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Newsletter: Issue 5: Summer 2018

Experts in Parole, Judicial Review and Prison Law

In our last edition we highlighted that the Ministry of Justice was reviewing the Parole Board decision process. This review has now been completed. Members of the public will be able to request summaries of Parole Board decisions made after 22nd May 2018. Here is a quick 5 point guide completed by Andrew Sperling at SL5 Legal:

1. Who is entitled to a summary of the decision?

A victim can request a summary of a Parole Board decision letter. A "victim" is defined as a person who is participating in the Victim Contact Scheme. They must make their request via a Victim Liaison Officer (VLO). There must be an active Parole Review at the time the request is made or the decision must have been made within the last 6 months. Any other person can request disclosure of a summary of the reasons for a decision made by the Parole Board. The Parole Board has designed an online form for requests by members of the public. Any member of the public who requests a summary will have to demonstrate why it is in the public interest for the summary to be provided.

2. Who decides whether a decision should be disclosed and what will they take into account?

The new Parole Board Rules refer to the 'Board Chair' making this decision. 'Board Chair' usually refers to the Chair of the Parole Board (formerly Nick Hardwick, the current acting Chair is Caroline Corby). In this situation, it presumably means the 'Panel Chair' ie the chair of the particular panel of the Parole Board who made the decision. If a victim requests a summary it will be disclosed unless the chair considers that there are exceptional circumstances why a summary should not be produced for disclosure. If a member of the public requests a summary the Board must produce and disclose a summary to that person if the Board chair considers that the public interest in the principle of open justice justifies disclosure.

The Board has the discretion to refuse provision of a summary or redact details or amend as necessary a summary of a panel's decision where the information contained could or does: Adversely affect the successful rehabilitation or progress towards rehabilitation of any offender;

- Place the safety of any person/s in jeopardy, through threats or other harmful behaviour;
- Pertain to a young offender - under the age of 18
- Pertain to any offender released from a secure Mental Health Unit
- Breach any outstanding court orders;
- Relate to any ongoing investigations or
- Go against the public interest to disclose.

The Board states that it will not disclose information which breaches any persons' rights as covered in Article 8 of the European Convention of Human Rights (ECHR), Data Protection Act (DPA) and General Data Protection Regulation (GDPR). In order to assist the Parole Board in determining if any of the above criteria come into play, representations can be made by the prisoner, their representative or any interested party at the time of the making of the decision to allow or refuse release from custody.

3. What will happen if someone breaches any of the Parole Board Rules?

The new Parole Board Rules retain some restrictions on disclosure. Other than in the circumstances outlined above, information about proceedings under the Parole Board Rules must not be disclosed, except in so far as directed by the Board chair.

Other than those of "the parties", the names of persons concerned in proceedings under these Rules must not be disclosed. There is no definition of "the parties" and presumably this refers only to the prisoner. The Secretary of State is never named and very rarely represented. His representatives are not named publicly. It does not appear that the names of Parole Board Members considering a case will be made public. A breach of these Rules is "actionable as a breach of statutory duty" by any person who suffers loss or damage as a result. I am not aware of anyone ever pursuing a successful action for breach of statutory duty. What is likely to happen, for example, if a victim were to publish online details which had been disclosed to them but were not otherwise in the public domain?

4. What will the Secretary of State and the Parole Board do to explain how and why the Parole Board makes its decisions?

The current Secretary of State has done nothing at all about this. The Parole Board is working very hard on this already. Lots of new guidance has been added to the Board's website (or more accurately the GOV.UK website).

Meanwhile, the Secretary of State's department which still makes huge numbers of decisions regarding the release and recall of prisoners remain entirely PPCS hidden from the public view. They have no website, no information about what they do and why, no explanation of the training or expertise which its staff have to make decisions. The Parole Board has struggled to manage the demands on it even before these very significant changes. They have finally been able to reduce the backlog of late cases to a reasonable level albeit the backlog has not been eliminated entirely. This has taken five years to achieve, during which time thousands of prisoners have had delayed hearings and the Parole Board has had to pay out millions of pounds in compensation for breaching their Article 5 rights.

They have to deliver between 700 and 800 oral hearings each month to hold this position. They will now have to deal with the administration and preparation of summaries of an unknown number of these oral hearings. This is not an insignificant task. It will take the time of staff at the Parole Board, staff in the Secretary of State's department, the Probation Service and prisoners' advocates. Parole Board members will have to prepare two sets of reasons in some cases as well as dealing with submissions made regarding summaries. Where the money is coming from to pay for this is anyone's guess. There is no commitment to simplification and restructuring of the system to accommodate this and the other proposed changes floated by the Secretary of State (which are the subject of another consultation which will close in July).

There is a good chance that the impact assessment for these changes will prove to be woefully inadequate.

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News

It's been a busy few weeks for the Justice Secretary David Gauke. In addition to the changes to the Parole Board he has announced plans to increase education and employment within prison. The New Futures Network will create strong links between prisons and employers. The Justice Secretary stated *"We intend to do this by expanding and increasing the use of release of prisoners on temporary licence for work - or 'workplace ROTL'"*

The proposals echo very similar plans announced by the Ministry of Justice in 2016 when the then Justice Secretary Michael Gove announced his proposals to increase resettlement ROTL, stating; *"We know that the three most powerful factors helping to keep ex-offenders from re-offending are a good job, strong family ties and a stable place to live - ROTL makes all of them easier to achieve."*

Since then, ROTL applications remain a time consuming process without any obvious increase in prisoners accessing ROTL. Whilst such announcements are welcome we wait to see whether they have any real impact on rehabilitation and resettlement.

We all wish Kushal Sood, our colleague and friend a speedy recovery from his recent illness. All enquires for Kushal should be addressed to Andrew Sperling for the time being.



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Latest Tweets

The latest in a long line of Justice Secretaries making aspirational speeches about rehabilitation and resettlement of prisoners. They need to understand and tackle the barriers to achieving this. They are rarely in the job long enough to do so even if they really want to.

Inspectors at HMP Exeter found "disturbingly high levels of violence and self-harm and a serious failure to tackle safety issues".

24 years ago in my first week as a trainee I met a troubled 16 year old boy, a regular at the local Youth Court. I didn't see him for 22 years. Last month I represented him at a parole hearing. He'd served 9 years on an IPP sentence. He was released today.



Join our Facebook Group

Prison Law Free Help & Advice UK – SL5 Legal For prisoners on licence and prisoners' families.

Do you have a family member or friend who would like answers to questions about Prison Law, Parole or Judicial Review? Tell them about our group, it's free. We aim to answer as many questions as we can. These are posted on our Facebook group page.

Cases of the Month – Catherine Bond

Catherine has recently conducted the first criminal case for SL5 Legal. One of her IPP clients had been recalled for a new criminal offence. By persuading the Magistrates to deal with the potentially serious matter by way of a conditional discharge, she has a powerful argument to put to the Parole Board in the recall hearing that the conduct of her client was not considered by the Magistrates to cross the custody threshold, so in the absence of other concerns, her client's risk should remain plainly manageable in the community. The benefit of Catherine representing her client in the criminal matter as well as the parole matter is that she was able to give detail to the Magistrates about the client's progression through his sentence and about the nature of the parole process which criminal lawyers may not be familiar with.

Lisa Burton

Lisa was recently instructed to assist a client who had been deselected from a therapeutic community. Due to this deselection the establishment had decided at his pre-tariff sift that his case should not be progressed to a parole review and informed PPCS accordingly.

We obtained evidence to demonstrate that he met the criteria to have his case referred to the Parole Board for a pre-tariff review and sent detailed submissions to PPCS.

Following this PPCS directed the client's case should be referred to the Parole Board for a pre-tariff review. The client now has the opportunity to progress to the open estate prior to his tariff expiry.

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