



**CORPORATE GOVERNANCE OF THE
PAROLE COMMISSIONERS FOR
NORTHERN IRELAND
A FOLLOW-UP REVIEW OF
INSPECTION RECOMMENDATIONS**

March 2014

Criminal Justice Inspection
Northern Ireland
a better justice system for all





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List of abbreviations

CJI	Criminal Justice Inspection Northern Ireland
DoJ	Department of Justice
MoU	Memorandum of Understanding
NDPB	Non-Departmental Public Body
NICTS	Northern Ireland Courts and Tribunals Service



Chief Inspector's Foreword

The Parole Commissioners for Northern Ireland (PCNI) play a critical role in assessing the risk posed by offenders and deciding when and under what conditions they can be released back into the community. For those offenders who breach their licence conditions in the community the Commissioners must decide on their recall to prison.

This is a follow-up review of the corporate governance inspection of the Parole Commissioners for Northern Ireland ('the Commissioners') which was published in 2011. The main recommendations in that report dealt with the need for new sponsorship arrangements for the Commissioners and the requirement for a better understanding and control of the costs of delivering the service.

The decision to place the Parole Commissioners under the sponsorship of the Northern Ireland Courts and Tribunals Service (NICTS) has by and large been successful. The NICTS is ideally placed to ensure that greater standards of governance and accountability are delivered, and at the same time, respecting and protecting the independence of the decision making functions of the Commissioners.

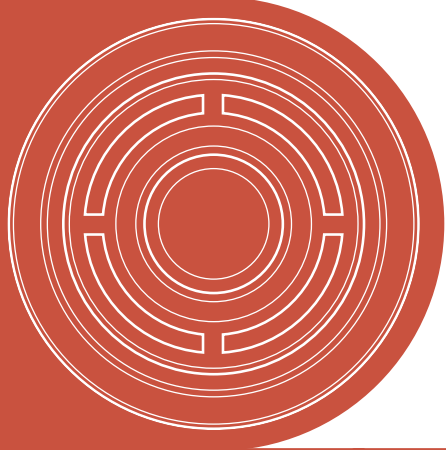
Significant improvements in service delivery and increased efficiency have been achieved in the last two years and the performance of the organisation now compares favourably with other jurisdictions. Of the seven recommendations made in the 2011 original report, five were fully achieved and substantial progress has been made in the remaining two. In addition, the importance of the Parole Commissioners has been referred to in previous Criminal Justice Inspection Northern Ireland (CJI) reports, particularly regarding their role in delivering protection to the public.

This follow-up review acknowledges some tensions around the issue of accountability versus independence, and Inspectors have explored this with both the Parole Commissioners and the NICTS. All agreed that there is a need to develop a Memorandum of Understanding (MoU) between the NICTS and the Parole Commissioners and a management statement between the Department of Justice (DoJ) and the NICTS. In our view, this will help resolve many of the teething problems and assist the relationship to develop. I am pleased to report that a draft MoU between the NICTS and the Parole Commissioners has been developed for agreement and implementation by 1 April 2014.

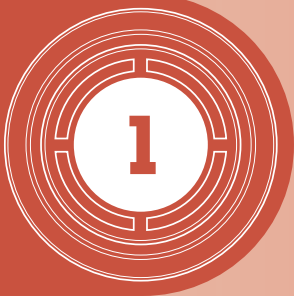
This review was conducted by Dr Stephen Dolan. My sincere thanks to all who contributed.

Brendan McGuigan
Chief Inspector of Criminal Justice
in Northern Ireland

March 2014



Follow-up Review



Introduction

Background

A report by CJI on the corporate governance of the Parole Commissioners was published in 2011. In line with CJI working practice, a follow-up review of progress implementing the recommendations of the original report was initiated two years later. This review looks at developments against the original 2011 recommendations to assess the level of achievement and to make comment on the impact of these.

In a minor departure from normal operating procedure this follow-up review also reports some of the issues arising from recommendations that were substantially achieved. The review also identified a possible course of action to regularise some aspects of the business of the Parole Commissioners.

Findings of the review

At the highest level, of the seven recommendations made in the original report, five were fully achieved and substantial progress was made in the remaining two recommendations. The most telling improvements lie in dealing with a massive (around 800%) increase in casework, the management of expenditure, the reduction in unit costs per case, improvements in casework management and a decrease in the cost of non-casework. The terms and conditions of the Commissioners have also been successfully renegotiated to give a simpler system of remuneration at a reduced cost with improvements to budgetary estimates. Overall, this reflects a significant improvement in both the management of the Parole Commissioners and the delivery of their primary business.

The move to the NICTS has brought greater rigour in the governance requirements for the Commissioners, noticeably in the application of procurement regulations and compliance with financial governance. The transfer of the secretariat into the NICTS has delivered the potential for additional staff resources to be made available if required, although the new management lines are not without some teething problems and would benefit from greater clarity of the respective responsibilities of the secretariat to the Commissioners and the NICTS management.

In similar vein, the structural arrangements governing the positioning of the Parole Commissioners *vis-a-vis* the Department and the NICTS have been implemented, but the outworking of the relationship between the Parole Commissioners, the NICTS and the Department requires further clarification and agreed protocols.

Overall, the new arrangements are working but in discussions with the respective parties, the balancing of accountability versus independence is the main issue that caused dissent and posed a risk to the working relationship. It was clear that the solution centred on a need to agree protocols governing both these elements of the working relationship between the Commissioners and the NICTS. The development of a MoU would be one way to address these issues, and a discursive approach to complete such a document could provide a vehicle to surface problem areas and formulate an agreed approach.

Accountability versus independence

The original report recommended that the Parole Commissioners would benefit from integration within the NICTS to avail of that organisation's expertise in servicing the needs of courts and tribunals - reflecting the adjudicative nature of the Parole Commissioners. The NICTS would provide administrative and business services support to the Parole Commissioners and account to its sponsors in the DoJ for the financial and business elements of the Commissioners. In making this recommendation, Inspectors looked at the arrangements in the rest of the United Kingdom where the tendency was for the setting of a wide policy framework by the Department within which the parole body agreed delivery objectives, funding and performance measures, wrote a Business Plan and delivered an Annual Report of performance. As long as the Department did not seek to regulate the business of the parole body, curtail their activities through restrictive funding or intervene in the decision making process, the sponsorship role did not of itself automatically cut across the independence of the parole body.

Whilst the structural elements of the original recommendation were implemented the outworking of the sponsorship arrangements, the incorporation of the secretariat to the Parole Commissioners within the NICTS and the relationship between the Parole Commissioners and the DoJ, will benefit from a period of working together to fully realise all the potential benefits of the new arrangements. There was recognition that the NICTS have respected the independence of decision making of the Commissioners, although the Chief Commissioner maintained that the lack of a corporate identity for the Commissioners was itself a threat to their independence, governance and accountability. In the original report, Inspectors noted that the Parole Commissioners did not fall into any of the recognisable structures usually associated with a public service organisation. In England and Wales the Parole Board is constituted as a Non-Departmental Public Body (NDPB) and in Scotland it is a Tribunal/NDPB.

A lack of clarity - according to the Chief Commissioner - was a potential source of conflict between the two organisations; with, on the one hand, the NICTS seeking to exercise a governance role and, on the other hand, the Commissioners seeking to maintain as high a level of independence as possible. The background to some of this potential conflict lies in the possible interpretations given to a judgement in what is commonly referred to as the *Brooke*¹ ruling. In its judgement, the Court of Appeal recognised that the role of a sponsoring department and the measures of governance it puts in place, could restrict the independence of the parole body, however a sponsorship or governance role did not automatically give rise to such a restriction.

The potential for administrative and fiduciary management to impinge on the perceived independence of a parole body was explicitly identified in the *Brooke* ruling and even the use of shared services was extended as a potential constraint on the Commissioners' perceived independence. The same caveat that these arrangements did not automatically undermine the independence or perceived independence of the parole body was made explicit.

1 Court of Appeal of England and Wales in R (Brooke) and Others -v- The Parole Board and Others [2008] EWCA Civ 29.

In the judicial review and subsequent appellate ruling on the *Brooke* case, there was no hard and fast ruling that independence was compromised by either a specific course of action or specific set of governance arrangements: rather the extent to which any particular regime was applied gave rise to the possible infringement of independence. The solution to any perceived problems in the eyes of the Inspectorate is therefore qualified rather than absolute. It requires recognition by both parties of their rights but also their responsibilities. On the sponsorship matter, it must be made clear and accepted by both parties that the DoJ is the sponsoring department of the NICTS and the Chief Executive of the NICTS is the interface with the sponsoring department on behalf of the NICTS and the Parole Commissioners. The Chief Executive of the NICTS is also the Accounting Officer and will be held accountable for the funding and expenditure incurred by the Commissioners. The secretariat to the Commissioners has a dual role in meeting the requirements of the Accounting Officer in respect of expenditure and administration, and to the Commissioners, for casework management and support. Clarifying the boundaries of these respective roles would be useful to both parties. Overlying all of this is the requirements of the *Brooke* ruling that the governance arrangements should be appropriate and proportionate.

Of equal relevance the Chief Commissioner retains primacy in respect of decisions, allocation of cases, reviews of decisions and other work of the Commissioners. The Chief Commissioner's responsibilities cover managing casework with an eye to limiting delays in hearings, minimising adjournments and judicial reviews and improving the parole hearing processes. The Chief Commissioner will be held to account for the Commissioners' work in general terms through an Annual Report and through legal redress on specific issues. On policy issues, the Chief Commissioner is the primary interface with the Department.

Inspectors encountered no dissent in principle to these governance arrangements and saw no reason for there to be a conflict of interest or impediment to independence arising from these arrangements, provided the respective roles were clarified and if necessary documented in a MoU. There were some difficulties with the NICTS requiring returns on expenditure, implementing procurement practices and the associated approval process for non-baseline expenditure through business cases. These are standard elements of the Northern Ireland Civil Service regime. The previous relationship however between the Department and the Parole Commissioners benefitted from a less restrictive financial backdrop across the public sector, not to mention the NICTS contention that the budget transfer accompanying the Parole Commissioners was under-provisioned. The change in circumstances and the associated administrative processes took some time to bed-in.

There remain some areas of contention between the NICTS and the Parole Commissioners that surface from time to time in respect of the disclosure requirements surrounding cases that might be deemed sensitive. On the one hand, it is reasonable to expect that an official of the NICTS could find themselves fielding queries about high profile cases where a decision is imminent or very recently announced, and it would be useful for them to be forewarned even to the extent that they can issue no comment or forward queries to the appropriate quarter. On a strict interpretation of the rules (specifically rule 22), the decisions of the Commissioners are theirs by right and confidential, and the NICTS is not a party to the proceedings thus there is no presumptive right to any updates.

In practice, this can be managed without the independence or perceived independence of the Commissioners being compromised. As a corollary the relationship between the NICTS and the Judiciary is founded on respect for the independence of the Judges but in high profile cases, it is not unusual for the NICTS to be made aware of imminent decisions. In practice the NICTS does not have a right to, nor does it request the information, but

receives it as a matter of course. This is part of normal working relationships and NICTS and the Commissioners need to agree a working praxis. The suggestion in the original report to consider scheduling the Commissioners as non-crown judicial appointments should be taken forward. This would bring the Commissioners within the aegis of the Lord Chief Justice's Office giving them the guarantee of independence they desire and provide a level of oversight that would satisfy the accountability requirements. The DoJ should give this purposeful consideration.

Similarly, as referenced above the underlying environment of restrictions on expenditure in public sector bodies and the duties of an Accounting Officer form the background to the approach taken by the NICTS. Limited funding requires higher levels of justification and Accounting Officers must not only balance the books but also ensure compliance with accepted financial and procurement procedures and deliver value for money. Added to this mix is the deficit between the baseline funding transferred to the NICTS and the current annual expenditure of the Parole Commissioners. The subsequent requirements for additional funding must be accompanied by a business case or more likely business cases, giving rise to an impression of additional scrutiny or bureaucracy.

It is in attesting to the final point that the roles of Accounting Officer and Chief Commissioner can be contradictory. The Chief Commissioner faces increasing demand and wishes to develop the Commissioners: the Chief Executive of the NICTS faces increasing pressure on limited resources. This rubbing point could be resolved within a management statement and financial memorandum that defines the ambit of the Commissioners' voted expenditure and the delegated limits within which the Chief Commissioner may exercise some discretion. In practice the financial management procedures of the NICTS and an agreed performance matrix that focuses on the generalities of case management whilst avoiding examination of specific cases would meet the demands of accountability and independence.

In the absence of a memorandum or working protocol, inevitable misunderstandings will arise. The protective shield of independence is there to guarantee that the Commissioner's decisions are objective, reasoned and without interference. This does not require a completely separate structure but rather assurances that their work is unhindered.

Budgetary management

The compliance aspect of budgetary management has developed with the incorporation of the Parole Commissioners into the NICTS. The normal pattern of estimates and regular reporting alongside the changes in the remuneration of Commissioners, has provided a regime of financial management that is evidenced by the reduction in the increased spending seen in the formative years of the Commissioners. The introduction of additional changes to the terms and conditions of the Commissioners – such as fixed case fees, reduced levels of remuneration for ancillary work and less frequent plenary sessions – has also contributed to a reduction in forecast expenditure with a commensurate decrease in the unit cost per case.

Table 1: Annual expenditure of the Parole Commissioners

	2009-10 (£k)	2010-11 (£k)	2011-12 (£k)	2012-13 (£k)
Commissioners' remuneration	324	527	607	689
Commissioners' travel, accommodation and expenses	19	59	46	37
Legal costs	119	0	62	86
Premises	77	179	207	188
General administration	75	166	94	72
Staff salaries etc.	279	399	427	431
Total expenditure	893	1,330	1,443	1,503

The changes to the funding of the Commissioners has reduced the rate of increase in the expenditure of the Commissioners and in conjunction with an increase in the number of referrals, has led to a decrease in the unit cost per case referred to the Commissioners. In the original report, the unit cost per referral in 2010 was over £15,000 reflecting the low volumes of referrals. The long run forecast was around £4,500 which was almost twice that of other jurisdictions. In 2012-13 the average unit cost of a referral fell to £3,000 and the marginal cost per referral from 2012-13 was £360. Although there was an increase in annual expenditure due to increases in the overall level of Commissioners' remuneration - reflecting the increased caseload - the reduced unit cost and a fall in other expenses signalled increased efficiency. This is a welcome improvement and perhaps most significantly the average unit cost was within £500 of the unit cost for England and Wales, despite their benefitting from economies of scale that are not possible in the Northern Ireland scenario.



Progress against recommendations

Recommendation 1

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.

Achieved

Chief Commissioner's response

In response to this recommendation I can do no better to quote from this year's Parole Commissioners Northern Ireland Annual Report as follows:

'A decision was made to move the operational business to that body (NICTS) with policy matters remaining with the Department of Justice. This move took place on 1 May 2012 with the Commissioners not being involved in whatever consideration was given to this change. In last year's report, I said that I welcomed the closer relationship with the Courts and Tribunals Service and this is still the case. I meet senior officials periodically and I know that they are at pains to try to respect the Commissioners' independence. There is still a lack of clarity as to which body – the NICTS or the Department of Justice – I contact on some matters which can mean me writing to both bodies when there is an issue. A memorandum of understanding would improve accountability here. But there is a will to support the Commissioners from both bodies and I hope that clarity will improve as the NICTS understands us better. I also said that I feared that the opportunity had not been seized to take best advantage to improve our governance and accountability. I have worked with a large number of paroling bodies across the world and I am at a loss to understand why Northern Ireland is the only one I know that does not have a proper status as a publicly accountable body. This will of course require primary legislation but I see no reason why this long-overdue event should not now be a priority for Government.'

DoJ response

The transfer of the Parole Commissioners to the NICTS provides operational support and improved governance arrangements. The DoJ retains overall policy direction and the Chief Commissioner is the main interface with the DoJ on policy matters. The separation of governance and management accords with the aims of ensuring the independence of the Commissioners whilst providing assurances that public finances are suitably managed and scrutinised. The establishment of the Commissioners as an independent arms length body would run counter to the prevailing aims in the Northern Ireland public sector of reducing the number of non-departmental bodies and the associated expense.

Inspectors' assessment

The new arrangements whereby the NICTS provides operational support to the Parole Commissioners, with the DoJ retaining policy direction, substantially achieves the aims of the CJI recommendation. The independence of the Commissioners is preserved with the retention of their own secretariat and case management function, independent IT support and custom accommodation. At the same time, the budgetary processes utilised by the NICTS with the requirement for additional in year expenditure being subject to oversight, gives assurances that public resources are adequately managed.

The creation of the Parole Commissioners as a statutorily distinct body - such as an executive non-departmental public body (NDPB) - would run counter to the current approach within the Northern Ireland public sector of reducing the number of non-departmental bodies and the associated expense. The independence of the Commissioners centres on their decision making and casework management, and this can remain the purview of the Chief Commissioner buttressed by appropriate processes and protocols without structural enhancement.

Recommendation 2

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.

Achieved

Chief Commissioner's response

There is still no defined structure as set out in paragraph 4.6 of the CJI report. The lack of any such corporate identity for the Parole Commissioners for Northern Ireland means that the governance arrangements are not fit for purpose. The lack of a memorandum of understanding with the Chief Commissioner has not helped to resolve uncertainties. Following a review by the Department of Justice, the terms and conditions for Commissioners were changed. This included a new job description being agreed for the Chief Commissioner post.

DoJ response

The transfer of the Parole Commissioners for Northern Ireland to the NICTS was implemented with managerial and reporting lines established for the secretariat of the Parole Commissioners. A draft MoU aimed at clarifying reporting lines and certain roles and responsibilities is currently the subject of discussion between the NICTS and the Parole Commissioners. The MoU establishes an operating protocol between the Chief Executive, NICTS and the Chief Parole Commissioner, which recognises the operational independence of the Parole Commissioners for Northern Ireland, but still satisfies the rules of accountability and oversight for the effective use of public funds. The MoU also sets out an agreed approach to meeting these objectives in relation to the conduct of Parole Commissioners for Northern Ireland cases so as to protect the independence of the decision making functions of the Commissioners.

A Code of Practice for Complaints about the Conduct of Parole Commissioners has been developed by the Department in consultation with the Parole Commissioners, and at the time of writing, was in the process of being finalised.

The scheduling of the Commissioners as Non-Crown judicial office holders under schedule 1 of the 2002 Justice Act as suggested in the original report, was agreed in principle by the Department and the outworking of such are under active consideration. Once complete, this would bring the Commissioners under the aegis of the Office of the Lord Chief Justice and within the purview of the Northern Ireland Judicial Appointments Commission underpinning the independence of the Commissioners, providing support in both legal and non-legal aspects to the Commissioners without the burden of creating an arms length body infrastructure.

Inspectors' assessment

The recommendation has been achieved, although the comments of the Chief Commissioner should be noted. The corporate identity of the Parole Commissioners is not so much the issue as the relationship between the Parole Commissioners, the NICTS and to a lesser extent the DoJ. A MoU could define these relationships and remove confusion. The relationship between the Chief Commissioner and the other Commissioners is a more pressing concern. At present the Commissioners and the Chief Commissioner are individual entities, but there needs to be a more defined relationship. Specifically, where there are issues around performance or complaints there must be a clear process for investigation. A Code of Practice for Complaints about the Conduct of Parole Commissioners has been developed by the Department in consultation with the Parole Commissioners, and at the time of writing was in the process of being finalised. Inspectors welcome this development which will fully implement the original recommendation.

Recommendation 3

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.

Achieved

Chief Commissioner's response

The new terms and conditions for Commissioners changed the payment method of cases. Cases are now paid as a unit cost appropriate to the article that the case is referred under. This allows the secretariat to track the cost of casework. The Chief Commissioner has introduced a 'smarter working' group that aims to deliver more efficient processes.

DoJ response

The Department introduced fixed fees for certain types of casework to replace the previous arrangements. This simplified the forecasting of costs and also reduced costs. The terms and conditions of Commissioners were amended to reflect the new rates for casework and other allowances which also contributed to a reduction in expenditure.

The Parole Commissioners for Northern Ireland and Parole Commissioners secretariat operate within the NICTS accountability framework to ensure that there is proper governance and financial accountability over the funds allocated.

Inspectors' assessment

The new terms and conditions have introduced a fixed cost for certain types of casework and this has reduced the open ended nature of the previous arrangements. The overall cost of the Parole Commissioners had risen

more or less in line with the projections outlined in the original CJJ report but the caseload had increased to 134% of the highest projection in the original Sentencing Framework Initiative forecasts meaning the average unit cost per case had fallen. Also, the fee for single Commissioners was set at a competitive rate and the imminent increase in future recall determinations will contribute to a further reduction in the average unit cost per referral. The table below shows the total expenditure of the Commissioners falling into line with the budget estimates and the average unit cost falling by 80% in the last four years. Perhaps most significantly the average unit cost is within £500 of the unit cost for England and Wales despite the latter benefitting from economies of scale that are not possible in the Northern Ireland scenario. These are significant improvements in efficiency.

Table 2: Trends in Parole Commissioners casework 2005-13

Financial year	Annual cases referred	Upper limit forecast	Annual cost	Forecast cost	Unit cost per referral
2005-06	20	-	£295,000	-	£14,800
2006-07	24	-	£373,000		£15,500
2007-08	40	-	£528,000		£13,200
2008-09	46	-	£711,000		£15,500
2009-10	59	88	£893,000		£15,100
2010-11	177	306	£1,330,000	£1,123,000	£7,500
2011-12	323	342	£1,443,000	£1,300,000	£4,500
2012-13	492	365	£1,503,000	£1,471,000	£3,000

Recommendation 4

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.

Achieved

Chief Commissioner's response

The introduction of the new terms and conditions of Commissioners has largely resolved this issue. The secretariat now submit a business case to the NICTS for all ancillary work over and above casework. The decisions on such work are considered by the NICTS.

Inspectors' assessment

In the original report the concern was raised that work ancillary to casework was costing as much as the actual casework. In light of the escalating costs of the Parole Commissioners this was a risk. Most recently the cost of non-casework has fallen from almost £70,000 (47% of total fees) in 2008-09 to £7,000 (5% of total fees) in 2012-13. Most of the non-casework expenditure is incurred for training of new Commissioners. Inspectors deem this recommendation achieved reflecting the significant fall in expenditure and the controls now in place.

Recommendation 5

It is recommended the projected caseload and case mix statistics should be reviewed taking into account the most recent sentencing patterns to date.

Partial achievement

Chief Commissioner's response

The secretariat continues to liaise with the Prison Service to obtain estimated case projections. The point on sentencing patterns to date lies outside the remit of the secretariat. This relates to the Courts and analysis of sentencing patterns would fall to the NICTS.

DoJ Response

The original Sentencing Framework Initiative estimated the level of sentencing and subsequent referrals to the Commissioners following the 2008 Criminal Justice Order. It is intended to conduct a review of the sentencing trends in 2014.

Inspectors' assessment

The Parole Commissioners record the numbers and type of cases referred and keep a record of the completion of cases. They also make educated estimates of the numbers of cases that will be referred and have analysed the level of recalls for the various types of sentences. This data has been used to forecast general staffing levels and make projections of expenditure which in turn, has informed applications by the Commissioners to the NICTS for funding. The most recent indicators show the level of referrals was exceeding even the highest forecast. In 2012-13, the number of referrals was 34% above the highest projection and increased by 52% year on year. Since 2009-10 – the reference point for the original inspection – the caseload level had increased from 59 to 492 referrals, over 800%.

There remains a need to accurately assess the sentencing patterns to forecast the level and case mix of referrals that will present to the Parole Commissioners.

Recommendation 6

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.

Achieved

Chief Commissioner's response

The new terms and conditions for Commissioners changed the payment method of cases. Cases are now paid as a unit cost appropriate to the article that the case is referred under. This allows the secretariat to track the cost of casework. The Chief Commissioner has introduced a 'smarter working' group that aims to deliver more efficient processes.

DoJ response

The introduction of fixed costs for certain types of cases and a reduction in the scale and scope of paid allowances has simplified the tracking of the cost of casework. The NICTS also monitor overall expenditure and the formal accounting, procurement and expenditure approval processes provide additional assurances that value for money is achieved.

Inspectors' assessment

Although the development of regular monitoring of unit costs for the types of hearings has not been achieved, the average unit cost of a hearing has fallen by 80% due to changes to Commissioners' remuneration and controls on general expenditure. This reflects substantial progress. The introduction of fixed fees for casework and the significant reduction in non-casework expenditure negates Inspectors' original conclusion that costs could escalate out of control. The further development of more rigorous unit costs and/or performance measures is dependent upon resources, and in light of the progress made by the secretariat and the launch of the casework management system, is probably not necessary.

Recommendation 7

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.

Partial achievement

Chief Commissioner's response

The Chief Commissioner has held meetings with Chairmen of Parole Boards in England and Wales, Scotland and the Republic of Ireland to discuss work, benchmarking and good practice. Quality standards under development in England and Wales significantly changed due to resource pressures. Developing further measures in Northern Ireland will need a business case and additional resources but the approach to quality standards is set out in both last years and this year's Annual Report.

The present structure does not allow for proper accountability – the Department cannot hold the Chief Commissioner to account when all Commissioners continue to be corporation sole and not part of a formal body. The Chief Commissioner has tried within the present framework to report on performance and improve efficiency as set out in the last two Annual Reports.

DoJ response

The development of a Code of Practice for Complaints about the Conduct of Parole Commissioners has been developed by the Department in consultation with the Parole Commissioners, and at the time of writing, was in the process of being finalised.

The scheduling of the Commissioners as Non-Crown judicial office holders under schedule 1 of the 2002 Justice Act as suggested in the original report, was agreed in principle by the Department and the outworking of such are under active consideration. Once complete this would bring the Commissioners under the aegis of the Office of the Lord Chief Justice and within the purview of the Northern Ireland Judicial Appointments Commission underpinning the independence of the Commissioners, providing support in both legal and non-legal aspects to the Commissioners without the burden of creating an arms length body infrastructure.

This will provide a framework of accountability appropriate to the Commissioners' role as adjudicative officers without compromising their independence.

Inspectors' assessment

The performance management regime envisaged by Inspectors is not in place and the Chief Commissioner confirms that the independent nature of the individual Commissioners was an obstacle to any formal review of performance. However, a formal policy to deal with non-performance issues, complaints and the possible suspension or removal of a Commissioner, is in the process of being finalised and this will provide a welcome framework.

Outwith the development of a formal performance management regime, the Chief Commissioner reviewed a sample of decisions and raised issues with both the individual Commissioners and as general learning points, in written guidance to all Commissioners. The Chief Commissioner was considering a formal appraisal process analogous to the judicial scheme, but in the meantime held one-to-one discussions with all the Commissioners and had also dealt with a formal complaint.

Inspectors deem that there has been substantial progress in implementing this recommendation.



Conclusion

The improvements in service delivery and the increased efficiency were significant. Although there were some teething issues surrounding the governance arrangements between the NICTS and the Commissioners, they should not undermine the progress to date. The narrative surrounding the work of the parole bodies in the United Kingdom defined the status of the parole bodies, their right to independence and their responsibilities to parolees. Inspectors found no difference of opinion on the principles of the relationship between the NICTS and the Commissioners, although there were specific instances where one party or the other felt that the rules of engagement were breached. The issues lay in the management of the secretariat – now part of the NICTS staffing structure – and their relationship with the Commissioners, the reporting of the casework timetable and compliance with the reporting requirements of the NICTS and the lines of communication between the Commissioners and the DoJ and the NICTS, respectively.

Whilst these issues have the potential to impede the working relationship of the Commissioners and the NICTS, they are surmountable. A MoU would not only delineate the boundaries of the respective parties but the process of agreeing this MoU would clarify the respective positions and clear up some of the previous misunderstandings.


The positioning of the Parole Commissioners within the NICTS also seems right. Previous judgements² gave strong support to the definition of parole boards as courts and described the proceedings as quasi-judicial. Therefore the positioning of the Parole Commissioners with the NICTS was and still is appropriate. The independence of the Parole Commissioners is not in dispute and guarantees from both the sponsoring Department and the NICTS through a management statement, MoU and/or a concordat will underpin this at less expense than reconstituting the Commissioners as a statutory public body.

The remaining issues around performance management, benchmarking and monitoring of unit costs were not deemed fatal to an overall assessment of success. Performance management in the eye of the Chief Commissioner faced an obstacle as she holds no defined line management role for the other independent Commissioners. In practice the Chief Commissioner provided feedback to the Commissioners on decisions and promulgated lessons learned. The Chief Commissioner also met with other Commissioners on a one-to-one basis to discuss any issues and to provide advice and guidance. The imminent publication of a Code of Practice about the conduct of Parole Commissioners was welcomed and will complement the work of the Chief Commissioner.

² R (Smith & West) v Parole Board (2005) WLR 350. Reilly's application [2010] NIQB 46.

In the original report the possibility of scheduling the Commissioners as Non-Crown judicial office holders under Schedule 1 of the 2002 Act³ was considered. This is something that the NICTS and the DoJ should consider as it would bring the Commissioners under the aegis of the Office of the Lord Chief Justice and, it would follow, within the purview of the Northern Ireland Judicial Appointments Commission providing support in both legal and non-legal aspects of the running of the Commissioners.

3 Justice (Northern Ireland) Act 2002 Schedule 1 (Section 2) - Listed Judicial Offices (PDF 26 KB).



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