



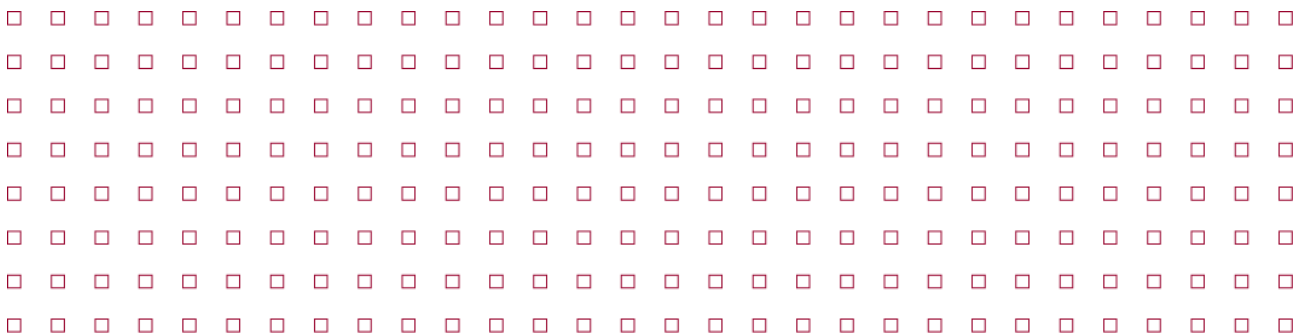
Ministry  
of Justice

# Triennial Review

## Parole Board for England and Wales

### Combined Stage One and Two Report

January 2015





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of Justice

## **Triennial Review of the Parole Board for England and Wales**

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## Contents

<b>1 EXECUTIVE SUMMARY</b>	<b>3</b>
Stage One	3
Stage Two	4
<b>2 INTRODUCTION: STAGE ONE</b>	<b>7</b>
Public Bodies Reform	7
Aims of the Triennial Review	7
Background on the Parole Board	8
<b>3 FUNCTION AND FORM: STAGE ONE</b>	<b>10</b>
Scope	10
Process	10
Evidence and Stakeholder Engagement	10
Functions of the Parole Board	11
Is there a continuing need for these functions?	12
How to deliver those functions	14
Conclusions of Stage One	23
<b>4 INTRODUCTION – STAGE TWO</b>	<b>24</b>
Cabinet Office guidance	24
The Ministry of Justice approach	25
Efficiency	26
<b>5 COMPLIANCE: STAGE TWO</b>	<b>28</b>
Summary	28
Accountability	28
Roles and Responsibilities	32
Effective Financial Management	40
Communications and Engagement	42
Conduct and Propriety	44
<b>6 PEER REVIEWER COMMENTARY</b>	<b>46</b>
<b>7 CONCLUSION: STAGE TWO</b>	<b>48</b>
Summary of Recommendations	48
<b>ANNEX A: Project Board Terms of Reference</b>	<b>50</b>
<b>ANNEX B: List of Stakeholders Consulted</b>	<b>52</b>
<b>ANNEX C: Project Board and Challenge Group Membership</b>	<b>54</b>



## 1 EXECUTIVE SUMMARY

- 1.1 The Parole Board's Triennial Review was announced in a Written Ministerial Statement on 18 November 2013. The Triennial Review has two stages. Stage One tests and challenges the continuing need for the Parole Board's functions and whether delivery through an Executive Non-Departmental Public Body (NDPB) remains the most effective method. Stage Two assesses whether the Parole Board is complying with recognised principles of good corporate governance.
- 1.2 The Parole Board's core business is assessing the risk of prisoners to decide whether they can safely be released into the community. The Parole Board is statutorily responsible for:
1. Determining whether to release:
    - all indeterminate sentence prisoners;
    - some determinate sentence prisoners; (1991 Act Discretionary Conditional Release (DCR) prisoners; some Extended Determinate Sentence (EDS) prisoners and; Extended Sentences for Public Protection (EPPs) imposed before the Criminal Justice and Immigration Act 2008 came into force).
  2. Determining the lawfulness of the continued detention of prisoners, who have been recalled to prison and deciding, based on an assessment of risk, whether to re-release these prisoners.
- 1.3 In addition to these statutory functions, the Parole Board also has an advisory function to make recommendations to the Secretary of State for Justice on the suitability of transfer of indeterminate sentenced prisoners from closed to open conditions.

### Stage One

- 1.4 The overwhelming conclusion to Stage One of the Triennial Review was that the statutory functions of the Parole Board are still required because:
- As a signatory of the European Convention on Human Rights (ECHR), the United Kingdom has an obligation under international law to have in place proceedings by which the lawfulness of an individual's detention shall be decided speedily by a court and his release ordered if the detention is not lawful;
  - The alternative to delivering the Parole Board's statutory functions would involve release without a full risk assessment (with the consequent risk to public protection) or continued detention; and,
  - Parole is an important part of the government's rehabilitation policy.
- 1.5 Furthermore, it was concluded that the most effective method of delivering these statutory functions remains via the NDPB model as:
- The delivery of these functions needs to be, and be seen to be, clearly independent of Government and therefore bringing them in house to the MoJ would be unsuitable, as would delivery through an executive agency;

- It would be inappropriate to deliver the functions outside of central government, i.e. through a charity or the private sector; and,
- Merging the statutory functions with another body, such as Her Majesty's Courts and Tribunals Service (HMCTS) or National Offender Management Service (NOMS), would not be appropriate.

1.6 However, in terms of the Parole Board's advisory function, there were competing views as to how this should be delivered. It was agreed that this was a complex policy decision requiring significant additional work, and therefore not something that can be included and concluded within the scope of this Triennial Review. NOMS, in conjunction with the Parole Board is taking this work forward and will advise Ministers on the way forward by June 2015.

## Stage Two

- 1.7 Stage Two of the Triennial Review reviewed the control and governance arrangements against the 11 principles of good corporate governance. The Review Team assessed a wide range of evidence provided by the Parole Board and its Sponsor team.
- 1.8 An independent peer reviewer considered the Review Team's initial assessment and additionally conducted interviews with Parole Board members, staff and MoJ officials. A summary of her conclusions can be found in Chapter 7. The review also sought to identify and recognise good practice evident within the Parole Board.
- 1.9 The review finds that the Parole Board has complied with the majority of the governance and accountability requirements which are placed on them by legislation, regulation, the MoJ and Government guidelines or best practice. Where the Parole Board has not been able to demonstrate compliance against a specific requirement, the review has made recommendations which, once implemented, should result in improved governance and the Board's positioning within the wider criminal justice arena. It is to the Parole Board's credit that they were already addressing how to improve compliance across the range of principles assessed, having commissioned an independent review of their governance arrangements in October 2013.
- 1.10 The review has made 8 recommendations, under three of the five themes, to improve and provide clarity in relation to roles and responsibilities, communication and conduct and propriety.

### ***Roles and Responsibilities***

- 1.11 The following recommendations will enrich sponsorship support, enhance the working relationship between policy development and operational implementation and provide the Parole Board with a wider range of skills and a source of independent business advice.
- **Recommendation One:** The Parole Board invites the Head of ALB Governance Division to have observer status on its Audit and Risk Management Committee.

- **Recommendation Two:** The MoJ to identify a named Policy Lead for the Parole Board. The post holder to have clear roles and responsibilities and be a day to day policy contact.
- **Recommendation Three:** A 'Parole Policy and Strategy Forum' to be established with terms of reference that set out a clear and agreed process for the MoJ to obtain views of both the Parole Board and NOMS.
- **Recommendation Four:** The Parole Board to implement a '*framework of strategic control*' that clarifies the roles, responsibilities, delegated authority and the relationship between its boards and committees (to include a remuneration committee).
- **Recommendation Five:** The appointment of the Chair is brought back in line with the CPA's Code of Practice, hence widening the scope of applicants.
- **Recommendation Six:** The Parole Board appoints NEDs to the Management Board in line with the CPA's Code of Practice.

### **Communication**

- 1.12 The review makes one recommendation to heighten the transparency and openness of the Parole Board, while recognising the nature of its business is at times confidential.
- **Recommendation Seven:** The Parole Board to hold an annual open Board meeting.

### **Conduct and Propriety**

- 1.13 The final recommendation the review makes is to ensure its code of conduct for staff and members is aligned with Government policy.
- **Recommendation Eight:** The Parole Board to review and align its codes of conduct for staff and members with Cabinet Office code.
- 1.14 A formal update on implementation of these recommendations will be provided by the end of March 2015 and on a quarterly basis thereafter.
- 1.15 Following the conclusion of the Review, the Supreme Court has given a judgment in the case of 'Whiston'. The court overturned previous domestic case-law by finding that Article 5(4) of the European Convention on Human Rights (ECHR) is not engaged when an offender serving a determinate sentence is recalled to prison. This means that such prisoners are not entitled under Article 5(4) to have their detention following recall reviewed by a court or court-like body. In other words, determinate sentence recall cases do not have to be referred to the Parole Board to be ECHR compliant. This referral process is, however, currently enshrined in the Criminal Justice Act 2003 – which provides a statutory entitlement for recalled prisoners to have their cases referred to the Board – and to change this would require primary legislation.
- 1.16 In light of the *Whiston* judgment, the Government has brought forward amendments in the Criminal Justice and Courts Bill which would, if enacted by Parliament, provide for the detention of recalled determinate sentence prisoners to be reviewed by 'recall adjudicators' rather than the Board. Under these provisions, the Secretary of State will be able to appoint recall adjudicators to undertake the

functions currently performed by the Board for this category of prisoner – although the Board may also be appointed as a recall adjudicator. This will provide the flexibility for determinate recall cases to be dealt with by persons other than the Board, with a view to alleviating the Board’s caseload; in any event, the judgment and proposed changes to the legislation do not impact on the findings, conclusions and recommendations of this review. The release of indeterminate sentence prisoners that will remain with the Board will continue to engage Article 5 (4) and require an independent court-like review.



## 2 INTRODUCTION: STAGE ONE

### Public Bodies Reform

- 2.1 The Government is committed to reforming the public bodies sector.
- 2.2 In 2010, a Review of Public Bodies was published that proposed the largest restructuring of public bodies for many decades and a reduction in the number of public bodies by nearly a third. Since 2010, there have been over 180 abolitions, more than 160 bodies merged into fewer than 70 and the total number of public bodies in scope of the Reform Programme has been reduced by more than 280.
- 2.3 It is Government policy that a non-departmental public body (NDPB) should only be set up or remain in existence, where the delivery model can be clearly evidenced as the most appropriate and cost-effective way of delivering the function in question.
- 2.4 In April 2011, Cabinet Office announced that all NDPBs still in existence, following the reforms brought about by the Public Bodies Act 2011, would undergo a substantive review at least once every three years, i.e. a Triennial Review. These reviews are intended to increase accountability, cut out any duplication of activity and ensure value for money.

### Aims of the Triennial Review

- 2.5 A Triennial Review is comprised of two stages, each with its own objective:
1. To provide a robust challenge to the continuing need for the body – both its function and its form; and,
  2. Where it is agreed that a particular body should remain as a 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.
- 2.6 This Triennial Review has been carried out in line with Cabinet Office's "Guidance on Reviews of Non Departmental Public Bodies", June 2011. This guidance states that reviews should be:
- **Proportionate:** Reviews must not be overly bureaucratic and should be appropriate for the size and the nature of the NDPB in question;
  - **Timely:** Reviews should be completed quickly – the first stage ideally within three months – to minimise disruption to the NDPB's business and reduce uncertainty about its future;
  - **Challenging:** Reviews should be robust and rigorous. They should evidence the continuing need for individual functions and examine and evaluate as wide a range as possible of delivery options;
  - **Inclusive:** Reviews should be open and inclusive. Individual NDPBs must be engaged in reviews. Key users and stakeholders should have the opportunity

to contribute to reviews. Parliament must be informed about the commencement and conclusion of reviews;

- **Transparent:** All reviews should be announced and all reports of reviews should be published; and
- **Value for Money:** Reviews should be conducted in a way that represents value for money for the taxpayer.

## **Background on the Parole Board**

- 2.7 The Parole Board is an independent body that works with its criminal justice partners to protect the public by risk assessing prisoners to decide whether they may safely be released into the community. It was established in 1968 under the Criminal Justice Act 1967 and became an independent Executive Non-Departmental Public Body (NDPB) on 1 July 1996 under the Criminal Justice and Public Order Act 1994.
- 2.8 Since its establishment in 1968 the Parole Board, and the context within which it operates, has evolved. It began its life as an advisory mechanism allowing the Executive to advise the Crown on the exercise of Royal Prerogative and today has the power to direct the release of certain categories of prisoner. It is now both a decision-making and an advisory body. This change has happened over time and in response to various legislative and policy changes, as well as court rulings.

### ***Funding and Staff***

- 2.9 The costs of the Board are driven by workload, with staff and members costs, representing the majority of the Board's budget and expenditure. The Parole Board's budget for 2013/14 was £12.6 million (as reported in the 2013/14 Annual Report and Accounts).
- 2.10 The number of staff in post on 31 March 2014, as reported in the 2013/14 Annual Report and Accounts was 92 (83 employed and 9 agency).

### ***Membership of the Parole Board***

- 2.11 The Parole Board consists of a number of members (including a Chair and vice-Chair) who conduct parole hearings. In August 2013 there were 232 members. The membership is drawn from a mix of backgrounds, including, Judges, psychiatrists, psychologists, probation officers and lay members.

### ***Osborn, Booth and Reilly***

- 2.12 At the time of the publication of this report, the Parole Board is responding to the Supreme Court Judgment in *Osborn, Booth and Reilly v. the Parole Board* (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. As a result, the Board's policy and practice in respect of oral hearings has had to change and there will now have to be many more oral hearings than in the past.

- 2.13 Consequentially, the Parole Board is identifying ways it can reform case management operations so that its Members and staff can deliver and respond to the workload as efficiently as possible. The Triennial Review has sought to capture and engage with these issues, as appropriate, but is mindful that work is on-going at the time of writing.

### 3 FUNCTION AND FORM: STAGE ONE

#### Scope

- 3.1 Stage One was carried out in accordance with Cabinet Office guidance on reviewing NDPBs, which states that:

*'The first stage of the review should identify and examine the key functions of the NDPB. It should assess how the functions contribute to the core business of the NDPB and the sponsor Department and consider whether the functions are still needed. Where the Department concludes that a particular function is still needed, the review should then examine how this function might best be delivered.'*

#### Process

- 3.2 This review was conducted using project management disciplines by a review team within the Arm's Length Bodies Governance Division at the Ministry of Justice. The Senior Responsible Owner for the review project was Alan Eccles who holds the office of Public Guardian, and is independent of the sponsoring team. The work of the review team was overseen by a Project Board. The terms of reference for the Project Board can be found in Annex A.
- 3.3 A Challenge Group was set up to provide independent challenge to the review's findings and to robustly test their conclusions and recommendations. This group comprised senior officials across Whitehall as well as external stakeholders of the Parole Board. Members of the Project Board and Challenge Group can be found in Annex B.

#### Evidence and Stakeholder Engagement

- 3.4 A public consultation (held between 18 November 2013 and 10 January 2014) informed the conclusions of this Stage One report. It was wide ranging and included:
- a call for evidence;
  - workshops;
  - one to one interviews; and
  - prisoner questionnaire.
- 3.5 The full list of those consulted is included in Annex C. The call for evidence document can be found at <https://consult.justice.gov.uk/digital-communications/parole-board-triennial-review>.
- 3.6 This report also draws on previous reviews of the Parole Board's functions, including the Quinquennial Review in 2001, the Public Consultation into the Future Status of the Parole Board in 2009 and the Public Bodies Review in 2010.

## Functions of the Parole Board

- 3.7 The Framework Document between the Parole Board and the Ministry of Justice sets out the Parole Board's core business as:

*'to work with its criminal justice partners to protect the public by risk assessing prisoners to decide whether they can safely be released into the community or recommend whether Life Sentence and IPP prisoners can progress to open conditions.'*

- 3.8 The Parole Board has jurisdiction to carry out its core business across England and Wales.

- 3.9 This business is divided into three functions:

1. It decides whether to release certain types of prisoners. Specifically:
  - a. all indeterminate sentence prisoners, including life sentence prisoners and prisoners given indeterminate sentences of Imprisonment for Public Protection (IPP) after their minimum term of imprisonment has expired; and
  - b. some determinate sentence prisoners: 1991 Act Discretionary Conditional Release (DCR) prisoners; some Extended Determinate Sentence (EDS) prisoners and; Extended Sentences for Public Protection (EPPs) imposed before the Criminal Justice and Immigration Act 2008 came into force.
2. It considers the lawfulness of the continued detention of prisoners who have been recalled to prison and decides, based on an assessment of risk, whether to re-release these prisoners. Recalls may occur for alleged or actual re-offending or breach of licence during the probation supervision period.
3. It makes recommendations to the Secretary of State for Justice on the suitability for transfer of indeterminate sentence prisoners from closed to open conditions. The decision on transfer rests with the Secretary of State.

### Statute

- 3.10 The release functions (functions one and two above) are statutory functions. The Parole Board's powers in relation to its decisions as to the release of all classes of indeterminate sentenced prisoners are contained in the Crime (Sentences) Act (C(S)A) 1997, as amended; and in relation to determinate sentenced prisoners in the Criminal Justice Act 2003 (as amended by the Criminal Justice & Immigration Act 2008 and the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012)

- 3.11 In addition to these statutory release powers, there is also a general obligation on the Board to provide advice to the Secretary of State on any release and recall matters referred to it. Section 239(2) of the CJA 2003 states that:

*'it is the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is to do with the early release or recall of prisoners'* (CJA 2003, s239(2))

### Policy and Practice

- 3.12 The Parole Board's function in recommending the transfer of indeterminate sentenced prisoners from closed to open conditions (function 3 above), is not a

statutory function. The decision on the categorisation of prisoners rests with the Secretary of State. At the time of writing, it is government policy that in the majority of cases, it will seek the recommendation of the Parole Board on the suitability of this category of prisoner for transfer.

### **Is there a continuing need for these functions?**

3.13 After analysing the available evidence it is clear that there are compelling reasons confirming the continuing need for the functions of the Parole Board.

3.14 Firstly, as a signatory to the European Convention on Human Rights (ECHR), the United Kingdom has an obligation under international law to continue to deliver the release functions (functions one and two above) in accordance with the Convention. Article 5(4) of the ECHR states:

*“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”*

3.15 The Parole Board’s statutory release functions are founded on the basis that, Article 5(4) is engaged and the Board sits in a judicial capacity, and must be able to reach release decisions independently. However, Article 5(4) is not engaged when the Parole Board exercises its third function, making recommendations on the suitability of indeterminate sentenced prisoners for transfer from closed to open conditions.

3.16 As stated in the Executive Summary above (paragraph 1.15) the recent Supreme Court judgment, handed down on 2 July 2014 in the case of *Whiston*, overturned previously established case law by finding that Article 5(4) is not engaged in respect of recalled determinate sentence prisoners. This means that it is no longer necessary for determinate recall cases to be reviewed by the Board in order to remain ECHR compliant, and opens the possibility of changing the legislation so that these cases do not have to be referred to the Board. The Government’s amendments to the Criminal Justice and Courts Bill, if approved by Parliament, will allow for a system of ‘recall adjudicators’ to be established to review the detention of recalled determinate sentence prisoners. The Secretary of State will be able to appoint the Board or any other person to be a recall adjudicator, thereby giving the flexibility for these cases to be diverted away from the Board in the future. This does not, however, affect the Board’s core function in relation to the release of indeterminate sentence prisoners, where Article 5 (4) continues to apply and requires an independent court-like review.

3.17 Secondly, parole is an important part of the government’s rehabilitation policy. Both a discretionary release period and transfer from closed to open conditions are important stages of a prisoner’s rehabilitation journey from incarceration to eventual reintegration into society. They can provide an incentive for prisoners to engage with the prison regime and commit themselves to the process of rehabilitation. The risk of the Parole Board not finding a prisoner ready for release can encourage prisoners to do as much work as possible to convince the Parole Board of their state of readiness. This is particularly the case for the high risk offenders whose cases would be considered by the Parole Board.

**Alternatives to delivering the statutory functions**

- 3.18 There are two identifiable potential alternatives to delivering the Parole Board's statutory functions: release without a full risk assessment or continued detention.
- 3.19 The government has made a commitment to reduce reoffending and to decrease the number of victims and costs to the taxpayer. The estimated cost of reoffending is between £9.5 and £13 billion per year. If prisoners were released without a full risk assessment this could threaten public safety and bring further costs to the taxpayer.
- 3.20 Alongside this, the continued detention of the offender would not be a sustainable option as it would be in contravention to ECHR 5(4). There would be an increase in the prison population and the associated financial costs. Unnecessary detention would impede the imperative to rehabilitate, resettle and reintegrate prisoners back into society, where appropriate reduction in risk had been achieved.

**Responses to the Triennial Review public consultation**

- 3.21 Responses to the public consultation were overwhelmingly supportive of the continuing need for the functions of the Parole Board. There was no evidence to suggest that there was no longer a need for any of the functions:

*'In accordance with ECHR Article 5(4), it is necessary that an independent court-like body should continue to review the detention of recalled prisoners and that such a body must have the power to direct re-release.'* (**National Offender Management Service**)

*'The work of the Parole Board is required by primary legislation (CJA 2003) and by operation of Article 5(4) ECHR. This work will continue to be a legal requirement for as long as there is a power to impose indeterminate sentences and for as long as determinate sentenced prisoners are subject to a statutory recall scheme. As there are no plans to abolish life sentences or early release schemes for prisoners the work of the Parole Board remains a legal necessity.'* (**Association of Prison Lawyers**)

*'It is essential to keep the parole board as it is vital that prisoners are assessed before any decision is made on release of violent offenders.'* (**SAMM National**)

*'Economically, the function is a justifiable use of taxpayers' money, particularly in light of the cost of detention. It is impossible to assess the ongoing cost of not releasing people who are safe to be released but this would be substantial.'* (**Prison Reform Trust**)

*'Clearly, there is a need for there to be a quasi-judicial body, independent from Government, which can make decisions in relation to the release of prisoners who are serving indeterminate sentences.'* (**The Law Society**)

*'There is a continued need for the functions of the parole board, which is vital in deciding risk assessments of prisoners to decide whether they can safely be released into the community.'* (**Action for Prisoners' Families**)

*'I do not think there is a realistic alternative to the Parole Board'* (**Serving Prisoner**)

*'This is vital work. The Parole Board is a vital part of the Justice system'* (**Serving Prisoner**)

**3.22 The review concludes that the functions of the Parole Board are still required by the Government.**

### How to deliver those functions

3.23 In line with Cabinet Office guidance, Stage One has examined the appropriateness of a range of models for delivering the Parole Board's functions. These include:

- Abolish;
- Bring in-house to the Ministry of Justice;
- Deliver through a new Executive Agency;
- Deliver outside of Central Government;
- Merge the functions with those of another body; or,
- Continue as a NDPB.

### *The Advisory function*

3.24 At the time of publication, it is the policy of the Secretary of State to seek advice from the Parole Board on the suitability of indeterminate prisoners for transfer from closed to open conditions. In the case of other categories of prisoner (e.g. determinates) this function is delivered through the National Offender Management Service (NOMS). During the review it became clear that there were competing views as to how the advisory function should continue to be delivered. It was agreed that this was a complex policy decision, requiring significant additional work, and therefore not an issue on which a final conclusion could be reached within the timeframe of this Triennial Review. NOMS, in conjunction with the Parole Board, is therefore taking this work forward and will make a recommendation on the issue to Ministers by June 2015.

3.25 Consequently, the remainder of this report focuses on the potential mechanisms for delivery of the statutory functions only.

### *The Statutory Functions*

3.26 A key issue that runs throughout the analysis below is the need for the statutory release functions to be performed independently of the executive. As previously stated, when the Parole Board is executing its statutory release functions (including decisions on recalls), Article 5 (4) is engaged and the Board sits in a judicial capacity (but bear in mind the Supreme Court's judgement in 'Whiston' has recently found that Article 5(4) is not engaged in determinate recall cases). In this capacity, the Board must be able to reach its decisions independently of government.

3.27 In Brooke (2008), the Court of Appeal stated:

*'It is common ground that it is the function of the Parole Board to act as the 'court', whose speedy determination of the lawfulness of a prisoner's detention is required by Article 5(4)... A court must be and be seen to be both independent and impartial and the question is whether the Parole Board demonstrates these qualities. It has*



*been common ground that the Board is required to do so not merely by reason of Article 5(4) but under common law principles.’ (Brooke, 20)*

- 3.28 The majority of respondents to the public consultation highlighted the need for independent decision-making as a key issue for the delivery of the Parole Board’s functions:

*‘Its independence is essential and is required by the jurisprudence of the European Court of Human Rights.’ (Academic)*

*‘The independence of the Parole Board is vital and needs to be enhanced and protected. The Court of Appeal has emphasised the importance of independence in Brooke and others ([2008] EWCA Civ 29). In that case the Court ruled that the relationship between the Board and the Government had become too close to guarantee that its decisions would be seen as independent. It is critical that this does not happen again.’ (Howard League for Penal Reform)*

*‘The need for it to be independent of the Executive is obvious’ (The Law Society)*

- 3.29 The analysis of the range of models has been undertaken recognising the clear need for independent decision making.

### **Abolish**

- 3.30 As this review concludes there is a continuing need for the functions of the Parole Board, any decision to abolish the Parole Board must necessarily be in the context of replacing it with an alternative delivery model.

### **Bring in-house to the Ministry of Justice**

- 3.31 When the Parole Board was created in 1967 its functions were delivered in-house (at that time it fell within the structure of the Home Office). Its functions were purely advisory, as it gave recommendations to the Secretary of State on how to exercise the Royal Prerogative. Today, as set out above, the Parole Board is the final arbiter when executing its statutory release functions, and must therefore be able to take those decisions free from Ministerial control. Its restructuring as an Executive NDPB in 1994 was, in part, intended to facilitate this.

- 3.32 If the Parole Board’s statutory functions were brought in-house to the Ministry of Justice there would be a significant risk of parole decisions not being taken, or at least not perceived as being taken, with sufficient independence from the executive. In Brooke the Court of Appeal explained why the Parole Board’s statutory release functions must be delivered free from executive interference or influence:

*‘In 1967 it was considered that in such circumstances both the determination of the minimum term and the decision whether to release were matters for the executive. It is now recognised that they are matters for the exercise of judicial discretion, in the first place by the sentencer and in the second case by the Parole Board. In exercising this judicial function the Parole Board must both be and be seen to be free of executive interference or influence.’ (Brooke, 90–91)*

*'The Board is a court-like body; it is a requirement of common law and Article 5 ECHR that the range of decisions it makes are conducted by a court. The Ministry of Justice could not lawfully conduct the Board's work.'* (**Association of Prison Lawyers**)

*'The ECHR, Article 5 (4) makes it necessary that the functions of the Parole Board are undertaken by a court like body independent of the Executive. This means it would not be compliant with the ECHR if carried out in house by the MoJ.'* (**The Parole Board**)

- 3.33 If the decisions made in the execution of these statutory functions were perceived as being influenced by political priorities there would be a risk to the credibility of the parole process:

*'In particular, we would draw attention to the risk of individual parole decisions being influenced, or more realistically seen to be influenced, by political considerations. The cases dealt with by the Parole Board are often high-profile, and decisions themselves are not uncommonly exposed to negative media coverage; the prospect of justice being undermined in any way by ministers assuming more control is therefore not a remote risk, even if it were more in the perception than the reality.'* (**Clinks**)

*'Independence is the key to the continued success of the Parole Board. It should remain independent of both ministerial input and the MOJ to remove any concerns about decisions being made on anything but the evidence presented.'* (**Anonymous, HMPS**)

*'It is important for the parole board to remain independent of political influence; it must be able to carry out its statutory purpose free of particular political considerations.'* (**Action for Prisoners' Families**)

**3.34 The review concludes that it is not appropriate to bring the functions of the Parole Board into the Ministry of Justice.**

***Deliver through a new Executive Agency***

- 3.35 An executive agency is a distinct business unit of a government department that carries out an executive function, within a policy framework set by Ministers.
- 3.36 As delivering the statutory release functions through a new executive agency would bring release decisions closer to Ministerial control, there would be a consequential loss of the independence from Government that was identified as essential in the Brooke case (see 3.33).
- 3.37 Evidence submitted through the public consultation identified that, as of April 2014, the Criminal Injuries Compensation Authority (CICA) will be an example of an Executive Agency that exercises independent decision-making. However, unlike the decisions made by the Parole Board in respect of its statutory release functions, CICA decision-making is not judicial in nature and therefore does not require the same degree of independence from government.

**3.38 The review concludes that the functions of the Parole Board are not appropriate to be delivered by an Executive Agency.**

**Deliver outside of central government**

- 3.39 This review has examined a number of delivery options outside central government: delivering through the Private Sector; the voluntary sector; or local government.
- 3.40 The impact of budgetary control on the independence of decision making is likely to be a concern if the statutory release functions are delivered either through the private sector or the voluntary sector and this may result in legal challenges to decisions. As set out above, the Parole Board must make decisions that are independent and impartial when executing its statutory release functions. The Court of Appeal's judgment in the case of *Brooke v Parole Board* (2008) identified a link between the funding arrangements of the Parole Board and its capacity to make independent decisions (Brooke, 37):

*'The question is: is this exercise of power of budgetary control consistent with the objective appearance of the independence of the Board from the Executive and from a part? The answer can only be that it is not.'* (Brooke, 66)

*'As the Board is a court, there are no local government, voluntary groups or private companies that can lawfully complete its work.'* (Association of Prison Lawyers)

*'Moving the Parole Board out of central Government could present significant risks at this time, and could potentially expose the process to challenge. At this stage, given the significant changes to rehabilitation, we concluded that the parole board should currently remain with the Ministry of Justice, subject to a full independent review.'* (Wales Probation Trust)

- 3.41 For a private sector provider, in keeping with its principal responsibility to its shareholders, there would inevitably be pressure to increase the profitability of delivering these functions.

*'The risks of moving the functions to a private or alternative delivery model are that: a profit motive may be introduced; it could become more expensive and that public safety could be put at risk by moving it out of the public sector where others do not have the necessary specialist expertise and where there would be less accountability to Parliament and the Public.'* (The Parole Board)

- 3.42 Commentators also highlighted the risk that private sector providers may not be willing to deliver these functions as there would be no obvious financial incentive. These functions would also come with a high risk, in terms of impact on public safety and managing public opinion.
- 3.43 It would be unlikely that the voluntary sector could generate the necessary funding and may require support from central government, which would take away the cost incentive for delivering outside of central government. A lack of funding might prohibit these functions from being delivered with the necessary level of expertise.
- 3.44 If these functions were to be delivered regionally, either through local government or voluntary/private organisations, there would be a risk of inconsistencies across the parole system. Local Review Committees, which worked on parole decisions during the early years of the Parole Board, were abolished in part due to inconsistencies between decision-making. A number of commentators agreed that

to ensure a consistent delivery of parole decisions the functions should be delivered at a national level:

*‘Similarly, we would oppose any suggestion of delivery by local government because of the need for consistency of decision-making at the national level. The arrival of Police and Crime Commissioners has prompted discussion within and outside Parliament about which crime and justice functions could be devolved in future; this has in some contexts included sentencing guidelines. Clinks would be opposed to any such move, and would extend this opposition to related functions including that of the Parole Board. As well as leading to duplication of administrative costs, localisation in this context would pose a serious threat to key principles of equality, transparency and legal certainty.’ (Clinks)*

*‘In my view, the work needs to remain within Central Government. Moving the work to Local Government would create differences in the way the work is completed across the country. There needs to be parity to the process, particularly in that prisoners rarely remain within the home area and are moved around the prison estate.’ (Parole Board Member)*

- 3.45 The credibility of the parole process could be threatened if the public perceived decisions as being motivated by commercial or other priorities. The significant volume of written evidence expressing concerns about this delivery model is evidence of the potential for negative perceptions from the public. All respondents advocated against this delivery model:

*‘In order to protect its impartiality the Parole Board must not move out of Central Government. Its functions require that it is delivered nationally. Moreover, its decisions must be based on public safety and not with any consideration of the cost of a decision whether to release or retain an individual in custody.’ (Women in Prison)*

**3.46 The review concludes that the functions of the Parole Board cannot be appropriately delivered outside central government.**

***Merge functions with those of another body***

- 3.47 Merging the functions of an NDPB with those of another body would aim to remove possible duplication, improve efficiency and reduce costs.
- 3.48 The public consultation identified two existing Executive Agencies that carry out similar functions to those of the Parole Board: Her Majesty’s Courts and Tribunals Service (HMCTS) and the National Offender Management Service (NOMS).

***i. Her Majesty’s Courts and Tribunals Service (HMCTS)***

- 3.49 The Parole Board’s statutory release functions are judicial decisions. A direct comparison can therefore be made to HMCTS. Some respondents advocated delivering these functions through a formal court or tribunal based within HMCTS. A public consultation in 2009 examined the implications of such a merger in detail. After a thorough examination of the costs and benefits the then Secretary of State for Justice opted to continue to deliver these functions through the NDPB model as there was no clear consensus of support for an alternative model.

- 3.50 As recently as August 2013, in response to a report from the Victims' Commissioner, the government reiterated this position:

*'The public consultation about the future status of the Parole Board did not provide a clear consensus of support for any of the options including transfer to HMCTS. Kenneth Clarke QC MP, when Secretary of State, confirmed that the Board would remain an independent arm's length body of the Ministry of Justice for the immediate future. This provides for a period of stability while the Board faces a number of challenges. I consider that parole hearings are conducted with the appropriate level of formality.'* (**Jeremy Wright, Minister for Prisons and Rehabilitation**)

- 3.51 The Parole Board has expressed a desire to remain an NDPB and advocates, as it did in 2009, that delivering its functions through a formal court or tribunal within HMCTS would not be the most appropriate option.

*'The function of the Parole Board is unique and not duplicated elsewhere. There are similarities with other tribunals, for example the Mental Health Review Tribunal (MHRT), and this has led to suggestions that the Parole Board be absorbed into the Courts and Tribunal Service. This was thoroughly investigated and widely consulted upon two years ago and the results of the consultation were inconclusive... The consultation identified that there would be some, limited benefits of utilising existing tribunal systems to manage parole hearings but that there were also benefits of having the inquisitorial, risk based parole decisions outside of the largely adversarial/ fact finding Courts and Tribunal system. The work undertaken for the consultation demonstrated that it was unlikely that significant savings could be made by such a move.'* (**The Parole Board**)

- 3.52 Some commentators identified other jurisdictions where the courts system delivers the functions currently delivered by the Parole Board. An example of this is France, where all early release decisions are taken either by a single *Juge de l'Application des Peines* who is a judge of the *Tribunal de Grande Instance*, or by a three-member *Tribunal de l'Application des Peines*. Under this system the court plays a broader role in the progression of a prisoner, with the supervision of conditions of release being the responsibility of the *Juge de l'Application des Peines*. Some commentators advocated the benefits a similar system would bring to the UK:

*'The Board could have a more direct and active role in the progression of prisoners serving indeterminate sentences, which would provide for more objective decision making and alleviate the burden currently placed on prison administrators.'* (**Association of Prison Lawyers**)

- 3.53 Equally, commentators suggested that a merger with HMCTS could produce efficiency savings. A merger would provide the opportunity to share the administrative systems used by HMCTS. The Parole Board could also be run through the existing senior management structure through which the various jurisdictions of courts and tribunals are administered. However, the 2009 consultation concluded it was unlikely savings could be made in case management or other operational roles as these would likely continue in their current format. Savings in administrative or corporate functions were also assessed as negligible. The Triennial Review public consultation received no evidence to undermine this conclusion.

- 3.54 In the short term, any potential savings would be diminished by the costs of merging. Research undertaken in 2009 identified differences in staff terms and conditions and the need to operate on separate IT systems (the Parole Board operates on the same system as NOMS to facilitate effective working, rather than the system used by the Ministry of Justice and HMCTS) as costly obstacles. The savings that would come from managing the Parole Board through the existing HMCTS management structure would need to be balanced against the exit costs if other roles were not found into which surplus staff could be transferred.
- 3.55 In terms of operations, improvements have been made to the parole process as a result of the closer working relationship and improved integration of IT systems between the Parole Board and NOMS. As there continues to be a need for greater collaboration, a merger with HMCTS could jeopardise the delivery of streamlined and efficient business activities.

*Given the level of interdependency that these systems inevitably create, there is a real risk that, in the absence of effective collaboration, our processes will quickly become dysfunctional. Such a consequence would only serve to undermine the effectiveness of both NOMS and the Board in delivering timely reviews. (National Offender Management Service)*

- 3.56 Furthermore, a merger, which would require primary legislation, would have significant cost and time implications for both HMCTS and the Parole Board. This combined with the rapidly changing demands on the parole process, means that a merger would present a significant risk when resources are needed elsewhere.
- 3.57 In view of the above and the inevitable changes to the Parole Board's work following OBR, and with reforms being considered for HMCTS, a merger would be inappropriate at this time.

#### **ii. National Offender Management Service (NOMS)**

- 3.58 The National Offender Management Service (NOMS) has recognised the need for the statutory functions of the Parole Board to be delivered in a way that preserves independent decision making.

*'In accordance with ECHR Article 5(4), it is necessary that an independent court-like body should continue to review the detention of recalled prisoners and that such a body must have the power to direct re-release.'* (National Offender Management Service)

*'NOMS can see that there are advantages in having a specialist "court like" body for parole such as the Parole Board – as opposed to subsuming the work into a wider organisation, such as the Court Service, is that its members develop a degree of specialism in the assessment and management of potentially high risk offenders. If any alternative model was unable to replicate this important feature of the current Board, it must undermine public protection.'* (National Offender Management Service)

- 3.59 Additionally the arguments put forward under paragraphs 3.35 to 3.37 regarding delivering the functions through a new Executive Agency stand and are as equally relevant when considering merging them with an existing agency.

**3.60 The review concludes that the statutory functions of the Parole Board cannot be appropriately merged with another body.**

***Continue to deliver through the NDPB model***

3.61 The Parole Board became an Executive NDPB in July 1996. A number of reviews of the last 15 years have confirmed the appropriateness of that status: the Quinquennial Review in 2001; the Public Consultation into the Future Status of the Parole Board in 2009 and; the Public Bodies Review in 2010.

3.62 The Cabinet Office's *Guide for Departments on Public Bodies* describes an Executive NDPB as

*'A body which has a role in the processes of national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arms length from ministers... Their distance from government means that the day-to-day decisions they make are independent as they are removed from ministers and civil servants. Ministers are however ultimately responsible to Parliament for an Executive NDPB's independence, its effectiveness and efficiency.'*

3.63 As set out above, the Parole Board must make decisions that are independent and impartial when executing its statutory release functions.

3.64 In its judgment in the case of *Weeks v United Kingdom* (1987), the European Court of Human Rights (ECHR) addressed the requirements of Article 5(4):

*The 'court' referred to in Article 5(4) does not necessarily have to be a court of law of the classic kind integrated within the standard judicial machinery of the country. The term 'court' serves to denote 'bodies which exhibit not only common fundamental features, of which the most important is independence of the executive and of the parties to the case... but also the guarantees'-' appropriate to the kind of deprivation of liberty in question' - 'of [a] judicial procedure', the forms of which may vary from one domain to another. In addition, as the text of the Article 5(4) makes clear, the body in question must not have merely advisory functions but must have the competence to 'decide' the 'lawfulness' of the detention and to order release if the detention is unlawful.'*

3.65 To date there has been no ruling that the NDPB model is not able to facilitate the independent decision making required under ECHR 5(4). In *Brooke*, the Court of Appeal did not make any finding that the Parole Board being subject to departmental sponsorship as an Executive NDPB was incompatible with its members' ability to reach their decisions independently. The Court of Appeal stated:

*'We do not consider that the fact that the Board, as an ENDPB, is subject to sponsorship, is incompatible with its actual or perceived independence.'*

3.66 A large number of commentators highlighted that the NDPB model also afforded other important freedoms to the delivery of these functions. As a NDPB, the Parole Board's budget is allocated from the budget of its sponsor, the Ministry of Justice. The Board, through its Chief Executive is accountable to the MoJ Permanent Secretary for this budget and therefore publishes its own annual report and accounts. This freedom provides assurance that budgetary control is not being used to influence parole decisions.

- 3.67 Some respondents argued that the flexibilities of the NDPB model helped the Parole Board to maintain constructive links with key public sector bodies, such as NOMS, upon which it is dependent in order to conduct effective reviews. This flexibility could also be useful for engaging organisations outside of government:

*'One area in which NDPBs can benefit enormously from their arms-length status is their ability to engage with a variety of stakeholders. In the case of the Parole Board, this would be particularly relevant in terms of producing guidance in the first instance, and monitoring practice afterwards, for example in relation to consistency of decisions, quality of communication, and equalities issues.'*

**(Clinks)**

*'The NDPB model affords the Parole Board a degree of freedom and flexibility, which are important to its role as an independent decision maker whilst remaining accountable for the way it uses tax payers' money and able to maintain constructive links with key public sector bodies such as NOMS, upon which it depends in order to conduct effective reviews. For example; it is able to defend its own decisions, issue guidance and manage cases in the way it sees fit.'*

**(The Parole Board)**

- 3.68 A high proportion of respondents advocated the continued delivery of the Parole Board's functions through the NDPB model:

*'...its existence as an independent Executive Non-Departmental Public Body, as established under the Criminal Justice and Public Order Act 1994, seems entirely appropriate. We can think of no other structure that would be better suited.'*

**(The Law Society)**

*'Since the PB need to deliver a balanced risk assessment, I think it is a special task and should broadly remain as it is. I consider that its powers are appropriate to its aims and objectives.'*

**(Anonymous, HMPS)**

*'[Victim Support is] content with the current constitutional arrangements of the Parole Board as a Non-Departmental Public Body.'*

**(Victim Support)**

*'The Parole Board should continue to be delivered as a Non-Departmental Public Body. It essential that decisions about people's freedom are made with absolute political impartiality (like with sentencing decisions).'*

**(Women in Prison)**

- 3.69 There were concerns expressed by some respondents that as an NDPB the Parole Board would not be subject to the Victims Code of Practice. However, the Victims Code of Practice is clear that the Parole Board (together with HMCTS and the Supreme Court among others) is under a requirement to provide services to victims and is one of the identified "service providers" bound by the Code. .

### **The Three Tests**

- 3.70 Cabinet Office mandates that for a function to be delivered through the NDPB model it must pass at least one of the following three tests:

1. Is this a technical function (which needs external expertise to deliver)?
2. Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?



3. Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?
- 3.71 The functions are all technical in nature: Parole Board members are experts in assessing the risk of violent offenders. The membership of the Board includes Judges, consultant psychiatrists, forensic psychologists, probation officers and lay members. This mix of external expertise, knowledge and skills ensures a fair but rigorous analysis and assessment of risk.
- 3.72 The release and recall functions need to be delivered with absolute political impartiality: they are judicial tasks that need to be delivered independently of Ministers and as such must be, and be seen to be, delivered without political interference.

*'The work of the Parole Board is technical – the courts have consistently referred to it as an expert body specialising in the task of risk assessment and risk management. It is a judicial task that has to be devoid of political content and free from political interference.'* (Association of Prison Lawyers)

*'The Parole Board's function fits well with this model. It is technical (risk assessment) and does require external expertise and independence. It is also a function that should be delivered with political impartiality and at arm's length from ministerial decision making. We consider on balance that a non-departmental public body, as long as it has appropriate distance from the executive safeguarded and sufficient resources, is an efficient model to deliver these functions.'* (Prison Reform Trust)

**3.73 The review concludes that the Parole Board passes the Cabinet Office tests to remain as an Executive NDPB.**

### Conclusions of Stage One

- 3.74 Based on the analysis set out above the review concludes that there is a continuing need for the statutory functions of the Parole Board.
- 3.75 It is also concluded that these functions should continue to be delivered through the Parole Board constituted as an executive NDPB. As a NDPB the Parole Board has an appropriate level of independence from the executive and sufficient flexibilities for its functions to be delivered effectively.
- 3.76 The review does recognise the different views expressed around the Parole Board's advisory function. The Stage One review noted that, having decided that this function is required, the question as to whether or not it should continue to be delivered through the Parole Board or transferred to NOMS was too complex to resolve in the context of this Triennial Review. NOMS, in conjunction with the Parole Board, is therefore taking this work forward and will advise Ministers by June 2015.
- 3.77 As the Parole Board is to remain as a NDPB this review recommends that Stage Two should commence.

## 4 INTRODUCTION – STAGE TWO

- 4.1 This section covers Stage Two of the Parole Board for England and Wales Triennial Review. It follows Stage One which recommended that the Parole Board should continue to carry out its statutory functions in its present form.

### Cabinet Office guidance

- 4.2 The Cabinet Office has identified the principal aim for Stage Two to be:  
*‘to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance’.*
- 4.3 Compliance is assessed against a number of principles, the requirements of which are set out in the Cabinet Office’s *‘Principles of good corporate governance for Executive NDPBs<sup>1</sup>* and summarised in the table below.

### *The Principles of Good Corporate Governance*

Principle <sup>2</sup>	Descriptor	
<b>Accountability</b>	Statutory Accountability	The public body complies with all applicable statutes and regulations and other relevant statements of best practice.
	Accountability for Public Money	The Accounting Officer of the public body is personally responsible and accountable to Parliament for the use of public money by the body and for the stewardship of assets.
	Ministerial Accountability	The Minister is ultimately accountable to Parliament and the public for the overall performance of the public body.
<b>Roles and Responsibilities</b>	Role of the Sponsoring Department	The departmental board ensures that there are robust governance arrangements with the board of each arm’s length body. These arrangements set out the terms of their relationships, and explain how they will be put in place to promote high performance and safeguard propriety and regularity. There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the public body.

<sup>1</sup> ([http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011\\_tcm6-38900.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011_tcm6-38900.pdf))

<sup>2</sup> Supporting provisions are in the Cabinet Office guidance.

Principle <sup>2</sup>	Descriptor	
	Role of the Board	<p>The public body is led by an effective board which has collective responsibility for the overall performance and success of the body. The board provides strategic leadership, direction, support and guidance.</p> <p>The board – and its committees – have an appropriate balance of skills, experience, independence and knowledge.</p> <p>There is a clear division of roles and responsibilities between non-executive and executives. No one individual has unchallenged decision-making powers.</p>
	Role of the Chair	The Chair is responsible for leadership of the board and for ensuring its overall effectiveness.
	Role of the CEO	The CEO is responsible for leadership of the NDPB and for ensuring its overall effectiveness.
	Role of Board Members	As part of their role, non-executive board members provide independent and constructive challenge.
<b>Effective Financial Management</b>	The public body has taken appropriate steps to ensure that effective systems of financial management and internal control are in place.	
<b>Communication and Engagement</b>	The public body is open, transparent, accountable and responsive.	
<b>Conduct and Behaviour</b>	The board and staff of the public body work to the highest personal and professional standards. They promote the values of the public body and of good governance through their conduct and behaviour.	

### The Ministry of Justice approach

- 4.4 Where there was non-compliance, the Parole Board was asked to explain why an alternative approach has been adopted and how this approach contributed to good corporate governance – this is known as the “comply or explain” approach, the standard approach to corporate governance in the UK. Reasons for non-compliance might include the need for structures and systems to remain proportionate, commercial considerations or concerns about cost and value for money.

### Questionnaire

- 4.5 The MoJ devised a questionnaire for Stage Two to be used for all Triennial Reviews within the Department’s programme. The Parole Board and the MoJ completed the questionnaire and submitted evidence to support the initial assessments.

### **Peer reviewer**

- 4.6 A peer reviewer was appointed for Stage Two to look at the evidence gathered about governance and accountability, and challenge it as necessary. This was a person independent of the subject area who has experience and expertise in running an organisation with knowledge of the principles of good governance, among other things. Michelle Crotty, Head of Office of the Sentencing Council, acted as the peer reviewer for the Triennial Review of the Parole Board. Following her review of the completed questionnaire, she conducted on-site interviews with members of the Parole Board's Management Board, and met with MoJ Officials.

### **Challenge Group**

- 4.7 The same Challenge Group from Stage One met during Stage Two to provide external assurance and robust challenge to the process. The composition of the Challenge Group had one change to that used for Stage One (**Annex C**).

### **Efficiency**

- 4.8 In recognition of the work the Parole Board has done to deliver efficiency savings, and the focus of this in the recently published Cabinet Office Triennial Review guidance for the 2014–2017 Programme<sup>3</sup>, the review sets out the work the Parole Board has undertaken to deliver efficiency savings. This contextualizes the journey the Parole Board has been on, and will continue on, in light of the decision by the UK Supreme Court in *Osborn, Booth and Reilly (OBR)*. This has presented an opportunity for the Parole Board to design and implement an efficient case management model<sup>4</sup> which will enable them to deliver further efficiency savings.
- 4.9 The OBR judgment will result in far more oral hearings being granted, as a result a review of the case management of all cases is underway. The existing processes will not be able to accommodate the increase in work and therefore a new model is required. The project '*Fair for the Future – Delivering on Osborn*' will design and implement an efficient case management model which will enable the Board to accommodate the increase in oral hearings within agreed resources. It will also provide the Board with versatility to adapt to changing demands in the future.
- 4.10 Over recent years the Parole Board has delivered a variety of efficiencies following two critical reports. In 2008, the NAO published a report titled '*Protecting the Public: The Work of the Parole Board*' and in 2009 the Public Accounts Committee published a report with the same title. The reports identified the Parole Board's need for greater efficiencies in addition to its role within the wider Criminal Justice System.
- 4.11 The NAO report noted that each type of case heard by the Parole Board 'involves different processes undertaken by various parts of the criminal justice system to ensure that the Board has the information it needs to make an informed and timely

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<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332147/Triennial\\_Reviews\\_Guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332147/Triennial_Reviews_Guidance.pdf)

<sup>4</sup> <http://www.justice.gov.uk/offenders/parole-board/osborn,-booth-and-reilly-supreme-court-judgment>

decision'. The PAC report commented '*money was being wasted because hearings could not be held on time and offenders are held in prison at a time when they should have been released*'. The PAC echoed the fact that there were multiple agencies involved in the Parole process.

- 4.12 In response to this, work on the '*Generic Parole Process (GPP)*' was established in April 2009. The work was overseen by a Board (GPP Board) consisting of a multi-agency staff with representation from MoJ, NOMS, and the Parole. The GPP Board had the responsibility to monitor the progress and delivery of an 'end to end review' of the parole process.
- 4.13 This resulted in the launch of a piece of work by the Parole Board and NOMS (Public Protection Casework Section (PPCS)), to streamline the parole process, with the aim to improve current practices, avoid duplication and remove needless steps or processes that prevent the most effective and efficient delivery of parole reviews. This produced 42 proposals, details of which can be found on the Parole Board's website<sup>5</sup>. These will now be taken forward and merged with the '*Fair for the Future*' project.
- 4.14 Alongside this the Parole Board has delivered efficiencies in relation to its corporate centre and operations. In terms of its corporate centre, the Parole Board has been preparing for transition to MoJ shared services in 2015, and has already transferred its transaction processing, for payment of invoices fees and expenses, during the 2013/14 financial year. Alongside this, the Parole Board has created a single Head of Corporate Services Manager position to replace: the Deputy Chief Executive, Head of Finance, Head of Human Resources and Head of Communications and the Parole Board has further reduced its Human Resources Section to a team of two interim specialists, again in preparation for transition to MoJ shared services.
- 4.15 Furthermore, the Parole Board's Financial Operating Model has been reviewed to explore the possible benefits from a closer working relationship between the Parole Board and MoJ Finance. This would support the delivery of efficiency savings by drawing on central professional expertise in developing management information and financial reporting. One issue, however, is the Parole Board's current IT System presents challenges due to its instability and impact on the timely production of management and financial reporting. However, MoJ and the Parole Board are seeking a solution to this problem with the aim to migrate the Parole Board's IT system onto the MoJ's Pegasus system by April 2015.
- 4.16 Finally, plans to rationalize the Parole Board's estate with the Parole Board's HQ moving from its current location in Grenadier House to MoJ's HQ in Petty France took place in October 2014. The review considers that it is through this streamlining of different processes, that there is a potential for efficiency gains and greater opportunity to utilize the advantage of economies of scale.

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<sup>5</sup> <http://www.justice.gov.uk/offenders/parole-board/end-to-end-review>

## 5 COMPLIANCE: STAGE TWO

### Summary

- 5.1 The Parole Board complies with the majority of the requirements which are placed on them by statute, regulation, the MoJ and government guidance or best practice. This conclusion echoes the findings of the governance review the Management Board commissioned in October 2013 prior to the Triennial Review.
- 5.2 A summary assessment against each principle and for overall compliance is set out below. The overall assessment of green reflects the fact that the Parole Board complies in full with 8 out of 11 principle requirements. Once the Parole Board has implemented the review recommendations, and they have had the time to be tested, we consider this will result in compliance with all requirements.

Theme	Principle	Principle Rating	Theme Rating	Overall assessment
Accountability	- Statutory	G	G	G
	- Public money	G		
	- Ministerial	G		
Roles and responsibilities	- Sponsor Department	G	G	
	- Board	A/G		
	- Chair	G		
	- Chief Executive Officer	G		
	- Non-executives	A/G		
Effective financial management			G	
Communication			G	
Conduct and Behaviour			A/G	

### Accountability

- 5.3 The accountability theme looks at the Parole Board's compliance with statutes, regulations and other relevant good practice. Based on the evidence provided, the review assesses the Parole Board fully compliant with this theme and makes no recommendations.

**Principle 1: Statutory and administrative accountability**

Detail of Requirement	Assessment
The ALB:	
1. complies with all statutory and administrative requirements on the use of public funds (inc Treasury Managing Public Money, and Cabinet Office/Treasury spending controls);	Complies
2. operates within the limits of its statutory authority and in accordance with delegated authorities agreed with MoJ;	Complies
3. operates in line with statutory requirements for the Freedom of Information Act;	Complies
4. has a comprehensive publication scheme;	Complies
5. proactively releases information that is of legitimate public interest;	Complies
6. complies with data protection legislation;	Complies
7. complies with Public Records Acts 1958 and 1967.	Complies

- 5.4 The Parole Board provided comprehensive evidence of policies and processes to address their obligations under data protection legislation, and information management and destruction policies. Public access to information is explained in the 'Freedom of Information Publication Scheme'<sup>6</sup>. Snapshots of older versions of the Parole Board's website are archived and available through the National Archives.<sup>7</sup>

**Good practice:** In terms of releasing information that is of legitimate public interest, the Parole Board published 'the Parole Journey' which is available as part of the 2012/13 Annual Report and published separately on the Parole Board's website.<sup>8</sup> The publication responds to stakeholders' concerns of confusion over 'who does what, when and why' within the Parole Process and clearly sets out and explains each stage and what activities take place.

**Principle 2: Accountability for Public Money**

Detail of Requirement	Assessment
1. there is a formally designated Accounting Officer (AO) who in particular has a responsibility to provide evidence-based assurances required by the Principal Accounting Officer (PAO);	Complies
2. the role, responsibilities and accountability of the AO should be clearly defined and understood and the AO should have received appropriate training;	Complies
3. the NDPB should be compliant with requirements set out in Managing Public Money, relevant Dear Accounting Officer letters and other directions;	Complies

<sup>6</sup> <http://www.justice.gov.uk/downloads/statistics/FOI/parole-board-foi-publication-scheme.pdf>

<sup>7</sup> [http://webarchive.nationalarchives.gov.uk/\\*/http://www.paroleboard.gov.uk/](http://webarchive.nationalarchives.gov.uk/*/http://www.paroleboard.gov.uk/)

<sup>8</sup> <http://www.justice.gov.uk/downloads/offenders/parole-board/parole-journey.pdf>

Detail of Requirement	Assessment
4. Accounting Officer to give evidence-based assurances required by the Principal Accounting Officer	Complies
5. the NDPB should establish appropriate arrangements to ensure that public funds: <ul style="list-style-type: none"> <li>• are properly safeguarded;</li> <li>• are used economically, efficiently and effectively;</li> <li>• are used in accordance with the statutory or other authorities that govern their use;</li> <li>• deliver value for money for the Exchequer as a whole;</li> </ul>	Complies
6. the annual accounts are laid before Parliament after certification by the Comptroller and Auditor General.	Complies

5.5 Claire Bassett, Chief Executive Officer of the Parole Board was appointed in February 2012 and is the Accounting Officer (AO). The roles and responsibilities of the AO were set out in her appointment letter and are included within the Framework Document between the MoJ and the Parole Board.<sup>9</sup> These include responsibility to comply with the requirements set out in HM Treasury’s Managing Public Money<sup>10</sup> and the relevant Dear Accounting Officer Letters.

5.6 The Parole Board’s 2013/14 Annual Report was certified by the Comptroller and Auditor General and was published on 8 July 2014.<sup>11</sup> The report provides evidenced based assurances to the MoJ’s Principal Accounting Officer (PAO) as to the Parole Board’s use of public money and governance arrangements.

**Principle 3: Ministerial Accountability**

5.7 The review has investigated the explanation for non-compliance of requirement 4 below and noted that Schedule 19 of the CJA 2003 allows the Parole Board to appoint such number of employees as it determines, including the Chief Executive Officer (CEO) without the need to consult with Ministers. While this is not compliant with this principle the Parole Board complies with legislation and the review makes no recommendation.

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<sup>9</sup> <http://www.justice.gov.uk/downloads/publications/corporate-reports/parole-board/framework-moj-parole-board.pdf>

<sup>10</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212123/Managing\\_Public\\_Money\\_AA\\_v2\\_-\\_chapters\\_annex\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf)

<sup>11</sup> <https://www.justice.gov.uk/downloads/publications/corporate-reports/parole-board/parole-board-annual-report-2013-14.pdf>



Detail of Requirement	Assessment
1. the Minister and Sponsor should exercise appropriate scrutiny and oversight of the ALB;	Complies
2. 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 (CPA);	Complies
3. the Minister will normally appoint the Chair and all non-executive board members of the ALB and be able to remove individuals whose performance or conduct is unsatisfactory;	Complies
4. the Minister should be consulted on the appointment of the Chief Executive and will normally approve the terms and conditions of employment;	Explain
5. the Minister should meet the Chair and/or Chief Executive on a regular basis (at least annually);	Complies
6. a power to require the production of information from the public body which is needed to answer satisfactorily for the body's affairs;	Complies
7. Parliament should be informed of the activities of the ALB through publication of an annual report;	Complies
8. a range of appropriate controls and safeguards should be in place to ensure that the Minister is consulted on key issues and can be properly held to account (e.g. consult on Business Plan, requirement for the exercise of particular functions to be subject to guidance or approval from the Minister, power to require information, a general or specific power of Ministerial direction over the ALB, a power for the Minister to be consulted on key financial decisions including power to acquire or dispose of land, property or other assets.)	Complies

5.8 The Chair of the Parole Board, accompanied by the Chief Executive, meets the Justice Minister at least annually. These meetings and the sponsorship arrangements (under Roles and Responsibilities) within the MoJ provide for the appropriate scrutiny and oversight of the ALB.

5.9 Parole Board members are appointed in line with the statutory requirements set out in section 2(2) of Schedule 19 of the Criminal Justice Act 2003.<sup>12</sup> While the Chair and Judicial members are exempt from the Code of Practice issued by the Commissioner for Public Appointments (CPA) other members of the Parole Board are appointed in line with the Code. Members' terms of appointment clearly set out the rules governing extension and termination of their appointment.

**Overall assessment: 'Accountability'**

**Green**

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/2003/44/schedule/19>

## Roles and Responsibilities

- 5.10 It is under this theme the review makes the majority of its recommendations. In particular these seek to strengthen the Parole Board's governance structures to provide the clarity needed on roles, responsibilities, delegated authority and the relationship between the Parole Board and its Executive. The review also makes a number of recommendations regarding the collaborative working between the Parole Board, NOMS and MoJ Policy.
- 5.11 While the Framework Document between the MoJ and the Parole Board clearly set out the various roles and responsibilities of each party<sup>13</sup> there is a need to clarify the relationship between the Parole Board (the members) and the Executive.

### ***Principle 4: Role of the Sponsoring Department***

<b>Detail of Requirement</b>	<b>Assessment</b>
1. The Department should scrutinise the performance of the ALB. There should be appropriate systems and processes to ensure effective governance, risk management and internal control in the ALB;	Complies
2. There should be a Framework Document in place which should be published, accessible and understood by the sponsoring department. It should set out clearly the aims, objectives and functions of the ALB and the respective roles and responsibilities of the Minister, the sponsoring department and the ALB. It should be regularly reviewed and updated and follow relevant Cabinet Office and Treasury guidance. The Framework document might include a Financial Memorandum as an appendix. A review of the Framework document should be carried out every three years and in line with the Triennial Review.	Complies
3. A sponsor should be identified, their role defined and there should be regular and ongoing dialogue between the sponsoring department and the ALB. Senior officials from the sponsoring department may as appropriate attend board and/or committee meetings. There might also be regular meetings between relevant professionals in the sponsoring department and the ALB.	Complies

- 5.12 While this principle was assessed as compliant, the review found a number of issues at a working level in terms of links and collaborative working between NOMS, MoJ Policy and the Parole Board.

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<sup>13</sup> <http://www.justice.gov.uk/downloads/publications/corporate-reports/parole-board/framework-moj-parole-board.pdf>

### **Current Sponsorship Arrangements**

- 5.13 The Parole Board is sponsored by the MoJ's Arm's Length Body Division (ALBGD) and it was clear that this relationship was built on confidence and trust, allowing issues to be raised quickly and efficiently. The review team considers the current sponsorship in terms of assurance provides invaluable support to the Parole Board and enables the necessary assurances to be given to the Department's Principal Accounting Officer.
- 5.14 The quarterly '*Business and Assurance Meetings*' (BAMs) between the ALBGD and the Parole Board consider the Parole Board's delivery against business objectives, financial performance, and risk and issue management. These meetings also consider the future challenges and have embedded horizon scanning as a standing agenda item. This could be strengthened, and avoid unnecessary duplication, if the ALBGD had observer status on the Parole Board's Audit and Risk Management Committee (as it does with other ALBs assessed as requiring the same level of sponsorship).

### **Relationship with MoJ Policy**

- 5.15 Whilst the ALBGD provides oversight, scrutiny and assurance, the review team and peer reviewer consider there is scope to strengthen the Parole Board's relationship with MoJ Policy and NOMS. At present, due to the absence of formal links, it could be perceived that policy decisions do not fully consider the Parole Board's operations, or take advantage of the skills and expertise the Parole Board has. Stronger links with MoJ Policy and NOMS would not only provide Parole Board with support to improve its long term planning capabilities but will also provide Ministers with more rounded 'parole' advice when considering the impact of new policies and strategies on front line business.
- 5.16 MoJ ALBs that are identified as needing a higher level of sponsorship, determined by the organisation's intrinsic risks (these are risks that are unchanging and flow from the ALB's size, level of financial exposure or type of service users etc) often have a 'joint sponsorship model', with both an 'assurance' and 'policy' sponsor. While the sponsorship provided to the Parole Board is of this high level they only have an 'assurance' sponsor. The review team considered recommending a joint sponsorship model; however this was deemed unsuitable because of the risk that a formal sponsorship role for MoJ Policy, which is responsible for developing policy and statutory changes which can directly and significantly affect the Board's work, would encroach on the Board's independence, or the perception of independence. It was clear that outside of a formal sponsorship relationship, there is potentially significant value in the Parole Board having an identified 'Policy Lead' as a day to day working contact on policy matters, as an alternative.

### **Open Policy Making**

- 5.17 Building on the above, the review team considers merit in establishing a 'forum', akin to the GPP Board (paragraph 5.12) to encourage more open discussion with regard to new policies and strategies that impact the parole process and in turn the front line operations within the Parole Board and NOMS. This would also provide for the MoJ to obtain the views of both the Parole Board and NOMS on sentencing policy where it is appropriate to do so. This would be in the spirit of the Government's Civil Service Reform Plan (CSRP), that states:

*At its best policy making in the Civil Service can be highly innovative and effective, but the quality of policy advice is not always consistent or designed with implementation in mind. There must be a clear focus on designing policies that can be implemented in practice, drawing on a wider range of views and expertise. At the same time, policy makers must have the skills and tools they need to do their jobs. And they should have a clear understanding of what works based on robust evidence. Policy resources should be focused on ministerial priorities, while improving the ability to scan the horizon better for threats and opportunities ahead.<sup>14</sup>*

- 5.18 In the spirit of the CSRP the creation of such a forum would capture and bring together front line operations and policy makers allowing for policy to be designed with implementation at the forefront. Furthermore this would improve forward planning by having an awareness of future risks as well as opportunities. The forum would also facilitate greater understanding and recognition of the role each organisation has in the parole process e.g. Parole Board's need to comply with statutory instruments such as Parole Board Rules 2011<sup>15</sup>. The peer reviewer noted that such a 'forum' would provide an opportunity to strengthen the relationship between MoJ Policy, NOMS and the Parole Board and ensure all their views are reflected in advice provided to Ministers and that advice is based on a strong evidence base.

**Litigation:**

- 5.19 Recognising the impact on the wider Criminal Justice System of court decisions resulting from Parole Board litigation the review considered the Parole Board's litigation strategy, published in April 2013.<sup>16</sup> The strategy demonstrated a step change from previous practice in a number of areas, for example alignment of judicial review practices with other bodies by only assisting the court with factual information where appropriate.
- 5.20 It was clear to the review team that the new strategy was working well and has been supported through greater information sharing between the Parole Board and MoJ legal teams. Furthermore the quarterly BAMs provide a forum for litigation matters to be raised, discussed and monitored. The review therefore concludes that the MoJ and its Ministers are effectively kept aware of any significant litigation matters.
- 5.21 The identification of a 'policy lead' (paragraph 6.17) would also support MoJ Legal as this would provide them with a specific 'client' for litigation matters. Historically this 'client' function has been undertaken by the assurance sponsor and while this worked it has proved difficult at times due to the fact that in the main litigation matters stem from policy activity and decisions, and the knowledge of these were not always available within the Team.

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<sup>14</sup> <http://my.civilservice.gov.uk/reform/the-reform-plan/improving-policy-making/>

<sup>15</sup> <https://www.justice.gov.uk/offenders/parole-board/parole-board-rules>

<sup>16</sup> <http://www.justice.gov.uk/offenders/parole-board/litigation-strategy-2013>

**Recommendation One:** The Parole Board invites the Head of ALB Governance Division to have observer status on its Audit and Risk Management Committee.

**Recommendation Two:** The MoJ to identify a named Policy Lead for the Parole Board. The post holder to have clear roles and responsibilities agreed and be a day to day policy contact.

**Recommendation Three:** A '*Parole Policy and Strategy Forum*' to be established with terms of reference that set out a clear and agreed process for the MoJ to obtain views of both the Parole Board and NOMS.

### **Principle 5 Role of the Board**

<b>Detail of Requirement</b>	<b>Assessment</b>
1. Meet regularly, retain effective control over the ALB, and monitor the SMT, holding the CEO accountable for the performance and management of the ALB;	Complies
2. Be appropriate in size and its members should be drawn from a wide range of diverse backgrounds;	Complies
3. Establish a framework of strategic control (or scheme of delegated or reserved powers), understood by all board members and the senior management team, specifying what matters are reserved for the collective decision of the board and;	Explain
4. Establish arrangements to ensure it has access to relevant information, advice and recourses as is necessary to carry out its role effectively;	Complies
5. Establish formal procedural and financial regulations to govern the conduct of its business;	Complies
6. Make a senior executive responsible for ensuring appropriate advice is given on financial matters, procedures are followed, and that all applicable statutes and regulations and other relevant statements of best practice are complied with;	Complies
7. Establish a remuneration committee to make recommendations on the remuneration of top executives. Information on senior salaries should be published in line with Cabinet Office requirements around transparency. Rules for recruitment and management of staff provide for appointment and advancement on merit;	Explain
8. There should be an annual evaluation of the performance of the board and its committees, and of the Chair and individual board members.	Explain

5.22 The Parole Board's Management Board met on six occasions during 2013/14 and was provided with the necessary information to make informed and timely decisions. The peer reviewer and review team observed a Management Board meeting, and reviewed minutes, and felt issues identified at these meetings were adequately addressed.

- 5.23 However, the review considers there is scope to strengthen the Parole Board's governance structure through the development and introduction of a clear 'framework of strategic control', which recognises and reflects the Parole Board's governance arrangements following the changes that came about as a result of the Criminal Justice Act (CJA) 2003.
- 5.24 Prior to the CJA 2003 the Parole Board was an organisation comprising its members. However the CJA 2003 established the Parole Board as a 'body corporate' giving it its own legal status. There is no clear evidence that the current governance arrangements (established in 2007) were reviewed following this change and the review finds that they need significant amendments to appropriately recognise the body as a separate legal entity. The current arrangements have led to some confusion around the role of the Executive Management team and the Parole Board (comprising all its members).
- 5.25 The review considers this would provide for the Executive to drive the day-to-day operation, via the CEO and Directors whose role is to deliver the functional business. The Parole Board would then be strategic and provide non-executive independent advice and guidance. Furthermore this would provide the clarity that the administration of the day to day operation is the responsibility of the Executive but the decisions in cases is quite clearly the role of the Parole Board members.
- 5.26 Such a framework should include agreed terms of reference for each of the Boards and Committees within the organisation. These should set out the relationship between each and the necessary escalation routes. They should also set out the requirement for an annual assessment of the performance of each board/committee, how these will be conducted, when, and by whom.
- 5.27 Schedule 19 of the CJA 2003, allows the Parole Board to set the remuneration of Parole Board staff with the approval of the Secretary of State. The review acknowledges the existence of a remuneration committee (this is currently existing Management Board members with the exception of the CEO) and the commitment and work underway to reconfigure this. Once this is completed it will be fully compliant with requirement 7 of this principle.

**Recommendation Four:** The Parole Board to implement a '*framework of strategic control*' that clarifies the roles, responsibilities, delegated authority and the relationship between its boards and committees (to include a remuneration committee).

**Principle 6: Role of the Chair**

Detail of Requirement	Assessment
1. The Board should be led by a non-executive Chair;	Explain
2. There should be a formal, rigorous and transparent process for the appointment of the Chair, which is compliant with the Code of Practice issued by OCPA. The Chair should have a role in the appointment of non executives and Commissioners if applicable, and in some instances, the CEO;	Explain
3. The duties, roles and responsibilities, terms of office and remuneration should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and any statutory requirement. The responsibilities of the Chair can include: <ul style="list-style-type: none"> <li>• representing the ALB in discussions with Ministers;</li> <li>• advising the sponsor department/Ministers about board appointments and performance of non-executive members and Commissioners;</li> <li>• ensuring non executives understand their responsibilities; are trained appropriately and undergo annual assessments;</li> <li>• ensuring the board takes account of guidance provided by Ministers; carries out its business efficiently and effectively, has its views represented to the public;</li> <li>• developing effective working relationships with the CEO (role of Chair and CEO must be held by different individuals);</li> <li>• being subject to an annual appraisal; and</li> <li>• appraising other board members ensuring they are performing to standard, following disciplinary procedures if necessary and ensuring they are committing the appropriate time to the work.</li> </ul>	Complies

5.28 The current Chair was appointed in July 2012 and his roles and responsibilities are set out in the Framework Document between the MoJ and the Parole Board. The Chair is appraised annually by the MoJ DG Criminal Justice Group. The Chair supports the Parole Board's stakeholder activities and in December 2013 appeared before the Justice Select Committee with the CEO, providing an overview of the work of the Parole Board, including funding and performance.<sup>17</sup> The Chair has highlighted the strong working relationship with the CEO across all the day to day business of the Parole Board.

5.29 The review team is aware that the Parole Board Chair since 2008 has been a senior serving or recently retired member of the judiciary. Until 2008 Chairs were appointed under the regulations from the Code of Practice issued by Commissioner for Public Appointments (CPA). At that time, the Parole Board had rising caseloads, hearing backlogs and critical reports from the NAO and PAC. It was therefore considered that appointing a serving or retired member of the senior judiciary would provide appropriate leadership and develop effective relationships

<sup>17</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-work-of-the-parole-board/oral/4733.html>

with the judiciary to help in securing sufficient judicial sitting days to manage the Parole Board's business. This has proved successful.

5.30 At the same time the Public Appointments Commissioner agreed to exempt this post from public appointments regulation to enable the Secretary of State to seek a nomination from the Lord Chief Justice for a member of the judiciary to take up the post. This arrangement continued when appointing the current Chair, who was appointed for a three year term.

5.31 Judicial members continue to be required for the Parole Board's work. However there has been and continues to be (following the ruling in the case of Osborn, Booth & Reilly) significant changes in the work of the Parole Board which leads to the review recommending that when the position becomes vacant consideration be given to widening the pool of applicants for the post of Chair, rather than restricting the appointment exclusively to a serving or retired judge. It is right that the Parole Board and Ministers have the widest and strongest pool of candidates from which to draw when seeking their next chair.

**Recommendation Five:** The appointment of Chair is brought back in line with the CPA's Code of Practice, hence widening the scope of applicants.

***Principle 7: Role of the Chief Executive Officer***

Detail of Requirement	Assessment
1. The NDPB should be led by a CEO	Complies
2. There should be a formal, rigorous and transparent process for the appointment of the CEO.	Complies
3. The duties, roles and responsibilities, terms of office and remuneration should be set out clearly and formally defined in writing. Terms and conditions must be in line with CO guidance and any statutory requirement. The responsibilities of the CEO can include the responsibilities of the Accounting Officer, the Consolidation Officer and Principal Officer for Ombudsman which involve: <ul style="list-style-type: none"> <li>• overall responsibility for the NDPB's performance, accounting for any disbursements of grant to the NDPB</li> <li>• establish the NDPB's corporate and business plans reflecting and supporting delivery of the Ministry of Justice's Strategic Objectives and departmental targets</li> <li>• inform the Ministry of Justice of any complaints about the NDPB accepted by the Ombudsman for investigation if applicable.</li> <li>• management of senior staff within the NDPB ensuring they are meeting objectives and following disciplinary procedures if necessary</li> <li>• maintains accounting records that provide the necessary information for the consolidation if applicable.</li> <li>• (details of accounting officer covered under 9: Effective Financial Management.)</li> </ul>	Complies



- 5.32 The review team acknowledges the strong leadership capabilities of the CEO who was appointed through a formal, rigorous and transparent process. The CEO's expenses are published in the annual report and remuneration is determined in line with the Senior Civil Service pay scales, in accordance with the recommendation of the Senior Salaries Review Body<sup>18</sup>. The CEO provides oversight of the Parole Board's performance and effectiveness and this was evidenced through the quarterly reports to the Parole Board's Management Board and the minutes of the quarterly meetings with the MoJ. The review team and peer review observed a Management Board meeting in which the CEO was seen to be effective in monitoring and reporting on the delivery of the Parole Board's business in accordance with plans and funding.

**Principle 8: Role of non-executive Board members**

Detail of Requirement	Assessment
Non-executive members/ Commissioners should:	
1. Form the majority of the board, (where appropriate there should be a lay majority);	Explain
2. Be appointed under a formal, rigorous and transparent process compliant with the code of practice issued by OCPA;	Complies
3. Be properly independent of management (as set out in the UK Corporate Governance Code.);	Complies
4. Allocate sufficient time to the board with details of their attendance published;	Complies
5. Undergo proper induction and appraisals;	Complies
6. Have their duties, roles and responsibilities, terms of office and remuneration set out clearly and formally defined in writing. Their terms and conditions must be in line with Cabinet Office guidance and any statutory requirement. The corporate responsibilities of non-executive board members will normally include: <ul style="list-style-type: none"> <li>• establishing strategic direction of the ALB and oversee development and implementation of strategies, plans, priorities and performance/financial targets.</li> <li>• ensuring the ALB complies with statutory and administrative requirements on the use of public funds and operates within its statutory and delegated authority.</li> <li>• that high standards of corporate governance are observed.</li> <li>• representing the board at meetings and events as required.</li> </ul>	Complies

- 5.33 The standard definition of a non-executive director (NED) is a '*member of the board of directors who is independent of the management and free from any business or other relationships which could materially interfere with the exercise of the independent judgment*'.<sup>19</sup> The current Management Board consists of four Parole Board Members in addition to the Chairs of the Audit and Risk

<sup>18</sup> <http://www.justice.gov.uk/downloads/publications/corporate-reports/parole-board/parole-board-annual-report-2013-14.pdf>

<sup>19</sup> Report of the Committee on the Financial Aspects of Corporate Governance – Cadbury 1992 (The Cadbury Report)

Management Committee and the Performance and Development Committee who attend *ex-officio*, and who in practice operate as full members.

- 5.34 These Parole Board members cannot be deemed as ‘independent’ in line with the above definition. The review therefore recommends the recruitment of NEDs to the Parole Board. This will add value to the leadership of the Parole Board by providing independent advice and challenge to the CEO and other Executive members. It will also shift the balance of members from a majority currently held by Parole Board members.
- 5.35 The Parole Board has recognised this issue and is currently recruiting up to three NEDs.

**Recommendation Six:** The Parole Board appoints NEDs to the Management Board in line with the CPA’s Code of Practice.

**Overall assessment: ‘Roles and Responsibilities’**  
**Green**

## Effective Financial Management

- 5.36 The Effective Financial Management principle requires for appropriate steps to be taken to ensure effective systems of financial management and internal control. The Parole Board provided evidence that it complies with all the requirements under this principle and no recommendations are made.

### ***Principle 9: Effective Financial Management***

Detail of Requirement	Assessment
1. Publish on time an objective, balanced and understandable annual report which complies with Treasury guidance, and includes an Annual Governance Statement (formerly a statement on internal control);	Complies
2. Comply with NAO requirements relating to the production and certification of their annual accounts;	Complies
3. Have effective systems of risk management as part of their systems of internal control and the annual report should include a statement on the effectiveness of the body’s systems of internal control.	Complies
4. Ensure an effective internal audit function is established which operates to Government Internal Audit Standards in accordance with Cabinet Office guidance;	Complies
5. Have appropriate financial delegations in place understood by the sponsoring department, by board members, by the senior management team and by relevant staff across the public body. Effective systems must be in place to ensure compliance with these delegations and the systems are regularly reviewed;	Complies

Detail of Requirement	Assessment
6. Have anti-fraud and anti-corruption measures in place, and clear published rules governing claiming of expenses;	Complies
7. Have systems in place to ensure compliance (e.g. hospitality logs.) Information on expenses claimed by board members and senior staff should be published;	Complies
8. Establish an audit (or audit and risk) committee with responsibility for independent review of the systems of internal control and external audit process;	Complies
9. Take steps to ensure objective and professional relationship is maintained with external auditors.	Complies
10. Comply with MoJ guidance with regard to any department restrictions on spending.	Complies
11. Report to Corporate Finance with management accounts and Grant In Aid authorities	Complies

- 5.37 The Annual Report and Accounts 2013–2014 of the Parole Board set out the internal systems of control, the current governance arrangements and risk management approach. The Parole Board retains an effective relationship with both internal and external auditors and worked closely with the NAO on the ‘process management maturity assessment’ with regards to the generic parole process. Their internal audit functions are delivered by the MoJ’s Internal Audit and Assurance Team, in line with the Government’s Internal Audit standards.
- 5.38 In November 2013 the Parole Board was awarded an amber/green rating, definition of which is ‘no requirement for significant improvement’ following an internal audit review of their financial systems. While two issues were identified during the course of the audit relating to: i) delegated limits of authority; and ii) risk associated with a fraudulent expense claims, these were not deemed significant. The first matter was found to be an historic arrangement which has ceased and in relation to the second guidance was updated and re-circulated reminding staff of the rules and regulations on expenses.
- 5.39 During 2013–14, supported by MoJ’s Corporate Risk and Assurance Team, the Chief Executive introduced a revised risk management approach and produced a new corporate risk register. The revised approach enables the Parole Board’s Audit and Risk Management Committee (ARMC) to identify key risks and ensure they are properly described, managed and mitigated. Once appointed a NEDs will chair the ARMC, providing independence and enhancing the challenge on risk management.
- 5.40 The Parole Board provides the MoJ with monthly and quarterly financial information and its financial authority is set out in the annual budget letter to the CEO. This letter, and the accompanying financial transaction limits, set out the delegated authority the Parole Board has in terms of finance and commercial spending controls. Compliance is monitored through the sponsorship arrangements. The review noted the current unstable IT system used by the Parole Board for financial reporting, which can be inefficient, however this is not deemed to be an issue in view of the impending move (2015) to the MoJ’s shared services.

**Overall assessment: 'Effective Financial Management'**  
**Green**

## Communications and Engagement

5.41 The Parole Board complies with all but two of the requirements.

### *Principle 10: Communications and engagement*

Detail of Requirement	Assessment
1. Establish clear and effective channels of communication with stakeholders;	Complies
2. Make an explicit commitment to openness in all activities. Engage and consult with public on issues of public interest or concern and publish details of senior staff and board members with contact details;	Complies
3. Hold open board meetings or an annual open meeting;	Explain
4. Proactively publish agendas, minutes of board meetings and performance data;	Explain
5. Establish and publish effective correspondence handling and complaint procedures, and make it simple for members of the public to contact them/make complaints. Complaints should be investigated thoroughly and be subject to investigation by the Parliamentary and Health Service Ombudsman. Performance in handling correspondence should be monitored and reported on;	Complies
6. Comply with any Government restrictions on publicity and advertising, with appropriate rules in place to limit use of marketing and PR consultants. Have robust and effective systems in place to ensure the NDPB is not engaged in political lobbying, includes restriction on board members attending Party Conferences in a professional capacity.	Complies
7. Engage the Sponsor Department appropriately especially in instances where events may have reputational implications on the department.	Complies
8. In line with transparency best practice, consider publishing spend data over £500.	Complies

- 5.42 The Parole Board has several channels of communication with stakeholders. Alongside the Annual Report and Accounts the Parole Board produces a newsletter called 'Boardsheet'<sup>20</sup> which provides an overview as to the Parole Board's work and contributes to 'Inside Time', a magazine for Prisoners.<sup>21</sup> The Parole Board Chair also chairs a quarterly Parole Board User Group (PBUG) which has a multidisciplinary membership, providing a useful resource for feedback and to facilitate collaborative working.
- 5.43 Supporting this, the Parole Board's work on the 'End to End Review' and the regular updates on the GOV.uk website demonstrates transparency and openness. As part of this work, in October 2013, the Parole Board carried out a proactive engagement exercise with stakeholders asking them to consider a set of 42 proposals to improve the current parole process for Indeterminate Sentence Prisoners.<sup>22</sup>
- 5.44 There is a clear complaints procedure,<sup>23</sup> and the Annual Report details the number of complaints received by the Parole Board. However, there is no evidence as to whether any were accepted for investigation by the Ombudsman. There would be merit in recording and monitoring complaints to establish a feedback loop and to identify improved services where complaints are justified and changes to services are made.
- 5.45 As part of its transparency arrangements the Parole Board publishes data on spend over £25,000,<sup>24</sup> alongside the MoJ. While there is requirements to publish data on spend of £500 and above, consideration needs to be given to proportionality and the cost and resource needed to do this. In terms of the Parole Board the review concurs with their view that this would be disproportionate.
- 5.46 The Parole Board does not comply with the requirements that there should be an annual open board meeting, and minutes of board meetings and performance data should be proactively published. The review team acknowledges the sensitivities around the Parole Board's business, however, consideration should be given to holding at least one open Board meeting per annum. As with other organisations this can be accommodated by including a 'closed' session on the agenda. Holding open meetings provides for openness and transparency.

**Recommendation Seven:** The Parole Board to hold an annual open Board meeting.

<sup>20</sup> <http://www.justice.gov.uk/downloads/publications/pb/parole-board-boardsheet-march-2014.pdf>

<sup>21</sup> [http://insidetime.org/articleview.asp?a=1781&c=parole\\_board\\_changes\\_\\_have\\_your\\_say&cat=Parole](http://insidetime.org/articleview.asp?a=1781&c=parole_board_changes__have_your_say&cat=Parole)

<sup>22</sup> <http://www.justice.gov.uk/offenders/parole-board/end-to-end-review>

<sup>23</sup> <https://www.justice.gov.uk/downloads/offenders/parole-board/parole-board-complaints-procedure.pdf>

<sup>24</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/307790/ParoleBoard-Jan14.csv/preview](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307790/ParoleBoard-Jan14.csv/preview)

**Overall assessment: 'Communication and Engagement'**  
**Green**

### Conduct and Propriety

- 5.47 The final principle seeks to ensure that the staff of the Parole Board work to the highest personal and professional standards and promote the values of the Parole Board and good governance through their conduct and behaviour.
- 5.48 This principle was the Parole Board's weakest in terms of compliance. However, once the Parole Board enacts the recommendation made by the review it will be fully compliant.

#### **Principle 11: Conduct and Propriety**

Detail of Requirement	Assessment
1. A Code of Conduct must be in place setting out the standards of personal and professional behaviour and propriety expected of all board members which follows the Cabinet Office Code and forms part of the terms and conditions of appointment;	Explain
2. the NDPB has adopted a Code of Conduct for staff based on the Cabinet Office model Code and form part of the terms and conditions of employment;	Explain
3. there are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for board members and senior staff which is regularly updated;	Complies
4. there are clear rules and guidelines in place on political activity for board members and staff with effective systems in place to ensure compliance with any restrictions;	Explain
5. there are rules in place for board members and senior staff on the acceptance of appointments or employment after resignation or retirement which are effectively enforced;	Explain
6. Board members and senior staff should show leadership by conducting themselves in accordance with the highest standards of personal and professional behaviour and in line with the principles set out in respective Codes of Conduct.	Complies

- 5.49 In terms of its compliance, the Parole Board maintains a register of members' interests which is open to public inspection. This is published in their Annual Report and Accounts.

- 5.50 This principle requires the Parole Board to have a code of conduct for staff and members, which follows the Cabinet Office Code. While the Parole Board has a code of conduct for staff and members the majority of which aligns with the Cabinet Office Code, there are some gaps. In particular the code relating to Board members is not sufficiently clear in terms of providing guidance on political activity. While members are asked to complete a political activity form on appointment and re-appointment, and inform the Chief Executive as to any political activity, there are no guidelines in place setting out behaviours around political activity throughout the duration of service. The Parole Board has acknowledged this and will review its current Code of Conduct and align this with Cabinet Office Guidance by the end of 2014.
- 5.51 The Parole Board's code of conduct for staff is based on the MoJ and NOMS codes and would benefit from a review to ensure compliance with the Cabinet Office code. While the existing code covers the majority of requirements consideration is needed on the provision of guidance (for staff and members) on the acceptance of appointments or employment after resignation or retirement.

**Recommendation Eight:** The Parole Board to review and align its codes of conduct for staff and members with Cabinet Office code.

**Overall assessment: 'Conduct and Propriety'**  
**Amber/Green**

## 6 PEER REVIEWER COMMENTARY

- 6.1 The role of the peer reviewer within Stage Two of this Triennial Review focused on governance and the relationship between the Parole Board, its sponsors and NOMS. In order to do this the peer reviewer met with Parole Board executives, sponsor leads within MoJ, attended a Parole Board management meeting and spoke with a Parole Board, board member and the Chief Executive. The peer reviewer worked closely with the review team throughout the process and the Stage Two report reflects the joint findings.
- 6.2 The peer reviewer found that many of the internal governance issues considered as part of Stage Two had been identified by the Parole Board in a review commissioned by the Management Board. By the time of the peer reviewer's involvement, the commitment of the Management Board to addressing these issues was evident including the recruitment of an additional member of staff to ensure timely progress.
- 6.3 Because of this, the peer reviewer focused on the relationship between the Parole Board and the sponsor department. Whilst the relationship between the Parole Board and parts of the sponsoring department work well, it was clear that there is a need to develop stronger working relationships with both MoJ policy and colleagues in NOMS.
- 6.4 Currently, sponsorship of the Parole Board lies with the MoJ's Arms Length Body Governance Division and this clearly works well in relation to corporate support. However, where issues concerning parole policy arise the peer reviewer felt the sponsorship team does not have the necessary information or immediate access to the correct officials within the department to facilitate early discussion with the Parole Board about both the practical and principled implications of proposed changes to policy. Examples were provided of recent decisions to change release policy requiring implementation by the Parole Board where they had not been given the opportunity to input into advice given to Ministers. It was clear from discussions that the Parole Board was not seeking to prevent changes being made but rather felt that they could provide expert advice on the most practical and cost effective way for those changes to be implemented.
- 6.5 The peer reviewer endorses the recommendation of identifying a Specific Point on Contact within MoJ Policy for the Parole Board and suggests that there should be a written, agreed process for MoJ to obtain the views of both the Parole Board and NOMS to inform recommendations in submissions to Ministers on parole policy. This will provide clarity for all parties and ensure that Ministers are provided with timely advice from both the Parole Board and NOMS prior to decisions being made.



- 6.6 The importance of the relationship between MoJ policy, the Parole Board and NOMS was evident throughout the peer reviewer's discussions so it was surprising that there was no forum where all three parties can meet to discuss wider policy issues which impact on each of them individually and collectively. The peer reviewer is strongly of the opinion that such a forum is required and that care should be taken in framing the terms of reference, particularly concerning the levels of officials that should participate and the frequency of meetings to ensure that it operates effectively.

**Michelle Crotty**

**July 2014**

## 7 CONCLUSION: STAGE TWO

- 7.1 The Parole Board performs an important function in terms of risk assessing prisoners to decide whether they may safely be released into the community. The Board consists of a wide range of people who are all dedicated to the work they do. Their commitment and professionalism is evident in all they do and they clearly add value to the parole process.
- 7.2 Over recent years it has faced, and continue to in light of the OBR judgment, significant changes. At times some of these changes have been imposed upon the Board without full consideration of the impact on its day to day business. A number of the recommendations in this report seek to address this by implementing a forum in which matters such as this can be discussed. Furthermore identifying a *'policy lead'* for the Parole Board will provide them with a day to day link into the MoJ Policy activity.
- 7.3 The changes brought about by the CJA 2003 in relation to the status of the Parole Board were fundamental. As the review has highlighted this was significant in terms of governance and the Parole Board need to address to provide clarity on roles and responsibilities and enable members and staff to have a common view and understanding of the governance arrangements. The appointment of NEDs will provide the independent challenge and support for the CEO to implement these significant and important changes.

### Summary of Recommendations

- 7.4 The information below draws together the recommendations made by the Review Team to be taken forward by the Parole Board and the MoJ. The recommendations have not been given a specific target date, however the Review Team suggests that the Parole Board and MoJ Sponsor provide a formal update on implementation by the end of March 2015 and on a quarterly basis thereafter.
- 7.5 To improve the roles and responsibilities theme we recommend:
- **Recommendation One:** The Parole Board invites the Head of ALB Governance Division to have observer status on its Audit and Risk Management Committee.
  - **Recommendation Two:** The MoJ to identify a named Policy Lead for the Parole Board. The post holder to have clear roles and responsibilities and be a day to day policy contact.
  - **Recommendation Three:** A 'Parole Policy and Strategy Forum' to be established with terms of reference that set out a clear and agreed process for the MoJ to obtain views of both the Parole Board and NOMS.
  - **Recommendation Four:** The Parole Board to implement a *'framework of strategic control'* that clarifies the roles, responsibilities, delegated authority and the relationship between it boards and committees (to include a remuneration committee).

- **Recommendation Five:** The appointment of Chair is brought back in line with the CPA's Code of Practice, hence widening the scope of applicants.
- **Recommendation Six:** The Parole Board appoints NEDs to the Management Board in line with the CPA's Code of Practice.

7.6 To improve the communication theme we recommend:

- **Recommendation Seven:** The Parole Board to hold an annual open Board meeting.

7.7 To improve the conduct and propriety theme we recommend:

- **Recommendation Eight:** The Parole Board to review and align its codes of conduct for staff and members with Cabinet Office code.

## ANNEX A: Project Board Terms of Reference

The Project Board will oversee the Parole Board Triennial Review through to Report publication and the project SRO is ultimately accountable for its success and other Board Members assume a collective responsibility for ensuring the successful delivery of the project and support the SRO in the execution of his duties.

Areas in which the Board will advise the SRO include financial, stakeholder management and legal and procedural issues. The Board is also collectively responsible for identifying and raising issues of concern, whether or not they are within their sphere of responsibility, as well as providing constructive challenge in all areas.

In accordance with MoJ best practice guidance, the particular collective responsibilities of the Project Board are to:

- Ensure effective delivery of the project by:
  - Advising and supporting the SRO;
  - Providing investment decisions;
  - Ensuring that the projects are delivered to time, cost and quality plans; and
  - Approving delivery of all major products, including, where appropriate, ensuring that stakeholder input has been taken into account in assessing the quality of products.
- Support and challenge the SRO and project manager in maintaining proportionate project disciplines to deliver agreed outcomes, in particular ensuring that:
  - Management of the project conforms with departmental and OGC best practice and Gateway review requirements;
  - There is an appropriate budget allocation to the project;
  - The correct level of skills and project team resources are sourced and secured;
  - Appropriate and proportionate project documentation is created and approved;
  - Appropriate project risks and issues are escalated, deviations from plans are managed, exceptions reported and change is controlled.
- Maintain the confidentiality of the project and ensure that information does not enter into wider circulation or the public domain earlier than has collectively been agreed.

As well as taking collective responsibility for the project, a Board member representing a business area:

- has the delegated authority to make decisions on behalf of their area;
- understand and be responsible for ensuring that their area is fully aware of the potential impact of the projects – maintaining confidentiality as stated above;
- ensure that any risks or concerns that may threaten the success of the project in their area are made clear to the SRO and, if appropriate, assume ownership for managing those risks; and
- lead by example and demonstrate commitment and direct involvement.

At closure of the project there are two key tasks that are the sole responsibility of the SRO. These are:

- formal project closure – formally closing the project and ensuring that the lessons learned are documented within the end of Project Closure Report: closure requires formal sign off by the SRO that the aims and objectives have been met and that lessons learned are documented and disseminated.
- post implementation review – planning for and ensuring that the post implementation review takes place, the output is forwarded to the appropriate stakeholders and the benefits have been realised: the SRO is responsible for commissioning and chairing these reviews and ensuring that the relevant personnel are consulted and involved in the review process.

## **ANNEX B: List of Stakeholders Consulted**

Below is a list of stakeholders who were consulted during Stage One of the Triennial Review.

Parole Board for England and Wales

Public Protection Casework Section, Offender Management and Public Protection Group  
– NOMS

Victims Team – NOMS

Offender Management & Assessment Section, NOMS

NOS Security Group, NOMS

Prison Psychologists

Prison Governors

HMPS, NOMS

HMCTS

HMI Prisons

HMI Probation

Youth Justice Board

Probation Officers

Probation Trusts

Probation Association

Probation Chiefs Association

Prison Governors Association

Prison Officers Association

Association of Chief Police Officers

Legal Aid Agency

Criminal Cases Review Commission

Public & Commercial Services Union

Napo

Victims' Commissioner

Prisoners

Prison Reform Trust

Prisoners Advice Service

Advice Services Alliance

Prisoners' Education Trust

Clinks

Action for Prisoner's Families  
Howard League for Penal Reform  
Justice  
Legal Action Group  
Liberty  
Criminal Justice Alliance  
Narco, the crime reduction charity  
Victim Support  
National Victims Association  
Freshwinds  
Victims Services Alliance  
Bernardo's  
Support After Murder & Manslaughter  
Women in Prison  
Centre for Crime and Justice Studies  
Royal Institute of Psychologists  
British Psychological Society  
Royal College of Psychiatrists  
Institute of Criminology (Cambridge)  
Centre for Public Law (Cambridge)  
Institute for Criminal Policy Research (Birkbeck)  
Association of Prison Lawyers  
The Bar Council  
The Law Society  
Criminal Bar Association  
Magistrates Association  
Simon Creighton & Hamish Arnott (*authors of Parole Board Hearings guide*)  
Lord Chief Justice of England and Wales  
President of the Supreme Court  
Judges' Council  
Unlock  
The Judicial Office

## ANNEX C: Project Board and Challenge Group Membership

### ***Project Board***

Alan Eccles	Senior Responsible Owner – Office of the Public Guardian
Alison Wedge	Ministry of Justice – Sponsor and Head of the Arm’s Length Body Governance Division
Stephen Bailey	Ministry of Justice – Sentencing Policy
Edward Holder	Ministry of Justice – Legal Directorate
Bill Loft	Ministry of Justice – Finance Business Partnering
Janine McCarthy	Ministry of Justice – Communications
Tony Kirk	Welsh Government
Maggie Garrett (November 2013 – April 2014)	Ministry of Justice – Triennial Review Programme Manager
Cheryl Wright (March 2014 – )	Ministry of Justice –Triennial Review Programme Manager
Rupert Dewey (November 2013 – February 2014)	Project Manager
James Cole (March 2014 – )	Project Support
Claire Bassett (Observer)	Chief Executive, Parole Board
Russell A’Court (Observer)	Head of Public Protection Casework Section, NOMS

### ***Challenge Group***

Pat Lloyd	Ministry of Justice – Director of Judicial Pay, Pensions and Reward,
Alison Wedge	Ministry of Justice – Head of the ALB Governance Division,
Digby Griffith	National Offender Management Service (NOMS) – Director of National Operational Services,
Helena Feinstein	Department of Health – Head of Capability and Relationships
Poppy Harrison	Youth Justice Board – Head of Safeguarding and Child Protection
Andrew Sperling	Chair of the Association of Prison Lawyers (Stage One only)
Simon Creighton	Association of Prison Lawyers (Stage Two only)



Rupert Dewey (November 2013 – February 2014)	Ministry of Justice – Project Manager
James Cole (March 2014 – )	Ministry of Justice – Project Support
Paul Wilson	National Offender Management Service (NOMS) – Non-Executive Director,
Paula McDonald CBE	Cabinet Office – Deputy Director, Public Bodies Reform
Ben Connah	Ministry of Justice – Deputy Director, Victim and Criminal Proceedings Policy
Jeremy Lonsdale	National Audit Office – Director, Ministry of Justice Value for Money audit,



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