

Rt Hon David Gauke MP
Secretary of State for Justice
102 Petty France
London SW1H 9AJ

19 March 2018

Dear Secretary of State,

Parole Review

I am pleased to attach a paper from Dr Thomas Guiney, a colleague at the Prison Reform Trust but also a leading authority on the history of parole in this country, in response to the review of parole that you announced in January.

The review was set up in response to an extreme media reaction to a particular decision. Those who live and work in our prisons will be only too familiar with the history of ill-judged policy responses with long term consequences that tend to result in those circumstances. Indeed, the fact that the Parole Board finds itself in the position of considering the case in question at all owes much to a bad law borne of hard cases around the turn of the century. So while the Prison Reform Trust welcomes the opportunity the review gives to take stock, it is essential that any decisions that flow from it take account of their likely long term consequences for the individuals most affected. It is plainly right that the experience of victims of crime should be central, but the history of parole shows that prisoners too have suffered through the failings of the system as a whole. It is prisoners who have routinely not been given the opportunity to be released on time when their punishment has been served and to make a success of their life following release.

There should be no confusion that the aim of the parole system (as distinct from the Board) should be to protect the public **and** meet the legitimate rights of the parolee by implementing a timely plan for their safe release. We should regard a failure to release a prisoner at their earliest parole eligibility date as a failure of the system both in custody and in the community to use the time available to prepare properly. This country is very unusual in Europe in the number of people sent to prison on indeterminate sentences – twice as many as the next three European comparators combined. Given our predilection for sentences containing such a measure of uncertainty for the person serving them, there is a particular burden on the agencies responsible for both risk reduction and risk management. Our national failure to meet those obligations following the introduction of the IPP sentence, but also in relation to many other life sentence prisoners, remains a scandal. The Parole Board, just as much as the prisoners before it, has been the recipient of an inadequate service too often, and the opportunity should be grasped as part of this review to set higher expectations of both prison and probation services.

Prisoners watching and reading the media coverage that prompted this review will have been dismayed by its potential to affect their already moderate chances of securing release and its

corrosive impact on the attitudes they are likely to encounter in the communities to which they will eventually return. The behaviour of the media in response to the Worboys case is perhaps unsurprising, and in any event beyond the scope of this review. But the prejudicial public commentary of those with direct power to influence the Board's operation, both now and in the future, should be a cause for concern. A clear line should have been drawn – and observed by all government spokespeople – between the procedural concerns in relation to victim issues, and the merits of the decision itself. It is reasonable to assume that none of those commenting had read the 363 page dossier, nor benefitted from the training and experience of the 3 member Parole Board panel that did. But the media's conclusion that the decision must be wrong was unhesitatingly endorsed. The threat to the independence of a body charged with the most difficult and emotionally charged of decisions is both real and severe. So the decisions taken in the light of this review must have regard to that threat and take the opportunity to bolster the protection the Parole Board needs if it is to meet its obligations to all of us, whether victim, prisoner or just a member of the society in which released offenders will build their future. Some greater protection than the good judgement of the individual in charge of the Ministry of Justice is essential.

Our recommendations therefore encompass both procedural changes which could be implemented relatively swiftly, and much more fundamental reform of the standing of the Parole Board and its relationship to ministers. They are:

- To reconstitute the Parole Board as a two-tier legal tribunal under the auspices of Her Majesty's Courts and Tribunal Service (HMCTS).
- To place far greater emphasis on improving public understanding of the parole system, and sentence progression more generally.
- To publish a parole compact that sets out, in clear and accessible terms, what prisoners, victims and the general public can expect from the Parole Board and partner agencies.
- To establish an easy use information management system providing public access to select, and quality assured information, held by the Parole Board.
- To follow the New Zealand example and publish brief but informative summaries setting out the reasoning behind parole decisions and the conditions placed upon a parole licence.
- To review the operation of determinate sentence recall cases and adopt a standardised system based upon a fixed recall period (not exceeding a percentage of the overall sentence).

We look forward to the opportunity to discuss these recommendations and to conclusions that will benefit all those people affected by the way the parole system currently operates.

Peter Dawson
Director

Prison Reform Trust response to the Ministry of Justice Review of the Law, Policy and Procedure Relating to Parole Decisions¹

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families

<http://www.prisonreformtrust.org.uk/>

Summary

This briefing paper responds to the Ministry of Justice review of the 'Law, Policy and Procedure Relating to Parole Decisions'.

It sets out the available background information to the John Worboys case and situates this parole decision within a wider criminal justice context, with reference to the current sentencing framework in England and Wales. It goes on to examine the problematic status of the Parole Board and discusses how greater transparency can be delivered in a way that is consistent with public protection, respect for the rule of law and human rights. This briefing builds the case for understanding transparency and accountability as mutually interdependent and calls for far greater emphasis upon release planning to promote constructive prison regimes, post-release supervision and the wider community infrastructure needed to support long-term desistance in the community. It concludes with a consideration of resource implications and the case for reform of determinate recall cases in the interests both of justice and economy.

On the basis of the analysis set out in this paper the Ministry of Justice review team is invited to consider the following recommendations:

- i. To reconstitute the Parole Board as a two-tier legal tribunal under the auspices of Her Majesty's Courts and Tribunal Service (HMCTS).
- ii. To place far greater emphasis on improving public understanding of the parole system, and sentence progression more generally.
- iii. To publish a parole compact that sets out, in clear and accessible terms, what prisoners, victims and the general public can expect from the Parole Board and partner agencies.
- iv. To establish an easy use information management system providing public access to select, and quality assured information, held by the Parole Board.
- v. To follow the New Zealand example and publish brief but informative summaries setting out the reasoning behind parole decisions and the conditions placed upon a parole licence.
- vi. To review the operation of determinate sentence recall cases and adopt a standardised system based upon a fixed recall period (not exceeding a percentage of the overall sentence).

¹ Prepared by Dr Thomas Guiney. Visiting Fellow, Mannheim Centre for Criminology, London School of Economics and Political Science

1. Introduction

The Prison Reform Trust welcomes the opportunity to respond to the Ministry of Justice Review of the ‘Law, Policy and Procedure Relating to Parole Decisions’. The decision to release John Worboys has generated considerable public interest and this has exposed longstanding weaknesses in the operation of parole as currently organised. The parole system is one of the most common areas of enquiry to the Trust’s dedicated prisoner ‘advice and information service’, and this briefing paper is intended as a constructive contribution to current debate which, it is hoped, will help place the parole system on a more secure footing so that justice is not only done, but seen to be done for prisoners, victims, and the wider community.

There is little doubt that the parole system is in urgent need of modernisation, but recent history should serve as a warning against the dangers of rushing through wide-ranging reforms on the basis of high profile or exceptional cases. The termination of prison sentences is critical to the effective operation of the criminal justice system and even small changes in law, policy and procedure can result in far reaching, and unintended consequences. While the overwhelming majority of men and women sent to prison will return to the community at some point in their lives, a growing number are serving indeterminate and extended determinate sentences that are subject to a system of discretionary release administered by the Parole Board. For those living with this uncertainty the parole system can represent a barrier as well as a bridge between prison and the community.

It is now 50 years since the Parole Board was first established and both public and legal expectations are now significantly higher. If the Parole Board, and the institutions it relies upon, are to respond effectively to these competing demands they must be equipped with the right tools for the job, and this paper sets out a vision for a twenty-first century parole system in England and Wales that is:

- independent from government
- pro-active in building public understanding of how parole decisions are made
- consistent in enforcing the rights of victims, prisoners and the wider community
- transparent in its activities
- accountable to the public, and supported by others to perform this role effectively
- affordable

2. Background to the review

In 2009, John Worboys was found guilty of 19 sexual offences against 12 victims. He received an indeterminate sentence of Imprisonment for Public Protection (IPP) and ordered to serve a minimum tariff of 8 years imprisonment before his case could be considered by the Parole Board.

Since the offences committed by John Worboys first came to light, public interest has extended far beyond the sentence of the court. Criticism has been levelled at historic failures in how the police respond to allegations of sexual assault, the evidentiary challenges of successfully prosecuting complex sexual offence case in court and the overall experience of victims at each stage of the criminal justice process. The decision of the Parole Board has become a lightning rod for public anger but the integrity of the justice process cannot rest on one body alone:

- In 2010, the [Police Complaints Commission](#)² called for wide-ranging changes in how the police deal with victims of sexual offences.
- Following a successful [legal action](#)³ for damages and declarations arising out of alleged failures by the Metropolitan Police Service and the Greater Manchester Police to conduct effective investigations into allegations of serious crime, it was revealed that between 2002 and 2008

² Police Complaints Commission. Findings of investigation into Met handling of Worboys case, 20 January 2010

³ [2015] EWCA Civ 646. This judgement was upheld by the Supreme Court [2018] UKSC 11

police suspected that John Worboys was responsible for over 105 rapes and sexual assaults on women who were passengers in his cab.

- In January 2018, the [Crown Prosecution Service](#)⁴, issued a statement confirming that files relating to 83 separate complainants were originally referred to the CPS. Of those, 14 complainants formed part of the trial with the remainder adjudged not to have passed the necessary evidential test. Following the conviction of John Worboys, the CPS were informed of a further 19 complainants by the Metropolitan Police Service but only one file was subsequently referred to prosecutors and this did not pass the evidential test.

Following a review of his case the Parole Board announced in January 2018 that Worboys would be released from prison. Taking into account time spent on remand, Worboys had spent almost 10 years in custody, the equivalent of a determinate custodial sentence of almost 20 years. In accordance with [Parole Board rules](#) the conditions placed upon his licence were not made public. However, in a subsequent statement the [Chairman of the Parole Board](#), Professor Nick Hardwick, indicated that the case had been considered by a three-member panel, was chaired by an experienced female member, and included representation from a parole board psychologist. The panel considered a dossier of 363 pages and heard evidence from four psychologists as well as prison and probation staff. The Secretary of State was represented and Worboys was questioned in detail. The panel also considered a written statement from one victim.

The case was reported widely in the media. In a statement issued in Parliament on the 19 January 2018 the [Secretary of State for Justice](#)⁵, David Gauke, responded to public concern and announced a review of the ‘Law, Policy and Procedure Relating to Parole Decisions’. While little detail has been made public on how the review will be conducted, the Ministry of Justice has published [terms of reference](#) which make clear it will focus on the following four areas:

- The law, policy, guidance and practice relating to challenges to Parole Board decision-making, specifically whether there should be a mechanism to allow parole decisions to be reconsidered.
- The transparency of Parole Board decision making.
- Victim involvement in Parole Board hearings.
- Arrangements for communicating with victims.

Since that time, the [Justice Committee](#) has convened a one-off oral evidence session on the work of the Parole Board and a number of parties, including several victims, the Sun newspaper, and the Mayor of London Sadiq Khan have been given leave to pursue an application for judicial review against the Parole Board. The hearing, which began on the 13 March 2018, will examine the ‘reasonableness’ of the decision to release Worboys and consider whether Rule 25 of the [Parole Board Rules 2016](#), which prohibits publication of the reasons for release or detaining inmates, is legal.

The initial findings of the MOJ review are not expected until ‘Easter 2018’. However, a ‘rapid fact-finding exercise’, undertaken by [HM Chief Inspector of Probation](#)⁶ at the request of the Secretary of State for Justice, has recently found that whilst the National Probation Service (NPS) had broadly complied with Probation Guidance on providing timely and relevant information to victims, the overall quality of correspondence was poor and opportunities for victims to participate fully in the parole decision-making process were missed. Dame Glenys Stacey also reported that the Parole Board decision in the Worboys case broke in the press before some victims had received and read their advanced notification, whilst many more women with a direct interest in the case, but not participants in the Victim Contact Scheme, first learnt of the decision through the media.

⁴ Crown Prosecution Service statement on John Worboys, 5 January 2018

⁵ Hansard: Parole Board: Transparency and Victim Support, 19 January 2018, Volume 634

⁶ HM Inspectorate of Probation (2018) Investigation into the policy and process followed by the victim contact scheme in the case of John Worboys

3. The parole system in context

Whilst recognising the issues of principle raised in the Worboys case it is important to place this decision within its appropriate context. In 2016/17 the Parole Board concluded 5,184 cases, of which 872 were recommended for moves to open conditions (17%), 1,825 cases were refused (35%), and 2,468 were recommended for release (48%).⁷ Overall, the Parole Board has a strong track record of protecting the public from serious harm. In the last four calendar years less than 1% of the total number of decisions made by the Parole Board have resulted in a serious further offence, as specified in Schedule 5 of the Criminal Justice Act 2003, being notified to the Board.⁸ Recent figures released by the Ministry of Justice also indicate that a small proportion of offenders serving indeterminate sentences go on to commit a further offence, serious or otherwise, following their release (Table 1).

Table 1: Adult proven reoffending data, by custodial sentence length, 2013-2016Q1⁹

	2013	2014	2015	2016 Q1
Indeterminate sentence for public protection				
Number of reoffenders	53	43	68	18
Number of offenders in cohort	389	376	453	137
Mandatory life prisoner				
Number of reoffenders	8	4	8	2
Number of offenders in cohort	172	113	185	51
Other life				
Number of reoffenders	7	17	11	2
Number of offenders in cohort	93	90	102	26
All				
Number of reoffenders	68	64	87	22
Number of offenders in cohort	654	579	740	214

While the Worboys decision has proved deeply unpopular, the administration of justice demands that the Parole Board is empowered to make difficult decisions. Since the abolition of the IPP sentence in 2012 there has been growing pressure on the government to resolve the precarious legal position of IPP prisoners held post-tariff and the Parole Board has a central role to play in this process. It has worked closely with partner agencies to increase the rate at which IPP prisoners have been released and many more prisoners now have detailed management plans where the risk is not yet judged to be manageable in the community. Nonetheless, recent analysis by PRT indicates that considerable challenges remain and this process would be jeopardised if the Worboys case begins to harden the risk-appetite of the Board:

- Despite its abolition in 2012, over four-fifths (86%) of people in prison currently serving an IPP sentence are still there despite having passed their tariff expiry date—the minimum period they must spend in custody and considered necessary to serve as punishment for the offence.¹⁰
- Many people in prison don't know if, or when, they might be released. 10,378 people are currently in prison serving an indeterminate sentence—accounting for 14% of the sentenced prison population, up from 9% in 1993.¹¹

⁷ Parole Board (2017) Annual Report and Accounts for 2016/17/. London: HMSO

⁸ Parole Board (2017) Annual Report and Accounts for 2016/17/. London: HMSO

⁹ Reoffenders: Written question – 123846. <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-01-19/123846>

¹⁰ Table 1.9a, Ministry of Justice (2017) Offender management statistics quarterly: April to June 2017, London: MOJ

¹¹ Table 1.1, Ministry of Justice (2017) Offender management statistics quarterly: April to June 2017, London: MOJ and Ministry of Justice (2013) Story of the prison population: 1993–2012 England & Wales, London: MOJ

- 16% of people currently serving an IPP have a tariff of less than two years, and 41% have a tariff of between two and four years. 513 people are still in prison despite being given a tariff of less than two years—over half of these (277 people) have served eight years or more beyond their original tariff.¹²

Like all criminal justice agencies, the Parole Board has struggled to manage a growing and increasingly complex workload, at a time of significant pressure upon criminal justice expenditure. The total net expenditure of the Parole Board increased from £16.1m in 2015/16 to £19.2m in 2016/17. In part, this reflects the significant cost of complying with the Supreme Court decision in *Osborn*,¹³ which held that the Board had erred in not offering IPP prisoners the option of an oral hearing. A recent enquiry by the [National Audit Office](#) (NAO)¹⁴ found that following *Osborn*, demand for oral hearings conducted by the Parole Board increased by 48% between 2012-13 and 2014-15, and this resulted in a significant backlog of cases. In December 2016, 3,081 prisoners on indeterminate sentences of imprisonment for public protection (IPP prisoners) were in prison beyond their tariff expiry date, and while the backlog of cases awaiting review has now been cleared the Board has paid out in excess of £1.1 million in compensation claims to prisoners since 2011-12 as a result of delayed hearings.

While the terms of reference set by the Ministry of Justice have been narrowly defined, it should be noted that many of the challenges facing the parole system are shaped, to a significant degree, by repeated changes at the top end of the sentencing framework. These reforms have radically extended the scope of indeterminate sentences and are likely to result in a growing number of prisoners serving extended determinate sentences. In England & Wales more than twice as many people are serving indeterminate sentences than in France, Germany and Italy combined¹⁵ and sentencing tariffs have increased significantly in recent years. The average minimum term imposed for murder has risen from 12.5 years in 2003 to 21.3 years in 2016.¹⁶ The Trust, has long called for a managed reduction in the use of indeterminate sentences, particularly for public protection reasons, as part of a careful application of the proportionality principle. Parallels can be found in the academic literature. Bottoms and Brownsword¹⁷ have argued that indeterminate sentences for public protection should only be imposed in exceptional circumstances where the danger to the public is “vivid”, based upon a threefold assessment of seriousness, the frequency and immediacy of the threat to the public, and the certainty of future offending. As a recent report by *HM Chief Inspector of Prisons*¹⁸ indicates, few IPP prisoners held post tariff would appear to satisfy this test.

The overuse of indeterminate sentences must be ended as a matter of urgency and this should be accompanied by a far greater emphasis on effective release planning. 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.¹⁹ Over time this burden of proof has been almost completely inverted for the growing cohort of prisoners serving life sentences and some extended determinate sentences for public protection. For example, the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* places a legal duty upon the Parole Board to determine whether it is ‘satisfied that it is no longer necessary for the protection of the public’ that the

¹² Ministry of Justice (2014) Freedom of Information request 89346, London: Ministry of Justice and House of Lords written question HL2315, 6 November 2017

¹³ *Osborn Booth and Reilly v The Parole Board*. [2013] UKSC 61

¹⁴ NAO (2017) Investigation into the Parole Board, HC 1013. London: HMSO

¹⁵ Table 7, Aebi, M., et al. (2017) Council of Europe Annual Penal Statistics, Survey 2015, Strasbourg: Council of Europe and Council of Europe Annual Penal Statistics, Survey 2014

¹⁶ Ministry of Justice (2014) Freedom of Information request 89346, London: Ministry of Justice and House of Lords written question HL2315, 6 November 2017

¹⁷ Bottoms, A. and Brownsword, R (1983). *Dangerousness and Rights*. In Hinton, J (ed) *Dangerousness: Problems of Assessment and Prediction*. London: Allen and Unwin

¹⁸ HM Inspector of Prisons (2016) *Unintended consequences: Finding a way forward for prisoners serving sentences of imprisonment for public protection*. A Thematic Review. London: HMSO

¹⁹ Guiney, T (forthcoming) *An Idea Whose Time Had Come? The Creation of a Modern System of Parole in England and Wales, 1960-1968* Prison Service Journal.

prisoner should remain detained. Over time, the gradual hardening of the pathways to release has resulted in over reliance on prison as a place of containment and undermined attempts to build a stronger strategic focus on the community infrastructure needed to support the desistance process in the long-term. No risk can be alleviated in its entirety and prisons have a very poor track record in preparing prisoners for their eventual release. The greatest public protection will always come from the successful and permanent reintegration of individuals into the community so that they are lead law abiding and constructive lives.

4. The independence of the Parole Board

The Parole Board for England and Wales is an independent non-departmental public body. It works in partnership with a wide-range of criminal justice agencies, such as Her Majesty's Prison and Probation Service (HMPPS), to '*carry out risk assessments on prisoners to determine whether they can be safely released into the community*'. The core work of the Parole Board has evolved over time and it is now primarily orientated towards the cases of prisoners serving indeterminate sentences, some extended determinate sentences and many recall decisions (see Table 2 below)

Table 2: Workload of the Parole Board

Indeterminate	Mandatory life
	Discretionary life
	Automatic life sentence prisoners
	Her Majesty's Pleasure detainees
	Indeterminate of imprisonment for public protection
	Indeterminate sentence of detention for public protection
Determinate	Discretionary conditional release (DCR) prisoners serving more than four years whose offence was committed before 4 April 2005
	Extended sentence for public protection (EPP) prisoners sentenced before 14 July 2008
	Prisoners given an extended determinate sentence (EDS) after 3 December 2012
	Prisoners given a sentence for offences of particular concern (SOPC) on or after 13 April 2015, who have committed a qualifying offence.
Recall	The recall of cases that fall in to the aforementioned categories
	The Parole Board also decides whether determinate prisoners referred by the Secretary of State for Justice following recall to prison for a breach of their licence

The Parole Board has become a more court like body, and since the Supreme Court decision in *Osborne* it has made great strides in seeking to comply with the European Convention of Human Rights and common law expectations in relation to the right to a fair trial. The Parole Board frequently describes itself as a 'court-like body' in public facing communications²⁰ but in reality, the quasi-judicial status of the Parole Board remains deeply problematic. The Board is sponsored by the Ministry of Justice and the Public Protection Casework Section plays a central role in the administration of the parole process. The Secretary of State for Justice retains the power to approve member appointments and issue policy directions to the Parole Board (although this power has not been used since the Parole Board Rules 2016 were issued).

As the caseload of the parole system has grown in complexity the quasi-judicial status of the Parole Board has been the subject to repeated legal challenge²¹. In the landmark case of *R v Brooke*²² the Court of Appeal held that the Parole Board was not sufficiently independent from the Secretary of State for Justice to discharge its responsibilities in accordance with the rule of law. Affirming the judgement of the Divisional Court, the (then) Lord Chief Justice Lord Phillips expressed his view that,

²⁰ More transparent decisions on parole. Martin Jones, Chief Executive of the Parole Board. 1 March 2018

<http://www.russellwebster.com/martinjones3/>

²¹ Padfield, N (2017) The role of the Parole Board. Independent Monitor, September 2017.

²² [2008] EWCA Civ 29

“Neither the Secretary of State nor his department had adequately addressed the need for the board to be and to be seen to be free of influence in relation to the performance of its judicial functions. Both by directions and by the use of his control over the appointment of members of the board the Secretary of State had sought to influence the manner in which the board carried out its risk assessment. The close working relationship between the board and the unit acting as its sponsor had tended to blur the distinction between the executive role of the former and the judicial role of the latter”.

Following this judgement sponsorship of the Parole Board was moved from the National Offender Management Service (as it then was) to the Access to Justice Directorate of the Ministry of Justice. In June 2009, the government announced a public consultation on the parole system and in the accompanying discussion paper ‘*The Future of Parole*’ invited views from the public on whether the Parole Board should be reconstituted as a court, tribunal or another form of arm’s length body. Unfortunately, no proposals for reform were forthcoming. The consultation ended shortly before pre-election Purdah for the 2010 General Election and no further action was taken when these restrictions were lifted.

As Professor Nicola Padfield,²³ has noted, there is still ‘unfinished business’ when it comes to the status of the Parole Board. In light of recent events, the government should revisit the decision in *Brooke* and take steps to re-constitute the Parole Board as an independent (and inquisitorial) tribunal under the auspices of the *Tribunals, Courts and Enforcement Act 2007*. Far from a purely legal exercise, such a move would deliver many of the practical improvements envisaged by the current review. A two-tier tribunal structure would create a clear legal pathway for the appeal of parole judgements (where leave is granted by a first-tier tribunal) and in many cases this would dispense with the often time-consuming, and prohibitive costs associated with the judicial review process. Administration by the Majesty’s Courts and Tribunals Service (HMCTS) would bring the Parole Board into line with comparable bodies such as the Mental Health Tribunal and may deliver a range of associated benefits, such as greater legal expertise, the timeliness of reports and access to a wider pool of expert witnesses.

The Parole Board has already made incremental moves in this direction and now is the right time to complete this process. Above all else, a tribunal structure would help secure the independence of the Parole Board and insulate the system from any semblance of political interference (real or perceived). High-profile parole decisions will continue to attract public interest and in a more politicised penal climate it is perhaps inevitable that politicians will be drawn into public debate. We should protect their right to do so, but the integrity of the parole system is surely damaged when the Chairman of the Conservative Party declares publicly that his government is doing ‘everything it can’ to keep Worboys in prison²⁴; when the Secretary of State for Justice takes the unprecedented step of seeking legal advice to challenge the judgement of its own agency; and a former Labour Lord Chancellor, Charles Falconer, writes in a national newspaper that “the system for releasing prisoners on parole is letting out those who are unsafe”.²⁵

The liberty of the individual is a cornerstone of our liberal democratic system and a tribunal structure would help restore a clear dividing line between the distinct roles of the executive and the judiciary. As the Conservative home affairs spokesman (and future lord Chancellor Lord Hailsham) observed during the very first parliamentary debate on the creation of a parole system in England and Wales,

‘... we do not think that this subject should be a matter within the day-to-day responsibilities of a political Minister. We believe that it should be not only detached from politics, as I am

²³ Padfield, N (2016) Justifying Indefinite Detention - on what grounds? Criminal Law Review. Pp.797-822

²⁴ Worboys case: Government 'doing all it can' to keep rapist in jail. BBC, 14 January 2018 <http://www.bbc.co.uk/news/uk-42678572>

²⁵ Charles Falconer. British justice is in flames. The MoJ’s fiddling is criminal. The Guardian 6 February 2018. <https://www.theguardian.com/commentisfree/2018/feb/06/british-justice-collapse-moj-prisons-probation-legal-aid-lord-chancellor-charles-falconer>

*sure that the right hon. Gentleman and any likely successor would make it, but should be seen to be detached from politics. We think that it should not be in the hands of either officials or Ministers responsible for the ordinary conditions of incarceration. We do not think that it should be in those hands administratively’.*²⁶

5. Transparency

Since the parole system was first established by the Criminal Justice Act 1967, the operation of parole has been viewed as secretive and paternalistic: 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. We have come a long way in this regard, but there remains a general lack of public understanding about how parole decisions are made, by whom and on the basis of what evidence. The difficulties faced by victims have been well documented but experience suggests that prisoners also have very little understanding of their sentence pathway, how they will progress through the prison estate and the steps they should take to work towards their eventual release.

The parole review presents a real opportunity to return to first principles and design a parole process that is genuinely transparent, accessible and publicly engaged. The parole system has always operated on the basis of public trust and the ongoing renewal of this social compact demands that victims and the general public have a better understanding of the parole system. The critical point is that greater transparency must be delivered in such a way that does not undermine the primary aims of the parole system. The publication of detailed licence conditions, such as place of residence or the identity of the supervising officer, is very likely to undermine supervision and compliance, infringe human rights law and might in some instances encourage vigilantism. Similarly, giving victims the final say over parole releases would certainly introduce arbitrariness into the administration of justice and should be resisted. Victims may sometimes be co-defendants, friends or family members. The most forgiving victims have been known to pardon the most heinous crimes.

In seeking an appropriate balance, PRT advocate the following changes that will help to equip the Parole Board with the tools it will need to discharge this critical criminal justice function in a rapidly changing climate:

- I. Greater emphasis upon improving public understanding of the parole process, and the sentencing pathway more generally. This will require considerable investment in accessible and plain English content, available across a range of mediums, to explain the end-to-end journey of the parole process; the role of the Parole Board and worked examples of how decisions are made.
- II. The publication of a parole compact that sets out, in clear and accessible terms, what prisoners, victims, and the general public can expect from the Parole Board and the various agencies with a stake in the delivery of the parole system.
- III. The Worboys case has exposed a concerning asymmetry in the public presentation of parole decisions. Where the Parole Board is satisfied that risk can be managed adequately in the community considerable emphasis is placed upon crafting licence conditions that will minimise any residual risk to the public and trigger a prompt response from supervising agencies if an individual’s behaviour begins to deteriorate. It is therefore regrettable that Rule 25 of the Parole Board Rules 2016 currently prohibits the Board from publishing information, even in general terms, on the licence conditions imposed in individual cases. Such a position is clearly unsustainable and may be detrimental in the long-run if it serves to undermine public confidence in the parole system. The government should look again at the Parole Board rules with a view to empowering the Parole Board to explain its decisions to the public. For the reasons outlined

²⁶ Hansard: HC Deb 12 December 1966 vol 738 c76

above the government should resist pressure to publish the specific licence conditions imposed in individual cases. Instead it should follow the example set by many [common law jurisdictions](#) that publish a concise 1-page public statement containing a short overview of the case, the reasoned opinion of the Board and a high-level statement of the conditions placed upon the licence. A recent example from the New Zealand Parole Board is set out at Appendix 1.

- IV. There will always be interest in high-profile parole decisions and the Parole Board must be equipped with the tools it needs to respond to public interest and explain its decisions. But in the long-term transparency must mean more than an updated website. Internationally, the [Parole Board of Canada](#) and [New Zealand Parole Board](#) have made great strides in establishing publicly accessible information management systems that provide access to select, and quality assured information, held by the Parole Board. Levels of access differ, but this will often include the status of individual cases, Parole Board listings, transcripts from parole hearings and a summary of key decisions following the template outlined above.
- V. Since the parole review was announced there has been significant discussion of who should be able to access information about the parole process. PRT take no view on victim liaison and whether this should be managed by the National Probation Service or police commissioned victim services, but a system which seeks to fine tune levels of public access according to the status of the individual is unconvincing. Such attempts are almost certainly arbitrary and unworkable in practice. As already happens with Crown Court listings, registered users should be able to access basic information on Parole Board hearings and delays. With regards to more sensitive information, such as the outcome of individual cases, it is absolutely right that government make full use of embargoes to ensure that signatories to the Victim Contact Scheme are informed and given adequate time to digest a decision before public announcements are made. However, controversial decisions will always come to the attention of the press eventually and the approach outlined here would ensure that the system is opened up, not just to the benefit of victims and the media but also for family, friends and loved ones who often feel detached from the decision-making process.

The changes outlined above will almost certainly require additional investment in new technology but experience suggests that greater transparency will only succeed if it is accompanied by culture change and new ways of working. Such changes are long overdue in the criminal justice system. The Parole Board has taken welcome steps to improve engagement with academic researchers and further moves in this direction should be encouraged. Parole Board decision-making should be opened up to greater outside scrutiny and international exchange, steps should be taken to improve the quality and accessibility of data pertaining to parole outcomes and performance. Greater emphasis should be placed upon user engagement with victims and prisoners, friends and family with meaningful opportunities to feedback their experiences and recommend changes. The roll out of video-conferencing may offer a good place to start in this regard.

6. Accountability and effectiveness

PRT welcome the determination to learn lessons from the Worboys case and improve the transparency of parole decision-making. However, it should be made absolutely clear that transparency and accountability are inter-dependent and should be treated as such. Greater transparency invites far greater scrutiny of the criminal justice system and further moves in this direction will only succeed if the Parole Board is supported to perform that function to the highest possible standards.

The Parole Board has always been reliant upon a complex network of delivery agencies including prisons, probation, the Ministry of Justice and other local agencies, such as the police and Local Authority, through Multi Agency Public Protection Arrangements (MAPPA). At present this interface is not functioning adequately. A series of reports by the criminal justice inspectorates reveal a penal

system that is overcrowded, under-resourced and in many cases failing short of basic standards of care.²⁷ This pervasive operational fatigue has affected parole decision-making. The Prison Reform Trust information and advice service receives numerous calls from many prisoners who have not been given sufficient opportunity pre-tariff to access relevant courses, suffered from significant delays in transfers to more suitable prisons and inadequate support to help them progress through the prison system in order to demonstrate a reduction in risk. A prison system in chaos harms all those it holds, but none more so than those whose release date is uncertain. It is no surprise that rates of self-harm are highest amongst IPP prisoners.²⁸

These failings have been the subject of repeated challenge. In the 2012 case of *James, Wells and Lee v The United Kingdom*²⁹ the European Court of Human Rights held that detention could become arbitrary, and contrary to Article 5.1 (a right to liberty and security) of the European Convention on Human Rights, where there was insufficient opportunity provided for an IPP sentence prisoner to demonstrate they had mitigated their risk at tariff expiry or soon after. More recent judgements by the Supreme Court have significantly circumscribed the scope of this decision³⁰ but there is little doubt that underinvestment in our prisons and probation services have made the job of the Parole Board significantly harder than it ought to be.

A thematic inspection of IPP prisoners by HM Chief Inspector of Prisons³¹ found that many prisons did not provide good quality offender management to support IPP prisoners in their progression, including timely assessment and ongoing contact with their offender supervisors. It went on to note that not all IPP prisoners could access the relevant offending behaviour programmes which enable them to demonstrate a reduction in their risk and offered a damning assessment of current practice;

Failures in the criminal justice and parole systems have resulted in far too many people with IPP sentences being held in prison for many years after their tariff (minimum term) has expired. They have been denied the opportunity to demonstrate whether they present a continuing risk to the public, or to have this properly assessed. IPP sentences have not worked as intended and the current situation in which many prisoners find themselves is clearly unjust.

Ongoing issues with the timeliness and quality of parole reports, OASys scores and expert statements have also caused significant disruption to the administration of parole. In 2016/17, approximately a quarter of all parole cases were adjourned or deferred with more than one in ten deferred on the day of the hearing itself. As the Chairman of the Parole Board has noted, some are necessary to meet requirements for additional information or because of unexpected circumstances but, as he goes on to observe, ‘too many are the result of different parts of the system, including the Parole Board itself, failing to work effectively together to ensure that all of the information needed to progress the case are prepared in enough time to conclude the case on the date planned’.

As demands for greater transparency increase so should our demands for accountability from a system that is currently falling short of the minimum standards required to deliver clean, safe, and purposeful prison environment that provides opportunities for rehabilitation and progression to robust supervision in the community. A greater emphasis is needed on responsibility, accountability and multi-agency working throughout the system; prisoners need to understand why they have been denied parole if they are to take an active role in their rehabilitation. There is little recourse against prisons that do not engage

²⁷ HM Chief Inspector of Prisons. Urgent Notification in respect of HMP Nottingham <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2018/01/17jan-sofs-nottingham-letter-and-debrief-pack-for-publication.pdf>

²⁸ ‘Self-harming rise’ among prisoners on indefinite sentences. BBC 23 June 2016. <http://www.bbc.co.uk/news/uk-36598560>

²⁹ European Court of Human Rights (2013) Judgement in the case of James, Wells and Lee v. The United Kingdom. (2013) 56 EHRR 12

³⁰ R (Haney, Kaiyam, Massey and Robinson) v Secretary of State for Justice. [2014] UKSC 66. 17 Dec 2014

³¹ HM Inspectorate of Prisons (2016) Unintended consequences: Finding a way forward for prisoners serving sentences of imprisonment for public protection. London: HMSO

with inspectorate improvement plans and the Parole Board has little power to compel the actions required to progress a prisoner's risk management plan.

There is no magic bullet to address the current accountability and effectiveness gap, but elsewhere [the Trust has argued](#) that a more strategic approach to the management of the criminal justice system, premised upon a managed reduction in the prison population, should be built upon the following principles:

- i. A local service: an acknowledgement that, even in the face of a prison population dominated by people serving very long sentences, imprisonment should be considered primarily a local service, delivering for and accountable to a local community.
- ii. Managing demand: a radical rethinking of sentencing is required. In a time of austerity, a continuing fixation with ever longer sentences is hard to understand in the absence of any evidence that longer sentences have any impact on either deterring crime or securing better post custody outcomes. The startling increase in sentence lengths for serious crime in recent years has been the single biggest factor in ensuring that the size of the prison population consistently outstrips our ability to resource a system capable of delivering a decent or effective service.
- iii. A permeable boundary: a fresh approach is needed to estate planning. ROTL has the potential to transform our idea of what a prison is able to deliver, and the extent to which the prison estate must cater for very particular needs and specialisms by bringing services in rather than sending prisoners out. A much greater use of ROTL for many more prisoners across the whole of what is called the "resettlement" estate would not only transform the rehabilitative quality of their regimes but also generate a powerful incentive to good institutional behaviour.
- iv. Active citizenship in prison: the prison estate should be designed with an expectation that prisoners should play a more responsible role in prison life. As a design principle, this should inform how new prisons are built but it should also inform regime design, expecting prisoners to involve themselves in identifying and solving problems within the prison, and undertaking roles which reflect a commitment to the place in which they are living..

7. Resource implications

There is no doubt that the changes outlined in this paper will have significant resource implications. Additional investment will be required from the Ministry of Justice to drive through a long overdue transparency agenda. However, given the significant financial pressures still facing the Department – which is expected to make a further £600m in savings by the end of the decade³² - it may be necessary to free up and reinvest existing resources more efficiently. In this respect, the parole review presents a welcome opportunity to rationalise the cases that are subject to discretionary release by the Board.

A priority should be to revisit the value of Parole Board involvement in determinate recall cases, given that the Board is not party to the original release decision. Since *Osborn* and the *Offender Rehabilitation Act 2014*, the number of determinate recall cases managed by the Parole Board has increased significantly from 738 cases in 2011/12 to 1,891 cases in 2015/16, representing 36% of all cases (see Figure 1). Determinate recall cases make up a growing proportion of Parole Board business and in recent times steps have been taken to streamline decision-making in these cases.

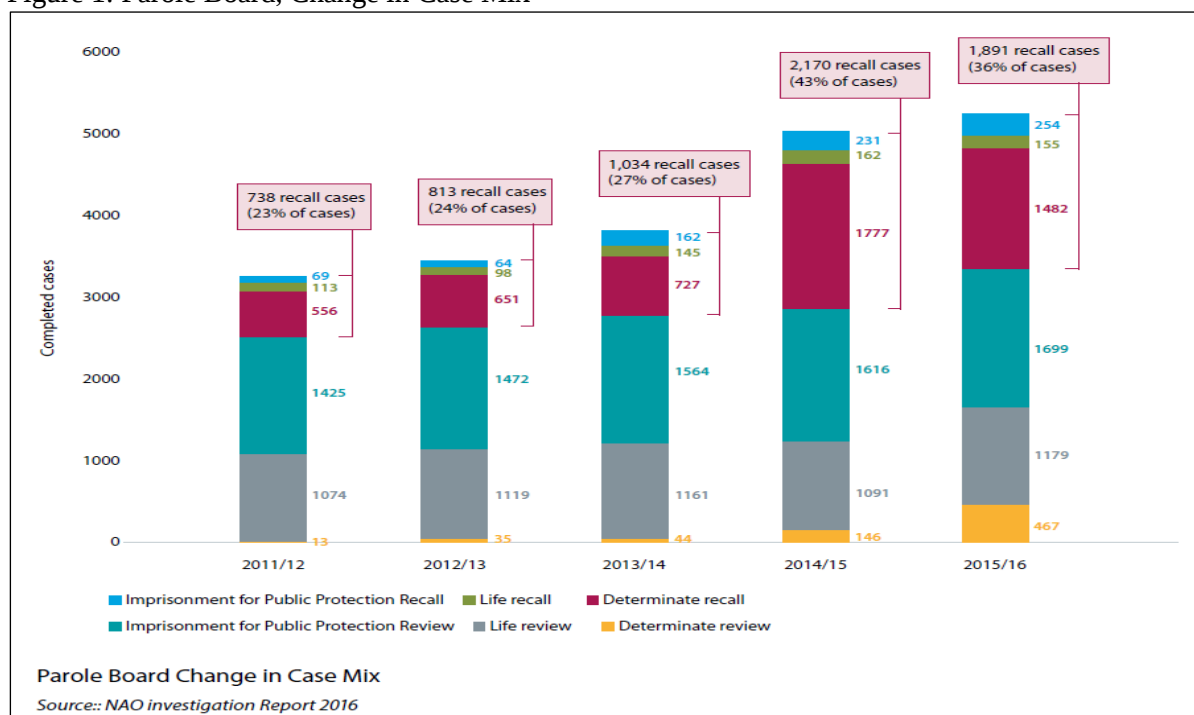
- In the cases of determinate sentence prisoners who are recalled, a single member of the Parole Board will initially consider their case on the papers. During this review, which should take place 28 days after the prisoner's return to custody, the Parole Board can direct release on the papers alone, without the need for convening an oral hearing.

³² HM Treasury. Autumn Budget 2017

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/661480/autumn_budget_2017_web.pdf

- The Parole Board has experimented with options to deal with determinate recall cases by way of executive release. As part of the National Parole System Action Plan, NOMS committed to increase the number of Executive releases for determinate recall prisoners, in order to reduce the number of referrals, and demand for oral hearings at the Parole Board.
- In August 2016, the Parole Board and PPCS launched a short pilot with twelve Parole Board members, to test whether a cohort of cases could be referred to NOMS to reconsider Executive Release as an option. However, the pilot ceased at the end of November 2016 due to the low impact of this work.

Figure 1: Parole Board, Change in Case Mix



These operational changes have not yielded the savings that were hoped for and a more wide-ranging review of determinate recall cases is now needed. In the past three decades the caseload of the Parole Board has been re-orientated towards the most serious offences and the complexity of these cases has necessitated greater use of automatic release for the majority of prisoners serving fixed-term sentences. In this policy context, determinate recall must be considered anomalous and is often unjust in its operation.³³

The review offers a unique opportunity to revisit the management of determinate recall cases and take steps to remove these cases from the Parole Board caseload. This can only be achieved if the government moves to implement a standardised system of recall and release for offenders serving fixed term prison sentences. This would entail a fixed recall period (not exceeding a certain percentage of the overall sentence) with the emphasis upon preparing the individual for release and ensuring robust risk-management systems are in place to actively manage individuals in the community. A clear recall framework would promote greater ‘truth in sentencing’ and free up significant resources that could be used to pursue the wide-ranging and ambitious programme of reform outlined above.

³³ Padfield, N and Maruna, S (2006) The revolving door at the prison gate: Exploring the dramatic increase in recalls to prison. *Criminology & Criminal Justice*. Vol: 6(3): 329–352

Appendix 1: A recent decision by the Parole Board of New Zealand

CORNES - James William - 14/12/2017

Parole Hearing

Under section 21(2) of the Parole Act 2002

James William CORNES

Hearing: 14 December 2017

at [withheld] via AVL to NZPB Offices, Wellington

Members of the Board:

- Judge D Mather – Panel Convenor
- Ms F Pimm
- Ms M More

DECISION OF THE BOARD

1. Mr Cornes is serving a sentence of four years six months. He was convicted of no further than 19 burglaries and a charge of possessing burglary instruments. He offended over a period of some six months in 2014.
2. He has no offending history in New Zealand but a significant offending history in Australia. He has served a number of prison sentences there.
3. The last Board in February 2016 noted the importance of Mr Cornes undertaking necessary rehabilitative treatment and deferred him for next consideration of parole for close to two years.
4. Over that period he has completed the medium intensity rehabilitation programme (MIRP). Questions arose as to the genuineness of his commitment to that programme, but on further enquiry it appears that he did make considerable gains. He was recently assessed for the short motivational programme (SMP). The outcome of that was it was not considered necessary that he do the SMP because he was able to identify his learnings from the MIRP and the consequences of his decisions.
5. He has been working outside the wire in the piggery since April 2016. Over that time he has gained a number of work related skills and also impressed staff with his work ethic.
6. He has completed a detailed safety plan.
7. Very recently he received a work offer from a dairy farmer in [withheld] who has previously employed released prisoners. Accommodation is provided. Community Corrections have assessed this proposal as suitable as the employer has been very supportive of other offenders in similar situations.
8. We take into account the extent of Mr Cornes offending, the length of his sentence, and the time remaining until his sentence end date. He reverted to crime very soon after he arrived in New Zealand but he appears to have been provided with quite inadequate support at that time. As indicated above he has made positive progress since starting this sentence.
9. In our view no undue risk will arise if Mr Cornes is released now subject to a range of special conditions. He raised the need for alcohol and drug conditions, and given that there is no evidence of alcohol or drugs featuring in his offending, we will not impose conditions in that

regard. A three month curfew is in our view appropriate particularly if it allows him to work around the farm property.

10. Given the background and the risks associated with the early period following release, we consider it appropriate to obtain a monitoring report after three months. On receipt of that report the Board can then decide whether to require Mr Cornes' attendance at a further monitoring hearing.
11. On this basis we direct Mr Cornes' release on parole on [withheld]. At this point we will impose both standard and special release conditions until sentence end date only. That can be the subject of review over the next 12 months.

(1) To attend, participate in and adhere to the rules of a Departmental maintenance group to the satisfaction of a Probation Officer.

(2) From [withheld] to 20 March 2018 not to stay away overnight 10pm to 6am daily from the [withheld] where you are living and working without prior written approval of a Probation Officer.

(3) To reside at [withheld] and not to move from that address without the prior written approval of a Probation Officer.

(4) To notify a Probation Officer before starting, terminating or changing your position or place of employment.

(5) You are not to have contact or otherwise associate with the victim(s) of your offending, directly or indirectly, unless you have the prior written consent of your Probation Officer.

(6) If required, to comply with any direction made under section 29B(2)(b) of the Parole Act 2002 to attend a hearing at a time and place to be notified to you, to enable the Parole Board to monitor your compliance with your release conditions.

Judge D Mather
Panel Convenor