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

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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

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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's¹⁷ 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%

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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.

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:

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

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

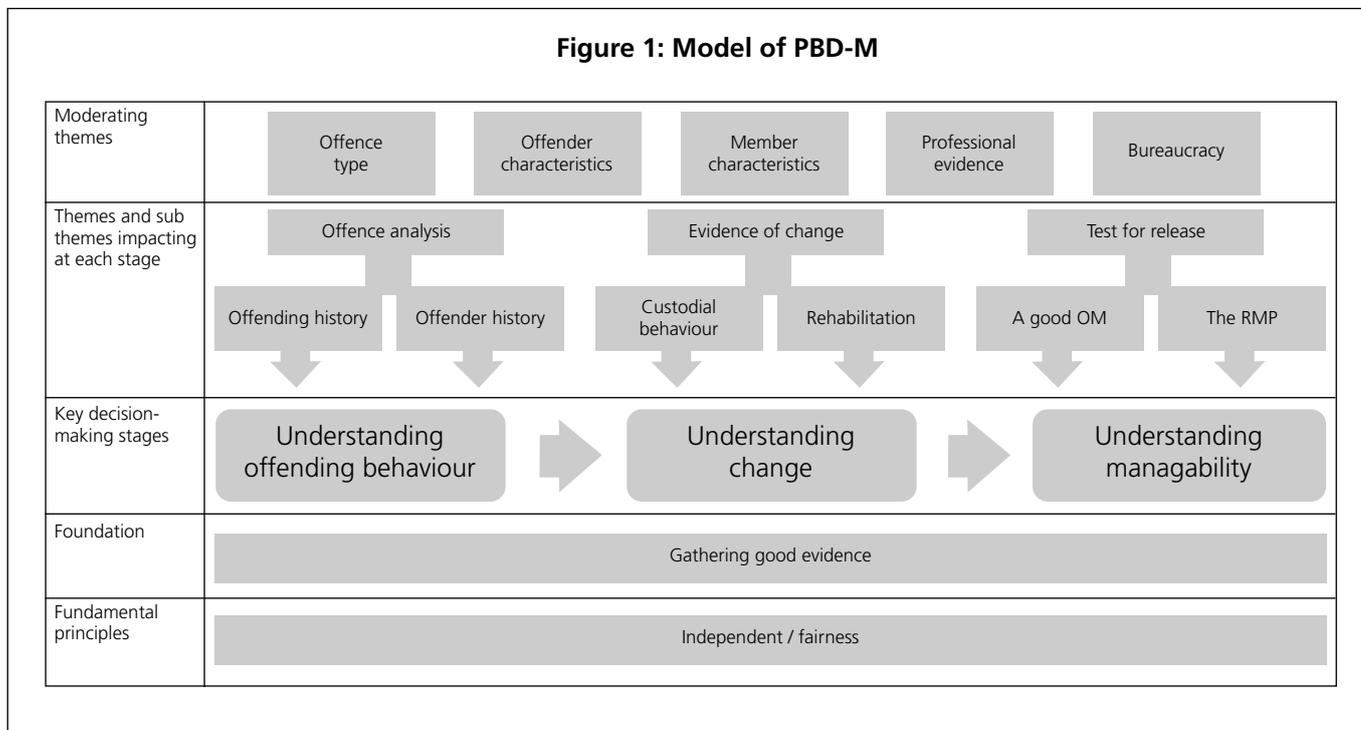
In some cases, the decision becomes more finely balanced. As described by a psychologist member where the lack of understanding of the offence is balanced against understanding management of risk,

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 Covernry university