

# **STRATEGIES TO DEAL WITH PRISON OVERCROWDING - THE ROLE OF PAROLE**

*Christine Glenn*

*Parole Commissioner of Northern Ireland and Immigration Judge*

## **Introduction and overview**

Parole is perhaps the least understood process in our criminal justice systems. Its name suggests that it focuses on the prisoner and allowing him or her a ticket out of prison before serving the full sentence meted out by the court. Little wonder that it is distrusted by many politicians, reviled by the press and disrespected by the public. Yet, as part of a multi-agency approach to public protection and prisoner rehabilitation, it can - and does - serve an invaluable purpose. I hope this short paper will cast some light on a process that was once described to me by a victim as “one of the black arts” - he changed his view once he had seen and understood the real parole.

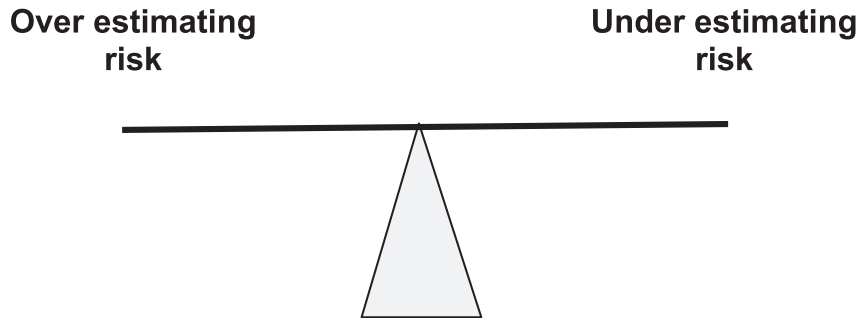
I start with a definition. What I mean by parole here is the managed release of a prisoner on set conditions before the expiry of the sentence. If released on parole, the prisoner will be on licence for the unserved part of the sentence and will be eligible to be returned to prison if he or she re-offends or breaches the conditions of the licence. A prisoner sentenced to life imprisonment will be on licence if granted parole for life and will be eligible for return to prison in the same way.

The parole decision is based on a risk assessment of the prisoner’s suitability to be safely managed in the community. I will discuss risk assessment and risk management later in this paper. At its heart is public protection as the decision is about balancing the rehabilitation of the prisoner and his reintegration back into the community against the risk to the public that this would cause. In this balancing act, the scales always fall on the side of public protection.

The role of parole has become increasingly under the scrutiny of the courts in the context of Human Rights in the United Kingdom. I will develop this further later in this paper. The ensuing media coverage has contributed to a now common misconception that parole boards consider only the rights of the prisoner, that they put a prisoner’s human rights first before public safety and that parole is a prisoner’s right, especially if they have behaved well in prison. It is considered a “soft option” and parole boards are often accused of not taking into account the rights of the victims. A linked misconception is that parole is mainly about saving money and releasing prisoners early so that prisons are not overcrowded. I aim to show that this is not the case. However, by freeing up prison places and prison resources by releasing some low risk offenders, I contend that this enables better supervision and control over those released on conditional licence as well as ensuring that prisons are less overcrowded and therefore able to respond better to the needs of those incarcerated.

## Risk assessment

Offender management in the United Kingdom has at its heart the concept of risk. Risk is a familiar concept in everyday life and translates well into the field of criminal justice. The model below shows the importance of finding the right balance in making risk assessments.



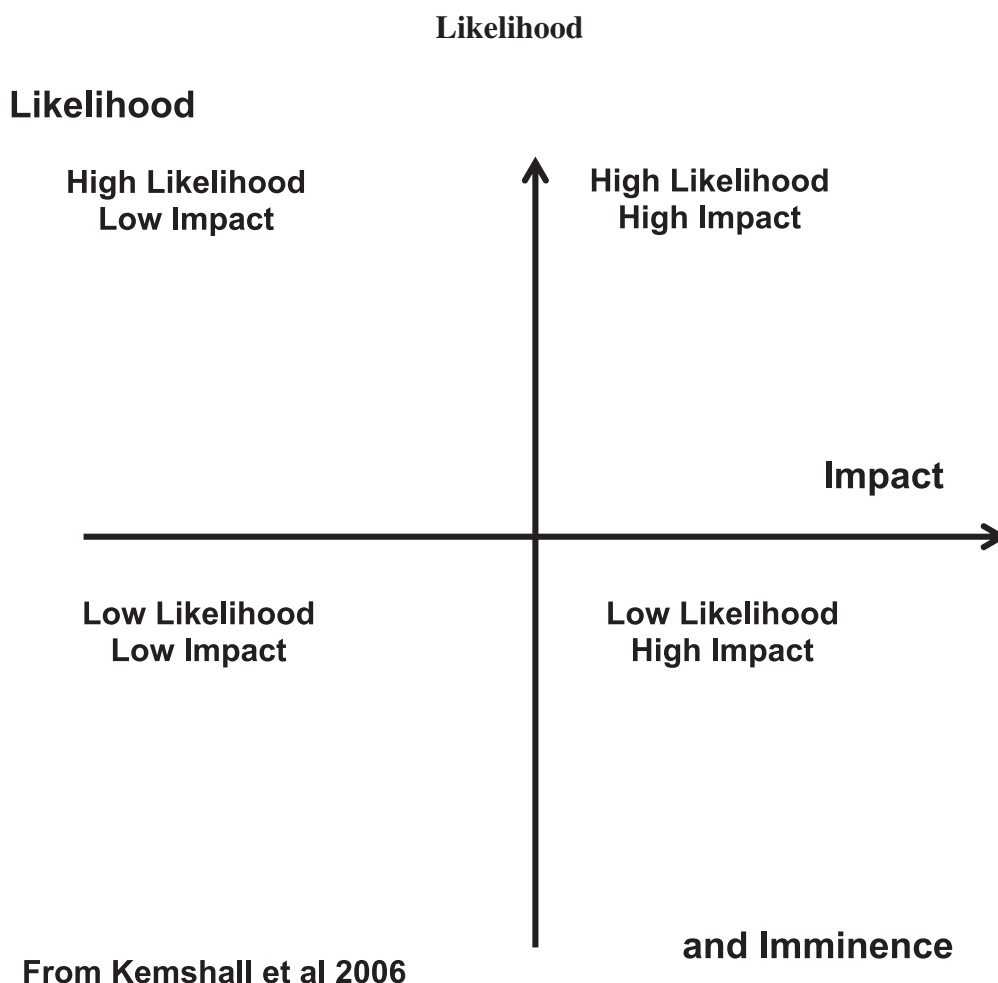
## Balanced Risk Judgements

A risk assessment is a judgement about a negative (usually) event or behaviour based on likelihood (probability) and impact (the outcome). The risk will be the risk of reoffending, the risk of doing serious harm to others or the risk of doing serious harm to him/herself.

Imminence is a judgement as to how soon an offender is likely to commit his/her act. In making this judgement - some questions which are useful are:

- Is he/she more likely to do it than not
- Is he/she likely to do it as soon as an opportunity or victim presents
- Is he/she actively grooming an opportunity or a victim
- Will he/she act as soon as the risk management plan breaks down
- Is he/she already failing to attend or comply with conditions of release
- **Are past circumstances and conditions repeating**

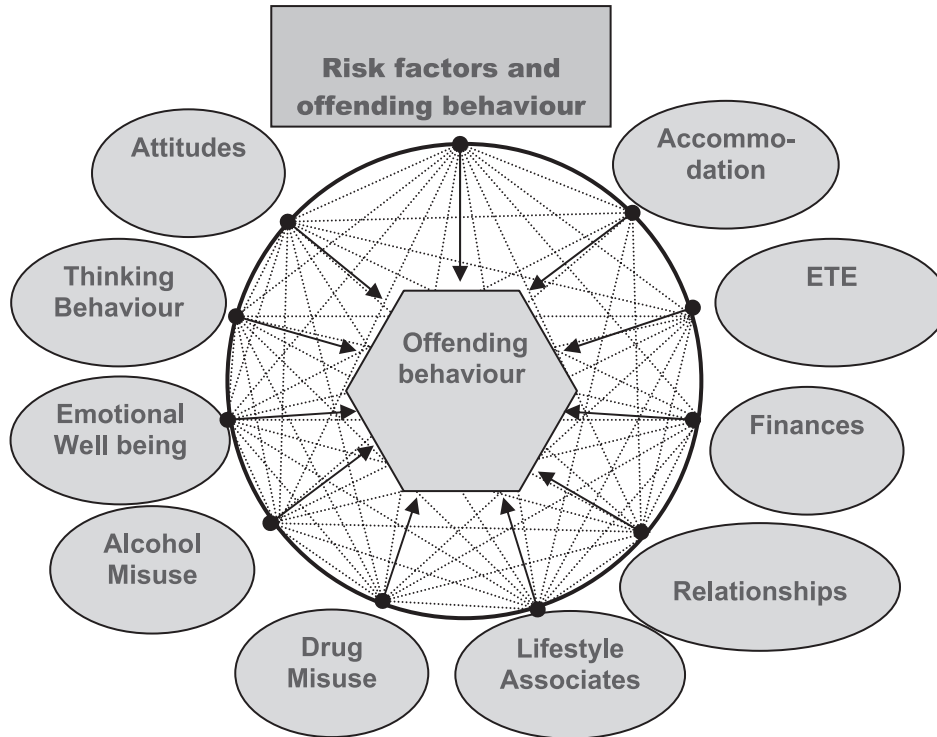
The last question is particularly pertinent as past behaviour is said to be the best predictor of future conduct. These considerations can be seen on the diagram below. This can be useful to those making risk assessments in this context.



How then is risk identified? A starting point is to determine the main risk indicators of an individual. These will usually include

- Past behaviour and convictions
- Motivation for and attitude towards offending
- Access and proximity to victims (including grooming)
- Preparedness to use weapons
- Disinhibitors (alcohol and drugs)
- Situational triggers
- Conditions and circumstances

To these must be added risk factors and offending behaviour. The diagram below shows that this process is a complex one and that factors will overlap as they contribute to offending behaviour. It will be necessary to assess and manage the risks both individually and collectively as factors may impact on each other and increase risk. For example, financial problems may lead to the loss of accommodation, relationship difficulties and affect emotional wellbeing. The analysis of risk factors requires detailed consideration.



The next step in the risk assessment, having looked at the individual’s main risk indicators and risk factors is to look at the current situation - what are the main indicators now and what are they likely to be in the future? Risk factors may be static - things that may not be changed such as the offender’s age and the previous offending record - or dynamic - things that may be susceptible to change such as substance abuse. All must be fully analysed, taken into account and balanced.

There are a number of tools to assist those charged with making these risk assessments. These include actuarial risk assessment tools as well as structured clinical risk assessments, usually by forensic psychologists. The recommended best practice is a combines approach using both static and dynamic factors. Research suggests that clinical judgement is inherently unreliable (see Campbell, 2004 for a summary) and that considering level of ‘dynamic risk’ alongside actuarial instruments can improve accuracy beyond that of current actuarial instruments alone (Thornton, 2002; Beech et al 2002).

Static risk assessment includes

- Static/actuarial historical factors which are unchangeable and predict risk, normally combined into an equation or scale.
- Involves researching the behaviour of offenders in order to establish significant differences between those who offend at high rates and those who offend at low rates
- Characteristics identified by research use thousands of subjects
- Trying to identify the characteristics associated with higher risks of reoffending
- Thornton’s Risk Matrix 2000 (for sex offenders) has been found to identify correctly 71% repeat offenders
- RM2000 includes: age; previous criminal history (sexual and general); male victims;

relationship status; stranger victims; non-contact offence

If static risk assessment is so powerful, why then use dynamic factors at all? Actuarial risk assessments deal only with groups of offenders and not individuals. Static risk assessments can be artificially low or artificially high. Static factors cannot be changed and actuarial procedures are insufficiently inclusive of risk and protective considerations (Doren, 2002). In contrast, psychological factors shown by research to be associated with risk include dynamic factors that can be changed. Identifying these correctly enables treatment targets to be set therefore promoting risk management. Structured consideration of dynamic factors improves accuracy of static instruments and give the most accurate and thorough method of risk assessment - static plus dynamic. Meaningful risk factors

- Tell you what things make it more likely that the individual will reoffend
- Tell you what the person needs to do to change
- Therefore give you an indication of which programmes might be helpful.
- Help you to assess if change has occurred

Examples of these are a sexual interest in children, attitudes promoting violence, angry rumination and wanting revenge, believing that women deserve to be raped/children are interested in sex, a need to work on improving problem solving skills and thinking of consequences, a chaotic and criminal lifestyle and a tendency to be influenced by others.

In addition to risk factors must also be considered protective factors when making a risk assessment. Protective factors, as the term suggests are:-

- Opposites of risk factors.
- Meaningful, fulfilling and pro-social life goals
- Coherent, organised and meaningful daily activity.
- Learning something in treatment that will clearly work i.e. he understands the procedure and can explain what he will do.
- Robust, respectful, loving and non-collusive social/statutory support.
- Belief in one's capacity to change

What is crucial in all risk assessment is the need for it to be evidence based. The analysis of the case must be directed at finding and weighing evidence - both positive and negative - and then balancing the factors. Where the balance is even, the scales must always fall on the side of public protection. The Parole Board must always consider

- Nature and circumstances of the original offence
- Previous offending, plus any additional measures of risk including age of offender
- Attitude and behaviour in custody and whether this indicates a willingness to address offending behaviour and to understand its causes and consequences for victims
- Progress in addressing offending behaviour
- Likely compliance with licence, including previous behaviour on licence, bail etc
- Resettlement and risk management plans

Having considered the risk factors and the protective factors, the next stage in a risk assessment will be the consideration of whether there is any evidence of behavioural change. Insight (responsibility, empathy, honesty, and understanding) is good, and is a treatment target of most Offending Behaviour Programmes but it is not the same as change: insight is the vehicle which enables change to occur. Change in attitudes, behaviours, skills must be observed in addition to insight.

Examples of such change are

- Behaviour during treatment
- Attendance at sessions and level of active participation
- Completion of between session assignments
- Evidence of application of skills
- Seeking advice and support from staff
- Going the extra mile
- Recognising when a risk factor is present

Having considered all these factors, the acid question is “How robust are the skills for managing future risk and will his strategies work?” The risk assessment will depend greatly on the plan which is to be put in place to manage the individual’s risk. The Parole Board can put in place conditions as part of the risk management plan, for example restrictions on contact with victims and other individuals or groups of people, curfews, and restrictions on going to particular places. These conditions must be both necessary and proportionate to manage the risk.

Accurate risk assessment will require all agencies involved to provide good information. This will start even pre-sentence with reports to the judge, will continue with good sentence planning and assessments in the prison and by the probation service.

### **Risk management**

No individual will be risk free. The risk assessment will serve to inform the risk management plan which in turn will take into account protective factors. The plan will need to be monitored and supervised effectively and a multi-agency approach may well be necessary here for some offenders.

A good risk management plan will take account of both external and internal factors and include strategies to deal with both.

## **Risk Management Strategies**

<b>External</b>	<b>Internal</b>
<ul style="list-style-type: none"><li>■ <b>Reducing triggers &amp; opportunities</b><ul style="list-style-type: none"><li>■ <b>e.g. restrictive conditions</b></li></ul></li><li>■ <b>Delivered through external limits &amp; controls</b><ul style="list-style-type: none"><li>■ <b>includes details of programme provision</b></li></ul></li></ul>	<ul style="list-style-type: none"><li>■ <b>Reducing triggers &amp; opportunities</b><ul style="list-style-type: none"><li>■ <b>avoidance</b></li><li>■ <b>diversion</b></li><li>■ <b>developing thinking</b></li></ul></li><li>■ <b>Delivered through active participation in interventions or programmes</b></li></ul>

To summarise:

- Does he acknowledge the existence of the risk factor and does he understand how it connects to his offending?
- Can he articulate a strategy for managing the risk factor?
- Is he able to recognise when the risk factor manifests itself in the present?
- Is there evidence of behavioural change? Or is there continuing evidence of the risk factor being present? Or is there no evidence either way?
- Is there any evidence that he has developed and is using healthy alternative behaviours?

- Is the risk management plan realistic and robust and will it be properly managed?

### **Impact of Human Rights**

The Human Rights Convention has become increasingly important in the work and decision making of many Parole Boards including the Boards in England and Wales and to the Parole Commissioners in Northern Ireland.

Article 5(4) of the Human Rights Convention states that “everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided by a court and his release ordered if the detention is not lawful”.

The case of **Stafford -v- UK (2002) 35 EHRR 32** decided in 2002 by the European Court of Human Rights began the journey of the Parole Board from an advisory body to Ministers on the early release of prisoners (in that case of prisoners sentenced to a mandatory life sentence) to the court or court-like body required to oversee and decide on the lawfulness of detention in such cases under Article 5(4).

This case was followed in 2005 by a House of Lords ruling in the cases of **Smith and West -v- Secretary of State (2005) UKHL 51** that prisoners recalled to prison allegedly in breach of their licences should be granted an oral hearing in order to comply with Article 5(4) of the Human Rights Convention - prior to this, the Parole Board had handled these types of cases by considering them on paper. Subsequent cases such as **Girling -v- Secretary of State (2006) EWCA Civ 1779** and more recently **Brooke -v- Parole Board (2008) EWCA Civ 79** have underlined this principle and the overarching need for the Parole Board to be completely independent from government when making these decisions.

This line of cases has resulted in the Parole Board moving from being an advisory body, governed by Directions from the Secretary of State, to being described as a court by the higher courts and being responsible for making the decisions rather than offering advice to Ministers. This move was welcomed by the Parole Board for England and Wales and by many stakeholders. The media coverage of the change was however sometimes unhelpful and even some senior politicians commented unhelpfully about the role of human rights in the decision making process of the Board. In fact, the legal changes did not impact on the way the Board performed its risk assessment task in terms of balancing the evidence as required. They did lead to the Board holding more oral hearings with the prisoner present - and it is perhaps telling that the Board’s release figures have decreased over the last three years. There are other factors here, including a different case profile, but it may be that hearing in person from the prisoner in these cases has also contributed to these statistics.

The other important Article for Parole Boards is Article 8, the qualified right to family and private life. This generally concerns ensuring that any conditions attached to a prisoner’s licence on release are both necessary and proportionate.

### **Measuring and recognising success**

At the risk of stating the obvious, there is no release decision that is free of risk - the only safe decision in terms of re-offending and risk of harm to the public is a refusal. This is a problem for Parole Boards where offenders do re-offend after conditional release with the inevitable media and political pressure that these incidents will bring. However, it must be considered that automatic release after serving a proportion of a prison sentence can mean that a prisoner has had no motivation to address his offending behaviour while in custody and that he may be released without effective licence conditions or sanctions back into the community. The parole option, while it does carry risk, does allow a structured condition re-entry for a prisoner who will have had to take some responsibility and ownership of his risks and make efforts to address them during his sentence.

The re-offending statistics in England and Wales show around 67% of offenders re-offend within two years. For those paroled, only 6% offend during the parole period which is typically around one year.

The figure is the same for those released on life licence - with only 1% of the re-offending being for serious sexual or violent offending. In an Annual Report, Judge David Carruthers, the Chairman of the New Zealand Parole Board refers to parole being around twice as effective in terms of re-offending as community penalties.

There is little in the way of global research here but a factor may be that prisoners have already been in custody and know what to expect on return. They will have taken active steps in trying to tackle the causes of their offending and will have had support in their re-entry into their communities. With evidence-based risk assessment by well-trained Parole Boards, based on robust information and a risk management plan backed up by effective

Supervision in the community, parole is an effective tool in managing overcrowding and in contributing to rehabilitation.