In the News: commentary on the cases of John Worboys and Jon Venables

By Thomas Evans and Graham Gilbert

John Worboys and the missing success story

In January 2017, news broke that John Worboys (aka the black-cab rapist) was to be released from prison following an oral parole hearing. Large swathes of the mainstream media understandably adopted a critical approach to reporting with a particular focus on the failure to charge a number of additional complaints. However, as a result of the secrecy surrounding decisions of the Parole Board; missing from the public discourse is the question of whether this could actually be a success story for the criminal justice system.

Background

Mr Worboys was convicted of a single offence of rape and multiple sexual assaults following trial and sentenced to indeterminate imprisonment for the public protection ('IPP') with a minimum term of 8 years. Numerous additional allegations were received by the police which were not subject to charge. He is scheduled to be released having served 10 years in custody (including time spent on remand).

The case garnered significant public attention in part due to the appalling nature of the allegations but also the subsequent IPCC investigation. The latter concluded that there had been a litany of errors in the investigations of early allegations (which if handled properly might have prevented further offences), and, notably, bias by the police against victims.

Opinion

IPP sentences required an offender to remain incarcerated for a period of time before becoming available for release at the discretion of the Parole Board. Oral hearings are generally only conducted where there is a realistic prospect of release, the panel is made up of 3 members and is usually chaired by a Circuit Judge (the latter is a mandatory

requirement where the offender is serving life imprisonment). The Parole Board will only recommend the release of an offender where 'satisfied that it is no longer necessary for the protection of the public'. This type of sentence was heavily criticised (and subsequently abolished) in part due to the fact that an offender could only demonstrate a reduction in risk as a result of completing courses which were often unavailable either due to a lack of resources or the fact that the offender continued to maintain their innocence. There remain thousands of offenders incarcerated subject to IPP sentences.

Prior to the hearing a dossier is compiled. In the case of Mr Worboys we know that his dossier exceeded 400 pages and included reports from 4 separate psychologists. We also know that a number of victims were not contacted and accordingly their views would not have been taken into account. The failure to engage with victims is inexcusable and entirely deserving of both criticism and review.

However, the decision not to charge Mr Worboys in respect of other allegations, while significant in determining the length of his minimum term, likely had less of an impact on the assessment of risk than many would presume. In *R v Parole Board ex p Bradley* [1991] 1 WLR 134, the High Court considered the level of risk required to justify the continued incarceration of an offender who had served their minimum term concluding as follows:

> First, the risk must indeed be 'substantial' […] but this can mean no more than that it is not merely perceptible or minimal. Second, it must be sufficient to be unacceptable in the subjective judgment of the Parole Board, to whom Parliament has of course entrusted the decision, the decision, that is, whether to recommend release on licence, which recommendation is itself a necessary precondition to the exercise of the Secretary of State's final discretion. Third, in exercising their judgment as to the level of risk acceptable, the Parole Board must clearly have in mind all material considerations.

The inherent contradiction between 'substantial' and 'not merely perceptible or minimal' has been subject to judicial criticism. However, it remains good law that the Parole Board must take a wide approach to the assessment of risk and it is inconceivable that 'all material considerations' would not have included the full extent of Mr Worboys alleged criminality. Any document may be put before the Parole Board whether or not it would be admissible in a court of law.

Mr Worboys elected to test the accounts of his victims and was convicted by a jury, he then unsuccessfully attempted to appeal his convictions. Nevertheless, he has almost certainly now accepted his guilt and most probably admitted that his criminal behaviour extended beyond his convictions. He would not have been able to persuade the Parole Board that continued incarceration was unnecessary without significant engagement in courses of rehabilitation and quite possibly a spell in a therapeutic community which necessarily require an offender to address their previous criminality through group and one-to-one therapy. An assessment of reduced risk also indicates that resources were made available to address the triggers of Mr Worboys' offending behaviour.

Conclusion

Due to the secrecy surrounding determinations of the Parole Board we cannot know how they arrived at their decision. Reviews of the risks presented by a given offender necessarily involve a scrutiny of their private lives dealing with matters of a personal and intimate nature. Nevertheless, the public interest in cases such as this must surely outweigh an individual's Article 8 rights. It may be (given the ultimate decision) that Mr Worboys was successfully rehabilitated during his incarceration but the public remain in the dark. A judicial review brought by victims of Mr Worboys is pending and he has agreed to disclose all the documentation in his case: perhaps this will bring to light whether this was a gross error of judgment or a rare success story for the criminal justice system.

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Jon Venables Sentence

On 7 February, Jon Venables appeared at the Old Bailey to receive his sentence for three offences of making indecent photographs of children, contrary to section 1 of the Protection of Children Act 1978, and one offence of possession of a paedophile manual, contrary to section 69(1) of the Serious Crime Act 2015. This was the second time Venables appeared before a court for such an offence, having previously been convicted of similar offences in 2010. Prior to that, of course, he had been convicted, along with Robert Thompson, of the notorious murder of James Bulger in 1993.

On this occasion the first three counts on the indictment reflected the three categories of image found in Venables'possession. The images totalled 1170, of which 392 were Category A images. For these offences, Venables received concurrent sentences of:

- Count 1 (Category A images): 32 months' imprisonment;
- Count 2 (Category B images): 24 months' imprisonment; and
- Count 3 (Category C images): 18 months' imprisonment.

For the offence of possessing a paedophile manual, Venables received a sentence of 8 months' imprisonment, to be served consecutively to the sentences passed for the indecent images.This gives a total of 40 months' imprisonment and a starting point of 60 months. However, as the sentencing judge, Mr Justice Edis, noted: "there is no guarantee that you will be released when you have served the sentence" as a result of his being on licence for the life sentence passed for the murder.

This is a notably heftier sentence than many other defendants would receive for such offences. After all, those convicted of making/possessing Category A images would normally face 3 years', or 36 months', custody at most, and that would be after trial (assuming that they were not made subject to an extended sentence under the provisions of the Criminal Justice Act 2003, which Venables was not). Venables had pleaded guilty at the first opportunity, even making remarks to the police when he was arrested for the offence. He was given a full third discount from his sentence as a result. This means that Mr Justice Edis took a starting point of around 42 months, or 3 and a half years, as appropriate for this particular offence.

The other two images offences sentences were similarly much more robust than might normally be the case. For making/possessing Category B images, the usual maximum under

the guidelines would be 18 months', whilst Category C would attract sentences of up to 6 months'.

In Venables' case, allowing for a third discount for his plea, it would appear that starting points of around 36 months' for the Category B images and 24 months' for the Category C ones were adopted.

The question that arises from this is: how did Mr Justice Edis come to arrive at such apparently high sentences?

The answer is relatively straightforward: there were an extremely high number of aggravating features identified by the judge, alongside "very limited mitigation". Even Venables' candour with the police and early plea were met with the caveat that he "did not have much choice".

Of the aggravating factors identified by Mr Justice Edis, perhaps the most serious were the previous conviction from 2010 for the same offence and that these offences were committed whilst on licence. The breach of licence was described as "manipulative, persistent and dishonest as well as seriously criminal in itself". It was noted that a particular browser, TOR, was used. This allows anonymous browsing and access to the dark web. Mr Justice Edis concluded that this, along with the proportion of high level images, "suggests deliberate searching for a collection of this most repulsive material".

The Judge also noted the possession of a paedophile manual as an aggravating factor for these offences, as well as one in its own right, and that it suggested the possibility of a move towards so-called contact offences. The age, vulnerability and apparent pain of some of the subjects were also aggravating, as was the fact that the collection included moving images.

The view was taken that the large number of aggravating factors meant that the sentence should be moved up a level and the guidelines normally reserved for distribution offences utilised. For distribution of Category A images, the guidelines indicate a starting point of 3 years' custody, with a range of between 2 and 5 years. Mr Justice Edis then elevated the starting point slightly from 3 years in the manner and for the reasons already indicated. The starting point of 42 months' falls comfortably within this range, as does the eventual sentence passed for this particular offence.

However, this reasoning does not fit so comfortably when applied to the sentence imposed for the Category B and C image offences.

As previously mentioned, it would appear that the Learned Judge took the view that the appropriate starting point for the Category B images was 36 months. The Sentencing

Guidelines for distribution of Category B images provide for a starting point of 12 months' custody, with a range of 26 weeks' to 2 years. Whilst Venables' eventual sentence was within this range; the starting point would appear to have been well outside of it.

Similarly, the guidelines indicate a starting point of 13 week's custody for distributing Category C images with a maximum of around 26 weeks'. An apparent starting point of around 24 months is, therefore, four times the usual maximum sentence.

Conclusion

Does this leave a route open to Venables to appeal the sentence? In reality there is little practical advantage to doing so. Not only are the potentially excessive sentences subsumed by the entirely proper one for the Category A images but, as has already been noted, Venables was on life licence for his 1993 offence. It is uncertain when, if ever, he would be released on that even if any sentence was reduced on Appeal.

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