

PROHIBITION ON REPORT WRITERS MAKING A RECOMMENDATION TO THE PAROLE BOARD AS TO WHETHER THE STATUTORY RELEASE TEST IS MET: GUIDANCE FOR ORAL HEARINGS

As a result of changes to the Parole Board Rules, which came into effect on 21 July 2022, HMPPS report writers are no longer permitted to give a view in their reports as to whether the statutory release test has been met. This non-statutory guidance is intended to assist report writers at any oral hearing attended by a report writer, enabling them to provide full assistance to the Panel in its judicial decision making role, in a manner entirely consistent with the Parole Board Rules. This guidance should be read as guidance only. It is not intended to contradict or detract from a report writer's legal or professional duties or obligations when appearing as a witness before a Panel or the need to comply with any lawful requirement or direction imposed by the Panel.

It had been the practice for some years for report writers to provide a view or a recommendation as to a prisoner's suitability for release and this was previously specified as a requirement of a written report under previous Parole Board Rules. Even though such a view where presented was not binding on the Parole Board, that previous practice posed a number of problems which the new rule change addressed, such as:

- i) Individual report writers would normally only ever be addressing certain aspects of a prisoner's risk, rather than be purporting to provide an informed view on all aspects of the multi-factorial and multi-dimensional judgment potentially relevant to an overall recommendation to the Parole Board.
- ii) Differing views could be presented by different report writers, all of whom are employed or engaged by the MoJ;
- iii) Offering a recommendation could potentially blur the clear distinctive responsibilities of the Parole Board and the report writers, where it is the Parole Board alone that determines the issue. On occasion decisions made by the Parole Board have been attributed to the report writers' recommendation(s);

The primary legislation provides a clear statutory function for the Parole Board to make a decision as to whether or not the statutory release test is met. Report writers can best assist the Parole Board in its role by providing comprehensive and fully-reasoned assessments of the facts and risks that fall within the report writer's particular remit, but recognising that it is for the Parole Board to consider and apply the statutory test based on all relevant evidence and to reach a view on whether a prisoner is suitable for release.

As recognised by the High Court in the *Worboys* case¹ "A risk assessment in a complex case such as this is multi-factorial, multi-dimensional and at the end of the day quintessentially a matter of judgment for the panel itself."

In light of this, report writers are no longer required and now prohibited from making a recommendation on suitability or otherwise for release, but should continue to provide all relevant evidence and assessment of risk relevant to their particular role.

Where the Parole Board Panel Chair directs that an oral hearing be arranged, it is to assist the Panel in making the decision as to whether the statutory release test is met. The oral hearing provides

¹ *R. (D and another) v. The Parole Board* [2019] QB 285, at [133]

Panel Members with (amongst other things) an opportunity to ask report writers questions about their risk assessments and to ask prisoners questions about their efforts to reduce their risk.

Given that the Rules now prohibit report writers from offering a view in their written report on whether the statutory release test is met, report writers should endeavour to conduct themselves at the oral hearing in a manner entirely consistent with the Rules and with their role in the parole system: in providing their reports and similarly in answering any questions related to those reports, report writers should address those aspects of the prisoner's risk and management that fall within their remit and not be attempting to offer a view on the multi-factorial and multi-dimensional assessment of whether a prisoner is suitable for release. That is a judgment for the Parole Board alone to answer based on its review of all of the evidence that is available.

Parole Board Members are entirely within their rights to ask report writers to justify the content of their risk assessments, including by way of responding to direct and searching questions; report writers must continue to answer such risk related questions as fully as possible.

Panel Members might ask report writers whether they "support release" or ask similar such questions of report writers. If a question of this nature is seeking a report writer's view as to whether the statutory release test is met, it is considered legitimate for report writers to identify that that is a judgment for the Parole Board alone based on all the evidence and the report writer can identify what evidence is covered in his/her report that may be relevant to that overall judgment to be made by the Parole Board. Consistent with the prohibition as to making a recommendation in a written report, a report writer should not attempt to make a recommendation on whether or not the statutory test is satisfied where that decision is for the Parole Board and necessary requires a multi-factorial and multi-dimensional assessment based on all of the available evidence. If the question is directed at understanding whether the report writer considers that the Probation Service working with partner agencies has the means to manage the prisoner's risk robustly in the event of release, report writers can, of course, explain in detail measures that would be in place and how they would be used if release were to occur. In doing so, report writers should consider the risk management plan.

The risk management plan is a mandatory document for inclusion in the prisoner's parole dossier. It is drawn up by the community offender manager (COM), following consultation with partner agencies. It is the way in which the COM explains to the Parole Board how the Probation Service would manage the offender, if the Parole Board directed release. Panel Members might ask report writers whether the risk management plan is "sufficient" to manage the prisoner's risk. Again, this question might be capable of being interpreted in different ways. It is unlikely to be asking whether the risk management plan precludes all possibility of the offender causing serious harm to others, since no risk management plan, however robust, can provide such a guarantee. The question might be interpreted as asking, in terms, whether the COM judges that the prisoner is "safe" to be released. If so, report writers can properly remind the Panel that such an assessment is a multi-factorial and multi-dimensional assessment that is solely for the Parole Board and can identify what their report addresses. Report writers can, of course, explain to the Panel that if the Panel were to direct release, how the risk management plan addresses known risk factors by means of a requirement or a prohibition and how the Probation Service would go about monitoring compliance.

The changes to the Rules also allow the Secretary of State to submit a view as to whether the statutory release test is met, in the cases which involve the most serious offending and threats to public protection. In such cases, the Secretary of State will formulate that view following careful consideration of all the available risk assessments and evidence. The Secretary of State will be

represented at the hearing, with it falling to the Secretary of State's Representative to answer questions about the Secretary of State's view. Panel Members might ask report writers whether they agree with the Secretary of State's view. Again, report writers should note the multi-factorial and multi-dimensional nature of any such assessment and a view expressed on it by the Secretary of State, as compared with the scope of the evidence given by a report writer. Report writers should be aware that the Secretary of State may have seen additional information beyond that which a report writer is covering and is better placed to provide an holistic, over-arching, recommendation than any individual report writer. Again, consistent with the prohibition as to making a recommendation in a written report, a report writer should not attempt to make a recommendation on whether or not the statutory test is satisfied where that decision is for the Parole Board and necessarily requires a multi-factorial and multi-dimensional assessment based on all of the available evidence. The decision as to whether the statutory test has been met remains solely for the Parole Board.

As set out above, nothing in this Guidance is intended to contradict or detract from the need for any report writer giving evidence at a hearing to comply with any legal or professional duties or obligations that apply to a report writer in giving that evidence or the need to comply with any lawful requirement or direction imposed by the Panel.

PUBLIC PROTECTION GROUP

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