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## 50 Years of the Parole System for England and Wales

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***Anisha Gadhia*** is Head of Parole Board Member Development and Practice. ***William Aslan*** is a communications officer at the Parole Board.

***David J Cox*** is a reader in Criminal Justice at the University of Wolverhampton. ***Dr Helen Johnston*** is a reader in Criminology at the University of Hull.

***Dr Thomas Guiney*** is a visiting fellow at the Mannheim Centre for Criminology, the London School of Economics and Political Science.

***Dr Roy King*** is Professor Emeritus, Wales: Honorary Research Fellow, Cambridge Institute of Criminology.

***Nicola Padfield*** is Professor of Criminal and Penal Justice, University of Cambridge and Master of Fitzwilliam College, Cambridge.

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***Jo Shingler*** is a Chartered Psychologist and Registered Forensic Psychologist. She is a Consultant Forensic Psychologist, as well as studying for a PhD at the University of Portsmouth. ***Dr Adrian Needs*** has a background as a qualified practitioner in forensic psychology (including in HM Prison Service) and currently runs the MSc Forensic Psychology at the University of Portsmouth.

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***Nick Hardwick*** is Professor in Criminal Justice at the School of Law, Royal Holloway University London. He was Chair of the Parole Board for England and Wales from 2016–March 2018.

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***Georgina Rowse*** is a member of the Parole Board.


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# Editorial Comment

**Planning this edition of the Prison Service Journal to mark the 50th anniversary of the creation of the Parole Board began back in April 2017 and set out to discuss the 50 year history of the Parole Board and contemporary practice.**

A year later, just before the edition went to press, the fallout from the successful judicial review[1] of the Parole Board's decision to release John Worboys (now known as John Radford) in January 2018 and the legality of Rule 25 of the Parole Board Rules[2] which prevented the Board from saying anything about its decisions, handed down on 28 March 2018, cast uncertainty over the Board's future and led to the resignation of Professor Hardwick as Chair of the Parole Board on 27 March 2018.

We are grateful to Professor Hardwick who was Guest Editor for this edition and for his reflections on the articles in the journal and their relevance to recent events, which are represented as part of this comment.

The High Court in their judicial review decision on 28th March 2018 said Worboy's was *'a difficult, troubling case with many exceptional features'*.[3] There are four issues the Parole System is left to consider: the extent to which panels should and are equipped to consider unconvicted offending in their decision-making; the transparency of Parole Board decision-making to victims and the public; who should be able to challenge a Parole Board decision and the independence of the Parole Board and whether the Parole Board should now be an independent tribunal, in the courts and tribunal service.

In the political and media turmoil that surrounds the Parole System at this moment, clear and calm thinking is required to ensure the desire for instant changes does not lead to unintended consequences.

The papers in this edition of the Journal predate the Worboys case but make an important contribution to current debate and those thinking about the future of the Parole System would do well to consider them.

The journal opens with *Our Parole Hearing [p.4]*; a unique insight into an oral hearing from the victim, prisoner and panel's perspectives, which explores the hopes and fears of those involved and truly reflects oral hearings today; a 'multi faceted process (with) a lot of parts played out.'

Dr Helen Johnson and Dr David Cox [p.10] describe the origins of the Parole System in the Victorian system of prison licencing and their description of the tensions between rehabilitation, the need to address prison overcrowding and popular demands for harsher punishment will be familiar to readers today and perhaps serve to dampen suggestions that current controversies are a new phenomenon. Dr Thomas Guiney describes [p.14] the debates that surrounded the creation of the modern Parole Board and argues that despite the compromises and shortcomings that attended its creation, the original *'rehabilitative ideal'* it encapsulated is worth revisiting today.

Over the years the powers and status of the Board has grown from the 'small, advisory committee' described by Guiney — largely in response to successive judicial reviews enforcing the requirements of the European Convention on Human Rights. The Board's primary duty is now to protect the public and the test it applies before it can release a prisoner is that *'it is satisfied that it is no longer necessary for the protection of the public that the prisoner should remain detained.'*[4] The Board is now, when convened as a panel, in effect a court which orders the release of prisoners.[5] Professor Nicola Padfield (p.22) says that sits uncomfortably with the Board's status as a Non-Departmental Public Body sponsored by and located in the Ministry of Justice. The Justice Secretary is responsible for the Parole Board's Rules which govern its work and are approved by Parliament. All its members are public appointments made by the Justice Secretary.

Between 2016 and 2018,the Board eliminated its case backlog which resulted from the extension of prisoners' rights to oral parole hearings in *Osborne, Booth and Reilly* in 2013, halved the number of prisoners serving indeterminate sentences for public protection, recruited over 100 new members, and moved to entirely digital working. The elimination of the backlog created the space to begin the process of overhauling the assessment, guidance and training it provides to members, including the development of

1. (R (DSD and NBV; the Mayor of London; and News Groups Newspapers Ltd) v The Parole Board of England and Wales; the Secretary of State for Justice; and John Radford (formerly John Worboys) (Interested Party).
2. (S.I. 2016 No 1041) ('Rule 25').
3. (R (DSD and NBV; the Mayor of London; and News Groups Newspapers Ltd) v The Parole Board of England and Wales; the Secretary of State for Justice; and John Radford (formerly John Worboys) (Interested Party).
4. Legal Aid, Sentencing and Punishment of Offenders Act 2012 Part 1. S.6(2).
5. See for example: (Article 5(4) ECHR) (CJA 1991) (CJA 2003) (LAPSO 2012).

the decision-making model proposed by Joanne Lackenby [p.32]. In 2016/17 the Board recommended a move to open or agreed release of 65 per cent of prisoners at oral hearings.[6] It has achieved this while maintaining a serious further offence rate of less than 1 per cent.

Decisions are judgments and human nature is unpredictable. Parole Board members make their decisions in accordance with their understanding of the law, their expertise and the evidence before them. Parole Board members must be given the information, training and support they need to do the job as well as possible. Sue Power [p.26] considers how insufficient information is impacting paper release rates for determinate recalled prisoners. Dr Roy King [p.18] explores the role of statistical risk tools in panel decision-making and Jo Shingler's and Adrian Needs' paper [p.36] considers the role of psychological evidence in panel members decision-making and argue '*it is also important that a range of perspectives is available to panels of the Parole Board from professionals with different training, experience and priorities*'.

The biggest current obstacles to making further progress on the efficiency issue is the high rate of cases that are deferred or adjourned, as Professor Nicola Padfield describes in her paper [p.22]. Between a quarter and 30 per cent of all cases are deferred. A principal reason for deferrals is the panel seeking information or reports that were not in the original dossier.

In November 2017 — before the Worboys decision was made — Professor Hardwick gave a lecture arguing the case for transformation in the openness of the Parole System and quoted the example of the Canadian system in which almost every part of its work is open to public scrutiny. With the kind permission of Professor Hardwick and the Butler Trust we have reprinted that lecture at the end of the journal. It is a helpful point in time.

Rule 25 changed on 22 May 2018 to allow the Board to produce a full summary of reasons for the decisions it makes and summary of the evidence considered whilst withholding key personal information about those involved in the proceedings. These will be available to victims in cases and the public/media on request.

There are rightly constraints on how the new rule should operate, illustrated by papers here. *Our Parole Hearing* [p.4] shows how difficult parole hearings can be for victims and the importance of privacy for the victim, Dr Laura Janes considers at [p.41] how the Board has made significant adaptations to its processes to meet the needs of children and young adults but notes that' If Parole Board hearings cease to be confidential, effective participation for young people may be inhibited, unless an exception is made'. Parole hearings are designed to encourage candour and steps to make parole hearings more open need to ensure this does not impact negatively on the willingness of prisoners to speak at their hearing, their rehabilitation, or endanger someone's safety on release. Scott Martin's interviews with lifers granted parole [p.46], demonstrates how challenging rehabilitation and reintegration following release can be and we need to be mindful of this, in implementing and evaluating the change to Rule 25 and considering whether to go further in opening the system up.

Transformational change may be ahead to make the Parole System fit for its next 50 years, but one thing remains as true today as it did 50 years ago and, indeed, will continue to be in 50 years' time, and that is that the Parole Board's primary focus will always be the protection of the public.

6. The Parole Board for England and Wales. (2017) *Annual Report and Accounts 2016/17*. Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631425/Parole_Board_Annual_Review_Web_Accessible_Version.pdf

# Our Parole Hearing

***Anisha Gadhia*** *is Head of Parole Board Member Development and Practice.* ***William Aslan*** *is a communications officer at the Parole Board.*

**This is a unique collection of interviews with four people who took part in the same Parole Board oral hearing in August 2017. They agreed to be interviewed after the hearing and were asked exactly the same questions to talk about their involvement in the hearing and what their experiences of the day were.**

The participants were: a representative of the Secretary of State, the chair of the oral hearing panel, a family member of the victim, and the prisoner.

The prisoner was convicted of murder and is serving a life sentence. The family member has taken part in Restorative Justice with the prisoner and read a Victim Personal Statement at the hearing.

### What part did you play in this hearing?

**SoS:** A representative from Her Majesty's Prison and Probation Service (HMPPS) attends every hearing where a victim wants to deliver their Victim Personal Statement (VPS) in person to the Parole Board. I see our role as being the guardian of the day. Our overriding objective is to make sure the victims have the best experience possible, in what are very emotionally taxing and difficult circumstances

**Chair:** I was the chair of the panel conducting the hearing. I was one of three Parole Board members reviewing the case. I gave attention to the process of the hearing that is, how it was run, but also asked some questions.

**Family:** I was a member of the victim's immediate family attending the hearing to read out my VPS. I am the twin brother of the person who was murdered by the offender almost 20 years ago, and I attended with my parents. I went into the room to read out my VPS which detailed a personal reflection on how the murder impacted myself, my family and friends over the years.

**Prisoner:** This was an opportunity to express to a panel what I had done in the last 18 months since my last parole review and to share my hopes for the future. It would be an opportunity also to think about what might be outstanding in terms of further work and what I need to do to address this. My primary role was to be present and to answer every question or concern. I listened actively to what was being said and I wanted to be present for the victim's family. The hearing is an outlet, and opportunity for them to let go of anything that they want to express.

### Why did you want to do this? What is your motivation to do this work?

**SoS:** I was keen to develop my skills in a different area of work having been an Offender Manager and having done victim empathy work with prisoners and people on licence. However, nothing could have prepared me for supporting a person who has lost a loved one or suffered a serious assault and to hear them recount the devastation and destruction that this has caused them.

**Chair:** I have spent many years working in the criminal justice system, as well as in other organisations which provide services to vulnerable people in the community. The Parole Board gives me the opportunity to use my knowledge and experience in a different setting. It is very important that the Parole Board makes fair and justifiable decisions, and I feel that I have something to contribute, as well as having the skills for the work.

**Family:** This is I think my 5th or 6th parole hearing over the years. I come to these hearings out of a sense of purpose for my brother and his family and friends, and to be a voice in the room that can truly relay the impact of such a crime on my family. We have seen and observed over the years that reading out our statements at parole hearings has a profound effect on the room, and enables us to be satisfied that we have done as much as we can for my brother, and in a way being there to represent him — I personally feel this even more as his identical twin brother.

Attendance is partly also a way of helping us continually move on and recover inside ourselves, although the experience remains very emotional no matter how many times you have done it. Coming to the hearings for me is also a means to look the offender in the eye to say what you want to say instead of a third party reading your statement which is just not the same. After a gap of 10 years or more since the offence we were notified that attendance at hearings was possible and we knew straight away that we were ready to meet the offenders of the crime and truly realised it was the right thing for us to do. I don't think many families know about the possibility to attend parole hearings and for us it remains a very important part of our moving on and acceptance, particularly regarding the looming release dates. For me personally attending parole hearings has led to very positive follow

on actions relating to my own reflection and recovery in the last 3-4 years.

**Prisoner:** It was important for me to share the details of the work that I have done and express my desire to be progressed and released. I don't want to stagnate. Life is about living and there are things I want to do and achieve. I am still young. I can do good. It hinders me to be in jail. I know that the parole review is about answering concerns and questions about risk. I think the VPS helps my victim's family release feelings that they have kept in.

Listening and feeling the words leaves an emotional resonance in me and creates a feeling of energy. The spoken word is powerful, and it carries. I can never right my wrong, but I think it is important to allow my victim's family an outlet to say what they feel — it would be cowardly not to allow them this. I don't see the Parole Board as my hearing, it is a hearing about my crime and everyone's view is important. The crime, and my risk is being reviewed. I'm the perpetrator and so a lot of the content is focused on me; but it is a multi-faceted process and a lot of parts are played out.

**How did you prepare?**

**SoS:** I liaised with prison staff to ensure that all the facilities are in place to accommodate the family properly and decently. I also spoke to the victim's family in advance to answer any questions about the process and how the oral hearing would unfold. I arrived at the prison about 2 hours in advance of the hearing to inspect the facilities and walked the route to satisfy myself that the family will have no uncontrolled contact with the prisoner. This also gave me an opportunity to see the oral hearing room and arrange it in a way that best suited the needs of the victims.

**Chair:** Overall, it is important to be aware of the effects of crime, the reasons for people committing offences and to understand the work undertaken by the prisons and Probation Service. However, in individual cases, I prepare for a parole hearing by reading and thinking about the information that has been provided in advance in the dossier. This includes reports from the prison and Probation Service, reports about programmes that have been completed, and sometimes medical, psychological or psychiatric reports. Also, there may be written representations that have been made in advance by the prisoner or his/her legal representative. On this occasion, there were also three written statements in the dossier from the victim's twin brother and parents.

**Family:** I prepared a VPS several weeks earlier and submitted it via our Victim Liaison Officer. My VPS was revised from a previous version for earlier hearings. Over the years my statement has changed as my own recovery and reflection on the offence has changed through time. I also prepare through discussions with my family and wife about general feelings and thoughts on the hearing, although our statements are generally quite private between us individually. A hearing is very emotional, and I need to take some time off work before and after to be ready. It's also hard sometimes discussing it with my work line manager as I need to be honest, yet in the same vein private about the time I need to take off work. My employers have been extremely supportive over the years.

**Prisoner:** I only became aware of my hearing date about 6 weeks to a month prior. Once I am given the firm date, I start by reviewing the risk reduction work that I have done since the last hearing. I also review my paperwork, my risk assessments and my reports. This gives me an indication of the gaps and what the Parole Board panel might ask me. I have never had any help to prepare for my hearing, I don't expect it. I am given updates, paperwork and dates but a lot of preparation takes place in my cell on my own. I find a lot of solace in books, so I can read well.

I have never had any help to prepare for my hearing, I don't expect it.

The last oral hearing was my seventh. I have done 2.5 years of therapy and I understand the root causes of my offending. I sometimes overthink things and I guard myself against this as it is important at a parole hearing to speak from the heart. I speak about what comes up and have faith that the work that I have done and the space that I am now in, will come through. I used to ruminate a lot but now I think that everything is how it is meant to be — in the right place. If it was meant to be different it would have been. I try not to project into the future too much, and instead I try to remain in the present.

**What were you thinking about just before the hearing?**

**SoS:** Before this hearing, I felt happy because the person organising the oral hearing at the prison was competent and willing to go the extra mile. She had personally cleaned the room that the victim's family would be waiting in, and even bought nice mugs so they weren't drinking out of old ones. I was worried about the distance that the victim's elderly father would have to walk from the waiting room to the oral hearing room, but having looked at all the alternatives, I decided that the room was the most suitable.

**Chair:** Just prior to the hearing, the panel discussed the issues that were likely to be of importance and where the focus of attention should be when it asked questions. The purpose of the hearing is to assess the risk of serious harm in the community and to decide whether to direct release or recommend progression to open conditions. I was also thinking about how the victim's family might feel when they come into the hearing room to read their statements. I was considering how the prisoner might react to what he hears. I was thinking about where everyone should sit to be comfortable and how I might respond to any difficulties if they arose. As the offence in this case was murder, it was only to be expected that the emotions of everyone participating in the hearing could be close to the surface.

**Family:** Just nerves generally...butterflies and emotions flying through your head…very mixed thoughts about the prisoner, about how he might react and how you want to get through your statement without tears and breaking down. The walk to the room and waiting before is also very difficult, and I have lots of nervous energy and thoughts on doing this for my brother and being there for my mum and dad.

**Prisoner:** I wonder what questions will come up. I am anxious and nervous of the unknown. I worry whether I will get a nice panel or one that tries to trip me up (which I have never had; but you hear horror stories). I ready myself for the victim personal statements. I prepare myself to look at my victim's family, not to stare but not to look down at the table either. I want them to be able to speak the words to me and ready myself for what I will absorb. It will affect me and it will make me feel down. I want to be ready and prepared to process it. I try to feel the feelings, cry, meditate, go over the detail and process it. At one prison they handed me the victim impact statements and they told me to ask for support if I needed it, but mostly I read them on my own. I try to read them several times, but it is the emotion at the hearing that is the most impactful.

The most difficult thing for me to deal with was the distress of the victim's mum and dad.

**What was the most difficult thing for you to deal with?**

**SoS:** The most difficult thing for me to deal with was the distress of the victim's mum and dad. The victim was a twin, and his brother was also at the hearing with his wife. I wonder how it must be seeing the living evidence every day of what the victim could have been. The relationships you develop with people in such a short space of time are very intense and this family is no exception.

**Chair:** I can't say that there was anything that was difficult to deal with — apart from some of the practicalities. Each family member wished to read their statement without the other family members in the room. While this was not problematic in itself, it raised some logistical issues because the waiting room was not near the oral hearing room. Consequently, there was a delay while each family member was escorted to the hearing room.

I thought that this might lead to the prisoner becoming very anxious and not able to focus but in fact he remained very calm and accepting of the situation. Victims or victim's family members (who are also victims themselves) attend a hearing only to read their statements. This takes place at the beginning of the oral hearing and then they leave the prison.

**Family:** It's just those first few moments going to the oral hearing room, opening the door and getting prepared to read out your statement. I remember the first time I attended a parole hearing we had a long walk from our waiting room to the oral hearing room. We had to go up and down stairs and my legs were so wobbly with nerves I could barely manage it. Then when I walked in and saw the prisoner for the first time in 15 years since the trial, I filled with adrenalin and emotion. This moment for the last hearing that I attended was also still so incredibly powerful and yet difficult.

**Prisoner:** It's the victim's mother's statement and her loss that really hits home. For me this is the most difficult part. At the last hearing I listened and absorbed what she said. All the victim impact statements have changed over time. At the last hearing, the victim's brother's statement contained more understanding and acceptance. His father always expressed a lot of anger when he spoke but now he looks at me and although the content of the statement hasn't changed much; there is less anger I feel. The victim's mother spoke to me and her words contained messages for me; messages about not messing up and words of encouragement to get back on track. Deep words that I need to absorb.

The victim's twin brother is always positive, but this does not detract from the fact that his brother died. The victim's brother and I have engaged in a restorative justice process and this has helped me to come to terms with what I have done. The victim's brother has said that although he will never forgive me, he has come to terms with how I arrived in that dark place. He accepts

that I will be released one day. He wants me to do something positive with my life and not let the restorative justice experience that we have both been through, go to waste. He is a role model for me. He has never judged me. Even through his immense anger and pain, he speaks about the impact and never moves to blaming.

The victim's brother read out his VPS in 2014 and it had a real impact on me. I cried, listened and nodded. Then someone spoke to me about restorative justice. Restorative justice added a layer of responsibility to me. I was in awe of him after the restorative justice meeting. It would be easy for him to be angry, he has every right and I would have been ready to absorb it. The fact that I had not included him and his family in any decisions that I was making; but after the restorative justice process, they have become present enough in my mind to influence all my future decisions.

**What support did you have?**

**SoS:** I look to see who the panel chair is. In my experience, some are more comfortable in dealing with victims and their families than others. I'm nervous if it's not someone I've worked with before but helpfully this panel chair turns out to be really good. She visits the family before the hearing and takes the time to explain the process without making the family feel rushed or harried.

The victim's brother read out his VPS in 2014 and it had a real impact on me. I cried, listened, and nodded.

**Chair:** Support for all parole hearings is provided by the case mangers that work in the Parole Board's office in London. However, the prison also plays a part, by compiling the dossier and by providing a member of staff on the day to assist with the hearing arrangements. At this hearing, the victim's family were accompanied by the Secretary of State's representative, who explained to them how the hearing would proceed, and who sat next to them in the hearing room to support them if necessary.

**Family:** The support network is very important. My family, particularly my wife who doesn't usually come to the hearings but did to this one (her first) just to be with me before and after. Also my mum and dad, who came with me to the hearing to read out their VPS. The Victim Liaison Officer (VLO) is also a key part of the process, helping to guide and steer us through all aspects including the key logistics.

Over the years you form a close connection with your VLO who becomes a crucial conduit for the process. At the prison itself our Secretary of State representative is a key confidante and support who steers us through the day. Having supported us through previous hearings, she was a welcome familiar face on this day. Also welcome was a briefing from the panel chair, who came over to the room we were waiting in to say hello and explain the process of the hearing and to check if we had any questions.

**Prisoner:** I get most of my support from my mum and sister and my little nieces who are growing up quickly. My solicitor and his assistant are also quite involved. My solicitor is not business-like in his dealings at all. He's personable and cares. Building up to the oral hearing we speak sporadically on the phone and there is an increase of calls and visits prior to the hearing. We go over the release plan in detail. My mum and sister have never attended a hearing. My mum did however write a letter for one of my hearings, about the impact on her and how she has seen me undergo a change. My sister wrote about the support that she would be able to offer on the outside. It can be difficult when you walk into the oral hearing room, but I manage it. It is part of the process and I adapt. I have never been that overwhelmed with people in a room as I have had therapy where speaking in large groups is part of the process.

**What was the most positive thing about the hearing?**

**SoS:** Prisons were not originally set up to accommodate oral hearings or victim attendance. I try to arrive early because sometimes a detail is not quite right. I have found that prison staff are always willing to make changes when asked to support a more positive experience for victims or their families. Once I have checked everything, I meet the victim's family at the prison gate. My aim is to take care of everything, so the only thing the victim's family has to focus on is getting into the oral hearing room and reading their statements. I am with them before, during and after they deliver their statement to listen and guide as needed.

**Chair:** The statements made by the victim's family were valuable as it gave them the opportunity to express the impact that the offence had on them. That added to the panel's understanding of the consequences of the offence. As in all cases however, it did not affect the assessment of future risk.

This prisoner has engaged with the victim's brother in a restorative justice process earlier in his sentence and it was clear that it had been a positive experience and that it had deeply affected him. The prisoner said that it had more of an influence on how he thought about his past offending, and possible future offending, than any of the programmes that

he had completed. In talking about the restorative justice work, he demonstrated his empathy and current attitudes which does influence the assessment of risk. The victim's brother told the panel that his involvement in the restorative justice process had been one of the things that has helped him deal with the emotional impact of the offence.

**Family:** It's undoubtedly the feeling you get when you are in full flow reading out your statement. The listening in the whole room is very powerful and we always observe an emotional response in the prisoner, very often tears. You get a wonderful feeling of achievement afterwards, which nudges you to say 'that's why I did it....'

**Prisoner:** The atmosphere that it was conducted in was positive and felt supportive. The panel were reassuring, and the panel chair came out and introduced herself to me before the hearing started. The questions were clear, I understood them, and they heard me — really heard me. Overall, I was relaxed and at ease. I felt listened to. I have been to a few oral hearings where they move you on to their line of questioning, but at this one I felt fully heard. Sometimes I can get anxious about how it is going but if I feel listened to, I can focus on what is happening in the room rather than being pre-occupied with pre-empting questions and giving distracted answers.

The questions were clear, I understood them, and they heard me — really heard me. Overall, I was relaxed and at ease.

**How did you cope with the prison environment?**

**SoS:** The pressure to make sure things go well is enormous because of the human cost should something go wrong due to a logistical issue. In this case, I had met the family previously at another oral hearing and wanted the day to go smoothly for them. I remember when I first started doing this work, victims telling me about a careless comment or word from professionals working with them and this has stuck with me. I choose my words carefully as I do not want to make that grain of sand comment that victims remember and that can cause them distress even years later.

**Chair:** Because I go into prisons a lot and hear from prisoners about their experiences, I have some understanding of the realities of prison life — ranging from the quality of the food to day to day relationships with prison staff. However, my personal experience of prisons in this role is different and limited. I go to a specially designated hearing room and see little of the prison itself. However, it is easy to spot those prisons that take more care about the physical surroundings and those that do not, which I tend to believe indicates something about how prisons are run. It is also noticeable that in some prisons, the Offender Supervisor has time to engage with prisoners on a regular basis, but in others there is virtually no contact. This means that the information provided by the prison to the panel about the prisoner's progress might be more limited than would be preferable.

**Family:** I have no issues with visiting prison. All of the prisons I have visited for hearings show you the utmost dignity and respect. At HMP Elmley we had a very positive experience and the staff tried their best to put you at ease. I felt secure and safe, and we had a comfortable room to base ourselves in with an officer waiting with us at all times.

**Prisoner:** On the day of the hearing everything feels important. The things that happen in prison that would not normally bother you, assume new significance. If you are not unlocked on time it can affect whether you can have a shower. If you are not collected from the wing on time, then you can't get a vital document photocopied. If all goes well on the day of a hearing, I like to get up, have breakfast, shower, look over the dossier, wait for my Offender Supervisor to collect me and then go to the oral hearing. But it doesn't flow like that sometimes. I want to look like I have made an effort for the hearing. When I was at one prison, I couldn't get my shower as it was a late unlock. I was sharing a cell and the radio was blaring and I couldn't reflect over what I might say. I was placed in a small room on the side of the oral hearing room, and as a certain amount of time had passed, I couldn't speak to my solicitor. I had no time to process anything or to come down from the stress of it all at the end.

**What do you think went well?**

**SoS:** I felt pleased about this hearing apart from the distance that the victim's father had to walk to the oral hearing room. There was little hanging around at the prison gate and the family waiting room was bright and comfortable with hot drinks provided. The panel chair was welcoming and humane and the prisoner remained in the hearing room while they read their statements which was in accordance with the families' wishes.

**Chair:** At this hearing, I think we were able to draw out comprehensive evidence from the witnesses that

assisted with the assessment of risk and allowed for a clear decision to be made. I thought that the attendance of the victim's family was of value to them, to the prisoner and to the panel. I think that all participants had the opportunity to say what they felt it was important for the panel to hear. That is the basis for a fair hearing.

**Family:** It all went well I feel, I don't have any specific areas to highlight in this respect. As mentioned above we said our piece for my brother in a dignified respectful way, and we felt listened to.

**Prisoner:** Everything felt like it went well — the questions, the timing, how it was led by the panel chair. It was a positive experience. I have done huge damage. At previous hearings the victim's family spoke their words with emotion, but this time they spoke them at me and the emotion was directed at me. It felt different, they were speaking to me. My victim's twin brother has always done this but this time, his parents spoke their words with purpose and intention. They were letting go of more of their anguish and sharing it with me. I don't get to speak, so it is important that they know that I am listening. So I nod and look at them and let them know that I am listening.

### How did you feel about the hearing once it had finished?

**SoS:** After a hearing, I can de-brief with my manager or there is the employee well-being helpline that has trained counsellors. When I worked with men who had committed sexual offences, I had regular therapy sessions with a psychologist paid for by the Probation service. I continue to use a lot of the coping tools and techniques I was taught then.

**Chair:** Immediately following the hearing, the panel reached a joint decision, which was later put in writing and sent to the prisoner. The decision letter is not a public document, but the victim's family are informed of the outcome of the hearing. My feelings were that the hearing went well. I hoped that the prisoner would accept the reasoning behind the decision and move forward positively in preparation for his next review. I hoped that the victim's family had found the experience worthwhile as they continue to come to terms with their loss.

**Family:** Very happy and contented that we had shown courage in attending the hearing and that we had been able to see the offender and read our statements.

**Prisoner:** I feel positive in terms of how it went. I felt listened to. I'm a little drained and a little emotional. I don't try to pre-empt the decision of the panel. If I get released, I get released. If I get progressed to open, I get progressed to open. I knew that as I hadn't undertaken any home leaves, release was unlikely. I am realistic about release. I know that when I am released it will be a challenge and I will have to work on my relationships. I am not the child that I was when I went into prison.

# Development of early release mechanisms in the Victorian convict prison system, 1853-1895

***Dr Helen Johnston*** *is a reader in Criminology at the University of Hull and* ***Dr David Cox*** *(University of Wolverhampton, D.Cox@wlv.ac.uk).*

**The origins of the modern system of parole in England and Wales (as discussed in Guiney's article elsewhere in this issue) lie in the use of prison licensing established in the middle of the nineteenth century. This article will examine the use and development of prison licensing or early release mechanisms from the mid- to late-nineteenth century. The article draws on material produced during an ESRC-funded study that examined the use of prison licensing and the development of this system in policy, bureaucratic and financial terms.[1] Further, it draws on a sample of 650 male and female convicts who were released on licence in order to understand the impact of the licence system at the individual level. This study used a whole-life methodology to reconstruct offenders' lives, not only through their interactions with agencies of criminal justice and during their imprisonment, but also using data on births, marriages and deaths, census information and newspaper reports to provide as full a picture as possible of these individuals from cradle to grave.**

The system of prison licensing came into operation in England in 1853 after the passing of the first Penal Servitude Act.[2] However, its origins were in a probationary system used in Australia to help transported convicts re-establish their lives as they progressed through their sentences. In Australia, from 1801, transportees were encouraged to earn a 'ticket of leave' after a specified term of their sentence. Under the terms of the 'ticket', they were able to find employment, marry, gain property but they had to observe strict conditions. If one or more of these conditions were broken then they would be returned to the penal system to continue their sentence. Tickets had to be carried at all times and be available for inspection. For numerous reasons, the use of transportation to Australia had dramatically declined by the 1850s and it had already been decided that a new long-term prison system in England was required to replace transportation. This became known as the convict prison system and was established through the Penal Servitude Act in 1853 which instructed that long prison sentences replace previous sentences of transportation. For example, four to six years' penal servitude replaced seven to ten years' transportation. The convict prison system rapidly became highly bureaucratic and mechanical; prisoners passed through the progressive stage system (probation, third, second, first), which used a system of marks to represent daily work-based activities, 42 marks could be earned in a week, seven marks per day (if you were in hospital you could only earn six marks per day). Marks were earned, prisoners progressed through the stages, and once they reached the first-class stage (this also required them to be able to read and write, unless medically exempt) they were then looking at early release. Marks were also taken away as punishment or prisoners could be required to undertake stages again. Remission marks for good behaviour could also be gained and these represented days off the sentence. Conversely, any earned remission marks could also be lost following bad behaviour by convicts. More severe punishments were also possible for serious offenders within prison; confinement in a solitary cell on bread and water, or whipping (for males — corporal punishment in prisons was finally abolished in 1967).

The 1853 Act implemented the use of a licensing system at the third stage of the sentence of penal servitude; preceding this was a period of separate confinement and a period undertaking hard labour on the 'public works' — unpaid labour building barracks, military docks etc. On the face of it, the government simply transferred and subsequently adapted many aspects of the 'ticket of leave' policy from Australia and implemented it as part of the new sentence of penal servitude. Convict prisoners could be released after

1. Economic & Social Research Council funded project on 'The Costs of Imprisonment, 1853-1945', RES-062-23-3102.
2. Joshua Jebb's (Surveyor-General then subsequently, Director of the Convict Prisons) *Report on the discipline and management of the convict prisons, and disposal of convicts, 1854*, states that the system was introduced on 8 October 1853 and that by 27 June 1854, almost a thousand prisoners had been released on licence (1854: 29).

serving two-thirds of their sentence, subject to their progression and behaviour in the previous two stages. As part of their release conditions, they were required to give a post-release destination address and location. Once approved for early release, male convicts were released on licence to be at large and were required to report to the police on arrival at their destination and monthly for the remainder of their sentence (and also to notify the police of any subsequent change of address). Female convicts experienced a slightly different system; those serving their first sentence of penal servitude were released first on a 'conditional' licence to a refuge and then to be at large, approved by the Directors of the Convict Prison, from the refuge after a period of between six and nine months.

By the time the prison licensing system was fully implemented there were approximately 2,500 convicts released on licence at any one time and this was almost one-fifth of the total yearly convict prison population.[3] In terms of the bureaucratic operation of the system, our evidence shows that the overwhelming majority of convicts were released early from the system, even those with long sentences for serious crimes or recidivists. This is despite the prevailing view today that the Victorian prison system was particularly harsh and unrelenting.

By the time the prison licensing system was fully implemented there were approximately 2,500 convicts released on licence at any one time...

Whilst breaches of prison rules could affect the early release date for prisoners, the overwhelming majority of those in our study did have a number of prison offences against their name. This was often for minor regulatory offences — for example talking whilst waiting to enter chapel, but some had been punished in the weeks or even days before they were released on licence for fairly serious bad behaviour and yet release was still permitted. As noted above, licensees were required to inform the prison system of their destination; often this was the name and address of a family member or a friend, but it could also have been a Discharged Prisoners' Aid Society (established in the 1850s and 1860s and expanding in use across this period) — publicly funded charitable organisations who gave prisoners practical and often financial assistance in order for them to re-establish themselves as productive members of society. As in Australia, released convict prisoners were required to keep the licence document on them at all times and to be able to produce it when required by an officer of the law. They were to refrain from crime and were 'not to habitually associate with notoriously bad characters such as reputed thieves and prostitutes'. They should also 'not lead a dissolute life without visible means of obtaining an honest livelihood'. If the licence was forfeited or revoked, then they would be returned to prison to finish the remainder of their original sentence as well as any other new sentence, should a criminal offence be the reason for the revocation.

The convict prison population had increased quite quickly after the demise of transportation and without the introduction of early release on licence the number of offenders would have been difficult to accommodate; the average daily prison population would have increased by about one-fifth, and a prison-building drive was only just under way. Despite public and media-driven criticism in the 1860s regarding the lack of deterrence in convict prisons, remission and the prospect of release on licence was still regarded as an important element of the system. Although a sensitive area in terms of public opinion, notably during the 'garotting panics' — media-fuelled concern about street violence carried out in London by recently released male convicts on licence, the response was to increase minimum sentence lengths and make the daily routine (diet, labour etc) more severe rather than to abolish the system of remission.[4] The problem of possible prison overcrowding became acute in the 1870s and early 1880s when the licensing system was used extensively to release pressure in the system. This saved the government a considerable amount of money as well as making the prison system more manageable.

One of the central questions of our research was the effect that imprisonment, sentence length and release on licence had on individual offenders and their subsequent lives, both in terms of their personal circumstances but also their ability or not to move away from criminality. We therefore outline two brief contrasting case studies below that illustrate both the benefits and problems that could affect convicts' post-release on licence.

3. For example, there was an annual total of 15,231 convicts received in prison during 1856 and a total of 2,856 released on licence (Judicial Statistics, 1856: 100).
4. For further details of this moral panic, see Davis, J. (1980). The London garotting panic of 1862: a moral panic and the creation of a criminal class in mid-Victorian England. *Crime and the law: the social history of crime in Western Europe since, 1500,* 190-213.

### Joseph Quarmby (born c.1822, d. c.1891)

Joseph Quarmby was a West Riding-born stone mason who offended regularly over a period of almost 30 years. His offending appears to have taken a more serious turn following a bad fall, which caused a severe chronic rupture which seems to have affected his employment prospects. He was first sentenced to penal servitude in 1870, when he received seven years for stealing tools. He was a troublesome prisoner throughout his sentence, rebelling against the system, often refusing to work, and complaining about physical abuse from warders. Shortly after his release, in 1878 he was again found guilty of stealing tools and sentenced to ten years' penal servitude to be followed by seven years' police supervision (whereby he had to report on a regular basis to his local police station). After being released on licence a year early, he continued to offend and in 1888 was sentenced to six months' hard labour for stealing tools. It appears that the magistrate was lenient as he considered the theft to be of a minor nature, but a contemporary newspaper report stated that Quarmby was unhappy with the sentence as he wished to re-enter the convict system as he received better medical treatment for his injury than he did on the outside. He continued to carry out minor offending and spent much of his later life in and out of the workhouse before dying in Huddersfield c.1891. Early release on licence appears to have had a detrimental effect on his life, as he clearly found it difficult to cope with his life-altering injury during his time as a free man.

### Emily Brennan (born c.1850, date of death unknown)

In contrast to Joseph Quarmby, Emily Brennan appears to have eventually benefited both from the prison system and her early release on licence (despite being a serial offender). She committed a number of offences in her twenties, but first received a sentence of penal servitude in 1876 for attempted shoplifting. She received a seven-year sentence, but whilst in prison wrote regularly to her husband and received visits from a female friend and possibly one of her own children. She was transferred to Russell House Refuge in Streatham in October 1880, but shortly after her subsequent release was found guilty of larceny and received a further sentence of seven years' penal servitude. Whilst in convict prison again she clearly made full use of her rights, writing regularly to family and friends and ensuring that her children were well cared for in both Princess Mary's Village Home and Barnardo's — a letter in her file speaks of her son Thomas prospering at the home. Upon her second early release on licence, she enlisted the support of the Discharged Prisoners' Aid Society in Charing Cross Road and was released into the care of a family friend in Brick Lane. We then lose all trace of her, but she does not appear to have reoffended under any of the variety of aliases that she used during her lifetime.

The police in some counties took the view that all employers should be informed of discharged prisoners in their employment...

### Conclusion

Overall, did the prison licence system work at the individual level? For a large percentage of convicts, the operation of licensing allowed for a shorter period in custody and therefore reduced the impact of several aspects of institutionalisation, though it did not always solve post-release problems such as that of obtaining gainful employment. This was a particularly contested area for the released licensees. By the time of the Kimberley Commission Report in 1878-9 there was growing concern about the surveillance and monitoring of those on licence and habitual criminals in general. The Royal Society for the Assistance of Discharged Prisoners presented evidence that police interference had resulted in convicts losing their employment. The police in some counties took the view that all employers should be informed of discharged prisoners in their employment but the Commission disagreed, fearing ex-prisoners would be driven back to criminality due to lost employment. However, problems with supervision persisted, in particular the use of retired police officers as supervisory agents. Reverend G. W. Reynolds claimed that the Society in Manchester was 'nearly ruined' by very active ex-policemen.[5]

In an attempt to ameliorate such problems, prison chaplains or Lady Superintendents of female refuges would write a standardised letter to potential employers of released convicts in an attempt to gain them employment:

5. McConville, S. (1995) *English Local Prisons: Next only to death*, London: Routledge: 322.

*Sir, The Secretary of State being anxious to ascertain the prospect of employment of convicts who from time to time become eligible for release on licence, and with a view to assist them in entering upon a career of honest industry, has requested me to refer to any one likely to afford information, or to promote these objects. I therefore take the liberty of addressing you in the case of ... now a prisoner under sentence of ... in ... to make inquiry as to his prospects of obtaining employment, or the means of support, if liberated on licence. He is in ... state of health and his conduct during imprisonment has been ... . I enclose a form which should be filled up by any one inclined to find employment for the man, or to support him, if an invalid. A certificate of such person's respectability, and power to fulfil his promise should be duly signed by a magistrate, or the minister of the parish. Whether the inquiries you may be good enough to make may prove successful, or otherwise, I request the favour of your returning the enclosed paper filled up, addressed to the Chaplain of the prison in which the man referred to is confined. The prisoner states that ... of ... will give him employment or support him, as the case may be.*

The period on licence also allowed more time for the possibility for desistance factors to occur: more time to find employment; a window for other supporting processes such as the establishment of relationships and familial commitments, and in general achieve more stability in their lives outside of the criminal justice system than had they served the full term of their prison sentence. The prospect of early release from a hard, degrading and dehumanising sentence must also have appealed to many convicts and perhaps contributed to modifying their offending behaviour whilst in prison.

# An Idea Whose Time Had Come?

## The Creation of a Modern System of Parole in England and Wales, 1960-1968

***Dr Thomas Guiney*** *is a visiting fellow at the Mannheim Centre for Criminology, the London School of Economics and Political Science.*

*'It has been said with truth that it is easy to imprison a man; the difficult thing is to release him…'*
(Home Office 1959).[1]

**It is more than half a century since a system of parole was introduced in England and Wales. This was a significant milestone in the evolution of British penal policy, but little is known about the complex chain of events that culminated in the Criminal Justice Act 1967. Drawing upon a range of archival sources this article will explore the competing ideas, trade-offs and moments of political controversy that defined the emergence of parole in England and Wales between 1960 and 1968.**

### Introduction

The *Criminal Justice Act 1967* introduced a new legal framework for the '*release of prisoners on licence and supervision of prisoners after release*' in England and Wales. Under the new arrangements a Parole Board was created to advise the Secretary of State on (a) the release on licence and the recall of persons; (b) the conditions of such licences and the variation or cancellation of such conditions; and (c) any other matters pursuant to the operation of the new Parole System.

Prisoners serving determinate sentences became eligible for parole once they had served one-third, or twelve months of their sentence, whichever was the longer. Since all prisoners were entitled to unconditional release for the final third of their sentence, under a system known as remission, the new Parole System only applied to prisoners serving sentences of 18 months or over. In practice, this meant that a prisoner sentenced to three years' imprisonment could expect to serve one year in custody, followed by eligibility for parole during the second year of their sentence and unconditional release in the final year subject to any time lost for bad behaviour.

A distinct system was created for indeterminate sentences. Under the Act, the Secretary of State could authorise the release on licence of a person serving a life sentence, if recommended to do so by the Parole Board, and after consultation with the Lord Chief Justice and trial judge if available. The decision-making process was further clarified by the Parole Board in their 1968 Annual Report which made clear, that in most instances, the first review of lifer cases should take place after 7 years had been served.[2]

To administer the new system, Local Review Committees (LRCs) were established in prisons across England and Wales. In advance of a prisoner's parole eligibility date (PED) it was the duty of the LRC to review a prisoner's case and submit a dossier to the Home Office providing a reasoned opinion on whether parole should be granted. A new Parole Unit, housed within the Home Office Probation and Aftercare Department, was created to manage parole applications and prepare all suitable cases for review. Initially, all decisions were taken by the Parole Board 'on the papers', typically with a recommendation as to the prisoners' suitability for parole, the appropriate date of release (or next review date) and the conditions to be placed upon a licence.

Since parole was positioned as a 'privilege and not a right' there were no oral hearings, prisoners were not informed of the reasons why their applications had been unsuccessful and the Home Secretary reserved the right to overturn the recommendation of the Parole Board if it was deemed to be in the public interest.

### A 'recognisable peak'

While it is tempting to scour the historical record for the 'smoking gun' that signalled the arrival of parole in England and Wales the historical antecedents are inevitably diffuse. With the growth of penal transportation in the early nineteenth century an embryonic system of early release, known as the 'ticket of leave', began to take shape which granted convicts of 'good character' limited rights to live and work

1. Home Office (1959) Penal Practice in a Changing Society: Aspects of Future Development. Cmnd 645. London: HMSO.
2. Parole Board (1969) Report of the Parole Board for 1968. HC 290. London: HMSO.

within the colonies. As Johnston and Cox show elsewhere in this issue, the underlying rationale for the ticket of leave became firmly established within British penal practice and from the 1850s these techniques permeated into the release arrangements for convicts sentenced to penal servitude.[3]

In this sense, the events of the 1960s were not unique, but the latest attempt to address long-standing questions about the management of incarcerated populations, the defensible exercise of discretion and the administrative challenge of bridging the gap between custody and the community. In a series of influential reports from the late 1950s onwards the Advisory Council on the Treatment of Offenders would draw attention to the importance of effective aftercare and resettlement to reintegrate offenders back into the community.[4] The growing use of parole in much of the English-speaking world had not gone unnoticed by British policy-makers and the Murder *(Abolition of Death Penalty) Act 1965* brought much needed focus on the treatment of prisoners serving long determinate and life sentences.

Each of these concerns must be considered contributory factors in the emergence of parole onto the political agenda, but it is striking just how quickly these drivers of reform were located within a wider narrative bound up with prevailing justifications for punishment, particularly the therapeutic methods associated with the 'rehabilitative ideal'. Since the late nineteenth century, the arc of penal policy in England and Wales had been towards the rehabilitation of offenders and parole was attractive within this context because it gave administrative expression to high-level normative ideals that favoured indeterminacy (in the operation of both determinate and indeterminate sentences) and the personalisation of punishment. Since inmates differed in their response to 'treatment' this necessitated individualized doses of incarceration to allow for the early release of reformed prisoners and extended periods of detention for those requiring more intensive 'support'.

As Dr Rupert Cross, then a Lecturer in Law at Oxford University, would argue in a radio broadcast on the 15th February 1962, '*individualization of punishment is the current demand*' and within such a system sentencing judges are not well placed to adequately predict a prisoner's response to rehabilitation while in prison. Surely it was better that the executive, with access to real-time information on a prisoner's progress and prospects on release, should be able to vary the sentence accordingly?[5]

Since the late nineteenth century, the arc of penal policy in England and Wales had been towards the rehabilitation of offenders ...

**A system takes shape**

By 1964 support for the introduction of a Parole System was gaining traction, but it was not until the work of the Longford Committee that these various policy prescriptions began to coalesce into a workable programme of reform with political impetus. The Study Group, chaired by Lord Longford, was one of several policy reviews established to prepare the Labour Party for government. Published in April 1964, their landmark report, '*Crime: A Challenge to Us All*', set out an ambitious programme of penal reform and endorsed the creation of a modern Parole System for offenders serving medium-to-long prison sentences.[6]

This proposal was adopted almost wholesale by the incoming Labour Government. In August 1965, the Home Secretary, Sir Frank Soskice, wrote to the Cabinet Home Affairs Committee seeking approval to supplement a long-awaited Criminal Justice Bill with a new system of parole. Policy approval was duly granted, but by November 1965 it was clear that the Criminal Justice Bill had lost its place within the Parliamentary timetable. The Prime Minister, Harold Wilson, commanded a wafer-thin majority in Parliament and this political vulnerability greatly inhibited the government's legislative ambitious. As the prospects of a criminal justice bill dimmed, the Home Office moved to regain the initiative with the publication of a new White Paper. Published in December 1965 '*The Adult Offender*' set out the case for a modern Parole System in the following terms,

> *What is proposed is that a prisoner's date of release should be largely dependent upon his response to training and his likely behaviour*

3. Shute, S (2003) The Development of Parole and the Role of Research in its Reform, in Zedner and Ashworth (eds) The Criminological Foundations of Penal Policy: Essays in Honour of Roger Hood. Oxford: Oxford University Press. p.385.
4. Home Office (1958) The After-care and Supervision of Discharged Prisoners. Report of the Advisory Council on the Treatment of Offenders. London: HMSO.
5. Cross, R (1962) Indeterminate Prison Sentences. The Listener, 15 February 1962.
6. Labour Party (1964) Crime: A Challenge to Us All (The Longford Report). London: Labour Party.

*on release. A considerable number of long-term prisoners reach a recognisable peak in their training at which they may respond to generous treatment, but after which, if kept in prison, they may go downhill. To give such prisoners the opportunity of supervised freedom at the right moment may be decisive in securing their return to decent citizenship'.*[7]

Shortly thereafter, the Prime Minister announced a major Cabinet re-shuffle in anticipation of a summer General Election. Roy Jenkins was appointed Home Secretary and this change of leadership, bolstered by a decisive electoral performance in March 1966, helped to unlock a period of unparalleled productivity within the Home Office. It is at this time that the government brought forward proposals to streamline court proceedings and introduce a system of mandatory suspended sentences for all prison sentences of six months or less.

**The Criminal Justice Bill**

The Criminal Justice Bill 1966/1967 received its Second Reading in December 1966. Commending the Bill to the House, Jenkins presented parole as the centrepiece of a reform package that '*revolves around a single theme, that of keeping out of prison those who need not be there*'.[8]

Clause 22 left the decision of whether to release a prisoner on licence wholly at the discretion of the Home Secretary.

The proposals were warmly welcomed in Parliament. At this time, criminal justice was still largely insulated from party-politics and the government's proposals commanded a level of bi-partisan support that is uncommon in contemporary discourse. Yes, there was discussion of recall arrangements and the powers conferred upon the Home Secretary, but the proceedings are notable for the absence of any steadfast ideological opposition. In part, this reflected longstanding Conservative support for the introduction of a Parole System.[9] Briefing the Shadow Cabinet on 30th November 1966, Quintin Hogg (later Lord Hailsham) reflected upon the Bill in the following terms,

*There can be no question of a party attitude on the majority of these proposals. They are essentially matters on which experts differ, and individuals will not be dragooned into a common line. Personally I support the great majority of the changes, for what they are worth (as to which a certain degree of agnosticism is permissible). I am against entrusting the new Parole System to the Secretary of State, and would prefer a Parole Board on the Canadian model.*[10]

As Hogg had predicted, the one major area of contestation concerned the governance arrangements for the new Parole System. As originally introduced in the Commons, Clause 22 of the Bill left the decision of whether to release a prisoner on licence wholly at the discretion of the Home Secretary. This reflected the strong centralising instincts of the Home Office at this time and it is unsurprising that the merits of an independent Parole Board were debated at length during the passage of the Bill.

On Second Reading Quintin Hogg set out the opposition's preference for an independent Parole Board, arguing that it was essential that questions of liberty never became a matter for government ministers. The issue was discussed at length in Commons Committee and while the Home Office 'bill team' were unable to accept the proposed amendments, they were prepared to bring forward their own plans for the incorporation of an independent board. The Home Office honoured this commitment at Report (Commons) with a series of amendments intended to establish a 'Prison Licensing Board', a rather municipal title that was eventually changed to the Parole Board in the House of Lords.

**Cautious first steps**

The *Criminal Justice Act 1967* received Royal Assent in July 1967 and Lord Hunt was appointed the first Chairman of the Parole Board. The choice was symbolic. Jenkins was strongly opposed to a judicial chair and Lord Hunt, who led the 1953 British Expedition to Mount Everest, was a prominent public figure who commanded cross party support. The Parole Board was originally comprised of seventeen members (one of whom resigned) and was required by the Act to include amongst its membership; persons who hold or

7. Home Office (1965) The Adult Offender. London: HMSO. p.4.
8. Hansard: HC Deb 12 December 1966 vol738 c1502.
9. Conservative Party (1966) Crime Knows No Boundaries. London: Conservative Party.
10. The Churchill Archives Centre: Churchill/HLSM 2/42/2/16. The Papers of Lord Hailsham. Unpublished.

have held judicial office; qualified psychiatrists; probation officers and criminologists with a track record in the study of '*delinquency or the treatment of offenders*'.

The first tranche of parole releases took place on 1 April 1968 in order to clear an initial backlog of pending cases. A total of 406 prisoners were recommended for parole, of which 350 cases were approved by the Home Secretary. Thereafter, the total number of cases dealt with by the Parole System increased to around 10,000 cases a year by the mid-1970s, although a significant minority of prisoners continued to exempt themselves from this process. In parallel, the number of prisoners recommended for release by the Parole Board, and latterly by the LRCs under delegated powers, grew steadily from 1,835 in 1969 to 4,029 in 1975, representing an approval rate of approximately 40 per cent.

Establishing an effective system of parole did not prove to be an easy task. The Parole System had been premised upon continuing assessment of prisoners and the provision of high quality paperwork that would enable the Board to operate a sophisticated system of discretionary release. In reality, administrative mismanagement and historic under-investment in prisoner case notes meant that prison records were often of poor quality, incomplete and delivered late to the Parole Board. This state of affairs was further compounded by the fragmentation of criminal justice administration and longstanding communication failures between agencies.

In this context, it was perhaps inevitable that the fledgling Parole System would begin to court controversy. In August 1968, Sydney Williams made front-page news after shooting his wife and her new partner at their home in Staffordshire before committing suicide. Williams had been amongst the first prisoners to be released on licence and it later emerged that neither the Parole Board nor the police had been informed of the repeated threats Williams had made against his wife. This tragedy was preventable and the new Home Secretary James Callaghan ordered an immediate review of the nascent Parole System that resulted in new guidance stressing the importance of data sharing between all criminal justice agencies.

## Conclusion

The enduring interest of these historical events reflects the challenge of unpicking the rather 'nebulous consensus' that characterised the emergence of parole in England and Wales; the different views and agendas of those engaged in the policy-making process, and the somewhat blurred lines between the underlying objectives of parole and its presentation to the public.[11]

Nonetheless, there are good reasons to conclude that parole was, at least initially, rooted in principle and inexorably bound up with the unfolding narrative of the 'rehabilitative ideal'. The likely impact upon the prison population and reductions in expenditure were undoubtedly important considerations and grew in significance as the prison population began to rise in the late 1960s. But these were secondary justifications that helped maintain the momentum for reform once the issue broke onto the political agenda. They were not, in and of themselves, the primary considerations.

Comparative historical analysis draws attention to these important continuities and dislocations with the past. As originally conceived, the Parole System was justified on the basis of a 'recognisable peak' in an individual's rehabilitation where the interests of the community were better served by the careful reintegration of the offender back into the community, rather than continued incarceration and the slow creep of institutionalisation. The system was by no means perfect. Parole was fiercely paternalistic, secretive and only possible within a society that was highly deferential to authority. We have come a long way in this regard, but it is also timely to ask whether the pendulum has swung too far away from the principles that motivated this earlier generation of penal reformers.

As the scope of automatic release has been extended, the caseload of the Parole Board has been repurposed to focus on the growing cohort of prisoners serving life sentences, extended determinate sentences for public protection and some determinate recall cases. With the emergence of a more contested discourse on law and order the burden of proof in these discretionary cases has been almost completely inverted and the onus is now placed firmly on prisoners to demonstrate to the Parole Board that the interests of the community are not better served by their continued, and prolonged incarceration.

11. See Guiney, T (Forthcoming) Getting Out: Early Release in England and Wales, 1960-1995. Oxford: Oxford University Press (Clarendon Studies in Criminology).

# Decisions, decisions, decisions:

## reflections on 50 years of parole

***Dr Roy D King is Professor Emeritus, Wales: Honorary Research Fellow, Cambridge Institute of Criminology.***

**Some time in 1954 I sat cross-legged in Stationers' Company's School assembly hall, an eager third former, watching our end of term treat — the documentary film *The Conquest of Everest*. Little did I think that thirteen years later I would be invited by Roy Jenkins to join the Parole Board as a founder criminologist member under the chairmanship of Lord Hunt who had led that Everest expedition, and his deputy Sir Eustace Roskill. With only sixteen other members we could comfortably sit around a conference table for full board meetings, alternately in the Home Office and the Middle Temple, and once the formalities were over we got to know each other very well. We soon settled down into a pattern of deciding cases in panels of five or six members, with each of us taking turns to chair the panels.**

In those days there were no directions, or even guidelines, from the Secretary of State to steer the Board's decision-making. When the Board was set up the Chairman prepared a statement of general policy guidance, based on his scrutiny of the Parliamentary debates during the passage of the Criminal Justice Bill which had led to the establishment of the Board. It is worth quoting in full. He wrote:

1. Our concern is three-fold:

a) Whether further imprisonment is likely to be helpful or harmful to the prisoner.

b) Whether:
(i) the domestic situation
(ii) the employment prospects
(iii) the after-care provision
are affirmative.

c) Whether, in view of these considerations, the prospect of the prisoner 'going straight' is good, and the risk to the public correspondingly small, during the period of Parole (ie between release and completion of 2/3 of the sentence).

2. We are NOT a judicial body. We should not concern ourselves with the purely judicial question as to whether the prisoner has been sufficiently punished in terms of the period of sentence completed as at the time of his release on parole.

3. We are concerned with the past only in so far as the criminal record, circumstances of the crime and the response to prison treatment bear on the considerations listed in Para.1.

There were lively discussions amongst board members about this interpretation which emphasised the future rather than the past and provided for the protection of the public through a judgement about the risk of further offending. These discussions resulted in a new working policy memorandum. The reference to not being a judicial body was dropped and a major new clause was added — the relevant part of which read as follows:

> *parole, being a method under which sentences of the Courts are varied, must not be divorced entirely from the sentencing policy of the Courts. No hard and fast approach can be made, but it is recognised that there are certain offences which, by their nature, prevalence and circumstances of commission, attract long custodial sentences. This is a feature which the Board in the exercise of its administrative function must take into account when deciding whether or not to recommend a prisoner as suitable for parole.*

I had some reservations about the way in which the new clause and its reference to the length of prison sentences might be interpreted — not least because the proportional nature of the system as originally conceived, with one third of the sentence in custody, and one third on parole with the final third remitted, automatically ensured that those with longer sentences served longer in custody. However, the Annual Report of the Parole Board for 1968 unambiguously stated ;' *no category of crime excludes a prisoner altogether from consideration for parole' and that in any case, 'the type of crime ought not to override all considerations of the offender as an individua*l'. (para. 63).

> *In effect, throughout my first period as a member of the Board it operated as an*

*administrative body with a quasi judicial function. It also operated in ignorance of a great deal of relevant information. In the absence of any direct contact with the prisoner, who was only allowed to make written representations whatever his literacy skills, the process was a purely paper exercise based on parole dossiers which were often brief, uninformative, lacking in important reports and out of date. Panels had to defer many cases submitted to them to get missing probation or psychiatric reports, which exacerbated the problem of coping with a backlog of prisoners which had built up before the Board came into operation and who were well past their parole eligibility dates. And to the chagrin of many members the Board was not initially trusted to deal with life sentence cases and the Home Secretary retained the right to veto its recommendations in determinate sentence cases.*

Thirty years later, in September 2001, when I began a second term, the Board had become much more bureaucratic, and was becoming much more judicial. Not only had it expanded, in response to a vastly increased caseload, to over a hundred members and now needed a large lecture hall to accommodate all of us, but there had been a large amount of legislation and case law to be assimilated and codified. Changes to legislation had meant that determinate sentence prisoners now had to serve half their sentence instead of one third before becoming eligible for parole and there was no doubt that the Board was operating in a much more risk averse climate than had previously prevailed. Thinking in terms of the potential for rehabilitation and resettlement had taken second place to concerns about risks. But the Board no longer made recommendations for release to the Home Secretary in determinate sentence cases except for those serving more than fifteen years.

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The Board had recently decided the very high profile cases of Jon Venables and Robert Thompson and was soon to deal with the decision of the European Court of Human Rights in the case of Stafford which would lead to replacing the paper-based process for mandatory life sentence prisoners with a system of oral hearings. Ironically, at much the same time, the system which had been introduced in 1992, and had run successfully for nearly ten years, whereby prisoners serving determinate sentences were interviewed by a Board member who visited him or her in prison was under threat from a Home Office Review. The interviews gave prisoners an opportunity to present their cases in person to someone directly involved in the process, although it was made plain to all concerned that the interviewer never sat on the panel that actually decided the case. The prisoner was able to comment on the interview report and other Board members at least knew the person who had written it. Moreover, the process not only gave the interviewer the opportunity to check that the dossier was complete and to ask for further reports as necessary, but also to see something of the reality of prison life which they could never get from an impersonal paper review. It seemed to me that it was a win, win situation but the impassioned pleas from members, including myself in a detailed written submission, to retain the interviews were to no avail. They were abandoned for determinate sentence cases to save £750,000 a year before I left the Board in 2006. This was in my view, and that of most other members, a sad day for the Parole Board, not least for the loss of a civilising and humane element which had been entirely lacking in my first term. In their place the Board had to make do with a newly designed dossier which included a new Offender Assessment System (OASYS) document which Board members has some difficulty in finding the data they needed.

Policy discussions at Full Board meetings were no longer practicable and these now took place in an Advisory Committee including two full time salaried members who were charged with, among other things, the training and appraisal of new members and the organisation of conferences. This was soon to be replaced by a much more structured Management Board with three subcommittees inelegantly styled as being concerned with Audit and Risk Management, Performance and Development, and Quality and Standards.

Although the proportion of judicial members had remained much the same or had somewhat increased the proportion of other 'statutory' members — psychiatrists, probation officers and criminologists had somewhat declined. Whereas in the early days appointments to the Board were made, presumably, on the basis of 'soundings' taken by the Home Office from well connected and influential personages now would-be recruits had to apply for membership and be subjected to screening procedures and interviews. and if

appointed, to training and appraisal of performance. The process produced a Board which was somewhat more representative of the general population in several respects and certainly better informed about a process which had in so many ways become much more complex. Importantly successive Secretaries of State had promulgated a comprehensive system of Directions which the Board was required to consider and to demonstrate that it had done so in giving detailed reasons for its decisions. All members were presented with a laminated checklist for applying the Secretary of State's Directions to DCR Cases and an even longer list for lifer cases, both of which stressed that '*failure to comply with them can leave the Board open to judicial review*'. As a result panels had to agree for each case a reasoned and carefully worded decision which could take as much as three sides of A4 and could rarely be contained on a single sheet. In fact judicial reviews of decisions whilst not uncommon were not all that frequent.

The Secretary of State's Directions raised, not for the first time, the question of the extent to which the Board was genuinely independent or merely a creature of the government. The answer almost certainly lies somewhere in between the two: on the one hand it could be argued that the Secretary of State only required that the Board give its reasons for deciding one way or another having given due consideration to the matters listed; on the other it could be argued that the Board was being given a rather clear steer. It was certainly a much more circumscribed process than it had been originally.

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Scrolling forward another dozen years from the time I last served on the Board we find ourselves at the time of writing in the midst of controversy concerning the recommendation to release John Worboys which has produced a remarkable backlash not just from his victims who have an understandable concern, but more widely in what threatens to become, perhaps has already become, a 'moral panic'. It would be inappropriate for me to enter into discussion of the merits or otherwise of that decision. But it may be useful to reflect on how far we have come on these matters since those very early days of the parole scheme.

Notwithstanding what had been said in internal documents and those first Annual Reports there was always a tendency among the original Board members to proceed very conservatively, giving excessive weight to the gravity of the past offence at the expense of assessing future risk in coming to their recommendations. During my time on the Board I wrote a number of brief papers for the internal consideration of members. One of the first of these was an argument for giving reasons for decisions. Initially panels simply agreed on a yes or no verdict and although different reasons were of course expressed, or could be inferred, during discussions they were not written down. My fellow criminologist member, Donald West, had conducted a small pilot study trying to tease out the factors that led to members' recommendations but so far as I am aware this was never followed up. The judges were particularly opposed to giving reasons on the grounds that this would only encourage challenges. In my paper I argued that if we were not able or prepared to explain, even to ourselves, how and why we reached decisions then we could hardly be in a position to evaluate our effectiveness or to learn from our own experience. The point was eventually accepted and a rudimentary system of recording reasons was introduced although it tended to be brief and formulaic and it was not implemented consistently in all panels.

A second paper urged the inclusion in the dossiers of information about the category of statistical risk of re-offending which applied to each offender based on work carried out by the Home Office Research Unit (as it then was) on reconviction rates within two years of release. This information was eventually included in most dossiers as a general guide to one element of risk which could bolster the clinical judgement based on reports of a prisoner's progress whilst in custody, the domestic circumstances, job prospects and likely response to supervision and so on. However, some members of the Board were apt to use these scores as though they were an individual prediction of success and they were widely referred to by members and by the Home Office as 'prediction scores'.

After some six months or so of operating this system I wrote a further paper, again just for internal use, under the title *Gravity of Past Offence and Gravity of Future Risk as Considerations in Granting Parole*. It was based on an analysis of decisions made at the panels I attended during the four months from November 1969 through February 1970. This drew attention to the need to distinguish between the likelihood of any offence being committed during the parole period (which, being

shorter in many cases, might often be much lower than the two year risk) and the possible *gravity of the risk* to the public that such an offence might entail. I argued that '*the prediction scores do give far and away the most accurate guide to the chances that the public will be put at risk' ...* but .. *'there are lots of things they don't tell us which still leaves room for judgement for example although he is not likely to offend again, if he did, would it be trivial or very serious indeed?*'

In fact the panels which I attended during that period paid rather little attention to risk as measured by the statistical 'prediction' scores. In November 1969 the prisoners released had an average risk of reconviction within two years of release of 34.7 per cent whereas the likelihood of reconviction for those refused parole was 40.2 per cent. But in the following three months that situation was reversed with parolees actually having higher prediction scores than those refused parole. The average predicted reconviction rate of those paroled in December was 42.0 per cent against an average of 30.9 per cent for those refused parole. In January 1970 the figures were 45.1 per cent for parolees against 38.5 per cent for those refused and in February the gap had narrowed to 36.2 per cent against 34.0 per cent.

The data also showed that decisions to refuse parole had been based not so much on an assessment of the risk to the public but had rather been influenced by consideration of the perceived gravity of the original offence — at least if we may take length of sentence as a reasonable proxy for the gravity of offence. The average length of sentence of those paroled in the four months from November 1969 to February 1970 ranged from 2.6 years to 3.3 years. The average length of sentence of those refused parole on the same panels ranged from 3.9 years to 4.1 years.

It should be remembered that in the early days of parole the caseload of the national Board was determined by the Local Review Committees (LRCs) who each put forward what they thought of as the best risks from their often very different populations. By the time of my analysis additional cases were brought forward by the parole Unit at the Home Office on the basis of their prediction scores or where there were other special reasons for drawing them to the attention of the Board. Since the Local Review Committees have long ceased to exist any analysis of the way the Board overturned LRC decisions is of largely academic interest.

Whilst it would be inappropriate to draw firm conclusions from such a small number of possibly unrepresentative panels, I tentatively suggested that there was reason for thinking that the Board had become more conservative in recent months '*paying increased attention to the gravity of the offence*'. And in a footnote I suggested that adverse publicity in relation to a recently released offender (Harding) may well have affected parole decision-making — at least temporarily in the months immediately after the publicity thus denying some potentially good risk offenders the possibility of parole. Given the current criticism of the Board, at the time of writing, over the panel decision to release John Worboys it may be worth re-stating my own position written all those years ago. I wrote as follows:

> *I always make the basic assumption that the sentence of the Court was right at the time at which it was given. If that is so then ... to propose as some members of the Board have proposed that this man 'ought to serve more of his sentence' would amount to re-writing the provisions of the 1967 Act. ... It would seem more in accordance with the legislation if, in most cases, we were to ignore the gravity of the offence. Parole decisions would be made in relation to all the other relevant criteria, and careful attention would be paid to the protection of the public by assessing the* ***kind*** *(emphasis added) of risk involved in releasing any individual. In any particular case the chance of reconviction might be tolerable but if things went wrong the results might be catastrophic and such as to suggest he would bring the scheme into disrepute.*
>
> And in my footnote I added:
>
> *It is worth remembering that there have been only three, or at most four, such cases out of more than 3,000 prisoners paroled. The scheme should be well able to withstand what might be called a 'dramatic failure rate' of less than 0.1 per cent, even while that small number be greatly regretted.*

**It is tempting to end this piece by simply noting that** *plus ça change, plus c'est la même chose*. However, the serious failure rate for parolees is still under 1 per cent and it would be a great pity if a moral panic were to lead to changes which meant that otherwise good risks were denied the opportunity for parole.

# Observational research into oral hearings:

## 1999 and 2017 compared

***Nicola Padfield*** *is Professor of Criminal and Penal Justice, University of Cambridge and Master of Fitzwilliam College, Cambridge.*

**In 1999 Alison Liebling, Helen Arnold and I carried out the first observational study of Discretionary Lifer Panels of the Parole Board.[1] In 2016-17, I carried out further research into what have now become 'oral hearings'.[2] In this article, I compare the two projects. In many ways, the process and style of the panels has changed remarkably little, with the result that most of the conceptual issues raised in 1999 remain pertinent today. But other changes also repay reflection — not least the membership of the Board, which is very different.**

### Background

The Parole Board was created in 1967 to advise the Home Secretary on the release of longer-term prisoners. Today, it is no longer advisory: it has the power to direct the release of certain prisoners, particularly those serving indeterminate sentences (including several thousand post-tariff IPP prisoners), and those recalled to prison during their period on license, as well as a smaller number of determinate and extended sentence prisoners.

Another big change has been the move towards oral hearings. In the early days, an individual member of the Parole Board would interview a prisoner and report to the panel who then considered the case on the papers in London. Discretionary Lifer Panels were introduced in 1992 following the decision of the European Court of Human Rights in *Thynne, Wilson and Gunnell* (1990) 13 EHRR 666.[3] This decision established the right of those subject to discretionary life sentences to regular and independent review once the tariff (punishment) part of their sentence had ended. This right was extended to prisoners convicted of murder when children (under 18) in 1997, and to adults convicted of murder in 2003.[4]

In this time, the prison population has grown enormously. Between 1993 and 2012 it more than doubled, to over 86,000. The number and proportion serving indeterminate or life sentences has also increased: there were 566 indeterminate sentence prisoners in 1970, 2,795 in 1990 and 11,359 in 2016.[5] Although Imprisonment for Public Protection (IPP), a form of life sentence, was abolished in 2012, in September 2017, there were still 3,162 IPP prisoners in prison serving the sentence.[6]

The number of hearings has grown as much as the size of the prison population. In the 1990s, the Parole Board considered about 200 discretionary lifer cases every year. In 2016, the Board completed 5,165 oral hearings.[8]7

### The oral hearing process in 1999

Discretionary Lifer Panels (DLPs) in 1999 were governed by s. 28-34 of the Crime (Sentences) Act 1997 and the Parole Rules 1997. They were always chaired by a judge, someone 'who holds or has held judicial office' (Rule 3). The second member was generally a psychiatrist (unless there was conclusive medical evidence that there was no serious concern about the prisoner's state of mind, when a psychologist or probation officer could be appointed instead), and the third a lay member, a criminologist, or a psychologist or probation officer (where he or she was not already the second member). Once a case had been

1. See Home Office Research Study No 213 (2000), available at http://library.college.police.uk/docs/hors/hors213.pdf
2. Available at http://ssrn.com/abstract=3081035 and http://ssrn.com/abstract=3081039
3. See s. 34 of the Criminal Justice Act 1991.
4. Attempts to roll back the right to an oral hearing by the Board have been largely resisted by the Supreme Court: see *Smith and West* [2005] UKHL 1; *Osborn and Booth* [2013] UKSC 61.
5. There are probably prisoners today serving at least 11 different sorts of life sentence (see Padfield, N (2016) Justifying Indeterminate Detention – on what grounds? *Criminal Law Review* 795-820, but figures are not easily found: see Padfield and Liebling (2000) at footnote 2 above; HC Briefing Paper (2017) UK Prison Population Statistics; annual Offender Management Statistics; Ministry of Justice (2013) Story of the prison population 1993-2012, England and Wales (at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218185/story-prison-population.pdf)
6. The number had decreased by 48% since the June 2012 peak of 6,080. But the number of IPP prisoners who have been recalled to custody continues to increase; in the past year, the recalled IPP population has grown by 20% (to 792).
7. See Parole Board Annual Report 2016-17 (at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/631425/Parole_Board_Annual_Review_Web_Accessible_Version.pdf)

listed for a hearing, the dossier had to be served on the prisoner within eight weeks, and both parties had to submit names of witnesses within 12 weeks; the prisoner had to serve any documentary evidence at least 14 days before the hearing. The Chairman of the panel could give directions for the conduct of the case, and these directions could be appealed to the Chairman of the Parole Board. The parties had to have at least three weeks' notice of the actual date of the hearing.

In 1999, there were, of course, no hearings by way of video link. The panel attended the prisoner's prison, always accompanied by an administrator, a panel secretary. Their job was 'to ensure that all panels are conducted effectively by the due date, in accordance with internal instructions, and provide sound, considered and thorough advice and guidance to the panel members, particularly in respect of drafting their decisions and recommendations…ensure panel decisions adhere to current guidelines and directions and are circulated within the required time-scale'.[8] The panel secretaries we observed were successful in achieving the logistical demands of their job, arranging rooms, lunch and so on. However, there was wide variation in the way in which they interpreted the other parts of their role. It is perhaps not surprising that they no longer feature, victims of 'austerity justice'.

The extent to which (and competence with which) the Lifer Governors fulfilled the role varied enormously.

As well as a panel secretary, each panel was also attended by the 'Secretary of State's Representative' (a lifer governor) who would present the Secretary's view, often recommending release. The Lifer Governor has also disappeared from the process today. He or she was then expected to question witnesses, including the prisoner, sum up to the panel with a closing speech, remind the panel of their duty to protect the public, etc. The extent to which (and competence with which) the Lifer Governors fulfilled the role varied enormously — some clearly hated it. It had not originally been the Prison Service's expectation that the lifer governor, as the Secretary of State's representative, would have to be 'the legal representative' for the State. In 1999, we concluded that they had had this role forced upon them largely because of the expectation of the judges, who were used to an adversarial court room. Interestingly, the Secretary of State is only occasionally represented nowadays (never in my recent study), and only in high profile cases, when someone from Ministerial headquarters will represent the Secretary of State.

The process in 1999 was more 'adversarial' than today — 'witnesses were normally examined first by the person who had asked them to attend, then by the other party, and then by the panel' (p.59). We commented then that 'sometimes the panel was encouraged by the legal representative to lead the questioning'. This has become normal practice. In 1999, the prisoner was told that they would get the decision within 7 days. Drafting happened on the spot. The judge would begin and the other panel members chipped in. The panel secretary took it away at the end, to tidy it up and to post it off.

**The 1999 research**

We observed 52 different cases over a six-month period. This involved 30 different panels, all chaired by a judge (we observed 15 different judges) in 22 different prisons. Of the 52 cases, there was only one woman; 8 were recalled prisoners, 11 were detained during Her Majesty's pleasure (i.e. convicted of murder under the age of 18), and 33 were discretionary lifers. Follow-up interviews were carried out with 40 participants.[9] The aim was to explore, amongst other things, whether the process was fair, effective and consistent. To help our analysis, we identified seven key conceptual issues or concerns, which I simply mention here since all remain relevant today:

(i) The significance of a prisoner being 'post-tariff'.
(ii) Giving proper recognition to competing rights.
(iii) The Parole Board as court.
(iv) The relationship between the Parole Board and the Prison and Probation Services.
(v) Burdens of proof.
(vi) An inquisitorial or an adversarial process?
(vii) The status of 'risk factors' as indicators of risk.

Discussion of these seven key conceptual issues helped us towards our conclusions. 'The power of the Parole Board to direct release was seriously constrained by powers and inertias lying elsewhere. If a narrow view of the process is taken, then the DLP process is fair. The quality of the decision-making process was high and

8. Job description cited in Padfield and Liebling (2000), p.100.
9. Five judges, four psychiatrists, four independent members, two panel secretaries, seven prisoners, four legal representatives, five lifer governors/liaison officers, two probation officers, two psychologists and five others involved in the process.

decisions were reached carefully and after thorough consideration of all the available information. Yet when seen in its fuller context, it seemed less fair. The significance of a prisoner being post-tariff and the dual task of the DLP needed emphasising'.

The recall process raised particular concerns: 'Whilst recall hearings were conducted similarly to ordinary DLPs, the issues raised were very different. In a recall case, the panel was being asked not only to assess risk, but to confirm the recall of someone who had previously been deemed safe to release if managed adequately in the community. The reality of power in recall cases seemed to lie with the Probation Service. The human rights implications of this are too easily ignored. The management of risk needs carefully distinguishing from the assessment of risk'.

We also considered 'value for money': 'Given the human rights obligations of the Parole Board, the relative expense of the process is justified. Resources are wasted in delays and deferrals, but if the positive duty on the Prison Service to move post-tariff prisoners swiftly towards release were acted on, this would save money. Whilst Parliament seems to have tipped the scales in favour of protecting the public, the competing rights of the prisoner need all the more protection'.

The management of risk needs carefully distinguishing from the assessment of risk.

**The 2016/17 research**

In the summer of 2016, I observed 19 oral hearings at the 'hub' at the Parole Board headquarters, where cases are heard by three-way video link: prisoner and his/her lawyer and Offender Supervisor(OS) in the prison, Offender Manager (OM) at their probation office, and the panel sitting in the London Hub. As well as observing hearings, I interviewed several Parole Board members. Then, early in 2017, I observed a further 17 oral hearings at 11 different prisons, and was able to conduct further interviews with a variety of participants in the parole process, including prisoners. The 36 cases all involved male prisoners. Ten prisoners were serving mandatory life sentences for murder (one of whom had previously been released and had then been recalled to prison); 24 were serving imprisonment for public protection (IPP, of whom 6 had been recalled), and 2 were determinate sentence prisoners.

As in 1999, it was impossible, of course, to know whether decisions were 'correct'. In practice, 'success' in being 'moved on' appeared to be related less to a prisoner's personal characteristics, and more to overcoming a bureaucratic system which seemed to tolerate delays and inertia as 'normal'. Luck played a significant role, for example, in whether prisoners found staff who had the time and commitment to 'champion' their progress. Of course, the process should not depend on luck. Prisoners spoke of repeat cancellations, of a system in which the left hand often didn't know what the right was doing.

One feature was the high number of on-the-day deferrals and adjournments. My study is not untypical: in February 2017, the National Audit Office published an investigation into the Parole Board.[10] *Of the 2,117 oral cases outstanding in September 2016, 13 per cent were more than a year past their target date for a hearing. A further 16 per cent were more than six months past their target date. The oldest of the outstanding cases in September 2016 had an original target date in 2009, with another 404 cases having target dates in 2015 or earlier*.

The 2017 research asked whether it was fair to identify a *culture* of delay within both prison and parole processes. As in 1999, it felt in 2017 as though the Board was not sufficiently 'powerful' or indeed 'independent' to drive the process. There needed to be a much clearer commitment to avoid delays and to create a culture of urgency (to keep the prisoner 'moving on', both within the prison and probation system and within the Parole Board. I concluded that the Board's leadership (of the parole process) and independence within the broader penal system needed to be strengthened. The relationship between the Prison Service's headquarters (the Public Protection Casework Section or PPCS) and the Parole Board, and between PPCS and Offender Management Units (OMUs) in individual prisons needed to be reviewed; and the constitution of the Parole Board as a court, outside the Ministry of Justice, giving a proper priority to safeguarding the prisoner's right to liberty (a clear burden on the state to prove the necessity of detention) was proposed. Other 'process' improvements were recommended:

- a clear burden on the state to prove the necessity of detention;
- a commitment to avoid delays and to create a culture of urgency: all adjournments and deferrals should be subject to critical review;
- a review of the style and content of dossiers;

10. Available at https://www.nao.org.uk/report/investigation-into-the-parole-board/

- ❒ a review of the style of decision letters, ensuring greater formality and that the names of panel members appear on the face of the record.

### 1999 and 2017 compared

Whether or not the Parole Board is 'successful' in its mission depends on the criminal justice system which surrounds it, on the powers and inertias which lie elsewhere. The prison system in 2016-17 seemed to be much more disordered that it was in 1999 and desperately underfunded. How can a prisoner prepare convincingly for release in a prison which is basically unsafe?[11] The prison population is too large, and/or the system too under-staffed, to achieve its rehabilitative ambitions. Parole hearings are but one stage in a long and multi-stage process.

Some process concerns remain unchanged in 20 years:

- The assessment of risk: the 'status' of risk factors in the decision to release. Panels today focus on 'risk' quite as much as they did in 1999, despite the fact that there is greater understanding of the impossibility of predicting with any certainty the likelihood of future dangerous acts. Hence the suggestion in 1999 that decisions on risk should be separated from decisions about the management of the prisoner.
- The rights of prisoners: these could be swamped by the focus on 'risk'. Hence our seven key conceptual concerns in 1999 and my concern in 2017 that the Board gave too much weight to the protection of the public, and not enough to the rights of post-tariff offenders.
- The status of the Parole Board: in many ways, it felt less court-like in 2017. For example, the Government still initiates reviews, issues directions and now houses the Parole Board within the Ministry of Justice. Judges are much rarer. Whilst the process has become more inquisitorial, this has not focused attention on the burden of proof — the balance remains firmly in favour of public protection. It seemed obvious to us then, and to me now, that there should be a presumption of release for post-tariff lifers. Denial of release should be clearly explained.

Parole processes remain private, and have opened up very little. But it seems to me right that victims should be largely invisible at the hearing, as long as those victims (or their relatives) who wish to be kept informed are both informed and supported, their expectations of the parole process carefully 'managed'. The process is far from transparent — there needs to be a review of the format and distribution of decision 'letters', for example.[12]

So, what are the key differences between 1999 and today? Perhaps the most obvious was the make-up of panels. Then they were always chaired by a judge and nearly always involved a psychiatrist member. All members of the Board appeared to have some criminal justice expertise. Nowadays panels are only rarely chaired by a judge, and psychiatrists are even rarer. Three leading US experts have recently called for the composition of US Parole Boards to be reconstituted to ensure members possess a relevant criminology, social science or law degree, and at least five years of experience in corrections or criminal justice.[13] I was surprised in 2016 at the shrinking use of judges, psychiatrists and other criminal justice experts and would welcome a review of the skills required of Parole Board members (including a study of the impact on the process of the background of panel members).

How good is good enough? I was unimpressed by hearings held by video link for a variety of reasons — but these are probably 'fairer' than decisions taken on the basis of papers only. A question raised in both studies was whether it is 'efficient', given the thorough and resource-intensive system of review involved in oral hearings, that panels should be discouraged from making broader recommendations about a prisoner's progress. In 1999, there was always a senior member of staff (normally a 'Lifer Governor') present to present the case for the Secretary of State for Justice. By 2016, this role had been abolished in the vast majority of cases. Was it a waste of time/money? It is perhaps symptomatic of a degrading of the parole process that the prison's senior management team is no longer involved in parole hearings.

Today the 'stop-start' nature of the process is particularly obvious. Prisoners were often in the dark about delays, with little idea of how their case might be progressing. After an 'unsuccessful' Parole Board hearing, it would appear that a prisoner's case then sinks back into the background — the hard-pressed system moves on to the next case. Prisoners were resigned to a system which they could not control. Would more independent support and advice, maintained throughout their sentence, help? Or should the Parole Board actively monitor cases between hearings? The occasion of the Parole Board's 50th anniversary is a timely occasion to conduct a major review of what is a fundamentally important part of the criminal justice system.

11. See, for example, the Chief Inspector of Prisons' statement that many prisons are unacceptably violent and dangerous places – and getting worse, Annual Report 2016-17, at p.7: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629719/hmip-annual-report-2016-17.pdf
12. They are somewhat informal, often much longer nowadays and less likely to be used to attempt to push forwards a 'stuck' prisoner (see p. 72-73 of the earlier Report, see fn 2).
13. Rhine, E, Petersilia, J and Reitz, K (2017) 'The Future of Parole Release' 46 *Crime and Justice* 279.

# To Release or not to Release?

## A study of Parole Board decision-making at paper hearings for recalled determinate sentence prisoners

***Sue Power*** *is in an independent Parole Board Member for England and Wales. She has just completed a masters in Applied Criminology at Cambridge University.*

### Introduction

**For several years the Parole Board's re-release rate at paper reviews of determinate sentence recalled prisoners has been falling, currently standing at 3.8 per cent. Historically, little attention has been paid to this aspect of Parole Board work, despite the fact that nearly 10,000 prisoners who have been recalled on determinate sentences are dealt with by the Parole Board each year, the majority at a paper review. This article details the findings of a research project which set out to explore some of the reasons behind this falling re-release rate.**

The research methods consisted of individual semi-structured interviews with 20 Parole Board members, and two focus groups with a total of 7 members. The data was analysed using a grounded theory approach. Illustrative quotes from interviewees are included throughout. The research process also involved observation of Parole Board and PPCS administrative teams looking at processes around recall. The research aimed to answer two questions:

- How do Parole Board members understand risk when making decisions about the re-release of determinate sentence recalled prisoners on paper reviews?
- How does Parole Board members' understanding of risk shape their practice?

The 27 members who participated accounted for over 40 per cent of the membership who undertook paper reviews of determinate sentence prisoners at the time of the research.[1]

The rates of re-release for determinate sentence recalled prisoners at oral hearings are significantly higher (over 50 per cent) than at paper reviews. The paper seeks to argue that present arrangements may give rise to a tension between pressure to achieve an early review on the papers and the lack of information available to the single member at that time. This tension may contribute to decisions not to release. It considers whether re-release decisions on the papers are currently being taken at the optimum time and with the right information to give assurance that risk assessment is being undertaken most effectively by the Parole Board.

> *The Parole Board is an independent body that works with its criminal justice partners to protect the public by risk assessing prisoners to decide whether they can be safely released into the community* [2]

### Context

The headline above is both the mission statement of the Parole Board and a description of what it does. The job of the Parole Board is twofold: firstly, to review the cases of indeterminate sentence prisoners to decide whether they should remain in custody, should progress to open conditions or are safe to be released; and secondly, to review the cases of indeterminate and determinate sentence prisoners who, having been released, are recalled from the community back into custody to decide whether they should be re-released. Traditionally, the focus of the Parole Board, of society and of academic research has been on the decisions made about the release or progression of indeterminate sentence prisoners and/or practice at oral hearings. There has been little attention paid either to Parole Board practice in relation to decision-making about recalled determinate sentence prisoners or to decision-making at paper reviews. Yet every year nearly 10,000 of these cases come before the Parole Board for decision following recall and the vast majority of them are decided at a paper review by a single member of the Board.

Prisoners are returned to custody for a variety of reasons including allegations of further offending or failure to abide by licence conditions. If they receive a negative decision from the Parole Board following review of their recall, they will not be referred back to the Board for further review unless at least 12 months remain until their sentence ends. As a result, many determinate sentence prisoners will have only one

1. At the time of the research only about 60 Parole Board members regularly undertook paper reviews. Since the research a further 104 Parole Board members have been appointed, all of whom will carry out this work.
2. Parole Board Annual Report and Accounts 2016/17.

opportunity for review before the expiry date of their sentence.

As well as the personal impact of the decision to release or not on individual prisoners and their families and the effect on local communities and wider society, the work of the Parole Board plays an important part in the management of the prison population. England and Wales has the highest imprisonment rate of any country in Western Europe at 145 prisoners per 100,000 population.[3] With the prison population currently standing at 84,550[4] and with 'startling increases in all types of violence'[5] evident in prisons in England and Wales, the role of the Parole Board in directing the release of those who it considers to be safely manageable in the community is of increasing relevance.

Following the recall of a determinate sentence prisoner, the Secretary of State, through the Public Protection Casework Section of the Ministry of Justice (PPCS), has 28 days to refer a case to the Parole Board for a decision about re-release unless an order for executive re-release has been made. All cases sent to the Parole Board for consideration commence with a paper review conducted by a single member. The decision regarding the re-release of a recalled determinate sentence prisoner can be made solely on the basis of the recall dossier which is prepared by PPCS following application for recall from the supervising Offender Manager. The Parole Board member who reviews the case has a number of options open to them at that point:

- ❒ to release, either immediately or at a future date
- ❒ to make no direction for release
- ❒ to send the case to an oral hearing
- ❒ to adjourn or defer for further information to be provided to make one of the decisions above

The vast majority of the determinate sentence recall cases are concluded at the paper review with no direction for re-release.[6]

**The issue**

The size of the recalled prisoner population has risen every year from 1993 to 2015.[7] Although falling slightly over past two years,[8] there were 6,186 recalled prisoners in England and Wales in September 2017. More recently, there has been a slight drop in the number of recalls of those sentenced to over 12 months imprisonment.

The re-release rate of recalled determinate sentence prisoners at a paper review has been falling over recent years and currently stands at 3.8 per cent — in 2011 the re-release rate was 10 per cent.[10] The re-release rate at oral hearings for this group of prisoners is significantly higher at over 50 per cent.[11] On the face of it, two main issues seem to account for the falling re-release rates at paper reviews — the first is the introduction of fixed term recalls in 2008 and the increasing use of executive re-release by the Secretary of State since 2012 which means that a large number of 'straightforward' recalls are dealt with in advance of referral to the Parole Board.[12] The effect of these two initiatives is that increasingly the Parole Board deals only with those recall cases which show greater complexity or where the risk of serious harm is judged as high and re-release is not supported by the Probation Service.

The re-release rate of recalled determinate sentence prisoners at a paper review has been falling over recent years and currently stands at 3.8 per cent ...

The second issue is the impact of the 2013 Supreme Court ruling in the case of Osborn, Booth and Reilly (OBR)[13] which states that, amongst other factors, fairness requires that prisoners should have an oral hearing where they request one. Following OBR there was a sharp increase in the number of cases sent to oral hearing by the single member as the Parole Board sought to understand and apply that ruling properly.

3. Bromley Briefings 2017.
4. Ministry of Justice *prison population figures* 5th January 2018.
5. HM Chief Inspector of Prisons (2017) Annual Report 2016-17 HMSO p 7.
6. Parole Board Annual Report and Accounts 2016/17 p 33 6873 negative decisions were issued.
7. Ministry of Justice *'The story of the prison population 1993 – 2012'* HMSO January 2013.
8. Ministry of Justice *Offender Management Quarterly statistics April – June 2017* 26 October 2017.
9. Ministry of Justice *Offender Management Quarterly statistics April – June 2017* 26 October 2017.
10. Parole Board Annual Report and Accounts 2016/17.
11. Parole Board Annual Report and Accounts 2016/17.
12. Some 1000 prisoners were executively released by the Secretary of State in 2016 (National Offender Management Service Recall and Release project report 2016).
13. Osborn, Booth and Reilly [2013] UKSC 61.

Prior to this ruling, it was very unusual for a Parole Board to send a recalled determinate sentence prisoner to an oral hearing.[14] It is possible that members may be increasingly sending those cases to oral hearings which they think might have a realistic option of release rather than making that decision on the papers. Cases can also be sent to oral hearing on request from a prisoner following a decision not to direct re-release on the papers. The most recent Parole Board figures show that of the cases receiving a negative decision on papers, just over 11 per cent of those cases requested an oral hearing (and 55 per cent of those requests were granted).[15]

Other factors may also be at work. One is the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in 2012 which confirmed that the same test for release should be applied across all categories of prisoner assessed by the Board namely, *'that it is necessary for the protection of the public that (the prisoner) remains confined'*. Prior to this the Parole Board was able to balance the safe manageability of risks in the community with the benefits of continued supervision. By removing consideration of benefits to individual prisoners, this narrower focus on public protection is itself likely to have had a negative impact on re-release rates.

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**The process**

Recall dossiers generally consist of Part A Recall and Part B Risk Management reports completed by the Offender Manager; previous convictions; a copy of the licence and the OASys risk management plan. Information from the prison is seldom received and representations against recall from the prisoner are infrequent. As a result, the information in the dossier is limited and the only view put forward is generally that of the Probation Service, which is the enforcing agency.

The Part B report is submitted by the Offender Manager only 14 days after the recall has been authorised by PPCS — in practice this timescale means that the Offender Manager has often not been able to make contact with the prisoner since his/her return to custody and has no further information to add to the Part A Recall Report. Hence there is frequently no updated information available on the recall events which means that in many cases Parole Board members are making decisions based only on the allegations which have led to the recall. Not only do most recall dossiers lack personal or legal representations from the prisoner against the recall — in some cases it appears that the prisoner only knew that a review of their recall had taken place when they received the negative decision.[16]

**The findings**

The findings of the research drew out three main areas:

- ❒ Risk and public protection
- ❒ The independence of the Parole Board and decision-making based on evidence and the information in the dossier
- ❒ Process and practice issues

*Risk and public protection*

It was clear from the interviews that Parole Board members took their responsibilities very seriously and were acutely conscious that they were making decisions which affected the liberty of another human being and of the consequences for the individuals concerned. Without exception interviewees considered that the role of the Parole Board was to protect the public.

> *The test for release being — is it necessary for the protection of the public that you should stay in custody — well that means exactly what it says on the tin* Member 58.

Whilst this clear focus on public protection outweighed considerations of the rehabilitation of the offender, members also showed a strong awareness of the developing theories regarding desistance. When asked if they had any worries in their decision-making, at least as many members identified not releasing someone who could have been safely managed in the community as releasing someone who went on to commit a serious offence.

14. In 2012/13 42 cases were sent to oral hearings; in 2017, it was 1,757 p33 Parole Board Annual Report and Accounts 2016/17.
15. Parole Board Annual Report and Accounts 2016/17.
16. Padfield, N, 2011 Understanding Recall. *University of Cambridge Faculty of Law Research Paper*, (2).

*...definitely the best way not to protect the public is to keep people in custody who don't need to be there* Member 12.

*The public is finally best protected if we can help people who pose a risk get better at managing and reducing their own risk…* Member 30.

*They're stuffed — if they've only got a year left they are not going to get looked at again. I am a firm believer that if you can get supervision to work, they are better out than in* Member 20.

This is an important area for the Parole Board which must balance competing concerns of individual discretion, independence and public confidence in decisions made. In 2007 Mulgan[17] pointed out that 'the big dilemmas are not between right and wrong, but between right and right', in other words there are competing claims for justice.

In terms of understanding risk some common themes emerged. Members identified harm, likelihood and imminence as the key factors in their decision-making. Members were universally clear that risk of harm was more important than risk of reoffending in their decisions. Hence, they were able to tolerate the prospect of releasing prisoners who might go on to reoffend where that re-offence was unlikely to involve harm. However, wide variation was apparent among interviewees in the identification of and importance given to key factors in decision-making. Whilst all identified past patterns of behaviour as key in understanding current behaviour, for some interviewees this could result in an emphasis on looking back rather than looking forward. A number of interviewees used the adage 'the best predictor of future behaviour is past behaviour' However, some noted that holding this view could preclude consideration of the possibility of change for individuals. None of the members interviewed felt that risk could be eliminated, only that it could be managed.

*The independence of the Parole Board and decision-making based on evidence and the information in the dossier*

It was clear that members felt that the work of the Board was poorly understood in wider society and there was little tolerance for errors.

*The Parole Board only gets attention when someone reoffends after being released from prison. The mission statement is about protecting the public* Member 53.

Another member, reflecting on their sense of needing to be more careful, referred to 'the Daily Mail effect' in terms of poor tolerance in society for prisoners' failure to comply with licence requirements, echoing the view of Clear and Cadora (2001)[18] that even small evidence of risk provokes an overwhelmingly punitive response within society in general.

It was clear that members felt that the work of the Board was poorly understood in wider society...

However, some members saw recall for breach of licence conditions not as evidence of failure but as evidence that the risk management plan had worked by detecting rising risk and therefore that it was sufficiently robust to support re-release. Other members took the opposite position that the recall was of itself evidence that the risk management plan had failed; these members wanted to see more or tighter licence conditions put in place to ensure further compliance.

It was apparent that most members follow the recommendation of the Offender Manager in making their decision, seeing them as the expert in risk assessment and the professional with the responsibility for managing the risk in the community. This is confirmed by the other studies into Parole Board decision-making practice.[19, 20] Whilst this may signal confidence in the Probation Service, it begs the question about the independence of the Parole Board's decision-making, an independence of which members were highly conscious and on which they placed great value. Members spoke of the importance of making decisions based on evidence. However, reflecting on going against an Offender Manager's recommendation not to release, a member said:

17. Mulgan, G. (2007) *Good and Bad Power: The ideals and betrayals of government*. Penguin UK.
18. Clear, T.R. and Cadora, E., 2001. Risk and correctional practice. *Crime, risk and justice: The politics of crime control in liberal democracies*, pp.51-67.
19. Ministry of Justice The decision-making at parole reviews *Research summary 1/12* February 2012.
20. Forde, R (2014) Risk Assessment in Parole Decisions: A study of life sentence prisoners in England and Wales. *PhD submitted to Birmingham University*.

*it would be a brave Parole Board member who would release someone on the papers in those circumstances* Member 72.

Another interviewee said,

*It would be very rare for me to release someone on the papers against an OM's decision* Member 74.

Members were very conscious of a fine balance between the need for a timely review of detention following recall and the provision of sufficient information to make a decision. The high premium placed on the independence of the Parole Board was also expressed in a feeling that in some cases it was this independence that was instrumental in moving a prisoner forward. The perception of prisoners, noted in Padfield's 2011 study,[21] however, is that far from being independent the Parole Board is seen as part of a remote and faceless bureaucracy and that prisoners were unsure of how or indeed when their review process was being conducted. In the absence of an oral hearing the perception is reinforced that 'the Parole Board is merely part of an administrative system'.[22]

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*Practice and process issues*

Members were familiar with the formal risk assessment tools used by Prison and Probation Services (OASys),[23] and were aware that they are group based actuarial measurements rather than individualised risk assessments. Whilst previous research suggests that these tools enhance Parole Board decision-making,[24,25] Mehta (2008)[26] noted an over reliance on actuarial risk assessment tools. Some members expressed a preference for the professional judgement of the Offender Manager. Overall interviewees were conscious of the limitations of the risk assessment tools used throughout the dossiers.

*You cannot ignore those risk assessments but OASys is only as good as its input* Member 20.

All interviewees were clear that they ideally wanted more information and a fuller picture of the individual they were considering but that if they were in any doubt, they would send the case to an oral hearing. It was apparent that some members saw the ability to direct a case to an oral hearing as a safety net.

Members all understood that the much higher release rate at oral hearings for this group of prisoners was due to a number of factors. First, more information tends to be available to a Parole Board panel at the point that the hearing takes place, which will be some months after recall. This includes information from the prison based Offender Supervisor about the conduct of the prisoner since recall. Secondly, both prisoner and Offender Manager are likely to have met and to have had chance to reflect on the recall 'event' — an event which may have resolved itself by the time of the hearing. Thirdly, there is a greater chance that the Offender Manager will then support re-release and have a risk management plan in place. Finally, where an Offender Manager was still not in support of re-release, the ability to ask questions of both Offender Manager and the prisoner at an oral hearing gives the members greater confidence in a decision not to follow the recommendation of the Offender Manager.

In interview a number of members acknowledged that they did not feel enough information was provided to them at paper reviews but the response to this varied. Some adjourned the review to get more information, sometimes several times — leading effectively to a significant delay in the review being concluded. Others took the view that the Secretary of State was responsible for providing the information required and that they would make the decision on the basis of the information given. Amongst those members who did report adjourning for more information to be provided, significant frustration was expressed about the failure of PPCS to provide that information in the time scales requested. Some members reflected that this frustration was a factor in causing them to change their

21. Padfield, N, 2011 Understanding Recall. *University of Cambridge Faculty of Law Research Paper, (2)*.
22. Padfield, N, 2011 Understanding Recall. *University of Cambridge Faculty of Law Research Paper, (2)* p.41.
23. Offender Assessment System.
24. Harding, J. (2006). Some reflections on risk assessment, parole and recall. *Probation Journal, 53(4)* pp. 389-396.
25. Wendy Fitzgibbon, D., 2008. Fit for purpose? OASys assessments and parole decisions. *Probation Journal, 55(1)*, pp.55-69.
26. Mehta, A (2008) Fit for purpose: OASys assessments and parole decisions – a practitioner's view. *Probation Journal, 55 (2)*, pp 189-194.

behaviour in this regard that is not to adjourn so frequently or perhaps not at all. It is arguable that in those circumstances members may be less inclined to release on the papers.

An interesting finding from the research is that members were not generally aware of the rates of re-release from paper decisions (although these are published in the Parole Board Annual reports). When asked to estimate it, nearly all significantly over estimated the re-release rate and were surprised to discover that it is so low. When then asked to reflect on their own practice, members acknowledged that their own re-release rates were in fact in line with these overall rates although most went on to express that they felt they were 'risk averse' in relation to their colleagues. Given that members do not routinely have access to colleagues' written work nor do they get feedback on the results of their decisions, the basis for this view was unclear.

An unexpected finding was that whilst Parole Board Rules state that 14 weeks is allowed for the determination of a referral to the Parole Board from the Secretary of State,[27] in practice a working agreement between the Parole Board and the Secretary of State has developed over time which allows only 14 days for the decision to be completed. It is not clear that any analysis has been undertaken to assess what impact, if any, this much shorter time scale has had on the decision-making process at paper reviews.

It also became apparent during the research that the Parole Board does not routinely gather information on determinate sentenced recall prisoners and therefore analysis of the characteristics, trends or patterns in this group of prisoners and in the decisions made about their re-release on the papers has not been possible.

## Conclusion

The study finds that the short time scale allowed for a paper review to be completed means that frequently, insufficient information may be available for the single member to make fully informed assessments of risk. The findings suggest that the effect of this lack of information is twofold: fewer directions for release are made on the papers and more referrals to oral hearings are made. If more time was given for a paper review to be completed and more information provided, this may enable single members to make a more accurate assessment of risk. In turn this could result in a higher level of re-release at paper reviews and reduce the need for oral hearings.

Making a decision to release on less information than would be available at an oral hearing is itself a risk. It is arguable that without sufficient time and information on which to base decisions, Parole Board members are over reliant on the view of the Offender Manager and do not feel able to defensibly go against a recommendation not to re-release from the professional who will be managing the risk in the community. They may therefore be less able to exercise their independence. Given that the cases which are now referred to the Parole Board are those where the Offender Manager does not recommend release, and where there is little other information put before the member to allow them to form a different view, it is not perhaps of surprise that there is a high correlation with the Offender Manager's recommendation.

There is no doubt of the independence of the Parole Board from other parts of the criminal justice system. However, in the absence of information apart from that provided by the Offender Manager in recall cases, the question arises as to whether members are able to exercise their independence fully. It is at least possible that as a result of this the process issues currently in place are driving the decision-making at paper reviews.

## Summary

This was a small-scale research project and the topic under exploration would benefit from further research. In light of the falling re-release rates for determinate sentence prisoners at paper reviews, there is value in increasing understanding of Parole Board decision-making in this area.

27. Parole Board Rules 2016 *(Rule 14 (4))* Statutory Instruments 2016 No 1041 HMSO.

# To Parole or Not to Parole? How do Parole Board Members make decisions about Parole?[1]

***Joanne Lackenby*** *is a British Psychological Society chartered and Health Care Professions Council registered forensic psychologist. She is also a Parole Board Member.*

**Parole Board decision-making (PBD-M) is a relatively under researched area compared with other criminal justice practices. Additionally, legislation surrounding Parole Board Rules creates a lack of transparency and understanding by the public, victims and stakeholders regarding PBD-M. This article provides an overview of the findings from a doctoral research project that explored what Parole Board Members (PBMs) in England and Wales said informed their decision-making.**

A review of 59 research papers identified that PBD-M is internationally perceived as inconsistent.[2] However, several factors have been identified as decreasing the likelihood of an offender obtaining Parole. These include; severity of the index offence, criminal history, sexual offending, denial, institutional misconduct, drug and alcohol use, prior supervision failure, lack of remorse, lack of insight, negative attitudes, lack of programme completion, lack of accommodation or employment upon release.[3 ,4 ,5 ,6,7, 8, 9, 10, 11 ,12 ,13, 14]

Factors increasing the likelihood of Parole are less identifiable. It is not the case that the absence of the aforementioned factors increases the likelihood of a positive decision. Positive custodial behaviour, absence of previous convictions and completion of programmes, for example, do not necessarily suggest Parole is more likely.[15,16] Further, some offenders who have committed severe offences and/or have long criminal histories, who deny their offences and/or behave poorly in prison do obtain Parole, whilst some offenders who have completed treatment programmes and have positive custodial records do not. On the face of it, from the perspectives of the public, stakeholders and the offenders themselves it may indeed appear that PBD-M is inconsistent.

Having worked with offenders and engaged with the Parole System for over 20 years as a prison

1. Joanne Lackenby, Psychologist Member of the Parole Board (Since 2010), Senior Practitioner Lecturer Coventry University, BPS chartered and HCPC Registered Forensic Psychologist.
2. Caplan, J. M. (2007). What factors affect parole: A review of empirical research. *Federal Probation*. Volume 71, Number 1, 16-19.
3. Assy, R., Menashe, D. (2014) The catch-22 in Israel's parole law. Criminal Justice and Behavior, Vol. 41, No. 12, 1422-1436. DOI: 10.1177/0093854814548448.
4. Carroll, J. S., Galegher, J., & Wiener, R. (1982) Dimensional and categorical attributions in expert parole decisions. *Basic and Applied Social Psychology*, 3(3) 187-201.
5. Carroll, J. S. & Burke, P. A. (1990) Evaluation and prediction in expert parole decisions. *Criminal Justice and Behavior* Vol 17 No 3, September 1990 315-332.
6. Cotton, R. F. (2008) Time to move on: the California Parole Board's fixation with the original crime. Yale Law and Policy Review Volume 27: Iss 1, Article 8. http://digitalcommons.law.yale.edu/ylpr/vol27/iss1/8.
7. Hannah-Moffatt, K. & Yule, C. (2011) Gaining insight, changing attitudes and managing 'risk': Parole release decisions for women convicted of violent crimes. *Punishment & Society* 13(2) 149-175. DOI 10.1177/1462474510394961.
8. Hood, R., and Shute, S. (2000) The Parole System at work: A study of risk based decision-making. *Home Office Research Study 202*: UK, London.
9. Lindsay, S. C., & Miller, M. K. (2011) Discretionary release decisions of actual and mock Parole Board members: implications for community sentiment and parole decision-making research. *Psychiatry, Psychology & Law* Vol. 18. No.4, November 2011, 498-516 DOI/10.1080/13218719.2011.625619.
10. Matejkowski J. (2011) Exploring the moderating effects of mental illness on parole release decisions. *Federal probation* Vol 75 No119-26.
11. Ostermann, M (2011) Parole? Nope, not for me: voluntarily maxing out of prison. Crime and Delinquency 57: 686-708 DOI: 10.1177/0011128710372194 .Online at http://cad.sagepub.com.content/57/5/686
12. Padfield, N & Liebling, A (2000) 'An exploration of decision-making at discretionary lifer panels'. *Home Office Research Study* 213 London: Great Britain.
13. Porter, S., ten Brinke, L., & Wilson, K. (2009) Crime profiles and conditional performance of psychopathic and non-psychopathic sexual offenders. legal and Criminological Psychology, 14, 109-118. DOI: 10.1348/135532508X284310.
14. Proctor, J. L., & Pease, M. (2000) 'Parole as institutional control: A test of specific deterrence and offender misconduct'. *Prison Journal* 80 (1), 39 DOI: 10.1177/0032885500080001003.
15. Morgan, K. D. & Smith, B. (2005) Parole decisions revisited: An analysis of parole decisions for violent inmates in a southeastern state. *Journal of Criminal Justice*. 33, 277-287 online at www.science direct.com doi 10.1016/j.jcrimjus.2005.02.007
16. West-Smith, M., Porgrebin, M.R. & Poole, E. D. (2000) Denial of parole: An inmate perspective. *Federal Probation,* 64(2), 3-1.

psychologist initially, then from 2010 as a Parole Board Member, I was interested to explore more rigorously, how decisions are made and whether PBMs have a sense of consistency in their perception of the decision-making process. Audio-recorded semi-structured interviews lasting between 44-116 minutes were conducted with 33 experienced PBMs between June 2016 and January 2017. This represented 20 per cent of active PBMs at that time across England and Wales. Participants' ages ranged from 41-75 years with 4-17 years of PBM experience (see Table 1 for further participant information).

PBMs described in detail what they considered in PBD-M. Interviews were transcribed verbatim, analysed using thematic analysis and developed into a model of PBD-M (see Figure 1). The nature of qualitative research means that a definitive set of predictor variables for parole cannot be identified, however the themes identified from the analysis explain some fundamental decision-making considerations represented in overarching themes, informed by specific themes. Moderating themes were also identified that elucidate the complex and idiosyncratic nature of PBD-M.

Thematic analysis of how decisions are made at oral hearings revealed a fundamental principle of **independence / fairness** underpinned PBD-M decision-making. PBMs firmly proclaimed their independence and asserted that fairness to all parties was an overriding concern. Further PBMs reported that there was not a standardised approach to PBD-M, that all offenders were considered as individuals. Whilst such comments might support Caplan's[17] conclusions that PBD—is inconsistent, analysis revealed some commonalities in the way PBMs approach decision-making.

The foundation stage to PBD-M, highlighted by all participants was **gathering good evidence**. PBMs described that, notwithstanding the legal framework surrounding the types of decisions that can be made 'on the papers' and those that can only be made at an oral hearing, that having 'quality' 'required' and 'desired' information/evidence enabled decisions to be made more efficiently and confidently. Where PBMs believed that necessary information was not forthcoming, frustrations were expressed with the bureaucracy of the system being too convoluted, precluding direct requests to specific organisations for information. Concerns regarding the lack of judicial gravitas of the Parole Board were also expressed, that sometimes organisations or individuals within them did not comply with directions to provide information. Perceptions that information that was insufficient or of questionable quality often resulted in instrumental actions being taken to obtain and clarify information including deferring or adjourning cases and directing cases to an oral hearing to try to ensure evidence was produced.

Firstly, and not surprisingly PBMs, referred to whether an offender meets 'the Test for release'[18] as the primary consideration for PBD-M. Detailed analysis of decision-making revealed 3 overarching themes, centred around the overarching theme of comprehensively ***understanding*** the offender. PBMs expressed the need for **Understanding Offending** including both the index offence and any previous offences. How PBMs achieve this understanding is captured in two themes of *offence characteristics* — the factual details of the offence, the motivation for it and antecedents and *offender history* — aspects of the offender's lifestyle and life history that explained the offending pathway and enabled identification of risk factors for further offending. Understanding Offending set the standards for potential future offending and the severity of this.

Understanding Offending also established the baseline from which PBMs then developed an **Understanding of Change** made by an offender during sentence, informed by two themes of *custodial behaviour* and *rehabilitation.*

**Table 1:**
**Participant information and representation of membership**

| Membership | No. of members | No. of participants | Percentage of membership |
|---|---|---|---|
| **All active** | 172 | 33 | 19.18% |
| **Independent** | 104 | 20 | 19.23% |
| **Judicial** | 38 | 6 | 15.78% |
| **Psychologist** | 16 | 4 | 25% |
| **Psychiatrist** | 14 | 3 | 21.42% |
| **Chairperson (judicial and independent)** | 93 | 18 | 19.35 % |
| **Non-chairing** | 79 | 15 | 18.98% |
| **Female** | 62 | 17 | 27.42% |
| **Male** | 110 | 16 | 14.55% |
| **White** | 148 | 32 | 21.62% |
| **BAME** | 24 | 1 | 4.16% |

17. Caplan, J. M. (2007). What factors affect parole: A review of empirical research. Federal Probation. Volume 71, Number 1, 16-19.
18. 'The Parole Board must not give a direction [for release] ... unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.'' LASPO 2012.

Poor custodial behaviour was, as literature suggests, often considered indicative of lack of change. In some cases, good custodial behaviour was evidence of change. Engagement in rehabilitation including accredited offending behaviour programmes, individual therapy, self-directed work, vocational and educational training was also considered by members to be a means of understanding whether an offender was changing or had changed. In some instances, participation in rehabilitation was assessed as a positive indication and a lack of participation as a negative indication. However, PBMs were more discerning in their assessment of change and were affected by **Moderating Factors** for example, offence type. Some PBM's reported that evidence of change through custodial behaviour was more identifiable for some violent offenders than for some sexual offenders where the triggers and opportunity to offend might not be present in prison.

The final overarching theme underpinning PBD-M is **Understanding Manageability** upon release or in open conditions and is informed by two themes; *The RMP* (risk management plan) and *A good OM* (offender manager) with the overriding factor being whether the 'Test for release' was met. Having *a good OM* was frequently cited by PBMs as being instrumental in decision-making in conjunction with there being a RMP in place that would re-integrate the offender, manage the risk factors and identify signs that risk was increasing prior to serious harm occurring.

In some instances, participation in rehabilitation was assessed as a positive indication and a lack of participation as a negative indication.

It was acknowledged that on its own this model of understanding is insufficient to explain PBD-M. Many moderating factors were identified, as alluded to above that influenced individual and group PBD-M. Five moderating themes were identified from the analysis as potential contraindications to developing understanding either independently or in combination with other moderating factors.

*Offence type:* Some PBMs suggested some types of offence were easier or more difficult to understand regarding motivation, capacity to change and management. PBMs differed in their perceptions of offences. For example, some reported sexual offending as more difficult to understand, whereas others suggested that this was not a concern for them and referred to different types of offending as being more challenging to understand.

*Offender characteristics:* PBMs described aspects of offenders' presentations that affected understanding including denial and minimisation and offenders with particular needs for example personality disorder, mental illness or learning disability.

*Member characteristics:* reflects the significance of members' attributes to developing understanding. Attitude to risk, personal and professional experiences and interactions with other panel members were all reported as potentially impacting upon understanding.

*Professional evidence:* PBMs reported that evaluating the credibility and reliability of professional evidence was significant to understanding an offender. This was particularly important where professionals made conflicting recommendations.

*Bureaucracy:* There were many political and systemic pressures recognised by PBMs, for example the availability of rehabilitative work, limited resources for offender management, political positions and policies. PBMs were cognisant of such influences and the need to consider the offender fairly.

The model in action is illustrated in the following extracts. This first extract from an independent chair regarding a straightforward release decision of a man convicted of murder:

> *an understandable story for the index offence, an understandable history of progression through the system, the prisoner can tell me an understandable story and that he seems to understand why he did what he did, the absence of any indicators that he has failed to put that learning into practice so you know the absence of the drug relapse or the absence of bullying in custody that sort of thing. He got drunk, he got into a fight and he killed somebody. He'd done 4 years in open conditions and had no problems, he'd done 15 home leaves or something like that you know he'd worked out in the community for 9 months*

Here the PBM described the need to understand the offence, the changes evident in custodial conduct and the evidence of risk management.

In this following extract another independent chair described a negative outcome, where the inference is that in understanding change, behavioural concerns suggest change related to risk has not occurred.

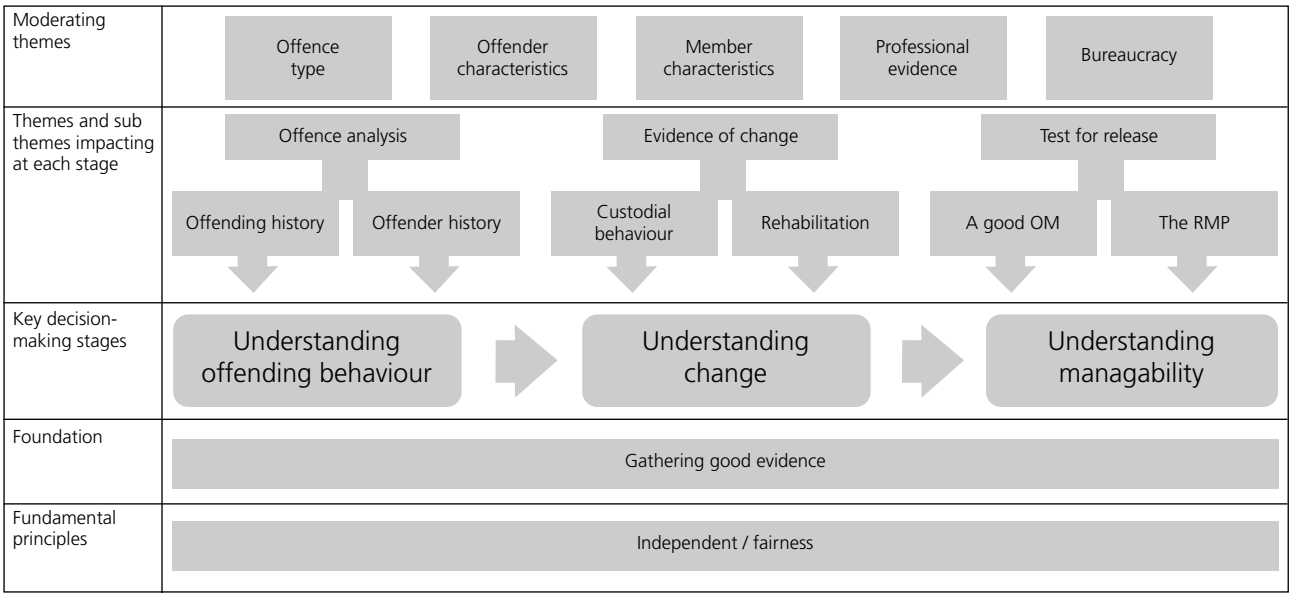
> *He has got to do more offending behaviour work; his behaviour hasn't been such where we can consider his release*

In some cases, the decision becomes more finely balanced. As described by a psychologist member where the lack of understanding of the offence is balanced against understanding management of risk,

> *Where it has been more of a challenge, on one hand you've got this whole history of really quite worrying behaviour, but then there might not have been any concerns in custody for the 20 years or so that he or she has been in. That's why it's more difficult. It's about trying to make a decision about the person now when you know there's a backdrop of really horrible offending. Trying to be objective, looking at the current evidence, not just the issues about the offender's progress in custody, but also the robustness of the RMP, about how confident we are in the offender manager who's going to be taking forward the case. If you've got a complex risk, but you've got an offender manager who knows the case inside out, really skilled, really knows their stuff, you've got absolute confidence that they'll be all over this case in the community, that can sometimes make the release decision much easier than if you've got a complex case and you've got somebody who's brand new to the role, they haven't really got to grips with the history of the case and the RMP you've got no confidence it'll be delivered properly. So, I think those complex cases they don't necessarily lean towards a no decision.*

Overall the findings from this research suggest that PBMs approached offenders individually, seeking to understand how and why they came to offend, what had changed to reduce the risk of re-offending and committing serious harm and how if released or in open conditions how this risk could be managed. In simple terms, if this understanding was developed, decisions about parole were more straightforward. Where there was a lack of understanding decisions were reported to be more difficult and finely balanced. Several moderating factors both enhanced and impaired understanding, which impacted on the decision-making process and outcomes.

**Figure 1: Model of PBD-M**




This article summarises findings of research completed as part of PhD research at Coventry university. Supervisory team: Professor Sarah Brown of Coventry university, Professor Erica Bowen of Worcester university, Dr Emma Holdsworth of Coventry university and Dro Carlo Tramontano fo Coverntry university

# The role of psychological risk assessment in Parole Board decision-making:

## an exploration of the perspectives of psychologists, indeterminate sentenced prisoners and Parole Board members

***Jo Shingler*** *is a Chartered Psychologist and Registered Forensic Psychologist. She is a Consultant Forensic Psychologist, as well as studying for a PhD at the University of Portsmouth.* ***Dr Adrian Needs*** *has a background as a qualified practitioner in forensic psychology (including in HM Prison Service) and currently runs the MSc Forensic Psychology at the University of Portsmouth.*

**Providing written and oral evidence to panels of the Parole Board is a central task for prison-based psychologists.[1] Whilst there is usually a range of professional opinions available to panels of the Parole Board, psychologists are seen by some prisoners to be the people who hold 'the key to captivity or release'[2] (p.121). It is not known whether Parole Board decisions are more influenced by psychologists' reports than by those of other professionals (in fact another study suggested that parole decisions were most consistent with recommendations from Offender Managers).[3] However there is certainly a view amongst prisoners that psychological assessment carries the most weight in parole decisions.**

One consequence of the apparently pivotal significance of psychological assessment seems to be a tendency for prisoners to see correctional psychologists as untrustworthy and hostile (Maruna, 2011). There is evidence that some prisoners resent the power psychologists are seen to hold in relation to decisions about release or progression, as summed up by Sparks[4] who reported that 'Prisoners were particularly wary of input from psychologists, whose view they felt was given a disproportionate weight' (p22). Sparks suggested that the life sentenced prisoners who took part in her study resented brief and infrequent interviews by psychologists who did not know them, yet whose opinion could make a significant difference to their progression. Maruna[5] suggested that another possible explanation for hostility and mistrust directed towards psychologists is that it is an unforeseen consequence of changes in correctional psychological practice: increasingly detached from any role in alleviating psychological distress, the focus on risk assessment has become 'all-consuming' for psychologists (p672). Crewe's quote from a prisoner effectively sums this change in emphasis of prison service psychologists:

> *When I first came away, the psychologist was there if you'd got problems, to talk to. She wasn't there to write reports, she wasn't there to judge you, she wasn't there to write reports and manipulate you, she was there to help you if you needed help. Now that attitude's not there. They are there to write reports on you, they are there to judge you, they are there to fucking try and manipulate you. Your interests, your needs are pretty much last on the list (p117).*

To summarise, there is some literature to suggest that psychological risk assessment is perceived by prisoners as being central to parole decision-making, at the same time as being resented and mistrusted. However, systematic investigation of perceptions and experiences of risk assessment is largely absent from the extant literature, whether those of prisoners, psychologists or Parole Board members. Samples from all three groups were interviewed in the present study in order to identify limitations, problematic and positive aspects of current practice and consider what could be done to improve the assessment landscape.

### Participants and Procedure:

Detailed individual interviews were conducted with 11 psychologists, 10 indeterminate sentenced prisoners and 8 Parole Board members.[6] The psychologists were all

1. Bowers, L. & Friendship, C. (2017). Forensic psychological risk assessment for the Parole Board. In K. Browne, A. R. Beech, L. A. Craig & S. Chou (Eds). *Assessments in Forensic Practice: A Handbook* (pp103-121). Chichester UK: John Wiley & Sons, Ltd.
2. Crewe, B. (2012). *The prisoner society: Power, adaptation and social life in an English prison.* Oxford: Oxford University Press.
3. Forde, R. A. (2014). *Risk assessment in parole decisions: A study of life sentence prisoners in England and Wales.* (Doctoral dissertation, University of Birmingham, U.K.). Retrieved from http://etheses.bham.ac.uk
4. Sparks, C. (1998). Lifers' views of the lifer system: Policy versus Practice. Prison Reform Trust.
5. Maruna, S. (2011). Why do they hate us? Making peace between prisoners and psychology. *International Journal of Offender Therapy and Comparative Criminology 55*(56), 671-675.
6. In order to maintain brevity, details of participant selection processes have been omitted. This detail is available from the author on request.

Chartered and Registered; there were ten women and one man; they had been working in the field of forensic psychology for between 8 and 29 years and been Chartered for between 1 and 17 years. The prisoners were located in two prisoners in the South of England, one Category B and one Category C. Six were serving mandatory life sentences, three were serving Indeterminate Sentences for Public Protection and one man was serving an Automatic Life Sentence. The prisoners had spent between 4 and 34 years in custody on their current sentence. Four prisoners had yet to reach their tariff, and six were past tariff. The Parole Board members comprised two psychologists, one psychiatrist and five independent members. There were four men and four women. They had been members of the Parole Board for between 4 and 11 years.

The interviews explored participants' overall experiences of and opinions about psychological risk assessment. Psychologists and prisoners were additionally asked about positive and negative experiences of risk assessment, and about their views and experiences of the risk assessment interview. Interviews were recorded, transcribed and analysed using Grounded Theory methods.[7] Member checking exercises[8] were conducted with 17 psychologists, 9 Parole Board members, and 1 indeterminate sentenced prisoner[9] in which the emerging analysis was shared, discussed and refined.

The interviews explored participants' overall experiences of and opinions about psychological risk assessment.

**Outcomes:**

Results support the perception in the literature that Parole Board members weight psychologists' reports heavily when it comes to decision-making, as described by Graham (PBM):

> *I do attach quite a lot of weight to what a psychologist says…that's why we that's why we use them, they're there to give us a, a high level professional risk assessment. It's a complex issue that — if you don't take what they're what they're saying seriously why why do we bother?...So I do take what they say very seriously.*

It was also apparent that Parole Board members valued psychological assessment, which they felt added depth and meaning to their understanding of prisoners:

> *I sometimes ask for a psychological risk assessment even if there isn't any obvious, erm, psychological aberration. And I do that if I think it would be useful to have that extra perspective, because obviously somebody whose trained as a psychologist is used to looking at problems in a certain way, er which is a completely different perspective. There's more, you can offer more in terms of presenting explanations than a lay person.* (Steve, PBM)

Parole Board members particularly value the individual-level understanding that psychological formulation provides. Gail (PBM) describes how, in good psychological assessment 'the psychologist has really engaged to get under the skin of the individual'. Psychologists agreed with this perspective, with several participants commenting on the value of psychological formulation in understanding prisoners, facilitating risk assessment and informing recommendations.

Psychologists experienced a weight of responsibility in relation to the parole decision-making process: 'If the psychologist is saying something that is really negative, it can, it can change the course of the parole outcome' (Alex, psychologist). Some psychologists felt that the weight of responsibility was exacerbated by the Parole System, causing stress and anxiety:

> *My deadline is 4 weeks before everyone else's to give them time to to read yours, decide what they think, Erm, and I think that can be helpful, but it can make you feel very isolated and very alone and feel like there's a lot of responsibility on your shoulders.* (Karen, psychologist)

Also consistent with extant literature, the results of this study suggested that the prisoners resented and mistrusted psychologists, whom they perceived as holding disproportionate power in relation to release and progression decisions. Psychologists were variably described as 'trying to catch [prisoners] out' (John);[10]

7. Urquhart, C. (2013). *Grounded theory for qualitative research: A practical guide*. London, UK: Sage.
8. Creswell, J. W., & Miller, D. L. (2000). Determining validity in qualitative inquiry. *Theory into practice, 39* (3), 124-130.
9. At the time of writing, steps are being taken to engage in member checking exercises with more indeterminate sentenced prisoners.
10. The quotations in this paragraph are all from prisoners.

wanting to 'nit-pick and keep me in for nothing, really' (Colin) or to 'catch you out, make your life in here longer' (Peter). Martin summarised, 'You just don't trust their opinion. You don't trust their counsel or they just, they just lose the credibility'. Shawn described psychologists as 'the quiet ones with the power: what the psychologist says goes'; Jude (prisoner) believed psychologists had 'too much' power and Ron described the prison system as 'psychology top-heavy' where 'everything's a mind game'. Shawn believed that psychologists had 'a lot of power and influence in sentences', and Martin believed that the psychologist's report 'tips the scales' for ISPs in Parole decisions. Jim described more explicitly how he saw psychologists' reports as influencing parole decisions:

> *If you've got an OM supporting you and a psychologist who's not, you're probably in trouble. If you've got a psychologist who's supporting you and your OM isn't, there's more chance I think … if you've got a psychologist who says we think this person's got a x, y, z, you know, puts a fancy looking name on it, you're really in trouble.*

Prisoners seemed particularly to resent psychological power when it was perceived to be held by psychologists with little experience (for example some trainee psychologists) or by psychologists whom prisoners felt had not spent enough time with them.

Despite an overall sense of suspicion and mistrust towards psychologists, most of the prisoner participants described approaches to the risk assessment interview which enabled them to overcome suspicion and hostility, build trust and rapport with psychologists, and talk openly about problems and concerns. Importantly, analysis revealed that prisoners and psychologists had a shared understanding of what constituted an effective interpersonal approach to risk assessment. First, they agreed that clear and transparent explanations of the process and of opinions were crucial. Clarity and transparency enabled some prisoners to overcome feelings of suspicion and mistrust. Second, effective risk assessment practice was experienced as collaborative, involving proper, meaningful attempts to involve prisoners in what could feel like a coercive process. Third, respecting the individuality of prisoners was important — recognising each prisoner as a person with his own story, needs, problems and strengths. Fourth, the information gathering function of the risk assessment interview was best achieved when the interaction was purposeful and aims driven, and 'more conversational' (Shawn, prisoner) and less like a 'job interview' (Claire, psychologist). Finally, the ideal risk assessment interview was thought to be characterised by being a 'human being in a situation with a human being' (Maria, psychologist). 'Making human connection' was central to effective interviewing, even though achieving the balance between professionalism and humanity could be challenging for psychologists. This difficult balancing act was best summed up by Ezra (prisoner):

> *As I said, there's a wall, I understand, that needs to be brought down; obviously that wall has to remain there, professionalism and whatnot, but at the same time, it needs to be lowered a bit, so you can go over the wall and you can see who you are talking to.*[11]

…prisoners expressed resentment and mistrust of psychologists and their role in risk assessment.

In summary, whilst Parole Board members valued psychological assessment and reported weighting it heavily in their decision-making, prisoners expressed resentment and mistrust of psychologists and their role in risk assessment. This matters because resentment and mistrust is likely to impact on prisoners' engagement in the risk assessment process, making it harder to gather the information needed for risk assessment, and more challenging to motivate prisoners to participate in their own risk management. However, there was substantial common ground between psychologists, Parole Board members and prisoners when it came to views about good risk assessment practice. This common ground can be built on in order to maintain the value and legitimacy of psychological assessment in the eyes of the Parole Board, and increase legitimacy of psychological assessment and perceptions of fairness amongst Prisoners.

**Implications for Parole Board practice:**

Whilst the results of this study are consistent with the view that psychological assessment can lack legitimacy in the eyes of prisoners, the results also suggest that psychological assessment is valued by Parole Board members. What is currently unknown is whether the weight given to psychological assessment by the Parole Board impacts prisoners' perceptions of the parole process. The procedural justice literature suggests that decisions that feel fair and transparent

11. See Shingler, Sonnenberg & Needs (2017) for a detailed account of the results pertaining to the risk assessment interview.

are those that tend to be complied with.[12] If prisoners feel that parole decisions are too heavily influenced by psychological assessment that they do not perceive to be legitimate, this may well have implications for their perceptions of fairness and ultimately for compliance with risk management attempts. The current study did not explicitly explore prisoners' perceptions of fairness around parole decision-making, and this would be a useful avenue for further research.

In the meantime, it is in everybody's interests for the parole process to be perceived as fair and legitimate by all those involved, and this study provides some pointers to how this can be achieved. First, this research, discussion with Parole Board members and colleagues and my own assessment practice highlight that other professionals rely heavily on psychological reports when forming their own assessments. Psychologists are frequently given deadlines in advance of other colleagues in order for those colleagues to use the psychological assessment in preparing their own reports. Whilst it is essential that colleagues share opinions and discuss cases, it is also important that a range of perspectives is available to panels of the Parole Board from professionals with different training, experience and priorities (a 'relational approach).[13] There is a risk that the priority given to psychological risk assessment reports (by virtue of earlier deadlines, for example) undermines a relational approach, and reduces other professionals' confidence in making their own assessments. A more relational approach to Parole Board risk assessment might help to provide a broader range of information to Parole Board members, reduce the pressure and weight of responsibility on psychologists, as well as begin to challenge prisoners' perceptions of psychologists' power and influence.

Second, the results of this study indicate that Parole Board members want to understand prisoners as individuals in order to make the best recommendations. The Parole Board members see psychological assessment, in particular the formulation, as central to facilitating individual level understanding. The importance of individuality was also identified by the psychologists and prisoners in this study. This agreement about good risk assessment practice can be built on in order to assist in making the whole process more legitimate: maintaining a focus on prisoners as individuals throughout assessment and parole decision-making is crucial. Psychological assessments should retain a focus on psychological formulation, in order to provide Parole Board members with the individual level understanding that they so highly value. The priority given to the use of structured professional judgement (SPJ) approaches to psychological assessment needs to be balanced with an individual level approach to assessment and formulation. Involving prisoners in the development of their formulation could further increase legitimacy.[14]

...maintaining a focus on prisoners as individuals throughout assessment and parole decision-making is crucial.

Third, the results point to the importance of a more contextual approach to understanding the entire process of risk assessment[15:] if prisoners do not trust psychologists, yet see them as having disproportionate influence over parole outcomes, this arguably has implications for how prisoners behave during psychological risk assessment interviews. Prisoners could be understandably reluctant to be fully open about current or past dysfunction for fear of the potential consequences of negative recommendations in psychologists' reports. Recognising these influences on prisoners, alongside the high stakes nature of risk assessment for those serving indeterminate sentences is crucial, and greater awareness of contextual issues in risk assessment can only improve the process.

Fourth, clarity was identified as central to good assessment practice; it is also central to the perception of fairness.[16] Hardwick[17] has described the importance of

12. Tyler, T. R., & Huo, Y. J. (2002). *Trust in the law: Encouraging public cooperation with the police and courts*. New York: Russell Sage Foundation.
13. Austin, W., Kagan, L., Rankel, M. & Bergum., V. (2008). The balancing act: Psychiatrists' experience of moral distress. *Medical Health Care and Philosophy*, 11, 89-97.
14. Shingler, J., & Mann, R. E. (2006). Collaboration in clinical work with sexual offenders: treatment and risk assessment. In W. L. Marshall, Y. M. L. Fernandez, L. E. Marshall, & G. A. Serran, (Eds). *Sexual Offender Treatment: Controversial Issues* (pp225-239). Chichester, UK: Wiley.
15. Shingler, J. & Needs, A. (2018). Contextual influences in prison-based psychological risk assessment: Problems and solutions. In G. Akerman, A. Needs & C. Bainbridge (Eds). *Transforming Environments and Rehabilitation: A Guide for Practitioners in Forensic Settings and Criminal Justice*. Abingdon, Oxon, UK: Routledge.
16. Tyler, T. R., & Huo, Y. J. (2002). *Trust in the law: Encouraging public cooperation with the police and courts.* New York: Russell Sage Foundation.
17. Hardwick, N. ( 2017, November). Parole – 50 years and counting. Presentation given at Parole, Probation and Prisons – Past, Present and Future. London.

parole processes and decisions being clearer, and how he believes additional steps could be taken to increase clarity and transparency.[18] Any opportunity to make risk assessment and parole decision-making clearer should be taken as a way of increasing legitimacy of the entire process. Whilst psychological reports and parole decisions may feel clear to professionals, they may not always be clear to prisoners. Again this was not specifically investigated in this study, and research into prisoners' understanding of their psychological assessment reports and their parole decision letters would be invaluable. One prisoner pointed out to me that psychological assessments were inaccessible to many prisoners purely by virtue of their length, a view echoed by many of the Parole Board participants in my study.[19] Clarity in all aspects of the assessment and parole process is crucial, and there is no doubt that this can be further improved.

Fifth, prisoners particularly resented psychological power when it was perceived to be held by psychologists whom they felt had not spent enough time with them. Whilst resources are understandably tight, a number of psychologists talked about steps they had taken to improve their assessment practice which redistributed the time they spent on tasks, without necessarily spending more time overall. For example, some psychologists described having a separate meeting with prisoners in which they explained the assessment process clearly, answered questions and went through the consent form. As this process has to be done, having a separate meeting in which to do it overcomes a number of hurdles: it gives both psychologists and prisoners more time to think and reflect; it provides an opportunity to discuss and overcome suspicion, and to begin to build rapport. It also communicates a sense of respect for prisoners' choices, in that no assumptions are made about their willingness to consent. Additionally, whilst some prisoners in this study resented being assessed by trainee psychologists, two men particularly singled out and named the same trainee psychologist as someone who made them feel valued, heard and understood, and whom they could trust. This suggests that being a trainee in itself is no barrier to good assessment practice. It also highlights the importance of trust, rapport and a human connection between psychologists and prisoners in risk assessment, as described above — seemingly, those aspects can overcome barriers of hostility and suspicion. This knowledge could be used to support both trainee and qualified psychologists in increasing their own risk assessment legitimacy via their interpersonal approach.

Finally, the implications of the weight assigned to psychological assessment need to be considered — for example, to what extent does the sense of weighty responsibility impact psychological recommendations, in particular any tendencies towards risk averseness? There was some evidence from the study that the weight of responsibility resulted in more cautious decision-making from psychologists.[20] These influences on risk assessors need to be investigated in more detail, but even this preliminary level of awareness should help both psychologists and Parole Board members to reflect on potential influences and consequently weigh up the available information more effectively.

## Conclusions

Psychological risk assessment is a complex task, with competing demands and multiple stakeholders. This study provides some insight into how psychological risk assessment for parole purposes is experienced by three key stakeholder groups. It has confirmed difficulties with working relationships between prisoners and psychologists, as well as confirming perceptions about the weight given to psychological assessment in parole decision-making. It has also identified problems of legitimacy in psychological risk assessment. However, it has also identified areas of shared understanding of good practice between prisoners, psychologists and Parole Board members, which can be built on. It is hoped that the increased knowledge and awareness provided by this study can facilitate the sharing of good practice as well as improvements in the process, experience and outcome of psychological assessment for those whom it affects.

18. At the time of writing, The Times newspaper (05/01/18) reported on the Parole Board decision to release John Worboys, in what the article described as 'a secret Parole Board hearing' (p.1, column 5).
19. Shingler, J. (2017). Psychologists' role in Parole Board decision-making: What do Parole Board members think about psychological assessment? *Forensic Update126*.
20. Adshead, G. (2014). Three faces of justice: Competing ethical paradigms in forensic psychiatry. *Legal and Criminological Psychology*, *19*(1), 1-12; McDermott, F. (2014). Complexity theory, trans-disciplinary working and reflective practice. Applying Complexity Theory, 181-198; Stanford, S. (2009). 'Speaking back' to fear: Responding to the moral dilemmas of risk in social work practice. *British Journal of Social Work*, *40*(4), 1065-1080.

# Parole for children and young adults[1]

***Dr Laura Janes*** *is a solicitor and holds a professional doctorate in Youth Justice and is Legal Director at the Howard League for Penal Reform.*


**A parole hearing is an important event for anyone. For children and young adults it can be both overwhelming and a major turning point. Children and young adults make up a relatively small number of cases that the Parole Board has to consider. However, the complexities of parole for young people are radically different from the issues that affect adults. Many young people facing parole have grown up in custody. Although they are often characterised as difficult to manage they are a vulnerable group for whom a distinct and holistic approach is essential.**

Law and science have long recognised that children should be treated differently. More recently, this recognition has been extended to young adults aged 18 to 25, based on the evidence that young people are developing and not fully formed until the age of 25, and therefore capable of change in a shorter period of time. Just as youth can be a time of enhanced recklessness, it is also the most likely time for desistance: put simply most people grow out of crime as they reach fully fledged adulthood. Robust risk assessment cannot ignore these factors.

The Parole Board has made significant adaptations to its processes in recent years to bring itself into line with established and emerging thinking in these areas. For example, in 2010 it introduced an oral hearings policy for children and in 2017, a pilot scheme for young adults. It has also commissioned youth specific guidance to assist members in adapting their approach to young people. The Howard League's specialist legal team for children and young adults in prison has observed several instances where a distinct, proactive approach by the Parole Board has quite literally transformed young people's lives. Through the Howard League's participation work, young people have told us that while parole can be 'scary', it can also be a welcome opportunity to tell their stories and formally mark their progress.

Yet more could be done. Examples from other forums could be followed, such as the Mental Health Tribunal, where every case involving a child must include a specialist 'child and adolescent' member, and criminal proceedings, where there has been an increased focus on how to achieve effective participation. Parole Board reviews for young people could be further adapted to ensure that children and young people effectively participate in the process and achieve better outcomes commensurate with their risk.

## The parole experience for young people — a chance to speak direct truth

As of 1 February 2018, there were around 190 active Parole Board cases concerning young people aged 21 or under, representing just under five per cent of the total Parole Board caseload. The Howard League for Penal Reform's legal team is the only front line legal service that specialises in representing children and young adults aged 21 and under before the Parole Board. Over the last three years, we have received over 143 new enquiries about parole through our 'access to justice' service. In addition to legal work, the Howard League undertakes participation work to provide a voice for young people involved in the criminal justice system.

The Howard League's experience from legal and participation work suggests that young people facing parole are understandably overwhelmed by the parole process. The nature of the scrutiny that young people face during parole, which focuses entirely on risk, contrasts to the sentencing process where the focus is on mitigation. Factors such as immaturity, which are recognised as mitigating for the purpose of sentencing, are viewed as factors that increase risk of harm for the purpose of parole.[2]

Whilst adults have had the opportunity to develop and experience life in the community, young people who face parole are likely to have grown up in custody. A process which determines your liberty will be stressful for anyone,

1. This article has been prepared by the author with input from the legal team at the Howard League for Penal Reform, with special thanks to Marie Franklin. Throughout the article, the term 'children' refers to under 18s, the term 'young adults' refers to 18 to 25 year olds unless otherwise stated and the term 'young people' refers to both children and young adults.
2. Howard League and T2A (2017) Judging Maturity: Exploring the role of maturity in the sentencing of young adults. Available at: https://howardleague.org/wp-content/uploads/2017/07/Judging-maturity.pdf [accessed February 2018].

but considerations relating to future risky behaviour in the community are particularly difficult for young people. A young person who has never had a job or had to budget will find it hard to imagine how they will cope with these things on release, let alone manage romantic relationships (possibly for the first time) while under criminal justice supervision. The sensitive nature of the questions and the formal environment of a panel of three strangers and every key person in your life watching you can be traumatic for a young person convicted of serious crimes, which may include sexual offences. The sheer pressure of the situation can fog the young person's understanding and ability to speak out.

Young people have told the Howard League about the 'paper-self' which follows them through the criminal justice system.[3] This indelible record of all the mistakes in their life is the primary representation of themselves that they feel professionals see. It is therefore not surprising that when we asked young people who have had oral parole hearings to comment on their experience, several have conveyed the importance of the process for them to get their side of the story heard. One young person told the Howard League that 'you get to go over everything in custody, you get to explain yourself, show remorse and give a better understanding of yourself.' Another young adult who responded to a question about what comes into your head when you think about parole found that as well as feeling a host of negative emotions it was a 'chance to speak direct truth' (see image).

A process which determines your liberty will be stressful for anyone, but considerations relating to future risky behaviour in the community are particularly difficult for young people.

A Parole Board oral hearing can present a unique opportunity for young people to participate actively in important decisions about their future with the decision makers themselves. It can be an incredibly important turning point for young people.

**Children and young adults require a distinct approach**

In order for a parole review to be effective and fair, let alone reach its potential as a positive turning point in a young person's journey, a distinct approach, adapted to the specific needs of the young person, is required.

*The needs of children*

Childhood is a time when significant biological, physical, intellectual, psychological, social and emotional changes take place. A child is defined in law as someone under the age of eighteen.[4] The age of criminal responsibility in England and Wales begins at ten, even though the same cohort of children is not considered responsible enough to have sex until the age of 16 or vote until they are 18. As of November 2017, there were 912 children in prison. The child prison population has decreased by two thirds in the last decade. However, a higher proportion are serving sentences that may attract parole reviews.

As Mr Justice Munby (as he then was) noted, '[children in custody] are, on any view, vulnerable and needy children'.[5] He drew attention to the high proportion that were either in or had left care, had serious mental health problems, had drug or alcohol dependencies and had no educational qualifications. A child in custody is likely to have experienced trauma, abuse or, neglect. Not only are they likely to have come from disadvantaged backgrounds, but custody may have an adverse effect on them. Young people in prison often experience extended periods of isolation, excessive levels of violence and self-harm, as well as restricted access to education. In the community these events would result in child protection action, care proceedings or even criminal charges against parents. Yet such features appear to be endemic within the prison estate for young people. The Chief Inspector of Prisons found that in 2017 there was not a single establishment that they had inspected in England and Wales in which it was safe to hold children and young people.[6] As David Lammy highlighted, children in prison come disproportionately from BAME backgrounds: the latest statistics from the Ministry of Justice show that 45 per

3. Howard League for Penal Reform (2015) *You can't put a number on it: A report from young adults on why in criminal justice maturity is more important than age*. London: T2A. Available at: http://www.t2a.org.uk/wp-content/uploads/2015/07/HL-Report_lowerres-1.pdf [accessed April 2017].
4. Children Act 1989, section 105.
5. R (Howard League) v Secretary of State for the Home Department and the Department of Health [2002] EWHC 2497 (Admin), Para 10.
6. HMIP (2017), HM Chief Inspector of Prisons for England and Wales annual report 2016 to 2017 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629719/hmip-annual-report-2016-17.pdf [accessed February 2018], pp 9.

cent of children in prison are from BAME backgrounds, compared to just 18 per cent in the general population.[7]

Risk assessment for children is fundamentally different, in recognition of their distinct needs and stage of development. Specialist tools exist to assess risk in children. For example, children with a history of violence may be assessed using the Structured Assessment of Violence Risk in Youth, a tool that factors in both risk and protective factors for children.

*The needs of young adults*

A growing body of criminological, neurological and psychological evidence led the House of Commons' Justice Committee to conclude that young adults' characteristics and needs make them distinct from older adults in terms of both their needs and their outcomes.[8] The neurological and psychological evidence that development of the frontal lobes of the brain does not cease until around 25 years old is particularly compelling. It is this area of the brain, which helps to regulate decision-making and the control of impulses, that underpins criminal behaviour.[9] In terms of brain physiology, the development of traits such as maturity and susceptibility to peer pressure appear to continue until at least the mid-twenties.[10] It is now accepted that adolescence lasts until the age of 24.[11] As a consequence, while there is no legal definition of young adults comparable to the definition of a child, the distinct needs of young adults aged 18 to 25 in the criminal justice system are now widely recognised, largely as a result of extensive work by the Transition to Adulthood (T2A) initiative and its T2A Alliance (a coalition of 16 leading criminal justice, health and youth charities) working to develop and promote evidence of effective policy and practice for young adults in the criminal justice system.

The negative effects of custody for young adults are demonstrated by the high number of self-inflicted deaths by young adults in custody and the extremely high reoffending rates.[12] Between 2006 and 2016 there were 164 deaths of 18-24 year olds in custody; 136 of which were self-inflicted.[13]

While the numbers of young adults in custody has dropped significantly in recent years, sentence lengths are increasing and the number of young adults from BAME backgrounds is disproportionately high.[14] In his review on race and the criminal justice system, David Lammy identified youth justice as the area of biggest concern.[15] T2A has highlighted the particular needs of young Muslims within the criminal justice system.[16]

## The legal framework supporting a distinct approach

*Children*

Both domestic and international law recognise the need to treat children differently from adults and there is a wide range of legal duties catering to the needs of children. The UN Convention on the rights of the Child ('the UN Convention') sets out a raft of specific rights that apply to children and has been signed by every nation in the world except for the United States.[17] Its provisions include the need to ensure their best interests is the primary consideration in every decision that affects them,

7. Lammy, D. (2017) Lammy review: final report, An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system. Available at: https://www.gov.uk/government/publications/lammy-review-final-report [accessed February 2018].
8. Royal College of Psychiatrists (2015) Written evidence submitted by the Royal College of Psychiatrists to the young adult offenders inquiry, HC 937, 13 October 2015 [online]. Available at: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-treatment-of-young-adults-in-the-criminal-justice-system/written/22190.html [accessed February 2018], pp 7.
9. Blakemore S-J, Choudhury, S (2006) Development of the adolescent brain: implications for executive function and social cognition. Journal of Child Psychology and Psychiatry, 47:3, 296-312; T2A and University of Birmingham (2011) Maturity, young adults and criminal justice: A literature review. Available at: https://www.t2a.org.uk/wp-content/uploads/2011/09/Birmingham-University-Maturity-final-literature-review-report.pdf [accessed February 2018].
10. Royal College of Psychiatrists (2015) Written evidence submitted by the Royal College of Psychiatrists to the young adult offenders inquiry, HC 937, 13 October 2015 [online]. Available at: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-treatment-of-young-adults-in-the-criminal-justice-system/written/22190.html [accessed February 2018].
11. T2A (2018) 'Adolescence now lasts from 10 to 24' scientists say. Available at: https://www.t2a.org.uk/2018/01/19/adolescence-now-lasts-10-24-scientists-say/ [accessed February 2018].
12. Harris, T. & the Harris Review panel (July 2015) *Changing Prisons, Saving Lives: Report of the Independent Review into Self-Inflicted Deaths in NOMS Custody of 18-24 year olds.* London: Her Majesty's Stationery Office [online]. Available at: http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2015/07/Harris-Review-Report2.pdf [accessed April 2017].
13. Ministry of Justice (2017a) Safety in Custody quarterly: update to September 2016 [online]. Available at https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2016 [accessed April 2017].
14. T2A (2017) Dramatic fall in the number of young adults in prison and serving community sentences. Available at: https://www.t2a.org.uk/2017/09/12/dramatic-fall-number-young-adults-prison-serving-community-sentences/
15. Lammy, D. (2017) Lammy review: final report, An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system. Available at: https://www.gov.uk/government/publications/lammy-review-final-report [accessed February 2018].
16. T2A (2016) Young Muslims on Trial: A scoping study on the impact of Islamophobia on criminal justice decision-making. Available at: https://www.t2a.org.uk/wp-content/uploads/2016/03/Young_Muslims_on_Trial.pdf [accessed February 2018].
17. The UN Convention on the Rights of the Child.

that children in conflict with the law are treated with dignity and that they are only detained for the shortest appropriate period of time.[18] Although the UN Convention is not directly binding in English law, the courts have held that, when interpreting human rights contained in the European Convention on Human Rights, it can be relied on to interpret and inform the extent to which the human right has been breached.[19]

A number of English laws that apply specifically to children are highly relevant to Parole Board decision-making since they affect plans to manage risk. It is well established that a lack of suitable accommodation and support is a major factor that will contribute to an increased risk in reoffending. The Children Act 1989 requires local authorities to protect and care for children in their area such that no child in England and Wales should legally face the prospect of release into the community without an address and suitable support in place. A proactive approach is often required on behalf of the child to ensure that a plan materialises before a parole review. Fortunately, this is one area where legal aid remains available.

*Young adults*

The criminal law recognises young adults aged 18-20 as different from children under 18 and adults aged 21 and over. Young adults in this age bracket in prison are governed by a separate legal framework. Many young adults will also be care leavers and entitled to long term support as 'former relevant children' in accordance with the duties under the Children Act 1989. Former relevant children can expect to receive 'such assistance as their welfare requires' until the age of 21 and this can include accommodation.[20] In addition, care leavers over the age of 21 but wishing to pursue education or training can also expect to receive social care support until they have completed a course (provided it is commenced before they turn 25).

## Parole reviews for children and young adults as a window of opportunity

The reason the law recognises children and young adults is because it is a time of genuine change. Youth can be a time of enhanced recklessness — young people typically have high levels of criminal behaviour, partly due to their lack of maturity, their susceptibility to the pull of instant gratification and their lack of consequential thinking skills.[21]

However, youth is also the most likely time for desistance: put simply, most people grow out of crime as they reach fully fledged adulthood, often through the normal process of maturation.[22] The fact that their personalities are not yet fully formed and their characteristics not entrenched in the way that older adult personalities are, means that they may find it easier to move away from criminal behaviours and reinvent themselves, particularly if they have the right support.

Young people are often recalled to prison for reasons relating to their immaturity. This is unsurprising given that traditional indicators of maturity include the ability to resist peer pressure or the ability to delay gratification.

Young adults in prison also face exceptionally poor outcomes following a period of imprisonment. As a cohort, they have limited or no access to the support and safeguards in place for children but don't necessarily have the independent living skills of older adults. This is especially the case for young people who have grown up in custody.

## Recent developments in parole

The Parole Board has made significant adaptations to its policies and processes.

*oral hearings policy for children*

Anyone who applies for parole before the age of 18 has been entitled to an oral hearing in front of the Parole Board since 2010. The policy was developed in response to the Howard League's work. In a judicial review brought by the Howard League on behalf of K, a 14-year-old who was denied the opportunity of an oral hearing, the High Court found that common law fairness required K should have the opportunity to be heard.[23] The Court also acknowledged Article 12 of the UN Convention to be relevant in this context.[24] Following a number of other successful legal challenges to the failure to send children's applications to an oral hearing, the Howard League wrote to the Parole Board and asked it to adopt a policy of permitting all children oral hearings if they could not be released following a paper review. The rationale behind this is that children not only deserve the level of anxious

18. The UN Convention on the Rights of the Child, articles 3, 37 and 40.
19. R (Howard League for Penal Reform) v Secretary of State for the Home Department [2002] EWHC 2497 (Admin).
20. Children Act 1989, s23C(4)(c).
21. T2A and University of Birmingham (2011) Maturity, young adults and criminal justice: A literature review. Available at: https://www.t2a.org.uk/wp-content/uploads/2011/09/Birmingham-University-Maturity-final-literature-review-report.pdf [accessed February 2018]; T2A (2017) Dramatic fall in the number of young adults in prison and serving community sentences. Available at: https://www.t2a.org.uk/2017/09/12/dramatic-fall-number-young-adults-prison-serving-community-sentences/
22. Smith, D., McVie, S., Woodward, R., Shute, J., Flint, J. & McAra, L. (2001) The Edinburgh Study of Youth Transitions and Crime: Key Findings at Ages 12 and 13. Edinburgh: The Edinburgh Study of Youth Transitions and Crime; McAra & McVeigh (2010) McAra, Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime. Criminology and Criminal Justice, 10:2, 179-209
23. R (K) v the Parole Board [2006] EWHC 2413 (Admin).
24. The UN Convention on the Rights of the Child, articles 12.

scrutiny that an oral hearing provides in order to enable release at the earliest opportunity but also a chance to be heard. In the Howard League's experience, a key benefit of an oral hearing is that it invariably concentrates the minds of the various professionals who are required to put together plans to manage risk and support the child in the community.

*Children and young people guidance*

In 2012 the Parole Board commissioned guidance for memebers on the specific needs and vunerabilities of children and young adults going through the parole process. The guidance is accompanied by information about specific risk assessment tools used for children written by forensic psychologist Dr. Louise Bowers.

*The young adult pilot*

In 2017 the Howard League asked the Parole Board to consider a distinct policy for young adults in line with both the evidence about the specific needs of this group and following a number of cases where young adults were stuck in the system for longer than necessary due to the need to challenge decisions not to hold oral hearings. From 2nd October 2017, the Parole Board has begun to pilot a different approach to granting oral hearings at the paper review stage for young people aged 18-21 years old at the point of their referral or recall. The pilot creates a presumption (but not an automatic right) that all young adult of this age are granted an oral hearing if they are not released on the papers. Data collated by the Parole Board shows a ten percent increase in the number of cases directed to an oral hearing by the second six weeks of the pilot.

*Creative approaches by Parole Board members*

Creative and proactive case management can make a real difference. The Howard League's specialist legal team has found that in some instances Parole Board members have displayed a willingness to take unusual steps to ensure children and young people feel at ease and have effective hearings. Through participation work, a young adult who recently appeared before the Board told the Howard League that he was worried the Parole Board 'would twist my words'; another said that he associated the words 'interrogation' and 'scary' with parole.

Simple techniques, such as going to see the young person and their representative and introducing themselves before the hearing, or inviting the young person to see the room before the hearing starts, can make a huge difference. One experienced member who had picked up on a young adult's drawing skills referred to in the dossier, invited a particularly troubled young man to draw pictures in response to some initial questions. This set him at ease and enabled him to participate effectively. Other panels have supported the appointment of an intermediary in cases where the young person would otherwise be unable to understand or answer questions.

In appropriate cases, members have adjourned with robust directions to ensure that an adequate release plan is in place, requesting senior representatives from children's services to attend the hearing. A parole hearing can provide a unique opportunity to mark monumental changes in outlook and achievements by young people who have worked intensively to turn their lives around. The formal hearing, often in the presence of key professionals who have worked with the young person for years, can mark that change. In appropriate cases, the Parole Board has departed from its usual convention of not providing a decision on the day — as the Mental Health Tribunal does.

In some cases, this kind of proactive approach by the Parole Board has quite literally transformed young people's lives. The fall in the numbers of children and young adults in prison provides a real opportunity to ensure that those who do appear before the Parole Board are appropriately supported to make a fresh start.

## Reflections on the way forward

More could be done to build on the progress that the Parole Board has made. Effective practice developed among members should be shared and others encouraged to follow suit. At present the Parole Board does not 'ticket' members to sit on hearings for young people, as is the case for other similar bodies. For example, the Mental Health Tribunal requires that Panels involving a child include a specialist child and adolescent member. CAMHS (child and adult mental health services) panel members have regular training in law and practice affecting children: a similar approach could be adopted by the Parole Board. Alternatively, the Parole Board could include issues affecting young people as part of its regular training.

Parole Board reviews for young people could be further adapted by taking simple steps to ensure that they can effectively participate, including the use of intermediaries, using first names where appropriate, planning questions carefully, and making questions short and easy to understand by using less jargon. If Parole Board hearings cease to confidential, effective participation for young people may be inhibited, unless an exception is made — as is the case in the youth courts.

Several young people have told the Howard League that they want the Parole Board to gain a 'better understanding of each person' before it. The best way to achieve that will be to help young people feel able to speak freely. That, in turn, will result in better outcomes for young people that are commensurate with their risk and in accordance with our legal obligations towards them.

# Does Preparing for Parole Help Prepare for Life?

***Scott Martin*** *served 16 years in custody as a life sentenced prisoner working to understand his offending past and build a future. He has has been through the Parole System.*

**The prison service identifies risk factors for lifers based on their offence and lifestyle prior to custody. Many successful parole applicants spend years pursuing treatment to evidence that they understand these factors and then further years demonstrating that these factors are no longer active in their life. They will also develop new activities, hobbies or interests that show a full and healthy life free from these risk factors in custody and develop a convincing plan to continue this approach on release.**

Is this a useful approach? Does it require real change? Or does it just demand insight into the system and patience?

I discussed these questions recently in interviews with ten of my fellow mandatory lifers now living on licence in the community driven by a desire to investigate how those of us who lived through it think about the Parole System. These interviews combine with my personal experience and reflections on anecdotes and observations heard over the years to form this article. It has no academic pretensions or aspirations and seeks to stimulate conversation rather than provide answers.

### Does anyone in here know how to get out?

Like all lifers I was convicted, sentenced and given my minimum term in a local prison. Few of us knew anything about what would happen next. There were sometimes meetings with lifer managers back then — we would ask for televisions and extra clothing, they would refuse and keep us in the dark about when we would move on to a *proper prison.* I felt stuck in local, over 2 years with no idea of what my sentence meant or if I could survive it. Another lifer recalls, 'It felt like I had no idea of when I would get out, or even be given a chance to move forward.'

In local prison there is no opportunity to work on any of the factors which lead to imprisonment and no opportunity to plan. What little education there is on the parole process comes from other prisoners since the staff typically know nothing about lifer management. The most common misconception is that 'you should act up for a few years and then show them you've changed.' The system has a long memory and misdemeanours committed early in the sentence are often seen as a source of risk much later down the line.

For lots of us it was only when we were got a solicitor to prepare for our first Parole Board that the true nature of the process became clear — risk is all that matters. Many lifers find that evidence from their time in custody does not support a release application. Even those who are successful are at a loss to explain how they managed it — 'I didn't know what the right thing to do was, I felt like I was winging it.' Another lifer commented that 'things weren't explained to me. I was asked which prison I wanted to move to — the officer told me where they are so I chose HMP Gartree cause my Dad's cousin once lived in Market Harborough.'

Lifers' risk factors are collections of characteristics which the system uses to recommend *treatment* and to assess the probability of further offences. In reality the most reliable predictors of future actions are static, based on unalterable facts such as the age at which the first offence was committed, whether there have been multiple offences and whether they were violent. Each lifer will also have a list of dynamic risk factors which are considered treatable or to have the potential to be mitigated against by protective factors. One lifer was told 'these will always be your risk factors, you just have to learn to manage them.'

Risk factors are harvested from information about the lifer and the offence gathered at the time of conviction. The lifers I spoke to felt removed from the process of identifying risk factors with only one feeling consulted:

> *It felt like the psychologist was trying to put things in a bracket. Things aren't black and white. I explained to them the circumstances of my offence and why I didn't agree with two of the risk factors on the list. They told me they would be adding an extra one.*

### So what do I do about it?

Many lifers come to understand the importance of addressing risk factors by listening to the experiences of others. This advice need not necessarily be positive, the old adage that 'they have to let you

out some time' is not even remotely true for mandatory lifers. When it proves false many turn to coping strategies like drink or drugs for temporary relief from the frustration of being ten or twenty years over their minimum term.

Risk factors are context specific, in combination with personality traits serious offences are triggered by a set of environmental factors — perhaps poverty, social isolation, abusive intimate relationships or gang membership. In prison these environmental factors are absent and the lifer is left to work on risk factors removed from the context in which they were tragically relevant. The complex reality of how violent acts come to be cannot be usefully explored by focusing on a list of risk factors. This over simplification of the original act is mirrored in the release plan at the end of the sentence — often a mundane set of unrealistic aspirations which in no way inspires the individual or reflects their complex (and very human) needs.

Every lifer should have a sentence plan which details what is required of them during their years in custody, focused on areas of risk related to the offence. In common with the list of risk factors most lifers felt distanced from the compilation of these targets which normally involve attendance on offending behaviour courses with some additional goals focused on education or employment. Until the lifer has moved to open prison the emphasis appears to be exclusively on addressing risk factors — that is the focus is on unpicking the past, not in moving forward beyond the prison gate. A desire to learn new skills, develop relationships or to build release plans early in a life sentence is discouraged. Most lifers were cautious when pushing for progression or release as they felt it was perceived as suspicious by the system. One man was told not to ask for a move to a Category B prison from dispersal for at least 6 years. He was a Cat B when he asked.

A desire to learn new skills, develop relationships or to build release plans early in a life sentence is discouraged.

One lifer commented that he began to understand what was required of him during his life sentence by listening to other men he came to trust and respect: 'I realised it's a game of chess, if you don't do these courses you aren't going to be released.'

Many of us questioned at the time whether undertaking offending behaviour work was just ticking boxes. Every lifer I have discussed this issue with has said that their primary motivation to attend these courses was the desire to be released, that they took part because they believed it was necessary to progress through the system and the Parole Board would attach significance to it.

In terms of the experience of the courses themselves lifers often report that they feel manipulated onto the course and that facilitators as well as participants were simply ticking boxes. Non-offence focused Cognitive Behavioural Therapy courses such as the Thinking Skills Programme are often seen as simply packaging common sense inside a few acronyms, as patronising and of little value. However, many lifers did say that techniques that they learned on courses have stayed with them and can be useful in 'managing life in general, not so much in managing risk.'

My experience of offending behaviour courses is in accord with many others I have spoken to — the process of selecting and assessing an individual for treatment is dehumanising and threatening but it is possible to benefit from the opportunity if the imbalance of power in the room can be overcome. The fear which comes from the knowledge that a positive report at the end of the course can result in progression to less secure conditions or release is inhibiting, it stifles honesty and creativity and makes it extremely unlikely that participants will openly and fully engage.

**How did we change then?**

Each lifer I spoke to is free, has a stable family life and all but one of them is employed or in full time education. Prior to prison all led chaotic lives. All were convicted of murder. One man's reflections on the process of change for him summarises the majority of views:

> *For me there was a process of maturing and reflecting through umpteen years — from local all the way through to release. Sometimes it was helped by courses and sometimes by family, the people around me or just by time.*

Asking released lifers about the existence of the previously crucial risk factors in their life today appeared to evoke a kind of nostalgia, 'It's been a while since I though about it like that' was one comment which resonates with 'I can't remember what they were? Did I have 4 or 5? They seemed to be relevant at the time, they made sense, but they're not relevant to life now.'

As much as lifers frequently acknowledge that they developed some techniques from their offending behaviour work it appears that a toolkit for managing active risk factors is not one of them. It appears that this is simply because it is unnecessary — 'Looking back 20 years I can see the problems in my life. All I've done is extracted the sense from the nonsense.' The shared view is that committing the crime followed by two decades in prison has changed each person significantly. Each lifer also found the process of proving this to the Parole Board extremely confusing and each found that the plans developed during their time in prison to be somewhat differently to the reality.

*They are quite weird, Parole Boards.*

*The trouble is I was trying to prove a negative, that something wasn't going to happen.*

*I went into the board full of mixed emotions but trying to appear confident and positive.*

*Is it useful? Only in the sense that once you've been through it you can face anything.*

*I think they were just trying to see if I still had a temper.*

Every lifer has their own experience of Parole Board oral hearings. On my first one the lay member told me she had read my dossier and that there was lots of good stuff in it, that I had clearly achieved a lot during my time in custody, 'and I'm not going to ask you about any of it.' She was, she said, the one who would ask the tough questions. Well, by this time I had been prodded and poked and provoked by group facilitators and fellow group members for years, nothing she was going to throw at me would provoke a strong reaction. I had answers to those difficult questions about the past. What I really didn't know about was the future.

**Why does nobody tell you just how hard it will be?**

I was in open prison for a long time prior to my final Parole Board. I worked in the community, had numerous day releases and a series of home leaves to a probation service Approved Premises. I worked with my solicitor and Offender Manager to put together a release plan covering housing, employment and my support network, even considering what kinds of hobbies I would have. And, of course, how I would manage my risk factors on an ongoing basis in the community. Most mandatory lifers will prepare for their final board in a similar way.

'Everything was focused on release, I had no idea just how difficult life outside would be,' disclosed one lifer. This is a common theme, that the whole of the Parole Board process is focused on satisfying a set of criteria on that day but that very little attention is given to the reality of what happens next. One recently released lifer commented that 'they released me and then left me to my own devices — it obviously shows I am trusted.'

There is general surprise from released lifers at the lack of supervision they are subject to — which is universally met with approval although there is also a view that being left alone means that support is lacking. Every lifer I have spoken to has commented that there are practical problems that they have had to solve themselves, often this is accompanied by bemusement at the lack of information, 'Surely they must have a list of landlords who will accept lifers?'

Everything was focused on release, I had no idea just how difficult life outside would be...

Plans for employment and housing are two areas where it appears that the package put together to satisfy the Parole Board is extremely unrealistic. Many lifers are released following 15-25 years in prison and yet have insufficient ID to enable them to accept employment even if it was offered. This problem is somewhat mitigated by the fact that they need to disclose often inhibits lifers from applying for a job in the first place and frequently lack of guidance on how and when to disclose leads to rejection from employers. There are resources to guide lifers in this process from organisations such as Unlock 2000 but this knowledge is rarely passed on from the probation service.

Although almost every mandatory lifer will have spent time in open prison where they will have been offered employment support most still have many barriers such as lack of transportation or experience in using the internet and a large gap in their CV. Many have unrealistic plans for employment and an array of qualifications which appear to impress the Parole Board (presumably because they demonstrate purposeful activity and focus) much more than they impress the typical employer. Since discriminating against a job applicant on the basis that they have committed murder is in no way unlawful many released lifers experience similar problems — 'they asked me what my offence was, I told them and they just hung up on me.'

Finding housing can be a similar experience. Most mandatory lifers are described as high-risk and will live in an Approved Premise on release. How easy it is to move on from here varies enormously across the country and according to the knowledge and helpfulness of Offender Manager. The oft repeated line of 'look on the internet' or 'try the local council' is often as good as it gets but two lifers did tell of supportive Offender Managers who were able to secure housing association accommodation. For those lifers seeking a flat via a high street estate agent there appears a clear avenue to success — tick the box marked No on the application form when asked about a criminal record.

> *Nobody tells you what it is really like to try and get a job or a house. Nobody is honest about it. Being on home leaves didn't get me ready for the reality.*

For many lifers it appears that society is not ready to accept them, work next to them or live in the same street as them. These rejections are never issued directly, nobody ever explains they won't rent a flat to a lifer. That is problematic since rejection is a pretty normal part of life but to some of us it can be accompanied by an unspoken question, 'Is it because I am a murderer?'

Before prison all of us had a space in society. Some of us had a job, a family, a few friends or a place to call home and, perhaps, someone to hold and to love. Keeping everyone safe meant removing us from that space. Naturally we recreated some of it in prison but in a contained and supervised way. We worked on our risk factors in a bubble away from all that difficult and complicated stuff like meaningful relationships and responsibility. We began to feel better about ourselves and pictured a way through the system, though for most of us we weren't exactly clear on where this would lead to.

Some lifers make it through their sentence and retain friendships, some maintain family ties through phone calls and visits and some are released from prison knowing nobody from their previous life. Developing new relationships is accompanied for most with a sense of fear about disclosure and many lifers have supportive social networks of people who have no knowledge of their past. Others hold people at arm's length and struggle to engage. Very often the support network designed in prison is not the network which exists after release. For the majority, those people who were so supportive over the years — including family, friends and volunteersare not those who support the lifer after prison. 'Friends who I thought would be the mainstays disappeared off the scene.'

The complexities of human relationships, the barriers to jobs and housing and the difficulty of learning a new set of norms makes preparing for release from prison a huge challenge. It is a different challenge to that of preparing for parole. All lifers when asked directly 'Does preparing for parole help prepare for life?' answered 'No' but each could articulate how they faced the challenges of life in the community by building on a process of reflection and maturation within prison.

One lifer presented a release plan to the Parole Board which he has followed exactly — he worked in open prison whilst undertaking an educational course and carried this on after release. He lived in an Approved Premises and then was able to move to a privately rented flat (yes, he lied on the form). When asked if preparing for parole had helped he replied, 'No. I didn't ever prepare for parole, I prepared for life after prison. I didn't ever do anything for them, I did it all for me.'

# Parole – 50 Years and Counting

***Professor Nick Hardwick*** *Chair, The Parole Board for England and Wales 2016-2018.*

This article is reprinted courtesy of The Butler Trust and Parole, Probation and Prisons—Past, Present and Future to mark 50 years of the Parole Board—6 November 2017

**Fifty years is a long time in the life time of any organisation—but perhaps less so for the Parole Board than other organisations. We deal with the legacies of the past. We have a parole review coming up for a man who has been in prison since he was first sentenced in January 1967—before the Parole Board was first established. Were he to be released, imagine how the word has changed since he was last free.**

Every time I meet victims I am reminded that although many years may have passed since the crime that took away a wife or husband, son or daughter, and those left behind have had to get on with life, the Parole System opens up those old wounds that never heal. As one man said to me, 'the worst day in my life was when I learnt my daughter had been murdered, the second worst was when her killer was released on parole'.

The Parole Board was created by the Criminal Justice Act 1967 but did not actually begin its work until 1 April 1968. Reading its first annual report for 1968 I can see that much has changed, but I am struck by how much has stayed the same.

In a report addressed to the then Home Secretary, James Callaghan, the first Chair of the Parole Board, Lord Hunt, wrote:

'There are bound to be doubts about the very concept [of parole], reservations regarding the extent to which it should be applied and differing views about the methods of administration. There will be inevitable set-backs. In all these respects, the successful establishment of parole will depend to no small extent on the sympathy of the public.'

He goes on to explain that it is, quote

'In an effort to explain the idea of parole, and to set before the public the problems and prospects of the system'

that he uses the report to explain in detail how the system works. These are sentiments I could very well express today in a contemporary report.

The 1968 report goes on to describe many other features that sound familiar. Backlogs, prisoners deteriorating when they spend too long waiting for a decision, the ambiguities surrounding mental health all feature heavily—as they do today.

Moving forward, Rex Bloomstein, made the TV documentary 'Parole' in 1979. It is fascinating to watch. The processes he describes, and it is perhaps too easy to mock the posh accents, attitudes and behaviours of Board members that now seem so old fashioned. But the dilemmas the Board members struggled with then are in essence the same as those we deal with today. Rex is in the process of making a new radio documentary about the Parole Board's work today. In 50 years' time, it may be that people will listen to it again and mock our funny accents and odd views—but I suspect they will still recognise common challenges.

So, what would people make of our work today if they looked back on it from 50 years in the future?

This is the Parole Board today.

With powers, independence, size and status that have developed greatly since the Board was established. It is now defined as a 'court-like' body. The growing independence of the Board is still a journey we are on.

In most cases, it is now a decision-making body and over the years successive legislation has extended its remit to a wide variety of cases—to the extent that I am not sure that we are the right people to make the decision in all the cases that come before us.

Our decisions are now solely based on risk. The test we apply before a prisoner can be released, arising from the Legal Aid, Sentencing and Punishment of Offender Act 2012, is:

When considering the release of prisoners who come before it, the Board is required to determine whether it is satisfied that it is no longer necessary for the protection of the public that the prisoner should remain detained

The early reports of the Parole Board appear to take a wider view of public protection and justice than we do today and we lose something if our decisions simply turn on risk algorithms and the statistical analysis of the effectiveness of offending behaviour programmes and avoid moral and ethical judgement.

I hope those who in future look back on our work will recognise the progress we have made in recent years.

Backlogs have dominated our recent work as they did at many time in the Parole Board's past.

The Parole Board was almost overwhelmed by the consequences of the Osborn, Booth and Reilly judgement in 2013 which gave most prisoners the right to an oral hearing rather than having their case determined 'on the papers'. In my view this was absolutely right in principle, but of course oral hearings are much more resource

intensive than paper hearings and so without additional resources, the Parole Board's backlog of cases waiting for a hearing grew rapidly.

We have now pretty much turned that situation round and got back to a situation where the cases in the pipe-line are close to frictional levels. We began to turn the corner under the leadership of my predecessor Sir David Calvert-Smith and the previous Parole Board Chief Executive, Claire Basset who did much of the heavy lifting. They are also here today and I pay tribute to them. That progress has been maintained by our current Chief Executive, Martin Jones, and I thank again Martin and his team and the Parole Board members who have worked so hard and skilfully to eliminate the backlog.

We have done that while maintaining our focus on public safety. The thousands of prisoners we have released or recommended move to open conditions mean thousands who have had an opportunity to rebuild their lives and make a contribution to society, and for every prisoner released who takes advantage of that opportunity, that creates a legacy for them, their families and the society of which they are part that will still be felt in 50 years' time.

But a fraction of one percent of the prisoners we release then commit a further serious offence. Very few of these could have been predicted but we are and should be always mindful that this too leaves a legacy—of distress and destruction—that will last many years.

Each decision has enormous consequences—just as it did 50 years ago and will 50 years in the future.

Some aspects of the current Parole System may not be looked back on favourably in future.

I suspect those looking back in future may be shocked that it is taking us so long to resolve the Indeterminate Sentences for Public Protection problem.

IPP sentences were abolished in 2012 because they were thought to be unjust and resulted in prisoners spending much longer in prison than the courts intended or was proportionate to their offence and this because of what they might do in future rather than what they had done in the past.

Although the sentence was no longer available to the courts, its provisions remained for those who had already received the sentence.

If, as Ministers have recently repeated, the IPP issue is a' stain on the justice system'—although a lawful sentence—why, those in future might ask, has nothing been done about it? It is a question we ask about many elements of public life today—'you knew something was not right but you did nothing. Why?' It would be a hard question to answer.

I think I can honestly say that the Parole Board is now doing all it can to resolve the issue.

The IPP release rate has risen significantly and we are working with other to safely progress those IPP prisoners with the most complex supervision and support needs.

I have been clear on a number of occasions that further and faster progress requires policy and political decisions and put forward a number of options for what these might be.

Foremost amongst these is to do something about the recall rate for indeterminate prisoners. Were the human consequences not so serious, I think future observers of the system would ridicule the extent to which different part of the system are releasing, recalling and re-releasing the same individuals. I think there are faults on all sides here but unless we get our act together better I fear there will still be IPP prisoners revolving round the system for many years to come.

I hope this is not something we will have to wait 50 years to resolve but that it is an area where we will be able to make rapid progress.

We have been very focussed on reducing the backlog over the last few years. Now that we have made good progress, that does gives us the space to look at other aspects of the Parole Board's work

I want to suggest three other areas whereI think we could make changes in future. I do not think these are things that should have to wait 50 years to achieve but they are medium or long term. I also want to be clear that I am not announcing policy decisions—but suggesting areas on which we want to begin a consultation with our members, victims and penal reform groups, the Ministry of Justice and others with an interest in the Parole System.

I will begin by looking at openness and transparency.

It is an undisputed principle that for justice to be done, it must be seen to be done. The Parole System, and the Parole Board itself, now a court like body don't forget, are closed systems. I think the onus should be to demonstrate why any part of the system should be closed—not to demonstrate why it should be open. I also recognise that public bodies of all types are rightly expected to be more open and transparent and in these circumstances the Parole Board is lagging behind in ways that it is difficult to defend.

I recall the words of the Lord Hunt, the first Chair of the Parole Board that I quoted earlier about the importance of explaining the system to the public if they are to have confidence in it. That still holds true today.

We recently had a visit from the Canadian Parole Board, a very similar system to ours in some ways—but

much more open. There is much we can learn from them I think.

In this regard, there are three areas we could tackle, in ascending order of difficulty.

First, we could just have more information available in different formats that explain the parole process much better than we do at present. This should take account of prisoners and other with different levels of understanding and make much better use of our website and social media—although for the time being prisoners will continue to need information in printed form. We have begun to open up the system to researchers and the media and we should continue to do so. We may not always agree with what they say but we should not be so lacking in confidence that we avoid scrutiny of and debate about our work.

Second, we should be much better at informing people of our decisions. Frankly, our letters to prisoners are pretty incomprehensible and I think we should consider producing our decisions in a style and format that could be shared with victims. Perhaps we should go further and publish our decisions and reasons so that everyone can see them.

In most cases, it should be possible to inform a prisoner of our decisions at the end of a hearing rather than leave them in suspense waiting to hear the outcome. This would also underline the members concerned's ownership of the decision. I am not clear now why our current decision letters do not have the names of the panel making the decision on them—although these names will be known to the prisoner from other documents available to him or her. The issue here is that as in other tribunals, the decision maker should be clearly accountable for the decision he or she makes.

Thirdly, I was impressed that in Canada anyone can apply to attend a parole hearing—victims, academics, the media and interested members of the public although they will be subject to security checks before permission is granted. Their hearings are held in prisons like ours although a greater proportion are held by video link. Here, a victim can attend to read a victim statement but must leave after they have done so. I think we should consider carefully why we ask victims to leave at this point, of course only if they wish to stay. I do not think we should rule out opening up hearings even further.

I can accept there are many arguments against this approach that need to be carefully considered. Cost would be a big issue—such changes would require additional resources which we don't have at present. Perhaps victims here might feel that opening up the process in this way might reopen their trauma to an unacceptable degree and increase the extent to which they have to relive the original pain of the crime. Perhaps opening up the system in this way would make prisoners less forthcoming and so make it more difficult to assess their risks. And I accept there would sometimes be safety, security issues that meant some information should be withheld, however open the system was in principle.

However, I don't accept that a good reason for not opening up the system is that the public or media might not like what they see. Even at present, some of the decisions we make are subject to ill-informed criticism—but how could it be otherwise when we do not provide information about why we made a decision? If all the media have to go on are lurid accounts of a crime many years ago, and do not hear how a man or woman had changed or how their risk can be managed, we cannot complain if they do not understand the decision we have made.

Cost would be a big issue—such changes would require additional resources which we don't have at present.

So, nothing is going to happen quickly and these are all matters that we need to consider and consult on carefully. No decisions have been made—other than we want to start a discussion.

The next area we should look at is our independence.

Perceptions of independence are important, not just real independence.

I have never thought it was appropriate that a court like body is located in the executive offices of the Ministry of Justice. For this reason, I am pleased we will be moving to new offices next year.

I am not aware of any occasion in which ministers of officials in the Ministry of Justice have attempted to improperly influence our decision on an individual case. That is not the issue.

However, I do think there are problems with the balance of control over the preparation of a case and the relevant dossier between the Parole Board and Public Protection and Casework System in the Prison and Probation Service.

At the very least this leads to duplication of effort and confusion about accountability. Critical issues like the number of deferrals that result from incomplete dossiers become more difficult to resolve. The more stages there are in a process, the more opportunities there are for confusion to occur.

More seriously, it might be argued that it should be for the Parole Board to determine the timing of hearings and to direct the evidence and witnesses it requires at the start of the process.

All of these matters could be resolved administratively. There are other issues that go to the Board's independence, such as the reappointment and

reappointment of members and the Board's formal relationship with the Ministry of Justice that it would be useful to look at. But I recognise that these would require legislation—and I suspect that there will not be a space for that for a number of years to come.

The make-up of the Board's membership is the third area I want to examine.

An observer from 2067 would surely comment on how unrepresentative the Parole Board of 2017 is of the communities it serves. We have this in common with much of the rest of the justice system—although we have a better gender mix than many other parts. Nevertheless, lack of racial diversity amongst our members means we do not have access to the insights and experience a more diverse membership would bring.

In his very powerful recent review into the treatment of and outcomes for Black, Asian and Minority Ethnic individuals in the Criminal Justice System, David Lammy MP wrote:

'Trust is low not just among defendants and offenders, but among the BAME population as a whole. In bespoke analysis for this review which drew on the 2015 Crime Survey for England and Wales, 51per cent of people from BAME backgrounds born in England and Wales who were surveyed believe that 'the criminal justice system discriminates against particular groups and individuals'.

The answer to this is to remove one of the biggest symbols of an 'us and them' culture—the lack of diversity among those making important decisions in the CJS; from prison officers and governors, to the magistrates and the judiciary. Alongside this, much more needs to be done to demystify the way decisions are made at every point in the system. Decisions must be fair, but must also be seen to be fair, if we are to build respect for the rule of law."

Lammy suggests a link between independence, diversity and transparency as important to trust, and trust as underpinning confidence in the justice system as a whole. I am sure that is true for all sections of the population even if the issues are more acute for those sections Lammy discusses

Earlier in my lecture I referred to the words of my predecessor, Lord Hunt, the first Chair of the Parole Board who recognised how important public confidence was to the success of the Parole System.

That is no less true today so I hope in addressing issues of diversity, independence and transparency, in spite of the real difficulties involved, the Parole Board will do all it can to ensure it has earnt public confidence and when they look back on our work in 2067 they may smile at some of our ways—but will recognise the work we have done to build a system that has earnt the trust on which its future depends.

# Reviews

Book Review

***On the Parole Board: Reflections on Crime, Punishment, Redemption and Justice***

By Frederick Reamer

Publisher: Columbia University Press (2017) ISBN: 9780231177337 (paperback) £24.95 (paperback)

> *Few people experience life inside of prison. Even fewer are charged with the formidable responsibility of deciding whether inmates should be released.* F.Reamer

The working practices and day to day experiences of Parole Board members are somewhat shrouded to those outside of this distinct group. This book lifts the lid on the Rhode Island Parole Board and allows the reader to gain a glimpse into the decision-making processes involved. These weighty parole decisions impact the inmate, victims, their families, and the public. Here Frederic Reamer draws on his 24 years as a member of the Rhode Island Parole Board in the United States (1992-2016) to offer his insights on the inner workings of the board and his experience of this challenging decision-making.

Professor Reamer's background includes a career as a social worker in prison and mental health settings, with subsequent academic university appointments conducting research in to professional ethics. He draws on his rich research and social work background extensively in this, his latest book. The book includes thoughtful consideration of contentious issues that he recommends anyone who must 'decide the fate of prison inmates had better wrestle with'. These include consideration of rehabilitation versus retribution, the origins of criminal behaviour, blame, shame, tragedy and hope, and although he offers no answers to these debates the book acts as a catalyst for their careful thought.

Throughout his overview of the US criminal justice system, Reamer illustrates key points with 're-created' case examples, anonymized accounts from hearings and poignant victim accounts. He also interweaves his own individual opinions, offering deeply personal reflections on his philosophical position regarding some of the recurring moral issues. In the first chapter Reamer discusses free will. He outlines the opposing positions of those who see crime as a choice, 'deliberately, willingly and rationally' taken, weighing up calculated risks, in stark contrast to determinists, who posit that offenders are 'essentially victims of errant genes, trauma or toxic environmental circumstances that have led them down life's wayward paths'. Reamer suggests that how people respond to offenders is often a direct function of their beliefs about the extent to which the offenders sitting before them are, or are not, responsible, in the free will sense of the term, for their misconduct, and that this extends to parole hearing decisions.

Reamer's work he states was influenced in part by a longstanding relationship with a multiple life-sentence serving inmate, Dave Sempsrott. Dave, who had faithfully attended weekly group meetings led by Reamer, for nearly two years, barely spoke during these sessions. However, when Professor Reamer left the Missouri State Penitentiary to work in Rhode Island they began a pen-pal relationship which lasted for over 30 years, until Dave's death. It is clear this relationship had a profound impact on Reamers view of criminality and he acknowledges its 'influence on [his] approach to the decisions [he] made as a member of the Parole Board'. Reamer expresses compassion for the lifelong challenges faced by prisoners often with severe trauma histories, mental health difficulties, and 'out of control' issues with substances. This compassion is in turn extended to the victims, who may face lifelong grief and torment at the hands of crime. Likewise, in a later chapter, he discusses the resilience and 'grit' of many victims and inmates, who demonstrate 'an indomitable spirit and ability to persevere in the face of daunting circumstances'.

Alongside these personal reflections and case vignettes, Professor Reamer underpins his criminal justice analysis with well researched, historical data. For example, in his chapter on Punishment, Retribution and Shame he draws upon research into the probability of offenders receiving the death penalty. Currently, capital punishment is used as a legal penalty in 31 US states, within the federal government and US military. The US is one of 57 countries worldwide, and the only western country, to apply the death penalty. He knowledgably discusses this and the data on wrongful convictions, and proudly affirms that Rhode Island was one of the first states to abolish the death penalty (despite its later revocation). However, this academic context acts as an aside to Reamer's principled debate and

personal standpoint on the purpose and moral acceptability, or not, of the death penalty. This balance of fact and opinion makes for an engaging read which would be of interest to those from criminal justice backgrounds and readers intrigued by the workings of the Parole Board. Clinicians and academics will also be interested in the book for its balance of insights in to victim experiences and synthesis of relevant literature.

Whilst reading the book it is difficult not to draw out the parallels and distinctions between the Rhode Island Parole Board and that of England and Wales. Indeed, differences exist even across the US, as each of the states with a Parole Board has their own laws and criteria pertaining to parole. One of the five criteria that needs to be considered by the Rhode Island Parole Board is 'that there is a reasonable probability that the prisoner if released, would live and remain at liberty without violating the law'. This compares to the England and Wales Parole Board test that *'the board must be satisfied that it is no longer necessary for the prisoner to be detained in order to protect the public from serious harm'*. There also appear to be clear distinctions in how the oral hearings are run, although specific details are not offered. On the morning of hearing days, the board meet with any victim who wishes to engage, these meetings are scheduled at half hour increments. The afternoons of typical parole hearing days then involve the conduct of around 25 hearings in comparison to the two conducted per day in English and Welsh prisons. The Rhode Island board also have a clear policy that inmates must have at least six months without disciplinary action in custody to be seriously considered for parole. Whereas prisoners with adjudications can still be considered for parole in England and Wales, (however the seriousness and frequency of these will of course be included amongst the myriad factors considered to inform the parole decision). Of note too is that Reamer refers to all Parole Board members being 'on call to issue detention warrants if police and or parole officers had reason to believe a parolee had violated conditions of their parole', this work is not done by Parole Board members in England and Wales.

Common ground between Reamer's experiences of Parole Board work and those of Parole Board members in England and Wales can also be identified. 'Parole Boards everywhere examine mounds of shifting, sometimes elusive, data. They use historic patterns to forecast a future that will be shaped by many complex variables. They deal with odds and probability not certainty'. England and Wales Parole Board members will identify with the 'hours and hours poring over the records' that Reamer describes before each hearing. Also, the weighing up and balancing of the recognition of inmates' progression in custody with the gravity of their offence(s) alongside the past, current and hypothesized future risk of causing further harm. Not to mention, the scrutiny and security protocols at the gates of prisons, and the curious glances from prisoners in the grounds at the Parole Board members 'dressed in civilian clothes and cradling our laptops'.

Professor Reamer attributes his interest in understanding crime to having his curiosity piqued by the striking cover of a library book on one of his many childhood library visits. He chose a book off a shelf and describes the cover, which he still remembers, with a photo of a prison cell on the front jacket. Reamer's book may have the same impact on those who see its starkly contrasting orange uniformed, hand-cuffed, segregation prisoner in an austere prison corridor. He describes how the photographs in the book he kept returning to on future library trips impacted on him; 'my questions were endless, as was my fascination', he describes how to this day this curiosity has persisted. Readers of Reamer's book may feel the same. Whilst it offers a personal view on several complex issues, it sparks further debate, both internally and for conversation with others about the value we place on freedom, the complex actions leading to those who lose theirs, and the difficult decisions of the Parole Board in granting that freedom back to those who are felt to warrant it.

***Georgina Rowse*** *is a member of the Parole Board.*

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