

PRISON SERVICE JOURNAL

May 2018 No 237



Special Edition
50 Years of the Parole System
for England and Wales

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 review¹ 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 Rules² 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