

Parole
Board
for
Scotland

Annual
Report
2021/22



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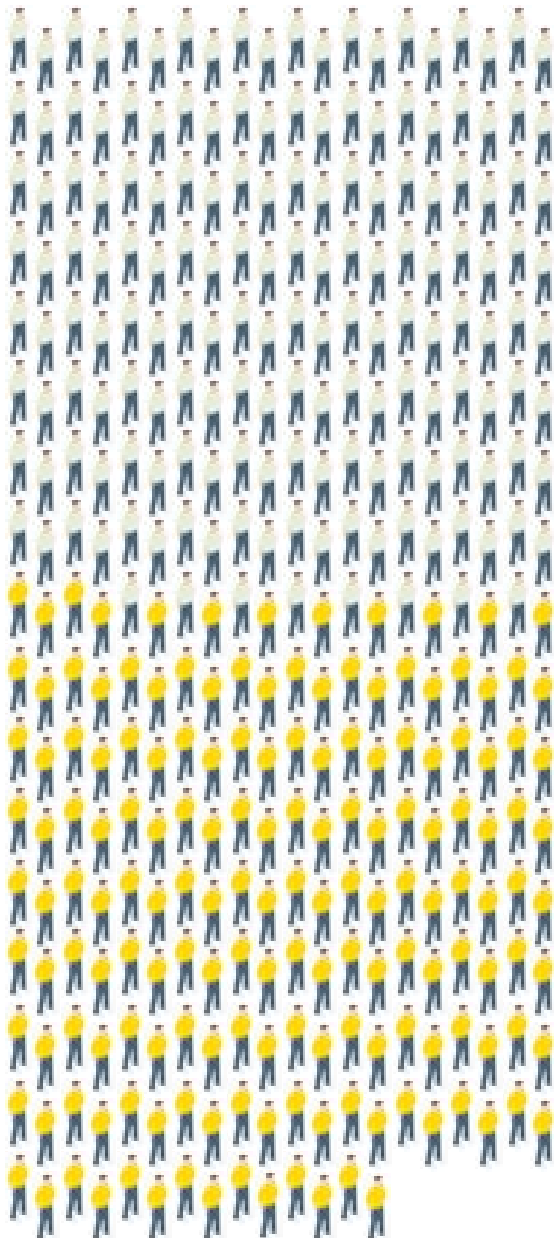
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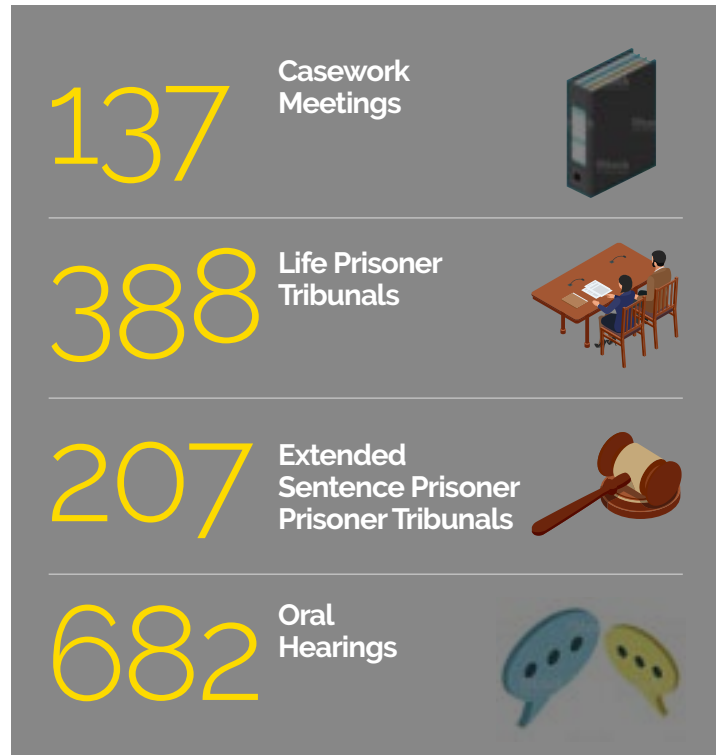


Life prisoner cases

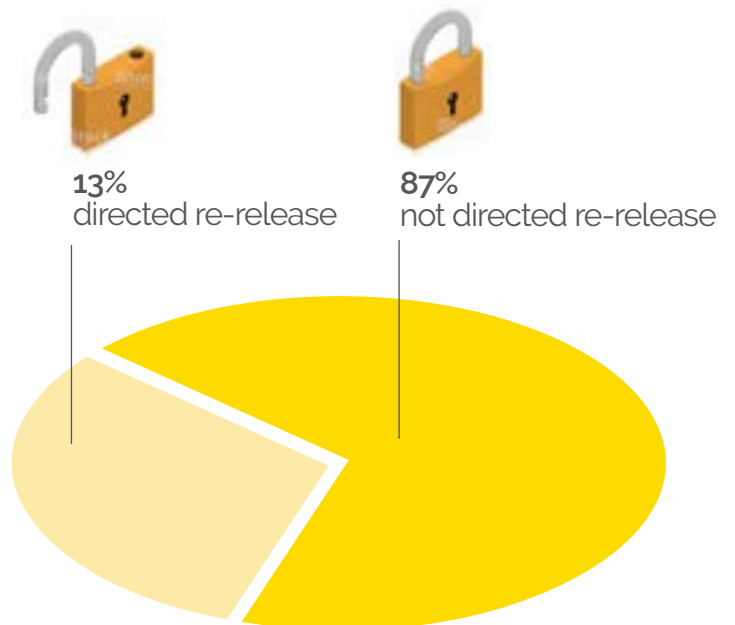
388 



Of the 388 Life Prisoner cases considered, **167 were not recommended for release.**



Recalled Life prisoners



87% 87% of life prisoners recalled were **not directed re-release** from their Tribunal.



2020/21

At a glance

Oral hearings

Oral hearings have risen by

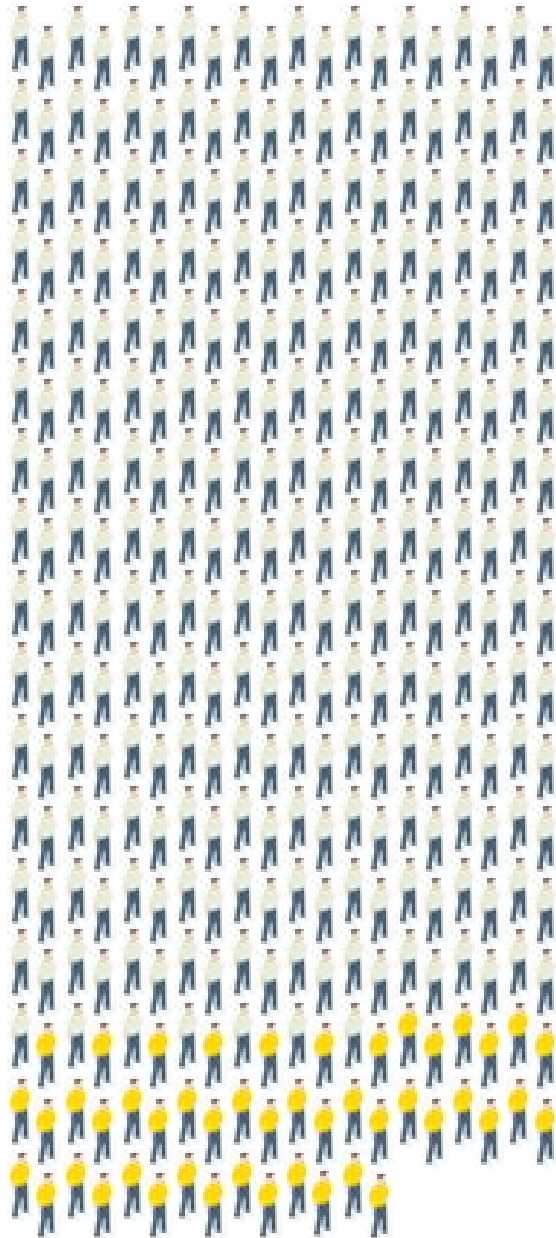
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from last year.



Life prisoner cases

63



Of the 388 Life Prisoner cases considered, **63 were released.**

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Chair's and Chief Executive's

Chair's and Chief Executive's Joint Foreword

We are pleased and privileged to be able to present this Annual Report on the work of the Parole Board for Scotland - Scotland's Parole Court - during 2021 - 2022. As in previous years the report shows the considerable volumes of work dealt with by the relatively small number of individuals who comprise the Board and its administrative support body, Parole Scotland.

The COVID-19 pandemic has continued to be a dominant factor in our activity over the reporting year. As we have started to emerge from the pandemic towards the end of the reporting year we have been focused on learning from and retaining what has worked well over this challenging period. The Board has decided to continue to conduct its casework meetings, and the majority of its hearings remotely using video and telephone technology. This operating approach has had no significant impact on case outcomes and has clear time and cost benefits both for the Board and also for those appearing before the Board, for example Social Work witnesses who no longer have to travel to attend.

At the same time staff in the Board's administrative function continue to work largely from home. We intend to introduce an element of office working later in the year and to evaluate the costs and benefits of this as we devise a more permanent operating approach. The commitment and professionalism of our staff and membership as we adapt and evolve has meant the Board has continued to operate efficiently and effectively over the reporting year.

The work which the Board undertakes needs to be, and is, of the highest standard involving difficult and complex decisions which have a direct bearing on the safety of communities across Scotland. It has an important role to play in assisting with the rehabilitation of offenders to return to their communities as law-abiding citizens while also protecting the rights of victims, communities and others who are affected. All of the Board's decisions have to be taken, however, with the fundamental consideration being whether the risk posed by releasing a prisoner into the community is acceptable and safely manageable. The Board must balance the legitimate interests of the prisoner and victims, community safety and the rights of third parties.



As detailed in last year's report the figures set out this year show a variation in the number of life, determinate and extended sentence prisoners dealt with by the Board, as one might expect, with increases in some categories and decreases in others.

We noted last year that there was a noticeable and disappointing increase in the number of postponed or adjourned Tribunals and this trend has continued. We also noted last year that whilst the Board will seek to continuously improve our own processes in many, if not most, cases postponements or adjournments are due to factors beyond the Board's control. The Board depends on information from a number of sources, including, Social Work, Scottish Prison Service, Police Scotland, Crown Office and Procurator Fiscal Service, Scottish Court Service and sometimes the National Health Service. Problems and delays can arise if such information does not arrive timeously and to an appropriate standard. The Board also has to deal with problems which arise in relation to timeous instruction of legal representation for the prisoner and the time and ability of the prisoner and his or her solicitor to prepare for a Parole Hearing. In essence, that Board is at the end of a chain of processes each link of which has to be effective for the Board to function efficiently.

Over the coming year the Board intends to trial a number of initiatives to reduce postponements and adjournments.

We will also look to work with other organisations involved in the chain of Parole processes to identify and implement improved approaches. There have been productive discussions with the Scottish Government on these issues over the course of the year and we look forward to the proposed consultation on changes to the Parole Board Rules that hopefully will support this.

Changes to the Parole Board Rules effective from March 2021 allowed the Board to approve the attendance at tribunals of victims as observers. Unfortunately the continuing impact of the pandemic has prevented such observations taking place this year. Parole Scotland has however now recruited a Victims' Team to support such observations, taking a trauma informed approach. All staff in Parole Scotland have now undertaken training in trauma informed practice. Guidance for members has been produced on conducting tribunals with an observer present and all Board members have attended a briefing session. We anticipate that observations will commence early in the next reporting year. We are confident that the Board will be able to facilitate such observations in a way that is both positive for victims and fair to prisoners.

We would like to take this opportunity to thank, not only members and all of the hard working staff in Parole Scotland for their commitment and support but also to thank those many individuals and agencies, both statutory and voluntary, on whose services and expertise the Board relies for evidence, information and for support to inform the vital decisions which it takes.

Finally, we would also like to express our particular thanks to, those whose appointments to the Board came to an end during this reporting period.



John Watt
Chair, Parole Board for Scotland



Colin Spivey
Chief Executive,
Parole Board for Scotland

About the Parole Board

The Parole Board for Scotland was first constituted by section 59(1) and Schedule 2 of the Criminal Justice Act 1967 to advise the Secretary of State for Scotland on the early release on licence and recall of prisoners in terms of that Act. Since then in excess of 10 statutes have impacted directly on the Board's functions and roles including the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Section 20(1) of the 1993 Act provides that there shall continue to be a body known as the Parole Board for Scotland to discharge the functions set out in the 1993 Act.

A significant watershed was the Convention Rights (Compliance) (Scotland) Act 2001. Until then the Board carried out an advisory role as a paper exercise.

The 2001 Act amended the 1993 Act and radically altered the system of parole in Scotland.

Part 1 introduced new release arrangements for life prisoners, augmented the role of the Board and ensured compliance with certain decisions of the European Court of Human Rights ("ECtHR").

Part 2 of the 2001 Act reformed the constitution of the Board, created rule making powers and established a system of Tribunals and security of tenure of Board members that was compliant with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

OT1 About the Parole Board



The Board was reformed into a Tribunal Non-departmental Public Body, which is an independent, judicial body the members of which hold judicial office independent of Scottish Ministers and which acts as a Court.

Like Parole Boards and their equivalents in New Zealand, Australia, South Africa, the United States, Canada, Jersey, Guernsey, the Isle of Man, Ireland North and South, England and Wales, Western Europe and Scandinavia, the Board is entirely independent from the country's court system.

Scottish Ministers have now confirmed that they consider that the Board and Tribunals of the Board operate in terms of the Parole Board (Scotland) Rules 2001 and numerous court decisions, as Courts for the purposes of Articles 5(4) and 6(1) of the European Convention on Human Rights.

They are not "courts" in the conventional sense of bodies which adjudicate between parties who are in dispute or preside over criminal trials or civil proofs. Their role is at least partly inquisitorial in nature but they can be seen as Scotland's parole courts.

The Board and tribunals of the Board are not "courts" for any of the purposes of the Judiciary and Courts (Scotland) Act 2008 other than the appointment provisions set out in Part 2 Chapter 3 and in particular are not listed as a court in Section 2 (6).

The Board's main aim is to ensure that the risk posed by a prisoner, if released, can be safely managed in the community. The prisoner may serve the remainder of their sentence in the community under the supervision of a social worker. It is not the responsibility of the Board

to consider questions of punishment and general deterrence.

The Board can only consider cases referred to it by Scottish Ministers who are in terms of the 2001 Rules, parties to Tribunals.

The Board only grants release in cases where the level and nature of risk are deemed to be manageable. This decision is informed by oral or written evidence in the form of witness evidence or, usually, reports contained in dossiers. The content of the dossier referred to the Board by Scottish Ministers includes, wherever practical, documents listed in the schedule to the Parole Board rules. The Board is keen, as part of its commitment to continuous improvement, to continue engaging with Scottish Ministers around whether this approach provides the best and most timely information.

The tests which the Board and its Tribunals apply in making release decisions are many and complex. Release of life prisoners and some extended sentence prisoners are covered by statutory tests while all others are non-statutory tests, which have not been tested in court. The tests are set out in the Member's guidance manual which can be found on the Board's website.

While the Board has inquisitorial duties, it has no powers to investigate but only to require information from investigators such as the police or Crown or to cite witnesses and question them by way of investigation.

In cases considered under Part III of the 2001 Rules, mostly determinate sentence cases, the Board can only request information. It has no powers to compel information or to require the

attendance of witnesses. There is little the Board can do if met with a refusal to provide information or to attend as a witness. The Board has raised this issue with Scottish Ministers and they have committed to consider that issue in the review and revision of the Parole Board Rules which is planned for 2022.

Relations with Scottish Ministers are regulated by a Memorandum of Understanding which includes reference to governance processes. There is, however, no statutory basis for governance arrangements. This issue has been recognised by Scottish Ministers and there is provision in the Management of Offenders (Scotland) Act 2019 for Scottish Ministers to make Regulations in this respect. The Board awaits confirmation as to when these Regulations will be made and will seek to be involved in their drafting. It is hoped that firm progress can be made quickly.

The Board's supporting administrative body, Parole Scotland, comprises civil servants informally assigned from the wider civil service in Scotland.

Parole Scotland occupies Scottish Government premises. Due to the pandemic, the Board and Tribunals of the Board work from home, at present, but in normal circumstances from accommodation in prisons or government buildings at the pleasure of Scottish Prison Service or Scottish Government.

The Board has no independent budget but receives funding from the Justice budget monitored by Justice Directorate civil servants. The Board is also required to rely on Scottish Government for provision and maintenance of Information Technology systems. As the

complexity and scope of the Board's work continues to grow we will continue to discuss whether these arrangements remain proportionate and appropriate.

While no doubt very necessary, neither the Board nor Parole Scotland has a part in preparing prisoners or victims for the Parole process. It is right that the Board, as a court, should not be involved but there can be significant negative impact on the work of the Board because prisoners are not ready to proceed at hearings.

Everyone involved in the Parole System works very hard to make it work. We will continue to advocate for and to seek to change and improvement whilst providing the best service we can. We confidently expect that other agencies in the parole process will play a full part with the Board in driving necessary change in a reasonable time scale.

Types of Sentence

The type of sentence imposed will determine both at which point in the sentence the Board will consider release, and under what procedures the review will take place.

Short Term Determinate Sentence Prisoners

For prisoners sentenced to a determinate sentence of less than four years, the Board has no role in determining whether or not individuals are released into the community and they will be unconditionally released at the half way point. Short Term Sex Offenders (STSO) are released on licence, the conditions of which are set by the Parole Unit of the Scottish Prison Service on behalf of Scottish Ministers, therefore the Board's involvement in these cases is to consider grounds for recall to custody or re-release as appropriate.

Long Term Determinate Sentence Prisoners

For offenders sentenced to determinate sentences of four years or more, the Parole Board is invited to recommend to Scottish Ministers whether the individual offender should be released on licence at the half way point of their sentence (the Parole Qualifying Date). The Board's recommendation is binding on Scottish Ministers. If early release is not directed at the first review then the Board will reconsider the offender's case at 12 month intervals until the offender reaches their Earliest Date of Liberation (the two thirds point of their sentence or 6 months before the expiry of the sentence depending on when they were sentenced) at which point the Scottish Ministers are statutorily required to release the prisoner into the community on licence.

The Board sets the licence conditions for all long term determinate sentence prisoners. Requests to change licence conditions can be made at any point over the course of the licence period but there should be good grounds for doing so. Such requests are considered at casework meetings of the Board or by a meeting of at least two members.

Extended Sentence Prisoners

The Board will deal with extended sentence prisoners in one of two ways. The first is where a short custodial term is imposed, but when taken with the extension period the total sentence is four years or more. This type of case will be referred to the Board to recommend licence conditions only.

If the custodial term is four years or more, the Board would deal with these cases as for long term determinate sentence prisoners.

All extended sentence prisoners are released on licence and subject to recall consideration for the total period of the extended sentence (i.e. the custodial term and the extension period).

Life Sentence Prisoners

Life sentence prisoners are reviewed, at the end of the punishment part of their sentence, for possible release on life licence by the Board, sitting as a Life Prisoner Tribunal. This is a face to face consideration chaired by a legally qualified member of the Board and two other Board members at which the prisoner and his legal representative are present.

It is for the Board to determine if the prisoner should continue to be confined for the protection of the public. If release on life licence is not directed then the Tribunal is required, by law, to fix the date when it will next consider the prisoner's case not later than two years after the date of the decision to decline to direct release.

Orders for Lifelong Restriction Prisoners (OLRs)

The release arrangements for OLR prisoners are the same as life sentence prisoners which is that they are referred to the Board for consideration on the expiry of the punishment part of their sentence. The Board is required to have regard to the Risk Management Plan which has been approved by the Risk Management Authority.

Recall of Prisoners for Breach of Licence

Where a prisoner has been released on licence but there is evidence from which it can be inferred that the risk posed can no longer be safely managed in the community, usually because a licence condition has been

breached, the prisoner may be liable to be recalled to custody by Scottish Ministers or the Board.

Following a referral by Scottish Ministers, the Board is required to consider the recall to custody of the following sentence types:

- short term sex offenders;
- extended sentence prisoners;
- determinate sentence prisoners serving four years or more;
- life sentence prisoners; and
- prisoners subject to an OLR.

Prisoners are not advised when the Board is giving consideration to their possible recall. The case will be considered at a casework meeting of the Board.

Other Post Release Considerations

Whilst the Board will recommend the licence conditions to be set prior to the release of prisoners, there are some circumstances in which the Board might be asked by Scottish Ministers, following a request from a supervising officer, to change the licence conditions once the prisoner is on licence in the community. This might include transfer of supervision, the termination of the supervision element or the insertion or removal of a condition. The prisoner would be provided with the opportunity to make representations on the proposed changes and the Board would then consider the request at a casework meeting.

Re-release Following Recall

For those cases where a prisoner has been recalled to custody, the Board is required to consider their suitability for re-release. The Board will consider if the risk posed can be safely managed in the community and the

Board is required to determine if they should remain in custody.

The way in which the Board deals with these cases depends on the sentence type. For re-release of STSO or long term determinate sentence prisoners, the Board will consider these cases at a casework meeting. Different members of the Board consider re-release from the members who considered an individual's recall to ensure fairness.

Life sentence prisoners and prisoners subject to an OLR will be considered at a Tribunal.

For re-release of extended sentence prisoners, a Tribunal of the Board requires to be held if the prisoner is recalled to custody during the extension period of the sentence. This provides for the prisoner and their legal representative to present his case to the Board orally. If the prisoner is serving the custodial term of their sentence, the case will be considered at a casework meeting.

Children and Young People

Statute requires that all Children and Young People (C&YP) sentenced to detention under Section 208 of the Criminal Procedure Act 1995 must be treated in the same way as long term adults. This means that the Board is responsible for considering the early release of C&YP cases sentenced to four years or more detention, and for setting licence conditions for all C&YP cases sentenced to less than four years detention. All C&YP cases are liable to be recalled to custody in the same way as long term adults.

Oral Hearings

In all cases which are routinely dealt with at a casework meeting, consideration must be given to whether fairness requires, in the

circumstances of the individual case, that an oral hearing should take place at which the prisoner can appear personally, along with a legal representative if they wish, and state their case.

Compassionate Release

The Board provides advice to Scottish Ministers on individual cases and these recommendations are binding on Ministers in almost all matters. Decisions on compassionate release lie with Scottish Ministers.

Home Detention Curfews

The decision to grant a Home Detention Curfew (HDC) rests with the Scottish Prison Service. A risk assessment is undertaken, which includes a report from local authority criminal justice social workers. The Board only operates as the appellate body in the case of alleged breaches of HDC conditions.

Adverse Developments

Once the Board has considered a case and made a decision, should any further information come to light which would have an impact on its decision, such as an adverse development or information which the Board did not have at the time it made its decision, the case can be formally referred back to the Parole Board.

Deportation

The Board makes decisions and recommendations in cases where the prisoner may be subject to deportation on release. In cases where the prisoner who is liable to deportation has a determinate sentence then the Board makes a recommendation which is not binding on Scottish Ministers. In cases where the prisoner who is liable to deportation has an indeterminate sentence (life sentence or order for lifelong restriction) then only the Board can direct release.

Advice to Scottish Ministers

It may be worth mentioning that it is the duty of the Board to advise the Scottish Ministers with respect to *any* matter referred to it by them which is connected with the early release or recall of prisoners. So far as can be ascertained, Scottish Ministers have never sought such advice.

Tests for Release

There are statutory tests for release in the case of life sentence prisoners and recalled extended sentence prisoners. The lifer test is "Before the Tribunal can direct release, it must be satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined". The recalled extended sentence prisoner test is "the Board shall not direct release unless it is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined".

There are no statutory tests for release otherwise and the test which has been applied for many years is that "the Board can recommend release where it is satisfied that such risk as the prisoner poses can be safely managed in the community". The origin of the test is not entirely clear and it has never been tested in court.

Chapter One

The year's work 01.2



The tables below provide statistical details of the various cases considered by the Board during the period 1 April 2021 – 31 March 2022. Comparable historical data is contained in Appendix A.

Determinate Sentence Prisoners – 1st review for early release

Number recommended for parole by the Board including parole from a forward date	68
Number not recommended by the Board	251
Number of cases deferred for further information	49
Number of cases recommended for Oral Hearing	125
Total	493

Determinate Sentence Prisoners – 2nd or subsequent review for early release

Number recommended for parole by the Board including parole from a forward date	53
Number not recommended by the Board	253
Number of cases deferred for further information	43
Number of cases recommended for Oral Hearing	131
Total	480

Determinate Sentence Prisoners – review for early release following recall

Number recommended for parole by the Board	9
Number not recommended by the Board	42
Number of cases deferred for further information	11
Number of cases recommended for Oral Hearing	23
Total	85

Determinate Sentence Prisoners – other considerations

Request to transfer supervision authority	0
Total	0

Determinate Sentence Prisoners – adverse development

Recommendation for early release on parole withdrawn	0
Recommendation for early release on parole upheld	0
Number of cases deferred for further information	0
Total	0

Extended Sentence Prisoners – review for early release

Number recommended for parole by the Board including parole from a forward date	7
Number not recommended by the Board	218
Referral for licence conditions only	21
Number of cases deferred for further information	34
Number of cases recommended for Oral Hearing	48
Total	328

Life Prisoner Cases

Total number referred to the Board for consideration including those brought forward from 2020/2021	365
Number where release directed	63
Number not recommended for release	167
Number of cases postponed or adjourned	157
Withdrawn	1
Total	388

Order for Lifelong Restrictions Prisoners (OLRs)

Total number referred to the Board for consideration	154
Number where release directed	0
Number not recommended for release	91
Number of cases postponed or adjourned	61
Withdrawn	2
Total	154

Extended Sentence Prisoner Cases – consideration for re-release at Tribunals and casework meetings

Total number referred to the Board for consideration	260
Number where release directed	12
Number not recommended for release	134
Number of cases postponed or adjourned	72
Withdrawn	21
Number of cases recommended for Oral Hearing	21
Total	260

Life Prisoners – other considerations received

Request to terminate supervision	12
Request for an earlier hearing by a Life Prisoner Tribunal	7
Amendment to life licence conditions	31
Total	50

Miscellaneous - other considerations received

"Non-Parole" Licences	147
Children and Young People	9
Home Detention Curfew (HDC) licence	8
Short term sex offenders	140
Compassionate Release	1

Summary of Determinate Sentence Cases Where Release Recommended – by Offence

	Violence	Drugs	Sexual	Property	Other	Total
10 years or over	6	1	2	0	3	12
Under 10 years	34	29	25	2	19	109
Total	40	30	27	2	22	121

Category of Offence	Offences Include
Violence	Culpable Homicide, Attempted Murder, Assault to Severe Injury etc. Assault and Robbery.
Drugs	Contravention of the Misuse of Drugs Act and Customs and Excise Management Act.
Sexual	Rape, Attempted Rape, Sodomy, Incest, Clandestine, Injury, Lewd and Libidinous Practices.
Property	Theft, Conspiracy to Rob, Embezzlement.
Other	Road Traffic Act, Fire-Raising.

As can be seen from the following table, over the previous 12-month period there has been an increase in the proportion of determinate sentence prisoners who have opted out of the process. In addition, 20 extended sentence prisoners' self-rejected from having a further review, at a Tribunal, following recall.

Year	2019/20	2020/21	2021/2022
Eligible	848	925	1115
Opting Out	35	77	103
%	4	8	9

Extended Sentence Prisoner recall

Cases considered where licensees behaviour was a cause for concern	102
Recalled to custody	74
Warning Letters	24
No Action	1
Deferred	3
Withdrawn	0

Grounds for recall – Parole Licensees

Reported for possible grounds for recall	53
Recalled to custody	24
Warning Letter	27
Re-Released	1
Not Released	9
Withdrawn	2
Oral Hearing	4

Grounds for recall – Non Parole Licensees

Cases considered for those released on non-parole licence	76
Recalled to custody	59
Warning Letter	14
No Action	0
Re-released	0
Withdrawn	34
Not Released	34
Releases which required Oral Hearing	2
Not Released which required Oral Hearing	10

* Non-Parole licence - Those released having served two-thirds of their sentence or 6 months before expiry of their sentence depending on when they were sentenced and those who were released on parole, but the discretionary period had expired whose behaviour in the community was giving rise for concern.

Extended Sentence Prisoner - consideration for immediate re-release

Number of Immediate re-release Tribunals	33
Number of cases that directed re-release	8
Number of cases not re-released	25
Number of licenses revoked by Scottish Ministers	1
Number of licensees re-released after Scottish ministers recall	0

Extended Sentence Prisoners first and subsequent review following recall

Cases considered a further review following recall	270
Re-released on licence	5
Not Re-released	176
Self-rejected from further Tribunal	20

Life Sentence Prisoners recall

Cases considered where licensees allegedly breached their licence conditions or behaviour was of concern in the community	56
Recalled to custody	30
Released	10
Not Re-released	16
Withdrawn	0
Warning Letter	23
Deferred	3
Cases outstanding	5
Ineligible	0
Number of licenses revoked by Scottish Ministers	0
Number of licensees re-released after Scottish Ministers recall	0

Life Sentence Prisoners Tribunal

Number of re-release Tribunals	45
Re-released on licence	6
Not Re-released	39

HDC licence Breach

Cases considered of those on HDC returned to custody	8
Grounds for appeal upheld	1
Appeal refused	4
No Action	0
Deferred	3

STSO Determinate sentences recall

Cases referred from Scottish Ministers where licensees have given cause for concern	72
Recalled	53
Warning Letter	16
Deferred	3

STSO Determinate sentences - consideration for immediate re-release

Released	0
Not Re-released	49
Withdrawn	2

“Non-Parole” Licences

The Board advises Scottish Ministers on the conditions to be attached to prisoners' release licences.

Those prisoners sentenced to four years imprisonment or more are automatically released on licence when they have served two-thirds of their sentence in custody or 6 months before the expiry of their sentence depending on when they were sentenced. These licences expire at the sentence end date. The term “non-parole” licence is used to describe the non-discretionary period of supervision in the community.

During 2021/22, the Board recommended that 90 conditions be attached to the licences of prisoners who were not released on parole.

A further 147 cases were re-referred to the Board to enable it to recommend specific licence conditions to the prisoners non-parole licences.

Extended Sentence Prisoners

Scottish Ministers consult the Board about the conditions that are to be attached to the release licences of extended sentence prisoners where the custodial term is less than four years but where the aggregate sentence (i.e. custodial term and extension period combined) is four years or more.

During 2021/22, Scottish Ministers referred 1 case to the Board where the courts had imposed extended sentences where the aggregate term totalled four years or more in order that the Board could recommend the conditions to be attached to the prisoners' release licences.

Orders for Lifelong Restriction Prisoners (OLRs)

During 2021/22, Scottish Ministers referred 95 Orders for Lifelong Restriction to the Board for consideration by Tribunal. Of those 90 considered, 0 were released on licence.

Children and Young People

The Board has responsibility for considering the case for early release of children and young people sentenced to four years or more under section 208 of the Criminal Procedure (Scotland) Act 1995 referred to it by Scottish Ministers, and in all cases, sets the conditions to be attached to the young person's release licence.

In 2021/22, there were 9 children and young people cases considered who were sentenced under section 208 of the Criminal Procedure (Scotland) Act 1995 referred to the Board.

These cases involved a child or young person who who was due to be released on licence and whose case was referred in order that the Board might consider the conditions to be attached to their release licence.

Oral Hearings

In the interests of fairness and justice, the Board may convene an oral hearing within the prison where the prisoner is situated, if it considers that there are issues raised by the prisoner that cannot be resolved without an oral hearing. During the period 2021/22 the Board held 684 oral hearings which included prisoners who were considered more than once.

Chapter Two

Progress Report

013



Annual Report 2021/22

COVID-19

The Board's primary focus during this financial year was to continue to address the challenges presented by the COVID-19 pandemic, and mitigate their impact while ensuring business continuity. Throughout the year, the Board continued to work with Scottish Ministers and the Scottish Prison Service (SPS) to further improve remote access to systems and other methods of conducting business, this continues to be an ongoing commitment.

Following the pandemic, we continued to take forward the workstreams which were identified through the Recovery Working Group. This included roll out of MS Teams to all SPS establishments, the extension of emergency legislation in the Coronavirus (Scotland) Act 2020 which saw, the cases of extended sentence prisoners recalled in the extension part referred to the Board by Scottish ministers under Part III of the Parole Board Rules (previously Part IV).

This year saw the introduction of the The Parole Board (Scotland) Amendment Rules 2021 ("the Amendment Rules") which applied to all cases referred to the Board from 1 March 2021. They enhance the rights of registered victims - those who are registered with the Victim Notification Scheme (VNS) - in a number of ways:

- by requiring the Board to take into account "the effect on the safety or security of any other person, including in particular any victim or any family member of a victim, were he or she to be released on licence, remain on licence, or be re-released on licence as the case may be".
- by requiring the Board to publish anonymised summaries of all release decisions in Part IV cases (those considered by way of a tribunal hearing), having first sent a copy to any registered victims.
- by providing registered victims with the opportunity to request attendance at the tribunal hearing, as an observer. Restrictions imposed during the pandemic meant that it was not possible for registered victims to attend tribunal hearings from 1 March 2021; however, the Board has been in ongoing discussion with Scottish Ministers, SPS, Victim Support Scotland and other relevant bodies in developing processes to allow this to happen in a safe, secure manner. To this end, a dedicated Victims Team was established.

Decision-making

The Board's decision-making process is rigorous, fair, defensible and independent. The Board makes fully informed decisions based on all of the evidence available to it. Each case is subject to the statutory test for release, with public safety central to every decision made. In comparison to the previous year, the number of cases considered by the Board increased by 6% in 2021-22.

Our people

The Board is committed to being an inclusive, open and diverse organisation which reflects the community it serves. Members come from a variety of backgrounds and experiences and are appointed by Scottish Ministers through a rigorous selection process to ensure transparency, objectivity and fairness. No new appointments were made during the financial year.

The Board continued to focus on professional development of its Members this year. Two training events were organised for Members.

The Board continues to strive to create a more diverse organisation which allows everyone to be themselves at work, knowing they will be treated fairly and supported to achieve their potential. It is committed to working in collaboration with Parole Scotland staff on the decisions and issues that affect them, and established a number of working groups during the year to enable staff to influence and manage change.

Working arrangements

The Parole Board Management Group (PBMG) met, via MS Teams 6 times in 2021-22 to discuss the Board's operational performance and oversee the implementation of the Board's business plan.

PBMG members during 2021-22 were:

John Watt - Parole Board Chair
 Ian Bryce - Parole Board Member, Legal Vice Chair
 George Connor - Parole Board Member, General Vice Chair
 Jill Malloy - Parole Board Member
 Rona Sweeney - Parole Board Member
 Colin Spivey - Chief Executive
 Eddie Kotrys - Deputy Chief Executive

A review of the Board's risk management process was undertaken during the year which resulted in the introduction of a more robust risk mechanism and a full revision of the corporate risk register.

The following corporate risks were actively managed during the course of the year:

- Casework Management System
- Records management
- Budget constraints
- Corporate governance
- COVID-19

PBMG review the Board's corporate risk register quarterly and the Senior Management Team, with support from an established internal Risk Management Team, review the operational and corporate risks on a monthly basis.

Despite the challenges encountered as a result of the pandemic, 2021-22 was a year of significant achievements for the Board. This resulted in alternative systems being put in place which allowed business to continue as usual resulting in no backlog of cases.

The year also saw the successful delivery of a number of key projects which enabled the Board's work to be effectively monitored and managed. To support this, a project management framework was developed which defined the execution of each project.

Technology

During the year, the Board implemented the move to full electronic working. This resulted in a significant reduction in the cost of consumables and supported the Board's introduction of a new operating model in response to the COVID-19 pandemic.

Raising awareness

The Board continued to raise awareness of what we do and how we contribute to the wider Scottish justice context with partners and the public through remote attendance at a number of meetings and events across the country throughout the year. This included a series of sessions delivered to Local Authority Social Work teams, presentations to professional staff with SPS establishments and criminal law and public sector conferences. Recognising the importance of continuing to strengthen the Board's profile, the delivery method and format of the outreach sessions were redesigned to enable these to continue to be delivered despite the challenges encountered as a result of COVID-19.

The Board recognises the important role legal professionals have in ensuring prisoners are supporting during the parole process, and the Solicitor User Group provides a platform for the sharing of key information and discussion of any identified operational issues.

This year, the Board conducted 22 victim interviews and continued to develop its approach to receiving oral representations based on experience and feedback from victims and victim support organisations. As a result of COVID-19, a new mechanism was developed to enable the Board to continue to conduct victim interviews safely. The Safe Space Initiative is an agreement with the 32 Local Authorities to allow the use of their venues for victim engagement meetings.

We continue to work with the Scottish Government (SG) on proposals about parole reform and victim engagement. In addition, quarterly meetings are held with Public Scottish Criminal Justice Agencies to engage in victim-related work. We continue to focus on how we can best support victims through the parole process by working closely with victim support organisations.



Being able to facilitate face to face victim interviews and observations (with use of live link) has allowed Scotland's victims to have a better understanding of the parole process and has allowed victims to feel listened to and included in the process. This is a welcome change from all victims and a huge step for Parole Scotland in terms of victim engagement.

Full Membership 2021/22

Board Membership

Parole Board members come from a variety of backgrounds and are appointed by Scottish Ministers through a rigorous selection process to ensure transparency, objectivity and fairness. Members come from a diverse range of professional backgrounds which includes psychologists, social workers and professionals from mental health services and the criminal justice system.

The Board is committed to continuous personal development and training its members to recognise and understand equality issues to ensure that there is no discrimination when considering offenders for parole. Once appointed, members receive extensive training and development to ensure they are appropriately equipped with the skills and knowledge to undertake their role effectively. Further information about our membership is available on our website scottishparoleboard.scot

Gender Balance of Board		
Member	Male 	Female 
Chair	1	-
General	8	13
Legal	7	7
Psychiatrist	-	1
Judicial	1	-
Total	17	21

Case Studies

015



Judicial Reviews

This year's annual report contains case studies of those judicial reviews against the Board which concluded during the reporting year.

Extended Sentence Prisoner Case Study

This review concerned a sex offender who was serving an extended sentence, and who challenged the Board's decision not to recommend their release on licence.

The offender submitted that the Board had acted unreasonably when considering their status as a "denier", by not taking into account information before it or rejecting it without providing adequate reason.

The court noted that the Board must presume the guilt of the offender when considering a case, regardless of whether they deny it. It must have regard to all relevant facts, and protection of the public is the key factor in its consideration. The assessment of risk must be objectively stated, and it would be unlawful to refuse release based solely on denial.

The offender submitted that the Board had refused to objectively assess their level of risk. Reference was made in its decision to an inability to reliably quantify the risk posed by the offender, as denial meant the triggers and motivating factors leading to the index offence were unknown and unexplored. The Board had made the availability of this information a precondition of release, effectively making their status as a denier critical to its decision. The Board had information available to it that should have allowed it to objectively assess risk, including social work evidence and the risk assessments in the dossier. That it had failed to engage with this suggested it had relied too heavily on their status as a denier.

The Board submitted that it had heard divergent opinions from social work on whether denial increased risk; however, it had to determine whether the risk posed by the offender could be managed safely in the community. Intensive and effective offence-related work would be required before it could conclude this, and this had been accepted in evidence and submissions at the time. It was a reasonable conclusion based on what it had heard. The offender had not been prejudiced by this conclusion, as the Board clearly did not place weight on their continued denial.

The Board submitted that the offender's challenge rested on the assertion that it assumed motivation can only be known where guilt is admitted, which would require expert evidence, e.g. from a clinical psychologist, to support. In addition, prisoners were not always open and honest even when guilt was admitted; denial did not mean that assessment of triggers and motivations could not be made.

The Board submitted that social work evidence had illustrated that the offender's status as a denier did not prevent the Board from looking at triggers and motivations. Social work had explored these with the offender, it was therefore not the case that they could say nothing in response to questions because of denial. They had been able to give information about factors such as lifestyle at the relevant time, but denial necessarily gave them limited insight. The Board had pursued these questions with the social worker, illustrating that it had pursued the issue of triggers and motivations against the background, and taking account of, denial. Had it taken an absolutist position, it would have been unnecessary to ask these questions at all; in every case where a prisoner

denied the offences, the question of triggers and motivations would have to be left out altogether. The correct position had been set out by the offender in their petition: that where motivation was unknown, the Board was entitled to refuse release on licence due to a lack of evidence.

Finally, the Board submitted that it was not obliged to record its reasons in relation to every adminicle of evidence. It had provided adequate reasons to explain why it was not satisfied that the risk posed by the offender could not be managed safely in the community. The Board had engaged with all material points put forward in submissions.

The court concluded in favour of the Board. Denial did not mean it was impossible to explore the question of triggers and motivations. There had been no failure to engage with relevant evidence, even on the limited basis upon which it was presented. The Board's decision was clearly based (and expressed to be based) not on the offender's status as a denier but on a continuing need for them to undertake offence-focused work before their risk could be managed safely in the community.

Life Sentence Prisoner Case Study

This judicial review concerned the case of a prisoner, who was convicted of murder and sentenced to life imprisonment with a punishment part of 11 years. This had expired in 2002. They had been released on life licence shortly after but had been recalled several years later after accruing further charges. They were released again but recalled after receiving a fixed penalty notice. They were then released for a third time in 2018 and recalled in 2020 having been found in the company of a

missing vulnerable female and while intoxicated.

A tribunal of the Board considered whether to direct release in 2021. The tribunal heard evidence and concluded that the Risk Management Team at the prison did not think further testing in open conditions was necessary as the prisoner had previously desisted from using alcohol for significant periods. Social workers had provided reports in which they did not support release. There was no request from the prisoner that the social workers should be cited to provide oral evidence at the tribunal. The prisoner gave evidence and disputed they had an alcohol problem. The test to be applied by the tribunal was whether it was necessary for the protection of the public that the prisoner remained confined. The tribunal concluded that it was, and declined to direct release.

The prisoner judicially reviewed this decision. Their counsel argued that the longer the prisoner served beyond tariff, the clearer should be the perception of public risk in order to justify continued deprivation of liberty. They argued that this case merited particular anxious scrutiny of the ongoing confinement. They pointed out that the charges accrued following their first release had not resulted in a conviction and that there was no violent conduct associated with either of the subsequent recalls. They relied on the absence of any violent conduct since the index offence. They also submitted that the tribunal had erred in failing to cite social workers to test their recommendations. They also submitted that the tribunal had provided inadequate reasons for its decision.

Counsel for the Board submitted that the decision was lawful and necessary. The tribunal had taken account of all material and relevant considerations. They had taken particular account of the high risk posed by the petitioner when they consumer alcohol and their lack of insight into their risks and the challenges they would face in the community. It was also submitted that the social work reports were clear and understandable, and that there was no need or justification to cite the social workers to provide oral evidence. It was submitted that the tribunal provided adequate and comprehensible reasons which explained its decision.

The court decided that the tribunal's decision was underpinned by legitimate ongoing concerns about the prisoner's use of alcohol, their lack of insight into their risk when abusing alcohol and the troubling circumstances of the latest recall to custody. Alcohol had been a feature of the index offence. The prisoner was assessed as presenting a high risk of general offending. The risk of serious harm was assessed as medium, under explanation from the prison-based social worker that such harm was unlikely unless there was a change in circumstances such as drug or alcohol use. The social worker had also noted a theme whereby the prisoner withheld information from professionals rather than seeking assistance. The community-based social worker considered that the prisoner's lifestyle within the community could quickly and seriously deteriorate upon alcohol use.

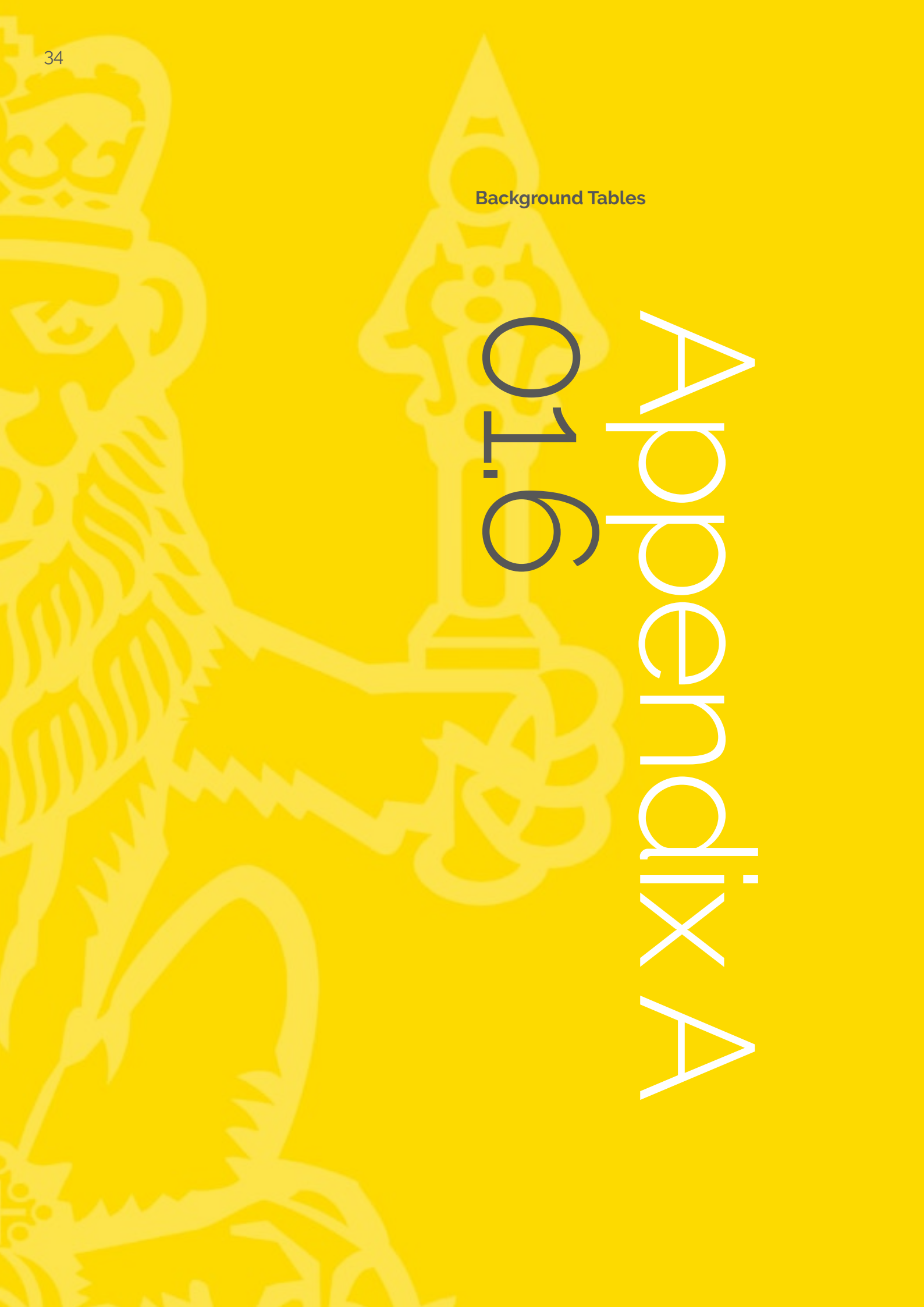
The tribunal recorded that it found the social workers' views to be well-founded. The court decided that this was a view which the tribunal was well entitled to reach based on the evidence before it. The court noted the

prisoner's own view that they posed a risk to anyone when they consumed alcohol, and the reported lack of candour, indeed dishonesty, on the part of the prisoner about their use of alcohol in the community. The court held that the suggestion that there was no evidence that the prisoner had actually committed any offences occasioning serious harm while in the community did not address the fundamental point that the tribunal had unchallenged evidence from the prisoner's risk assessment that they presented an ongoing risk of causing serious harm to others in circumstances where they lost their supported accommodation and abused alcohol on release. The court considered that the reports from the social workers were detailed and their recommendations clear, and concluded that it had been unnecessary to cite the social workers to provide evidence, particularly as this had not been requested by the prisoner's legal representative. The court concluded that the decision not to direct release was lawful and reasonable, and expressed in language which was readily comprehensible to the informed reader.

Background Tables

Appendix A

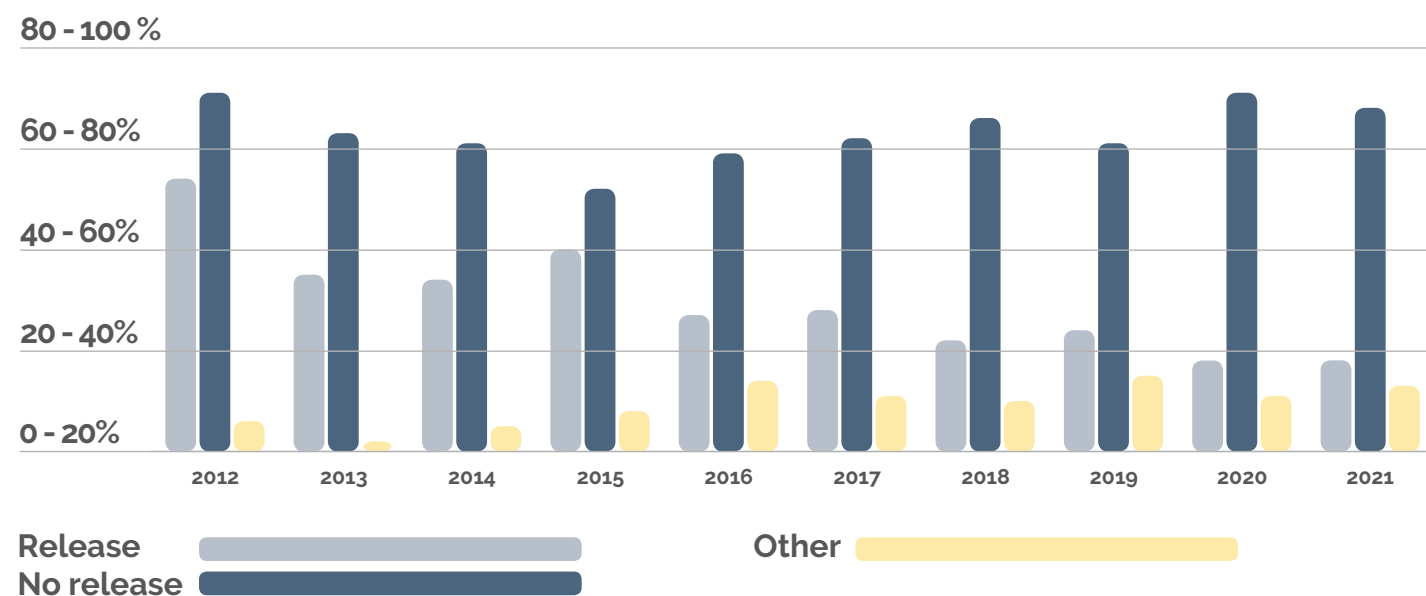
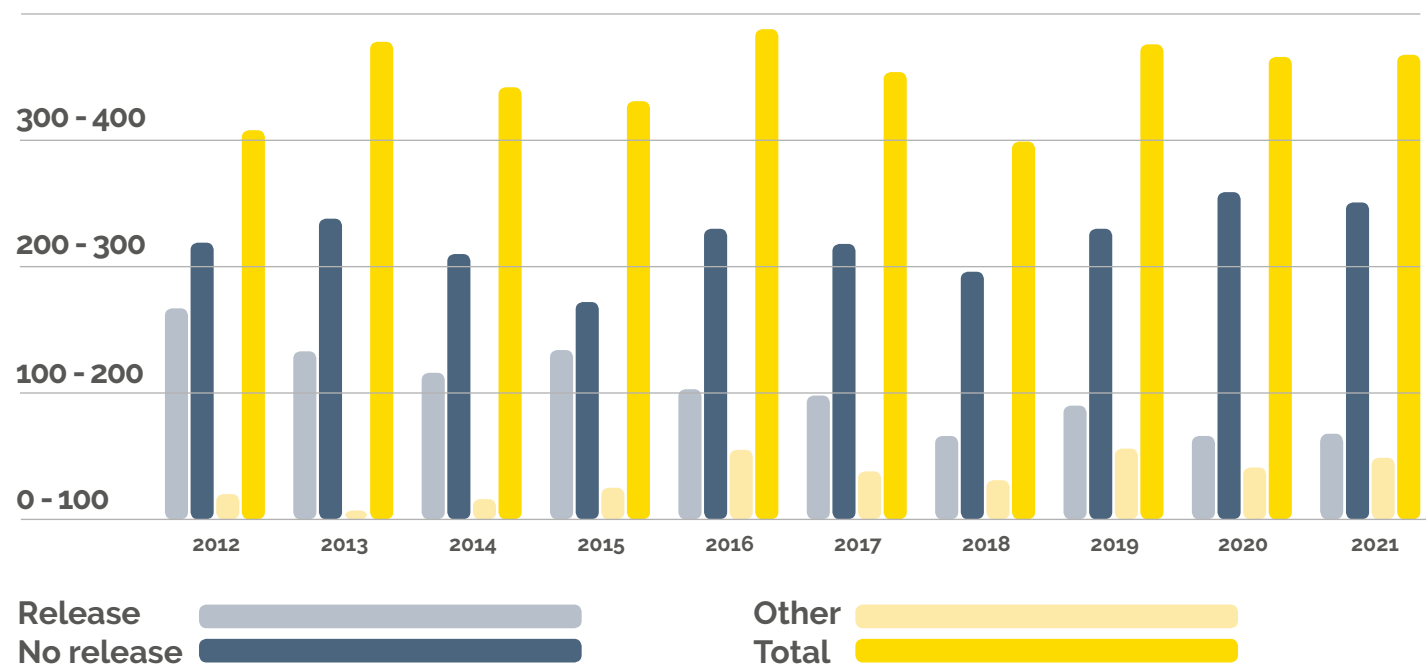
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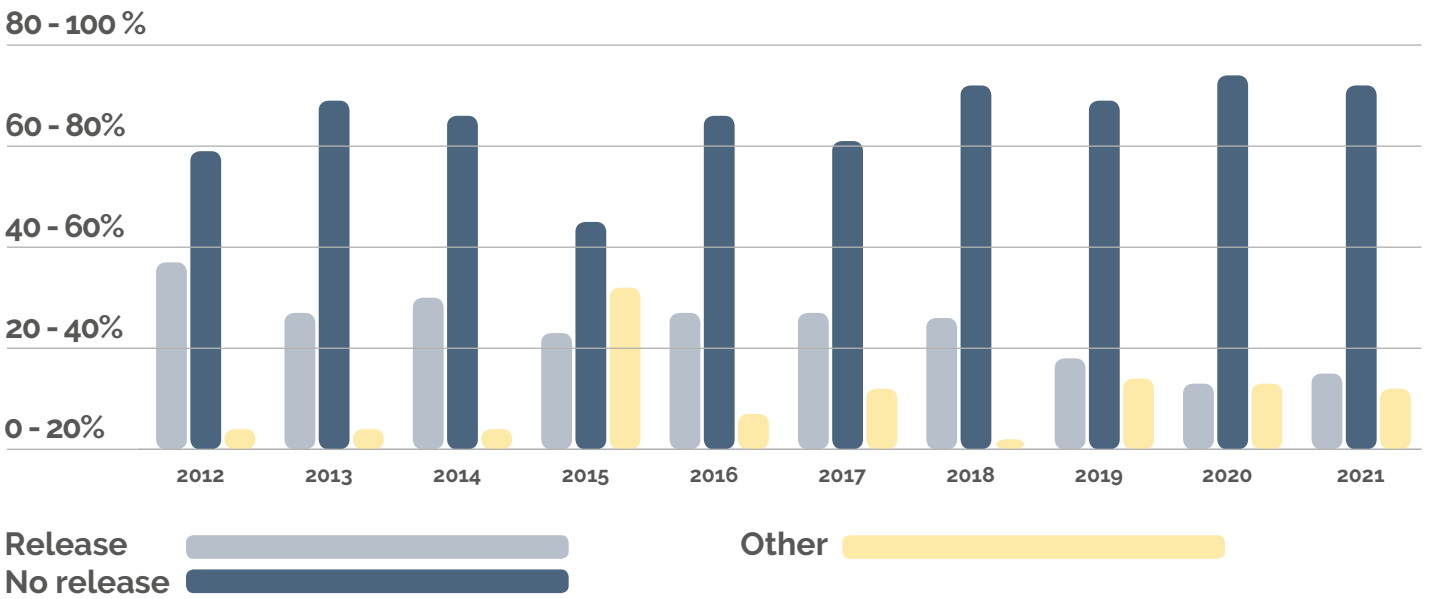
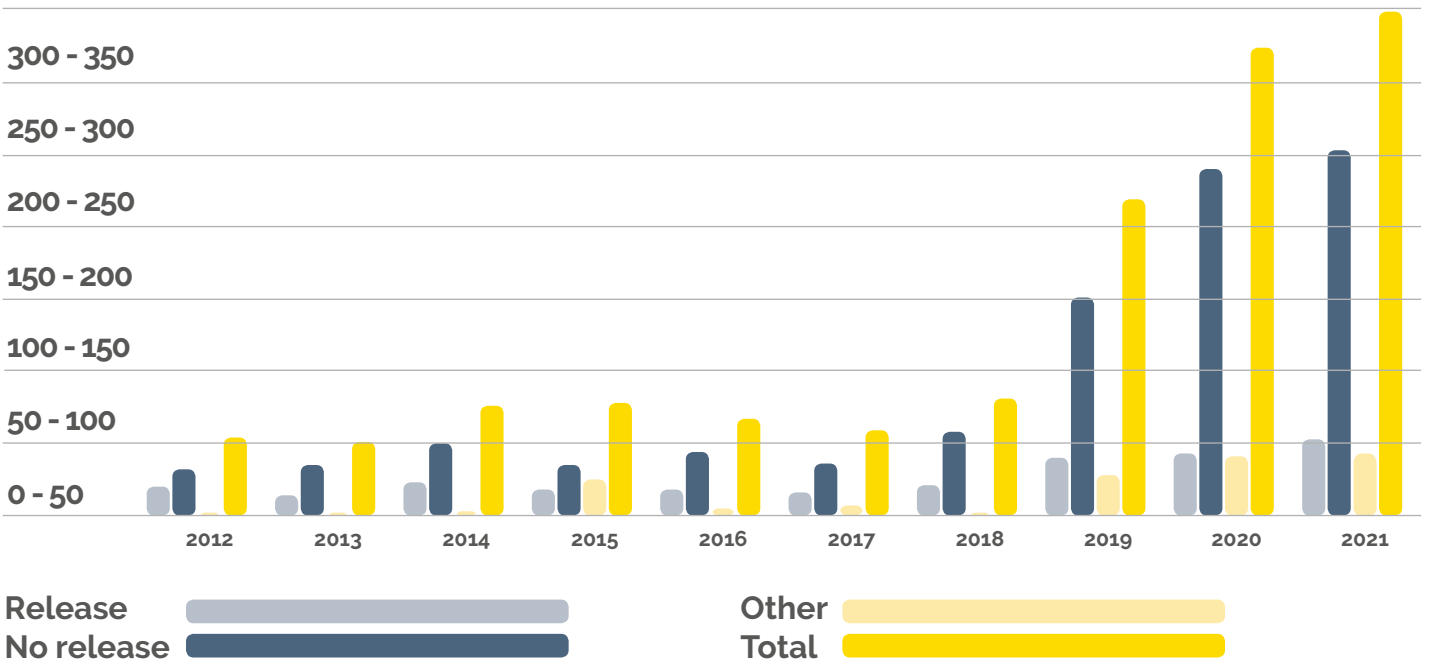
Year of Release	Time Spent in Custody by Persons First Released from Life Sentences									Total
	Under 7	7 - 8	8 - 9	9 - 10	10 - 11	11 - 12	12 - 13	13 - 14	over 14	
2019-20	0	0	0	0	1	1	3	3	11	19
2020-21	0	0	0	0	0	2	3	3	13	21
2021-22	0	0	0	0	0	2	1	5	25	33
Total	0	0	0	0	1	5	7	11	49	73

Note 1 does not include those recalled to custody and subsequently re-released.

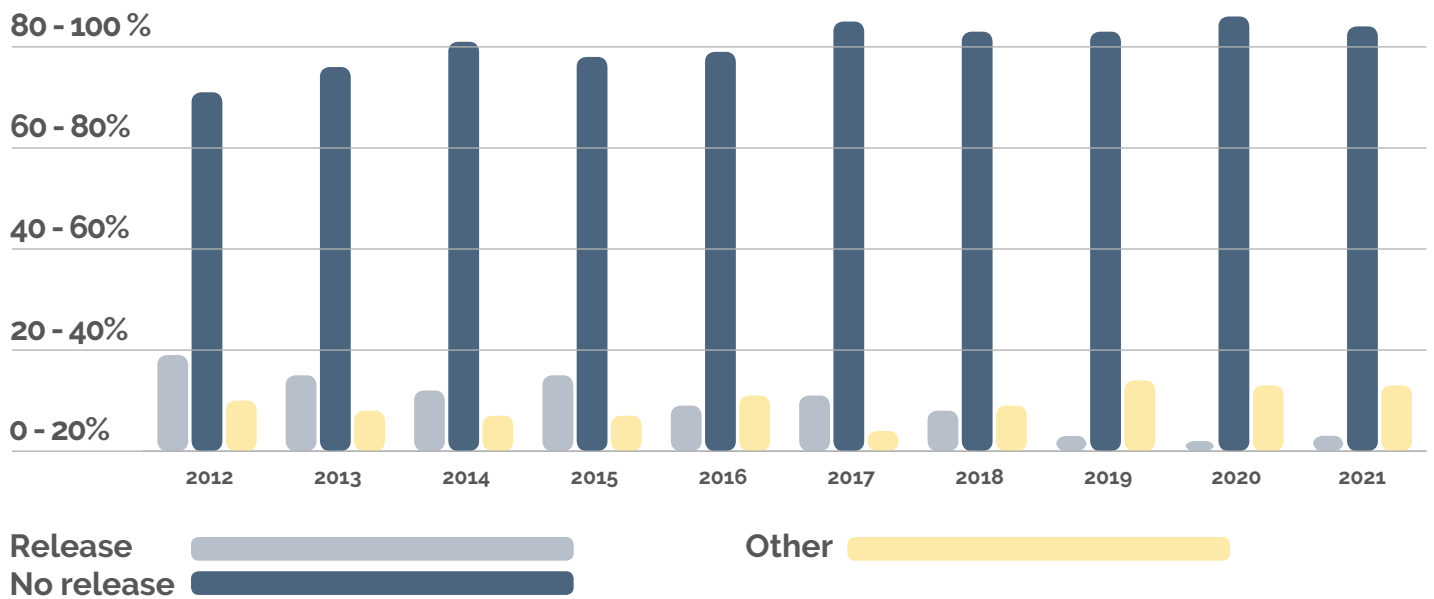
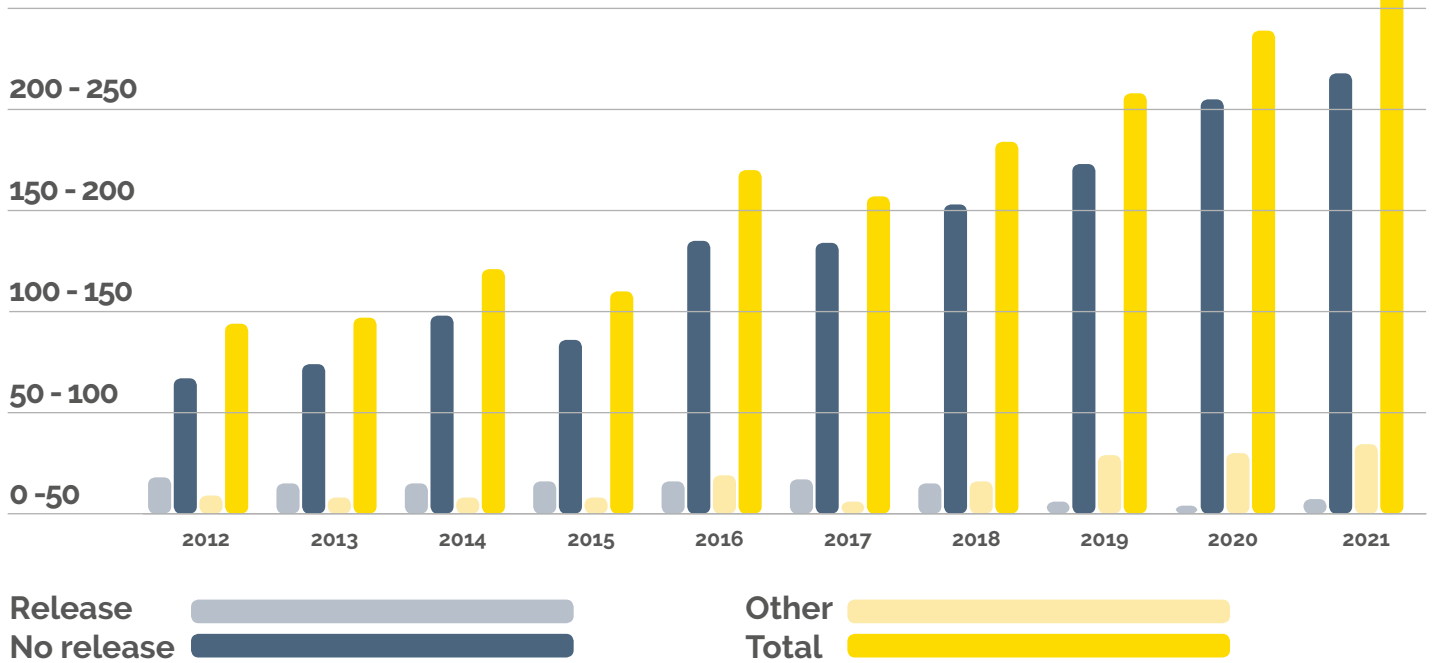
Determinate Sentence Prisoners - First review for Early release



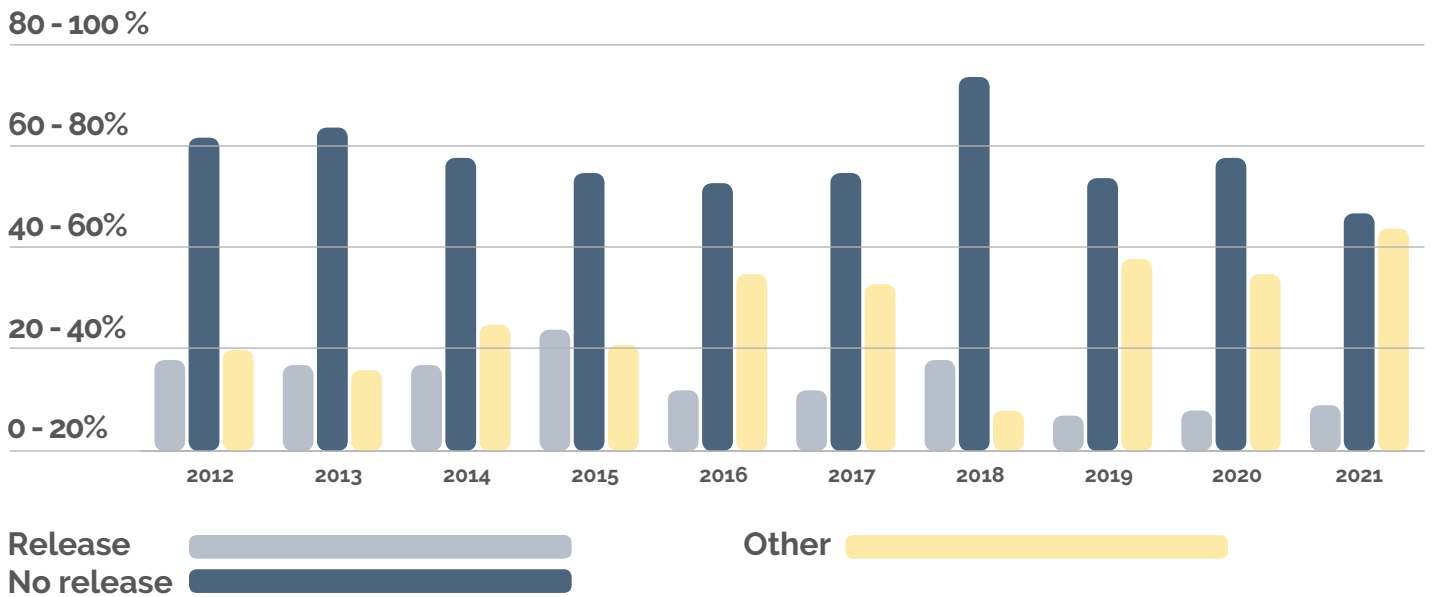
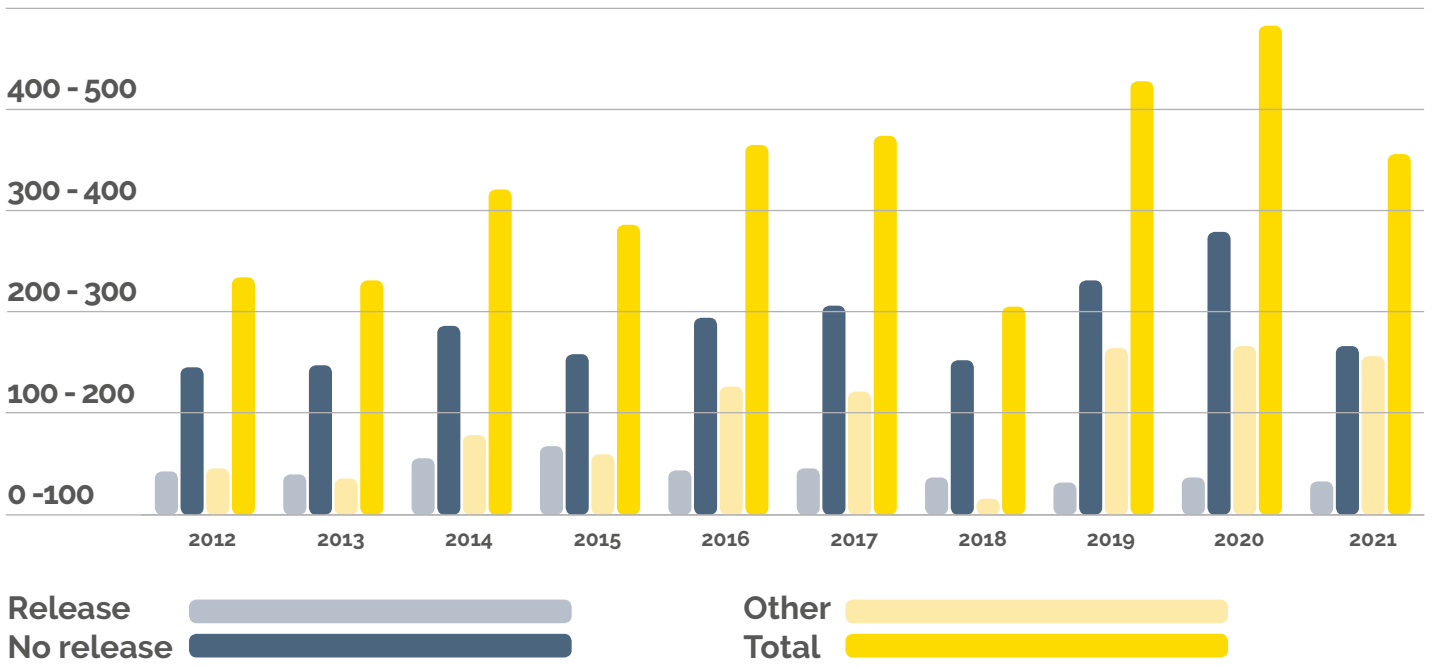
Determinate sentence prisoners - Second or subsequent review for early release



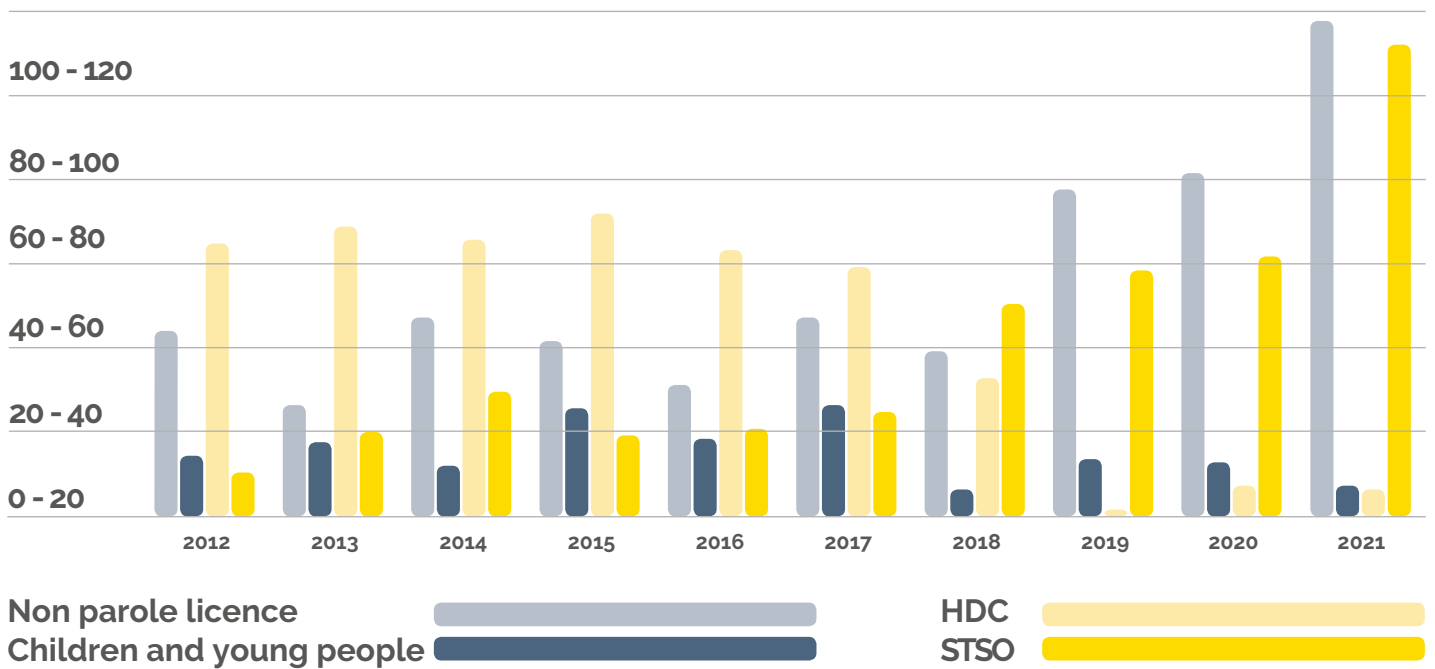
Extended Sentence Prisoners - Review for Early Release



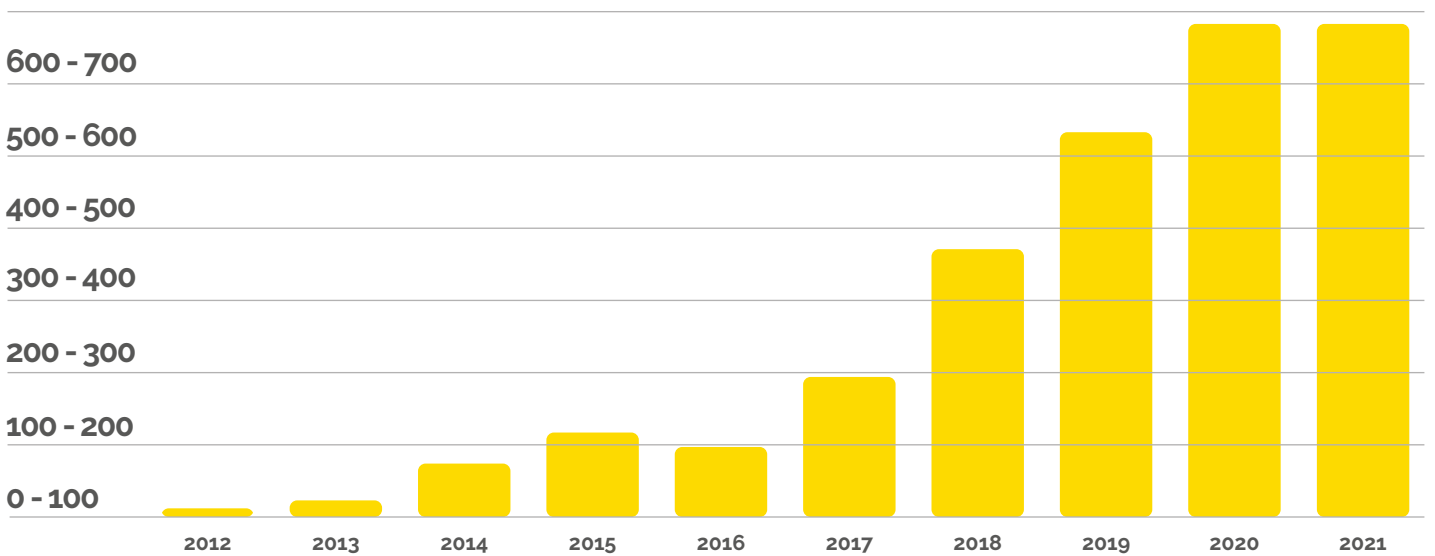
Life sentence Prisoners



Miscellaneous



Oral Hearings



Statutory Provisions and Financial
Information

Appendix B

OT.17



**Prisoners and Criminal Proceedings (Scotland)
Act 1993, as amended SCHEDULE 2
The Parole Board**

Membership

1. The Parole Board shall consist of a Chairman and not less than 4 other members appointed by the Scottish Ministers.
- 1A. In making those appointments, the Scottish Ministers shall comply with such requirements as to procedure and consultation as may be prescribed in regulations made by them.
- 1B. In making regulations under paragraph 1A above, the Scottish Ministers may make different provision for different kinds of members of the Board, including kinds of members having the respective qualifications for office specified in paragraph 2 below.
2. The Parole Board shall include among its members:
 - (c) a person appearing to the Scottish Ministers to have knowledge and experience of the supervision or after-care of discharged prisoners; and
 - (d) a person appearing to the Scottish Ministers to have made a study of the causes of delinquency or the treatment of offenders.

Limitation, termination etc. of appointment of members

- 2A. An appointment as a member of the Parole Board shall, subject to paragraph 2B to 2D below, last for the period of 5 years beginning with the date of appointment as specified in the instrument of appointment.
- 2B. A member of the Parole Board may resign at any time by giving notice to that effect to the Scottish Ministers.
- 2C. An appointment of a person as a member of the Parole Board shall not extend beyond the day when the person reaches the age of 75.
- 2D. The appointment of a member of the Parole Board shall come to an end upon the member's being removed from office under paragraph 3 below.
 - (1) A person who has been a member of the Parole Board is eligible for appointment to the membership on a subsequent occasion.
 - (2) The exception to this is where the person's membership has previously ceased by virtue of—
 - (a) paragraph 2C, or
 - (b) paragraph 2D.

Automatic reappointment

- 2HA (1) A member of the Parole Board is to be reappointed to the membership on the expiry of the period of the member's appointment, unless—
- (a) in any case, sub-paragraph (2) applies, or
 - (b) where the member is not the chairperson, sub-paragraph (3) applies.
- (2) This sub-paragraph applies if the member has declined to be reappointed.
- (3) This sub-paragraph applies if the Scottish Ministers have accepted a recommendation made to them by the chairperson that the other member should not be reappointed.
- (4) A recommendation of that kind may be made to the Scottish Ministers only if the chairperson is satisfied that—
- (a) the other member has failed to comply with any of the terms and conditions of membership by which the member is bound, or
 - (b) the number of members required for the Board to carry out its functions is such that the services of the other member are no longer needed.
- (5) The instrument of appointment of the member may be annotated or reissued so as to show that the member is reappointed under sub-paragraph (1).

- 2HB (1) Sub-paragraphs (2) and (3) apply in connection with paragraph 2HA(1).
- (2) The reference in paragraph 2HA(1) to the period of the appointment includes each period of reappointment under that paragraph.
 - (3) In addition—
 - (a) the provisions of paragraphs 1 to 2D apply in relation to reappointment under paragraph 2HA(1) as well as applying otherwise, and
 - (b) the references in paragraphs 1 to 2D to appointment are so far as necessary for this purpose to be read as including reappointment, which in particular means that reappointment is for 5 years at a time."

Performance of duties

- 2J. The Chairman of the Parole Board shall have regard to the desirability of securing that every member of the Parole Board is given the opportunity of participating appropriately in the functions of the Board under this Act on not fewer than 20 days in each successive period of 12 months beginning with the day of the member's appointment as such.

Removal of members from office

3. A member of the Parole Board may be removed from office by and only by order of the tribunal constituted by and under paragraph 3B below ("the tribunal").
- 3A. The tribunal may order the removal from office of a member only if, after investigation carried out at the request of the Scottish Ministers, it finds that the member is unfit for office by reason of inability, neglect of duty or misbehaviour.
- 3B. The tribunal shall consist of the following three members, who shall be appointed by the Lord President of the Court of Session:
 - (a) either a Senator of the College of Justice or a sheriff principal (who shall preside);
 - (b) a person who is, and has been for at least 10 years, legally qualified; and
 - (c) one other person who shall not be legally qualified.
- 3C. For the purposes of paragraph 3B above, a person is legally qualified if that person is an advocate or a solicitor.
- 3D. Regulations made by the Scottish Ministers:
 - (a) may make provision enabling the tribunal, at any time during an investigation, to suspend a member from office and providing as to the effect and duration of such suspension; and

- (b) shall make further provision as respects the tribunal as the Scottish Ministers consider necessary or expedient, including provision for the procedure to be followed by and before it.

Remuneration and Allowances

4. There shall be paid to the members of the Parole Board such remuneration and allowances as the Scottish Ministers may, with the consent of Treasury, determine.
5. The expenses of the Board under paragraph 4 above and any other expenses incurred by the Board in discharging its functions mentioned in section 20(1) of this Act shall be defrayed by the Scottish Ministers.

Reports

6. The Board shall as soon as possible after the end of each year make to the Scottish Ministers a report on the performance of its functions during the year, and the Scottish Ministers shall lay a copy before Parliament.

Regulations

- 6A. Regulations under paragraphs 1A and 3D above shall be made by statutory instrument.
- 6B. No such regulations shall be made unless laid before, and approved by resolution of, the Scottish Parliament.

Financial Information Fees and Expenses

1. Under the provisions of Schedule 2 of the 1993 Act, members of the Parole Board for Scotland may receive sessional fees for attendance at Board meetings; and they may also be paid a full fee or part of a fee for undertaking other business of the Board, the sessional rates payable to each category of member during 2020-21 were as follows:

	1/4/21 - 31/3/22
Chairman	£517
Legal Member	£341
Psychiatrist	£341
General Member	£221
Case Work Meeting Chair	£50

2. Members of the Board are also paid allowances for travelling and subsistence in accordance with prescribed scales.
3. The Board's expenditure during 2021-22 was £2,926,780 made up as follows:

Members Fees, Staff Salaries and Travel/Subsistence	£2,599,154
Legal Costs	£204,359
Other	£123,267
Total	£2,926,780

Cost Effectiveness

4. The Board recognises the need to have due regard to economy and cost effectiveness in carrying out its functions. Examination of the costs incurred by the Board during 2021-22 reveals that the work of the Board continues to represent good value for money. The average cost of Tribunals convened in 2021-22 for life prisoners and extended sentence prisoners is £1000. The average cost of considering a case at a meeting of the Board is £200.

5. The average cost to carry out these functions includes members' fees; and their travel and subsistence costs.

Judicial Review – Compensation Payments

6. There have been no compensation claims in this reporting year.

Report on Expenditure under Part 3 of Public Services Reform (Scotland) Act 2010

Public Relations	Nil
Overseas Travel	Nil
Hospitality and Entertainment	Nil
External Consultancy	Nil
Payments in excess of £25,000	Nil
Employees/Members earning in excess of £150,000	Nil

The Parole Board for Scotland continues to be committed to providing an effective and efficient method of service delivery.

Further information on how the Board has changed its standard operating procedures using information technology is contained in the Progress Report section of this report. The Board's Management Group will continue to look for further opportunities to drive out efficiencies and savings.

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