

Dame Vera Baird QC

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Rt Hon Robert Buckland QC MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
sent by email

Dear Secretary of State

**THE ROOT AND BRANCH REVIEW OF THE PAROLE SYSTEM: PUBLIC
CONSULTATION ON MAKING SOME PAROLE HEARINGS OPEN TO VICTIMS
OF CRIME AND THE WIDER PUBLIC**

I am responding to your consultation on whether parole hearings should be opened up to victims of crime and the wider public.

I am a strong advocate of open justice and am of the view that victims should be viewed as participants of the justice system, which includes being given greater access to information. Therefore, my starting point in the discussion about opening up the parole process is to welcome this initiative as an opportunity to provide further transparency in parole decision-making.

Nevertheless, and as your consultation sets out so clearly, there are some complex considerations at play. After careful reflection, my support is tempered by the need to protect victims and other third parties. It is also important we do not take any step that might inadvertently inhibit offenders and professional witnesses from being candid in response to questions from Parole Board panel members; as this may undermine their ability to make an accurate assessment of the offender's future risk of serious harm.

I sense there is much greater scope for transparency than simply opening the parole hearing to the public. I am therefore calling for this review to also look at other opportunities for greater openness which achieve your aim of open justice as well as making victims better informed. For example, I would like to see more information being shared with victims throughout the duration of the offender's sentence, more victims being persuaded to participate in the Victim Contact Scheme (VCS) and a review of the Parole Board's high level summaries of parole decisions to see whether there is scope to share more information with those victims who do not wish to attend the hearing.

Current Victim Engagement with the Parole Process

As your consultation document sets out, great strides have been made in opening up the parole process from what was a closed system, shrouded in secrecy, to the point where victims can: submit a Victim Personal Statement; present the statement in person at oral hearing; receive a high level summary of the parole decision; and apply for parole decisions to be re-considered. There is better engagement with victims on what to request in respect of licence conditions. All of this is positive and the increasing levels of victim engagement in the parole process re-enforces my wider message that victims wish to be treated as participants within the criminal justice process and not simply as by-standers.

I am particularly impressed by the efforts taken by the Board and HMPPS to facilitate victims reading their VPS during lockdown, by making maximum use of video-links. This must be the way forward.

Importantly, the Parole Board has been open to new ideas for engaging with victims and has constantly reviewed its practices to see how they can facilitate better engagement.

This leads me to conclude the Parole Board and MoJ have achieved a great deal in opening up the parole process to victims, but there is still much more we can do.

Open Parole Hearings

I believe open parole hearings would go a long way in informing victims and the wider public of how the parole process operates and how the Parole Board is required to reach its decisions. I agree with your consultation paper that parole decisions can generate a huge amount of controversy, in large part due to poor information on how decisions are made.

As evidenced by the take up rate of victims in the Victim Contact Scheme opting to receive high level decision summaries, there is a thirst for more knowledge on how decisions are taken. Victims would be better placed to understand a release decision if they had access to more information and could see first-hand the painstaking care taken by parole members in weighing up all the evidence.

The default should always be for open justice, unless there are strong reasons to the contrary.

The Board's overriding priority is the safety of the public. Its' decisions are based solely on a forensic assessment of future risk of serious harm to the public. Keeping the public safe and avoiding the creation of more victims is absolutely paramount. In making these decisions, Parole Board members have to ask very personal questions to the offender in relation to their former life, their motivation for the offence, their mental and physical health and their treatment and progress in custody. This questioning will often be difficult for the offender and invariably, it will be painful and traumatising for victims too.

Within the hearing, professional report writers must feel able to speak openly when offering their professional advice to the Board, even if this advice may not be well received by other parties. It is important an open hearing does not inhibit either the questions being asked or the offender and report writers from responding in full. If witnesses do feel constrained when answering questions, this might in turn undermine the quality of the Board's risk assessment.

The other issue of concern is that hearings are not confined to examining data relating to the offender but will include information relating to the victims and other third parties. I am particularly concerned that the disclosure of personal data relating to victims and their families may cause them distress. They have already experienced the trauma of testifying at trial as well as having their lives scrutinised in open court during the course of cross examination of other witnesses. It would be completely unacceptable for this trauma to be repeated during an open parole hearing. We must also remember that most offenders usually attend multiple parole hearings before being released and this means victims having to re-live the experience time and time again. This could have a devastating impact on them, many of whom would have strived for some form of closure in the intervening years. Indeed, I suspect some victims would be distressed even at the mere possibility their offender's parole hearing might be held in public.

Even if the victims' private data was not disclosed at the hearing, hearing the offender give their evidence might be traumatising. Whilst the decision whether to request permission to attend the hearing must ultimately rest with the victim, consideration would have to be given to providing professional support in respect of any hearing where the victims was present.

For this reason, I would urge caution in opening up hearings, despite my default position in favour of open justice. I believe it would be unwise and premature to make these hearings open to press and wider public at this stage. Such a move would inevitably result in hearings being reported in detail in the press, which in turn could greatly add to the distress of victims.

Instead, I would prefer to see any scope for open hearings being restricted to the victims of the crime, and only where the victim makes an application to attend in person. I also feel the Parole Board should have the discretion to determine whether access to the hearing be in full or subject to some restriction.

The consultation makes reference to practical considerations if there were to be open hearings within the confines of prisons. This is particularly the case where there are multiple victims and extended families involved. I would have thought it would be more comfortable for victims to observe the hearings remotely, possibly in victim hubs, where support was readily available if required.

Re-engaging Victims

Access to the parole process is dependent upon victims opting into the Victim Contact Scheme. Many do not, for a variety of reasons, and therefore are unable to participate in the process or have their voice heard. The Parole Board tells me as few as 30% of parole hearings include a victim personal statement. I accept there will be victims who do not wish to make a statement. However, I suspect there are many victims of historical crimes who did not feel able to engage with the Victim Contact Scheme or understand fully what it was about. They are simply unaware the offender is being considered for parole.

Too often we hear reports of victims being shocked to find out through a third party or, even worse by bumping into the offender in their local high street, that they have been released from prison.

I have taken this up with the Probation Service. The Probation Reform Programme extends to the operation of the Victim Contact Scheme. I have called on them to consider how they might proactively re-engage with historic victims outside of the scheme in time for the commencement of the parole process. I am pleased they have been receptive to my concerns. I understand there is a proposal to set up a dedicated team to trace victims of legacy cases so they can input into the parole process. I

support this and it is important the team is set up to coincide with any changes to make the parole process more transparent. Greater transparency will be of limited impact or value if thousands of eligible victims remain outside of the Victim Contact Scheme.

Tracing victims after years without contact is only part of the solution. We also need to consider how the initial offer is made to victims to join the scheme. There have been some useful pilots which have shown that having the scheme properly explained to victims significantly improves the opt in rate. The learning from these pilots needs to be rolled out across all parts of the country.

High Level Summaries

The government's desire to open up the parole process must include a review of the information given to victims in high level summaries.

In 2018, the government scrapped the privacy requirement in the Parole Board Rules, enabling victims to be informed in summary form, of the reasons behind their decisions. Over 2,500 victims in the Victim Contact Scheme have opted to be sent high level summaries. This level of engagement is a clear example of victims wanting to be better informed and become active participants in the criminal justice process.

Last year, the re-consideration mechanism was introduced. This offered an opportunity for both offenders and victims to challenge the Parole Board. Challenge is a good thing. It requires decision-makers to reflect. Ultimately, it brings better practice and better decisions.

I have already flagged up to the Board that I am looking for reassurance that the summaries are providing sufficient information to enable the victim to understand how the decision was reached. It also needs to be sufficiently detailed to facilitate victims considering whether to make a request for re-consideration.

This consultation has re-enforced the need to evaluate the effectiveness of these summaries and whether there is scope to share more information. Plans to allow victims to attend parole hearings opens the way for victims to hear in much greater detail the evidence being placed before the Parole Board. It would be incongruous for this level of detail to be made available to the victim at the hearing but not referred to in the subsequent written high-level summaries.

Expanding the high-level summaries would make the parole process far more open and transparent regardless of whether the victim opts to attend the hearing, which accords with the government's over-arching objective.

Greater transparency

Opening up parole hearings will not by itself make the parole process more transparent. It needs to be seen as part of a much bigger piece of reform covering the whole of the victim journey from trial to release.

Every year, victims in the Contact Scheme receive an annual contact letter and, routinely, it will advise them that there have been no significant developments to report. This sends a signal to the victim that the offender presents the same risk as the day he was convicted. It makes no reference to offending behaviour work, signs of maturation or remorse or any other indicator of progress.

Eventually, when the offender is eligible to apply for parole, the victim is invited to become more engaged in the process. They will know very little if anything about the offender journey since the trial. They will not understand the context in which the

parole review is taking place. It is therefore not surprising so many victims are shocked and upset to find out the offender is considered to be sufficiently low risk to be transferred to open conditions or even released.

I have challenged HMPPS on this. For example, I could not understand why these victims were not being told when the offender was re-categorised. How can the fact that an offender has been moved from Cat A to Cat B prison not be considered a “significant development”?

I am pleased to say this has been reviewed and in future, victims will be told of re-categorisation. This is a small but important step forward, but we need to go further.

As part of its drive for transparency, I would ask the government to consider how we can convey to victims information on a range of indicators of progress or regression, for example, better custodial behaviour, signs of remorse, or active engagement on offending behaviour programmes throughout the offender’s sentence.

If we want victims to have a better understanding of parole decisions, the sharing of information needs to start from the outset of the sentence and not at the very end. In other words, you cannot have greater transparency for parole if everything that goes before it is shrouded in secrecy.

In line with my usual practice, a copy of this submission will be placed on my website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V Baird', written in a cursive style.

Dame Vera Baird QC
Victims’ Commissioner for England and Wales