Changes to Psychological Risk Assessment Reports Sensitive

V2 28th October 2022

The note provides non-statutory guidance on parole reform changes relating to decision-making by the Parole Board and the implications for Psychology Risk Assessment (PRA) reports, these include:

- **the Open Test for parole eligible Indeterminate Sentenced Prisoner (ISP) cases,**
- **the Single Secretary of State View for all HMPPS parole reports,**
- **the Johnson ruling (JR) affecting determinate cases.**

This document provides non-statutory ***internal guidance*** for Psychology Services Group (PSG) and those who write psychology reports on behalf of the Secretary of State (SoS). It replaces previous guidance issued 'Open Test and Psychology Risk Assessment Reports – PSG Guidance V1 June 2022' and 'Changes to Psychological Risk Assessment Reports V1' issued on 13th July 2022.

This guidance is not for other report writers writing on behalf of the SofS such as Probation Officers. Separate guidance has been provided by EPSIG (Effective Practice and Service Improvement Group) for Probation Staff and others. A recent guidance issued on 4th October 2022 replaced all previous guidance for HMPPS report writers (OralHearingsGuidance4Oct2022)[1]. The information noted does however impact all those preparing parole reports on behalf of HMPPS.

1. Context

1.1 Psychologists routinely complete risk assessments with indeterminate and determinate sentenced prisoners for the Parole Board on behalf of the SoS. It is vital that Psychologists remain abreast of practice, legislative and policy changes which impact how reports are prepared and how evidence is provided to oral hearings. All Psychologist report writers should ensure they are familiar with the Parole Board Root & Branch Review (30th March 2022) (Root and Branch Review of the Parole System - GOV.UK www.gov.uk). This sets out the Deputy Prime Minister's plans for parole reform, including the issued 'Open Test' (Senior Leaders Bulletin – 1st June 2022) and the recently issued 'Changes to the Open Test and the Single Secretary of State View' (Senior Leaders Bulletin – 1st July 2022). It is also essential that psychologist report

[1] Please find FAQs for all HMPPS report writers - Staff FAQ Parole Board Rules 2022

writers are familiar with the guidance issued by the Public Protection Group on 4th October 2022.

1.2 Furthermore, Judicial Review in the case of *Johnson* [EWHC 1282 (Admin)] handed down on 27th May 2022 has triggered a change for all determinate and determinate recalled cases being considered by the Parole Board. In brief, it relates to the timescales within which risk is considered. This has implications for parole report writers, including Psychologists writing reports on behalf of HMPPS.

1.3 This guidance document explains:

- Recent Parole Reform
- Which cases it applies to
- When it applies and what you need to do now

2: Recent Parole Reform

The Open Test

2.1 The Open Test was implemented on the 6th of June 2022. It is relevant to ISP cases only. The test means that the Secretary of State (SofS), or an official with delegated responsibility, will only accept a recommendation to move to open conditions from the Parole Board when:

1. **the prisoner is assessed as low risk of abscond; <u>and</u>**
2. **a period in open conditions is considered essential to inform future decisions about release and to prepare for possible release on licence into the community; <u>and</u>**
3. a transfer to open conditions would not undermine public confidence in the criminal justice system.

2.2 As set out in Senior Leaders Bulletin (1st July 2022) part 3 will not apply to HMPPS report writers and the Parole Board. Decisions about whether the third element of the test applies in individual cases are a matter solely for the Secretary of State or his delegated official. However, HMPPS must continue to provide information and evidence, where available, to enable that decision to be made.

Introduction of the Single Secretary of State View

2.3 From 21st July 2022, the way that recommendations for release and open conditions are provided to the Parole Board changed. From this date, <u>in all cases</u>, (including all recall cases), the report writer does not present a recommendation around suitability for a move to open conditions or release. In addition, in some cases, the SoS will provide the Parole Board with a position. This is called the **Single Secretary of State View**.

2.4 The SLB notes:

HMPPS Report writers should prepare and write their reports in the normal way. Reports from HMPPS (COMs, POMs and, where relevant, psychologists) will still provide a formal risk assessment, based on professional judgement, but they will no longer contain the report author's final recommendation about the prisoner's suitability for release or open conditions. It is important for the report author to assist the Secretary of State in obtaining the factual information and, whilst they are no longer required to include a

recommendation, their professional assessment in these cases remains essential for the purpose of determining the overall risk of the individual and of informing the decisions to be made by the Parole Board and the Secretary of State.

In the most serious or high-profile cases, ***the Secretary of State may choose to provide the Parole Board with a single Secretary of State view which takes account of all the evidence.*** *The Public Protection Group will agree with the Deputy Prime Minister which cases meet the criteria for a Secretary of State view, which are:*

- *The nature and characteristics of the offending are particularly severe and risks damaging public confidence if the prisoner were to be released (e.g., where the victim(s) was a child or vulnerable; or cases with a sadistic or predatory motivation);*
- *Cases involving multiple victims or where there is a history of serious offending, indicating a pattern or escalation of such offences;*
- *Where the gravity of the offending behaviour indicates that, if further such offences were to be committed, the level of harm to the public would be particularly grave; and*
- *Where a case raises issues in relation to victims' confidence more broadly in the parole system.*

Where a single Secretary of State view is provided, the Secretary of State will be represented at the hearing by either a Secretary of State Representative from the Public Protection Casework Section (PPCS) or by Counsel. In such cases, PPCS will work very closely with the report writers, who will very likely continue to appear as witnesses at the oral hearing.

2.5 In the recent 'Oral Hearing Guidance, 4th October 2022 – Public Protection Group' it is noted: 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* case[2] *"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."*

2.6 Psychologists[3], like all HMPPS report writers, are no longer able to make recommendations within PRA reports for the Parole Board, regarding suitability for release or open conditions, including ongoing suitability for closed or open conditions. Not all parole reviews will include a Single SoS view and therefore a SoS representative. The SoS decides on a case per case basis where a single view will be provided, and this has been in place from the 21st of July 2022.

2.7 Psychologists should continue to include information and evidence within PRA reports to assist the Parole Board in making recommendations relating to the new Open Test. Previously submitted reports which did include a recommendation do not need to be amended.

2.8 Report writers need to be aware that whilst recommendations for release and/or open

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

[3] This includes Trainee Forensic Psychologists.

cannot be made for any cases, panels may ask for additional information relating to risk judgements.

3 The Johnson Ruling for Determinate Sentenced Prisoners

3.1 The outcome of a Judicial Review (JR) relating to the case of *Johnson* [EWHC 1282] (Admin) handed down on 27th May 2022 related to the issue of the period of risk to be considered for determinate sentence cases. The Court found that the Parole Board's guidance on such cases contained an error in law and concluded that "***for decisions made on or after 27th May 2022, the period over which a panel is considering risk in all determinate sentence cases is indefinite".***

The outcome of the JR goes onto state:

- *In light of the judgment, when considering whether the test for release is met in the case of a determinate sentence prisoner (on both initial release and after recall), panels need to bear in mind the following:*
- *The statutory test to be applied by the Board when considering whether a prisoner should be released does not entail a balancing exercise where the risk to the public is weighed against the benefits of release to the prisoner. The exclusive question for the Board when applying the test for release in any context is whether the prisoner's release would cause a more than minimal risk of serious harm to the public.*
- *The statutory test for release does not include a temporal element. The test is whether release would cause a more than minimal risk of serious harm to the public* ***at any time****. Therefore, consideration of risk goes beyond conditional release dates (CRD) and sentence expiry dates (SED).*

3.2 Assessments of risk need to be time bound and scenario based in accordance with the appropriate SPJ tools and guidance. It will be important to include, as far as is possible, risk scenarios outside of the 6-12 months, to aid this change in consideration.

3.3 Whilst recommendations for open/release cannot be made, parole panels may still request additional information relating to the risk period judgments referred to in 3.1.

3.4 As part of this new approach, all managers need to ensure there is an appropriate strategy to ensure reports are submitted in accordance with the requirements.

4 Which cases it applies to

4.1 The Open **Test applies to all ISP cases** reviewed by the Parole Board, including those at the pre-tariff review stage as well as for recall cases. Terrorist and Terrorist Connected Prisoners are presumed to be unsuitable for open conditions, unless exceptional circumstances can be evidenced. When considering the risk reduction and risk management plan necessary were the prisoner to be moved to open conditions, it is important to remember that only for exceptional reasons will the prisoner be moved there. It is however for the Public Protection Casework Section (PPCS) to determine whether the circumstances are exceptional.

4.2 **The SoS Single View applies to all parole eligible cases** and therefore all parole PRA reports by Psychologists on behalf of HMPPS. What this means is that whilst not

every case will have a single SoS view submitted (this is decided on a case-by-case basis), the fact that recommendations must not be made applies to all cases.

4.3 The **Johnson ruling is relevant for all determinate cases**, including extended sentences and those recalled on licence.

5 When it applies and what you need to do now

5.1 The Open Test was applied from the 6th June 2022 and was updated on 1st July 2022. You do not need to change PRAs that have already been submitted. Remember, the Open Test is for the Parole Board. You can highlight information and evidence relevant for the Parole Board to consider the test. You can only comment upon risk of abscond and how the risk can be managed in closed/open or in the community.

5.2 The Single SoS view applies to all parole reports from 21st July 2022. You do not need to change PRAs that have already been submitted.

5.3 The change to the risk consideration following the Johnson ruling applies to all determinate cases from the 27th May 2022. You do not need to change PRAs that have already been submitted but you may receive addendum report directions and may be questioned on this area in the Oral Hearing.

5.4 From 21st July 2022, <u>in all cases</u>, (including all recall cases), the report writer does not present a recommendation around suitability for a move to open conditions or release and such recommendations cannot be discussed in Oral Hearings.