issues that came out of the *Worboys* case and to deliver on the commitments made by the first review.

36. But there is a limit to the reform that can be delivered without primary legislation. If there is a case for going further – for example, by giving the Parole Board additional court-like powers or indeed by reconstituting the Board to deliver its functions in a different way – those are options that the Tailored Review can explore.

**Conclusions and next steps**

<h1 style="margin: 0;">Conclusions and next steps</h1>	
<p><b>How will the parole system be different, and better, as a result of the work of this review? Once the measures in this report have been implemented, we will have:</b></p>	<p><b>The implementation of these measures will be delivered over the course of 2019 by a number of methods:</b></p>
<ul style="list-style-type: none"> <li>● A new reconsideration mechanism in the Parole Board Rules which will provide for flawed decisions to be re-examined without the need to pursue a judicial review;</li> <li>● Published Parole Board Standard Practice guidance which will open up and make more transparent the workings of the Parole Board;</li> <li>● Victim Liaison Officers who are better trained and equipped to provide the information and support needed to help victims through the parole process, including the reconsideration mechanism (alongside an improved Victim Contact Scheme which is easier to opt-in and out of and provides discretionary contact to wider categories of victims);</li> <li>● Clear guidance and approach on evidence relating to offences for which the prisoner was not convicted, to make sure it is taken into account where it is relevant to the parole decision;</li> <li>● Revised Rules on time limits for non-disclosure requests and for the disclosure of evidence and service of documents, to provide for new electronic methods;</li> </ul>	<ul style="list-style-type: none"> <li>● A Statutory Instrument introducing new Parole Board Rules will be laid which will implement the new reconsideration mechanism and the other changes to the Rules;</li> <li>● The guidance, information, new paperwork and training for VLOs – and others involved in the new measures – will be developed in readiness for the new Rules coming into force;</li> <li>● The Parole Board’s new Standard Practice documents will begin to be published and there will be an ongoing programme to produce them for all the areas that they will need to cover;</li> <li>● Further publicity and publicly available information about the parole system and the reforms will be made available on the Parole Board’s website and on GOV.UK.</li> <li>● The Operational Protocol between HMPPS and the Parole Board will be published once the new Rules have been introduced.</li> <li>● The new Policy Framework on the Generic Parole Process will be published in 2019.</li> <li>● The Tailored Review of the Parole Board will report by Summer 2019.</li> </ul>

- Better publicised quality assurance, to provide reassurance that there are robust methods in place to check processes are being followed correctly and to a high standard;
- An Operational Protocol in place between HMPPS and the Parole Board which clarifies roles and responsibilities and avoids unnecessary duplication;
- A new Policy Framework on the Generic Parole Process which will set out improved, more efficient, timescales for the elements of the parole process and supports delivery within HMPPS of the new measures and reforms;
- New provision in the Rules for the Parole Board to ensure a fair hearing and representation for prisoners who lack mental capacity to participate in the parole process.

## **2. Methodology**

### **Parole Board independence**

37. It is important to consider and explain the work of the Rules Review in the context of the Parole Board's independence from Government and its status as a court-like body that makes judicial decisions about the release of certain prisoners. It is a fundamental principle that no measures can be taken or changes made that would interfere with the Board's independence. To do so would risk rendering its decisions unlawful.
38. The Secretary of State may make Rules governing the procedures that should be followed by the Board in carrying out its statutory functions but cannot seek to influence or dictate how the Board should approach its decision-making responsibilities. We have been careful in conducting the Review, therefore, to ensure that the measures and reforms proposed continue to protect and reinforce that important principle of independence.

### **Approach**

39. We have considered evidence from a wide range of sources, using feedback from the 'first review', building on the commitments made in that review and drawing on the responses to the consultation on the reconsideration mechanism. This included views from the Parole Board, the Public Protection Casework Section (PPCS) in HMPPS, victims, parole law practitioners, academics and offenders themselves. The review team also conducted detailed enquiries into the current practice and operation of the Parole Board Rules, observing hearings and analysing performance data.

### 3. Reconsideration Mechanism

## Reconsideration Mechanism

We will make provision in the Parole Board Rules to create a reconsideration mechanism which will:



- Apply to cases where it appears the Parole Board's decision is legally flawed / meets judicial review type criteria (illegal, irrational or procedurally unfair).
- Apply to release decisions made in respect of Indeterminate Sentence Prisoners and Extended Determinate Sentences (EDS).
- Provide that applications may be submitted to the Parole Board by the parties to the parole proceedings (the Secretary of State or the prisoner).
- Allow victims to make a case for reconsideration to the Secretary of State by submitting representations to the Public Protection Casework Section (PPCS) – with information and support provided by the Victim Liaison Officer.
- Involve PPCS screening all eligible release decisions to identify cases which may justify a reconsideration application being made.
- Allow a period of up to 21 calendar days (excluding Bank Holidays) from the date of the decision for an application to be submitted (during which the prisoner will not normally be released).
- Provide that prisoners will be able to make an application for reconsideration directly to the Parole Board if they believe a decision not to release them was fundamentally flawed or unlawful.
- Provide for decisions on reconsideration applications to be made by a Parole Board judge, who will decide whether the case should be directed to a new panel to hear again and make a fresh decision or dealt with in a different way.

#### Introduction

40. The overwhelming majority of the respondents to the public consultation were in favour of creating a reconsideration mechanism. The Government's response to the consultation – published alongside this report – sets out in detail the model for how the mechanism will operate and provides an explanation of the reasoning behind the approach. The key aspects of this are summarised in this chapter.

## **Resources**

41. Consultation respondents were rightly concerned about the potential impacts of introducing a new element to the parole process and urged the Government to ensure it is properly resourced. We acknowledge those concerns and have worked closely and carefully with key stakeholders on the development of these proposals to ensure they are fair, realistic and deliverable.
42. The Secretary of State has confidence in the Parole Board to perform its functions effectively, and to make fair, safe and reasonable decisions about the release of prisoners in the vast majority of cases. However, the case of John Worboys illustrated that, on occasion, a panel's decision may be flawed and in such cases it would be desirable to have a mechanism to review those decisions without the need to engage in costly and time-consuming judicial review proceedings.

## **Criteria**

43. We intend to adopt criteria akin to judicial review grounds (illegal, irrational or procedurally unfair), which will set a high threshold for reconsideration applications – an approach supported by the majority of respondents to the consultation. It will not be enough simply to disagree with the result and for a decision to meet the criteria for reconsideration it will need to be legally flawed in some way. By setting this high threshold, and by making this clear, it should ensure that the Parole Board is not inundated with applications simply expressing dissatisfaction with the decision but focused on the small number of cases which may be genuinely flawed.
44. We also decided that the reconsideration mechanism should be restricted to release decisions in respect of Indeterminate Sentence Prisoners and Extended Determinate Sentences (including their re-release after recall) – that is, the most serious sexual and violent offenders. It will not apply to other decisions made by the Parole Board, such as on whether to re-release standard determinate sentence prisoners following recall to prison for breaching their licence conditions.
45. We realise that this may not go as far as some may have wished. However, we have concluded that broader criteria that allow challenges based on disagreement with the result would not be workable. A merits-based appeals system is something which could be re-visited in the future but it would require primary legislation.

## **Access for victims**

46. We have thought carefully about how best to enable victims to participate in the reconsideration mechanism and have concluded that their representations should be submitted to the Secretary of State. The Public Protection Casework Section (PPCS), on behalf of the Secretary of State, is best placed to assess whether there is sufficient evidence to suggest a parole decision may be flawed, because they have access to all the written evidence relating to the decision as well as access to legal expertise if necessary. In our proposed model, victims will ask PPCS to look at the possibility of making a reconsideration application to the Parole Board and in doing so they will need only to outline their concerns. We intend to make this process as straightforward as possible by using a form for victims to record their views, supported by clear guidance to help focus this on the criteria for reconsideration. Victim Liaison Officers will also be able to advise victims on how the process will operate and the timescales involved.

47. This approach avoids the need for victims to have a deep understanding of the parole process or to have to present a potentially complex legal argument in order to participate. It also means that victims would not need to engage legal representation, as they would if pursuing a judicial review. It will be for PPCS to make an application for reconsideration to the Parole Board in cases where the evidence points to a potentially arguable case.

### **Application window**

48. We have decided there will be an 'application window' of 21 calendar days (excluding Bank Holidays) from the date that the outcome of the parole hearing is notified to the parties. Prisoners will not normally be released during that window but if no reconsideration application is submitted before the end of that period, the prisoner must then be released as directed.

### **Prisoner applications**

49. Prisoners may also apply for reconsideration – if they believe a decision not to release them was flawed – and those applications will go to the Parole Board directly.

### **Judicial decisions**

50. The planned model will be judge-led as proposed in the consultation – with judicial members of the Parole Board appointed to make decisions on the applications submitted to the Parole Board for reconsideration.

### **Public hearings**

51. We have concluded that public hearings for the parole process are not viable at the present time. While other courts and tribunal services have hearings in public, there are significant privacy, security and practical barriers to doing so for parole cases.
52. However, it is intended the reconsideration mechanism will be as open and transparent as possible. Victims will be provided with information and guidance both before and during the process, and full reasons will be given for any decisions taken – including where decisions are taken not to pursue an application and where a decision is made by a Parole Board judge in response to applications submitted. The name of the Parole Board member who makes the decision on a reconsideration application will be given in the written reasons.

### **Implementation**

53. The mechanism will be introduced by adding new provisions in the Parole Board Rules. This requires a Statutory Instrument to be laid before Parliament which we expect to take place in the next few months. Between now and then, we will undertake the work required to prepare for implementation – including the development of new paperwork, guidance and training and to put the necessary resources in place.

## 4. Victim engagement and communication

<h1>Victim engagement and communication</h1> <p>To improve the parole process experience for victims:</p> 	
Already underway	Future measures
<ul style="list-style-type: none"> <li>● New guidance to provide a more flexible approach to discretionary contact, allowing Victim Liaison Officers (VLOs) to offer contact to a broader range of victims.</li> <li>● Training to improve the way VLOs communicate with victims, including understanding the victim experience.</li> <li>● Making it easier for victims to opt in and out of the Victim Contact Scheme (VCS) at a later stage in the prisoner's sentence.</li> <li>● Providing a more comprehensive explanation of the Victim Personal Statement (VPS) and its purpose in a parole context.</li> <li>● Improving on-line content about the VCS, its benefits and how to join it – with a dedicated mailbox for VCS enquiries.</li> <li>● Commitments made in the Victims Strategy to strengthen victim entitlements on: presumption that Victim Personal Statements (VPS) will be read/heard; greater protection for victims from disclosure to prisoners; better engagement / information for victims throughout the criminal justice process.</li> </ul>	<ul style="list-style-type: none"> <li>● Roll out further training and guidance for VLOs to make sure they have the necessary information and skills to support victims – on the new reconsideration mechanism in particular.</li> <li>● Improving communication methods such as making it easier to track correspondence and to alert victims (e.g. by text) when an email or letter is on its way.</li> <li>● Examining the possibility of linking case-management systems used by VLOs to other systems so they receive automatic updates about the offender.</li> <li>● Looking at ways to provide more victims with the option of delivering their VPS remotely without having to attend the prison.</li> <li>● Codify victim entitlements in the Parole Board rules (once the Victims Code consultation and revision is complete).</li> </ul>

## Introduction

54. This chapter focuses on the measures that have been taken and the plans for further reform to make sure that the victims, and families of victims, of prisoners going through the parole process are properly supported, are given the information they need at the right time and have the opportunity to have their voices heard.
55. The first review explored the experience and views of victims and revealed a number of concerns and dissatisfaction with the way the system was working. It made a number of commitments to make improvements and this report provides an update on the delivery of those commitments.
56. We are taking forward a programme of improvements which includes: extending the VCS to more victims; rolling out new training for VLOs; making it easier for victims to opt in to the VCS at a later stage; more comprehensive information and advice about the Victim Personal Statement (VPS) and its purpose; better on-line content about the VCS; improving methods of communication with victims; and linking case management systems to ensure VLOs receive automatic updates about offenders.
57. In addition, there are the commitments made in the Victims Strategy that was published on 10 September 2018. These include enshrining in the Victims' Code the presumption that victims who want to can read out their VPS, or have it read out on their behalf, unless there is good reason otherwise, such as safety or security issues; and exploring whether there is scope to restrict the information the offender receives about a victim's request for licence conditions.
58. More broadly, though, it is important that there is a comprehensive, joined-up, system-wide approach to victim engagement and communication – and that is what the Victims Strategy aims to deliver. That means ensuring the right information and support is provided from the outset of the criminal justice process (at the point of charging, prosecution and sentencing) and throughout the offender's journey through the system to the point of release on licence and beyond.
59. There should be a clear, consistent message about what the sentence means and how it operates. Some of the feedback on victims' experience of the parole process stems back to the information they were given at the point of sentencing and their understanding of how and when the prisoner may be released. It is unhelpful, for example, where the victim is informed that an indeterminate sentence prisoner may never be released and the gravity of their offences means that parole is unlikely to be awarded once the minimum term imposed by the judge has been served. Whilst that information may be broadly correct, it can give a false impression to victims which is carried through to the point in the sentence when the prisoner is being considered for release by the Parole Board.
60. In such circumstances, it is not surprising that victims then find the parole process very difficult. It is important to be clear right from the outset, therefore, what the sentence means and how release on parole works. That is, the prisoner's detention beyond the minimum term imposed by the judge is not about ongoing punishment for the offences committed but about the offender's current risk to the public by the time that stage of the sentence is reached – often many years after sentencing. Detention beyond that point can only legally be justified if it is necessary for the ongoing protection of the public – and that is the difficult assessment the Parole Board is required to make.

61. Under the Victims Strategy there will be a more joined-up approach to victim contact and support throughout the system and improved continuity of who victims engage with. But there are some specific measures as well aimed at improving victims' experience of the parole system, which are explained in more detail below.

### **Training for Victim Liaison Officers**

62. It was clear from the work undertaken by the first review that the role of the VLO is central to the successful delivery of the VCS. That came through strongly from the views gathered from victims by the Victims' Commissioner and the investigation by HM Inspectorate of Probation into the VCS policy and process followed in the *Worboys* case.
63. We made a commitment, therefore, to make sure VLOs are equipped with the skills, information and systems they need to provide the best possible service to victims. Part of that has been the development of a fresh programme of training for VLOs, to include a specific component on understanding the victim experience, to be delivered by a victim support organisation. A further module on relevant processes in the wider criminal justice system is also important to ensure the different services and agencies are joined up and understand the role they play in delivering information and support to victims (e.g. links between police and CPS Witness Care Units (WCUs) and VLOs).
64. A workbook and face-to-face training for VLOs has been developed and a delivery plan put in place. The workbook was launched at the end of August 2018 and the Prison Service College piloted the face-to-face training in September. Roadshows for the seven NPS Divisions took place over the autumn, with input provided by a number of agencies and organisations including the Parole Board and Victims Support.

### **The Victim Contact Scheme (VCS)**

#### ***Improving information / awareness of the VCS***

65. We undertook to make sure victims, and other agencies and the wider public, were provided with more and better information about the VCS, its benefits and how to join it.
66. Work has been carried out to update the GOV.UK content about the VCS so it is clearer about what the scheme can offer a victim. Provision has also been made for a dedicated mailbox for VCS enquiries so that people are able to join the scheme if they decided not to at the time and have changed their mind, or if they were not asked after the offender was sentenced. Victims in the VCS can now request information via their preferred method of communication (i.e. e-mail, mobile telephone, letter, text message) making it easier for victims to update their contact details and ensuring that correspondence from VLOs is received in a timely manner.
67. Information has also been added to the Parole Board section of GOV.UK which outlines how a member of the public can request a summary of a Parole Board decision. We have explained how a victim who is part of the scheme should contact their VLO to submit their request and have also included the VCS enquires email address in case someone wishes to join the scheme.

### ***Improving access to the VCS***

68. We identified a need to streamline VCS processes, particularly at the point of referral, and to make clear that victims can opt-in at any point in the process. This responds to a point raised by the first review that victims can find it difficult to make informed decisions about whether to participate in the VCS, especially at the outset of the process when they have just been through the trial and may still be distressed.
69. The information, guidance and advice for victims about the VCS – including the new on-line content mentioned above – will hopefully make it easier to make properly informed decisions about participation in the service. And by making it clear to victims that they can opt in or out at any time, this will also ensure that victims can access the service when the time is right for them.
70. The first review was also interested in an idea supported by the Victims' Commissioner on co-locating VLOs with other support services, recognising that there were several initiatives around the country where this approach was being trialled. With the roll-out of new IT equipment, NPS Victim Liaison Units (VLUs) are able to work more flexibly. There is one well established model where VLUs are co-located with the Witness Care Unit and Victim Support, as well as Citizens Advice, which has promoted joint working and effective information sharing. There are also a small number of pilots underway in other areas, to identify what benefits that might bring to victims. HMPPS will continue to explore the possibilities for co-location in other areas, or the opportunity to work in shared hubs.
71. A further area for improvement identified was through joint work with the police and the Crown Prosecution Service (CPS), particularly Witness Care Units, to ensure their staff are clear about the VCS and the process for referring victims to it. The Victims Strategy committed to review guidance provided to Witness Care Units to improve referrals to support services post trial. The police and CPS are conducting a joint review of WCUs and as part of that review are looking at how referrals to the VCS can be improved.

### ***Providing timely communication***

72. Also key to providing a good service under the VCS is making sure that victims are contacted in an appropriate and timely way and by means they find most convenient. Victims are asked what their preferred method of communication is and encouraged to provide a variety of contact details (such as e-mail address and mobile number) to ensure timely contact where necessary and to avoid losing contact over time.
73. To further improve on this, we are investigating how the case-management system used by the VCS can be upgraded and reconfigured so that we can increase VLOs' confidence that victims receive information, for example, by tracking e-mails and issuing texts where appropriate in addition to letters.
74. Work is also underway to explore linking the VCS case-management system to other systems used by HMPPS in order to keep VLOs automatically up-to-date with changes in an offender's circumstances, such as a change of location. This will enable a VLO to proactively seek information from HMPPS caseworkers and keep victims up-to-date as changes happen.

### ***Guidance on discretionary contact***

75. We reported in the first review the views of the Victims' Commissioner who had said that the guidance on offering discretionary contact to victims who did not fall within the statutory scheme was too restrictive. We made a commitment to revise the guidance to allow VLOs to offer the VCS to a broader range of victims where appropriate. The new guidance will set out clearly defined categories of victim that should be routinely offered the VCS, for example victims in cases where a serious charge has been ordered to lie on file. The new guidance will also give VLOs the flexibility to offer information to other categories of victim having regard to the profile of the case, the impact on the individual and the views of the police and the CPS.
76. Work has been undertaken in liaison with the police and the CPS to inform what the new guidance should say. Protocols governing the referral of cases from Witness Care Units (WCUs) to the VCS have been examined and examples of good practice identified.
77. The policy is being finalised, and we plan to publish fresh guidance in early 2019. In the meantime, the HMPPS Victims Team is reviewing all requests for discretionary contact in line with the proposed new guidance.

### **Victim entitlements**

#### ***Victims' requests for licence conditions***

78. Another concern identified by the first review was a need to provide victims with a better explanation if their requests for particular conditions to be included on the offender's release licence are not agreed by the Parole Board.
79. We have worked with the Parole Board to ensure that victims are told the extent to which their representations have been taken into account by the Parole Board panel, and if a victim's request for a specific condition is not adopted the reasons for this are set out clearly and comprehensively.
80. This has been included as part of the work by the Parole Board to provide decision summaries for victims, which the Board have been producing since the Rule change came into force on 22 May 2018. Summaries include information which confirms that the panel heard or read the VPS. When the decision summary is sent to the VLO, the covering e-mail contains information and an explanation about the victim specific licence conditions the panel decided were appropriate.
81. To help assist and guide victims on the sort of licence conditions that may be possible and appropriate, new guidance is being developed for the NPS, and a new template for requesting conditions will be provided.
82. The Victims Strategy also commits to exploring whether there is scope to restrict the information the offender receives about a victim's request for licence conditions.

#### ***The Victim Personal Statement (VPS) and its purpose***

83. The first review reported that many victims felt their VPS was not taken into account and that it was not sufficiently clear what purpose the VPS serves in the parole process. In response to that, the Parole Board's website now includes a dedicated section for victims that explains the purpose of the VPS and how it is used as part of

the parole process. MoJ also published new guidance on the VPS in September 2018, which is promoted within that section of the website.

84. The Parole Board also now have a page on the 'Victims Choice' website which sets out the role of the Parole Board and links to more guidance – and is developing a video for victims which will also explain about making a VPS. In addition, the Board is revising and updating their information booklet for victims (which was last published in 2014). The briefing events for VLOs around the country have included input from the Board setting out the considerations that should be thought about when supporting a victim to make a VPS.
85. Victims also expressed concern that the current presumption that the VPS will be disclosed to the offender can discourage some victims from submitting a VPS – and suggested a further improvement would be to change the rules to provide victims with more protection and reassurance on this.
86. As these changes could require amendment to the Victims' Code we undertook to explore these issues in more detail as part of the work on the Victims Strategy. That now contains commitments to examine, as part of the changes to the Victims' Code, the entitlements relating to VPSs and their disclosure.
87. In the meantime, we will ensure that victims are informed at an early stage of their right to request non-disclosure of the VPS. VLOs notify victims at the outset of the prisoner's parole review that they may request non-disclosure of their VPS. We will be amending the Rules to set a time-limit of eight weeks before the oral hearing to make sure such non-disclosure requests are received in time – and VLOs will ensure that victims are fully aware of when they will need to make such an application if they wish to do so. We recognise that it may not always be possible for victims to make decisions on submitting a VPS and any non-disclosure application within these timescales but the panel Chair will have the discretion to allow late applications where that is appropriate.
88. We also made a commitment to make it easier for victims to present their VPS at oral hearings. We are taking forward work between the National Probation Service (NPS) and the Parole Board to give more victims the option of delivering their VPS remotely (e.g. using video technology) without having to attend the prison.

**5. Transparency and openness**

# Transparency and openness

To make the parole system more open and transparent:



Already underway	Future measures
<ul style="list-style-type: none"> <li>● The Parole Board Rules have been amended to allow victims and other parties to request decision summaries.</li> <li>● The Parole Board has improved and made more accessible publicly available information about their work and the parole process, such as the updated Oral Hearings guide in November 2018.</li> </ul>	<ul style="list-style-type: none"> <li>● The Parole Board will develop and publish Standard Practice guidance to provide clear and public information about what sort of information and factors are taken into account and how release decisions are reached.</li> <li>● Publicly available information about how parole works will be further improved.</li> <li>● Capture feedback / public opinion to assess how greater transparency is being received and whether more could be done.</li> <li>● Continue to work with broadcast and print media to increase public understanding about how parole works.</li> </ul>

**Decision Summaries**

- 89. From May 2018 we amended the Parole Board Rules to allow victims and other members of the public to request decision summaries from the Parole Board, explaining the rationale behind their decisions. This was a significant step in opening up Parole Board proceedings and there have been over 800 summaries provided since the change. Since commencement, the Parole Board have been working with their panel of summary writers to improve the quality of summaries, based on feedback from victims and VLOs. They have also improved the timeliness of the process, with most summaries available within a fortnight from the release decision.
- 90. Most summaries are requested before the hearing has taken place indicating that requesters are interested in finding out more about the process, irrespective of the final decision made. Extracts from summaries have been used by the press to add further detail and context to the reporting of these cases. Summaries are intended to

provide greater detail about the decision, rather than convey any sentiments expressed by either party. They are also rigorously checked to ensure that no sensitive information about anyone involved in the cases is put into the public domain.

91. We will continue to review the how decision summaries are being provided under the new Rule 25 and whether any further changes may be needed to ensure the transparency this was designed to achieve is operating as effectively as possible.

## **Increasing Public Awareness**

### ***Communications***

92. The Parole Board has been actively seeking opportunities to increase public awareness of parole, and the work of the Board. They have redesigned their website to make key information easier to find, and have been working with the media to reach as many people as possible, such as the Radio 4 documentary '*Parole: A Calculated Risk*'. A regular blog posted by the Board's Chief Executive provides updates and commentary on key issues and developments affecting the Parole Board's work. Additionally, the Board is continuing to refine their information specifically aimed at victims, and are currently working on producing an animated video explaining the parole process.

### ***Public access to hearings***

93. We have concluded that open public hearings for the parole process are not viable at the present time given they are held within prisons. While other courts and tribunal services have hearings in public, there are significant privacy, security and practical barriers to doing so for parole cases. We are satisfied that the current arrangements are robust and proportionate given the challenges associated with conducting proceedings in secure establishments. We are not, therefore, proposing any amendments to the current Rules regarding observer and witness attendance.
94. It is important to underline, though, that under the current Rules the panel chair is able to admit anyone to a hearing, either on the application of a party, or directly. The Parole Board has already committed to extending this to key media figures in its 2018/19 Business Plan. Therefore, whilst hearings generally cannot be open to any member of the public to attend, they are not entirely closed or 'secret' and in appropriate cases, approved by the panel chair, can be observed by those with a legitimate interest in the proceedings.

### ***Standard Practice***

95. The Parole Board has committed to produce Standard Practice guidance to sit alongside its statutory duties and covering how it approaches the procedures covered by the Rules. It will set out additional detail on the processes and approaches the Board follows, and the advice for members in determining specific types of cases and in dealing with applications made to the Board. Standard Practice will be available for the public to view on the Board's website, and the development and amendment of future guidance will be incorporated into the Board's governance arrangements.

## 6. Evidence requirements

# Evidence requirements

**To make sure the Parole Board is provided with and fully considers all relevant evidence:**



Already underway	Future measures
<ul style="list-style-type: none"> <li>● Issued new guidance and instructions to HMPPS staff compiling dossiers for the Parole Board to make clear what must be included – including evidence relating to unconvicted offences.</li> <li>● Introduced new management checks on dossier content, e.g. to ensure judge’s sentencing remarks are included or allegations of wider offending.</li> <li>● The Parole Board has produced new guidance and conducted events for members on how panels should approach allegations of wider offending – and ensured panels are asking for, and considering, all necessary evidence / reports / witnesses.</li> </ul>	<ul style="list-style-type: none"> <li>● The Parole Board will produce and publish Standard Directions on evidence to make clear and public the standard requirements for parole cases.</li> <li>● The documents required to be provided to the panel in the core dossier will be formally reflected in future guidance / instructions.</li> <li>● Introduce new Rules on the service and transmission of evidence.</li> <li>● Introduce new timescales for non-disclosure applications to ensure that all matters relating to disclosure are resolved in good time before the hearing.</li> </ul>

### Introduction

96. It is imperative that each Parole Board panel has the opportunity to consider all evidence relevant to the case before it in order properly to assess risk. To this end, we have put in place new procedures to ensure that reports are produced on time and to a good standard; that all relevant evidence is seen at the earliest possible opportunity; and that there is clarity about when evidence can be shared with all parties.

### Evidence Considered by the Panel

#### *Unconvicted Offences*

97. The prevailing understanding and approach prior to the judgment in the *Worboys* judicial review – both within HMPPS and the Parole Board – was that evidence relating to unconvicted offences should not be taken into account when deciding on

the initial release of a prisoner. This was on the basis that, if it had not been proven to a criminal standard that those offences had been committed and they did not form part of the sentence the prisoner is serving, they should not be taken into account when deciding whether the prisoner is safe to be released from that sentence.

98. But the *Worboys* case was very exceptional in this regard and led the Court to conclude that, in the circumstances of his particular case, the evidence relating to other offences for which he had not been convicted was relevant to his future risk; and the Parole Board should have had regard to it. The judgment has, therefore, shifted the previous established position and it has been necessary to respond to that.
99. The Parole Board has, therefore, issued guidance to members outlining how and when they should take wider alleged offending into account. This guidance will be published but, in summary, panels are now expected to take into account other untried offending, and come to their own conclusion as to the weight that should be given to it. An explanation should be given as to whether further inquiry was or was not necessary.
100. This new guidance and approach put in place in light of the *Worboys* judgment ensures that the right approach will be followed if similar circumstances arise in other cases.

### ***Core Dossier***

101. The requirements for the core dossier will be formally set out in future published guidance and instructions to reflect that they must now include any information relevant to both unconvicted offending and the offending related to the current sentence, e.g. the sentencing remarks of the trial judge.

### ***Non-disclosure of evidence***

102. We will introduce new timescales for applications for non-disclosure of evidence to ensure that applications are received at least eight weeks before the oral hearing. This means that all parties, and victims, will be aware in good time of any issues relating to non-disclosure and the panel will have sufficient time to investigate any concerns. Additionally, the Parole Board will be publishing Standard Practice guidance covering the appointment and involvement of special advocates.

### ***Service and transmission of documents***

103. Where the Parole Board Rules stipulate a timeframe in which documents need to be provided to those involved in a case, it is important for there to be clarity about when and how those documents are deemed to have been served.
104. We will introduce new rules which provide this certainty – and which will provide for service of documents as quickly and efficiently as possible, taking into account in particular the ability for this to be done electronically, to ensure the Rules keep pace with new digital ways of working.

## 7. Quality assurance

Already underway	Future measures
<ul style="list-style-type: none"><li>● The Parole Board has introduced measures to ensure that panels comprise members with the right experience and expertise for the case.</li><li>● Ensured that cases involving mentally disorder offenders or those cases transferred from the Mental Health Tribunal are assigned a psychiatric member to the panel.</li><li>● Introduced checks to ensure the quality of dossiers / reports before they are provided to the Parole Board.</li><li>● Developed and published the policy on when a Secretary of State representative should attend a hearing.</li><li>● Parole Board have introduced a set of standard directions across all case types.</li></ul>	<ul style="list-style-type: none"><li>● The Parole Board will publish Standard Practice guidance to explain their procedures and approaches.</li><li>● Amend the Rules to allow the Board Chair to delegate certain statutory responsibilities to other members of the Board, or the secretariat.</li><li>● The Tailored Review of the Parole Board will look at statutory options which could include creation of quality assurance or inspectorate style functions.</li></ul>

### Quality assurance

To ensure the quality of the parole process and decision making:



### Introduction

105. There are many component parts to the parole system, and ensuring quality decisions and fair outcomes relies on making sure all stages of the process are being properly adhered to and operating to a high standard.

106. We have found there to be good and effective quality assurance arrangements in place but consider more could be done to publicise what those are to give further reassurance and confidence that the parole system is being held to the high standard that is expected of it.

## **Panel Composition**

107. The membership of the Parole Board is determined by statute<sup>1</sup> and allocating members to specific panels is a statutory responsibility of the Board Chair. In practice, this is discharged by members of the secretariat, and we have concluded that it would be better if the Rules were amended to reflect this to make the position clear.
108. The secretariat take care to ensure that each panel is comprised of appropriate members for the case before it. A blend of experience and expertise is vital in ensuring that good quality decisions are made, and there is no evidence to show that one type of member is particularly suited to hear specific cases.
109. Restrictions on which panel members can hear particular types of case have gradually been lifted over time through amendments to the Rules. This has been done to allow greater flexibility and timeliness in listing the right cases for the right panel members and we do not wish to undo the improvements this has achieved.
110. We found that the Parole Board Chair and Chief Executive have measures in place to make sure that panels comprise members with the right experience and expertise for the case. The most experienced or judicial members are appointed to deal with the more complex, high profile or legally challenging cases.
111. More generally, the Parole Board continues to provide extensive training to all members to enable them to hear all types of cases.

## **Training for members**

112. Following the *Worboys* judgment, the Parole Board has provided training to members on how to deal with evidence of unconvicted offending when making initial release decisions. Furthermore, they have committed to deliver additional mandatory training on effective questioning skills for all members. This has been piloted and is planned to be extended to all members in 2019.

## **Internal Assurance mechanisms**

113. The Parole Board has several internal mechanisms for checking the quality of members' decisions. None of these impinge on the member's independence, but provide useful feedback on decision trends and performance of new members.
114. The Board has a Review Committee which looks at release decisions that have resulted in an alleged Serious Further Offence being committed after release. The Committee seeks to identify any learning arising from these specific cases, and uses this to inform its guidance to members more generally.
115. New members are subject to mentoring by experienced Parole Board members and go through a process of accreditation in order to undertake the various hearing types. All members are subject to peer review and will have regular practice observations undertaken across the course of their tenure, by members accredited to do so.

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<sup>1</sup> Schedule 19 Criminal Justice Act 2003

**Review of the Parole Board Rules and Reconsideration Mechanism:**  
Delivering an effective and transparent system

116. All members undertaking paper hearings will have quality assessments during their tenure and members can be removed temporarily from conducting paper hearings if the assessment is judged to be ineffective on two occasions. The member will then be subject to the successful completion of additional training or coaching.

**Dossier compilation**

117. It is essential that the right evidence is presented to the panel at the first available opportunity. This allows for active case management right from the start, and better informed decisions at hearings. PPCS (on behalf of the Secretary of State) are responsible for compiling the core dossier, the contents of which are prescribed in the Schedules to the Rules. PPCS have instigated a series of management checks on dossier compilation to ensure that the correct information is being passed to the Board.

118. Furthermore, the Parole Board is working towards being responsible for dossier management from the point of referral, giving them greater control over the quality and timeliness of reports.

**Standard Practice and Directions**

119. Whilst each panel is required, by independence, to conduct the case before them in the most appropriate way, the Parole Board will be introducing Standard Practice guidance on a variety of subjects, which will provide guidance to panels on procedural matters. Standard Practice will be published on the Parole Board's website. Additionally, the Parole Board has recently introduced standard directions in each case, which will only be varied by exception. As the use of standard directions grow, parties will better understand what is required and the expectations of the panel.

## 8. Efficiency and effectiveness

### Efficiency and effectiveness

To ensure the parole process is as efficient and effective as possible – and that cases are being processed and concluded in a robust and timely way:



Already underway	Future measures
<ul style="list-style-type: none"> <li>● The Parole Board and PPCS have instigated separate projects to reduce the number of deferrals.</li> <li>● The number of outstanding cases within the system has been reduced by streamlining administrative processes and introducing more robust case management procedures.</li> </ul>	<ul style="list-style-type: none"> <li>● Develop and implement an ‘Operational Protocol’ between Parole Board and PPCS – including clarifying the roles and responsibilities of both organisations.</li> <li>● The Parole Board will develop Standard Practice guidance which clarify the procedures and processes that members should follow.</li> <li>● The current Generic Parole Process Prison Service Instruction will be replaced with a new Policy Framework, implementing identified improvements to timescales.</li> <li>● Explore opportunities for further improving the quality of reports under the new Offender Management in Custody (OMiC) model.</li> </ul>

### Introduction

120. Part of the context to this review has been the considerable work that has been done over the last few years to eliminate the backlog of cases that were being delayed because they could not be listed for a hearing within the normal timescales. In 2013, the Supreme Court’s judgment in the case of Osborn, Booth and Reilly (“*the Osborn case*”) required the Parole Board to conduct oral hearings in considerably more cases than it did previously (rather than making decisions following a paper review). That judgment led to a significant backlog of cases and delays as the Parole Board struggled to list sufficient oral hearings to meet the increased demand.

121. Since then, however, the Parole Board has responded by introducing new, more streamlined and efficient case-management processes and rolled out greater use of electronic working, enabling it to list and turn-around cases far more quickly and efficiently – but without compromising the quality or robustness of decision making. This enabled the backlog that had developed to be eliminated by the end of 2017 and the position now is that the Parole Board is able to manage its caseload and list hearings within normal timescales for the majority of cases.

122. The starting point for this review, therefore, was that the system is generally operating efficiently and effectively as a result of those recent improvements. But there are some additional measures that will deliver further efficiencies and better ways of working.

## **Process Improvements**

### ***Deferral of cases***

123. There is an ongoing need to reduce the number of deferred cases. Deferral is often necessary to ensure that a hearing can go ahead with all the information, evidence and witnesses the panel needs to make its decision. But it is important to keep deferrals, especially those on the day of the hearing itself, to a minimum as they cause delays; create uncertainty and frustration for prisoners and victims; and place extra demands on resources.

124. The Parole Board has a programme of work to bring down deferrals and ensure more cases can be dealt with effectively at their first listed hearing, or where this cannot be done the panel keeps hold of the case and progresses it to conclusion. A group of 17 members (circa 20% of panel chairs) that tested this approach brought down their on-the-day deferral rate from 24% to 2.5% over the first six months. This work will continue and its impact will be monitored.

### ***Parameters for paper or oral hearings***

125. The Review was also tasked with looking at the parameters for paper or oral hearings. It is primarily case law that has established the parameters on this – the *Osborn* Supreme Court judgment in particular which sets out the circumstances in which an oral hearing is required to meet ECHR and common law requirements. This has been reflected in internal Parole Board guidance which is followed when the Board is assessing whether a case could be decided on the papers or needs to be directed to an oral hearing.

126. To bring further clarity and openness to the approach on this, it will be covered as part of the new Standard Practice guidance the Parole Board will produce and publish.

### ***Active case management***

127. Whilst most cases move through the system without significant delay, there are a small number of cases which require some additional attention to ensure that they reach a resolution within an appropriate timeframe. PPCS have introduced an Enhanced Case Management Team (ECMT) to proactively identify and resolve any issues. Furthermore, the Parole Board has begun to test case conferences for difficult cases, well in advance of the oral hearing, which provides an opportunity for all parties to identify any potential problems that could delay the oral hearing.

### ***Directions compliance***

128. One of the most significant obstacles to effective case management is the lack of compliance with panel directions, especially from third parties. The new Operational Protocol between the Parole Board and HMPPS will identify an internal escalation route within HMPPS so ensure that all reports from the prison, probation and other HMPPS representatives are on time and of sufficient quality. Additionally, we are exploring how the Parole Board could take over responsibility for ensuring compliance from third parties, such as the police or Local Authorities. This should add greater clarity as to who is requesting action and enhances the independence of the Parole Board.
129. Parties are not required, however, to comply with panel directions, and there is no legal sanction that can be applied by the Board (beyond applying to the High Court for a witness summons). The current Rules cannot accommodate any civil or criminal sanctions without amendments to the primary legislation. The desirability and practicality of such a legislative change will be considered by the Tailored Review of the Parole Board.

### ***Improved processes and timescales***

130. Most parole cases are processed according to the 'Generic Parole Process' (GPP) which outlines a 26-week process from the point of referral by the Secretary of State to the Board, until resolution. Initial provision of the dossier to the Board – i.e. the papers and reports the Board needs to progress the case – takes place several weeks after the case has been referred. This does not give the panel sufficient time to sort out any issues before the paper hearing, or even the oral hearing.
131. We will, therefore, amend the GPP to allow referral to occur at the same time as initial disclosure of the dossier, giving the Board an extra eight weeks to case manage. This will not result in cases being delayed by eight weeks, as the preparation for disclosure will start eight weeks before the scheduled review date.
132. Additionally, all other timescales will be reviewed as part of the translation of the current GPP Prison Service Instruction into a Policy Framework. This is due to be published alongside, and in support of, the new Rules in 2019.

### ***Ongoing oversight of parole procedure***

133. In order to provide a more flexible and responsive set of procedural rules, we will establish a consultative Rules Committee to advise the Secretary of State on future amendments to the Parole Board Rules. This group will comprise Parole Board members, parole practitioners, HMPPS, MoJ lawyers and representatives from both offender and victim groups. It will make suggestions as to the improved operation of the Parole Board Rules to ensure that the parole process remains fair, open and transparent for all.

## 9. Offenders with mental health needs and learning difficulties

# Offenders with mental health needs and learning difficulties



**To make sure the parole system takes proper account of offenders with mental health needs and learning difficulties and meets their needs:**

Already underway	Future measures
<ul style="list-style-type: none"> <li>● Following engagement in the Mental Health Act Review, Parole Board processes have been reviewed and will be streamlined for restricted patients recommended as suitable for a conditional discharge by a Mental Health Tribunal.</li> </ul>	<ul style="list-style-type: none"> <li>● Introduce Rules to make explicit provision for the procedure to follow where prisoners lack mental capacity to ensure a fair hearing, including the appointment of suitable representation if necessary.</li> </ul>

### Introduction

134. We have undertaken an examination of all the Parole Board Rules to explore whether they adequately support and make provision for the processes and procedures that should be followed to ensure a robust and fair hearing.

135. In doing so, we were mindful of the High Court judgment in the *Worboys* case which found that the blanket prohibition on disclosure of information about parole proceedings (at the time contained in Rule 25) was an unlawful infringement of the principles of open justice. Rule 25 has since been replaced to rectify that finding but we have reviewed all the other Parole Board Rules to ensure there were no other areas where the Rules might be argued to be deficient.

136. We did not find any other Rules which might be subject to similar accusations to those levelled against Rule 25 in the *Worboys* case. However, one area where we considered the Rules would benefit from further, explicit, provision was in relation to the procedure that should be followed in cases where the prisoner has been assessed to lack the mental capacity to participate in the parole process.

### **Appointment of suitable representation**

137. Currently, Rule 6 makes provision for the Parole Board to appoint a representative where the prisoner does not have one and consents to have one appointed. Rule 10 provides that the Parole Board panel may make directions as required to ensure a fair and lawful hearing. Together, those Rules can be used to ensure that prisoners are properly represented at their hearing – usually by their legal representative (for which legal aid may be sought).
138. Whilst we think it is possible under the current Rules, they do not make explicit provision for the appointment of a representative in the rare case where a prisoner may be unable to consent to such an appointment because they lack the mental capacity to do so. It is important for there to be a clear and unambiguous process that can be followed in such cases to make sure that prisoners who lack the capacity to make decisions themselves are appointed representation on their behalf who will be able to act in their best interests.
139. We have looked, by way of comparison, at the Rules which govern Mental Health Act Tribunal cases for restricted patients detained under the Mental Health Act, where the issue of capacity to participate in the proceedings also arises. The Rules for the Mental Health Tribunal make provision for the Tribunal to appoint an appropriate legal representative to act in the best interests of the patient. We propose to adopt a similar provision in the Parole Board Rules.
140. If the panel is satisfied, having considered professional assessments and on application from one of the parties, that the prisoner lacks mental capacity and requires representation to make decisions about the conduct of the process on his or her behalf, the new Rule will make explicit provision for the panel to appoint one. This may be a suitable relative or friend of the prisoner but may also be their legal representative if the panel assesses them to be appropriate to act in that capacity and to represent the best interests of the prisoner to ensure a fair hearing.

### **Meeting prisoners' mental health needs**

141. More broadly, improving the physical and mental health of people in prison remains a top priority for the Government. A package of measures has been designed to make prisons safe, decent and better able to manage the often complex health needs of offenders.
142. The Ministry of Justice and Department of Health and Social Care (DHSC) welcomed the launch of the independent Mental Health Act review, announced at the end of 2017. The review has explored a wide range of issues including ways to improve the transfer process between prison and secure hospitals for those offenders who need it.
143. The Mental Health Act review has also explored streamlining the process of decision-making for restricted patients serving an indeterminate sentence who are subject to both the Mental Health Tribunal and the Parole Board for considering their discharge and release. Having considered how this part of the system operates, the Parole Board, together with the Mental Health Casework Section (MHCS) and Public Protection Casework Section (PPCS) within HMPs are making improvements to streamline their processes for these patients who have historically waited for long periods in hospital (or prison) having been recommended as suitable for conditional

discharge by a Mental Health Tribunal. This work will ensure they receive a timely review of their detention by the Parole Board.

144. There is also a broader range of work underway to ensure that there is a coordinated approach to identifying and meeting the mental health care needs of those in prison.

145. The National Partnership Agreement for Prison Healthcare in England was published on 10 April 2018 by DHSC, NHS England, MoJ, HMPPS and Public Health England. It marks the establishment of an even stronger level of co-operation and cohesiveness between all of those who can impact on the policy, commissioning and delivery of health services in prisons.

146. Other initiatives include:

- A new key worker scheme which allows staff dedicated time to provide one-to-one support to prisoners throughout their sentence.
- Staff training in key areas such as mental health and substance misuse – for example, over 17,000 new and existing prison staff have completed at least one module of the revised suicide and self-harm prevention training.
- The Samaritans have been awarded a grant of £500k each year for the next three years so that they can continue to deliver the excellent Listeners scheme where selected prisoners are trained to provide emotional support to their fellow prisoners.

## **Annex A – Terms of Reference for the Parole Board Rules Review**

The following Terms of Reference for the Rules Review were published on 28 April 2018:

### **Review of the Parole Board Rules**

The Parole Board for England and Wales is established under the Criminal Justice Act 2003. It is an Executive Non-Departmental Public Body (NDPB). Its role is to protect the public by carrying out risk assessments to decide whether prisoners can be safely released into the community.

Under the Criminal Justice Act 2003 the Secretary of State has the power to make procedural rules about the proceedings of the Parole Board, including requiring cases to be dealt with at prescribed times.

The Parole Board Rules were last updated in 2016 and cover matters including process for the referral of cases to the Parole Board, the appointment of Parole Board panels, information before the Board, the Board's powers to make directions, adjournments and deferrals and also the requirements for hearings. The full Rules are available at: <http://www.legislation.gov.uk/uksi/2016/1041/contents/made>.

This review will consider each of the Parole Board Rules and the case for any changes to improve the operation of the Parole Board. It will take into account the independence of the Parole Board and examine all 27 Parole Board Rules, and whether there should be any new Rules, including:

1. The evidence that is required to be put to the Board when they consider cases
2. The parameters for paper or oral hearings
3. The time limits set for each stage of the process
4. The means of enforcing Parole Board directions
5. Whether the rules should set requirements for the composition of Parole Board panels
6. The rules on disclosure and non-disclosure of evidence
7. How to provide for public access to Parole Board hearings, information about the panel members who make Parole Board decisions and any further changes to the transparency of the Parole Board
8. The introduction of rules to provide for a new reconsideration mechanism for Parole Board decisions (following public consultation)
9. Assurance of Parole Board decisions and processes





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