PRISON SERVICE
JOURNAL

May 2018 No 237

Special Edition

50 Years of the Parole System for England and Wales

Parole – 50 Years and Counting

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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.

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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.