

Professor Nick Hardwick, Chairman

15 March 2018

Rt Hon David Gauke MP
Lord Chancellor and Secretary of State for
Justice
Ministry of Justice
102 Petty France
London
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the
Parole
Board

working with others
to protect the public

Dear Secretary of State

REVIEW OF LAW, POLICY AND PROCEDURE RELATING TO PAROLE DECISIONS

The Parole Board is pleased to provide a response to the Review of Law, Policy and Procedure Relating to Parole Decisions. This response is based on consultation with Parole Board Members and discussions with the Board's wider stakeholders.

At a conference last November to mark the Parole Board's 50th Anniversary, I set out the progress the Board had made in recent years: [Nick Hardwick Butler Trust](#) and I was grateful to your predecessor for acknowledging that in his own speech [David Lidington 50th anniversary speech](#) to the conference. We now deal with more cases than ever before; in 2016/17 we dealt with 7,377 cases at an oral hearing and 16,866 on the papers. We have improved the efficiency of the system, made real long-term savings and eliminated the backlogs that have plagued the Board for many years - while at the same time keeping the rate of serious offences committed by those the Board has released or advised should move to open conditions at a fraction of one percent. I argued that those improvements provided a platform from which the Board could modernise its work and become better able to respond to the contemporary challenges it faces today. I also made clear that we understood how difficult the parole process can be to victims of crime and the need to improve their treatment.

The Board acknowledges the pain and anguish that has been caused to victims by the John Worboy's decision (which is now sub-judice). I believe the review creates an opportunity to accelerate the introduction of much needed reforms which will benefit future victims and the wider requirements of justice.

We repeat our strongly held view that the work of the Parole Board and the reasons for its decisions in individual cases must be open to scrutiny by the public, Parliament, victims and prisoners themselves. This will involve a significant change to the way the Board operates and the Rules that govern its work. I have argued for this change for some time and whatever the outcome of the current judicial proceedings; we should look to make urgent improvements.

In addition, we believe it is increasingly clear that there is no mechanism for challenging a Parole Board decision short of judicial review.

The Parole Board does not seek a greater responsibility for communication with victims but supports Dame Glenys Stacey's recommendations for much needed improvements in the way the system as a whole communicates with and involves victims in the processes that follow conviction, put forward in her Investigation into the Policy and Process followed by the Victim Contact Scheme in this Case.

We would welcome the Secretary of State being represented at a more senior level at appropriate hearings and other measures to ensure that Parole Board panels have confidence they will receive all the relevant evidence they need to enable them to make the best possible decisions.

All these changes would require increases in the Board's resources and powers. It is essential that any change does not undermine the Board's independence. In addition to the issues being considered by the current review we believe there may need to be more fundamental changes to the parole system to ensure its status, structure and processes are fit for any new responsibilities that may arise from the forthcoming Judicial Review judgement. These issues require careful consideration and no firm conclusion can be reached until the results of the Judicial Reviews are known. The Board will make further representation on these matters if that appears appropriate at that point.

Transparency in General

The Board proposes to improve and extend our outreach with key stakeholders and make better use of digital social media and its website to ensure that our key information about the parole process and how parole decisions are made are communicated effectively. This will enable better informed comment on the Board's work and assist those who interact with it directly. We recognise that this alone will not address criticism that the Parole Board does not meet the need for 'open justice'.

The Board is committed to working towards ensuring we have system that provides greater transparency in its decision making, with safeguards. This is likely to require interim measures over the short term whilst the Board develops a sustainable model which meets the needs of greater transparency for the future. We therefore propose the changes set out below should be implemented as quickly as possible and that we should then review these arrangements to assess the effect of these changes and whether further changes should be made.

Transparency of Decision Making

The Board proposes a phased approach to increasing the transparency of Parole decision making, to balance the need for open justice with the principles of safety and privacy.

- The Board should provide a portal to give public access to its current cases and recent decisions which have been approved for publication. Victims should be able to register to receive additional information – such as notification of decisions.
- The Board should make a summary of the reasons for its decision available on request.
- The summary decision should contain enough detail to enable someone with sufficient interest to make an effective challenge; including the release test, the decision and the factors taken into account. The summary should include licence conditions subject to the exclusions below.
- It should be possible for summary decisions to be requested for all types of cases, irrespective of the outcome. The Board's view is that only providing summary decisions for release cases would not represent an accurate view of the work of the Board.

Further consideration must be given to

- Naming the panel members involved in particular decisions. The safety of members is a priority for the Board and we think this may be compromised if the identity of those taking a controversial decision to refuse or approve release was known. We have been concerned by the very threatening and abusive language used in some responses to the Worboys decision. The names and backgrounds of Parole

Board members are provided in the annual report, and the panel is named in documentation which goes to the parties. However, the Board would not support disclosure of the details of individual panels to the public at the current time on the basis that members do not have the status and protections of others in a judicial role.

- Similarly, very careful consideration would have to be given to naming third parties such as report writers as we believe this might both place them at risk and constrain their willingness to provide their honest and frank opinion.

The Board would resist

- Disclosing the full parole decision letter to prisoners in its current format or providing a redacted version. The prisoner letter will often include sensitive material that should be withheld such as the names of witnesses, information about victims and information relating to medical conditions of the prisoner.
- The provision of any specific information relating to the location of the prisoner once released or information which might disrupt their resettlement
- The disclosure of medical and psychologists reports as this would be contrary to the prisoner's rights to privacy and may have a chilling effect on the candour necessary for their successful work with psychologist and other professionals.
- Public hearings. This is due to the need to prevent the disclosure of the information described above and to ensure hearings encourage the greatest degree of candour from the prisoner and other witnesses as possible. In addition, the physical constraints arising from hearings being held in prison would make public hearings very difficult at present.

A Reconsideration Mechanism.

The Board proposes that the Parole Board Rules should be amended to provide a simpler mechanism for its decisions to be reconsidered than judicial review.

A request for review could be made by:

1. The prisoner
2. The Secretary of State
3. Anyone who was a victim of one or more of the index offences
4. The Chair of the Parole Board

The grounds for appeal would be:

1. A material mistake of law
2. A material procedural error
3. The panel took into account irrelevant matters or failed to take into account material matters.
4. The decision of the panel was irrational.

The appeal would also consider in every case whether, even if one of these grounds was made out, it effected the decision.

If the appeal was successful, the decision of the panel would be quashed and the hearing re-panelled as a priority.

The review would be considered by a member appointed by the Chairman. Reviewers would be judicial members of the Board.

The effect of the internal appeal process would not be to prevent a judicial review taking place, but it could not occur until the internal processes had been exhausted.

The Board believes this will be simple and low cost for individuals to initiate and unlikely to lead to unreasonable resource requirements or delays.

Victim Involvement

The Board does not seek greater responsibility for contact for victims. It notes that Dame Glenys Stacey's report into victim handling in the Worboys case made no criticism whatsoever of the Parole Board in that matter. Nevertheless, the Parole Board believes there are some limited but important measures it can take to make it easier for victims to interact with the parole process. These include offering victims a greater range of technical options for making any statement they wish a panel and the prisoner to hear. There are further measures. The Board strongly supports Dame Glenys's recommendations for improvements across the system to ensure communication with victims is centred on their needs, timely and professional.

Secretary of State Representation

The Board believes that the Secretary of State should be represented at a more senior level in appropriate cases such as where there are complex legal issues to consider or conflicts over evidence. Care should be taken to guard against creating a two-tier system where the most notorious cases get represented and other cases do not. The Board believes that in complex or controversial cases there should be a senior level review of the dossier provided to the Board to ensure it contains the information required by the panel to come to a correct decision.

Parole Board Status and Resources

Recent issues which have driven the review have raised the question of the Board's independence. We welcome assurances that the Board's independence will be respected.

If the Parole Board Rules are to be changed the Department should also look to further strengthen the Board's case management powers in respect of direction compliance and non-disclosure matters. The Board continues to find that the late submission of key material causes delay, additional cost and avoidable adjournment of cases. If the Board is to be regarded as a court its directions must be treated with the utmost seriousness.

These changes will require additional resources. It would be wrong to assume that there can be a significant increase in the Parole Board's responsibility without an increase in its resources. You will be aware of the consequences of the Osborn judgment when a lack of funding to undertake more oral hearings and a shortage of members led to significant backlogs and payment of compensation to prisoners. We have now brought these matters under control and we need to ensure that future changes do not set back the significant progress that has been made.

Whilst we do not yet know the outcome of the current JRs; it is possible that the decision could have significant implications for the Board's work and role. The Board may wish to make a further submission once the results of the challenges are known. Regardless of the results of the outcome the Worboys case has raised some major issues about whether the Board's status, structure, resources and working methods have kept pace with its growing work load and responsibilities. In its 50th anniversary year, the Board would welcome any opportunity to ensure it is fit for the next phase of its work.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Hardwick', is centered on a light blue rectangular background.

Nick Hardwick
Chairman
The Parole Board for England and Wales