**ROYAL COLLEGE OF PSYCHIATRISTS**

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**SURVIVING PRISON**

**Interpreting behaviours in a prison context**

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Thank you.

I have to confess that the context in which I speak to you today has changed since I accepted the invitation to speak to you today some months ago, chose my original title and began to think about what I might say.

As you will see from the published agenda, I was originally going to focus remarks on how the prison environment might affect behaviour. I will still say a little about this because the difficulty of assessing risk is the key challenge faced by the Parole Board.

However, as a result of the Warboys case, the Parole Board has been engulfed in a storm of public controversy, judicial reviews, parliamentary inquiries, investigations by the Chief Inspector of Probation and Ministry of Justice reviews.

The matter is now before the courts so I cannot speak to you about that specific case – but I think it would be strange if I spoke here today without addressing some of the broader issues involved. I hope you will forgive me if I use this forum to set the record straight.

Let me begin by tackling head on some of the general concerns that seem to have arisen – quite understandably – from the Warboys case. It seems to me that in summary these are:

* First, simply put, does the Parole Board let out the wrong prisoners? Endangering the public by releasing those who, it is said, deserve further punishment or who remain a serious risk - whilst setting back the rehabilitation of those who could be safely released by refusing to do so.
* Second, does the Parole Board adequately involve and communicate with the victims of the prisoners who come before it?
* Third, is the Parole Board too secretive about its work?
* Fourth and finally, is the Parole Board insufficiently independent from the executive – or conversely, is it too independent?

So first, do we let out the wrong people?

Last year the Parole Board dealt with almost 25,000 cases. Nearly 17,000 on the papers and over 7,000 by a panel of members at an oral hearing. Like many parts of the criminal justice system, over recent years we have been plagued by a growing work load combined with steadily diminishing resources.

As a result, backlogs of cases waiting to be heard grew and in practice this meant many prisoners kept in prison for months and sometimes years just because of administrative delays.

I do not think that was just an administrative matter; it was a profound injustice.

Our first priority has been to safely eliminate that backlog and I am pleased to say we have done so. There is more that can be done to improve the efficiency of the parole system but I suggest that not many parts of the criminal justice system can point to similar improvement.

By definition, many of those who come before the Parole Board will have committed very serious offences - and I have to tell you that the most notorious cases who come before us are not necessarily the most serious.

But for the avoidance of doubt, it is not the Parole Board's job to second guess the prosecution, the judge or the jury at the time of the original trial. Nor should it be.

The CPS will decide the number and type of charge a defendant is to face.

A jury will decide if he or she is guilty having heard the case for both the defence and the prosecution.

A judge will decide the length of time the prisoner has to serve as punishment, and it is in the sentencing that the impact the crime has had on the victims will be taken into account.

In an indeterminate sentence, only once the punishment part of the sentence has been served, will the prisoner be referred to Parole Board at regular intervals to decide if he or she is safe to be released.

[SLIDE 2] The test for release the Board is statutorily obliged to apply is whether it is satisfied that it is no longer necessary for the protection of the public that the prisoner should remain detained.

In practice this involves an assessment of the likelihood of the prisoner committing a further offence and the seriousness of such an offence. It will take into account an array of evidence to assess whether the prisoner's risks have been reduced while in prison and the robustness of plans to manage them in the community if released.

But let me be clear, this is a judgement about a risk, not a finding about a fact.

Those judgements are all the more difficult because of the distorting effects of the prison environment. Take just the basic issue of prison conditions.

 [SLIDE 3] Every year the prison inspectorate surveys how long prisoners spend out of their cells. In 2016/17, in a training prison for instance, where many of those who come before the Parole Board will be held, about 1 in 6 spend less than two hours a day out of their cells.

And what are cells like?

These are pictures taken on prison inspections.

I want to present a balanced picture.

[SLIDES 4,5] These first two cells are quite decent – and not untypical.

But these are more usual.

[SLIDE 6] This is a double at HMP Lewes.

You can see. A bit wider than my outstretched arms and a bit more than twice as long. A toilet at the end screened by a shower curtain. Two bunks, one table and chair. There would be a TV on the wall here. Men did spend 22 hours a day in this cell, eating and using the toilet in the same space.

[SLIDES 7, 8, 9, 10, 11] It was the same story in these.

 [SLIDE 12] I don't think the latest prison safety data needs much comment. It is of course very welcome that the number of deaths is falling quite sharply – but the violence and distress, assaults and self-harm are rising inexorably. And how does the pressure simply to survive distort behaviour?

I don't make these point to elicit sympathy for prisoners. There will be many who say 'if you can't do the time etc…' That is an argument for another day.

My point here is that these conditions must, surely affect behaviour, and we need to ensure our models for interpreting and assessing behaviour take account of that.

[SLIDE 13] We do not get every decision right. But despite the difficulties, the figures show that consistently less than 1% of those we release or advise should be moved to an open prison go on to commit a serious further offence.

Depends on how you look at it - as a proportion of the total it is a very low figure but it is still an average of about 21 cases a year where someone we thought was safe has gone on to do great harm.

You might also argue that although a very low proportion of those we release go on to commit serious further offences, we do not know how many we keep locked up who would be safe to release. Those would be failures too - but I make no apology for public safety being our first priority.

Sometimes but rarely we will get it wrong but overall, I am happy to defend our record.

Next, let me turn to the question of communication with and involvement of the victims of the crimes of the prisoner being considered for parole.

Here I will touch on the Worboys case.

One of the criticisms levelled at the Parole Board in that case is that we failed to properly communicate with his victims, some of whom were denied an opportunity to submit a statement to the hearing as they were entitled to do or were not informed of the decision to release him in a timely way.

The Parole Board has only limited responsibility for contact with victims, most falls to the Victim Contact Service, part of the National Probation Service.

I urged the Justice Secretary to set up an independent investigation into victim contact in the Warboys case and he asked Dame Glenys Stacey, the Chef inspector of Probation, to carry this out.

No criticism, none, was made of the way the Parole Board fulfilled its responsibilities in this case. Dame Glenys report states explicitly, and I quote:

*'The Parole Board panel was told wrongly that all victims had been contacted.'*

Nevertheless, it is clear the system needs modernising and that in this case it did not meet the needs of those affected and I regret that very much.

One issue is the question of how a victim is defined.

We know there will be many victims of crimes that happened but which for many reasons did not result in a conviction. Those harmed may go beyond those directly affected – family members, witnesses, investigators and more.

Even where the victims are clearly identified, there may be more than one and not all will want the same thing. Some will want to be kept informed, some will never want to hear the prisoner's name again. Many victims will quite naturally change their minds about such matters as time passes.

We must be able to harness modern technology to ensure all those who have been affected by a crime can access the information they need in a secure and flexible way. We are looking now at models from other jurisdictions to see how this could be done

This will be a key part of greater openness in the parole system and it is to the question of greater openness I will now turn.

There are some obvious and I think uncontroversial areas where we could improve. The general information we produce about how the parole system works and how prisoners, victims and witnesses can engage with it is poor. The letters we write to prisoners setting out our decisions are lengthy and complex – difficult for anyone to follow let alone a prisoner who might have learning difficulties or poor levels of education.

More contentious is what we should make publicly available about our individual hearings and the reasons for our decisions.

The Parole Board Rules which are statutory instruments passed by Parliament currently state that hearings must be held in private and in Rule 25:

*"Information about proceedings under these Rules and the names of persons concerned in the proceedings must not be made public.*

The legality of these rules is currently before the courts and so I will not comment on that - but the question of whether these rules should be changed to allow greater openness is also central to the Ministry of Justice's review and regardless of any court judgement, I hope the Ministry does agree to make changes.

Open justice must be right in principle, mustn't it?

Over hundreds of years justice has been removed from private hands to eliminate vendettas and mob lynchings and replaced, however imperfectly, by laws passed by an elected Parliament, international human rights standards and the courts.

And in a democratic society, surely, for confidence in that exchange to hold, justice needs to be seen to be done. Equally, most democratic societies accept that there are justifiable and necessary limits to the principle of open justice.

So, in the case of the Parole Board, the question should be, not why any part of it should be opened up, but why any part of it should be closed.

Well, there are some very powerful constraints.

First of all, there are a set of issues about rights to privacy. Many parole hearings will hear substantial evidence about the prisoner' mental health and will often deal with personal information about victims and other parties too. Privacy rights should be respected and this will be particularly true where there are issues about the age or capacity of the prisoner, the victim or others involved.

There are particular issues about the privacy of the victim here.

To be clear, every parole hearing will cover the prisoner's attitude to the original offence in some detail and a prisoner who is refused parole is entitled to a new hearing, every two years.

Think of a serious offence committed against a young child – I don't think it would be right for lurid details of the offence against them to be reported every two years as that child moves into adult life.

Next, parole hearings are designed to encourage candour. A sex offender needs to talk honestly to their psychiatrist or psychologist about their offence and their sexual feelings. A psychiatrist's report to the Parole Board will be based on those interviews and at the parole hearing the panel will question the prisoner in detail about that.

That process can't happen if a prisoner thanks there is a risk that what he says will become a media headline or start trending on twitter.

By the same token, we need psychiatrists, psychologists and others to give us their honest, independent *opinion*. An opinion about likely future behaviour – not a factual description of past events. We should be very careful to ensure that those experts do not face being hounded by the press or in social media, with severe personal and professional consequences, because the opinion they express is unpopular.

Then there is the question of the rehabilitation of the prisoner to consider.

I think it is accepted that once a prisoner has served his punishment and is safe to release, he or she should be supported in their rehabilitation in the community.

That in itself surely requires a degree of privacy and would be part of a prisoner’s Article 8 rights.

There is certainly an obligation to do nothing that will endanger their safety from vigilantism.

We should be realistic too that some victims are themselves offenders, sometime seriously so. We should not be providing information that enables one gang member to take revenge on another who stabbed him by providing information about where the attacker will be required to live after release.

Last but not least, there are practical constraints on how open the parole system can be.

Most parole hearings are held in a small meeting room inside a prison. It is hard to see how you could let the public in even if you wanted to. And anyone familiar with prison video links will know that at present at least, that is not a reliable alternative.

So how can these conflicting demands be reconciled?

As a first step, I think the Board should produce a detailed summary of its reasons for the decisions it makes. Not because I consider that it is legally required to do so; that is for the court to decide but because it is the right thing to do. I do not see why such a summary could not provide a relatively detailed explanation whilst withholding key personal information.

Such arrangements would not altogether mitigate some of the potential harms I referred to earlier but do I believe strike a reasonable balance with the requirements of open justice.

Finally let me turn briefly to the question of the board's independence.

Over the last few weeks we have had various politicians from all parties trying to tell us what to do.

The answer is no.

The Parole Board will make independent decisions based on evidence and in accordance with the law and rules Parliament has agreed.

At present if you don't like what we do, Parliament can change the law and the rules and our decisions can be judicially reviewed.

We should not fear our decision being scrutinised. We have not opposed permission being given for the current JRs to proceed. But I am not comfortable that the only way of challenging our decision is to crowd-source funding for a judicial review.

I am pleased that the Ministry of Justice is looking at whether there should be a simpler system for reviewing Parole Board decisions. Other jurisdictions allow an internal review open to both victims and prisoners – international comparisons suggest it is more likely to be used by the latter than the former. There would have to be a high merits test similar to that used for JRs otherwise we would simply end up taking most decisions twice and of course it would not exclude access to JRs once the internal mechanism has been exhausted.

I will end by making this point.

The scrutiny the Parole Board has been under provides an opportunity to make positive change in the parole system. We welcome that. Whatever the results of the judicial reviews I hope the Ministry of Justice review will lead to significant change. That should include harnessing modern technology and social media to provide a much more responsive service to victims and others. We want to and can provide an explanation of our decisions while balancing that with the privacy of victims, prisoners and others involved. We would welcome a simple system that allows our decisions to be reviewed.

We are looking forward to positive change and hope some of you might wat to join us on that journey.

[SLIDE 15] As it happens, the Ministry of Justice is just about to begin a recruitment process for new psychiatrist members of the Parole Board.

I hope I won't have put you all us and some of you will think of applying.

These are the details so do have a look. There are colleagues here from the Parole Board – I will ask them to stand up – and I know they would be happy to talk to you more about the role.

Thank you.