

# Consultation response

## Reconsideration of Parole Board decisions: creating a new and open system

July 2018

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## **1. Do you agree that decisions where the Parole Board directs a prisoner to be released or prohibits them from being released should be in the scope of the proposed reconsideration process?**

Before we comment on the reconsideration question, it goes without saying, that to reinstate and maintain public confidence in the Parole Board, parole decisions need to have credibility. The more confidence one has in the primary decision, the less likely an appeal or other challenge.

Transparency has an important part to play and we welcome recent developments to the Parole Board website. More information about the Parole Board process is now available.

We are aware that you are reviewing the Parole Board rules and would recommend that you take this opportunity to ensure the quality of first decision-making. We would expect to see good training and professional development of decision-makers for example, alongside first-class quality management and quality assurance mechanisms. These may exist – we appreciate – but it is not apparent to the public or to parties to Parole Board hearings.

We have seen the Parole Board's response to your consultation and are supportive of its recommendation to define the original decision as the final decision (not provisional) and then any reconsideration mechanism as an appeal mechanism. Language, terminology, they are important. In our view these terms give proper weight to the main event – the Parole Board panel decision - and then any appeal against that decision.

As to the appeal process, we agree that, of the four overarching responsibilities of the Parole Board, appeal should only be applied when the Board directs a prisoner to be released or else prohibits release. There is no right answer, but these decisions can be differentiated from other decisions the Parole Board makes in individual cases (where, we note, appeal processes already exist). All Parole Board decisions have consequences of course, but these decisions can be said to be the most weighty.

We are uncomfortable with the proposal to apply automatic reconsideration in some cases. We think such arrangements would put into question the standing and weight of the original decision, and could further undermine public confidence in those decisions. Where the Parole Board directs release from secure custody, for instance, we would expect the Panel to be able to robustly justify that decision, as in any other case.

## **2. Which individuals or group should be able to make an application for a decision to be reconsidered?**

The Secretary of State's representative, the Parole Board and the offender are parties, and in our view each should be able to appeal. As it is most unusual for those other than parties to be able to appeal a decision in someone else's case, we ask ourselves why things should differ here. We think the relevant consideration is fairness: what is fair, all things considered?

In our view, the appeal process should not be open to the general public or the media. The Parole Board should of course account to the public for the way it conducts its business overall, and for the quality of its decision-making, but that should be done periodically and transparently (for example in an annual report).

Victims are affected by decisions of the Parole Board – most especially, any decision to release. We are not convinced that victims should have a right of appeal against decisions not to release.

It is not clear to victims at the moment, how their experiences and views are taken into account as the Parole Board makes its decision. In our view, it may be possible to better engage victims at or before decision-making stage, to increase confidence and/or to make sure that licence conditions are well-explained so that the victim can see how things are likely to be upon and after release.

The victim clearly has a stake in the release decision. On balance we think there is a case to allow victims in the convicted offences to appeal – but the appeal should be on specific grounds only (see below). We think that strikes the right balance. It enables a victim who may feel justifiably aggrieved to appeal, but falls short of allowing appeals for the sake of it.

We are talking here of victims as defined under the Victim's Code. This would include a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; or a close relative of a person whose death was directly caused by a criminal offence. A close relative refers to the spouse, the partner, the relatives in direct line, the siblings and the dependants of the victim.

We do not advocate opening up the process further to include 'other' victims who may have suffered similar offences at the hands of the offender but whose case was not considered at trial. Defining who is 'in' and who is 'out' of scope would be extremely difficult to achieve and may not pass the fairness test. The process also needs to be proportionate.

### **3. Do you agree that any reconsideration mechanism introduced should consider grounds similar to those used within judicial review?**

Yes, we agree. The consultation makes clear that the introduction of an appeal process would enable [relevant] individuals to raise concerns about a Parole Board decision without having to take the onerous step of launching a judicial review. It therefore seems appropriate that such a mechanism would consider grounds similar to those used in judicial review. What is more, the established grounds cover the right territory. They are essentially grounded in the notion of fairness.

We are unclear, incidentally, what the reference at paragraph 50 means. It reads: 'The Parole Board will have some flexibility for broader requests for reconsideration to be considered'. Any appeal mechanism needs to be easy to understand and transparently applied. It also needs to be fair and proportionate to have the public's confidence. We would advise against any informal application of the process.

### **4. Do you agree that the grounds used within the First-tier Tribunal provide helpful parameters for the grounds of a reconsideration mechanism?**

The grounds used to appeal a decision of the First-Tier Tribunal to the Upper Tribunal seem sensible. There must still be a point of law arising from the decision, but we note the grounds are wider than those relating to Judicial Review.

We are not convinced that grounds other than those that would support a judicial review are necessary. If we assume for a moment that most appellants will be unrepresented, then the main thing is that they are able to get clear advice about the grounds that can support an appeal.

**5. How could we increase public access to reconsideration hearings in some circumstances and provide more information about reconsideration decisions whilst also making sure that the process remains robust and protects victims?**

The introduction of a summary of the reasons for Parole Board decisions relating to the release of an offender that will be made available to the victim(s), and others as the Parole Board deems fit, is a welcome step.

While we agree that the appeal process and decision need to be equally open and transparent, we do not think this necessitates hearings being made open to the public or information being made available about the panel members who make these decisions.

The appeal process necessarily needs to feel tangibly different from the original panel decision, and obviously has a different purpose but we are not clear why it demands that such measures that are not applied to the original decision, be applied at appeal.

Open hearings will not necessarily build trust. They could also have a negative impact on victims and offenders, victims especially if they have not been the ones to request the reconsideration. This must not feel like another court hearing. In addition, there are confidentiality issues associated with those who are under 18, both offenders and/or victims.

**6. What more could we do to make the reconsideration process as open and transparent as possible?**

We suggest this is part of the wider question about transparency, and that it is equally relevant to regular Parole Board panels and not just reconsideration panels.

Transparency can build trust – although it is no guarantee. The public should be able to see the quality of first decision making over time, and the proportion of successful appeals. They can expect to see the Parole Board learning from successful appeals.

In our view the appeal process would be more likely to build faith were it to include an independent element – a chair, for example, that came from outside the Parole Board. There are examples in other spheres.

**7. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform?**

We would reinforce the following as applies to all Parole Board decisions:

- Protection of identity and confidentiality - for both victims and offenders under the age of 18;
- Accessibility for victims - for those with physical disabilities who may not be able to easily navigate the prison environment, as well as for those who find the prison environment intimidating, and so would advantage from a panel hearing being held in a different location. It also relates to the clarity and understandability of information made available to those with learning difficulties or disabilities.

We recommend that meaningful analysis of equality impacts is reported (say, in an annual report) with any learning identified. Also, what action has been taken, where inequalities are found, in line with the 'explain or reform' principal proposed in David Lammy's review.

**8. Do you agree that we have correctly identified the range of impacts under each of the proposed reforms set out in this consultation paper?**

It is not clear why the introduction of an appeal process would create a backlog of parole decisions. It should be able to operate independently alongside the parole process (and have the resource necessary to do this).

The public confidence impact of referring cases back to the original panel need to be carefully considered.

The impact analysis does not address the proposal to apply automatic release in some cases and for the Parole Board to accept broader requests for reconsideration. Applying discrete action in individual cases can open the process up to challenge. There is no consideration of the resource implications of such challenge, though, as we have stated above, we do not support these proposals in any case.

The introduction of an appeal mechanism will clearly have resource impact on offender managers and victim liaison.