

**TRIENNIAL REVIEW REPORT OF THE  
PRISON SERVICE PAY REVIEW  
BODY**

March/April 2014

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## 1. Executive Summary

This report records the observations and recommendations that have emerged from the Triennial Review of the Prison Service Pay Review Body (PSPRB). The Review has examined evidence both in relation to the continuing need for the PSPRB and its status as a non departmental public body (NDPB) (Stage One) and that the governance arrangements in place are compliant with Cabinet Office guidance (Stage Two).

The Review was conducted by Ministry of Justice officials, with input from the Office of Manpower Economics (OME), and included a paper based stakeholder engagement exercise with representatives from the Prison Officers Association (POA), Prison Governors Association (PGA), Public and Commercial Services (PCS), National Offender Management Service (NOMS), Northern Ireland Prison Service and Her Majesty's Treasury (HMT).

The Review concluded that the functions of the PSPRB are still required and that delivery through a Non Departmental Public Body (NDPB) remains appropriate. The Review has found that the PSPRB is delivering relevant and beneficial functions on behalf of the Prison Service, in an appropriate governance framework.

In keeping with Triennial Reviews of other Pay Review Bodies, this report recommends slight amendments to the appointments process literature. These amendments are minor in nature and do not detract from the overarching message that the PSPRB is a valued, and valuable, asset.

## 2. Introduction

Cabinet Office's "Guidance on Reviews of Non Departmental Public Bodies" published in June 2011, sets out the principles and process which departments should follow in conducting reviews of their NDPBs. The Cabinet Office has identified two principal aims for Triennial Reviews:

- to provide robust challenge to the continuing need for individual NDPBs – both their functions and their form (Stage One); and
- where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance (Stage Two).

The Review of the PSPRB commenced on 4 March 2014 and was announced via a Written Ministerial Statement (WMS).

Views of key stakeholders, such as the POA, PGA, PCS, NOMS, Northern Ireland Prison Service and HMT were sought as part of the Review. Each stakeholder was invited to send in a submission regarding their views on the form, function and governance of the PSPRB.

Responses were analysed, including recommendations for improvement to either the output or governance of the PSPRB. The publication of the Review's report, announced in a WMS, and the placing of the Review Report in the Libraries of the House marks the end of the Triennial Review process.

### **2.1 Background**

#### *History*

Section 127 of the Criminal Justice and Public Order Act 1994 prohibits the inducement of operational staff within the prison service to take industrial action. As a "compensatory mechanism" for their inability lawfully to take such action, Section 128 of the 1994 Act enabled the establishment of the PSPRB. The governing Regulations empower the PSPRB to make recommendations to the Secretary of State about the pay of those staff. The PSPRB comprises eight members<sup>1</sup> who have senior-level experience of handling pay and other matters, both in the private and public sectors.

#### *Terms of Reference*

The PSPRB's Terms of Reference (TORs) stipulate that the Body is to provide independent advice on the remuneration of Governing Governors and operational managers, Prison Officers and support grades in the England and Wales Prison Service. The Review Body will also provide independent advice on the remuneration of Prison Governors, Prison Officers, Prison Auxiliaries and Night Patrol Officers in the Northern Ireland Prison Service.

In reaching its recommendations, the Review Body is to have regard to the following considerations:

- 1 the need to recruit, retain and motivate suitably able and qualified staff taking into account the specific needs of the Prison Service in England and Wales and the Northern Ireland Prison Service;
- 2 regional/ local variations in labour markets and their effects on the recruitment and retention of staff;
- 3 relevant legal obligations on the Prison Service in England and Wales and the Northern Ireland Prison Service, including anti-discrimination legislation regarding age, gender, race, sexual orientation, religion and belief and disability;

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<sup>1</sup> There is a statutory minimum of 6 members.

- 4 Government policies for improving the public services, including the requirement to meet Prison Service output targets for the delivery of services;
- 5 the funds available to the Prison Service in England and Wales and the Northern Ireland Prison Service as set out in the Government's departmental expenditure limits; and
- 6 the Government's inflation target.

The Review Body shall also take account of the competitiveness of the Prison Service in England and Wales with the private sector, and any differences in terms and conditions of employment between the public and private sectors, taking account of the broad employment package including relative job security. The Review Body may also consider other specific issues, as the occasion arises. Reports and recommendations are submitted jointly to the Prime Minister, the Secretary of State for Justice, and the Chief Executive of NOMS.

#### *Annual Pay Cycle*

Engagement with the PSPRB is through an annual cycle comprising of three key components. First, at the beginning of the annual pay round, which coincides with the start of the financial year, the PSPRB conducts an extensive visit programme to allow the Review Body members to engage with Prison Service staff. Secondly, this is complemented by written evidence from both the Government and Trade Unions.

Thirdly, a series of formal meetings and oral evidence sessions are held with Ministers and senior officials from NOMS and HM Treasury, as well as with each of the PSPRB-remit Trade Unions. This dialogue provides an opportunity for the PSPRB to explore further any issues that were raised with Members on visits or in written evidence. The annual cycle culminates in the PSPRB submitting its report and making remuneration recommendations. The Government then considers these recommendations formally and collectively. The Government's final response is formally announced by a WMS prior to implementation of the pay award.

The PSPRB is independent and has an almost unique position amongst Pay Review Bodies (aside from that of the Armed Forces Pay Review Body and the National Crime Agency Remuneration Review Body) in that it acts as a compensatory mechanism in *lieu* of staff being able to participate in lawful industrial action.

#### *Recruitment*

Appointments to the PSPRB are made by the Prime Minister. As an advisory NDPB, appointments to the PSPRB are regulated by the Commissioner for Public Appointments (CPA). The Code of Practice of the CPA (April 2012) sets out the regulatory framework for public appointments within the Commissioner's remit. The Code is based on three core principles – merit, openness and fairness – and sets out the essential requirements for meeting those principles. In conjunction with the Code of Practice, the Cabinet Office's Centre for Public Appointments team also provides guidance to Departments on the processes for making and managing public appointments. Regular engagement with the Cabinet Office, HMT and No10 is required to ensure that Departments remain compliant with the CPA code throughout the recruitment campaign.

In terms of execution, the Public Appointments Team in the Arm's Length Bodies Governance Division, MoJ fulfil a co-ordinating and supporting role in the conduct of the recruitment campaigns for the MoJ. They are responsible for arranging the advertising, sifting and interviewing of applicants. Appointments are usually made for three years, although there are occasions where individuals can serve two terms, up to a maximum of six years, in any one appointment. Such reappointments are subject to the satisfactory appraisal of appointees and the agreement of Ministers.

### 3. Review – Stage One

This section considers the key objectives and functions of the PSPRB, and whether they are still required. It then considers whether a statutory advisory PSPRB is the best model for delivery of these functions.

#### *Role and functions*

The key role of the PSPRB is to provide the Prime Minister, Secretary of State for Justice and the Chief Executive of NOMS with independent advice and to make specific recommendations on remuneration of public sector prison service staff who are unable to lawfully participate in industrial action.

The PSPRB researches remuneration levels and policies in other public and private sector workforces in order to ensure that the remunerative offer for Prison Service staff is sufficient to recruit, retain and motivate suitably able and qualified people. The PSPRB also maintains oversight of the total remuneration package for Prison Service staff to help ensure it is appropriate, effective and efficient. The PSPRB delivers this role *via* an annual programme of work culminating in a report that makes recommendations to the Government on Prison Service pay based on evidence gathered from across NOMS and trade unions representing Prison Service staff.

#### *Contribution of role/functions on behalf of the Prison Service*

The majority of stakeholders agreed that it is considered wholly appropriate that an independent body determines the pay for staff who would otherwise have no recourse to contest an imposed Government award due to their inability to take lawful industrial action. The independence of the PSPRB therefore assures public and political legitimacy in the management of remuneration for Prison Service staff.

However, a concern was raised by the PCS regarding those staff with no explicit link with the Pay Review Body who are directly affected by the outcome of the Pay Review Body pay round. The preference of PCS is to extend the remit of the PSPRB to include all staff. Their view is that non-remit staff are potentially at a disadvantage as they are in a minority and that, therefore, there is little or no authentic collective bargaining on pay. Neither the POA nor the PGA chose to respond during the consultation period.

The PSPRB was created because of industrial action restrictions that apply to certain operational roles, and its role is statutorily limited by reference to those roles. The concerns raised by the PCS are known to NOMS and a commitment has been made to respond to trade unions and PSPRB members on progress outside the scope of this review.

#### *Continuing relevance of role and functions*

The prohibition of the inducement of operational staff within the prison service to take industrial action underlines the continuing relevance of the PSPRB, and that all of the functions outlined above remain relevant. The main strength of the PSPRB is its independence; it does not exist to support either NOMS or Trade Unions and therefore recommendations, based on the experience and knowledge possessed by Review Body members, are made in an informed, balanced and considered way.

### **3.1 Recommendations**

The Review concluded that the functions performed by the PSPRB are still required. It has assessed possible delivery models and found that the advisory PSPRB model is most suitable.

## 4. Review - Stage Two

Having concluded that the PSPRB should remain an advisory NDPB, the second stage of the Review considered how far PSPRB practice aligns with principles of good governance. The assessment is summarised below and set out in detail in Annex A.

### *Accountability*

Assessed as GREEN<sup>2</sup> by the Review team. The PSPRB complies with this aspect of NDPB governance, including the publication of an annual report. The OME assure that all Pay Review Bodies are compliant with Data Protection legislation and the Public Records Acts of 1958 and 1967. It has been confirmed that the administration and oversight of appointments is conducted correctly.

### *Role of the Sponsoring Department*

Assessed as GREEN by the Review team. While the PSPRB is an advisory non-departmental public body of the MoJ, there is no dedicated sponsor team. The OME acts as secretariat for the PSPRB and NOMS supports MoJ Ministers in commissioning the PSPRB's annual Pay Review and in submitting evidence in order to inform this review. There is regular engagement between NOMS staff and the PSPRB about matters of mutual interest and the MoJ's Public Appointments Team will take forward issues relating to the recruitment of the PSPRB Chair and Members. The Chair of the PSPRB conducts annual appraisals of Review Body Members and the Director of OME appraises the Chair, annually.

### *Role of the Board Members*

Assessed as GREEN by the Review team. Board Members are recruited through a meritorious, fair and open process that complies with the Code of Practice of the CPA. Additionally, the terms of appointment and remuneration are set out in the appointment letter sent to the successful applicant. All appointment literature is compliant with both the CPA Code of Practice and Cabinet Office guidelines. All new members typically meet the Chair before the first Review Body meeting and there is an induction process for all new members lead by the secretariat at OME.

### *Role of the Chair*

Assessed as GREEN by the Review team. The Chair is recruited through a meritorious, fair and open process that complies with the Code of Practice of the CPA. The Chair's terms of appointment are set out in the Appointments pack that is available during the recruitment campaign. Additionally, the terms of appointment and remuneration are set out in the appointment letter sent to the successful applicant. The appointment literature is compliant with both the CPA Code of Practice and Cabinet Office guidelines. The Director of OME chairs the selection panel and the Chair of the PSPRB is a member of the panel for member recruitment campaigns. The Chair of the PSPRB is appraised annually by the Director of the OME. The Chair of the PSPRB also conducts annual appraisals of the Review Body Members. The OME Secretariat leads the induction process for the PSPRB Chair and all new PSPRB Members.

### *Communication and Engagement*

Assessed as GREEN by the Review team. Along with other Pay Review Bodies, PSPRB, is named in Schedule 1 of the Freedom of Information Act together with the OME, and operates in accordance with the Act. The formal annual review process includes opportunities for the PSPRB to collect both written and oral evidence. The PSPRB's annual report, which draws and comments on that extensive evidence base, is published by MoJ and made available on the OME website and contains excerpts of the evidence base where relevant to explain the rationale of recommendations.

### *Conduct and Behaviour*

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<sup>2</sup> GREEN: Good – requires refinement; AMBER/GREEN: Mixed –some aspects require substantial attention; AMBER/RED: Problematic – some aspects need urgent attention; RED: Highly problematic – requires urgent and decisive action.

Assessed as GREEN by the Review team. The PSPRB works to the highest personal and professional standards in accordance with the Code of Conduct issued to appointees. As required, the OME Director will provide advice and guidance on potential conflicts of interest and acceptable activities. The OME scrutinises and approves expenses claims from PSPRB members, ensuring adherence to the rules and procedures for claiming expenses. The PSPRB Chair and Members are public appointments, and thus restrictions on the acceptance of appointments after resignation or retirement are not appropriate. However, PSPRB members must discuss with the Chair any offers of other appointments they receive while serving on the Review Body, or shortly after stepping down, if those offers may raise questions about independence or impartiality.

#### **4.1 Recommendations**

Despite the GREEN assessment for the Role of the Sponsoring Department, the Review team recommended minor changes to the appointments literature better to define political activities and reflect Code of Conduct requirements of new members of the PSPRB. These changes are:

- a. the Appointments packs should explicitly state that perceived political lobbying is incompatible with Review Body membership and perhaps set out acceptable political activities; and,
- b. reference to the Cabinet Office Code of Conduct for Board Members of Public Bodies be included in the appointment letters in order to form part of the terms of appointment for PSPRB members.

It is recommended that these amendments should be made to the Appointments literature for the PSPRB, with the exception of listing acceptable political activities, which it is considered would not be effective. The changes will be made in conjunction with Cabinet Office and OME guidance to ensure coherence across the Pay Review Bodies.



## 5. Conclusion

The majority of stakeholders who provided feedback to the Review were content that the PSPRB was fit for purpose, delivering functions, which continued to be relevant and beneficial to the Prison Service, within an appropriate governance framework. The PCS called for the scope of the PSPRB to be revised, raising concern about staff who are impacted by the Pay Review Body report but who are outside of its remit and have no input into the Pay Review Body process. A resolution to this issue is beyond the scope of this review and related dialogue regarding this issue will progress outside of this review process.

There were two minor recommendations for change to the governance and appointments arrangements that arose from Stage 2 of the Review, but this does not detract from the overarching message of this Review, which is that the PSPRB is a valued, and valuable, asset.

Annex A: Assessment against Good Principles of Good Governance

Principles of Corporate Governance for advisory NDPBs	Description	Assessment of PSPRB
<b>ACCOUNTABILITY</b>		
<b>Principle</b>	<b>The Minister is ultimately accountable to Parliament and the public for the overall performance, and continued existence, of the public body</b>	
<b>Supporting Provisions</b>	The Minister and sponsoring department should exercise appropriate scrutiny and oversight of the public body. This includes oversight of any public monies spent by, or on behalf of, the body.	Explain – All costs (whether incurred by OME or those that form part of the services provided by BIS, at no direct cost to OME) are overseen by BIS Ministers as part of their management of the Department as a whole and appear in BIS audited accounts. The OME Director has day-to-day responsibility for the budget by means of a letter of delegated authority from the BIS Accounting Officer.
	Appointments to the board should be made in line with any statutory requirements and, where appropriate, with the <i>Code of Practice</i> issued by the Commissioner for Public Appointments.	Comply
	The Minister will normally appoint the Chair and all board members of the public body and be able to remove individuals whose performance or conduct is unsatisfactory.	Comply
	The Minister should meet the Chair on a regular basis.	Explain – all chairs meet the Minister following appointment, and generally have an annual meeting to hear about contextual issues prior to the start of the pay round. Once in remit, Ministers submit written evidence and present formal oral evidence, but it would be inappropriate for the Chair to have additional meetings prior to submission of the recommendations.
	There should be a requirement to inform Parliament and the public of the work of the public body through publication of an annual report (or equivalent publication).	Comply
	The public body must be compliant with Data Protection legislation.	Comply
	The public body should be subject to the Public Records Acts 1958 and 1967.	Comply
<b>ROLES AND RESPONSIBILITIES</b>		
<b>ROLE OF THE SPONSORING DEPARTMENT</b>		
<b>Principle</b>	<b>The departmental board ensures that there are</b>	

	<b>appropriate governance arrangements in place with the public body. There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the public body.</b>	
<b>Supporting Provisions</b>	The departmental board's regular agenda should include scrutiny of the performance of the public body.	Explain - While the Prison Service Pay Review Body (PSPRB) is an advisory non departmental public body of the Ministry of Justice (MoJ), there is no dedicated sponsor team. Review Body Members are expected to comply with the Code of Practice for Members.
	There should be a document in place which sets out clearly the terms of reference of the public body. It should be accessible and understood by the sponsoring department and by all board members. It should be regularly reviewed and updated.	Comply
	There should be a dedicated sponsor team within the parent department. The role of the sponsor team should be clearly defined.	Explain - While the Prison Service Pay Review Body (PSPRB) is an advisory non departmental public body of the Ministry of Justice (MoJ), there is no dedicated sponsor team.
	There should be regular and ongoing dialogue between the sponsoring department and the public body.	Explain - While the Prison Service Pay Review Body (PSPRB) is an advisory non departmental public body of the Ministry of Justice (MoJ), there is no dedicated sponsor team.
	There should be an annual evaluation of the performance of the board and its committees – and of the Chair and individual board members.	Comply
<b>ROLE OF THE BOARD MEMBERS</b>		
<b>Principle</b>	<b>Board members should provide independent, expert advice.</b>	
<b>Supporting Provisions</b>	There should be a formal, rigorous and transparent process for the appointment of non-executive members of the board. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments.	Comply
	Board members should be properly independent of the Department and of any vested interest (unless serving in an ex-officio or representative capacity).	Comply
	Board members should be drawn from a wide range of diverse backgrounds. The board as a whole should have an appropriate balance of skills, experience,	Comply

	independence and knowledge.	
	The duties, role and responsibilities, terms of office and remuneration of board members should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements.	Comply
	All board members must allocate sufficient time to the board to discharge their responsibilities effectively.	Comply
	There should be a proper induction process for new board members. This should be led by the Chair. There should be regular reviews by the Chair of individual members' training and development needs.	Explain – All new members typically meet the Chair before the first review body meeting and there is an induction process for all new members lead by the secretariat at OME. Annual appraisals of members are conducted by the Chair and by the OME Director for review body Chairs using the Cabinet Office prescribed form.
	All board members should ensure that high standards of corporate governance are observed at all times. This should include ensuring that the public body operates in an open, accountable and responsive way.	Comply
<b>ROLE OF THE CHAIR</b>		
<b>Principle</b>	<b>The Chair is responsible for leadership of the board and for ensuring its overall effectiveness</b>	
<b>Supporting Provisions</b>	The Board should be led by a non-executive Chair	Comply
	There should be a formal, rigorous and transparent process for the appointment of the Chair. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments. The Chair should have a clearly defined role in the appointment of non-executive board members	Comply
	The duties, role and responsibilities, terms of office and remuneration of the Chair should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The responsibilities of the Chair will normally include: <ul style="list-style-type: none"> <li>• representing the public body in discussions with Ministers;</li> <li>• advising the sponsoring Department and Ministers about board appointments and the</li> </ul>	Comply

	<p>performance of individual non-executive board members;</p> <ul style="list-style-type: none"> <li>ensuring that non-executive board members have a proper knowledge and understanding of their role and responsibilities. The Chair should ensure that new members undergo a proper induction process and is normally responsible for undertaking an annual assessment of non-executive board members' performance;</li> <li>ensuring that the board, in reaching decisions, takes proper account of guidance provided by the sponsoring department or Ministers;</li> <li>ensuring that the board carries out its business efficiently and effectively; and representing the views of the board to the general public.</li> </ul>	
<b>COMMUNICATION AND ENGAGEMENT</b>		
<b>Principle</b>	<b>The Public Body should be open, transparent, accountable and responsive.</b>	
<b>Supporting Provisions</b>	The public body should operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000.	Comply
	The public body should make an explicit commitment to openness in all its activities. Where appropriate, it should establish clear and effective channels of communication with key stakeholders. It should engage and consult with the public on issues of real public interest or concern. This might include holding open meetings or annual public meetings. The results of reviews or inquiries should be published.	Comply
	The public body should proactively publish agendas and minutes of board meetings.	Explain - Agendas and minutes of the review body meetings are not publicly available. The ability of the review bodies to provide sound evidence-based advice to Ministers depends on a free and frank exchange of views for the purposes of deliberation. However, Departments and consultees generally publish their evidence. In addition, prior to each remit, the review bodies conduct a programme of visits to members of the remit groups and managers to take views on pay and related matters, enable staff to highlight issues of concern and provide an opportunity for staff to give

		feedback on previous recommendations.
	There should be robust and effective systems in place to ensure that the public body is not, and is not perceived to be, engaging in political lobbying. There should also be restrictions on board members attending Party Conferences in a professional capacity.	Comply
<b>CONDUCT AND PROPRIETY</b>		
<b>Principle</b>	<b>Board members should work to the highest personal and professional standards. They should promote the values of the public body and of good governance through their conduct and behaviour.</b>	
<b>Supporting Provisions</b>	A Code of Conduct must be in place setting out the standards of personal and professional behaviour expected of all board members. This should follow the Cabinet Office Code. All members should be aware of the Code. The Code should form part of the terms and conditions of appointment.	Comply
	There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for board members. This is regularly updated.	Comply
	There must be clear rules in place governing the claiming of expenses. These should be published. Effective systems should be in place to ensure compliance with these rules.	Comply
	There are clear rules and guidelines in place on political activity for board members and that there are effective systems in place to ensure compliance with any restrictions.	Comply
	There are rules in place for board members and senior staff on the acceptance of appointments or employment after resignation or retirement. These are enforced effectively.	Explain - The post of review body member and Chair are public appointments rather than employment, so restrictions on the acceptance of appointments after resignation or retirement are not appropriate. However, review body members must discuss with the Chair any offers of other appointments they receive whilst serving on the review body or shortly after stepping down which might raise a question about their independence or impartiality.