

Reflections on parole, England, Wales and beyond

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Overview

- About the Howard League
- Parole in England and Wales: aftermath of Warboys (R(Radford) v The Parole Board)
- The context of parole decision making in England and Wales
- Lessons from other jurisdictions
- The strengths of the current system
- The weaknesses of the current system
- New proposals – risks and opportunities

About the Howard League

- England and Wales, since 1866
- Less crime, safer communities, fewer people in prison
- Policy, research, direct legal work for under 21s
- Membership organisation
- No government funding



the Howard League for Penal Reform

Key points

- There are more people sentenced to an indeterminate term in England and Wales than in the other 44 countries in the Council of Europe combined.
- There are currently 11,677 people serving life and indeterminate sentences for Public Protection (IP) sentences, which currently total 4,500 in 2011 and 2,700 in 1981.
- As the number of people serving open-ended sentences has increased, so too has the length of their periods in prison. Average tariffs have increased by 22 per cent and 60 per cent for mandatory and non-mandatory sentences respectively in just three decades.
- Most people serving long terms in prison are under 50 years old.
- Making it possible to already long sentences longer is extremely expensive and there is no evidence that it is more effective than any other punishment approach long term.
- The United Kingdom is the only country in the world to have a mandatory life sentence.
- A life sentence should be reserved and a sentence of imprisonment half length for its sentence should be available.
- A life sentence should be reserved for an individual who has not made an effective attempt to turn their lives around.
- The sentence should be based on the individual's progress and not the nature of the crime.
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Howard League for Penal Reform

Key points

- Fifteen years ago the Howard League introduced legal work to an approach to reducing long terms, life sentences and three strikes in prison.
- The Howard League has transformed law, policy and practice for children and young adults in the criminal justice system. Our legal system has helped to reduce the through legal system, reduce prison and participation work.
- Our legal education work empowers young people and professionals in education and law to improve outcomes.
- The Howard League was a landmark case in 2002, which changed the law to ensure that the protection of the Children Act 1989 applies to children in custody.
- We represent young people to establish and enforce local authorities' duties to support children, care leavers and vulnerable adults in and out of custody.
- Our legal work ensures there is equality and justice for children and young adults in the criminal justice system. We have achieved this through legal challenge and participation work at all stages of the criminal justice journey, from sentencing to supervision to release.
- We have introduced changes to young people in prison and the community by successfully challenging policy and practice, from cutting custodial and prison discipline to helping secure the right to an appropriate level of 17-year-olds in the police station.
- We have increased access to justice through our own work and our successful legal challenge to government legal aid cuts to prison law for children and adults.

Post Worboys

- A unique combination of unusual features:
 - Successful decision following judicial review of parole board decision brought by third party
 - Case had been subject of civil litigation (settled)
 - Supreme Court judgment re police failings
 - Conviction concerned one of a huge number of offences
 - Catalogue of errors – from charge to sentence (IPP)
 - Unusual to release from high security
 - <https://www.judiciary.gov.uk/judgments/the-queen-on-the-application-of-dsd-and-nbv-ors-v-the-parole-board-of-england-and-wales-ors-and-john-radford/>

Post Worboys

- Consultation

- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/703534/review-of-the-law_policy-and-procedure-relating-to-parole-board-decisions.pdf

- Transparency

- Reconsideration

- Victims' role

Some context

- This week there are 83,385 people in prisons and young offender institutions in England and Wales
- 299 people died in prison custody in the 12 months to the end of March 2018, including 69 people who lost their lives through suicide. There were five homicides.
- 359,081 days – almost 984 years – of additional imprisonment were imposed in 2017
- Prisons recorded 29,485 assaults in 2017 – a 13 per cent rise on the previous year.
- Incidents of self-injury rose by 11 per cent to 44,651 over the same period.
 - <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2017>

Some context

- The parole board deals with all indeterminate sentence prisoners, extended sentence prisoners and all “standard” recalled prisoners, regardless of length
- England has more indeterminate sentenced prisoners than the rest of the countries in the council of Europe combined: **over 10,000**
- Very high rates of recall by the Secretary of State for IPPs
- All indeterminate sentences have a minimum term (tariff); mandatory life sentence for murder, including children; judicialised in response to litigation (Anderson, 2001) but in response starting points increased (Criminal Justice Act 2003):
 - Starting point for murder 12 years child; 15-30 years for an adult depending on nature of the murder
 - Whole life sentence available: On 30 June 2017 there were 63 offenders serving a whole life sentence. These include serial killers Peter Sutcliffe, Dennis Nilsen and Rosemary West.
- Sentencing Council responsible for consistency but some have criticised it as being responsible for increasing sentence lengths:
 - In June 1993, 54% of the sentenced prison population were serving sentences of ‘less than four years’
 - By June 2016 only around 1 in 3 (34%) sentenced prisoners were serving ‘less than four years’:

Lessons from Canada, Portugal, Netherlands

- Faint Hope (Howard League, 2016)
- Canada:
 - Faint hope clause – a chance to reduce the tariff
 - Lifeline programme – prisoner led rehabilitation
- Netherlands
 - Retains whole life tariff but small numbers, humane conditions and falling prison population
- Portugal
 - No indeterminate sentence at all
 - Maximum 25 year term

Strengths of the current system

- Clear process, defined and refined over time – generic parole process
- Pre-tariff reviews – advisory
- Post tariff reviews – binding
- Due process, MCA, oral hearings with live evidence from probation, prison staff and the prisoner, victims able to attend and participate (albeit limited), process for non-disclosure applications
- Representation for prisoners funded by legal aid for all reviews to avoid systemic unfairness, following Court of Appeal decision in R(Howard League and Prisoners' Advice Service) v SSJ 2017
 - <https://www.judiciary.gov.uk/wp-content/uploads/2017/04/howard-league-v-lord-chancellor-20170410.pdf>
- Training and development of board, policies for juveniles, young adults, prisoners with mental health sections
- Clear and transparent test for release, publicly available guidance

Weaknesses of the current system

- Ad hoc development in reaction of judicial scrutiny
- Court-like but without powers of a court including power to compel witnesses and commission evidence
- Not diverse
- Inconsistent and sometimes risk averse – uphill struggle for prisoners
- Insufficiently independent and therefore vulnerable to political and media concerns



Sisyphus at his endless task

New proposals – risks

- The Board may dilute its primary functions ensuring (a) public protection and (b) fairness: a key question in respect of all the issues in this review is whether the changes will better protect the public both in the short and long term and afford sufficient fairness to the prisoner given that liberty is at issue (Article 5 ECHR)
- The quality of expert evidence Board will receive may be compromised if the best experts feel unable to participate in the parole process for fear of their safety or reputation.
- Risk assessment and rehabilitation may be compromised, both in parole hearings and in therapy prior to parole, if the prisoner feels unable to speak freely

New proposals – risks

- Greater media coverage may increase the risk of a released prisoner being identified, and lead to concerns about their physical safety. The rise in vigilantism as a result of tabloid and social media interest in people involved in the criminal justice system is well documented. Greater resources may be required to manage risk in the community.
- Greater media coverage may negatively impact on rehabilitation. Long term desistance from reoffending may require the person to fully adopt their new crime free personality, discard their old ways of being and to develop positive relationships (McNeill *et al*, 2012). There is a risk that if increased transparency leads to widespread negative publicity about the person who committed the crime, it will become much harder for the prisoner to sustain long term desistance and rehabilitation <https://www.iriss.org.uk/resources/insights/how-why-people-stop-offending-discovering-desistance>

New proposals – risks

- Reconsideration may:
 - undermine the principle of legal certainty,
 - further interfere with parole board independence
 - may introduce a system that is out of kilter with the rest of the criminal justice process if victim has a “right of appeal”:
 - the role of victims throughout the system where the state prosecutes on behalf of the community to reflect the “shared wrong”,
 - introduces an element that is highly subjective and not necessarily related to risk and may be impossible to therefore adjudicate fairly unless the release test is changed
 - Proliferation in legal challenges?

New proposals – opportunities

- Is this an opportunity for:
 - A new, independent and more court-like structure with greater powers and/or
 - Some wider changes to the penal landscape including greater hope for change
- Can Ireland lead the way?