

Parole Board for Scotland

Scheme of Delegation

(1) The Memorandum of Understanding

The Parole Board for Scotland (the Board) and Scottish Ministers have agreed a Memorandum of Understanding dated 17 February 2017 in relation to governance arrangements for the Board.

Paragraph 3(6) of the Memorandum gives the chairperson of the Board discretion to 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). The Chairperson has exercised such discretion and has appointed a Legal Vice Chair and a General Vice Chair.

The Chief Executive of Parole Scotland, the Board's administrative support body is recognised at Part 4 of the Memorandum.

(2) Overall delegation of chairperson's duties where there is no chairperson, or where the chairperson is unavailable for any Reason

If there is no chairperson of the Board, or the chairperson is unable to perform their functions under the Rules for any reason, the Legal Vice Chair of the Board is to perform those functions instead.

If there is no Legal Vice Chair of the Board, or the Legal Vice Chair is unable to perform their functions under the Rules for any reason, the General Vice Chair of the Board is to perform those functions instead.

If there is no General Vice Chair of the Board, or the General Vice Chair is unable to perform their functions under the Rules for any reason, the most senior legal member of the Parole Board is to perform those functions instead.

The most senior legal member of the Parole Board means—

- (i) the legal member whose initial appointment to the Parole Board began first, or
- (ii) if more than one legal member falls within sub-paragraph (i), whichever of those legal members is most senior in age.

(3) Delegations of specific powers

The Parole Board (Scotland) Rules 2001 (the Rules) confer certain powers on the Chairperson of the Board, either explicitly or implicitly, and the chairperson formally delegates such powers as set out below

(4) The Parole Board (Scotland) Rules 2001 Rule 6 is in the following terms:-

6.— Non disclosure of information

(1) This rule applies where—

*(a) the Scottish Ministers consider that any written information or document contained in a dossier sent to the Board under rule 5 or otherwise given to the Board by them;
or*

(b) the Board considers that any other written information or document obtained by it,

should not be sent or disclosed to the person concerned because its disclosure would be likely to be damaging on one or more of the following grounds, namely:—

(i) that it would be likely adversely to affect the health, welfare or safety of that person or any other person;

(ii) that it would be likely to result in the commission of an offence;

(iii) that it would be likely to facilitate an escape from legal custody or the doing of any act prejudicial to the safe keeping of persons in legal custody;

(iv) that it would be likely to impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;

(v) that it would be likely otherwise to damage the public interest;

*and any such information or document is referred to in these Rules as
“damaging information”.*

(2) Where this rule applies—

(a) *the Scottish Ministers or, as the case may be, **the Board** shall not be required to send a copy of the damaging information to the person concerned whether under rule 5 or otherwise;*

(b) *the Board may take such damaging information into account even although it has not been disclosed to the person concerned; and*

(c) *the Scottish Ministers or, as the case may be, **the Board** shall send to the person concerned a written notice—*

(i) informing him or her that certain information which has been sent to or obtained by the Board has not been sent to him or her because the Scottish Ministers or, as the case may be, the Board considers that the disclosure of that information would be likely to be damaging on one or more of the grounds mentioned in paragraph (1) which is or are specified in the notice;

(ii) giving that person, but only so far as is practicable without prejudicing the purposes for which the information is not disclosed, the substance of the damaging information,

*and, where this rule applies by virtue of paragraph (1)(a) above, the Scottish Ministers shall send a copy of that written notice to the **chairperson of the Board.***

The chairperson of the Board appoints the Legal Vice Chair of the Board to discharge all of the functions of the Board or the chairperson of the Board in relation to Rule 6 (2). For appointment in relation to Rule 6 (1) see under Rule 14 below.

(5) The Parole Board (Scotland) Rules 2001 Rule 9, is in the following terms:-

9. Confidentiality

Any information—

(a) in connection with the proceedings before the Board or, in a Part IV case, a tribunal in dealing with a case;

(b) about any application, document or written or oral information given to the Board or to the tribunal; or

(c) about the name of any person concerned in the proceedings,

shall not be disclosed, either directly or indirectly, to any person not involved in those proceedings or to the public, except—

- (i) insofar as **the chairperson of the Board** or, in a Part IV case, the chairperson of the tribunal otherwise direct; or
- (ii) in connection with any court proceedings

The chairperson of the Board delegates the power to direct in terms of Rule 9 (3) (i) to the Legal Vice Chair of the Board.

(6) The Parole Board (Scotland) Rules 2001 Rule 12A is in the following terms:-

12A – Use of a live link

(1) *The Board or tribunal may, where it considers that it is in the interests of justice to do so—*

(a) on the application of—

(i) the person concerned; or

(ii) the Scottish Ministers; or

(b) on its own motion, make arrangements for the whole or part of the evidence of a witness, or of the person concerned, to be given through a live link.

(2) *Applications under paragraph (1)(a) must be made no later than 5 working days after the notification by the Board to the parties of the hearing to which the application relates.*

(3) *Before deciding to make arrangements for the use of a live link, the Board must give the parties the opportunity to make representations and must consider those representations.*

(4) *The Board shall give the parties written notice of its decision no later than 5*

working days (or such shorter time as the parties may agree) before the hearing to which the application relates.

(5) *Where the person concerned has requested an interview with the Board in terms of rule 15(3), the Board may, where it considers that it is in the interests of justice to do so, make arrangements for the interview to be conducted through a live link.*

(6) *In this rule “live link” means any arrangement as the Board may direct by which the person concerned, or a witness is able to— (a) be seen and be heard, or be heard, in the proceedings;*

(b) see and hear, or hear, the proceedings, while not present at the place where the case is being heard.

The chairperson of the Board delegates the power in terms of Rule 12A (1) (b) to make arrangements for the whole or part of the evidence of a witness, or of the person concerned, to be given through a live link to the Chief Executive of Parole Scotland who may, in turn delegate to a member of his staff as he deems appropriate;

(7) The Parole Board (Scotland) Rules 2001 Rule 14, is in the following terms:-

14.— Composition of the Board

(2) Subject to rule 16 and the following paragraphs, the powers of the Board may be exercised—

(a) in a case that is determined to be dealt with by way of an oral hearing

under rule 15A, by any 3 members of the Board;

(b) in any other case, by any 2 members of the Board.

(3) Subject to rule 16, any case may be dealt with, in whole or in part—

(c) in a case which is determined to be dealt with by way of an oral hearing under rule 15A, by any 3 members; or

*(d) in any other case, by any 2 members of the Board, **who are appointed by the chairperson of the Board for the purposes of dealing with that case, in whole or in part.***

*(4) The powers of the Board under rule 6(1) to decide that any written information or document should not be sent or disclosed to a person shall be exercised **by the chairperson of the Board or such member as may be appointed by him for that purpose.***

(5) No member of the Board who took part in making a recommendation under section 28(1) of the 1989 Act in relation to a person shall deal with that person's case under section 28(4) of that Act.

(6) No member of the Board who took part in making a recommendation under section 17(1) of the 1993 Act in relation to a person shall deal with that person's case under section 17(3) of that Act.

(7) If a case is determined to be dealt with by way of an oral hearing under rule 15A, the members of the Board appointed under paragraph (2) must include either— (a) a person who holds or has held judicial office; or

(b) a solicitor or advocate of not less than 10 years standing,

and the chairperson of the Board will appoint that person to be chairperson of the hearing.

(8) In the event of the death or incapacity or unavailability (for whatever reason) of any member of the Board appointed under paragraph (2) (“the absent member”)—

*(a) **the chairperson of the Board may**, subject to paragraphs (4), (5) and (8), appoint another member of the Board in place of the absent member; or*

(b) if the absent member is a member other than the chairperson of a hearing, the case will be dealt with or, if a hearing under rule 15A has already commenced, will continue to be dealt with, by the two remaining members of the Board.

*(9) Where paragraph (7) applies to a case being dealt with by 2 members of the Board, **the chairperson of the Board must appoint another member of the Board in place of the absent member.***

The chairperson of the Board: -

delegates the power to appoint in terms of Rule 14(2) for the purpose of dealing with a case in whole or in part to the Chief Executive of Parole Scotland who may, in turn delegate to a member of his staff as he deems appropriate.

delegates the power to appoint in terms of Rule 14(6) the chairperson of an Oral Hearing to the Chief Executive of Parole Scotland who may, in turn delegate to a member of his staff as he deems appropriate.

delegates the power in terms of Rule 14 (7) to appoint another member of the Board in place of the absent member to the Chief Executive of Parole Scotland who may, in turn delegate to a member of his staff as he deems appropriate;

appoints the Legal Vice Chair of the Board to exercise the powers of the Board or the chairperson of the Board under Rule 6(1) to decide that any written information or document should not be sent or disclosed to a person;

(8) The Parole Board (Scotland) Rules 2001 Rule 18 is in the following terms:-

18.— Composition of tribunal

*(1) Subject to paragraphs (2), (3) and (4) below, any case may be dealt with, in whole, by 3 members of the Board **who are appointed by the chairperson of the Board** to form a tribunal for the purpose of dealing with that case.*

(2) No member of the Board who took part in making a recommendation under section 28(1) of the 1989 Act in relation to a person shall be appointed by the chairperson to deal with that person's case under section 28(4) of that Act.

*(3) No member of the Board who took part in making a recommendation under section 17(1) of the 1993 Act in relation to a person shall be **appointed by the chairperson** to deal with that person's case under section 17(3) of that Act.*

(4) The members of a tribunal appointed under paragraph (1) shall include either—

(a) a person who holds or who has held judicial office;
or

*(b) a solicitor or advocate of not less than 10 years standing; **and the chairperson of the Board shall appoint that person to be chairperson of the tribunal.***

(5) In the event of the death or incapacity or unavailability (for whatever reason) of any member of a tribunal ("the absent member")—

*(a) **the chairperson of the Board shall, subject to paragraphs (2), (3) and (4), appoint** another member of the Board in place of the absent member; or*

(b) if the absent member is a member other than the chairperson of the tribunal, the case will be dealt with or, if a hearing has already commenced, will continue to be dealt with, by the two remaining members of the tribunal.

The chairperson of the Board: -

delegates the power to appoint members of the Board, in terms of Rule 18 (1), for the purpose of dealing with a case to the Chief Executive of Parole Scotland who may, in turn delegate to a member of his staff as he deems appropriate;

delegates the power in terms of Rule 18 (4) to appoint the chairperson of a Tribunal to the Chief Executive of Parole Scotland who may, in turn delegate to a member of his staff as he deems appropriate;

delegates the power in terms of Rule 18 (5) to appoint another member of the Tribunal in place of the absent member to the Chief Executive of Parole Scotland who may, in turn delegate to a member of his staff as he deems appropriate;

This is a dynamic document which will be reviewed by the chairperson, regularly, and no less than every 2 years.

A handwritten signature in black ink, appearing to read 'J. Smith', written in a cursive style.

Chairperson of the Parole Board for Scotland

21 July 2022