

# the BOARD SHEET

the  
Parole  
Board  
working with others  
to protect the public



## Chair's Introduction

A lot has changed since the last edition of the Boardsheet! The Supreme Court Judgment in *Osborn, Booth & Reilly (OBR)* has focused our energy and attention on taking a completely new look at how we manage our business in order to adjust to the shift in demand for oral hearings. We need to position ourselves to move from hearing 4,500 to more than 14,000 cases a year.

We are already at our maximum current capacity to list oral hearings each month and this is typically running at between 520/550 cases per month. We cannot simply upscale our current operation to meet the new demand but devise new ways of working. We will need to work with all of our stakeholders to achieve this. We are posting regular updates on our web pages so please do visit them when you can.

In December, Claire and I attended the Justice Select Committee. It had been several years since the Parole Board appeared before the Committee and it was good timing with so much going on. In particular we were able to update MPs on the progress we have already made in reforming the process, the likely impact of the OBR judgment and the impact of other changes within the criminal justice system such as legal aid reform and the Transforming Rehabilitation Programme.

This month we also attended the All Party Penal Affairs Group. The purpose of the group is to "increase its members' knowledge of penal affairs and to work through parliamentary channels for reform of the penal system". Feedback we have received is that our presentation and willingness to engage with a range of questions was greatly appreciated

and have enhanced the Group's understanding of the challenges and opportunities facing the Parole Board.

At the beginning of February the Parole Board User Group (PBUG) met and this provided a good opportunity to bring our key partners up to date on developments and activity within the Board and to seek views on some of our ideas and initiatives.

We were pleased to see the publication of the new Code of Practice for Victims of Crime and we have revised our guidance to both members and the public accordingly.

As well as *OBR*, the parole system is dealing with the continuing Transforming Rehabilitation Programme, the prison realignment work (Through the Gate Resettlement Model) and the changes to Legal Aid – we all have our work cut out for 2014! ■

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## CEO Update

**F**irst of all welcome to the new look Boardsheet. As the Chairman has already mentioned a lot has happened in a very short space of time.

The impact of the *Osborn* judgment has been immediate and meant refocusing our resources on immediately increasing the number of oral hearings we can deal with, making sure we are engaging with others and developing plans for how we will work in the future.

In order to cope with this we have had to make some significant changes to the structure of the Secretariat.

The new arrangements are set out later in the newsletter and I am confident that with the right people and structures in place we are well placed to meet this challenge.

We have submitted a bid to the Ministry of Justice for additional funding to increase resources, which we are pleased, has now been agreed. This new way of working will assist us in continuing to work together efficiently and we would welcome your feedback over the course of the next two months, if there are ways to make further improvements.

We have reported some of the key facts and figures elsewhere in this newsletter and so I won't repeat them here, but they highlight the necessity of the Board to challenge the way it works and to demonstrate efficiencies. A project group has been established to lead this work, which has already co-ordinated our input into two submissions to Ministers

on this issue, briefed members and operational staff as well as developing a detailed analysis of the potential impact to help plan for future workload.

The need to fill new and some existing vacancies across the secretariat will mean continued pressure in the short term but temporary management changes in operations have been put in place to manage this as best we can. This will include maintaining focus on reducing deferrals.

Although *Osborn* takes up much of our time, other work must continue:

We are progressing with our Governance Review and will be beginning to implement changes to our Management Board and committee structures shortly. This will include the appointment of up to three non executive directors to the Board which we hope to be advertising in the coming months.

We are proceeding with a change to the Rules to remove the strict requirement for judicial members to chair all Lifer oral hearings. This will allow us to deploy our independent and judicial panel chairs more flexibly whilst retaining the option to allocate those with special expertise in those cases which require them.

Finally, thank you to everyone who contributed to our Triennial Review. Stage 1 is now progressing well with evidence collected from a wide range of stakeholders. The project board, led by the MoJ, will be putting together the stage one report over the next month before they start stage two which looks more closely at how the Board is run. ■

## Supreme Court Judgment in the case of Osborn, Booth and Reilly

The Supreme Court handed down its decision in the case of Osborn and others in October 2013. The judgment has wide-reaching implications for the Board as it fundamentally changes the way in which the Board must view the concept of an oral hearing and significantly broadens the circumstances in which the law requires it to hold one.

The most important points are:

- the Board's policy and practice in respect of oral hearings has had to change;
- there will now have to be many more oral hearings than in the past;
- if in any doubt, the Board should hold an oral hearing;
- fairness to the prisoner in the individual case before the Board is the over-riding factor;
- the Board can no longer decline an oral hearing merely because it's unlikely to make any difference;
- the Board must not be tempted to refuse an oral hearing in order to save time, trouble or expense.

## Entitlements to oral hearings

There remains no statutory entitlement by right to an oral hearing before the Parole Board for any case other than life or indeterminate sentenced prisoners who are assessed as 'not unsuitable' for release, or life or indeterminate sentenced prisoners at first review following recall. However, the UKSC judgment clearly indicated that the previous policy and practice of the Board could no longer stand.

## Implementing Change

A project was established in order to understand the impact of the judgment and what changes will be needed. The judgment will result in far more oral hearings being granted across the whole caseload referred to the Board, and therefore a review of the case management of all cases is already underway. The existing processes will not be able to

## Delays to Listing of Cases for Oral Hearings

We have already seen a significant increase in cases being progressed for an oral hearing and we are hearing as many cases each month as possible.

Prior to the judgment the number of indeterminate review cases progressing to oral hearing following the first paper review (the ICM assessment) was usually around 65% (approx 298 cases per month). In December this rose to 89% (391 cases).

We have also seen an increase in determinate recall cases being referred to an oral hearing, moving from an average of 3% (32 cases each month) to 14% in December, resulting in an additional 90 cases being referred for oral hearing in December.

At the last listing exercise (for cases to be considered at oral hearing in April 2014) we listed 506 cases but there were a further 374 cases ready to list, which we could not schedule. These cases have been put forward for the May 2014 listing exercise. If this trend continues it is possible we may see delays of at least three months over and above the usual timeframe for cases waiting to secure an oral hearing date.

This is very disappointing as this is one of the areas in which we had been making significant progress since the serious delays experienced between 2009-2012.

Where the Board is unable to list all the cases ready for listing in a particular month, it is applying its published Listing Prioritisation Framework,

The framework is designed to ensure that the most urgent and oldest cases receive the earliest available dates for a hearing. This can mean that where there are insufficient resources to hear all cases that require a hearing in a particular month, some cases will take precedence in accordance with the prioritisation framework. We will continue to monitor the application of the framework in order to ensure it remains fit for purpose against the changing needs of the case load.

We have written to prisoners affected by the delays in listing and are advising them to seek advice and discuss their individual situations with a legal representative, where they have access to one. ■

accommodate the increase in work and therefore, the design and development, piloting and implementation of a new model is required. This work will supersede some of the work that began under the End to End Review Programme.

More details on the project can be found on the web pages: <http://www.justice.gov.uk/offenders/parole-board/osborn,-booth-and-reilly-supreme-court-judgment> ■

# Changes Underway

## Secretariat Changes

In the majority of cases a dedicated case manager for each establishment will no longer be possible. Cases will now be allocated as they progress to oral hearing and will be shared out equally across all case managers. This system has already been tested in our Recalls Team for over a year and works well.

However, we will maintain a prison allocation contact list which can be found here:

<http://www.justice.gov.uk/contacts/parole-board/casework-teams>. If the case manager listed at that prison is not able to deal with your enquiry, it will be forwarded to the most appropriate individual to assist you.

We will also be introducing increased team working and have begun to recruit additional case managers, which will mean that stakeholders will eventually be able to call any case manager about all review types regardless of their location. This will provide improved customer service and increased efficiency.

We are delighted to announce that Rachel Onikosi and Ali Bushell have recently joined us as Team Managers and will be working alongside Rebecca Bayley, Alex Emery, Vince Peters, Tania Langdon and Angela Forbes as the management team reporting to Jonny Twidle. ■

## Imminent or close Sentence Expiry Dates on determinate recall cases

Imminent Sentence Expiry Dates (SEDs) have always been an issue for the Board when determinate recall cases require an oral hearing and where there are just a few weeks to SED. The Board has always made every attempt possible to list such cases. It is not always possible to do so and even when it is possible, such hearings are often impracticable, or bring no discernable benefit to the offender, even where there is a decision to release as there can be little or no time to put it into effect before automatic release takes place.

As we are now sending more cases to oral hearing post-Osborn, the Board has considered the impact on listing and the available resources. We are currently listing to full capacity and using all panel chairs to the fullest extent. This means that it is less likely that we will be able to convene an expedited panel to deal with an urgent recall case and in making attempts to do so, it is likely other cases will be adversely affected, causing delays for some prisoners in order to provide other prisoners with an oral hearing where their release will take place automatically relatively quickly in any event.

In order to mitigate the effect of this, the Board has decided that, absent exceptional circumstances,

it will formally impose a cut off point at which it will declare that although an oral hearing is ordered, there is insufficient time available to list such a hearing. **This point will be where there are fewer than 12 weeks to the SED from the point at which the case is sent to oral hearing.** This is on the basis that we would only aim to list hearings with 4 weeks between the hearing and the SED (i.e. up to 8 weeks after decision to send to oral hearing).

Where possible, panels will make a decision on the papers, or identify the key areas or issues outstanding. Where it appears that additional written information may be available quickly, which may negate the necessity for an oral hearing, panels will clearly recommend a further paper review with this information prior to SED to enable the Board to consider release of those offenders once the missing information is provided. ■

## End to End Review update

The End to End Review programme of work entitled *Streamlining the Parole Process Together* began in December 2012 and progressed through 2013. This work took an end to end review of the Generic Parole Process (GPP) for indeterminate sentence prisoners with the aim of improving current practices, avoiding duplication of effort and removing needless steps or processes that were preventing the most effective and efficient delivery of parole reviews.

A final set of 42 proposals were developed and published for further comment at the end of October/early November and they have now been adapted accordingly following feedback. Clearly, the Osborn and Others judgment has impacted on the nature and delivery of some of the proposals. As such, the work has been broken down into various sections including:

1. Proposals that have been accepted and can be taken forward now (mainly PPCS case management changes)
2. Proposals that are significantly affected by the Osborn judgment and will now be fed into the developing work under Osborn
3. Proposals that will need to wait until the Osborn work has been progressed before they can be implemented
4. Proposals that have been dropped following feedback

Work will continue on these proposals, alongside developing work following the Osborn judgment. The full proposals table can be accessed from the Parole Board web pages:

<http://www.justice.gov.uk/offenders/parole-board/end-to-end-review> ■



## Membership Update

### Regional events

Following the success of the first series of Members' Regional Events, held in November 2013, there will be a second series of events in February and March 2014. The programme will include a participative session on the work streams within Fair for the Future, the Parole Board's project to deliver change in response to the impact of the Osborn judgment. Over 6 dates spread across the country these events will provide the opportunity for discussion, advice and training for members related to current activity and in preparation for new ways of working.

### Chairing arrangements

As a result of the agreement by the Justice Secretary to remove the requirement for a judge to chair all lifer parole panels, there has been consultation with members on proposals for chairing panels in the future. All accredited chairs, whether judicial or independent members will be able to chair any type of hearing. A new and limited role will be created to identify a pool of specialist chairs with a background and expertise in aspects of certain cases, which are considered specialist because of their particularly complex or sensitive nature.

Whilst these proposals are being finalised, applications have opened for existing members to apply for oral hearing chair accreditation. The assessment, training and mentoring for these roles takes around 6 months. The subsequent increase in the number of chairs available will assist with managing the increased workload as an impact of the *Osborn* judgment.

### Membership recruitment

At this stage in the Fair for the Future project we have not identified whether the size of the membership will need to increase to meet the increased demand for oral hearings. We certainly don't expect a need for an exponential increase because new ways of working will mean that we are not simply scaling up our old approach in response to this new demand.

The member deployment work stream that is part of the Fair for the Future project will look at when and how member resources are used.

This is directly linked with the work streams for case management and case listing and, as proposals develop, consideration will be given not only to member numbers, but also the skills, experience and roles that will be needed and how they will be sourced.

### Communications

The members' communication strategy was launched in October 2013 and has defined the method and purpose of various communication routes. Matters of practice and procedure that are essential to every member in fulfilling their role are delivered by way of a PBM letter.

These are issued as required and contain only a single matter, or closely related matters, critical to practice.

The members' newsletter is capped at 2 pages and is issued fortnightly. It contains news and items of general interest to the membership. Each item is brief and where applicable, a link is provided to the members' extranet where more details will be posted. The extranet is a secure site, accessible only by members, and is a valuable reference tool.

External contributions to the newsletter are welcomed. Stakeholders who wish to put forward an item for the members' newsletter should contact the department at **MDP@paroleboard.gsi.gov.uk.cjism.net** or Sam Hendry, Acting Head of Member Development & Practice, on **03000 474244**. ■

## Improved Access to Information

The Parole Board is currently developing its IT Strategy to ensure that a detailed understanding of the current and future needs of the business and its users inform plans to enhance the IT provision over the coming months. One of the initiatives which we are very keen to pursue is expanding access to our case management system also known as PPUD. This is jointly owned by the Parole Board and NOMS and allows prison, probation, PPCS and Parole Board Secretariat staff instant access to all the necessary information about a case, what stage it is at and what further action is needed in order to conclude the review. We believe that there are significant benefits

from extending access to Parole Board members and legal representatives. This will enable all parties to ensure they have the same information at the same time, to be able to check progress with the case without having to wait for others to answer emails or telephone calls and will also allow those who need to, to upload documents such as decision letters or representations and download copies of the dossier. We have been running workshops with representatives from the Association of Prison Lawyers, Parole Board members and others and have had a very positive response.

There is currently a pilot being led by NOMS to widen direct access to PPUD for Offender Managers. This work will run over the next six months and the results will be evaluated in the autumn. ■

## Prison Protocol and Good Practice Guide for oral Hearings

We were very pleased to see the introduction of PSI 35/2013 in November which sets out the facilities and services that are required for an effective oral hearing to be held and the behaviour that Parole Board members and Prison Service staff can expect from one another on the day of a hearing. We are hopeful that, by setting out a clear set of standards to be adhered to, this PSI will help foster good working relationships between Parole Board members and prison staff and build upon the good working relations already in place.

The PSI should also help to ensure that oral hearings run smoothly and do not overrun.

This could potentially lead to saving the time and resources of all parties involved in the process.

Alongside this, a good practice guide for those

attending oral hearing was developed, in collaboration with London Probation Trust, and in consultation with members of the Parole Board User Group (PBUG) and Parole Standards Board (PSB). The purpose of this guide is to help us all work effectively together to achieve the best possible outcome at an Oral Hearing. The guide is presented in bullet points and focuses on the basic service we can each expect from one another.

In order to draw up this bullet point guide colleagues from the Parole Board, NOMS Public Protection Unit and Victims Unit, Prisoners Legal Representatives, Public Protection Representatives, Probation Officers, Senior Probation Officers have been approached for comment and contributions. It was helpful to hear from everyone and our sincere thanks to all those who contributed or commented.

Links to the Prison Protocol PSI and Good Practice Guide for Oral Hearings can be found at the following location: <http://www.justice.gov.uk/offenders/parole-board/end-to-end-review>

## Judicial Review Update

As you may be aware, in November, the Board said goodbye to Terry McCarthy who has returned to the Ministry of Justice. In December, we were also sorry to say goodbye to Jessica Mance who has moved on to a role in HM Treasury. Natalya O'Prey has now taken up the post of Legal Adviser after spending some time managing the Member Development & Practice Team

There were no judgments handed down in this quarter in any of our cases, other than in *Osborn, Booth and Reilly*, which is already reported on in this newsletter.

We have seen a number of JRs filed between October and December, with 8 out of 17 related to our refusal to grant an oral hearing, suggesting that the Board is responding to pre-action letters satisfactorily following the judgment in October. It is probably a little too early to tell whether we are consistently applying the *Osborn* principles yet, but

a close eye will be kept on challenges to refusal of oral hearings. Now that the Board has been able to provide face to face guidance to many members on *Osborn* during November and written guidance published in December, it is hoped that there will be fewer challenges to current cases and that any challenges outside of the usual 3 month time limit will dissipate.

Readers should be aware that the impact of *Osborn* has meant an increased work load for our case managers responsible for responding to pre-action letters. This has led to our being unable to respond to all letters within the time limits of the pre-action protocol. We will continue to make every attempt to do so and are very grateful for the understanding and reasonable approach taken by the majority of legal representatives in delaying issuing claims while awaiting late responses to pre-action letters so that unnecessary costs to the public purse can be avoided. ■

## Duties to Victims

Following the launch of the Code of Practice for Victims of Crime in October 2013 and the publication of the Ministry of Justice's Victim Contact Scheme Manual, the Parole Board has revised its existing practice guidance in relation to our duties to victims.

We are now inviting feedback from all of our stakeholders on its content and intend to review the guidance following consideration of this feedback. Comments should be submitted by 31 May 2014 and more information can be found here:

<http://www.justice.gov.uk/offenders/parole-board/victims-and-families>

## Changes to Legal Aid – Prisoners Representing Themselves

As a result of the government's recent changes to the legal aid system, which took effect on 2 December 2013, some prisoners will no longer be entitled to receive legal aid for their parole review. Legal aid is only available for parole reviews where the Board has the power to direct release

In the majority of cases where the Parole Board is considering release from prison then legal aid will still be available. This will therefore mainly affect those prisoners whose review is only considering a transfer to open conditions (a pre-tariff review) or a return back to open conditions (an advice case).

We undertook a snapshot evaluation of how this will impact on advice cases and during a six month period it was estimated that approximately 70 advice cases were referred to the Parole Board, of which around 73%, or 51 cases, were combined with an ongoing GPP review (thus becoming eligible for legal aid). If this pattern is consistent across the year, then the impact will only affect a small number of these prisoners. However, we have also noted that some prisoners do find it difficult to secure a legal representative, even if they are eligible for legal aid and the reasons for this are not entirely clear. For example, it may be geographical access to providers although evidence is only anecdotal. The Offender Survey which we carried out last year indicated that 13% of respondents said they wanted a solicitor to represent them but could not get one.

Because of these changes, the Parole Board has published a practical guide, setting out how prisoners can prepare for their parole review, if they are unable to instruct a legal representative. This has been circulated to NOMS agencies and is available from the

Parole Board web pages. We are also sending it out with our initial notification letters to prisoners when their review commences.

We are aware that the document is not currently accessible to all prisoners and we are developing an EasyRead version which should be available soon.

The guide can be found here:

<http://www.justice.gov.uk/downloads/offenders/parole-board/guide-for-prisoners-without-legal-representative.pdf> ■

## Publisher

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Comments or questions about the publication should be sent to the Business Development Directorate **Glenn.gathercole@paroleboard.gsi.gov.uk**

The Board Sheet is intended for circulation to key stakeholders and those with a direct professional interest in the work of the Board.

Information about the work of the Parole Board is now available online in three places:

### **Prisoner facing content**

<https://www.gov.uk/leaving-prison/parole-board-hearings-what-happens>

### **Practitioner facing content**

<http://www.justice.gov.uk/about/parole-board/index.htm>

### **Archive content**

[http://tna.europarchive.org/\\*/http://www.paroleboard.gov.uk/](http://tna.europarchive.org/*/http://www.paroleboard.gov.uk/)