

[2023] PBPH 1

Application for a Public Hearing in the case of Mr Colin Pitchfork

Preliminary Matters

Since his conviction in 1988, Mr Colin Pitchfork has changed his name by deed poll on two occasions. Mr Pitchfork's motivation for these name changes appears to be a desire to protect his identity given the public reaction to his offences and his potential release. From the representations received in this case, which are detailed below, it appears that it may be beneficial to the agencies tasked with managing Mr Pitchfork, both inside and outside the prison estate, for knowledge of Mr Pitchfork's current name not to become widespread. In this decision I will therefore use the name, Mr Pitchfork. This is the name that will also be used at Mr Pitchfork's oral hearing.

Outcome: A public hearing has not been granted. However, if any of the victims in this case wish to observe the hearing, the Parole Board will explore whether it may be possible to support the victims observing the hearing, subject to any necessary case management directions.

Background on the Parole Board and Public Hearings

1. The Parole Board is an independent body which acts as a court when deciding whether prisoners in England and Wales are safe to be released, or not, and makes recommendations to the Secretary of State on a prisoner's suitability for open conditions if the release test has not been met. Prisoners are referred to the Parole Board only after they have served the minimum period for punishment set by the sentencing judge ('the tariff'). When considering a case, the Parole Board's role is to consider whether a prisoner's risk can be safely managed in the community. This is the test set out in the relevant legislation. The Parole Board will not direct release unless it is satisfied that it can be managed. Public protection is always the Parole Board's primary concern.
2. The Parole Board was established in 1967. Under its rules hearings were required to be held in private. From 20 October 2020 to 1 December 2020 the Government held a public consultation on whether parole hearings should be heard in public in some limited circumstances (public consultation: [Root and branch review of the parole system - Public consultation on making some parole hearings open to victims of crime and the wider public \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/root-and-branch-review-of-the-parole-system-public-consultation-on-making-some-parole-hearings-open-to-victims-of-crime-and-the-wider-public)).

3. In February 2021 the Government decided that the blanket ban on public hearings was unnecessary, and that public hearings in appropriate circumstances would improve transparency and could help build confidence in the parole system (outcome of the consultation: [Root and branch review of the parole system \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)).
4. At the time of publication, the then Minister of State for Justice, Lucy Frazer KC MP, said: *'We are mindful of the fact that parole hearings involve discussion of sensitive personal matters about prisoners and victims. It is important that the privacy, safety and wellbeing of hearing participants is protected, as well as ensuring that the Board can continue to properly assess prisoners' risk without the evidence on that being compromised. For these reasons we expect truly public hearings to be rare but it is right that we are removing the barrier that requires them to always be held in private. Where it can be done safely and securely, a public hearing will provide a valuable opportunity to show how the Parole Board goes about its valuable work and how decisions are made.'*
5. On 30 June 2022 a statutory instrument was laid before Parliament, containing a new rule allowing for anyone to be able to apply for a public hearing. The new rule took effect from 21 July 2022. Under the new rule, it is for the Chair of the Parole Board (the Chair) to decide whether to hold a hearing in public or not, applying an 'interests of justice' test. The Parole Board has developed Guidance on the Criteria for Public Hearings for the Chair to consider when making a decision ([Applying for a Parole review to be public - GOV.UK \(www.gov.uk\)](https://www.gov.uk)).
6. The definition in the Victims' Code of a victim is *'a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; a close relative (or a nominated family spokesperson) of a person whose death was directly caused by a criminal offence'*. A victim may also be someone who has opted into the Victim Contact Service which is run by the Probation Service. A victim, as well as the parties and members of the public, may ask for a public hearing. Before deciding whether the application meets the interest of justice test, the Chair asks for representations from the parties to the case – namely the Secretary of State and the prisoner, usually through their legal representative. The Chair will also ask the Secretary of State to find out the views of any victims involved with the case. The Secretary of State will usually seek the views of victims who are signed up to the Victim Contact Service. In some circumstances the Secretary of State may choose to seek the views of victims who have not opted into Victim Contact Service or are not eligible for the service for technical reasons. This is a matter for the Secretary of State. The Parole Board does not generally have direct contact with victims.
7. A test in the South-West of England is currently being conducted by the Ministry of Justice on victims automatically having the right to attend private hearings. The expectation is that this will be rolled out across England and Wales during 2023. Victims attending a private hearing will have to agree to maintain the privacy of that hearing. Different rules apply to public hearings.

8. Each year the Parole Board is asked by the Ministry of Justice to review the risk of approximately 900 prisoners with a conviction for murder and approximately 900 prisoners with a conviction for rape. Each prisoner referred to the Parole Board has caused immense pain to the victims or their family and loved ones. The Parole Board tries as best it can to take this into account, but it must decide any referral according to the test set out in law.

Background to the case

9. On 22 January 1988, upon his guilty pleas, Mr Pitchfork received a mandatory life sentence for the murder of two young women. He also received concurrent determinate custodial sentences for two counts of rape, two counts of indecent assault and one count of perverting the course of justice committed between 1979 and 1987 (these are referred to together as the index offences).

10. The then Home Secretary originally set the minimum tariff to be served for punishment at 30 years. In 2009, this was reduced to 28 years by the Court of Appeal as a result of what they described as Mr Pitchfork's '*exceptional progress*' in custody.

11. Mr Pitchfork became eligible to be considered for release or potential transfer to open conditions in September 2015. Mr Pitchfork moved to open conditions in August 2016 and resided in such for over five years.

12. Mr Pitchfork was then twice refused parole. However, in May 2021 a panel of the Parole Board determined that Mr Pitchfork met the statutory test for release. The panel directed an extensive set of licence conditions including GPS tracking, polygraph testing and a direction that he resides at an approved premise.

13. In June 2021, the then Secretary of State applied for reconsideration of the release decision. The application was not successful. The Parole Board's reconsideration decision was published online.

14. Mr Pitchfork was released on 1 September 2021 and then recalled to custody on 19 November 2021 for breaching his licence conditions.

15. Following Mr Pitchfork's recall, the Secretary of State referred the case back to the Parole Board in December 2021 to consider whether or not he is suitable for release and, if not, whether he is ready to be moved to open prison conditions.

16. The case was reviewed by a panel comprising a single member on 25 January 2022 and was directed to an oral hearing. An oral hearing has been scheduled for 19 and 20 April 2023 when a three-member panel (the Panel) will decide whether or not Mr Pitchfork meets the statutory release test.

17. Mr Pitchfork is now 62 years old.

Details of the Application and Representations

18. On 12 December 2022 the Parole Board received an application from Alberto Costa MP for Mr Pitchfork's parole hearing to be held in public. Mr Costa is the Member of Parliament for the area in which Mr Pitchfork's crimes took place.

19. In summary, the reasons given for the application for a public hearing were:

- a) The case is exceptional, not only for the brutal nature of the crimes but also because Mr Pitchfork was the first person to be convicted using DNA fingerprinting evidence.
- b) Mr Pitchfork's sentence and parole are of public interest. His release in 2021 aroused lots of attention including his licence conditions which were described as '*stringent*'.
- c) Mr Pitchfork's breach of his licence conditions and his recall caused lots of media attention.
- d) Given the unique nature of the evidence used to convict Mr Pitchfork and the extraordinary licence conditions, a public hearing would assist the constituents of Mr Costa MP, as well as the wider public, in understanding how parole decisions are made.

20. On 16 December 2022, the Parole Board asked for representations from the parties to the case – namely the Secretary of State for Justice and Mr Pitchfork through his legal representative. The Secretary of State requested an extension to submit his representations which was subsequently agreed. The Parole Board also asked the Secretary of State to seek the views of the victims. Having read those representations, I sought further clarification on some issues from the parties and further representations were subsequently received from both parties.

21. In summary, the representations made on behalf of the Secretary of State (dated 7 February 2022 and 24 February 2023) were:

- a) The Secretary of State supports the application for a public hearing in this case with some parts held in private.
- b) The Secretary of State would wish that some evidence relating to the recall and some other matters were held in private.
- c) The views of the victims engaged with the Victim Contact Scheme have been sought and five of the six victims contacted support the request for a public hearing with one opposing the request due to concerns about increased notoriety and the trauma of a public hearing. If the case were held in public, the Victim Liaison Officer would offer support.
- d) Concerns have been raised by the Probation Service that additional media attention could undermine the risk management plan and could impact on Mr Pitchfork's stability in terms of his management and profile within the prison estate. However, there would be contingences to manage potential media intrusion.
- e) A public hearing may add to Mr Pitchfork's grandiosity, which is linked to risk, however, the risk management plan is robust should Mr Pitchfork's release be directed.
- f) If the oral hearing were to be in public, steps would be taken to minimise knowledge of Mr Pitchfork's current name.

- g) Increased transparency is vital to building confidence in the parole system particularly in the most serious cases. Mr Pitchfork is serving a sentence for the gravest of offences.
- h) The reason for changing the Parole Board Rules was to allow greater insight into how the Board reaches its decisions.

22. In summary, the representations made on behalf of Mr Pitchfork (dated February 2023 (with no specific day) and 24 February) were:

- a) Mr Pitchfork does not wish the hearing to be held in public.
- b) Due to the nature of his offending, to ensure Mr Pitchfork's safety, his identity is only revealed when it is necessary, including within the prison estate.
- c) Mr Pitchfork has changed his name by deed poll twice to keep himself safe.
- d) The ongoing risk of serious harm to Mr Pitchfork is as a result of media attention. Significant threats of harm have been made to Mr Pitchfork and the Probation Service has ongoing concerns about vigilante incidents.
- e) If the hearing is held in public, the risks are likely to increase.
- f) The prisoner has been advised to keep a low profile. A public hearing will not allow for this.
- g) Media attention causes Mr Pitchfork stress and anxiety which may impact on his behaviour, his self-esteem and his stability which could make the task of managing Mr Pitchfork by various agencies more challenging.
- h) Professionals working on the case believe that attention undermines Mr Pitchfork's progress.
- i) If the hearing is in public, Mr Pitchfork may not feel that he can properly express himself which may impact on the appropriateness of the decision.
- j) The case is complex with lots of material. It is unlikely that a member of the public will appreciate all the evidence relevant to the panel's decision and therefore a public hearing is unlikely to assist public understanding.
- k) The public being interested is not the same as the public interest or the interests of justice.
- l) Conducting a hearing in a way which increases the chances of any release on licence being unsuccessful is not fair to the prisoner or the public.

23. I have also consulted with the Panel Chair as the Panel Chair is most familiar with the details of the case and therefore best placed to assess: (i) if a public hearing would cause a victim or prisoner undue distress or prevent best evidence being given by witnesses; (ii) if it could adversely affect a prisoner's ability to safely resettle in the community; or (iii) if it could compromise the panel's ability to assess risk.

24. Having consulted the Panel, the Panel Chair has raised concerns about the practicality of a public hearing. These concerns include:

- a) The risks of compromising the identity of people other than Mr Pitchfork which could breach their rights under Article 8 of the European Convention on Human Rights.
- b) Matters relating to the recall which it may not be in the public interest to have covered in a public hearing.
- c) Issues relating to a separate matter which may lead to unwarranted identification.
- d) If the hearing were to be in public, it could curtail the hearing of some evidence which could be relevant, as this material could be prejudicial to an issue arising in sensitive material.
- e) So much evidence may need to be heard in private that there would be little benefit to a public hearing as it will not lead to a proper understanding of the Panel's decision in this case.

Reasons for the Decision

25. I have considered all the information in the application, the representations, and the response from the Panel Chair. I have also taken account of the Parole Board's *Guidance on the Criteria for Public Hearings*.

26. The normal position is that parole hearings will remain in private. This is because it is of paramount importance that witnesses are able to give their best evidence. Furthermore, evidence can relate to highly personal matters including health and evidence that may be distressing to victims. There must therefore be good reasons to depart from the general rule.

27. It should be clear that I would not grant an application to have a hearing in public in circumstances where I thought that a public hearing would impact on the fairness of the hearing.

28. I am aware that there are a number of measures which can be taken to protect the fairness of the hearings. These would include the ability to take evidence in private, the ability to use code phrases to conceal sensitive information such as actual addresses, the ability to put in place conditions of attendance, and the ability to suspend the hearing or remove any person from the hearing if they are disruptive.

29. I am also aware that recent developments in technology and Parole Board operating models have better enabled the public to attend a hearing by remote viewing. This will make it more convenient for members of the public to attend and will also minimise the potential for disruption to the hearing itself.

30. I note that, should a hearing be held in public, it is always open to the Panel Chair to use their case management powers to manage the hearing and to suspend a hearing if they feel that the proceedings are becoming unfair.

31. In this case some strong arguments have been made for a public hearing including:

- a) The grave nature of Mr Pitchfork's offences.
- b) The notoriety of the case.

- c) Public concerns about Mr Pitchfork's recall to custody after a relatively short period of time in the community following his release from Prison in September 2021.

32. As set out in paragraph 4, a high bar has been set for public hearings to be in the interests of justice. Notwithstanding the points set out above, I have decided that this high bar is not met in this case. My reasons are as follows:

- a) Much of the hearing will be taken up with hearing evidence about the reasons for Mr Pitchfork's recall. This evidence is likely to be fundamental to the decision of the Panel. The Secretary of State and the Panel Chair both agree that, given the confidential nature of some of the evidence, parts of it are not appropriate to be heard in public.
- b) As set out at paragraph 3, the Government has decided that public hearings in appropriate circumstances could improve transparency and help build confidence in the parole system.
- c) As set out in paragraph 26 and in the Parole Board's *Guidance for Applications for Public Hearings*, there should be good reasons to justify a departure from the general rule that parole hearings should remain in private.
- d) In circumstances where evidence which is likely to be critical to the Panel's decision cannot be heard in public, it is difficult to see how a public hearing would aid transparency or public understanding of the parole system or the decision in this case.
- e) Although five out of the six victims are content for Mr Pitchfork's hearing to be in public, one victim does not wish the hearing to be in public due to concerns about the notorious nature of this case and potential trauma. The wishes of all victims weigh very heavily with me.
- f) If any of the victims believe that their attendance at the hearing would be beneficial to them, this benefit can be achieved in alternate ways by allowing these victims to observe the private hearing, as covered below in more detail.
- g) As set out in paragraph 4, it is important that the privacy and safety of all participants in the hearing is protected. If this hearing were to be held in public, this could be compromised for some participants.
- h) There is information to suggest that a public hearing could add to Mr Pitchfork's grandiosity and could make managing Mr Pitchfork more challenging either in the prison estate or if he is released.
- i) A detailed summary would provide sufficient information to the public for the reasons for the decision made at Mr Pitchfork's oral hearing. This would satisfy the requirements of transparency without prejudicing the effectiveness of the hearing.

33. In light of the above, the application for a public hearing in the case of Mr Pitchfork is not granted.

Victim attendance at a private hearing

34. Some of the victims are supportive of a public hearing however it is not clear from the representations received whether they would wish to attend the hearing themselves.
35. As set out in paragraph 7, the Ministry of Justice is currently piloting victims attending hearings, however, this is only in the South-West of England. Regardless of whether or not they are located in the pilot area, if any of the victims do wish to observe the private hearing, the Parole Board is willing to explore the feasibility of supporting those victims to observe the private parole hearing subject to any necessary case management conditions and also proper support being in place for them victims. The victims are therefore invited to contact the Parole Board to discuss the potential arrangements and support that may be needed at CEO@paroleboard.gov.uk.
36. It is ultimately for the Panel Chair to make the final decision on attendance at a private hearing and being satisfied that appropriate arrangements can be made.
37. If permission is granted by the Panel Chair for the victims to attend the private hearing, I note that some parts of the hearing may need to take place without the presence of the victims. However, I am satisfied that if permission is granted by the Panel Chair, a sufficient part of the hearing could be heard in the presence of the victims to allow them a deeper understanding of the parole process. The Panel Chair has extensive case management powers to enable the relevant parts of the evidence to be taken without the presence of the victims and is best placed to make the decision on how these powers should be used in Mr Pitchfork's case should the Panel Chair grant permission.
38. If permission is granted, the Panel Chair may also need to hold a preliminary hearing to deal with any practical matters associated with this hearing.
39. This matter will only revert back to me if there is any fresh information which represents a significant change in the relevant circumstances.

Caroline Corby

The Chair of the Parole Board for England and Wales

2 March 2023