Prison Reform Trust response to the Ministry of Justice consultation on victim attendance at Parole Board hearings – November 2020

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
- promote equality and human rights in the criminal justice system.

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Introduction

We welcome the opportunity to comment on this consultation.

However, we regret the piecemeal approach the government has taken to matters concerning parole, in particular following the judicial review concerning the case of John Worboys in 2018. The most thorough examination of the parole system in the intervening period was undertaken in the Tailored Review. The publication of the report of that review was delayed without good reason, and it makes a series of recommendations to which the government should respond rather than expending energy on yet another review. That is particularly so when the new "root and branch review" appears to be an internal Ministry of Justice exercise, with no plan set out for how it will consult beyond this first narrow question on public hearings. Given that one of the principal complaints the government has made about the parole process is an alleged lack of transparency, the opaque handling of multiple and overlapping reviews within the department provides a poor example to follow.

We cannot avoid the conclusion that the attention given to the parole process is driven by political considerations rather than a genuine concern for the efficient and fair functioning of the system. We note in particular this extract from the report of the Tailored Review:

"Each of the above options (i.e. ALB, Tribunal or Court), has various strengths and weaknesses and will impact the wider criminal justice system in different ways. Whilst the review team did consider each option, the political landscape has shifted considerably since the launch of the Tailored Review and its initial conclusions may no longer hold true."

We understood the Tailored Review to be an objective review and are deeply concerned that its conclusions appear to have been altered because of a change in the "political landscape". The government should publish the original conclusions of that review so that the impact of a political change can be made clear.

This consultation

We understand that the reason for considering making certain parole hearings open to either victims or the general public is to improve public understanding of and confidence in the parole system. There is a specific policy objective to ensure that the public understands that the parole process is not about the adequacy of the punishment element of the sentence passed by the court.

In that context, it is worth considering how public understanding of that crucial point has been undermined by the actions and public statements of the government that now wishes to increase it. In the case concerning John Worboys, which lies at the root of the political interest in parole, even the chairman of the Conservative party colluded with elements of the press in giving the impression that the task of government was to ensure that John Worboys remained in custody. That was very plainly not the task of government and represented a fundamental misunderstanding of the role of the board and an attack on its independence. The judicial review which followed found far more to criticise in the government's handling of John Worboys' time in custody and the preparation of his parole dossier than in the board's consideration of the case when it was put to them. Yet it was the board's chair who was scapegoated, in order to deflect the criticism of the government which the court made.

In our view, the most important factor in fostering both public understanding and confidence is that the government should respect the board's independence and expertise, and be prepared in times of crisis to explain the limits of its role and the sentencing structure which underpins it.

The board has moved quickly to become more transparent once the government-made bar to doing so was removed in a revision of its Rules in 2018. The consultation paper describes those steps in detail, but no assessment appears to have been made of their impact on either understanding or confidence. The need to do more is therefore not established, and the paper does not explain why making some (and inevitably only a small minority) of hearings open to victims or the public might have that effect. The board has already demonstrated that it is entirely open to informed scrutiny, and to explaining its role and procedures.

None of the measures already taken to increase transparency pose any serious risk to the integrity and quality of the decision making process. But as the paper points out, the measures needed to ensure that open hearings do not harm either the offender or the victim all carry a risk to the fairness and integrity of the decision making process. In practical terms, as we set out below, the steps that would need to be taken to ensure that did not happen would be very likely to undermine any marginal benefit to the objectives of improving public confidence and understanding. The impact of what would inevitably be a compromised form of transparency might well work against those objectives rather than in their favour. Put simply, an inevitably partial and limited form of public access is more likely to provoke mistrust and suspicion than to reduce it.

Our central conclusion, therefore, and our answer to the consultation paper's first question, is that the benefits to public confidence and understanding of any of the proposals in this paper are outweighed by the risks to the overriding purpose of a parole hearing, which is to arrive at a result which protects the public while respecting the rights of the offender to a fair hearing and the possibility of release. Neither victims nor the general public should have their expectations raised by the false expectation of being to attend a parole hearing. The task of increasing public understanding should be shared between the board itself and ministers, with the latter playing a larger and more courageous role than they have hitherto.

Neither victims nor the public are qualified or invited in statute to offer a view about the risk of serious further offending. At the original trial, the impact on the victim is plainly relevant to seriousness, and a jury of the public is charged with the judgement on innocence or guilt. Neither is true at the parole hearing, and the importance of victims' experience is already part of the process and informs any future risk management plan. The giving of reasons, and the steps the board has taken to publicise its role and the way in which it is carried out meet the requirement to help the general public understand what a parole hearing is and is not about. If there is public misunderstanding, it is easily corrected on every occasion that it arises, if there is a political will to do so. If, by contrast, the public disquiet about parole springs in fact from a desire that a parole hearing should offer the possibility of keeping a person in prison because of the seriousness of the crime they committed, no amount of attendance at hearings will change that desire or the impossibility of satisfying it.

We therefore do not support any of the options that the consultation paper sets out. But in starting to describe the practical problems each of those options presents, the paper makes very clear why all would in reality fall far short of the public access equivalent to that allowed at a trial. All would pose a risk to the integrity of the parole panel's decision making. In order to pre-empt the risks to the personal safety of different participants (not just the offender, but also those giving evidence and those assessing it), to prevent re-traumatising victims, and to prevent evidence being presented in a partial or less than objective way, any public hearing would need to exclude some of its material or proceedings from the public or victims. That "editing" of the process would either have to be done in advance by means of some quasi-judicial procedure, or in editing a recorded version of the hearing before it could be shown to the public or to victims. In either case, the risk that the editing process failed or was inadequate would have a chilling impact on the candour and completeness of the evidence provided to the panel. For the victim or the public, the very existence of an editing process would exacerbate the very suspicions about transparency which the whole exercise was designed to allay.

We understand the comparison that is made with public access to a trial. But the justification for that access is to allow the public to see in any individual case that justice is done, that the innocent are acquitted and the guilty appropriately punished. A parole hearing is about neither of those things. The public interest in knowing that that assessment is thorough and fair can be adequately met through the educative measures the board has taken and, in the individual case, by the possibility of a review of a panel's decision and, ultimately, through a challenge under administrative law.

Notwithstanding some significant improvements to the Parole Board's operation and its openness to scrutiny, instigated by its previous Chair and continued under current leadership, immensely serious problems remain with the parole process as a whole. Despite sentences of increasing length, the government continues to fail to prepare prisoners adequately for release to happen as soon as the period set for punishment

has expired. Cases are repeatedly adjourned because of inadequate preparation by prison and probation services, and prisoners are repeatedly denied the opportunity to progress because of the chaotic state of an overcrowded prison system. Support for people released on parole repeatedly falls short, leading to avoidable recalls to custody. The government's decision to begin its latest review of parole with this consultation only highlights its fundamental failure to deliver its much larger responsibilities for efficient and fair handling of the parole process. Its energies would be better directed to the timely reduction of risk during custody and the effective management of it following release.