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Title: The use of Intermediaries (communication specialists) at Parole Board Oral Hearings in England and Wales.

Abstract

Purpose

The purpose of this paper was to find out what role intermediaries have in facilitating communication with victims and prisoners at Parole Board oral hearings.

Design / methodology / approach

A survey was designed and administered to thirty-nine Parole Board members to find out their perceptions of, and experiences with, the use of intermediaries. Frequency tables and verbatim quotations are used to report the results.

Findings

Overall, participants had not experienced any use of intermediaries with victims or family members presenting victim personal statements at an oral hearing. Further, there had been limited use of intermediaries for prisoners attending oral hearings. Nevertheless, there was a good recognition of a range of communication needs that a prisoner might present with at a hearing. There was also general support for the use of intermediaries with some caution about possible delays to procedural fairness.

Originality/value

This is the first published paper examining the role of intermediaries at Parole Board oral hearings. It builds on the evidence base of the use of intermediaries in other criminal justice contexts.

Keywords

Parole Board, vulnerable prisoners, victim personal statements, oral hearings, intermediaries, communication support.

Paper Type

Research paper

Introduction

The Parole Board (PB) in England and Wales was created by the Criminal Justice Act 1967 with the function of considering which prisoners are suitable for release. The PB initially consisted of seventeen members, including the chair, High Court judges, psychiatrists, principal probation officers, and criminologists (Arnott and Creighton, 2014; Guiney, 2018). In those early days the panel conducted the initial release decisions based on a dossier of written evidence and therefore the prisoners were not interviewed by those tasked with assessing whether they were suitable for release. Fast forward to the current system in England and Wales where there were 318 members in March 2021, from three membership categories 1) judicial; 2) specialist (psychiatric and psychologist) and; 3) independent members (e.g., lawyers, retired senior police officers, senior professionals from private industry). Further, for a proportion of cases decisions are based on an oral hearing as well the dossier of papers.

There were 83,152 prisoners in the male prison estate, and 3450 in the female estate in England and Wales in July 2023 (Ministry of Justice, 2023). Many of these will be determinate (fixed tariff) sentenced prisoners and will not come before the PB. The PB has a variety of functions. Firstly, the PB makes binding decisions as to whether indeterminate sentence prisoners (lifers) should be released on licence. Secondly, the PB makes binding decisions as to the re-release of recalled indeterminate sentence prisoners. The PB also makes recommendations to the Justice Secretary as to whether indeterminate sentence prisoners should be transferred to open conditions prior to their eventual release into the community on licence. The PB also has other duties including making binding decisions as to whether recalled determinate sentence prisoners should be re-released on licence into the community and has a role in other types of sentences such as extended sentences.

The annual publication by the PB relevant to the time of this research illustrates the magnitude of the task the PB has in managing these hearings on an annual basis. When a case is referred by the Secretary of State for Justice to the PB for consideration there is a requirement that it goes through the Member Case Assessment (MCA) process, the outcome of which is dependent on the (usually single) PB member who is allocated the case. Options available at this stage in the process to the MCA PB member include: 1) paper decision that the prisoner remains in custody; 2) paper decision that the prisoner is released; 3) paper decision that a progressive move to open conditions is recommended; or 4) direction to an oral hearing. In the annual report for the year 2020 / 2021 there were 18,248 cases referred to the PB, and a total of 23,453 MCA hearings, from which 7281 cases were directed to an oral hearing (Parole Board 2021, p20).

PB members have access to an MCA Guidance document which includes an overview of the Osborn, Booth and Reilly judgement (2013), which stated that the PB 'must hold an oral hearing whenever fairness to the prisoner requires one, in light of the facts of the case and the importance of what is at stake' (Parole Board MCA Guidance, October 2022). One of the issues that MCA panel members must consider is the type of oral hearing that is required. For example, should the hearing

be held by telephone, video, hybrid arrangements or does the review require a face-to-face meeting? One of the issues that MCA members will consider is how the prisoner's communication needs may impact on the type of oral hearing. The MCA Guidance advises MCA panels that they can consult with a duty member or specialist member to assist in their deliberations about the case requirements. PB Members also have access to guidelines on cases involving Young Adults, where it is documented that 'the presumption is for young adults to be directed to oral hearings if they cannot be released on the papers' (Young Adults Member Guidance, 2021; Allen & Janes, 2023).

If an Oral Hearing is required, the MCA member makes directions as to what needs to take place to prepare the case for the oral hearing. For example, the MCA member will identify which reports are missing from the dossier, who is likely to be required to attend the hearing as a witness, and what the responsibility needs of the prisoner are. For example, if and how communication will need to be adapted at the hearing. Later in the process, when the case is allocated to a panel, the Panel Chair may issue further directions to get the case ready for the hearing. It is at these early stages in the process that there might be information in the dossier that alerts the PB Member to the communication support needs that a prisoner may have, even in the absence of explicit diagnoses.

Prior to the Covid pandemic oral hearings predominantly took place on site in the respective prison where the prisoner resided. A panel of one, two or three PB members, depending on the perceived complexity of the case (for example the number of witnesses or requirement for specialist knowledge), would sit and question professional witnesses, including the Prison Offender Manager, the Community Offender Manager, psychologist(s), and the prisoner if they consent. In most cases prisoners are entitled to get legal aid for representation at their oral hearing.

As is the case in the criminal courts there is the principle of orality, where questions are asked orally, and answers provided orally. The victim of the index offence, or family members closely related to the deceased, are also entitled to prepare a Victim Personal Statement and to read this to the PB Panel at the commencement of the oral hearing, or to have it read on their behalf, or submitted in writing to be put before the panel. The panel then makes its decision based on the information contained within the written dossier, together with the oral evidence at the hearing.

This means of course that anyone answering questions in the context of the PB oral hearing needs to have both adequate receptive (understanding) and expressive communication skills. Psychological research has examined vulnerability in terms of acquiescence to questions, suggestibility and compliance (Gudjonsson, (2003). Life adversity has also been found to impact on an individual's resilience when questioned (Drake, 2010). This paper acknowledges that there are a multitude of communication difficulties found in the population that enter the criminal justice system. Around 30% of children detained in a secure children's home presented with language difficulties, and at least 60% of young people accessing youth justice services have speech, language and communication difficulties. (Bryan, Garvani, Gregory & Kilner, 2015). Young offenders may disproportionately present with

Developmental Language Disorder (DLD) and struggle with the demands of communication within the context of the criminal justice system (Sowerbutts, Eaton-Rosen, Bryan & Beeke, 2021; Holland, Hutchinson & Peacock, 2023). Young offenders in the custodial setting with autism may have difficulties with communication (Paterson, 2007). Further, research at HMP Liverpool found that 7.1% of adult participants were in the intellectual disability range of cognitive functioning and an additional 23.6% were in the borderline range of intellectual functioning (Hayes, Shackell, Mottram & Lancaster, 2007). This effectively means that approximately 30% of the adult participants in the HMP Liverpool study, if attending a cognitive behavioural intervention, would require an adapted offending behaviour programme in order to accommodate their communication needs.

Additionally, women in prison may have unmet needs relating to speech, language, and communication from complex trauma histories and undiagnosed ADHD and autism (House of Commons Justice Committee, 2022). Finally, prisoners serving sentences of imprisonment for public protection (IPP) are known to have elevated levels of mental health difficulties (HM Inspectorate of Prisons, 2016) which may impact their ability to communicate effectively.

There are some provisions at various stages in the criminal justice system to assist those with communication difficulties, such as Appropriate Adults for vulnerable suspects attending police interviews, or intermediaries for vulnerable victims, witnesses, or defendants attending court (Farrugia & Gabbert, 2019; O'Mahony, Creaton, Smith and Milne, 2016). These roles will be examined in the next section. That said, there appears to be an absence of a formal system for supporting the communication needs of vulnerable people attending PB oral hearings and this is the first published academic research to examine this issue.

The report '*A Parole System fit for Purpose*' (Justice, 2022) argued that the role of the PB should be subject to regular scrutiny, and it made 22 recommendations. These included reconstituting the PB as a Tribunal, thus giving it sufficient funding and resources to fulfil its function, and enhancing the PB's programme of training, to include training about vulnerable people and communication styles. The report also stated:

'Many more individuals will have communication needs that can be accommodated by the appointment of an intermediary and other adaptations, such as adaptations to a venue's facilities, breaks and the complexity of language used by the panel.' Para 4.71.

Intermediaries and Appropriate Adults

Article 13 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) states that parties shall ensure effective access to justice for persons with disabilities on an equal basis to others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct or indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. Secondly, Article 13 UNCRPD states that parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The right to a fair trial is enshrined in Article 6 of the European Convention on Human Rights and defendants must be able to understand and to participate effectively in criminal proceedings (Mergaerts, 2022; Fairclough, Mergaerts and Dehaghani, 2023). There are different strategies used in various European jurisdictions to support individuals with speech, language and communication needs, which include the use of specialist courts and the use of adaptations, known as special measures, and one of these special measures is the intermediary, a communication specialist (Turner and Westwood, 2023).

To aid people with communication needs engage fully and meaningfully with the criminal justice system intermediaries were introduced in England and Wales through the Youth Justice and Criminal Evidence Act (YJCEA) 1999 (O'Mahony, Smith and Milne, 2011). Intermediaries are trained professionals with backgrounds such as speech and language therapy, psychology, occupational therapy, social work, mental health nursing, and teaching (O'Mahony, 2009). The intermediary scheme was piloted in 2004 and rolled out throughout England and Wales in 2008 following evaluation (Plotnikoff and Woolfson, 2007). Intermediaries are used to assess the communication needs of vulnerable witnesses and to give advice on how to adapt communication accordingly. S29 of the YJCEA 1999 enables the intermediary to facilitate communication between the person asking the question, and the person answering it, to minimise miscommunication. This applies during the police interview and/or at court. Early identification of communication need is thus essential (O'Mahony et al, 2011).

Witnesses deemed vulnerable under this legislation include all witnesses aged under 18 years and any other witness whose quality of their evidence is likely to be diminished because they have i) a mental disorder or learning disability or ii) a physical disability or physical disorder. In summary, this includes all children under the age of eighteen; those with mental disorder or mental illness, for example, bipolar disorder, psychosis, depression, ADHD, autism, dementia, and intellectual disability; and personality disorders. Also included are those with neurological conditions that affect communication, for example acquired brain injury, Motor Neurone Disease, and stroke. There is a small cadre of intermediaries who specialise in working with the deaf community, in addition to a BSL interpreter.

Those suspected of committing a criminal offence detained in police custody in England and Wales have a right to an Appropriate Adult (AA) if they meet the criteria for vulnerability under The Police and Criminal Evidence Act 1984 (PACE) guidelines

(Dehaghani, 2022). Part of the AA role is to facilitate communication. On rare occasions intermediaries are used in police suspect interviews in addition to an AA (O'Mahony, Milne and Grant, 2012). There is no published data available on how often an intermediary is used in police suspect interviews.

The Coroners and Justice Act 2009 also makes provision for an intermediary to be present when a vulnerable defendant gives evidence at court in England and Wales, but this legislation has yet to be implemented (O'Mahony, 2012). Meanwhile judges use their inherent jurisdiction to appoint an intermediary for a vulnerable defendant who has communication support needs. A judge may appoint an intermediary for when the defendant gives oral evidence only, or for the duration of the trial.

If appointed for the whole trial the intermediary may sit in with lawyers during meetings to facilitate communication in addition to sitting in the dock with the defendant to assist with understanding. If appointed solely for the defendant's oral evidence then the intermediary will advise the court how to effectively communicate with the defendant and the intermediary is permitted to intervene during evidence giving to alert the court to any miscommunication and, if required, to suggest alternative ways of asking a question without changing the essence of the question. The court may also ask the intermediary to review the proposed questions and to offer feedback on how they might be amended to meet the communication needs of the defendant (Morrison and Taggart, 2023). In April 2022 the Ministry of Justice established the HM Courts and Tribunal Service (HMCTS) Appointed Intermediary Service for the provision of intermediaries to vulnerable defendants attending court. Significantly, the provision of intermediaries does not apply to PB oral hearings as the PB is an executive non-departmental public body, which excludes it from HM Courts and Tribunal Service.

Hitherto, there is now an anomaly in the criminal justice system in England and Wales where a vulnerable prisoner with communication needs attending an oral hearing does not have access through a formal scheme to specialist communication support, where s/he may have had access to an Appropriate Adult in police custody and an intermediary while giving oral evidence at trial. There appears to be a further anomaly where vulnerable victims with communication support needs do not have access to an intermediary in preparing the Victim Personal Statement and when reading the statement to the panel at a PB oral hearing. Further the vulnerable victim may have been eligible to access an intermediary for communication support when preparing a Victim Personal Statement for the original court proceedings.

Aims and Objectives of this research

The PB has not historically collected data about the use of intermediaries at oral hearings. This was an exploratory study about the use of intermediaries at PB Oral Hearings with the following aims: i) To ascertain the extent to which intermediaries were thought to be currently used to facilitate communication with vulnerable victims preparing for, and reading, Victim Personal Statements at PB Oral Hearings; ii) To ascertain the extent to which intermediaries were thought to be currently used to facilitate communication with vulnerable prisoners giving oral evidence at PB hearings; iii) To find out if there is a perceived role for intermediaries at

PB Oral Hearings; and iv) If there is a perceived role for intermediaries, to find out how it can best be implemented.

Methodology

Materials

To explore the aims and objectives a mixed method survey was designed and administered to PB members currently accredited to sit on oral hearing panels. It was piloted with three PB members and feedback incorporated prior to wider dissemination.

The survey comprised of forty-three test items across the following five subsections; i) demographic information; ii) identifying communication support needs; iii) familiarity of PB members with intermediaries; iv) use of intermediaries for victim impact statements; and v) use of intermediaries for communicating with prisoners.

Of the forty-three test items, there were 15 Closed (Yes / No) questions, 8 option lists, 13 specific-closed (5 WH), and 7 Open Questions across the five subsections.

Closed (Yes / No) questions were asked to establish information such as whether the participant was an accredited oral hearing panel member, or an accredited panel chair.

The option lists gave respondents a list of alternatives such as to select which category of PB member they were, for example, Independent, Judicial, Specialist Psychiatrist or Specialist Psychologist. These question types also asked participants to select from a list of communication difficulties that they were aware of at an oral hearing. For example, communication needs relating to a learning disability, ADHD, autism, personality disorder, mental illness etc. Further option lists asked respondents to select who, if anyone, had provided communication support at the oral hearing, and who participants thought was responsible for identifying communication support needs.

Specific closed questions (Who, what, when, how etc) were used to find out how long participants had been a panel member for, and how many oral hearings they had participated in. This question type was also used to elicit additional information if there was no available option in an option list. For example, if answering 'Other' in an option list, this question type enabled the participant to insert a free text.

The open questions were used to generate qualitative data and to allow participants to share their opinions and to develop their thoughts (Braun, Clarke, Boulton, Davey & McEvoy, 2021). These questions enabled participants to describe how an intermediary was used at an oral hearing and how the use of an intermediary had benefitted the process and whether the PB member had encountered any practical difficulties when an intermediary was used. The final open question enabled participants to add any further comments about their thoughts and experiences about communication needs and the use of intermediaries with victims or prisoners in the PB process. The full list of survey questions can be attained from the lead author.

Participants

The research received ethical approval through the University of XXX ethics committee. It also received approval through the PB Research Governance Group. The research survey was open for access to all PB Members between 17th November 2020 and 26th April 2021 and they were notified of the research survey via an internal email. Participants were required to be accredited oral hearing panel members to meet the inclusion criteria. Four respondents were excluded from the research findings because they did not meet these criteria. As of 31st March 2020, there were 264 Members of the PB. Of these 151 were Independent Members, 56 Judicial Members, 42 Psychologist Members and 20 Psychiatrist Members (Parole Board Annual Report, 2019-2020). It is acknowledged that membership numbers will have altered during the timeframe of data gathering for this research due to recruitment and to the end of tenure for some members.

Thirty-nine participants completing the survey met the inclusion criteria (14.77% of membership) comprising of: 14 Independent Members (9.27% of Independent Members of PB); 11 Judicial Members (19.64 % of Judicial Members); 12 Psychologist Members (28.57% of Psychologist Members); 2 Psychiatrist Members (10% of Psychiatrist Members). 15 (38%) were male participants and 24 female (62%).

Of the 205 Members who had previously declared their gender to the PB, 84 were male (41%) and 121 female (59%).

In 2019/20 there were ninety accredited Panel Chairs. There were nine research participants who identified as Accredited Chairs at Oral Hearings -10% of Chair membership (plus 3 in-training Chairs).

The range of experience of the sample of PB Members (N=39) sitting on oral hearing panels varied between eighteen months and twenty years (Mean: 6.03 years; SD = 4.23). Median = 4 years; Mode = 4 years.

Thirty-seven of the PB Members in this sample had participated in between 15 and 5000 oral hearings; Mean: 490 oral hearings (SD = 877). Two participants were outliers which skewed the data: one reporting 5000 hearings and another, 2300 hearings. The rest were between 20 and 1000 hearings. Median = 250 oral hearings; Mode = 300 oral hearings.

PB Members in this sample who were accredited Chairs (n= 9) had a range of experience between three months and seventeen years (Mean: 4.9 years; SD = 5.22). The data is skewed by one participant who had been a chair for 17 years. Every other Chair had been a Chair between 6 months and 10 years. Median = 3 years; Mode = 2.5 years.

Data analysis

Frequency tables and qualitative verbatim quotes from participants were used.

Results

The result section will be structured around the four primary aims and objectives. Firstly, Parole Board Members were asked to self-assess their knowledge base of the intermediary role.

Prior to reading about this research project 14 participants were familiar with the role of intermediaries in the justice system, 13 were not familiar with the intermediary role; 12 participants had some / limited knowledge.

PB Members who had attended a hearing where an intermediary was used were asked if they thought that they had enough information about the role and function of the intermediary to make decisions about the practicalities of using the intermediary at the oral hearing. Four of these participants (n=9) stated that they had enough information, one considered that they did not have enough information, and four were unsure if they had enough information.

Twenty-five participants said that they would like to learn more about the role of intermediaries. Five participants did not want to learn more about the intermediary role, and two were unsure.

(1) The extent to which intermediaries are currently used to facilitate communication with vulnerable victims preparing for, and reading, Victim Personal Statements at PB Oral Hearings.

Participants reported zero occasions where an intermediary had been used for a victim, or victim's family member attending a PB oral hearing. Participants would unlikely have been aware if an intermediary had been used in the earlier preparation of a Victim Personal Statement because that process would be undertaken by the Victim Liaison Unit at the probation service.

Seventeen participants considered that there was a role for intermediaries to assist the communication needs of a victim (or bereaved close relative(s) of the deceased) who elects to prepare a Victim Personal Statement, and to support their communication needs at an oral hearing.

Five participants considered that there was no role for intermediaries for victims in PB cases. Fourteen participants were unsure if there was a role for intermediaries with victims in PB cases.

Of those who considered that an intermediary might have a role for victims, participants identified the following list of professionals from an options list as likely having a responsibility to identify the need for an intermediary for a victim. As can be seen in Table I, participants considered that the Victim Liaison Officer from the probation service would be the person most likely to hold the responsibility for identifying the communication needs of a victim, or family member with communication support needs.

Table I: Professionals who might have a role in identifying cases where an intermediary is required for a victim preparing a statement and attending an oral hearing.

Person Responsible	Frequency
Victim Liaison Officer (Probation Service)	22 (95.7%)
MCA Member (Member Case Assessment)	1 (4.3%)
Panel Chair	2 (8.7%)
Other*	1

- Other: Secretary of State’s representative

Multi answer: Percentage of respondents who selected each answer option (e.g. 100% would represent that all this question’s respondents chose that option)

Number of respondents to this question = 23

(2) The extent to which intermediaries are currently used to facilitate communication with vulnerable prisoners giving oral evidence at PB hearings.

The data collected about the frequency with which an intermediary is recommended for a prisoner was unclear. Of the nine participants who indicated that they had made such a recommendation, some respondents were not sure if they had made the recommendation on one or two occasions. The responses indicated that an intermediary has been recommended between 14 and 16 occasions. However, we cannot know from the anonymous responses if these are individual cases or if some participants sat on the same panel. One participant had recommended an intermediary once or twice at the Member Casework Assessment (MCA) stage, therefore, at the earliest stage when the PB received the Secretary of State for Justice’ referral.

Participants identified that a legal representative had requested an intermediary be used on six occasions for prisoners attending an oral hearing. Again, we cannot be certain that these cases are in addition to the 14 to 16 occasions identified above.

Panel Chair participants, having read an intermediary report, had agreed that an intermediary be appointed to attend an oral hearing for a prisoner on five or six occasions. This data appears to be the most reliable figure in ascertaining the actual use of intermediaries in oral hearings in the current sample.

There was a range of experience in terms of appointing an intermediary for use at a PB oral hearing. One participant stated, 'Despite serving a full 10 years on the PB, I have never been in a hearing where an intermediary was used or considered. There have certainly been issues with communication for a large variety of reasons - we have dealt with these simply by being flexible and patient (panel members and professionals all trying their best!), I think there could be a valuable role for intermediaries in the system - this needs to be more widely advertised to the membership'.

Another participant with experience in the criminal courts reflected, 'I have asked at the MCA stage for the Legal Rep to highlight any other considerations suitable for their client (in order) to enable his participation, but I appreciate that is a world away from actively engaging an intermediary. I regret to say I had not given it much thought, despite having successfully employed the services of intermediaries in the Crown Court in a previous role'.

In the absence of PB practice guidelines, some members have used their discretion to permit intermediary assessment and attendance at oral hearings. Nine participants had previously recommended that an intermediary assessment be considered while thirty participants had not identified the need for an intermediary assessment.

Panel Chairs considered the intermediary appointment as necessary for the following reasons:

- I was advised by the psychologist member.
- Both cases the prisoners were young men (20/21) with very low IQ and additional learning disabilities such as ASD. It was clear from court reports that they would struggle to understand and participate in the oral hearing process.
- Mental health issues.
- Deafness.

According to the research findings, Panel Chairs had not declined to appoint an intermediary on any occasion, having read the intermediary report.

(3) Is there a perceived role for intermediaries at PB Oral Hearings?

When an intermediary was used at an oral hearing both receptive and expressive communication needs were facilitated. Participants' free text responses identified comprehension and ability to express themselves as communication issues where an intermediary had been used at an oral hearing. Other occasions identified were those in a case where a prisoner who had impaired hearing and another prisoner with attention deficit. This means that prisoners were likely to need assistance to both understand the questions that they were asked as well as having access to a qualified communication specialist to assist them in expressing themselves, orally or otherwise, when replying to questions.

Participants identified several ways in which intermediaries were utilised at an oral hearing:

- Liaison between the prisoner, legal representative, and panel chair
- Recommending breaks
- Support
- Ensuring the prisoner understood questions by checking the prisoner's understanding.
- Using communication aids to facilitate communication.
- Advising the panel on how to rephrase questions so that they can be better understood.

The benefits of using an intermediary at a PB Hearing, as identified by participants included:

- allowing the legal representative to focus on their role.
- giving the prisoner confidence that they could ask for a break or assistance.
- providing pre-hearing advice on the prisoner's communication abilities and needs.
- how to best ensure that the panel were obtaining reliable evidence from the prisoner.
- providing advice on how to write the Licence Conditions so that the prisoner understood them fully.
- enabling the prisoner to both understand the proceedings and to express themselves better.

The range of communication support needs that PB members considered prisoners attending an oral hearing may present with are identified in Table II

As can be seen in Table II, participants selected communication needs relating to a learning disability as the most frequent item in a list of options where they have previously thought that a prisoner needed communication support. Participants were instructed to interpret the term *communication support* as they wished. This was followed closely by recognising that communication support was needed in terms of prisoner attention and concentration difficulties. Less frequently identified were

needs related to word finding difficulties and stammer. Hearing impairment was identified in free text responses.

Table II: Types of communication difficulty identified in prisoners.

Communication need	Frequency
Communication needs relating to a learning disability	25 (75.8%)
Attention / Concentration Difficulty	22 (66.7%)
Difficulties arising from personality disorder	18 (54.5%)
Difficulties arising from mental illness e.g., psychosis	18 (54.5%)
Difficulties arising from ADHD	17 (51.5%)
Difficulties arising from autism	17 (51.5%)
Difficulties arising from dementia	14 (42.4%)
Difficulties arising from a head injury	12 (36.4%)
Difficulties arising from a history of trauma	11 (33.3%)
Word finding difficulties	8 (24.2%)
Stammer	3 (9.1%)
Other: English as a second language; Language; Deafness; Deaf, English not first language, stroke; hearing difficulties; deafness, English not first language; Deafness and Speech Impediment	

Multi answer: Percentage of respondents who selected each answer option (e.g. 100% would represent that all this question's respondents chose that option)

Number of respondents to this question = 33

(4) How can the use of intermediaries be best implemented, and what are the barriers to achieving this?

The frequency rates in Table III illustrate how participants placed the greatest responsibility for identifying communication support needs for a prisoner on the prisoner’s legal representative, followed by the PB panel chair and then the offender manager in custody. Many participants held the view that the communication need should be identified early in the planning process for the oral hearing by the PB Member who completed the MCA. One participant stated that the responsibility lay with anyone who had contact with the prisoner identifying the communication need.

The benefits of a comprehensive communication assessment were greatly appreciated by one participant, who stated ‘I have a hearing coming up where the panel have been provided with a SALT (Speech and Language Therapist) assessment. It is one of the most helpful assessments I have ever seen regarding how to communicate with a man with autism. As a result, I have directed the SALT to attend, that there is further preparatory work, and that the hearing is over two days. The SALT has given very helpful input about how to communicate with the person’.

Table III: Who is responsible for identifying prisoner communication support needs?

Person Responsible	Frequency
Legal Representative	36 (92.3%)
Oral Hearing Panel Chair	33 (84.6%)
Offender Manager in custody	33 (84.6%)
MCA Member (Member Case Assessment)	28 (71.8%)
Offender Manager in community	25 (64.1%)
Specialist Member	20 (51.3%)
I do not know	1 (2.6%)
Other: Mental Health in -reach team or healthcare; Any panel member; Anyone who has contact with the prisoner should indicate support needs; Prisoner; Psychologist	5 (12.8%)

Multi answer: Percentage of respondents who selected each answer option (e.g. 100% would represent that all this question’s respondents chose that option)

Number of respondents to this question = 39

PB Members reported that in cases where communication support had previously been provided to prisoners at an oral hearing the legal representative was the most likely to have provided the support (frequency 26). This was followed by the Prison Offender Manager (frequency 16), Panel Chair (frequency 16), Co-panellist (frequency 14), and Intermediary (frequency 7). Other professionals were also identified as providing communication support including the prison psychologist, the chaplain, and a key worker.

One participant acknowledged that it is easy to overlook communication needs even when there are some indications within the parole dossier that communication support might be warranted, stating, 'I think that the pressures of wishing to conclude a hearing once the day arrives and the presence of those who can follow and engage in the procedure (such as Community Offender Manager /Prisoner Offender Manager) mean that the hearing is often too late to identify communication needs. There are sometimes indicators in the dossier, such as prisoners who have to undergo modified programmes because of communication difficulties, but I think it is often overlooked even when those signposts are there'.

Practical difficulties encountered when an intermediary was used in the Oral Hearing parole process.

None of the participants stated that the use of an intermediary was detrimental to the PB oral hearing, but some practical difficulties were reported including the necessity to allow additional time for the hearing and the potential for adjourned hearings. One participant stated, 'it made the hearing much, much longer so if an intermediary is to be used, then this case should be listed as the only case on the day'.

Participants identified some other practical difficulties encountered when an intermediary was appointed. One participant stated 'in both cases the intermediary was appointed too late, and we were only presented with their report on the day of the first hearing. This led to adjournments and therefore delay for the prisoner. It also created quite a lot of extra pre-work for the panel, but I felt it was well worth the effort'. Another participant stated, 'just a longer hearing with breaks etc., but this would probably have been even longer without the intermediary'.

The threshold required for appointing an intermediary.

One participant identified that there would need to be a threshold in place to identify when an intermediary should be considered in a parole case, 'I think there may be a role for intermediaries, however I would suggest that it would require quite a high threshold to be eligible. A process which routinely involved intermediaries could seriously hamper the speed and efficiency of the process and have serious cost implications.'

Previous experience with intermediaries in other judicial contexts

There was a range of comments from participants who had used intermediary services in the criminal courts, some being highly supportive of using intermediaries in the PB context, with others adopting a more cautious approach. Examples of the range of opinion is illustrated by the following quotes:

‘I had a good deal of experience with intermediaries when sitting as a judge. They were in my view extremely valuable in securing a fair trial for the defendant. I would warmly welcome their use in parole proceedings.’

Another participant stated:

‘I have not had a case (*in PB context*) where I considered an intermediary was necessary or would have been useful. I have experience of intermediaries with defendants and witnesses in the criminal courts. My experience of the intermediaries has been mixed. Some are very helpful, but others provide little assistance. I can envisage cases where they would be useful for PB hearings for prisoners. But I think these would be limited. However, on those rare cases they can have a very important role in ensuring that a prisoner can communicate effectively.’

One participant considered that the difference in the environment and style of questioning between that taking place in a criminal court and that in a parole hearing reduces the requirement for an intermediary:

‘Intermediary assessments take a long time and cost a lot of money. Often, they add little to the process or the person's understanding. In all but the most obvious cases of impairment I cannot see that an intermediary will in fact assist the Parole Board process, which is much less archaic, less formal, uses more accessible language than for example the Crown Court proceedings.’

Discussion

The participants in this research represented all categories of the PB membership and included accredited Chairs. Participants had a great deal of experience in terms of the number of cases they had sat on and the length of tenure that they have been panel members. The response rate to the questionnaire was rather low and limited the depth of analysis that could be undertaken with the qualitative data but the authors consider that there is enough qualitative information gained from this exploratory research to make the findings valuable to the PB.

This research has found that intermediaries have been used at oral hearings in England and Wales, but this usage currently appears to be rare with limited guidance or infrastructure for their use. The use of intermediaries has been with prisoners and

not with victims preparing and reading Victim Personal Statements. Twenty-five of the research respondents stated that they would like more information about the role of intermediaries. There is generally a strong level of support amongst research participants about the benefits of using intermediaries at oral hearings; there are also some cautionary words of concern / advice including awareness that hearings may take longer, and the parole process delayed.

To effectively monitor the demand for, and usage of, intermediaries, it is recommended that the PB starts to collect data about the frequency that intermediaries attend oral hearings. This may require the introduction of a new professional category on databases and timetables so that demand can be monitored. The PB and other relevant agencies should consider the role of intermediaries for Victim Personal Statements (in addition to the role for prisoners with communication needs). They should consider how this relates to the provision of Special Measures (Right 4) under the Code of Practice for Victims of Crime in England and Wales (2020).

It is recommended that the PB develops practice guidelines as to whether MCA / Panel Members / Chairs have a role in identifying the need for an intermediary. If the PB considers that there is a valid argument for intermediaries to attend oral hearings, providing clear guidance as to who is responsible for locating and funding the intermediary. The PB should also develop practice guidelines for members detailing what to expect if they see that an intermediary is being considered for an oral hearing.

Significantly, the PB in England and Wales has developed additional training for all Members about the effective questioning of vulnerable persons attending oral hearings and this appears to meet obligations under Article 13 UNCRPD. This training closely follows that delivered to advocates in England and Wales by the Inns of Court College of Advocacy (The Council of The Inns of Court, 2022). This adapted training programme, recognising that the PB context of questioning is inquisitorial rather than adversarial, commenced in December 2022 and will reinforce the importance of developing knowledge and skillset for this important issue of enabling effective communication with those who have communication support needs.

The development of this training programme is a major commitment by the PB to enhance the knowledge and skillset of its membership. However, as seen in the criminal courts, even when lawyers who question vulnerable witnesses and defendants have attended workshops to develop their skills at adapting communication with vulnerable persons, they still seek out and benefit from the expertise offered by the communication specialists acting as intermediaries. The practice of using intermediaries in the courts appears to be growing rather than reducing, even when many lawyers have already attended training workshops on adapting communication. HMCTS has introduced Appointed Service Providers in 2022 to standardise the procedure of obtaining an accredited and regulated intermediary. Unfortunately, PB Hearings are currently outside this new scheme.

Intermediaries are entirely focused on assessing communication needs, advising lawyers and judicial office holders how to adapt communication to make it more effective, and identifying miscommunication and minimising the risk of

miscommunication. This reduces the cognitive load on those formulating and asking the questions.

The authors hypothesised that, as PB Members gain additional insight into the complexity of both identifying communication needs, and adapting communication effectively, there will be an increased recognition of the importance of having access to independent communication specialists such as speech and language therapists and intermediaries. The authors of this paper anticipate that, in time, there will be a requirement that vulnerable prisoners with communication difficulties will be provided with an equitable service to that available in the criminal, family, and civil courts. This process could be expedited if the PB was made a Tribunal as recommended by the Justice report (2022) which would give it access to the HMCTS intermediary resources.

Critical issues moving forwards will be how to identify those prisoners with the greatest communication needs, how to provide and fund adequate resources in the form of intermediaries, without causing any undue delays to the progression of those incarcerated, whose risk may have reduced to a level that it can be safely managed on licence in the community. Additionally, how to ensure that intermediaries are accessible to victims or close family members of the deceased with communication difficulties, who are preparing written Victim Personal Statements for parole hearings.

The authors recommend that consideration be given to piloting the use of an intermediary scheme in the parole oral hearing process to ascertain how communication support needs can best be assessed, and by whom, identifying any difficulties in resourcing intermediaries, and to find out if there are any delays to the parole process. This could be done on a regional basis in the adult male estate where most prisoners reside, or in the smaller young offenders estate or the women's estate. Alternative suggestions to pilot an intermediary scheme are the long-term residents of the High Security Estate who have not progressed as anticipated and for prisoners serving sentences of imprisonment for public protection (IPP) who appear to be 'stuck' in the system. Additionally, a spotlight should be shone on the Victim Liaison Service to ensure that victims' (and families) communication needs are identified and supported for preparation and attendance at oral hearings.

Implications for practice:

- The early identification of communication support needs for prisoners and victims attending an oral hearing is essential.
- The PB should raise awareness with the PB Membership about the role of intermediaries.
- The PB should continue to develop guidance and policy surrounding intermediaries.
- Prison lawyers and HM Prison and Probation Service may require specialist training in identifying communication needs in vulnerable prisoners and identifying when a communication specialist might be required for an oral hearing.

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