



Recall adjudicators

Criminal Justice and Courts Bill

House of Lords, Third Reading, Monday 10 November

The Government introduced amendments (Clause 8, 9 and Schedule 3) into the Criminal Justice and Courts Bill at Report Stage in the House of Lords to create a new public function entitled “recall adjudicator”. This new body would carry out the review of whether determinate sentenced prisoners released on licence and subsequently recalled to prison should be re-released. The function is currently carried out by the Parole Board. The Prison Reform Trust and JUSTICE share concerns regarding the practical operation of the recall adjudicator and the legal basis for the decision to create the role. **We encourage Peers to support the amendment to Clause 8 tabled by Lord Woolf, the former Lord Chief Justice and Chair of the Prison Reform Trust. The amendment provides for Parliamentary oversight of arrangements for the recruitment, qualifications, training and costs of recall adjudicators.**

Operational concerns

1. The proposals are being rushed through without any opportunity for proper consultation or effective Parliamentary scrutiny. There has been no formal process of consultation on the proposals despite their representing a significant change to the scope and function of the Parole Board. There are no details in the proposals as to who the recall adjudicator will be, the exact nature and scope of their function or how they will cooperate with other criminal justice agencies to ensure a just, transparent and effective system of recall. Parliament is being asked to sign off on these proposals without any provision for oversight of their implementation.

2. It is difficult to see the benefit of setting up a parallel system to the Parole Board or whether it will solve the existing resource pressures created by the Osborn judgment. During the Report Stage debate the Justice Minister Lord Faulks confirmed that “*oral hearings will still be required if they are necessary in the interests of fairness to the prisoner in the particular case and it will be necessary to interpret that requirement consistent with the Osborn decision.*”¹ Even if the majority of determinate recall cases do not require an oral hearing, it is unclear why the government needs to create a separate body when the Parole Board cost of a paper hearing is £60. If the idea is to relieve the Parole Board of some of the mounting pressure of cases which it currently faces, the better approach would be to provide the Board with additional resources rather than to put resources into a new parallel system of adjudicators.

3. Members of the Parole Board are skilled in assessing risk to the public. Their training is primarily geared to risk assessment and they receive constant updating information and training on new developments relating to the assessment of risk. This is a different set of

¹ Hansard HL, 20 Oct 2014, c438

skills and knowledge from many other types of decision-making in the criminal justice system such as sentencing, which is primarily about selecting an appropriate measure of punishment and rehabilitation in response to an offence. The recall cases which Parole Board members examine include some of the most potentially dangerous offenders in the system. They include offenders who have been recalled from licences following lengthy determinate sentences imposed for rape, serious sexual assaults, armed robbery, causing grievous bodily harm with intent and other very serious offences.

4. We understand that no final decision has been made on which body will perform the function of “recall adjudicator”. However, according to a report in the Times newspaper on Saturday 21 June, the Government plans to transfer responsibility for administering recall cases from the Parole Board to magistrates.² Transferring responsibility for the adjudication of recall to magistrates would be a misguided development and one which could put the public at risk. Magistrates' experience is limited to sentencing much less serious offenders for periods of up to six months' imprisonment for a single offence. It would potentially jeopardise public safety if release decisions were made by people who do not have the same level of training, expertise and cumulative experience in risk assessment as Parole Board members. It would also carry the opposite danger that adjudicators without previous experience of dealing with serious cases could adopt an excessively risk averse position and refuse to re-release people who have been recalled for relatively minor breaches of licence conditions, have otherwise worked hard to rehabilitate themselves and could safely be re-released.

Legal concerns

5. The Government has relied on the case of *Whiston* to explain the creation of recall adjudicators. We do not see how *Whiston* makes any difference to the need for appropriate and fair decision making in release cases, nor why this important function is better carried out by a new body rather than the Parole Board.

6. The Supreme Court in *Whiston* considered the right to review of a decision to recall and release on home detention curfew, which it found to be an administrative arrangement relating to a determinate sentence. The article 5 ECHR requirement for review of the lawfulness of detention by a court or independent judicial tribunal did not apply to that process because the courts had already fulfilled the requirement by imposing a determinate sentence. The justices were not agreed, however, that recall following mandatory release on licence at the expiry of a prisoner's tariff is not subject to article 5 ECHR. Nevertheless, the Court agreed that the common law could afford appropriate protection for the rights of prisoners without recourse to the European Convention on Human Rights in any event. The cases of *West* (2005) and *Osborn* (2014) make clear that there is a common law duty to act fairly, both substantively and procedurally, when considering whether the revocation of a licence is justified, and that this normally requires an oral hearing before an independent decision maker when the issue of release or transfer is being considered.

7. Under current law, after 28 days a prisoner is entitled to re-release following recall on licence and this could be done on the papers. However, the new test for release following recall set out in clause 9 will require recall adjudicators to hold oral hearings to consider whether a prisoner should be released, or whether they are highly likely to breach their licence conditions. This will simply replicate the role already being carried out by the independent and experienced members of the Parole Board.

² Ford, R (2014) The Times, 21 June 2014

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