

Memorandum of Understanding
between
Scottish Ministers
and
the Chair of the Parole Board for Scotland
in relation to
the Governance Arrangements for the Parole Board for Scotland

1. Introduction

1.1 This Memorandum of Understanding sets out the broad framework whereby the Parole Board for Scotland (PBS) will operate and outlines the key roles and responsibilities which underpin the relationship among:

- the Chairman of the PBS
- the Chief Executive of Parole Scotland (PS)
- the PBS members
- the Parole Board Management Group (PBMG) and
- Scottish Ministers (SM)

1.2 This document will be reviewed and updated at least every three years. All previous Sponsor Frameworks and Management Statements are revoked.

1.3 A copy of this document will be published on the PBS website and copies will be made available to the Scottish Parliament Information Centre.

1.4 PBS is a body corporate initially constituted by virtue of section 59(1) of the Criminal Justice Act 1967 with the powers and duties allocated to it by statute including:

- the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”);
- the Human Rights Act 1998;
- the Convention Rights (Compliance) (Scotland) Act 2001;
- the Management of Offenders Etc (Scotland) Act 2005;

- applicable subordinate legislation; and
- by the common law.

1.5 Legislation has made provision for:

- the membership of the PBS including the Chairman;
- the appointment of PBS members;
- the performance of duties;
- the removal of PBS members from office;
- the remuneration and allowances of PBS members;
- reports to Scottish Ministers which they are to lay before the Scottish Parliament; and
- fees and expenses.

1.6 When performing its statutory functions the PBS acts as an independent and impartial decision-making body sitting as a tribunal, an oral hearing or as an administrative case-work meeting. In exercising these functions the PBS must both be, and be seen to be free, of executive interference or influence.

1.7 The PBS is not an instrument of government policy.

1.8 In the event of any conflict or ambiguity arising from this Memorandum, legislation and the Opinions of the court shall take precedence.

2. **PBS Members**

2.1 PBS members shall exercise the powers and duties allocated to them by statute and at common law only and have no management or governance powers or functions. Members may, however, agree to accept functions which relate to the review of the quality and quantity of information contained in dossiers to be placed before PBS members for their decision making functions. They may also agree to liaise with other bodies regarding the quality standards to be adhered to in relation to dossiers. Furthermore they may agree to participate in the development of reference and guidance manuals and/or the management and exchange of information on relevant case law and changes in legislation and practice.

2.2 When performing the functions detailed in paragraph 2.1 above the individual members of the PBS are independent and impartial decision makers. In particular when performing those functions the PBS members are independent from Scottish Government (SG)/SM and from other institutions. Independence is vital to fostering public confidence in the fairness and objectivity of the justice system and is a necessary pre-requisite for impartiality.

2.3 A number of measures are taken to protect this independence. In particular, but not exclusively:

- the Chairman of the PBS oversees the setting of hearing dates and the assignment of PBS members to particular decision making case meetings, oral hearings and tribunals;
- the Chairman of the PBS is involved in the recruitment and appointment of new PBS members with the exception of the recruiting of a new Chair;
- PBS members enjoy security of tenure in terms of statute;
- PBS members enjoy a legal indemnity in relation to the exercise by them of powers and duties allocated to them by statute and at common law;
- PBS members are and are seen to be objective, independent, impartial, fair and reasonable. In particular, but not exclusively:
 - they observe the recognised principles of public life including public service, selflessness, integrity, objectivity, accountability and stewardship, openness, honesty, leadership and respect as set out in their Instruments of Appointment.
- PBS members treat lawyers, prisoners, patients and those who appear before them as witnesses and representatives with respect;
- PBS members do not act in any way which could lead a fair-minded and informed observer, who is not unduly sensitive or suspicious, having considered the facts, to conclude that there was a real possibility that the member was biased;
- PBS members prepare for their cases and meetings by reading and assimilating papers in advance. PBS members satisfy themselves that they have sufficient information before them to reach a fair, reasonable and proportionate decision and relay any concerns in a timely manner;

- PBS members observe the confidentiality and privacy of information which they receive in the course of their PBS duties and comply with data protection legislation;
- PBS members ensure that parties are on an equal footing and that whether represented or not, parties are able to have their cases represented and have them considered as fully and fairly as possible;
- PBS members promote in each case the most expeditious dispatch of business compatible with the interests of justice;
- PBS members deal with each case in a way which is proportionate to the importance of the case and to the complexity of the issues;
- PBS members maintain the authority and dignity of the case meetings, oral hearings and tribunals which they conduct;
- PBS members take an accurate note of the relevant parts of the evidence;
- PBS members take into account all relevant evidence and disregard any irrelevant evidence;
- PBS members decide the issues of fact, law and procedure which arise during a case;
- PBS members, when issuing decisions, produce reasons which deal with the crucial controversial issues and which are readily understandable to the interested parties and their advisers. Ideally these are short, simple and easy to follow. In a few cases they have to find lengthier explanation. The decisions leave the informed reader in no real and substantial doubt as to what the reasons for them were and what were the material considerations which were taken into account in reaching them; and
- PBS members keep abreast of legal developments in the area of law with which they are concerned.

3. The Chairman of the PBS

3.1 The Chairman of the PBS shall perform the duties allocated to the Chairman in terms of statute and his/her instrument of appointment.

3.2 The Chairman shall take reasonable care to ensure that:

- the PBS is functioning efficiently and effectively both operationally and financially;

- the PBS members are provided with the appropriate induction, training and other resources to enable them to perform their statutory functions;
- the work of the PBS and its members is subject to regular assessment;
- the performance of each PBS member is assessed on a continuous basis; and subject to a formal annual appraisal; and
- SG/SM are advised when any vacancies are likely to arise to enable new PBS members to be appointed timeously.

3.3 The Chairman of the PBS shall meet with the Cabinet Secretary for Justice at least annually to:

- discuss the effective financial management and operational efficiency of the PBS; and
- discuss the continuing effectiveness of the sponsorship arrangements.

3.4 The Chairman of the PBS shall have regard to the desirability of securing that every PBS member is given the opportunity of participating appropriately in the decision making functions of the PBS on not fewer than 20 days in each successive period of 12 months beginning with the day of the member's appointment.

3.5 The Chairman of the PBS shall be responsible for:

- overseeing the assignment of PBS members to particular decision making casework meetings, oral hearings and tribunals;
- production of the PBS Annual Report;
- the authorisation of legal proceedings and the instruction of solicitors and counsel in relation to legal proceedings; and
- holding to account the Chief Executive in relation to the governance of the budget and management of the work of the support staff.

3.6 The Chairman, in his/her discretion, may appoint up to 2 members to act as Vice Chair/s, for such periods and on such conditions as may be agreed by the Chair and Vice Chair(s).

3.7 When the Chairman of the PBS is unavailable to chair PBMG, the Vice-Chair or one of the Vice Chairs as appointed by the Chairman, shall assume the responsibilities of the Chairman.

3.8 The SG Director of Justice shall be responsible for assessing the performance of the PBS Chair, at least annually.

4. The Chief Executive of PS and support staff

4.1 PS is the team of civil servants which is employed by SG/SM to provide administrative support to the Chief Executive.

4.2 The Chief Executive has responsibility and authority for the overall organisation, management and support staff and for PS procedures in all matters including financial. They will ensure:

- that dossiers referred to the PBS are received in sufficient time, complete and contain all necessary information;
- the efficient and effective operational management of the support staff;
- financial and risk management – ensuring that a system of risk management is embedded to inform decisions on financial and operational planning performance management and operational development of support staff;
- the execution of the decisions, policy and strategy determined by the PBMG;
- the production of management accounts to ensure the PBS expenditure is kept within budget;
- approving PBS expenditure including capital expenditure within budget up to a maximum amount set by Civil Service Rules;
- oversight of the production of minutes of casework meetings, oral hearing and tribunal decisions in accordance with approvals given by PBS members and authorised by the Chairman of the PBS;
- the instruction of agents, solicitors, counsel and other specialists in accordance with approvals given by the Chairman; and

- with the approval of the Chairman represent the PBS or support staff at meetings with SG/SM and other relevant stakeholders, and the preparation of minutes of such meetings.

4.3 The Chief Executive may delegate his/her powers, authority and responsibilities to other support staff with the approval of the Chairman of the PBS.

5. **The PBMG**

5.1 The PBMG shall comprise:

- the Chairman of the PBS who shall chair it;
- the Chief Executive or the Chief Executive's nominee in the Chief Executive's absence;
- Vice-Chair(s), if the Chairman decides to appoint one or more; and
- up to two PBS members elected by the PBS members to serve on the PBMG for not more than two successive terms of two years from date elected.

5.2 A decision of the PBMG will mean a decision by a simple majority of those persons who constitute the PBMG from time to time. In the event of a tied vote, the Chair shall have a casting vote. The quorum of a meeting of the PBMG shall be three (including the Chairman or Vice Chair) where there are elected members and/or appointed Vice Chair(s). Where there are no elected members or appointed Vice Chair(s), the Chairman will be the quorum. The PBMG shall meet not less than every 3 months.

5.3 The PBMG shall be the group charged with responsibility for:

- the efficient and effective day-to-day operational management of the PBS
- the corporate governance of the PBS;
- the setting of policy and strategy for the non-statutory or common law functions of the PBS;
- the preparation of PBS Corporate and Business Plans;
- the approval of the annual budget prepared by the Chief Executive and submitted to the PBMG;

- the monitoring of spend against budget;
- risk management including the adoption and implementation of policies and practices to minimise the risk of fraud or theft;
- the management and protection of data and the handling of freedom of information requests to ensure compliance with legislation and best practice;
- financial management and procurement of materials and services consistent with the principles of best value;
- the review of the quality and quantity of information contained in dossiers to be placed before PBS members for their decision making functions and liaising with other bodies regarding the quality standards to be adhered to in relation to dossiers;
- the development of reference and guidance manuals and the management and exchange of information on relevant case law and changes in legislation and practice;
- the training and development of PBS members including legal members
- ensuring measures are in place to make the PBS compliant with legislation supporting victims;
- settling and monitoring adherence to efficiency targets; and
- consulting with PBS members and the support staff on decisions which impact in a significant way upon the performance of their functions.

5.4 The Memorandum of Understanding dated 28th November 2013 is revoked.

5.5 PBS members who are not members of the PBMG will have no role in the functions detailed in this part (Part 5) of the Memorandum of Understanding (with the exception of those functions which relate to the review of the quality and quantity of information contained in dossiers to be placed before PBS members for their decision making functions and liaising with other bodies regarding the quality standards to be adhered to in relation to dossiers and the development of reference and guidance manuals and the management and exchange of information on relevant case law and changes in legislation and practice) but shall perform the decision making functions provided for by statute and at common law.

6. **SG/SM**

6.1 The PBS exercises an independent statutory function in relation to decisions concerning the release and post custody management of offenders. However, the Scottish Ministers are ultimately accountable to the Scottish Parliament for the effective financial management and operational efficiency of the PBS in the exercise of its functions. Their responsibilities include:

- keeping the Parliament informed about the Board's performance (through the laying of an annual report);
- allocating the resource budget for the PBS and securing the necessary Parliamentary authority; and
- carrying out responsibilities specified in Schedule 2 to the 1993 Act, including appointments to the Board, approving the terms and conditions of Board members and laying of the annual report before the Parliament.

6.2 The remuneration and allowances to be paid to PBS members and any other expenses incurred by the PBS in discharging its functions will be met from the budget allocated by SG/SM.

6.3 SG/SM will provide an indemnity to PBS members, including the Chairman, when exercising the powers and duties allocated to them by statute and at common law and to the Chairman when performing corporate governance functions and to the Chairman and members in relation to work carried out as part of the PBMG provided the member or Chairman has not acted dishonestly or recklessly.

6.4 The SG's internal auditors shall have a right of access to documents and records held by the PBS which relate to financial management and operational efficiency issues except:-

- where there is a conflict between the interests of SM and the PBS; and
- where the information in such documents or records is privileged, for example, legal advice obtained by PBS.

There would not normally be any requirement for SG's internal auditors to access dossiers or documents directly associated with dossiers or with decisions made by

the Board in the exercise of any of its statutory or common law functions. Where SG's internal auditors request access to such documents for a purpose related to financial management and operational efficiency this would normally be granted subject to the exceptions set out in this section.

7. Effective Date

7.1 This Memorandum takes effect from 17 February 2017.



John Watt
Chairman
Parole Board for Scotland
Date: 17 February 2017



Linda Pollock
Deputy Director, Community Justice
Directorate for Justice
Scottish Government
Date: 17 February 2017