

## Written evidence submitted by Simon Scott (OUS0006)

### 1. Executive Summary

- 1.1 This evidence submission is based on **Simon Scott's** professional and academic expertise in relation to mandatory life sentences in England and Wales.
- 1.2 Simon Scott is currently undertaking PhD research at Nottingham Trent University and has collected a significant amount of qualitative data regarding the release and management of people serving mandatory life sentences. He previously acted as a consultant to prison law solicitors specialising in parole board applications including several high-profile cases involving judicial review of the release process.
- 1.3 This submission is informed by Scott's PhD data, his professional work and is framed by his wider expertise. It provides a perspective from individuals released into the community after completion of the custodial element of a life sentence. This submission is written in a personal capacity based on academic research and work experience.
- 1.4 The aim of this submission is to explore the impact of public opinion and understanding of sentencing to those people subject to it and to the wider public. Qualitative data from Scott's research informs the evidence of the impact of public opinion on the integration into communities and society of those people who have received the most serious sentence available to the courts for the offence of murder.
- 1.5 It is hoped that the Committee will recognise that public opinion and understanding of sentencing has a direct impact on those subject to custodial sentences and supervision in the community, specifically on the ability of the individual released after punishment to maintain a position in society which is supportive of a productive, crime free life.
- 1.6 This submission directly addresses two of the questions set by the Committee and makes a series of recommendations at the bottom of this submission. The recommendations specifically relate to two areas:
  - The Government and public responses to the most serious offences and the role of media communication on public misconception of life sentencing
  - Ways to improve public understanding of life sentencing, providing an anchor to enhance wider understanding of all sentencing
- 1.8 As explored below the existing lack of public understanding of life sentences undermines key goals of the criminal justice system, including those of reducing reoffending, protecting the public, and integration of people released from custody. Clear communication and effective choice of language when discussing life sentences can go

some way to improving public understanding of life sentences, confidence in the criminal justice system and aid in achieving the goals of the system.

## **To what extent does public understanding of sentencing affect public confidence in the criminal justice system?**

### **2. How does public understanding of life sentences impact their delivery and therefore public confidence in the criminal justice system?**

- 2.1 The Murder (Abolition of the Death Penalty) Act 1965 mandates a sentence of imprisonment for life for any person convicted of murder. This mandatory life sentence has two elements, the custodial period and, following a successful application to the Parole Board, a period served under licence in the community for the remainder of the person's life. The Sentencing Council 2019<sup>1</sup> reports that high levels of the public state in surveys that they understand the meaning of the term 'life sentence'. However, subsequent qualitative research described in the report demonstrates that the understanding of the term and how the life sentence is administered is low. Very few participants in the Sentencing Council research were aware of the application of the life licence to all people convicted of murder.
- 2.2 The minimum period served in custody for a person sentenced to a mandatory life sentence is set according to the guidelines within Schedule 21 of the Sentencing Act 2020. Again, the Sentencing Council research reveals a significant gap between public understanding of the length of the custodial period and the actual length via adherence to Schedule 21 by the sentencing court. You Gov<sup>2</sup> polls relating to the death penalty indicate public support for the reintroduction of the death penalty for murder at between one third to over half depending on the context of the offence. The UK government has committed<sup>3</sup> to not reintroducing the death penalty.
- 2.3 Scott's research identifies that there is a significant gap between the public understanding of life sentences and the operational delivery of life sentences including the Parole Board release process, supervision in the community, and licence conditions which apply to those people serving life sentences in the community.
- 2.4 Furthermore, there is not only a clear gap between public understanding of the mandatory life sentence but also between government policy and public desire for the death penalty. This results in a lack of public confidence in the sentencing of people convicted of murder. Jonathan Simon<sup>4</sup> argues that one of the functions of sentencing for murder is to regulate the public response to instances of violent crime, for example whether the public's fear of violent crime is reduced through the application of the mandatory life sentence. A high level of public understanding of life sentences is therefore key to regulating the public's response to violent crime.

- 2.5 It is clear that the application of the mandatory life sentence does not effectively regulate public fear of violent crime, due to a lack of public understanding of the sentence combined with significant public desire for the harshest possible punishment for murder.
- 2.6 The public fear of violent crime, the lack of public confidence in the sentencing of people convicted of murder, and the lack of understanding of the nature of supervision for people on life licence creates a difficult and potentially hostile environment for those people convicted of murder and released into society. Individuals convicted of murder are portrayed in the media as monstrous, when released the details of the murder are foregrounded, frequently their release is reported as irrational with an emphasis placed on the perceived high likelihood of further violence. This fear of serious violence displays a lack of public confidence in the life sentence and is not supported by Serious Further Offence data. We also know that people convicted of murder released into the community report barriers to integration into society foregrounding public attitudes to murder as the reason for this over and above any statutory restrictions placed on them by the life sentence.
- 2.7 The participants in Scott's PhD research are all serving mandatory life sentences for a conviction for murder. They served between 10 and 32 years in custody and now live crime free lives in the community on life licence. The research participants describe very narrow constrained lives, having formed very small social circles, most often with close family relationships and a small number of friends and colleagues. Criminological research describing the process of moving from a life of crime to a non-offending life<sup>5</sup> very clearly highlights the importance of *belonging* as a key element in living a crime free life following imprisonment. Offending Behaviour Programmes delivered in prison place emphasis on developing supportive social networks as necessary to maintain a non-offending future. However, it is widely accepted in criminological research<sup>6</sup> that those convicted of the most serious offences such as murder will not be able to gain wide social acceptance, a place in society and a sense of belonging.
- 2.8 People serving mandatory life sentences are unable to play a full part in society following release from prison. People describe threats of physical harm, carrying a stigma, being unable to integrate into community activities, being hyper-vigilant, and being 'outed' in the press leading to loss of employment or accommodation. Participants in Scott's PhD research frequently report that their life is constrained by the belief that if their conviction was known to their associates they would, at the very least, be ostracised.
- 2.9 Therefore, the lack of public understanding of the life sentence and supervision leads to barriers to a pro-social, integrated and productive life. The priority of the probation service is 'to protect the public by the effective rehabilitation of offenders'<sup>7</sup> however this goal is undermined by lack of public understanding. The isolation and stigma experienced by those convicted of murder does not protect the public, it actively works against the creation of protective factors via wide socially supportive networks. Rather than demonstrating the potential of the criminal justice system to facilitate change in

individuals, the lack of public understanding increases the overall risk of harm to society and ultimately further undermines public confidence.

### **What could be done to improve public understanding of sentencing?**

#### **3. Given the public's abhorrence of murder, what can be done to improve their understanding of the application and administration of the life sentence?**

- 3.1 The mandatory life sentence is the only sentence given for a conviction of murder. The legislation which determines the minimum term, progression to open conditions and release into the community on licence is clear and prioritises the minimisation of risk of serious harm to the public. The mandatory life sentence is an appropriate and effective tool by which people convicted of murder are imprisoned and, in almost all cases, subsequently released into the community under supervision. The administration of the mandatory life sentence and its protective nature is not, however, understood by the public, and it should be recognised that fear of crime, particularly extremely violent and offences where there is a sexual element is not in proportion to an individual's risk of becoming a victim of crime.
- 3.2 There are three key points in the mandatory life sentence: conviction, transfer to open conditions and release. It is at these points that the conviction is covered by mainstream media and is often the subject of wide discussion on social media. These points also present an opportunity to improve public understanding of sentencing and the administration of the sentence in general. However, media commentary on these crimes by members of parliament and government ministers focuses vividly on the index offence and makes morality-based judgements rather than highlighting the processes in place which safeguard the public, particularly around the supervised release of an individual into the community.
- 3.3 The public expression of a personal view of government ministers, particularly by the Secretary of State for Justice, as to the morality of Parole Board release decisions undermines public confidence and understanding of the application of the life sentence. In cases which receive widespread media coverage often there will be commentary from political figures. Generally, these take a 'tough on crime' approach, voicing abhorrence of the index offence, questioning the minimum custodial period set, or the rationality of the Parole Board recommendation for open conditions or the decision to release. They do not in general support the structures and systems in place for the sentencing and supervision of people convicted of murder but rather question them. Guidance could and should be provided to highlight the damaging nature of these statements and how they are likely to increase fear of crime, cause harm to individuals and undermine public understanding of, and confidence in, the criminal justice system.
- 3.4 Using evocative and vivid language to describe serious offences, sentencing and the release of someone serving a life sentence will lead to members of the public having a

strong affective reaction. Evocative, vivid, and visual language used when describing serious offences not only misrepresents the risk to individuals and may lead to fears disproportionate to the actual risk of harm but also inhibit the understanding of the sentence and its administration. Therefore, to increase public understanding of sentencing it is necessary to avoid this language and to adopt a more factual tone. This would not misrepresent the impact of serious offences but would be an opportunity to enable the public, when engaged on the subject of the criminal justice system, to understand the details of the sentence and its administration.

- 3.5 Similarly, the vocabulary used to describe people convicted of murder, their sentences, the release process, and supervision must change to enable understanding. Not only can language such as stigmatising labels be inaccurate and damaging<sup>8</sup> but it leads directly to public misunderstanding of the life sentence. Some terms used, like *life imprisonment*, are very obviously open to being misunderstood since it does not mean *life in prison* which is a common but inaccurate understanding. That a person sentenced to *life imprisonment* is subsequently released undermines public understanding and confidence.
- 3.6 The use of open conditions to prepare those serving a mandatory life sentence is not well understood by the public. There is a tension between the harm caused by such individuals in the past and the public's perception of the risk of future harm they present. The housing of someone labelled as a *dangerous offender* in open conditions is likely to undermine public understanding of the administration of the sentence. The effective use of open conditions as part of the custodial period of the life sentence should be explained clearly to the public.
- 3.7 The Ministry of Justice should take inspiration from the Parole Board's agenda on open justice, their engagement with the public their clarity and non-emotive way they describe their role. For example, the Chief Executive of the Parole Board, Martin Jones CBE, provides blog posts and engages in Twitter and LinkedIn discussions relating to the Parole Board's role and processes in clear and non-emotive language. The Parole Board have also commissioned a series of short videos informed by those whose lives have been impacted by the parole process including parole applicants and those who have been harmed by serious offences and their families.

#### **4. RECOMMENDATIONS**

- 4.1 This submission makes 10 recommendations regarding public understanding of and confidence in the mandatory life sentence. These focus on two questions posed by the Committee as detailed above and although they relate to the mandatory life sentence, they may be more widely applicable to other sentences. The recommendations cover two main areas and are:

#### **The Government and public responses to the most serious offences and the role of media communication on public misconception of life sentencing**

- The Ministry of Justice should initiate a pro-active campaign via traditional and social media explaining the sentencing and administration of the life sentence. This should focus on the protective processes and policies in place, the supervision of people serving life sentences in the community and the Parole Board's expertise in assessing risk of serious harm. This campaign should utilise the research described in this submission to highlight the potential for change and positive societal impact possible following imprisonment for those serving life sentences.
- The Secretary of State for Justice should constrain their public responses to sentencing, Parole Board recommendations for open conditions and release decisions to clear explanations of the application of legislation and the processes and policy in place to protect the public from harm.
- The processes in place for appealing sentences by the Attorney General and for the reconsideration of Parole Board decisions should be employed where necessary to ensure appropriate sentence length and the lawfulness of Parole Board decisions for people convicted of murder. No additional discourse based on morality should be entered into.
- Engagement in social media by government officials, particularly those directly responsible for the criminal justice system should be restricted to a clear discussion of the protective processes and policies in place. Individual morality-based commentary or engagement on the details of individual cases should be avoided.

### **Ways to improve public understanding of life-sentencing**

- Data on Serious Further Offences presented by the Ministry of Justice should provide additional detail, enabling analysis to establish clear, accessible evidence as to the types of further offences committed by individuals serving mandatory life sentences. This evidence should be published regularly with a clear explanation in full and summary form.
- The Ministry of Justice should consider upcoming research from the Centre for Crime, Offending and Prevention at Nottingham Trent University into the harmful affect of language used to describe the most serious offences. This research will seek to ascertain the relationship between overly emotive language regarding murder and the impact this has on the public's ability to understand the application of the life sentence.
- The research will consider the use of misleading terms, such as *life imprisonment* and *life sentence* and the potential for simple but clear language to be used in describing the mandatory life sentence.
- Public discussions of the mandatory life sentence should emphasise that release from custody does not end the life sentence. Consideration should be given to using phrases such as *released from custody to serve the remainder of the life sentence on licence in the community*.

- The Ministry of Justice should consider Simon Scott's upcoming PhD thesis *What makes a Good Life for a Lifer?* which includes analysis of qualitative data describing the post custody experiences of men serving life sentences in the community. This can contribute to increasing public understanding of the personal growth and change achieved by individuals and the positive societal impact people serving life sentences have made following release into the community on licence.
- The effectiveness of open conditions both in terms of the benefits to the individual serving a mandatory life sentence and the low potential of harm to the wider public should be communicated to the public.

4.2 Simon Scott is available to provide further evidence or oral evidence if called.

July 2022

## References

<sup>1</sup> <https://www.sentencingcouncil.org.uk/wp-content/uploads/Public-Knowledge-of-and-Confidence-in-the-Criminal-Justice-System-and-Sentencing.pdf>

<sup>2</sup> [https://yougov.co.uk/topics/politics/explore/topic/Death\\_Penalty?content=all](https://yougov.co.uk/topics/politics/explore/topic/Death_Penalty?content=all)

<sup>3</sup> For example, in a response to a petition to parliament in July 2020  
<https://petition.parliament.uk/petitions/304809>

<sup>4</sup>

[https://heinonline.org/HOL/Page?handle=hein.journals/marqlr94&div=38&g\\_sent=1&casa\\_token=6oExsyBGW4oAAAAA:v4xmgnZAnd1MKgkztg9pK6SZY9orPE8TymMbRk9aj19LMCt\\_h\\_YsKlxhvLLKOreeeDyCX9UIIA&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/marqlr94&div=38&g_sent=1&casa_token=6oExsyBGW4oAAAAA:v4xmgnZAnd1MKgkztg9pK6SZY9orPE8TymMbRk9aj19LMCt_h_YsKlxhvLLKOreeeDyCX9UIIA&collection=journals)

<sup>5</sup> For example, Graham, H., & McNeill, F. (2017)  
<https://dspace.stir.ac.uk/bitstream/1893/25882/1/Graham%20and%20McNeill%20%28Carlen%20and%20Franca%29%20--%20Final%20Chapter%20for%20Routledge%20English%20edition.pdf>

<sup>6</sup> For example, Nugent and Schinkel (2016)  
<https://journals.sagepub.com/doi/pdf/10.1177/1748895816634812>

<sup>7</sup> <https://www.gov.uk/government/organisations/probation-service/about#:~:text=Our%20priority%20is%20to%20protect,to%20turn%20their%20lives%20around.>

<sup>8</sup> [http://irep.ntu.ac.uk/id/eprint/46214/1/1540991\\_Winder.pdf](http://irep.ntu.ac.uk/id/eprint/46214/1/1540991_Winder.pdf)