

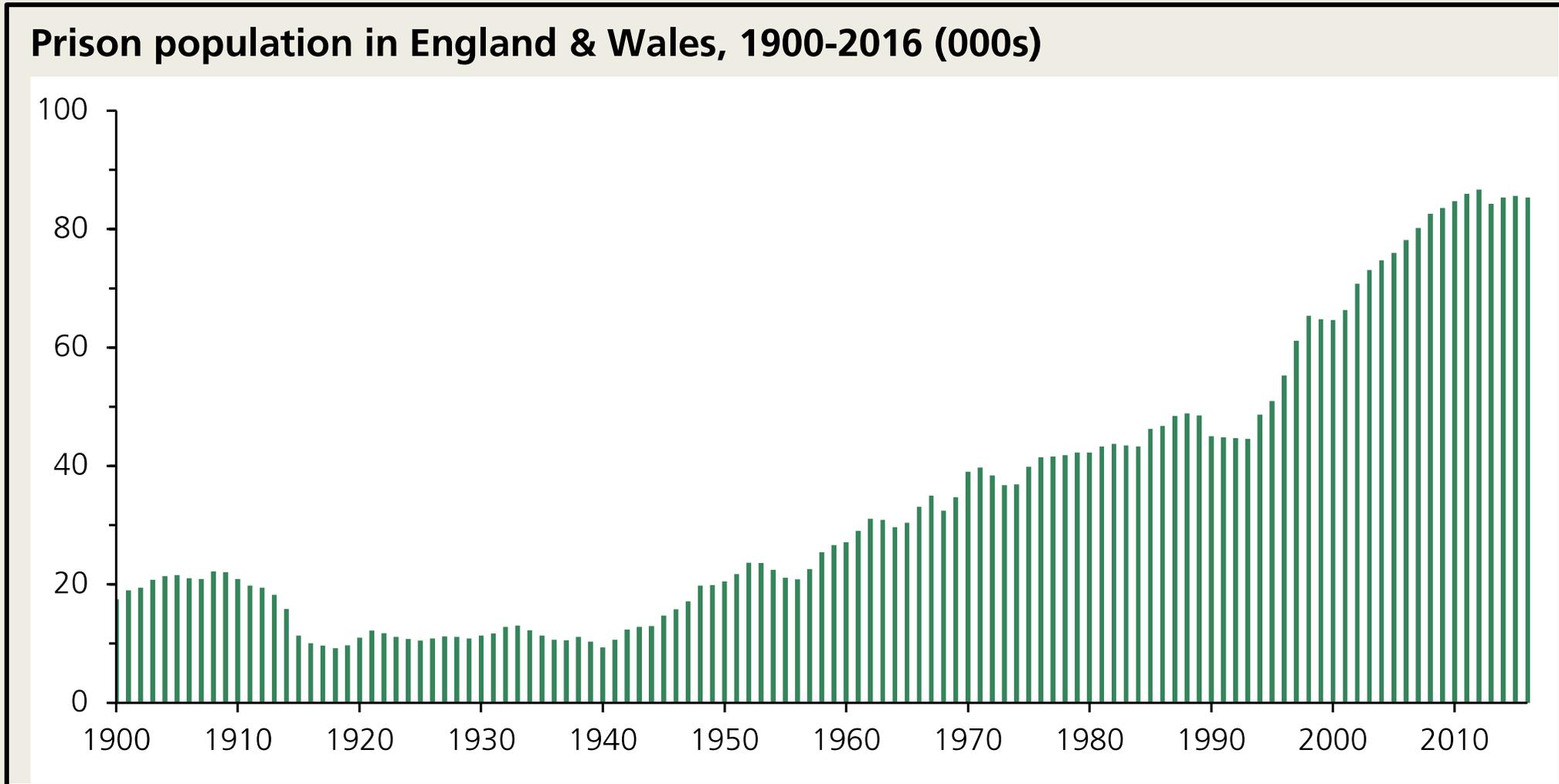
SCOTTISH ASSOCIATION FOR THE STUDY OF OFFENDING
49TH Annual Conference 2 November 2018

SEX OFFENDERS AND PAROLE ***LESSONS FROM THE WORBOYS CASE***

Professor Nick Hardwick
Royal Holloway University of London
2 November 2018

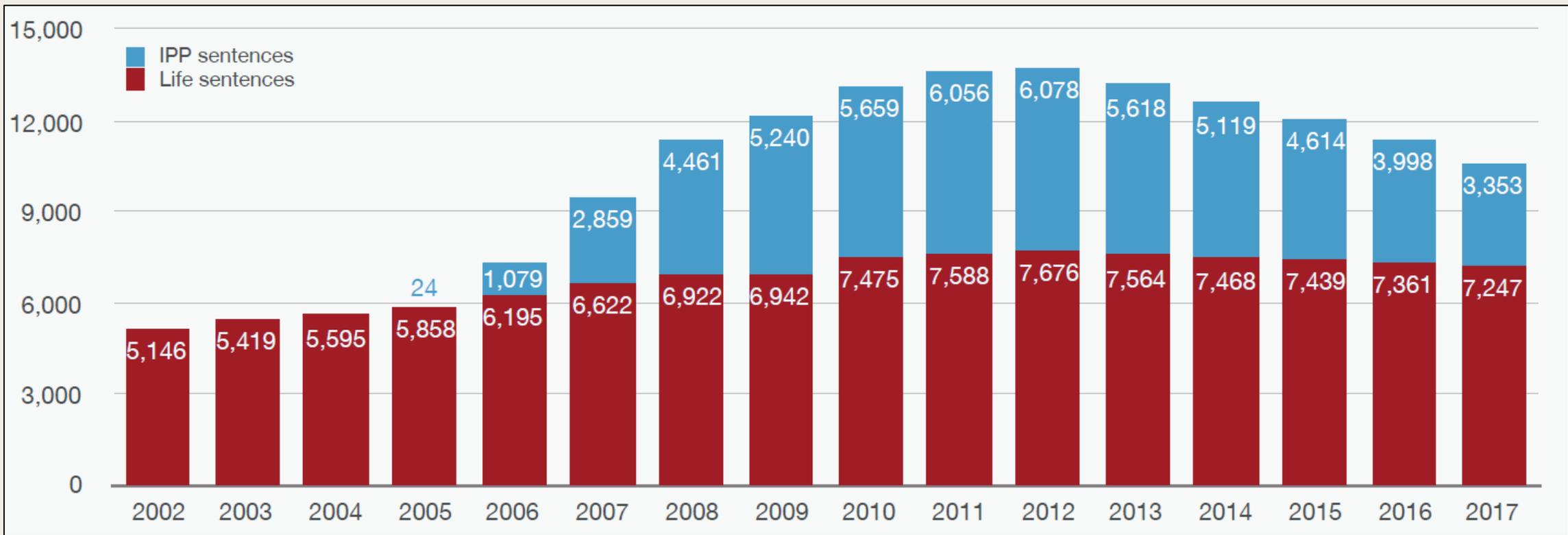
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Prison population growth



Prisoners: offence, sentence and age

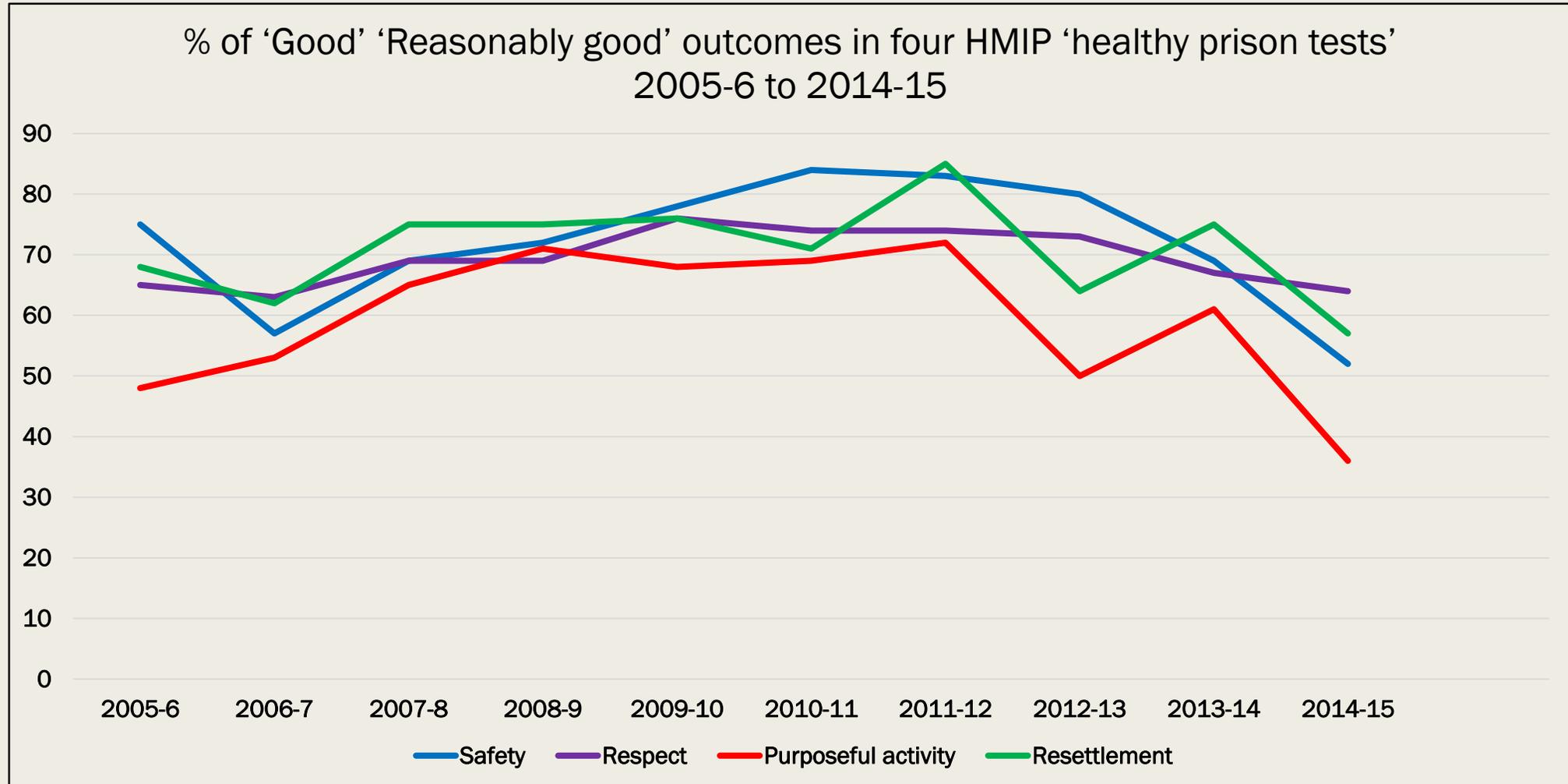
- 19% of prisoners serving determinate sentences for sexual offences (highest level since 2002)
- 5.5% of sentenced prisoners serving determinate sentences of 14+ years (up 8% in last year)
- 13% serving indeterminate sentences (life or Imprisonment for Public Protection)
- 6% aged 60 plus (up 110% in last decade)



Source: Guiney, T (2018) Prison Reform Trust (2017) Bromley Briefing Prison Fact File

Inspection findings

From HMI Prisons Annual Reports 2010/11 and 2014/15



Deteriorating safety

2008

- 168 prisoners died
- 2.1 deaths/1000
- 76 prisoners killed themselves
- 0 murders
- 6126 prisoners self-harmed
- 15,644 assaults
- 1,481 serious assaults
- 3,247 assaults on staff
- 276 serious assaults on staff

2018

- 325 prisoners died
- 3.9 deaths/1000
- 87 prisoners killed themselves
- 5 murders
- 12,142 prisoners self-harmed
- 32,559 assaults
- 3,951 serious assaults
- 9,485 assaults on staff
- 112 serious assaults on staff

Decline in probation services – HMI Probation

■ Annual Report 2017

- *There is now a two-tier and fragmented service, with individuals being supervised by the NPS more effectively overall. Of course, the NPS is funded differently, and more generously.... Most CRCs are struggling.*

■ Quality of public protection work (October 2018):

- *The quality of public protection work was found to have deteriorated*
- *It is of particular concern that the assessment of risk of harm to both known adults and to children and young people had deteriorated in cases now allocated to CRCs.*

Proven reoffending rates by sentence length

SENTENCE LENGTH	RE-OFFENDING RATE
Less than 12 months	64.5%
12 months to less than two years	36%
2 years to less than four years	29.7%
4 years to ten years	19.9%
More than ten years	8.8%
Indeterminate sentence of imprisonment for public protection	16.4%
Mandatory life	2.2%
TOTAL CUSTODY	48.3%

The Parole Board for England and Wales - beginnings

- 2017 was 50th anniversary of the creation of the Parole Board by the Criminal Justice Act 1967
- Initially just 17 members, less than 100 cases and sole purpose was to advise ministers on the release of life sentenced prisoners

The Parole Board today

- The Board is now an independent court-like body when sitting as a panel which **orders** the release of prisoners (Article 5(4) ECHR) (CJA 1991) (CJA 2003) (LAPSO 2012)
- A non-departmental body (NDPB) sponsored by the Ministry of Justice
- Justice Secretary makes Parole Board Rules (statutory instruments) and directions on matters to be taken into account
- 2017-18: 8,137 oral hearings and 16,436 cases on paper
- 246 Board Members: 44 Judicial Members, 31 psychologist members, 15 psychiatrist members, 156 independent members (probation, legal and other backgrounds). Members sit in panels of 1, 2 or 3.

The risk test

Legal Aid, Sentencing and Punishment Offenders Act 2012:

When considering the release of prisoners who come before it, the Board is required to determine whether it is

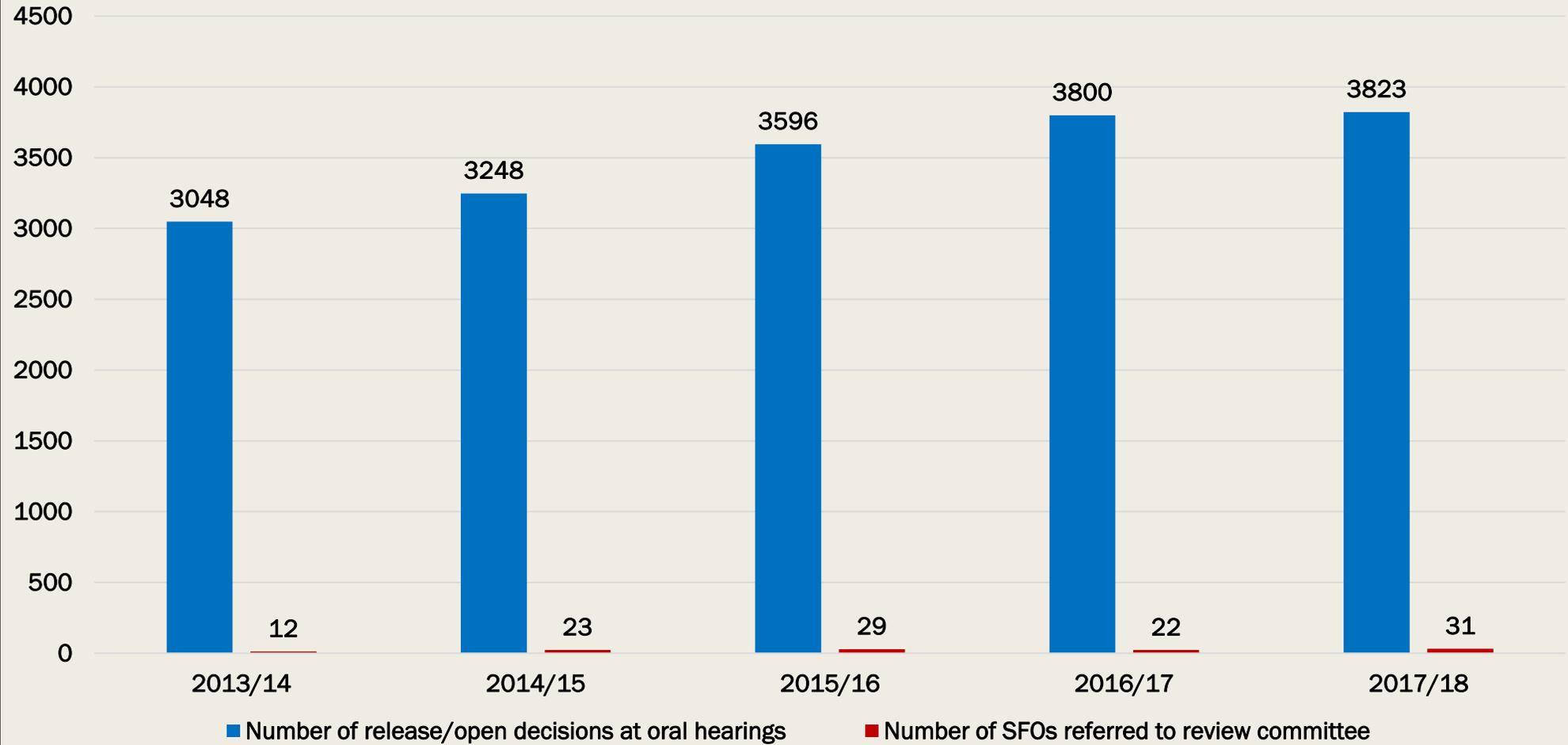
'satisfied that it is no longer necessary for the protection of the public'

that the prisoner should remain detained

Current Parole Board performance

- Backlog eliminated
- 104 new members recruited and trained
- Moved to entirely digital working
- All hearings soon digitally recorded
- New member training and assessment processes now nearing completion
- Reduced the number of IPP prisoners by 53% 6080 - 3029
- Delivered a release or progression rate of 65%

RELEASES/OPEN DECISIONS AND NOTIFIED SERIOUS FURTHER OFFENCES



Issues arising from the Worboys case

1. The role of the Board
2. The transparency of the system and contact with victims
3. The right to review decisions
4. The conduct and preparation of hearings
5. Forensic psychology evidence
6. Hearsay
7. The independence of the Board

Dame Glenys Stacey, the Chief Inspector of Probation:

'The Parole Board panel was told wrongly that all victims had been contacted.'

"The Secretary of State as a party to the proceedings was a natural claimant"

"Given the Secretary of State's early indication that he would not be seeking to challenge the Parole Board's decision, there is considerable force in the convention that had the standing of DSB and NBV been placed in issue that would have disabled this Court from performing its function (if it considered it necessary to protect the rule of law)".

R(DSD &Anor) v The Parole Board of England and Wales (2018) EWHC 694

“The case raises particularly pertinent issues for discussion, in which psychologists should be taking a leading role. Although we are all hampered by the limited access to the full documentation, it should surely raise questions in our mind when four psychologists all apparently arrive at similar conclusions regarding the risk assessment; are they truly all naive and duped, or are there some features to the case that lend weight to their opinions? What we do know from information in the public domain is that the very issues that so concern the public – Mr Radford’s denial of the offences for many years, his apparent failure to confess to all his crimes, suspicions about his level of remorse and victim empathy – are the very issues for which there is robust evidence regarding their lack of association to risk....”

It goes on:

“We now know that these post-hoc offence rationalisations are driven by shame, a functional response to wrong-doing, often held by those individuals with stronger social bonds”

“Ultimately, we are not persuaded that this panel reached an irrational decision. It is not sufficient for the Claimants’ purposes to have persuaded us, as they have done, that this decision is surprising and concerning...

A risk assessment in a complex case such as this is multi-factorial, multi-dimensional and at the end of the day quintessentially a matter of judgment for the panel itself...

This panel’s reasons were detailed and comprehensive. We are not operating in an appellate jurisdiction and the decision is not ours to make. We are compelled to conclude that the decision of the panel must be respected.”

"a difficult, troubling case with many exceptional features".

"Drawing these strands together, whereas we agree with Mr Collins [the Board's counsel] that it is not the role of the Parole Board to determine whether a prisoner had committed other offences, we cannot accept the extension of that submission, shared by Mr Fitzgerald albeit advanced in slightly different terms, that it is precluded from considering evidence of wider offending when determining the issue of risk. "

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R(DSD &Anor) v The Parole Board of England and Wales (2018) EWHC 694

"We must emphasise that we have not held, nor must we be understood as suggesting, that Mr Radford's present risk is such that his continued imprisonment is necessary for the protection of the public or that the Parole Board should so find."

R(DSD &Anor) v The Parole Board of England and Wales (2018) EWHC 694

“In my judgment it is not acceptable for the Secretary of State to pressurise the Chair of the Parole Board to resign because he is dissatisfied with the latter’s conduct. This breaches the principle of judicial independence enshrined in the Act of Settlement 1701. If the Secretary of State considers that the Chair should be removed, then he should take formal steps to remove him pursuant to the terms of the Chair’s appointment.”

Wakenshaw, R (On the Application Of) v Secretary of State for Justice (2018) EWHC 2089