

Governance inspection of the Parole Commissioners for Northern Ireland

September 2011

Criminal Justice Inspection
Northern Ireland
a better justice system for all





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List of abbreviations

CICAPNI	Criminal Injures Compensation Appeal Panel Northern Ireland
CJI	Criminal Justice Inspection Northern Ireland
DoJ	Department of Justice
ECHR	European Convention on Human Rights
LSCNI	Legal Services Commission Northern Ireland
NICTS	Northern Ireland Courts and Tribunals Service
NIPB	Northern Ireland Policing Board
NIPS	Northern Ireland Prison Service
NISRA	Northern Ireland Statistics and Research Agency
NOMS	National Offender Management Service (in England and Wales)
NPS	National Probation Service (in England and Wales)
PBNI	Probation Board for Northern Ireland
PBS	Parole Board for Scotland
The Parole Commissioners	The Parole Commissioners for Northern Ireland



Chief Inspector's Foreword

Parole Commissioners are responsible for life-changing decisions in relation to the release of prisoners back into the community. Their decisions impact not only on the lives of individual prisoners but the wider community also, and they are a significant component of the criminal justice system public protection arrangements. Originally constituted as the Life Sentence Review Commissioners, their role changed in 2008 with the introduction of Extended Custodial and Indeterminate Custodial Sentences, and subsequently Determinate Sentence recalls. This inspection was commissioned in February 2009 with fieldwork completed during September to December 2009.

The Parole Commissioners for Northern Ireland are independent and free from Executive interference in relation to the individual decisions they make. The question of real and perceived independence is central to understanding the work of the Parole Commissioners and the nature of this independence has been strengthened in Great Britain through a series of court decisions. In this inspection we respect this independence and offer no comment on the decisions made in relation to individual prisoners.

The issue of '*independence*' however raises a number of important questions about the future operation of the Parole Commissioners. As a body of judicial character the Parole Commissioners act like a court, and recent court decisions would support this view. However, as currently constituted the Commissioner's structure differs from those adopted by other United Kingdom parole bodies and other bodies of judicial character, such as tribunals. In our view there is a potential conflict over the governance arrangements between the Parole Commissioners and the sponsoring department that has important implications for how future services will be delivered. The judicial nature of the Parole Commissioners and the requirement for their decision-making being seen to be independent, does not sit easily with the organisational governance and accountability arrangements that underpin the relationship between sponsoring departments and their arms length bodies.

Our inspection clearly states that the current operational model underpinning the work of the Parole Commissioners would be better served if they were reconstituted as a tribunal within the auspices of the Northern Ireland Courts and Tribunals Service (NICTS). The report also identifies the significant costs associated with the work of the Parole Commissioners in Northern Ireland, the potential for greater cost increases and indeed, delay in the decision-making process as numbers to be assessed increase. At the very least, this raises the question about the efficacy of the processes currently in place to support decision-making and the ability to assess the outworking of the Department of Justice (DoJ) Sentencing Framework Initiative.



It could be argued that such expenditure is a small price to pay given the important work undertaken by the Parole Commissioners and their criticality to public protection arrangements. The problem is that the cost basis of the Parole Commissioners is out of step with similar organisations elsewhere. The cost per case in Northern Ireland is also significantly higher than that of Scotland or England and Wales.

Our inspection report I believe charts a way forward that maintains the independence of the Parole Commissioners while developing the necessary governance arrangements that are in place for organisations elsewhere. These arrangements are necessary for the delivery of a value for money service, efficient management processes and good governance.

The inspection was carried out by Stephen Dolan of CJI. My thanks to all those who participated in the inspection process.

Dr Michael Maguire
Chief Inspector of Criminal Justice in Northern Ireland
September 2011



Executive Summary

The Parole Commissioners for Northern Ireland (hereafter the Parole Commissioners) are a very important element in the delivery of criminal justice in Northern Ireland. The Parole Commissioners make life-changing decisions about the safe release of offenders back into the community. Originally constituted as the Life Sentence Review Commissioners, the role of the Parole Commissioners is now significantly changed with the Criminal Justice Order 2008 introducing Extended Custodial and Indeterminate Custodial Sentences and making the Parole Commissioners responsible for Determinate Sentence recalls. The Parole Commissioners were established as an independent body with judicial character.

Two considerations should be taken into account when reading this inspection report. Firstly, the impact of the *Brooke* judgement which defined the independence of parole boards, and secondly the *Reilly* judgement, which consolidated the court-like status of parole boards. The importance of these rulings is manifold in defining the remit of this inspection, the role of the sponsoring body and the nature and extent to which accountability and the trappings of accountability may be exercised.

The work of the Parole Commissioners is driven by the number of prisoners considered for release in any one year. In 2008-09 46 cases were referred to the Commissioners and 40 were heard. It was in anticipation of a significant increase in the number of prisoners to be considered (estimates showed a projected increase from 88 in 2009-10 to a potential 407 in 2014-15; 162 cases were referred in 2010-11) that the number of Commissioners was increased from 24 to 40.

The Parole Commissioners, led by a Chief Commissioner, make the decision whether or not to release prisoners. Commissioners are paid for their participation in casework decisions and for work ancillary to casework. Their work is supported by a Secretariat that provides assistance in relation to case administration, payment arrangements and other provisions.

The current structure of the Parole Commissioners in Northern Ireland is unique. Unlike other arms length bodies within Northern Ireland, it is not an executive agency, a non-departmental public body, a commission or a tribunal. It also differs from the structural arrangements that underpin the work of the Scottish Parole Board and the Parole Board for England and Wales.

The Department of Justice (DoJ) have adopted a standard model of governance with an Accounting Officer ostensibly held responsible for decision-making and financial management of the arms length body and set reporting procedures, but this does not happen in practice. The Chief Commissioner is not the Accounting Officer of the Parole Commissioners; is not the Chief Executive, and whilst supported by the Secretariat, is not their line manager. The Accounting Officer role is assigned to an Official within the DoJ reporting to the Permanent Secretary. The Official is the line manager for the Head of the Secretariat. The work of the Parole Commissioners is not subject to oversight by the Secretariat or the DoJ. The DoJ have developed a benefits realisation plan (Appendix 3) but this is a measure of the general effectiveness of the Sentencing Framework Initiative, and as it has not been agreed with the Chief



Commissioner, it is not to monitor the work of the Commissioners. Additionally, the normal framework of accountability, as set out in a management statement and financial memorandum, do not apply in this instance due to the independent nature and judicial status of the Commissioners.

The central issue in understanding the work of the Parole Commissioners in practice is the question of independence from the Executive in relation to decision-making. An issue is the importance of both real and perceived independence with regard to the work of the Commissioners. This issue has shaped both the establishment of the Parole Commissioners and subsequent formation. A key component of the debate is the *Brooke* judgement. The *Brooke* case was a judicial review that dealt with the issues of accountability and independence governing the Parole Board for England and Wales. In this instance, the Court of Appeal found that the sponsoring department curtailed the independence of the Parole Board by exercising too much control over the appointment and tenure of the Commissioners by specifying the use of funding, by not adequately segregating support services and by including a policy element in the role of the Commissioners. The ruling extends not only to the decision-making but also the processes and arrangements that support decision-making.

Although the Court of Appeal found that the ‘*normal*’ relationship between a ‘*sponsoring department and its sponsored parole body did not automatically create a conflict of interest or automatically infringe the independence of the body*’¹ the implication is that the relationship between a sponsoring body and its parent department may create a conflict. The subsequent ruling in the *Reilly* application (another judicial review) confirming the court-like status of the Parole Board strengthens the independence of the Commissioners and demands clear water between the Commissioners and the Executive – a situation not best met by the current arrangements.

A straightforward comparison with the costs of cases in Northern Ireland and in England and Wales shows the former to be considerably higher. The average cost per referral was just under £8,000 in 2010-11. The comparable figures in England and Wales, and Scotland, are around £2,500, thus Northern Ireland is around three times as expensive.

The Northern Ireland Parole Commissioners do not enjoy the economies of scale of the other jurisdictions (England and Wales have almost 30,000 referrals per year). The development of the support structures, policies, procedures, recruitment and training of Commissioners and Secretariat staff incurred significant costs. This should reduce over the coming years and alongside increasing numbers of cases should see the unit cost decrease.

There is a low level of delay in the cases heard by the Parole Commissioners and no judicial reviews of their decisions (both significant factors following the increase in cases in England and Wales). The Northern Ireland approach has incurred costs, although the achievement of timely hearings, the very low level of lifer recalls or judicial reviews indicate a high quality service.

Our inspection has found that there is an inevitable conflict between any governance model proposed by the DoJ and that which complies with the legal rulings in a series of cases culminating in *Brooke* and *Reilly*. The thrust of these judgements was to emphasise the

¹ *Brooke* case.



independence of the parole bodies and create a governance framework within which the sponsoring authorities must operate. The resulting impracticality of the current sponsorship arrangements with the potential legal ramifications arising from the *Brooke* judgement requires a rethink of the existing arrangements.

The inspection recommends a strengthening in the governance arrangements underpinning the work of the Commissioners – within the constraints set by the *Brooke* judgement. Reconstituting the Commissioners as a tribunal accompanied by a transfer to the Northern Ireland Courts and Tribunals Service (NICTS) and listing the Chief Commissioner under Schedule 1 of the Justice (Northern Ireland) Act 2002, would provide a more suitable environment for a body of judicial character.





Recommendations

Strategic Recommendations

- *(Pending consideration of the second strategic recommendation)* Inspectors recommend the sponsoring department review the sponsorship arrangements in place and redefine these arrangements. They should guarantee the independence of the Commissioners whilst seeking to provide the department with adequate assurances that public resources are being managed to appropriate standards. *(Paragraph 2.20)*
- It is recommended consideration should be given to reposition the Parole Commissioners within the Northern Ireland Courts and Tribunals Service given its similarities to a tribunal (use of a panel; adversarial nature of proceedings). This will underpin the independence of the Parole Commissioners, provide a governance and accountability structure consistent with other adjudicative bodies (including courts and tribunals) and provide a model for the role and responsibilities of the Chief Commissioner, Commissioners and their administrative support. *(Paragraph 4.7)*

Other Recommendations

- It is recommended the Parole Commissioners Secretariat develop their budget monitoring and their associated cost targets to allow them to track the cost of casework and aim to deliver the most efficient process. Similarly, if possible they should gather unit costs for the various types of hearing to act as internal monitors for their casework management process. *(Paragraph 3.14)*
- Inspectors recommend the Chief Commissioner gains assurance that the relative level of work ancillary to casework is reasonable and that the overall budget is reasonable and kept under review. *(Paragraph 3.18)*
- It is recommended the projected caseload and case mix statistics should be reviewed taking into account the most recent sentencing patterns to date. *(Paragraph 3.22)*
- Inspectors recommend the Commissioners should develop requisite measures including if possible, unit costs that provide the Chief Commissioner with an insight into absolute and comparative performance. The Chief Commissioner's Annual Report could provide a vehicle for reporting year-end outturns including (if developed) unit costs for various types of hearings. *(Paragraph 3.33)*
- It is recommended the Parole Commissioners engage with the Parole Board for England and Wales to examine the feasibility of using the quality standards under development by England and Wales as the basis for benchmarking the work of the Parole Commissioners. *(Paragraph 3.40)*

Section



Inspection Report



Introduction



Background to the Parole Commissioners for Northern Ireland

1.1 In October 2000, anticipating the coming into effect of the provisions of the Human Rights Act 1998, Government conducted a review of Northern Ireland prisons legislation. An important aspect of that work was to review the arrangements then in place for the consideration of the suitability for release of prisoners who had been sentenced to life imprisonment. The review deemed that the existing procedures for discretionary life sentence prisoners and those sentenced to detention at the Secretary of State's pleasure (juvenile offenders whose convictions would merit either a mandatory or discretionary life sentence for an adult) could be considered inconsistent with the requirements of the European Convention on Human Rights (ECHR). Those procedures were based on advice on the suitability of the prisoner for release being given to the Secretary of State by the Life Sentence Review Board, a non-statutory body consisting largely of senior officials from the Northern Ireland Office. It was concluded that compliance with the ECHR would require that prisoners should have his or her case reviewed periodically by a judicial body. To have a

judicial character, the body would need to be independent of the Executive, impartial and able to give a legally binding direction regarding a prisoner's release.

- 1.2 The Life Sentences (Northern Ireland) Order 2001 and the Life Sentence Review Commissioners' Rules 2001² brought into being the Life Sentence Review Commissioners. Further significant changes to the sentencing framework for England and Wales were established under the Criminal Justice Act 2003 with the introduction of Indeterminate Custodial Sentences and Extended Custodial Sentences for public protection. The decision to release rested with the Parole Board for England and Wales, thus meeting the requirements of the ECHR.
- 1.3 In similar vein, the Northern Ireland Office brought forward new legislation to provide for the introduction of Indeterminate Custodial Sentences and Extended Custodial Sentences for dangerous sexual and violent offenders, allowing individuals who posed a risk of serious harm to be detained indefinitely or to the end of their extended sentences. The resulting Criminal Justice (Northern Ireland) Order 2008 provided, amongst other things, that the

² The principal provisions of the Order and rules are given at Appendix 1.



Life Sentence Review Commissioners be renamed the Parole Commissioners for Northern Ireland (hereafter known as the Parole Commissioners). Their responsibilities were extended to include decisions as to the release and recall of prisoners sentenced to Indeterminate and Extended Custodial Sentences, and the recall of prisoners who received Determinate Sentences of 12 months or more.

- 1.4 The Parole Commissioners were thus established as an independent body with judicial character consistent with the model for parole bodies in the United Kingdom. The Parole Commissioners (including their time as the Life Sentence Review Commissioners) heard around 20 to 35 cases per annum during the last eight years. However, the extension of their remit to assess the suitability for release of lifers, prisoners subject to Indeterminate Custodial Sentences, Extended Custodial Sentences, and recalled prisoners with determinate sentences could lead to some 400 cases per annum if the most extreme projections are realised. At the launch of the Parole Commissioners the then Criminal Justice Minister said: *“The extended remit of the new Parole Commissioners will mean that, for the first time, it has a critical role in making a judgement that it is safe to release dangerous offenders back into the community and not just life sentence prisoners. Its role, as an independent body, is critical to enhancing the public protection element of these reforms.”*
- 1.5 It is against this backdrop of major change to the sentencing framework and the consequent increase in the workload of the Commissioners, that Criminal Justice Inspection Northern Ireland (CJI)

conducted this report. Our governance inspection of the Parole Commissioners is a comprehensive review of all aspects of the organisation and particularly in its response to the changes it faces. The aims of our inspection are detailed in Appendix 2 but the general framework used by CJI is based on three main elements to the inspection. They are:

- leadership and governance;
- delivery; and
- outcomes.

- 1.6 CJI constants in each of the three framework elements and throughout each inspection are equality and fairness, together with standards and best practice. This inspection set out to examine whether the Parole Commissioners is operating efficiently, effectively and in a sustainable manner. Within this scope we considered:

- structure, roles and accountability;
- business processes;
- management of resources; and
- performance management.

- 1.7 The main issues considered in this report are the structure of the Parole Commissioners, their governance arrangements and the impact of the increased workload on the Parole Commissioners. Allied to this is the response of the Commissioners in matching resources to meet the demand and developing processes to manage the new workload.

- 1.8 To respect the independent decision-making role of the Commissioners, CJI makes no recommendations about the outcomes of any individual hearing.

CHAPTER 2:

Structure and governance



Structure of the Parole Commissioners

- 2.1 The Parole Commissioners were established in response to the changes of the sentencing framework brought into effect by the Life Sentences (Northern Ireland) Order 2001 and Criminal Justice (Northern Ireland) Order 2008. Schedule 4 of the Criminal Justice (Northern Ireland) Order 2008, whilst providing for the establishment of the Parole Commissioners, does not define the organisational structure, arms length status or governance arrangements for the Commissioners (see Appendix 1). Its primary focus is defining their role in the new sentencing framework, the appointment of Commissioners, a Chief Commissioner and defining the procedures for the hearings.
- 2.2 Of key importance to the proceedings of the Parole Boards is their independence, perceived or otherwise from the Government Executive, and the nature of their independence has been progressively strengthened through a series of court decisions. The culmination of this is that Parole Boards in Scotland and England as well as Wales are structured as arms length bodies (tribunal non-departmental public bodies/non-departmental public bodies)

to the Executive with clear governance arrangements to guarantee their independence. In Northern Ireland the structure and governance arrangements of the Parole Commissioners are less clearly defined with the judgement in *Brooke – vs – England and Wales Parole Board*³ providing a mainstay to their independence.

- 2.3 The *Brooke* case was a judicial review that dealt with the issues of accountability and independence governing the Parole Board for England and Wales. In this instance, the Court of Appeal found that the sponsoring department curtailed the independence of the Parole Board by exercising too much control over the appointment and tenure of the Commissioners, by specifying the use of funding, by not adequately segregating support services, and by including a policy element in the role of the Commissioners. Whilst, the Court of Appeal found that the ‘normal’ relationship between a ‘sponsoring department and its sponsored parole body did not automatically create a conflict of interest or automatically infringe the independence of the body’... (*Brooke* case) the potential remains that it may. The findings by Lord Hope⁴ and Mr Justice Treacy⁵ stated that parole hearings not conducted in the way a court would be

3 R (on the application of (1) Brooke and Ter-Ogannisyanm (2) O’Connell (3) Murphy vs The Parole Board (1st appellant The Lord Chancellor and Secretary of State for Justice (2nd appellant [2007] EWHC 2036 (Admin).

4 R (*Smith & West*) v Parole Board(2005) WLR 350.

5 Reilly’s application [2010] NIQB 46.



expected to conduct them, breached the European Convention on Human Rights (ECHR) and that the lack of adversarial proceedings would also undermine the proceedings being regarded as meeting the standards expected of a court. The definition of the Parole Commissioners as a court dramatically affects the nature and extent of departmental sponsorship that may be exercised.

- 2.4 Arising from this, the focus on independence during the establishment of the Parole Commissioners influenced both structure and process. The current organisational status of the Parole Commissioners does not readily conform to any of the standard organisational models of publicly funded bodies in Northern Ireland. Unlike other arms length bodies it is not an executive agency, a non-departmental public body, a commission or a tribunal and as such is a unique structure. Compliance with the *Brooke* judgement has also helped shape the relationship between the Department of Justice (DoJ) and the Parole Commissioners, and influenced the accountability and sponsorship arrangements. The affirmation of independence also influences the proceedings of the Parole Commissioners' hearings.

Governance and accountability

- 2.5 In compliance with HM Treasury guidelines⁶ defining the governance arrangements for arms length bodies, the DoJ established a sponsoring branch for the Parole Commissioners within the Criminal Justice Directorate of the Northern Ireland Office. The role of a sponsoring department is defined as

ensuring that the arms length body operates effectively and to a high standard of probity, usually in accordance with an agreed framework document. The sponsorship role is normally supported by monitoring performance and expenditure against agreed plans and benchmarks.

- 2.6 Although these arrangements are based on commonly accepted standards, the DoJ and the Parole Commissioners do not share a common view of the appropriateness of this form of governance. Whilst the DoJ may regard this traditional model as valid, the judgement in *Brooke*, particularly paragraphs 65 and 66, endorse the view that the exercise of power for budgetary control in relation to the procedure of the Parole Board in England and Wales was inconsistent with the objective appearance of the independence of that Parole Board and therefore unlawful.

- 2.7 The rulings in *Smith and West* and *Reilly* confirm the Parole Commissioners status as a court and as such the imposition of administrative oversight would cut across judicial independence. In the view of the Chief Commissioner of the Parole Commissioners establishing governance arrangements to exercise accountability, could be open to interpretation by the courts that they are unlawful and breach the *Brooke* judgement. For their part, the DoJ point out that they have taken very careful account of the *Brooke* judgement, taking legal advice on occasion, and have acted in full accordance with that judgement. Thus they have not sought to impose any arrangements that breach the *Brooke* ruling and do not intend to do so.

⁶ Her Majesty's Treasury, Managing Public Money.



2.8 A self-assessment exercise with the Secretariat and consultations with Commissioners, sponsor branch and stakeholders has confirmed to the Inspectorate, there is no consensus on the sponsorship and accountability structures of the Parole Commissioners. Thus, one view is that the sponsorship role should include formal business planning and reporting processes, including performance management, and another view where monitoring arrangements or interventions that impinge on the requirements of independence and perceived independence potentially breach the *Brooke* ruling. The Commissioners would advocate that subject to the legislation and the rules made under it, it must be for the Commissioners to decide how those statutory functions should be performed. If Government and not the Commissioners were to make these decisions, the Commissioners would neither be nor appear to be independent. In the face of such seemingly irreconcilable viewpoints and the underlying legal implications the current arrangements are unworkable.

2.9 Whilst, the Court of Appeal in *Brooke* says “We do not consider that the fact that the Board ...is subject to sponsorship, is incompatible with its actual or perceived independence,” this does not provide much clarity to the type of sponsorship arrangements that might be put in place. The normal arrangement of a sponsoring branch defining budgets and business plans with an Accounting Officer would probably cut across the *Brooke* judgment as stated earlier. The risk arises that expenditure becomes simply demand led with only the test of reasonableness as a restraint. A more detailed analysis of demand and

expenditure will be undertaken in Chapter 3 but a brief summary shows costs almost doubling from £295,000 in 2005-06 to £528,000 in 2007-08 and a further doubling to £1,123,000 in 2010-11. The backdrop to this is the dramatic increase in cases coming before the Commissioners, the increase in the number of Commissioners and a very significant increase in training of existing and new Commissioners.

Roles and responsibilities

2.10 The unique status and structure of the Parole Commissioners also complicates the accountability arrangements in place. Whilst the DoJ adopt a standard model of governance with an Accounting Officer being held responsible for decision-making and financial management of an arms length body, this does not happen in practice, and it is arguable that it could, given the current arrangement of the Accounting Officer status conferred on a DoJ Official. In the case of the Parole Commissioners, whilst it is inviting to assume the Chief Commissioner is *de facto* the Accounting Officer of the Parole Commissioners, he/she is not and has never been designated as such. The Chief Commissioner gives general guidance and specific advice and leads on the development of relevant policies but is not involved in any of the planning or management of expenditure. The DoJ need to consider whether the Accounting Officer model of governance is incorrectly implemented or indeed if it is the correct model of governance for this set of circumstances.

2.11 The Accounting Officer role for the Parole Commissioners is assigned to an Official within the Criminal Justice



Directorate reporting to the Permanent Secretary of the Northern Ireland Office. The relationship between the Accounting Officer of a department (the Principal Accounting Officer) and the Accounting Officer of a sponsored arms length body demands that steps are taken to gain assurance that public resources in the arms length body are being managed to appropriate standards. The normal mechanisms to exercise this role include regular monitoring returns, performance management returns and outturns viz a viz business and corporate plans. The details of the Accounting Officer role are spelt out in the letter of appointment to Accounting Officer status. In this case there was no formal appointment with specific responsibility for the Parole Commissioners as the Accounting Officer role is subsumed within the sponsoring department.

2.12 The Official within the DoJ is also line manager for the Head of Secretariat in the Parole Commissioners, and whilst the Secretariat have undertaken some planning and activity analysis, it is limited to the activities of the Secretariat and clearly they would run foul of *Brooke* should they seek to extend their role to cover the work of the Commissioners. Thus, while the roles for accountability and governance are nominally in place the inherent contradiction between the current governance arrangements and the ruling in *Brooke* indicates that they are probably not the most suitable.

2.13 The Secretariat provide advice to the Chief Commissioner in respect of demonstrating that expenditure is necessary, but the Commissioners do not produce unit costs or cost comparatives by which an objective assessment could be made. Other

parole bodies do produce some details of expenditure and unit costs that can usefully provide a basis for assessment.

Other parole bodies

2.14 With the *Brooke* case in mind CJI considered the structure and workings of other parole bodies in the United Kingdom and Republic of Ireland to assess how they balanced the accountability framework with their judicial function. Although *Brooke* is not legally binding in Scotland, the Parole Board for Scotland are aware of it and instituted similar structures and measures to those of England and Wales to guarantee the independence of the Parole Board decision-making.

2.15 In each case the other parole boards are a corporate body and constituted as non-departmental public bodies or tribunal non-departmental public bodies with a specified sponsoring division. They operate in a traditional manner and produce corporate and business plans, bid for and receive funding, plan their response to the demand for their services, allocate resources, deliver the service and subsequently measure and report on performance. As a model for the service in Northern Ireland they were given detailed consideration.

2.16 The caseload of the Parole Board for England and Wales is way beyond the scale of the Parole Commissioners and whilst direct comparatives are limited, it provides evidence of planning and adapting to the changes in sentencing reform. The Parole Board in the Republic of Ireland only deals with sentences exceeding eight years and includes officials from the Ministry of Justice and the Prison Service as



members of the Board. As such it reflects a modus operandi that would constitute a conflict of interest within the confines of the *Brooke* judgement and it does not contribute to our consideration of the structure of the Parole Commissioners. The Parole Board for Scotland is closer in scale to the Parole Commissioners. As already stated, whilst *Brooke* is not legally binding in Scotland, the Parole Board for Scotland took cognisance of it when establishing their relationship with their sponsoring department.

2.17 Like the Parole Commissioners the Parole Board for Scotland is a publicly funded body with a similar role to the Parole Commissioners in ensuring public protection by assessing prisoners' readiness for release. They are constituted as a tribunal non-departmental public body and the Chief Executive is held accountable by the sponsoring department, although the Permanent Secretary of the DoJ is the Principal Accounting Officer. The basis of this arrangement is the setting of a wide policy framework by the department within which the Parole Board for Scotland agrees delivery objectives, funding and performance measures, writes a business plan and delivers an Annual Report of performance. In the instance where the Chief Executive does not have a legal background the Deputy Chief Executive will come from a legal background.

2.18 The Parole Board of England and Wales is an executive non-departmental public body where the Chief Executive is the Accounting Officer and the sponsoring

division lies within the Ministry of Justice. The Chief Executive does not necessarily come from a legal background but is normally supported by members who do. A recent report by 'Justice' recommended reconstituting the Parole Board for England and Wales as a tribunal to balance independence and accountability.⁷ This is now the subject of a consultation process⁸.

2.19 In conclusion, the structural arrangements of the Parole Commissioners are different to comparable parole bodies in the rest of the United Kingdom which are tending towards tribunal status.

2.20 Inspectors recommend the sponsoring department review the sponsorship arrangements in place and redefine these arrangements. They should guarantee the independence of the Commissioners whilst seeking to provide the department with adequate assurances that public resources are being managed to appropriate standards.

⁷ 'Justice, A new Parole System for England and Wales' 2009.

⁸ 'The Future of the Parole Board', Ministry of Justice; consultation paper 14/09.



CHAPTER 3:

Delivery and outcomes



Planning for change

- 3.1 The Criminal Justice (Northern Ireland) Order 2008 established new sentences and also extended the remit of the Parole Commissioners to include Determinate Sentence recalls. The immediate effect of this sentencing reform is to increase the workload of the Parole Commissioners. Similar reforms in England and Wales saw a massive increase in the number of cases rising by 29% from 24,000 to a peak of 31,000 in 2007-08. In Scotland numbers rose by 13% in 2006 and 2007. However, in Northern Ireland the number of cases referred in 2010-11 (circa 150) will treble compared with 2008-09 (46) presenting major challenges to officials and Commissioners.
- 3.2 In anticipation of the impact of sentencing reform the Department of Justice (DoJ) made a range of projections of the number of cases that might present to the Parole Commissioners, illustrated in Table 1 below.

- 3.3 In response to this projected caseload the number of Commissioners was increased from 24 to 40.
- 3.4 England and Wales faced a massive backlog of cases with some prisoners receiving compensation for delays. Currently the level of delays being faced by prisoners in Northern Ireland is very low. However, the increase in the number of Commissioners and caseload requires an increased complement of case management workers. Within the budgetary levels faced by the Commissioners this will probably require a realignment of the funding split between costs of Commissioners and the costs of the Secretariat support staff if the current level of service is to be maintained.

Managing demand

- 3.5 Inevitably increasing the capacity of the Parole Commissioners preceded the actual increases in the caseload, thus the annual expenditure for the Parole Commissioners rose from £295,000 in

Table 1: Projected caseload

Total number of cases	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Low	51	142	153	162	173	186
Median	70	222	246	262	276	292
High	88	306	342	365	384	407



2005-06 to £711,000 in 2008-09 – although referrals only increased from 20 in 2006 to 46 in 2009 (see Table 2 below). This increased expenditure was in preparation for the forecast increase in cases coming before the Commissioners. From 2009 to 2015 referrals are forecast to increase by a minimum of 120 per annum. This might create a pressure in light of the future budget provision for 2011-12 and thereafter as the budget is reducing by 8% per annum over the spending review period.

3.7 In an attempt to place the cost per parole hearing in context, the cost per case heard was compared with other United Kingdom Parole Boards (Table 3). The cost was calculated using the total budget of the Commissioners and the number of cases heard. There were, and will be, accrual effects as cases brought forward reduce the cost of cases heard and cases carried forward increase the cost of cases heard in any particular year. The accrual effects are assumed to reverse.

Table 2: Forecast costs and caseload

Financial Year	Annual cases referred per referral	Increase	Annual cost	Increase cost	Estimated unit cost per referral
2005-06	20	-	£295,000	-	£14,800
2006-07	24	4	£373,000	£78,000	£15,500
2007-08	40	16	£528,000	£155,000	£13,200
2008-09	46	6	£711,000	£183,000	£15,500
2009-10	59	13	£893,000	£182,000	£15,100
2010-11 Estimate	142	83	£1,123,000	£230,000	£7,900

3.6 The table above uses the forecast number of referrals although it is noted that this is problematic as the new sentences are only introduced and it will be some time before predictable trends are established. The key points to note are the initial very high unit costs per case referred from 2006-10 and the decrease in the cost per referral as numbers rise in 2010-11. As budget provision is constrained a continued reduction in the unit costs will be necessary to live within the financial limits.

3.8 It is very important to note that the Parole Commissioners only heard lifer cases in 2008-09, and in 2009-10 all but two were lifer cases, thus only the costs of three panel member lifer and three panel member public protection hearings from England and Wales and Scotland are used for comparative purposes. The cost of Determinate Custodial Sentence recall cases are very much lower as they are considered by a single Commissioner.



3.9 In normal fashion a 25% sensitivity analysis is applied to the England and Wales and Scotland unit costs. Using these figures the unit costs of cases heard by the Parole Commissioners in 2009-10 are about five times their counterparts in England and Wales and Scotland. The unit cost of a lifer/public protection panel hearing in England and Wales and Scotland are roughly similar, which in itself might indicate the level of unit cost that is attainable (Table 3).

Board members is lower than the Parole Commissioners, and the cost of the Secretariat and legal costs, at £400,000, are similar to the Parole Commissioners.

3.12 One difference appears to be the time dedicated to individual cases. As an example, assuming a reasonable fee of £1,100 per day for a panel of three Commissioners and with total Commissioners' fees for casework costing £132,665 in 2008-09 and the average time for a case is 3.5 days:

Table 3: Comparison of unit costs per case 2009-10

	Scotland	Northern Ireland	England and Wales	Northern Ireland vs Scotland	Northern Ireland vs England and Wales
Number of cases heard	363	59	2,335	16%	2.5%
Unit cost with 25% sensitivity analysis added	£2,829 ⁹	–	£2,692 ¹⁰	533%	561%

3.10 The massive caseload in England and Wales brings with it economies of scale that can never be realised in Northern Ireland, and perhaps of more relevance is the relative efficiency of the Parole Board in Scotland. The total expenditure of the Parole Commissioners in 2008-09 is approximately 50% of the budget for the Parole Board of Scotland but with only 16% of the caseload. Direct comparison between jurisdictions is complicated and quantitative measures are only useful as indicators rather than absolute measures. Even so the disparity in costs is significant.

a cost of commissioners' fees will be £3,500 per case.

3.13 In contrast, in 2008-09 the Parole Board for Scotland held 363 lifer and Extended Custodial Sentence tribunals ranging from two to four hours. The Determinant Sentence recall hearings were heard at casework conferences. (Over 600 recall case decisions were made at 47 casework conferences: 12 a day). The Northern Ireland Parole Commissioners are also hearing Determinate Sentence recalls and have established single Commissioner Panels to consider these cases. The low numbers to date preclude any detailed analysis but the cases considered have been completed within the relevant timescale.

3.11 Higher input costs are not the cause as the per diem paid to Scottish Parole

⁹ Cost only reflects Indeterminate Public Protection (IPP) and lifer hearings. Determinant Sentence recalls are excluded.

¹⁰ Cost of an oral hearing for IPP and lifer hearings. Paper Boards and Determinant Sentence recalls are excluded. Cost increased to include notional costs.



3.14 In defence of the Parole Commissioners the smaller scale of the operation does count against them as the other United Kingdom parole bodies benefit from economies of scale. Added to this is the considerable effort required in completely reforming the Parole Commissioners, getting to grips with the new sentencing legislation and increased pressure on the existing administration support team. There is no doubt that the expanded remit of the Commissioners comes at a cost. A 155% increase in referrals in Northern Ireland in 2010-11 since the introduction of Public Protection sentences and Determinate Custodial Sentence recalls demands investment to develop infrastructure, processes, policies and personal development to cope. Table 2 indicates a rough estimate of the cost per case once the higher volumes are realised to be between £7,000 and £8,000 per referral. There are four points to acknowledge. These are:

- the increased volume of cases saw a reduction in the unit cost of the hearings in Northern Ireland by over 50% and in the absence of further significant training costs this could fall further;
- the unit costs of cases heard in England and Wales will very probably increase following the recent ruling by Mr Justice Treacy supported by the findings in *Smith* and *West* that may result in even greater recourse to oral hearings for the Determinate Sentence recall cases (additionally the increase in fees to parole board members will raise costs);
- the increase in Determinate Sentence recall requests and reviews in

Northern Ireland will reduce unit costs as they are less onerous than life, Extended Custodial Sentences and Indeterminate Custodial Sentence hearings; and

- those cases that are resolved by a single Commissioner cost significantly less than a panel hearing and the number of these will increase in the coming years.

It is recommended the Parole Commissioners Secretariat develop their budget monitoring and associated cost targets to allow them to track the cost of casework and aim to deliver the most efficient process. Similarly, if possible they should gather unit costs for the various types of hearing to act as internal monitors for their casework management process.

Cost of casework -v- work ancillary to casework

3.15 The conduct of casework requires ancillary work, and in the case of the Parole Commissioners who underwent a major transformation, it is inevitable that there is much development work required. Analysis of the ratio of casework to work ancillary to casework in 2008-09 shows the latter increasing to the point where they are virtually equal.

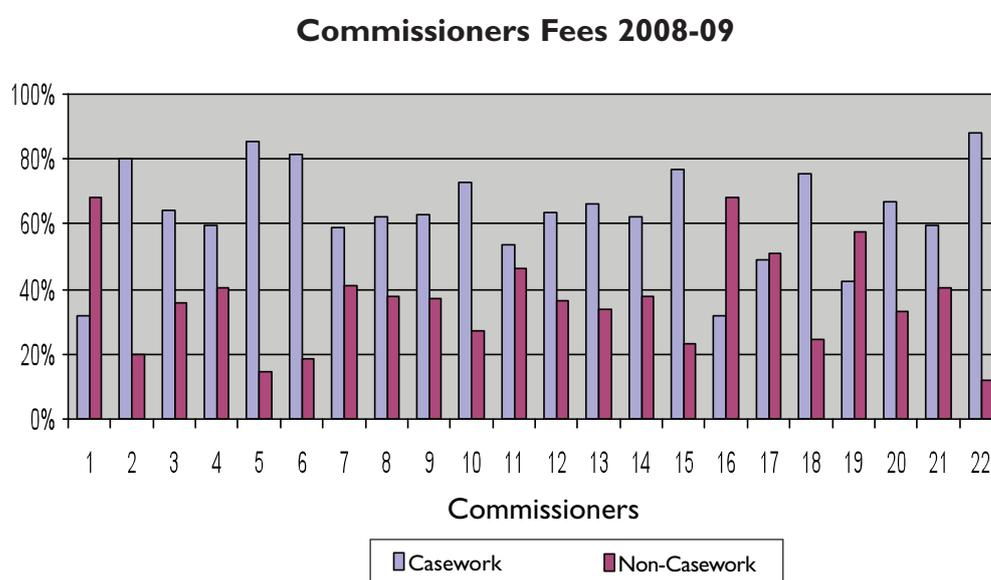
3.16 Most of the Commissioners undertook high levels of work ancillary to casework with only four of the Commissioners' work ancillary to casework accounting for less than 20% of their fees in 2008-09 and 2009-10.



Table 4: Analysis of casework and work ancillary to casework fees for all Commissioners

	Casework fees		Work ancillary to casework fees		Total
2007-08	£132,659	62%	£80,977	38%	£213,636
2008-09	£76,747	53%	£69,219	47%	£145,966 ¹¹

Table 5: Ratio of casework and work ancillary to casework for individual Commissioners



3.17 It is only to be expected that the establishment of a new parole body and the introduction of a new and more complex sentencing framework demands this additional work. The development of licensing guidelines and other policies necessitates a significant input from the Chief Commissioner. Also the Parole Commissioners anticipated a significant increase in workload and appointed additional Commissioners, and this necessarily incurred extra costs of training. There is evidence that the increased caseload is now feeding through, as evidenced by referrals increasing in 2009-10 and 2010-11 and the unit cost of referrals has halved as a

result. Provided this reduction in unit costs continues comparisons with other parole bodies will reflect more favourably on the Parole Commissioners.

3.18 In the short term there is unlikely to be a significant reduction in the amount of work ancillary to casework as the rules governing the Commissioners are to be reviewed and developments arising from the Determinate Sentence recall process will require input from the Commissioners. There are legal issues raised by the concept of the sponsoring department being seen to impose budgetary constraints on a parole body, and **Inspectors recommend the**

¹¹ To December 2009.



Chief Commissioner gains assurance that the relative level of work ancillary to casework is reasonable and that the overall budget is reasonable and kept under review. The department does exercise some influence over the level of the fees and other remuneration given to Commissioners and it should review these against suitable benchmarks in Scotland and England and Wales.

3.19 The CJI inspection cannot comment on the actual approach taken by the Parole Commissioners in the conduct of its hearings. It appears on the face of it that the throughput in England and Wales and in Scotland is higher than that in Northern Ireland and there may be some merit in assessing if there is any best practice exhibited by these parole bodies.

3.20 The Parole Commissioners rightly contend that the nature of the hearings in Northern Ireland are in accordance with the Parole Commissioners' Rules and also are consistent with the rights of the prisoner under Article 5(4) of the ECHR.¹² Anecdotal evidence presented to the Inspectorate by the then Chief Commissioner reflecting the views of Commissioners with direct experience of the parole process in other jurisdictions, contends that the service delivered in Northern Ireland is of a very high standard.

Adjournments

3.21 The Parole Boards for Scotland, and England and Wales report increasing levels of deferrals/adjournments in their annual reports arising from the increase in the caseload following the

introduction of Determinate Custodial Sentence recalls and Public Protection sentencing. The rates in Northern Ireland are very low due in the first instance to the low level of cases in 2008, but subsequently in the face of increasing caseload, the implementation of a forward planning case management process. As the number of cases increase the continued management of the caseload will require adequate levels of Secretariat staff. The limit on finances in future years will present a challenge to the Commissioners to adequately allocate their resources between the cost of the Commissioners and the cost of the Secretariat.

Table 6: Comparison of deferral/adjournment rates

Cases carried over	Northern Ireland	Scotland	England and Wales
2008	1-2%	13%	15%
2009	1-2%	14%	19%

Impact of increasing workloads on future costs and delays

3.22 The first main impact arising from the increase in workload is a significant increase in cost each year. As Table 2 shows the case referrals costs increase from 2006 to 2009 – referrals increased by 130% and costs by 144%. The costs of hearings are mostly variable as Commissioners are paid per diem and extra referrals require additional caseworkers, travel expenses and associated costs. A forecast of costs can be made using the projections of caseload. Evaluation of the number of Public Protection sentences to date indicates that the lower projections

¹² Hussain and Singh v UK (1996) 22 European Human Rights Reports 1, para 60.



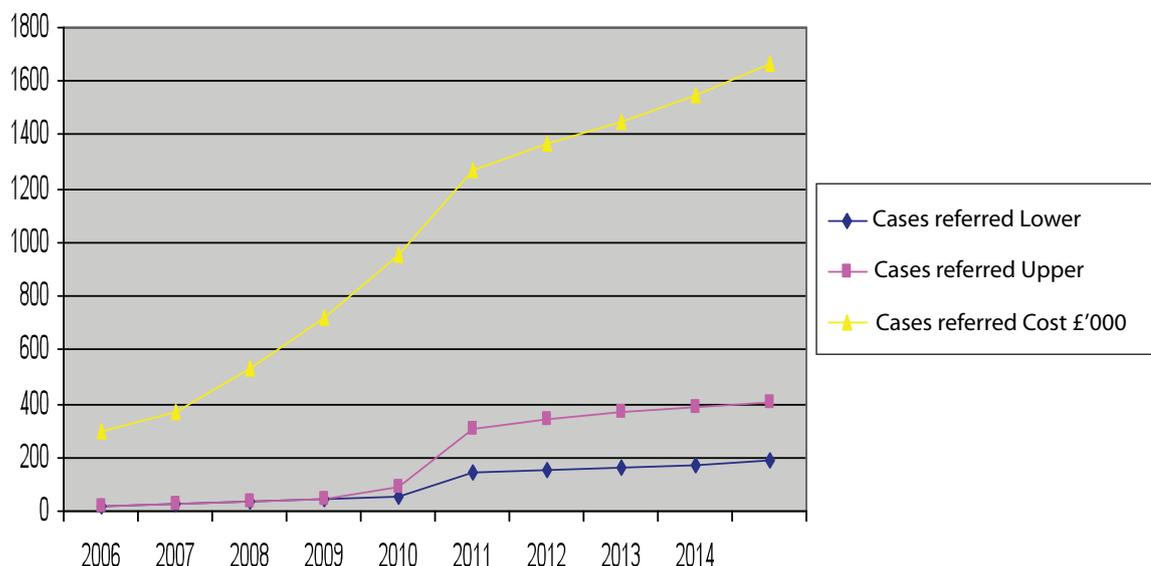
of caseload are appropriate. The projections prepared by DoJ and the Northern Ireland Statistic and Research Agency (NISRA) are 142 referrals in 2010, (the actual figure at 1 March 2011 was 162 referrals) rising to an estimated 186 in 2014, and these figures are used in estimating costs (Appendix 5). An accurate projection of sentences is vital to plan the work and funding for the Parole Commissioners and projections should be regularly reviewed. **It is recommended the projected caseload and case mix statistics should be reviewed taking into account the most recent sentencing patterns to date.**

3.23 The evidence to date is that costs rise in straight-line fashion with referrals reflecting the variable nature of the costs of hearings. On this simple straight line basis this indicates an increase from £711,000 in 2008-09 to £2.38 million in 2010-11 rising to £3.11 million in 2014-15, with the average cost per case around £16,000 per annum.

3.24 The straight-line analysis provides the potential upper limit of costs of the Parole Commissioners. Accepting that some costs are already incurred and that the Secretariat has introduced casework teams with available capacity to handle an increased caseload, the costs of the Parole Commissioners will not follow the straight-line increases seen from 2005-06 to 2008-09. Assuming some costs are semi-variable the overall costs of the Parole Commissioners (shown in Table 7) could be maintained in the region of £1.6 million by 2014-15, not £3.1 million. The issue at hand is the mechanism to ensure costs are contained within a reasonable limit. The sponsoring department has very limited powers to monitor the expenditure of the Commissioners and even less ability to intervene; to do so could be open to legal challenge in light of the *Brooke* judgement.

3.25 Whilst acknowledging the cost of the Commissioners is comparatively high the alternative could be an increase in delays to hearing cases. In England and Wales

Table 7: Number of cases vs costs (£'000s and year)





and Scotland there were delays as numbers rose from 2007-08 to 2008-09 by 22% in England and Wales and by 14% in Scotland. It was estimated that the Parole Board for England and Wales and Her Majesty's Prison Service incurred £3 million of additional costs due to these delays. Even though the numbers of Parole Board members were increased, major backlogs still ensued with some prisoners being compensated for delays. Additional resources were made available and the number of judicial panel members increased to chair oral hearings. Even with this other measures had to be adopted to cope with the increasing demand. In Scotland, dossiers are emailed to Commissioners and two lifer panels per day were carried out. Targets were introduced to process cases with the emphasis on paper panels for recall work and greater use of single commissioner panels. In England and Wales 99% of Determinate Sentence recall cases were considered by paper panels within 25 days of referral and a target of 25% of oral hearings by video link was introduced. The Parole Commissioners are aware of these issues and have streamlined processes for hearing recalls and are working with the Northern Ireland Prison Service (NIPS) to avail of video link hearings. A single Commissioner considers the Determinate Sentence recalls and the Chief Commissioner has provided guidelines governing the use of the single Commissioner and recourse to a full panel hearing. One issue that has arisen is the consequence of the distribution of legal aid for prisoners' representatives at single Commissioner stage. In a perverse way the distribution of the cost of legal aid is having the opposite effect. Many prisoners' representatives in the absence of an

appropriate level of legal aid at this stage are referring to the full three person panel where adequate legal aid is guaranteed.

- 3.26 Another consequence arising from the greater number of delayed cases in England and Wales was an increase in applications for judicial reviews. In 2008-09 there were 146 applications (a 25% increase and about 0.5% of total number of cases) for judicial reviews in England and Wales citing ECHR article 5(4) and 10 in Scotland (0.6% of total number of cases). By far the most frequent area for challenge concerned delays in completing lifer/public protection reviews with delays in listing oral hearings being the chief cause. In Northern Ireland there were three judicial reviews in the last four years. Only one of these concerned delay and the House of Lords found that this case did not breach ECHR article 5(4) because of the justified length of time needed to gather the evidence.
- 3.27 The experience in England and Wales and Scotland showed that increasing resources was not the sole answer to the rising caseload and higher number of delays. Of considerable importance was the development of the approach taken to the hearings. The increased use of paper assessments to consider Determinate Sentence recalls with low numbers of oral hearings is a salient point. The implications for the Parole Commissioners are a possible increase in legal challenges if prisoners are not represented at the single Commissioner stage. In England and Wales a parole bodies pilot is looking at greater reliance on transferring data to Commissioners via ICT, maintaining the number of single Commissioner hearings



and the adoption of video link hearings as key factors to reduce the cost of the hearings. Similarly, the Parole Commissioners are looking at secure email transfer and video link alongside the active management of casework by the Secretariat. The challenge is to manage the pressure that any additional investment would create considering the reduction in funding faced by the Commissioners. The Parole Commissioners should realise savings as unit costs fall with increasing case numbers and economies of scale, and this will provide an opportunity to ensure adequate funding is available for casework management as well as Commissioners.

Working with other agencies

3.28 In an earlier CJI report on lifers,¹³ whilst it was reported that inter-agency confidence levels had improved, a fundamental review of the lifer hearing system, information and support requirements by the NIPS and the Parole Commissioners was recommended. The aim of the review was to resolve issues about timetabling, dossier content, need for potential witnesses to routinely attend hearings and opportunities for alternative hearing locations. The Parole Commissioners administrative processes were also to be reviewed to ensure they complement Lifer Management Unit processes and possess sufficient capacity to cope with future demands. It was recommended the Parole Commissioners should initiate regular business meetings with the NIPS and other statutory agencies to deal with administrative issues such as forecasting and planning work ahead.

3.29 There were some joint training events and other communication but during this inspection staff within the Commissioners and the Prison Service felt that closer and more regular communication between these agencies would help improve the management of the process. The discussions can be structured to avoid issues that might interfere with the Commissioners' independence. The aim should be to reduce delays by ensuring the requisite information is available and improved joint planning by the Parole Commissioners and the NIPS. The Parole Commissioners have usefully created a Users' Group to which the Northern Ireland Policing Board (NIPB), NIPS, legal representatives and other Government agencies are free to bring forward matters pertinent to the work of the Commissioners. Early indications from discussions with the NIPS and the NIPB are very positive.

3.30 Another issue of inter-agency working centred on the availability of psychologist's reports. The role of psychologists in the Parole Commissioners' hearings is dealt with in detail in the earlier report on lifers, but the Parole Commissioners are of the view psychology assessments are indispensable for their hearings, yet expressed concern that these are not always available or completed on time. The problem arose due to the shortage of psychologists in the NIPS, although this was not due to lack of effort on the part of the NIPS to recruit and maintain psychologists – they had advertised repeatedly, requested local universities to develop a forensic psychology course and reviewed pay scales. These efforts had so far failed to completely resolve

¹³ 'A review of Transition to Community Arrangements for Life Sentence Prisoners In Northern Ireland', March 2009 CJI.



the problem, although recent recruitment of a psychology assistant grade was showing more promise.

- 3.31 One important matter that could have consequences for the Parole Commissioners when dealing with the different type of sentence parolee was touched upon in a recent NIPS review. In November 2008 the NIPS reviewed its psychologists services and it was suggested, among other things: “...the NIPS...initiates discussion with the (Parole) Commission (sic) with a view to enabling decisions to be taken about the type and format of reporting that should be provided in different types of case...”

Performance management and improvement

- 3.32 The Parole Commissioners hold regular Senior Management meetings and report on the number of cases being heard, budget matters and other business issues. Without infringing upon the independence of the Commissioners’ decision-making role, it is possible to introduce performance measures. Examples of these should include:

- adherence to the timetable for the hearings;
- analysis of casework and work ancillary to casework expenditure;
- unit cost of hearings;
- ratio of deferrals/adjournments; and
- analysis of the reasons for deferrals/adjournments.

- 3.33 The issue arises where the performance measures are seen as a report to the department and where the department would seek to hold to account the Chief Commissioner for work that falls within the judicial remit. **Inspectors**

recommend the Commissioners should develop requisite measures including if possible, unit costs that provide the Chief Commissioner with an insight into absolute and comparative performance. The Chief Commissioner’s Annual Report could provide a vehicle for reporting year-end outturns including (if developed) unit costs for various types of hearings.

- 3.34 A benefits realisation plan proposed as part of the Sentencing Framework Initiative of the Northern Ireland Department of Justice will provide a general assessment of the effectiveness of the Sentencing Framework Initiative but as it is not agreed with the Chief Commissioner, it is not intended to be a monitoring vehicle for the Commissioners. As stated above the Parole Commissioners will have to develop performance measures of their own and decide if they will be published in the Chief Commissioner’s Annual Report.

Outcomes

- 3.35 The finding in *Brooke* and the subsequent ruling by Mr Justice Treacy confirming the judicial status of the Parole Commissioners defines the remit for this inspection. In keeping with this the Inspectorate does not look at individual case files or decisions to release or not to release. The views of the Inspector are limited to only a high level snapshot of the overall outcomes at the time of the inspection.
- 3.36 The rate of recall of prisoners released on parole is very low in Northern Ireland. Since the introduction of the 2008 Order only five prisoners released



on Indeterminate or Extended Custodial Sentence licences have been recalled. The rate of recall from parole in England and Wales is 4% for Determinate Sentence prisoners and 5.4% for lifers. In Scotland the rate of recall of parole licensees is 4%. On this basis the outcome for the general public in Northern Ireland is very positive as the risk of harm to the public is very low due to re-offending of prisoners convicted of serious offences. The unit cost per hearing of the Parole Commissioners is higher than the other jurisdictions and thus the positive outcomes are at a higher cost than the rest of the United Kingdom.

- 3.37 The deferral/adjournment rates in Northern Ireland are very low compared to Scotland or England and Wales, and anecdotal evidence suggests the quality of the dossiers prepared for the Parole Commissioners is of a high standard and does not require adjournments to request additional information. The low level of adjournments and effective case management results in few delays in the hearing of cases, although the indicative evidence of cases processed is that they take longer to process here than in Scotland or England and Wales. An increasing caseload and the budget pressures on the Case Management support staff could create a risk of delays occurring in the future. The danger here is that delays and or deferrals *'can lead to prisoners spending longer in custody than necessary... potentially contravening the human rights of the prisoner'*¹⁴.

- 3.38 Balancing the cost of the hearings against the rights of the prisoner to

representation, and ensuring that the correct outcome is achieved is a difficult proposition. The lower volumes of casework in Northern Ireland pushed up costs and the development of the parole process also demanded investment. There is continued development required but with the higher number of cases the unit costs should drop. It is up to the Secretariat working with the Commissioners to manage the process to ensure that the economies of scale - such as they are - become realised.

- 3.39 It is also reasonable to assume that a prisoner is entitled to not only an explanation of the decision affecting his release or recall, but also a framework against which good quality decisions may be assessed. In England and Wales a quality standards unit is extant as a learning and development unit to impart training to Commissioners. A framework of good decision-making was also instigated and this provides a consistent and rational basis for the decisions of the Board. The small scale of the Parole Commissioners does not warrant a separate quality review body but some qualitative assessment against the England and Wales model could be beneficial and could be conducted by the Parole Commissioners Secretariat. This would also fit in with the Parole Commissioner's proposed peer review arrangements.

- 3.40 **It is recommended the Parole Commissioners engage with the Parole Board for England and Wales to examine the feasibility of using the quality standards under development by England and Wales as the basis for benchmarking the work of the Parole Commissioners.**

¹⁴ 'Protecting the Public: the work of the Parole Board', NAO 5 March 2008.



CHAPTER 4:

The way forward



- 4.1 The preceding analysis raises questions surrounding the current structure, governance and operation of the Parole Commissioners in the longer term. There are consequences to their continued operation in the current regime, namely escalating costs, probable delays in hearings and tacit acceptance of low levels of accountability. Good governance through accountability and value for money is axiomatic for publicly funded bodies and was clearly accepted by the Lord Chief Justice of Northern Ireland in his submission to the Assembly and Executive Review Committee¹⁵ inquiry on the devolution of policing and justice when he stated: *“I (also) understand that there must be accountability to the executive for the money provided by the legislature... I freely accept, for instance, that it should be incumbent ... to produce a strategic plan with key objectives, outputs and strategies, including the use of resources.”*
- 4.2 The question is the independence of the Commissioners versus the need for accountability. The Department of Justice (DoJ) has been careful to take account of the Brooke ruling in its dealings with the Commissioners and acknowledges the challenges that arise in addressing the governance of the Commissioners in the face of perceived independence. The present structure and accountability arrangements governing the Parole Commissioners and its relationship with the sponsoring department therefore need addressed.
- 4.3 Of relevance to this is the Leggatt Report 2001¹⁶ that reviewed arrangements for administrative justice in England and Wales. The review focused on the role of tribunals with the object being to recommend a system that is independent, coherent, professional, cost-effective and user-friendly. (A full list of the Terms of Reference of this review is given in Appendix 4). Leggatt found that too often, *‘their methods are old-fashioned and they are daunting to users. Their training and IT are under-resourced. Because they are many and disparate, there is a considerable waste of resources in managing them, and they achieve no economies of scale. Most importantly, they are not independent of the departments that sponsor them’*. Leggatt recommended a single Tribunal Service with the independence of the Tribunals *‘safeguarded by having their administrative support provided by the Lord Chancellor’s Department... As a Minister he is answerable to Parliament, and so to the public, for the proper functioning of our*

¹⁵ ‘Assembly and Executive Review Committee Official Report Inquiry into Devolution of Policing and Justice Matters’, 2 October 2007.

¹⁶ ‘Tribunals for Users, One System One Service’, March 2001.



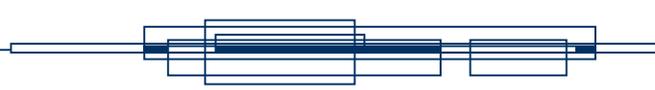
system of justice. He is uniquely well placed to protect the independence of those who sit in tribunals... through a Tribunals Service... separate from, the Court Service and the courts’.

Northern Ireland review of tribunals

- 4.4 A similar review of tribunals in Northern Ireland was underway at the time of writing with the expansion of the Northern Ireland Courts Service to become the Northern Ireland Courts and Tribunals Service (NICTS). In considering an appropriate structure for the Parole Commissioners the recent review of the Criminal Injury Compensation Appeals Panel for Northern Ireland (CICAPNI) provides a useful parallel. It does not display the full panoply of legal powers exhibited by the Parole Commissioners but even so acts as an exemplar for the possible repositioning of the Commissioners.
- 4.5 The purpose of CICAPNI is to support the victims of violent crime by determining promptly, impartially, fairly and independently in accordance with the Scheme and appeals against review decisions made by the Compensation Agency. The membership of CICAPNI consists of 20 members and a Chairman. The Chairman and nine of the members are legally qualified; there are four medically qualified members and seven lay members with various relevant qualifications and experience. Following review the future vision for the delivery of the functions of CICAPNI is that it is fully integrated into what will become a unified Courts and Tribunals Service. The operational independence of CICAPNI will be provided by the responsibility for its administration resting with the NICTS (on behalf of

the Minister of Justice). Following the devolution of justice in April 2010, responsibility for the administration of CICAPNI transferred to the Department of Justice (DoJ) and is administered by the Courts and Tribunals Agency. The independence of its adjudicators was further enhanced in the post devolution of justice environment by the inclusion of this office within Schedule 1 to the Justice (Northern Ireland) Act 2002.

- 4.6 As a possible model for the Parole Commissioners, tribunal status has merit. It would confer independence through a defined structure at arms length to the Executive and retain their judicial character. This would meet the requirements of Article 5 (4) of ECHR. The Courts and Tribunal Service would complement the current Secretariat, helping to minimise duplication and improve efficiency through economies of scale. The Courts and Tribunals Service has accountability and governance arrangements for tribunals that would improve upon the current arrangements between the Parole Commissioners and DoJ. The Commissioners would have access to the training resources already provided by the Courts and Tribunals Service for judicial office holders. In addition to the above, considering the Chief Commissioner for listing in Schedule 1 of the Justice (Northern Ireland) Act 2002 would also provide accountability for the judicial function of the Parole Commissioners through the office of the Lord Chief Justice.
- 4.7 **It is recommended consideration should be given to reposition the Parole Commissioners within the Northern Ireland Courts and Tribunals Service given its**



similarities to a tribunal (use of a panel; adversarial nature of proceedings). This will underpin the independence of the Parole Commissioners, provide a governance and accountability structure consistent with other adjudicative bodies (including courts and tribunals) and provide a model for the role and responsibilities of the Chief Commissioner, Commissioners and their administrative support.



Section



Appendices



Appendix 1: Criminal Justice (Northern Ireland) Order 2008: Schedule 4: The Parole Commissioners

Appointment

1. (1) The Secretary of State shall appoint Parole Commissioners.
- (2) The Secretary of State shall so far as reasonably practicable ensure that at any time -
 - (a) at least one of the Commissioners is a person who holds or has held judicial office in any part of the United Kingdom or who is -
 - (i) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years standing; or
 - (ii) an advocate or solicitor in Scotland of at least 10 years standing; or
 - (iii) a person who has a 10 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c.41);
 - (b) at least one is a registered medical practitioner who is a psychiatrist;
 - (c) at least one is a chartered psychologist;
 - (d) at least one is a person appearing to the Secretary of State to have knowledge and experience of the supervision or aftercare of discharged prisoners.
 - (e) at least one is a person appearing to the Secretary of State to have knowledge and experience of working with victims of crime; and
 - (f) at least one is a person appearing to the Secretary of State to have made a study of the causes of delinquency or the treatment of offenders.
- (3) In sub-paragraph (2) -
“chartered psychologist” means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists;
“registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983 (c.54).
- (4) The Secretary of State shall appoint a Chief Commissioner from among the Commissioners.
- (5) The Secretary of State may appoint a deputy Chief Commissioner from among the Commissioners.

Tenure

2. A Commissioner -
 - (a) shall hold office in accordance with the terms of appointment; and
 - (b) may resign by notice in writing to the Secretary of State.
3. The Secretary of State may, after consultation with the Lord Chief Justice, dismiss a Commissioner if satisfied -
 - (a) that the Commissioner has without reasonable excuse failed to carry out any functions

- 
- for a continuous period of 3 months beginning not earlier than 6 months before the day of dismissal;
- (b) that the Commissioner has been convicted of a criminal offence;
 - (c) that a bankruptcy order has been made against the Commissioner, or the Commissioner's estate had been sequestrated, or the Commissioner has made a composition or arrangement with, or granted a trust deed for, the Commissioner's creditors; or
 - (d) that the Commissioner is unable or unfit to carry out any functions of a Commissioner.

Rules

- 4. (1) The Secretary of State may make rules with respect to the proceedings of the Commissioners.
- (2) In particular rules may include provision
 - (a) for the allocation of proceedings to panels of Commissioners;
 - (b) for the taking of specified decisions by a single Commissioner;
 - (c) conferring functions on the Chief Commissioner or deputy Chief Commissioner;
 - (d) about evidence and information, including provision -
 - (i) requiring the Commissioners to send to the Secretary of State copies of such documents as the rules may specify;
 - (ii) requiring the Secretary of State to provide specified information to the Commissioners;
 - (iii) for the giving of evidence by or on behalf of the Secretary of State, the Police Service of Northern Ireland and others;
 - (iv) about the way in which information or evidence is to be given;
 - (v) for evidence or information about a prisoner not to be disclosed to anyone other than a Commissioner if the Secretary of State certifies that the evidence or information satisfies conditions specified in the rules;
 - (vi) preventing a person from calling any witness without leave of the Commissioners;
 - (e) for proceedings to be held in private except where the Commissioners direct otherwise;
 - (f) preventing a person who is serving a sentence of imprisonment or detention from representing or acting on behalf of a prisoner;
 - (g) permitting the Commissioners to hold proceedings in specified circumstances in the absence of any person, including the prisoner concerned and any representative appointed by the prisoner.
- (3) Where a prisoner and any representative appointed by the prisoner are excluded from proceedings by virtue of sub-paragraph (2)(g), the Advocate General for Northern Ireland may appoint a person to represent the prisoner's interests in those proceedings.
- (4) A person appointed under sub-paragraph (3) shall not be responsible to the prisoner whose interests the person so appointed represents.
- (5) Until section 27 of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force, sub-paragraph (3) shall have effect as if the reference to the Advocate General for Northern Ireland were a reference to the Attorney General for Northern Ireland.



Remuneration and allowances

5. (1) The Secretary of State shall pay to or in respect of a Commissioner such remuneration, fees and allowances as the Secretary of State thinks fit.

(2) If a Commissioner resigns in accordance with paragraph 2(b), the Secretary of State may pay the Commissioner compensation if in the Secretary of State's opinion special circumstances make it appropriate.

Staff, premises, etc.

6. The Secretary of State shall provide for the Commissioners the services of such staff, and the use of such premises and other facilities, as the Secretary of State thinks appropriate.

Annual report

7. (1) The Chief Commissioner shall, as soon as reasonably practicable after the end of each financial year, make a report to the Secretary of State on the performance of the Commissioners' functions during the year.

(2) The Secretary of State shall lay a copy of the report before each House of Parliament.



Appendix 2: Aims of the inspection

Key aims are to establish:

1. A clear sense of leadership to develop the organisation and manage performance.
2. A management structure with clear lines of public accountability for delivery of outcomes and management of resources.
3. That the organisation is responsive to changes in its operating environment and stakeholders' needs.
4. That there are adequate and competent resources to deliver the outcomes.
5. Value for money administrative functions that support the efficiency and effectiveness of the organisation.
6. That the organisation has clearly defined its role and its desired outcomes within a suitable corporate and business plan.
7. A reporting mechanism that gives outturns and achievements versus plans.

Methodology

A complete case file examination was not conducted. The Parole Commissioners reviewed the previous year's cases and provided a summary of:

- the target month of the hearing as calculated by the Prison Service;
- the first provisional date of the hearing, the additional provisional dates and the actual date of the hearing;
- the number of adjournments and deferrals;
- when the dossier was received;
- the date the dossier was sent to the panel;
- the number of requests for additional information;
- the date of the decision at the hearing;
- the date notification of the hearing was sent to stakeholders; and
- as part of the inspection process CJI will identify standards and best practice (where they are known to exist) that are applicable to the inspected organisation or inspection theme and will embed these in each element of the framework. Similarly, equality and fairness will form an integral part of any inspection undertaken by CJI.

Inspection design and planning

CJI took into account the changing remit of the Parole Commissioners, the consequences for the Commissioners' administrative functions and the findings of the recent review for the management of the assessment for release into the community of life sentence prisoners when developing terms of reference. The Commissioners' press release of 16 May 2008 confirmed the changes facing the Commissioners and their development of *'appropriate processes and mechanisms in good time before new cases begin to emerge out of the system'*.



The Parole Commissioners' Annual Reports provided background to the most recent achievement of the Commissioners and this will be supported by interviews across the Parole Commissioners to provide insight to the challenges and achievements of the Commissioners.

Inspection delivery

CJI agreed the Terms of Reference of the inspection with the Chief Commissioner and the Department of Justice (DoJ) and provided a fieldwork plan.

CJI conducted interviews/questionnaires/workshops with the Parole Commissioners and stakeholders to give insight to the organisation.

The Parole Commissioners completed a self-assessment of the organisation.

Progress in the development of policies, performance management data, and human resources issues were looked at.

Discussions with comparable organisations, for example the Parole Board for England and Wales provided some basis for standard setting and benchmarking.

The relationship between the Commissioners and the sponsoring department including communication, adequacy of resources, reporting and access was reviewed.

Consultees

Commissioners were surveyed using questionnaires. A self-assessment workshop with the Secretariat was carried out and followed up with a series of individual interviews. These included:

- representatives of other stakeholders;
- Probation Board for Northern Ireland (PBNI);
- Crown Solicitor's Office;
- Northern Ireland Prison Service (NIPS) Lifers' Management Unit;
- Northern Ireland Courts and Tribunals Service (NICTS) Review of Northern Ireland Tribunals;
- Director, Northern Ireland Prison Service;
- Department of Justice (DoJ) Criminal Justice Directorate;
- Scottish Parole Service; and
- Parole Board for England and Wales.

Publications

- *'The Indeterminate Sentence for Public Protection, a thematic review'*, HM Inspectorate of Prisons and HM Inspectorate of Probation, London, September 2008;
- *'Fifth Report – Imprisonment for Public Protection sentences and the pressure on the Parole Board'*, House of Commons Select Committee on Justice, London, July 2008;



- *'Protecting the Public: The work of the Parole Board'*, National Audit Office, London March 2008;
- The Parole Board England and Wales; Annual Report 2008-09;
- The Parole Board for Scotland Annual Reports 2007-08 and 2008-09;
- The Parole Board (Republic of Ireland) Annual Report 2007;
- Case No. C1/2007/2229, between The Queen on application of (1) Michael Brooke and Gagik Ter-Ogannisyan (2) David O'Connell (3) Michael Murphy – and (4) The Parole Board The Lord Chancellor and Secretary Of State for Justice;
- PSI 33/2009 NOMS Pre-Tariff Sift Reviews for Indeterminate Sentence Prisoners;
- *'A New Parole System for England and Wales, Justice Report 2009'*, ISBN 978 0 907247 50 0;
- Inquiry into Devolution and Policing and Justice Matters, Assembly and Executive Review Committee, Northern Ireland Assembly, Hansard, 2 October 2007;
- *'Indeterminate Sentences for Public Protection'*, A joint inspection by HMI Probation and HMI Prisons, 2010; and
- *'The Future of the Parole Board'*, consultation Paper 14/09; Ministry of Justice.





Appendix 3: Indicators included in the Department of Justice Sentencing Framework Initiative

Extract from the Benefits Realisation Plan

EXPECTED BENEFIT	MEASURES
2.4 The most dangerous offenders are not released until it is assessed they no longer pose a significant risk of serious harm to the public.	2.4 Parole Commissioners are constituted with the required expertise and capacity to make sound decisions and benefit from the application of consistent risk assessment tools.
3.1 Effective, independent release decisions based on objective risk assessments.	3.1 (a) Parole Commissioner hearings (including preparation of dossiers and submission of other evidence) are completed in line with timescales in PCNI rules or any inspection carried out by CJI.
3.2 Effective and professional recommendations of licence conditions to the Department of Justice.	3.2 A body of licence conditions are developed by NIPS and YJA with the expertise of an independent body of Parole Commissioners.
3.3 Improved levels of compliance with licence conditions.	3.3 A reduction in the number of breaches on licence.
3.4 Objective, independent, safe and effective recall recommendations.	3.4 An independent body of expert Parole Commissioners makes recall recommendations in line with agreed timescales and standards.
5.1 Streamlined processes for executing release recommendations by the Parole Commission.	5.1 Releases occur within the agreed statutory timescales.
5.2 Timely action on recall decisions.	5.2 Recall decisions made and actioned within the agreed timescales.



Appendix 4: Report of the Review of Tribunals by Sir Andrew Leggatt

Sir Andrew Leggatt's Report

Tribunals for Users - One System, One Service (published 16 August 2001)

Terms of Reference

On 18 May 2000 the Lord Chancellor, Lord Irvine of Lairg, appointed Sir Andrew Leggatt to undertake a review of tribunals and to report by 31 March 2001. Sir Andrew's Terms of Reference were as follows:

'To review the delivery of justice through tribunals other than ordinary courts of law, constituted under an Act of Parliament by a Minister of the Crown or for purposes of a Minister's functions; in resolving disputes, whether between citizens and the state, or between other parties, so as to ensure that:

- *there are fair, timely, proportionate and effective arrangements for handling those disputes, within an effective framework for decision-making which encourages the systematic development of the area of law concerned, and which forms a coherent structure, together with the superior courts, for the delivery of administrative justice;*
- *the administrative and practical arrangements for supporting those decision-making procedures meet the requirements of the European Convention on Human Rights for independence and impartiality;*
- *there are adequate arrangements for improving people's knowledge and understanding of their rights and responsibilities in relation to such disputes, and that tribunals and other bodies function in a way which makes those rights and responsibilities a reality;*
- *the arrangements for the funding and management of tribunals and other bodies by Government departments are efficient, effective and economical; and pay due regard both to judicial independence, and to ministerial responsibility for the administration of public funds;*
- *performance standards for tribunals are coherent, consistent, and public; and effective measures for monitoring and enforcing those standards are established; and*
- *tribunals overall constitute a coherent structure for the delivery of administrative justice.*

The review may examine, insofar as it considers it necessary, administrative and regulatory bodies which also make judicial decisions as part of their functions.'



Appendix 5: Provisional projected number of referrals to the Parole Commissioners

Up until 2008-09 the Parole Commissioners have only considered cases under the Life Sentence Order 2001 which deals specifically with cases of prisoner's serving life sentences. The table below gives an indication of the cases received per year.

Current Workload – Life Sentence Cases Only:

Financial Year	Article 3 Cases (Pre-tariff)	All other Cases (Article 6,7,8 and 9)	Total Cases Received
2005-06	5	15	20
2006-07	3	21	24
2007-08	8	32	40
2008-09	12	31	43

Under the new public protection arrangements the Parole Commissioners will take on responsibility for the new Indeterminate Custodial Sentences, Extended Custodial Sentences and recall of Standard Determinate Sentences. This work will be **additional** to the caseload listed in the table above, which will continue to increase as shown below.

The Parole Commissioners Secretariat has based its staffing and Commissioner levels and the associated accommodation requirement on these estimates.

Provisional projected number of referrals to the Parole Commissioners (including current caseload)

2009-10

Sentence type	Type of referral	Lower limit	Median	Upper limit
Extended Custodial Sentence	1st referral (sentences of < 2 years) ¹⁷	8	23	38
Life	Post tariff review/ Pre-release assessment ¹⁸	43	47	50
Total cases referred 2009-10	51	70	88	

¹⁷ Projected volume and length of public protections sentences are based on SFI estimates.

¹⁸ Number of life sentence referrals are based on figures provided by the Parole Commissioners and include re-referrals and pre-tariff.



2010-11

Sentence type	Type of referral	Lower limit	Median	Upper limit
Extended Custodial Sentence	New referrals	14	35	55
Extended Custodial Sentence	2nd referral ¹⁹	7	20	34
Recall Article 28(2) ²⁰	Decision to recall – 48 hr turnaround	37	57	79
Recall Article 28(4) ²¹	Review	41	63	88
Life	Post tariff review/ Pre-release assessment	43	47	50
Total cases referred 2010-11		142	222	306

2011-12

Sentence type	Type of referral	Lower limit	Median	Upper limit
Extended Custodial Sentence	New referrals	17	40	63
Extended Custodial Sentence	2nd referral	12	31	49
Extended Custodial Sentence	3rd referral ²²	3	8	13
Recall Article 28(2)	Decision to recall – 48 hr turnaround	37	57	79
Recall Article 28(4)	Review	41	63	88
Life	Post tariff review/ Pre-release assessment	43	47	50
Total cases referred 2011-12		153	246	342

2012-13

Sentence type	Type of referral	Lower limit	Median	Upper limit
Extended Custodial Sentence	New referrals	21	45	70
Extended Custodial Sentence	2nd referral	15	36	56
Extended Custodial Sentence	3rd referral	4	12	19
Extended Custodial Sentence	4th referral ²³	1	2	3
Recall Article 28(2)	Decision to recall – 48 hr turnaround	37	57	79
Recall Article 28(4)	Review	41	63	88
Life	Post tariff review/ Pre-release assessment	43	47	50
Total cases referred 2012-13		162	262	365

19 Estimates of 2nd referrals are based on an assumptions that Commissioners will direct against release in 90% of first referrals.

20 Projected number of Article 28(2) recalls are based on the assumption that 90% of Article 28(4) recalls will be referred as Article 28(2) recalls in the first instance to the Parole Commissioners.

21 Projected number of Article 28(4) recalls are based on SFIP estimates.

22 Estimates of 3rd referrals are based on an assumption that Commissioners will direct against release in 40% of second referrals.

23 Estimates of 4th referrals are based on an assumption that Commissioners will direct against release in 25% of third referrals.



2013-14

Sentence type	Type of referral	Lower limit	Median	Upper limit
Extended Custodial Sentence	New referrals	27	52	78
Extended Custodial Sentence	2nd referral	18	40	63
Extended Custodial Sentence	3rd referral	6	14	22
Extended Custodial Sentence	4th referral	1	3	4
Recall Article 28(2)	Decision to recall – 48 hr turnaround	37	57	79
Recall Article 28(4)	Review	41	63	88
Life	Post tariff review/ Pre-release assessment	43	47	50
Total cases referred 2013-14		173	276	384

2014-15

Sentence type	Type of referral	Lower limit	Median	Upper limit
Extended Custodial Sentence	New referrals	30	56	84
Indeterminate Custodial Sentence	New referrals	3	4	6
Extended Custodial Sentence	2nd referral	24	46	70
Extended Custodial Sentence	3rd referral	7	16	25
Extended Custodial Sentence	4th referral	1	3	5
Recall Article 28(2)	Decision to recall – 48 hr turnaround	37	57	79
Recall Article 28(4)	Review	41	63	88
Life	Post tariff review/ Pre-release assessment	43	47	50
Total cases referred 2014-15		186	292	407



Appendix 6: Expenditure 2005-12

Expenditure 2005-10 £'000	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Commissioners' remuneration	72	102	114	182	324	Budget figures	Budget figures
Commissioners' travel, accommodation and expenses	12	18	18	26	19		
Legal Costs	0	46	158	184	119		
Premises	51	51	52	58	77		
General administration	32	32	51	56	75		
Secretariat Salaries	128	124	135	207	279		
Total Expenditure	295	373	528	713	893	1,123	1,087









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