

**LIFE
SENTENCE
REVIEW
COMMISSIONERS**

Annual Report 2007

Report for the year ended 31 March 2007

Presented to Parliament pursuant to Section (6)(2) of Schedule 1
of the Life Sentences (Northern Ireland) Order 2001

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Chairman: Peter Smith QC



The Rt Hon Peter Hain MP
Secretary of State for Northern Ireland
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Dear Secretary of State

Paragraph 6(1) of Schedule 1 to the Life Sentences (Northern Ireland) Order 2001 requires that, as soon as is reasonably practicable after the end of each financial year, the Chairman of the Life Sentence Review Commissioners shall make a report to the Secretary of State on the performance of the Commissioners' functions during that year. In compliance with that requirement, I am pleased to submit to you a report in respect of the financial year 1 April 2006 to 31 March 2007.

Information as to the cases referred and processed during the year is contained in Chapter 3 of this report. During the year the Commissioners have continued to develop policies and procedures designed to enhance the effectiveness and efficiency of our work.

Perhaps the most significant features of the year were the continuing reactions in the media and from the public to the cases of Trevor Hamilton and Patrick Coleman.

Although neither offender had been released on foot of a direction from the Life Sentence Review Commissioners their cases, plus that of Anthony Rice in England, gave rise to concerns among Commissioners as to the quality of the advice furnished to LSRC panels and the effectiveness of post-release arrangements, including inter-agency communication.

At the time of writing I am still in the process of seeking to have these concerns addressed fully but my attempts to date have had a number of important consequences. One is the realisation that the route by which Commissioners' concerns can be communicated and addressed in a formal way is not clear. Clarity is important as it is highly unlikely that this will be the only time that the chairman of the Commissioners will find it necessary to raise important issues of this sort. I have brought this to the attention of your Department and I hope that clarity will be achieved in the near future.

Another consequence has been agreement with the Prison Service that it will conduct a review of all cases in which a decision of a LSRC panel has not had the anticipated outcome – for example, where the prisoner has had to be recalled.

The objectives of such reviews would not be to pillory dedicated professionals who have made careful judgments or unfairly to criticise those performing difficult post-release functions in respect of prisoners released on licence, often with limited resources. Rather, they would be designed to ensure that the quality of the advice proffered to panels – and on which Commissioners depend heavily in assessing suitability for release – is as good as it can be, and also to enhance the confidence of Commissioners in the efficacy of post-release arrangements by seeking to identify and correct shortcomings.

The Commissioners have recognised that we too must take steps to ensure that our processes and decisions are as good as they can be. To this end we have agreed that where a decision has not had the anticipated outcome a complementary review by a Commissioner independent of the decision making panel will be instituted.

The Prison Service has undertaken that in each case a copy of its reviewer's report will be furnished to the LSRC and the Commissioners will share learning points applicable to the Prison Service or other agencies which have emerged from our review.

Yet another consequence has been that agreement has been reached that in respect of prisoners whose case come before LSRC panels and who are subject to MASRAM (*Multi Agency Sex offenders Risk Assessment and Management*). LSRC panels will in the future be furnished with all relevant information available from that source.

The LSRC noted the statement of the Minister of State, Mr David Hanson MP, announcing the introduction of indeterminate and extended public protection sentences. It seems inevitable that whenever the requisite legislation comes into force there will be a significant increase in prison numbers and much greater pressure on the facilities for prisoner rehabilitation and post-release supervision. It is hoped that sufficient resources will be made available. Failure to do so would result in the development of a vicious circle:

- prisoners being inadequately prepared for release
- panels not giving release directions because prisoners have been inadequately prepared or because of concern as to the effectiveness of poorly resourced post-release supervision arrangements
- further reduction in preparation and post-release supervision capacity because resources have been dissipated in keeping prisoners in prison

- and so on.

Since inception, the LSRC have been conscious of their statutory obligation, set out in Article 3(4)(b)(ii) of the Life Sentences (Northern Ireland) Order 2001, to have regard to the desirability of securing the rehabilitation of life sentence prisoners. An ad hoc group of Commissioners has been set up to focus on rehabilitation with particular reference to the impact of the implementation of the new types of sentence.

In my report for the financial year 2005/2006 I referred to the Commissioners' request to the Prison Service that arrangements be made for the validation of information certified by you as confidential under Rule 15(1) of the Life Sentence Review Commissioners' Rules 2001. I now record that the Prison Service has informed the LSRC of arrangements that are now in place and which appear to the Commissioners to be satisfactory.

Also in my report for 2005/2006 I referred to a judicial review in which the judge cast doubt on my jurisdiction to appoint panels of Commissioners to deal with references other than those governed by the LSRC Rules. At the date of that report it was thought that amendment to the Rules would be required.

The judge's remarks in that case were *obiter dicta*. In the course of giving judgment in a subsequent judicial review, in which my power to appoint a panel to deal with a reference under Article 9(1) of the Order (which is not covered by the Rules) was at issue, the same judge (Lord Justice Girvan as he is now) held that this procedure is lawful.

While it is true that, strictly speaking, the decision in the more recent case is limited in its application to functions conferred by Article 9(1) of the Order, there is no reason to believe that the ruling does not apply to all other functions which the Commissioners are required to perform other than those governed by the Rules. Accordingly, the Commissioners do not consider it necessary that the Rules be amended at this stage. It would, however, be prudent to consider including powers to act by a single Commissioner or by a number of Commissioners in any revised or substituted version of the Rules which may fall to be drafted in the future.

The year has seen extensive contact between the Commissioners and the Prison Service, including its Director, Mr Robin Masefield. The Commissioners are conscious of the efforts made to assist them in their performance of their statutory functions and commend the work that is being done within the prison system to help life sentenced prisoners to minimise the risk they pose to public safety.

In conclusion may I once again express the gratitude of the Commissioners for the helpful advice and support provided to us by the Secretariat and for the high standard of their work throughout the year.

Yours sincerely

PETER SMITH, QC
Chairman

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Chapter One

Background

The appointment of the Commissioners was the result of a review of Northern Ireland prisons legislation conducted by the Government in anticipation of the coming into effect, in October 2000, of the provisions of the Human Rights Act 1998. An important aspect of that review was a consideration of the arrangements then in place for the consideration of the suitability for release of prisoners who had been sentenced to life imprisonment. The review considered the three types of life sentence: mandatory life sentences (for murder), discretionary life sentences (for other serious violent offences) and juvenile offenders sentenced to detention at the Secretary of State's pleasure in circumstances that would, for an adult, have merited either a mandatory or a discretionary life sentence.

The review concluded that the existing procedures for discretionary life sentence prisoners and those sentenced to detention at the Secretary of State's pleasure could be deemed inconsistent with the requirements of the Human Rights Act. They were based on advice on the suitability of the prisoner for release being given to the Secretary of State by the Life Sentence Review Board, a non-statutory body consisting largely of senior officials of the Northern Ireland Office. It was considered that compliance with the Human Rights Act would require that, once the punitive element of the sentence had been completed, each prisoner should have his or her case reviewed periodically by a judicial body. To have judicial character, the body would need to be independent of the executive (and of the parties concerned); impartial; and able to give a legally binding direction regarding the prisoner's release.

In March 2000, the report of the Review of the Criminal Justice System in Northern Ireland endorsed this conclusion and further recommended that an independent body should make decisions on the release of *all* life sentence prisoners.

The Government accepted this recommendation and brought forward legislation to require all life sentence prisoners to have the punitive element of their sentence judicially determined and their suitability for release independently assessed and directed at the appropriate time by an independent body of judicial character.

The Order and Rules

The legislation in question was the Life Sentences (Northern Ireland) Order 2001 ("the Order") and the Life Sentence Review Commissioners' Rules 2001 ("the Rules"). The Order was approved by, and the Rules laid before, Parliament in July 2001 and both came into force on 8 October 2001.

The principal provisions of the Order provide for:

- the appointment of Commissioners, one of whom shall be Chairman;
- the Commissioners to advise the Secretary of State on any matter referred to them by him connected with the release or recall of life sentence prisoners;
- the setting by the court of a relevant period, or 'tariff', as the period of the sentence to be served to satisfy retribution and deterrence before review for release;

- the power of the Commissioners to direct a prisoner's release on licence if continued detention is not required for the protection of the public;
- the attachment by the Secretary of State of conditions to the release licence, in accordance with recommendations of the Commissioners;
- the revocation by the Secretary of State of the licence of a released prisoner and the latter's recall to prison;
- the consideration by the Commissioners of such recalls and their power to direct the release of recalled prisoners; and
- arrangements for the setting of tariffs for prisoners already serving life sentences.

The Rules set out in detail the procedures that apply where the Secretary of State refers a prisoner's case to the Commissioners regarding his release or recall. They provide, in particular, for:

- the appointment by the Chairman of a panel of three Commissioners to consider each case (wherever practicable, one panel member should be legally qualified and another a psychiatrist or psychologist);
- the representation of the prisoner and the Secretary of State;
- the submission of information and reports by the Secretary of State and of further evidence by the prisoner;
- the holding of an oral hearing to consider the prisoner's case and the procedure for such hearings (including the attendance of witnesses);
- time limits within which notifications and responses must be made;
- the giving of procedural directions by the panel and the consideration of appeals against such directions; and
- the withholding, in specified circumstances, of particular items of evidence from the prisoner, or the prisoner and his representative, and, in the latter event, the appointment by the Attorney General of a special advocate to represent the prisoner's interests.

The Commissioners

The Commissioners appointed by the Secretary of State are:

Chairman

Mr Peter Smith, QC

Peter Smith is a QC who retired from practice in 2001 after over 30 years' experience at the Bar of Northern Ireland. He remains a judge of the Courts of Appeal of Jersey & Guernsey and a deputy judge of the High Court of Justice in Northern Ireland. Between 1998 and 1999 he was a member of the Independent Commission on Policing.

Commissioners

Mr Thomas Craig

Tom Craig is a retired Assistant Chief Constable with over thirty-five years' experience of policing in Northern Ireland. Latterly he was appointed Regional Commander of South Region in 1998 and held operational command responsibility for most of Co Down, Co Armagh and part of Co Tyrone.

Ms Teresa Doherty CBE

Teresa Doherty is a self-employed barrister. She was formerly a member of the Lord Chancellor's Advisory Committee of JP's, is a part-time Chairman of the Social Security Appeals Tribunal and also held the positions of Principal Magistrate and National and Supreme Court Judge for the Judicial and Legal Commission of Papua New Guinea and was a judge of the Court of Appeal and High Court of Sierra Leone. Appointed by the United Nations, since January 2005 she has been a judge of the 2nd trial chamber of the Special Court for Sierra Leone (the international war crimes tribunal for Sierra Leone).

Dr Ruth Elliott

Ruth Elliott is a retired Consultant Clinical Psychologist. She was Clinical Psychology Services Manager at Belfast City Hospital and served on the Mental Health Commission for over 7 years, latterly as Vice-Chairman. She is a Chartered Clinical Psychologist, an associate fellow of the British Psychological Society, and is Treasurer of the Northern Ireland Division of Clinical Psychology.

Mrs Anne Fenton

Anne Fenton has been a qualified solicitor since 1978 and she was appointed Director of the Institute of Professional Legal Studies at Queen's University, Belfast in 1998. She is currently a part-time legal member of the Mental Health Review Tribunal and has previously held appointments as part-time Chairman to both the Child Support and Disability Appeal Tribunals.

Dr Ronald Galloway

Ronald Galloway was a Consultant Psychiatrist at Craigavon Area Hospital and St Luke's Hospital, Armagh and until 1998 held the post of Medical Director and Executive Board Member of the Craigavon and Banbridge Community Health and Personal Social Services Trust. He is a fellow of the Royal College of Psychiatrists. Dr Galloway has been a member of the Mental Health Commission since 1994, serving as its Vice-Chairman in 1999/2000, and is currently Chairman of the Commission's Management Committee.

Mr Brian Garrett

Brian Garrett is a qualified solicitor and Senior Consultant in a Belfast law firm. He is also a Deputy County Court Judge, Chairman of the Northern Ireland Teachers' Salaries and Conditions of Service Committee and a Chairman of the Social Security Appeals Tribunals. He has previously held appointments as Deputy Chairman of the Northern Ireland Independent Commission for Police Complaints and as a member of the Standing Advisory Commission on Human Rights. He is a qualified arbitrator and formerly Visiting Fellow in International Affairs at Harvard.

Mrs Mary Gilpin

Mary Gilpin is a former member of the Scottish Probation Service and a retired social worker. She was a member of the Board of Visitors for HMP Maze from 1985 to 1997 and served two terms as Chairman as well as being Secretary to the Northern Ireland Association of Members of Boards of Visitors. She was closely involved in the establishment of Dismas House, a hostel for use by prisoners and their families. She has also been a Sentence Review Commissioner since 1998.

Dr Adrian Grounds

Adrian Grounds is a University Senior Lecturer in Forensic Psychiatry at the Institute of Criminology and Department of Psychiatry at the University of Cambridge. He is an Honorary Consultant Psychiatrist in the Cambridgeshire and Peterborough Mental Health Partnership NHS Trust. He is a fellow of the Royal College of Psychiatrists. He has also been a Sentence Review Commissioner since 1998.

Professor Peter Hepper

Peter Hepper is Professor of Psychology, and currently Head of the School of Psychology, Queen's University Belfast. He also serves as a member of the Irish Football Associations Appeal Committee. He is a Chartered Psychologist and a Fellow of the British Psychological Society and has been Visiting Professor at Kyushu University, Japan, and University New South Wales, Australia.

Professor John Jackson

John Jackson is Director of the Institute of Criminology and Criminal Justice at Queen's University, Belfast. He previously taught in University College Cardiff, the City University, London and the University of Sheffield and was Visiting Professor at Hastings College of the Law, University of California, in 2000. From 1998 to 2000 he was an Independent Assessor for the Northern Ireland Criminal Justice Review.

Mr John Leckey

John Leckey qualified as a solicitor in 1974 and is presently the Senior Coroner for Northern Ireland. From 1996 to 2001, he served as a member of the Criminal Cases Review Commission, which considers allegations of miscarriages of justice in England, Wales and Northern Ireland.

Dr Damien McCullagh

Damien McCullagh is a Consultant Clinical Psychologist with Armagh & Dungannon Health and Social Services Trust and was previously a Principal Clinical Psychologist in the Northern Ireland Prison Service.

Mr Donal McFerran

Donal McFerran is a qualified solicitor who practised as partner in a litigation firm in Belfast. Has served as a Deputy Resident Magistrate, was appointed a Deputy County Court Judge in 1990 and is a legal member of the Mental Health Tribunal. He has also been a Sentence Review Commissioner since 2001.

Dr Patrick McGrath

Pat McGrath is a recently retired General Practitioner who continues to work as an independent forensic physician to the Policing Board for Northern Ireland. He has a number of General Medical appointments and is also a member of both the Social Security Appeals Tribunal and Criminal Injuries Compensation Appeals Panel.

Ms Clodach McGrory

Clodach McGrory practiced at the Bar of Northern Ireland from 1990 to 1995 and subsequently worked at the Law Centre (NI). She was a member of the Standing Advisory Commission on Human Rights from 1998 to 1999 and was appointed to the Irish Human Rights Commission in December 2000. She is currently a part-time Chairperson of Social Security Appeal tribunals and has been a Sentence Review Commissioner since 1998.

Dr Duncan Morrow

Duncan Morrow is the Chief Executive the Community Relations Council and a lecturer in politics at the University of Ulster. He is a member of the Corrymeela Community, has a long-standing interest in reconciliation and conflict resolution and is the author of a number of reports into politics and community relations in Northern Ireland. He has been a Sentence Review Commissioner since 1998.

Mr Stephen Murphy CBE

Steve Murphy is the Deputy National Offender Manager for England & Wales, and the Regional Offender Manager for London. He was previously the Director General of the National Probation Service for England & Wales from 2004 to 2005, prior to which he was Chief Probation Officer first in Hampshire and the Isle of Wight and most recently in Northumbria. He was a member of the Parole Board for England & Wales from 1995 to 2005, and is a former member of the Local Review Committee at HMP Wandsworth. He was made a CBE in the 2004 New Year's Honours List for services to the probation service.

Mrs Elaine Peel

Elaine Peel is a former Assistant Chief Probation Officer with the Probation Board for Northern Ireland and in that capacity acted as chairman of the Criminal Justice sub-committee on Domestic Violence and Director of the National Community Justice Training Organisation.

Mrs Elsbeth Rea OBE

Elsbeth Rea is a self-employed consultant providing independent social work research services and training to social work organisations. She has previously worked as both a Senior Probation Officer with the Probation Board for Northern Ireland and as a lecturer in Social Work at Queen's University Belfast. She is a Lay Magistrate and has held public appointments with the Ulster Community and Hospitals Trust, the Police Authority for Northern Ireland and the Eastern Health & Social Services Council.

Judge Derek Rodgers

Derek Rodgers has been a County Court Judge since 1997 and previously served as a District Judge for eight years. He is a member of the Legal Advisory Committee of the Church of Ireland and holds positions with a number of voluntary organisations.

Professor Andrew Sanders

Andrew Sanders is Professor of Criminal Law & Criminology at the University of Manchester, having previously held the post of Deputy Director of the Centre for Criminological Research

at the University of Oxford. His current research is focused on the role of victims in the criminal justice process and he is the author of several criminal justice publications. He has recently stood down from the Parole Board for England & Wales, having served nine years as a criminologist member, and was a member of the working party that established the detailed arrangements for lifer panels.

Dr Oliver Shanks

Oliver Shanks is a retired Consultant Psychiatrist in Learning Disability who specialised in forensic psychiatry. He is a member of the Royal College of Physicians, a fellow of the Royal College of Psychiatrists and was a member of the Mental Health Commission from 1996 until 2005. He was an Honorary Clinical Lecturer in Mental Health at Queen's University, Belfast and is currently a member of the Boards of EXTERN and PRAXIS.

Mr Nigel Stone

Nigel Stone has been Senior Lecturer in Criminology and Criminal Justice at the University of East Anglia since 1979. Until 1997 he also served in the Probation Service for 24 years, holding a joint appointment as Probation Officer and Head of Home Office sponsored training programme for probation students at East Anglia. He was appointed as a criminologist member of the Parole Board for England & Wales in 1997.

Professor Herbert Wallace OBE

Herb Wallace is Professor Emeritus at the Queen's University of Belfast. He is a former member of the Police Authority for Northern Ireland, serving as Vice-Chairman from 1996 until 2001 and ultimately as Chief Executive. He is a past Chairman of the Northern Ireland Regional Committee for Custody Visiting and is currently a Member of the Criminal Injuries Compensation Appeals Panel for Northern Ireland.

All Commissioners serve on a part-time basis.

Chapter Two

The Work of the Commissioners

Policy and Procedures

The Commissioners have continued to enhance their understanding of the arrangements for the sentence management and rehabilitation of life sentence prisoners, and of the Human Rights issues affecting the exercise of their statutory responsibilities. They have also continued to hold regular plenary meetings at which they have continued their work of developing policies and refining their procedures.

Because of the Commissioners' need to maintain a current knowledge of developments in jurisprudence, the legal sub-group continues to meet regularly to discuss the implications of relevant judgements delivered in the UK and by the European Court of Human Rights.

Other sub-groups continue to convene on an *ad hoc* basis as necessary to discuss matters that have arisen or may arise in relation to cases under consideration.

Recording of Oral Hearings

In the course of a judicial review of one of the Commissioners' decisions, the judge had queried the fact that oral hearings were not recorded. The Commissioners also felt that in the current climate of legalistic and contentious cases the recording of oral hearings had become a necessity. A trial of recording equipment similar to that used by Northern Ireland Court Service was held, and routine recording of all oral hearings will commence shortly.

The Commissioners also continually review and update their Step-by-Step Guide for Prisoners, a copy of which is attached as at Annex A.

Chapter Three

Casework

The work of the Commissioners is dependent on the number of prisoners whose cases are referred to them in accordance with the provisions of the Life Sentences (Northern Ireland) Order 2001 and this year saw the number of referrals slightly decrease.

During the period of this Report, cases were referred and processed as follows:

- Six cases were referred under Article 3(3)(a) of the Order
 - Twelve cases were referred under Article 6 of the Order
 - No cases were referred under Article 7(2) of the Order
 - Two case was referred under Article 8(3) of the Order
 - No cases were referred under Article 9(1) of the Order
 - Four case was referred under Article 9(4) of the Order
-
- Six cases referred under Article 3(3)(a) were completed
 - Fourteen cases referred under Article 6 were completed
 - No cases referred under Article 7(2) were completed
 - Two case referred under Article 8(3) was completed
 - No cases referred under Article 9(1) were completed
 - Four cases referred under Article 9(4) were completed

Table 1 (overleaf) shows the breakdown of business at the end of each quarter and the total cases processed in the year.

Oral Hearings

During the period of this Report, oral hearings were completed in eighteen cases. In two further cases the hearings were adjourned and have yet to be reconvened. A further fourteen are still to be heard.

Judicial Reviews

In the period covered by the report three decisions of the Commissioners were subject to judicial review. In two of the three cases the judge dismissed the prisoner's case and upheld the Commissioners' decisions. Both prisoners subsequently appealed to the Court of Appeal where one is currently still pending and the other has been withdrawn. In the third case, the judge found in favour of the prisoner and the Commissioners' subsequent appeal to the Court of Appeal is currently pending.

Table 1

Cases Processed In-Year

	2006			2007	
	Jun	Sep	Dec	Mar	Total
Carried over from previous year					2
Referred for pre-tariff expiration review under Art 3(3)(a)	1	2	2	1	6
Pre-tariff expiration recommendations given	2	0	2	2	6
Cases pending					2

Carried over from previous year					13
Referred for decision on release under Art 6	3	1	3	5	12
Releases directed	0	1	0	0	1
Releases not directed	5	3	3	2	13
Cases pending					11

Carried over from previous year					0
Referred for consultation on compassionate release under Art 7(2)	0	0	0	0	0
Recommendations given	0	0	0	0	0
Cases pending					0

Carried over from previous year					0
Referred for recommendation on cancellation of licence conditions under Art 8(3)	0	0	0	1	1
Recommendations given	0	0	0	1	1
Cases pending					0

Carried over from previous year					0
Referred for advice on recall under Art 9(1)	0	0	0	0	0
Recall recommended	0	0	0	0	0
Recall not recommended	0	0	0	0	0
Cases pending					0

Carried over from previous year					4
Referred for decision on revocation of licence under Art 9 (4)	2	1	0	1	4
Licence revoked	0	0	2	1	3
Licence not revoked	0	1	0	0	1
Cases pending					4

Chapter Four

Staff and Resources

For most of the year covered by this report, the Commissioners have been supported and advised by a Secretariat comprising the Secretary to the Commissioners and a team of four staff. A fifth staff member took up post in March 2007.

Throughout the year, the Commissioners have occupied accommodation on the 5th floor of Windsor House, Belfast.

The Secretariat also support the work of the Sentence Review Commissioners appointed under the Northern Ireland (Sentences) Act 1998, who occupy the same accommodation. Shared costs have been apportioned accordingly and are indicated as *. All other costs were actually incurred.

Expenditure incurred by the Secretary of State in providing for the work of the Commissioners in the year ended 31 March 2007 was:

Programme expenditure:	£000	
	2006/07	2005/06
Commissioners' remuneration	102	72
Commissioners' travel, accommodation and expenses	18	12
Legal costs ¹	46	0
Premises*	51	51
General administration*	32	32
Running costs:		
Staff salaries etc*	124	128
Total Expenditure	373	295

¹ Mainly costs incurred in responding to challenges by way of judicial review

THE LIFE SENTENCE REVIEW PROCESS

A step-by-step guide for prisoners

NOTE: The advice given in this Guide may be changed if the Life Sentence Review Commissioners consider that additional or amended information should be included for the benefit of prisoners.

INTRODUCTION

1. If you have already received and read the information leaflets issued by the Prison Service explaining the procedures for reviewing life sentences you may have a fairly clear understanding of how your case would be referred to and dealt with by the Life Sentence Review Commissioners. This Guide sets out additional information on that process which you might find helpful.

THE LEGISLATION

2. For ease of reference, this Guide summarises parts of the relevant legislation – the Life Sentences (Northern Ireland) Order 2001 (“the Order”) and the Life Sentence Review Commissioners’ Rules 2001 (“the Rules”). It is important that you fully understand what the legislation means, and how the procedures affect you. It is in your interests to consider the benefits of legal representation. You or your representative should study the Order and the Rules carefully before submitting any material to the Commissioners or attending the oral hearing of your case.

THE REFERRAL

3. The Secretary of State starts the review process by referring your case to the Commissioners, usually about six months before the date at which your tariff period set by the courts is due to end, or following your recall to prison upon revocation of your licence. The Commissioners will then write to let you know that your case has been referred to them by the Secretary of State. That letter, known as the ‘listing letter’, will set a provisional date for your oral hearing by a panel of three Commissioners and also set the dates by which certain matters need to be completed so that your hearing can go ahead as provisionally arranged. All the dates and timings are counted forward from the date of the listing letter.

THE TIMETABLE

4. The steps and time limits set out in this Guide apply to prisoners who have not previously been released on licence and whose tariff has not yet expired.

4.1 However, if your tariff has already expired by the time your case is referred to the Commissioners or if you have been recalled to prison after a period of release on licence, then a shorter timetable will apply.

4.2 **The Commissioners will try to arrange for your case to be heard as soon as practicable. But as all cases are considered individually, your timetable may differ from that of someone whose case you think is similar to your own.**

SAMPLE TIMETABLE

5. If you take the date of your listing letter as “week 1”, then the next steps go as follows:

5.1 **By week 3** you must give the Commissioners and the Prison Service details of the person appointed to act as your representative. A form on which to do so is sent out with the listing letter. If you want to consult or employ a solicitor, you may be entitled to Legal Aid. You may of course choose to be represented by someone else, but please note that some categories of persons require the consent of the Commissioners. The Prison Service must also notify the Commissioners and you of the details of the person appointed to act as the Secretary of State’s representative at this stage.

5.2 **By week 5** you must notify the Commissioners and the Prison Service whether or not you wish to attend the hearing. A form on which to do so is sent out with the listing letter.

5.3 The Commissioners would encourage you to be represented and to attend your hearing, but if you choose not to be you will be offered an interview with a Commissioner who will not be on the panel hearing your case. The interview will only proceed if you agree to it. The purpose of the interview is to give you the opportunity to discuss your case with the Commissioner and mention anything that you would wish the panel to consider. The Commissioner may also ask you questions about matters that the panel might wish to consider. After the interview, the Commissioner will prepare a report for the panel, and send copies to you and to the Secretary of State.

5.4 **By week 8** the Prison Service will make a dossier available to you or your representative. This will normally contain all the information and reports that the Secretary of State considers relevant to your suitability for release, so you and your representative will need to discuss the written evidence carefully.

5.5 **By week 14** you must submit any representations that you wish to make about your case to the Commissioners and the Prison Service.

5.6 **By week 16** you must submit a written application to the Commissioners for any witnesses that you want to call at the hearing. You must send a copy to the Prison Service. In the application **you must provide a written outline of the evidence that each witness intends to adduce** to enable the panel Chairman to give a direction on attendance and presentation of that evidence. A form on which you can do this is sent out with the listing letter. The Prison Service must also submit a written application to the Commissioners at this time for any witnesses required by the Secretary of State at the hearing and must send a copy to you.

5.7 You may also apply to be accompanied at the hearing by, for example, a family member, a friend, or a minister of religion. This can be done on the form to be used for witnesses. The Secretary of State also has a right to apply for the presence of others not directly involved.

5.8 The Chairman of the panel will direct whether or not these applications have been granted and give reasons in writing for the decision if any application is refused.

5.9 **After all these stages have been completed (usually around 4-6 weeks in advance of the hearing) the final date of the hearing will be confirmed.** At this stage, you or your representative must contact those being called as witnesses on your behalf and confirm that they are able to attend on the day of the hearing. The witnesses should, if possible, be available for the whole day. **It is the responsibility of those calling witnesses to arrange for their attendance.**

5.10 If you have any further documentation that you wish to have considered, you must submit it to the Commissioners and Prison Service in good time for the hearing.

5.11 *If you or your representative wish to make any submissions on any point of law at the hearing, you or your representative should notify the Commissioners within one week from the day on which you receive confirmation of the actual date of hearing (which will be at least three weeks prior to the date of the hearing). The notification should include a summary of the point or points of law to be raised and should also include a list of any legal precedents, upon which you or your representative proposes to rely, together with their citation. If possible, photocopies of such precedents should accompany the notification and, in any event, a sufficient number of photocopies of precedents must be available at the hearing for use by the panel and the representative of the Secretary of State. Failure to comply with these requirements may result in the hearing of your case being delayed or adjourned.*

THE ORAL HEARING

6. The hearing will usually be held in the Boardroom of the Lifer Management Unit, HMP Maghaberry. However, if you are a recalled prisoner being detained outside Northern Ireland the hearing will be heard in the establishment in which you are being detained.

7. Participants should note that from early 2007 all hearings will be recorded. Although the panel may grant permission for the taking of notes by the parties, the Rules prohibit information about the proceedings or the names of any persons concerned from being made public —see also Paragraph 17.

8. A room will be available for you and your representative and any witnesses to be called on your behalf to consult. A separate room will be available for the Secretary of State's representative and his witnesses. When the hearing is ready to begin, you will be escorted into the hearing room along with all the other participants listed below.

The Participants

9. The Panel is made up of three Commissioners. The function of the panel is to consider your suitability for release. In each case, one of the panel members is appointed to act as the chair of the panel. The Chairman of the panel will usually be a lawyer. One of the other panel members will be a psychiatrist or psychologist and the third panel member will be a person with relevant experience in this field. Each of the panel members is entitled to an equal voice on questions of law, procedure and substance. The panel will try to keep the proceedings as informal as possible.

10. **The Secretary** is a member of the Commissioners' Secretariat and is responsible for administrative duties during the oral hearing. The Secretary will also operate the recording equipment.

11. **The Secretary of State** is normally represented by a lawyer from the Crown Solicitor's Office and/or a prison governor. The governor is not there to give formal evidence about the prisoner, but may be asked general questions about the management of life sentence prisoners.

12. **Your representative** is the person you have chosen to represent you at the hearing.

12.1 Please note that although there may be lawyers present, their role is to represent the interests of their client. They are not the focus of the hearing. As far as possible, the hearing will be conducted in a way that is easily understood by all parties, using ordinary language and avoiding legal phrases such as 'cross-examination' and "re-examination".

13. **Witnesses** are people called by either you or the Secretary of State to give oral evidence at the hearing. In keeping with the informality of the hearing, witnesses are not required to give evidence on oath.

14. **Observers** are people granted permission by the Chairman of the panel to attend the hearing while taking no active part. These could include other Life Sentence Review Commissioners, but only the three panel members will play a role in the deliberations of the panel during and after the hearing.

The Layout of the Room

15. The three members of the panel will sit facing you, your representative and the Secretary of State's representative. The Secretary will sit on one side of the panel and the witnesses will sit on the opposite side of the panel while giving evidence. Unless the Chairman of the panel directs otherwise, only expert and professionally qualified witnesses can expect to be present during the entire hearing.

The Purpose of the Oral Hearing

16. The panel's task is to consider your suitability for release. The hearing lets the panel examine all the relevant evidence in depth, including your views and the views of the Secretary of State. The panel members may ask you questions and you should do your best to answer them.

16.1 **Please note** that if you have had a tariff set you must satisfy the panel that it is no longer necessary for the protection of the public from serious harm that you be confined. Serious harm has been defined by the Commissioners as being "death or serious personal injury, whether physical or psychological, arising from a criminal offence committed by the prisoner and psychological injury should be understood as meaning serious psychological distress, or mental illness". It must be clear that the risk of you committing serious harm if you are released on licence is no more than minimal.

16.2 Where the Secretary of State makes any allegation of fact against you which you dispute it will be up to the Secretary of State to prove, on the balance of probabilities, that that fact is true.

16.3 If you have never had a tariff set but have been recalled to prison, the panel is required to have due regard to the need to protect the public from serious harm from life prisoners and also the desirability of preventing the commission by life prisoners of other offences and securing the rehabilitation of life prisoners. You must satisfy the panel that there is no more than a minimal risk of serious harm resulting if you are again released on licence.

Confidentiality of the Oral Hearing

17. The hearing will be held in private and those present must not subsequently make public any information about the proceedings or the names of any of those taking part.

The Order of Proceedings

18. This section outlines the way in which a hearing normally proceeds, but it is important to remember that the panel has discretion as to how it is conducted therefore this can vary. Your representative or the Secretary of State's representative may also make applications to the panel at the beginning of the hearing if they want to vary the proceedings.

19. The panel will try to keep the proceedings as informal as possible. The Chairman will direct his or her opening remarks to you, introduce all the participants and outline how the hearing will proceed. (You may be asked whether you object to the presence of any of the observers and, if so, why.)

20. The Chairman will ask the Secretary of State's representative to give the Secretary of State's view on what the outcome of your case should be. The Chairman will then ask your representative to state what decision and/or recommendation you will be asking the panel to make. This should be a short statement of fact. The Chairman will allow each party to make a closing statement at the end of the hearing.

21. The Chairman will then ask the Secretary of State's representative, to call his or her witnesses. The witnesses will usually be asked questions in the following order:

- by the Secretary of State's representative;
- by your representative;
- by each panel member in turn;

21.1 The Chairman may, however, decide that panel members may ask questions before the witness is questioned by the Secretary of State's representative or your representative. If so, this will be intended to focus the questioning on what the panel regards as the important issues in your case.

22. Once all the Secretary of State's witnesses have been heard, your representative will be asked to call your witnesses. This time, the order in which the witnesses will be asked questions will be as follows:

- by your representative;
- by the Secretary of State's representative;
- by each panel member in turn;

23. You will have an opportunity to speak on your own behalf if you wish. You may be asked questions by your own representative, the Secretary of State's representative and by members of the panel. It is important that you try to answer all questions put to you, including those from the panel.

24. Once all the evidence has been heard, the Chairman will ask the Secretary of State's representative to sum up in light of all the evidence presented and to make a closing statement. After that, your representative will be asked to sum up and to make a closing statement.

25. Finally, the Chairman will explain that when the panel reaches its decision it will be sent in writing to you within seven days. A copy of the decision will also be sent to your representative, and to the Prison Service.

The Decision of the Commissioners

26. At the end of the hearing, if the panel is satisfied that the level of risk you pose is no more than minimal, then it is required by law to direct that you should be released. This decision may be taken by a majority but will be presented as the decision of the entire panel. The Secretary of State must comply with the panel's direction to release.

27. The panel may also make recommendations about licence conditions attached to your release. The Secretary of State does not have to accept such recommendations but he cannot impose any licence condition that has not been recommended by the Commissioners. (The list of standard licence conditions is at Annex A)

28. If the panel is not satisfied about the level of risk you pose it must make it clear that no direction for release is being made. The panel will also recommend when your case should be reviewed again.

29. Whichever decision the panel makes, it must give its reasons in writing. Neither you nor the Secretary of State can appeal against the Commissioners' decision though it is open to either party to seek to challenge it by Judicial Review.

Life Sentence Review Commissioners

January 2007

Standard licence conditions

A On your release you must report to the probation officer so nominated, at the time and place designated.

B You shall place yourself under the supervision of whichever probation officer is nominated for this purpose and co-operate with risk assessment procedures required by this probation officer to enable your safe management and supervision.

C You shall keep in touch with your nominated probation officer in accordance with that officer's instructions.

D You shall receive visits at your home, or place of residence, from your probation officer as deemed appropriate by PBNI

E You will permanently reside at an address approved by your probation officer and you must notify that officer, in advance, of any proposed change of address or any proposed stay (even for one night) away from that approved address.

F You will undertake only such work (including voluntary work) approved by your probation officer and you must notify him or her, in advance, of any proposed change.

G You will not travel outside of Northern Ireland without the prior permission of your probation officer.

H You must not behave in such a way that would undermine the purposes of your supervision, which are to protect the public, prevent you from re-offending and help you resettle successfully into the community.

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