

## PROBATION BOARD FOR NORTHERN IRELAND

**SPECIAL BOARD MEETING – 20 JULY 2018****9.30 AM – PBNI HEADQUARTERS****399th MEETING – 31st of THE ELEVENTH TERM OF OFFICE**ATTENDANCE

Mrs V Patterson (Chair)

Mrs J Gillespie

Mr I Jeffers

Mr G OhEara

Mr E Jardine

Ms A Matthews

Mr D Wall

Officials

Ms C Lamont, Chief Executive

Mr P Doran, Director of Rehabilitation

Mr H Hamill, Director of Operations (Via video link)

Mrs G Robinson, Head of HR

Mr M Cox, Board Secretary

Mrs W Rodgers, Personal Secretary (Minutes)

**1. OPENING REMARKS AND CONFLICTS OF INTEREST**

The Chairman welcomed everyone to the Special Board meeting. She advised that the meeting was called to consider the latest legal advice received on working with Terrorist Politically Motivated Offenders (T/PMOs) and to consider the way forward. There are three options for members to consider on the way forward.

A quorum was confirmed with seven members present.

No conflicts of interest were declared.

**2. APOLOGIES**

Apologies were received from: Mrs J Erskine, Deputy Chair; Mr D Brown, Board Member; Mr R Mullan, Board Member; Mr T O'Hanlon, Board Member; Mrs P Shepherd, Board Member.

**3. LEGAL ADVICE RECEIVED ON WORKING WITH T/PMOS**

The Chairman stated that events had shown that Probation is not the appropriate agency to handle T/PMOs but there is a legal obligation to do so as set out in the Criminal Justice Order 2008. Advice has been received from counsel, Tony McGleenan QC. The Chairman invited the Chief Executive to set the scene for the Members, from the meetings with the Department of Justice (DOJ) to the option paper that has resulted out of the meetings.

The Chief Executive took the Members through the options, stating that option 3 was the preferred option of the Senior Team. Option 1 is the DOJ's proposed Interim Guidance which was discussed previous by the Board at the meeting on 23 March 2018. Option 2 is the Board's long-term preferred option of a change in legislation but is currently not available for consideration until an Executive is in place. Option 3 is an updated operational framework and is the preferred option of the Senior Team at this juncture. Option 2 would require a minister in place to make the necessary changes to legislation and policy framework. In reference to the recent meeting with Nick Perry and his Officials the Chief Executive noted that whilst acknowledging the current security threat by dissidents to PBNI he noted that there remained a statutory obligation in relation to T/PMOs.

The Chief Executive advised that the advice received stated that there was no legal defensible position to not resume working with loyalist T/PMOs. The T/PMO cohort represents 1.5% of Probation's workload. This cohort had negatively impacted on the work with other offenders as home visits had been suspended in particular areas for sex offenders, domestic violence offenders and others, therefore potentially putting the public at risk. It is accepted that the Department cannot vary the terms of licences in the absence of a minister.

Article 2 in relation to the safety of staff was discussed with attention being brought to page 13 of the legal advice. In response to a question from the Chairman, the Director of Operations confirmed that the threat, in his opinion, is ongoing and objectively verified. The Chief Executive advised that the Permanent Secretary had stated that in the absence of any verified threat from loyalist there was no reason not to resume work with loyalist T/PMOs.

Discussion ensued around focusing on the contentious issues. Loyalists, at this point, are not contentious. The 'Nash' judgement was discussed and that Probation does not have an assessment tool for dissident republicans or loyalists T/PMOs. It was accepted that there is a verified threat but it is for the Board to consider its response and it should not be diverted from its decision by union and staff's likely response to any decision made. It is important to understand the exposure of staff in working with dissident republicans and loyalists T/PMOs. The Chief Executive advised that concern about dissident republican is a national security issue and one for the Secretary of State to be involved in. She advised that the legislation brought in in 2010 (which amended the Criminal Justice Order 2008) had put Probation in an impossible position. The comment was made that the legislation had been in place since 2010. Concerns over Probation's role in the legislation had been highlighted at the time.

A member asked how different Option 3 is from the position pre September 2017. The impact of the threat level being reduced was discussed. The threat level is likely to reduce due to there being no work / interaction carried out with the dissident republican cohort. Option 3 still allows for voluntary engagement by Probation with dissident republicans if they wish to engage whereas Option 1 would put staff back on the front line.

It was agreed that the ideal would be a change in legislation but it was recognized that that this is not possible without a minister.

The Chief Executive drew attention to Appendix 12. She advised that Probation was doing what it can but there are unavoidable gaps. The Board agreed with the highlighted points in the Option 3 paper. The potential issues of supervising loyalists and not dissident republicans were discussed. It was advised that unions are unlikely to agree to working with any T/PMOs. The Chief Executive advised that at a meeting with the PSNI it was made clear that the PSNI would not be taking on the statutory duty of supervising T/PMOs. It was noted that no other agency has the statutory duty of supervising this cohort. The Crown Solicitor's Office (CSO) had provided advice on the consequences of Probation not complying. It is possible that Judicial Review proceedings could be initiated by the DOJ although there is no indication that this will happen. It was noted that under the DOJ's Interim Guidance there was conflicting advice on the PSNI's position in Option 1.

**Action: The Chief Executive to provide a copy of the legal advice obtained from the CSO. (Chief Executive)**

The Members discussed the Corporate Risk Register and what action would resolve the risk. The Chief Executive advised that she had been clear to other agencies on what Probation does. The Members agreed that the best way was to do what can be done in light of the current position and in doing so acknowledge the wider context and other means of supervision. The Chief Executive advised that the Permanent Secretary had requested Probation to develop alternative means of supervision which was agreed and stated in Option 3. It was commented that the legislation is defective in that PBNi are not in a position to fully discharge its Criminal Justice Order 2008 functions in respect of T/PMOs.

The Chairman commented that managing potential reputational damage was important and ensuring that Probation's partners in the Criminal Justice System understood Probation's role.

There is a need for change in legislation but this option is not available at the current time. The immediate issues need to be addressed and to ensure that Probation (individually) is not vulnerable. The Chairman suggested obtaining legal advice on behalf of the Board Members in case it is seen that they are failing in the delivery of the statutory duty under this public appointment. The Director of Operations suggested that such legal advice should also consider the implications for individual Board Members if they made a decision which potentially increased the risk to staff,

The options were put to the Board Members for decision and it was agreed that Option 3 would be supported and approved by the Board with caveats. The context of the paper is to show the desire for staff and the Department to look at the gaps and to work together to bring the gaps closer. The Members agreed option 3 which included interaction with loyalists.

**Action: The Chairman to look at obtaining legal opinion on Board Member’s individual position under public appointment in regard to delivering Probation’s statutory duty. (Chairman)**

**Action: The Chairman to write to the Permanent Secretary with the views of the Board. (Chairman)**

**Action: Once legal opinion and a response from the Department are received, the Chairman would then update the Board. (Chairman)**

The Chief Executive advised that she had commissioned research on Recommendations for a Social Work Criminal Justice Organisation (PBNI) for a practice framework for working with Terrorist/Politically Motivated Offenders (TPMO’s) and this should be available in December.

**Action: The Chief Executive to provide the Terms of Reference for the research commissioned. (Chief Executive)**

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Vilma Patterson  
Chairman

Date \_\_\_\_\_