

HOW DO I MAINTAIN MY INNOCENCE AND GET PAROLE?

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Introduction

I will always be haunted by a case I worked on when working for the Home Office in the Royal Prerogative of Mercy division. Stefan Kisko, a vulnerable and simple man, was convicted of the sexual murder of a young child. He spent many years in prison, difficult years of course because of his “crime”. Yet when the case was re-opened and sent back to the Court of Appeal, his conviction was overturned on the basis of evidence that should have been available at his trial. We had seen cases go back to the courts because doubts existed over the safety of the conviction. What was unique in my experience of working on these types of case was the fact that the evidence uncovered in Stefan Kisko’s case proved that he was innocent – it was not that his guilt was in *doubt*. He could not possibly have murdered this child. Poor Stefan was released, a damaged man and died soon after.

The Parole Board’s shoes

Prisoners sometimes say that they wish the Parole Board could know what it was like to step into their shoes; to know what it is like to be in prison for something they did not do. I have tried to imagine what Stefan Kisko’s years in prison were like but it isn’t possible, and the effort itself is too painful. However, when Phil Faber asked the Parole Board to write an article for SAFARI about what prisoners can do to achieve parole or release on life licence, it seemed to me that I would have to ask those prisoners to step into the Parole Board’s shoes and see how difficult it can be to assess someone who says he is innocent, but not knowing whether they are in fact innocent or not.

There have been many different labels put on those whose cases come before the Parole Board saying they are innocent of the crime(s) for which they are in prison. “Deniers” is one, “Prisoners who maintain their innocence” is another. SAFARI represents those who are “falsely accused”. The fact is that some people who say “I did not do it” are indeed innocent of their crime. But equally, there are those prisoners who know they are guilty, but for one reason or another cannot admit it out loud, so they deny it. The question the innocent prisoner might ask is, why should I be treated the same as the guilty man?

Here is where the Board’s answer will disappoint, because we are a organisation created by law, and operating under the law. The law says the Board must treat all prisoners as guilty. A jury decided that question, maybe backed up by the Court of Appeal. No other body may decide otherwise except where the Criminal Cases Review Commission says that there is doubt about a case and the Court of appeal has overturned the conviction.

Consider the following extracts from various judicial reviews of Parole Board decisions:

“We consider that the Parole Board must approach its consideration of any application for parole on the basis that the Applicant has committed the offences of which he has been convicted. It is not the function of the Parole Board to investigate possible miscarriages of justice or to give effect in their consideration to any personal misgivings they may have about the correctness of any particular conviction.” *R v The Secretary of State for the Home Dept & the Parole Board ex parte Lillycrop, Scott and Powell*).

“...the Parole Board must assume the correctness of any conviction. It can give no credence to the prisoner’s denial.” (*Court of Appeal, R v The Secretary for the Home Dept & the Parole Board ex parte Owen John Oyston*).

This is the first principle that I have to get across. What the courts have said repeatedly, is that the Board must ignore any representations by the prisoner that he is innocent. The Board must assume he is guilty. It also means that the Board cannot distinguish between those who “maintain their innocence”, those who are “deniers” and those who are “falsely accused”. In the eyes of the law, they are all guilty.

In reply, the prisoner may say OK, then it must also be fair that the Parole Board treats me the same as someone who pleaded guilty. The Board releases less prisoners who say they are innocent, and that is unfair.

“Denial” does matter

Unfortunately, this is a fact of life. The Board must take denial into account and it will sometimes put that prisoner at a disadvantage:

“...denial will always be a factor and may be a very significant factor in the Board’s assessment of risk...” (*Oyston*)

“...where the pattern of offending behaviour is such that there is a significant risk of a further offence being committed, particularly an offence of a violent or sexual nature, and the Applicant has not demonstrated by his conduct in prison that such risk has been reduced to an acceptable level, then a recommendation for parole is unlikely to be made. (*Lillycrop, Scott & Powell*)”.

“ At one end of the scale is the persistent offender, in particular the persistent sex offender, who refuses to accept his guilt in the face of clear evidence and is unable to accept that he has a propensity to such conduct which needs to be tackled if he is not to offend again. In such a case it may well be a determinative consideration. At the other end of the scale is the first offender, where the motivation for the offence is clear and does not point to a likelihood of re-offending. In the

majority of cases it is unlikely to be more than one of many factors to which undue weight should not be given.” (*R v The Parole Board ex parte Zulfikar*).

What these judgements mean is that denial, as the courts call it, is a factor in every case. In some cases, it will not weigh too heavily against the prisoner; in others it may be very important indeed. Why is that the case? It boils down to another legal requirement the Board works under – the Home Secretary’s Directions, which will feature again later when I turn to that all important question – how do I get parole?

The Directions are simply a list of things that every Parole Board panel must consider before making a decision. I will go through them in detail in a minute. But first, I will quote some bits that have particular relevance for this article.

“The Board shall take into account that safeguarding the public may often outweigh the benefits to the offender of early release.”

....the Board shall take into account....whether the prisoner has shown by his attitude and behaviour in custody that he is willing to address his offending behaviour by participating in programmes or activities designed to address his risk, and has made positive effort and progress in doing so.”

When we take these two together, it means that a prisoner who has not taken steps to address offending behaviour will be put at a disadvantage. And because the safety of the public comes first, the benefit of the doubt may well go against the prisoner. This leaves many prisoners frustrated and angry. It also leads journalists to write articles which are very good at pointing out the unfairness this may cause. Unfortunately, these articles are rather less effective at suggesting what the Parole Board should do about it.

For example, it was recently pointed out to the Board by SAFARI , that 82% of sex offenders do not re-offend within two years. Therefore, 82% of those sex offenders who maintain their innocence should be released. Putting aside the fact that the two year boundary does not help when the prisoner’s parole licence is longer than two years, or when he is a lifer, how does the Board decide who are the dangerous 18% that will re-offend within two years? If we get it wrong, there will be a large number of victims of sexual crimes who will demand of the Parole Board, why did you let this man out so that he could rape/assault me? How can the Board safeguard the public by letting dangerous people go? If you truly can put yourself in the Board’s shoes, would you be confident in releasing a large number of sex offenders who might re-offend?

The answer is that the Board will do its best with the information it has, to pick out those who are safe to release. But because public safety is our main concern, it is inevitable that the percentages may not add up. There is a cliché that says each case must be considered on its merits. This sounds old-fashioned but it is true.

Every case is different

No two cases are the same. It is no good saying that one prisoner got parole claiming he is innocent, but I did not. We need, therefore to think about the case itself before we can see how important the question of innocence or guilt is.

Broadly speaking, we see three types of offender in this category:

1. This prisoner says I did not do it. I will not discuss my conviction. I will not talk to staff about it. I will not take any course or programme because that would be seen as admitting my guilt.
2. This prisoner says I did not do it but I am prepared to co-operate with anyone, do any course and jump through any hoop I am asked to if it will help get me out.
3. This prisoner says I did not do it, but I have previous convictions that are similar that I do admit to, and I will discuss those in courses and programmes, to try and convince the Board that I am no longer a danger.

Added to that, there are different types of crime, obviously. Go back and read the extract from the *Zulfikar* case above. The court spoke of a scale of offending. At one end the denial will count heavily against the prisoner, and may on its own mean a knockback. At the other end, it will not matter too much and provided everything else is OK then release should be possible. A couple of fictional examples shed light on how this works

Prisoner A is 70 years old. His only daughter has accused him of sexually assaulting her on a regular basis when she was a child. The last assault happened 30 years ago. He has no other convictions. A jury convicted him and the judge gave him 4 years in prison. He has applied for parole. He claims innocence but has co-operated with staff during his sentence. While he can't take the sex offender treatment programme, he has taken the enhanced thinking skills course. Tutors report no problem with his thinking. He has seen a psychologist regularly. She says she can detect no sexual interest in children generally. A statistical risk assessment says he presents a low risk of offending. He has no adjudications. The victim is no longer at risk – she is 45 years old and lives abroad. On release he plans to live with his sister. There are no children in the family. The probation officer says he will comply with licence condition, including one not to live with children.

Prisoner B is 40 years old. He is serving eight discretionary life sentences for eight predatory rapes. The offences involved sadistic and prolonged attacks on male and female pensioners. He has previous convictions for gross indecency, indecent assault and rape. He denies all of them, says the police have the wrong man and have hounded him for every sexual offence in his area. In his youth he was abandoned by his mother and physically abused by his father. Taken into care, he was sexually assaulted by his foster parents.

He is bitter and refuses to speak to anyone about his offences. He is suspected of making sexual threats against another elderly prisoner. He is held in category A. Statistical assessments rate him as likely to commit further sexual and violent offences. He has written letters blaming his victims and accusing them of lying.

Put yourself in the Board's shoes. Prisoner A appears to pose no threat to anyone. He has committed no offence for 30 years, has co-operated and his only victim is out of the way. So what if he has not done the SOTP and says he is innocent? He can be safely released to serve out his parole with a good set of licence conditions.

Prisoner B is a persistent and highly dangerous offender. His offences seem to stem from deep rooted and extremely complex personal circumstances. They go all the way back to a tragic and traumatic childhood. He needs sustained and in-depth counselling and intervention that can only come from an honest examination of his problems. He has to be motivated and co-operative. Because of his denial, he may never be released.

These examples are extreme. I chose them deliberately to show how the *Zulfikar* scale works. Of course, in practice 99.9% of cases fall somewhere in between and are far more difficult for the Parole Board to work out. Each case is different. But in each case, the safety of the public comes first. No one would suggest taking a chance with Prisoner B and the Board does not lightly take a chance with any case.

Put yourself in the Board's shoes. You have this legal minefield to find your way through. If you get it wrong one way, you have the next victim on your conscience. If you get it wrong the other way, you have a prisoner, the media and various pressure groups accusing you of discrimination.

How do I get parole?

There is no easy answer. There is no list of boxes you can tick and say release me. There are no points to be added up and no pass mark to reach. In truth, every case *is* treated on its merits and the decision can be a very fine one. You may not get the answer you want.

But what this article can do is give you pointers. It can give you the principles on which parole/release on life licence depend. And for that we have to return to the Home Secretary's Directions. The Directions I shall quote from are those applying to parole – sentences with a fixed length (4 years, 8 years, 15 years etc). The Directions for lifers are broadly similar and the difference is minor.

The Directions say – “Before recommending release on parole licence, the Parole Board shall consider:

Whether the safety of the public would be placed unacceptably at risk. In assessing such risk, the Board shall take into account the nature and

circumstances of the index offence including any information provided in relation to its impact on the victim or victim's family";

The offence itself is the first of what we call the "static" risk factors. Static factors are things that cannot be changed. The more serious the index offence, the more cautious the Board will be before it releases you. If the victim, or the victim's family has said anything about the effect the crime has had, that must also be considered.

The Board does often look for what is sometimes called "victim empathy". This means that you are able to show that you understand how victims of crimes, especially sexual and violent crimes, must feel. Even if you are innocent, discussing victims in general can give the report writer and the Board an idea of your level of compassion for those who have suffered physical and/or psychological harm. When a prisoner refuses to talk about anything, because he wants to stick to his guns about his innocence, then it leaves a gap in the Parole Board's information about that prisoner. The Board is being asked by the prisoner to take a chance, and that does not fill us with confidence about re-offending.

"The offender's background, including the nature, circumstances and pattern of any previous offending";

The other static area consists of your previous convictions and personal background. Taken together with i) above, they provide a starting point for the rest of the assessment of risk and the Board has to measure any progress you have made in prison, against that starting point. For example, Prisoner B, the fictional serial rapist above, would start his sentence with an extremely high level of risk. Before the Board is going to even think about releasing him, we would want to see a complete turn around in his attitudes, extensive offence related work over a very long period of time to address every one of his risk factors, and he would probably need to open up about his childhood and the abuse he received. He may be so damaged by trauma, and so dangerous to others, that this work could take many, many years, and may even be impossible. We would almost certainly want to see him go through the different levels of security category (A-B-C) and eventually a long spell in open conditions to test him out. It may well be that he is only released when he is too old or weak to commit any more crimes.

With Prisoner A, the starting point would be different. The likelihood of him offending again is probably very low before he has even got to prison. He had only one victim who is out of the picture, and has done no wrong for 30 years. The chances are that the Board will not be looking for too much if anything in the way of change before we regard him as safe.

Remember, to rate your chances of parole, and to write good representations, you need to understand the way the Board thinks. The Board will first look at your static factors and weigh the risk you

presented when you first came into prison. Against that, they will measure any changes that have happened since to see if you are now a good bet for release.

“Whether the prisoner has shown by his attitude and behaviour in custody that he is willing to address his offending behaviour by participating in programmes or activities designed to address his risk, and has made positive effort and progress in doing so.”

This is the one that prisoners who maintain their innocence often complain about. – the fact that many accredited programmes are not available unless you change your plea of innocence. There are two parts – willingness to co-operate; and actual progress.

Someone who shows himself willing is in a better position than someone who refuses to. It shows the Board that he is motivated and that he is prepared to change where possible. Someone who simply says “I am innocent, I will not do any work, I will not co-operate” will leave the Board very little to go on.

This is an area where those who maintain their innocence are at a disadvantage, but all is not lost in terms of accredited programmes. While some, especially the SOTP (sex offender treatment programme) are unsuitable, others are not. For example, the ETS (enhanced thinking skills) and Cognitive Skills programmes can be done by all. If a prisoner can persuade the tutors that his ways of thinking and solving problems are normal, then he has taken a step in the right direction.

One other thing about the SOTP. Some prisoners have previous convictions that they *do* admit to. It may well be that the SOTP can focus on those instead of the index offence, and again give the Board vital information to go on. If you get the chance, discuss those crimes that you have committed. If you can address sexual offending in general, then the Board will be less concerned about the one you say you did not do.

**“Behaviour during any temporary release or other outside activities.”
Since much of the Board’s attention will be on how likely it is that a prisoner will keep to his licence conditions, any previous periods spent on, for example, ROTL, escorted/unescorted leave, etc can count in your favour. Of course, if those periods were unsuccessful, it can count against you just as easily.**

**“Any medical, psychiatric or psychological considerations relevant to risk (particularly where there is a history of mental instability).”
In extreme cases, a severe medical problem could, on its own, persuade the Board that a prisoner can safely be released. It doesn’t matter how much or how little offending behaviour work has been done if a prisoner cannot physically re-offend.
Equally, we have seen cases where the crimes arose solely out of a mental illness that, if kept under control, could make the risk to the**

public very low indeed. Any prisoner who is identified as having a psychiatric or psychological problem that the experts believe played a part in the offence they are convicted of, will need to co-operate with those trying to help them. The Board will look to see if you are equipped to deal with these problems on release.

“If available, the indication of predicted risk as determined by a validated actuarial risk predictor.”

There are many of these predictors – OASys and Matrix 2000 being the best known and most widely used in prison. They are a sort of questionnaire for report writers who have been trained to fill them in. They reflect the static risk factors I mention above and give the Board help in assessing the starting point of risk factors against which the “dynamic” factors (those things that change) can be measured. They have no special meaning for prisoners who maintain their innocence.

“That a risk of violent or sexual offending is more serious than a risk of other types of offending.”

This simply means that the Board must be more cautious about releasing someone who is convicted of say, rape than it would someone who is convicted of theft. It is all about preventing someone from being the next victim of a sexual or violent crime. Someone convicted of such a crime *may* have to do more to persuade the Board that they are safe to release.

“The content of the resettlement plan.”

What the Probation Service has in mind for you on licence can be very important indeed. The Board is trying to measure whether you will commit offences during the licence period and the probation report is vital in most cases. The resettlement plan may include the release address, employment plans, offending behaviour courses, curfew hours, licence conditions and anything else designed to help you re-adjust to living in society. These can be extremely helpful in cutting down the chances of offences being committed.

A few examples – someone who has been convicted of sexual offences against his own family might be better off living in a probation hostel while on parole; it reduces the possibility of contact with his victims. Someone who gets violent when drunk and is in a hostel with a curfew at night, may not be able to go to the pub and drink all evening. Someone who commits burglaries during the day while people are at work, might be less likely to do so again if he has a full time job to keep him occupied. Someone who steals because he can’t get a job, might be able to get one if he has learned a trade in prison and has an offer of a job on release. Someone about whom the Board has doubts because an offending behaviour course was not available in prison, might tip the balance in his favour if the Board knows that the course can be provided by the Probation Service on licence.

The point is that a good resettlement plan with firm licence conditions, can be a strong factor in your favour. In order to persuade the Board on this issue, you will need to co-operate with your probation officer and be realistic about what you may have to sign up to. Someone who is innocent but wants to be released early, may have to put his principles to one side and agree to abide by rules and regulations that he would otherwise reject.

“Whether the longer period of supervision that parole would provide is likely to reduce the risk of further offences being committed.”

One of the reasons parole was introduced in the first place in the 1960's, was because prisoners who were simply locked up until the end of their sentence and then pushed out the door into the outside world, often couldn't cope. This made it more likely, not less, that they would go back to crime.

If the Parole Board is faced with a finely balanced case, it may tip the balance in the prisoner's favour if there is only a short period of the licence left and we feel that it is worth the risk of releasing the prisoner so that they have more time to adjust. However, you should note that if the Board comes to the conclusion that you are likely to commit offences, then the decision has to be a knock back. We will not take a chance just because you will only have a short supervision period. In general, whether someone pleaded guilty or not, the longer the length of the licence, the more opportunity there is for him to re-offend.

“Whether the prisoner is likely to comply with the conditions of his licence and the requirements of supervision, taking into account occasions where he has breached trust in the past.”

This is very important. A prisoner who is not going to keep to his licence conditions, is not going to be released. Of course the Board will take note when the prisoner tries to assure us in his representations and in the reports written by others, that he will stick to his conditions. The trouble is that almost all prisoners say this. The Board has to try and pick out those who are telling the truth from those who are not. Or, it may be that the prisoner truly means to comply with his licence but the Board doubts that he is actually *able* to – many prisoners are released with the genuine intention of keeping to their licence but after a while find that they are tempted back to their old ways.

This is one area where the prisoner who says he is innocent must co-operate. If you are one of those who will not discuss anything, then again the Board is left with a huge gap in the information it needs to judge whether you are safe to be let loose on a licence. You will find it difficult to successfully apply for parole or release on a life licence if you just dig your heels in.

“The suitability of home circumstances.”

This pretty much speaks for itself. If the prisoner has been convicted of assaulting his partner, or his children, he should not expect the Board to

release him back to the same address. Similarly, if a prisoner's convictions arose from his friendship with people with a criminal background, then release to an address in the same area may not be on the cards – you may have to accept living on release in a new area altogether. It is a matter of common sense and if you can put yourself in our shoes, you will understand that sometimes a new start is called for.

“The relationship with the supervising probation officer.”

A prisoner who refuses to talk to his probation officer because he does not want to abandon his principles is at a disadvantage. The Parole Board wants to know that you will work with your probation officer. It does not mean necessarily that you have to *like* the probation officer, it is enough you can work together. At some point during the sentence, and certainly after the parole review has started, the probation officer should contact you to talk about the parole report and the plans for release. It is very important that you should engage in this discussion. The probation officer is trying to help, but help cannot be given to those who will not accept it.

“The attitude of the local community in cases where it may have a detrimental effect upon compliance;”

Everyone knows that some crimes in particular cause the public concern. In the main, these are sexual and violent crimes but there may be others. It may depend on the type of community in question. The Parole Board is not so much concerned about whether the *prisoner* might be at risk from members of the public, but more whether the community's reaction to his living there will have an effect on him. If a licensee is likely to respond to hostility by going to ground, for example, then that prisoner will fail on licence and end up recalled to prison. Or even worse, if stress causes a prisoner to commit offences, then the community's attitude to him may raise the chances of him committing further crimes.

Prisoners must be realistic about this. It may not be possible to insist on being released to the same area where you used to live.

“Representations on behalf of the victim in respect of licence conditions.”

In the majority of cases, the victims have little if anything to help the Board decide whether a prisoner is safe to release. This is because they usually have no knowledge of what has happened to the offender and how much he may have changed during the sentence. This may not always be the case of course and a prisoner who has, for example, continued to harass a victim by letter or telephone, has a very poor chance of release indeed.

In the main, the victim's role is concerned more with licence conditions. The Board frequently sets conditions to help victims. These are normally to prevent the prisoner on licence from trying to contact a victim; or to prevent him entering the area where the victim or victims

live. These conditions are largely standard when the victims ask for them and prisoners should accept and understand the victims' feelings.

SUMMARY

It is fact of life that the Board sees you as guilty. It has to by law. If you are innocent then this is hard to accept but this article is not written to soothe your feelings by telling you that the Board agrees that you didn't really do it. Nor is designed to persuade you to change your stance to a guilty one – it is your right to say "I am innocent". Only you know the truth but the message here is that reality can be a difficult place to visit. If you are serious about wanting early release then you may have to swallow your pride and meet us half way. Representations that just say "I am innocent, you must release me" are pointless.

Where do you stand on the "Zulfikar scale"? Are you nearer in truth to Prisoner A or B? Depending on the answer, you may have a more difficult job gaining early release and the brutal fact is that if you are towards the top end of the scale, it may take a long time and a lot of hard work on your part and others to convince the Board that you are suitable to be released.

If the Board has to take account of the Directions then so do you. During your time in custody; and when talking to those who are writing parole reports; and when writing your representations, put yourself in our shoes. Ask yourself, how do I look to someone who doesn't know me personally but must assume I am guilty? There are some things I can't reassure the Parole Board about, what are the things that I can do something about? Follow each step of the Directions and do what you can in each area to convince the Board that you are motivated and serious.

Co-operate, co-operate, co-operate. Be the type of prisoner who stands firm behind his claim of innocence if you wish, but acknowledge that the prisoner who clams up tight, will not speak to anyone about anything, leaves the Board with very little to go on. It puts you at a serious disadvantage and while you may have the satisfaction of knowing you are morally right, that will not help you get out. The fact is, you do not have to compromise your principles in order to co-operate with those who are trying to help you. The choice is yours but if you can put yourself in the Parole Board's shoes, you will see the sense in what I am saying.

CONCLUSION

Before sitting down to write this I had certain misgivings. I am sure that there are prisoners whose sense of anger and frustration towards the verdict at their trial will view this article with suspicion and cynicism. They will shake their heads and repeat the mantra that no one gets parole while they maintain their innocence. Others will remain steadfast behind their barricade and refuse to do anything that they feel will betray their innocence.

This article will not help them much and that is a shame. There will be others who read this carefully, apply what it says, jump through the hoops – and still not get parole. And that may change their attitudes, or merely reinforce what they thought in the first place – that the Parole Board does not play fair with prisoners like us.

So I approached writing the piece with some trepidation. The last thing I want to do is raise peoples' hopes only for them to be dashed when that eagerly awaited envelope is opened and the Board's decision is finally known. Please understand – **this article comes with no guarantees**. I could just as easily write a similar piece for prisoners who pleaded guilty and it still would not come with any promises other than the promise that the Board will be as fair as it can be. At the end of the day, all I can say is that this article, for what it is worth, may help to increase your chances. It is not a perfect world we live in and we have different views of what justice means. This is as much a reality check as a guide to how to get what you believe you deserve. Please bear that in mind and good luck.

Terry McCarthy
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