PAROLE PUBLIC INQUIRY HELD UNDER THE INQUIRIES (EVIDENCE) ACT 2003

REPORT OF GEOFFREY FRIEND KARRAN M B E: T H.

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NOTE. Deletions and amendments have been made to the original report submitted to the Council of Ministers on the 1st February 2017 on the advice of H M Attorney General. These are indicated in red on this amended report.

PART 1
CHAPTER 1
INTRODUCTION

1. At a sitting of Tynwald held on 22nd July 2015 the following resolution was passed: -

   "(1) an Inquiry be established by the Council of Ministers, pursuant to section 1 of the Inquiries (Evidence) Act 2003, to:

   i) examine the circumstances whereby it was deemed appropriate to release Donovan Kitching on parole from the Isle of Man Prison, whereupon he was subsequently able to cause the death of a member of the public on 26th April 2014,

   ii) determine whether there were any deficiencies in the practices or procedures of the Prison and Probation Service and the Parole Committee in relation to parole, whether specifically in this case or more generally,

   iii) make such recommendations as the person conducting the Inquiry deems necessary in order to secure and promote public confidence in the early release of prisoners on parole,

   and

   (2) The powers conferred by the Inquiries (Evidence) Act 2003 shall be exercisable by such an Inquiry."

2. On 27th July 2015 I was notified by the Cabinet Office that I had been appointed by the Council of Ministers to hold the aforesaid Public Inquiry and I accepted the appointment on 30th July 2015. I was also informed that I would be given the benefit of any legal advice required by me through the good auspices of Miss Norman, a Senior Advocate in Her Majesty's Attorney General's Chambers. I am very grateful for the advice given to me throughout by Miss Norman.

3. In view of my lack of prior knowledge of the parole process in the Isle of Man I determined that the Public Inquiry should be held in two parts with the first part to ascertain the practices and procedures of those involved in the parole process and with the second part to concentrate on the release of Mr Kitching.

4. I caused a Public Notice of the Inquiry to be issued on 27th and 28th August 2015 inviting submissions to be sent to me on or before 25th September 2015 by anybody in relation to the particular matters referred to in the Tynwald Resolution. On 17th and 18th September 2015 I caused a further similar Public Notice to be issued. I was very disappointed at the poor response to such notices and in particular the lack of any response from the Parole Committee or any of its members or from any Probation Officer.

   On 7th October 2015 I wrote to interested parties asking for their involvement in the Inquiry and for their help in obtaining any information that would help me comply with the wishes of Tynwald. This resulted in a further small number of submissions being received. Also I had to exercise my powers under the Inquiries (Evidence) Act 2003 to obtain relevant documentation and to compel certain people to give evidence to the Inquiry. I enclose in

Appendix B copies of all submissions made to me, some before the hearings and some as final submissions.

5. I gave notice that the first part of the Inquiry would commence on 23rd October 2015 and set a number of days for this hearing.

6. Under the powers contained in the Inquiries (Evidence) Act 2003 I gave Interested Parties Status at the outset to the Department of Home Affairs (hereinafter called “the Department”), the Minister of that Department (hereinafter called “the Minister”), the Parole Committee (hereinafter called “the Committee”), Mr McColm the Governor of the IOM Prison at the time of the Inquiry, Mrs Martin the Head of Community Rehabilitation at the IOM Prison at the time of the Inquiry, and Mr Parkes a Member of the Committee. Subsequently I received applications for and granted such status to Professor Scarffe a Member of the Committee in 2014, Mrs Lynda Watts the Supervising Probation Officer in 2014 and Mr Stuart Valentine the son of Mrs Gwen Valentine the member of the Public referred to in Section (1) (i) of the Tynwald Resolution as the person killed on 26th April 2014. In the main the Committee were represented by Mr Kevin Morgan and I found his involvement in the hearings to be extremely beneficial.

7. On 16th October 2015 I became aware that the Committee was seeking legal representation to appear at the Inquiry and wanted the Department to pay the cost of such representation.

8. On 18th October 2015 I was notified by a Member of the Committee that it had concerns over the status and authority of the Inquiry and the validity of my appointment.

9. I took legal advice from Miss Norman on these issues raised and responded to the Committee Member on 19th October 2015 indicating that based on legal advice I was satisfied that there was no uncertainty as to the status of the Inquiry and that my appointment had been properly made. Allegations were made that I had consulted with the Minister regarding the issues involved in the Inquiry. I made it clear to the Committee and repeat now that, at no time, did I have a meeting with the Minister to discuss issues relating to this Inquiry.

10. On 21st October 2015 I received a formal submission filed on behalf of the Committee challenging the independence of the Inquiry, questioning my right as to the order in which I wanted to hear the issues and asking for information on the procedure I intended to adopt.

11. I replied to the Committee on 21st October 2015 setting out the procedure I intended to adopt and also inviting the Committee to appear before me on 23rd October 2015 if they wished to raise any issue of procedure, status and impartiality.

12. On 23rd October 2015 I opened the Inquiry and Mr Kermode the Chairman of the Committee appeared and indicated that the Committee wished to raise legal argument in relation to several important technical and procedural issues and current irregularities, and in particular the independence of the Inquiry. As the Committee was still waiting for an answer from the Department over the payment necessary for it to have legal representation he asked for an adjournment of the Inquiry.

13. I was extremely disappointed that despite the public notices having been issued by me in August, procedural issues were only raised by the Committee on 18th October 2015, five days before I intended to commence the Inquiry. Reluctantly, I adjourned the hearing and

informed all parties that if any person or committee wished to raise any preliminary issue then I wanted to receive a full submission of the same by 6th November 2015 and would sit on 13th November 2015 to deal with any preliminary arguments.

14. On 12th November 2015 in the company of Miss Norman I met with certain members of the Committee to see if I could satisfy them over issues that they had regarding the Inquiry and my position.

15. I re-opened the Inquiry on 13th November 2015 and appearances were entered on behalf of the Department and by Mr John Kermode the Chairman of the Committee. Discussion took place over the status of a document setting out twenty nine various points to be considered in connection with an Inquiry. I had been told that this document had been prepared by the Department for the benefit of the Minister but it did not go to Tynwald. It had been supplied to try and assist the Minister in applying to the Council of Ministers and Tynwald for the Inquiry to be set up. I was told it was not binding upon me or the Inquiry. Mr Kermode asked also if a daily transcript of the evidence taken could be supplied and I indicated every effort would be made to supply transcripts as soon as possible although it was not possible to do so on a daily basis. Then he asked for a further adjournment to seek legal advice and again I agreed reluctantly but indicated that I intended to hold the Inquiry between 14th and 16th December 2015 but I would sit again on 25th November 2015 to enable any person or Committee to raise any preliminary issue with me.

16. On 25th November 2015 I re-opened the Inquiry and only a representative of the Department appeared before me. No appearance was entered on behalf of the Committee and so no preliminary point was formally raised. I ordered that the Inquiry would reconvene on 14th December 2015 for hearing evidence from witnesses.

17. The Inquiry resumed on 14th December 2015 when evidence was taken on oath from a number of people, with all evidence tape recorded. I set out in Appendix A to this report the names of all persons who gave evidence to the Inquiry either during Part 1 or Part 2. A transcript was also produced of all the evidence submitted and copies of the transcripts are attached in Appendix C hereof.

18. Following the taking of all evidence on Part 1 of the Inquiry I adjourned and gave Public Notice once again inviting any person or organisation to submit evidence that would be relevant to Part 2 of the Inquiry. It had been my hope in July 2015 when I was appointed that I would have finished the taking of all evidence before the middle of January as I was due to have a new hip operation at that time. The delays that had occurred in commencing the Inquiry, which I have set out above, and were outside my control, resulted in me having to put off the commencement of Part 2 of the Inquiry.

19. I resumed the Inquiry on 4th April 2016 and for a further three and a half days in April I took evidence from persons as set out in Appendix A hereof. On the final day I closed the Inquiry but indicated that I would be prepared to accept final written submissions from Interested Parties. The last Submission was received by me on 20th June 2016.

20. During Part 1 of the Inquiry certain legal points were raised by the Committee. I referred the matter to the Attorney General's Chambers and on 8th August 2016 I received advice from Miss Norman of Chambers on all these points. This legal advice was circulated to all Interested Parties but no further submissions were made to me by any of these.

CHAPTER 2

THE LAW AND PRACTICES OF PAROLE IN 2014 AND SUGGESTED CHANGES

1. I will now set out the law and practices regarding parole on the Isle of Man, as they existed in 2014, making comment over how I consider they could be improved. I will then deal with the circumstances leading to the release of Donovan Bradley Kitching and his supervision whilst on licence before summarising my recommendations for change and findings in relation to Mr Kitching's parole.

2. The provisions regarding parole or Early Release of Detainees are set out in Schedule 2 of the Custody Act 1995 ("the Act"). There are different provisions for persons serving custody for life, short term detainees defined as those serving custody for less than 4 years and long term detainees defined as those serving custody for 4 years or more.

3. Under Section 2 (1)(a) and (b) of Schedule 2 once a short-term detainee has served one half of his sentence the Department has to release the person unconditionally if serving less than 12 months and on licence if serving twelve months or more.

4. Under Section (2) (2) of the Schedule once a long-term detainee has served two-thirds of his sentence the Department have to release him on licence. Under Section 6 (1) of the Schedule after a long-term detainee has served one half of his sentence the Department, if recommended to do so by the Committee, may release him on licence. The functions of the Department are exercised by the Minister under Section 3(1) of the Government Departments Act 1987 unless the Minister authorises some other person to do so on his behalf.

5. There are other provisions within Schedule 2 which deal with the release on licence of Mandatory and Discretionary Life Detainees. The Inquiry carried out by me concentrated on long term detainees, as Mr Kitching was at the time of his application for parole serving a sentence of 6 years 4 months' custody on each of the two counts brought against him, with the sentences running concurrently. I will in Part 4 of this report be making recommendations regarding the parole law rules and practices, but I consider that they are relevant to all types of release on licences and not just in relation to long term detainees.

6. The Committee is established under Section 23 of the Act which states that the Committee shall advise the Department with respect to the release and recall under Schedule 2 of persons whose cases are referred to it by the Department, the conditions of licences and any other matter referred to it by the Department in connection with the release or recall of persons to whom the Schedule applies.

7. From time to time the Department have made Custody Rules, and in some cases, provisions relating to the Committee have been included in those rules. The rules prevailing in 2014 were the Custody (Amendment) Rules 2007. Section 3 of those rules provided that the Committee should comprise a Chairman, a Deputy Chairman and not less than four and not more than seven other members. It also provided that at least one member should have a legal qualification or a background in criminal justice or experience in the treatment and re-settlement of offenders. The section also empowered the Governor of the Prison to attend each meeting of the Committee, if requested, and that a Dossier should be submitted to the Committee by the Department to enable it to make its recommendation. A copy of the Dossier should be provided to the Detainee. A power to interview the Detainee was granted

to the Committee, with the interview to be conducted by one of its members. The section also provided that the decision over recommendation by the Committee should be sent to the Detainee and if the final decision of the Department was to release on Licence, that decision was to be notified to the Court which sentenced the Detainee, the Chief Constable and the Governor of the Prison together with any conditions attached.

8. I did receive evidence on the constitution of the Committee. Representations were made that a person with experience of the Probation Service would be a valuable member as would a former Detainee within the prison. I see great merit in appointing a person with experience of the Probation Service but consider there may be practical difficulties in obtaining a suitable former Detainee.

9. At the time of the Inquiry there were seven members of the Committee that had been appointed for three year terms by the Department. They consisted of two Manx Advocates, one of whom had sat as a High Court Judge in another jurisdiction. One appointee was from the Business Sector of the Island and another with extensive background in the Airline Industry and had sat on a Pension Board. Another was a former Police Officer with extensive background in terms of community service and was also a member of the Education Advisory Council. The sixth member had a background in Consumer Affairs and the final member who was also its chairman was a former civil servant who had worked on the Island as a Psychologist for children and families. In 2014, at the time the Kitching Parole was considered, there was also a retired Medical Consultant on the Committee. Whilst I was satisfied that the committee which considered Mr Kitching's application was properly constituted and was comprised of very experienced and able members, I do recommend that all Committees in future should be comprised of at least one legally qualified person, at least one medically qualified person, and at least one person with experience of the Probation Service. Otherwise the constitution set out in the 2007 Rules is appropriate.

10. It was made clear to me at the Inquiry that there was insufficient training of members of the Committee once appointed and also a lack of continued training throughout their term of office. I was told that in 2009 two of the present members of the Committee attended a five day training course in the United Kingdom. I will shortly comment on the position in the United Kingdom, but it is clear that the law, rules and practice of parole there are different to what they are on the Island and so education in the United Kingdom in my opinion has limited value. I was also informed that the two members who attended the 2009 course have themselves given training sessions to new members once appointed. The Committee stated in their final submission that the Isle of Man practice should not fall behind relevant UK and European law or good practice and should guard against errors being made in terms of process or outcomes. I agree totally that there has been inadequate training of members of the Committee and this must be changed. I was even told in evidence that the Committee had no access to reference books on parole. In the Department's final submission, it indicated that one reference book referred to in evidence before me by a member of the Committee had been purchased in January 2016. Once the Isle of Man decide on the principles of parole then decisions can be made as to the best methods of training Committee Members and if necessary the Minister, if he still has the final decision, and providing continued education. I believe from the evidence I received that there are now people on this Island who have been members of the Committee, or are still members, who could provide this training, if the recommendations I set out below are adopted. This would

be much more suitable than sending people off the Island to learn about a different parole procedure. Personally I do not see why we need to follow totally UK or European Law or practice. A suitable budget should be found by the Department to finance the training and also pay for books or periodicals from other jurisdictions if the Committee and/or the Minister consider they would be beneficial to their decision-making processes. In their final submission, the Committee suggested five days training for new members and two days training per year for all members of the Committee for updates. The Committee also suggested the subject matter of the training which seemed sensible to me although again this would need to retain flexibility so that any amendment to the training schedule that is considered beneficial could be made. I am confident, however, that by using Advocates in the Attorney General's Chambers, senior persons in the Prison and Probation Service and Committee Members, past or present, adequate training could be given on the Island. A budget for this training should be established by the Department.

11. Whilst therefore there existed in 2014 Rules made under the Custody Act 1995, it has been submitted to me that the laws of the Isle of Man and its rules and regulations do not expressly and clearly state the objectives for the Committee or the Department in dealing with applications for parole. I agree totally with that submission. The legislation and rules fail to state the key factors that should be considered and weighed when decisions are being made. In my opinion this placed the Committee and the Department in a very difficult position in reaching their decisions. Section 23 of the Custody Act gives the Department the power to make rules to govern proceedings of the Committee. Whether therefore this power can be used to introduce proper rules and guidance is not for me to say, but if it is not considered sufficient then I would recommend Tynwald to amend the legislation to empower the Department to make such rules and guidance in the form of secondary legislation with additional powers to vary those rules if circumstances require it.

12. Before I set out what I believe should be adopted as the objectives for parole in the Isle of Man, I should comment on the position in the United Kingdom in 2014 and at this time. I was informed that because of overcrowding in the prisons there and because of pressure of cases being brought to the Parole Board, in connection in particular to life prisoners, it had been decided there that in relation to long term Detainees they would be granted automatic release after serving 50% of their sentence without requiring a specific recommendation from the Parole Board. No party to the Inquiry suggested that I should recommend introducing that system into the Isle of Man. I was referred to Hansard for the debate in 1995 when the Act introduced the present system. The Minister presenting the Bill stated, "I cannot stress too strongly that under new procedures every prisoner has obligations under his sentence for the full period of the term to which he is sentenced, not just to the two-thirds point as at present. Early conditional release not only helps the prisoner but would hopefully lessen the effect of a sentence on the offender's family as he or she will be returned to normal life in the community earlier but under supervision and this should be seen as providing support for often innocent parties to the crime, the offender's family". Whilst to some degree accepting those comments, I feel personally that there was too much influence being placed on the offender and his family rather than on the victim of the crime.

Both the Minister in evidence to me, and the Department in its final submission, stated that parole is a privilege and should remain so. The Department stated that a privilege must be earned and there is no right to release on parole. It continued that those convicted by the

Courts have a right to be considered for early release if they meet the criteria. The decision to release is based on the offender demonstrating that it is appropriate that he is released. Automatic release, earlier than the two thirds currently stipulated by legislation, should be resisted.

I totally agree with those remarks. Clearly it is a matter for Tynwald to decide if the more lax system now adopted in the UK in respect of long term Detainees should be adopted here or whether, as the Department and the Minister have indicated to me, early release should be a privilege and earned. I believe this principle which was in operation in 2014 and still exists is the correct principle for parole but it should be adopted into proper rules and guidance. The Department in making the above statement referred to meeting the criteria but once again no criteria is actually laid down in any rule, and this must be corrected.

13. There was little difference in the submissions I received from the Committee and the Department over what could be set out as the objectives or criteria for granting parole. Both referred to key factors or aims to be considered and weighed in making decisions.

The objectives were identified as:

i) public or community safety;

ii) the risk of re-offending or the resilience of the offender to maintain desistance;

iii) the Applicant's ability to contribute to society or his re-integration or re-settlement into the community and his ability to remain offence free.

The Department also considered that factors could include:

iv) The ability of the Department's Officers to support and where necessary curtail the offenders' activities that in the past led to harm being inflicted on others, and

v) recognition and reward for positive change acknowledging that at times there maybe relapses and this does not represent total failure.

I have no hesitation in recommending that all those provisions could be included into specific rules governing the parole decision. The rules to be adopted to set out these objectives or aims should also make provision for the introduction from time to time by the Department of Codified Guidance Principles to the Committee and the Minister to assist them further in making decisions. These Guidance Principles should address specific objectives and the weight to be given to particular factors.

These factors must include:

a) any educational programmes undertaken in prison;

b) anger management courses undertaken in prison;

c) therapy undertaken;

d) details of medical treatment in prison and the requirement for future medical treatment;

e) victim impact statements and other victim considerations;

f) the existence or non-existence of adjudications in prison against the Applicant or comments made during the prison term by any Officer regarding the character and behaviour of the Applicant.

I consider it is important that these factors are set out in Guidance Principles provided by the Department so that flexibility can be maintained in the provision of these principles. From time to time it may be necessary to make amendments to the document and this can be achieved by leaving the power within the Department.

14. Issues were raised over the independence of the Committee and whether it should be able to obtain its own legal advice. As I have pointed out the decision to grant parole in 2014 remained with the Department and it was only a recommendation that was being made by the Committee. Although I did not receive any specific representation to remove this from the Department, I was asked to consider the effects of the rules of the European Court of Human Rights (hereinafter called "the ECHR") and I address this in paragraph 16 below.

    I will address the issue of independence in a later paragraph as I view the Committee in a different light to other groups established by the Government of the Isle of Man as in the main it was in 2014 not a decision maker but merely an advisor. The Committee can obtain advice from advocates within the Attorney General's Chambers and I would hope that this would continue. There may be occasions when Chambers are conflicted in some way and it would be right and proper to obtain independent legal advice. In addition, there may be occasions when advocates in Chambers are too busy to give urgent advice, and again it would be advisable to seek alternative advice. I believe these types of cases should be few and far between but the Department must be prepared to set aside a budget to cover these remote eventualities.

15. The Committee indicated to me that it had concerns over the fact that it felt exposed to the possibility of an unsuccessful applicant for parole issuing a Petition of Doleance. This clearly is a fear of any statutory body or body appointed by a Department of Government. I am aware that Government provide indemnity to many of these bodies. I certainly consider that the Committee should receive assurance from the Department that it has the benefit of such an indemnity.

16. Concerns were raised by the Committee over the legality of the practices and procedures that were being adopted and in particular issues as to whether there were breaches of the Human Rights Legislation. As a result I took advice from Miss Norman. It had been suggested to me that the basic issue was whether we should regard the Committee as a Court or not. In the United Kingdom, it would appear that they now believe that it should act as a Court. The choice for us in the Island is whether we continue the present position or establish the Committee under the Tribunal Legislation, as an Independent Tribunal, making its own decisions and setting its own policy.

    The present position in the opinion of the Committee leaves it and the Department open to legal challenge. At this juncture, I ought to state that the Tribunals which fall within the remit of the Tribunals Act 2006 are judicial bodies which review decisions of administrative bodies or adjudicate on disputes between specific classes of parties. The Parole Board in England and Wales is currently described on the gov.uk website as being "an independent body that carries out risk assessments on prisoners to determine whether they can be safely

released into the community. Although there are some judicial aspects to the role of the Board, its role is not that of a traditional judicial body. If I accept that changes to the constitution and/or procedures of the Committee are required, I would have to be convinced that the effect of them would be such that the Committee's function would then become sufficiently judicial in nature in order that I could agree that it should be established as a Tribunal. The extent to which the Committee's constitution and procedures presently comply with the requirements of the ECHR is a crucial consideration.

Miss Norman referred me to Article 5 of the ECHR, paragraph 1 which states that everyone has the right to liberty and security of person. No-one should be deprived of his liberty save in certain cases which included the lawful detention of a person after conviction by a competent Court. I was also referred to paragraph 4 which states that everyone who is deprived of his liberty by arrest or detention should be entitled to take proceedings by which the lawfulness of his detention should be decided speedily by a Court and his release ordered if the detention was not lawful. Miss Norman continued that the ECHR has had effect in the Island since 1953 with the Manx Courts being required to have regard to it in the exercise of judicial discretion in addition to the right of individual petition to the ECHR in the case of alleged breach. This right was later incorporated into Manx Law by the Human Rights Act 2001 since when alleged breaches can now be litigated in our Courts. Miss Norman referred me to the case of Weeks v The United Kingdom in which the ECHR observed that there was nothing to preclude a specialised body such as the Parole Board being considered as a "Court" within the meaning of Article 5(4) provided it fulfilled the condition of independence of the Executive and of the parties, and guarantees appropriate to the kind of deprivation of liberty in question of judicial procedure, the forms of which may vary from one domain to another. In addition, it must have the competence to decide the lawfulness of the detention and to order release if the detention is unlawful. The Court took the view that, notwithstanding the manner of appointment of the Board's members (by the Home Secretary), it could not conclude that the Parole Board and its members were not independent and impartial. It did find, however, that the Board lacked the procedural safeguards necessary to ensure the effective participation of the detained person because there was no entitlement to full disclosure of adverse material in the Board's possession. I am informed that, at the time that Weeks was decided, the role of the Parole Board was similar to that of the Committee. The Committee referred to the case of R (on the application of Brooke) v Parole Board for England and Wales concerning the standing of the Parole Board as a "Court" making decisions to which the Secretary of State is required to give effect. Although the Court of Appeal saw nothing objectionable in the Secretary of State making appointments of three year terms to the Parole Board, it felt that the general power of the Secretary of State to terminate a member's appointment was not compatible with the independence of the Board and considered it should be restricted by the establishment of a procedure that ensured that a member's appointment was not terminated without good cause and subject to fair process. The Court also considered the sponsorship arrangement between the Ministry of Justice and the Board defeated the requirement that the Board should be manifestly independent of the Ministry. Accordingly, the Court held that the Parole Board did not meet the requirement of common law and Article 5 of the ECHR for a Court to have demonstrated objective independence of the Executive and the parties.

In the Isle of Man of course it was Section 23 of the Act that provided for the constitution and proceedings of the Committee by Custody Rules made by the Department. Since 2014, the Department passed the Custody Rules 2015. Rule 89 provides for the appointment of the Committee by the Department. Rule 90 makes provision for the tenure of office of members of the Committee including the appointment for a fixed term of three years and removal only for reasons specified i.e. for just cause. The remuneration of the Committee is set by the Treasury in accordance with the allowances provided for under the Payment of Members Expenses Act 1989 as it is specified for the purposes of that Act. There is therefore no equivalent sponsorship relationship as exists in the United Kingdom. The Department does provide administrative support to the Committee, but in the absence of any evidence to the contrary, I am advised and accept that it is difficult to see an argument that this in itself could mean that the Committee could not be independent or impartial. I am also advised and accept that the fact that the Department holds the Policy as regards the early release of detainees and makes the Rules governing the constitution and proceedings of the Committee is not in itself incompatible with the requirements of independence and impartiality.

I am therefore advised and accept that taking into account the issues raised in Brooke, the relationship that exists between the Department and the Committee does not preclude it from being perceived to be independent and impartial. Miss Norman did suggest that if the Department were minded to do so it could decide to remove the Department from the role of appointing members of the Committee and providing administrative support, and transfer its powers to the Appointments Commission and the Chief Registrar. This is purely a matter for the Department and Tynwald and is not one where I consider it necessary to make any recommendation.

Miss Norman continued however in her advice to state that it was more crucial to consider the extent to which the Committee in its present role under Schedule 2 of the Act is required to comply with Article 5 of the ECHR. The Committee acts in an advisory role in decisions to be taken by the Department e.g. release on licence of Long Term Detainees, Mandatory Life Detainees and recall of certain Detainees. The Committee however is the decision maker in the following circumstances:

i) release on licence after recall of a Long-Term Detainee and of a Short-Term Detainee serving an extended sentence;

ii) release on licence of a Discretionary Life Detainee;

iii) release on licence after recall of a Discretionary Life Detainee;

iv) release on licence after recall of a Life Detainee other than a Mandatory or Discretionary one.

In the Brooke case the Secretary of State conceded that Article 5(4) of the ECHR applied to the task of the Parole Board in the UK. Miss Norman continued that the reason for this is that the sentencing court have two objectives when imposing the initial sentence. The first objective is punishment. Once, however, a prisoner has served the penal part of the sentence and is entitled to be considered for release under licence, his continued imprisonment can only be justified in so far as it is necessary to satisfy the second objective, namely the protection of the public. Article 5(4), I am advised, entitled the prisoner to

challenge the lawfulness of his detention on the grounds that imprisonment is no longer necessary to satisfy this objective. The Committee referred me to the case of R v Whiston where it considered whether the decision of the Secretary of State to revoke a decision to release on licence pursuant to the Home Curfew Scheme in the UK was compatible with Article 5(4) of the ECHR. The question for the Court was whether this recall constituted a fresh deprivation of liberty. The Court did not determine that issue as it held that the release on Home Detention was a modified way of performing the original sentence imposed by the Judge and thus recall simply restored the way in which it was assumed the sentence would be served. The requirements of this Article were therefore satisfied by the original trial. Reference in the Whiston case to other cases showed the differentiation in the minds of the Court between cases where the decision about the length of period of detention is made by a Court at the close of the judicial proceedings and cases where the responsibility for decisions about the length of sentence is passed by the Court to the Executive. From the above it can be seen that not every decision taken under Schedule 2 of the Act engages Article 5(4) of the ECHR as it is only those decisions concerning the release of a Life Detainee of whatever category, decisions to recall or decisions to release after recall, which will engage it. In such cases therefore where Article 5(4) is engaged, as set out above, I am advised and accept that for the Committee to be considered as a Court, it must be independent and impartial and have the necessary safeguards in place and the competence to decide the lawfulness of the detention. Miss Norman advised that the Committee has the competence under the Act and Rules to decide on the lawfulness of the detention, in those cases where the Department is required to give effect to a recommendation. As regards those instances where the Department exercises its discretion on receiving the recommendation of the Committee, Miss Norman is less clear and states that this will depend on the extent to which a judicial review by a Doleance claim can be seen as being “proceedings by which the lawfulness of the detention will be decided speedily and the detained person’s release ordered if the detention is not lawful”. As already pointed out the role of the Parole Board in the UK has changed progressively over time to the extent that it has now become the primary decision maker. Miss Norman advises that to put the matter beyond any doubt we should extend the role of the Committee so that it mirrored that of the Parole Board in the UK and became the decision maker for all decisions on release on licence of any class of Life Detainee and also decisions on the recall of any class of Detainee. Changes of this nature would of course require primary legislation.

I am fully aware that the whole question of European Law will be the subject of great debate for many months to come. The status of the ECHR, however, comes from a convention of the Council of Europe and the UK’s membership of that is unaffected by Brexit. I can merely state that I have been legally advised that it is not possible at this stage to form a conclusive view as to whether the present ECHR is complied with under our practices and procedures. What is certain is that we would be compliant if the actual decision making, in those instances referred to earlier, was placed firmly in the hands of the Committee. It would be a matter for the Department and Tynwald whether decisions to release on licence (other than after recall) of Detainees serving determinate sentences should also be taken by the Committee. As this would result in the role of the Committee mirroring that of the Parole Board, it would seem to be a logical step. Provided proper rules and guidance notes are established as recommended by me, I see no public policy reason for not adopting that course of action. In fact, I believe that our parole process on the Island would be enhanced

by passing the decision-making process to the Committee in all cases. I did forward to all persons with Interested Party Status the legal opinion I had received from Miss Norman and I received no adverse comments.

For completeness, whilst I have outlined above certain recommendations, I must say that I do not consider that it is necessary or appropriate "to establish the Committee under the Tribunal Legislation as an Independent Tribunal". As already indicated, it is essential that the Committee should be capable of being considered to be a "Court" for the purposes of Article 5(4), with the attributes of independence and impartiality and the necessary procedural safeguards. The Committee already has many of these attributes and the adoption of my recommendations should secure the remainder. As a body which does not exercise the functions of a wholly judicial nature, I do not consider that the Committee should be established as a judicial body and, indeed, I note that the Parole Board does not appear to have been established as such.

17. In her legal opinion to me Miss Norman also referred to the disclosure of information to the person applying for parole. Under Rule 93 of the Custody Rules 2015 the Dossier submitted to the Committee should be disclosed to that person. There is no requirement to submit any other document or information given or obtained by the Committee. Miss Norman advises that this does not provide adequate procedural safeguards and states that all such documents and information should be disclosed to the Applicant prior to any decision being made for parole or recall. I agree totally and recommend that this practice should be adopted.

18. It was clear to me that in 2014 there was little note taken of the view of the victim of the crime for which the Applicant for parole was in prison. The Committee in their final submission recommended that there should be a provision for a statement from the victim being included in the Dossier as to the impact of release on the victim and his/her family and the potential impact on the community. This is a difficult issue as the victim has the opportunity to make his/ her views known to the Court prior to sentencing. Clearly that can therefore influence the length of sentence the person receives, although I am told this does not always happen. That is a great pity in my view. The Department in their submission recognised that the victim of crime often feels overlooked in the criminal system and they consider that the victim should have a right to be heard as part of the parole process. It suggests the setting up of a dedicated victim service so that victims could supply a submission to the Committee for consideration. It feels however that victims' expectations should be carefully managed to ensure that they do not expect their submission will have a disproportionate impact on the outcome.

In the Inquiry, I had the benefit of general evidence from Mrs Paula Gelling from the charity Victim Support Isle of Man. She was under a duty of confidentiality to her client the victim of Mr Kitching in 2010 and therefore could not give evidence specifically on that case. She was able to inform me that in cases of parole she may be involved and could liaise with the victim if she had already had contact with that person. There was, however, no formalised process to involve the victim in parole. She was firmly of the view that the victim should be involved in the process possibly through her charity or a similar organisation. Once contacted, her charity could then meet the victim face to face and discuss the possible release and the effect on the victim and family. In particular, it would be beneficial to give

the victim the opportunity to make representations on possible conditions of release. I believe that parole should involve the victim, as the whole question of the protection of the public is an important element to the process. It should be established in the guidelines that a body such as Victim Support should in all parole cases be asked to speak with the victim and then arrange for a statement to be prepared by that victim setting out his/her views, in particular how a release could be managed by condition to give victim and family protection. I do not advocate giving the victim the right to appear before the Committee, or any member of the Committee, as this is likely to give the views of the victim too much impact on the parole process.

19. During the evidence given at the Inquiry I became aware that Mr Kitching had been discussed at a MAPPA meeting prior to his release. I was informed that in the Isle of Man we operate a Multi-Agency Public Protection Arrangement Policy (hence “MAPPA”) based heavily on the UK system. In the UK MAPPA is enshrined in the Criminal Justice Act 2003 but no such provisions have ever been adopted into Manx Legislation. I am aware that the Department have set up a full review of MAPPA in the Isle of Man by Mrs Fairley and no doubt her report will be very useful in determining how MAPPA can be improved. Although therefore it is not enshrined in any legislation here, certain bodies act under an interdepartmental practice arrangement on the implementation of risk management procedures. This system identifies responsible authorities, namely the Police and Prison and Probation Service, and identifies high risk offenders and imposes a set of control mechanisms for the management of the risk on MAPPA designated offenders. There are three categories of MAPPA Offenders on the Island and management varies between level 1 and 3. Category 1 is for Registered Sex Offenders, Category 2 for violent offenders convicted of an offence against the person and Category 3 for other dangerous offenders convicted of an offence indicating a capability of causing serious harm to the public.

The Levels at which risk is assessed and managed are as follows:

Level 1 which is used to manage offenders where the risk posed can be managed by a single agency without significant involvement of other agencies. Ordinarily the risk of harm is low to medium.

Level 2 which is for the management of offenders where the risk of serious harm is assessed as high or very high and where active multi-agency participation is required in managing the risk posed. Mr Kitching was placed into this level by MAPPA.

Level 3 which refers to offenders assessed as being at high or very high risk of causing serious harm to the community and those risks can only be managed through close cooperation at a senior level due to the complexity, resource commitments or public interest likely to be generated in the case.

I will comment later on the MAPPA arrangements and management in the case of Mr Kitching. I do however recommend that the principles of MAPPA should be enshrined into legislation in the Isle of Man with proper guidance notes adopted by the Department as to the practices and procedures of those involved in MAPPA. No minutes or notes of the MAPPA meetings were made available to the Committee. I was advised that for legal reasons MAPPA meeting minutes could not be supplied even to myself let alone the Committee. I was given, however, a summary of the meetings. If the legal reasons for

withholding minutes cannot be overcome I certainly recommend that a summary of MAPPA meetings relative to the Applicant for parole should be made available to the Committee to assist in their deliberations. I also recommend that each of the parties involved in MAPPA, namely the Police and the Prison and Probation Service, should send representatives to each meeting, which did not happen in the case of Mr Kitching. I also recommend that a MAPPA Risk Management Plan for each offender assessed as being on Level 2 or 3 must be prepared and in place prior to the release on licence of an Offender. This plan should also be made available to the Offender applying for parole and the Committee to assist in its deliberation. Whatever arrangements were being made in 2014 by the Police to bring Mr Kitching to the attention of its Officers was not adequate. As I will refer to later he was not identified by Officers who approached him and when Police were called to incidents involving him they took no action to bring the matters to the attention of the MAPPA authorities or anyone else.

I recommend that if there is any contact with the Police regarding a person on licence a report should be submitted to the Supervising Probation Officer, the Committee and the MAPPA committee even if there is no formal breach of licence conditions. I am sure that Mrs Fairley will in her review deal with other issues to improve the MAPPA process such as involving other agencies in this process and a more structured management of these Offenders released on licence.

20. I did receive criticism at the Inquiry that the Committee did not place sufficient emphasis, in reaching decisions, on the question of rehabilitation. Certainly, the new Officers now appointed to the Prison and Probation Service on the Island were quite clear of the value of rehabilitative interventions. Indeed, I was pleased to see the Isle of Man being the first place in Europe to look to adopt a full range of interventions and become a world leader in the approach to offence focussed programme delivery. Some of these interventions included Victim Awareness, Education and Employment, Alcohol Awareness, Anger Management and Cannabis Awareness. Mr Kitching's attendance at these programmes would have been evidence to support a recommendation for parole, whereas a refusal should have been to his detriment.

21. What was also clear to me was the lack of data available in 2014 with regard to the success or otherwise of the parole system. In a submission of evidence by the Department it stated that between 20th September 2012 and 27th August 2015 there were forty one cases where parole was granted, which amounted to 76% of the applications received. Seven people or 17% of those granted were subject to recall- two for re-offending, two for drugs and three for general behaviour.

This was an increase from previous periods. In a later submission from the Prison and Probation Service I was told that between January 2013 and January 2016 there were fifty eight cases examined- eighteen were transferred to the UK prison service and so received automatic parole after 50% of their term, as once transferred a Detainee becomes subject to the UK parole rules. This may seem unfair on prisoners retained in the IOM but in my opinion should not influence how we deal with prisoners serving their sentences here.

Of the forty remaining cases, thirty one people, or 77.5%, received parole on application, two of those thirty one cases were later recalled. As to the final nine people, six got parole on 2nd application, one of whom was subsequently recalled for re-offending, two have

reapplied and were awaiting a decision at the time the submission was made to me and the final one decided not to re-apply. When I asked the Department representative at the Inquiry and the present Governor for any facts as to the overall re-offending statistics for released prisoners, they both stated that there were no accurate details but the Department representative stated that about 50% of prisoners re-offend within two years of release from prison in the Isle of Man which is lower than the re-offending rate in the UK. I believe it is essential for the Department to keep actual records of prisoners released on licence, or otherwise, and the details of re-offending. This information should be always available to the Committee as it would be one way of assessing the success or otherwise of parole and give details of the type of person who does re-offend. I am sure this would give benefit to the Committee tasked with deciding the merits of a particular parole application.

22. It was a further submission of the Committee that they were not always consulted on changes in the parole system. Clearly they have a lot of knowledge about this system and therefore I recommend that they should be consulted by the Department or indeed by any other body wishing to consider making changes that affect the parole system. They should also be represented on any group that is formed whose mandate is to consider the question of parole.

23. A further point submitted to me in evidence was the lack of confidentiality in communications between the Committee members or between the Department and those members. I recommend that a secure e mail communication system is set up immediately to ensure compliance with Data Protection, confidentiality and privacy legal obligations.

24. I appreciate that many of the recommendations in this report will require extra expenditure on the part of the Department to implement. I also appreciate that the Isle of Man Government has indicated that every Department must cut its expenses. It becomes therefore a matter for Tynwald to consider all the recommendations being made and to decide on their priorities. I can say, merely, that the Island is being given an opportunity to adopt a much better system of parole and I would hope that funding could be found to implement change.

25. Once a sentence is announced I am sure that the majority of the general public, and the victims, are likely to believe that a prison sentence of a stipulated length will mean that the person sentenced will spend that time in prison. This is clearly misleading. I agree with the principle of parole on licence but as stated above I believe that it should be earned by the prisoner. I would hope the Island never has to decide to adopt the UK parole system of granting automatic parole after serving 50% of the sentence. Whilst therefore I consider the Isle of Man basis for parole is superior to that of the UK, it can be improved, and I would hope this report gives the opportunity for those changes to be made.

PART 2

CHAPTER 3

FACTS ON DONOVAN BRADLEY KITCHING CONTAINED IN THE DOSSIER

1. The Committee in determining whether to release Mr Kitching received from the Prison and Probation Service a document called the Dossier. This gave certain information about Mr Kitching. I was also able to obtain a great deal of further information about him which had not been made available to the Committee and in some cases, was not available to at least one of the Probation Officers who was required to make a recommendation to the Committee as to whether Mr Kitching was suitable for parole.

2. I will start therefore by setting out the facts about Mr Kitching that were disclosed to the Committee in the Dossier.

3. Mr Kitching was born xxxxxxxxxxx in1984. He first appeared in Court on 11th May 2000 after he had been charged with Burglary, Theft, Assault and Criminal Damage to a cell.

   Between 2000 and 2009 he was convicted on a total of forty four offences. Some of these related to possession of drugs, and a number were drink related including one for being in charge of a vehicle whilst unfit through drink. What was clear to me in relation to his offences was that he had little respect for authority and the Law. For instance he was convicted of an assault on a Police Officer in 2001, threatening violence to a Police Officer in 2001, breaching Conditional Discharge and Probation Orders in 2001, using threatening and abusive words to a Police Officer in 2002, resisting a Police Officer in the execution of his duty in 2009, and driving whilst disqualified by a Court in 2009. He was convicted on 22nd September 2009 for a series of offences including the last two I have just listed. The sentence of the Court was for a period of eight months' imprisonment, eight years' disqualification from driving and a three year anti-social behaviour order banning him from entering licensed premises or being found in an intoxicated condition in any public place.

4. Then on 7th March 2010 Mr Kitching and two other men entered a house carrying knives and threatened a pregnant woman. Money was demanded and a number of items stolen. Mr Kitching was soon arrested and remanded into custody at the Isle of Man Prison.

5. At a Court on 8th September 2011 Mr Kitching pleaded guilty to one offence of Aggravated Burglary and one offence of Robbery. He was sentenced to imprisonment for six years and four months on each count with the sentences to run concurrently. It was also ordered that for the purpose of licence the length of service was extended by three years.

6. In view of his sentence, and the time he had already spent in prison, this meant that under the custody and parole rules that applied at that time, the Parole Eligibility Date for Mr Kitching (his PED) was 6th July 2013, the half way point of his sentence. The Non-Parole Release date (his NPRD) was 26th July 2014, the two-thirds point of the sentence. His Licence Expiry Date (his LED) was 4th February 2018 which meant that any release was subject to a Licence until this date, and his Sentence Expiry date (his SED) was 6th July 2019. The calculations included an extra 60 days he received on 26th May 2011 for an Adjudication in prison whilst on remand, from March 2010 to September 2011.

7. Whilst in prison either on remand or serving this particular sentence, Mr Kitching was guilty of thirty three Adjudications against him for offences ranging from assault, fighting

damaging property, abuse to staff and fermenting liquid, to disobeying orders. Twenty of the adjudications were committed whilst on remand. The last two were on 11th April 2013 and 25th June 2013, one for assault on another inmate and the other for fighting with another inmate. He received various punishments for these adjudications including 60 extra days added to his sentence. xx.

8. The Social Enquiry Report of Mr John Bass prepared for the Court hearing on the 8th September 2011 was in the Dossier. This indicated that an LSI-R risk assessment had been carried out on Mr Kitching and assessed him as high risk for re-offending and high risk for causing harm.

9. Also included in the Dossier were two reports from Probation Officers, namely Mrs Lynda Watts and Mr John Bass, made specifically for the purposes of the parole application. Mrs Watts advised that parole should be granted subject to conditions. In her report, she indicated that she had only had one interview with Mr Kitching, had on one occasion visited the home where it was proposed he would live, had one telephone discussion with Mr Kitching's brother regarding employment, attended a MAPPA meeting and liaised with Victim Support. The proposed address was the home of his brother who lived in a three-bedded house with his wife and their three children. Mrs Watts stated that she was informed that Mr Kitching had lived at that home before when his brother only had one child but could not indicate between what dates this had been, or whether Mr Kitching had offended during that period. There was mention by the Probation Officers and the Committee that the house would be overcrowded. I will refer later in my report to the fact that within a week of his release it is alleged that Mr Kitching was sleeping away from his brother's house. This may have been because of the overcrowding but despite the good intentions of the brother and his family I am of the opinion that less weight should have been given to the proposed residence on release. The employment with his brother would be as a customer service employee, dealing with stock control and ordering.

Mrs Watts did state that Mr Kitching's previous history of compliance did not suggest positive co-operation and he had done no offence focused work whilst in custody.

Referring to his previous risk assessment she expressed the view that because of stable employment and accommodation on release it was anticipated, on the method used, that Mr Kitching would fall into the Moderate Risk Band on release for re-offending whilst retaining the assessment of High Risk of causing harm. Mr Bass also recommended parole subject to conditions. He had one meeting with Mr Kitching for the preparation of the report, although he had previous dealings with Mr Kitching. He had attended the MAPPA meeting and had spoken to Mrs Watts. He referred to Mr Kitching having attained Enhanced Prisoner status on the 25th September 2013. He had previously been given Enhanced Prisoner status on the 20th February 2013 but had been stripped of this on the 17th April 2013 because of his conduct. Mr Bass expressed the view that there was little to be gained by keeping Mr Kitching in custody given that he was close to his non-parole date. He believed Mr Kitching had made progress in moderating his behaviour.

10. The Dossier also contained Mr Kitching's History Sheet, a substantial document, (referred to as "the PIMS") that detailed everything that happened regarding Mr Kitching, during the

period he was in custody. The records show that Mr Kitching did not wish to apply for parole initially and he had made no application on the 5th July 2013, his PED. The records do show that in September 2013 Mr Kitching applied for Enhanced Status in the prison. On the 18th September 2013, the application was refused on the grounds that “he has made no effort to help out on the wing- still sleeps all day and no positive entries on his record”. Despite this he was granted Enhanced Status only one week later on the 25th September 2013 which I have to say I find remarkable.

11. The PIMS document also contained an entry by Officer Elvezia on 10th December 2013 referring to the behaviour of Mr Kitching. The Officer stated that Mr Kitching confronted him in a manner that made him feel under immediate danger of being assaulted. The Officer also made a note that staff should be aware that if Mr Kitching is challenged he may suddenly get extremely volatile and that after all the years in prison he still had a big problem with authority and uniforms. No adjudication however was made against Mr Kitching in respect of this incident and he did not lose his Enhanced Status which again I find remarkable.

12. The Dossier then contains reports from various Officers at the Prison. These Officers were not asked specifically if they favoured Mr Kitching getting parole but a number of them expressed the view that he had originally struggled during his initial period in prison to accept rules and regimes but in the last period he had made a real effort to change his ways and conform to prison rules. There was conflict in these reports, however, as to his relationships with his family, his engagement with the education programmes on offer and his attitude towards parole. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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Attached to these documents was Mr Kitching’s answer to the invitation to attend the Restorative Justice Course in February 2012. He replied ‘Fuck parole, I love jail. I’ve no remorse. Don’t ask again.”

CHAPTER 4
RECOMMENDATION OF THE PAROLE COMMITTEE

1. By a document dated 5th November 2013, over a month before the incident referred to in Chapter 3 (11) hereof Mr Kitching filed his application for parole.

2. Under the procedure adopted by the Committee at that time one member of the Committee was allocated to be the Lead Member for a particular case to consider the same in detail and lead the discussion. In the case of Mr Kitching, Professor Scarffe was appointed as the Lead Member and prepared an Aide Memoire document which he presented to his colleagues on the Committee to facilitate the debate on the application. I support this manner of dealing with applications.

3. At the hearing of the Committee to consider any application the Governor of the Prison is present to clarify any issue on applications being considered that day, by the Committee. Witnesses believed that there were some minor issues raised with the Governor in the Kitching case before she withdrew but no-one could remember anything specific. The Governor then withdrew before the Committee discussed each case.

4. The Aide Memoire prepared by Professor Scarffe was produced to a meeting of the Committee on 20th March 2014. In this document Professor Scarffe recommended to his colleagues that Mr Kitching should be granted Parole and supported this opinion by referring:

   i) to Mr Kitching's major improvement in behaviour leading to his Enhanced Status in September,

   ii) that parole would give him 3-4 months under supervision,

   iii) little would be gained in keeping him in prison over that period,

   iv) both Probation Officers recommended parole,

   v) there was a strong release plan (apart from overcrowding in the brother's house) which gave a reasonable chance of his leading a law-abiding life.

   He also noted that Mr Kitching would be subject to Level 2 MAPPA and should also be assessed by a Dr Briggs post release re any structured interventions required.

5. At the meeting on 20th March 2014 the Committee recommended parole to be implemented on 2nd April 2014. It agreed to recommend that Mr Kitching should get parole, basically on the grounds set out by Professor Scarffe in his Aide Memoire. They also recommended that the parole should be subject to the standard conditions and three additional conditions namely:

   a) Mr Kitching must submit to alcohol/drug testing as required by the Supervising Probation Officer

   b) and c) he should not contact two named persons by any means without the prior written consent of the Supervising Probation Officer.

CHAPTER 5

DECISION OF THE DEPARTMENT OF HOME AFFAIRS ON PAROLE

1. As I have stated the power to grant parole is given by the Act to the Department.

2. Applying the Act to the case of Mr Kitching it defines a long-term Detainee as a person serving a sentence of custody for a term of four years or more. Therefore, Mr Kitching was a long-term Detainee under the Act.

3. Under Section 6 (1) of the Act after a long-term Detainee has served one-half of his sentence, the Department, if recommended to do so by the Committee, may release him on licence. If the Committee do not recommend parole the Department have no power to grant it and must accept the recommendation of the Committee.

4. After the decision of the Committee had been made on 20th March 2014, the Dossier and the recommendation was submitted to the Minister on 31st March 2014. On 1st April 2014, the Department, under the power reserved to the Minister, ordered the release of Mr Kitching on parole. The release was ordered subject to the standard conditions plus three other specific conditions. Two were a repeat of the three specific conditions recommended by the Committee (amalgamating two into one condition as I have done above), the third stated that Mr Kitching should also not contact two additional persons without the permission of the Supervising Probation Officer.

5. In relation to the six standard conditions imposed I summarise these as follows: -

   a) Mr Kitching should obey all instructions of his Supervising Probation Officer, who in the case of Mr Kitching was Mrs Watts,

   b) he should only reside where approved by his Supervising Probation Officer from time to time,

   c) he must take up employment approved by his Supervising Probation Officer,

   d) he must allow his Supervising Probation Officer access to his place of residence,

   e) he must be of good behaviour and refrain from criminal conduct,

   f) he must not leave the Island without the permission of his Supervising Probation Officer.

6. On 2nd April 2014 Mr Kitching was released on parole.

CHAPTER 6
RELEVANT FACTS ON THE CASE NOT DISCLOSED IN THE DOSSIER

1. As a result of my powers to compel the production of documents, and also as a result of evidence adduced at the Inquiry hearings, I consider that there were other relevant facts that should have been disclosed to the Probation Officers, the Committee and the Minister which may have influenced decisions taken in this case.

2. In my opinion the following are such documents or facts:

   a) The Case for the Prosecution and the remarks of Deemster Turner in sentencing Mr Kitching on 8th September 2011. As an example of how important this could have been to the Committee in deciding on parole, I set out certain of the comments from the Deemster:

      i) "you Kitching were the one in control,

      ii) you Kitching told lies and behaved as you have today, in an aggressive unpleasant and dishonest manner,

      iii) you treated the Police in the way you're treating me, with contempt,

      iv) you resisted arrest you told outrageous lies in interview, you showed outrageous bravado in interview,

      v) you took the leading role in this,

      vi) you exhibited a violent aspect to your character which is evident in the long record of yours,

      vii) you are not someone of whom the Isle of Man is proud".

   b) Mrs Lynda Watts described herself as a Community Probation Officer. In addition, as I have stated, she was the person allocated to Mr Kitching as his Supervising Probation Officer on his release. In her evidence, Mrs Watts indicated that she only qualified as a Probation Officer in December 2012 and therefore in late 2013 when the application for parole was made she was quite an inexperienced Officer for the Committee to rely so heavily upon. This inexperience should have been made known to the Committee.

   c) Unfortunately although Mr Bass, the second Probation Officer to supply a report in the Dossier, gave evidence at the first part of the Inquiry I was advised that he was too ill to give evidence before me at the second part. I was not able to question him therefore over his specific recommendation. Mrs Watts did indicate to me, however, that she did not have access to all the documents that featured in the Dossier, let alone those documents or facts disclosed in this chapter of my report. She did not even have access to the details of all the Adjudications against Mr Kitching. She did not know the classification for a Prisoner to receive Enhanced Prisoner status. In her evidence, Mrs Watts stated that her recommendation was not a strong one, but she was supporting parole on balance. She also stated that if she had seen the other documents in the Dossier alarm bells would have gone off and she would have assessed Mr Kitching as a high risk of re-offending. Mrs Watts stated she did not know the date when Mr Kitching had previously resided with his brother or whether he had committed offences during

that period of residence. Mrs Watts also disclosed that she was aware that Mr Kitching had an issue with drug use and was very much influenced by “plant food”.

d) When asked at the Inquiry as to whether she would have made the same recommendation to the Committee, in favour of parole, if she had seen all the documents in the Dossier and those disclosed at the Inquiry she replied “Probably not”.

e) The two reports of the Probation Officers were not approved in writing by any Senior Officer at the prison before being submitted in the Dossier.

f) Neither the Committee nor the Minister had access to the Minutes or even a summary of the Minutes of the MAPPA meeting held on 17th January 2014 when the application for Parole was discussed. In addition, they would not be aware that the Police took no part in that meeting or any decisions that were made.

g) There was clear confusion between the Probation Officers, the members of the Committee, the Police and the Minister as to the true meaning of some of the conditions attached to the parole licence. For instance the condition over residence, I am now assured by the Department, means that Mr Kitching should have slept at his brother’s house every night unless he got prior permission from the Supervising Probation Officer.

h) The condition over taking a drink/drug test was interpreted by the Minster as a prohibition on a person going out drinking any alcohol, and if found to have alcohol in his system he could be recalled. This was not the view of the Supervising Probation Officer, as Mr Kitching had admitted to her he had been out drinking alcohol and yet she took no action. In fairness to Mr Kitching I doubt if the true requirements of the conditions were properly explained to him.

i) The Police took no part in the application for parole and submitted no views. The Chief Constable, Gary Roberts, in evidence stated “there are people like Kitching for whom you can have the best probation regime in the world, but he will still re-offend, he is wired to offend”.

j) I received copies of Social Media comments in relation to Mr Kitching’s release. These posted comments were as follows:

    i) “many prisoners, prison staff and probation staff were surprised that he received parole”

    ii) “I have heard that John Bass, who was the internal Probation staff at the prison, recommended that he NOT get parole and said he was high risk”.

    As I have pointed out I was not able to question Mr Bass on this allegation because of his serious illness.

    Certain of the other Social Media comments were accurate e.g. references to his behaviour in prison and his refusal to attend offending behaviour programmes, but no-one came forward to identify the person posting these comments and no-one submit formal evidence to me. I did receive one submission from a serving prisoner, who identified himself to me but wished to remain anonymous. He stated that because of Mr Kitching’s behaviour he should have been classified as a Category A prisoner and moved

off the Island. His behaviour had contributed to other prisoners also getting into trouble. Prison had been no deterrent to him he said and he was abusive to prison staff.

Probation Officers who gave evidence did not support the views expressed on Social Media. The report of Mr Bass was of course contained in the Dossier. I would not consider he was making a strong recommendation for parole when he used words such as “There is little to be gained by keeping Mr Kitching in custody given that he is close to his non-parole date” and “on balance I believe that Mr Kitching should be granted parole”.

He was not however making a statement that parole should not be granted. Whilst therefore noting the comments posted on Social Media and by the prisoner I do not believe that I can allow them to influence me.

CHAPTER 7

SUPERVISION BETWEEN 2ND APRIL 2014 AND 26TH APRIL 2014

1. Mr Kitching was released on 2nd April 2014 on conditions. His eight year driving ban was still in force. His release was so fast after the decision made by the Minister that the final CP4 Custody Planning meeting did not take place before release. This meeting is normally held to review a release plan, review the licence conditions, and plan a probation regime. In view of his arrest again on 26th April 2014 this CP4 meeting never took place at all.

2. On 2nd April 2014 Mr Kitching did meet with Mrs Watts who was appointed as his Supervising Probation Officer. The notes of that meeting show that Mr Kitching xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx asked if his ASBO had finished and was advised that this was so. He also confirmed that he understood his Licence Conditions but there was nothing in the note to say the meaning of these conditions was discussed.

3. Mrs Watts was on leave on 9th April 2014 and Mr Kitching was seen by another Probation Officer. The note of that meeting was very scant. Mr Kitching indicated that everything was good. He had started work xxxxxxxxxxxxxxxxxxxxxxxxxxx

4. I received evidence from the Chief Constable that on 11th April 2014, nine days after Mr Kitching's release on parole, a householder in Peel reported that noise was coming from an adjoining house where she had seen Mr Kitching and he had been living there for a couple of days with a woman. The noise had been heard on 9th and 10th April late at night. The person wanted the noise stopped and did identify Mr Kitching. She did not want the Police to come around and investigate though. The Police noted the report but took no action in respect of the same. Whilst I appreciate the Police were placed in a difficult position over the fact that the informant did not want the Police to call at the house, in view of the condition of the licence that Mr Kitching should reside with his brother, I feel that the Police should have investigated the matter further and a report should have been made to the Supervising Probation Officer for her to discuss the issue of residence with Mr Kitching. A copy of the report should also have been sent to the Department, the MAPPA committee and the Committee.

5. The next meeting was on 15th April 2014 when Mr Kitching saw Mrs Watts. This was on his birthday. He reported that work and home were good. He said he had had a couple of girls but one was a wreck so he had moved on.

6. The next and final meeting with Mrs Watts before his arrest was on 25th April 2014. He admitted to having had a few drinks on his birthday. He had drunk vodka but had not got drunk. xxxxxxxxxxxxxxxxxxxxxxxxx When challenged as to why he had therefore drunk vodka he laughed and replied he had to test it. . xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx . It is clear to me from this note that Mrs Watts knew Mr Kitching was again drinking alcohol. There is no evidence as to whether this was in licenced premises or not. Mrs Watts stated however that she did not consider him to be in breach of a Licence Condition by having alcohol. If one accepts the Minister's interpretation of the alcohol testing condition, then Mr Kitching's admission that day was a clear breach justifying recall. My own interpretation of the condition however only allowed for testing and was not strong enough to prevent Mr Kitching drinking alcohol. A much stronger condition from the list available to the Committee and the Minister would have been "You must not frequent any licensed premises including

clubs, public houses or licensed restaurants without written permission from your supervising probation officer". In view of Mr Kitching's previous convictions, a lot of which were alcohol related, and in view of the fact that at the time of his arrest a three year prohibition order was still in force that type of condition would have been perfectly justified to be added in addition to the clause permitting testing, and this should have been done.

7. At 4.28 am on 26th April 2014 the Chief Constable stated that the Police attended in response to a complaint to a guest house in Port Erin where Mr Kitching was staying. Police Officers treated the matter as a civil dispute and Mr Kitching resolved it with the staff without actions by the Police beyond them ensuring Mr Kitching left the premises.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. There was some suggestion made to me that Mr Kitching had at that time been in possession of illegal drugs but he was not searched by the Police Officers at the scene. He certainly admitted to taking drugs later that night. xxx

Despite the residence condition imposed on Mr Kitching, the Police made no effort to report the matter to the Supervising Probation Officer. What happened that night was clearly a breach of the licence condition justifying recall, as was probably the incident in Peel if it had been properly investigated. Mr Kitching was not allowed to spend a night away from his brother's house without the permission of Mrs Watts and she gave no evidence that she had given such consent.

8. Mr Kitching and the girlfriend travelled to Laxey but no witness who appeared before me was able to confirm how he travelled there. He stayed then in the home of a Mr Bxxxxx which again was a clear breach of his parole condition.

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Mr Kitching stayed up drinking until about 4.30 am and went to bed at 5 am. He also admitted to have taken "a little line" of a Class B drug, which of course was another breach of licence condition. He got up at 12.50 pm by which time his girlfriend had left. He then persuaded the owner of a car, a Mr Mxxxxxx, to let him borrow it as he wished to get Mr Bxxxxxx out of the house before the latter's girlfriend called to collect her property. He told the owner of the car that he had a full driving licence and was covered by trade insurance. Mr Kitching had never held a valid driving licence and had never even taken a test. The disqualification imposed on him was still in force. This behaviour was again a breach of condition justifying immediate recall and showed once more the total disregard this man has for authority and the law. The owner told him that the car had sustained some damage the night before so advised Mr Kitching to get it checked to see if it was roadworthy. There is a dispute as to the advice he received. The person who inspected it said he told Mr Kitching it was not roadworthy as the nearside panel was damaged causing the bumper to run against the tyre and the exhaust was lying on top of the rear axle which was restricting the suspension. Mr Kitching said he was told it was okay to drive. He said the vehicle seemed

and sounded fine. He then drove around Douglas before heading up to the mountain road. At Windy Corner a witness heard the car making a noise and it was being driven at a fast speed. The witness said it also overtook another car about 100 metres before the 32nd milestone in a dangerous and reckless manner. At the Bungalow Mr Kitching drove through a "Road Closed Ahead" sign. He says he thought it related to the Tholt-y-Will Road. At the next "Road Closed" sign at the Mountain Box he turned the car back to the Bungalow. He was spotted at the Mountain Box by a Police Officer in an unmarked car. The Officer noted that the car had braked hard to stop in time before the "Road Closed" sign. He also noted that the wing mirrors were damaged, the rear silencer was displaced hanging down by the rear wheel, and there was further damage to the nearside wheel and wing area. This substantiates the evidence that the vehicle was indeed not roadworthy. The Officer exited his car to speak to the driver but as he approached the car it drove away. He caught up with it at the Bungalow and caused it to stop. The Officer and Mr Kitching got out of their cars, and the Officer invited Mr Kitching to sit in the passenger seat of the Police Car which he did. The Officer did not know or recognize Mr Kitching. The latter said he was the owner of the car and provided false details to avoid being arrested. Because of his suspicions the Officer administered a roadside breath test which proved positive, so Mr Kitching was arrested for driving whilst unfit. When asked for his telephone Mr Kitching asked to get his mobile from the car. On getting into his car, Mr Kitching prevented the Officer from removing the ignition key, knocking the Officer away. He then drove off knowing that if taken to Police Headquarters his true identity would be discovered and his breach of his parole licence exposed. Another witness at the scene saw Mr Kitching drive off at speed. Mr Kitching remembered going over a cattle grid with something happening to the car. It sounded like the engine falling apart or the gearbox seizing. He felt the steering heavy and as he took a corner the car snaked. He then saw some people ahead. He tried to counter steer to gain control. He remembered hitting a woman and then the car hit the verge and flipped. He got out of the car and subsequently fled the scene. Three hours later he was spotted in Sulby and subsequently arrested and charged with various offences.

9. At a Court of General Gaol Delivery on 23rd October 2014 Mr Kitching pleaded guilty to:

i) an offence of causing the death of Gwen Valentine by dangerous driving,

ii) driving whilst disqualified,

iii) driving without insurance,

iv) possession of a Class B controlled drug.

Whilst further tests taken after his arrest confirmed that he was over the legal limit of alcohol in his system, he was never charged with driving a vehicle whilst unfit through drink or drugs. I must express my surprise that the prosecution did not pursue a charge of that nature.

10. He was sentenced by the Court to:

i) Two years seventy two days' custody for his conviction during the currency of the original sentence imposed on 8th September 2011,

ii) Eight years' custody consecutive on the charge recited in paragraph 9 i) above,

iii) seven months' custody concurrent on the charge recited in Paragraph 9ii)above,

iv) no separate penalty imposed on the charge recited in paragraph 9 iii) above,

v) one month's custody concurrent on the charge recited in paragraph 9 iv) above. The total sentence was therefore ten years seventy two days' custody.

CHAPTER 8

CONCLUSIONS OVER THE RELEASE OF DONOVAN BRADLEY KITCHING ON PAROLE AND SUBSEQUENT SUPERVISION

1. I feel it would now be appropriate at this time to set out my conclusions regarding the release of Mr Kitching and his supervision after release in order to answer the questions raised in Sections 1 i) and ii) of the Tynwald Resolution.

2. It is clear to me that the Committee and the Minister relied totally on the Dossier presented to them which came from the Prison and Probation Service so I will first of all comment upon that document and any failings in it. It must be stated that the Dossier in the Kitching case was prepared on the same basis as Dossiers produced in other cases and therefore I believe that my comments will not only apply to the Kitching Dossier but all others produced at that time.

3. On the face of it the Dossier appeared to be a very comprehensive document but in my opinion there were several fundamental failings:

   i) There seemed to be a total lack of coordination by the staff of the Prison and Probation Service over the production of the documents making up the Dossier.

   ii) Certainly, one of the Probation Officers making a recommendation did not even see all other documents within the Dossier before completing her report. If she had been allowed to do so, she admitted to me her recommendation may well have been different. All Prison and Probation Officers submitting views on parole should be allowed to see all other Officers comments before concluding their reports.

   iii) No Senior Officer within the Prison seems to have been involved in the preparation of the Dossier or of formally approving it. Either the Governor or Deputy Governor of the Prison should review the Dossier before it is submitted to the Committee and make their own recommendation on parole.

   iv) There were too many inconsistencies within the reports e.g. Mr Kitching's education during his custody, his medical treatment and condition. One would hope that if my recommendations are accepted then a more accurate assessment of the person seeking parole would be presented.

   v) Whilst a formal risk assessment was carried out for the purposes of the Court report in 2011, no new formal risk assessment was carried out for the purposes of the parole application. I recommend a formal risk assessment for the purpose of release should be carried out in all parole cases and the results submitted in the Dossier.

   vi) A MAPPA meeting was held in relation to Mr Kitching before his release and he was assessed as Level 2. In view of his previous convictions I believe this was justified. No information regarding that meeting was disclosed to the Committee other than the Level 2 finding. In addition, there was no notification to the Committee that there had been no participation by the Police in the MAPPA meeting. As I have already stated, I have been advised that for legal reasons the minutes of a MAPPA meeting cannot be disclosed to the Committee or the Minister and indeed despite all my powers I was only able to obtain a summary of such meeting. I recommend that at least a summary of any

MAPPA meeting involving the person applying for parole should be made available to the Committee.

vii) As stated in vi) above, the Police took no part in the MAPPA meeting despite being listed as persons entitled to attend all such meetings. As a result, the Committee could well have formed the view that the Police were part of the MAPPA process. I was also informed that the Police took no part at all in the parole process. In my view the Police Force will have important information on persons such as Mr Kitching, and it is essential that the view of the Force is made known in the Dossier. If a Designated Officer to the MAPPA Committee meeting cannot attend or find a Replacement Officer to attend, their views should be submitted in writing to that MAPPA Meeting for consideration by those able to attend, before a decision is made. The Chief Constable was able to give me his view on whether Mr Kitching was likely to re-offend and this view should have been able to have been submitted to the Committee.

viii) It was clear to me that the Committee and the Minister relied heavily on the reports of the two Probation Officers. I cannot comment to any great degree on Mr Bass as he was too ill to give evidence before me regarding Mr Kitching. What was not clear in the Dossier was the inexperience of Mrs Watts. What was clear in the Dossier was the limited time spent on investigations by Mrs Watts in relation to her report on parole e.g. one interview with Mr Kitching, one visit to the proposed place of residence, one telephone conversation with the brother, the proposed employer. I am satisfied that Mr Bass was an experienced Officer, but if the Committee are going to place such reliance on the views of Probation Officers they should be made aware of their experience. In addition, I do not believe that the research carried out by Mrs Watts was adequate to make any recommendation. More time should have been spent with Mr Kitching, particularly in view of his appalling behaviour in prison. More time should have been spent investigating the proposed residence, particularly in view of the fact that he had previously resided there, which had not stopped his criminal behaviour. One telephone call with his brother was not adequate to assess his prospects over employment.

4. **The 6-month Rule.**

i) In a previous parole application case the Minister had concerns over the behaviour of an Applicant whilst in prison. He decided that in all future parole cases he would not be prepared to grant parole unless there was evidence that the particular applicant had been of good behaviour in prison for at least 6 months prior to filing his application. I applaud the Minister for trying to introduce some test to show an improvement in behaviour into the parole system and indeed he may have been constrained in what he could do. His decision was communicated to the Committee but it did not seem to be generally communicated around all the Prison and Probation Officers. Mrs Watts for instance was totally unaware of the decision by the Minister.

ii) I will be discussing later in this report the whole question of behaviour in prison and rehabilitation. I am firmly of the view that parole should be earned and not just be automatic. In my view, therefore, the behaviour of the applicant whilst serving his sentence is very relevant to whether or not parole should be granted, and so I agree with the Minister on that issue. I do feel however that it is wrong to fix a 6-month period prior to application as the sole benchmark. I believe behaviour throughout the sentence

should be considered. One would hope to see either evidence of good behaviour throughout the sentence period or evidence of marked improvement during the term, not just for the last 6 months before an application for parole is considered.

Whilst Mr Kitching could very well have not had any adjudications after June 2013, examination of his Prison records still show instances of outbursts, refusal to accept rules, unwillingness to help out on the wing, paranoia and of course the incident on 10th December 2013 which did not lead to an Adjudication, but in respect of which a Prison Officer had made comment about his behaviour towards himself and his attitude towards authority and uniforms. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx This was also at a time after he had applied for parole.

iii) Certainly, in fairness to Mr Kitching one can see from the prison record an improvement in his behaviour from the time he decided to apply, but there were still instances of poor behaviour, which in my opinion should have been taken into account.

5. **The effect of an application 3 months before the automatic release date**

i) In my opinion Mr Bass in his report and recommendation placed a heavy weight on the fact that the application was being made some three months prior to the automatic date for parole which in the case of Mr Kitching was 26th July 2014. He stated in his report that there was little to be gained by keeping Mr Kitching in custody given that was so close to his non-parole date. This also influenced the Committee as Professor Scarffe in his Aide Memoire stated in his decision recommendation – “there would appear to be little to be gained in keeping him in custody over that period”.

ii) I doubt if in hindsight the family of Mrs Valentine would agree with those statements as Mr Kitching would have still been in prison on 26th April 2014 if not granted parole until the automatic date. I took advice from Miss Norman as to whether there was any distinction in the Custody Act 1995 between a person released on licence by the Minister on the recommendation of the Committee, and the person getting a licence under the automatic release provisions after two thirds of the sentence. I was advised that so far as recall is concerned that made no difference. In my opinion therefore Mr Kitching was just getting an extra three months of freedom, and to achieve it he should have proved he had earned and justified it.

iii) I understand that the Committee believed in 2014 that there was a difference between release on parole and release after a Detainee had served two thirds of the sentence. There were of course no guidance or rules to guide the Committee on that matter, and it is unclear to me whether that belief was based on practice and procedure or on some verbal advice given to them. The only difference was that for a release on parole any conditions would be imposed following the recommendation of the Committee and contained in the licence issued by the Minister. For the later release after two thirds of the sentence, the conditions, which could be any of those capable of being imposed by the Minister, would be imposed by the Prison and Probation Service. The belief of the Committee was erroneous.

iv) In my view parole should be earned and should not become an automatic right. To award an extra three months of freedom on licence merely because it is close to the automatic release date is not a factor to be built in to these Guidance Rules.

6. **The decision of the Committee and the Department**

i) I have set out above various issues where I feel the Dossier and the procedure adopted in 2014 by the Committee and the Department could be improved. As I have already stated there were no Rules, Regulations or Guidance Notes in operation in 2014 to assist the Committee or the Department, therefore everyone was operating under a system that had developed over the years by practice and precedent.

ii) Let me say straight away that I do not consider that any person broke any Law, Rule or Regulation in connection with the release of Mr Kitching on parole. Basically, everyone followed the practice that had evolved. Because of the resolution of Tynwald I have spent a considerable period of time explaining how recommendations were made.

iii) I am critical of the Prison and Probation Service but only because the practice that had developed led to insufficient investigation being made by Officers tasked with making recommendations. These Officers were not given access to all prison records and the reports of other Prison Officers. When there was clear conflict in statements being made, no-one picked them up to investigate and explain the conflicts. On important issues over residence and employment there was, in my opinion, insufficient investigation to make an opinion as to whether something that had been tried before would succeed a second time. There was no formal risk assessment carried out for parole.

iv) I can certainly understand why the two Probation Officers made their recommendations. These recommendations were not strong in my opinion, merely borderline, but this could and should have been made clearer in the reports. There had certainly been some improvement in Mr Kitching's behaviour and he had served more than fifty per cent of his sentence. There is some evidence of family support for him on release.

v) I have, however, to balance this against the evidence given to me by Mrs Watts when she stated that if she had been able to read the whole of the contents of the Dossier and had heard the evidence given at the Inquiry, before making her report, she would probably not have made the same recommendation. This places me in some difficulty, as the Committee in their final submission stated that if the members had been made aware of the extra facts about Mr Kitching disclosed at the Inquiry, it would not have made any difference to their decision. They do not, however, specifically cover what their position would have been if Mrs Watts had not recommended parole. I am advised that a prisoner can insist upon an application for parole going ahead even though it does not have the support of one or more of the Probation Officers. I am told, however, that it would be very dangerous to release a person on parole when the Community Probation Officer, which in this case was Mrs Watts, advised against parole. More than likely the application would have been sent back to the Probation Officers for further investigation. In my opinion the proper course of action would have been to defer the

application for clarification of issues, which would probably have caused delay, resulting in release after the two thirds of the sentence had been served.

vi) In looking at the decision of the Committee they were again acting according to practices and procedures adopted over the years without any formal guidance or rules. They received what was then the standard Dossier. This Dossier contained two recommendations for parole from Probation Officers. I understand why the decision was made by the Committee and I would also state that if I had merely been faced with the evidence contained in the Dossier I could also have made a recommendation for parole. That said, because of the inconsistencies in the report, I would have expected the Committee to have challenged these either at their meeting with the Governor, or more appropriately, in written form to the Governor in advance of their meeting. This would have followed the preparation of the Aide Memoire by the person appointed to prepare it and tasked to identify such inconsistencies. I will address the situation on conditions below.

vii) In looking at the decision of the Department made by the Minister under delegated powers, and based on what he received, I feel he also made the correct decision to grant parole, though this is subject to my comments below on conditions. He had a positive recommendation from the Committee and supportive recommendations from the two Probation Officers.

viii) As to conditions, I was informed that a schedule of conditions was prepared by the Attorney General's Chambers. This was made up of standard conditions applied in most cases and then in addition there was a list of special conditions that could be applied.

The procedure adopted in 2014 was for the Probation Officers and the Committee to make recommendations so that when the Department made a parole decision, it could impose the conditions recommended or indeed any others it thought appropriate. In my opinion opportunities were missed in this case to impose appropriate conditions. It was clear from Mr Kitching's record that alcohol and drugs had played an important part in his behaviour. At the time of his arrest for the offences for which he was sentenced in 2011 he was subject to a three year anti-social behaviour order banning him from entering any Licensed Premises on the Isle of Man, or being found in an intoxicated condition in any public place during that time. Neither Probation Officer addressed that issue in conditions, but clearly this must have been discussed by the Committee as they suggested a condition that Mr Kitching had to submit to alcohol/drug testing as required by his supervising Probation Officer. I cannot see the logic of imposing such a condition as it gave no guidance to the Supervising Probation Officer as to when to carry out tests and what limit, if any, was being placed on Mr Kitching on taking drink or drugs. Whilst the taking of drugs would be illegal, the drinking of a pint of beer is certainly not. The Minister in his evidence said that he believed that the condition meant that Mr Kitching could not take any alcohol at all either in Licensed Premises or at home. Obviously, Mrs Watts as the Supervising Probation Officer did not make that interpretation as Mr Kitching admitted to her that he had been out drinking vodka. In my opinion an appropriate special condition to be attached would have been No 7 on the approved list "You must not frequent any licensed premises including clubs, public houses or licensed restaurants without written permission from your Supervising Probation Officer". What

is important is that all persons involved in parole including the prisoner being released must clearly understand the meaning and effect of the conditions being imposed.

ix) Again, as to conditions, it was clearly important to the Probation Officers and the Committee that Mr Kitching was to reside with his brother and his family. The only condition imposed over residence was the standard one “You will only reside where approved by your Supervising Probation Officer from time to time, and not move residence without prior approval of your Supervising Probation Officer”. Again it is obvious that this was not explained to Mr Kitching or his brother’s family as there was evidence that within days of release he was seen residing for a couple of days in Peel and then on 25th April 2014 he was identified as being in a hotel in Port Erin and it transpired that after being asked to leave that hotel he spent the rest of the night in Laxey. I was advised that this standard clause meant that he had to reside every night at the address approved by the Supervising Probation Officer. There was no evidence that Mrs Watts ever gave permission for him to sleep in Peel, Port Erin or Laxey. A more suitable special condition, in my opinion, and one that would have made it clear to all parties what was intended, would have been special condition 10 “You must not leave your accommodation address, (insert address) between the hours of x and y without the written permission from your Supervising Probation Officer”. I would have suggested in this case a suitable curfew period would have been between 10-30pm and 8am.

x) The other major reason for Mr Kitching getting into trouble was through road traffic offences. He had never held a valid driving licence and yet a number of his convictions related to driving offences. Whilst a condition not to drive could have been imposed he was still disqualified from driving at the time of his release on parole and so all involved in this case including Mr Kitching must have realised that condition 5 on the licence itself namely “You will be of good behaviour and in particular refrain from any conduct which may lead to criminal conviction” meant that any motoring conviction whilst he was still disqualified would result in his recall.

xi) One of the other special conditions that in my opinion should have been imposed was Condition 12 namely “You must adhere to all instructions given to you by the electronic monitoring contractors” Now it may be that the electronic monitoring of persons released on parole is too expensive for the Government to instigate, but in my opinion because of the issues of alcohol and drug use and the clear disobedience of Road Traffic Rules by Mr Kitching in the past, he would have been a suitable person to impose a condition requiring electronic monitoring for a period after release.

xii) Reference was made in the recommendations from the Probation Officers and the Committee to Mr Kitching being assessed by Dr Briggs post release regarding structured intervention that may be required. From the evidence in the Dossier I am firmly of the opinion that Dr Briggs should have seen Mr Kitching before parole release, and his comments included in the Dossier. Then a condition could have been imposed requiring Mr Kitching to attend at specified places and times for the purpose of advice and treatment from Dr Briggs.

xiii) It is my opinion that prior to any release of a person on parole, a proper written release plan should be prepared and ready for implementation before release. Obviously, issues over residence and employment should form part of that plan. Contact arrangements

with the Supervising Probation Officer should also be included. A MAPPA Risk Management Plan and Assessment and monitoring arrangements should be included. Now most of these plans were made in the case of Mr Kitching but no formal plan was produced to me. Copies of this plan should be given to the person on parole as well as the Supervising Probation Officer and the Police.

xiv) In view of the previous convictions recorded against Mr Kitching and in view of his behaviour in prison it would have been more appropriate for all concerned in deciding the application for parole to have tried and tested other actions before granting full parole on licence. Some of these may not be possible under our present laws or perhaps they incur expenditure which the Department feel is not a priority. I am being advised to recommend actions that will give this Island the best possible parole system and so I am not inhibited by such matters. I believe Mr Kitching would have been a suitable person to have been given the opportunity for day home releases, or supervised weekend releases with curfews imposed, to trial how he reacted to such temporary releases. I also believe the electronic monitoring of Mr Kitching, through tagging and a GPS system, would have been beneficial to have been imposed to monitor his movements, particularly because of his previous behaviour involving alcohol, drugs and road traffic offences.

7. **Monitoring of Mr Kitching after parole**

i) Although certain aspects of a Release Plan were prepared, no formal written plan was produced and made available to Mr Kitching. This should be done in all parole cases and the plan prepared and circulated before the decision over parole is taken.

ii) It was clear from the evidence that the Supervising Probation Officer met Mr Kitching on the actual day of his release and arrangements were made to see him once per week which was the normal minimum arrangements made at that time. In my opinion that provision was reasonable, although I believe that additional supervision with occasional visits to the place of residence and employment should have been carried out to ascertain that conditions were being complied with.

iii) Subject to ii) above, and if adequate conditions had been imposed on release, the arrangements made between Mr Kitching and the Supervising Probation Officer were in my opinion reasonable.

iv) If the true meaning of each condition was known to all parties concerned in the parole, then on breach immediate action should have been taken to deal with it.

v) The Chief Constable explained to me at the Inquiry that, once it had been decided that a person leaving prison was on Level 2 MAPPA, this would be reported using the tasking process. This is a system that analyses information, crime data and intelligence and identifies who the Constabulary ought to prioritise. There is a tasking meeting every Thursday. The Chief Constable also said that they had no new intelligence on Mr Kitching to impart to the MAPPA meeting even if they had attended the one in January 2014. I was further told that following the January MAPPA meeting, Mr Kitching was placed on the Police Information system on 21st January 2014. All Police Officers are required to read this daily. When Mr Kitching received parole this would also be entered into the system. The Chief Constable said there were in the system warning markers to highlight

for instance his disregard for road traffic rules. He did then say that in Mr Kitching's case no bulletin was issued to his Officers highlighting a perceived risk as it is the practice of the Police in parole cases not to expect that they present a risk to the public. No photograph of Mr Kitching was placed in the Information system.

vi) I accept what the Chief Constable said in evidence that even on our Island you cannot supervise everyone who is released every single minute of the day. In my opinion, however, anyone released with a record such as Mr Kitching, and who is subject to a MAPPA classification of at least Level 2, should have his photograph posted on the Information System, and he should be subject to a bulletin highlighting the warning signs of alcohol and drug participation and the tendency to commit road traffic offences. The bulletin should also have set out the conditions of parole and made Officers aware of their meaning. Merely by being identified on the Information System clearly did not work in this case. The Officer receiving the call that Mr Kitching was residing in Peel should have known that he was subject to a condition to reside every night with his brother in St Johns, and regardless of the attitude of the person reporting this fact, it should have led to further investigation and reporting to the Supervising Probation Officer. The Officers who attended the hotel in Port Erin also did not seem to know about the condition of parole over residence. They should also have taken action over the breach of condition and notified the Supervising Probation Officer. It was suggested that if a person commits a breach of licence on a Friday or during the weekend there is no Probation Officer on duty, and so no report could be made until the following Monday. Obviously if the person on parole had committed a new offence for which they could be detained, then the Police could hold them on remand. This situation, in my opinion, is not acceptable and the Probation Service should ensure that there is someone on call twenty four hours each day for contact, if necessary in relation to all persons released on parole. Once again, the Police Officer at the Bungalow when given a false name by Mr Kitching did not recognize him.

vii) I would also advise that consideration should be given by Tynwald as to whether the Police should be given the power to detain a person who is found to have broken a condition, even if in the breach no criminal offence is alleged to have taken place. This would need to be a power to detain for such period as is necessary for the Committee and the Department to consider the recall of the person under the Act. I accept that this may create practical difficulties and be considered by some to be too draconian.

In my opinion, and if accepting that parole is to be earned and should be considered to be a privilege as the Minister testified before me, then instant recall powers should be considered and implemented.

PART 3

CHAPTER 9

CHANGES MADE TO RULES AND PROCEDURES SINCE 2014

1. Obviously since the unfortunate incident which resulted in the death of Mrs Valentine, the Department and the Prison and Probation Service have been considering the whole question of parole and both have already made certain changes. In their final submissions to the Inquiry they also both referred to possible additional changes being considered at that time.

2. The Custody Rules 2015 were introduced which set out particulars of the constitution of the Committee, the tenure of office of its members, the meetings of the Committee, the Dossier, the interviewing of the Detainee and the issue of the Licence if granted.

3. The Department agreed to provide all Committee Members with a Laptop Computer and a secure Government email address for the transmission of sensitive and confidential information.

4. The Department did consult with the Committee on the Custody Amendment Bill and have added the Committee to the priority list of consultees for all future Legislation and Rules to be considered by the Department. It also arranged for the notes of all Criminal Justice Board Meetings to be shared with the Committee with an invitation to comment.

5. The Department have confirmed that the Committee are registered with the Data Protection Office.

6. The Prison and Probation Service have informed me that Officers preparing reports to be included in the Dossier will have full access to the PIMS document and any other comments and documents prepared by any Prison or Probation Officer relevant to the Detainee applying for parole.

7. I am also informed that to prepare their report for the Committee, the Prison and Probation Service will produce a full formal re-assessment of risk on the Detainee at that time and this will be disclosed in the Dossier.

8. The Prison and Probation Service have confirmed that prisoners will only be considered suitable for enhanced status in the prison if they are engaging in offence focussed work and are shown to be compliant.

9. The Prison and Probation Service have also confirmed that the practice of preparing two Probation Officers reports for parole is abolished, and in place there will be one cohesive report completed by the receiving Community or Supervising Probation Officer. This report will be prepared in conjunction with the information provided by the Prison Probation Officer, Personal Officer, Health Care Professionals, Education and any other relevant agency.

10. The Prison and Probation Service have confirmed that all PIMS entries in relation to a parole applicant are now available to all staff at the prison including the Probation Officers.

11. The Prison and Probation Service have also confirmed that an Intervention Hub is being piloted with “Thinking Skills” as the first module. This will provide approved Cognitive Behavioural Therapy Interventions which are recognized as being effective. Following the pilot the effectiveness will be evaluated with a view to rolling out a range of accredited

programmes including for example, Victim Awareness and Restorative Justice, Domestic Abuse Prevention, Education and Employment, Alcohol Awareness, and Cannabis Awareness. I totally support this initiative.

12. The new Custody Bill extends the responsibility for the Committee to formulate its own development. The Committee have already decided that its minutes should contain more detail about the pros and cons of their decision. In addition, if an application is refused, the Committee have improved the information given to the Detainee outlining the reasons for its decision.

13. I am very pleased that these changes have already been made and I totally support their introduction. The full implementation of these changes can be added as recommendations by me in this report.

PART 4

CHAPTER 10

SUMMARY OF RECOMMENDATIONS FOR FURTHER CHANGES

1. Amend the Custody Rules over the provision of the membership of the Committee.

   (See Part 1 Chapter 2 Paragraphs 8 and 9 on Page 6).

2. Provide training to the members of the Committee.

   (See Part 1 Chapter 2 Paragraph 10 on Pages 6 and 7).

3. Provide Rules and Guidance Notes in the form of secondary legislation setting out the objectives of the Committee and key factors and guidance principles to be considered and weighed when decisions for parole are made.

   (See Part 1 Chapter 2 Paragraphs 11, 12 and 13 on Pages 7 to 9, and Part 2 Chapter 8 Paragraph 6 i on Pages 31 and 32).

4. The Committee to be able to obtain legal advice whenever it is required.

   (See Part 1 Chapter 2 Paragraph 14 on Page 9).

5. The Committee to have the benefit of an indemnity from the Isle of Man Government to cover legal claims being made against it.

   (See Part 1 Chapter 2 Paragraph 15 on Page 9).

6. To consider whether it is prudent to adopt under the principles of the ECHR that all parole decisions should be made by the Committee and not the Department.

   (See Part 1 Chapter 2 Paragraph 16 on Pages 9 to 13).

7. All documents and information received by the Committee for the purposes of a parole application and for a recall shall be disclosed to the particular Applicant involved in the process.

   (See Part 1 Chapter 2 Paragraph 17 on Page 13).

8. A statement from the victim or victims of the crime for which the Applicant for parole is in prison to be included in the Dossier, if they wish to make such a statement.

   (See Part 1 Chapter 2 Paragraph 18 on Page 13).

9. The principles of MAPPA should be enshrined into primary legislation with proper Guidance Notes adopted by the Department as to the practices and procedures of all those involved in the MAPPA process.

   (See Part 1 Chapter 2 Paragraph 19 on Pages 14 and 15).

10. If legally possible the Minutes of any MAPPA meeting relating to a particular Applicant for parole should be included in the Dossier. Alternatively, if it is found that for legal reasons this cannot be achieved, then a summary of the MAPPA meeting in relation to that individual should be included in the Dossier.

(See Part 1 Chapter 2 Paragraph 19 on Pages 14 and 15 and Part 2 Chapter 8 Paragraph 3 vi on Page 29).

11. Each of the Authorities involved in the MAPPA process should send representatives to every MAPPA meeting.

    (See Part 1 Chapter 2 Paragraph 19 on Pages 14 and 15 and Part 2 Chapter 8 Paragraph 3 vii on Page 30).

12. A Custody Release Plan (incorporating a MAPPA Risk Management Plan in the case of Applicants assessed as being on Level 2 or 3) must be prepared and in place prior to the release on licence of that Applicant. Such plan should be disclosed to the Applicant and the Committee to assist in its deliberations.

    (See Part 1 Chapter 2 Paragraph 19 on Pages 14 and 15).

13. If any contact is made with a Police Officer regarding a person released on Licence during the period of that licence, or any reference is made to a Police Officer regarding that person, a report should be submitted immediately to the Supervising Probation Officer, the Committee, the Department (and the MAPPA Committee if appropriate).

    (See Part 1 Chapter 2 Paragraph 19 on Pages 14 and 15 and Part 2 Chapter 7 Paragraphs 4, 7 and 8 on Pages 25 to 27).

14. The Department to keep actual records of all prisoners released on licence or otherwise with details of their re-offending and this information should be available to the Committee and all Probation Officers.

    (See Part 1 Chapter 2 Paragraph 21 on Page 15).

15. The Committee should be consulted by the Department or any other Government Department intending to submit a Bill, Regulation or Rule that affects the parole system, and the Committee should also be represented on any group whose mandate is to consider the question of parole.

    (See Part 1 Chapter 2 Paragraph 22 on Page 16).

16. The case for the Prosecution and the remarks of the Deemster sentencing the Detainee to the term in respect of which he is then applying for parole should be contained within the Dossier.

    (See Part 2 Chapter 6 Paragraph 2(a) on Page 22).

17. If the present system is maintained and reports are to be made by inexperienced Prison and Probation Officers, no report should be filed by an Officer who has not been qualified and serving for at least 3 years before investigating and preparing his/her report, unless that report is countersigned by a Superior Officer holding those qualifications. In addition Probation Officers should make proper research into facts supporting their recommendations. I appreciate that certain recommendations contained herein may not need to be implemented if the change made by the Prison and Probation Service referred to in Chapter 9 Paragraph 9 continues to operate.

    (See Part 2 Chapter 3 Paragraph 9 on Page 18 and Part 2 Chapter 6 Paragraph 2 (b) on Page 22 and Part 2 Chapter 8 Paragraph 3 viii on Page 30).

18. Any Prison or Probation Officer submitting information or a report to be contained within a Dossier being prepared for a parole application to be given, in advance of preparing his/her submission, access to all records and information on the detainee applying for parole including the PIMS report and all adjudications against the individual concerned.

    (See Part 2 Chapter 6 Paragraph 2 (c) on Page 22 and Part 2 Chapter 8 Paragraph (3 ii) on Page *29).*

19. Any report or reports by Probation Officers to be submitted in a Dossier to the Committee for the purposes of a parole application should be reviewed by the Governor or Deputy Governor of the Prison, and a recommendation made by that person.

    (See Part 2 Chapter 6 Paragraph 2 (e) on Page 23 and Part 2 Chapter 8 Paragraph 3iii on Page 29).

20. The clear meaning and effect of any condition imposed in a licence for parole must be known to all involved in the parole process, and fully explained to the Detainee before his release, and to the person or persons living where the Detainee is to reside.

    (See Part 2 Chapter 6 Paragraph 2 (g) on Page 23).

21. A CP4 Custody Planning Meeting should take place before release, or if not possible then within seven days of the release of a person on licence, to review licence conditions and plan a probation regime.

    (See Part 2 Chapter 7 Paragraph 1 on Page 25).

22. A formal risk assessment to be carried out on any person seeking parole at the time of the application being made and such assessment should be included within the Dossier prepared on that person.

    (See Part 2 Chapter 8 Paragraph 3 v on Page 29).

23. Six months good behaviour prior to consideration of a parole application should not be the benchmark for adjudicating rehabilitation. Conduct throughout the sentence should be considered and credit given to the Applicant for parole if showing a marked improvement in behaviour, willingness to cooperate, acceptance of the authority of prison and probation officers and participation in intervention hubs.

    (See Part 2 Chapter 8 Paragraph 4 on Pages 30 and 31 and Part 3 Chapter 9 Paragraph 11 on Pages 37 and 38).

24. To award three months of freedom on licence, merely because it is close to the automatic release date, should not be a major factor for the granting of parole to be included in the Guidance Rules.

    (See Part 2 Chapter 8 Paragraph 5 on Page 31).

25. The Prison and Probation Service should have an Officer on call twenty four hours per day, seven days per week, to accept a report from a Police Officer or someone else regarding conduct which could amount to a breach of parole conditions.

    (See Part 2 Chapter 8 Paragraph 7 vi on Pages 35 and 36).

26. The Police should be given power to detain a person who is found to have broken a parole licence condition or is suspected of so doing.

    (See Part 2 Chapter 8 Paragraph 7 vii on Page 36).

PART 5

CHAPTER 11

SUMMARY OF FINDINGS REGARDING THE RELEASE OF MR KITCHING AND HIS SUPERVISION

1. I have already stated in Chapter 8 Paragraph 6 (ii) that I do not believe that any person broke any actual Law, Rule or Regulation in connection with the release of Mr Kitching. I would also state that I believe the Isle of Man parole system, explained to me by the Minister, where parole should be earned and not just be automatic, is a much better system than the one that has developed in the United Kingdom with long term detainees now getting parole automatically after serving 50% of their sentence, without the issue even going to the Parole Board for consideration. Despite that, one can always look to try and improve a system as nothing should ever be considered perfect. Also I said earlier that this Inquiry creates a major opportunity arising from the facts surrounding the tragic death of Mrs Valentine to improve the present system and create a fair, reasonable and fit for purpose parole system. I have already set out above the twenty six recommendations which I consider could enable us to achieve this. Below I now summarise my findings in relation to the release of Mr Kitching, because although no law rule or regulation was broken there were errors made and possibly the death of Mrs Valentine could have been avoided as Mr Kitching may not have been given parole on 2nd April 2014.

2. Summary of findings in relation to the actions of the Prison and Probation Service:

    i) There was insufficient investigation by the Officers preparing reports and recommendations in particular in relation to the proposed residence and employment of Mr Kitching.

    (See Part 2 Chapter 8 Paragraph 6 iii on Page 32).

    ii) The Prison and Probation Officers submitting comments in the Dossier were not given access to all records and reports on Mr Kitching which could have affected their recommendations.

    (See Part 2 Chapter 8 Paragraph 6 iii on Page 32).

    iii) There was conflict in the various reports prepared by the Prison and Probation Officers that was not picked up for further investigation and clarification. Clarification could have delayed the grant of parole.

    (See Part 2 Chapter 8 Paragraph 6 iii on Page 32).

    iv) No formal risk assessment was made after the application for parole was lodged. One cannot surmise what recommendations and decisions would have been made if there had been a different risk assessment.

    (See Part 2 Chapter 8 Paragraph 6 iii on Page 32).

    v) It was not made clear if the recommendations were considered strong or borderline. What is also uncertain is what the Committee would have done if Mrs Watts's recommendation, having seen all the documents, was not to grant parole. I am led to believe that if a Probation Officer did not recommend parole the Committee would have deferred the application for further investigation or comment thus delaying that parole.

(See Part 2 Chapter 8 Paragraph 6 iv and v on Page 32).

vi) Opportunities were missed to suggest appropriate conditions to the recommendations for release based upon Mr Kitching's previous convictions and behaviour in prison.

(See Part 2 Chapter 7 Paragraph 6 on Pages 25 and 26 and Part 2 Chapter 8 Paragraphs 6 vii, viii, ix and xi on Pages 33 and 34)

vii) Mr Kitching should have been seen and assessed by Dr Briggs before his release.

(See Part 2 Chapter 8 Paragraph xii on Page 34)

viii) In view of Mr Kitching's previous record and his behaviour in prison, opportunities were not taken to suggest other options for release before recommending a full release on licence.

(See Part 2 Chapter 8 Paragraph 6 xiv on Page 34)

3. Summary of findings in relation to the actions of the Committee and the Minister

i) In view of the comments I make in Chapter 11 Paragraphs 2 i, iii and iv above the Committee should have referred the application of Mr Kitching back to the Prison and Probation Service for clarification and further consideration before granting parole.

(See Part 2 Chapter 8 Paragraph 6 iv on Page 32)

ii) Opportunities were missed to impose appropriate conditions to the licence for parole based upon Mr Kitching's previous convictions and his behaviour in prison.

(See Part 2 Chapter 7 Paragraph 6 on Pages 25 and 26 and Part 2 Chapter 8 Paragraphs 6 vii, viii, ix and xi on Pages 33 and 34)

iii) The Committee and the Minister should have insisted that Mr Kitching was seen and assessed by Dr Briggs before granting parole.

(See Part 2 Chapter 8 Paragraph 6 xii on Page 34)

iv) In view of Mr Kitching's previous convictions and his behaviour in prison opportunities were not taken to consider other options for release prior to granting full parole on licence.

(See Part 2 Chapter 8 Paragraph 6 xiv on Page 34)

4. Summary of findings in relation to the supervision of Mr Kitching after parole

i) All parties should have insisted that a formal written release plan in respect of Mr Kitching was made prior to his release, and distributed to all relevant parties.

(See Part 2 Chapter 8 Paragraph 6 xiii on Page 34 and Paragraph 7 i on Page 35)

ii) The supervision of Mr Kitching should have included occasional visits to his place of employment and residence.

(See Part 2 Chapter 8 Paragraph 7 ii on Page 35)

iii) There was a total failure on the part of all concerned with monitoring Mr Kitching to understand the meaning of the conditions actually imposed. Mr Kitching's actions within the first three weeks of his release should have resulted in his recall.

(See Part 2 Chapter 8 Paragraph 7 iv on Page 34)

iv) A bulletin in relation to Mr Kitching, together with his photograph, should have been issued to all Police Officers, together with the meaning of conditions attached to his licence.

(See Part 2 Chapter 8 Paragraph 7 v on Page 35)

v) Police Officers who came into contact with Mr Kitching or received reports regarding his conduct failed to report the incidents to the Supervising Probation Officer and the Committee for consideration of action against Mr Kitching.

(See Part 2 Chapter 7 Paragraphs 4, 7 and 8 on pages 25 to 27 and Part 2 Chapter 8 Paragraph 7 vi and vii on Pages 35 and 36)

PART 6

CHAPTER 12

THE CASE OF G V THE COMMITTEE AND THE DEPARTMENT

On the 11th December 2016 for the very first time I heard that there had been a case in the Isle of Man Courts before His Honour Deemster Corlett in relation to parole. I obtained therefore a copy of the judgement of His Honour, delivered on the 7th November 2016, and whilst I do not need to set out in this report the full details of that case, His Honour made some salient points to which I feel I should refer.

The case primarily involved the recall of a prisoner and his right to appear before the Committee when his case was considered, but certain comments made by the Deemster do in my opinion also relate to parole applications.

In the judgement, His Honour referred to the well-known book “Administrative Law” by Wade and Forsyth under the heading “A right to a fair trial”. He quoted, “Where the issue was whether the Parole Board should hold an oral hearing in deciding whether to release certain prisoners on licence or transfer them to open conditions, the Supreme Court said that an oral hearing should be held in such cases whenever fairness to the prisoner requires such a hearing in light of the facts of the case and the importance of what is at stake”. The Supreme Court added, “The purpose of holding an oral hearing is not only to assist it in its decision-making, but also to reflect the prisoner’s legitimate interest in being able to participate in a decision with important implications for him, where he has something useful to contribute”. The Court added that when in doubt it would be prudent for the Parole Board to allow an oral hearing.

As neither the person involved in this case, nor his Advocate, were invited by the Committee to participate in the hearing, His Honour held the decision of the Committee was unlawful, and he ordered it to be quashed and the matter reheard. He also stated that the hearing must be procedurally fair with full disclosure to the person involved of all documents on which the Committee and the Department seek to rely in making any decision. There must be provision he said for the person to give evidence and cross-examine all witnesses on whom the Committee may rely when reaching their decision.

The principles set out by His Honour the Deemster in this case should apply in my opinion to all matters being considered by the Committee and should be set out quite clearly in the Rules and Guidance Notes I have recommended should be adopted. It may be that a particular Applicant for parole does not want a formal hearing of his application or to appear before the Committee. That is his right, but if he wishes to have this hearing and appear either in person, with or without an Advocate representing him, then that right should be permitted.

This 1st day of February 2017

Geoffrey F Karran M.B.E:T H

APPENDIX A

Persons who gave evidence to Part 1 of the Inquiry

- Mr John Kermode – Chairman of the Parole Committee
- Mr Simon Parkes – Member of the Parole Committee (but not in April 2014)
- Minister Juan Watterson – M H K Minister of the Department of Home Affairs
- Mr Simon Griffin – Director of Social Policy with the Department of Home Affairs
- Mrs Clare Faulds – Member of the Parole Committee
- Mr Bob McColm – Present Governor and Head of Probation, the Isle of Man Prison
- Mrs Geraldine Martin – Present Head of Community Rehabilitation in the Probation Service, at the Isle of Man Prison
- Mr John Bass – Senior Practitioner in the Probation Service

Persons who gave evidence to Part 2 of the Inquiry

- Mrs Geraldine Martin – Present Head of Community Rehabilitation in the Probation Service at the Isle of Man Prison
- Mrs Lynda Watts – Community Probation Officer in April 2014
- Mrs Alison Gomme – Governor at the Isle of Man Prison 2014
- Mrs Paula Gelling – Victim Support Isle of Man
- Mrs Kirsty Morphet – Senior Practitioner in Isle of Man Probation Service 2014
- Mrs Patricia Ingram – Director of Community Operations in Isle of Man Prison 2014
- Mr John Kermode – Chairman of the Parole Committee
- Mrs Clare Faulds – Member of the Parole Committee
- Professor Howard Scarffe – Member of the Parole Committee in April 2014
- Mrs Jacqueline Bridson – Member of the Parole Committee
- Mrs Gillian Skinner – Member of the Parole Committee
- Minister Juan Watterson – M H K. Minister of the Department of Home Affairs
- Mr Gary Roberts – Chief Constable of the Isle of Man
- Mr Nigel Fisher – Deputy Governor at the Isle of Man Prison
- Mr Gianni Elvezia – Prison Officer at the Isle of Man Prison
- Mr Simon Griffin – Director of Social Policy at the Department of Home Affairs
- Mr Stuart Valentine – Son of Mrs Gwen Valentine

APPENDIX B

Submissions received

Part 1

Sender	Date	Documents
Department of Home Affairs	25 September 2015	Page 1-20 Page 21- 31 Page 32 -66
Parole Committee	21 October 2015 6 November 2015 25 November 2015	
Mr McColm –Prison Governor	20 October 2015	
Mrs Martin – Head of Community Rehabilitation	21 October 2015	
Minister Watterson	5 October 2015	
Mr Parkes – Parole Committee Member	19 October 2015	
Mrs Stott – Probation Officer	13 October 2015	
Mr Bass – Probation officer	21 October 2015	
Mr Skillicorn – Deputy Prison Governor	19 September 2015	

Part 2

Mr Valentine	7 March 2016	Submission statement Coroners correspondence DHA correspondence Family statements HMCIP reviews (links below) https://www.gov.im/media/55044/hmiprisonrepor t.pdf https://www.gov.im/media/55040/prisonreport20 11.pdf others MOJ instruction (link below) https://www.justice.gov.uk/downloads/.../pi-10-2011-review-further-offences.doc Police correspondence
Prison and Probation Service	1 April 2016	Various records
Department of Home Affairs	23 February 2016	Submission of paperwork Sentencing 08.09.11 Sentencing 23.10.14
Parole Committee	14 March 2016	Statement

Closing submissions

Department of Home Affairs	24 April 2016
Prison and Probation Service	24 April 2016
Parole Committee	9 May 2016
Mr Valentine	26 June 2016

APPENDIX C

Transcripts of Evidence to the Inquiry

Date of hearing	Witness / content	pages
23rd October 2015	Parole Committee legal argument	1-6
13th November 2015	Parole Committee legal argument	1-5
25th November 2015	adjourned	1
14th December 2015	Witness John Kermode, Parole Committee Chair	1 - 78
	Witness Simon Parkes, former Parole Committee Chair	78 - 88
15th December 2015	Witness Juan Watterson MHK, Minister for Home Affairs	1 - 33
	Witness Simon Griffin, Department of Home Affairs	33 - 76
	Witness Clare Faulds, former Parole Committee Chair	76 - 107
16th December 2015	Witness Bob McColm, Prison Governor and Head of the Prison and Probation Service	1 - 41
	Witness Geraldine Martin, Head of Community Rehabilitation	41 - 60
	Witness John Bass, Senior Practitioner, Prison and Probation Service	60 - 88
26th February 2016	Production of documents, Simon Griffin, Department of Home Affairs	1-3
14th March 2016	Production of documents, John Kermode, Parole Committee Chair	1
4th April 2016	Production of documents, Geraldine Martin, Head of Community Rehabilitation	1-3
12th April 2016	Introduction	1-3
	Witness Lynda Watts, former Community Probation Officer	3 - 63
	Witness Alison Gomme, former Prison Governor and Head of the Prison and Probation Service	63 - 93
	Witness Paula Gelling, Victim Support Isle of Man	93 - 97
	Witness Kirsty Morphet, former Senior Practitioner, Prison and Probation Service	97 - 119
13th April 2016	Witness Patricia Ingram, former Director of Community Operations	1 - 20
	Witness John Kermode, Parole Committee Chair	21 - 79
	Witness Clare Faulds, former Parole Committee Chair	79 - 100
15th April 2016	Witness John Kermode, Parole Committee Chair	1 - 25
	Witness John Scarffe, former Parole Committee member	25 - 40
	Witness Jacqueline Bridson, Parole Committee member	41 - 47
	Witness Gillian Skinner, Parole Committee member	47 - 59
	Witness Juan Watterson MHK, Minister for Home Affairs	59 - 79
	Witness Gary Roberts, Chief Constable	79 - 110
18th April 2016	Witness Nigel Fisher, Deputy Governor, Isle of Man Prison	1 - 12
	Witness Gianni Elvezia, Prison Officer, Isle of Man Prison	12 - 17
	Witness Geraldine Martin, Head of Community Rehabilitation	17 - 22
	Witness Simon Griffin, Department of Home Affairs	22 - 28
	Witness Stuart Valentine, son of Mrs Gwen Valentine	28 - 31
	Close of the Inquiry	31-32