

## **TILTING THE SCALES – the offender in the community**

I am honoured and delighted to have been invited to speak to you and to contribute to shared learning between our two countries. My title tries to convey the tension between the need to incarcerate an offender for public safety and the desirability to reintegrate an offender back into the community. This tension is increasingly hard to reconcile especially under the spotlight of the media which can bring its own political pressures.

I want to talk about the government policy framework on sentencing, the population pressures in the prison system, recent trends and disposals in sentencing, the offender management model and risk assessment, probation supervision, including high risk offenders, the parole perspective and a little about international comparisons. I will end by suggesting some future challenges and opportunities.

### **Government policy**

Government policy is that prison should be reserved for **serious and dangerous** offenders, and that others are normally better punished in the community. To this end, the Ministry of Justice has been working with the courts and others to try to bring down the prison population, which is at record high levels. Until 2005, there was no real statutory framework for sentencing. That changed with the Criminal Justice Act 2003 which came into force in April 2005.

### **Purposes of sentencing**

Our whole sentencing framework was rewritten in the Criminal Justice Act

2003. For the first time, there was a statutory definition of the purposes of sentencing. These are (as set out in section 142 of that Act)

- 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.

This definition does not apply to offenders under 18 at the time of sentencing and certain categories of sentences for the mentally ill. Other than those few categories, the purposes of sentencing are now so defined.

### **Seriousness of offence**

Whilst courts are obliged to have regard to these principles, sentence will generally be determined according to the **seriousness** of the offence.

Seriousness is made up of:

- **harm** caused by the offence; and
- **culpability** of the offender in committing it.

There is also a presumption that recent and relevant previous convictions make an offence more serious.

There are thresholds of penalty based on seriousness:

- offences that are **so serious** that only custody will represent a sufficient response;
- offences that are **serious enough** to warrant a community sentence.

If neither of these thresholds is reached then a fine or a discharge will be

appropriate.

### **Community Sentences**

Since the implementation of the Criminal Justice Act 2003, there has been a single community order for offenders aged 18 or over that can comprise up to 12 requirements depending on the offence and the offender. These are:

- unpaid work (formerly community service/community punishment)  
– a requirement to complete between 40 and 300 hours' unpaid work;
- activity – e.g. to attend basic skills classes;
- programme – there are several designed to reduce the prospects of re-offending;
- prohibited activity – requirement not do so something that is likely to lead to further offender or nuisance;
- curfew – electronically monitored;
- exclusion – not much used as no reliable electronic monitoring yet available;
- residence – requirement to reside only where approved by probation officer;
- mental health treatment (requires offender's consent);
- drug rehabilitation (requires offender's consent);
- alcohol treatment (requires offender's consent);
- supervision – meetings with probation officer to address needs/offending behaviour;
- attendance centre – three hours of activity, usually on Saturday afternoons, between a minimum of 12 hours and a maximum of 36

in total.

Typically, the more serious the offence and the more extensive the offender's needs, the more requirements there will be. Most orders will comprise one or two requirements but there are packages of several available where required. The court tailors the order as appropriate and is guided by the probation service through a pre-sentence report.

### **Breach**

Offenders who commit more than one unacceptable failure to comply with the terms of a community order within a 12 month period are returned to court. If the breach is proven, the court is obliged to make the order more punitive; or it may re-sentence, including to custody.

### **Custody**

The picture on custody is complicated as there are different sentences for 18-21 year olds and for older adults; and depending on whether sentence is under the Criminal Justice Act 2003 or its predecessor, the Criminal Justice Act 1991.

18-21 year olds are sentenced to **detention in a young offender institution** and older adults to **imprisonment** but to all intents and purposes here, they can be considered to be the same thing.

Maximum penalties are specified for all offences according to the seriousness of the offence.

One of the characteristics of the criminal law in England and Wales is that offences are defined very broadly. Robbery, for example, can be the snatching of a bar of chocolate from one schoolboy by another or a multi-million pound gold bullion heist. Hence penalties tend to cluster much

lower than the maxima.

### **Short sentences – Under 12 months**

Those sentenced to **under 12 months** (still made under the Criminal Justice Act 1991) spend the first half of their sentence in prison and are then "**at risk**" for the remaining period. This means they are under no positive obligations and do not report to the probation service but, if they commit a further imprisonable offence during the at risk period, they can be made to serve the remainder of the sentence in addition to the punishment for the new offence. The exception to this is those aged 18-21 who have a minimum of 3 months' supervision on release.

### **Custody plus**

The Criminal Justice Act 2003 sought to replace short sentences with **custody plus**, a new sentence that would comprise a short period (2-13 weeks) in custody followed by a period under supervision in the community (similar to a community order). This was because the recidivism rate for short sentences is particularly high and one of the reasons for that is because offenders receive no supervision or support on release. Resource constraints have prevented the introduction of this sentence, which remains on the statute book.

### **Suspended sentence orders**

The government has implemented **suspended sentence orders**, which enable a court to suspend a sentence of up to six months for a period of up to two years subject to the successful completion of requirements in the community. The courts have used this substantially – we think to up-tariff from community sentences. As breach of a suspended sentence order leads very often to custody, this is having an unfortunate effect on

the prison population. The government tried to legislate in the Criminal Justice and Immigration Act 2008 to restrict the use of the order to indictable offences but had to give up on account of lack of time for the parliamentary process. They will probably return to this in future legislation.

### **Sentences of 12 months or over**

The Criminal Justice Act 1991 created a distinction between **short term** – those serving under four years – and **long term** – those serving sentences of four years or over – prisoners.

**Short term** prisoners are those serving between one and four years and spend the first half of their sentence in prison; the third quarter on **licence** and the final quarter **at risk**.

**Long term** prisoners serving determinate sentences spend the first half of their sentence in prison and then may apply for **parole** to the independent Parole Board. Parole may be granted at any time between the half way point and the two thirds point of the sentence, and will only be granted if the Parole Board considers that the offender is a sufficiently safe bet to release. The test is that the prisoner will not commit a further offence of any kind within the parole window. The offender is on **licence** from the point at which he is released until the three quarter point of sentence and then **at risk** for the final quarter. In the Criminal Justice and Immigration Act 2008, the government legislated to treat long term prisoners (as defined by the 1991 Act) who have been convicted for non-sexual non-violent offences as if they were standard determinate sentence 2003 Act prisoners. These provisions commenced on 9 June 2008 and

apply only to prisoners who have yet to reach the half way point of their sentence on that day. **Life** sentences, as their name suggests, last for the remainder of the offender's life. When sentencing, the judge sets a minimum period – normally known as the **tariff** – that the offender must serve as a punishment before being considered for release. Once this minimum period has elapsed, the offender may be released by the Parole Board but only if it considers that to be an acceptable risk to public safety. The test is different from the one described above – here, the Board must decide whether the prisoner would commit an offence which would harm "life and limb" – this is usually a sexual or violent offence.

### **Criminal Justice Act 2003**

The 2003 Act abolished the distinction between short- and long-term prisoners and instead created one between **standard determinate sentences** and **public protection sentences**.

Offenders sentenced to a **standard determinate sentence** serve the first half in prison and the second half in the community on **licence**. The at risk period no longer applies.

Offenders convicted of a sexual or violence offence may be sentenced to a **public protection sentence**. In such cases, the court has to determine whether the offender is dangerous to the extent that he is likely to cause serious harm to the public through the commission of a further sexual or violent offence. If the court does consider that to be the case, it may impose a public protection sentence. There are three such sentences:

- **life** – which should be used where it is available by statute and where the particular crime warrants it;

- **imprisonment for public protection (IPP)** – where the maximum for the offence is ten years or more and where life is not available or appropriate. An offender sentenced to an IPP serves the **tariff** as set by the judge and then is eligible to be released if considered safe by the Parole Board. The only significant distinction between life and IPP is that, whereas life sentences last for the whole of the offender's life, the Parole Board can bring an IPP licence to an end after 10 years in the community following release;
- **extended sentence** – where the maximum for the offence is less than 10 years. An extended sentence comprises the normal custodial period plus an extension period. The offender may be released at any time between the half way point and the end of the normal custodial period and is on licence until the end of the extension period.

The Criminal Justice and Immigration Act 2008 changed the provisions so as to give judges more discretion over the use of public protection sentences; for use of public protection sentences to be restricted to offences for which two years real time is justified; and for release from an extended sentence to be automatic at the half way point of the custodial period with licence extending then until the end of the extension period. These changes apply to cases sentenced on or after 14 July 2008.

### **Licence**

For the duration of the **licence**, an offender is obliged to comply with the terms of that licence. These may include requirements to report to the probation service, restrictions as to where he may live and what work he may undertake, and requirements to attend programmes. If an offender

**breaches** his licence he is liable to recall to prison, potentially until the end of his sentence.

### **Early release**

Offenders serving less than four years who meet various criteria may be released up to 4.5 months before they would otherwise be released on

**home detention curfew** subject to an electronically monitored curfew.

Alternatively, offenders who meet other criteria may be released up to 18 days earlier than they would otherwise have been released on **end of**

**custody licence**.

### **Prison population pressures**

The prison population has grown exponentially over the past years. On the day I wrote this paper, the population in England and Wales was 82,918, up from a year before by 2,211. The usable operational capacity is 84,725 so we are very close to the edge. Numbers of unconvicted prisoners have reduced. Sentenced receptions into prison continue to rise – in 2007 there were nearly 136,000 persons sentenced to custody (immediate and suspended) – the highest in a decade. This was an increase of 5% from 2006 and 40% from 1997. The highest rise here was in suspended sentences which were re-introduced in April 2005. In 2007, there were 40,700 suspended sentences – an increase of 21% (7,200) on 2006. The other area of increase were persons sentenced to indeterminate sentences – either life or an indeterminate sentence for public protection (IPP).

The biggest change in prison receptions in recent years has been those sentenced to an IPP – longer determinate sentences (those of over 4 years) fell by 3% between 2006 and 2007 while the largest percentage

increase in sentenced prisoners in 2007 was for IPP's which increased by 18%.

These prisoner receptions increased by 6% - to 2,280 in 2007 and by a further 18% the following year. The IPP sentence has had a great impact on the population and it would appear that this impact was not properly researched or taken into account when the legislation was enacted. The joint report from the Chief Inspectors of Prisons and of Probation – The indeterminate sentence for Public Protection – a thematic review, published in September 2008 – is critical of the lack of impact assessment and resourcing of this sentence. There have also been a number of challenges through the courts as prisoners with short tariffs were unable to get places on offending behaviour programmes or access interventions which would allow them to address their risk and successfully apply for release. The 2008 Act has made wholesale amendments to the IPP sentence, allowing greater judicial flexibility and ensuring that very short tariffs can no longer be passed here. But the impact of the first sentences remains in the system and will do for some time. From an integrated and holistic policy introduced in the 2003 Act, it appears that all policy and energy is being focussed on population reduction.

This is a considerable change from a real attempt to balance the need for public protection on the one hand and on the other the potential to rehabilitate and reintegrate the individual into the community.

This policy move to make sentencing more coherent and structured has been affected by a number of pressures. The main two in my view as I said earlier are the prison population explosion and the lack of confidence

– both judicial and public – in community based penalties. It appears that the change is borne out of necessity and pragmatism rather than a true research base on what works. The population crisis is now driving policy development.

### **Recent sentencing trends and disposals**

The British Crime Survey (BCS) shows that crime has fallen by 10% in the last year, representing a million fewer crimes. Police recording of crimes has improved while victim reporting of crime has remained fairly stable since 1997.

Despite this, high numbers of people believe that the crime rate has risen. People have more positive perceptions of crime in their own area than nationally – 65% thought that crime in the country as a whole had increased in the past 2 years compared with 39% who thought that crime in their home area had increased.

The highest proportionate increase in numbers sentenced for specific offence types were for drug offences (up 12.7% since 2006) while the numbers sentenced for fraud, forgery and robbery have increased by 8.5% over the same period. Overall, the trend over 10 years is for increases in those sentenced for robbery and violence against the person with the largest decreases for burglary and theft and handling of stolen goods. It will be interesting to see if this trend continues in the era of the credit crunch.

### **Offender Management model**

Alongside these matters around sentencing, we must also consider

offender management, now the job of the National Offender Management Service. The National Offender Management Model is said to be consistent with the best available evidence on what works in reducing re-offending.

This service encompasses both the police and prison services, for the first time seeking to harmonise and co-ordinate sentence planning and management under a single umbrella. The principles are as follows: -

- Resources should follow risk – the evidence suggests that efforts should be focussed on those offenders who are at medium/high risk of re-offending;
- Supervisory practices should incorporate elements of pro-social modelling where the offender is actively engaged in the sentence and is motivated, supported and encouraged to change their offending behaviour;
- The relationship between the offender and the offender manager is critical with consistency of supervision promoting the development of a trusting working relationship;
- Supervision and referrals to other agencies for interventions should vary according to the assessed risk levels and needs of the offender; and
- Referrals to partner agencies can be beneficial for offenders with multiple needs and for offenders who would otherwise not have received community supervision. However, the evidence here is mixed.

The objective of the service is for the C's to be delivered – continuity, consistency, commitment and consolidation. Risk is then matched to resources using a tiering mechanism based on four approaches. Tier 1 is Punish and includes monitoring and “signposting” to the offender. Tier 2 is Help and includes in addition helping and brokering support for the offender who will fit the low risk and low seriousness criteria. The help may be with health problems, accommodation, employment or learning skills for example. Tier 3 adds an additional element of personal change on top of the tier 2 elements and the final tier – Tier 4 – adds on top Control. These offenders may be regarded as the dangerous and/or

prolific that need additional restrictions and controls to manage their risk.

More than half of community and suspended sentence orders ran their full course or were terminated early in the first quarter of 2008. But 36% of community sentences terminated for negative reasons and 1860 offenders in custody in August 2008 for breaching a court order. These numbers need to be considered alongside those for persons in prison for breaching their licence following release. In 2007/08, 11756 determinate sentenced prisoners were recalled to prison – an increase of 5% on the previous year. In the same period, 926 parolees were recalled – a drop of 24% from 2006/07. The parole rate remained the same at 36%. These figures show a continued trend of “back end sentencing” – a consequence of legislative changes and the increased focus and efficiency of the Probation Service in enforcement of licences.

### **Risk assessment**

Risk assessment is at the heart of offender management and underpins sentence planning, resource allocation, targeting of interventions designed to reduce re-offending and community supervision of offenders. It is defined as “The systematic collection of information to determine the degree to which harm (to self and others) is likely at some future point in time.”

For all involved in offender management, making a full and accurate assessment of risk is crucial to decision making. In understanding the boundaries of risk assessment, it must be recognised that the processes do not conform to an exact science and that no environment is risk free.

Assessment refers to the prediction of future re-offending (in the UK this is normally measured by reconviction) and the prediction of the harm, to both an offender and their victim, that re-offending is likely to cause.

Typically, risk assessment measures two types of risk factor- "static" and "dynamic" and methods of assessment are actuarial or clinical in nature.

Static factors are the unchangeable historical characteristics of an offender – such as gender, age and previous criminal convictions associated with higher rates of re-offending. Actuarial risk prediction relies on assessment of these factors. It calculates the probability that an individual will re-offend based on the average re-offending rate calculated from a sample of offenders who match that individual on relevant static factors. Clinical risk prediction in contrast is less structured and relies on interviews and observations of social behavioural environmental and personality factor related to previous offending. These factors are considered dynamic in nature as they are amenable to change via treatment and offender management.

Both actuarial and clinical approaches are limited when used alone.

Actuarial assessment cannot identify which offenders will go on to re-offend, merely into which group an individual falls. Clinical assessment can be more prone to bias as it relies upon judgement and can be influenced by an assessor's opinion of the relative importance of different risk factors. A number of tools are available, many of which have been validated on UK populations and these are used as part of risk assessment processes. Some are actuarial, some clinical and others a combination of both. A number of tools predict specific types of re-offending for example

sexual or violent, others are designed for general application. The most prominent tool now used is the Offender Assessment System (OASys) which is used to assess risk of general offending, likely degree of harm and degree of need posed by an offender in a range of areas. Other widely used tools are Risk Matrix 2000 which predicts the risk of sexual re-offending and Historical Clinical List – 20 (HCR-20) which measures the risk of violent re-offending. Risk assessment in England and Wales is undergoing substantial re-development. The current OASys re-offending predictor will be replaced in the spring by a refined actuarial measure. The new measure scores on dynamic factors which research has shown to be most predictive of non-violent reconviction such as drug misuse and accommodation needs which in addition to criminal history were the best individual predictors of non-violent reconviction. A separate actuarial predictor of violence will also be included and this will be used to form the basis for further judgements regarding risk of serious harm. A further tool is being piloted to examine dynamic risk factors for sexual offenders being managed in the community building on the Stable and Acute 2007 tool developed in Canada.

### **Probation supervision including high risk offenders**

The number of offenders starting community orders remains relatively stable – 33200 started such a sentence in the first quarter of 2008. 51% of these community orders had just one requirement, 14% had 3 or more requirements. 3% more offenders were being supervised under community orders on 31 March 2008 than a year earlier, up from 98090 to 101250. 13% had no previous convictions or cautions – 18% had 15 or

more.

The number of offenders starting pre or post release supervision increased by 4% - to 11,870. The total number of offenders being so supervised was 97,080 at March 2008. This is an increase of over 22% from December 2002 and is largely a result of the changes brought in by the 2003 Act which means that offenders now spend longer on licence.

High risk offenders are supervised under Multi-Agency Public Protection Arrangements (or MAPPA). These are arrangements set up locally to assess and manage offenders who pose a risk of serious harm. National guidance indicates the use of 3 levels of management. Level 1 involves ordinary agency management; level 2 is where the active involvement of more than one agency is required to manage the offender. Most offenders assessed as high or very high risk of serious harm can be managed effectively at level 2 where the management plans do not require the oversight and commitment of resources at a senior level. The highest level is level 3 where it is determined that the management issues require conferencing and senior representation from the agencies. The few cases referred at level 3 – sometimes known as the critical few – are those whose management is so problematic that multi-agency co-operation and oversight at a senior level is required, together with the authority to commit significant resources.

In 2007/08, there were 12,806 level 2 and 3 offenders. During this period, 79 serious further offences were committed by these nominees. The major aim of MAPPA is public protection. Relevant agencies have a statutory

duty to co-operate in the arrangements.

There is also the Prolific and other Priority Offender (PPO) Programme which targets those offenders who commit most crime in the area or whose offending causes the most damage to the local community. The three strands of the programme aim to: -

- **Catch and convict** Offenders who commit most crime in their locality or whose offending causes most harm to their community. There is no standard national definition of PPO. Local areas devise their own selection criteria based on key principles set out in national guidance. PPO's are subject to intense police supervision.
- **Rehabilitate and resettle** Working with offenders to stop their offending by offering a range of supportive interventions addressing identified needs and risks of further offending. The opportunity to rehabilitate is backed by a swift return to court if offending continued.
- **Prevent and deter** To stop the most active young offenders escalating into tomorrow's prolific offenders through youth justice interventions and continued post-sentence support.

Recent research supports a positive assessment of the PPO programme. A comparison of total convictions before and 17 months following the programme showed a 43% reduction by PPO offending and a comparison from the start of the scheme to 17 months after the start showed a 62% reduction in convictions and a sharp reduction in PPO offending following entry on to the scheme. These reductions cannot necessarily be attributed to the PPO programme as we do not know what would have happened to these offenders had the scheme not been introduced.

A new initiative is integrated offender management, the aim of which is to reduce re-offending. It approaches target offenders in the community who present the highest risks to their communities especially those short sentence offenders released from prison with no statutory supervision.

There are 5 pilot areas. No evaluation has yet taken place but research is being built into the pilots which were announced in July 2008 and which will run for 2 years. The schemes are multi- agency partnerships.

### **The Parole Perspective**

The role of the Parole Board has changed significantly over the past 5 years. These changes are two-fold. The first concerns its decision-making. The Board has moved from being a mainly advisory body, making recommendations to Ministers and making the vast majority of its decisions on the papers to what the courts now call “ a court-like body” which is independent of government and which makes decisions about the release and recall of prisoners rather than making recommendations that Ministers can follow or reject. There are two types of case where the Board continues to make recommendations but these involve only a very small number of cases.

The second change is the sort of cases which come before the Board. Previously, the majority of cases related to determinate sentence prisoners serving over 4 years. The Board dealt with some recalled prisoners – again mainly on the papers – and some life sentenced prisoners – some on paper, some at oral hearings. This is no longer the profile of the Board’s business. Since the 2003 and 2008 Acts, the Board deals only with the residual determinate prisoners in the system and this work is falling quickly. It has been replaced by huge numbers of recall cases – where prisoners have breached their licences – as well as more oral hearings for lifers and indeterminate sentence prisoners. We focus now on the dangerous offender – and the defaulter.

The Board is made up of around 170 members, all but 2 of whom are part-time. They come from a large number of disciplines – from judges and psychiatrists to senior probation staff, former police officers, people from business, the voluntary sector and across public service. They usually sit in panels of three to make decisions.

The Parole Board currently has a responsibility to consider the risk posed by all indeterminate and some determinate sentenced prisoners, and they convene, either at a paper panel (becoming less common) or an oral hearing (much more common) to make their decisions at various, but pre-determined stages of the prisoners' sentence.

The Parole Board has different powers, and has to consider different tests for release, depending on the type of prisoner and the stage of sentence.

#### *Indeterminate Sentenced Prisoners*

There are prisoners in custody currently serving five main different types of indeterminate sentence - there are some other but these are rare. These are:

- **Mandatory Life** – awarded for an act of murder.
- **Detention at Her Majesty's Pleasure** - Awarded to anyone committing an offence of murder and aged under 18 at the time of the offence.
- **Discretionary life** – awarded for other very serious offences, (e.g. manslaughter, rape, armed robbery), where life is the maximum sentence.

- **Automatic life** – ceased to be available to the sentencing courts after April 3rd 2005. Prior to this it was awarded to anyone who was convicted for a second time for a variety of serious specified offences, such as armed robbery or rape. The sentence was based on the presumption that anyone who was found guilty of a second serious offence must be 'dangerous'. The sentence was automatically imposed in these circumstances unless the offender could prove that there were 'exceptional circumstances' and that they did not pose a continuing danger to the public.
- **Indeterminate Sentence for Public Protection (IPP)** – Replaced the Automatic Life sentence on April 4<sup>th</sup> 2005. Awarded when an offender is convicted of a 'serious specified' offence, and the court subsequently makes the assessment that the offender is 'dangerous'. Dangerousness is defined as '*there is a significant risk to members of the public of serious harm, occasioned by the commission of him of further such offences*'. This sentence can also be imposed on young people under the age of 18 at the time the offence was committed.

### **The Powers of the Parole Board**

#### *Indeterminate Sentenced Prisoners*

Under the Crime (Sentences) Act 1997, and the Criminal Justice Act 2003, once a prisoner has completed their 'tariff' or 'minimum term', if it is deemed safe to do so, the Parole Board has the authority to *direct* the immediate release of any indeterminate sentenced prisoner.

If the Parole Board makes a direction to release a prisoner he is released on life licence. The document outlines how and when the prisoner will be supervised by the Probation Service, but it also contains 'conditions' that are set by the Parole Board at the time of release. The life licence remains in force until death, and although the supervision element of the licence may be cancelled, if risk is seen to be escalating, supervision breaks down

or further offences are committed, an indeterminate sentenced prisoner can be recalled to prison at any time. For IPP prisoners, the situation is slightly different in that after 10 years of being supervised in the community they can apply to the Parole Board to have the licence imposed at release terminated. The licence will contain several 'standard conditions' but will sometimes also have additional conditions that are set by the Parole Board. These conditions may relate to where the prisoner can/must live, what work he can undertake, places he must not go to, people he must not seek to contact, what type of offending behaviour work he must undertake etc. All of the conditions must be necessary and proportionate in order further to protect the public, and/or existing victims.

If an indeterminate sentenced prisoner breaches their life licence conditions and subsequently has his or her life licence revoked by the Secretary of State and is recalled to custody, The Parole Board then has the authority to decide whether the Secretary of State was justified in recalling them, and or whether they are safe to be re-released.

Most determinate sentenced prisoners who are referred to the Parole Board become eligible for release at the halfway point in their sentence. At this stage if the Parole Board consider that it is safe to do so, they have the power to direct their immediate release. If release is not granted at the first opportunity the Parole Board will conduct an annual review of the risk such prisoners pose, and can direct release at any such review, until the two thirds point of the sentence is reached when they are automatically released. The situation is slightly different for prisoner serving over 15 years, where the Parole Board makes a *recommendation* to the Secretary of State regarding release, (as opposed to a direction for release) which is then confirmed or rejected. The Criminal Justice Act 2003 introduced new release procedures whereby the Board will only be consulted in respect of those prisoners deemed 'dangerous' by the sentencing court. Other prisoners not posing a risk of violent or sexual offending will be released automatically at the half way stage of their sentence.

When the Parole Board has directed release, as with indeterminate sentenced prisoners, the Parole Board also has the power to set additional license conditions that will help with managing risk in the community.

If a determinate sentence prisoner is recalled to prison for a breach of their Parole license conditions, the Parole Board considers whether the recall was appropriate and if it is considered safe to so, they can direct re-release back into the community.

### *Oral Hearings*

Oral hearings usually take place in the prison where the prisoner is located. These types of hearings will usually be chaired by a Judge, but in some cases by a legally qualified experienced Parole Board member. Where the circumstances of the case warrant it, the panel will include a Psychologist or Psychiatrist. The third person will be an Independent, Probation or Criminologist member. The prisoner is usually legally represented, and there may also be a Public Protection Advocate present representing the Secretary of State and or the victim(s). Witnesses may include the Offender Manager or Supervisor, and anyone else who can add something to the risk assessment decision. Oral hearings are used to consider the majority of cases where an indeterminate sentence prisoner is applying for release or transfer to open conditions. Oral hearings are also often held when either a determinate or indeterminate sentenced prisoner is making representations against a decision to recall them to prison, or requesting to be re-released. In terms of the style that the hearing should be conducted in, the overriding principle is that the hearing should be as informal as possible, with the panel having an inquisitorial role.

Section 28 of the Crime (Sentences) Act 1997 states that the Parole Board can only release an indeterminate sentenced prisoner if it *'is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined'*. In terms of how the Parole Board satisfies itself that it is no longer necessary for the prisoner to be confined, the test that is applied is *'whether the lifer's level of risk to the life and limb of others is*

*considered to be more than minimal*'. This is often referred to as the 'Life and Limb Test'. The relevance of this is that when assessing an indeterminate sentenced prisoner for possible release, it is not *'any risk'* that should be assessed, but only those risks that mean the prisoner could cause serious harm to another. For determinate sentence prisoners, the test is different and is the risk of any form of re-offending during the period of the parole licence.

The Parole Board's mission statement is

The Parole Board is an independent body that works with its criminal justice partners to protect the public by risk assessing prisoners to decide whether they can be safely released into the community.

It is very clear that its primary role is contributing to public protection and addressing future risk – it is not about punishment or retribution.

Some key statistics from last year are

- 31,172 – record number of cases handled during the year, up 22%
- 7,594 – number of DCR cases considered by paper panels, down 4%
- 2,531 – number of oral hearings during the year, up 1%
- 19,060 – number of recall cases considered during the year, up 30%
- 35.9% - percentage of DCR cases where parole was granted, unchanged from previous year
- 3% - percentage of released indeterminate sentence prisoners who re-offended – down from 6% the previous year
- 231 – number of DCR prisoners recalled from parole for further offending, down from 246 last year, but up slightly as % from 5.7% to 6.8%

- 15% - percentage of lifer prisoners where life licence was granted, unchanged from previous year
- 114 – number of lifers recalled for any reason, down from 178 last year, also down as % from 10.8% to 6.5%

Up until 3 years ago, the Board's release rates had been steadily increasing and in determinate cases was up to just over 50%. However, in 2004, there were two high profile cases where prisoners we had released went on to commit murder. There was a huge furor in the press and this led Ministers to make public comments about how we should make our decisions. Since then, the release rates have fallen as everyone in the system has become more risk averse.

### **Initiatives by the Parole Board**

The Board has put as a golden thread through all its activities quality. This means quality members to make decisions, recruited through a rigorous process. It means top quality training and development, ongoing mentoring arrangements, accreditation of members and tough appraisal. It means that a sample of decisions are monitored for quality and feedback given. It means too that we have a Review Committee with distinguished external members, chaired by a High Court judge that looks at every decision we have made to release someone who goes on to re-offend seriously. The Review Committee's findings are fed back to panel members and also form the basis of our ongoing training. We have also led in setting up a Joint Review Panel where all relevant agencies - police, probation, prisons, health as well as parole – consider serious case reviews for learning points and areas for improvement.

The Board has also invested in a lifer database. In the database are the details of every indeterminate prisoner we have released since September 2004. We want to use this database to learn whether there are any factors which make re-offending more predictable and we want to share this resource with researchers.

But those are the internal quality items. We are also working with report writers and providers to set standards about what we need to make a proper decision both in terms of content and timeliness. We must take account of resource pressures on other agencies but we cannot compromise where public safety is concerned. There is a joint programme of work with the National Offender Management Agency to design and implement a generic process to cover all types of parole application which puts in quality mechanisms and standards with a shared whole system target. This is due to become operative in April 2009. The improvements in outcomes I spoke of earlier in my view are largely accountable to our quality agenda. But the fall in our release decisions has been another contributor to the burgeoning prison population.

The Board has also tried to raise its profile and improve knowledge of its role. It allowed the BBC to make a series of three documentaries about its work – following members making decisions in real cases with real prisoners. We also have a programme of observation visits - we have invited a number of high profile people to observe panels as well as victims and representatives of other pressure groups. We have found that the resulting improved understanding of our work has helped relationships. We have regular stakeholder events and involve them in policy development. None of this is rocket science but it is all important. We want to build on this in future as we try to improve public confidence in our work. It's fair to say that this will be our biggest challenge.

### **International Context**

I mentioned that I wanted to put in some international context to this analysis. Making robust international comparisons on re-offending are difficult. This is due to an international standard on the way to measure re-offending as well as the complication of each country having different judicial systems. I understand that work is underway to devise a standardised way to compare re-offending rates across countries. We contributed too – along with Japan – to a study on recall rates that has recently been published. So with those health warnings, we have some

work on international comparisons with regard to the prison population. At the end of August 2007, England and Wales had 149 prisoners per 100,000 population – the second highest rate in Western Europe. The highest was in Luxembourg (155) and the other high rates were in Spain (148) and Scotland (142). Figures are higher in Eastern Europe – 613 in the Russian Federation, 322 in Estonia and 237 in Poland for example. Japan's rate is commendably low at 63, with Canada on 108, New Zealand 188 and South Africa 339. The United States is the highest in the world at 762.

There are also some published figures for European Union countries that correlate the prison population with recorded crimes. In England and Wales there was a lower rate here than in other European countries – a ratio in 2001 of 12.1 prisoners per 1000 recorded crimes compared to an average of 16.9 for all EU countries. However, these comparisons are considered misleading because of differences between countries both in the way that crimes are recorded and their legal definitions. The prison population issue is complex indeed and it is pleasing and exciting that Japan is looking to lead on a workshop next year at the 12<sup>th</sup> United Nations Congress on Crime to find ways to address this global problem.

### **Future challenges and opportunities**

Where to start? I have tried in a somewhat discursive way to give an overview of what is happening in England and Wales across the system as a whole. And that is probably our first challenge. What we call a criminal justice system is a number of agencies with individual budgets and strategies and no common systems. There is much excellent joint working – MAPPA and the PPO scheme are examples here – but there are no common information systems and the legal frameworks about data protection and disclosure do not assist in agencies feeling and acting with confidence in working together. The lack of connectivity between information systems also means that information may be available but unable to be shared effectively. This is not good enough.

Then we have the media and its influence on public confidence. The trend now seems to be about blame and scapegoats when things go wrong – as they inevitably will. I am certainly not suggesting even for a moment that officials and agencies should not be accountable – but trial by television or newspaper in the absence of many of the facts is not the most mature way of proceeding in these cases. Sadly, in the UK, the public does not accept the facts about the fall in crime and often according to research polls regards published statistics as at best incomplete and misleading and at worst dishonest. This research indicates that people are more likely to believe local rather than national estimates. This is not a quick fix cure but it is not enough to look only internally and not engage and try to inform the community about your work – and to agree to some press interviews and coverage to try and balance reporting where possible. This is an area where the scales can be tilted in either direction.

There is also the issue of judicial confidence – it is vital that the judiciary is independent and is seen to be so. Some parts of the 2003 Act – notably the IPP sentence – were crafted so as to take away judicial discretion and when judges did what they had to do in following the statute with unfortunate consequences, there was public criticism. It has taken over 3 years for the worst excesses of this sentence to be put right by the 2008 Act. What is a great advance is that in those years there is now a proper agreement between the Secretary of State for Justice and the Lord Chief Justice – the concordat. Communication and understanding have greatly improved and this bodes well for the future.

Research and information are crucial – good information is the oxygen of good decision making. So rigour in setting standards, in evaluation of what works – and just as importantly what doesn't and why is fundamental. The two serious further offence cases that hit the Board were independently reviewed and a key finding was that there was basic information about previous offending that had not been given to the Board – which may well have changed the decision. But as someone much wiser than I said – You don't know what you don't know.

And then there are resources. We were already facing budget pressures before the downturn in the global economy. All interventions require funding. Our prison population is estimated to increase to between 83,400 and 95,800 by 2015. Community orders too are projected to go up to 258,500 by 2010/11. The increase in knife crime and the expectation to prosecute rather than caution these offenders and for sentencing tariffs here to increase may increase these estimates further. The impact of increased radicalisation as well as the impact of technology on crime will also be challenges. What impact will the credit crunch have on crime too?

So the scales are balanced with public protection and public safety on the one side and rehabilitation and reintegration on the other. At the fulcrum of this balance are those who work with offenders both in prison and in the community. I am delighted to have been asked to contribute to the work Japan is leading on the global prison population crisis. I believe that the best way of using our scant resources and applying best practice is to learn from each other. I hope that the work we are looking to do together in this international context will be a springboard and that we can look forward to tilting that balance even more towards making our society a safer place.

Christine Glenn

January 2009