



House of Commons
Public Accounts Committee

Protecting the public: the work of the Parole Board

Ninth Report of Session 2008–09

*Report, together with formal minutes, oral and
written evidence*

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The Public Accounts Committee

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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pac>. A list of Reports of the Committee in the present Session is at the back of this volume.

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Summary

The decision whether an offender is suitable for release from custody on parole must be made in the interest of the public and of the offender. The Parole Board (the Board), a Non-Departmental Public Body sponsored by the Ministry of Justice, is responsible for making these decisions. The Board's administrative performance is undermined by a lack of capacity to hear cases and a variety of other difficulties, such as obtaining complete and timely data for its hearings, some of which are outside its immediate control.

The Board's workload of cases to assess has more than doubled in a five year period. The balance has also shifted from more straightforward paper based hearings to more resource intensive oral hearings, where the offender attends and is questioned. Both the rise in workload and the change in its nature have placed additional pressure upon the Board's resources. This increase in workload stems from the rising prison population and new sentencing regimes.

Assessing the risk of harm posed by offenders is central to a strong parole process. However, for the most serious offenders the Board often does not receive the key information required to make their assessment. The Prison and probation services have been unable to provide the timely and complete information necessary for the efficient and effective running of the parole process.

The increase in workload and the difficulties in accessing timely data and reports have also impaired significantly the Board's ability to hold oral hearings as planned. Two-thirds of oral hearings have not been held in their planned month and 20% of hearings have been held more than 12 months late. As the Board acknowledges, these delays are unacceptable and costly. Between September 2006 and June 2007, the Board incurred direct costs of £1 million due to the delays. Keeping offenders who should have been released or transferred to open conditions cost HM Prison Service nearly £2 million over that period. These costs are significant when set against the Board's net expenditure in 2007–8 of £7.4 million, and the Board needs to administer hearings more effectively.

The Court of Appeal has judged that the Board's position as a Non-Departmental Public Body sponsored by the National Offender Management Service within the Ministry of Justice is not sufficiently independent. The Ministry of Justice has moved sponsorship of the Board to another part of the Ministry as a temporary solution. The Board's preferred option would be for it to become part of HM Courts Service, which would increase its independence and enable the Board to secure more time from judges to chair oral hearings. The Board acknowledges that it needs to make the best possible use of its existing membership, but also needs to ensure that the make up of the Board's membership more accurately reflects the composition of society.

On the basis of a report by the Comptroller & Auditor General,¹ we took evidence from the Parole Board, the Ministry of Justice and the National Offender Management Service.

1 C&AG's Report, *Protecting the public: the work of the Parole Board*, HC (2007–08) 239

Conclusions and recommendations

- 1. Assessing the risk posed by offenders, especially those on life sentences or an indeterminate sentence for public protection, is a difficult task for Board members, and is made more difficult if key documents are not available or late.** The Board is demanding that dossiers are received complete and on time, and if key documents are not available it will defer hearings. This approach is not a tenable solution. All relevant parts of the criminal justice system must provide the reports required for the parole process on time and in full.
- 2. The Board has not explained why release rates for both determinate and indeterminate sentenced offenders fell by one-third in 2006–07 and 2007–08.** We were told that a speech by the then Home Secretary in 2006, in which he reflected public concern about certain high profile cases where offenders on parole committed very serious offences, led to Board members placing greater emphasis on public protection when making their decisions. The fall in release rates can be ascribed to this greater emphasis on public protection.
- 3. Since 2002–03, the percentage of determinate sentenced offenders recalled for having committed a further offence while on parole has remained constant at 6–7%.** No system can be foolproof, but on the other hand, every offence committed while an offender is on licence is unacceptable. To help the Board work towards a reduction in the rates of re-offending, the Board's Review Committee should supplement its scrutiny of serious further offence cases by examining, on a sample basis, the reasons given for the decision to release in all cases where prisoners on licence re-offend.
- 4. More than two-thirds of oral hearings did not take place as planned and 20% were held more than 12 months late.** These delays are completely unacceptable but until recently the Board did not monitor its performance in this area. As part of the wider changes being proposed to the management and oversight of the parole process, the Board should set a target for holding oral hearings in the planned month, and manage its achievement actively.
- 5. The Board's administration of cases and its recording of data are being hampered because it holds details of cases on three separate databases and combines them manually.** The Board should work with its new sponsor in the Ministry of Justice to implement a new database as soon as possible.
- 6. Money is being wasted because hearings cannot be held on time and offenders are held in prison when they should have been released, at a time when the prison population is at an all-time high.** The cost to the Board of hearings that were adjourned or deferred was nearly £1 million in the nine months to 30 September 2007. The cost to HM Prison Service of keeping offenders in jail who were subsequently released at rescheduled hearings or were transferred from closed to open conditions was estimated to be nearly £2 million in the same period.

7. **One of the key factors underlying the Parole Board's difficulties is that all agencies involved have been attempting to cope with a significant increase in oral hearings.** A big factor in this increase has been the introduction of the indeterminate sentence for public protection, brought in by the Criminal Justice Act 2003. This has been used far more by sentencers than the Ministry of Justice had optimistically predicted, resulting in more cases coming before the Board for oral hearings. The full range of the implications of criminal justice legislative change should be considered at the planning stage for new Bills, including modelling the potential impact on all criminal justice agencies.
8. **Although HM Prison Service and the probation service have been under considerable pressure, with rising numbers of prisoners and of offenders under the supervision of the probation service, both services need to give higher priority to the parole system if it is to work efficiently and effectively. In particular:**
 - HM Prison Service should introduce a more systematic method for triggering the process of compiling the reports required for Board hearings for indeterminate offenders, which at present relies heavily upon the skills and experience of the individual in prisons responsible for compiling the dossiers, and
 - the probation service must remedy its lack of a target for producing reports for the Board, and should collect data on whether reports were provided on time.
9. **The Board's independence was challenged in a Court of Appeal ruling in February 2008, which stated that sponsorship by the National Offender Management Service of the Ministry of Justice meant that the Board was not sufficiently independent.** In April 2008, the Secretary of State announced that sponsorship of the Board would be transferred to the Access to Justice Directorate within the Ministry. The Board's preferred option is that it should become a court and become part of HM Courts Service.
10. **The National Audit Office identified that 22 of the 180 Board members were not fulfilling their minimum time commitment to the Board.** The Board has reduced the number of non-judicial members who do not meet their minimum commitment but acknowledges that obtaining enough judges' time to fulfil the requirements of the Parole Board rules as they stand remains difficult. A transfer of the Board to HM Courts Service would help ensure that judges meet their obligations to the Board.
11. **The Committee found unacceptable that there has been no requirement for all three panel members to sign off on the reasons for their decisions on each case, rather, the final word has been left to the chair alone.** The Board has accepted the new template recommended by the National Audit Office which will require all three members to sign off reasons for panels' decisions.
12. **The average age of the Board's non-judicial Members was 50, a figure that is increasing. All but four members described themselves as being 'white' and 86% of those Members who provided information have a degree.** It is important that the Board increases the level of ethnic minority representation of its membership, reduces its average age and adjusts the social composition of members. It should set targets for each of these areas in conjunction with the Ministry of Justice.

1 Making decisions on cases

1. The Parole Board for England and Wales (the Board) is an independent body which, in taking decisions on whether to release offenders from custody, works with, and is dependent upon, other parts of the criminal justice system including HM Prison Service and the probation service. The main types of case the Board considers are described in **Figure 1**.

Figure 1: The types of cases considered by the Parole Board

- **Determinate sentenced prisoners**, serving four years or more, and those given extended sentences for public protection. These cases are handled largely by panels of three Board Members, using written evidence.
- **Indeterminate** sentenced prisoners, which include Indeterminate sentences for public protection (IPP) and life sentenced prisoners. These are largely handled through an oral hearing with the offender by panels of three Board members chaired by a judge.
- **Recall cases** of offenders recalled to custody for breaches of the terms of their parole. These hearings are largely held through examination of paper evidence.

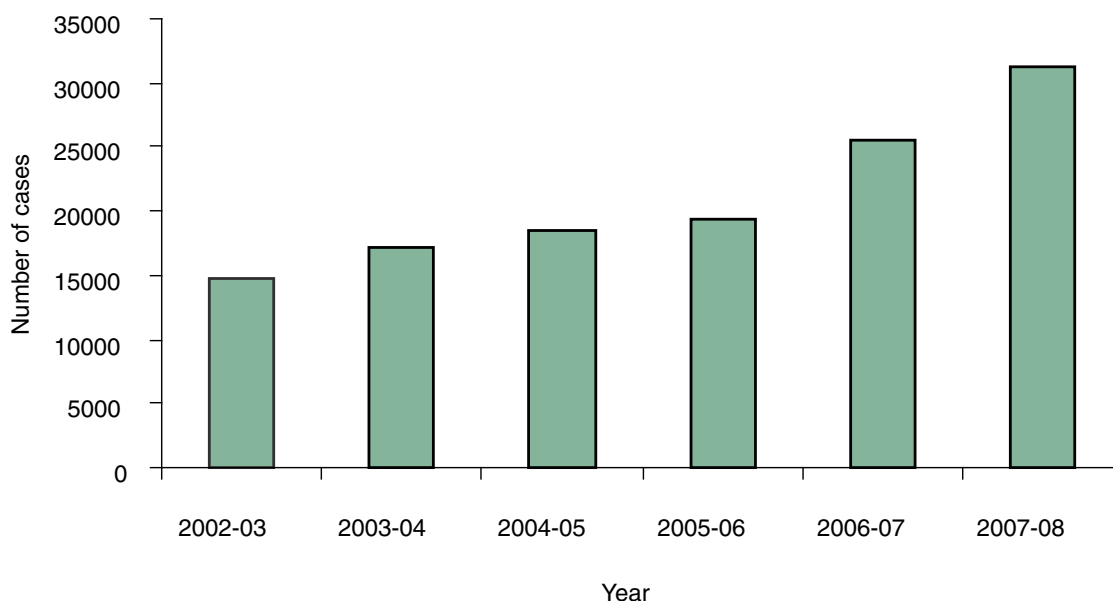
2. The Board's annual caseload increased from 14,668 in 2002–03 to 31,172 in 2007–08 (**Figure 2**).² The most significant annual increase was a rise of 31% between 2005–06 and 2006–07 as changes in sentencing under the Criminal Justice Act 2003 started to have an effect. The Act made the Board the sole arbiter for deciding on the release of prisoners who received Indeterminate sentences for Public Protection (IPP). These are imposed on those who commit a specified serious violent or sexual offence and are deemed to pose a significant risk of serious harm in the future. The Act also gave the Board responsibility for deciding whether a determinate sentenced offender recalled to prison should remain in custody.³ Over the six years to 2007–08 there has also been a shift away from paper panels to the more resource-intensive oral hearings which are attended by the offender. A three person paper panel usually handles 24 cases in one day, but a similar panel can typically only deal with two or three oral hearings in a day. Oral hearings require significant extra preparation.⁴

2 Ev 14

3 C&AG's Report, para 3.1

4 C&AG's Report, para 3.7

Figure 2. Annual Caseload of the Parole Board from 2002–03 to 2007–08



Source: National Audit Office analysis of Parole Board data

3. Board members face a number of difficulties when making their decisions on cases. Dossiers of evidence are often incomplete and they can receive significant additional information on the day of the hearing. This can make what is already a difficult role harder. Assessing the risk posed by offenders is fundamental to the effective working of the Board. No system is going to eliminate all risk, but it is important that all possible steps are taken to ensure risks are minimised by ensuring the Board Members have all the required information. The consequences of not taking the necessary actions can be catastrophic as evidenced, for example, by the Hanson and Rice cases, where offenders on licence after release by the Parole Board committed murder.⁵

4. The Offender Assessment System (OASys) report, jointly produced by HM Prison Service and the probation service, is a key document which Board members use in assessing risk. This detailed report calculates the likely risk of the offender causing serious harm to others or themselves and being reconvicted. OASys reports were introduced in 2003–04 for all offenders serving over 12 months, are mandatory for determinate prisoners, and became mandatory from May 2007 for indeterminate cases, replacing Life Sentence Plans. In a sample of 276 indeterminate cases heard by the Parole Board between September 2006 and May 2007, the National Audit Office found that 97 case files (35%) did not contain a Life Sentence Plan or an OASys report.⁶

5. The Board stated that it will not compromise on information about risk when making decisions to release offenders. The Board considered that it had now become more rigorous in demanding harder evidence. For example, it will not hear a case if the information required is not in the dossier. The Board's system of Intensive Case Management aims to identify missing information earlier in the process so that any gaps

⁵ Q 8

⁶ C&AG's Report, para 2.13

can be filled in time for the planned hearing.⁷ As discussed in Part 2, however, problems in obtaining all the information in a timely way have meant many oral hearings have not been held as planned.

6. **Figure 3** shows that the percentage of determinate sentenced prisoners released in the five years to 2005–06, was consistently around 50%. From that year it fell by over a quarter to 35.8% of cases considered, a trend which continued in 2007–08. The percentage of indeterminate sentenced cases where release has been directed has been less constant, but also showed a significant reduction in 2006–07 from 22.6% to 14.6%: a reduction of over a third. This trend continued in 2007–08.⁸

Figure 3. The percentage of determinate and indeterminate sentence prisoners released by the Board on licence from 2001–02 to 2007–08

Year	Determinate sentence prisoners released on licence %	Indeterminate sentence prisoners released on licence %
2001–02	50.6	Not Known
2002–03	52.8	18.4
2003–04	53.1	25.0
2004–05	52.0	21.6
2005–06	49.4	22.6
2006–07	35.8	14.6
2007–08	35.9	15.2

Source: National Audit Office summary of Parole Board data

7. The Board said that there had not been any change in policy or procedure which could explain the decrease in release rates. The cases of Hanson and Rice had made everybody involved in the parole system more cautious, as illustrated by the then Home Secretary's lecture to the Board in 2006, in which he stated that public protection must be the overriding priority of the Board. The Board noted that a similar reduction in release rates occurred in Scotland at the same time.⁹ An increased level of caution amongst Board members is understandable, but decisions should be made on the basis of the evidence available to members.

8. Between 2002–03 and 2007–08, the percentage of the average number of determinate sentenced offenders on parole recalled for having committed a further offence has remained stable at either 6% or 7%. The number of prisoners released on a life licence who were recalled to prison was also constant at 6% until it fell to 3% in 2007–08.¹⁰ This improvement (assuming that it is sustained) is welcome, but needs to be echoed in the re-offending rates for determinate sentenced offenders. The Head of the National Offender Management Service claimed that within the next two years the parole system will have responsibility for fewer than 1,000 determinate sentenced offender cases, suggesting that the parole system should place less emphasis on this stream of offenders.¹¹ However, in

7 Q 2

8 Ev 16

9 Q 8

10 Ev 16

11 Q 127

practice a decline in this stream of work is not evident so far. The Board considered 7,594 determinate sentenced offender cases in 2007–08, 1% more than in 2005–06.¹²

9. Some Board members are concerned that some panel chairs rewrite the reasons for the panel's decision after a hearing, and that these final reasons can differ from those agreed during the hearing. There has been no requirement for all three panel members to sign off the final reasons and the panel members who are not chairs usually do not see the final version of the reasons.¹³ The Board agreed that this was unacceptable and noted that the new approach recommended by the National Audit Office will require all three members to sign off the reasons for the panel's decision.¹⁴

10. The Board's Review Committee examines cases where prisoners released on licence have committed or are suspected of committing a serious sexual or violent further offence, in order to assess whether the Board's initial decision to release was justified. The Committee provides feedback to members responsible for the original decision to release. The Committee draws out wider lessons for all members which are fed back at training events, and the Board takes forward wider lessons with partner agencies and through a joint review panel. The Board does not currently have a mechanism for reviewing the decisions made on other cases where offences are committed, although it is considering introducing such a process.¹⁵

12 C&AG's Report, Figure 10; Parole Board Annual Report 2007–08, page 4

13 Q 99; C&AG's Report para 2.14

14 Q 101

15 C&AG's Report, para 4.2

2 Managing oral hearings

11. Oral hearings have increased significantly over the past five years and totalled over 2,500 in 2007–08.¹⁶ There are a number of reasons for this increase. For example, judges have passed more Indeterminate sentences for Public Protection than anticipated, often with short tariffs—that is the minimum period of imprisonment the offender must serve.¹⁷ The rise in such sentences has posed significant problems for the Board, which has consistently failed to meet its key targets for holding oral hearings.

12. For 214 parole cases where the National Audit Office were able to identify a target month, only 32% of oral hearings were held in that month. Of the 146 cases held after the target month, 29 (20%) were held 12 or more months late. The longest delay was 25 months.¹⁸ The Board agreed that this performance was unacceptable and that they had struggled to improve their performance in this area.¹⁹

13. The Board has not set a target for holding oral hearings for indeterminate sentenced prisoners in their planned month.²⁰ In administering hearings the Board is hampered by the lack of a single database that contains all the information on cases. At present the Board operates three home-grown databases, each of which contains different information on its cases. Until recently, the Board has not been bringing all this information together in one place, as this task has to be done manually. The Board is looking to identify a single replacement database but could not provide a definite date for when such a system would be in place.²¹

14. A further difficulty facing the Board is that it lacks direct control over a number of the causes of the delays in the information provided on time for parole dossiers. The Board is heavily reliant upon the Ministry of Justice, HM Prison Service and the probation service to provide timely and complete information for oral hearings. Each of these bodies contributes to the delays and the National Audit Office found that the Ministry of Justice had struggled to produce and issue the initial dossiers to prisons on time.²²

15. In prisons, the Lifer Clerk is responsible for taking the initial dossier provided by the Ministry of Justice and compiling the remainder of material required for the dossier. There is no system in place to prompt the Clerk to begin the process for indeterminate sentence prisoners. Lifer Clerks therefore either have to devise their own system, or are reliant upon notification from the Ministry of Justice via email or receipt of the initial dossier.²³ The Head of NOMS agreed that there is some art required on the part of Lifer Clerks when they

16 Q 53

17 C&AG's Report, para 3.4

18 C&AG's Report, para 3.12

19 Qq 3–4

20 Ev 15

21 Qq 51–52

22 C&AG's Report, para 3.20

23 C&AG's Report, para 3.23

select the date for the parole hearing, and that the Ministry was examining whether they could devise a system which involved a clearer routine for staff to follow.²⁴

16. The Lifer Clerk requires reports from a range of prison and probation staff. HM Prison Service is under pressure due to the rising prison population and prison resources are focused towards managing this high prison population. For 2007–08, HM Prison Service dropped its Key Performance Target on the timely provision of dossiers to the Board for oral hearings for indeterminate sentence prisoners because it considered that it did not control enough of the process to justify continuing with the measure.²⁵ As part of its response to the National Audit Office report, HM Prison Service is to contribute to the introduction of a whole of system target for the parole process.²⁶

17. The National Audit Office found that the probation service also had no target for producing reports for the Board and it did not collect data on whether or not reports were provided on time. Where hearings were deferred because of missing documents, a probation report was the second most common cause. In addition, in just over half of the hearings which were deferred because a witness was not available, or did not turn up on the day, the missing witness was a probation officer. The probation service does not monitor probation officers' attendance at Board oral hearings.²⁷ The Probation Service is under considerable pressure to perform its mainstream work without having to accept other responsibilities, but the head of the NOMS assured the Committee that, as he is now responsible for both HM Prison Service and the probation service, he would ensure they provided a much better service for the Board.²⁸

18. From its sample of cases, the National Audit Office found that the extrapolated cost to the Board of deferrals or adjournments on the day of the hearing was £859,000.²⁹ Deferrals and adjournments can also lead to prisoners spending longer in custody than necessary. This delay places additional pressure on the already stretched prison system, is unfair to the prisoner and may leave the Board open to Judicial Review or compensation claims. The extrapolated cost to the taxpayer of the additional time spent in custody and the additional cost of keeping an offender in closed, rather than open, conditions was £2,033,000. In total the delays to oral hearings cost nearly £3 million in the nine months to September 2007.³⁰ The Board's net expenditure for 2007–08 was just £7.4 million.³¹

24 Q 73

25 C&AG's Report, para 3.24

26 Ev 17

27 C&AG's Report, para 3.27

28 Qq 6, 121

29 C&AG's Report, para 3.14

30 C&AG's Report, para 17

31 Parole Board Annual Report 2007–08, page 75

3 The Board's status and membership

19. From May 2007, the Board was sponsored by National Offender Management Service in the Ministry of Justice. In 2007, a legal challenge was launched by a number of offenders that argued that being within the purview of the Ministry of Justice compromised the Board's independence. The High Court ruled in September 2007 that the Government's arrangements for the Board, "do not sufficiently demonstrate its objective independence of the Secretary of State." This decision was upheld in the Court of Appeal in February 2008. The Ministry of Justice did not appeal against this judgement.³²

20. In April 2008, the Secretary of State announced that sponsorship of the Board would move to the Access to Justice Group within the Ministry of Justice. The Ministry and the Board are currently examining the possibility of the Board becoming a Tribunal or, the Board's preferred option, a Court. There is no timescale for this consideration and the Board's future status remains uncertain.³³

21. The National Audit Office found that the composition of the Board's Members was generally balanced between the sexes, with women making up 51% of the non-judicial members. The average age was 50 years and increasing, and all but four members described themselves as white. The Ministry of Justice has tried to address the Board's lack of diversity of ethnic background but has not been as successful as either the Board or the Ministry would have wished.³⁴ We asked for information on the education and social status of Members, but only just over half responded to the Board's request for information. A total of 90 (86%) out of the 99 Members who provided information have a degree. Twenty-four Members (23%) out of 98 who replied went to a public school. The social background of Members was more evenly spread, with 43 out of the 93 Members who replied describing themselves as coming from a 'working class' background. We consider that this data, allied to that reported by the National Audit Office, indicates that the Board has a considerable way to go in ensuring that its membership better reflects the composition of society.³⁵

22. The Board sets a minimum and a maximum number of days that each type of Board member is expected to work. The National Audit Office found that in the 12 months to 30 September 2007, 22 members worked less than the minimum number of days. In November 2007, the Director of Performance and Development tasked an experienced member with contacting these members to discuss the issues preventing them from undertaking more Board casework.³⁶ The Board told the Committee that the number of members not fulfilling their minimum commitment had been reduced to nine members in the 12 months to 30 September 2008. Of these, six were psychiatrists who face great difficulties in fulfilling their commitment to the Board given the terms of the NHS contract

32 R (Brooke & Others) [2008] EWCA Civ 29

33 Ev 14

34 C&AG's Report, para 2.2

35 Ev 18–19

36 C&AG's Report, para 2.4

they work under. Three others were independent members, two of whom have been on sick for some time, and one of whom has decided to resign.³⁷

23. Under current Board rules, a Judge must always chair an oral hearing for indeterminate sentenced cases. However, recruiting judges is difficult and although serving Judges allocate three weeks of their time to the Board they often find it difficult to fulfil this commitment. The Board has looked to solve this by appointing retired judges but again there are limits on availability. The Board agreed that one of the advantages of being re-constituted as a court as part of the Courts Service could be that it would have more leverage over the amount of judge's time that would be set aside for the Board.³⁸

37 Q 110

38 Qq 92-96

Formal Minutes

Monday 9 February 2009

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon
Angela Browning
Rt Hon David Curry
Mr Nigel Griffiths

Rt Hon Keith Hill
Mr Austin Mitchell
Rt Hon Alan Williams

Draft Report (*Protecting the public: the work of the Parole Board*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 23 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Ninth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 11 February at 3.30 pm]

Witnesses

Monday 27 October 2008

Page

Ms Christine Glenn, Chief Executive, Parole Board, **Mr Phil Wheatley**, Director General, National Offender Management Service and **Mr Peter Handcock CBE**, Director General, Access to Justice Directorate, Ministry of Justice

Ev 1

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Oral evidence

Taken before the Committee of Public Accounts

on Monday 27 October 2008

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon
Mr Paul Burstow
Mr Ian Davidson

Keith Hill
Dr John Pugh
Mr Austin Mitchell

Mr Tim Burr, Comptroller and Auditor General, **Mr Jim Rickleton**, Assistant Auditor General, and **Mr John Cable**, Director National Audit Office, gave evidence.

Ms Paula Diggle, Treasury Officer of Accounts, HM Treasury, was in attendance.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

PROTECTING THE PUBLIC: THE WORK OF THE PAROLE BOARD

Witnesses: **Ms Christine Glenn**, Chief Executive, Parole Board, **Mr Phil Wheatley**, Director General, National Offender Management Service and **Mr Peter Handcock, CBE**, Director General, Access to Justice Directorate, Ministry of Justice, gave evidence.

Q1 Chairman: Good afternoon. Welcome to the Committee of Public Accounts where today we are considering the Comptroller and Auditor General's Report *Protecting the Public: the Work of the Parole Board*. We welcome Ms Christine Glenn, the Chief Executive of the Parole Board, at her first appearance before this Committee. You are very welcome.

Ms Glenn: Thank you.

Q2 Chairman: Peter Handcock, who is the Director General, Access to Justice in the Ministry of Justice and Phil Wheatley, who has been here many times, the Director General of the National Offender Management Service at the Ministry of Justice. Perhaps I can start with you, Ms Glenn, and refer you to paragraph 2.13 of the Comptroller and Auditor General's Report where you will see right at the end of that paragraph it says: "In our sample of 276 indeterminate cases heard by the Parole Board between September 2006 and May 2007 we found 97 case files (35%) which did not contain a Life Sentence Plan or an OASys report." My question to you is how can you make proper decisions where in a third of the hearings you did not have the key document which assesses the risk of the offender to society if he is let out?

Ms Glenn: The Board's bottom line is that we will not compromise on risk information when making decisions to release prisoners. This rigour and emphasis about what is necessary for the public protection, public safety, means that we must have evidence before us that illustrates the risks will be manageable in the community. Dossiers will contain a lot of other information as well as the OASys report and will often contain other actuarial risk

assessments. Where members consider that there is sufficient information in the dossier, even if there is not the OASys, they will proceed but we will always err on the side of caution and if we believe we have not got the information there in the dossier we will not hear the case. What we have tried to put into place is a system of intensive case management which will enable earlier quality checks and earlier opportunities to fill those information gaps in future.

Q3 Chairman: You see, what worries me about this is, fair enough, you are saying in answer that of course we will try and proceed, where we have not got the full information we will not, that seems a fair answer. So what is happening then is that a lot of these cases are being delayed. We already have overcrowded prisons. Let us look at 3.12 where it says: "The Board has no evidence of how many cases are heard in the target month . . ." it is very important obviously to get these heard on time in the target month ". . . but our analysis of 276 oral hearing cases from the nine month period from 1 September 2006 to 31 May 2007 shows that, of the 214 cases where we were able to identify the target month, only 32% of cases were held in that month". So you are not getting the information on time and these hearings are not being held in the target month. Justice delayed is justice denied and our already overfilled prisons are remaining overfilled, so what is going on?
Ms Glenn: I start by saying I entirely agree this is unacceptable. It is very frustrating and demoralising for everyone and we have really struggled to improve our performance in this area.

Q4 Chairman: Can I interrupt a moment because my clerk reminds me, reading on there, “. . . (20%) were held 12 or more months late.” 12 months late, appalling, is it not?

Ms Glenn: It is appalling and the case examples that appear later in the report on pages 26 and 27 give a flavour of the various reasons that there are. The great problem is that there is not one single agency that has total control over the process.

Q5 Chairman: All right. We have Mr Wheatley here, do we not, let us ask him. Surely the prospect of cost savings, and freeing up prison places, would be a pretty big incentive on you to get some of these reports on time, would it not? The prison operation services need to send their reports to the Board on time, do they not?

Mr Wheatley: Certainly.

Q6 Chairman: So what is going on? Why is this not happening?

Mr Wheatley: Certainly what I am doing in my current position is to use the advantage of the reorganisation which brings the Prison and Probation Services together to focus on this because it is to the advantage of the whole system. Many of the reports are to come from the Probation Service. They may not see the immediate effects of not producing them, I certainly do on the prison side, but I am joining all that up to make sure we do produce a much better service for the Board. I think the period we were looking at was during the rapid growth particularly in IPP short tariff prisoners which to some extent was putting the whole system under strain at the very same time as we were also, within the prison system, running very full indeed. That combination of facts meant it worked less well. It is worth bearing in mind, however, on the determinate sentence side, which after all is the bulk of the parole work, at this point those determinate sentence prisoners were about four times as many as the life sentence or IPP prisoners, that system was largely running to time, which the Report acknowledges. That was the one that people were most likely to be released from.

Q7 Chairman: So, once again, the answer to this Committee is that new man in charge, new broom, reorganisation, getting on top of it.

Mr Wheatley: I can only say I am trying to get on top of it because there is an issue to get on top of and I think the Report correctly identifies something was not working well.

Q8 Chairman: All right. Ms Glenn, can you look at paragraph 2.16: “The proportion of offenders released . . .”. Can you explain the fall in the Board’s release rates in the last few years?

Ms Glenn: No, I cannot because there was not any policy or procedure which led to the decreases identified. I can speculate. I am sure that the impact of the *Hanson* and *Rice* cases made absolutely everybody in the system more cautious. I think this was illustrated by the then Home Secretary’s lecture to us in 2006.

Q9 Chairman: I want to ask you about the Home Secretary’s lecture. It was the case that the Home Secretary gave his lecture, and we can all understand why he gave his lecture, his 2006 annual lecture, was it not?

Ms Glenn: Yes, it was.

Q10 Chairman: There were these very high profile cases. There was the *Monkton* murder as well, was there not?

Ms Glenn: Yes, that was the same time.

Q11 Chairman: You reflect society’s views, was it that you just caught fright and decided to let fewer out?

Ms Glenn: I think everybody in the system became more risk averse, people who were writing the reports for us, I am sure our members did as well, they would hardly be immune from it. It was interesting that the same trend spread north of the border. In 2005 the percentage of release rates for determinates was 47½%, fell to 37½% in 2006, and similar falls to us in indeterminate sentences.

Q12 Chairman: It is fair enough. It is an honest answer, you became more risk averse.

Ms Glenn: I think we did. We have looked at the reoffending rates as well. They did not change so that gave me consolation, which is set out in the Report, that we think that our decisions were good decisions largely. Last year the reoffending rate for indeterminate prisoners fell from 6% to 3%, as set out in the draft memorandum.

Q13 Chairman: On that point about the decision, if you would like to look at figure 16, which you will find on page 31, it says half the cases examined by review raised concerns or were questionable.

Ms Glenn: Yes.

Q14 Chairman: That figure is not very good. How will you improve your decision-making?

Ms Glenn: That is out of the total of 31,000-plus cases. We are talking 13 cases there where our own committee, peer review plus two external members, decided that—

Q15 Chairman: It was a small sample but it is not very encouraging, is it, they take a small sample and half of your decisions raised concerns?

Ms Glenn: These are real cases of people who have been recalled. We take the learning forward three ways. First of all, the panel members concerned get a feedback letter from the Chairman of the Committee, who is a high court judge. The second is that we feed the learning points into training events for members. We send out a bulletin of learning points based on working with a researcher at the Board. We also take forward learning points with our partner agencies and through a joint review panel. We believe that panel could be even more effective if it had some external or separate governance arrangements being led by the Parole Board.

Q16 Chairman: Lastly, Mr Hancock, you sent us a memorandum on 22 October and at paragraph three it seems the Board has moved administering from one part to another part. How has that made it more independent?

Mr Hancock: The shift of sponsorship was in response to a court judgment that suggested that positioning the Parole Board sponsorship within NOMS did not provide it with sufficient independence. The decision was taken to move it into the newly formed Access to Justice Directorate.

Q17 Chairman: I know that. How has it made it more independent?

Mr Hancock: It has moved it further away from NOMS. The sponsorship arrangements are now entirely independent of NOMS. As a result of that we have been able to set up new performance management arrangements that, again, are independent of NOMS.

Q18 Mr Davidson: In paragraphs 2.18 and 2.19 and the appropriate tables it mentions the percentage that are brought back in for reoffending as being fairly persistent at 6% and suggests that standards are being maintained. Surely rather than having it maintained at 6%, you ought to be looking for an improvement and is it acceptable that a standard 6% are reoffending?

Ms Glenn: I do not think we should be setting any standard in this because every single case is another victim. What we try to do is to learn lessons broadly from the cases, as I have said, in the review area. I was a member of the NOMS Public Protection Board and we looked at whether it was right to use a whole system target in respect of serious further offences and we decided that was just not something which was tenable.

Q19 Mr Davidson: You have a target to improve. The question is taking account of all the lessons you are learning and all the rest of it, you would expect the situation to improve and the number of people you allowed out reoffending would come down.

Ms Glenn: Yes.

Q20 Mr Davidson: Yet it has not, which potentially indicates there is something you are not learning?

Ms Glenn: It has on indeterminates, it has halved in the last year, as it says in your update Report from the NAO. It went down from 6% to 3%.

Q21 Mr Davidson: To what extent do you think that is because of the drop from 50% to 35% of people being released?

Ms Glenn: That is the other figure, it is the drop down— It was not the 55%, it was the 15%. It is the indeterminates, not the determinates.

Q22 Mr Davidson: All right. Given that it has remained, have you made a particular breakthrough this year, do you think? It has gone from 6% to 3%, for the last five years or so your figures are not known but for both categories is it 6 or 7, it just stays remarkably constant?

Ms Glenn: I could not answer that question, I just do not have enough information base on which to do so.

Q23 Mr Davidson: You are running it. If you do not have the information what do the rest of us do? Do we just give up then?

Ms Glenn: As I say, I am giving you an honest answer, I do not know the answer to that. What I can do is go back and see if I can give you more information in the form of a note.¹

Q24 Mr Davidson: Right. You seem singularly relaxed about the fact that until this year a consistent 6% were reoffending. Is it unreasonable for us to want you to improve that figure?

Ms Glenn: Not at all unreasonable, no.

Q25 Mr Davidson: Why are you not doing so then?

Ms Glenn: The difficulty now in that figure is that we are not comparing like with like. Determinate cases we are not dealing with any more. Parliament changed the law in 2003 and 2008 so the cases we are hearing there are people who have served seven years plus, only sex and violence cases. There is no point having a target in those determinate cases any more because we are not going to be seeing them.

Q26 Mr Davidson: Okay. The Chairman mentioned about the extent to which you were influenced by public opinion and you said you had become more risk averse. What does that tell us about the behaviour beforehand? Surely you were risk averse beforehand?

Ms Glenn: I want to define that more. I think we have become more rigorous in demanding harder evidence.

Q27 Mr Davidson: You were not rigorous before?

Ms Glenn: I think we have upped our game. The review committee has also meant that members have had much firmer guidance. We have also upped the advice that we have given to our members in the form of good practice on risk assessment and training. It has been a concerted effort to improve quality.

Q28 Mr Davidson: You were sloppy before, but you are not nearly as sloppy now?

Ms Glenn: I hope we are not sloppy now. Every organisation should be looking to improve.

Q29 Mr Davidson: Can I ask you about the challenges made. There are a large number of challenges made. Challenges can only be made by prisoners and their solicitors, there is no opportunity for the real world to challenge?

Ms Glenn: No, the challenges will be made by judicial review by the parties.

Q30 Mr Davidson: Is it the case that judicial review cases are always on Legal Aid?

¹ Ev 18

Ms Glenn: The vast majority would be, yes.

Q31 Mr Davidson: Maybe you can just give us some figures about that. Am I right in thinking that there is no downside to having a judicial review from the prisoner's perspective. He cannot be worse off, the lawyer makes money out of it, the system loses a lot of time and effort defending it but there is no downside at all, is there?

Ms Glenn: I do not think there is a downside for the prisoner, no.

Q32 Mr Davidson: Have you thought of pursuing with your colleagues elsewhere within the system the ease with which judicial review is initiated and pursued?

Ms Glenn: I have had discussions with the Legal Services Commission about trying to address the issue of representation. Part of those discussions was about judicial reviews. We cannot stop people appealing. We are a court-like body, we cannot stop people appealing.

Q33 Mr Davidson: There is no logical reason why everybody should not go to judicial review if the public are daft enough to fund it, is there? There is no downside and there can only be an upside, is that correct?

Ms Glenn: It is a matter for others whether or not they fund those appeals.

Q34 Mr Davidson: Can I ask you about the membership. There is mention made in the Report about the Parole Board not being representative. It focuses on the question of ethnic minorities. Can you clarify for me the extent to which the Board is representative in other ways, in terms of social class, for example? Do you think it is a representative board?

Ms Glenn: The explanatory note that you have got refers to members thinking that they were from the same part of society. I think some of them probably describe themselves as working class.

Q35 Mr Davidson: How many of those do you think there are on these boards?

Ms Glenn: I could not give an answer.

Q36 Mr Davidson: Maybe you could give us some figures then. Could you tell us what percentage of the Parole Boards have got degrees? How many are from public schools? How many might describe themselves as working class? That would give us an indication, possibly, of how representative they are in society. I am curious about the extent to which the Parole Board have a different social class from most of the prisoners that they are dealing with. Do you think that is a fair assessment to make?

Ms Glenn: I cannot answer your first point about how many have got degrees et cetera. I can research the point.

Q37 Mr Davidson: Yes, I have asked for that.

Ms Glenn: I will certainly give you that.² The Parole Board members have to be tested on a number of competencies in the recruitment exercise. They are not about education and our independent members come from a wide spectrum, ranging from former police officers, an ex fireman to people in business.

Q38 Mr Davidson: We should expect to see a fair number of working class people there then?

Ms Glenn: I would have thought so.

Q39 Mr Davidson: Your figures will show us that then. Can you tell me what percentage of people on the Parole Board have been victims?³

Ms Glenn: Yes. I have not got it with me but we did a survey of the Parole Board two years ago where we asked the current members whether they had been victims or had family or close friends who had. A very high majority of that survey had.

Q40 Chairman: On that question of Mr Davidson's about the make-up, it says in paragraph 2.2 on page 13 that "At the focus groups, members accepted they were all of a similar social background . . .".

Ms Glenn: Yes.

Q41 Chairman: ". . . and argued that the low remuneration available was a barrier to the Board's goal of widening access to its membership". There is something wrong here, is there not, all of the same social background.

Ms Glenn: I was not sure whether that meant the members at the focus groups or the whole of the members, Chairman. I can say something about the low remuneration if that would help the Committee.

Q42 Chairman: Say it now. Pay more.

Ms Glenn: If only we could. We have commissioned—

Q43 Chairman: What do they get at the moment for an afternoon's work?

Ms Glenn: It depends on the sort of work it is. It is a different fee for different parts of work. I can let you have a note.⁴

Q44 Chairman: Can you give us a flavour.

Ms Glenn: I will give you a flavour. £482⁵ for a conditional release panel which is about four days' work.

Q45 Chairman: £400 for four days' work.

Ms Glenn: £482⁶ for four days' work. £186 is the non case work day. Our retired judicial members get £428—

² Ev 18

³ Ev 19–22

⁴ Ev 23

⁵ Note by witness: The figure of £482 was amended to £537.

⁶ Note by witness: The figure of £482 was amended to £537.

Q46 Chairman: It is okay if you are a retired judge on a good pension, but if you are a working man who has to work for a living it is not very good, is it?
Ms Glenn: That is for two days and actually if they sit as a deputy circuit judge they get £560 a day for retired judges so we are below there as well.

Q47 Mr Burstow: Can I go back, first, to the OASys report and clarify something. It says in the Report from the National Audit Office that these reports became mandatory in respect of indeterminate cases from May 2007. Obviously the survey undertaken pre-dated that point. Would it be the case that when you are next before us and the next audit is done that 100% of all indeterminate cases will have those reports in front of them?

Ms Glenn: The intensive case management system will mean that will definitely be the case. I did a sample of cases for this month and of the 20 cases we sampled, 12 of them already had OASys and the others our intensive case manager was requesting. This was at a time 13 weeks before a hearing so there is time to get that.

Q48 Mr Burstow: How does it obviate the need to have to provide a mandatory report, to have the other system you just mentioned being used, the intensive case management? If there is a mandatory requirement to have an OASys report how can anything else result in that not being done?

Ms Glenn: No, what I am saying is we will then ask the Prison Service to provide it at an earlier stage so that it is before the panel when we send the papers out to them 30 days before the hearing date.

Q49 Mr Burstow: So definitely 100% next time.

Ms Glenn: We will not accept it in future.

Q50 Mr Burstow: In other words there will be more delays?

Ms Glenn: No, there will not be because we are giving the directions at an earlier part of the process. We will be giving those directions 13 weeks before the hearing date in the timetable. They will have four weeks to prepare before the hearing.

Q51 Mr Burstow: Just to be clear on the point about delays, which you have been asked about already, you said there is no single reason so one of the things that is surprising from the work the NAO have done is that the Board has no evidence as to how many cases are heard in a target month. I understand from the memo supplied as well that is still the case. Why is that still the case? Why is there no clear evidence being gathered to allow you to know and thus address any problems in respect of delays dealing with cases?

Ms Glenn: What we did not have was a single place where that evidence was. The IT systems mean that we have not got a fully functioning case management system so we operate on three home-grown databases effectively. We have got the

numbers of cases on one of those, the second one has the case management arrangements, the listing arrangements, and the third one has the arrangements for individual cases. What we were not doing at the time of the NAO report was doing a full reconciliation of the two. That we now do. It is very time-consuming because it is a manual process and I can give you figures today which give you a snapshot as at 1 October, if that would be helpful.

Q52 Mr Burstow: Rather than reading them into the record now, if we could have a note of those figures that would be very useful.⁷ In terms of the databases that you have been talking about, in the recommendations that were made by the NAO it was asking that there be work done on the database and we are told that cleansing of data has been completed and a comprehensive process manual produced for staff, but it then goes on to say the current database has reached the end of its useful life and the Board is currently working on plans for implementing a replacement. What sort of timescale is that likely to take place in?

Ms Glenn: We are now working with our new sponsors on this. The replacement for our database was going to be C-NOMIS and that is not achievable before 2010 so what we are looking at as options are buying an off-the-shelf system and we have looked at costings and possible providers. We are also looking at possible places within the Ministry of Justice where we would be able to piggyback on to one of the existing systems. One which has been suggested is the Mental Health Review Tribunal and the sponsors have facilitated a visit to their head office and also to the Asylum and Immigration Tribunal to look at their systems. So far as timescales are concerned ideally we would like to be looking for something from 1 April next year, but I do not know how achievable that is. It would depend on capital bids.

Q53 Mr Burstow: The reason I ask in part is because work has been done which suggests that the cost of all the delays that are inherent within the systems as reported in the NAO report in the nine months to 30 September 2007 to the Board and Her Majesty's Prison Service amounted to £3 million and your whole budget is £7.8 million. There is a whole lot of public money that is just being wasted because of all these delays. Would this IT system when it is in place deal with those?

Ms Glenn: Only in part. The main point about the delays is that all the agencies have been hit by this tremendous increase in caseload. When I joined the Board less than seven years ago there were 285 oral hearings a year; this year we held 205 in August; we held 2,500 last year. Those figures are set to rise over the next three years so everybody is completed

⁷ Ev 19

inundated with this workload. The IPP sentence was the final straw but the other legislative changes made the difference. What we are doing is working on a generic parole process to set targets to address delays and this, I think, is the way forward.

Q54 Mr Burstow: Is this the new monitoring board responsible for monitoring performance?

Ms Glenn: Yes.

Q55 Mr Burstow: Which met for the first time on 16 October.

Ms Glenn: Yes.

Q56 Mr Burstow: What were the key decisions in that meeting?

Ms Glenn: We have set up four work streams. One is looking at quality and standards because there is no point having timely information if it is no good; the second is looking at the process itself; the third is looking at communications issues and the fourth at training. What we are intending to do is to have the process wrapped up by the end of this calendar year so we can have training events aimed at prison and probation staff in the first three months of next year or simultaneously working up the whole system targets so each of us holds the other to account through that monitoring arrangement.

Chairman: Thank you, Mr Burstow. Keith Hill.

Q57 Keith Hill: I would like to focus on the delays in the oral hearings for those serving indeterminate sentences. These are presumably prisoners who have had the longest sentences, for the most part at least, and although they may be very wicked people presumably these hearings are extremely important to them and they deserve to be treated fairly.

Ms Glenn: Yes.

Q58 Keith Hill: Yet we learn that of the cases looked at by the NAO in two-thirds of them the oral hearings are delayed, in some cases for up to 12 months. I would just like to concentrate on at least one stream of the reasons for these delays which is the issue of incomplete dossiers which account for about a third of the delays. Perhaps I could begin with Mr Hancock because as the NAO remarks the Ministry of Justice is not meeting its business plan targets on the production of information for the Board and that causes delays from the outset. Can I ask you a number of questions which are probably capable of yes/no answers so that I can deliver the coup de grace in due course? In paragraph 3.22 the NAO reports: "The Ministry of Justice told us the main reason for the missed targets is a lack of resources." Is that correct?

Mr Hancock: It may have been at the time?

Q59 Keith Hill: It may have been at the time, we come back to that. The report goes on to say that the number of prisoners serving indeterminate sentences doubled between November 2003 and November 2007, yet over that period the Pre-Release Section's

workforce which is the section responsible for preparing these dossiers fell from 75 to 59, is that correct?

Mr Hancock: I assume it was. I have to look to Mr Wheatley for the answer to that question.

Mr Wheatley: Those are the agreed figures.

Q60 Keith Hill: Then it goes on to say: "The Section suffers from high staff turnover and is heavily reliant on agency staff, which causes problems as it can take up to six months to become proficient as a Caseworker." Was that true and is that true?

Mr Hancock: Was and I think is not true now. I will ask Mr Wheatley to say a little more about this in a moment because this is his area rather than mine but the whole process has been comprehensively overhauled.

Q61 Keith Hill: If it is your area, Mr Wheatley, perhaps you had better come in.

Mr Wheatley: I have now taken ownership of this group that belongs to the new NOMS agency. They have been reorganised into a single Public Protection Unit and that has made it more efficient. We are training people better, we are recruiting people, keeping them and not relying on agency staff and I am committed to ensuring that we staff up this important area of work for the reasons that you say, it needs to work well because people's liberty hangs on it and the country's money hangs on it.

Q62 Keith Hill: It is no longer true then to say that there is a lack of a structured and in-depth training programme for new caseworkers.

Mr Wheatley: No, and we are correcting the deficiencies which this report correctly identifies.

Q63 Keith Hill: It also says in paragraph 3.22 that the head of the Pre-Release Section is hoping to increase the Section's workforce to 68 by April 2008. Was that achieved?

Mr Wheatley: Yes, to the best of my knowledge it was. I cannot give you a precise number but we have built up the section and are making sure we staff for the workload, because there is no point having a head count target that does not deal with the workload we have got.

Q64 Keith Hill: I understand that, but it is still odd, is it not, that the target seems to have been 68 by April 2008 although in 2003 it was 75 and in the meantime cases have at least doubled?

Mr Wheatley: We have correctly become more efficient; there was inefficiency I think in that whole section which I remember from a long way back.

Q65 Keith Hill: How many are agency staff now?

Mr Wheatley: I would have to write to you with the precise number to give you an accurate number.⁸

Q66 Keith Hill: That would be extremely helpful.

Mr Wheatley: We have reduced reliance on agency staff and we have made it more efficient which I think you would want us to do.

Q67 Keith Hill: I would. How do you measure that efficiency?

Mr Wheatley: Efficiency can be measured by the number of caseworkers we have got and the work correctly done so you can see the throughput of cases but it has to be done correctly, it is no good saying we are just moving cases through.

Q68 Keith Hill: Give me a statistic then to demonstrate the efficiency.

Mr Wheatley: The number of cases dealt with per caseworker shows, I think—and I am speaking from memory and I would like to check this—that we have about 100% increase in efficiency over the period. I can give you a detailed note on that.⁹

Q69 Keith Hill: That would be extremely interesting but over what period is that?

Mr Wheatley: It is over a four year period but I would like to write and confirm that.

Q70 Keith Hill: That would be extremely helpful, thank you for that. Can I move on to the Prison Service then, whose responsibility is that?

Mr Wheatley: Mine.

Q71 Keith Hill: It is still you. What is the Lifer Clerk?

Mr Wheatley: The Lifer Clerk is the Treasury grade as I would know them, the administration grade, in an establishment who organises the hearing. Each prison will have a Lifer Clerk.

Q72 Keith Hill: Presumably that clerk deals with lifers.

Mr Wheatley: That clerk deals with lifers.

Q73 Keith Hill: It is extraordinary to read in the NAO report: "Lifer Clerks therefore either have to devise their own system to prompt them to begin to compile the dossier, or are reliant on notification from the Ministry of Justice via email or the receipt of the skeleton dossier." All of that seems a little haphazard for such an important arrangement.

Mr Wheatley: It contrasts it with the determinate sentence position where a simple calculation of the date tells you precisely when somebody should be reviewed because they have a fixed date, which is obviously what you have with a determinate sentence. In this case there is more art in the selection of review dates and more involvement of the review section in deciding what those dates need to be in order to take the decision at the right time. We are reviewing, as part of the overall parole process, whether we can make this into a more routine system and run a routine system for the whole of the service.

Q74 Keith Hill: It sounds as though it would be a good idea to have a bit more routine, a bit more of a template for the way in which the Lifer Clerk operates.

Mr Wheatley: The more we are able to do that, while still meeting the needs to flex it sometimes when reviews take place, the better.

Q75 Keith Hill: We would agree with that. The Lifer Clerk has to send out a large number of requests to those who are responsible for providing the reports; that is to the Home Probation Officer, to the Probation Officer seconded to the prison, the Lifer Manager of the prison, the offender's Wing Manager, Personal Officer and other prison staff. This seems very complicated, a very large number of sources. Is all this really necessary?

Mr Wheatley: The Parole Board, who decide what information they need to take decisions, want reports from all those people, so those reports have to be gathered. The ones that come from within the prison can easily be chased, the ones that are from outside the prison or rely on specialist resources elsewhere obviously are more problematic.

Q76 Keith Hill: I do agree that the most likely report to be missing from a dossier is the psychological report; presumably that is done within the prison.

Mr Wheatley: It is. There is a question of do they need a psychologist's report, not all lifers have a psychologist report and lots of the psychologist reports are actually reports at the end of an accredited offending behaviour programme which need the programme to be finished before they can be written, so there are particular problems with the psychologist's report.

Q77 Keith Hill: The second report most likely to be missing is from the Home Probation Officer; why does the Home Probation Officer need to write a report?

Mr Wheatley: The Parole Board want to have an assessment from the Home Probation Officer as to how the risk could be managed if they were in the community. In the offender management model, which as part of the National Offender Management Service we are rolling out, it is the offender manager in the community who takes all the key decisions about IPP prisoners and therefore the probation officer is in the leading role on what the risk is and how it is managed.

Q78 Keith Hill: Finally I want to ask you how has the very recent introduction of intensive case management impacted on this issue of delays in oral hearings for indeterminate sentence prisoners?

Mr Wheatley: It is an effective system for spotting what is missing in time to allow that to be chased. That, coupled with changes to the way in which we organise will bring substantial improvements and is bringing improvements, but it needs to be coupled with the redesign of the process which we are now engaged in and have just been told about.

⁹ Ev 25

Q79 Keith Hill: But it does not actually prevent overall delays and has not prevented overall delays, it gives you notice of where delays are likely to occur and therefore be obviated so in a sense they do not appear in the system.

Mr Wheatley: That is absolutely right. It tells you where you are missing a report, it enables you to remedy that faster. The crucial thing is to get the reports done on time out of what is, as you correctly point out, quite a complex system but all are important players for the Parole Board to take a correct decision.

Ms Glenn: I could possibly add one statistic there, Mr Hill. In September deferrals on the day were 11%. As said in the report it was something that rose to 45% last year so we do think that we have turned the corner in those. The other thing which has been affected by intensive case management is the ability for panels not to be lost, and I can give you another statistic if that would be helpful. In August 2007 we cancelled 29 panels which affected 83 cases. Between 1 April and 30 September this year—again this is following intensive case management—we only lost six out of 844 panels due to a member dropping out and that is less than 1% of the cases. We are, therefore, cautiously optimistic at the moment.

Keith Hill: Thank you.

Q80 Mr Bacon: In Appendix One it says that the Parole Board only retains parole dossiers for nine months after the date of the hearing, before they are destroyed. If there is a hearing and as a result of the hearing someone is released and then commits an offence ten months later or one year and three months later does that mean that you have no record of what was done at the parole hearing?

Ms Glenn: No, it does not. NOMS keeps the main dossier and it keeps it ad infinitum as I understand, it is just that for storage purposes there is no point us keeping duplicates.

Q81 Mr Bacon: Do they keep an electronic copy?

Ms Glenn: I do not know whether it is electronic or not but they keep a dossier. We ask our members to keep them for nine months in case there is an appeal in that period.

Q82 Mr Bacon: I see, and the information is retained eventually somewhere else.

Ms Glenn: Yes.

Q83 Mr Bacon: In paragraph 4.4 it talks about the wider learning points of which there are 39. The Board established a Joint Review Panel as a result of these wider learning points and the need to learn from them which met for the first time in June 2007 and met again in October 2007, which could lead one to suppose it was due to meet quarterly.

Ms Glenn: And it does.

Q84 Mr Bacon: It has met since then, it is merely that it does not say so.

Ms Glenn: It is rather oddly worded, yes.

Q85 Mr Bacon: Just a question about your budget, it is £6.6 million, is that right?

Ms Glenn: Yes.

Q86 Mr Bacon: It is in light of that that I find these figures about the cost of delays so shocking. In the global scheme of things, they do not sound like much, but in the context of your budget they are very big sums, are they not?

Ms Glenn: Yes.

Q87 Mr Bacon: If you take the 174 deferrals costing just over £1,000 each—this is at paragraph 3.14—the administrative cost to the Board of deferrals or adjournments on the day would be nearly £900,000—£859,000.

Ms Glenn: Yes.

Q88 Mr Bacon: It refers to 29 offenders spending an additional 5,100 days in custody at a cost of nearly £400,000 and the total cost of oral hearings being deferred in the nine month period was just over £2 million. These are big sums from a budget of £6.6 million.

Ms Glenn: They are big sums.

Q89 Mr Bacon: Have you not had pressure to do something about it, purely from a financial point of view?

Ms Glenn: Yes.

Q90 Mr Bacon: When do you think you will?

Ms Glenn: It has got to improve, these delays are just totally unacceptable. The case examples on pages 26 and 27 I think set out part of the reasoning why there are such a lot of deferrals because you will see that we were unable to do what we should have done in terms of arranging hearings on time and having the appropriate number of panel members. Part of the reason for that is that the Parole Board rules as currently drafted are very inflexible and there are going to be changes which will enable us to have much greater flexibility in how many members.

Q91 Mr Bacon: Where it says “This Board could not arrange a full three-member panel” how difficult can it be to arrange a three-member panel?

Ms Glenn: You need a judge and there are only so many judges. We could easily arrange other members.

Q92 Mr Bacon: Is this one of the reasons why the Board would prefer to be constituted as a court?

Ms Glenn: Partly.

Q93 Mr Bacon: You would then have more judges, or would you?

Ms Glenn: Not necessarily more in number but more judge time.

Q94 Mr Bacon: You are nodding, Mr Hancock; I always like a good nod, especially if it is coming from behind which is usually very revealing. Mr Hancock, you were definitely nodding.

Mr Hancock: I was indeed nodding and I was agreeing with what I anticipated my colleague was about to say.

Q95 Mr Bacon: Can you tell me what you think she was going to say.

Mr Hancock: One of the difficulties here is that the owner of the resource, the judges—which is Her Majesty's Court Service—does not own Parole Board targets so it is not incentivised to feed in the right number of judges. In fact, if it is struggling with its own list then it has a positive disincentive to put the right number of judges in. If the Parole Board were associated more closely with the Court Service—

Q96 Mr Bacon: By being a court in its own right.

Mr Hancock: By being a court in its own right, for example, both the resource and the accountability would rest in the same place. It is never a recipe for satisfactory performance if someone owns the target and someone else owns the resource you need to deliver it.

Q97 Mr Bacon: Let us just be clear. In those circumstances if the Parole Board's dream organisation became true, you would have allocated judges who only did this sort of work, is that right, within that structure?

Mr Hancock: It is a possibility and it is something, when we come to consult on potential changes to the constitution of the Parole Board, that we might want to consult on, it is not that we necessarily want to do that.

Q98 Mr Bacon: Would those judges come still from the normal sources from where judges come, there would be no change there.

Mr Hancock: No.

Q99 Mr Bacon: Written reasons, paragraph 2.14. I was quite surprised by this—this is the second bullet point in paragraph 2.14—it says that: “For oral hearings, which are always chaired by the judicial member of the Board . . . written reasons are formalised after the hearing.” It goes on to say: “We found that some members are concerned that some panel chairs rewrite the reasons for the panel's decision after a hearing”—it sounds exactly like the Cabinet minutes actually—“and that these final reasons can differ from those agreed during the hearing. There is currently no requirement for all three panel members to sign off the final reasons as happens at the Parole Board for Scotland and the other panel members usually do not see the final version of the reasons.” Why not? In fact, why not two things: why do they not see the final version and why is there no requirement for them to sign off?

Ms Glenn: I have to say that until we read this we did not know that they were not seeing the final version.

Q100 Mr Bacon: No one ever complained to you? Had no Parole Board member ever said to you “I do not see the final version”?

Ms Glenn: No.

Q101 Mr Bacon: They just take their £462 and run.

Ms Glenn: Nobody had raised it. Clearly it is unacceptable and the new template that we are bringing in in response to the recommendation in this report will enable us to ensure that all three members sign them off. What we did following this was issue information to our members, telling them that this was expected, and certainly when we train our judicial members we tell them that this is the way that it should be.

Q102 Mr Bacon: What are you doing to check that it is done this way?

Ms Glenn: Nothing at the moment because we are waiting for the monitoring and the new template to come in in January. Having issued the advice I would expect a member to raise it with me if it is not happening.

Q103 Mr Bacon: Thank you. In 2.11 it refers to the people who are consulted about parole decisions; members have difficulties because of the differing opinions from those responsible for supervising offenders, and it talks about probation officers. This may be one for Mr Wheatley, I do not know, but do prison officers routinely get consulted about parole decisions?

Mr Wheatley: There will be reports from those who are working with them in the prison as well as reports from external probation. If there is an oral hearing prison staff can be summoned to give evidence, as indeed I have; when I worked with prisoners I turned up and gave evidence as a prison member of staff.

Q104 Mr Bacon: It would be quite routine for prison officers to be called to give evidence.

Mr Wheatley: Yes.

Q105 Mr Bacon: I have just read *Screwed: The Truth About Life as a Prison Officer* by Ronnie Thompson. Have you read it?

Mr Wheatley: No, I have not.

Q106 Mr Bacon: I recommend that you do, it was quite surprising actually but it is a very good book, available in all good airports, but I am told it is true. Could I ask about the Director of Performance and Development who, in November 2007, tasked an experienced member with contacting the 18 members who were not meeting their expected number of days to discuss issues preventing them from undertaking more Board casework. The way this is written suggests that he was tasked with contacting them, but it is not quite clear what has subsequently happened. Did he agree to contact these 18?

Ms Glenn: He did and he prepared a report which was about the reasons why this was happening.

Q107 Mr Bacon: What were the reasons?

Ms Glenn: The reasons were very much what is set out in this report: fees levels, not so much location of hearings.

Q108 Mr Bacon: They knew what the fee levels were when they agreed to do the work.

Ms Glenn: They did, but they were able to maybe do the minimum amounts—

Q109 Mr Bacon: No, these are people who are not meeting the minimum, they are the 18 members who are not meeting the expected number of days. Those are the only ones I am asking you about.

Ms Glenn: Sorry.

Q110 Mr Bacon: Those 18 presumably also knew the fee levels when they came on board.

Ms Glenn: Yes. I can give you a specific reply—sorry, I did not hear the question properly. Only nine members between 1 October 2007 and 30 September this year failed to meet the minimum number of days. Six of those were psychiatrists employed in the NHS and, frankly, the NHS contract means it is really difficult for them. Some of them do the Parole Board work in annual leave, so that is a problem. Of the other three independent members two have been long term sick and the other one has recently decided to resign.

Q111 Mr Bacon: In relation to the psychiatrists you say that is a problem, but presumably psychiatrists' reports are really rather important in this process; what are you planning to do about that one?

Ms Glenn: It is not the psychiatrists' report, it is the psychiatrist members on the Panel.

Q112 Mr Bacon: Their presence is rather important is what I meant, their ability to input into the process is important.

Ms Glenn: Of course it is.

Q113 Mr Bacon: If they are not there it is a problem, as you have said; what are you going to do about it?

Ms Glenn: We have fortunately been able to recruit some additional psychiatrist members in the last recruitment round and we are starting another recruitment round with our sponsors in January. The intensive case management has meant that we have tried to target their presence at the hearings that most require them, so that is what we have been doing about it.

Chairman: Your last questioner is Austin Mitchell.

Q114 Mr Mitchell: You are doing okay on hearing determinate sentences but only a third of hearings on indeterminate sentences are held as planned and two-thirds are deferred at least once. There are two possible reasons for deferment. One is that you have not got the information and the other is you have not been able to convene a panel; which is the more important and what proportions come into it?

Ms Glenn: There is a third reason as well if I may say, Mr Mitchell, which is that sometimes prisoners want the case to be deferred because they are able to get additional information which will help them.

Q115 Mr Mitchell: Is that a high proportion?

Ms Glenn: That is a high proportion too.

Q116 Mr Mitchell: Is it bigger than the other two proportionately?

Ms Glenn: No, it is probably slightly less.

Q117 Mr Mitchell: How much is your fault and how much is the fault of information?

Ms Glenn: I can only respond in terms of the outstanding cases. As of 1 October, snapshot cases, on 24 October there were 689 outstanding cases, 174 are ready to be listed, 64 are with ICM members, 137 no dossier received, 65 an incomplete dossier and 249 where we have made directions and we are waiting for those to be complied with.

Q118 Mr Mitchell: That is a lot of dossiers, a lot of lacking information.

Ms Glenn: Yes.

Q119 Mr Mitchell: Whose fault is that, is it the prison service, is it the probation service, whose fault is it?

Ms Glenn: It is the information that we need from NOMS in order to convene the hearing.

Q120 Mr Mitchell: Yes, but who is being most dilatory, the Prison Service, the Probation Service or NOMS?

Mr Wheatley: The answer to that is it is probably a shared responsibility between the Prison Service and the Probation Service. We have been changing the way in which we manage offenders and the Probation Service now play a much more leading role than they used to do, it was almost entirely a prison-contained process at one point apart from what we used to rather grandly call a home circumstances report from probation. We are now expecting a lot more from the Probation Service who themselves of course are coping with—

Q121 Mr Mitchell: Can it live up to that?

Mr Wheatley: They can if we organise ourselves well to do it. They will have to because it is an essential part of the process and what we are doing is making sure that we measure their performance—at this point there was not a specific measure on probation performance, it is now one of the key targets of the Probation Service which I monitor and the monitoring suggests that something like 88% of reports are now being done on time—I need to make sure that that is really quality information and that they are not just telling me that, and we need to drive forward on this because they are an essential part of the new process.

Q122 Mr Mitchell: That is good to hear but we have heard reports in the newspapers in the last couple of weeks of substantial job cuts in the Court Service

and the Probation Service and in the Ministry of Justice's staff. If these job cuts occur it is going to make your situation far worse, is it not?

Mr Wheatley: It will be a challenge for us managing.

Q123 Mr Mitchell: No, no, it will make it hard work.

Mr Wheatley: There are substantial efficiencies we can make in the way the Probation Service operates generally and there are some very sensible things we can do that will give us a more efficient and effective Probation Service which we can drive forward over the next year so that we do not impact on performance. We also need to be careful that of the things we ask the Probation Service to do, we from the centre—of which this is one—are not asking them for anything we do not need. If we over-prescribe the process and ask them to do more elaborate things than are necessary we do not add to public protection.

Q124 Mr Mitchell: Why has there been a shift from paper hearings to oral hearings?

Mr Wheatley: As a result primarily of court hearings and changes to procedure as a result of judicial reviews and legal challenges.

Q125 Mr Mitchell: You are tightening up the procedures.

Mr Wheatley: No, the changes to the process have been largely—

Q126 Mr Mitchell: You fear a judicial review therefore you have more oral hearings.

Mr Wheatley: They have been largely a result of judicial reviews, the findings of judicial reviews, which have increasingly said particularly lifers and indeterminate sentence prisoners have a right to an oral hearing whereas previously it was done as a paper hearing.

Q127 Mr Mitchell: The oral hearings are obviously going to be more expensive than the paper hearings; has your grant, the money coming in, increased proportionately?

Mr Wheatley: What we have done of course is there have been changes to the process so that Parliament has made changes to the assessment system which means that the number of determinate sentence cases will shrink rapidly—it is expected to drop below 1,000 within the next 18 months to two years—and that will free up resources which will enable us to concentrate on the high risk cases which are mainly lifers and indeterminate sentence cases and the top end of the determinate market, the dangerous.

Q128 Mr Mitchell: I see that the judges are supposed to allocate three weeks of their time to the Board and you say, rather understandingly, they often find it difficult to do so. If I appear before a judge and he sentences me to three weeks for taking photographs of public places, an offence that is very fashionable, and I said I am going to find it very difficult to fulfil

that commitment, your Honour, he would just tell me to bugger off. Why can you not make the judges pull their weight?

Ms Glenn: All the judges are doing their minimum sittings; most of the retired judges are doing double.

Q129 Mr Mitchell: In that case you have not got enough judges.

Ms Glenn: We have not got enough, no.

Q130 Mr Mitchell: You have not got enough psychologists, you have no psychiatrists either.

Ms Glenn: Yes.

Q131 Mr Mitchell: What is the answer?

Ms Glenn: The answer to the psychiatrists and psychologists is not so chronic because we are better targeting those people at the cases that need them through the early management of the cases. In terms of judges, through the new sponsors we have been able to achieve additional judge days for the rest of this year and we are optimistic that that arrangement will continue. We have also got another recruitment campaign starting in January.

Q132 Mr Mitchell: Do they not want to do the job, are they not paid enough?

Ms Glenn: It is quite a tough job actually. Our deputy chairman, who is a High Court judge, said it is actually much harder than sitting in court and dealing with cases because they are chairing a panel and they are making the decisions rather than the jury. They also do an enormous amount of having to read the cases in their own time and write the stuff up in their own time, so it may not be that attractive.

Q133 Mr Mitchell: Do you have to have a judge as the chairman?

Ms Glenn: At the moment the rules say so; the new rules will mean that you do not have to. We are looking to keep judges for lifer cases because as a public confidence point we thought that would be necessary.

Q134 Mr Mitchell: To return to the issue of the people who were not meeting the expected number of days, the 18 who were contacted, I assume that 2.5 is the explanation that they gave. You said the number who are not fulfilling the commitment is actually lower—

Ms Glenn: That has been addressed now, yes.

Q135 Mr Mitchell: But there are a number of reasons given: low remuneration—is that still valid?

Ms Glenn: Yes.

Q136 Mr Mitchell: Uncertainty over whether the hearing will go ahead, in other words there is a certain amount of confusion. Is that still valid?

Ms Glenn: It is much, much less valid. As I said, hardly any panels are now being cancelled.

Q137 Mr Mitchell: The location of the hearing can be inconvenient. I can imagine they would say Grimsby, another chance to visit Grimsby, fantastic, but Lincoln they cannot be bothered. Why do you allow them that latitude?

Ms Glenn: We do not. We ask each member who is eligible to sit on oral hearings to nominate 25 prisons which would be convenient and we do our best to try and list cases in those prisons, but it may be that we have a case that needs hearing and none of the members that like sitting in Acklington or Dartmoor are available. Members are very flexible and they will travel all over the place but, understandably—

Q138 Mr Mitchell: Okay, and performance is improving.

Ms Glenn: Yes.

Q139 Mr Mitchell: I am flogging a dead horse there. I have here a letter to us from the Howard League for Penal Reform that we are sending too many kids to jail in this country and they make recommendations for dealing with children's applications which are the creation of a dedicated and trained secretariat. Have you seen the letter?

Ms Glenn: Yes, I got it late this afternoon but I have seen it.

Q140 Mr Mitchell: Okay. A dedicated and trained secretariat, a need for representation for kids, a copy of the dossier before it is sent to the Parole Board and an extension of the policy that all children should receive oral hearings automatically. Are you in a position to fulfil those recommendations?

Ms Glenn: There are two that really affect my organisation. One is the first one about dedicated secretariat staff; I would rather train all my staff because we get very, very few cases—thankfully—involving children. We had 58 last year and we have 38 this year so far, so I would be a bit worried that something would fall through the net. I would rather train all my staff.

Q141 Mr Mitchell: But you are trying to fulfil that.

Ms Glenn: Absolutely. The second one was about the oral hearings. We worked with the Howard League and I think in the supplementary evidence you see the booklet that we co-produced with them. We have a policy where we give an oral hearing for young people in everything except recalls. My preferred position would be not for the first review, because it actually might delay their process. We hear 100% of our recall applications in six days so I would rather see whether they get that as a paper sift and then consider an oral hearing after that.

Q142 Mr Mitchell: Thank you. I see that in the 12 months to December 2007 you reviewed 50 cases and found that 25 were reasonable; the other 25 were reasonable with concerns or questionable. Those are two big differences—how many were questioned?

Ms Glenn: There is a definition for these and I can let you have a note of what it is,¹⁰ but briefly reasonable with concerns tends to be that the decision is reasonable but there are concerns, often about the way that it has been expressed in the reasons. Questionable will normally relate to whether or not we think that was a sound decision and/or the reasons.

Q143 Mr Mitchell: What proportion was which?

Ms Glenn: Sorry, could you refer me to the page?

Q144 Mr Mitchell: 25 were either questionable or reasonable with concerns.

Ms Glenn: 13 were questionable and 12 were reasonable with concerns.

Chairman: Mr Burstow has a supplementary.

Q145 Mr Burstow: I have a question for Mr Wheatley and a question for Ms Glenn if I may. The question for Mr Wheatley relates back to the exchanges with Mr Hill. In the exchange earlier there was a reference made to one of the footnotes in the NAO report which says that the most likely report to be missing from the dossier and cause a hearing to be deferred is the psychological report which was responsible for 26% of hearings that were deferred because of missing documents. I listened to you and I will re-read the transcript later but I do not think you then went on to explain why that happens in cases where a psychological report is required and is the reason for a deferral, why has the psychological report not been requested?

Mr Wheatley: Two things are happening. There is not a need for a routine psychological report, so not every one of these cases has a psychologist's report. Psychologist's reports are where applicable, so the issue is, is it applicable. The Panel may well decide on the day and with representations from the barrister or legal representative for the prisoner that they really want further information and they want a psychologist's report, so that may happen. We are trying to deal with that by the intensive case management approach which means that we look in advance and think is that likely to happen.

Q146 Mr Burstow: Can I just interrupt very briefly because these reports are agreed between you and the NAO and the footnote talks about reports that are missing, not reports that were not commissioned because they were not required.

Mr Wheatley: It is a perfectly accurate report, they were missing in that the panel thought they were needed and they were not there. If we had spotted in advance that they were needed we would have put them in.

Q147 Mr Burstow: But they were not missing therefore so the definition is obviously incorrect.

Mr Wheatley: I think it is a perfectly accurate account and the intensive case management

¹⁰ Ev 24

approach we are bringing in is making us much more focused on what we should have for the hearing and involves the board saying this is going to need a psychological report. The other thing that happens with the psychological report is that they often account for an update on what somebody has done in their offending behaviour programmes, so they require the offending behaviour programmes to finish which means that they are often done very near to the time of the hearing and that can lead to delay, because what the psychologist is saying is not just a psychologist's opinion, they are saying this person has now completed their sex offender treatment programme and the assessment at the end of the course is X, Y and Z which is very helpful to the Parole Board. The course itself may be finishing very tight up to the hearing taking place.

Q148 Mr Burstow: But there are cases where the report is just missing?

Mr Wheatley: Yes, there are.

Q149 Mr Burstow: Do you have the data which would allow us to unpack those?

Mr Wheatley: I cannot pick out of this data why they were missing in every case. They are not routine reports and if we had to provide a psychologist's report on every prisoner that is a substantial resource implication.

Q150 Mr Burstow: That should not be taken to be implied by the question, we are just trying to understand why.

Mr Wheatley: I cannot tell you the reasons and I do not think that is available to us.

Q151 Mr Burstow: Thank you very much, Mr Wheatley. The other question was really on the memorandum that we have had. Can you just confirm, when was this report signed off between yourselves and the NAO, do you know?

Ms Glenn: Some time in February.

Mr Burr: 29 February.

Q152 Mr Burstow: Then we start the new year and what we see in the memorandum on page 3 is that the year to 31 August in terms of the performance against the business plan targets for holding oral hearings when compared to the last full year, on dossiers to be sent to panel members 15 working days before the hearing and also in terms of reducing the numbers of cases deferred, in both cases the performance has gone the wrong way.

Ms Glenn: If we were measuring like with like on sending the dossiers to the panel members it would be 98% within 15 days. The target now in the new business year, the 80% target, is actually to send them out 30 days before, so doubling the amount of time that members have.

Q153 Mr Burstow: The target now to 31 August is 30 days.

Ms Glenn: Yes.

Q154 Mr Burstow: And only 47% of dossiers have actually been delivered within 30 days.

Ms Glenn: Only 47% because we are sending complete dossiers out rather than the piecemeal ones that we were sending before.

Q155 Mr Burstow: Whereas the previous target where the actual figure was 69% was for a shorter period of time.

Ms Glenn: It was for a shorter period of time.

Q156 Mr Burstow: So more documents were being sent in a lesser period of time and now less documents are being sent even though you have more time to prepare them.

Ms Glenn: No, it is the other way round.

Q157 Mr Burstow: It is the other way round, so it is an improvement.

Ms Glenn: Yes.

Q158 Mr Burstow: In that case I am pleased I asked the question if only to make it clear in my mind.

Ms Glenn: You have only got the figures to August but in September we actually hit 80% on that one, so we actually hit the target.

Q159 Mr Bacon: I would like to ask Christine Glenn what do you understand by the phrase "honesty in sentencing".

Ms Glenn: I interpret that as meaning the public and the prisoner understanding what the sentence is completely and for there to be no surprises. I think that is what I have to say.

Q160 Mr Bacon: That is a reasonable way of putting it. I would put it more simply, that certainly from talking to my constituents they expect that if somebody is sentenced to prison for a given period of time, say three years or seven years, that is the amount of time for which they will go to prison. That never happens, does it, or very rarely with determinate sentences.

Ms Glenn: It does not happen with determinate sentences either, does it?

Q161 Mr Bacon: I am talking about determinate ones. With determinate sentences it is pretty much never the case—there might be the odd exception—that somebody who is sentenced to prison for three years goes to prison for three years, or that somebody sentenced to prison for seven years goes to prison for seven years.

Ms Glenn: Parliament has enacted otherwise.

Q162 Mr Bacon: It has. The public's expectation in that respect is basically not fulfilled.

Ms Glenn: Yes.

Q163 Mr Bacon: I realise that this is a policy question but it just seems to me that the whole

business of what you are doing is completely incompatible with honesty in sentencing; you can either have what you are doing which costs quite a lot of money and it is not obvious how efficient and effective economically you are—in fact I would say you are not that efficient or effective given some of the evidence, and you do not seem to be improving that much—or we can have honesty in sentencing but you probably could not have both, is that fair?

Ms Glenn: The law has been changed so actually we will not be dealing with the determinate sentence prisoners in future. We are now dealing with the rump of people who had a long sentence and we are not up to seven or eight year sentences for only sex and violence offences. Everybody else is getting out automatically halfway through determinates, so we have the rump of those. Those people we were dealing with on time, 98% on time. Recall cases we are dealing with very efficiently, within six days. The indeterminates are the ones that, as I have said, we have struggled with. These are the ones that the courts have said have to have a hearing by an Article 5.4 compliant court-like body and we have been selected to be that body.

Q164 Chairman: Lady and gentlemen, that concludes our hearing. Obviously the Parole Board have a difficult enough task to do as it is, without all these delays. Mr Wheatley, I do not like taking you to task because I have always thought you were an outstanding public servant and I appreciate the fact that you have risen up really from the bottom of the

prison service, and it is very reassuring to see you in your job, but I do not think we are very reassured by what you have told us this afternoon. I do not know if you saw Dickens' *Little Dorrit* on television last night.

Mr Wheatley: I did.

Q165 Chairman: I am not suggesting for a moment that people are rotting away in our prisons like they used to, but the Parole Board has been around since 1967 and it seems to us that you are still not managing to get the information to them on time. You said in your defence "I am now in charge, I will reorganise this" but we hear this so often. I suppose this is defence number one in the Civil Service College for appearing before the Committee of Public Accounts on the grounds that the Committee will not return to this for three or four years and so you could get away with it and nobody will be any the wiser. I do not believe that that is your attitude but I would like, please, the NAO to bring this back to us in a year or so, so that we can have a look at it and see what progress you are making, Mr Wheatley, and we can hold you to account.

Mr Wheatley: I would be pleased to be held to account.

Q166 Chairman: Thank you very much, I bet you would.

Ms Glenn: Mr Leigh, if I could just say, if any Member wants to come and observe a panel of the Parole Board you would be most welcome.

Chairman: That is very kind of you.

1. Memorandum from the National Audit Office

INTRODUCTION

1. This memorandum updates the Committee on the C&AG's report: *Protecting the public: the work of the Parole Board* (HC 2395, March 2008). Annex A outlines the actions the Parole Board (the Board) and others have taken to respond to the recommendations made in that report.

THE STATUS AND INDEPENDENCE OF THE PAROLE BOARD

2. Since May 2007, the Board has been sponsored by National Offender Management Service in the Ministry of Justice. In 2007, a legal challenge was launched on the grounds that being within the purview of the Ministry of Justice compromised the Board's independence. The High Court ruled in September 2007, that the Government's arrangements for the Board, "do not sufficiently demonstrate its objective independence of the Secretary of State".¹ This decision was upheld in the Court of Appeal in February 2008. The Ministry of Justice did not appeal this judgement.

3. In April 2008, the Secretary of State announced that sponsorship of the Board would move to the Access to Justice Group within the Ministry of Justice. The Ministry and the Board are currently examining the possibility of the Board becoming a Tribunal or the Board's preferred option, a Court. There is no timescale for this consideration and the Board's future status remains uncertain.

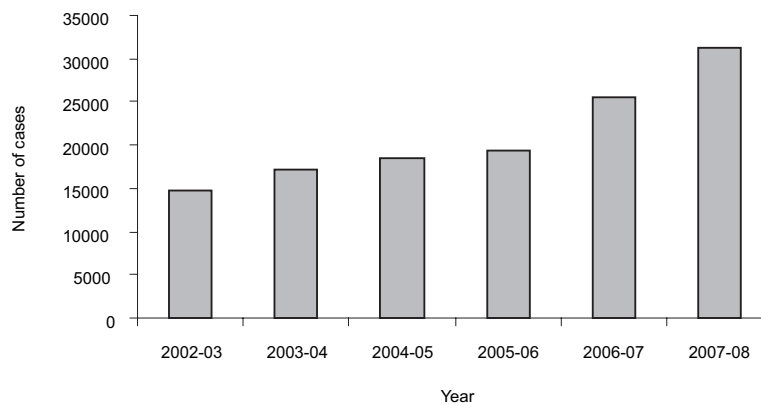
¹ R (Brooke & Ors) [2007] EWHC 2036 (Admin).

THE BOARD'S WORKLOAD

4. The Board's workload increased by a further 23% in 2007–08 to 31,172 (Figure 1).

Figure 1

ANNUAL CASELOAD OF THE PAROLE BOARD FROM 2002–03 to 2007–08



Source: National Audit Office analysis of Parole Board data

5. The Ministry and the Board are currently considering the impact of the following changes made in the 2008 Criminal Justice and Immigration Act on the Board's workload:

- Indeterminate Sentences for Public Protection (IPP) can now only be handed down where the offence merits a minimum tariff of two years;
- the Act introduced:
 - fixed term recalls of 28 days for certain offenders, rather than these offenders' cases having to be reviewed by the Board;
 - provision for the Secretary of State to release other offenders within 28 days of their return to custody, without these cases having to be considered by the Board.
- determinate sentence offenders with a Extended Sentence for Public Protection will now be released automatically halfway through their custodial period; and
- the Act extends the automatic release arrangements in the Criminal Justice Act 2003 to include those prisoners sentence under the 1991 Criminal Justice Act to fixed terms of four years or more who have not committed a specified sexual or violent offence.

All these changes should reduce the Board's workload.

THE BOARD'S PERFORMANCE AGAINST ITS MAIN TARGETS

Determinate sentence prisoners

6. The data to 31 August 2008, shows that the Board held 100% of determinate sentence prisoner's hearings within its target of 25 working days of having received the parole dossier and had a 100% success rate in issuing decisions made within two working days of the hearing.

Indeterminate sentence prisoners

7. The Board continues to find it difficult to meet its targets for holding oral hearings for indeterminate sentence prisoners (Figure 2). The Board still does not have a target for holding indeterminate sentence prisoners on time.

Figure 2

**PAROLE BOARD PERFORMANCE AGAINST ITS BUSINESS PLAN TARGETS FOR
HOLDING ORAL HEARINGS 2007–08 AND TO 31 AUGUST 2008**

<i>Objective</i>	<i>2007–08</i>		<i>Year to 31 August 2008</i>	
	<i>Target</i>	<i>Actual</i>	<i>Target</i>	<i>Actual</i>
Dossiers to be sent to panel members 15 working days before the hearing	Average for the year 75%	69%	Average for the year 80% ⁽¹⁾	47%
Notify all parties of panel decisions within 5 working days of the hearing	Average for the year 90%	66%	Average for the year 90%	66%
Reduce the number of cases deferred or adjourned at hearing	Reduce percentage of cases deferred or adjourned to 10%	15%	Reduce percentage of cases deferred or adjourned to 10%	19%

Source: The Parole Board

Note 1: The target was changed to dossiers to be sent to panel members 30 days before hearing. The Board continues to face serious difficulties in holding oral hearings on time. In August 2008, 48 out of 203 oral hearings were adjourned or deferred on the day of the hearing. As at 30 June 2008, 949 offenders were awaiting an oral hearing.

Recalls

8. The Board is required to review any decisions taken by the Secretary of State to recall an offender to prison within six days of receipt of the recall dossier in 90% of cases. In 2007–08 the Board achieved a performance of 84% against a target of 90%. In the five months to 31 August 2008, it has achieved a performance of 99 per cent against a target of 90%.

RELEASE RATES

Figure 3

**THE PERCENTAGE OF DETERMINATE AND INDETERMINATE SENTENCE PRISONERS
RELEASED BY THE BOARD ON LICENCE FROM 2001–02 to 2007–08**

<i>Year</i>	<i>Percentage of determinate sentence prisoners released on licence</i>	<i>Percentage of indeterminate sentence prisoners released on licence</i>
2001–02	50.6	Not Known
2002–03	52.8	18.4
2003–04	53.1	25.0
2004–05	52.0	21.6
2005–06	49.4	22.6
2006–07	35.8	14.6
2007–08	35.9	15.2

9. The percentage of determinate sentence offenders recalled for having committed a further offence expressed as a proportion of the average number of offenders on parole has remained constant from 2002–03 to 2007–08 at 6 or 7%. The number of offenders out on life licence recalled for a further offence expressed as a proportion of the average number of those offenders under active supervision fell from 6% in 2005–06 and 2006–07, to 3% in 2007–08. These figures suggest that patterns of re-convictions have remained broadly constant, and that standards of risk assessment by the Board are being maintained when identifying those offenders ready for release into the community.

JUDICIAL REVIEWS

10. In 2007–08, the Board received 122 applications for Judicial Review, up from 84 in 2006–07. Twenty four were settled out of court or withdrawn by the claimant. Forty nine of the remaining cases were decided in that year of which the Board won 44 and lost five. Three of the five cases lost were due to delays in hearing cases which may have contravened the offender's right to a speedy hearing under Article 5(4) of the European Convention on Human Rights.

11. Judicial Reviews are expensive to defend and can result in the need for the Board to pay compensation. The Board has kept records of compensation payments it has made for unacceptable delays in conducting a hearing since April 2006. To date the Board has made 29 payments totalling £103,139. The largest payment has been £12,000.

Annex A**PROGRESS MADE AGAINST NAO RECOMMENDATIONS**

<i>Recommendation</i>	<i>Action taken</i>
The Ministry of Justice should, along with the Board, examine the composition of the Board's membership to consider whether it can be made more representative. In particular the Ministry of Justice and Board should identify ways of attracting more members from different ethnic backgrounds.	The Parole Board has worked with Operation Black Vote since 2005 with the aim of increasing the number of members from the black and minority ethnic (BME) community. A "Leading Justice" seminar organised by OBV was held on 9 July 2008 for 120 delegates from the BME community. It is anticipated that there will be an increase in the number of BME applicants in the next recruitment round in 2009.
The Board should build on the steps it has already taken to monitor closely the amount of time members are making available for casework, to ensure that all members meet their minimum workload commitment.	The work levels of all members are monitored carefully and those falling below the minimum level are contacted to establish the reason and see whether improvements can be made. Work levels are now published on the secure area of the Board's website so that members can carry out self-monitoring of their workload. The latest analysis shows that only a handful of members are falling below the minimum level.
The Board should introduce a template to record the reasons for all decisions which should follow the checklist of issues that members are expected to consider. All members of panels should sign off the agreed written reasons after hearings. All written guidance to members should be made available online.	The Board has designed a template and this will be introduced following a consultation process with the membership. Part of the consultation will include the recommendation for all three members to sign off the decision. The Board has sought to drive up the quality of members' written reasons by implementing a monitoring system that routinely reviews these decisions and provides written feedback to new and existing members. In January 2008, the Parole Board website was re-launched and all written guidance to Parole Board members was made available to members and staff online.
The Ministry of Justice should: <ul style="list-style-type: none"> (a) ensure that all parties are providing all the required information for the Board on indeterminate sentence prisoners, including OASys reports, in a timely manner. (b) from 2009–10, it should also introduce a target which covers the entire process of providing information and holding hearings for indeterminate sentence prisoners. This should embrace specific targets for: (c) the provision of information by HM Prison Service; (d) a new target for the probation service; and (e) a time target for holding oral hearings for the Board. 	<p>The Ministry of Justice has conducted a review of this issue, with the aim of having a new process and monitoring arrangements in place in time for 1 April 2009 in line with the report's recommendation. Action so far includes:</p> <ul style="list-style-type: none"> — In August MOJ set up a joint project board with the Parole Board to put together a plan to introduce a whole system target and put in place robust monitoring arrangements. <p>Actions being worked on include:</p> <ul style="list-style-type: none"> — Setting up a high level monitoring board responsible for monitoring the performance of all agencies involved in the parole process. NOMS will collate the performance data and the committee will scrutinise it and hold agencies to account for their performance. The Board will have met for the first time on 16 October. — The performance of prison, probation and NOMS casework will be monitored centrally by NOMS Public Protection Unit using the PPU Database. Work is underway to give all agencies access to enter performance data

<i>Recommendation</i>	<i>Action taken</i>
	<p>and track progress of individual cases.</p> <ul style="list-style-type: none"> — MOJ is looking to merge three parole processes and timetables into one generic process to simplify and streamline administration. — A series of training events is being developed for January-March 2009 for prison staff. — MOJ is considering setting up a quarterly lifer and parole forum for practitioners across NOMS (a similar forum is proving effective for recall and licence enforcement).
The Board should take further steps to publicise its Intensive Case Management process to prisons and probation so that the timetables and quality standards are understood by all, and monitor the results.	Parole Board members and staff have visited several prisons to publicise Intensive Case Management. Meetings have also taken place to promote ICM attended by prisons, probation, solicitors and other interested parties.
The Ministry of Justice needs to produce more realistic workload forecasts, formally revisit and agree them with the Board at least twice a year so that all relevant changes in the criminal Justice system are reflected in the forecasts.	Twice yearly meetings with the Ministry of Justice to discuss projections are planned. A first meeting took place on 15 August 2008 with further meetings to be arranged.
The Board needs to ensure that by June 2008, all relevant information is included in its database of oral hearing cases. It should also issue new guidance to staff on how to record information and introduce exception reporting.	The cleansing of data has been completed and a comprehensive process manual produced for staff. The current database (the SOAPHS system) has reached the end of its useful life and the Board is currently working on plans for implementing replacement.
Release rates for both determinate and indeterminate cases fell sharply in 2006–07 without any change in policy or procedure; the Board and the Ministry of Justice should identify why.	The Board is currently examining the fall in release rates.
The Review Committee does a valuable job in reviewing past decisions where offenders on parole or life licence have gone on to commit a further serious violent or sexual offence. The Board should review random samples of other completed cases to assess the quality of the reasons for the decisions taken.	The Board has recently established a Quality Unit and part of its role will be to review a random sample of cases on a regular basis to assess the quality of the decisions taken.

27 October 2008

2. Supplementary memorandum from The Parole Board

In relation to the additional notes that I agreed to provide, I shall be grateful if you could submit the following information to the Committee:

Question 23 (Mr Davidson) on *Re-offending rate*

Changes in legislation have meant that an increasing proportion of those cases referred to the Parole Board are more complex or are higher risk sexual or violent offenders. Therefore, the fact that the re-offending rate has remained fairly constant over the last few years indicates that the Parole Board is effectively fulfilling its Public Protection function.

The reduction in the rate of re-offending for indeterminate sentence prisoners in 2007–08 may reflect a number of different factors. For example, the profile of the offender population being actively managed during that period will have changed in comparison with previous years. Changes in policy and standards in probation supervision during that period may also serve to alter the re-offending rates. It is worth noting

that the offender population used to calculate release rates is not the same offender population which was used to calculate the re-offending rates. On the basis of current data, it is not possible to compare like with like and draw conclusions about the relationship between release and re-offending rates.

A target for the Parole Board to maintain or reduce the rate of re-offending by those it releases raise two issues. Firstly, the Parole Board does not have control over the range of factors which influence the offender's likelihood of re-offending. For example, it has no control over the frequency of supervisory meetings between Probation Officers and offenders. Secondly, whilst the Parole Board is committed to rigorous and fair assessments of risk, such a target could appear to encourage more risk-averse decision-making.

A large proportion of the cases referred to the Parole Board are offenders who have committed single, albeit very serious offences. It is widely recognised by academics and practitioners alike that this population presents the greatest challenge to those trying to predict future re-offending with any accuracy.

The Parole Board is not complacent and has introduced a range of measures to ensure that it continues to learn from our experience, constantly reviewing practice, for example through the Review Committee's consideration of serious further offences and analysis of all indeterminate sentence prisoners released since 2004.

Questions 34 and 37 (Mr Davidson) on *Percentage of Members who have got degrees, who went to public school and who describe themselves as working class*

Members were asked to provide the information requested. Our survey has now been completed and the results are attached.

We received responses from 62% of the members. You may wish to know that several members expressed concern about the nature and relevance of the questions. Members are appointed against a set of specific competencies needed to perform the role of a Parole Board member. Their educational background and past work experience do not form part of the selection criteria. In this way the role is open to the widest range of applicants.

PAC QUESTIONS—MEMBER SURVEY RESPONSE

Do you have a Degree?

<i>Yes</i>	<i>No</i>	<i>Decline to Answer</i>	<i>Total Responses</i>
90	9	6	105
85.71%	8.57%	5.72%	

Did you attend Public School?

<i>Yes</i>	<i>No</i>	<i>Decline to Answer</i>	<i>Total Responses</i>
24	74	7	105
22.86%	70.47%	6.67%	

Would you describe yourself as coming from a working class background?

<i>Yes</i>	<i>No</i>	<i>Decline to Answer</i>	<i>Total Responses</i>
43	50	12	105
40.95%	47.62%	11.43%	

Question 39 (Mr Davidson) on *What percentage of people on the Parole Board have been victims*

In May 2006 a survey of Members was carried out to find out how many had been victims. The results showed that 73 Members (46%) replied out of a total membership of 160. Of those, 69 (95%) had been a direct victim of crime, 47 (64%) had also been an indirect victim and 39 (53%) had experience working in a victim support context. Of those who responded, only one member had not been a victim or involved with victims' organisations. Details of the survey are attached at Ev 20–22.

Question 43 (Chairman) on *How much do Members' get paid*

The current list of fees is attached at Ev 23.

Questions 51–52 (Mr Burstow) on the *Number of cases delayed*

The number of oral hearing cases which should have been considered by 1 October 2008 but which remained outstanding on 24 October 2008 was 689. This comprised 137 cases where the Parole Board had not received the prisoner's dossier, 65 where an incomplete dossier had been received, 64 cases undergoing Intensive Case Management consideration, 249 which were waiting for directions to be complied with and 174 cases waiting to be listed.

13 November 2008

VICTIM PERSPECTIVE—MEMBER SURVEY

<i>Have you been?</i>	Question 1		Total Replies	73
			Total positive responses	72
	<i>Directly a victim of crime?</i>	<i>Indirectly a victim of crime (see Q4 below)</i>	<i>Working in a victim support context</i>	<i>None of the above</i>
Number	69	47	39	1
% Of Total Responses	95	64	53	1

<i>If you have directly been a victim of crime what was the offence?</i>	Question 2		Total positive responses	69				
	<i>Attempted murder</i>	<i>Rape of other serious sexual assault</i>	<i>Racially motivated offence/hate crime</i>	<i>Domestic violence and/or stalking</i>	<i>Violent crime and/or gun crime</i>	<i>Anti-social behaviour</i>	<i>Burglary or car theft</i>	<i>Other, please specify*</i>
Number	0	10	2	10	14	24	65	13
% Of Total Positive Responses	0	14	3	14	20	35	94	19

* Breakdown

- * *Other—2 x Motor offence causing injury*
- Other—Indecent Assault*
- Other—Taken Hostage at Work*
- Other—Threats To Harm*
- Other—Traffic Offences*
- Other—Indecent Exposure*
- Other—Deception*
- Other—TWOC and RTA*
- Other—Identity Theft*
- Other—Fraud*
- Other—Riot*

Other—non contact-sexual assaults

If you have been indirectly been a victim of crime what was the offence?

Question 3 Total positive responses 47

	<i>Attempted murder</i>	<i>Rape of other serious sexual assault</i>	<i>Racially motivated offence/hate crime</i>	<i>Domestic violence and/or stalking</i>	<i>Violent crime and/or gun crime</i>	<i>Anti-social behaviour</i>	<i>Burglary or car theft</i>	<i>Road traffic incident resulting in a fatality</i>	<i>Other please specify*</i>
Number	4	11	2	11	21	13	29	11	5
% Of Total Positive Responses	9	23	4	23	45	28	62	23	11
* Breakdown	* <i>Other—Terrorism</i> <i>Other—Robbery</i> <i>Other—Fraud</i> <i>Other—Indecent Exposure</i> <i>Other—Criminal Damage</i>								

If you have indirectly been a victim of crime what was your connection to the offence?

Question 4 Total positive responses 47

	<i>Close relative of the victim</i>	<i>Close friend of the victim</i>	<i>Present when the offence took place</i>	<i>Other, please specify*</i>
Number	34	24	8	2
% Of Total Positive Responses	72	51	17	4
* Breakdown	* <i>Other—x 1 Director of company against which offence committed</i> <i>Other—Employee</i>			

If you have worked in a victim support context was this as?

	Question 5	Total positive responses 39		
	As representative of a victim supporting organisation	As a police officer	As a psychologist or psychiatrist	Other, please specify*
Number	10	2	8	21
% Of Total Positive Responses	26	5	21	54

* Breakdown

* Other—x 1 Assessing funding applications for victim charities
 Other—x 1 Developing policy with victim organisations
 Other—x 1 As a Researcher—studies of service responses to victim of rape/sexual crime
 Other—x 1 Legal Rep
 Other—Served on 3 Domestic Violence Forums
 Other—Helping victims prepare submissions
 Other—Chairman of the Criminal Injuries compensation appeals panel
 Other—Volunteer Visitor and Committee member of victim support scheme
 Other—As a family friend
 Other—As a Judge in court
 Other—As a Samaritan
 Other—Youth Justice mediation work—Offender and victims in the probation service
 Other—Military Commander
 Other—YOT Manager
 Other—Chairman of CJ Committee organising seminar on victim issues
 Other—As Magistrate
 Other—Race Equality Adviser
 Other—Chief Exec of Charity with Young Adults who have been victims of abuse
 Other—Volunteer Victims of crime projects/Site Visits/Member of a national advisory group in probation work with Victims
 Other—Counsellor
 Other—Assisted in setting up Victim Support Group

The following section sets out guidelines for claiming fees and reimbursement for travel and subsistence expenses. Details of the current fees—effective from 1 April 2008 and details of the travel and subsistence rates—effective from 1 November 2007 are listed below.

	<i>1 April 2007</i>	<i>1 April 2008</i>
<i>Paper Hearings DCR</i>		
Independent, Probation & Criminologist members	524	537
DCR Panel Chair	101	104
Extra DCR case (per case)	22	23
Chairing Extra DCR cases (One off payment)	10	11
<i>Duty Judge</i>		
Retired Judicial members (12 cases)	904	927
<i>Lifer Sift</i>		
Sift	65	67
<i>Paper Recall Panels</i>		
Panel	322	330
Extra case	13	16
<i>Oral Hearings</i>		
Independent, Probation & Criminologist members	229	235
Psychiatrists and psychologists	322	330
Retired Judicial members	418	428
Cancelled hearing (having read and prepared)	53	54
<i>Single-member reps against recall</i>		
Single-member reps against recall	428	439
<i>Interviews</i>		
Interview	134	137
Cancelled interview (having read and prepared)	65	67
<i>Mentoring</i>		
Mentoring	91	93
<i>Appraising</i>		
Observation of a paper panel, assessment & feedback	285	292
Observation of oral hearing & feedback	237	243
<i>Non-casework day</i>		
Training, meetings, conference etc	181	186
<i>Single Member Recall</i>		
Per case	18	19
<i>Licence Variations</i>		
Licence Variations (per hour)	26	27
Considering Smith & West cases	26	27
<i>Review Committee cases</i>		
Per case	104	107
<i>Intensive Case Management</i>		
Per case	100	103
<i>Duty member</i>		
Per day	181	186
Per hour	26	27

Paper recall cases are £330 for 20 cases so the fee per case from 1 April 2008 has been set at £16 to be in line with this. This fee was not increased at 1 April 2007.

3. Further supplementary memorandum from The Parole Board

Questions 142–144 (Mr Mitchell) on *Review of cases*

Further to my letter to you of 13 November, I also offered to send the Committee a note clarifying the definitions applied by the Board’s Review Committee to their findings on individual cases reviewed.

The “scoring” system used by the Review Committee has two main benefits:

- it makes for consistency between reviewers; and
- it enables the Committee to record its outcomes in a statistical way that informs the Annual Report and feeds into training.

The system places decisions in a five-point scale, ranging from “entirely reasonable” to “entirely unreasonable”. These words should not necessarily be confused with the legal principle of *Wednesbury* reasonableness where the term “unreasonable” is almost akin to “irrational” and would be used to describe a decision that no reasonable-minded person could have reached on the facts. Nor is it necessarily akin to the ordinary everyday meaning of reasonableness. Rather the scores reflect what the Board, with its intimate knowledge of risk assessment, would regard as reasonable or unreasonable.

The definitions are as follows:

ENTIRELY REASONABLE

This refers to a decision that, on the facts known at the time, was sound and properly reasoned. There were no issues left unaddressed and no indication that further information should have been sought.

REASONABLE

This refers to a decision that was balanced and acknowledges that another panel on another day may have decided differently, but that the decision was perfectly reasonable.

REASONABLE WITH CONCERNS

This is a decision that could be criticised in some respects but would not be regarded as flawed overall. For example, the decision may be reasonable but there are gaps in the reasons; or where a panel may have called for a piece of evidence that was not there but the decision overall was reasonable.

QUESTIONABLE

This is a decision about which the Committee expressed real concern. In other words the decision itself, while not unreasonable in the *Wednesbury* sense is regarded as one that a properly informed Parole Board panel should not have made.

ENTIRELY UNREASONABLE

A decision that no reasonable or rational panel should have made. This will be a rare occurrence and is an indication from the Committee that it could not see how the decision could be justified in any way. This score has not been attributed to any decision looked by the Committee to date.

In addition it may help to give a clearer perspective on these cases if I also clarify the responses to Questions 13 to 15 by briefly explaining the nature of the cases that come before the Committee. Cases that are referred to the Review Committee are not a random sample of the approximately 31,000 offenders considered by the Parole Board in the year. The Committee was set up to review the decisions in cases where offenders released by the Board are recalled for serious further offences during the parole period of supervision or supervision on life licence. Thus, out of all the releases by the Board: 50 cases were referred to the Committee for review. In the 12 months to December 2007: 13 out of all the release decisions by the Board were found by the Review Committee to be questionable.

The number of cases referred to the Review Committee has declined over the past five years; in the year from October 2007 to October 2008 there were 39 referrals compared to 50 in the previous year.

17 November 2008

4. Supplementary memorandum from the National Offender Management Service

PAC HEARING: NAO REPORT “PROTECTING THE PUBLIC: THE WORK OF THE PAROLE BOARD”

When I appeared before the Committee on 27 October in respect of the Hearing to consider the NAO report “*Protecting the public: the work of the Parole Board*”, I undertook to write and provide further information in response to questions from Keith Hill.

Questions 63-69 (Keith Hill) on *the former NOMS Pre-Release Casework Section*

Mr Hill asked about the workforce in the former NOMS Pre-Release Casework Section and referred to the information in the report which showed that in the four years to November 2007 the number of caseworkers fell from 75 to 59 whilst the indeterminate caseload doubled. The report highlighted the section’s high turnover and reliance on agency staff as well as the absence of a structured and in-depth training programme for new caseworkers.

The Pre-Release Casework Section was merged into the new NOMS Public Protection Casework Section. The new Section has delivered efficiencies through economies of scale. The number of staff involved in indeterminate sentence parole casework was 66 as of 17 November. We are about to embark upon a restructuring within the section which is designed to re-focus resources on indeterminate parole casework. The intention is to increase the number of casework teams from six to nine as well as increasing the number of caseworkers from 66 to 78 by March 2009. These planned increases underline the commitment, as stated in the hearing, to provide the necessary resources for this important area of work.

Of the 66 staff working on indeterminate parole casework, eight are agency staff. We are in the process of recruiting permanent staff to replace all agency staff and anticipate this exercise to be complete by March 2009.

Since the report was drafted the Section has established a training team which provides new staff, including any agency staff employed until permanent recruitment can be made, with structured training lasting four to six weeks. This is followed up by on-going mentoring and support until the new members of staff are assessed as fully proficient.

Mr Hill also enquired about whether the Section had improved its productivity. There has been a significant improvement in the production of dossiers from NOMS caseworkers. In 2002–03 a section of 75 staff produced 121 dossiers a month. In the current year, 66 staff are producing 298 dossiers a month. This is, in the most part, due to more efficient working practices. In addition, some basic casework duties are now the responsibility of staff in establishments.

24 November 2008

5. Memorandum from The Howard League for Penal Reform

SUBMISSION ON CHILDREN AND THE PAROLE PROCESS TO THE PUBLIC ACCOUNTS COMMITTEE, AHEAD OF THE ORAL EVIDENCE SESSION ON MONDAY 27 OCTOBER

EXECUTIVE SUMMARY

This submission from the Howard League for Penal Reform on children involved in the parole process draws on our legal team’s experience in providing specialised representation to children. It aims briefly to highlight significant gaps and failings in the process which have an enormous impact on children, and no doubt result in unnecessary public expenditure given the high cost of incarcerating children.

We recommend that the Parole Board receives assistance to build on its achievements to date in ensuring that children’s applications are dealt with speedily and effectively by:

- (i) the creation of designated and trained secretariat members to deal with applications by children;
- (ii) the introduction of guidance to all parole clerks, including the Youth Justice Board, who deal with children’s applications, setting out the content of dossiers, the dates by which they should be compiled, the need to ensure that children are legally represented and that children and their representatives are provided with a copy of their dossier before it is sent to the parole board;
- (iii) an extension of the policy that all children on extended sentences (sentenced prior to 14 July 2008) receive oral hearings automatically to include all applications made by children, including those who have been recalled;
- (iv) the introduction of an expedited mechanism to review and set directions in children’s cases, mirroring the ICM process;

- (v) the creation of a circular with statutory force to youth offending teams, probation teams, children's services and other relevant statutory agencies explaining the role and function of the parole board and that directions issued, including directions to attend, must be complied with; and
- (vi) the creation of, or, if in existence, the publication of guidance to parole board members relating to applications by children.

1. INTRODUCTION

1.1 The Howard League is the oldest penal reform charity in the world and set up a legal department to represent children (under 18) and young adults (under 21) in the penal system in 2002, following a successful judicial review against the Home Office that forced it to recognise that the 1989 Children Act protects children in prison (the "Children Act case"). The Howard League legal team has represented hundreds of children and young people and has a track record of success in contributing to improvements in prison conditions, parole procedures and support on release.

1.2 This submission responds to the National Audit Office's report, *Protecting the Public: the work of the Parole Board*² and is prepared in advance of the oral hearing to be held on 27 October 2008 before the Public Accounts Committee. However, as the issue of children and the parole process is absent from the report, this submission does not respond in detail to the issues raised in that report but aims to alert relevant parties to the specific issues that relate to children appearing before the parole board and the potential cost and efficiency savings that could be made in this area. This submission also builds on our report, *Parole 4 Kids: A Review of the Parole Process for Children in England and Wales*, published in December 2007 (Appendix 1) and our consideration of the wider legal considerations involved when representing children before the parole board, set out in our article, *Children and the Parole Process*, published by *Legal Action* in September 2008 (Appendix 2).

1.3 As regards the Committee's remit into the effective working of the parole board, we noted that the views expressed in this submission are generated from our experience in representing children before the parole board.³ We are mindful of the progress that has been made to date following the case of *R (K) v Parole Board* [2006] EWHC 2413 (Admin), 5 October 2006 and the publication of *Parole 4 Kids* (2007). The parole board has introduced a policy that all those serving extended sentences under the Criminal Justice Act 2003 who apply for parole before the age of 18 are entitled as a matter of policy to an oral hearing. The parole board has also produced a booklet outlining the parole process for children in easy to understand language. These steps are welcomed. However, the Howard League for Penal Reform believes that there is much more to do, especially given the issues and the consequential public costs involved.

1.4 We believe that the issues involved in any decision made by the parole board in relation to children are of overwhelming importance: the law has long regarded the incarceration of children as an option of last resort and the United Kingdom is party to the UN Convention on the Rights of the Child which provides that imprisonment should be for the "shortest appropriate period of time" (see article 37 (b)). The parole board plays a vital role in ensuring that detention is for the "shortest appropriate period of time", while protecting the public. If the parole board is unable to fulfill this function effectively and quickly, our ability to comply with the UN Convention is hindered.

1.5 It is also noted that the costs of locking up a child are extremely high: Some 10,000 children pass through the secure estate for juveniles per year. At any one time there are approximately 3,000 children under the age of 18 held in secure children's homes, Secure Training Centres (STCs) or Young Offender Institutions (YOIs). Incarceration is costly: A Secure Training Centre place (run by private contractors) costs £164,750, and a local authority secure children's home place costs £185,780, reflecting staffing ratios of four staff to eight youngsters. A place at a Young Offender Institution run by the Prison Service costs £50,800, with a ratio of around four staff to 60 youngsters.⁴

1.6 Inefficiencies and delays in the parole process for children can incur additional costs. For example, higher legal costs as a result of an increase in judicial reviews and claims for damages as a result of failure to review on time. The intensive work required by a solicitor to properly prepare an application on behalf of a child, especially where there are issues concerning the need for agencies to formulate a safe and supported release plan, could be reduced by considered directions being issued by panel members at an early stage. This in turn would reduce the consequent cost on the legal aid budget. If money were to be invested in employing dedicated and trained staff (both administrative and panel members) to deal with children's cases to ensure they are dealt with swiftly, it could save the taxpayer money in the longer term.

1.7 In addition, the recent joint report by HM Chief Inspector of Prisons and HM Chief Inspector of Probation, "*The indeterminate sentence for public protection: A thematic review*" published in September 2008, reveals a lack of consistent sentence planning, assessment and intervention for prisoners serving the indeterminate sentences for public protection. As the case of *Secretary of State for Justice v Walker and James* [2008] 3 All ER 104 also shows, the number of people serving public protection sentences and the lack

² Available at http://www.nao.org.uk/publications/nao_reports/07-08/0708239es.pdf

³ The Howard League's legal team has represented over 30 children in applications before the parole board.

⁴ House of Commons, July 2004—*Youth Offending: the delivery of community and custodial sentences*, p 4. These figures are per child per annum.

of available courses is inevitably and unlawfully causing prisoners to be detained for longer than necessary. The inspectorate's report suggests that only five children sentenced to detention for public protection to date have been released.⁵

1.8 The number of children whose applications are considered by the parole board is not known. However, the sheer number of children sentenced to public protection sentences under the Criminal Justice Act 2003, all of whom could have been subject to the parole board's scrutiny either prior to release or following recall, suggests that children make up a sufficiently large (and undeniably significant) group to warrant special attention. Statistics produced by the Youth Justice Board show that as of 12 September 2008, 541 children were in custody serving public protection sentences or fixed term sentences under section 91—all of which could attract parole board scrutiny at some point.

1.9 These submissions are designed to assist the Committee by putting forward constructive recommendations that we believe will assist in the effective and fair administration of the parole process for children. They do not provide a detailed analysis of the workings of the system and the Committee is referred to the annexed report and article for further information.

1.10 We believe there is an urgent need for reform of the parole process in relation to children and urge the Committee and the parole board to consider recommendations briefly outlined below.

2. RECOMMENDATIONS

2.1 *The creation of designated and trained secretariat members to deal with applications by children*

2.1.1 The parole board secretariat consists of a largely dedicated team of caseworkers who are clearly dealing with an extremely large number of applications. The release and recall section appears to be an even larger body. It is essential that administrative caseworkers understand the terminology and different systems that are in place for children if children's applications are to be managed efficiently and quickly.

2.1.2 It is therefore essential that certain caseworkers are designated to deal with children's applications to ensure that children do not suffer as a result of being piled in with the many thousands of adult applications.

2.1.3 It is also essential that caseworkers understand the different types of institutions that children may serve their sentences in, the offending behaviour work they have access to and the professionals that are likely to be involved in their applications so as to ensure that the parole board can make a meaningful decision.

2.2 *The introduction of guidance to all parole clerks, including the Youth Justice Board, who deal with children's applications, setting out the content of dossiers, the dates by which they should be compiled, the need to ensure that children are legally represented and that children and their representatives are provided with a copy of their dossier before it is sent to the parole board*

2.2.1 It is the unfortunate experience of the Howard League's legal team that many children are in institutions where staff are not familiar with the parole process. This has several far reaching implications—including sometimes a failure to gear sentence planning to achieving parole. In particular, many of the staff involved with the child will never have written parole reports before or been to an oral hearing. This can often cause difficulties and delays for the parole clerk in getting the dossier assembled with completed and appropriate reports. Although PSO 6000 sets out a clear timetable and procedure it is often the case that children's dossiers are not supplied to the parole board until very near to the child's application is due to be considered. Further, although the K case (cited above) made it clear that children are entitled to adult assistance and it is clear that children are entitled to legal representation, there is a clear shortage of lawyers with expertise in this area and a lack of awareness of this entitlement. Consequently children often are without representation before the parole board and often without representation at the time the dossier is completed. It is also the case, that even where children are represented, the dossier is simply sent straight to the parole board without the child and his or her representative being given the required four weeks to consider the dossier and put in representations. This is unacceptable as it denies children an opportunity to put forward their considered view. It is especially unfortunate that guidance issued by the Youth Justice Board for youth offending teams on release and recall⁶ includes a timetable on the parole process but completely omits the stage where a child and his or her legal representative are given the dossier to consider and comment on before it is sent to the parole board.

2.2.2 It is therefore essential that all involved are made aware of the importance of dossiers being completed in a timely fashion and being provided to children and their representatives before being sent to the parole board so that their views can be submitted.

⁵ Ibid at paragraph 6.3.

⁶ YJB (2007) Release and recall, guidance for youth offending teams, YJB London.

2.3 An extension of the policy that all children on extended sentences (sentenced prior to 14 July 2008) receive oral hearings automatically to include all applications made by children, including those who have been recalled

2.3.1 The board's policy of providing all children serving the old (ie 2003 Act) extended sentences an oral hearing has been extremely helpful. Children often find the parole process confusing and alien. An oral hearing provides them with an opportunity to understand the process and put their view across. It also ensures that all professionals concentrate their minds on the task at hand as they will often be required to explain themselves before the panel. This is especially helpful in cases where issues beyond the child's control such as accommodation and support on release are at issue.

2.3.2 However, the policy does not apply to children who are recalled to custody. It is often the case that children who are recalled find that their applications are deferred time and time again while issues such as accommodation are required and then finally referred in any event to an oral hearing. Recalls can be especially difficult for children who may not truly understand why they have been recalled or feel it is unfair. Some children will find that they have been released from a children's home or a secure training centre but are returned to a prison establishment—this can be particularly difficult. Others will risk losing their accommodation during the recall period or risk turning 18 and being sent to adult prison.

2.3.3 It is therefore essential that children are guaranteed an oral hearing as a matter of right in order to ensure that delays are kept to a minimum and their application is dealt with fairly, especially as the child is in custody following an administrative decision. However, in order to deal with clear cut cases effectively without draining the parole board's resources, it is recommended that recall cases that due to be determined by the parole board are considered on the papers within 14 days of recall and that they are referred to an oral hearing if release is not directed. This will allow for clear cut cases to be dealt with on the papers and also provide the parole board with an opportunity to set appropriate directions for an oral hearing.

2.4 The introduction of an expedited mechanism to review and set directions in children's cases, mirroring the ICM process

2.4.1 All adult cases fail to be considered under the ICM process to ensure that hearings are focused and effective. Children do not go through the ICM process, although it is understood that these cases are considered informally by a panel member. However, the lack of formality often means that cases lack pre-hearing consideration. The Howard League's team has sometimes arrived at an oral hearing to find that the panel is particularly interested in hearing about an aspect of the release plan that had not previously been considered or does not want to hear from a witness whose availability has in fact delayed the hearing by several weeks.

2.4.2 Children have very little control over their lives. In particular, they have very little control over where they will live when released and what support they will get. Often these aspects are crucial to the parole board's assessment of risk. The Howard League's legal team always pays particular attention to liaising with relevant professionals, including social services, prior to a parole hearing to try to ensure that a robust plan that will manage risk and meet the young person's needs is in place. However, young people involved in the criminal justice system are often neglected by local authorities who are not keen to pay for intensive support and care on release from prison. Focused directions could assist children, their representatives and the parole board in ensuring that issues such as accommodation and support on release, or evidence of reduction in risk is provided at the hearing to ensure that the panel can make a meaningful evidenced based decision.

2.4.3 It is therefore essential that children's applications are considered by a parole board member in advance of the hearing, preferably with training in issues relating to children's applications and preferably the chair of the panel who will be considering the case. The member should provide written directions setting out who should attend and what needs to be provided.

2.5 The creation of a circular with statutory force to youth offending teams, probation teams, children's services and other relevant statutory agencies explaining the role and function of the parole board and that directions issued, including directions to attend, must be complied with

2.5.1 It is often the case that even where directions are set by the parole board to try to ensure a meaningful review takes place, professionals fail to comply with them. This is partly because agencies that deal with children in the community often have no or little experience of the parole board. Some professionals think that if the parole board releases a child, they can make arrangements following release. Others do not appreciate the judicial function of the board, referring to hearings as "meetings" and expressing reluctance to attend hearings due to other commitments. In some cases, agencies simply refuse to comply with the parole board's directions. It is sadly the case that many children appear before the parole board just before their 18th birthday as they are due to pass from youth services to adult services: it is often extremely difficult to get adult services to engage in advance of the child turning 18 despite the fact that the majority of the licence will take place in adulthood.

2.5.2 It is therefore imperative that clear guidance, preferably with statutory force, is issued explaining the judicial function of the parole board and the importance of its public protection role. Agencies should receive a clear message of the importance of attending hearings and complying with directions.

2.6 *The creation or, if in existence, the publication of guidance to parole board members relating to applications by children*

2.6.1 Given that children have such little control over their lives and are entitled to a range of assistance and support from youth justice agencies and children's services under the Children Acts 1989 and 2004, it is essential that members receive appropriate training and guidance in this area. This was recommended in *Parole 4 Kids* and it is unclear as to whether this has in fact occurred. If it has not, training and guidance for members should be arranged as a matter of urgency. If this has already taken place, the guidance should be published so that decision making processes for children can be as transparent as possible.

3. CONCLUSIONS

3.1 The Howard League for Penal Reform believe that if implemented, the recommendations outlined above could have a huge positive impact on children who are considered by the parole board.

3.2 We have attempted to set out our key recommendations. We have restricted our observations and comments to areas in which we have a degree of expertise specific to our legal work. The Howard League for Penal Reform firmly believes that it is crucial that these points are considered by the Committee and we would be very happy to provide oral evidence if required.

October 2008

END NOTES

Parole 4 Kids: A Review of the Parole Process for Children in England and Wales, The Howard League for Penal Reform, Published in December 2007.

Children and the Parole Process by Laura Janes, Published in *Legal Action*, September 2008.
