the Parole Board
working with others to protect the public

Parole Board response to the Root and Branch review of the parole system public consultation on making some parole hearings open to victims of crime and the wider public.

Summary

The Parole Board welcomes the potential for greater transparency which, we believe, will improve public confidence in the way that the parole system works. These changes also have the potential to increase understanding of our work and show how the Parole Board performs its functions with extreme care so as to ensure public protection. The opportunities that arise from greater openness must however be balanced against the risks that, unless carefully thought through, any changes may undermine the effectiveness and fairness of a process which has proved highly effective at protecting the public for over fifty years.

The Parole Board has already taken a number of steps to become more transparent. For example, since 2018, over 4,000 parole decision summaries have been issued. This is now a key service to victims, but has also helped improve the accuracy of media reporting. Separately, the Parole Board has now published 134 of its reconsideration decisions; establishing much more clearly and transparently the legal principles underpinning our decisions.

Taking further steps to increase transparency should build on the work that we have already done in this area and ensure that principles of procedural justice are respected, and that justice can be seen to be done. The Parole Board is aware that the issue of transparency must be considered in the round, together with other factors such as protecting victims and ensuring that the effectiveness of parole hearings is not at risk of being diminished. Appropriate safeguards will no doubt be necessary to make sure that the right balance is struck. We would therefore advocate a measured and staged approach to further steps to increased transparency. We think that it may be helpful to start with a pilot of those further steps; and an initial focus on how we might open up the system to victims before opening it up more widely.

In the meantime, there may also be benefit to building on the work we have done to be more open and transparent, for example by publishing some summary decisions on-line, prior to considering the likely benefits of opening hearings to victims of crime or members of the public.

Before responding to this consultation, the Parole Board has undertaken research into the transparency of the parole process in other jurisdictions including Canada, New Zealand and Australia. In all of those jurisdictions there are safeguards to

ensure that sensitive information about the prisoner or third parties is not disclosed. In Canada, for example, there are exemptions restricting the disclosure of certain information if this could reveal confidential matters, put a person's safety at risk, or hinder an offender's return to society as a law-abiding citizen. We anticipate that similar safeguards will be needed if the transparency of our own proceedings is increased to match that in other jurisdictions.

The response to this consultation draws on our own experience and the experience of international paroling authorities. We believe that our response balances the public interest in becoming more transparent, with the vital need to ensure that hearings are fair and effective in determining whether prisoners continue to represent a significant risk to the public.

Detailed answers to the questions raised in the consultation

Q1. Do you agree that parole hearings should generally continue to be held in private but with the possibility of a public hearing in certain limited circumstances?

The Board agrees that Parole Hearings should generally continue to be held in private, but with the possibility of the Chair of the Parole Board allowing a Public Hearing in certain limited circumstances. We had proposed that as an option in the last Rules review. Such decisions should take account of the views of the parties, the best interest of victims and the prisoner, and balance open justice with fairness and the interests of justice.

Given that all parole hearings are currently held in private we would strongly advocate a pilot to test how this balancing act would work in practice; and to identify the potential issues that need to be resolved, before any steps are taken with regard to the process as a whole.

The Parole Board has a unique role in the criminal justice system; we are the part of the system through which prisoners (occasionally notorious prisoners), can, if it is safe to do so, be released back into the community after they have served the period set by the sentencing courts for punishment of their crimes. In law our sole focus is risk, and we are not there to further punish an offender. We are aware that our decisions are not always popular, however, we approach our work with great care, and we have a strong record on public protection, which is always our key consideration. A balance therefore needs to be struck between open justice and not undermining the decision-making process itself, which can be sensitive and relies on participants being willing to talk with candour about the facts of each case and their assessment of risk.

In order to make a rigorous assessment of the risks a prisoner presents, our oral hearing panels are inquisitorial in nature. Parole Board members seek to create an environment which encourages a prisoner to be honest and open with the panel, in order to gain the greatest insight into their offending. At an oral hearing, it is not unusual for a prisoner to disclose offending for which they have not been convicted, to admit to perpetrating domestic abuse which may not have been reported to the authorities, and to disclose deeply personal information from their formative years including parental and other abuse, to talk about other identifiable people connected to the offender, and for sex offenders to talk about their sexual proclivities and strategies for self-management. In some cases, Parole Board members will hear highly sensitive security information. Often, as part of the prisoner's Risk Management Plan, the specific location of the proposed accommodation will be discussed along with possible sensitive licence conditions.

We are of the view that all of this information is very important in establishing an informed view on risk and we would not wish any further steps to improve transparency to do so at the cost of undermining the effectiveness of the process. Particular care will need to be taken in cases where a public hearing could involve distressing offences, or details of vulnerable victims or prisoners.

Based on the limited number of requests for summaries from the public, the Board anticipates that there will be limited public interest in the overwhelming majority of parole hearings.

Q2. Which of these groups should be able to attend the hearing:

a. Should victims be able to attend the hearing?

We think that the parole process should be more accessible to victims and that they should have far greater access to the process than they have at present. Great care does, however, need to be taken that in opening up the system, we do not cause harm to victims, or create unfairness to the prisoner. A staged and measured approach is necessary and that is why we would propose a pilot.

With respect to victims, each year only around 200 victims who are signed up to the Victim Service choose to come and read a victim statement either at the oral hearing in prison or virtually. A far greater number submit a written statement for the panel to consider but choose not to attend the hearing in person. Each year around 2,000 victims request a summary.

Whilst victims could have more access to the process and may be able to observe in some circumstances, any victim observation must not impact on the primary focus of the parole hearing; whether the prisoner continues to represent a significant risk to the public. There would need to be a safeguard that the panel should have the power to give a direction that part of the hearing should be held in private where, for example, the panel considers an open hearing could prevent a witness giving evidence, or making submissions freely.

In our experience, despite our best efforts to treat people with great care, reading out a statement can be extremely distressing for victims. The majority of victims already ask for the prisoner not to be present when they read out their statement, because this would cause them pain and anguish. Sitting through the full hearing with the prisoner in attendance, and listening to extremely sensitive information is likely to increase victim's distress in many cases and may cause huge harm and even conflict. Hearings are often located in prisons a long way from a victim's home and it is not unusual for a hearing's start time to be delayed or for the hearing to be adjourned, potentially causing frustration for victims.

For all those reasons it is difficult to see how the system could support a victim to be physically present in the room during the hearing. A more suitable long-term approach might be to allow a victim to observe a hearing remotely. However, we think that live streaming could be costly and present practical difficulties. There would clearly need to be sufficient cameras in the room to ensure that all parties can be seen. However, our key concern is to ensure that confidential information, should properly remain confidential, such as details about a prisoner's health or other third parties. Managing hearings so that there is no inadvertent reference to highly sensitive matters would require a huge amount of training of all participants. We think this would be very difficult to achieve, and time consuming (see 9a below). We note for example that it is not uncommon for prisoners to change their names to give them a chance of a clean break if they were to be released.

In Canada they provide a service allowing victims to listen to a parole hearing after the case has concluded. Whilst we understand that there is limited demand for this, we think it might be possible to facilitate this, upon request, in some cases, or through provision of a transcript; but this will have cost implications. Testing the viability of this could be part of any pilot.

b. Should hearings be open to the general public?

We think there should be a discretion for the Chair of the Parole Board to allow a public hearing on application by an interested party. Such applications will need to set out the reasons why a public hearing is justified. The final decision must take account of the views of the parties and balance the public interest with the rights of the prisoner, the interests of victims and the vital need to ensure the hearings are effective. This policy will need to be published so it is understood by those wishing to apply.

Given the sensitive nature of hearings, it is unlikely that it would be in the public interest for many hearings to be held in public, but in exceptional circumstances it could be. For example, where a prisoner had a strong desire for the hearing to be held in such a manner.

We are also aware of the potential for sensitive information discussed at a public hearing to become widely available – such as, for example, the location to which a prisoner will be released. Safeguards will need to be put in place to manage this risk.

The best precedent for a public hearing was the Mental Health Tribunal hearing involving Ian Brady. We understand that this was costly and that public and media interest diminished quite quickly once the hearing was properly underway.

Given the considerable practical difficulties and potential costs involved; we think that this should be piloted, in a case where the prisoner is content, so we better understand the issues that may arise.

c. Should hearings be open to the media?

The Parole Board has already allowed a number of journalists to watch and report on parole hearings and believe it has the potential to increase confidence in the system. Whilst the first priority should be increasing access for victims, if that is found to be workable in the pilot, we think that in the longer term it may be possible to open up the parole process further to the media. But there must be safeguards and, as with other court proceedings, there will need to be rules on reporting restrictions with sanctions for breach, such as a power to order proceedings under the Contempt of Court Act 1981 where there has been a breach of the provisions providing automatic anonymity for complainants in sexual cases. Ultimately parole hearings are judicial proceedings and will need to be respected and treated seriously.

The final decision on opening up a hearing to the media (following an application) should be for the Chair of the Parole Board. As made clear, this decision must take

account of the views of the parties, including the interests of victims and the prisoner.

d. Who else, in your opinion, should hearings be open to (if anyone)?

In line with the Boards current observer policy, no group would be specifically excluded but each applicant would need to apply and make an application that can be considered by a panel chair. Other groups typically seeking to attend are HMPPS staff including trainee prison and probation staff, trainee psychologists and researchers/academics.

Q3. In what circumstances would a public hearing be appropriate or add value to the parole process?

The Board thinks that there will be limited public interest in the majority of cases in the parole system and we expect there to be a limited number of cases where this is requested. That limited public interest needs to be weighed against the potential impact of a public hearing on the decision-making process.

Public hearings might be particularly appropriate in cases of high public interest; or cases which follow a successful reconsideration or a judicial review application.

Based on the cases which attract the most interest at present, the highest public interest will be in cases of high public notoriety (including serious sexual offending and terrorism). Those cases are also highly likely to include consideration of evidence which is sensitive to the victim or the authorities.

The primary value of a public hearing would be improving the public's understanding of the parole process. There is however a very real risk that a public hearing would detract from the actual risk assessment and the decision-making process by the parole panel and a considered approach will be needed to ensure that a hearing being held in public does not impact on the Parole Board's ability to complete an effective and fair review of risk in a case.

Appropriate safeguards will also need to be in place to ensure that particularly sensitive information discussed at the hearing does not become widely available. We recognise that the courts deal in public with a wide range of information, but at the same time put in place reporting restrictions on some information such as names and locations. We think that public hearings of Parole Board proceedings will need similar safeguards.

The final decision on opening up the process must be based on an assessment of the individual case.

Q4. In what circumstances would a public hearing not be appropriate?

It would not ordinarily be appropriate to hold a public hearing if the prisoner has significant vulnerabilities or if an open hearing has the potential to undermine the assessment of risk, which is the touchstone of the parole system.

The Board does not feel a public hearing would be appropriate where a prisoner is subject to an anonymity order, where the prisoner was under 18, or where the prisoner was considered vulnerable and a public hearing would be detrimental to their health or wellbeing. Caution will also need to be taken in cases where national security is a significant factor and cases where public outrage about an offence is such that a public hearing would cause risk to the prisoner; although this can be partially mitigated by holding some sensitive parts of a hearing in private.

Particular care will need to be taken if a public hearing has the potential to cause distress to victims or undermine the rehabilitation and potential reintegration of the prisoner.

In a number of cases a victim will attend the start of a hearing to read out their victim personal statement. Care would need to be given as to whether this should form part of a public hearing, or be held in private.

On rare occasions a victim may be called as a witness and in these circumstances an open hearing may not be appropriate.

Q5. What criteria should be used to decide whether a hearing should be heard in public?

The decision must balance the public interest including the potential considerable costs and the need for procedural justice; with the risk that it could undermine the rehabilitation of the prisoner and undermine the panel's ability to properly assess the evidence in the case. The decision should also consider the risks that sensitive information might become widely available as a result of the hearing being in public. An application for a public hearing should not be allowed to delay the parole process; so such matters will need to be considered at an early juncture. There is a real possibility that this decision could be subject to Judicial Review.

Q6. How should victims' view be taken into account in deciding whether to hold a public hearing?

Victims who are signed up to the victim contact scheme should be able to provide a view, which should be factored in with all other views and considerations when deciding whether a hearing should be held in public. The Chair of the Parole Board would be unlikely to agree to a public hearing if this was likely to cause substantial distress to a victim of crime.

Q7. Do you think that conducting a hearing in public would make the examination of evidence and decision-making process better or worse – and why?

Whilst the Board is confident that its members would seek to make decisions based on the evidence presented to the panel, it has the potential to change the nature of the hearing making it more difficult for panels to obtain the best possible evidence on the critical issue of future risk. The Board will need to be able to compel witnesses to attend the hearing, as we fear some witnesses would be

reluctant to provide evidence in public. A pilot could be used to better understand the potential impacts.

We agree with the consultation paper that there is the potential for witnesses, including the prisoner and professional witnesses such as probation officers and prison psychologists, to give less fulsome evidence if they feared they could face criticisms for their recommendations. There should therefore be safeguards and training.

How observers attend the hearing will be important in mitigating this risk. As set out in Section 2a, the Parole Board would at this stage advise against physical attendance.

Where observers are in the room this could impact negatively on the examination of evidence as it may inhibit a candid approach by all participants, some discussions may seem insensitive, and there may be disruption through observers either becoming distressed, upset or angry.

Q8a. What measures or approaches would be needed to avoid or mitigate any adverse consequences of conducting a hearing in public?

Where a decision has been made for a hearing to be held in public, rules would need to be devised enabling the panel to exclude persons from the hearing, or part of the hearing, in the event of likely disruption or where their presence is likely to prevent another person from giving evidence or making submissions freely (as provided for by Rule 38 of the Mental Health Tribunal Rules).

In any public hearing, the Secretary of State should be formally represented with the representative's responsibilities including a duty to assist the Panel if necessary, on any issues arising from the hearing being held in public. Presently, the Secretary of State is only formally represented in a minority of Parole reviews. The Secretary of State's views are instead provided through offender managers and other officials; many of whom may recommend release based on their professional assessment of the case; apart from that evidence the Secretary of State does not offer a view. There is a risk that the Secretary of State would be open to criticism if he elected not to be represented as a party to the proceedings and did not seek to either challenge the oral evidence or offer his view in a case.

Changes would need to be made to the rules to prevent unlawful recording of hearings or disclosure of personal information that could impact on risk management and public protection. Safeguards would also need to be put in place to prevent reporting of certain sensitive information.

The use of in camera sessions for certain discussions could be considered but would require careful handling to avoid contamination between open and closed sessions. This is another reason for favouring a recording of the hearing as, rather than halting the proceedings, any sensitive information can be subsequently removed.

The opening up of hearings, even via recordings, might not have its intended benefits if evidence heard by a panel in camera is particularly influential on the panel's decision-making.

Whilst evidence will be presented in an open hearing, the assessment of the evidence is undertaken by the panel in private and parole decisions are not handed down in open court. It will be important that anyone who observes a hearing, whether by recording, remotely or in person, also receives a copy of the summary decision so they can understand how the panel arrive at their decision.

Q8b. What impact will such measures have on the effectiveness or efficiency of the parole process?

We think there is a significant risk that open hearings will be more complex, costly and time consuming. Provided the volume is managed, this may be a price worth paying, given the potential wider benefits. However, there should be a pilot to ensure that this is properly understood.

There could be significant administrative costs in making necessary arrangements and ensuring technology supports remote observers. Resources would need to be made available to support this. Even allowing a victim to listen to a recording of a hearing would require considerable work and cost (to check that no inappropriate material is disclosed).

Q9a. Which of the options for the location / methods for public hearings (i.e. face-to face in prison or in a court building, broadcast to a separate location or streamed online) do you think would be the most suitable and why?

We think that a pilot group could consider the risks, benefits and practicalities of these different options. Our assessment is that each option has attractions and drawbacks.

In a small number of cases where there is exceptionally high interest or multiple victims, there may be a benefit in holding a hearing in a court, but the costs and security implications need to be understood.

A small number of parole hearings take place for restricted patients in mental health secure units. Open hearings in such cases are unlikely due to mental health considerations but we should not overlook the possibility.

As set out above, we do not think it is, fair, practical or appropriate to ask a victim of crime to sit through a parole hearing in a prison; but we think that it should be possible to facilitate journalist attendance at the physical hearing in some cases where appropriate.

Allowing a hearing to be streamed or access to a recording may be more practical but there must be systems in place to safeguard sensitive information.

Q9b. Can you suggest any other alternative options to facilitate public hearings?

In other jurisdictions victims and the public are allowed to listen to an audio or watch a video recording of the hearing (subject to some editing to remove sensitive information).

Q10. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.

A full Equality Impact Assessment should be undertaken to answer this question properly and consider protected characteristics of all participants (witnesses and members) and victims, not just the prisoner. The Parole Board is not alone in handling cases involving sensitive information and account should be taken of lessons in other jurisdictions.

Particular care should be taken in considering the impact of these proposals on people with mental health difficulties, learning difficulties and other disabilities. Consideration would also need to be given to the position of transgender prisoners who do not wish their gender change to be disclosed.

Q11. Are there any key reasons or benefits of having parole hearings in public not already identified in this consultation that we should seek to achieve?

The primary benefit of opening up the parole process should be increasing victim and public confidence and understanding of the process.

In the year to 31 March 2020, 17,000 cases were referred to the Parole Board. 60% of those cases concluded on the papers, without the need for an oral hearing. Of the cases disposed of at the paper stage, over 90% will result in the prisoner remaining in custody with, in 2019/20, only 460 prisoners released on the papers. However, it will be important to increase understanding when cases will not be considered for an oral hearing.

Q12. If a hearing were to be held in public, are there any risks or implications not already highlighted in this consultation that would need to be considered?

Over 60% of Parole Board cases are concluded on the papers. An impact assessment would need to be undertaken to establish any risk to this process, think about whether any further steps could be taken to improve transparency here and what the legal entitlements could be to demand a public parole hearing.

There are risks to Parole Board members who will be publicly identified for the first time on specific case decisions. We need sensible agreements in place to manage this risk. This could impact on recruitment and retention as some members may leave once this is introduced.

Many parole hearings will focus on the risk management plan. Where is the prisoner to be released? What support will be in place? In some cases, there is a very real risk that an offender's safe reintegration back into society could be impacted if this was open to the public. In cases which cause public outrage, disclosure of information could lead to direct threats to the life of the prisoner; or cause an offender to abscond, thereby placing the public at greater risk.