TRANSPARENCY OF PAROLE BOARD DECISIONS
Submission by the Parole Board for England and Wales

1. The Parole Board is grateful for the opportunity to give evidence to the Justice Select Committee on the issues arising from the Worboys’ case.

2. The Committee will be aware that we are prevented from discussing the specifics of the case and that there are a number of legal actions pending.

3. However, we repeat again how much we regret the distress this has caused the victims of his crimes, our invitation to meet with any of those victims and our desire to address any of their concerns where it is within our legal powers to do so.

The Parole Board

4. Members of the committee will be familiar with the status and work of the Parole Board. They will recall that the Board was established by the Criminal Justice Act 1967 but over the last fifty years its powers, status and work load have changed considerably.

5. The Board is now to all intents and purposes a court when a panel is sitting to determine whether or not to direct the release of a prisoners or in the alternative recommend their progression to open conditions. It sits as an arms-length body within the Ministry of Justice. Its powers in relation to the release of all classes of indeterminate sentence prisoners are contained in the Crime (Sentences) Act (C(S)A) 1993 as amended by Criminal Justice Act 2003. The Lord Chancellor sets the Parole Board Rules which are statutory instruments subject to the negative resolution procedure in Parliament. The Parole Board, when performing judicial functions, remains a statutory body not a court of inherent jurisdiction. As such it can only adopt procedures expressly or implicitly authorised by the statutory framework.

6. The Board has 247 members. Members are appointed by ministers and may be judges, psychologists, psychiatrists, probation officers or others from a wide range of backgrounds. Members take decisions in panels of one, two or three. Each panel is a decision maker in its own right and their decisions are not subject to approval by any other body within the Board. Once a panel has made a decision it is 'functus officio' and so its decisions cannot be changed on its own initiative but only by judicial review.

7. In 2016/17 the Board considered 16,866 cases on the papers and conducted 7,377 oral hearings.

8. As we discussed when we gave evidence to the Committee in October 2017, the Board has emerged from a troubled period when a shortage of members and an increased work load led to large backlogs. Our first priority was to sort this out and we focused relentlessly on doing so. These issues have now been resolved, the backlog cleared and we had set out plans for the next stage of the Parole Board's development, including much greater transparency, when the current controversy
surrounding the release of John Worboys brought these matters to public attention.

**Decision making**

9. As we made clear when we last gave evidence to the committee, the Board's primary responsibility is public safety. Our sole focus is on risk. The test we must apply is 'that it is no longer necessary for the protection of the public that the prisoner should be detained.' This does not (and cannot) require *certainty* that the prisoner will not reoffend but it is a high threshold.

10. We have no role in deciding whether the punishment awarded by the judge at the original trial was sufficient or questions of guilt or innocence that were not settled at the time of the trial. As soon as a person has served the relevant custodial period, or tariff, he or she is entitled to be considered for release and if not released, his continued detention must be reviewed at regular periods thereafter.

11. In determining risk, panels will look at both evidence of how the prisoner's risk has been reduced in custody and the robustness of plans developed by the National Probation Service and partners to manage any residual risk if a prisoner is released. Once a panel is satisfied that it is no longer necessary for the prisoner to be detained they must, by statute, release them.

12. Panels will be guided in their decision making as appropriate by detailed risk assessments, expert advice from psychologists and psychiatrists, reports from offender managers, prison staff and others who know the prisoner, and the evidence of the prisoner him or herself. The panel will consider any victim statement and the Secretary of State may be represented.

**Victim involvement**

13. The Board is committed to ensuring it treats victims with sensitivity and respect. Other than receiving and carefully considering their statements, the Parole Board has no actual role in contacting or liaising with victims. The Parole Board does not have the names or contact details for victims signed up to the victim contact scheme. That is undertaken by the Victim Contact Service, part of the National Probation Service, on behalf of the Secretary of State. Whether that is something that should change should be considered by the Review established by the Secretary of State.

14. As we discussed with the Committee in October 2017, victims may choose to submit a written victim statement or attend part of an oral hearing to read that statement in person. We have taken a number of steps to make that process easier and have very clear guidance to ensure that members of the Board check with the NPS whether victims who wish to make a statement have been given the opportunity to do so. In high profile cases a protocol is in place to ensure all the parties including the victims are informed of the decision at the same time if they wish to be so. We welcome Dame Glenys Stacey's investigation into what went wrong in the Worboys’ case and for our part are anxious to learn whether there is anything we could have done to make this work better.
15. The majority of prisoners who come before the Parole Board will have been given an indeterminate sentence of some sort. Almost all will have committed very serious offences with terrible consequences for their victims. The punishment a prisoner receives for these offences will be reflected by the judge in the tariff or length of time the prisoner must serve before they can be released. The impact on the victims or victims will be reflected in that tariff. Once the tariff has been served the Parole Board is only able to consider future risk. A victim has an opportunity through their victim statement to ensure the panel is aware of the impact the offence had on them and may make representations about license conditions.

16. Rule 25 of the Parole Board Rules prohibits the public disclosure of information about Parole Board hearings or the names of any of those involved. A contravention is actionable. This includes the publication of information to victims other than the bare facts of the decision. It is of course possible to challenge the Board’s decision by way of judicial review and where such action is taken there is scrutiny of the Board’s decision making subject to any reporting restrictions that may be imposed.

Options for change

17. We welcome the Lord Chancellor's review of the Parole Board’s transparency and decision-making processes. We alerted the Committee to the need to address some of these issues in October and since then have elaborated some options for doing so which we will feed into the review.

Appeal/Review mechanism

18. We believe that there are good arguments for exploring whether and if so how an appeal or review mechanism could be established.

19. Any review mechanism needs to be simple and low cost for individuals to initiate but not lead to unreasonable resource requirements or delays.

20. If one can be created, it is hard to see how any such system could not be open to both prisoners and victims and we suspect it would be most likely to be used by prisoners. The Judicial Reviews in this case are unprecedented. So far as we are aware all JR challenges to Parole Board decisions have been brought on behalf of prisoners.

21. One option would be an internal review mechanism that could be initiated on application by the victim, the prisoner, the Secretary of State or on the Board's own initiative.

22. Such a review mechanism might first apply a merits test and if met, then refer the matter to a panel of the Board’s senior judicial members for reconsideration. The option of JR would still be available once the internal mechanism had been exhausted.

23. An alternative mechanism might be modeled on the unduly lenient sentence scheme – but it may be that would be most workable if combined with an internal review mechanism.
24. Of course, any appeal mechanism available to victims would need to be based on a decision that they are able to read and understand.

Victim contact
25. In our view there might be some merit in the Parole Board having the responsibility for liaison with victims in relation to its work. This would have the virtue of reducing the length of the administrative chain and ensure the reality matched people’s reasonable assumptions about where responsibility and accountability should lie.

26. We think further consideration should be given to this once the result of Dame Glenys Stacey's investigation is known. It would clearly need to be resourced properly.

Transparency
27. We have been impressed by how other international jurisdictions approach transparency. In principle we think there are real opportunities to be more transparent in England and Wales; provided there are sensible safeguards. Options could include:

27.1. Improving the Board’s corporate communication – with much better general information for victims, prisoners and the public about how the Parole system works and performs. This information should be available on a variety of platforms using a variety of media – and work has already begun on this.

27.2. Making a simplified summary of the reasons for the Parole Board’s decision available to victims and the public. This should include license conditions. Such information should, we think exclude personal information or other material that might harm innocent people and increase harm to victims.

27.3. Creating an on-line registry of Parole Board cases which would enable interested parties to keep track of the progress of individual cases and register to be alerted at critical stages.

27.4. Allowing us to provide access to Parole Board hearings where appropriate, practical and in the public interest – either in person or through improved live video links – to victims and the public.

28. We believe there should be transformative change in this area. Nevertheless there are some important issues to be carefully considered.

28.1. Some victims will wish to put the offence behind them and not reawaken public interest. They may fear media intrusion. Many cases will have more than one victim and not all will have the same view.

28.2. The Parole Board processes are designed to encourage candour – opening the system up may discourage the prisoner from speaking openly about some very personal issues. We do not want to create a system which diminishes our ability to accurately assess risk. Nor do we want a system that sets back rehabilitation and safe reintegration into society.

28.3. Great care would have to be taken that an unexpected disclosure – such as of past abuse – did not cause harm to innocent third parties.
28.4. We do not think greater exposure should inhibit decision makers in all parts of the system from making decisions on the evidence in accordance with the law. We cannot, however, exclude the possibility that some decisions makers or report writers may be reluctant to make decisions or provide appropriate recommendations which might be unpopular despite the merits of a case.

29. For these reasons, we do not believe any decision could be retrospective – but we do think that if done in a careful staged way, some of these changes could be introduced very quickly.

Parole Board status and resources

30. Some of these changes would in effect change the character of Parole Board proceedings.

31. Recent issues have raised the question of the Board's independence. We welcome assurances that the Board's independence will be respected.

32. In the past, the government has considered various options to strengthen the Parole Board’s status and powers. These were not progressed. We think careful consideration should be given to these issues again.

33. Any of these changes will require additional resources. It would be wrong to assume that there can be a significant increase in the Parole Board’s responsibility without an increase in its resources. The committee will be aware of the consequences of the Osborn judgment when a lack of funding to undertake more oral hearings and a shortage of members led to significant backlogs and payment of compensation to prisoners. We have now brought these matters under control and we need to ensure that future changes do not set back the significant progress that has been made.

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Chair
The Parole Board for England and Wales

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