PRISON SERVICE
JOURNAL

May 2018 No 237

Special Edition

50 Years of the Parole System for England and Wales

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.

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.

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.

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.

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.