

*The following is a paper delivered by Gordon Holmes, Chairman Parole Board, at the second in the Prison Law series of practice seminars for barristers and solicitors, 'Prison Law Seminar - The Parole Process', which took place on Thursday March 26<sup>th</sup>, 2009. The lecture series is co-hosted by the Irish Penal Reform Trust, the Irish Criminal Bar Association and the Dublin Solicitors Bar Association.*

---

## **PAPER ON PAROLE**

1. Speaking to a gathering like this on the subject of Parole causes me one considerable problem. I don't know how conversant all of you are with the Parole system as it operates in Ireland. Therefore, if in my few words I tell you things that you already know, please forgive me and don't think I am trying to be in any way patronising.
2. There are an awful lot of people who think they know how the Parole system works in Ireland, in Britain and in many other Countries on the Continent, but in reality our position is different from all others. I will explain to you why.
3. The Parole Board came into existence in 2001. I was quite surprised to be asked by the Minister for Justice, Equality and Law Reform to become the first Chairman and it is a position which I still hold.
4. My knowledge of the release of prisoners generally was, to put it mildly not great. The first thing I did was to go with an official from the Department of Justice to London to attend one of their meetings and as it turned out the Chairman of the Parole Board in London was Peter Tatch, later Sir Peter Tatch was socially known to me.
5. Having attended the meeting, I said to the Department of Justice Official that if I ever ran the Irish Parole Board the same way that she should tell the Minister to get rid of me. The Board had to deal with probably about seventy cases in an ordinary day's work and if they wished to be finished by lunch time they were, therefore, giving two minutes to two and half minutes for discussion in each case. I was quite determined that that would not happen in this Country and, thankfully, it never has.

- 
6. From the time the Board came into existence and started dealing with cases, we have had what one might call 'a constant flow of customers'.
  7. I will now briefly set out for you the authority of the Parole Board, what we can do and what we can't do and enable you to make your own decision on whether or not such a system is the best one for the Country or not.
  8. Primarily, we are an advisory Board only. It means that when we have finished our deliberations in any case, and I will set out later how these deliberations are conducted, we make a detailed recommendation to the Minister for Justice, Equality and Law Reform. In that recommendation, we indicate the steps that should be taken by the prisoner to improve him or herself to lessen the risk of reoffending and to enhance their prospects of release at the earliest opportunity. From this you can see that our principle role is not just recommending temporary release of prisoners but it is managing their sentence and indicating what courses they should or should not do, the attitudes they should adopt, what psychiatric or psychological services should be provided for them and in general how they can best manage serving their sentence so that their prospects of a release as soon as possible are maximised. Our role, therefore, is primarily in Sentence Management and secondly in advising on temporary release when appropriate, but the one is absolutely bound up in the other. A co-operative prisoner who does the courses recommended to him and who does what he can to rehabilitate himself is thus maximising his prospects of release.

- 
9. There are only two types of prisoner whose sentence we can review. First, if there is any prisoner on whom is imposed a finite sentence in excess of seven years. Thus, the question of temporary release other than by remission does not arise for prisoners who are sentenced to a shorter period of imprisonment than seven years.
  10. The prison system in this Country provides that prisoners are entitled as of right to remission after they have served 75% of their sentence. In theory, though I fear not in practice, if they commit any discretions whilst in the prison, these breaches of prison regulations are dealt with by what are called P19s, the Governor of the Prison is empowered to forfeit from them any number of days of remission and, in theory at least, this means that their release date is shoved out further.
  11. It is fair to say, I think that if prisoners make a genuine effort to do whatever tasks are enjoined on them, then the Governor will waive these forfeited remission days and will restore a prisoner to entitlements.
  12. I digress here to say that remission has been a part of our penal system since the early 20<sup>th</sup> century. It started in Britain and was adopted virtually immediately here. The conditions of qualifying were good behaviour and hard labour, thus if a prisoner sewed the requisite number of mail bags and did not hit the prison warders he/she would qualify for remission.
  13. So the theory of remission lasted well up to the latter days of the 20<sup>th</sup> century but, of course, the hard labour part was dropped. This became clear in the early 1990s when the then Minister for Justice, in answer to a question in the Dail indicated that remission was given purely on the grounds of good behaviour. This showed great

---

foresight on the part of the Minister in question because some years later, he himself was sentenced to six months which he served in Mountjoy. He was able to avail of remission without undue physical endeavour on his part.

14. Now there is one very important distinction between prisoners released on remission and prisoners released on TR or Parole, as it is popularly known.
15. When a prisoner leaves prison having served his sentence and availing of all the remission that he is entitled to, he walks out the prison doors a free man but with no supervision whatsoever. If, however, a prisoner is granted temporary release, then whilst on that temporary release whatever the charge against him may be, he is subject to the supervision of the probation authorities whilst he is on such release. This can in theory last for the rest of his life if he is granted parole from a life sentence.
16. This is extremely important because when prisoners leave prison, if they are not given the back up of supervision, it is very easy for them to resume whatever activity got them into trouble in the first place. The workers in the Probation Service are dedicated and, in my opinion, are extremely good at their work. If they are looking after a prisoner they will take good care of that prisoner and do everything in their power to ensure that that prisoner does not offend again. Thus, a prisoner qualifying for parole or TR has the benefit of the supervision of an efficient probation service and a person released on remission does not have any such benefit. The importance of this cannot be overemphasised
17. I have frequently raised with the power that be, the difficulties that this creates and how the prisoners who very frequently need help don't get it. For example, sex

---

offenders in the past tended never to be granted temporary release and the result was that they would serve their sentence up to the last hour and then walk out the door with all the risks that that entailed. They were never required to do a sex offenders program and, indeed, so serious did this become, that at one stage the sex offenders program at the Curragh place of detention, which was where all sex offenders were then sent was cancelled because nobody would do the course. The reason the prisoners would not do the course is because there was nothing in it for them. They would still serve their sentence up to the very last day and only get released then. This was an error at the time and remains an error to this day. Sex offenders must be given every encouragement to attend whatever programs are available for them so that their prospects of becoming a rehabilitated prisoner are greatly enhanced.

18. Mr Justice Geoghegan once in a speech to the Prison Chaplains of Ireland said that it would be ideal that what everyone should aim for was the full rehabilitation of a prisoner so that he or she could resume the position as a member of the public and as a good citizen. If they were fully rehabilitated then the system had worked ideally for them.
19. Of course, as I shall point out to you getting Ministerial sanction to a release, in other words getting a Minister to accept any recommendation we might make for temporary release is not automatic. The Minister must have in the back of his mind the public attitude to different offences and, of course, this does cause and continues to cause problems which I will deal with later.
20. I wanted to point out to you and point out to you clearly the difference between a prisoner being released on remission or as the technical description is 'on TR'.

- 
21. The position, therefore, is that the Parole Board is an advisory Board only and not a Statutory Body. Is this a good or a bad thing?
22. It might be no harm just having a quick look at what happened in the United Kingdom where they have a Statutory Parole Board who could order the release of prisoners without any reference to the Home Secretary or any Minister for Justice. The Courts in England held that because a: the Board was only appointed for a three year period and b; members of the Board were dismissed by the Minister, the Board could not be described as being independent. The fact that they were dismissed for downright laziness and not attending meetings had nothing to do with the matter. Many people thought the Minister was quite entitled to get rid of the people that he got rid of but the Courts did not see it that way. They were a statutory body and we are not.
23. We must now have a look at the recommendations made by the Parole Board. At the time of dictating this paper the present Minister has rejected one recommendation from the Parole Board and altered another. All the remaining recommendations he has accepted in full. It can hardly be said, therefore, that the Minister in any way acts capriciously. It can hardly be argued that he second guesses the Parole Board.
24. If it is not broken why mend it.
25. Of course, the system presents complications. I recall on one occasion I was doing a radio interview for the Cork FM Radio Station. The interviewer asked me quite a lot of questions and the interview took quite a long time. It would have taken about fifteen minutes in all and as we were coming to the end the interviewer said to me that

---

I might be interested to know that the program had had seven calls from the housewives of Montenotte in Cork or somewhere nearby and that all seven thought that a sentence of life imprisonment should mean life imprisonment. This was hardly Ireland at its most forgiving, but it is the public to which the Minister is answerable and the public have views on certain matters which we, as a Parole Board, must take into account in laying down our general principles.

26. When the Parole Board was established, there were a large number of complaints that those convicted of murder served only seven or eight years and that there was in existence what used to be known as 'the revolving door' on prisons. Unfortunately, the spate of murders, especially committed by gun or knife in this Country continue to increase. The Board had to keep pace with this. Respect for human life has to be maintained.
27. You must first realise that if a person commits a murder they have deprived their victim of that most sacred and fundamental of all human rights, the right to life. If they later come looking for clemency for themselves, they do so against that background. They do so against the background that victims of crime quite rightly are getting more and more strident. It must be a terrible thing for a man whose daughter, let's say, is murdered in an outlying area of Ireland and who suddenly sees a wrongdoer released and walking in the public streets again. The Ministers, in making up their mind have to hold the balance between these conflicting rights. It is no easy task and I can assure you that all of the Ministers under whom I have had the honour of working have taken it extremely seriously.



- 
28. In recent years the Press did the Parole system a gross disservice by telling the public that persons who were sentenced to life imprisonment were released after eight or ten years. I can tell you that the last few years the persons released on temporary release have served an average of seventeen years. Now, of course, the average can be distorted by the release of prisoners who are in for over twenty years, but nonetheless the figure quoted so frequently reported in the public Press is misleading in the extreme. In addition to this, there is one particular prisoner who must be for over forty years despite everyone's efforts to get him of Sheldon Abbey. It is impossible to persuade him to avail of temporary release, because he has no where to go to.
29. There are two prisoners in for around thirty years and about five or six in excess of twenty years. You meet some very sad cases. I remember some time ago having a case of a fellow who had done everything as we wanted and we were quite prepared to consider recommending his release. When he had been in for twelve or thirteen years, we recommended, if I am correct, that he go to the Training Unit which is effectively the gateway to freedom. Unfortunately, he transgressed again, went back on drugs and remained on drugs for quite some time. He was on the point of release after serving fourteen years. He is now farther away than ever and he has served eighteen years. These cases are very heartbreaking from our point of view.
30. Frequently, we recommend that prisoners are given short periods of temporary release to see how they behave in the outside world. The temptations of immediate absolute release are often too much for prisoners. If given shorter periods of two or three days or periods of release during the day to take up a job, then the ultimate release into the great wide world can be appreciably easier.

- 
31. I think it is probably appropriate that I should set out for you how the Parole system works and how prisoners can avail of it. Before I do so, I will make a couple of observations.
32. As I said the Parole Board is at least just as much a Board for managing sentences as it is for making recommendations regarding temporary release. It is natural, therefore, that some of the prisoners who are being dealt with by the Parole Board get impatient as the process runs on. This is added to by the fact that they have a right to apply to the Parole Board for consideration and review of their sentence after, either in the case of a finite sentence in excess of seven years, if they have served 50% of that sentence or in the case of a person serving life imprisonment after a period of seven years. Let's now look at how these time periods work.
33. If a prisoner is sentenced to a finite term of imprisonment, he can, as I said, apply to the Parole Board after serving 50% of his sentence, providing that sentence is in excess of seven years. The trouble is that quite frequently prisoners do not make application as soon as they can and the result of it is that when a matter comes for consideration by the Board, their remission date is looming large on the horizon. In a moment, I shall tell you the procedure that we adopt in dealing with all persons who come before the Parole Board so that you will understand the time factors involved. When a prisoner is sentenced to life imprisonment, then he can apply to the Board after serving seven years of his sentence. This can, of course, present the huge problem that in, for example, murder cases, this means that he could be effectively a client of the Board for seven or eight years even if he did everything the Board said. It must naturally lead to a feeling of frustration on the part of a prisoner and there were

---

very strong arguments for saying that such a prisoner should not enter the parole system until he or she has spent ten years of their sentence.

34. When a person applies to the Parole Board or is referred to the Parole Board by the Minister, (which he has the power to do), then that sets in train a series of events.
35. Obviously, a file has to be prepared for the Board and reports obtained from all the various necessary parties. Who are these parties?
36. Well first of all, you will have the Prison Service; the prisoner's records must be submitted to the Board together with a description of the offence for which he has been convicted. The Board will have to be notified of the full details of the offence and this will require investigation and a report from the Gardai. In addition, of course, the Board will have to know whether the prisoner pleaded guilty or pleaded not guilty because of the attitude of the mind of the prisoner immediately after committing the offence is a matter of considerable importance.
37. Then throughout the sentence a prisoner is subject to review by the Prisoner Review Committee. They consist of members of the Prison Service, the Probation Service, the Psychological Services etc and they have a review of each prisoners situation and make recommendations to the Parole Board. Their view is always balanced and they have a full opportunity of discussing among themselves their opinions of prisoners, thus Prison Management, together with the Probation Service and all of the other services given, what is in effect a joint recommendation. A recommendation that we frequently adopt.

- 
38. We also get reports from the Probation Service and these are very important because prisoners particularly, life prisoners are interviewed by members of the Probation Service who take a personal and deep interest in their wellbeing. They indicate what the risk factors are; they indicate what dangers a prisoner will face both for the remainder of his sentence and when he rejoins the human race so to speak on release. Prisoners have come to rely on their Probation Officer and equally frequently Probation Offices go above and beyond the call of duty to try, so to speak to nurse their charges back to health.
39. I have seen cases where persons went to prison without ever having touched drugs and whilst in prison became addicted. The issue causes the Parole Board grave concern and recent events have served to highlight this problem yet again.
40. The number of offences committed under the influence of drink or under the influence of drugs or to feed either habit is frightening. Both drink and drugs remove any element of sympathy or fellow feeling for a victim and frequently under their influence a prisoner commits a crime under ghastly circumstances. Equally frequently prisoners don't want then to talk about the crime because reading about it in the cold light of day shocks them, but this in turn, unfortunately can prevent them from addressing their offending behaviour and this in turn can present an impediment to their release.
41. In addition to those already mentioned, there are many cases in which the mental condition of the prisoner will cause concern. In addressing offending behaviour it is often very important from our point of view that a prisoner dealing with an issue, has

---

available to him psychological help. In this regard the Parole Board has had meetings on a fairly regular basis with the psychology service so that they know what we want in the reports we get from them and we know the problems that confront them in giving their opinion on any given case.

42. Sometimes, a psychiatric report is required. To get an opinion for a psychiatric report can often take six weeks to two months. That in turn may reveal a necessity for a psychological report. A full up-to-date report from the Prisoner Review Group or from the Probation Service is often required before a matter comes for consideration by the Parole Board.
43. We then come to what is probably the most important practical step in the whole process. Two members of the Parole Board interview each and every prisoner who is seeking temporary release. Before they conduct this interview, they have available all of the information that I have listed above. They would have available the prisoners pre-offence record, his record in prison, the report of the prison Governors of the Institutions where he served part of his sentence. They will also have the views of the Central Review Group of the Probation Service and of any other group whose opinions require to be sought. They will then conduct an interview with the prisoner in the prison where he is incarcerated.
44. The object of this interview so that they can form an assessment of the prisoner and see whether his remorse for his offending behaviour is real, whether his attitude to the programs under which he is put, his practical and in general and having regard for all the different reports from experts that they have to consider the Parole Board's attitude to the prisoner should be.

- 
45. The interviews are conducted in the most informal manner possible and the members of the Parole Board who conduct the interviews are urged to conduct them in this manner and to put the prisoner as far at ease as is possible.
46. The representative of the Executive of the Board who attends then does a résumé of the interview, a file is fully prepared and the matter is then listed for the next meeting of the Board.
47. I set out these steps so that you will understand that with the best will in the world, time is taken up.
48. Now, applying time strictures to the cases we are dealing with, you will see that they fall into two categories.
49. First of all, you have prisoners who are serving a finite term of imprisonment with a specified remission date. If we are going to recommend some degree of leniency for such prisoners, it is important that they should be released on temporary release under supervision before their remission date clicks in. This means that when they go back to the world they left, they will do so with the assistance of, and guidance from the Probation Service. This gives them the maximum possible chance of avoiding going back into the lifestyle that brought them into prison in the first place. The trouble is that with the steps to be taken before a matter comes the Parole Board, we are often seeing cases where the remission date is only three or four months away.

50. The second category is those who are serving a life sentence and in these cases if all those reports are necessary as they are for a first report, then delay does not make much difference.
51. Then on receipt of all of these reports and on receipt of the report of the interview, the matter is listed before the Board. When a matter comes for consideration by the Board, the debate is started by those who conducted the interview and they both give their opinion and the impression they formed of the prisoner. Of course, it is quite understandable that that impression can be misleading. There are prisoners who will merely tick the boxes so to speak in responding to queries about offending behaviour and about dealing with drink addiction or drug addiction etc, but in general the interviewers are very experienced. We have, of course, a few rules of thumb. It is very difficult to recommend temporary release to anybody who is still taking drugs or even taking methadone as a means of cutting down on their drug addiction. They must be quite clean and have proved that they can remain that way before they are suitable for release into the general public.
52. If prisoners do not indulge in any form of substance addiction, and for all other reasons, they are suitable for consideration for release, then the gateway to release is effectively the training unit. The training unit has a number of very considerable benefits. It trains the prisoner and prepares for the outer world. Secondly it ensures that he remains drug free or alcohol free which, therefore, maximises his possibility of remaining in that condition when he is free again. Ultimately, it will help him and assist him on getting employment when he is released or, I suppose in this day and age, when it is very difficult to get employment anyway, it helps him to train for a job so that as soon as suitable employment becomes available he will qualify for it.

Generally, the public at large are quite helpful in employing ex-prisoners if they are satisfied that those prisoners are suitable for such employment.

53. Now what influences us in the decisions we make? The first is undoubtedly the risk of a prisoner reoffending. This arises in every case but most acutely in the cases where physical violence has been used in the commission of the offence. The safety of the public is our principle concern.
54. I have already emphasised that any prisoner seeking release should have taken all the steps open to lead to their rehabilitation including the courses, be they anger management courses, substance abuse courses sex offender courses or such should be taken by each prisoner as recommended.
55. I might digress here to add that at a recent meeting we had with the psychology department of the prison service, we were quite surprised to hear from them that some sex offenders are at no more risk of reoffending than anybody else. Of course, there are serial sex offenders and the public must be protected from these but all this does is to undermine the stupidity of categorising all forms of sex offenders together. They are quite different. The effect their offences had on the public is different. The risk of their reoffending is quite different. Yet they are all tarred with the brush of sex offenders and remain on sex offenders' register without distinction. I don't believe that this is the right method of dealing with sex offenders whose individual crimes should certainly be more specifically categorised.
56. Anyway, the risk of reoffending and the danger to the public is a major consideration with us. The second major consideration is as to whether the prisoner has passed



sufficient time in prison to make reparation for the offence he has committed. Public opinion must to some degree also be reflected in the general approach to Sentence Management.

57. Other Countries have different systems. In England the sentencing Judge imposes a tariff and really the effect this has is to turn an indefinite sentence into a finite sentence and the efforts made by a prisoner towards their own rehabilitation becomes almost valueless. A Judge when imposing a tariff does not know what the prisoner would be like when that tariff runs out. We do. I have little hesitation in saying that ours is the better system and please God when the value of human life is restored to what it was, when gun murder and knife murder ease, then it may be possible to release non-violent prisoners who have been sentenced to life in a shorter time.

58. I have been very happy recently with the efforts the Government have made to address the issue of victim support. It must be a terrible thing to lose a loved one to a crime of murder or to be oneself subjected to a brutal attack in a robbery or something of that nature. All the support the State can offer is necessary and over the years that has been in and out. It has been emphasised by the Parole Board frequently in our annual Report and I am very glad to say that recently the then Minister for Justice, Brian Lenihan indicated that he was taking steps to ensure that the Victim Support Movement would be effective and all embracing and this approach has been enthusiastically embraced by the present Minister. This is a very good thing indeed and the injured parties certainly deserve at least that.

59. You see the overall difficulty is that the injured party cannot really have a major say in the sentence imposed on the criminal. If they did, then a great deal would depend on the attitudes of the injured parties. This could cause serious problems.
60. We in the Parole Board are frequently at the receiving end of letters from the family of injured parties or frequently of people who are murdered seeking that the full rigor of the law be imposed on the wrongdoer. Some of these crimes are carried out with considerable brutality and we can well understand and empathise with the persons who make representations to us in these cases. There was a case some time ago in which the father of a girl who was murdered communicated with us on a regular basis. The time came when his daughter's murderer had served sufficient time and had been sufficiently well behaved in prison as to lead us to believe that he no longer presented a risk. Nonetheless we are very conscious of what it must mean to a spouse or a parent when the murderer of a loved one is released on to the streets again. Frequently, we can impose it as a condition on temporary release that the prisoner would reside a distance away from where the crime was committed but in general we have full sympathy with the families of the injured parties.
61. We have no hand, act or say in the trial itself and the present habit of impact studies has been debated sufficiently elsewhere for me not to mention of it here. It is sufficient to say that it does present problems and injured parties' reaction to what happened, of course, differs enormously.
62. Is the system the best? Well the first things as I said to you earlier is that if it is not broken why fix it.

63. A problem that we have not addressed in Ireland and a problem that in my opinion can create serious injustice arises when Irish prisoners are sentenced in a foreign Court and transferred back here. If they are transferred from the United Kingdom they come here and are subject to our laws and thus they lose a large percentage of remission. Sentencing policy in the United Kingdom is quite different from here. Remission is much higher and recently we had the ludicrous case of a prisoner sentenced to life with a tariff of six years. The charge was a serious robbery but it was a second offence and on a totting up rule the prisoner had to be sentenced to life. He elected to apply to serve his sentence here and thus lost the benefit of the tariff. I have been assured that the Authorities have explained the situation to each prisoner and yet I have very considerable doubts if that is so. I would strongly recommend that a simple detailed explanatory note be given to each UK prisoner who applies to serve their sentence here. This is a matter that does concern me.
64. It must be accepted that there are cases which are of sufficiently high profile that if a Minister is ordering the temporary release of a prisoner he knows it will be done in the full glare of publicity and with the disapproval of the large majority of the public. This is not ideal and I suppose a case can be made that there should be some cases which are left solely to the Parole Board but in general terms the system in this Country has served it well.
65. The Parole Board is also a Board which gives remarkably good value for money. In spite of what some cheap newspapers recently alleged the cost of running the entire Parole system in this Country comes to approximately €300,000. This includes the office, salaries of the permanent staff, the payment of the salaries to the Board Members which is only €9,000 per year, the payment of my salary as chairman which

is €14,000 per year, the payment of expenses for attending the interviews and all other travelling expenses which came to a grand total last year of €29,000 which includes two receptions we had: one for the launch of our annual report and one other. It cannot, therefore, be said that the public do not get very good value from the Parole Board despite recent efforts of the cheaper Press to suggest otherwise.

66. The sentencing of offenders will always give rise to problems. Our duty is to equate the public interest and the public good on the one hand and the rehabilitation of the prisoner on the other so that we can deal with the matter before us in an even handed way.
67. We do our very best to achieve this and all I can say in conclusion is that there is no member of the Board failed to pull their weight. In the days when Ireland gets appalling value for money in so many ways I am both pleased and proud to tell you of our endeavours to carry out our functions to the best of our ability in what is a sensitive and difficult area.