

A Parole System fit for Purpose

A Report by JUSTICE

Chair of the Committee

Professor Nicola Padfield QC (Hon)



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The views expressed in this report are the cumulation of the collective experience and expertise of the Working Party's members, and may not represent the views of each individual, organisation, or institution to which they belong.

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EXECUTIVE SUMMARY

Through the parole system, the State exercises one of its most important functions – the protection of the public from serious criminal offending – and also its most coercive power – the deprivation of an individual’s liberty. It is therefore vital that the process operates effectively and that the decision-making body responsible for determining continued detention can carry out its role fairly and independently. The report recognises the range of positive developments and hard work that have gone into improving the parole system over recent years. However, backlogs and delays remain problematic, in part due to changes in sentencing policy which have resulted in lengthier periods in custody and more complex sentencing regimes. As a result, the parole process continues to be difficult for prisoners and victims to understand and to navigate. This raises a multitude of human rights concerns around effective participation and procedural fairness.

The report looks both at the Parole Board itself and the roles and responsibilities of the organisations upon which it depends to receive information and make decisions including prisons, the Public Protection Casework Section, which is responsible for ensuring parole timeframes are complied with as well as building the parole dossier, and the Probation Service, which supervises an individual in the community and has the power to initiate the recall of people for breach of licence conditions.

Crucially, the report also questions the purpose of the parole system. For too long and for too many people, public protection has been regarded as synonymous with keeping individuals in prison. Yet rehabilitation and the reduction of crime are vital (and statutory) purposes of the penal system. Viewed in this light, outcomes that result in someone’s continued detention or recall should be seen as a possible failure of the system– for the individual prisoner, their victim, and the general public.

This report is intended to offer a comprehensive review by a group of experts in the field, who propose a number of practical, achievable, and well-evidenced recommendations to build a parole system that is truly fit for purpose. We hope it will

help inform the Government's own 'root and branch' review and its recommendations for reform.

Constitutional Position and Structure

The Parole Board is central to the parole system. It is the body charged with making the decision as to whether to release someone from prison and is considered to have the '*characteristics of a court*'.¹ However, it lacks the independence, power, and discretion to undertake this important and complex task properly. We therefore recommend that the Parole Board should be reconstituted as a well-resourced tribunal with procedural rules and case management powers in line with those of other tribunals.

In addition, too many individuals are being kept in prison longer than is strictly necessary either well past their tariff or on recall. We recommend that the Secretary of State for Justice should have to justify the continued detention of any individual beyond their minimum term, or of anyone who has been recalled. This would better reflect the fact that post tariff indeterminate prisoners are no longer serving the punitive element of their sentence, as well as the rehabilitative aims of the criminal justice system. We also recommend a new recall model which would require the breach of a licence condition to be proven first in a Magistrates Court, with the Parole Tribunal thereafter considering the risk and necessity of re-incarceration.

Making Effective Decisions

Each decision made within the parole system impacts the liberty of the incarcerated individual and can result in continued uncertainty for family, friends, and victims. The chronic delays that beset the system are therefore of deep concern. We recommend that the Public Protection Casework Section's performance indicators should seek to measure issues that cause delays in the parole process. Parole Board members require clear and manageable information on which to base their decisions.

¹ R (Gourlay) v Parole Board [2017] EWCA Civ 1003, para 47.

Currently dossiers are often too long and can be inadequate in terms of quality. This makes them difficult to understand for both the Parole Board and for those going through the process. Dossiers should be presented in a much more straightforward, logical, and standardised format, setting out the key information needed to make a decision. To this end, we recommend that the Ministry of Justice should commission a comprehensive, independent review of their form and content. It is also essential that Parole Board members have the necessary tools and training to help them make their important decisions.

The COVID-19 pandemic has greatly impacted the parole process, with most hearings being heard virtually by telephone or video-link. While this has resulted in certain benefits in terms of efficiencies, there remain many challenges as a result of the limited provision of technology and legal advice within the prison estate. Decisions about hearing format are taken without full regard to the wishes of the individual. Given that virtual hearings have become an important feature of the system, we consider that permanent safeguards are needed. Where an oral hearing is directed, an individual should have the right to an in-person hearing on request, and the right to have their legal representative physically present with them during a remote hearing.

Participants in the Parole Process

Procedural fairness, as guaranteed at common law and through the European Convention on Human Rights, requires that all parties are empowered to participate fully and effectively in their proceedings. Further, when an individual feels that they have been through a fair process and have had their views heard, they are more likely to take ownership of their sentence, release and/or supervision in the community. This ultimately reduces their risk of (re)offending and serves to support the goal of successful rehabilitation. We highlight the advantages of Parole Board members informally visiting prisons and meeting those incarcerated in order to understand better the realities and circumstances of prison.

The lack of information in prison about the parole process and about how individuals can enforce their legal rights needs to change. We recommend that people in prison

should have direct access to the Public Protection Unit Database, with computer terminals provided in prison for this purpose. We also call for the establishment of a dedicated and properly funded helpline to provide clear information about the parole process to all those who need it.

It is often unclear to individuals how they should evidence their rehabilitation and therefore get parole (for example, by completing Offending Behaviour Programmes, training courses, or taking vocational opportunities). This is, in part, due to insufficient resources and time available to prison and probation staff. The Parole Board could assist by keeping individuals up to date with their progression towards parole and through the prison estate. This could be done by a Parole Caseworker assigned from the beginning of an individual's sentence.

Effective participation requires that regard be given to the particular needs of those who go through the process, including those with protected characteristics, neurodivergencies, and mental health conditions. Yet there is insufficient information available to measure, and therefore develop, policies tailored at improving such experiences. We therefore urge the Parole Board to collect and publish data on outcomes, including licence conditions broken down by these characteristics. Building on the wealth of training provision that currently exists, we also call for enhancements and increased regularity of the Parole Board's training on equality, diversity and cultural awareness, mental health and neurodiverse conditions, communication, and on 'difficult conversations'. Finally, greater accountability for decision-makers requires effective avenues to feedback and complain where necessary. A review of the current complaints system is therefore desirable.

Effective Rehabilitation

Reform and rehabilitation are fundamental aims of the criminal justice system. A failure to take this goal seriously results in negative consequences for those in prison, the taxpayers who must fund an expensive prison system, as well as victims who will face the real-world consequences of reoffending. The Working Party is concerned that the present situation of overcrowded prisons, lack of educational and training provisions, and poor healthcare is likely to worsen an individual's risk profile rather

than to improve it. We therefore recommend that the Parole Tribunal should be empowered to consider the impact of continued incarceration on an individual's chance of being rehabilitated and have greater oversight of an individual's progress through prison to ensure that proper sentence planning takes place.

Further, we consider that there is insufficient evidence on the effectiveness of some of the core tools which are used to determine whether and how an individual can be released safely from prison, including risk assessments and offending behaviour management programmes. We therefore call on the Ministry of Justice to carry out a comprehensive review of the risk assessment of prisoners to build a better evidence base to justify their continued use.

Upon release, there is a risk that unreasonable, disproportionate, and poorly justified license conditions can set individuals up to fail. We recommend that the Probation Service must provide an explanation as to why any requested licence condition is reasonable, proportionate, and necessary to enable successful rehabilitation.

Finally, the Working Party notes that many of those released are at great risk of homelessness due to the lack of approved premises and other types of accommodation. Some people may not be released at all in the absence of a suitable address. This is not conducive to their rehabilitation and reintegration into society. This problem is particularly acute for women, with much of the country lacking any approved premises for them at all. The Working Party recommends that the Ministry of Justice should urgently increase and improve the availability of accommodation, with a particular focus on the provision for women, older individuals, and those with complex health needs.

The parole system is complex, and changes in one area have repercussions for those in another. However, if each of these report's recommendations are implemented, we consider that the benefits would be immense. We envisage a reduction in delays, greater coordination, better decisions, and ultimately fewer individuals trapped in a system which too often increases, rather than diminishes, their risk of reoffending in the community. There is a great opportunity to improve the system for those in prison, victims, and the general public. We call on the Government to seize it.

I. INTRODUCTION

Background

1.1 The Parole Board for England and Wales (the “**Parole Board**”) currently operates as a ‘*quasi-judicial*’ body,² responsible for determining whether a prisoner can be released from detention into the ‘community.’ The Parole Board was first constituted in 1967. It initially operated as a very small, purely advisory body, recommending to the Home Office cases for release which had been referred to it by local review committees.³ The Parole Board’s recommendation could be rejected by the Home Secretary if they considered it to be in the public interest.⁴ In 1989, the House of Lords Select Committee on Murder and Life Imprisonment recommended that the decision to release indeterminate prisoners should be an entirely judicial one, “*independent of the executive.*”⁵ The recommendation was not accepted by the Government of the time.⁶

1.2 The Parole Board currently fulfils three main functions:⁷

² Justice Committee, ‘Oral evidence: The transparency of Parole Board decisions and involvement of victims in the process’, HC 755, 7 February 2018, Q8 [Nick Hardwick, former Chair of the Parole Board].

³ S. 59 Criminal Justice Act 1967 sets the constitution and functions not only of the Parole Board but also of Local Review Committees. These committees were abolished in 1991. The only exception to the Parole Board’s exclusively advisory role was found in the requirement that where the immediate re-release of a recalled prisoner was recommended the Home Secretary was obliged to give the recommendation effect (s. 62(4) Criminal Justice Act 1967).

⁴ T. Guiney, ‘An Idea Whose Time Had Come? The Creation of a Modern System of Parole in England and Wales, 1960-1968’, 137 Prison Service Journal, (2018a), p.14.

⁵ For an overview of the Parliamentary and governmental responses to decisions of the European Court of Human Rights at this time, see HL Session 1988-89, Paper 78-I. See also N. Padfield (ed), *Beyond the Tariff: Human Rights and the Release of Life Sentence Prisoners*, (Willan, 2002), Chapter 4.

⁶ The Parole Board ultimately became a non-departmental public body in 1996, with formal sponsorship from the Prison Service (later to be absorbed into the National Offender Management Service in 2004), and finally the Ministry of Justice from 2008.

⁷ The *SoSJ* is required to refer a number of cases to the Parole Board. See for example Criminal Justice Act 1991, s. 35; Criminal Justice Act 2003, ss. 226A, 246A, 248, 255C, 256; Crime (Sentences) Act 1997, ss. 30, 28(5).

- a) Deciding whether to direct the release of all life, indeterminate and some determinate sentence prisoners, and approving licence conditions, as well as their variation;⁸
- b) Reviewing the circumstances in which all indeterminate and some determinate sentence prisoners have been recalled to prison, and deciding whether to re-release them; and
- c) Recommending to the Secretary of State for Justice (“**SoSJ**”) the transfer of indeterminate sentence prisoners from a closed to an open prison, as well as the termination of IPP licences.

1.3 There have been numerous changes to the parole system over the past 50 years.⁹ Since a Government consultation in 2009,¹⁰ there have been several reviews which have considered whether the Parole Board should be reconstituted as a court or a tribunal.¹¹ In 2009, JUSTICE published its own

⁸ See: Crime (Sentences) Act 1997, as amended; Criminal Justice Act 2003 (as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012); and the Criminal Justice and Courts Act 2015. The range of sentence types that currently fall under the Parole Board’s remit continues to grow, most recently with specified terrorist offences (*see* Terrorist Offenders (Restriction on Early Release) Act 2020, s. 1; Criminal Justice Act 2003, s. 247A). The Police, Crime, Sentencing and Courts Bill seeks, among other things, to broaden the cases that can be referred to the Parole Board, including any Standard Determinate Sentenced prisoner the *SoSJ* deems, at the point of automatic release, poses a risk to the public.

⁹ These broadly reflect three legislative overhauls: (1) 1967 – 1991, where the Criminal Justice Act 1967 established a small Parole Board and Local Review Committees attached to every prison to advise the Government on the release of prisoners; (2) 1991-2003, in the wake of the Criminal Justice Act 1991, which introduced significant reforms including automatic rather than discretionary release at the half-way point for those serving less than four years imprisonment. The Home Secretary relinquished their power to the Parole Board to direct release of prisoners serving less than fifteen years in 1998, as well as extended sentence prisoners once the extended sentence was introduced; and (3) 2003 to today, following the Criminal Justice Act 2003, this removed the Parole Board’s role in deciding the release of prisoners serving fixed term sentences and provided that all indeterminate sentence prisoners came within its remit. There were further reforms, including the creation of ‘Imprisonment for Public Protection’ sentences in 2005, later abolished under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. *See* N. Padfield, (2019) ‘Giving and getting parole - The changing characteristics of parole in England and Wales’, pp. 2-7.

¹⁰ At the end of 2008, the Ministry of Justice announced that it would undertake a public consultation process to consider what status would best support the work of the Parole Board. This consultation paper was published on 20 July 2009. *See* Ministry of Justice, ‘The Future of the Parole Board’, (2009).

¹¹ *See* the Judiciary’s response to the 2009 ‘The Future of the Parole Board’ consultation, which called for more powers and reintegration into the HMCTS system. The issue was also considered in the Parole Board’s most recent Triennial Review. Government guidance stipulates that all non-departmental public bodies should undergo a substantive review at least once every three years. However, the Parole Board’s most recent Triennial Review was in 2015. *See* Ministry of Justice, ‘Triennial Review: Parole Board for England and Wales, Combined Stage One and Two Report’, (January 2015).

review of the parole system, recommending that “*the existing Parole Board should be abolished, and a new Parole Tribunal should be set up by primary legislation. The constitutional position of the Parole Tribunal will be within the Tribunals Service and will allow for an appeal to a dedicated chamber within the Upper Tier.*”¹² In 2018, the Justice Committee of the House of Commons also suggested that one option might be for the Parole Board to transfer to Her Majesty’s Courts and Tribunals Service (“HMCTS”), and for the system to be reconfigured to operate in a similar manner to the Mental Health Tribunal with an upper and lower tier, enabling appeals to be made.¹³ The Tailored Review, published in October 2020, accepted that if the Parole Board were to sit under HMCTS, it would benefit from full judicial independence in its decision-making, increased powers to effectively carry out its functions, and develop a closer relationship with the judiciary.¹⁴

- 1.4 As JUSTICE noted in its 2009 report, parole has travelled a great distance since its introduction over half a century ago, from the discretionary grant of a privilege to an entitlement to liberty once specific risk criteria have been met. The journey, encouraged principally by the stimulus of the European Convention on Human Rights (“ECHR”), has transformed parole from an administrative function to a firmly judicial one. The consequence has been a positive, yet incomplete, shift in the constitutional status of the Parole Board.¹⁵
- 1.5 JUSTICE convened this Working Party in April 2021 in response to the Government’s ‘Root and Branch’ review of the parole system which launched in October 2020. That review’s stated aim is to “*build on recent reforms to improve the transparency of the Parole Board’s work but will also look at more fundamental change.*” At the forefront of the review is an examination of “*whether the current model – the Parole Board – is the most effective and efficient system for deciding whether prisoners should continue to be detained*”.¹⁶

¹² JUSTICE, ‘[A New Parole System for England and Wales](#)’, (2009).

¹³ Letter from the Chair of the Justice Committee to the Secretary of State for Justice on Parole Board decisions, 27 March 2018.

¹⁴ Ministry of Justice, ‘[Tailored Review](#)’, (The Parole Board for England and Wales, October 2020), para 32.

¹⁵ JUSTICE, ‘[A new parole system for England and Wales](#)’, (2009), p.16.

¹⁶ The Ministry of Justice, ‘[Root-and-Branch Terms of Reference](#)’, (2020).

- 1.6 An efficient, effective, and well-functioning Parole Board is vital for the criminal justice system. Its decisions make the difference between the continued deprivation of an individual's liberty and a new life in the community. However, its proper functioning is hindered on many fronts. Sources of frustration include financial limitations, inadequate powers, a lack of independence from the executive, and inadequate attention paid to facilitating the appropriate participation of victims and prisoners in the process. As a result, delays, disruption, and mistakes mar a system that is unable to operate as it should. Those whose liberty is at stake, as well as the public at large, pay a heavy price. It is important that we get this right.
- 1.7 The Working Party also considers that a disproportionate focus on the Parole Board risks failing to appreciate the complex tapestry of actors and organisations which lead up to its decisions, and which continue to play a vital part thereafter, be it continued detention, conditional release, or recall. The Parole Board does not operate in isolation. It is dependant on many processes outside its control, both before and after it is engaged. These processes are largely driven by Her Majesty's Prison and Probation Service ("HMPPS"), through both the Public Protection Casework Section ("PPCS"), which is responsible for ensuring parole timeframes are complied with as well as building the parole dossier, and the Probation Service, which supervises an individual in the community and has the power to initiate the recall of people for breach of licence conditions. It is impossible, therefore, to consider parole in the absence of this broader context.
- 1.8 Our review has therefore sought to cast a wider net and to examine the Parole Board as well as the wider parole system of England and Wales. This includes the Parole Board's constitutional position, its decision-making processes, the ability for individuals to participate in the process, and the rise in the number of recalled prisoners. In addition, we consider the roles and responsibilities of the various organisations upon which the Parole Board depends to receive information and make decisions. At every stage, we placed a particular focus on the experiences of racialised minorities and those with mental health and/or neurodivergent conditions, groups which are overrepresented throughout the criminal justice system, and which face particular challenges in participating. The report's practical recommendations are intended to improve the fair, efficient and effective operation of the parole process for all involved,

including victims, prisoners, their families, and all those who work within the variety of organisations responsible for this vital function.

1.9 The Parole Board plays an important function in protecting the public. This is described as its “*number one priority*”.¹⁷ For too long, however, this purpose has been seen as synonymous with keeping individuals in prison. The decision not to release is often viewed as a success, rather than a failure for the individual prisoner, their victim, and the general public. This suggests a system oriented towards the punishment of an individual, rather than their rehabilitation. One of the statutory aims of sentencing is the reform and rehabilitation of people who have offended.¹⁸ Yet many policy and legislative initiatives prioritise more and/or lengthier periods of incarceration. By contrast, limited attention is directed to the underlying sources of (re)offending, their solutions, and the role parole could play in facilitating rehabilitation. The principle of rehabilitation – that an individual should be supported in addressing the behaviour that led them to offend, so as to “*author a different and better future*”¹⁹ – forms an important component of this report. Our recommendations, therefore, seek to situate rehabilitation as a crucial tool for protecting the public.

1.10 Our report seeks to recognise the range of positive developments and hard work that have gone into improving the parole system over the years. This is especially important to recognise in the context of the severe funding restrictions imposed on the criminal justice system over the past decade. Similarly, it is impossible to ignore the fact that sentencing policy, both of this Government and previous, has contributed to lengthier periods in custody and more complex regimes and requirements. This has had a significant effect on the workload of the Parole Board, since far more prisoners serve indeterminate sentences or are on recall. In 2020, the COVID-19 pandemic imposed unimaginable pressure on the parole system, greatly testing its resilience. It is right to recognise the steps that have been taken to minimise the hardship of people in prison whose material conditions and opportunities to be considered for release have diminished greatly as a result.

¹⁷ See the [Parole Board \(gov.uk\)](https://gov.uk/parole-board).

¹⁸ Originally s. 142 of the Criminal Justice Act 2003; now s. 57 of the Sentencing Act 2020.

¹⁹ McNeill, Fergus (2014), ‘[Punishment as rehabilitation](#)’. In: Bruinsma, Gerben and Weisburd, David (eds.) *Encyclopaedia of Criminology and Criminal Justice*. Springer, New York, p.4195.

- 1.11** While we had understood that the aim had initially been to publish the Root and Branch Review in the summer of 2021, it remains unpublished at the time of this report. We hope, therefore, that our findings will serve as a positive contribution to the Government in working to improve the Parole Board and system so that its decision-making processes are fit-for-purpose and fair. We consider that our recommendations can help to chart a way forward for a parole system that works for prisoners, victims, and the community at large.

The Working Party

- 1.12** The Working Party set out to consider four key areas that run across the parole system. These are:

- a) The purpose and status of the Parole Board, in order to ensure that it is properly able to carry out its responsibilities relating to the release of those detained. This included examining issues such as the Parole Board's constitutional position, powers, and ability to carry out its functions effectively and independently.
- b) The Parole Board and the wider system's procedures, in order to improve their coordination and effectiveness and to reduce the significant delays that have impeded the fair operation of the parole process.
- c) The experiences of victims, prisoners, and their friends and families through each stage of the parole process, with a focus on procedural fairness and the need to ensure their effective participation.
- d) The increasing rates of recall to prison. This included consideration of how those on licence are supported and supervised, the recall process, delay, and the Parole Board's remit for re-release.

- 1.13** In order properly to consider these issues and take evidence, the Working Party divided itself into three subgroups, which explored:

- a) the Parole Board's constitutional position and purpose (chaired by Simon Creighton);
- b) parole decision-making processes (chaired by Professor Nicola Padfield); and
- c) the experiences of participants in the parole process (chaired by Dr. Harry Annison).

- 1.14** Of overarching consideration for each subgroup was effective rehabilitation and the issue of recall to prison, which has increased substantially over the last twenty years.

- 1.15 The parole system cannot be understood in the abstract. We therefore strove to ensure that the lived experiences of participants remained central to our investigation. This meant listening to the voices of prisoners, victims, practitioners, and legal representatives. The success of our recommendations depends on improving the experiences of those who participate in the process. It is essential that any reforms work to improve their experiences and be understandable for them.
- 1.16 We also considered systems for conditional release in nine other jurisdictions around the world, covering both civil and common law traditions. This enriched the Working Party's deliberations, and we have drawn on these comparisons when considering proposals for reform.
- 1.17 The Working Party drew on evidence from a broad range of sources and stakeholders, including the Parole Board, the Ministry of Justice, the PPCS, the Probation Service, the Victims' Commissioner, legal practitioners, and academics – both from here in the United Kingdom and from abroad. We also consulted by way of survey both prisoners and front-line probation staff on their experiences of the parole process.

Limitations

- 1.18 The wide scope of our mandate meant that many areas which deserve greater attention remain under-explored. As noted above, the Parole Board depends on many actors for its proper functioning. The Probation Service, for example, acts to supervise the compliance of licence conditions for those released into the community and has the power to initiate recall where it deems there to have been a breach. Like many organisations that make up the criminal justice system, its budget has faced significant restrictions over the past ten years. Its ability to function was further complicated by the privatisation of many of its functions in 2014 and the subsequent renationalisation six years later.²⁰ While our findings explore some of the responsibilities of the Probation Service, a fulsome analysis of its functions remained outside of our scope and capacity.
- 1.19 It is inevitable that certain areas will have received more focus than others. Our aim has been to draw attention to, and to offer solutions for, some of the parole system's most burning questions, provoked by the important opportunity that

²⁰ See HMPPS guidance on '[Strengthening probation, building confidence](#)', (2019).

the Government's 'Root and Branch' review affords. This is not to diminish the importance of those issues that might deserve fuller consideration, but rather a reflection of the pace of our review. During the course of 2021, the Working Party met and gathered evidence from April to July. This was followed by a period of drafting, revision, and further consultation between August and December. There is more to do, and we hope this report can act as a useful starting point.

Terminology

- 1.20 Racism and discrimination, at a systemic and individual level, continues to pervade our society and legal system. This is evident in the disproportionate representation of people from racialised communities at every stage of the criminal justice system.²¹ Recognising the variety of experiences and outcomes that occur within different racialised communities, we have sought to identify groups to which we refer where possible.
- 1.21 The report examines the issues that many vulnerable individuals face when going through the parole process, as well as the barriers to their effective participation. Some definitions used to describe those with mental ill health do not suitably reflect the broad range of experiences that the term encompasses.²² Nor is there one clear definition of 'neurodiversity' - we use it to refer to a range of neurocognitive differences, such as autism, attention deficit hyperactivity disorder, and dyslexia, which create challenges in a neurotypical society.²³ We have sought to capture the widest range of experiences. Science continues to progress in articulating and screening for such conditions.
- 1.22 We do not use the word 'offender' in this report, except where specified in statute or as required in referencing an external source. This is because we

²¹ We note that Gypsy, Roma, and Traveller individuals form a minoritized and racialised community who suffer from similarly negative outcomes to other groups.

²² S. 1(2) of the Mental Health Act 1983 uses the term 'mental disorder', meaning "*any disorder or disability of the mind*". S. 2(1) of the Mental Capacity Act 2005 looks at activities rather than conditions, stating that "*a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain*".

²³ Robert Chapman, *Neurodiversity Theory and Its Discontents: Autism, Schizophrenia, and the Social Model of Disability*, in Bluhm, R. (2019), '*The Bloomsbury Companion to Philosophy of Psychiatry*', London: Bloomsbury Academic. Retrieved November 2, 2021, p.371.

consider that the term serves to essentialise and pejoratively define an individual by one negative facet of their otherwise complex life. We do use the term ‘prisoner,’ which we recognise may have a similar effect, but emphasise that this is a description of their temporary status and by no means a defining personal characteristic.

- 1.23** The criminal justice system suffers from a range of complicated acronyms and words. For ease of reference, key abbreviations are set out here, as well as again where they first appear in the report.

Core Sex Offender Treatment Programme (“**SOTP**”)
European Convention on Human Rights (“**ECHR**”)
Generic Parole Process (“**GPP**”)
Her Majesty’s Courts and Tribunals Service (“**HMCTS**”)
Her Majesty’s Prison and Probation Service (“**HMPPS**”)
Imprisonment for Public Protection (“**IPP**”)
Juge de l’application des peines (“**JAP**”)
Member Case Assessment (“**MCA**”)
Mental Health Tribunal (“**MHT**”)
Multi-Agency Public Protection Arrangements (“**MAPPA**”)
Victim Contact Scheme (“**VCS**”)
OASys Violence Predictor (“**OVP**”)
Offender Assessment System (“**OASys**”)
Offender Group Reconviction Scale (“**OGRS3**”)
Offending Behaviour Programmes (“**OBPs**”)
Parole Board for England and Wales (“**Parole Board**”)
Public Protection Casework Section (“**PPCS**”)
Public Protection Unit Database (“**PPUD**”)
Release on temporary licence (“**ROTL**”)
Risk of serious harm (“**RoSH**”)
Risk of Serious Recidivism (“**RSR**”)
Secretary of State for Justice (“**SoSJ**”)
The Terrorism Act 2000 (“**TACT**”)

II. CONSTITUTIONAL POSITION AND STRUCTURE

Introduction

- 2.1 There has been a significant shift in the purpose of the Parole Board's function; initially it was concerned solely with the 'early release' of determinate sentence prisoners, whereas now it is concerned with 'delayed release' i.e., those who have served their tariff (the punitive element of the sentence imposed by the original sentencing court) and the re--release of those recalled.²⁴ It therefore requires a re-think of its purpose and justifications.²⁵
- 2.2 In 2019, the Government stated that the Tailored Review would
- "...consider fundamental issues such as the purpose of the Parole Board, which functions it should deliver, [...] its structure, including whether it should become a judge-led tribunal. This also includes assessing whether the Parole Board should receive additional powers and be monitored by an independent inspectorate."*²⁶
- 2.3 However, the Tailored Review ultimately gave very little attention to these issues. Instead, they were referred for consideration to the Root and Branch review.
- 2.4 Although the Parole Board has wide-reaching responsibilities, its role with respect to the progression, support and treatment of prisoners is limited.²⁷ For example, the referral document sent by the SoSJ to the Parole Board places apparent limits and expectations on the Parole Board's role: "[i]n any event, the Board is not being asked to comment or to make any recommendation

²⁴ N. Padfield, 'Giving and getting parole - The changing characteristics of parole in England and Wales', (2019), p.1.

²⁵ Guiney notes that parole during its infancy was a "*privilege and not a right*" and Padfield holds that when we consider how different the role of the Parole Board is today, "*more involved in adjudicating 'late', post-tariff, release, rather than 'early' release, we have to re-think its purpose and justifications.*" See T. Guiney, 'An Idea Whose Time Had Come? The Creation of a Modern System of Parole in England and Wales, 1960-1968', 137 Prison Service Journal, (2018a), p.14; and N. Padfield, 'Giving and getting parole - The changing characteristics of parole in England and Wales', (2019), p.2.

²⁶ Ministry of Justice, 'New improvements to parole board transparency and victim support', (2019).

²⁷ N. Padfield, 'Giving and getting parole - The changing characteristics of parole in England and Wales', (2019).

about the security classification of the closed prison in which the prisoner may be detained; nor any specific treatment needs or Offending Behaviour work required; nor on the date of the next review.”²⁸

- 2.5 The process requires the Parole Board to consider all the available material and form a judgment based on risk. The Parole Board is not permitted to make any assessments as to whether the original sentence handed down by the sentencing court was suitable and/or appropriate. Under section 28 of the Crime (Sentences) Act 1997, the Parole Board must not direct release unless it “*is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.*” This test applies to both release and re-release and to all prisoner sentence types subject to parole,²⁹ except those prisoners serving extended sentences who are recalled.³⁰ There must be a risk of serious harm (“**RoSH**”)³¹ which is considered unmanageable in the community.³² The Parole Board faces a particularly difficult task – a predictive task – in considering a number of factors. It is by no means an exact science.³³

Excessive Executive Control

- 2.6 The Parole Board is now considered by the courts to have “*characteristics of a court,*” and is therefore sufficiently independent from the executive for the

²⁸ N. Padfield, ‘Parole: Reflections and possibilities. A discussion paper’, The Howard League for Penal Reform, (2020).

²⁹ A single statutory test for all release cases, determinate or indeterminate, was introduced on 3 December 2012 under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012). See also: The Parole Board, ‘The Parole Board Decision Making Framework’, (2019).

³⁰ “*In the case of an extended sentence prisoner who is recalled in the “extension period” part of their sentence, panels are required to reverse the test, applying a presumption in favour of release. In such cases, the panel should direct release unless positively satisfied that continued detention is necessary for the protection of the public. But this presumption does not apply in any other case*” – see the Parole Board’s guidance on ‘Types of Cases’.

³¹ RoSH means the probability that a future offence will be one of “*serious harm*”. The RoSH Guidance 2020 further explains that the “*OASys risk assessment tool defines “serious harm” as: “an event which is life threatening and/or traumatic and from which recovery, whether physical or psychological, can be expected to be “difficult or impossible”*” – see Risk of Serious Harm Guidance 2020.

³² See Crime (Sentences) Act 1997, s. 28(6)(b); *R (Sturnham) v Parole Board* (No 2) [2013] UKSC 47, [2013] 4 All ER 177; and *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin).

³³ The assessment of risk “*cannot be ascertained with scientific accuracy*”, Lord Bingham in *Roberts (FC) (Appellant) v Parole Board (Respondents)*, para 4. See also N. Padfield, ‘The Sentencing, Management and Treatment of ‘Dangerous’ Offenders’, Council of Europe, (2010).

purposes of Article 5(4) ECHR.³⁴ Nevertheless, the SoSJ continues to have a significant level of power, discretion, and control in the parole process. The Working Party has heard of examples of the executive, and increasingly members of the legislature, commenting on Parole Board decisions in a way that they would not in relation to other courts making difficult or complex decisions. The Parole Board's role as a *quasi-judicial* decision-maker is inhibited both culturally, in terms of how third parties treat it, and administratively due to the SoSJ dictating its process. It is therefore unsurprising – and unsustainable – that multiple stakeholders (from the police to the PPCS) do not afford an appropriate level of respect for the Parole Board's directions.³⁵

Tensions between the Secretary of State for Justice and the Parole Board

- The PPCS initiates the Generic Parole Process (“GPP”)³⁶ and is responsible for co-ordinating the parole dossier alongside prison and probation staff. It is the PPCS which refers the case to the Parole Board.
- The SoSJ is a party to the proceedings, with a representative able to attend the hearing to present the case.
- The SoSJ (and the prisoner) are able to ask for a decision to be reconsidered, or to apply for a judicial review of a decision.
- The Parole Board's role is only advisory when recommending open conditions.

³⁴ *R (Gourlay) v Parole Board* [2017] EWCA Civ 1003, para 47. The case was appealed to the Supreme Court but not on the ground that the Parole Board did not satisfy Article 5(4) ECHR, and the court indicated no disagreement with this aspect of the judgment.

³⁵ A number of Government reports have identified the fact that the Parole Board suffers from poor levels of compliance from third parties with its directions. The Working Party has observed this in its own experience. See ‘Review of the Parole Board Rules and Reconsideration Mechanism’, (2019), p.33; and Ministry of Justice, ‘Tailored Review’, (The Parole Board for England and Wales, October 2020), para 30.

³⁶ The GPP starts from a prisoner's referral and goes on until the date of their hearing. During this period: (i) Prison and probation reports are completed and added to the dossier which is then disclosed; (ii) Prisoners can submit personal or legal representation; (iii) There will be an initial review called a Member Case Assessment (MCA). The prisoners' case may be decided on the papers at the MCA stage. If the decision is negative, they have a further 28 days to request an oral hearing, if they believe they should have one; and (iv) If their case is directed to an oral hearing, at MCA stage or following a request for an oral hearing, witnesses will be contacted, and their oral hearing date arranged - see Prison Reform Trust, ‘The Parole Board and Parole Reviews’; Ministry of Justice, ‘Generic Parole Process Policy Framework’, (30 August 2021).

- The SoSJ can circumvent the Parole Board's function, by exercising powers of executive release for individuals serving determinate sentences where they have been recalled.
- Board members are appointed by the SoSJ, who also oversees rules on tenure and remuneration etc.

- 2.7 The CEO of the Parole Board, Martin Jones, has expressed concern about cases where the SoSJ chooses not to be represented at the initial hearing but then, following a decision to direct release, decides to trigger the reconsideration mechanism.³⁷ There exists a palpable risk that, by making all decisions provisional until there is an opportunity for review by another tier, any faith in the Parole Board's decision-making powers is undermined. This is clearly inconsistent with the normal powers of a court like body, where a party to proceedings must decide whether or not they wish to appeal.
- 2.8 The reconsideration mechanism arose from the Worboys case. At the time there was no route for the Parole Board to be asked to revisit its decision, apart from through an application for judicial review. The reconsideration mechanism was created to fill what was seen as a gap in the process. However, of equal concern was the Government's politicisation of that decision, with the then SoSJ and Lord Chancellor in effect calling for the then Chair of the Parole Board, Nick Hardwick, to resign.³⁸
- 2.9 In our view, this was inappropriate, and a strong sign of the Parole Board's lack of real independence. Every day, judicial bodies are tasked with taking difficult decisions. Sometimes, these may be controversial. It is essential for good decision-making, public confidence, and for the rule of law that the

³⁷ *'Parole during the pandemic'*, CEO of the Parole Board, Martin Jones, interview with Dean Kingham and John Turner, Swain & Co Solicitors (Prison Law Podcast). See also Secretary of State's Application for Reconsideration in the case of *Baker* [2020] PBRA 73, (8 June 2020), para 8.

³⁸ *'Worboys release decision overturned as parole head quits'*, *BBC News*, 28 March 2018. The High Court later declared that this amounted to interference in the Parole Board's independence, noting that *"it is not acceptable for the Secretary of State to pressurise the Chair of the Parole Board to resign because he is dissatisfied with the latter's conduct. This breaches the principle of judicial independence enshrined in the Act of Settlement 1701. If the Secretary of State considers that the Chair should be removed, then he should take formal steps to remove him pursuant to the terms of the Chair's appointment"*. See also *R (Wakenshaw) v Secretary of State for Justice* [2018] EWHC 2089 (Admin), para 31.

Parole Board be fully endowed with the necessary powers and status to undertake its role genuinely independent of Government pressure.

Insufficient Directions Powers

- 2.10 The Parole Board also suffers from a lack of powers to ensure that its processes are fully respected. It cannot enforce its directions. One consultee troublingly noted that it has “*no real powers except for the power of shouting and making noise.*”
- 2.11 Under Rule 6 of the Parole Board Rules 2019, the Parole Board can make any direction necessary in the interests of justice to effectively manage a case, including a direction for evidence, reports and information, and the attendance of witnesses. However, as the Tailored Review (2020) noted, the Parole Board “*has no capacity to enforce them in its own right. This lack of powers compounds issues around timeliness and delay.*”³⁹ Currently, the Parole Board must request the issuance of a witness summons from the High Court to give effect to its directions.⁴⁰ Not only is this impractical and costly, but it also frustrates the Parole Board’s ability to carry out its statutory function effectively and undermines its position and status within the release process. In *Vowles*, the Court of Appeal delivered a stark criticism of the Parole Board’s lack of powers:

*“The Parole Board is further disabled from complying with its obligations to make a speedy determination, as it has no specific statutory powers to enforce its case management directions. It is difficult to see how it can properly and actively manage cases without such a power. A party can of course apply for a witness summons to the High Court or County Court under CivPR 34.4, but that is of very limited relevance in enforcing compliance with directions, such as the service of reports. It is plainly essential that the Parole Board be given such a power.”*⁴¹

- 2.12 The Tailored Review recognised the importance of the Parole Board having adequate authority to carry out its function. However, it merely noted that the

³⁹ Ministry of Justice, ‘Tailored Review’, (The Parole Board for England and Wales, October 2020), p.30.

⁴⁰ Civil Procedure Rules, Rule 34.4.

⁴¹ *R. v Vowles & Ors* [2015] EWCA Crim 45, para 42.

Parole Board should “*present itself*” as more court-like through its use of powers and approach to directions. Although considered to be a ‘court-like body,’ its lack of direction and case management powers – coupled with a lack of true independence – means that the Government, and other public bodies, do not cooperate in a way that would be expected by any other court. The result is that many cases are delayed as Parole Board members seek to have directions met late or at all, and hearings have had to be adjourned or deferred. This delay means that a prisoner may potentially remain in custody when otherwise they would have been released. As a result, there are significant operational costs for the Parole Board, as well as other parties such as the PPCS, prisons and the Probation Service. We consider such reform to be well overdue, having been mooted several times over previous decades.

- 2.13 The Working Party recommends that the Parole Board should be reconstituted as a Tribunal within HMCTS, allowing for an appeal to be made to a dedicated chamber of the Upper Tier. The Ministry of Justice should provide the Parole Tribunal with a sufficient level of funding and resources to fulfil its statutory functions. The Parole Tribunal should have procedural rules and case management powers in line with other tribunals.**
- 2.14** From the experience of some of our members and from the evidence we have taken, we consider that the Mental Health Tribunal (“**MHT**”) offers a helpful comparative model for the type of structure that we envisage for the new Parole Tribunal.
- 2.15** The MHT was established as part of the reforms of the tribunal system under the Tribunal, Courts and Enforcement Act 2007 and sits within the Health, Education and Social Care Chamber. The MHT is governed by the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, which provides a statutory footing for the operation of the MHT and the appeals process to the Upper Tribunal. The MHT does not review the original decision to detain an individual under the Mental Health Act 1983, but only considers if the individual concerned should remain detained, subject to the relevant section of the Act.⁴² In this way, a decision of the MHT can be compared to that of the Parole Board which does not review the original

⁴² Department of Health, ‘[Reference Guide to the Mental Health Act 1983](#)’, March 2015, p.49.

sentence imposed on a prisoner but assesses the necessity of continued detention.

- 2.16 However, in contrast to the Parole Board, the MHT, as a tribunal, has power to, amongst other things, regulate its own procedure⁴³, give directions as to the evidence that it requires⁴⁴, summon a witness⁴⁵ and respond to failures to comply with the rules (including by striking out a party's case or requiring a person to give or provide evidence).⁴⁶ This gives the MHT the required powers to enforce its case management directions that the Parole Board is currently missing. As noted above, the Working Party recommends that the Parole Board is adapted to emulate this administrative structure.

Making Release Fit for Purpose

- 2.17 The Working Party considers the parole system should encourage the meaningful rehabilitation of individuals, both in prison and in the community, and promote the training and encouragement needed to support their crime free reintegration into society. The Parole Tribunal ought to be able to ensure that prisoners are given all appropriate assistance to work towards their timely release. The sentencing, supervision, and release of prisoners in England and Wales is complex in law and in practice. The processes that apply to an individual can vary, and sometimes overlap, depending principally on the initial sentence given, along with their behaviour, and importantly, the priorities of those who manage the penal system. Broadly, those given determinate sentences are released at the halfway point of their notional sentence,⁴⁷ with supervision in the community forming the later part.

⁴³ Rule 5, Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

⁴⁴ *Ibid*, Rule 15.

⁴⁵ *Ibid*, Rule 16.

⁴⁶ *Ibid*, Rule 7.

⁴⁷ The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 (SI 2020/158) came into force on 1 April 2020. It provides that adults sentenced to seven years or more for violent and sexual offences now serve two-thirds, not half, of their sentence (see Schedule 15 of the Criminal Justice Act 2003). In addition, the Police, Crime, Sentencing and Courts Bill, which at the time of the report is progressing through its House of Lords stage, would also increase the minimum term for certain offences from the midway to the two-third point of their notional sentence. See JUSTICE, '[Police, Crime, Sentencing and Courts Bill – Briefings](#)', (May – December 2021).

Individuals with an indeterminate sentence must serve their minimum tariff before release.⁴⁸ Thereafter, they are subject to supervision in the community by the Probation Service. Both groups remain subject to recall while on licence.

2.18 It is helpful to recall the statutory purposes of sentencing for adults under section 57 of the Sentencing Act 2020:⁴⁹

- the punishment of offenders,
- the reduction of crime (including its reduction by deterrence),
- the reform and rehabilitation of offenders,
- the protection of the public, and
- the making of reparation by offenders to persons affected by their offences.

2.19 Political and legislative focus has largely centred on the first and fourth of these purposes, much to the detriment of the second and third, with sentences and tariffs moving in a one-way direction that prioritises increasing length on the basis of the supposed benefit of greater public protection. In England and Wales, more people are serving life and indeterminate sentences than in France, Germany, Italy, the Netherlands, Poland and Scandinavia combined – the highest number in Europe by a large margin.⁵⁰ Many people are receiving much longer sentences: *“almost three times as many people were sentenced to 10 years or more in the 12 months to June 2020 than the same period in 2008”*.⁵¹ Sentencers are imposing longer tariff periods,⁵² with the average

⁴⁸ The Parole Board considers those subject to an ‘Extended Determinate Sentence’ or a ‘Special Sentence for Offenders of Particular Concern’, ahead of their sentence end date at which point they must be automatically released.

⁴⁹ Originally s. 142(1) of the Criminal Justice Act 2003.

⁵⁰ M. Aebi and M. Tiago, ‘Space I – 2019 – Council of Europe Annual Penal Statistics: Prison populations’, (Strasbourg: Council of Europe, May 2020), Table 10.

⁵¹ Prison Reform Trust, ‘Bromley Briefings Prison Factfile’, (2021), p.11. See also: Ministry of Justice ‘Criminal justice statistics quarterly: June 2020’, (November 2020), Table Q5.4.

⁵² HMI of Probation and HMI of Prisons, ‘A joint inspection of life sentenced prisoners’, (2013), p.14.

minimum term for murder convictions rising from 12.5 years in 2003 to 21.3 years in 2016.⁵³

2.20 As of September 2021, a total of 9,254 people were in prison serving an indeterminate sentence. The number of 18-20 year olds serving indeterminate sentences saw a 24% increase when compared with September 2020.⁵⁴ There were 1,722 IPP prisoners, with the majority having been held for more than eight years beyond the end of their tariff.⁵⁵

2.21 Individuals are also spending a greater proportion of their sentence in custody. Of those serving a life sentence, 6,971 people remain unreleased, with many being held beyond their tariff expiry date.⁵⁶ The number of recalled prisoners serving life sentences increased by 10% to 658 when compared to September 2020. In addition, 11,623 people were released from sentences between April and June 2021, which is 13% lower than in the same period in 2020.⁵⁷

2.22 This contributes to prison overcrowding.⁵⁸ The Criminal Justice Alliance has observed that:

“When prisons are overcrowded, the risk that offenders will commit crimes upon release may be greater. A combination of some of the above effects – strain on prison staff, reduced access to educational and training programmes, and the lack of mental health and substance abuse treatment services – reduce the likelihood that prison sentences will actually work to tackle the causes of offending behaviour.”⁵⁹

2.23 The punitive element of a sentence is only one of the statutory sentencing aims. It is clear that there are significant advantages – in terms of cost to the taxpayer

⁵³ Ministry of Justice, ‘Homicide: Sentencing, Question for Ministry of Justice UIN HL2315’, (6 November 2017).

⁵⁴ Ministry of Justice, ‘Offender management statistics quarterly: April to June 2021’, (October 2021).

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Criminal Justice Alliance, ‘Crowded Out? The Impact of prison overcrowding on rehabilitation’, (2012), p.3; and House of Commons Library, ‘Key Issues for the 2015 Parliament’, (2015), p.97. This reports that 60% of the prison estate was overcrowded in 2015.

⁵⁹ *Ibid.*

and the contribution of the incarcerated individual to society – in ensuring that individuals continue to remain in custody only where this is necessary. Moreover, Article 5 ECHR contains an international human rights obligation to ensure that no one is deprived of their liberty arbitrarily. Currently, the release of prisoners is contingent on the type of sentence issued at the time of conviction. Beyond automatic release for determinate sentences, and the opportunity for release through the Parole Board for indeterminate and other sentences,⁶⁰ an individual's options for release on licence are limited regardless of their behaviour or any positive progress achieved while in prison.⁶¹ There exists, on the other hand, a number of ways that additional time can be added to the length of an individual's sentence and/or their release can be delayed at the first point of eligibility, sometimes regardless of an individual's conduct. For example, as a result of adjudications brought about as a consequence of infractions committed in prison, as well as the lack of access to necessary offending behaviour programmes (“OBPs”),⁶² or indeed through fresh legislative initiatives. Successive governments have sought to increase the amount of time prisoners spend incarcerated through legislative initiatives such as the indeterminate sentence of Imprisonment for Public Protection (“IPP”).⁶³ More recently, the Police, Crime, Sentencing and Courts

⁶⁰ See: Crime (Sentences) Act 1997, as amended; Criminal Justice Act 2003 (as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012); and the Criminal Justice and Courts Act 2015. The range of sentence types that currently fall under the Parole Board's remit continues to grow, most recently with specified terrorist offences (see Terrorist Offenders (Restriction on Early Release) Act 2020, s. 1; Criminal Justice Act 2003, s. 247A). The Police, Crime, Sentencing and Courts Bill seeks, among other things, to broaden the cases that can be referred to the Parole Board, including any Standard Determinate Sentenced prisoner the *SoSJ* deems, at the point of automatic release, poses a risk to the public.

⁶¹ Currently, apart from a successful appeal, the only prisoners who are entitled to release prior to the end of their sentence (i.e., on licence) are those who are serving determinate sentences who are eligible for automatic release, and those who have been deemed as “*no longer requiring confinement for the purposes of public protection*” by the Parole Board, as well as a small number of individuals detained at Her Majesty's Pleasure.

⁶² This is discussed further in **Chapter 5**.

⁶³ The Criminal Justice Act 2003 created the IPP sentence, which was enacted in 2005. Its purpose was to capture individuals whose offence did not trigger a life sentence yet were considered ‘dangerous’. The IPP sentence effectively operated as a life sentence. For prisoners subject to an IPP sentence, it entailed a tariff, along with an unlimited period of detention until they could demonstrate to the Parole Board that they were no longer a risk to the public. Upon release, they remained subject to an indefinite licence period, which they could apply to have cancelled after ten years. The Legal Aid, Sentencing, and Punishment of Offenders Act 2012 abolished the IPP sentence, albeit prospectively. As such, a number of individuals remain subject to IPP sentences today.

Bill currently passing through Parliament proposes a range of measures aimed at increasing the minimum tariff for many offences from the midway point to two thirds of the notional sentence.

Justification for Continued Detention

2.24 The Parole Board's unique role as a '*quasi-judicial* body' is also reflected in the way in which its proceedings operate. In particular, "[u]nlike a criminal court (in this jurisdiction) the Parole Board is not purely adversarial; it has inquisitorial functions."⁶⁴ This is noted by the Parole Board itself, which accepts that:

*"In reality, most reviews and hearings contain elements of both adversarial and inquisitorial practices. The Board has an important inquisitorial role; it may call witnesses, make directions about evidence it requires and ask questions at the hearing. There may be cases, however, particularly at recall hearings where there are disputes over fact[s] that will justify parties taking a more adversarial stance leaving the panel more in the role of independent arbiter."*⁶⁵

2.25 In practice, this means that the Parole Board must not only consider the evidence presented to it by the parties, but also ensure that any outstanding relevant information is collected. As noted in *DSD*,⁶⁶ the Parole Board "*is fully entitled, indeed obliged, to undertake a proactive role in examining all the available evidence and the submissions advanced, and it is not bound to accept the Secretary of State's approach,*" as a part of its inquisitorial function. The courts have considered and confirmed the inquisitorial nature of proceedings in a number of cases.⁶⁷

⁶⁴ Saunders, J., and J. Roberts., 'Parole Board Decision-Making: Two Key Challenges for the Parole Board of England and Wales'. Criminal Law Review, vol. 2019, no. 2, Sweet and Maxwell, pp. 131-46, p.2.

⁶⁵ The Parole Board for England and Wales, 'Oral Hearing Guide', 2018, Chapter 3.

⁶⁶ *R (on the application of DSD) v Parole Board of England and Wales* [2018] EW.

⁶⁷ *Ibid*, p.9 - "*If the courts are going to impose on the Parole Board a duty to act inquisitorially then the Board needs the necessary powers to enable it to do that effectively. Currently, it does not have those powers. The courts should recognise that the primary responsibility for acquiring all relevant evidence relating to risk lies on the Secretary of State*".

- 2.26 Regarding parole proceedings as ‘inquisitorial,’ raises several issues. Most pressing is the fact that the Parole Board is required to investigate proactively and to seek evidence to determine the potential risk presented by the individual before it. At the same time, this task is made difficult, and in some circumstances impossible, by its weak direction powers.⁶⁸ The Parole Board may be placed in a scenario where it either delays proceedings due to a lack of information or opts to make a decision in the interests of a timely disposal.

The Release Test

- 2.27 The test that the Parole Board must apply in the majority of cases in order to release a prisoner on licence is as follows:

*“The Parole Board must not give a direction [for release] unless... the Board is satisfied that it is no longer necessary for the protection of the public that [the prisoner] is confined”.*⁶⁹

- 2.28 There is considerable debate as to where the burden for (dis)proving risk lies. Is it on the prisoner, or on the State? Padfield concludes that *"the statutory test suggests that the prisoner bears a very real burden: he or she has to satisfy the Parole Board that it is no longer necessary for the protection of the public that he should be confined before the Board may direct his or her release"*.⁷⁰

⁶⁸ Legal Aid, Sentencing and Punishment of Offenders Act 2012, s. 125(3) and Schedule 17. A single statutory test for all release cases, determinate or indeterminate, was introduced on 3 December 2012 under Legal Aid, Sentencing and Punishment of Offenders Act 2012. See also: The Parole Board, ‘The Parole Board Decision Making Framework’, (2019).

⁶⁹ N. Padfield, ‘Justifying Indefinite Detention – on what grounds’, (2016) 11 Crim L. R. 797., p.14. See also Saunders, J., and J. Roberts., ‘Parole Board Decision-Making: Two Key Challenges for the Parole Board of England and Wales’. In Criminal Law Review, vol. 2019, no. 2, Sweet and Maxwell, pp. 131–46, p.4.

⁶⁹ Ministry of Justice, ‘The Parole Board for England and Wales: Tailored Review’, (2020), p.4.

⁶⁹ *R (on the application of Brooks) v The Parole Board* [2004] EWCA Civ 80, para 20. See also *R (on the application of Sim) v Parole Board* [2004] QB 1288, para 42.

⁷⁰ N. Padfield, ‘Justifying Indefinite Detention – on what grounds’, (2016) 11 Crim L. R. 797., p.14. See also Saunders, J., and J. Roberts., ‘Parole Board Decision-Making: Two Key Challenges for the Parole Board of England and Wales’. Criminal Law Review, vol. 2019, no. 2, Sweet and Maxwell, pp. 131–46, p.2.

- 2.29 The SoSJ, in the foreword to the Tailored Review, described the parole process as requiring:

*“Those offenders **to clearly demonstrate that they no longer pose a threat to the public** and where this is not the case, it requires them to remain in prison for the full duration of the sentence handed down by the courts. As an independent quasi-judicial body, the Parole Board undertakes this assessment of future risk independently of government and determines whether offenders are safe to be released.”*⁷¹ [emphasis added]

- 2.30 Judicial treatment of the burden of proof in the parole context is rather different. The concept of ‘burden of proof’ is often considered to have “*no part to play*”⁷² in determining suitability for release, in part because the risk assessment process by the Parole Board is inquisitorial. Lord Carswell in *McClean* (a Northern Ireland case concerning the release of a prisoner under the Good Friday Agreement 1998) also considered that it was inappropriate to place a burden of proof on either the prisoner or the Secretary of State as the question of whether someone was a danger to the public “*was more akin to many administrative decisions than the ordinary judicial process of deciding whether a matter requiring proof has been established ... [I]t is not a lis inter partes, and it is not the function of the Secretary of State to prove the case for keeping him in custody*”.⁷³
- 2.31 On the other hand, we have heard that in practice Parole Board panels interpret the ‘necessary,’ as set out in the release test, as implying the need for a positive demonstration of the need for continued detention on the part of the State. As a matter of law, however, this is not explicit, and the issue remains debated.
- 2.32 Given this inconsistency between how the test is set out, how it is interpreted by panel members, and how it is understood by the judiciary, the Working party considers that there is a need for clarification. **We therefore recommend it should be incumbent on the SoSJ to justify the continued detention of an individual beyond the minimum term and to show that any risk an individual poses after the minimum term cannot be managed in the**

⁷¹ Ministry of Justice, ‘*The Parole Board for England and Wales: Tailored Review*’, (2020), p.4.

⁷² *R (on the application of Brooks) v The Parole Board* [2004] EWCA Civ 80, para 20. See also *R (on the application of Sim) v Parole Board* [2004] QB 1288, para 42.

⁷³ *Re McClean* [2005] UKHL 46, para 73.

community. Requiring the SoSJ to set out their view clearly with justifications, would better reflect the fact that post tariff indeterminate prisoners are no longer serving the punitive element of their sentence and therefore should not have to justify why they ought to be released.

- 2.33 This could be further strengthened by requiring the dossier (and guidance) to be more explicit about the status of the prisoner, for example, by requiring the PPCS to state on the first page what type of sentence the prisoner has served and why their risk cannot be managed in the community going forward. In addition, it should set out the test for continued detention and the reasons why, in their opinion, the individual does not meet the requirements.

Recall

“... recall has very serious consequences for the person recalled. Sometimes those consequences will be out of all proportion to the events which have led to recall.” Hale LJ⁷⁴

- 2.34 Everyone released from prison remains liable to be recalled if they have not reached their sentence expiry date. Recalls take place when those on licence are alleged to have breached their licence conditions. This can include poor behaviour, non-compliance, criminal allegations or charges, failure to reside at an agreed address, and being out of touch. The Probation Service is responsible for initiating the recall process, which must then be authorised by the PPCS. Some recalled prisoners will be required to complete 14 or 28 days in prison and will then be re-released (‘fixed term’ recall). The SoSJ may curtail this period through the use of Executive Release. However, most ‘standard’ recalled prisoners are not re-released unless the Parole Board so directs. This is a drawn-out process and can leave those recalled in prison for lengthy periods without any review taking place.

Surge in Recall

- 2.35 The number of recalls has surged in recent years. The Parole Board’s Annual Report 2006/7 highlighted that recall cases were up a “*staggering*” 58% in one

⁷⁴ *R (Rodgers) v Governor of HMP Brixton* [2003] EWHC 1923 (Admin).

year.⁷⁵ Cases increased again by 30% in the following year.⁷⁶ Between 2014 and 2016 there was another significant increase in recalls, a pattern which has since remained constant. Some have explained this increase as a result of the Offender Rehabilitation Act 2014⁷⁷ as well as the use of Home Detention Curfew,⁷⁸ and the recalling of individuals serving IPP sentences.⁷⁹

2.36 Ministry of Justice data on recall from October 2020 states that one in every seven sentenced prisoners (14%) was serving a recall sentence on 30 September 2020.⁸⁰ The Working Party is concerned that this suggests that there

⁷⁵ The Parole Board for England and Wales, 'Annual Report and Accounts of the Parole Board for England and Wales 2006-07', (2007).

⁷⁶ The Parole Board for England and Wales, 'Annual Report and Accounts of the Parole Board for England and Wales 2007/08', 19,060 cases were dealt with in 07/08 – 64% of which were dealt with by the newly introduced single member recall panels, saving the Parole Board over £200,000. In 2006/07 there were 25,436 cases dealt with in total by the Parole Board, compared to 31,172 in 2007/08: *"this significant increase in overall volume is entirely down to the additional recall cases referred to the Board"*, (p.4). This has been explained potentially due to a *"more proactive recall policy being exercised by the probation service for reasons other than further offences, which actually fell for parolees during the year"*, (p.8).

⁷⁷ N. Padfield, 'Giving and getting parole - The changing characteristics of parole in England and Wales', (2019). *European Journal of Probation* 11(3) 153: *"The number has been rising significantly since then due to the changes introduced by the Offender Rehabilitation Act 2014."*

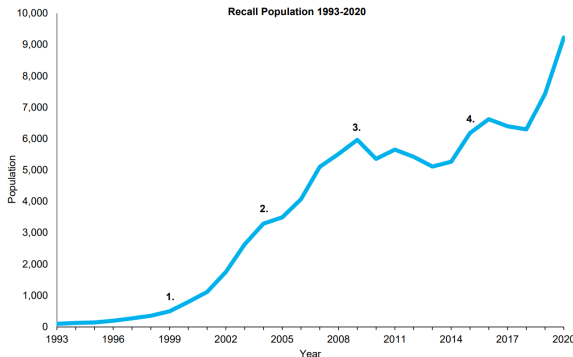
⁷⁸ *"Home Detention Curfew ("HDC") is a scheme which allows some people to be released early from custody if they have a suitable address to go to. It is often called 'tagging'. If you are released on HDC you will have rules to follow about where you can go and what time you have to be back at home. This is known as a 'curfew'. For example, you will normally be expected to be at your home address for 12 hours from 7pm to 7am. In rare cases, this curfew could be changed – for example if you have paid work that falls within these hours. You will have to wear an electronic tag whilst on HDC, normally around your ankle. This is used to check that you follow these rules."* – Prison Reform Trust, 'Home Detention Curfew', (2021).

⁷⁹ The Ministry of Justice's 'Offender management statistics' from 2019 stated: *"The prison population who have been recalled to custody (8,096 prisoners) increased by 22% over the year leading up to 30 September 2019. This is linked to the increase in the numbers released on Home Detention Curfew (since the policy change in early 2018), with more of whom are being recalled to custody. Additionally, there have been increases in the numbers recalled from IPP sentences."* Ministry of Justice Statistics, 'Offender Management Statistics Bulletin, England and Wales', October 2019, p.3. Regarding IPPs, the Prison Reform Trust found that *"between 2015 and 2019, 1,760 people were recalled to prison on a total of 2,342 occasions. People serving IPPs who had been recalled to prison, and subsequently released between July 2019 and June 2020, had spent on average 18 and a quarter months back in custody"*, The Prison Reform Trust, 'No life, no freedom, no future', (2020), p.33.

⁸⁰ Ministry of Justice, 'Offender Management Statistics Bulletin, England and Wales', October 2020, p.4.

is too little oversight in the exercise of recall powers given the disastrous consequences they can have for an individual.

The recall population has continued to grow even as the overall population has fallen



Recall figures for 1993 and 1994 are estimates.

While the overall prison population has been decreasing since 2012, in the same time span, the recall population has increased by almost 4000.

Legislative changes that have impacted on recall numbers:

1. Crime & Disorder Act (1998)

- Prisoners serving determinate sentences of 12 months to 4 years were made eligible for executive recall, meaning they can be recalled without the need to return to court

2. Criminal Justice Act (2003)

- Increased the time that prisoners serving determinate sentences of 12 months or more would remain on licence - from the three quarter point of their sentence until the very end
- Increased the time recalled prisoners would be liable to complete serving - from 75 % of their original custodial sentence to 100%
- Decreased the chances of recalled prisoners being re-released by requiring all recall cases to be reviewed by the Parole Board

3. Criminal Justice & Immigration Act (2008)

- Introduced Fixed Term Recall

4. Offender Rehabilitation Act (2014)

- Expanded the cohort of prisoners who would receive at least 12 months of community supervision to include those given custodial sentences of less than 12 months

[Recall population and legislative changes]⁸¹

2.37 As shown in the chart above, the implementation of the Crime and Disorder Act 1998 and the Criminal Justice Act 2003 led to significant rises in the number of recalled prisoners. Both Acts increased executive power to recall. The 1998 Act introduced executive recall for determinate sentences of 12 months to four years and removed the need for a court to authorise the recall. Since the implementation of the 2003 Act, responsibility for recalling all individuals released on licence has been a purely executive decision initiated by the Probation Service and authorised by the PPCS.⁸² The Criminal Justice and Immigration Act 2008 also introduced several changes that saw increases

⁸¹ Ministry of Justice, 'Story of the Prison Population 1993-2020 England and Wales', October 2020.

⁸² See s. 254 and 255 of the Criminal Justice Act 2003. See also Ministry of Justice and HMPPS, 'Recall, Review and Re-Release of Recalled Prisoners Policy Framework', March 2020, "It is the responsibility of the National Probation Service (NPS), Youth Offending Teams (YOT) or Community Rehabilitation Company (CRC) to initiate the recall of offenders on licensed supervision through the Public Protection Casework Section (PPCS)", (para 4.1.1). See previous versions: (i) 'Recall, review and re-Release of recalled offenders', (2014); and (ii) 'Recall, review and re-Release of recalled offenders', (2013).

in the number of prisoners recalled.⁸³ The Offender Rehabilitation Act 2014 extended mandatory supervision to all prisoners serving 12 months or less with the possibility of recall to custody if they breached the conditions of their release; this further compounded the issue, particularly for women.⁸⁴

2.38 As noted above, as of October 2020, one in every seven sentenced prisoners (14%) was on recall.⁸⁵ This proportion has steadily increased during the last decade. In addition, the number of IPP prisoners who have been recalled to custody continues to increase; in the year to March 2021 the recalled IPP population grew by 2% (1,350).⁸⁶ The prison population recalled to custody (9,182 prisoners) increased by 3% over the year leading up to 31 March 2021.⁸⁷ One explanation is the increase in sentence lengths, which means that people spend longer on licence, and (if recalled to custody) are likely to serve longer in prison on recall. Other reasons may include the reduction in community support and post-sentence supervision, as well as supervisors becoming increasingly risk averse.

2.39 Behind this increase in recalls are several serious issues, including:

- a) Licence conditions, which can be onerous, vague,⁸⁸ and therefore difficult to comply with;⁸⁹

⁸³ M. Stanbury and S. Holland, ‘Release and recall – two years on’, *insidetime*, 1 January 2012.

⁸⁴ “As women generally commit non-violent and acquisitive crimes, they are more likely to serve sentences of this duration than men, and so have been disproportionately affected by the introduction of mandatory supervision” – Prison Reform Trust, ‘Why are more women being returned to prison than ever before?’, 13 February 2018.

⁸⁵ Ministry of Justice, ‘Offender Management Statistics Bulletin, England and Wales’, October 2020, p.4.

⁸⁶ Ministry of Justice, ‘Offender Management Statistics Bulletin, England and Wales’, April 2021, p.5.

⁸⁷ *Ibid*, p.5.

⁸⁸ N. Padfield, ‘Parole: Reflections and possibilities. A discussion paper’ (Howard League), p.8; and Padfield, N. (2018) ‘Monitoring prisons in England and Wales: Who ensures the fair treatment of prisoners?’, (2018), *Crime, Law and Social Change* 70: 57–76, p.61.

⁸⁹ The Prison Reform Trust, ‘No life, no freedom, no future’, (2020), p.33, “Offender Managers may see a proliferation of strict licence conditions as a means of convincing the Parole Board to grant release. We have also seen that sets of conditions which offenders struggle to meet make it more likely that they will be recalled for non-compliance”.

- b) Recalls can be for minor breaches;⁹⁰
- c) Executive control over the process, with the lawfulness of the executive's decision to detain being reviewed after the fact, often months later;⁹¹
- d) Due process and the right to liberty are not respected, with a lack of procedural safeguards; and
- e) Delays in re-releasing recalled prisoners.

Executive Involvement in Decision-making

2.40 Recall is a purely administrative process. It is initiated by probation, authorised by the PPCS (who officially revoke the licence) and usually enforced by the police. Considerable discretion is given to the Probation Service and the executive to recall.⁹²

2.41 In addition, the executive has powers of re-release, by which a recalled prisoner can avoid having to go before the Parole Board to be re-released – ‘Executive

⁹⁰ *Ibid*, “Several Parole Board members expressed frustration when people serving IPPs were recalled for what they described as “minor issues of compliance”. From their perspective, many recall decisions reflected low tolerance of bad behaviour, rather than actual risk”.

⁹¹ Ministry of Justice and HMPPS, ‘Recall, Review and Re-Release of Recalled Prisoners Policy Framework’, (March 2020); and ‘Managing Parole Eligible Offenders on Licence Policy Framework’, (November 2020).

⁹² *R (Howden) v SoSJ* [2010] EWHC 2521 (Admin), HHJ Langan QC considered that the relevant test was as follows (para 14): “What is required of the defendant before he orders a recall is that there is “evidence upon which he could reasonably conclude that there had been a breach””. In *R (Gulliver) v Parole Board* [2007] EWCA Civ 1386 para. 5, Sir Anthony Clarke MR put it slightly differently, the question “is whether the Secretary of State could reasonably have believed on the material available to him that the claimant had not conducted himself by reference to “the standard of good behaviour””. In *R (McDonagh) v SoSJ* [2010] EWHC 369 (Admin) para. 28, Judge Pelling QC stated, “The threshold is plainly a modest one”.

See also *Whiston v SoSJ* [2014] UKSC 39, regarding recall of a determinate prisoner under s. 255 Criminal Justice Act 2003 (which required no Parole Board oversight). Was power under s. 255 compatible with Article 5(4)? The Court ruled no; following the jurisprudence of the Strasbourg courts and departing from domestic cases (see *R (West) v Parole Board* [2005] UKHL 1 and *R (Black) v SoSJ* [2009] UKHL 1, para 40-41). Relying on *R (Giles) v Parole Board* [2003] UKHL 42, Lord Neuberger held that a prisoner cannot invoke Article 5(4), as, so long as his sentence period was running, it had been satisfied by the sentence which was imposed at his trial (para 43-44). Meaning whether the prisoner was released before or after the requisite custodial period is important. The former means the sentence is still running and so Article 5(4) is satisfied by the original sentence.

Release’.⁹³ This power only applies to those serving determinate and extended determinate sentences.⁹⁴ There is no automatic right to be considered for Executive Release.

2.42 A case is generally only considered for Early Release if the Probation Service (usually the Offender Manager/recalling officer) recommends it.⁹⁵ Even if the Probation Service does realise that there has been a mistake, the reality is that they are not likely to want to admit that for fear of blame.⁹⁶ We also understand that there is significant organisational reputational risk inherent to the recall process. It is not surprising that an overly cautious ‘better safe than sorry’ culture should permeate the Probation Service, especially where budgetary restrictions have meant that alternatives to re-incarceration have become few

⁹³ Legal Aid, Sentencing and Punishment of Offenders Act 2012, s. 114 – Upon recalling a person, the SoSJ must consider automatic release, which must be completed within 28 days, if the SoSJ believed the person will not present a risk of serious harm to members of the public.

⁹⁴ Ministry of Justice and HMPPS, ‘Recall, Review and Re-Release of Recalled Prisoners Policy Framework’, (March 2020), para 6.12: “PPCS, on behalf of the Secretary of State, has the power to executively release determinate sentence prisoners into the community subject to licensed supervision at any time during the recall period, including those prisoners subject to extended sentences. All such releases take place without reference to the Parole Board; in making a decision to re-release, the Secretary of State must be satisfied that the recalled prisoner’s RoSH can be safely managed in the community.”; Parole Board, ‘Executive release and determinate recalls – A joint approach’, (November 2020); and HMPPS, ‘Working with Recalled Prisoners: Best Practice Guidance’, (2018).

⁹⁵ E. Davies, Head of Prison Law and Hine solicitors, ‘A pass to the executive lounge...’, *insidetime*, 30 November 2015, notes three circumstances where Executive Release may be used:

- 1) Following an initial recall when the Offender Manager reconsiders the grounds of the recall and supports re-release. However, it would be common practice for such information to be left to be considered by the Parole Board at the 28-day review.
- 2) At an annual review, where any outstanding offending behaviour work has been completed and both the Offender Manager and Offender Supervisor support re-release, and a risk management programme and release arrangements are in place.
- 3) Where there is a significant change in a recalled prisoner’s circumstances following the initial 28-day review. Such circumstances could be when a prisoner is recalled for alleged further offences and the police decide to take no further action or following an acquittal during court proceedings. However, even if these circumstances do arise there would still need to be support from an Offender Manager and a report prepared to inform that it is safe for re-release to be affected.

⁹⁶ Prison Law Podcast, ‘Parole during the pandemic’, Spotify podcasts, June 2020. Prison Law Podcast, ‘The Never-ending Story – IPP Prisoners, Parole and Purgatory’, Spotify podcasts, June 2020.

and far between.⁹⁷ Others have noted that probation workers are often not aware of Executive Release or do not fully understand it.⁹⁸

- 2.43 The use of Executive Release, a power which remains discretionary and not monitored, reflects the increasing power of the State. Generally, when a case is referred to the Parole Board, it must assess the appropriateness of the referral by the SoSJ.⁹⁹ This assessment does not take place with Executive Release, reducing accountability.

Test for Recall

- 2.44 According to the most recent guidance by Ministry of Justice/HMPPS on recalling both those serving indeterminate and extended sentences:

“Offender Managers must demonstrate a “causal link” in the current behaviour that was exhibited at the time of the index offence. One of the following criteria must be met when assessing whether to request the recall of an indeterminate sentenced offender:

- (i) exhibits behaviour similar to behaviour surrounding the circumstances of the index offence;*
- (ii) exhibits behaviour likely to give rise (or does give rise) to a sexual or violent offence;*
- (iii) exhibits behaviour associated with the commission of a sexual or violent offence; or*

⁹⁷ See H. Annison, (2020), ‘Re-examining risk and blame in penal controversies: Parole in England and Wales, 2013-2018’. In, Pratt, John and Anderson, Jordan (eds.) *Criminal Justice, Risk and the Revolt against Uncertainty*, (Palgrave Studies in Risk, Crime and Society), Palgrave Macmillan UK, pp. 139-163.

⁹⁸ Noted in E. Davies, Head of Prison Law and Hine solicitors, ‘A pass to the executive lounge...’, insidetime, 30 November 2015. M. Smith, ‘Parole Board changes the way they consider recall cases – will you benefit?’, insidetime, 3 April 2018.

⁹⁹ *R (Calder) v SoSJ* [2015] EWCA Civ 1050: the court confirmed that the Parole Board’s powers and duties include reviewing the appropriateness of the SoSJ’s recall decision and are not limited to reviewing continuing detention. However, a court should never refuse an application for judicial review of a decision to recall simply because the issue would be decided in due course by the Parole Board.

(iv) *is out of touch with the Offender Manager and the assumption can be made that any of (i) to (iii) may arise.*"¹⁰⁰

2.45 For determinate sentences, no causal link is required:

*"[Community Offender Managers] must recall an individual in cases where ...they have breached the conditions of their licence in such a way as to indicate that their risk can no longer be managed safely in the community. COMs must consider whether to recall an offender where s/he has breached licence conditions in such a way as to indicate that the risk has increased... COMs must also consider recall in cases where contact between the COM and the individual has broken down."*¹⁰¹

2.46 The decision to recall must be based on alleged behaviour while on licence. However, there is a low standard of proof required for an Offender Manager to initiate a recall. As noted in the Policy Framework, *"the test for recall does not require the criminal standard of evidence, and it is instead based on the Offender Manager's professional judgement as to whether, on the balance of probabilities, the reported behaviour has taken place."*¹⁰² This means a recall can take place even in the absence of the individual being charged with any offence, or where a police investigation is still ongoing.

Delays

2.47 Once an individual is recalled to prison on a 'standard' recall, the PPCS has 28 days to prepare the dossier to be sent to the Parole Board. The prisoner should also receive a set of documents from their Offender Manager setting out the reasons for the recall within five days (the 'Part A' report), and a second document concerning the 'risk' that an individual poses (the 'Part B' report) is required to be added to the dossier 10 working days after their return to custody. Part B reports can be problematic where the probation officer does

¹⁰⁰ Ministry of Justice and HM Prisons and Probation Service, 'Recall, Review and Re-Release of Recalled Prisoners Policy Framework', (13 May 2021), pp. 6, 8.

¹⁰¹ *Ibid*, p.9.

¹⁰² *Ibid*, para 4.2.8, 4.3.6, and 4.3.14.

not recommend re-release, as they will often not have prepared a risk management plan which further delays the process.

- 2.48 The consideration of a prisoner's case is first done on the papers. If the panel does not reach a decision, then the case will be directed to an oral hearing. The timeframe for this can be weeks, if not months, after the stated 28 days. Many of the reasons for delays at this stage are the same as those during the initial release process, but there are also additional barriers. For example, a study into the recall process in 2018 found that Offender Managers often suffer from *"heavy workloads and insufficient time, lack of contact with prison staff and lack of access to interventions"* which can inhibit progression of the cases.¹⁰³ Faith Geary, Chief Operating Officer of the Parole Board, has called for a more streamlined and faster way for probation/PPCS to get the relevant information to the Parole Board in order for it to take efficient and speedy decisions.¹⁰⁴
- 2.49 As a result of these delays, people can spend years unnecessarily in prison on recall. Moreover, those who are released can be recalled repeatedly, leading to a cycle of (re)imprisonment and (re)release. When compounded with the delays inherent in the decision-making processes, they may spend much longer in prison than is necessary, often with significant negative consequences (loss of accommodation, employment or ruptures with family that are essential for successful rehabilitation and reintegration into the community).

Case law

- 2.50 The courts' position on the application of Article 5 ECHR to the recall of those serving determinate sentences has not been consistent or easy to follow. The rationale has varied depending on sentence type.
- 2.51 It seems that, generally, to recall a person (particularly an indeterminate prisoner) there has to be a 'causal connection' between the initial sentence

¹⁰³ HMPPS, 'Understanding the process and experience of recall to prison', (2018), p.9.

¹⁰⁴ Cambridge Law Faculty, 'The Future of 'Parole': Identifying 'solutions'', December 2020, 30:00min onwards.

passed (and its purpose(s)) and the reason for recall.¹⁰⁵ Article 5(1)(a) ECHR does allow for recall in circumstances where there is sufficient causal connection between the original conviction and the reason for recall.¹⁰⁶ The time passed since the original sentence will be relevant in assessing the connection, although lawful detention “*after*” conviction by a competent court does not simply mean that the detention must follow the “*conviction*” in point of time, although the “*detention*” must result from, “*follow and depend upon*” or occur “*by virtue of*” the “*conviction*”¹⁰⁷ - i.e., there must be sufficient causal connection between the conviction and the deprivation of liberty at issue.¹⁰⁸

2.52 Issues arise when someone is recalled for ‘technical violations,’ where no offence has been committed, or where there is an argument that the behaviour that caused the breach did not relate or have causal connection to the original sentence and its purpose. This was arguably the case in *Weeks*, who was given an indeterminate sentence for robbery and armed robbery, with the sentencing judge Mr. Justice Thesiger describing him as “*a very dangerous young man.*”¹⁰⁹ However, he was recalled for not keeping in contact with his probation officer and for changing his place of residence, which arguably had no causal link to the objectives of the sentencing judge.¹¹⁰ A number of the Working Party’s members have seen many instances, both in the context of parole hearings, and beyond, where the Probation Service seeks to recall

¹⁰⁵ Article 5(1)(a) ECHR will not apply in circumstances where the reason to recall has been “*based upon grounds that had no connection with the objectives of the legislature and the court or on an assessment that was unreasonable in terms of those objective.*” See, *Van Droogenbroeck v Belgium* A 50 (1982); 4 EHRR 443, para 40. The rationale was subsequently followed by the domestic courts. See *Weeks v UK* (1987); 10 RHEE 293 PC. See also: *Monnell and Morris v UK* (1987); 10 EHRR 205; and *X v UK* (1981); 4 EHRR 188 for a decision on a licensee with mental health problems.

¹⁰⁶ *Weeks v UK* (1987); 10 RHEE 293 PC.

¹⁰⁷ *Weeks*, para 42. See also: *Bozano v France* 9990/82 judgment of 18 December 1986, Series A no. 111, p.23, para 54; and *Van Droogenbroeck*, para 35.

¹⁰⁸ *Van Droogenbroeck*, para 39.

¹⁰⁹ See *Weeks*, para 14 & 44: “*he is a very dangerous young man ... I think an indeterminate sentence is the right sentence for somebody of this age, of this character and disposition, who is attracted to this form of conduct. That leaves the matter with the Secretary of State who can release him if and when those who have been watching him and examining him believe that with the passage of years, he has become responsible. It may not take long. Or the change may not occur for a long time - I do not know how it will work out ... The Secretary of State can act if and when he thinks it is safe to act.*”

¹¹⁰ C. Morgenstern, C. Murillo, L. Ravagnani and A. Zaniboni, *Fairness issues in the breach process: European perspectives*, In: ‘*The Enforcement of Offender Supervision in Europe*’, (2018), p.21.

individuals for such ‘technical’ breaches, where it is not clear that there has been either an elevation of risk or the exploration of alternatives to custody, for example a diversion-based approach which looks at the underlying causes of the breach and seeks to remedy them.

Treatment of Contested Allegations

2.53 The Parole Board’s treatment of contested allegations is controversial, both in the context of parole decision-making generally, and the recall process specifically. The 2019 Guidance on Allegations sets out how facts arising out of allegations are considered.¹¹¹ An ‘allegation’ is defined as being:

*“conduct alleged to have occurred which has not been adjudicated upon. Adjudications can include a finding by a criminal or a civil court or a prison adjudication. Allegations which are relevant are those which, if true, could affect the panel’s risk analysis. Sometimes these allegations are currently being investigated by the police or others and may be disposed of or adjudicated on in the future”.*¹¹²

2.54 Allegations must be relevant to the panel’s decision and can be disregarded where they are not. In making a finding of fact in relation to an allegation, the panel must apply the ‘balance of probability’ test.¹¹³ The Guidance is clear that panels should be “very careful about making findings of fact in relation to allegations that are being investigated and may result in further enforcement action, such as a prosecution,” going on to note that it is not their role “to pre-judge any future case that may be brought against the prisoner.” If the Parole Board cannot make a finding of fact, it is nevertheless encouraged to consider the “level of concern” raised by the allegation.¹¹⁴

¹¹¹ The Parole Board published guidance on 11 April 2019 following *R (DSD and NVB) v Parole Board and Secretary of State for Justice* [2019] QB 285 (the John Worboys case).

¹¹² The Parole Board for England and Wales, ‘Guidance on Allegations’, (2021), p.4.

¹¹³ *Ibid*, p.4. See also *Re D* [2008] UKHL 33; [2008] 1 W.L.R. 1499.

¹¹⁴ The Parole Board for England and Wales, ‘Guidance on Allegations’, (2021), p.6.

- 2.55 While the Guidance acknowledges that panels must be prudent when considering allegations,¹¹⁵ this remains a delicate exercise given that the safeguards present in a criminal trial do not apply. Indeed, the allegations which panels may consider can include conduct that was investigated by the police but ultimately not prosecuted, allegations of drug misuse, and so on. Likewise, in practice we have seen instances where Parole Board panels have explored the possibility of looking behind a jury's acquittal of an individual. Any finding of fact on criminal conduct "*will not equate to a criminal conviction,*" but it will "*be something that the panel can take into account*".¹¹⁶
- 2.56 There are clear problems resulting from this approach. While the Guidance notes that findings of fact cannot result in a criminal conviction, they can result in lengthy additional periods in custody, either where parole is denied, or where an individual is recalled and subsequently denied re-release by the Parole Board. This has not gone unchallenged. In the case of *Morris*,¹¹⁷ the decision to refuse to direct release or to recommend a move to open conditions was upheld, despite being based on two historic allegations which never proceeded to trial. The High Court heard arguments that this decision was (i) procedurally unfair, contrary to common law, and in breach of Article 5(4) ECHR, and that (ii) the Guidance on Allegations was flawed. The Court found in favour of the Parole Board, noting that it is "*entitled to consider allegations where it is not in a position to make a full finding of fact,*" relying on *DSD*,¹¹⁸ which

*"reaffirmed the general principle [...] that "there is no implied limitation on the nature or temporal character of the information the Parole Board may take into account in assessing risk: the only constraint is that the board must act fairly".*¹¹⁹

¹¹⁵ *Ibid*, "Prisoners and their representatives may claim that it is unfair that a finding of fact is made to a lower standard of proof than the criminal standard (beyond reasonable doubt) and in circumstances where the procedural safeguards of a criminal trial do not apply".

¹¹⁶ *Ibid*.

¹¹⁷ *R (Morris) v Parole Board and Secretary of State for Justice* [2020] EWHC 711 (Admin).

¹¹⁸ *R (on the application of DSD) v Parole Board of England and Wales* [2018] EWHC 694 (Admin), para 154.

¹¹⁹ *R (Morris) v Parole Board and Secretary of State for Justice* [2020] EWHC 711 (Admin), para 49.

- 2.57** The decision in *Morris* was confirmed in the case of *Pearce*. Coming to the same conclusion that the guidance was lawful, Bourne J noted that:

*“The answer in my judgment is that the Board will find such facts as it can and then consider the logical effect of those facts on its risk assessment. Take the example of a domestic violence case in which it is alleged that the prisoner assaulted his partner during an altercation. If the Board can only conclude that there might have been an assault, that conclusion may be of little assistance to it. But if it is satisfied that there was an altercation which led to the police being called, it could find that participating in the altercation (even without any assault) was behaviour which was relevant to the assessment of future risk.”*¹²⁰

- 2.58** However, the right of the public to be safe must be balanced against the prisoner’s right to procedural fairness. The current post-Worboys approach to the treatment of allegations risks tipping that balance to the great detriment of prisoners, who may face many years of additional incarceration, or be recalled, on the basis of allegations that did not result in any criminal charge or conviction.

A New Recall Model

- 2.59** In light of these issues, we recommend that the Government should adopt a new recall model composed of two stages.
- 2.60** The first stage of this new model is only concerned with the finding of fact that an individual has breached their licence conditions. Considering the Working Party’s concern that Offender Managers may initiate recall without adequately substantiating an allegation of breach of a licence condition, we recommend that Offender Managers should have to apply to the Magistrates Court to make a finding of fact as to an alleged breach of a licence condition. These courts would be seized of the matter immediately but would only be concerned with a finding of fact, that there was a breach of the licence condition. Where there is an allegation of further criminal conduct, an individual should be dealt with in line with ordinary criminal procedure, instead of being immediately recalled

¹²⁰ *R (Pearce) v Parole Board for England and Wales* [2020] EWHC 3437 (Admin), para 39.

in advance of a finding of guilt. Recall should not be used as a method of short-circuiting due process in criminal investigations.

- 2.61** The advantages of this would be threefold. First, Magistrates are accustomed to making findings of fact and therefore this mechanism utilises the expertise they possess. It ought to be quick and preclude delays. Second, it would introduce appropriate oversight in the determination of whether licence conditions were breached. Third, by ensuring that the criminal justice system is engaged where there is an allegation of offending, greater justice would be afforded to the victims of any fresh offences. The Working Party has heard from consultees, and understands from its own experience, that where an individual on licence is alleged to have committed an offence, once the individual is recalled and is therefore in prison the sense of urgency is lost for the case. As a consequence, the investigation is delayed. By prioritising the criminal justice process, we consider that the system would work better both for the victim of the alleged offence and the accused because the safeguards of the criminal justice process would ensure that the offence actually occurred and therefore that the individual concerned is appropriately detained.
- 2.62** The second stage is concerned with the actual recall decision. Where it is found that there has been a breach of a licence condition, the case would then proceed to the Parole Tribunal (as opposed to the Offender Manager) which would be required to assess risk, consider whether incarceration is necessary, and ultimately make the recall decision. Only once the Parole Tribunal had made the decision to recall an individual could they be returned to prison. By bifurcating the finding of fact, and the issue of risk, this model would reduce the likelihood of conflation of the two questions.

A walk through the new model by alleged breach of licence condition

- **Allegation of a breach of licence condition, not an allegation of a criminal offence:**
 - a) The Offender Manager applies to the Magistrates' Court in order to establish whether the individual concerned did indeed breach their licence condition.

- i) If the Court is not of the opinion that the individual breached their licence condition, then nothing further happens, and the individual is not recalled.
 - ii) If the Court is of the opinion that the individual breached their licence condition, then the case is referred to the Parole Tribunal in order to assess the manageability of any risk in the community.
- b) Once it is determined that the breach of licence condition did occur, the Parole Tribunal would be tasked with assessing if the individual's risk can be managed in the community in light of the breach of the licence condition. We propose that this assessment is made within 72 hours of the Magistrates' Court's finding that there was a breach.¹²¹
 - i) If the Parole Tribunal determines that the risk cannot be managed in the community, then they may authorise the recall. Only once the Parole Tribunal has been seized of the matter may recall be directed.
 - ii) If the Parole Tribunal determines that risk can be managed in the community, then they will not authorise the recall and the individual is not recalled.
- **Allegation of breach of licence condition involving an alleged criminal offence:**
 - a) The new offence is referred to the police to be investigated if they are not already aware.
 - i) If the individual is accused of having committed an offence and they are remanded, the criminal justice system must be allowed to progress. If the case proceeds to a trial before a Magistrates' Court, and the individual is found guilty, the sentencing court will determine the new sentence and any effect of the fact that the individual was on licence.
 - 1) If the sentencing court gives a custodial sentence, the individual will return to prison and the Parole Tribunal will not be involved at this stage.
 - 2) If the sentencing court gives a non-custodial sentence, the case will then progress to the Parole Tribunal to determine if there is now a risk that cannot be managed

¹²¹ In light of the fact that the individual will already have been released and therefore the Probation Service ought to have all the relevant information on the individual, the Working Party considers this to be a sufficient timeframe.

in the community and therefore whether the individual ought to be recalled.

- 3) If the individual is not found guilty of the offence, then there is no role for the Parole Tribunal and the individual is not recalled.
 - ii) If the individual is accused of having committed an offence and issued bail, they would then await the trial which establishes as a matter of fact whether the offending behaviour occurred, and would not be recalled. After the trial occurs, the above process follows.
- **Allegation or concern that offending behaviour is imminent or that there is an elevated risk:**
 - a) The Offender Manager refers the matter to the Magistrates' Court.
 - b) The Magistrates' Court is seized of the matter immediately to determine if there is sufficient factual basis to determine that there is a risk of imminent serious criminal conduct.
 - c) If the Magistrates' Court is satisfied that there is a significantly elevated level of risk, they can authorise an emergency recall. The case is then referred to the Parole Tribunal.
 - d) Within 72 hours of an emergency recall, the Parole Tribunal must make a determination as to whether the risk posed by the individual can be managed in the community in light of the factual finding of the Magistrates' Court.

2.63 Although termed 'new', the proposed model draws upon past practice. Historically, pursuant to section 38 of Criminal Justice Act 1991, a short-term prisoner who was released on licence and failed to comply with their licence conditions would have been liable on summary conviction to a fine. Moreover, the Magistrates' Courts that convicted the individual of the offence had the power to (a) suspend the licence for a period not exceeding six months; and (b) order the individual to be recalled to prison for the period during which the licence is suspended.

2.64 **The Working Party recommends that, in order to initiate a recall, an Offender Manager must first make an application to the Magistrates' Court, which should be seized to consider the allegation and make a finding of fact. Where the court finds a breach of the licence conditions, the case should then proceed to the Parole Tribunal to consider the issue of risk, and whether re-incarceration is appropriate.**

III. MAKING EFFECTIVE DECISIONS

Introduction

- 3.1** Backlogs and delays have plagued the parole system for many years, including both ‘simple’ cases as well as those concerning life and indeterminate sentences cases, which are often considered more ‘complex.’ The GPP previously provided for a 26-week timetable from start to finish.¹²² However, this has since been removed and now there is no set timetable in place after the Member Case Assessment (“MCA”) decision.¹²³ Many cases take a considerable amount of time and are very often in excess of this former timetable. For example, in 2018/19, the Parole Board analysed a sample of 359 selected cases. The data showed that from the point of referral the longest case took 244 weeks to resolve; the shortest 10 weeks (albeit on the papers). The mean average was 40 weeks, and the median was 30 weeks.¹²⁴ There are many causes for the delays, some of which sit with the Parole Board. However, the Parole Board *“does not operate in a vacuum and many of the reasons behind these delays sit outside of its ability to resolve.”*¹²⁵ As discussed above at **paragraph 2.13**, a partial remedy to this would lie the creation of a newly-empowered Parole Tribunal with case management powers.
- 3.2** Delay is systemic and impacted by the multiple people (SoSJ, prisoners, legal representatives, specialists, and witnesses) and agencies involved throughout the process. The PPCS, for example, has a central role in collating information and preparing the dossier for the proceedings. Any issues or deficiencies that emerge at this stage often result in delays further along the process. Making

¹²² *“The process begins when the PPCS refers the case to the Parole Board and discloses the prisoner dossier to all parties. It applies to all cases under review. The Tailored Review raises that “further work is also needed to develop a more sophisticated and realistic way of determining how long different types of parole cases should ideally take, and moving away from a single, standard target for all cases.”* See Ministry of Justice, ‘Tailored Review’, (The Parole Board for England and Wales, October 2020), para 38.

¹²³ Ministry of Justice, ‘Generic Parole Process Policy Framework’, (August 2021).

¹²⁴ Ministry of Justice, ‘Tailored Review’, (The Parole Board for England and Wales, October 2020), p.22.

¹²⁵ *Ibid*, para 44.

effective decisions means holding key agencies to account and ensuring any gaps in information are corrected as early as possible.

- 3.3** That is not to say, however, that the Parole Board itself is functioning entirely efficiently. This chapter considers a number of areas with room for improvement, including in relation to the provision and standard of members' training, and the quality and speed of their decisions. This has become all the more important with the vast increase in the Parole Board's membership in recent years. We also consider how the construction of the dossier by the PPCS contributes to delays. Procedural improvements are also essential at the pre-hearing stage. The MCA process must ensure potential issues are identified, and remedied, as soon as possible. Finally, lessons must be learned from the widespread use of remote hearings in response to the COVID-19 pandemic. Improved safeguards and sufficient resourcing for their use in normal times are essential. In sum, effective decision-making requires greater clarity and certainty for all parties involved and better coordination across the parole system.

A Training Programme Fit for Purpose

- 3.4** Parole Board members need a multi-disciplinary understanding of a complex area of law. It is therefore essential for members' professional development, confidence, and the proper conduct and quality of parole proceedings, that training is provided to a high standard.
- 3.5** The existing range of training programmes includes independent e-learning courses, mentorship schemes, and forums for discussion and sharing of best practice. The Working Party is grateful to the Parole Board for providing us with the list of members' compulsory learning, as required during the 12 months from 1 April 2021. Broadly, training consisted of a number of courses on processes, which are particularly useful where a member adopts a new role (such as panel chair, duty member, or mentor). There are a few other sessions which encourage the sharing of experience, such as reflective practice forums, practice observation training, and quality assessor training.¹²⁶ In addition, there

¹²⁶ The relevant training programmes are as follows: (a) **Member Case Assessment Training**: two MCA training courses and two follow-up MCA training courses (split equally between the 2020 and 2021 cohorts), along with a MCA refresher e-learning course (COVID-19), mandatory where it has been six months or longer since the member has last completed a MCA panel and wishes to undertake MCA

are a series of networking sessions, aimed at psychiatrist members, chairs, duty members, and mentors. There are notably no training sessions focused on criminological knowledge, nor dedicated equalities and anti-racism programmes (see further discussion in **Chapter 4**).

- 3.6** The Working Party considers that there is room for improvement in the provision of training to Parole Board members. For example, we have heard that Parole Board members do not feel they receive enough training prior to being asked to undertake MCA work. Neither, we understand, was any formal training provided with respect to the Parole Board's allegations policy. Likewise, there are concerns that new members are not sufficiently trained in the complex legal aspects of the role. In this context, the Working Party recognises, and is concerned by, a reduction in training in recent years, and the increased pressure on panels to progress to becoming chairs quicker than was previously the case. Despite the variety of training offered by the Parole Board, it is not of sufficient depth to meet the needs of members.
- 3.7** This is undoubtedly connected to the rapid expansion of the Parole Board's membership. Indeed, the Tailored Review found that

work; (b) **Chair Training:** two sessions titled 'Curious about Chairing Q&A', and two 'Chair Follow-up Training' courses, split between the April and November 2020 cohorts respectively. This includes a pre-training e-learning module, four webinar style modules, and a half-day group Q&A video conference call with the facilitators and skills practice; (c) **Reflective Practice Forums:** five sessions designed "*for Members to engage in small groups to reflect on their experiences and share best practice*". This includes one session aimed solely at the 2020 cohort; (d) **Legal and Practice Q&A:** two sessions across the year, "*focused on the legal and policy guidance produced by the Parole Board, including any updates on new guidance or guidance issued in response to Covid-19*"; (e) **Quality Assessor Training:** one session, aimed at "*experienced members who wish to undertake Quality Assessor training*". This takes place through an e-learning course and a Zoom Q&A session; (f) **Practice Observation Training:** one session, aimed at "*experienced members who wish to undertake Practice Observation training*". In practice observation, "*a practice observer observes panel chairs and co-panellists through all stages of an oral hearing, from planning to agreement of the panel decision letter*". This takes place through an e-learning course and a Zoom Q&A session; (g) **Mentor Training:** this programme is aimed at training members to become mentors for new cohorts. The Parole Board "*ask that every member becomes a mentor by their second year of tenure and now is the perfect time to undertake this short training and connect with new members*". It takes place across four e-learning modules; (h) **Duty Member Training:** this programme seeks to train duty members, who "*consider case queries when cases are not allocated to a panel deal with requests that fall outside routine MCA and oral hearing processes*". It takes place across six e-learning modules, as well as a period shadowing an existing duty member upon completion of training.

*“[p]revious recruitment campaigns have sought to recruit large numbers of members infrequently. This has resulted in large numbers of experienced Members leaving the organisation at the same time. **This creates a strain on the Parole Board as it results in many new Members requiring training at the same time, diverting resources from operational delivery.**”*¹²⁷ [emphasis added]

3.8 We have heard that the quality and provision of training has decreased for Parole Board members at every stage, especially for those who are new (which represents a considerable cohort in recent years). Understandably, this may be as a result of financial and human resource pressures, and not a reflection of the hard work that the Parole Board’s secretariat has undertaken notwithstanding this context. The Tailored Review,¹²⁸ while noting that *“the Parole Board has made changes to its learning and development offer and is planning changes to its Member appraisal practices”*¹²⁹ concluded that *“much of Member training is based around peer-to-peer knowledge exchanges”*.¹³⁰ The COVID-19 pandemic has added further complications, since training is now principally carried out through e-learning courses and modules which offer a less interactive experience for participants.

3.9 Increased provision of legal training is vital given the specialist nature of the work of the Parole Board as a judicial body and the complex issues faced. The Working Party has heard that knowledge of legal procedure among members can be patchy.¹³¹ There could be improvements in how the risk test is understood and should be applied. A greater familiarity with the wider criminal

¹²⁷ Ministry of Justice, *‘Tailored Review’*, (The Parole Board for England and Wales, October 2020), p.41.

¹²⁸ *“Some members of the Parole Board User Group raised anecdotal concerns about the quality of some of the most recent cohort of Parole Board Members, and whether they were appropriately prepared to conduct hearings. This was supported by a number of Members who responded to the survey and indicated that they would like to see the training and quality assurance regimes strengthened”*. See Ministry of Justice, *‘Tailored Review’*, (The Parole Board for England and Wales, October 2020).

¹²⁹ Ministry of Justice, *‘Tailored Review’*, (The Parole Board for England and Wales, October 2020), p.41.

¹³⁰ *Ibid*, p.49.

¹³¹ The Working Party is grateful to the Parole Board for informing us that newly appointed members are given a programme of introduction to the criminal justice system. Since April 2020, we understand that this has been supplemented by seven legal and practice sessions covering a broad range of topics, in addition to structured training.

justice system, given the underlying offences that bring an individual before the Parole Board, is equally important. Likewise, it is concerning to note that the Parole Board has provided only two sessions addressing legal and policy issues and two on the MCA process in the past year. For newer and less experienced members this can negatively impact their confidence as a judicial decision maker.

- 3.10** The consequences of failing to improve the Parole Board’s professional training programme are clear. Members who feel poorly supported or anxious in the exercise of their powers risk making poorer decisions. Others may lose enthusiasm for the role. At a time when the Parole Board has been successful in increasing its membership, these gains should be consolidated and not undermined. Finally, members who feel experienced and well trained can go on to make more efficient, confident decisions that dispose of cases as effectively as possible.
- 3.11** **The Working Party therefore recommends that the Parole Tribunal should improve its provision of training to new members and provide for greater opportunities for continual professional development. This should include training in key areas such as sentencing, procedure, prison law and policy, critical analyses of OBPs and risk management tools, and other relevant public law matters.**

Dossiers

- 3.12** When deciding whether a prisoner meets the test for release, the Parole Board considers a range of information in order to assess the individual’s risk of reoffending and the manageability of such risk when in the community. The Schedule to the Parole Board Rules 2019 details the information and reports which will be considered by the Parole Board in determining the release of a prisoner.¹³² The Parole Board notes, in guidance, that a dossier is,

“a collection of documents about the prisoner, including reports and information about their offending, progress made in custody and their risk management plan. Using the information contained in the dossier, the

¹³² The Parole Board Rules 2019, Schedule. See ‘Parole Board Oral Hearings Guide – Chapter 1: Pre-Hearing Issues’, Parole Board, gov.uk, updated August 2018, for a guide of what should be provided.

member will either decide that the case requires an oral hearing or give a negative decision.”¹³³

- 3.13** The SoSJ, through the PPCS, is responsible for preparing the dossier. Key documents include a risk management plan prepared by the Offender Manager,¹³⁴ an Offender Assessment System (“OASys”) risk assessment report, and evidence of completion of any accredited OBPs.
- 3.14** While the dossier should present a holistic picture of the prisoner and their progress, allowing the Parole Board to make a decision as to the potential manageability of their risk upon release, in reality it presents more of the penal system’s picture than any other account. Prisoners are able to provide representations to the Parole Board within 28 days of the dossier’s disclosure but are not involved in its production.¹³⁵ The parties may supply further information (on their own initiative, or at the request of the Parole Board) at the hearing. Individuals (and their legal representative) may identify gaps in the material or highlight inaccuracies that need correcting, but this opportunity comes very late in the day. Dossiers are important because they act as a key tool for the demonstration of rehabilitation, as well as evidence of the manageability of risk while in the community. While dossiers can contain evidence of a prisoner’s change over time, and reports that are supportive of release or progression, we consider that the overall focus remains more on negative risks than on successful steps towards rehabilitation.
- 3.15** Dossiers are notoriously lengthy and complex documents, and can extend to hundreds of pages of what is often repetitious material. This is well known. Indeed, the Tailored Review recommended that

“the MoJ, HMPPS and the Parole Board should ensure that the current content, format and quality of dossiers supports the disposal of cases in a timely manner, and promotes quality decision making, with an emphasis on getting things right first time. If necessary, a new format should be

¹³³ Parole Board, ‘[How we make our decisions](#)’, February 2020.

¹³⁴ N. Padfield, ‘[Parole: Reflections and Possibilities - A Discussion Paper](#)’, (Howard League for Penal Reform, 2018), p.23.

¹³⁵ ‘[The Parole process – how does it work?](#)’, *insidetime*, 30 January 2019.

introduced in consultation with the Parole Board User Group and the Membership.”¹³⁶

- 3.16** The Working Party heard repeated complaints about dossiers, in particular about their length, complexity, and poor quality which undoubtedly impedes decision-making and can lead to hearings being deferred. For example, we learned from Parole Board members, probation officers, prisoners, and legal representatives that reports are frequently not up to date and are not (chrono)logically sequenced. Others have noted repetitious information, particularly with respect to the Offender Manager’s Parole Assessment Reports, as well as OASys assessments. Simple improvements such as pagination, or the removal of duplicate information, have not always been implemented.
- 3.17** The Working Party notes that the poor organisation of dossiers can also lead to inaccuracies. Their length can make it difficult for prisoners and their representatives to spot mistakes, which could have significant and harmful consequences for the individual. This was reflected in the evidence that the Working Party heard from Martin Jones, CEO of the Parole Board. He explained that while dossiers should tell you everything that is known about the prisoner, it can be the case that a dossier’s length substitutes for its quality, with the reason being, in his view, a lack of planning on the part of relevant bodies responsible for its compilation.
- 3.18** Ian York, Head of the PPCS, for his part, noted to the Working Party that the Parole Board’s secretariat can, at the referral stage, reject dossiers when mandatory documents are missing. Moreover, he highlighted the additional difficulties which arise when Parole Board members have different ideas as to what the dossier should look like. The PPCS, however, should take a proactive role in improving the effective coordination of dossiers to address the issue of their poor quality and the consequent delays to hearings. While it remains their responsibility to marshal the dossier, it is incumbent on them to take great care in minimising mistakes and omissions. It is unacceptable that hearings should be delayed or adjourned as a result of administrative processes that could have been rectified with proper coordination early on in the process.

¹³⁶ Ministry of Justice, ‘Tailored Review’, (The Parole Board for England and Wales, October 2020), p.11.

- 3.19** In sum, dossiers can all too often make the evidence in parole hearings unwieldy. Positive examples of change can be missed, insufficiently highlighted, or poorly understood. Given their central importance to parole proceedings, the Working Party considers that greater effort must be made to undertake a comprehensive review of the content and structure of dossiers. Relevant elements should be organised coherently. Proposed extra licence conditions, as well as risk management plans, should be in one place within the dossier, accompanied by clear reasons for their necessity and proportionality.
- 3.20** Moreover, greater attention should be given to simplifying the language within dossiers, which are text heavy and full of ‘legalese’. For many prisoners, opening a dossier is a daunting experience. This has a disempowering effect, particularly for those with a disability, learning difficulties, or where English is not their first language. The Working Party understands that prisoners often leave opening and reading the dossier until the last minute. This places them at a disadvantage, where obvious errors or mistakes may go unnoticed and therefore uncorrected. The Working Party recognises the difficulties involved in reforming dossiers and simplifying their content. Indeed, we have heard prisoners express the desire for the inclusion of as much material as possible so as to give them the best chance of release. Others have also noted that improvements in dossiers could come from increasing investment in the digitalisation of the parole process, observing that there is at present a lot of ‘clunkiness’ with its internal systems.
- 3.21** Ian York noted that there had been multiple internal reviews of dossiers over the years, and that it had been challenging to reach a consensus on what a dossier should look like and contain. However, to the Working Party’s knowledge, none of these reviews are publicly available for scrutiny or assessment. As such, it is not possible for us to consider their merits or comment more generally on their impact. Nevertheless, it is clear that such reviews have not adequately addressed the issues identified in this report. This makes, in our view, a more comprehensive, independent, and public review all the more necessary.
- 3.22** A comprehensive review should include assessing the purpose of the dossier as an aid to the Parole Board in making its decisions. A useful dossier, for example, serves to explain clearly the prisoners’ case for release, alongside the SoSJ’s position and recommendation in response. Such a structure would, if

presented clearly and sequenced logically, better assist the Parole Board in its decision-making.

- 3.23 The Working Party therefore recommends that the Ministry of Justice should commission a comprehensive, independent review of the form and content of dossiers, which are currently often too long and unmanageable. Dossiers should be available in an easy-read format and fronted with a standard form setting out the key information, including (a) the legal test for continued detention, and (b) a summary of the arguments on whether the test of continued detention is or is not met with regard to the prisoner.**

The Public Protection Casework Section

- 3.24** The PPCS, as a part of the Ministry of Justice, is responsible for initiating the GPP and for leading the construction of the dossier with the support of prison and probation staff. The PPCS refers the case to the Parole Board. The Working Party heard that the PPCS's main functions include:

- a) the operational delivery of the GPP, recall and review;
- b) compliance with Parole Board directions;
- c) determination of the timing of the next parole review so that the prison has the opportunity to implement comments and recommendations from the Parole Board;
- d) consideration of recommendations from the Parole Board relating to transfer to open conditions;
- e) fielding applications for reconsideration of Parole Board decisions by victims;
- f) representation of the SoSJ in appropriate cases; and
- g) where release is directed, PPCS works with HMPPS to carry out the statutory duty to release.

- 3.25** We understand that the PPCS considers that, operationally, causes for delays and other concerns with dossiers lie chiefly with third parties and, on occasion, with the Parole Board's members themselves. The Working Party considers that it is difficult to see how the Parole Board can be blamed for delays resulting from its requests for documents considered to be necessary to determine suitability for release.

- 3.26 An additional source of delay on the part of PPCS is the issuing of non-disclosure applications,¹³⁷ which have become much more common in recent years. Such applications are sometimes not started until the day of the hearing. Ian York pointed out that the PPCS is introducing a new ‘handling sensitive information framework’ and observed that PPCS can also be provided with last-minute notice from the police, prisons, or the Probation Service that an application needs to be made in circumstances where information comes to light late in the process.
- 3.27 Making the PPCS more accountable for their role in the parole process is essential. The Parole Board’s most recent Annual Report notes that it worked closely with the PPCS to develop an “*Operational Protocol which supports the Parole Board Rules 2019*”.¹³⁸ Alongside this exists “*an ongoing dialogue*” between the PPCS and the Parole Board “*to track and forecast incoming workload*”.¹³⁹
- 3.28 The Working Party understands that the PPCS also has performance indicators with respect to its involvement in the parole process. Unfortunately, these are not publicly available, and we were not able to assess them.¹⁴⁰ Nevertheless, the fact that there remain deficiencies in the parole process that result from the PPCS function seems to suggest that existing performance indicators are insufficient.
- 3.29 As such, the Working Party considers that making the PPCS more accountable would go some way to ensuring that the necessary, timely information is always provided at the earliest stage possible. **The Working Party therefore recommends that the PPCS’s performance indicators should measure issues that can cause delays in the parole process, for example regarding**

¹³⁷ Non-disclosure applications are issued by the Secretary of State or an authorised third party for a direction that a particular piece of sensitive evidence to be considered by a Parole Board panel should be withheld from the prisoner (and in exceptional cases, from their representatives). *See*, Parole Board, ‘[Guidance on Non-Disclosure Rule 17 Parole Board Rules 2019](#)’, July 2019, p.2.

¹³⁸ The Parole Board for England and Wales, ‘[Parole Board publishes Annual Report & Accounts 2019/2020](#)’, (July 2020), p.16.

¹³⁹ The Parole Board for England and Wales, ‘[Parole Board publishes Annual Report & Accounts 2019/2020](#)’, (July 2020), p.37.

¹⁴⁰ Beyond that which is available from the published ‘offender management statistics’. *See*, Ministry of Justice, ‘[Offender management statistics quarterly: April to June 2021](#)’, (October 2021).

the effective coordination and quality and completeness of dossiers, as well as with respect to their responsiveness to requests from the Parole Tribunal and other key stakeholders.

Improving the Member Case Assessment Process

- 3.30** In 2015, the Parole Board implemented the MCA as a new operating model.¹⁴¹ It replaced the ‘Intensive Case Management’ process which was introduced in 2008. This is the first stage of a parole review. The MCA process is a form of triage for every case referred to the Parole Board. Over 50% of cases are concluded at this stage.¹⁴² An individual member considers each dossier to assess the case, available options, key issues present, whether the dossier contains the necessary information to assess risk, and whether the case requires an oral hearing. Consideration is also given to the composition of the panel, whether reports are missing from the dossier, the witnesses and how long they should present evidence, the prisoners’ likely needs and requirements at the hearing, and other panel logistics.¹⁴³
- 3.31** If the member reads the dossier and concludes that there is sufficient information, they can make a decision without the need for an oral hearing (i.e., ‘on the papers’). This can be a direction to release or a recommendation for transfer to open conditions. Alternatively, the member can decide to refuse parole. They can also issue directions to “*build the hearing,*” putting “*the building blocks of an oral hearing in place so that the panel can concentrate on making an evidence-based assessment of risk rather than become bogged down with unnecessary procedural issues.*”¹⁴⁴ Padfield found in her study of barriers to release that “*there was considerable criticism [by the panel and chair] of MCA directions, and criticism of some MCA members who don’t spend enough time on oral hearings.*”¹⁴⁵

¹⁴¹ Explanatory Memorandum to ‘The Parole Board Rules 2016’, No. 1041.

¹⁴² The Working Party is grateful to the Parole Board for providing this information.

¹⁴³ Parole Board, ‘Member Case Assessment Guidance’, August 2021.

¹⁴⁴ *Ibid*, p.19.

¹⁴⁵ N. Padfield, ‘Parole Board Oral Hearings 2016 - Exploring the Barriers to Release: Avoiding or Managing Risks? Report of a Pilot Study’, (University of Cambridge, 2018).

Delays Early in the Process

3.32 Significant delays can stem from deferral or adjournments,¹⁴⁶ which occur at both the MCA stage and panel hearings.¹⁴⁷ It was not until recently that a clear distinction between the two was made, with the Parole Board now measuring and addressing them separately.¹⁴⁸ The 2018/19 Parole Board analysis, referenced above at **paragraph 3.1**, revealed that:

- a) 18.6% of cases had been subject to a deferral at the MCA stage;
- b) 38.2% had been subject to at least one deferral or adjournment at the oral hearing stage; and
- c) 7.5% had been subject to deferrals at both the MCA and oral hearing stages.¹⁴⁹

3.33 The Ministry of Justice's analysis of this data concluded that there were:

- a) 4,291 deferrals/adjournments at the MCA stage;
- b) 1,458 cases listed then deferred and cancelled before the oral hearing;
- c) 488 deferrals on the day of the oral hearing; and
- d) 2,035 adjournments on the day of the oral hearing.¹⁵⁰

¹⁴⁶ Deferrals are where a case is adjourned, but the panel making that decision does not need to retain conduct of the case. It goes back into Listings until the directions have been completed and it will then be re-listed, causing significant, unnecessary delay. An adjournment is where the panel retains the case and it is either made at the initial MCA stage, where the MCA panel requires more information before it is even able to decide whether or not an oral hearing is required, or at the oral hearing stage where the case has been adjourned part heard. See, Parole Board, 'Deferrals and Adjournments – Guidance for Parole Board Members', July 2020.

¹⁴⁷ *"When a case is deferred it is put back into the queue of outstanding cases and will be worked by different Parole Board Members in the future, essentially starting afresh. As such, any time spent by the original Members is wasted and will be replicated when the case is reassigned. Where a case is adjourned the same Members retain ownership of the case for future hearings. This means that there is less waste and duplication of effort from Members. It also allows better active case management to prevent cases getting "stuck" in the system".* See Ministry of Justice, 'Tailored Review', (The Parole Board for England and Wales, October 2020), p.39, 46.

¹⁴⁸ *Ibid*, para 49.

¹⁴⁹ *Ibid*, para 47.

¹⁵⁰ *Ibid*, para 55.

3.34 Deferrals and adjournments – many of which the Tailored Review accepted are avoidable – can happen for a host of (interrelating) reasons, including:

- a) Poor dossier quality;¹⁵¹
- b) Out of date reports, requiring addendums or updated reports from Offender Managers and psychologists;
- c) Poor direction compliance;
- d) Issues with a Risk Management plan;
- e) Additional programmes or ROTL activity required;
- f) Availability of parole members, legal representatives, and witnesses; and
- g) Issues with prison logistics.¹⁵²

3.35 Consultees have indicated that a particular and avoidable cause of deferrals are specialist psychologist reports. The assessments are not compulsory in all cases, but anecdotal evidence suggests they are increasingly requested by parole panels. The need for a psychological assessment is often first identified when the panel hearing the case receives the papers around four weeks before the listed hearing (as well as on the day decisions). This causes significant delay and could be requested and undertaken much earlier. Months can pass before a psychologist is able to visit a prisoner to carry out an assessment, primarily due to the shortage of specialists.¹⁵³

3.36 The Working Party considers that there should be more focus on preparing a case as early as possible. At present, insufficient time is allocated to the MCA

¹⁵¹ National Audit Office, Investigation into the Parole Board (28 February 2017), found that of those cases that had been listed by the Board's Listings Team in the year up to September 2016, 34% of oral hearings were deferred and more than half of these are deferred or adjourned on the day of the hearing. The most common reason for deferrals, both before the hearing and on the day, is in relation to reports required by Members to inform their decision-making (for example, that they were unavailable or incomplete). In the year up to September 2016, 50% of all deferrals (both paper and oral) before the hearing and 69% of deferrals on the day related to reports (paragraphs 1.19 and 1.20). See also, N. Padfield, 'Parole: Reflections and Possibilities - A Discussion Paper', (Howard League for Penal Reform, 2018): "*A prisoner's 'reputation' is built up through the dossier, since report writers will often have read earlier reports*". This is concerning as it suggests that later report writers will replicate what previous reports say.

¹⁵² Ministry of Justice, 'Tailored Review', (The Parole Board for England and Wales, October 2020), para 49-50.

¹⁵³ The COVID-19 pandemic has impacted the ability for specialists to undertake such assessments. For example, we have heard that prison psychologists were initially reluctant to undertake assessments remotely. A lack of sufficient IT equipment further compounded these problems. The full extent to which the COVID-19 pandemic has impacted these assessments, and thereby increased deferrals/adjournments, are not yet known.

stage to allow for an in- depth review of important case factors: there is usually one hour allocated per case. In the majority of cases, it is not possible for a member to look at a dossier in such a short amount of time without taking shortcuts. As such, they are required to put in hours of unpaid work. This must result in mistakes, errors, or omissions, leading to delays and adjournments at the time of the hearing. This is unacceptable, not only from the perspective of the Parole Board (in terms of wasted time and resources) but also for the individual, who will consequently face additional, unnecessary, time in prison, sometimes extending to many months before the Parole Board is able to schedule a new hearing.

- 3.37 The Working Party is also concerned by the pressures placed on hearings as a result of ambitious scheduling practices. At the MCA stage, the member will make an assessment about the length and complexity of a case, including the need for any specialists. Thereafter, if directing an oral hearing, the member will consider the logistics. The Parole Board's workload often means tight timetables for hearings, with different hearings scheduled for both the morning and the afternoon.
- 3.38 The Working Party recognises that predicting time for a hearing is difficult, though this becomes easier with greater experience. Nevertheless, the current pressure on members to list or undertake more than one hearing in a day can result in rushed or adjourned proceedings. In particular, potentially complex cases should not be scheduled for afternoon sessions when there is often insufficient time available, meaning that the Chair is then required to make a new direction for the hearing to continue on another day.
- 3.39 Delays can also result from the fact that different members sit at the MCA stage and the hearing itself. This can result in a lack of consistency between the two processes, and lead to duplication of efforts. The Working Party understands that the Parole Board is considering an approach whereby the original MCA member would sit on the panels where there is an oral hearing. This is welcome and would help to preserve and better utilise the knowledge gained by that same MCA member.
- 3.40 **The Working Party therefore recommends that the Parole Tribunal should make improvements to the MCA process by ensuring that:**

- a) sufficient time and resource are allocated to the MCA stage so that deficiencies in dossiers or other materials can be identified and rectified prior to oral proceedings;
- b) members benefit from enforcement powers to make directions for additional materials that are respected, and responded to in a timely fashion, by third parties; and
- c) the member who conducts the MCA stage also sits on the panel for the oral hearing in order to allow for better case management.

Panel Sizes

3.41 The appropriate size for a parole panel is determined in the first instance at the MCA stage in line with the criteria as set out in the guidance, which states:

*“The starting point for all panel logistics is a single non-specialist chair. Co-panellists should be added only when they are considered necessary in terms of role or the number needed in a particular case to complete a proper risk assessment and determination”.*¹⁵⁴

3.42 The MCA guidance provides suggested criteria which the MCA member should consider when determining if an increase in the size of the panel is necessary. Thereafter, the MCA member may recommend that a case be heard with a panel of two, or three, members. We understand that this approach is also embedded within relevant Parole Board training.

3.43 Between 2012 to 2016, the Parole Board froze the recruitment of new members.¹⁵⁵ As a result, its membership reduced by over a third as former members came to the end of their tenure.¹⁵⁶ This was particularly problematic with respect to the number of experienced Chairs, which similarly fell. In 2016, the Parole Board recommenced recruitment to bridge the gap in lost members.

¹⁵⁴ The Parole Board for England and Wales, ‘Member Case Assessment Guidance’, June 2021, p.47.

¹⁵⁵ “Member recruitment had been frozen and numbers had declined by over a third since 2013. On the other hand, whilst the total number of cases conducted has remained relatively stable over the last five years, the number requiring a resource intensive oral hearing has risen by 59% from 4,628 in 2012/13 to 7,377 in 2016/17” - Parole Board, ‘Annual Report and Accounts 2016/17’, 11 July 2017, p.7.

¹⁵⁶ *Ibid*, p.12 – “I have marvelled at the fact that over the last five years the Board has nearly doubled the number of oral hearings we hold, with a membership pool that had, at the same time, fallen by over a third”.

As a result, the proportion of Chairs is less than what is required for the proper functioning of the Parole Board. We are therefore concerned that there may be pressure on less experienced members to take on cases for which they may not feel sufficiently adept or supported at that stage in their career.

- 3.44 The Working Party considers that it is not appropriate for the guidance and training to suggest that one member should be the “*starting point*” when building an oral hearing. This is because it unduly prioritises the issue of resources over proper judicial decision-making, and, fundamentally, the needs and best interests of each case.
- 3.45 The consequences of improperly constituting a panel from the earliest possible opportunity can be serious. If the single panel member decides to proceed, and potentially struggle, in order to keep to schedule and dispose of the hearing, then there is a heightened risk of mistakes or errors being made. Not only is this unjust for the prisoner, it is also ineffective in the long-term as such decisions may be open to review or challenge. Alternatively, the panel member may decide that a second or third member is needed, and if one cannot be found within the hearing window, the hearing may need to be deferred and relisted at a future date, resulting in delays for the prisoner and a detrimental impact on the system as a whole. We wish to make clear that it does not lay the blame for this problem solely on the Parole Board. We appreciate that in the context of difficult financial circumstances, options are limited. The hard work and dedication of members should be applauded. Rather, we emphasize the importance of ensuring that the Parole Board is properly resourced so as to undertake its role as a judicial body, with decisions as to panel composition being made on their own merits.
- 3.46 **The Working Party recommends that the presumption that panels should start with one member should be removed. Instead, a holistic view should be taken based on all the evidence.**

Remote Hearings

- 3.47 The COVID-19 pandemic has exposed a number of longstanding issues within the wider criminal justice system, further compounding delays which have plagued the system for years. The Parole Board has not been immune. In March 2020, the Parole Board was required to cancel all in person hearings in prisons

as a result of the Government's wider restrictions.¹⁵⁷ The Parole Board paused a number of other policies¹⁵⁸ so as to provide "*greater flexibility to progress cases swiftly and fairly in the light of the Government's Covid-19 advice and the restrictions placed on the prison estate.*"¹⁵⁹ It published its most recent guidance on the matter in October 2020.¹⁶⁰

- 3.48 The Parole Board adapted quickly to the circumstances,¹⁶¹ by making rapid changes to its procedures, rules, and policies and introducing an 'intensive paper review' system and conducting most hearings via telephone conference or video-link.¹⁶² What underlines this is a determination as to whether a case can be fairly decided on the papers,¹⁶³ and if not, then whether a hearing can

¹⁵⁷ Parole Board, 'Immediate cancellation of all face to face hearings', 3 June 2020.

¹⁵⁸ Parole Board, 'Parole Board Covid-19 Member Guidance', October 2020. For example, "*Automatic granting of an oral hearing, if the prisoner cannot be released on the papers, for prisoners who are under the age of 18 at the point of referral (child cases). Please refer to paragraphs 11.15 – 11.27 for more guidance on children; Automatic granting of an oral hearing, if the prisoner cannot be released on the papers, for prisoners within a secure hospital or mental health setting or it is their first review after having been in a mental health unit or secure mental health setting. Please refer to paragraphs 11.28 - 11.49 for more guidance on mental health cases; Presumption of an oral hearing, if release cannot take place on the papers, for prisoners aged 18 – 21 (inclusive) at the point of their referral (young adult cases); Recommendation for life sentence prisoners to progress to open conditions to be made on the papers only in exceptional cases; and the initial release of a life sentence prisoner should only take place following an oral hearing*".

¹⁵⁹ Parole Board, 'Parole Board Covid-19 Member Guidance', October 2020, p.10.

¹⁶⁰ *Ibid.*

¹⁶¹ 'Chief Executive's blog - Parole Board Covid-19 recovery plan', Parole Board, gov.uk, 8 July 2020; Dean Kingham noted this in UNGRIPP, 'Legal Q&A Session on the IPP Sentence', January 2021.

¹⁶² In July, approximately 90% of hearings were taking place remotely, with 75-80% of cases that would have otherwise been heard face-to-face being rescheduled as remote hearings (Martin Jones CAPTIVE interview, 20 July as noted in Prison Reform Trust, 'CAPTIVE - Covid-19 Action Prisons Project: Tracking Innovation, Valuing Experience', 2020, pp. 42-43). As of January, the Parole Board has made almost 20,000 decisions since March, directing release just over 3,000 times and refusing release in 9,600 cases. Apparently, cases are down 30%; see the Parole Board, twitter.com, January 15, 2021. Additionally the Parole Board had converted 5,100 oral hearings to telephone and 2,200 to video-link; see the Parole Board, twitter.com, January 22, 2021.

¹⁶³ A power now extended to single panel members. Prior to COVID-19, single panel members were not able to direct release for indeterminate sentences. The Parole Board changed this in response to COVID-19.

proceed via telephone conference or video-link or if it must take place in-person.¹⁶⁴

3.49 However, access to remote hearings has varied significantly between prisons.¹⁶⁵ The Parole Board has also determined in some cases that only an in-person hearing would ensure a fair hearing.¹⁶⁶ This has led to inevitable delay and has caused both criticism and threats of legal action.¹⁶⁷ Moreover, despite attempts to make sure the procedure is fair for prisoners, the COVID-19 pandemic has added to the already deeply stressful experience inherent to release decisions. It has also brought to the forefront the debate around the need for oral hearings, and how best they should be provided.

3.50 A prisoner's ability to request the type of hearing they would like to have (i.e., in person versus remote) is limited. The guidance notes that a prisoner's "*representations must set out the reasons why [a face-to-face oral hearing], as opposed to a remote hearing, is viewed as the appropriate way to progress a case,*" and that "*it is not sufficient for them to simply say it is required on grounds of fairness or because it is the party's personal preference*".¹⁶⁸ The guidance further explains that:

*"[a]ny representations should be taken into account but the wishes or preferences of the parties (or the fact that one of them is prepared to wait longer for a face-to-face oral hearing) will not necessarily be determinative of what is fair."*¹⁶⁹

¹⁶⁴ Parole Board, 'Guidance During The Coronavirus: Progressing Cases At MCA', March 2020; and Parole Board, 'Parole Board Covid-19 Member Guidance', October 2020.

¹⁶⁵ Prison Reform Trust, 'CAPPTIVE - Covid-19 Action Prisons Project: Tracking Innovation, Valuing Experience', 2020, p.43.

¹⁶⁶ *Ibid*, Martin Jones told Prison Reform Trust that around 200 - 300 people would not be suitable for remote hearings.

¹⁶⁷ Howard League for Penal Reform, 'Justice and fairness under Covid-19 restrictions', 2020, p.1: "*The intention is to honour the individual's participation rights but the inadvertent outcome is that the vulnerable are at risk of being penalised for their participation difficulties*". A consultee from Warren Hill also initially had his hearing adjourned due to concerns by their panel. With the help of a friend, they drafted representations to the Parole Board and eventually it was agreed that the hearing would go ahead via video-link.

¹⁶⁸ *Ibid*.

¹⁶⁹ *Ibid*, p.11.

- 3.51 While the panel may consider factors, such as mental health needs or other barriers to access, the guidance is clear that the *“final decision lies with the panel chair and not with the parties.”*¹⁷⁰
- 3.52 It is unlikely that the number and format of in person hearings will revert to pre-COVID-19 practices. Indeed, despite the challenges, there may be some benefits of a more flexible system that allows for hearings to be facilitated in different ways. Martin Jones, for example, has noted that the Parole Board has *“found that for the majority remote hearings are fair and effective and allow us to operate in a period of ongoing uncertainty where further lockdowns are predicted for years to come”*.¹⁷¹ Without the geographical and travel limitations of physical hearings in prisons, it may be that hearings can be arranged more easily, avoiding delays.¹⁷² To facilitate such hearings, the Parole Board has increased the number of dedicated Video Meeting Rooms from two in 2020 to 35 today.¹⁷³
- 3.53 The Working Party has heard from some prisoners that the use of remote hearings demonstrates the adaptability of the Parole Board. Some legal representatives attest to their benefits. One solicitor, for instance, noted that *“most [remote hearings] have been very effective”* with some clients preferring these hearings *“as they have found them less stressful than meeting the Parole Board face to face”*.¹⁷⁴ The Working Party has seen from its own experience that some prisoners can be less nervous during remote hearings, perhaps as a result of the potential for greater informality. Martin Jones further noted in his evidence to us that there may be benefits with respect to improving disparate outcomes between White and ethnic minority prisoners in parole proceedings through the use of remote hearings, according to the Parole Board’s most recent data on disparities in release decisions. The Working Party has not seen the underlying data which might support this hypothesis, and would invite the Parole Board to provide further analysis and research.

¹⁷⁰ *Ibid*, p.10.

¹⁷¹ ‘[Chief Executive's blog - Parole Board Covid-19 recovery plan](#)’, Parole Board, gov.uk, 8 July 2020.

¹⁷² National Audit Office, ‘[Investigation into the Parole Board](#)’, (28 February 2017), p.22. The report indicates logistical reasons as the fourth most common cause of delay in the year to 2016.

¹⁷³ The Working Party is grateful to the Parole Board for providing this information.

¹⁷⁴ ‘[Virtual Representation](#)’, *insidetime*, 31 March 2021.

3.54 However, we remain concerned by the barriers to interaction with panel members and other parole hearing participants. The Working Party notes, in particular:

- a) *Technological challenges.* Many prisons suffer from poor provision of the technology necessary to facilitate an effective remote hearing. It should be obvious that the Ministry of Justice must accompany any increased or regular use of remote hearings with a sufficient level of funding so as to guarantee their effectiveness.
- b) *Access to lawyers.* Individuals going through parole proceedings must feel adequately supported. Physical access to legal representatives is therefore crucial, both for providing that support, and for ensuring that the individual understands what is happening, and can ask questions of their lawyer when necessary. This is all the more important where an individual has learning or language difficulties or neurodivergent conditions that may impact their ability to express themselves.
- c) *Poor engagement.* The Parole Board panel must take proactive steps to adjust and ensure that prisoners feel able to properly engage in proceedings. The Working Party heard from one individual who was concerned that the Parole Board may take their case less seriously as finishing the remote hearing is “*like turning the television off*,” with the panel members not seeing the person that the decision affects. In addition, it may be the case that a prisoner could find themselves less able to give evidence, resulting in the potential for misunderstandings. As a consequence, the panel would not be able to make a proper assessment of risk. This is important, as it is vital for the legitimacy and fairness of remote proceedings that prisoners come away feeling that the hearing was fair.

3.55 Considering these concerns, it is important that the future, post-pandemic, use of remote hearings benefits from robust assessment. The practices that have developed during the COVID-19 pandemic must now be evaluated and better tailored as the system progresses towards a level of normality. The Working Party therefore welcomes the Parole Board’s invitation for research, not least in the areas of (i) efficacy of remote hearings/comparison with face-to-face hearings; (ii) procedural justice and parole; and (iii) the experiences of

vulnerable prisoners.¹⁷⁵ In sum, while there are indeed many benefits, these must not come at the detriment to the prisoner's rights to procedural fairness. Whatever the outcome of such evaluation, there must be sufficient resources to make remote hearings accessible and practicable.

- 3.56** In the meantime, there are immediate improvements to be made. Where the Parole Board wishes to deploy a mixture of in-person and remote hearings, prisoners must be given a greater involvement in this decision and guaranteed access to legal support. **The Working Party therefore recommends that, should virtual hearings become a regular feature of the parole process, there should be a right to an in-person hearing upon request. If a hearing is remote, the prisoner should be entitled to have their representative in the same physical room as them.**
- 3.57** This would help to ensure that any continued use of remote hearings takes fully into account the needs and wishes of the individual prisoner. Their confidence and ability to effectively participate in the process is essential.

¹⁷⁵ 'Research at Parole Board', Parole Board, gov.uk; and see JUSTICE, 'Reforming Benefits Decision-Making', August, 2021, pp. 87-89. Research conducted by JUSTICE highlighted similar concerns with regards to remote hearings in the context of appealing benefits decisions before the First Tier Tribunal.

IV. PARTICIPANTS IN THE PAROLE PROCESS

Introduction

4.1 Fairness in the parole process is fundamental. It is guaranteed both at common law, and through Article 5(4) ECHR. Procedural fairness requires administrative decisions to be reached after a process that has given due regard to the interests of all parties involved. In *West*, the House of Lords held that the Parole Board would satisfy these requirements if its review of a prisoner's case met the common law standards of procedural fairness.¹⁷⁶ Lord Reed in *Osborn* further stressed the centrality of the common law in assessing fairness. He further noted that it was erroneous to think that “*analysis of the problem should begin and end with the Strasbourg case law.*”¹⁷⁷

4.2 Carnwath LJ, in *Osborn* before the Court of Appeal, interpreted Lord Bingham's position on procedural fairness in *West* as implying that at common law “*the emphasis is on the utility of the oral procedure in assisting in the resolution of the issues before the decision-maker.*”¹⁷⁸ However, Lord Reed categorically rejected this approach to procedural fairness, instead underscoring the importance of how people going through the process experience it.¹⁷⁹ He contended that:

“... the purpose of a fair hearing is not merely to improve the chances of the tribunal reaching the right decision. At least two other important values are also engaged.”¹⁸⁰

4.3 According to Lord Reed, those two further values are: (i) avoiding a “*sense of injustice*” by those subject to decisions;¹⁸¹ and (ii) the rule of law.¹⁸² It is

¹⁷⁶ *R (West) v Parole Board* [2005] UKHL 1.

¹⁷⁷ *Osborn (& others) v Parole Board* [2013] UKSC 61, para 63.

¹⁷⁸ *Osborn (& others) v Parole Board* [2010] EWCA Civ 1409, para 38.

¹⁷⁹ *Secretary of State for the Home Department v AF (No 3)* [2009] UKHL 28, para 72.

¹⁸⁰ *Osborn (& others) v The Parole Board* [2013] UKSC 61, para 67.

¹⁸¹ *Ibid*, para 68-69.

¹⁸² *Ibid*, para 66-71.

crucial, therefore, that throughout the process prisoners feel well informed, involved, and able to communicate effectively.

- 4.4 Further, effective participation in the process, where it is clear to prisoners what to expect and where the process is perceived to be fair, has many benefits. In particular, it helps prisoners take ownership of their sentence, release, and supervision in the community, which ultimately reduces the likelihood of reoffending.¹⁸³
- 4.5 At the same time, a feeling that the process is fair helps to make what is a very daunting process easier to navigate. Creating an environment which enables prisoners to express their views helps alleviate anxieties, promotes participation, and so reduces disengagement. It gives prisoners the confidence to put their best case forward effectively. This chapter therefore considers how fairness can be improved, both in reality and in perception, for prisoners, their friends and families, and victims.

Effective Participation

- 4.6 It is important to understand the experiences of those who navigate the parole system.¹⁸⁴ Yet, there has been little research carried out in this area. What does exist is either historic,¹⁸⁵ published prior to significant changes to the Parole Board's rules and policies, or limited in its scope and detail. Although more

¹⁸³ P. Ugwu-dike, 'The Dynamics of Service User Participation and Compliance in Community Justice Settings', (2016). *Howard Journal* 55(4): pp. 455–477; B. Weaver and M. Barry, 'Managing High Risk Offenders in the Community: Compliance, Cooperation and Consent in a Climate of Concern', (2014a). *European Journal of Probation* 6(3): pp. 278–295; and B. Weaver and M. Barry, 'Risky business? Supporting desistance from sexual offending', (2014b).

¹⁸⁴ JUSTICE's Working Parties have a long history of examining how decision-making bodies across jurisdictions can operate more fairly, effectively, and efficiently. Particular focus has been given to how courts and tribunals can be more accessible to lay users in order for them to effectively participate in proceedings which concern their lives and can lead to life-changing outcomes. Some of our Working Parties have examined generally whether current systems are fit for purpose, recommending more system-wide reform. Much of this work has also taken issue with more deep-rooted concerns, including bias, institutional racism, institutional defensiveness, mental health and neurodiverse conditions, and an apparent disregard for the status and worth of those navigating justice system processes. For example, see the following JUSTICE reports, 'Litigants in Person', (1971); 'Mental Health and Fair Trial', (2017); 'Understanding Courts', (2019); 'When Things Go Wrong', (2020); and 'Tackling Racial Injustice: Children and the Youth Justice System', (2021).

¹⁸⁵ A. Bilton and K. Bottomley, 'About Parole', (2012), 200 *Prison Service Journal*, p.15.

work has been done on post-release experiences,¹⁸⁶ recall, and understanding how perceptions of fairness inform compliance and reoffending,¹⁸⁷ the Government has insufficiently considered ways in which the parole process could be improved from the prisoners' perspective. Indeed, one of the few studies that has been conducted on prisoners' experiences of parole, albeit in Scotland, found that many prisoners perceive parole to lack transparency and to be difficult to navigate, thereby undermining their effective participation.¹⁸⁸ These concerns were echoed by a number of prisoners who responded to our questionnaire, which was circulated to gain their input on their own lived experiences of parole.

- 4.7 The complexity of the parole process makes it difficult for individuals to understand, prepare and participate. This means that, in practice, the requirements of procedural fairness are often not met from the perspective of prisoners. For example, we have seen that the process is often riddled with unexplained delays, poor communication, a lack of clear responsibility, little information on what to expect, disregard for the importance of the prisoner-lawyer relationship, and the general inaccessibility of long, complex documents which are difficult to understand. A study of Irish life sentence

¹⁸⁶ See, R. Armstrong & I. Durnescu, 'Parole and beyond: International experiences of life after prison', (Palgrave MacMillan UK, 2018); and F. Dünkel, I. Pruin, A. Storgaard & J. Weber, ' (London: Routledge, 2021).

¹⁸⁷ HMPPS, 'Prisoner and staff perceptions of procedural justice in English and Welsh prisons', (2019); HMPPS, 'Understanding the process and experience of recall to prison', (2018); P. Ugwudike, 'The dynamics of service user participation and compliance in community justice settings', (2016). Howard Journal 55(4): pp. 455–477; B. Weaver and M. Barry, 'Managing high risk offenders in the community: Compliance, cooperation and consent in a climate of concern', (2014a). European Journal of Probation 6(3): pp. 278–295; B. Weaver and M. Barry, 'Risky business? Supporting desistance from sexual offending', (2014b); McCartan K, 'Responding to Sexual Offending: Perceptions, Risk Management and Public Protection', (Basingstoke: Palgrave Macmillan, pp. 153–169). See also: ICEVLP chaired by Bishop James Jones. Ken Sutton is Secretary to the Commission.

¹⁸⁸ A recent study into prisoners' experiences, specifically of the parole process was conducted in 2020 by Kelly, McIvor and Richard in Scotland by way of a questionnaire which sought to explore their understanding, their level of engagement, and participation in the process, as well as their general experiences of the parole process with a view to identifying areas for improvement. The study found, amongst other things, that prisoners did not have a clear understanding of parole and often did not feel fully engaged in the process. It argued that better support for prisoners prior to, during and following parole hearings might foster their increased engagement and go some way to alleviating the anxiety associated with the parole process. See Kelly L, McIvor G & Richard K (2020), 'Prisoners' understanding and experiences of parole', Criminal Behaviour and Mental Health, 30 (6), pp. 321-330. The Parole Board for Scotland authorised the survey which was undertaken in conjunction with the Scottish Prison Service.

prisoners, which explored similar themes, identified that the general culture of delay throughout the process acts as a source of “*palpable exasperation*.”¹⁸⁹ The Working Party considers such ‘exasperation’ is equally prevalent in England and Wales.

- 4.8 Research raises concerns around effective participation and the procedural fairness of the parole system, suggesting that prisoners experience feelings of anxiety, powerlessness, voicelessness, frustration, disengagement, and a deep sense of “*irrational justice*.”¹⁹⁰ Consultees with whom we spoke echoed this. Anxiety and fear are common feelings for those ‘going up’ for parole; so is distrust and low expectations. As explained in **Chapter 5**, the lack of attention paid to sentence planning and progression early in an individual’s sentence only serves to compound these feelings. Neurodivergence and many mental health conditions can exacerbate difficulties in understanding and participating in the process.¹⁹¹

¹⁸⁹ D. Griffin, and D. Healy, ‘The pains of parole for life sentence prisoners in Ireland: Risk, rehabilitation and re-entry’, (2019) *European Journal of Probation*, 11(3), pp. 124–138.

¹⁹⁰ In N. Padfield, ‘Understanding Recall 2011’, (2013), Cambridge: Faculty of Law Research paper No 2/2013, 46 prisoners were interviewed in two prisons – the overwhelming impression was that they had little understanding of the process, what to expect and what role each criminal justice agency played; See: G. Attrill, G. Liell, ‘*Offenders views on risk assessment*’, (2007); N. Padfield, ‘*Who to Release? Parole, Fairness and Criminal Justice*’ (Willan, 2007); S. Martin, ‘Does preparing for parole help prepare for life?’, (2018), 237, *Prison Service Journal* pp. 46–49. All the lifers in his small study found the parole process, indeed the whole sentence, extremely confusing: “*A desire to learn new skills, develop relationships or to build release plans early in a life sentence is discouraged. Most lifers were cautious when pushing for progression or release as they felt it was perceived as suspicious by the system*”, (p.48); S. Power, ‘*To Release or not to Release? A study of Parole Board Decision-Making at Paper Hearings for Recalled Determinate Sentence Prisoners*’, (2018), 237 *Prison Service Journal* 26; J. Lazenby, ‘*To Parole or Not to Parole? How do Parole Board Members make decisions about Parole?*’ (2018), 237 *Prison Service Journal*, pp. 32–35.

¹⁹¹ Criminal Justice Joint Inspection, ‘Neurodiversity in the Criminal Justice System: a Review of the Evidence’, (July 2021).

Accessibility of Information

Information for Prisoners

4.9 The Working Party has heard throughout its evidence gathering that there is a lack of information provided to prisoners as to how parole works. Nick Hardwick, former Chair of the Parole Board, noted that:

“There are some obvious and uncontroversial areas where improvements can be made. The general information about how the parole system works and how prisoners, victims and witnesses can engage with it is poor.”¹⁹²

4.10 The Working Party heard from a number of prisoners about their frustrations: poor (or no) explanation of the parole process and their legal rights, a lack of information about support services that exist (the burden of which frequently falls on charities and non-governmental organisations with limited financial and human resources), and the absence of easy read and accessible versions of documents, vital in light of the significant number of prisoners with learning disabilities, neurodiverse conditions, or low literacy levels.¹⁹³

4.11 This lack of information about the process appears to persist at all stages of the parole process. Several prisoners indicated that they had no idea about their right to a pre-tariff sift.¹⁹⁴ Whilst the Prisoners’ Advice Service has produced a useful toolkit for the pre-tariff sift process,¹⁹⁵ it is unsatisfactory that the burden for such work should rest principally on the charitable sector, not least in a context of ever tightening resources. The Working Party considers that the

¹⁹² N. Hardwick, ‘[The Work of the Parole Board](#)’, (2018).

¹⁹³ B. Cresse, ‘[An assessment of the English and maths skills levels of prisoners in England](#)’, (2016) 14(3) *London Review of Education* 13. See also, Criminal Justice Joint Inspection, ‘[Neurodiversity in the Criminal Justice System: a Review of the Evidence](#)’, (July 2021). The report indicated that there is no reliable data on the exact number of prisoners with neurodivergent conditions, but noted that “based on the evidence provided to this review, it seems that perhaps half of those entering prison could reasonably be expected to have some form of neurodivergent condition which impacts their ability to engage”, p.8.

¹⁹⁴ The pre-tariff sift is the process which decides whether a prisoner’s case should be referred to the Parole Board for a pre-tariff review. This review examines any evidence related to the suitability for a prisoner’s transfer to open prison before the parole date.

¹⁹⁵ Prisoners’ Advice Service, ‘[The Pre-Tariff Review Self-help Toolkit](#)’, (2017).

responsibility for informing prisoners of their rights across the entire process ought to fall on the State.

- 4.12 There also appears to be a lack of adequate information for prisoners about how to prepare for the parole process and for the hearing itself. There are two ‘easy read’ leaflets prepared by the Parole Board that are usually given to the prisoner along with the dossier, some weeks, or months before the hearing.¹⁹⁶ Providing such leaflets is very important as it ensures that prisoners with difficulty reading text-heavy information are still able to understand the parole process. However, the Working Party is deeply concerned by the fact that these leaflets are not required to be given to individuals in prison and by how late they tend to be given, despite the fact that they should be added to all dossiers as a matter of course. From the Working Party’s questionnaire to prisoners, we found that many individuals were not aware of, or had not received, any leaflets about parole and that they had relied on the leaflets that others had received to inform themselves about the process. The Working Party considers that preparation for parole ought to start much earlier in an individual’s sentence and that relevant information should be provided much earlier.
- 4.13 The Working Party also notes that there is no dedicated, government supported or operated helpline.¹⁹⁷ This lack of clearly available information, either for prisoners or the public, located in a single, easily accessible place contrasts with the ‘one-stop shop’ internal database of key parole materials for practitioners and Offender Managers, which is not accessible to prisoners or the general public.
- 4.14 Where access to useful information does exist, awareness is poor. The Public Protection Unit Database (“PPUD”),¹⁹⁸ for example, is accessible remotely

¹⁹⁶ For example, the Government has prepared two leaflets (available in an easy read format) that attempts to explain the parole process and how an oral hearing works. In addition, we note that the Parole Board published an additional guide, ‘Getting ready for a parole review without a lawyer’, in 2020, which contains more detail than the above.

¹⁹⁷ The Working Party noted that there were helplines available to some prisoners, but these do not appear to be government run, nor well-publicised.

¹⁹⁸ This is a case management system for those prisoners serving life sentences and indeterminate sentences for public protection, recalled prisoners and prisoners who are restricted patients. This database contains the dossier as well as other key information such as date, time and length of the next hearing; directions that have been made; steps taken to ensure compliance; whether the hearing will be

from prison IT facilities. However, few prisoners are aware of it which means that it is not being used to its full potential. Moreover, due to a lack of internet provision or access to computer terminals, there are practical barriers to using the system. Prisoners must, therefore, rely on a prison officer or their lawyer to check it on their behalf. **The Working Party considers that prisoners should be given direct access to the PPUD, with computer terminals provisioned in prisons for this purpose.**

- 4.15 The provision of clear and accessible information for children is especially vital, given their inherent vulnerabilities. The Howard League for Penal Reform advice line receives many calls from children who clearly lack an understanding of what is going on and need to have the process explained to them.¹⁹⁹
- 4.16 Another area of the parole process where information is seriously lacking is the recall process. In a 2013 study on recall, Padfield found that the *“overwhelming impression given by the prisoners [interviewed] was that they had little knowledge or understanding of what was being done to progress their case.”*²⁰⁰ This study found a common misunderstanding with regard to recall: the difference between a standard and fixed term recall and which type of recall the prisoner was subjected to.²⁰¹ Moreover, many prisoners did not understand the roles of the different *“institutional players....several thought it was the Home Office, not the Ministry of Justice, which was recalling them.”*²⁰² These findings are consistent with more recent research which suggests that many prisoners receive no advice or information on how to achieve re-release.²⁰³ They are also supported by evidence taken by the Working Party. We heard from prisoners themselves that there is a lack of information for prisoners

via video-link; email and contact details of the PPCS and Parole Board; and case managers responsible for an individual’s case.

¹⁹⁹ The Howard League reported on this over a decade ago, but the Working Party notes that the problem persists: The Howard League for Penal Reform, *‘Parole 4 Kids Report’*, (2007). More information on the advice line can be found [here](#).

²⁰⁰ N. Padfield, *‘Understanding Recall’*, (Paper No. 2/2013), (2013), p.1.

²⁰¹ *Ibid*, p.26.

²⁰² *Ibid*.

²⁰³ Howard, Travers, Wakeling, Webster and Mann, *‘Understanding the process and experience of recall to prison – Analytical Summary’*, HMPPS (2018), p.8.

about why and when individuals get recalled and that misconceptions persist about what can trigger a recall. While we understand and welcome the PPCS's introduction of easy read guides for recall,²⁰⁴ we remain concerned that, overall, prisoners are not being given sufficient information about the recall process.²⁰⁵

A Parole Helpline

- 4.17** The Working Party heard from some prisoners that they had access to a 'helpline' that enabled them to speak to individuals at the Parole Board. Access and knowledge of this 'helpline,' however, has not been uniform across consultees. This is because, in reality, no such specific or dedicated helpline exists. Rather, prisoners are able to contact the Parole Board's general number or their relevant case manager's direct line. The impression we got from those who had took this route was positive as the prisoners were able to ask their specific questions and have someone explain the process to them. As such, the Working Party supports the establishment of a formal helpline for all prisoners who are going through parole.
- 4.18** **The Working Party therefore recommends that the Parole Tribunal should establish a dedicated "helpline" for enquiries from prisoners, victims, and other interested parties. This should be properly funded, staffed, and advertised within prisons and on the Parole Tribunal's website.**
- 4.19** Any helpline that is established will also need to have an appropriate level of funding and resources in order to be accessible to all prisoners. Ensuring there are a sufficient number of translators available to support those for whom English is not their first language will be key in this respect. Further, the staff operating the helpline will need training to ensure they fully understand the parole system, and are competent to support those who are neurodivergent.

²⁰⁴ The Parole Board, '[Parole Board publishes Easy Read guides for prisoners](#)', (July 2015).

²⁰⁵ The Prison Reform Trust, '[No life, no freedom, no future](#)', (2020).

Information for Victims

- 4.20 In the past five years, there have been a number of reforms that have improved the transparency of the parole process for victims. As a result, far more information is available to victims both about the process generally and with respect to the progress of the case of the individual who committed the crime against them.
- 4.21 The Code of Practice for Victims of Crime in England and Wales, issued by the Ministry of Justice, gives victims the right to be given information about an individual following their conviction.²⁰⁶ This includes the Probation Service's Victim Contact Scheme (the "VCS"), where victims (or their bereaved relatives) of an individual convicted of a specified violent or sexual offence and sentenced to 12 months or more in prison have the right to opt into the scheme and be assigned a Victim Liaison Officer. Under the VCS, the victim or bereaved relative will be informed of key stages of the individual's sentence (including when they are being considered for discharge, when their date of release is, and if they escape custody).
- 4.22 Where an individual has a Parole Board review, victims or bereaved relatives who opt into the VCS will be informed by the Victim Liaison Officer that they can make a statement to the Parole Board setting out how the crime has affected them (this is known as a Victim Personal Statement). The Victim Personal Statement must be read by the Parole Board and, unless there is good reason not to, the victim or bereaved relative must be permitted to read it out (or have it read out) at the Parole Board review.²⁰⁷
- 4.23 Further to the current position outlined above, recent developments include:
- a) **Parole Board Decision Summaries**, which were introduced in May 2018 and allow victims (or any other person) to ask for a summary of the reasons for a Parole Board decision.²⁰⁸

²⁰⁶ Ministry of Justice, 'Code of Practice for Victims of Crime in England and Wales', November 2020, Right 11.

²⁰⁷ *Ibid*, 11.8.

²⁰⁸ These summaries include better statements explaining why the Parole Board chose not to include the victim's requested licence conditions. In 2019-20 the Parole Board issued 1,739 summaries outlining

- b) **A Reconsideration Mechanism which was launched in July 2019,**²⁰⁹ which allows prisoners and the SoSJ (sometimes on behalf of victims) to challenge a panel's decision.
- c) **The Root and Branch Review,** launched in October 2020, which is now considering *“developing a way for victims to observe oral hearings in a safe and secure way without compromising the Parole Board’s ability to perform its function and obtain the best possible evidence from the prisoner and professional witnesses,”* as well as looking into the best ways to improve transparency.²¹⁰

4.24 The Working Party shares the Victims’ Commissioner’s concerns about the possibility of open hearings.²¹¹ First, the parole hearing’s purpose is to establish the progress of the individual and the possibility of releasing them, rather than the original offence. The Parole Board must be confident that all parties, including the prisoner and their Offender Manager, are fully comfortable in discussing what can be highly sensitive subjects, including medical history, interpersonal relationships, and so on. Second, there is a very real risk of re-traumatization for victims.²¹² Parole hearings often take place many years after the index offence. A prisoner may also have multiple hearings

the reasons for its decisions for victims, the public and members of the media, and more than 3,000 have been issued altogether. *See*, the Parole Board for England and Wales, [‘Parole Board publishes Annual Report & Accounts 2019/2020’](#), (July 2020).

²⁰⁹ Under the reconsideration mechanism, a victim can contact the Secretary of State’s Reconsideration Team in order to raise concerns about the Parole Board’s decision. *See*, the Parole Board for England and Wales, [‘Parole Board publishes Annual Report & Accounts 2019/2020’](#), (July 2020).

²¹⁰ The Ministry of Justice, [‘Root and Branch Terms of Reference’](#), (2021).

²¹¹ *See* JUSTICE’s 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’](#), (2020).

²¹² *“I am particularly concerned that the disclosure of personal data relating to victims and their families may cause them distress. They have already experienced the trauma of testifying at trial as well as having their lives scrutinised in open court during the course of cross examination of other witnesses. It would be completely unacceptable for this trauma to be repeated during an open parole hearing. We must also remember that most offenders usually attend multiple parole hearings before being released and this means victims having to re-live the experience time and time again. This could have a devastating impact on them, many of whom would have strived for some form of closure in the intervening years. Indeed, I suspect some victims would be distressed even at the mere possibility their offender’s parole hearing might be held in public” – see ‘Victims’ Commissioner responds to consultation on making parole hearings open to victims’*, (December 2020), p.3.

over their sentence. Attending a hearing (or in some instances, multiple) can risk undermining years of restoration with little benefit to the victim.

- 4.25 We agree with the Victims' Commissioner's recommendation that the Root and Branch Review look at "*other opportunities for greater openness which achieve your aim of open justice as well as making victims better informed.*"²¹³ There are clear benefits to focusing instead on improving the clarity and accessibility of the information available. For example, there is presently limited provision with respect to sentence progression.²¹⁴ The Victims' Commissioner told the Working Party that she thought there would be great value in updating victims more regularly on the steps that the prisoner has taken towards rehabilitation, particularly as they near release. We agree. This could help give victims confidence in the criminal justice system and offer some semblance of closure to their experience.

Families and Friends

- 4.26 When an individual is given a prison sentence, this does not just affect them and the victim. It also has a profound impact on the prisoner's family, who frequently face significant stress and anxiety.²¹⁵ The Farmer Review highlighted the fact that families have not been taken into account by those designing policies regarding those in prison.²¹⁶
- 4.27 The Farmer Review also noted the role of families in the rehabilitation of an individual as well as in reducing reoffending.²¹⁷ The Ministry of Justice's own

²¹³ *Ibid*, p.1.

²¹⁴ At present, the Victim Contact Service is responsible for keeping the victim informed of the prisoner's progress, separate from the Parole Board. We understand that in 2020 the Parole Board produced a leaflet for victims, in addition to the 2014 victim booklet. The Parole Board has also produced an "aide memoire" for Victim Liaison Officers setting out some of the important points to consider when victims are engaged in the parole process.

²¹⁵ C. Straub, H. Annison, 'The mental health impact of parole on families of indeterminate-sentenced prisoners in England and Wales', (November 2020).

²¹⁶ The Review was commissioned to look at how family engagement and support of prisoners could be improved to reduce re-offending. See Ministry of Justice, 'Farmer Review Report', the Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime', (August 2017), p.8.

²¹⁷ *Ibid*, p.4.

data shows that “for a prisoner who receives visits from a partner or family member, the odds of reoffending are 39% lower than for prisoners who had not received such visits.”²¹⁸ Ensuring that families are given the opportunity to be engaged and informed of progression is not only essential to reducing their pain, but also to the prisoner’s rehabilitation, and the legitimacy of the process itself.²¹⁹

4.28 In addition, a report into the experiences of families of IPP prisoners by the Prison Reform Trust, noted “the ongoing unmet needs by many families for clear information on the processes and policies related to the IPP sentence and related issues (including progression, licence and recall).”²²⁰ The study, which included surveys to families, indicated that there was strong support for clear information to be provided to families about relevant processes (e.g., parole hearings, recall, licence conditions), better and more consistent communication between agencies and families, and a dedicated ‘one-stop shop’ IPP point of contact for families.²²¹ In relation to the parole process specifically, the study also found that families “felt that practical guidance about what happens before, during, and after parole hearings as well as which role family members can and cannot assume was difficult to obtain (if it existed at all).”²²²

4.29 The Parole Board’s leaflet for families and friends of prisoners who go through parole explains what the Parole Board is, the Parole Board review, who is

²¹⁸ *Ibid.*

²¹⁹ Evidence suggests that poor engagement of families in the prison process can be damaging to the legitimacy, and therefore compliance, with the rules and expectations of the criminal justice system. As Jardine notes, based on a number of studies of families accounts and experiences, “theories of legitimacy would foretell that where subordinate parties feel the power exercised over them is unfair, they are less likely to comply with rules power holders seek to enforce; and indeed, there is a large volume of empirical research which demonstrates that individuals are more likely to accept decisions which they feel have been reached fairly, whether or not they are favourable (see, for example, Tyler, 1990; Sunshine and Tyler, 2003; Bradford and Myhill, 2015; Tyler, 2011)” – see Jardine, Cara., ‘Families, Imprisonment and Legitimacy’, Taylor & Francis, 2019, p.104.

²²⁰ H. Annison and C. Straub, The Prison Reform Trust, ‘A Helping Hand: Supporting Families in the Resettlement of People Serving IPPs’, (2019), p.2.

²²¹ *Ibid.*, p.6.

²²² *Ibid.*, p.12.

involved, and how to support someone going through parole.²²³ The leaflet also provides links to non-governmental organisations that assist in providing information and in finding legal representation.

4.30 The Working Party considers that it is essential to do more. **The Working Party recommends that the Parole Tribunal should produce clear, accessible, timely and tailored information about the parole process for prisoners, their families and friends, and victims. This should be provided within three to six months of an individual’s sentence and be prominently available for prisoners in prison libraries and to victims in line with the Victims Code. Such information should address:**

- a) how the individual’s specific sentence operates, how sentence planning maps onto their sentence as well as how parole fits in;
- b) what the parole process involves, how it should be prepared for, and what can be expected at each stage of the process; and
- c) an individual’s right to parole reviews.

Preparing Prisoners for Parole

4.31 A consistent theme for all prisoners is the lack of resources dedicated to helping them prepare for the parole process adequately. Liebling, Arnold and Straub highlighted this sentiment among the prisoners at HMP Whitemoor. One of their interviewees noted that *“there is a surprising lack of, you know, really good long-term objectives for people. The mentality seems to be that basically before you actually go out the door, a few years before you leave, that’s when they become interested in you.”*²²⁴ We agree, and consider that there should be more focus on preparation for parole from day one of an individual’s sentence.

4.32 At the root of this issue is the confusing approach taken by prisons and probation officers to parole preparation. There does not appear to be a uniform and consistent view as to what an individual needs to have done (e.g., by way of OBPs, training programmes, or other evidence of rehabilitation) prior to the

²²³ The Parole Board for England and Wales, ‘[Information for family and friends of prisoners having a parole review](#)’, (August 2020).

²²⁴ Ministry of Justice, ‘[An exploration of staff – prisoner relationships at HMP Whitemoor: 12 years on](#)’, (2011), p.54.

parole hearing in order to get parole. Consultees highlighted the frustration felt by prisoners when they are told by the Parole Board that they need to complete certain programmes in order to get parole when this has not been previously raised by the prison. Moreover, it is not within the Parole Board's powers to direct that an individual should undertake a particular programme. This can delay an individual's release and mean that prisoners may be kept in prison longer than would have been necessary if all the proper steps in preparation were originally taken. This is not only frustrating for prisoners, but it also has financial implications for the penal system. Furthermore, if individuals are only told shortly before their parole hearing about the need to complete certain courses in order to be released then there is pressure to complete the course rapidly. This can turn the completion of any OBP into a tick-box exercise, meaning that individuals may not properly engage or take on board the lessons from the course and the full rehabilitative benefit will not be gained.

- 4.33 While some Offender Managers go out of their way to assist individuals in preparation for parole, the Working Party understands that many are overworked and are responsible for too many prisoners. This sentiment was echoed in responses to our questionnaire, with some Offender Managers noting that they have little time to devote meaningful attention to an individual's sentence progression. Combined with a high turnover of staff, this often results in peaks and troughs in an individual's progress.
- 4.34 The Working Party believes that this could be remedied by placing a duty on the Parole Board, and not just on the prison service or HMPPS, to keep individuals up to date with their progression towards parole and through the prison estate. This must be accompanied by improvements to the information provided to individuals about the Parole process earlier in their sentence. By starting the preparation work for rehabilitation and parole early in a sentence, as highlighted in **Chapter 5** on rehabilitation, and giving individuals the necessary information, individuals could be empowered to take charge of their sentence and rehabilitation and seek out the assistance that they need.
- 4.35 This could be achieved through a Parole Caseworker, assigned from the beginning of an individual's sentence, who would help to update and inform that individual with respect to their sentence progression, and ultimately parole. This would also promote uniformity in the process. Such a caseworker would be located within the Parole Tribunal framework and be the key point

of contact for prisoners regarding parole matters.²²⁵ This would also allow individuals to feel empowered in preparing for parole (such as the creation of a risk management plan, confirmation of the dossier's contents, and undertaking of relevant OBPs or training programmes) and would allow for more robust checks to be undertaken along a persons' sentence.

- 4.36** A Parole Caseworker, who can act as a point of contact for individuals and ensure that the PPCS prepares a clear and well-marshalled dossier, would also help empower individuals who currently see the dossier as daunting. As noted in **Chapter 3**, many prisoners struggle to engage with the dossier due to its length and the fact much of it is written in formal and often technical language. By improving the dossier compilation, and by having a Parole Caseworker who can help explain the different documents in the dossier, the Working Party considers that individuals, especially those with learning difficulties and for whom English is not their first language, would be able to take charge of their parole process.
- 4.37** The Working Party heard from some prisoners and consultees who had the opportunity to speak to someone at the Parole Board prior to their parole process. They reported that this made the process a lot easier and more meaningful as it made the individual feel as though they had a voice in the process. Receiving information such as case updates directly from the Parole Board rather than a third party was welcomed. Having a Parole Caseworker who could fulfil this role for all prisoners would promote consistency and ensure that all who go through the process receive accurate and up to date information about what they personally need to do in order to be well prepared for their parole hearing.

²²⁵ A relevant example of the use of Caseworkers is in the recent Online Immigration Appeal Pilot run by the First-tier Tribunal (Immigration and Asylum Chamber). Tribunal Caseworkers were assigned as a point of contact for each immigration appeal and were given an enhanced role as part of the online procedure with the power to manage the progression of the appeal bundle (requesting missing information, listing the appeal when they consider it ready to hear and holding pre-hearing reviews if required). The intention of the pilot was to reduce the number of cases requiring a hearing and to reduce the length and breadth of hearings by active case management and early engagement of the parties. The Public Law Project published a report on the pilot in August 2020 ([Online Immigration Appeals: A Case Study of the First-tier Tribunal](#)), noting that interviewees found the responsiveness of Tribunal Caseworkers on their particular appeal and earlier engagement facilitated by the Tribunal Caseworkers to be highly beneficial. The need for clear accountability of Tribunal Caseworkers was also highlighted.

- 4.38 The Parole Tribunal should have a duty to update prisoners (and, where relevant, victims) on the progression of their case as well as providing general information about the parole process. This should take effect early in the sentence and complement its role in reviewing sentences.**
- 4.39 In addition, the Parole Tribunal should establish a Parole Caseworker section, in which each prisoner has an assigned caseworker who is responsible for providing information about the process.**

Improving Understanding of Prisoners' Experiences

- 4.40** As noted above, there are serious issues relating to prisoners' awareness and understanding of the parole process. Yet, there is also a need for Parole Board members to better understand the lives and circumstances of those in prison. Appreciating the realities of prison can play a significant role in contextualising prisoners' behaviour. Malcolm Richardson, the chairman of the Magistrates Association in 2016, said, "[s]ending offenders to prison, within the strict parameters of the sentencing guidelines, is one of the toughest decisions magistrates have to take on behalf of society. We therefore believe that seeing prison through visitation should be an essential part of judicial training for magistrates. At present, prison visits vary significantly from bench to bench and we're making the case to the Lord Chancellor that the Ministry of Justice should fully implement this as an essential training requirement."²²⁶ The Working Party considers the same is true in the context of parole.²²⁷
- 4.41** We consider that informal meetings between Parole Board members and prisoners would have an educational value for both parties. We understand that the Parole Board does from time to time encourage members to attend prison open days or meetings to have discussions with prisoners, giving some information about the parole process and answering questions. However, members are not compensated for their attendance. Both the prison service and the Parole Board should formalise these events so that they are very regular, and members should be suitably remunerated for their time. It may be possible to put on virtual events as well, but the prisons will need to have suitable equipment. Furthermore, members should be provided with a basic script of

²²⁶ 'MA members call for prison visits as part of magistrates' training', *Magistrates Association*, 31 October 2016.

²²⁷ 'Call to send all new magistrates to prison', *insidetime*, 01 December 2016.

‘Frequently Asked Questions’ so as to avoid inadvertently making any errors in law or procedure if asked particular questions.

- 4.42** In light of the fact that many consultees raised the issue of ensuring that Parole Board members were aware of the realities of prison life, **we recommend that the Parole Board should play a more active role in meeting with prisoners prior to their parole process. This should take the form of informal meetings between Parole Board members and prisoners. In addition, the Parole Board members should more widely implement its pilot of day visits to prisons, for which members should be fully reimbursed and remunerated.**

Tackling Discrimination in Parole

- 4.43** Racial disparities and discrimination are endemic across the criminal justice system. This is well evidenced and incontrovertible. In England and Wales, this manifests itself most troublingly in the marked overrepresentation of ethnic minority individuals throughout the prison estate. Over a quarter of the prison population in England and Wales are from an ethnic minority background, despite making up only 14% of the general population.²²⁸ Approximately 5% of men and 7% of women in prison are from Gypsy, Roma or Traveller background, compared to an estimated 0.1% of the general population.²²⁹ The number of Muslims in prison has more than doubled over the past 18 years.²³⁰ Foreign nationals (non-UK passport holders) currently make up 12% of the prison population.²³¹

²²⁸ As of 31 March 2021, the prison population was 78,058 in total. Of those, 77,416 had a recorded ethnicity: Asian (6,314); Black (10,084); Mixed (3,868); Other ethnic group (1,128); White (56,022). Asian (8.15%); Black (13.03%); Mixed (5%); Other (1.46%); White (72.36%), (See, Ministry of Justice, ‘Offender management statistics quarterly: October to December 2020’, (April 2021), Table 1.4).

²²⁹ See, HM Chief Inspector of Prisons, ‘Annual report 2019–20’, (October 2020); HM Inspectorate of Prisons, ‘Minority ethnic prisoners’ experiences of rehabilitation and release planning’, (October 2020), p.155.

²³⁰ In 2002 there were 5,502 Muslims in prison, by 2020 this had risen to 13,199. They now account for 17% of the prison population, but just 5% of the general population. (See, M. Halliday, Bromley Briefings, ‘Prison Factfile Winter’, (Prison Reform Trust, 2021), p.26).

²³¹ On 30 September 2021 there were 9,812 foreign nationals in prison. (See, Ministry of Justice, ‘Offender management statistics quarterly: April to June 2021’, (October 2021).

- 4.44 Disproportionality does not arise by accident. Rather, it is the consequence of biases (whether conscious or unconscious) on the part of decision makers that inform and shape existing laws and policies. Unsurprisingly, the criminal justice system’s processes and procedures are viewed as unjust and unfair,²³² which serves to deepen already entrenched feelings of distrust.²³³
- 4.45 Whereas the issue of racial inequality is well understood across the criminal justice system in general, the research and data on race, gender, and religion as regards to the parole system in England and Wales is limited. The Lammy Review raised this issue through the lens of inadequate transparency in the treatment and outcomes for ethnic minority prisoners going through parole. Lammy concluded that, in the interests of “*effective scrutiny*,” the Ministry of Justice and Parole Board should “*report on the proportion of prisoners released by offence and ethnicity. If possible, this data should also cover the proportion of each ethnicity who also go on to reoffend.*”²³⁴
- 4.46 In 2018, the Parole Board began to publish some data on ethnicity and parole outcomes. Its most recent annual report from 2020/21 contain the following statistics for outcomes of oral hearings for each ethnicity where this was identified:
- **Release:** Black (54.1%), Asian (56.9%), Chinese & Other (52.3%), Mixed (62.6%), White (54.4%);
 - **Remain in custody:** Black (32.1%), Asian (29.8%), Chinese & Other (36.3%), Mixed (30.4%), White (33.7%); and

²³² “We have concerns about every stage of probation supervision from the quality of pre-sentencing reports – we found 40 per cent were insufficient in considering diversity factors – to the way that ethnic minority service users were involved in their assessment and sentence plans.”, *Her Majesty’s Inspectorate of Probation*, ‘Probation service must ‘reset and raise’ standard of work with ethnic minority service users and staff urgently’, (March 2021); “A majority (51%) of British-born BAME people believe that the criminal justice system discriminates against particular groups and individuals, compared to only 35% of the British-born white population.” - Centre for Justice Innovation, ‘Building Trust: How our courts can improve the criminal court experience for Black, Asian, and Minority Ethnic defendants’, (2017), p.3.

²³³ See, Transition to Adulthood (T2A), ‘Race and the Criminal Justice System: Hearing from Young Adults’, (2017).

²³⁴ D. Lammy, *The Lammy Review. An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, (2017), p.52.

- **Open conditions:** Black (13.8%), Asian (13.3%), Chinese & Other (11.4%), Mixed (7%), White (11.9).²³⁵

4.47 Statistics from the previous year were not dissimilar.²³⁶ The data do not appear to indicate any concerning disparity in outcomes.²³⁷ However, it is important to note that the figures relate to outcomes of oral hearings only and do not include decisions made on the papers. Hence, it is not possible to determine what disparities exist at that stage. Bearing in mind that racial disparities are present throughout the criminal justice system,²³⁸ more information is needed, along with a fuller analysis.

4.48 Such limited data do not speak to the qualitative differences in outcomes for different ethnic groups. Some of those we consulted have indicated that licence conditions can be more stringent and onerous for ethnic minorities when compared to their White counterparts. Others said that they felt “*set up to fail*”. The reason(s) for this are not clear. We are aware that an individual is more likely to be released if there is a robust risk management plan in place, which is often reliant upon their family having the resources to be able to offer support. This can present challenges for people from lower socioeconomic backgrounds, which include a disproportionate number of ethnic minority individuals.²³⁹

4.49 Consultees (especially legal representatives) gave us examples of people who they felt had been recalled for reasons that do not go to risk but instead showed

²³⁵ The Parole Board for England and Wales, ‘Parole Board publishes Annual Report & Accounts 2020/2021’, (October 2021), p.21.

²³⁶ **Release:** Black (49.4%), Asian (49%), Chinese & Other (60%), Mixed (53.4%), White (50.9%); Average (50.8%). **Remain in custody:** Black (35.8%), Asian (39.6%), Chinese & Other (33.3%), Mixed (35.4%), White (36.4%); Average (36.4%). **Open conditions:** Black (14.8%), Asian (11.4%), Chinese & Other (6.7%), Mixed (11.2%), White (12.7%); Average (12.8%) (See: ‘Parole Board for England and Wales Annual Report and Accounts 2019/20’, p.24).

²³⁷ The report states: “*The % outcomes may appear disproportionate for certain ethnicities due to the representation in the prison population*”.

²³⁸ HM Inspectorate of Prisons, ‘Minority ethnic prisoners’ experiences of rehabilitation and release planning’, (October 2020); M. Halliday, Bromley Briefings, ‘Prison Factfile Winter’, (Prison Reform Trust, 2021), p.26).

²³⁹ England and Wales 2011 Census, ‘Socio-economic groups by ethnicity’, (2011).

clear insensitivities around cultural specificities.²⁴⁰ For example, young Black boys going to girls houses to get their hair braided and being accused of trying to exploit young girls, and young Black women being recalled after being stopped and searched. In the latter instance, the Probation Service did not appear to consider the fact that Black people are disproportionately more likely to be stopped and searched, and that in most cases there was no further action taken, meaning that an elevation of risk should not have been inferred. HMPPS has committed to publishing data on the outcomes of probation supervision, breach, and recall of service users, to identify any disproportionality across different ethnic groups.²⁴¹ While there is published data on recalls by ethnicity, no such provision exists for a breakdown of individuals who are released.²⁴²

- 4.50 Further, it cannot be discounted that personal biased misperceptions on the part of Parole Board members could influence decision-making processes, as is the case across the criminal justice system. This could have significant consequences for ethnic minorities who – through no fault of their own – are perceived as being ‘riskier’ than their White counterparts, with some groups considered more likely to partake in criminality than others. Both scenarios

²⁴⁰ The Prison Reform Trust analysed recall of IPP prisoners from 2015 to 2019. During this time, 1,760 individuals were recalled. Analysis showed “*[o]ver three quarters (77%) of people recalled were White British, one in eight (12.8%) were Black or Black British, with smaller numbers of individuals recorded as mixed race (4.8%), Asian or Asian British (2.7%), or other (1.3%)*”. However, because data was not available for the ethnic composition of the whole cohort of people sentenced to IPP, it was not possible to analyse whether there was any racial disparity in the recall rate (see, The Prison Reform Trust, ‘No life, no freedom, no future’, (December 2020).

²⁴¹ HM Inspectorate of Probation, ‘Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff’, (March 2021). HMPPS will publish data on outcomes of probation supervision, breach, and recall of people on probation, to identify any disproportionality across different ethnic groups. In the first instance this will include an additional chapter in the next HMPPS Offender Equalities report, to be published in November 2021. This information is already published for accommodation and employment outcomes by ethnic group. HMPPS will pilot the introduction of the Probation Equalities Monitoring Tool (EMT) in the East Midlands from April 2021. Learning from the pilot will be incorporated into the implementation of the EMT across all Probation regions by October 2021. The tool will form part of the regional equalities planning, it will identify which outcomes/groups show disproportionality in each region with the expectation that these areas are focussed on and required actions are identified. Once embedded we will review options for expanding the scope of probation data included in the HMPPS Offender Equalities report.

²⁴² Table 5.12, Ministry of Justice and HMPPS, ‘Offender management statistics quarterly: October to December 2020’, (April 2021). The offender management statistics indicate the number of recalls by ethnicity; however, it does not provide the number of releases by ethnicity which means analysis cannot be done to assess if the rates of recall are higher for a particular ethnicity.

highlight potential sources of disparities when panel members assess risk, its manageability, and potential licence conditions.

4.51 It is vital that the Parole Board’s membership reflects wider society. As the Lammy Report noted, “[a] *fundamental source of mistrust in the [criminal justice system] among BAME communities is the lack of diversity among those who wield power within it.*”²⁴³ Following this review, the Parole Board recognised the need for change.²⁴⁴ In February 2019, only 5% of its membership identified as coming from a Black, Asian, and Minority Ethnic background. A targeted recruitment campaign seeking to address this lack of diversity had resulted, by the autumn of 2020, in 13% of Parole Board members being part of an ethnic minority.²⁴⁵ In addition, recent data indicate that 17% of respondents to a Parole Board survey declared a disability.²⁴⁶ Nevertheless, the Working Party is concerned that the lack of diversity in life experiences within the Parole Board membership has the potential to impact the decision-making of members. A questionnaire sent to prisoners indicated that many did not feel as though Parole Board members had lived experience relevant to their lives.

Assessing Risk and the Offender Assessment System

4.52 The Parole Board’s decisions are not taken in a vacuum. Its members, in assessing risk, rely on contributions from prison and probation staff, and evidence shows that biases and a lack of cultural awareness persist in these institutions. A recent report of Her Majesty’s Inspectorate of Probation found that probation officers often do not consider an individual’s race, ethnicity, or religion, nor explore their experiences of racism and discrimination. It also found that in some cases, assessments may have been, or were, biased due to unconscious bias or “*misunderstandings about how an individual presents,*

²⁴³ D. Lammy, *The Lammy Review, An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, (2017), p.37.

²⁴⁴ Martin Jones, ‘*The Parole Board is implementing Lammy*’, (September 2019), Russell Webster.

²⁴⁵ The Parole Board for England and Wales, ‘*Annual Report and Accounts 2019-20*’, (July 2020), p.18. We are grateful to the Parole Board for providing more recent data on ethnicity among its members, which they provide on a voluntary basis. This appears to indicate that such proportions have remained steady, with at least six Black Parole Board members.

²⁴⁶ The Working Party is grateful to the Parole Board for this information.

their culture, ethnicity or religious practice".²⁴⁷ The same report found that *"there was some concern that decision-making in the probation service is affected adversely by race, nationality and religion."* An example used was a Jamaican man whose application to attend a funeral in Jamaica was refused by probation because of what they said was a risk of potential drug-related crime. The man had never been convicted of a drug-related crime. He felt this was discriminatory and wholly connected with their perceptions of Jamaican men, rather than of him personally.²⁴⁸ Within prisons, the problem is equally concerning, as evidenced in Her Majesty's Inspectorate of Prisons' report which found *"the considerable gap between BME prisoners and prison staff in their understanding of how ethnicity influences rehabilitation and resettlement. While about a third of interviewed BME prisoners felt that their ethnicity had a significant impact on their experience, almost no staff felt the same."* It is difficult to fix a problem when its very existence is not recognised.²⁴⁹

- 4.53** In the context of children, the Youth Justice Board (2021) analysed ethnic disproportionalities in remand and sentencing in the youth justice system, specifically looking at assessments of the likelihood of reoffending. It found that:

*"Black and children from Mixed and Other ethnic backgrounds, are slightly more likely to be set higher assessed likelihoods of reoffending. Asian children tend to be set a lower likelihood of reoffending than White children."*²⁵⁰

- 4.54** The Youth Justice Board concluded that *"differences in practitioner assessments of vulnerability and risk might reflect biases in judgement or actual societal differences in circumstances and wellbeing between children of*

²⁴⁷ HM Inspectorate of Probation, 'Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff', (March 2021), pp. 31-33.

²⁴⁸ HM Inspectorate of Probation, 'Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff', (March 2021), p.48.

²⁴⁹ HM Inspectorate of Prisons, 'Minority ethnic prisoners' experiences of rehabilitation and release planning', (October 2020), p.7.

²⁵⁰ Youth Justice Board, 'Ethnic disproportionality in remand and sentencing in the youth justice system', (2021), p.25 (Note: due to technical issues in data reporting, in 63% of cases the likelihood of reoffending is missing).

*different ethnicities. Disproportionality in practitioner assessments may translate into disproportionality in both remand and sentencing outcomes”.*²⁵¹

- 4.55 These practitioners are also responsible for preparing OASys reports (discussed in greater detail in **Chapter 5**). The accuracy and reliability of risk assessment tools depends on their proper use and application.²⁵² Given that issues are evident in other parts of the criminal justice system, we are concerned that such biases bleed equally into risk assessment tools.
- 4.56 Race often does not receive the consideration it requires in relation to unfair and prejudicial treatment, since information relating to ethnicity is often missing from the dossier.²⁵³ This is vital information in assessing outcomes (as noted in the Lammy Report),²⁵⁴ as well as ensuring members avoid biased or racialised decision-making. Poor data provision concerning race is a significant problem. According to the Her Majesty’s Inspectorate of Prisons in 2020, “an OASys assessment had not been completed or reviewed in the last

²⁵¹ Youth Justice Board, ‘Ethnic disproportionality in remand and sentencing in the youth justice system’, (2021), para 238.

²⁵² “Structured professional judgement tools can lack consistency ... and can also be susceptible to forms of bias and differences in local cultures around risk assessment. These issues raise concern about effectiveness and fairness, including the impact on protected characteristics”, HM Prison & Probation Service, ‘Risk of Serious Harm Guidance 2020’, (April 2020), Public Protection Group, p.7. See also Appendix 1 – Bias in Risk Assessment).

²⁵² D. Fitzgibbon, ‘Fit for Purpose? OASys Assessments and Parole Decisions’, (2008), 55 *Probation Journal*, p.66.

²⁵² D. Lammy, The Lammy Review, An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System, (2017), p.52.

²⁵² HM Inspectorate of Prisons, ‘Minority ethnic prisoners’ experiences of rehabilitation and release planning’, (October 2020), p.26.

²⁵² HM Inspectorate of Probation, ‘Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff’, (March 2021), pp. 32-33.

²⁵³ D. Fitzgibbon, ‘Fit for Purpose? OASys Assessments and Parole Decisions’, (2008), 55 *Probation Journal*, p.66.

²⁵⁴ D. Lammy, The Lammy Review, An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System, (2017), p.52.

12 months for almost a fifth of male BME prisoners.”²⁵⁵ Evidence from Her Majesty’s Inspectorate of Probation found that:

*“There were many examples of missed opportunities to deepen the responsible officer’s understanding of service users’ heritage, culture, family history, education, immigration status or experiences of trauma, which would have improved the OASys assessments considerably. However, the only section on OASys that mentions experience of discrimination is in the sentence planning section, in relation to its impact on planned work. In most cases this section was left blank, or worse stated ‘no issues’ when there were clearly relevant factors that had not been explored.”*²⁵⁶

4.57 This suggests that the Parole Board may well receive lower quality evidence for ethnic minority prisoners than their White counterparts. It has been shown that OASys risk assessments have lower accuracy for all ethnic minority groups, with the most inaccurate results for Black prisoners.²⁵⁷ We are therefore encouraged by HMPPS’ recommendations aimed at improving OASys assessments. These seek to ensure that:

- a) diversity factors and experience of discrimination and disadvantage are captured throughout; and
- b) the impact of discrimination and diversity factors are considered sufficiently in the planning of service delivery.²⁵⁸

²⁵⁵ HM Inspectorate of Prisons, ‘Minority ethnic prisoners’ experiences of rehabilitation and release planning’, (October 2020), p.26.

²⁵⁶ HM Inspectorate of Probation, ‘Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff’, (March 2021), pp. 32-33.

²⁵⁷ P. Howard, ‘The Prediction of Reoffending by Age, Gender and Ethnicity’ in R. Moore (ed), ‘A compendium of research and analysis on the Offender Assessment System (OASys), 2009 2013’, (National Offender Management Service 2015), p.45 and Table 3.2.

²⁵⁸ We note the target dates of March and June 2022 for some of the key workstreams pursuant to the recommendations. See HM Prison and Probation Service, ‘Race equality in probation: the experiences of black, Asian and minority ethnic probation service users and staff’, (March 2021).

Foreign Nationals

4.58 The prison population includes a high number of foreign nationals, who have particular vulnerabilities.²⁵⁹ Often, they have no recourse to public funds, may have poor or no English language skills, and lack support in the community beyond that which is available from charities. Foreign nationals' experiences of prison are "*characterised by isolation, language barriers, limited or no family contact, discrimination and racism.*"²⁶⁰ We are deeply concerned, therefore, by the risk of foreign nationals being unable to properly participate in the parole process as a result of poor information provision, as well as a lack of language services, such as translators and interpreters.

4.59 The Parole Board has no legal duty to provide documents or services in any language apart from English and Welsh. However, as the Parole Board is subject to the Public Sector Equality duty, where the provision of documents in another language or a translator eliminates direct or indirect discrimination (on the basis of the protected characteristic at play) this may be required.²⁶¹ It is not the sole responsibility of the Parole Board to identify language need; such matters should have already been identified and assessed by HMPPS ahead of any case being referred to the Parole Board. However, the Parole Board should make its own determination of the circumstances to ensure a fair parole hearing can take place. An interpreter should be supplied (by the Ministry of Justice) if it is evident from the dossier that one will be needed. The need for an interpreter or signer should be referenced in the main text of the MCA and the duty member or panel chair directions, and should be flagged

²⁵⁹ To note, the Parole Board's guidance on Foreign Nationals says: "*A prisoner's citizenship status or liability for deportation does not affect the Parole Board test for release or panel procedures; but the risk assessment and decision-making processes may be informed by or constrained by certain factors when an applicant does not have an absolute right to remain in the country (a foreign national prisoner). In particular, foreign national prisoners facing deportation may not be eligible for transfer to open conditions or may be referred for consideration of their release under risk management plans whose restrictions cannot extend beyond UK jurisdiction and which therefore would not be viable/effective following deportation.*"

²⁶⁰ James Banks, 'Foreign National Prisoners in the UK: Explanations and Implications', (2011), 50 Howard Journal of Criminal Justice 184, 185. James Banks is a Senior Lecturer in Criminology, Department of Law, Criminology and Community Justice, Sheffield Hallam University.

²⁶¹ The Parole Board for England and Wales, 'Translations and Interpreters Guidance for Members', (October 2020).

with the Parole Board case manager so that the attendance of the interpreter can be organised and confirmed in advance of the hearing.²⁶²

Vulnerable Individuals: Mental Ill-Health

- 4.60 In England and Wales, the prevalence of mental health problems among prisoners is much higher than that found within the general population. It is estimated that as many as 90% of prisoners have some form of mental health condition, personality disorder, or substance misuse problem.²⁶³ According to the Prison Reform Trust, over 16% of men said they had received treatment for their mental health in the year before custody. This was considerably higher for women prisoners, 26% of whom said they had received treatment for a mental health problem in the year before custody.²⁶⁴ Likewise, a higher proportion of women prisoners, 25%, reported symptoms indicative of psychosis, compared to 15% of men in prison and 4% of the general public.²⁶⁵ Further, over one in five (21%) prisoners were identified as suffering from a depressive illness; 9% were identified as suffering from schizophrenia or other delusional disorders, 7% from anxiety, post-traumatic stress disorder, obsessive compulsive disorder, or other phobia, and 7% from a personality disorder.²⁶⁶ In 2019, 1,016 people were transferred from prison to a secure hospital, the second highest number on record.²⁶⁷
- 4.61 There are no uniform definitions, approaches or databases to identify and record individuals with neurodivergence within the criminal justice system. For example, the OASys flag for mental health that is used by prison and probation staff allows for the screening and recording of learning disabilities.

²⁶² *Ibid.*

²⁶³ Centre for Mental Health, 'Mental health and criminal justice: Views from consultations across England & Wales', (2018); HM Chief Inspector of Prisons, 'Annual report 2019–20', (2020), which found that 71% of women and 47% of men surveyed reported having mental health problems.

²⁶⁴ Prison Reform Trust, 'Mental Healthcare in Prisons', (2018).

²⁶⁵ *Ibid.*

²⁶⁶ M. Halliday, 'Bromley Briefings Prison Factfile: Winter 2021', (Prison Reform Trust, 2021) pp. 32-33.

²⁶⁷ Ministry of Justice, 'Offender management statistics quarterly', *Restricted patients 2019* (April 2020), Table 7.

However, the probation case management system, nDelius,²⁶⁸ uses different definitions and the National Offender Information Management System does not include a mechanism to flag mental health conditions.²⁶⁹

- 4.62 At the 2021 Crime in Mind webinar on mental health and parole, Dr John O’Grady, a member of the Parole Board, noted that panel members often deal with prisoners with complex disorders that “*defy classification*”. He further added that classifications are often “*mental health*” or “*personality disorder*” but provide no specificity.²⁷⁰
- 4.63 According to the Parole Board’s written evidence to the Justice Committee inquiry into mental health in prisons, “*mental health concerns are identified far too late in the parole process, which makes it very difficult to put in place measures to support the prisoner to engage meaningfully in their parole review and can cause delays.*”²⁷¹ The Parole Board’s Guidance on Restricted Patients and the Mental Health Act suggests that directions should be considered at the MCA stage for records of any admissions to secure mental health settings during the prisoner’s current custodial sentence.²⁷²
- 4.64 However, even where followed, the MCA will fail to identify many prisoners with mental health and neurodiverse needs who have not been admitted into secure mental health settings during their custodial sentence. Neurodiverse conditions are unlikely to require a secure mental health setting unless combined with mental ill-health. According to Martin Jones, the CEO of the Parole Board, “*it is not at all uncommon for a prisoner’s mental health needs to be identified during the parole process, even though they may have been in prison for three to five years.*”²⁷³ The Parole Board has suggested that, instead,

²⁶⁸ nDelius includes data on disabilities, including but not limited to, ‘autistic spectrum condition’, ‘dyslexia’, ‘learning difficulty’ and ‘learning disability’.

²⁶⁹ Criminal Justice Joint Inspection, ‘Neurodiversity in the Criminal Justice System: a Review of the Evidence’, (July 2021), p.21.

²⁷⁰ J. O’Grady, ‘Parole Board Perspectives’, Crime in Mind Webinar, (22 June 2021).

²⁷¹ The Parole Board for England and Wales, ‘MHP0048 – Mental Health in Prison, Written Evidence’, (May 2021), p.1.

²⁷² The Parole Board for England and Wales, ‘Guidance on Restricted Patients and the Mental Health Act’, (October 2020), pp. 14-15.

²⁷³ House of Commons Justice Committee, ‘Oral Evidence: Mental Health In Prisons, HC 72’, (June 2021), Q95.

*“mental health needs should be assessed at the point of the prisoner’s reception into custody, and subject to periodic reviews throughout the prisoner’s time in custody.”*²⁷⁴ This has been echoed by the Criminal Justice Joint Inspection which looked into neurodiversity in the criminal justice system. This review also highlighted the need for different bodies to improve their sharing of information about individuals’ neurodivergent conditions in order to ensure that they are properly supported, noting that at present there *“is certainly no guarantee that a neurodivergent person coming into contact with the [criminal justice system] will have their needs identified – let alone met – at any stage of the process.”*²⁷⁵

Vulnerable Individuals: Learning Disabilities

4.65 In 2017-18, over a third of the prison population (34%) were identified as having a learning disability or difficulty following an assessment on entry to prison.²⁷⁶ Prisoners with learning disabilities or difficulties were almost three times as likely as other prisoners to have clinically significant anxiety or depression. Many suffer from both simultaneously.²⁷⁷

4.66 Studies show that individuals with autism:

²⁷⁴ The Parole Board for England and Wales, ‘MHP0048 – Mental Health in Prison, Written Evidence’, (May 2021) p.2.

²⁷⁵ Criminal Justice Joint Inspection, ‘Neurodiversity in the Criminal Justice System: a Review of the Evidence’, (July 2021) pp. 6-8. The report recommends that a common screening tool for universal use within the criminal justice system should be introduced. Within the report, ‘neurodivergence’ was used as an umbrella term to refer to the group of conditions that fall under the broader category of neurodevelopmental disorders (NDDs). These incorporate learning difficulties and disabilities (LDDs) which generally include: learning disability, dyslexia, dyscalculia, and developmental coordination disorder (DCD, also known as dyspraxia); other common conditions, such as attention deficit hyperactivity disorder (ADHD, including ADD), autism spectrum conditions, developmental language disorder (DLD, including speech and language difficulties), tic disorders (including Tourette’s syndrome and chronic tic disorder); and cognitive impairments due to acquired brain injury (ABI).

²⁷⁶ Skills Funding Agency, ‘OLASS English and maths assessments by ethnicity and learners with learning difficulties or disabilities: participation 2014/15 to 2017/18’, (2018). This is consistent with other estimates although it is recognised that there has not been any formal analysis; see House of Commons, Education Committee, ‘Oral Evidence: Prison Education’, HC86, (8 June 2021), Q147.

²⁷⁷ Skills Funding Agency, ‘OLASS English and maths assessments by ethnicity and learners with learning difficulties or disabilities: participation 2014/15 to 2017/18’, (2018).

“Often have poor experiences when they come into contact with [the criminal justice] systems. There are many reasons for this, including poor understanding of autism amongst professionals as well as challenges with getting adjustments they need to engage in processes. This lack of understanding can cause staff to misinterpret autistic people’s behaviour, resulting in missed opportunities to divert them from the criminal and youth justice systems.”²⁷⁸

- 4.67** Prisoners with certain personality disorders may be unable, or refuse, to engage in any prison activities, programmes and even the parole process itself.²⁷⁹
- 4.68** Many of these individuals will come before the Parole Board. The degree and severity of each individual’s disabilities and capacity to understand and communicate will vary. Some will have benefited from a medical diagnosis; others may remain undiagnosed. Across both groups, such conditions can impact a person’s ability to communicate and engage. Prisoners with learning disabilities or difficulties are more likely than other prisoners to have broken prison rules, they are five times as likely to have been subject to control and restraint, and around three times as likely to report having spent time in segregation.²⁸⁰ This is likely to be a consequence of the fact that prisons’ processes fail to adequately account for such disabilities and difficulties.

Reasonable Adjustments to the Parole Process

- 4.69** The Parole Board is bound by the Public Sector Equality Duty to make reasonable adjustments to the parole process for those with disabilities.²⁸¹ A thorough awareness and appreciation of these conditions is therefore essential.

²⁷⁸ HM Government, ‘The national strategy for autistic children, young people and adults: 2021 to 2026’, (July 2021), p.37.

²⁷⁹ Criminal Justice Joint Inspection, ‘Neurodiversity in the Criminal Justice System: a Review of the Evidence’, (July 2021), pp. 13-14.

²⁸⁰ Nursing Times, ‘Learning disabilities: supporting people in the criminal justice system’, (17 June 2019); J. Talbot, Prisoners’ Voices: ‘Experiences of the criminal justice system by prisoners with learning disabilities and difficulties’, (Prison Reform Trust, 2008), p.6.

²⁸¹ Some examples of reasonable adjustments are listed at para 2.9: The Parole Board for England and Wales, ‘Protected Characteristics’, (June 2020).

- 4.70 Where a prisoner lacks the capacity to participate actively in Parole Board proceedings, they will require a litigation friend to be appointed to act in their best interests in addition to a qualified prison lawyer. The Parole Board Rules 2019 include the power to appoint a litigation friend in such cases.²⁸² However, in most cases, a lack of capacity is identified far too late in the parole process, resulting in *“delay of the parole review, distress to the prisoner and avoidable last-minute activity to ensure a fair and effective parole hearing.”*²⁸³
- 4.71 However, establishing a lack of capacity requires showing that at the material time an individual was unable to make a decision for themselves *“in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain”*.²⁸⁴ Many more individuals will have communication needs that can be accommodated by the appointment of an intermediary and other adaptations, such as adaptations to a venue’s facilities, breaks and the complexity of language used by the panel. Intermediaries are experienced professionals with specific expertise in assessing and facilitating communication. It is unclear to us whether intermediaries have been used during the parole process,²⁸⁵ although the Parole Board’s 2020 guidance for family and friends of prisoners suggests that intermediaries are available.²⁸⁶ As JUSTICE identified in its report *Mental Health and Fair Trial (2017)*, *“too many criminal justice actors are unfamiliar with the range of mental health conditions and learning disabilities that can create vulnerability, nor what to do about them.”*²⁸⁷ In particular, according to Smart (2018), the individual approach of specific Parole Board panels, and especially their understanding

²⁸² Parole Board Rules 2019 10(6); *R (EG) v Parole Board* [2020] EWHC 1457 (Admin).

²⁸³ The Parole Board for England and Wales, *‘MHP0048 – Mental Health in Prison, Written Evidence’*, (May 2021), p.3.

²⁸⁴ S.2 Mental Capacity Act 2005.

²⁸⁵ The Working party understands that the Parole Board Research Governance Group approved a study into the role of intermediaries in parole hearings, which is likely to be published in early 2022. We look forward to considering its findings.

²⁸⁶ The Parole Board for England and Wales, *‘Information for family and friends of prisoners having a parole review’*, (August 2020).

²⁸⁷ JUSTICE, *‘Mental Health and Fair Trial’*, (2017), p.97.

of mental health issues, had a significant bearing on how easily participants with mental health issues felt able to engage.²⁸⁸

4.72 Every release decision will contain a standard set of licence conditions.²⁸⁹ Additional conditions can be requested by the Offender Manager, as well as the victim through their Victim Liaison Officer. The Parole Board has the power to direct licence conditions in determinate sentenced cases and recommend them in indeterminate sentenced cases (however, the SoSJ must accept these recommendations and cannot amend without consultation with the Parole Board, so in effect they are directions).²⁹⁰ The Multi-Agency Public Protection Arrangements (“MAPPA”) framework may also play a role in determining the additional licence conditions for many of those convicted of sexual and/or violent offences. Their requests are made through the Probation Service.

4.73 The Parole Board’s 2018 guidance states:

“In every case the panel must first consider whether the proposed conditions are necessary and proportionate. Article 8 of the European Convention on Human Rights gives a qualified right to private and family life. Any condition on a licence has the potential to breach that right

²⁸⁸ S. Smart, ‘Too many bends in the tunnel? Women serving indeterminate sentences of imprisonment for public protection – what are the barriers to risk reduction, release and resettlement?’, (The Griffins Society, 2018), p.42.

²⁸⁹ A prisoner must: (a) be of good behaviour and not behave in a way which undermines the purpose of the licence period; (b) not commit any offence; (c) keep in touch with the supervising officer in accordance with instructions given by the supervising officer; (d) receive visits from the supervising officer in accordance with instructions given by the supervising officer; (e) reside permanently at an address approved by the supervising officer and obtain the prior permission of the supervising officer for any stay of one or more nights at a different address; (f) not undertake work, or a particular type of work, unless it is approved by the supervising officer and notify the supervising officer in advance of any proposal to undertake work or a particular type of work; (g) not travel outside the United Kingdom, the Channel Islands or the Isle of Man except with the prior permission of the supervising officer or for the purposes of immigration deportation or removal. *See*, The Parole Board, ‘Licence Conditions and how the Parole Board use them’, (March 2019); The Parole Board, ‘Parole guidance on setting licence conditions’, (August 2018), para 5; and The Ministry of Justice, ‘Managing Parole Eligible Offenders on Licence Policy Framework’, (Nov 2020).

²⁹⁰ Pursuant to the Criminal Justice Act 2002, the Secretary of State for Justice must have regard to (1) the protection of the public; (2) the prevention of reoffending, and (3) the securing of the successful re-integration of the prisoner into the community when setting licence conditions.

unless it is both necessary to manage the risk AND proportionate to the risk it is intended to manage.”²⁹¹

- 4.74 As explained above, there is currently no data or research on how protected characteristics, including disabilities, affect the types of licence condition(s) that the Parole Board imposes on prisoners.

Duties and Training

- 4.75 The Equality Act 2010 does not prescribe any particular outcome but places a duty on public authorities to have ‘due regard’ to the public sector equality considerations when making decisions. These are: (i) eliminating discrimination, harassment, and victimisation; (ii) advancing equality of opportunity between people who share a protected characteristic; and (iii) fostering good relations between those with a protected characteristic and those without it.²⁹² It recognises that compliance with these duties does not mean treating everyone the same and will involve taking steps to meet the needs of people from protected groups and minimising the disadvantages suffered by them.
- 4.76 The Parole Board, like the wider criminal justice system, is not immune to cultural and religious insensitivities. For instance, the Working Party considers that the Parole Board’s focus on diversity places considerable emphasis on recruitment, while neglecting both retention and outcomes (decision-making). We have heard of frequent and “*frightening*” instances of a lack of cultural understanding informing panel member’s questioning, notwithstanding the overall diversification of its membership. Issues of bias should be raised during proceedings; however, it can be difficult for prisoners and their representatives to raise issues of bias regarding panel members, or more generally, for fear of damaging their own/their client’s case.
- 4.77 The Working Party has considered the Parole Board’s existing training programmes.²⁹³ With respect to equality and diversity, we note that Parole Board members must complete an e-learning course in ‘Equality and Diversity

²⁹¹ The Parole Board, ‘[Parole guidance on setting licence conditions](#)’, (August 2018), para 5.

²⁹² Equality Act 2010, s. 149(1).

²⁹³ Parole Board, ‘*Compulsory learning within 12 months from 1 April 2021*’, (July 2021). The Working Party is grateful to the Parole Board for providing this information.

and Information Assurance Training.’ The training also includes a mandatory training session on the Terrorism Act 2000 (“TACT”), along with a ‘TACT (Extremism) Training’ session aimed at TACT specialist members only. It is unclear to us whether this training challenges the risk of bias and the adoption of stereotypes in such cases.

- 4.78 The total amount of equalities training appears to be a mere 2 hours and 20 minutes a year (1 hour video, 50 minutes learning, and 30 minutes reading), although we recognise that a number of voluntary learning and development opportunities are also provided.²⁹⁴ Moreover, there does not appear to be any specific training covering those with specific vulnerabilities (such as mental health and neurodiverse conditions, and children), nor on communication styles with respect to those specific groups. This issue is echoed by the Tailored Review, which recommended that *“further consideration should be given to the training and support needs of Members to ensure that they are able to deal with racial and cultural issues in both a confident and sensitive manner.”*²⁹⁵
- 4.79 The Working Party agrees and considers that this is a deficiency which requires urgent remedy given the scale of racism and bias across the criminal justice system. It is worth noting that if the Parole Board were to be transformed to a tribunal it would be appropriate for the training of the Parole Tribunal members to fall under the remit of the Judicial College making them subject to the Judicial College training programmes and the Equal Treatment Benchbook.

Difficult Conversations

- 4.80 The Working Party considers that ensuring Parole Board members have the confidence to raise concerns about fellow members is crucial to ensuring high

²⁹⁴ The Parole Board informed the Working Party that in the year 2020/21 the following learning and development opportunities took place: two sessions on black experiences, both 90mins (June / July 20); Procedural justice, 90mins (Aug 20); Diversity and unconscious bias, 90mins (Sept 20); “A Service Users’ Journey – through a D&I Lens”, 75mins (Member Conference Nov 20); Transgender prisoners, 90mins (Mar 21); Restorative justice, 90mins (June 21); and Diversity and Inclusion week (Sept 21, secretariat only). The Parole Board further notes that all new policy releases coincide with Legal and Practice Q&A where members get to ask questions. Sessions scheduled for 2022/23 include: Trauma informed practice; Neurodiversity; Dementia in prison; Disability in prison; Vulnerable witness questioning; and Drug and Alcoholism.

²⁹⁵ Ministry of Justice, ‘*Tailored Review*’, (The Parole Board for England and Wales), (October 2020), p.12.

quality decision-making. The Parole Board already runs some initiatives to help promote reflective practices as well as quality assurance:

Reflective Practice Forum

*The Board has created a forum for Members to engage in small groups to reflect on their experiences and share best practice. We recognize the often-challenging nature of the work that you undertake; the information, the environments, the emotions evoked in hearings, and the weighty and impactful decisions that need to be made.*²⁹⁶

(Forum planned to run in March, May, July, September, November 2021)

Peer led Quality Assurance

*“The Parole Board operates two systems of peer led quality assessment, which is a two-way process between the assessor and the member being assessed. This is to help ensure that, in conducting MCA panels and oral hearings, members meet the required standard of performance...As a member undergoing MCA QA (quality assessment) or practice observation, you will receive feedback about your participation and can be involved in agreeing a report which records the overall effectiveness of your performance.”*²⁹⁷

- 4.81 We welcome the fact that the Parole Board encourages its members to reflect on their own practices as well as to undergo peer assessment.²⁹⁸ However, as a result of conversations with consultees, the Working Party remains concerned that there is insufficient support available for Parole Board members who are willing to have 'difficult conversations' with their colleagues when they see an issue in their practice. A renewed focus on this aspect of professional development is, in our view, warranted.

²⁹⁶ The Working Party is grateful to the Parole Board for providing this information.

²⁹⁷ The Parole Board for England and Wales, ‘[Quality Assurance Guidance](#)’, (October 2020), p.3. The Working Party also understands that there will be a review of this between 2020-22, *see*, The Parole Board for England and Wales, ‘[Strategy 2020 to 2022 and 12 Month Business Plan](#)’, (May 2020), p.6.

²⁹⁸ The Working Party understands that the Parole Board has in place a Member Administrative Policies and Processes guidance, as well as a New Member Standards and Conduct Policies, both of which were launched in early 2021.

4.82 We therefore recommend that the Parole Tribunal (including members, case managers and secretariat staff) should undergo thorough and regular training on the following areas:

- a. equality and diversity, including cultural awareness training;**
- b. vulnerable people, including those with mental health and neurodiverse conditions, and children;**
- c. communication styles;²⁹⁹ and**
- d. having “difficult conversations” as well as “constructive conversations” about the quality of decision-making.**

Complaints System

4.83 The Working Party has heard that the only way currently to provide feedback on the parole process is via the formal complaints’ mechanism.³⁰⁰ This includes complaints about *“poor service, which may include concerns about delay, discourtesy or a failure to follow proper procedures.”*³⁰¹ In the year 2019/20, there were 122 complaints. The most common issues cited related to delays and member practice (i.e., the way in which a member conducted themselves).³⁰²

4.84 A formal complaint is made by filling in a complaints form which is found on the Parole Board’s website. Once a complaint is submitted, an individual should receive an acknowledgement of their complaint by the Parole Board’s Complaints Officer within seven days. The Complaints Officer will assign the complaint to the appropriate manager within the Parole Board and this individual will carry out an investigation that ought to take four to six weeks. As part of this investigation, the Parole Board website notes that it will usually

²⁹⁹ It is noted that the Faculty Induction Seminar provided by the Judicial College includes information on communication styles, vulnerability, bias and mitigation strategies, use of the Equal Treatment Bench Book, judicial conduct and ethics. The Working Party would recommend such topics to also be covered in the training for Parole Board members. See The Judicial College, *‘The Prospectus 2020-21’*, (October 2019), p.52.

³⁰⁰ See, The Parole Board for England and Wales, *‘Complaints Procedure’*.

³⁰¹ *Ibid.*

³⁰² There were 53 complaints related to delays and 52 complaints concerning member behaviour. 26 of the 122 complaints were upheld and 41 not upheld whilst 55 were outstanding. See, The Parole Board for England and Wales, *‘Parole Board for England and Wales Annual Report & Accounts 2019/20’*, July 2020, p.26.

be necessary to speak to the individual about whom the complaint is made. If the investigation is concluded within four to six weeks, the Complaints Officer will send a reply to the complainant explaining the outcome of their complaint, any further measures that are being taken and information about what the complainant can do next if they are not satisfied with the outcome.³⁰³

- 4.85 If, at the end of this process the complainant is not happy with the outcome, they can write to the Senior Complaints Reviewer and ask for a review. This must be done within twenty days of the outcome of the complaint. The Senior Complaints Reviewer is an independent, Non-Executive Member of the Parole Board's Management Committee. If an individual is still not happy with the outcome of a complaint it can be taken to the Parliamentary and Health Service Ombudsman, who has the power to investigate.³⁰⁴ Thereafter, an individual would need to judicially review a decision if they remained dissatisfied.³⁰⁵ The Working Party has two key concerns with the existing feedback framework.
- 4.86 First, until recently, the complaints system was limited to formal complaints, which did not afford opportunities for individuals to provide more informal feedback as to the processes of the Parole Board. The introduction, in July 2021, of a new informal feedback process is a welcome development, although an appropriate level of scrutiny must be applied as to how it operates in practice, both in terms of outcomes for individuals and action on the part of the Parole Board itself. We consider, for example, that participants should be directed to this route as a matter of course after engaging in the parole process.³⁰⁶
- 4.87 Secondly, with respect to discrimination, the Working Party is concerned that there may be a general lack of cultural and religious understanding within the Parole Board. When incidents are taken forward as complaints, those reviewing the complaints may fail to understand the relevant circumstances.

³⁰³ See, The Parole Board for England and Wales, '[Complaints Procedure](#)'.

³⁰⁴ Complaints cannot be made directly to the Parliamentary and Health Service Ombudsman but must be referred through an individual's Member of Parliament. The Ombudsman can investigate complaints of maladministration and make recommendations.

³⁰⁵ The Working Party understands that in the year 2019/20, two complaints were escalated to the Senior Complaints Reviewer (one was not upheld and the other partially upheld). The Parole Board received no complaints via the Parliamentary and Health Service Ombudsman.

³⁰⁶ The Parole Board for England and Wales, '[Feedback and Complaints](#)'.

For example, consultees reported that despite a number of complaints relating to discrimination and racism being made no one was aware of any being upheld.³⁰⁷ The Parole Board does not publish data on how many complaints relating to member conduct concern discrimination. We are also aware, as was highlighted by the Tailored Review (2020),³⁰⁸ that many prisoners do not want their representative to raise a complaint out of fear that it will impact their case. Martin Jones, in his evidence, told us that the complaints procedure was soon to be changed and we would welcome these concerns to be considered as a part of its reformulation.

4.88 The Working Party recommends that the Parole Board should:

- a) collect data on, and publish, outcomes, including licence conditions broken down by protected characteristics; and**
- b) review its current complaints system, with specific attention given to complaints under the Equality Act 2010, so as to ensure that there are both formal and informal ways of raising complaints and feedback on potential issues and concerns. The findings of this review should be published.**

³⁰⁷ The Working Party understands from the Parole Board that, at present, most complaints about discriminatory conduct are from professional witnesses regarding their treatment by the panel. In addition, it is surprising that there is no record of any complaints that concern discrimination or racism against prisoners.

³⁰⁸ *“The review team did however receive concerning feedback from some offender representatives that offenders were reluctant to make complaints about the conduct of Members at hearings as they were concerned that this might either be held against the individual or against the representative at future hearings. This suggests that the complaints process could be more transparent and that the Parole Board could more proactively seek formal feedback from its stakeholders, on top of the engagement it already has with the Parole Board User Group. It should also ensure that its whistleblowing policy is communicated to its staff and members, and it should be routinely reviewed to ensure it is accessible, effective and that users have confidence in its application” - see Ministry of Justice, “Tailored Review”, (The Parole Board for England and Wales, October 2020), p.40.*

V. EFFECTIVE REHABILITATION

“There is no doubt that rehabilitation should be one of the main purposes of prisons, yet too many prisoners were locked up with too little to do before the pandemic and the situation became much worse this year, even in training prisons.”
HMPPS Annual Report 2020/21³⁰⁹

Introduction

- 5.1** The law provides specific justifications for imprisoning an individual.³¹⁰ These include the well-known aims of punishment, deterrence from further criminal activity, public protection and so forth. However, of equal significance is ‘reform and rehabilitation’, which suffers from serious neglect at all stages a prisoner’s journey through the system. While there are many reasons for this neglect, there remains a common yet often flawed assumption on the part of decision makers that incarceration alone offers a meaningful response to the causes of an individual’s interaction with the criminal justice system.
- 5.2** There are many facets to the term ‘rehabilitation’. One study breaks the concept into four forms: psychological, judicial, social, and moral.³¹¹ In the current parole system there is significant emphasis on the responsibility of the individual to reform (i.e., ‘psychological’ rehabilitation). However, we consider that it is equally important to focus on a wider range of factors, such as the existence of support networks, housing, welfare, and so on.
- 5.3** Multiple studies and a wealth of evidence indicate that the more effective responses to criminal behaviour involve rehabilitative initiatives, preferably

³⁰⁹ HM Chief Inspector of Prisons for England and Wales, ‘[Annual Report 2020-21](#)’, 20 July 2021, p. 8.

³¹⁰ S. 57 of the Sentencing Act 2020 sets out the statutory purposes of sentencing.

³¹¹ McNeil describes each type of rehabilitation as follows: Psychological represents “*correctional rehabilitation that seek to somehow change or restore the offender; to develop new skills or abilities, to address and resolve deficits or problem*”; judicial means “*how and to what extent a criminal record and the formal stigma that it represents can ever be set aside, sealed or surpassed*”; Moral and social meaning reparation that “*speaks to the insistence that moral demands have to be satisfied, and moral communication secured, before moral rehabilitation can be recognised* (Duff, 2001, 2003, 2005). In simple terms, an offender has to ‘pay back’ or to ‘make good’ before s/he can ‘trade up’ to a restored social position as a citizen of good character (McNeill and Maruna, 2010)” - see McNeill, Fergus, ‘*Punishment as rehabilitation*’. In: Bruinsma, Gerben and Weisburd, David (eds.), *Encyclopaedia of Criminology and Criminal Justice*. Springer, New York, (2014), pp. 4195-4206.

carried out in the community. Within prisons at this time, initiatives aimed at addressing the causes of criminal behaviour are often disappointingly lacking. When an individual comes before the Parole Board, it is too late to address the underlying drivers that brought them to prison. Effective rehabilitation involves looking forward and seeking to ensure that the circumstances which led to the original offence have changed or can at least be effectively managed in a community setting. The parole system can play a significant role.

- 5.4 This chapter focuses on the ways in which the parole system considers an individual's rehabilitative potential through, for example, sentence planning and recategorization; the provision of OBPs; education and training; risk assessment tools; licence conditions; and access to quality accommodation upon release. Equally important, however, is what the system does not currently consider; namely, the damage that continued incarceration can have on individuals who remain in prison and the other pointers towards 'rehabilitation' which are often ignored. The recommendations below therefore seek to bolster existing programmes that work, scrutinise those which do not, and place rehabilitation at the heart of the parole process.

Impact of Continued Detention on Chances of Rehabilitation

- 5.5 The Parole Board considers many factors that help its assessment of an individual's suitability for release, such as engagement on OBPs, behaviour while in prison, and psychological assessments indicating a more manageable risk profile. However, the potentially detrimental impact of incarceration is ignored. What should the Parole Board do where continued imprisonment results in the worsening of an individual's risk profile, where prison itself offers a criminogenic environment?³¹² Examples of the factors that can worsen the risk profile of an individual while in prison include:

- a) **Overcrowded prisons.** In practice those in prison have less privacy, less access to resources, and fewer opportunities to engage in rehabilitative activities. The World Health Organization has noted that overcrowding

³¹² See, for example, Annison's conceptualisation of the "*iatrogenic—the harmful and counter-productive—effects of indeterminate detention*". H. Annison, 'Tracing the Gordian Knot: Indeterminate-Sentenced Prisoners and the Pathologies of English Penal Politics', *The Political Quarterly*, Vol. 89, No. 2, April–June 2018, p.199.

can “*have negative effects on mental health*”.³¹³ It clearly diminishes the opportunities for prisoners to make any meaningful progress towards rehabilitation.

- b) **Lack of educational or training provision.** The ability to undertake meaningful and productive activities in prison is essential for two reasons. Firstly, it equips an individual for life in the community upon release, not least with respect to employment opportunities. Secondly, it helps prevent boredom and restlessness for those in prison. Chronic boredom can lead to feelings of depression and hopelessness for those detained.³¹⁴
- c) **Poor healthcare.** In the year to June 2021 396 people died in prison custody, representing an increase of 34% over the previous year.³¹⁵ Self-harm, mental ill health, and a general sense of despondency are all endemic. It is no surprise then that drug use is common, and addiction can result directly from serving time in prison as well as being exacerbated by it.³¹⁶

5.6 Significant cuts to the Ministry of Justice’s budget over the past decade have undoubtedly negatively impacted the criminal justice system. However, it is important not to exaggerate the impact of courses. When Sir Martin Narey, the first CEO of the National Offender Management Service, reflected on a period of higher investment he noted improvements to literacy and numeracy, and some falls in reoffending. However, this was only “*by a very small amount.*” He continued that:

“For most people incarcerated during that period, when finances were not remotely the obstacle they’ve become today, the things we did to

³¹³ The World Health Organization, ‘[Information Sheet: Mental Health and Prisons](#)’.

³¹⁴ HM Chief Inspector of Prisons for England and Wales, ‘[Annual Report 2020-21](#)’, 20 July 2021, p. 7, notes that “[i]t was understandably difficult for prisons to deliver full programmes of education, training and rehabilitation during COVID-19, but we have found poor outcomes in purposeful activity and failures in rehabilitation and release planning for many years, and the slow pace in some establishments in re-establishing these services has exacerbated that issue”.

³¹⁵ ‘National Statistics, ‘[Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to June 2021, Assaults and Self-harm to March 2021](#)’, gov.uk., 29 July 2021.

³¹⁶ HM Inspectorate of Prisons and the Care Quality Commission, ‘[Social care in prisons in England and Wales: a thematic report](#)’, October 2018.

*prisoners, the courses we put them [on] including those which involved charities, made little or no difference”.*³¹⁷

- 5.7 Recent assessments of rehabilitation in prison also cast doubt on the possibility of positive progress. One study noted a prisoner’s powerful reflection that *“[t]he prison still does not do anything to put you in a position where you should be, especially if you’ve done such a long time [... Prisoners] come out and they’re in a worse position than they were when they come in. They haven’t got their house no more. They haven’t got a job and they’re out there thinking, ‘How am I going to survive?’”*³¹⁸
- 5.8 By contrast, positive factors that can decrease the likelihood of reoffending include *“strong family and relationship ties, sobriety, having stable and satisfying employment, being hopeful about the future and being able to give something back to others/contribute towards society in some way”*.³¹⁹ These elements are notably much easier to achieve in the community and are likely to continue to deteriorate the longer someone remains incarcerated.
- 5.9 The benefits of effective rehabilitation are felt beyond the prisoner and their family. As discussed in **Chapter 4**, the Working Party has heard that victims are often let down by the inadequate provision of information regarding the progress that a prisoner has made towards rehabilitation. Victims are not well served by a system that leaves individuals unreformed and no better equipped to lead a crime free life than when they first entered the criminal justice system. High rates of recidivism result in fresh victims and an ever-growing prison population.
- 5.10 A question then arises as to the value of continued incarceration, particularly where an individual has served the punitive portion of their sentence and is entitled to seek release from the Parole Board. It is clear, therefore, that much more needs to be done to facilitate successful release. However, the negative

³¹⁷ ‘Address to the Annual Conference of the International Corrections & Prisons Association’, prisons.org.uk (see also ‘Courses don’t work, former prisons chief admits’, *insidetime*, 18 November 2019).

³¹⁸ Bullock and Bunce, ‘The prison don’t talk to you about getting out of prison’: On why prisons in England and Wales fail to rehabilitate prisoners’, *Criminology & Criminal Justice* 2020, Vol. 20(1), p.117.

³¹⁹ *Ibid*, p.113.

impact that continued incarceration too often represents for individuals should also be a factor of consideration for the Parole Board. There is, therefore, an urgent need to reassess how time spent in prison is considered within the wider context of parole decision-making.

- 5.11 The Working Party therefore recommends that the Parole Tribunal, when considering the risk that an individual poses, should be empowered to consider the impact of continued detention on their chance of rehabilitative success.** In making such an assessment, the Parole Tribunal should take into account factors such as access to education, training, employment, and healthcare services both within prison and in the community.

Improving Sentence Progression

- 5.12** An individual in prison is dependent on a number of administrative processes that can determine their access to key tools for rehabilitation, and consequently the pace at which they can progress through the system. These include, for example, the availability of courses, treatments, and vocational/educational opportunities. Likewise, other than progression to open conditions (which can occur at the Parole Board’s recommendation), the category of prison in which an individual is held remains entirely within the gift of the executive. Access to such opportunities is also entirely dependent on the capacity and/or discretion of the executive (through HMPPS). At present, many prisoners are left waiting a significant amount of time to undertake programmes that could make an important difference for their prison journey.³²⁰ Her Majesty’s Inspectorate of Prison’s most recent annual report highlights the consequences of a failure to meet these needs, noting:

“The lack of access to offender management programmes, education, resettlement planning and family visits means that in the last year, many prisoners have been released without some of the core building blocks

³²⁰ “In the last year leaders have had to make difficult decisions about staffing and services. This has meant that many prisoners have been denied the opportunity to get onto programmes that were part of their sentence plan and have therefore been unable to progress to a lower category prison or to a successful parole hearing” – see HM Chief Inspector of Prisons for England and Wales, ‘[Annual Report 2020-21](#)’, 20 July 2021, p.8.

*that will help them to lead successful, crime-free lives. This may increase the risk that more will continue to offend”.*³²¹

- 5.13 Individuals who are subject to a community order or a custodial sentence (where the offender will be supervised on licence on release) are required to have an assessment of their criminogenic needs³²² and associated risks, and a sentence plan.³²³ A sentence plan identifies the activities that a prisoner should complete while in prison and on licence and should be reviewed regularly and whenever there is a change of circumstances. It is the product of any evidence for the reduction and manageability of risk. Completion of, and engagement in, the sentence planning process is important in applications for downgrades in category status, and for release on temporary licence (“**ROTL**”).
- 5.14 The category of prison can have a meaningful impact to an individual’s successful rehabilitation. The High Court acknowledged this in *Gill*, where the Parole Board considered good behaviour following a move to a lower category prison to be evidence of a reduction in risk.³²⁴ Equally, inappropriate prison placement can have the opposite effect. For instance, the Parole Board has expressed concern that some IPP prisoners are not being held in the most appropriate place to ensure that they are able to progress effectively.³²⁵ Currently, the Parole Board is empowered to recommend that a prisoner move to open conditions (either at the MCA stage or at the oral hearing, or both, depending on the type of sentence).³²⁶ The Working Party considers that there

³²¹ *Ibid*, p.9.

³²² Criminogenic needs are the dynamic risk factors (e.g. “biological, personal, interpersonal, situational, and social variables”) that are used in a predictive manner for potential criminal behaviour. See Bonta, James., Andrews, D.A.. *The Psychology of Criminal Conduct*. United Kingdom: Taylor & Francis, 2016, p.29.

³²³ Her Majesty’s Prison and Probation Service and the Ministry of Justice, ‘Prison Service Instruction 29/2014’, (5 October 2015).

³²⁴ *Gill* [2010] EWHC 364 (Admin), para 6.

³²⁵ “A small number are in the high security estate (category A), and 21% are in category B prisons where there may be less support for rehabilitation work (accepting that some category B prisoners may be held in a training prison with this security classification). Over half in the male estate are currently classified as category C prisoners where current policy severely restrict the use of release on temporary licence (ROTL) for IPP sentence prisoners to be tested in the community”, see HM Inspectorate of Prisons, ‘Unintended consequences: Finding a way forward for prisoners serving sentences of imprisonment for public protection’, (2016), p.47.

³²⁶ The Parole Board, ‘The Parole Board Decision-Making Framework’, October 2019, pp. 12-14.

is great value in providing external oversight in the form of the Parole Board for sentence progression. We are therefore deeply concerned that the Government's root and branch review may recommend the removal of this power.³²⁷

- 5.15 Furthermore, according to HM Inspectorate of Prisons, over half of those in the male estate are in Category C prisons, where “*current policy severely restrict the use of release on temporary license (ROTL) for IPP sentence prisoners to be tested in the community*” despite the Parole Board's view “*that ROTL provides opportunities for prisoners to demonstrate reductions in risk, and to participate in activities which support rehabilitation and progression back to the community, so it therefore assists them in making decisions about release.*”³²⁸ As the completion of successful ROTL can be a critical factor in securing release, it follows that policy should be adapted to allow more prisoners to move to Category D prisons (so they can be given ROTL).
- 5.16 According to Padfield, “*the decision to recommend transfer to open conditions was to some more crucial than the decision to release, which could flow automatically from a period in open conditions*”.³²⁹ The Working Party notes that effective sentence planning, and the ability for many prisoners to secure ROTL, is also impeded by the poor distribution of Category D prisons, and by overcrowding. For example, while HMP Hewell currently holds 813 prisoners despite having a capacity of 1,278, HMP Spring Hill holds 412 prisoners

³²⁷ The Ministry of Justice, when asked, was not able to confirm that the power to recommend would stay with the Parole Board.

³²⁸ HM Inspectorate of Prisons, ‘Unintended consequences: Finding a way forward for prisoners serving sentences of imprisonment for public protection’, (2016), p.47; “*The prison system has evolved in recent years to the point where this testing through ROTL usually only happens in open prisons, but subject to risk assessment, prisoners who are category C can be considered for ROTL. However, as Figure 13 shows, since 2013–14 the number of ROTL incidents taking place in both category C training establishments and open establishments has declined*”.

³²⁹ N. Padfield, ‘Parole Board oral hearings 2016 – exploring the barriers to release. Avoiding or managing risks? Report of a pilot study’, (University of Cambridge, 2017), p.42.

despite only having a capacity of 335.³³⁰ Most other Category D prisons are operating at-capacity.³³¹

Offending Behaviour Programmes

- 5.17 OBPs aim to change the way prisoners think or behave.³³² Participation in OBPs is not compulsory, though they are often treated as a crucial tool for the Parole Board when assessing an individual's level of risk. The Ministry of Justice introduced an accreditation system for OBPs in 1996. Courses are delivered by prison officers, probation officers, and psychologists.
- 5.18 The completion of an OBP is frequently identified as proof of successful rehabilitation. Those who have not completed OBPs may be perceived to be less ready for release. In a decision against release in 2006, the Parole Board stated that *"without participation in accredited offending behaviour programmes, risk reduction cannot be measured"*.³³³ Practice has since developed, as evidenced in a 2009 decision where the Parole Board noted *"[i]n the absence of evidence of a reduction in risks through the completion of programmes aimed at addressing your offending behaviour the Panel must look elsewhere for evidence of change"*.³³⁴
- 5.19 Nevertheless, the High Court in *Gill* observed that it was not uncommon for OBPs to be regarded as a *"requirement"* to demonstrate risk reduction before the Parole Board.³³⁵ This is despite the fact that *"offending behaviour programmes are neither a necessary nor sufficient condition for release from prison. There are other recognised pathways to reduce re-offending and to achieve release."*³³⁶ The Parole Board's overreliance on the completion of

³³⁰ Ministry of Justice, 'Prison population: 31 March 2021', (29 April 2021), Table 1_8.

³³¹ HMP Hollesley Bay currently holds 438 prisoners with a capacity of 434; HMP Thorn Cross holds 311 prisoners with a capacity of 321, HMP Hatfield holds 245 with a capacity of 266; and HMP Leyhill holds 488 with a capacity of 526.

³³² S. Creighton, 'Offending behaviour programmes', *LexisNexis*.

³³³ *Gill* [2010] EWHC 364 (Admin), para 66.

³³⁴ *Ibid*, para 6.

³³⁵ *Ibid*, para 39. See also *R (Wells) v Parole Board* [2009] UKHL 22, para 26 and 36.

³³⁶ *Gill* [2010] EWHC 364 (Admin), para 80.

OBP to evidence reduced risk is therefore problematic for a number of reasons.

5.20 First, many prisoners face barriers in accessing OBPs. As the Sainsbury Centre for Mental Health noted as long ago as 2008, “*prison overcrowding has meant that many have had to join lengthy waiting lists for programmes and waits often exceed the prisoner’s tariff*”.³³⁷ Since then, prison overcrowding and resource problems due to chronic underinvestment have worsened. In 2016, HM Chief Inspector of Prisons identified “*delays in accessing OBPs as a recurring theme when looking at why many IPP prisoners have failed to progress*”.³³⁸ By 2019-20 the Ministry of Justice budget was 25% lower than in 2010-11.³³⁹ The COVID-19 pandemic exacerbated the issue further, as the introduction of the quarantine regime in prisons in March 2020 meant that the Ministry of Justice placed all OBPs and sentence planning on hold.³⁴⁰ Recent data indicate that the number of rehabilitative courses that prisoners started and completed fell considerably – by 62% – between 2009 and 2019, despite the overall increase in custodial population.³⁴¹

5.21 Second, for some prisoners with complex needs, such as learning difficulties or mental health problems, mainstream OBPs are not considered appropriate or sufficient to reduce risk. The Centre for Mental Health estimated that “*45% of adults in prison have anxiety or depression, 8% have a diagnosis of psychosis, and 60% have experienced a traumatic brain injury*”.³⁴² It is important, then, for schemes such as OBPs to be fully adapted to the needs of users. For example, conditions such as depression and anxiety can have an

³³⁷ Sainsbury Centre for Mental Health, ‘A review of the use of offending behaviour programmes for people with mental health problems’, (2008), p.5.

³³⁸ HM Inspectorate of Prisons, ‘Unintended consequences: Finding a way forward for prisoners serving sentences of imprisonment for public protection’, (2016), p.37.

³³⁹ G. Sturge et al., ‘The spending of the Ministry of Justice’, (House of Commons Library, 2019), p.2.

³⁴⁰ Prison Reform Trust, ‘Covid-19 Action Prisons Project: Tackling Innovation, Valuing Experience: How prisons are responding to Covid-19, Briefing 2: Regimes, reactions to the pandemic and progression’, (October 2020), p.2.

³⁴¹ E. Allison and J. Grierson, ‘England and Wales prisoners taking fewer rehabilitation courses’, *The Guardian*, 17 May 2021.

³⁴² Dr. G Durcan, ‘The future of prison mental health care in England’, *Centre for Mental Health*, 25 June 2021.

impact on a prisoners' motivation to participate effectively.³⁴³ Recently, a Criminal Justice Joint Inspection (2021) found that there are "*a limited number of accredited programmes available for use within HMPPS for the general offender population, and only a very few of these have been adapted or targeted specifically at neurodivergent individuals*".³⁴⁴ Given the absence of high quality and easily-accessible mental health care, coupled with lengthy waiting lists to access, it is all the more striking that there is such a meagre selection of neurodivergent-appropriate OBPs or indeed bespoke one-to-one sessions with a suitably trained specialist.³⁴⁵

5.22 Thirdly, the Parole Board's focus on OBPs might in practice play a role in reducing their efficacy. A 2004 Home Office study identified motivation as a "*key factor in producing positive treatment outcomes*".³⁴⁶ The fact that the waiting lists for these programmes are organised by parole date³⁴⁷ has contributed to the common misperception amongst prisoners that completing OBPs is simply a 'tick-box' exercise in order to become eligible for parole, rather than addressing offending behaviour.³⁴⁸ Clearly this is counterproductive.

5.23 Finally, OBPs do not always produce the expected results.³⁴⁹ There are many reasons for this, including the irrelevance of the OBP's content to some prisoners' needs, the lack of skilled facilitators and inappropriate 'pitching' of the programme (insufficiently stimulating, or too demanding).³⁵⁰

³⁴³ Sainsbury Centre for Mental Health, 'A review of the use of offending behaviour programmes for people with mental health problems', (2008), p.8.

³⁴⁴ Criminal Justice Joint Inspection, 'Neurodiversity in the Criminal Justice System – a review of evidence', (15 July 2021), p.51.

³⁴⁵ *Ibid.*, p.52.

³⁴⁶ A. Clarke, R. Simmonds and S. Wydall, 'Delivering Cognitive Skills Programmes in Prison: A Qualitative Study', (Home Office Findings Online Report 27/04, 2004), p. vii.

³⁴⁷ *Ibid.*

³⁴⁸ Sainsbury Centre for Mental Health, 'A review of the use of offending behaviour programmes for people with mental health problems', (2008), p.7.

³⁴⁹ D. Clark, 'Therapy and offending behaviour programmes', in J. Harvey and K. Smedley, 'Psychological Therapy in Prisons and Other Settings', (2010), p.247.

³⁵⁰ *Ibid.*

- 5.24 In certain cases, OBPs have been found to increase the risk of offending in some individuals. For example, according to a Ministry of Justice study into the Core Sex Offender Treatment Programme (“SOTP”), those who completed the programme were 2% more likely to re-offend compared to those who did not attend the programme.³⁵¹ This programme continued to be used until 2017 despite the findings which showed that the SOTP increased the likelihood of reoffending being presented to the Ministry of Justice in 2012.³⁵² Similarly, research on the Offender Personality Disorder Pathway programme found that prisoners who completed this programme had a higher proven reoffending rate than prisoners who did not participate.³⁵³
- 5.25 The Working Party considers that the Parole Board does not consistently interpret evidence gained from prisoner participation in OBPs. Given that completion of an OBP is often treated as important evidence of change, it seems to us a strong possibility that many prisoners are unfairly being kept in prison longer than necessary, despite potentially being able to demonstrate evidence of change through other aspects of prison life. For instance, we have been offered examples of prisoners learning key skills working on the servery or in the canteen which are not necessarily given much weight by those who supply reports on prisoners. We consider that the extent to which OBPs should be used as a key tool for assessing rehabilitation, and therefore instrumental in the Parole Board’s release decisions, must be swiftly and seriously reviewed. We consider that less emphasis should be placed on the completion of OBPs. Instead, the Parole Board should consider the specific characteristics of a prisoner when deciding what is meaningful evidence of change. For example, the Court in *Gill* held that the prisoner’s improvement in behaviour, consistent provision of negative drug tests, and the ability to retain a job in the kitchen where he had access to hot water and knives was sufficient evidence of change.³⁵⁴

³⁵¹ A. Mews, L. Di Bella and M. Purver, ‘Impact evaluation of the prison-based Core Sex Offender Treatment Programme’, (Ministry of Justice Analytical Series, 2017), Table A.8, p.50.

³⁵² D. Shaw, ‘MoJ used failed sex offender treatment ‘unlawfully’’, *BBC*, 16 July 2019.

³⁵³ The Working Party is concerned that while this study was completed in 2018, the Ministry of Justice has still not published the results. See P. Sullivan, ‘Offender Personality Disorder Pathway: FOI 210526018’, *whatdotheyknow.com*, 26 May 2021.

³⁵⁴ *Gill* [2010] EWHC 364 (Admin), para 6.

Academic and Vocational Education

5.26 According to the Parole Board Decision Making Framework, a prisoner's educational and vocational achievements can be evidence of change.³⁵⁵ Many prisoners enter the system with a poor educational history. Over 60% possess English and maths skills below that of someone aged eleven,³⁵⁶ and 40% were permanently excluded from school.³⁵⁷ Prisoners who take any form of learning activity have a significantly lower re-offending rate on release from prison than those who do not.³⁵⁸ This includes participation in basic skills programmes, such as help with applying for jobs, home maintenance and budgeting, as well as GCSE programmes.³⁵⁹ One potential explanation may be that since undertaking learning activities is usually voluntary, as opposed to the mandatory OBPs, participation in such activities demonstrates a desire to change. However, the current provision of education in prison needs great improvement. According to a 2016 review of Education in Prison, Ofsted's 'Overall Effectiveness' judgments showed that 27 prisons 'required improvement' and seven were 'inadequate'. Only two prisons were 'outstanding'.³⁶⁰ Furthermore, as many prisoners have complex educational needs,³⁶¹ provision of high-quality tailored courses is necessary to achieve the best rehabilitative outcomes.³⁶² The Working Party welcomes the Government's announcement of plans to create a Prison Education Service

³⁵⁵ The Parole Board, 'The Parole Board Decision-Making Framework', October 2019, p.18.

³⁵⁶ Department for Education, 'OLASS English and maths assessments: participation 2017/18', (December 2018).

³⁵⁷ K. Williams, V. Papadopoulou, and N. Booth, 'Prisoners' childhood and family backgrounds', (Ministry of Justice Research Series 4/12, March 2012).

³⁵⁸ Ministry of Justice and Department of Education, Exploring the outcomes of prisoner learners: analysis of linked offender records from the Police National Computer and Individualised Learner Records (27 July 2017), p. 2.

³⁵⁹ *Ibid*, p. 6.

³⁶⁰ S. Coates, 'Unlocking Potential, a review of education in prison', (Ministry of Justice, May 2016), p. iii.

³⁶¹ One third of prisoners self-identified as having a learning difficulty or disability, and a large proportion of prisoners were assessed on reception as having English and Maths at entry level 1-3 (equivalent to expected primary school levels of attainment) (see S. Coates, 'Unlocking Potential, a review of education in prison', (Ministry of Justice, May 2016)).

³⁶² *Ibid*, p.40.

focused on work-based training and skills.³⁶³ This should be sufficiently resourced to benefit the entire custodial population.

- 5.27 The sentence planning process should concentrate on activities identified to be beneficial for the individual prisoner, including interventions such as education, training, and employment.³⁶⁴ A Scottish study agreed, finding that *“holistic interventions that address multiple criminogenic needs are more likely to be effective in reducing reoffending”*.³⁶⁵

Risk Assessment Tools

- 5.28 The OASys is a structured clinical tool that enables assessors to gauge a person’s risk of reconviction, criminogenic needs and responsivity needs in order to inform sentence planning. It forms a central piece of evidence in a person’s parole dossier. OASys reports contain “risk ratings” determined by the characteristics of the prisoner and the type of offence committed. A number of other tools are used to predict the likelihood of different types of offending according to severity. For example, the OASys Sexual Reoffending Predictor recently replaced Risk Matrix 2000 as the tool which assesses the likelihood of proven reoffending for people with sexual or sexually motivated offences.³⁶⁶ Likewise, the OASys Violence Predictor (“OVP”) provides a percentage likelihood of a prisoner committing any proven violent re-offence within two years, whereas the Risk of Serious Recidivism (“RSR”) tool provides a percentage likelihood of a prisoner committing a seriously harmful offence within two years.³⁶⁷ Kemshall argued as early as 2003 that the number of risk assessment tools required for prisoners with specific needs *“can complicate an already complex process”*.³⁶⁸ The Working Party agrees, and considers that

³⁶³ S. Exley, ‘Conservatives unveil Prison Education Service Plans’, *tes.com*, 19 November 2019, (see also Ministry of Justice, ‘Education Select Committee Inquiry into Prison Education – Ministry of Justice Written Evidence’, 8 January 2021).

³⁶⁴ *Gill* [2010] EWHC 364 (Admin), para 47.

³⁶⁵ M. Sapouna et al., Justice Analytical Services, Scottish Government, ‘What Works to Reduce Reoffending: A Summary of the Evidence’, 2015, p.50.

³⁶⁶ HM Prison & Probation Service, ‘OASys Sexual reoffending Predictor (OSP): Guidance for Treatment Managers’, October 2020, p.3.

³⁶⁷ HM Prison & Probation Service, ‘Risk assessment of offenders’, 15 May 2019.

³⁶⁸ H. Kemshall, ‘Understanding Risk in Criminal Justice’, (Open University Press, 2003).

the overlapping and sometimes complicated nature of risk assessment tools may not best serve the Parole Board in its work.

- 5.29 When assessing each individual prisoner, an assessor must make judgements about the way in which dynamic risks affect their offending behaviour.³⁶⁹ Alarming, a 2015 National Offender Management Service study found that 32% of OASys assessors did not feel that they had sufficient information to properly complete an OASys assessment, for example, pre-sentence reports, Crown Prosecution Service documents, information from previous establishments, and offence history.³⁷⁰
- 5.30 The Working Party is particularly concerned about the accuracy of risk assessment tools when applied to prisoners from ethnic minority communities. OASys risk assessments have lower accuracy for all ethnic minority groups, with the most inaccurate results for Black prisoners.³⁷¹ Fitzgibbon argued that race does not receive the consideration it requires, observing in 2008 that information relating to ethnicity is often missing from the dossier.³⁷² In the intervening period, little appears to have changed. According to the Her Majesty's Inspectorate of Prisons (2020), "*an OASys assessment had not been completed or reviewed in the last 12 months for almost a fifth of male BME prisoners*".³⁷³ The accuracy and reliability of risk assessment tools depends on their proper use and application. The Parole Board may therefore receive lower quality evidence for ethnic minority prisoners than White prisoners. There is a similar lack of research or data on how risk assessment tools function, or their accuracy, with respect to women and trans prisoners.

³⁶⁹ 'Using OASys to Estimate Re-offending risk', nomsintranet.org.uk.

³⁷⁰ S. Pike and W. Smith-Yau, 'Prison and Probation Assessors' Views and Experiences' in R. Moore (ed), 'A compendium of research and analysis on the Offender Assessment System (OASys), 2009–2013', (National Offender Management Service, 2015), p.29.

³⁷¹ P. Howard, 'The Prediction of Reoffending by Age, Gender and Ethnicity' in R. Moore (ed), 'A compendium of research and analysis on the Offender Assessment System (OASys), 2009–2013', (National Offender Management Service, 2015), p.45 and Table 3.2.

³⁷² D. Fitzgibbon, 'Fit for Purpose? OASys Assessments and Parole Decisions', (Probation Journal vol. 55 issue: 1, 2008), p.66.

³⁷³ HM Inspectorate of Prisons, 'Minority ethnic prisoners' experiences of rehabilitation and release planning', (October 2020), p.26.

- 5.31 Finally, the results produced by the standard risk assessment tools do not accord with terms such as ‘substantial’ and ‘more than minimal,’ used by the courts to assess levels of risk. Therefore, when following guidance or applying a statutory test in order to determine suitability of release or re-release, decision makers must make a value judgment in order to decide, for example, what a ‘low,’ ‘medium’ or ‘very high’ risk of reconviction or harm means in terms of the test to be applied. As the OASys assesses both the likelihood of future re-offending and the RoSH it is unlikely that all aspects of the risk assessment would be relevant to the Parole Board’s decision-making. For example, the Offender Group Reconviction Scale (“**OGRS3**”) provides a percentage likelihood of a prisoner committing any offence within 2 years leading to reconviction. However, a prisoner with a high OGRS3 score may have a low OVP or RSR score, which means that they do not necessarily pose a risk to the public.
- 5.32 Given the central importance of ensuring that the Parole Board’s decision-making processes rely on accurate and meaningful information, **the Working Party recommends that the Ministry of Justice should engage in a comprehensive review of the risk assessment of prisoners and publish the outcome of this review, as well as any previous reviews. This should include:**
- a) **the implementation of sentence planning;**
 - b) **the provision and effectiveness of offending behaviour programmes;**
 - c) **the role of vocational and educational courses; and**
 - d) **the effectiveness and accuracy of risk assessment, including concerning their impact and any disparities with respect to gender, race, disability, or other protected characteristics.**

A New Model

- 5.33 Custodial sentences and minimum terms continue to increase for many prisoners in England and Wales. What belies this is the fact that much of the discussion regarding sentencing, both among the general public and at the level of decision-makers, focuses on the length of a sentence rather than its impact on the individual.
- 5.34 This has led, therefore, to the embedding of a lack of dynamism in the sentence structures, where a very lengthy sentence can be passed without the possibility

for consideration of any progress made in the intervening time. Today, tariff reduction in recognition of an individual's progress is rare³⁷⁴ and is seen chiefly through exercise of the Royal Prerogative of Mercy.³⁷⁵ This remains problematic, with serious consequences for those individuals detained, on top of the wider financial consequences for society at large in terms of expensive prisons, reduced tax revenue resulting from individuals left with little or no skills (indeed, sometimes completely illiterate), as well as the costs to families and communities.

- 5.35** This can be contrasted with the French system where “*sentences are varied according to the offender’s rehabilitative needs and his or her cooperation with the sentencing bodies... sentencing is seen more as an ongoing process than a one-off event.*”³⁷⁶ The Working Party considers that the French model, while not problem free, could offer a useful comparison when considering

³⁷⁴ The Criminal Justice Act 2003 removed the extra-statutory opportunity for those indeterminate-sentenced prisoners who had made exceptional progress in custody to apply for a reduction in their tariff of up to two years (pursuant to s. 29 of the Crime (Sentences) Act 1997, the practice of which is set out in *R v Cole* [2003] EWHC 1789 Admin). This reform came about under the stimulus of the House of Lords decision in *R(Anderson) v Home Secretary* [2003] 1 AC 837, which found involvement of the executive in determining an individual’s tariff to be incompatible with Article 6 ECHR. As a result, the ability of the SoSJ to exercise a discretion in reducing an individual’s tariff are limited. As the court noted in *R v Julie Barker* [2008] EWCA Crim 2558, para 13, “*The appellant is in a privileged group. Those sentenced to life imprisonment since the new regime under the 2003 Act came into effect do not have the benefit of any structured process resetting their tariffs; and looking wider, no prisoner serving a determinate sentence, nor any indeterminate sentence under the 2003 Act has the opportunity for a formal, judicial, reconsideration of their minimum term or tariff other than on appeal*”.

³⁷⁵ A prerogative power is defined as the “*residue of powers which remain vested in the Crown, and they are exercisable by ministers, provided that the exercise is consistent with Parliamentary legislation*”, (see *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, para 47). The Royal Prerogative of Mercy is one such power, whereby the executive can exercise their discretion at common law to vary an individual’s sentence. This is seen most recently in the case of Steven Gallant, for whom the Lord Chancellor granted “*a Royal Prerogative of Mercy reducing his minimum tariff by 10 months in recognition of his exceptionally brave actions at Fishmongers’ Hall, which helped save people’s lives despite the tremendous risk to his own*” - see ‘*London Bridge attack: Steven Gallant up for early release after confronting knifeman*’, BBC News, 18 October 2020.

³⁷⁶ N. Padfield, ‘*An Entente Cordiale in Sentencing? – Part 1*’, (2011) 175 *Criminal Law and Justice Weekly* 239-241, p.239. In addition, Hodgson and Soubise have observed that: “*In France, the position is rather different: the sentence imposed by the trial judge may simply be the starting point in determining the sentence that will be carried out. Sentencing is not a single event but an ongoing process, through which penalties can be adapted weeks or months after conviction, in a closed hearing with a procureur and a sentencing judge, the juge de l’application des peines (JAP)*”. J. Hodgson and L. Soubise, ‘*Understanding the sentencing process in France*’, (2016) 45(1) *Crime and Justice*, p.248.

improvements to our own system.³⁷⁷ In France, each *juge de l'application des peines* (“JAP”) will have a link to a prison in his or her geographical area and may be consulted about decisions concerning individual prisoners. Once released, the JAP will follow the progress of the prisoner in the community, receiving reports from probation officers (*conseillers d'insertion et de probation*).³⁷⁸

- 5.36 The Working Party understands that a similar system also operates in Italy, where measures alternative to detention are granted by, as in France, a specific judicial authority, the *Magistratura di Sorveglianza* (surveillance court). This Court is responsible for governing the execution of individual sentences, and as such, should know the prisoner and their circumstances.

Benefits

- 5.37 The key difference between the English and French systems of sentence implementation is the dominant role given to the *juge* in France.³⁷⁹ Padfield and Herzog-Evans recognise the beneficial aspects of greater judicial oversight in the progress of sentences, noting that

“[t]he extent to which the personal involvement of judges results in better decision-making. There is evidence of the vital role of the relationship between offender and judge in delivering positive outcomes (Rempel

³⁷⁷ This entails a court-based system under which all early release decisions are taken either by a single JAP who is a judge of the *Tribunal de Grande Instance*, or by a three-member *Tribunal de l'Application des Peines* (“TAP”), which is composed of a president and two JAP. The TAP is not a court of appeal from the *juge*: they have separate but parallel jurisdictions. From both, an appeal on questions of law lies to the criminal division of the Court of Appeal. The single *juge* deals with prisoners serving a sentence of less than ten years’ imprisonment, while the three-member tribunal deals with those prisoners serving a sentence of ten years or more. The supervision of conditions of release set by the TAP is, however, the responsibility of a JAP.

³⁷⁸ The JAP is consulted about a prisoner’s progress and behaviour, including the use of segregation and imposition of some disciplinary measures. They will also meet with personnel working within the prison as well as with lawyers and prisoners to discuss cases. Whilst an individual is on licence, they can also issue warrants of arrest.

³⁷⁹ N. Padfield, ‘*An Entente Cordiale in Sentencing? – Part 2*’, (2011) 175 *Criminal Law and Justice Weekly* 256-258, p.257.

2005, Rossman 2011) but this is not as yet well understood. Judicial behaviour, the role of the judge, is crucial.”³⁸⁰

5.38 We consider that there should be regular opportunities for prisoners to apply for ongoing consideration of their progress through prison, the conditions to which they are subject, as well as its appropriateness where they are showing great rehabilitative promise. In our view, greater judicial oversight in the progress of sentences would lead to better outcomes for many prisoners, as well as enhanced understandings of a prisoner’s experience for the decision-maker.³⁸¹ For example, individuals who are automatically released are often subject to licence conditions imposed by probation officers without sufficient consideration as to whether these conditions are “*reasonable, proportionate and necessary*”.³⁸² If the newly-constituted Parole Tribunal were able to gain greater oversight throughout an individual’s sentence, it is more likely that they will be able to effectively evaluate whether the conditions meet these criteria. The opportunity to discuss proposed licence conditions in a judicial forum can “*force an offender to negotiate and ‘sign up’ to release conditions*”.³⁸³

5.39 The Working Party considers that the adoption of elements of this practice would reap dividends not only for those imprisoned, but also for society at large. Currently, there are many individuals serving sentences who have made significant efforts, despite the challenging conditions within prison, and who could be suitable for release on licence to go on and contribute to their communities, where a renewed Probation Service could better support their reintegration. Moreover, the introduction of a form of judicial oversight of sentence progression would help to engender a culture of accountability on the part of HMPPS. This would benefit prisoners who wish to make progress,

³⁸⁰ M. Herzog-Evans and N. Padfield, ‘The JAP: lessons for England and Wales?’ (Criminal Justice Alliance, 2015), p.7.

³⁸¹ “If the initial sentencer, or a representative of the sentencing court, retains a responsibility periodically to review the progress being made by those to whom the warrant of imprisonment or the community order relates, not only would that of itself encourage the person primarily so affected to aspire to achieve the rehabilitation which is one of the statutory purposes of sentencing, but it would provide the judicial monitor with practical oversight of the prisoner’s release and risk management plans.” — see J. Samuels, ‘Casting off the gilded blindfold: The role of judges in creating a fairer, more rehabilitative, justice system’ in L. Rowles and I. Haji, ‘Humane Justice: What role do kindness, hope and compassion play in the criminal justice system’, (2020), p.76.

³⁸² *Ibid.*, p.9.

³⁸³ *Ibid.*

whose call for greater access to the tools they need to succeed could be amplified by the Parole Tribunal.

5.40 The benefits to public finances should not be ignored. At present, the Government spends an average of £42,670 a year to keep an individual in prison. This came to a substantial £3.5 billion (£3,536,900,071) in the year 2019/20.³⁸⁴ These costs are set to continue to spiral ever higher, with the Ministry of Justice projecting an increase of the prison population to 98,700 by September 2026, as compared to almost 80,000 today.³⁸⁵ Every effort should be made to reduce the prison population – and cost – in a safe and appropriate manner. Indeed, less than 1% of all prisoners who progress to open conditions or are released by the Parole Board go on to be charged with a serious further offence.³⁸⁶ A Parole Tribunal that facilitates prisoners’ progress through their sentences, as well as hears exceptional cases of rehabilitation, should be an integral part of this process.³⁸⁷ Rehabilitation is not antithetical to protecting the public. On the contrary, those successfully reintegrated into society represent a success for public protection.

5.41 The Working Party therefore recommends that the Parole Tribunal should have oversight of an individual’s progression through prison, including of executive decisions upon which they depend for their chance to be released.

5.42 This means that that the Parole Tribunal would be able to intervene at an earlier stage in the individual’s sentence to hold public bodies accountable for their efforts at rehabilitating and preparing an individual for parole. Further work would need to be undertaken to establish precisely what stage in a sentence that oversight should be triggered, as well as how it would be administered in

³⁸⁴ Ministry of Justice, ‘[Prison Performance Statistics](#)’, supplement to the ‘[HMPPS Annual Report and Accounts 2019 to 2020](#)’.

³⁸⁵ Ministry of Justice, ‘[Prison Population Projections 2020 to 2026, England and Wales](#)’, (2020).

³⁸⁶ Parole Board, ‘[Parole Board publishes Annual Report & Accounts 2019/2020](#)’, July 2020, p.23: 4% of those sentenced to a mandatory life sentence were reconvicted of a criminal offence within a year, compared to 48% of the overall prison population (see, Table C2a, Ministry of Justice ‘[Proven reoffending statistics: January to March 2018](#)’, January 2020).

³⁸⁷ N. Padfield, ‘[The function of the Parole Board – avoiding failure or promoting success?](#)’ Public Law, 2020 (July) 468-487, p.486: “*The protection of the public is one of its top priorities, but not its top priority, to be achieved at the expense of other, equally important, priorities: human rights, and the promotion of a crime-free lifestyle*”.

practice. Nevertheless, we consider that the principle for earlier involvement of the Parole Tribunal in the sentence management process would be desirable in ensuring individuals are given the best possible chance at rehabilitation.

- 5.43 Moreover, as noted above, even a prisoner who has made the most exceptional progress is limited in their ability to have their sentence reviewed and/or modified. Such power does exist, notably, within the SoSJ's discretion through the Royal Prerogative of Mercy. We consider it desirable that more routes for sentence modification be developed within the parole system, so as to introduce greater dynamism in a prisoner's journey post-conviction.

Impact of Licence Conditions on Rehabilitation

- 5.44 In deciding whether to direct release, the Parole Board considers whether the prisoner can be safely managed in the community subject to licence conditions. Licence conditions are set at the time of release (though they can be varied), and *“must be necessary and proportionate, which means that there must be no other way of managing the risk and that the restriction is the minimum necessary to address the risk.”*³⁸⁸
- 5.45 Every release decision contains a standard set of licence conditions.³⁸⁹ Additional licence conditions will vary according to the prisoner's particular circumstances.³⁹⁰ The Probation Service must request any additional conditions from the Parole Board, which will then determine whether they are necessary and proportionate.
- 5.46 Licence conditions are also informed by third parties, who can make requests through the Probation Service. Victims can feed into the licence condition process where relevant, for example, to make representations concerning restrictions on where the individual might live, or travel to, upon release.

³⁸⁸ HM Prison & Probation Service, 'Risk of Serious Harm Guidance 2020', (April 2020), p.34. See also *R (on the application of Craven) v Home Secretary and Parole Board* [2001] EWHC Admin 850.

³⁸⁹ The Parole Board, 'Licence Conditions and how the Parole Board use them', gov.uk, 20 March 2019.

³⁹⁰ Criminal Justice Act 2003, s. 250(8).

5.47 MAPPA play an important role due to their involvement in coordinating the supervision and management of risk in the community for some individuals.³⁹¹ The opportunity to dispute the evidential basis upon which MAPPA determines risk, and consequently the nature of the additional licence conditions imposed, is limited. Judicial treatment of prisoners' attempts to challenge the basis for its decisions has not been favourable. In *Gunn*, the claimant submitted that his licence conditions were “*unreasonably excessive, disproportionate in their impact upon his family and private life, and [...] not rationally connected with the reason for which they were imposed: the protection of the public and his rehabilitation.*”³⁹² He challenged the evidence upon which MAPPA determined his risk level.³⁹³

5.48 Blake J found that “*the level of disclosure that has been provided to this claimant more than meets the requirements of common law fairness,*” since he was “*provided with substantially more than a bare gist of allegations made against him*”.³⁹⁴ Ultimately, the court deferred to MAPPA, noting that the

*“assessment of risk is not for this court to make. It is very much for an expert multi-agency panel sharing relevant information that they consider to be credible and current and pertinent to the issues in hand.”*³⁹⁵

5.49 MAPPA assessments are, therefore, difficult to challenge. Indeed, in practice the choice may be between accepting excessive licence conditions so as to be released as expeditiously as possible or risking a delay to release so as to

³⁹¹ The MAPPA regime was established under the Criminal Justice and Court Services Act 2000, which required the police and Probation Service to work in a coordinated manner when managing individuals who were deemed to pose a risk to the public upon release from prison. Later, s. 325 to 327 of the Criminal Justice Act 2003 expanded the remit of MAPPA and included the prison service as an additional ‘responsible authority’. It is divided geographically according to police force areas across England and Wales. Its value purports to lie in its ability to coordinate key actors within the criminal justice system in supervising those released from prison while in the community so as best to protect the public, prevent reoffending, and promote successful rehabilitation. A number of other public bodies have a duty to cooperate and take part in the MAPPA mechanism as a part of its risk management processes, alongside their own existing statutory responsibilities and obligations. These include, for example, local authorities, Youth Offending Teams, and Housing Authorities.

³⁹² *R (Gunn) v Secretary State for Justice and the Nottinghamshire Multi Agency Public Protection Arrangements Board* [2009] EWHC 1812 (Admin).

³⁹³ *Ibid*, para 6.

³⁹⁴ *Ibid*, para 30.

³⁹⁵ *Ibid*, para 28.

challenge the conditions. The importance of properly taking into account the representations of an individual prior to the introduction of licence conditions is essential.³⁹⁶

5.50 Licence conditions represent a significant deprivation of liberty. Getting them right is essential, both in order to manage any risk that the prisoner may present, and to facilitate effective rehabilitation and reintegration into society. A Prison Reform Trust survey found that almost half of the participants considered that their licence conditions were impractical or unnecessarily restrictive and, in fact, increased their risk of offending.³⁹⁷ For example, licence conditions such as exclusion zones may create obstacles to stable employment and maintaining family ties, which are factors known to promote successful rehabilitation. As Parole Board members look for a robust risk management plan, probation officers may be incentivised to include a plethora of licence conditions to demonstrate this which may be, in practice, counterproductive and fail to facilitate rehabilitation.³⁹⁸

5.51 The Working Party has also heard that the Probation Service can often take a broad brush and indiscriminate approach when requesting licence conditions, especially where they have been requested through a MAPPA meeting. Whereas the Probation Service should, in theory, fully explain their requests, the Working Party is concerned that this is not always the case. A common refrain that Parole Board members hear at a hearing is that ‘MAPPA asked for it’, without providing sufficient (or sometimes any) detail or justification. This is unacceptable. The Working Party notes that requests through MAPPA (and indeed from other third parties) can come from those who are not parties to the proceedings. It is not their role or responsibility to explain the need for such restrictions. Nor is it sufficient, or good practice, for the Probation Service to make poorly justified requests to restrict an individual’s liberty. The Probation Service must instead ensure that for each case they turn their minds to the reasons for the requests and provide their own supporting arguments in favour of them.

³⁹⁶ See also *R (Latif) v Secretary of State for Justice* [2021] EWHC 892 (Admin).

³⁹⁷ K. Edgar, M. Harris and R. Webster, ‘No life, no freedom, no future: the experiences of prisoners recalled under the sentence of Imprisonment for Public Protection’, (Prison Reform Trust, 2020), p. iv.

³⁹⁸ *Ibid*, p.21.

5.52 As noted above, the law requires that licence conditions be reasonable and proportionate. The Probation Service must have this in mind in advance of any request that they make. Indeed, justifications should be formed well in advance of the hearing itself. As such, the Working Party considers that an additional practical safeguard should be introduced. **We recommended that the Probation Service should only be able to request that the Parole Tribunal impose licence conditions where it has demonstrated, with clear written explanations, (a) how they are reasonable and proportionate, and (b) their impact on an individual’s chances of successful rehabilitation.**

Provision of Accommodation

5.53 Risk management plans created by HMPPS seek to reduce the likelihood of serious harm, and should be based on sound, evidence-based risk assessment, taking into account the need to balance support and restriction. Many individuals are required to live at Approved Premises³⁹⁹ as part of their risk management plan,⁴⁰⁰ otherwise the Parole Board will not direct release. Suitable accommodation is essential for an individual’s chance at rehabilitation. Without a stable or fixed address access to healthcare, work, or other vital sources of support become impossible.

5.54 Approved Premises, however, are heavily oversubscribed.⁴⁰¹ According to Her Majesty’s Inspectorate of Probation, the estimated shortfall in 2017 was 25%.⁴⁰² Furthermore, places at Approved Premises are spread unevenly across the country, with locations often not matching need. They can be poorly staffed and apply inconsistent operating models.⁴⁰³ There have also been various criticisms, including that Approved Premises can, by providing an environment that groups together individuals who have committed certain

³⁹⁹ “Approved Premises are premises approved under Section 13 of the Offender Management Act 2007. The term currently applies to 101 premises, providing over 2000 bed spaces, managed either by the National Probation Service or by independent organisations. Currently the independent sector provide around 10% of the overall Approved Premises Estate” - see ‘Approved Premises’, National Approved Premises Association, napa-uk.org.

⁴⁰⁰ Offender Management Act 2007, s. 13.

⁴⁰¹ HM Inspectorate of Probation, ‘Probation Hostels’ (Approved Premises) Contribution to Public Protection, Rehabilitation and Resettlement’, (July 2017), p.8.

⁴⁰² *Ibid*, p.20.

⁴⁰³ *Ibid*, p.17.

types of offences (for example, sexual offences), make it more difficult for individuals to move past their ‘offender’ identities and progress with desistance.⁴⁰⁴ Additionally, families of IPP prisoners have noted that Approved Premises were often treated as the default option upon release of an IPP prisoner, and that the views of families on how best to support IPP prisoners went unheard.⁴⁰⁵

5.55 An unacceptably high number of individuals are homeless upon release from prison. In 2020, HMPPS noted that it was “*particularly disturbed by the high numbers of higher-risk prisoners being released into homelessness or unsettled accommodation,*”⁴⁰⁶ finding that “*at least 3,713 individuals supervised by the [Probation Service] left prison homeless in 2018-2019*”, many of whom have convictions for sexual or violent offences.⁴⁰⁷ Between April and September 2019, 35.4% of those who were released from prison were without settled accommodation.⁴⁰⁸ While we assume that the majority were those serving determinate sentences, homelessness is also an issue for those released by the Parole Board. Indeed, gaining a place at an Approved Premise may be short lived. For example, HMPPS found that “*it was not unusual for [those released by the Parole Board] to be given a 12-week notice to quit [their Approved Premises] when they arrived*”. The report further highlighted anecdotal evidence of individuals being moved on, making such individuals “*homeless or without settled accommodation.*” The full extent of this problem is troublingly unknown, since there “*is at present no published information on the extent to which this occurs*”.⁴⁰⁹

5.56 The situation is even more unsatisfactory with respect to the provision for women. Approved Premises are single sex establishments, the vast majority of which are for men. In 2017, there were only six Approved Premises for women,

⁴⁰⁴ Reeves C. ‘The others’: Sex offenders’ social identities in probation approved premises’, Howard Journal of Crime and Justice, September 2013, pp. 383-398.

⁴⁰⁵ H. Annison and C. Straub, ‘A Helping Hand Supporting Families in the Resettlement of People Serving IPPs’, (2019).

⁴⁰⁶ HM Inspectorate of Probation, ‘Accommodation and support for adult offenders in the community and on release from prison in England’, (July 2020), p.4.

⁴⁰⁷ *Ibid*, p.28.

⁴⁰⁸ *Ibid*, p.6.

⁴⁰⁹ *Ibid*, pp. 33-34.

who constitute presently approximately 5% of the prison population.⁴¹⁰ The UK Supreme Court in *Coll* held that the “*provision of Approved Premises in England and Wales by the Secretary of State pursuant to section 2 of the Offender Management Act 2007 constitutes direct discrimination against women contrary to section 13(1) of the Equality Act 2010 which is unlawful unless justified under paragraph 26 of Schedule 3 to the 2010 Act*”.⁴¹¹

5.57 Her Majesty’s Inspectorate of Probation’s report, ‘Probation Hostels’ (Approved Premises) Contribution to Public Protection, Rehabilitation and Resettlement’ also noted the lack of female Approved Premises. In its ‘Female Offender Strategy’ of 2018, the Ministry of Justice noted that Approved Premises “*are another valuable resource to support female offenders on release*”.⁴¹² Furthermore, the strategy stated “[w]e are conducting a review into the AP capacity for women to ensure there is provision for women where it is needed. We are seeking to identify suitable AP provision for women in London and Wales, where we have recognised that need is pressing.”⁴¹³

5.58 HMPPS told us that improvements have been made, noting:

*“HMPPS have committed to expanding Approved Premises by 200 beds (male and female) by 2024. A demand analysis has been undertaken by the Ministry of Justice to identify future requirements. The demand analysis is an internal model which estimates future demand on a regional basis and is reviewed half-annually. It is routinely compared with current and future capacity for male and female offenders and geographic spread of provision. The demand analysis, to which the Female Offender Strategy referred, is the first time there has been a model to guide and inform the development of Approved Premises.”*⁴¹⁴

5.59 Nevertheless, the Working Party considers that not enough has been done to remedy this chronic and well evidenced issue. There are still no Approved

⁴¹⁰ Ministry of Justice, ‘Statistics on Women and the Criminal Justice System 2019’, November 2020, p.3.

⁴¹¹ *Coll v Secretary of State for Justice* [2017] UKSC 40, para 45.

⁴¹² Ministry of Justice, ‘Female Offender Strategy’, (June 2018), p.22.

⁴¹³ *Ibid.*

⁴¹⁴ The Working Party thanks HMPPS for providing clarification on this point.

Premises for women in Wales,⁴¹⁵ and only ten places in London.⁴¹⁶ This is unacceptable and requires urgent redress. The figure of 200 beds by 2024, as noted by the Ministry of Justice, is clearly insufficient for the demand. This deficiency has real consequences for prisoners, many of whom become homeless either upon release from prison,⁴¹⁷ or later down the line when moved on from their Approved Premises placement. As a result, such prisoners are undoubtedly at a heightened risk of reoffending. It is difficult to imagine, for example, how an individual can deal with issues of addiction, let alone comply with a wide range of licence conditions, while living in a tent – as has been the case in numerous instances.⁴¹⁸

5.60 Approved Premises are only one part of the housing jigsaw. The provision of other types of accommodation is also poor. The Working Party notes a particular lack of accommodation for many of the most vulnerable prisoners, especially older prisoners, and those with complex healthcare needs. We echo Her Majesty’s Inspectorate of Probation’s Thematic Review of 2020, which recommended that the Government “*ensure, as a priority, that stable accommodation is available for every higher-risk offender leaving prison and that individuals moving on from approved premises have settled accommodation to go to*”.⁴¹⁹ However, the Working Party considers that the Government must go further than its response to that review, in which it promised a mere 200 extra beds.⁴²⁰ All prisoners, not just those who are at higher risk, are disadvantaged in their attempt to rehabilitate without stable,

⁴¹⁵ HM Inspectorate of Probation, ‘Probation Hostels in Context’, gov.uk, 2017.

⁴¹⁶ The Ministry of Justice informed the Working Party that in November 2019 HMPPS opened an Approved Premises for Women in London, known as Hestia Battersea, which accommodates up to ten women. Prior to this, there had been no provision at all since the closure of Kelly House in 2008.

⁴¹⁷ In 2018-19, 15.7% of men and 18.6% of women released from prison were homeless. See HM Inspectorate of Probation, ‘Accommodation and support for adult offenders in the community and on release from prison in England’, (July 2020), p.6.

⁴¹⁸ R. Ford, ‘Women released from private prison are forced to live in tents’, *The Times*, 13 April 2016; S. Minting and N Lavigueur, ‘Shock that prisoners are being given tents and drugs on release’, *YorkshireLive*, 16 March 2019; and S Minting, ‘Prisoners are being given tents to live in once they leave jail’, *TeessideLive*, 16 March 2019.

⁴¹⁹ HM Inspectorate of Probation, ‘Accommodation and support for adult offenders in the community and on release from prison in England’, (July 2020), p.12.

⁴²⁰ HM Prison & Probation Service, ‘A response to: An inspection of accommodation and support for adult offenders in the community and on release from prison’, updated action plan submitted 8 July 2021.

good quality accommodation. A holistic review of suitable provision, having regard to the importance of community links and the range of accommodation types and alternative resources, is necessary.

- 5.61 The Working Party therefore recommends that the Ministry of Justice should increase and improve the provision of housing and accommodation for individuals upon release from prison so as to guarantee that nobody is released homeless. At the same time, the Ministry of Justice should review the provision of accommodation for particular categories of prisoners, such as women, older prisoners, and those with complex health needs.**

VI. CONCLUSION AND RECOMMENDATIONS

- 6.1 A parole hearing can be a life-changing moment. For many in prison, it is the turning point between lengthy periods of incarceration and the start of a new life in the community – a second chance. At the head of this process is the Parole Board, whose members make difficult and sometimes controversial decisions. It is right that its role remains subject to regular scrutiny, which has been the case since the Parole Board's creation over 50 years ago.
- 6.2 We sought to explore the parole system through each stage of the process. Our findings have shown that it is not working as effectively as it should. This has significant consequences, for those prisoners who could be released but for delays and deferments, victims, whose assailants too often lack the opportunity for any meaningful rehabilitation and therefore risk reoffending upon release, and taxpayers, who are entitled to expect public money to be utilised in a way that delivers results.
- 6.3 While the parole process is complex, some of the fundamental problems are incontrovertible. It is well established that the Parole Board lacks the necessary powers, and therefore the authority, to function as a proper judicial decision maker. This is evidenced by the fact that a range of state bodies, from the police to probation, are able to ignore or disregard its directions. Moreover, the Government is able to exercise too much influence, in a manner that is manifestly incompatible with the Parole Board's supposed independence.⁴²¹ This is a framework that no other court or tribunal would be likely to tolerate. We therefore echo the call for the Parole Board to be re-constituted as a formal tribunal, provided with the necessary procedural rules and case management powers. We have also recommended improved training, as well as reforms to the MCA process, both of which should serve to provide Parole Board members with greater confidence in performing their functions.
- 6.4 It is important to note that Parole Board does not operate in isolation. It is dependent on many processes outside its control, both before and after it is engaged. These processes are often overseen by the HMPPS, through both the PPCS and the Probation Service. These organisations are crucial parts of the

⁴²¹ "In Professor Hardwick's letter of resignation, he said he was "sorry for the mistakes that were made in this case", adding that Justice Secretary David Gauke had told him his position was now "untenable" - see '[Worboys release decision overturned as parole head quits](#)', BBC News, 28 March 2018.

parole system. It is impossible to consider parole in the absence of this broader context.

- 6.5 We have concluded that the length, complexity, and poor organisation of dossiers remains deeply problematic to the efficient functioning of the parole process. For this reason, we consider that the Ministry of Justice should commission a review, the goal of which is to introduce a document that is easier for both practitioner and prisoner to use. The PPCS is an important player in the process, yet we are not convinced that there exist sufficient internal mechanisms to measure its performance and to hold it accountable for any errors and delays to which it contributes. This must change.
- 6.6 The parole system should be examined through the perspective of participants. Too often, victims receive little or no information on how the process works, or on how prisoners are rehabilitating while in prison. Their engagement and confidence is essential. Likewise, prisoners are at the heart of parole, and should be entitled to expect full engagement. This means improving their access to information, giving them the tools that they need to be better prepared, and ensuring that Parole Board members are afforded opportunities to understand the individuals who come before them. We are concerned by the paucity of research into both outcomes for prisoners who go through parole, as well as the current complaints architecture. Our recommendations seek to go some way to remedy this gap.
- 6.7 The Working Party recognises that many of the prisoners who appear before the Parole Board have committed the most serious offences. The consequences for victims are severe, loss of life, dignity, loved ones, and often life-long trauma. The prison system as it stands often does a disservice to victims, prisoners, and the general public when individuals are released back into the community unprepared and poorly supported with little done to address the underlying causes of their offending. Poor prison conditions result in high reoffending rates; new victims, frustrated human potential, and the waste of public resources. It is in everybody's interest that individuals in prison are equipped with the tools and support necessary to reintegrate back into the community successfully.
- 6.8 We began our work in the knowledge that too many individuals remain in prison unnecessarily. The prison population in England and Wales is the

highest in western Europe.⁴²² This represents a profound failure for victims, prisoners, and society at large. The principal explanations lie outside the scope of the report, namely decades of increasingly punitive sentencing policies from Governments of both colours, combined with a decline in prison conditions. This emphasis on ‘punishment’ acts as a contributory factor, with measures aimed at rehabilitation either deprioritised at best, or held in opposition at worst. This need not be so.

- 6.9** The report therefore concludes with a renewed call for rehabilitation to form the bedrock of the parole system. The benefits are threefold. First, the prisoner is better equipped to live their life constructively in the community. Secondly, the victim may achieve a sense of closure that the criminal justice system has taken its course, with lessons learnt and future victims prevented. Thirdly, a reduced level of reoffending and smaller prison population are obvious boons to the public finances, given the exorbitant sums that are spent with no obvious return.
- 6.10** The opportunity to encourage rehabilitation through the parole system should not be wasted. For this reason, we envisage greater powers for the newly-constituted Parole Tribunal to consider how sentence progression is managed, as well as the impact that continued detention has on rehabilitation. We have found that the evidence upon which many parole practices are based is insufficient, such as the effectiveness of OBPs, vocational and educational courses, and the accuracy of risk assessment tools. It is incumbent on the Ministry of Justice to take the lead in commissioning reviews of these areas. Lastly, our report notes the need for greater investment in many areas of the system. One in particular is the poor availability, and quality, of accommodation and Approved Premises for those who are released from prison. Stable accommodation is a vital prerequisite to reintegrating into the community, for example in fostering personal relationships, employment opportunities, and good mental health. The Government rightly recognises this, yet its proposals remain wholly inadequate.
- 6.11** We recognise that the overall funding environment for the criminal justice system is difficult. However, the majority of our recommendations could be implemented with minimal or no net cost. Where investment is needed, such

⁴²² A report by the Prison Reform Trust found that there were more than “140,000 admissions into prison in England and Wales in 2017—the highest number in western Europe”, *‘Prison Reform Trust’*, (2019).

as for additional training programmes or more places in Approved Premises or other types of accommodation, we consider that these measures would more than pay for themselves by reducing both the number of people in prison and the levels of recidivism. We cannot ignore, by contrast, the huge costs incurred through chronic delays, deferrals, and mistakes. The advantages of investing in a more humane and effective system where cases are disposed of in a timely fashion, and individuals are supported to achieve their full potential, make sense at both a financial and human level.

- 6.12** This Working Party has built on a wealth of reports, reviews, and studies. We have benefited from the expertise of many, both here in the United Kingdom, and abroad. Many of the problems we have identified are not new, nor are they all specific to the parole system. Yet, in restating them again in this report, we hope that decision-makers will take the next step in reforming and improving this vital criminal justice function. Prisoners, victims, and the general public deserve a parole system that is truly fit for purpose.

Recommendations

Constitutional Position and Structure

Insufficient Direction Powers

1. The Parole Board should be reconstituted as a Tribunal within Her Majesty's Courts and Tribunals Service, allowing for an appeal to be made to a dedicated chamber of the Upper Tier. The Ministry of Justice should provide the Parole Tribunal with a sufficient level of funding and resources to fulfil its statutory functions. The Parole Tribunal should have procedural rules and case management powers in line with other tribunals (**para 2.13**).

Justification for Continued Detention

2. It should be incumbent on the Secretary of State for Justice to justify the continued detention of an individual beyond the minimum term and to show that any risk an individual poses after the minimum term cannot be managed in the community (**para 2.32**).

A New Recall Model

3. In order to initiate a recall, an Offender Manager must first make an application to the Magistrates' Court, which should be seized to consider the allegation and make a finding of fact. Where the court finds a breach of the licence conditions, the case should then proceed to the Parole Tribunal to consider the issue of risk, and whether re-incarceration is appropriate (**para 2.64**).

Making Effective Decisions

A Training Programme Fit for Purpose

4. The Parole Tribunal should improve its provision of training to new members and provide for greater opportunities for continual professional development. This should include training in key areas such as sentencing, procedure, prison law and policy, critical analyses of offending behaviour programmes and risk management tools, and other relevant public law matters (**para 3.11**).

Dossiers

5. The Ministry of Justice should commission a comprehensive, independent review of the form and content of dossiers, which are currently often too long and unmanageable. Dossiers should be available in an easy-read format and fronted with a standard form setting out the key information, including (a) the legal test for continued detention, and (b) a summary of the arguments on whether the test of continued detention is or is not met with regard to the prisoner (**para 3.23**).

The Public Protection Casework Section

6. The Public Protection Casework Section's performance indicators should measure issues that can cause delays in the parole process, for example regarding the effective coordination and quality and completeness of dossiers, as well as with respect to their responsiveness to requests from the Parole Tribunal and other key stakeholders (**para 3.29**).

Improving the Member Case Assessment Process

7. The Parole Tribunal should make improvements to the Member Case Assessment process by ensuring that:
 - a) sufficient time and resources are allocated to the MCA stage so that deficiencies in dossiers or other materials can be identified and rectified prior to oral proceedings;
 - b) members benefit from enforcement powers to make directions for additional materials that are respected, and responded to in a timely fashion, by third parties; and
 - c) the member who conducts the Member Case Assessment stage also sits on the panel for the oral hearing in order to allow for better case management (**para 3.40**).

Panel Sizes

8. The presumption that panels should start with one member should be removed. Instead, a holistic view should be taken based on all the evidence (**para 3.46**).

Remote Hearings

9. Should virtual hearings become a regular feature of the parole process, there should be a right to an in-person hearing upon request. If a hearing is remote, the prisoner should be entitled to have their representative in the same physical room as them **(para 3.56)**.

Participants in the Parole Process

Accessibility of Information

10. Prisoners should be given direct access to the Public Protection Unit Database, with computer terminals provisioned in prisons for this purpose **(para 4.14)**.
11. The Parole Tribunal should establish a dedicated “helpline” for enquiries from prisoners, victims, and other interested parties. This should be properly funded, staffed, and advertised within prisons and on the Parole Tribunal’s website **(para 4.18)**.
12. The Parole Tribunal should produce clear, accessible, timely and tailored information about the parole process for prisoners, their families and friends, and victims. This should be provided within three to six months of an individual’s sentence and be prominently available for prisoners in prison libraries and to victims in-line with the Victims Code. Such information should address:
 - a) how the individual’s specific sentence operates, how sentence planning maps onto their sentence as well as how parole fits in;
 - b) what the parole process involves, how it should be prepared for, and what can be expected at each stage of the process; and
 - c) an individual’s right to parole reviews **(para 4.30)**.

Preparing Prisoners for Parole

13. The Parole Tribunal should have a duty to update prisoners (and, where relevant, victims) on the progression of their case as well as providing general information about the parole process. This should take effect early in the sentence and complement its role in reviewing sentences **(para 4.38)**.

14. The Parole Tribunal should establish a Parole Caseworker section, in which each prisoner has an assigned caseworker who is responsible for providing information about the process **(para 4.39)**.

Improving Understanding of Prisoners' Experiences

15. The Parole Board should play a more active role in meeting with prisoners prior to their parole process. This should take the form of informal meetings between Parole Board members and prisoners. In addition, the Parole Board should more widely implement its pilot of day visits to prisons, for which members should be fully reimbursed and remunerated **(para 4.42)**.

Duties and Training

16. The Parole Tribunal (including members, case managers and secretariat staff) should undergo thorough and regular training on the following areas:
 - a) equality and diversity, including cultural awareness training;
 - b) vulnerable people, including those with mental health and neurodiverse conditions, and children;
 - c) communication styles; and
 - d) having “difficult conversations” as well as “constructive conversations” about the quality of decision-making **(para 4.82)**.

Complaints System

17. The Working Party recommends that the Parole Board should:
 - a) collect data on, and publish, outcomes, including licence conditions broken down by protected characteristics; and
 - b) review its current complaints system, with specific attention given to complaints under the Equality Act 2010, so as to ensure that there are both formal and informal ways of raising complaints and accessing feedback on potential issues and concerns. The findings of the review should be published **(para 4.88)**.

Effective Rehabilitation

Impact of Continued Detention on Chances of Rehabilitation

18. The Parole Tribunal, when considering the risk that an individual poses, should be empowered to consider the impact of continued detention on their chance of rehabilitative success **(para 5.11)**.

Improving Sentence Progression

19. The Ministry of Justice should engage in a comprehensive review of the risk assessment of prisoners and publish the outcome of this review, as well as any previous reviews. This should include:
 - a) the implementation of sentence planning;
 - b) the provision and effectiveness of offending behaviour programmes;
 - c) the role of vocational and educational courses; and
 - d) the effectiveness and accuracy of risk assessment, including concerning their impact and any disparities with respect to gender, race, disability, or other protected characteristics **(para 5.32)**.

A New Model

20. The Parole Tribunal should have oversight of an individual's progression through prison, including of executive decisions upon which they depend for their chance to be released **(para 5.41)**.

Impact of Licence Conditions on Rehabilitation

21. The Probation Service should only be able to request that the Parole Tribunal impose licence conditions where it has demonstrated, with clear written explanations, (a) how they are reasonable and proportionate, and (b) their impact on an individual's chances of successful rehabilitation **(para 5.52)**.

Provision of Accommodation

22. The Ministry of Justice should increase and improve the provision of housing and accommodation for individuals upon release from prison so as to guarantee that nobody is released homeless. At the same time, the Ministry of Justice should review the provision of accommodation for particular categories of

prisoners, such as women, older prisoners, and those with complex health needs (**para 5.61**).

VII. ACKNOWLEDGMENTS

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A handwritten signature in grey ink, appearing to read 'N Padfield'.

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