Member Case Assessment Guidance
# Introduction

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Introduction

Overview
This document provides advice and guidance on working through the Member Casework Assessment (MCA) cases you have been allocated. It provides an overview of the MCA process as well as more detailed guidance about issues that you may encounter when doing MCA work.

How to use this guidance
This manual is intended to be primarily used as an ‘e-manual’ with hyperlinked cross-references throughout the document. The latest version will be available on the members’ extranet. The members’ newsletter will advise you when it has been updated and what the main changes are. You are welcome to print the guidance (or the parts that you use regularly) but it is possible that it may be superseded.

The guidance has three parts:

1. Member Case Assessment
2. What do I do when faced with...
3. Technical annexes

How to find what you need
When conducting an MCA panel you will find that some cases throw up issues that you will need guidance on. For example, a prisoner in a Scottish prison will need different directions compared with a prisoner in an English or Welsh prison as the probation function does not have the same structure in Scotland. This manual is likely to be your first port of call but you need to be able to find an answer easily. You can do this by looking at the list in Part 2 to see if your head-scratching case is covered. If it is not, then you can search this manual by using ‘Find’: click Ctrl & F to bring up the navigation box, entering a word to search by and looking at what is found.

If your challenging query is not covered in this guidance, please let the MDP team know so they can add the issue to the manual.

How to get more help
There is a range of alternative sources of information - from your colleagues to the legal advisor, member practice advisor and the members’ forum. The MCA Duty Member will also be able to provide advice, as will the trainers from the recent MCA training programme. Useful HQ contacts are: MCA Duty Member on 0203334 6397/4666; the member practice advisor in the MDP team on 0203334 5329; Legal team on 0203334 4755.
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Part 1: Member Case Assessment

The MCA process is a form of triage for every case that is referred to the Parole Board. Your role is to first decide if there is sufficient information to make a decision and then decide how to progress a case. Broadly speaking, the decisions that you can make are:

- Conclude the review on the papers, either releasing the prisoner or refusing parole;
- Sending the case to an oral hearing (occasionally, a directions hearing).

The MCA process was introduced in 2014. Prior to that only indeterminate sentence referrals received any form of case management by Parole Board members before being listed for an oral hearing. Determinate sentence and recall cases were referred to oral hearings, if needed, by paper panels. The MCA process was introduced to unify this approach and enable all types of cases to be dealt with in a similar fashion.

The aim of the MCA process is that:

❖ all cases will be dealt with appropriately, proportionately, effectively and consistently across the Board in order to:
   - Ensure fair, rigorous and timely reviews
   - Allow good quality analysis and directions (that is, defensible decisions, more accurate compliance with directions, and less delay) that identify the key issues in a case
   - Introduce a consistent approach for all case types
   - Enable the panel that considers the case at an oral hearing to concentrate on making an evidenced-based assessment of risk.

How the MCA process works
You will receive notice of the bundle(s) a week before your panel (i.e. the date by which you have to submit the decisions). The dossiers will be available electronically on PPUD for you to download. You will receive between 4 and 8 cases per bundle depending on the type of case: this represents one day’s work and fee (determinate sentence recall cases are estimated to take less time to deal with than others). Your bundle may contain all cases of one sentence type or may contain a mix of referrals. You need to assess each case, decided how to progress it, prepare your decisions/directions using the templates and return all decisions to the Secretariat by midnight on the day of your panel or before. You can complete and submit your decisions earlier, but they should all show the formal panel date. Annex 21 contains more information about the administrative processes for the MCA system.
All cases are subject to the same statutory test for release - *that a prisoner no longer needs to be confined for the protection of the public* - so require similar assessment of risk. Therefore, the fundamental principles in reviewing any case are largely similar. There are differences in the powers or remit you have in certain cases; these are summarised in the ‘traffic lights table’ on the next page. However, broadly speaking, your role is to determine whether you can conclude the review on the papers or whether to send the case to an oral hearing. This is covered in more detail later in the guidance.

If you are assessing a type of case that is not familiar to you and wish to know more about the type of sentence, please refer to Annex 3 of this guidance or Chapter 1 of Section B of the Members’ Handbook, which provides such detail. There are a decreasing number of determinate sentence prisoners imprisoned under earlier legislation where different considerations are needed. These cases are referred to the Parole Board increasingly rarely, but you need to watch out for them. If you do receive one, refer to the guidance.

The following table summarises the types of cases that you will receive and what powers you have (or do not).
<table>
<thead>
<tr>
<th>Type of case</th>
<th>Options available at MCA</th>
<th>Options not available at MCA</th>
<th>Options available at oral hearing</th>
<th>Options not available at oral hearing</th>
</tr>
</thead>
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<tr>
<td><strong>Lifer Pre-tariff</strong></td>
<td>• Conclude the review on the papers by issuing a negative decision</td>
<td>• Release</td>
<td>• No recommendation for open conditions</td>
<td>• Release</td>
</tr>
<tr>
<td></td>
<td>• Send the case to an oral hearing</td>
<td></td>
<td>• Recommendation for open conditions</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Adjourn/defer for further information</td>
<td></td>
<td>• Recommendation for open conditions</td>
<td></td>
</tr>
<tr>
<td><strong>Lifer on or post tariff reviews</strong></td>
<td>• Conclude the review on the papers by issuing a negative decision</td>
<td>• Release</td>
<td>• No recommendation for open conditions</td>
<td>• ‘Subject to’ Future date release</td>
</tr>
<tr>
<td></td>
<td>• Send the case to an oral hearing</td>
<td></td>
<td>• Recommendation for open conditions</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Adjourn/defer for further information</td>
<td></td>
<td>• Recommendation for open conditions (check referral), Direct Release/No Release</td>
<td></td>
</tr>
<tr>
<td><strong>Lifer Recall</strong></td>
<td>• Send the case to an oral hearing (PB Rules requirement)</td>
<td>• Release</td>
<td>• No recommendation for open conditions</td>
<td>• ‘Subject to’ or future date release</td>
</tr>
<tr>
<td></td>
<td>• Conclude the review on the papers if the offender has indicated that they do not wish to have an oral hearing and there are no OBR principles in terms of fairness</td>
<td></td>
<td>• Recommendation for open conditions</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Adjourn/defer for further information</td>
<td></td>
<td>• Recommendation for open conditions (check referral), Direct Immediate Release/No release</td>
<td></td>
</tr>
<tr>
<td><strong>Determinate (&amp; DCRs) or extended sentence early release</strong></td>
<td>• Conclude the review on the papers by issuing either a release decision or a negative decision</td>
<td>• Recommendation for open conditions</td>
<td>• Release</td>
<td>• Recommendation for open conditions</td>
</tr>
<tr>
<td></td>
<td>• Send the case to an oral hearing</td>
<td></td>
<td>• No direction for release</td>
<td>• ‘Subject to’</td>
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<tr>
<td></td>
<td>• Adjourn/defer for further information</td>
<td></td>
<td></td>
<td>• Specific future date release</td>
</tr>
<tr>
<td><strong>Extended / determinate recalls</strong></td>
<td>• Conclude the review on the papers by issuing either a direction for future or immediate release or a negative decision</td>
<td>• Recommendation for open conditions</td>
<td>• Immediate or future date release</td>
<td>• Recommendation for open conditions</td>
</tr>
<tr>
<td></td>
<td>• Send the case to an oral hearing</td>
<td></td>
<td>• No direction for release</td>
<td>• ‘Subject to’ release</td>
</tr>
<tr>
<td></td>
<td>• Adjourn/defer for further information</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Life sentence prisoners: recommendation to open on paper permissible in exceptional cases but requires Chairman’s agreement*
<table>
<thead>
<tr>
<th>Type of case</th>
<th>Options available at MCA</th>
<th>Options not available at MCA</th>
<th>Options available at oral hearing</th>
<th>Options not available at oral hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>IPP Pre-tariff</td>
<td>• Conclude the review on the papers by issuing a negative decision (unless juvenile or mental health case)(^1)**&lt;br&gt;• Send the case to an oral hearing&lt;br&gt;• Recommendation for open conditions, subject to prisoner being eligible (no previous abscond)&lt;br&gt;• Adjourn/defer for further information</td>
<td>• Release</td>
<td>• No recommendation for open conditions&lt;br&gt;• Recommendation for open conditions</td>
<td>• Release</td>
</tr>
<tr>
<td>IPP on or post tarff reviews</td>
<td>• Conclude the review on the papers by issuing a release decision&lt;br&gt;• Conclude the review on the papers by issuing a negative decision (unless juvenile or mental health case)(^2)**&lt;br&gt;• Recommendation for open conditions, subject to prisoner being eligible (check referral; no previous abscond)&lt;br&gt;• Send the case to an oral hearing&lt;br&gt;• Adjourn/defer for further information, where no Secretary of State View submitted</td>
<td>• Deferral where Secretary of State View submitted</td>
<td>• No recommendation for open conditions&lt;br&gt;• Recommendation for open conditions (check referral)&lt;br&gt;• Direct Release&lt;br&gt;• No release</td>
<td>• ‘Subject to’&lt;br&gt;• Immediate release&lt;br&gt;• Future date release</td>
</tr>
<tr>
<td>IPP Recall</td>
<td>• Conclude the review on the papers by issuing an immediate release decision&lt;br&gt;• Conclude the review on the papers by issuing a negative decision (unless juvenile or mental health case)(^2)**&lt;br&gt;• Send the case to an oral hearing&lt;br&gt;• Recommendation for open conditions, subject to prisoner being eligible (check referral; no previous abscond)&lt;br&gt;• Adjourn/defer for further information, where no Secretary of State View submitted</td>
<td>• Deferral where Secretary of State View submitted</td>
<td>• No recommendation for open conditions&lt;br&gt;• Recommendation for open conditions (check referral)&lt;br&gt;• Direct Immediate Release&lt;br&gt;• No release</td>
<td>• ‘Subject to’ or future date release</td>
</tr>
</tbody>
</table>

\(^1\)** Juveniles and prisoners in a secure hospital setting or mental health unit automatically progress to an oral hearing if they cannot be released on papers.
Conducting MCAs

First, check why the case has been referred to the Parole Board by the Secretary of State [SoS] from the Ministry’s Public Protection Casework Section [PPCS] and what type of case it is. Indeterminate sentence cases and DCR cases will have the details of the referral at the front of the dossier. Determinate sentence recalls do not contain the details of a referral but the dossier will tell you the nature of the case and under what legislation the prisoner was sentenced.

Determinate and indeterminate cases have different ‘risk periods’ to be considered. The following table summarises those:

<table>
<thead>
<tr>
<th>Type of sentence</th>
<th>Risk period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indeterminate (IPP and life sentence)</td>
<td>Indefinite, although indeterminate prisoners can apply to have their licence conditions removed after 10 years in the community.</td>
</tr>
<tr>
<td>Determinate recall including extended sentence prisoners</td>
<td>Up to sentence expiry date. The Parole Board has no jurisdiction over the post-sentence supervision period.</td>
</tr>
<tr>
<td>DCR (determinate conditional release)</td>
<td>From the PED (parole entitlement date) to the NPD (non-parole date)</td>
</tr>
</tbody>
</table>

Secondly, the key decision you need to make is whether you can conclude the case on the papers or whether instead it should be sent to an oral hearing. Before you can make that decision, you need to review the dossier to see if you have the necessary information to make an assessment of risk.

The dossier

The quality of the dossier has a big impact on the assessment of the case. You need to check that the dossier contains sufficient quality information upon which to review the case at the MCA stage and that it will have at the oral hearing if directed to one. Bear in mind that there are different requirements for different types of cases - so that a dossier for a determinate sentence recall will be very different from an IPP prisoner’s review dossier. It is not necessary to achieve exactly the same format, structure or content in every case type.

You should focus on what you need in the individual case to enable you to determine the issues and decide your approach: this is more important than simply requiring a particular sort of report as if it was normal practice for every case. Similarly, you will want to avoid using a formulaic approach to your cases. Every referral is different. Do not send a case to an oral hearing simply to fill an information gap which could be resolved by directing the submission of a further report. Rather, you can adjourn the review and issue directions if essential information is missing which, once received, could enable you to conclude the review on the papers.

The type of information you will need is likely to include:

- Understanding of offending behaviour through an independent account of the index offence and other offending behaviour (including unconvicted charges)
  
  *Sources: Pre-Sentence Report, Sentencing Judge’s remarks, OASys SARN, psychological assessments, witness statements etc.*
• Understanding of motivation to offend which contributes to an assessment of risk factors
  Sources: Pre-Sentence Report, OASys, SARN, psychological assessments, Offender Manager’s report etc.

• Evidence of change in risks during sentence including the impact of any interventions, success in open conditions, temporary releases, reasons for any recall, outcomes of any adjudications or drug tests
  Sources: Post-programme review reports, Offender Supervisor’s report, Offender Manager’s report, etc.

• Assessment of current level and nature of risk
  Sources: Offender Manager’s report, OASys, RM2000, psychological assessments, SARN

• Details of risk management plan (or release plan in the case of a short-term prisoner)
  Sources: Offender Manager’s report, OASys

Bear in mind the proportionality of any information requirement and that you do not need to answer every question in order to make a decision about a case.

Proportionality

Balancing the level and complexity of information requested and the cost and timescale for obtaining it against the period of liberty at stake and the risk presented. In the case of determinate sentence prisoners, the date of automatic release or re-release may have a bearing [NPD, SED].

Deciding how to progress a case

A key task for you is to decide whether you can conclude the case on the papers, either by releasing the prisoner or by issuing a negative decision. If a case cannot be determined on the papers immediately, or after adjournment, you will consider directing an oral hearing (and occasionally a directions hearing).

Whatever the type of referral, the most important task is to identify what you need to know and what the relevant issues are in order to make a decision about how to progress the case. Having done this, you then need to decide your approach. The range of decisions that you can make will include:

➢ Issue a paper decision to either direct release or to refuse parole
➢ Adjourn or defer for developments or further information before the MCA can be completed
➢ Send to oral hearing but direct a Directions Hearing in the first instance
➢ Send to oral hearing for determination of the case
➢ Send to oral hearing at a point in the future after deferring for further information to be provided.
There are different reasons for sending a case to an oral hearing: **fairness to the prisoner is the overriding requirement and the perceived utility of an oral hearing is not the deciding factor.** Some cases should be automatically sent to an oral hearing: these include recalled life sentence prisoners, prisoners in mental health settings and juveniles/young offenders. For all other cases, you need to decide whether or not oral evidence is essential to reach a fair decision. Osborn, Booth and Reilly (OBR) established the principle that some cases where progression is unlikely should still be sent to an oral hearing so that a thorough risk assessment can be completed (see [Annex 1](#) for the full OBR decision and guidance). Things to take into account are:

- The period of liberty at stake (i.e. life for an indeterminate prisoner, until SED for a determinate recall, and until non-parole date/conditional release date for a DCR case);
- Whether the prisoner has had an oral hearing previously or recently and whether there have been any significant changes.
- Whether there are disputed facts which are relevant to risk and can only be explored properly with oral evidence.

It is important that you explain why you have reached your decision. Bear in mind that a representative citing OBR and asking for an oral hearing does NOT mean that you have to grant one – but you do clearly need to evidence ‘why’ not if you do not accept the application.

You can also decide to adjourn or defer if you consider that further initial evidence is needed before you or another member can decide how to progress the case. Alternatively, you may consider that significant developments are likely as a result of any directions that may need a further response (such as key report writers needing to respond to recommendations in a psychological assessment that you have directed) which may merit a deferral or adjournment. Further information about adjourning and deferring is in [Annex 15](#). Finally, you might consider a case is so complex that a directions hearing is needed: this is an oral hearing, possibly undertaken only by the panel chair, to clarify what exact directions for information, witnesses and logistics are required in order to make the eventual oral hearing viable.

Bear in mind that all these decisions are not available for every case type. For example, Parole Board policy means that some cases are automatically entitled to an oral hearing. These are detailed in the box below.

<table>
<thead>
<tr>
<th>Automatically entitled to an oral hearing</th>
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<tbody>
<tr>
<td>ANY life sentence recall cases must be progressed for an oral hearing unless the prisoner has indicated that they are not seeking an oral hearing. You must also be satisfied that it is fair under the OBR principles to agree oral evidence is waived. If the prisoner has outstanding charges or police investigations that may be relevant to risk, you can defer or adjourn for the matter to be concluded: it is not a sensible approach to send it to an oral hearing until further criminal charges or investigations have been resolved as the panel is unlikely to be able to assess properly the prisoner’s current risk. It can be useful in this type of situation to seek legal representations.</td>
</tr>
</tbody>
</table>
ANY juvenile/young offender must be progressed to an oral hearing if release is not possible on the papers. This includes offenders who were under 18 when the review commenced, or when the decision to revoke the licence was made. Careful consideration should be given to any offender who is under 21 or was under 21 when sentenced. See Annex 7 for further guidance.

ANY prisoner within a secure hospital setting or mental health unit should be progressed for an oral hearing. Consideration should be given to expediting or prioritising the hearing as a Mental Health Tribunal will already have recommended progression.

ANY life sentence prisoner who is a potential candidate for release or a progressive move on the basis of key report writers’ recommendations should be progressed to an oral hearing.

When you assess a case, you need to decide whether you are able to conclude the review on the papers or whether live evidence is required. There are a number of reasons why you should not conclude a review on the papers:

➢ You may not be entitled to make a decision on the papers (e.g. there is a realistic prospect of progression to open conditions or release for a life sentenced prisoner);
➢ Issues which go to the question of risk need to be explored with oral evidence before it can be decided if a prisoner is suitable for release or progression to open conditions;
➢ Parole Board policy entitles a prisoner to an oral hearing;
➢ Oral evidence is required to determine a factual dispute which is relevant to risk;
➢ Procedural fairness under the OBR principles.

The following are examples of when you may think that it is appropriate to send a case to an oral hearing, taking into consideration the principles set out in the case of OBR:

- The Offender Supervisor and Offender Manager recommend progression to open conditions or release and you cannot make the decision on the papers either because it is life sentence review or oral evidence is required to make a thorough assessment of risk
- Proper risk assessment demands you see or question the offender or witnesses in person
- There is an important matter of dispute or mitigation (i.e. a finding of fact needs to be made that requires oral evidence such as dismissed adjudications, dropped charges, challenged recall circumstances or security information)
- Experts have different opinions about the offender’s risks and a panel needs to decide which opinion to prefer
- Legal representations seriously question the paper decision which impacts management in prison now or outcomes of future parole reviews
- The offender has a legitimate interest in participating in decision-making or has a useful contribution to be made in person
- Wider considerations that impact management in prison now or the outcomes of future parole reviews
The offender is significantly over tariff and has not had an oral hearing recently or is a determinate sentence prisoner and has a considerable period of time until sentence expires
The offender persuades you for any other reason that an oral hearing will be appropriate.

The following illustrate situations when a paper decision may be more appropriate:

- Determinate sentence or IPP case: you decide to direct release for the determinate prisoner or to release or progress the IPP prisoner to open conditions, all on the papers
- The prisoner has said that he/she wishes for the review to be concluded on the papers and you agree, bearing in mind our duty to provide a fair hearing
- The previous review was conducted at an oral hearing and there have been no significant changes affecting risk assessment since then
- The offender has started, or is due to start, an offending behaviour programme after which he/she will need a period of consolidation and time would need to be allowed for the post-programme report
- There is no support for progression in key report writers’ recommendations, the prisoner’s tariff has not expired and he/she has not asked for a review
- An indeterminate sentence prisoner has recently moved to open conditions and had not yet engaged significantly in the resettlement programme or started the temporary release (ROTL) process
- The prisoner is serving a new sentence that will not expire until the next review is due (although bear in mind that for indeterminate sentence prisoners open conditions may be an option and that for all prisoners the new sentence may not be relevant to the assessed risk of harm)
- Determinate sentence cases: the prisoner has outstanding criminal charges but bear in mind the Broadbent principles. When there are pending charges, you have the discretion to adjourn or defer the review until a trial is over: but mere suspicion/allegation by itself is NOT sufficient to keep someone detained in custody.
- Determinate sentence cases: the prisoner is about to attend a relevant offending behaviour programme or other intervention likely to affect risk assessment.
- Determinate sentence cases where SED/NPD is imminent and falls within the Parole Board’s operational policy for a minimum period to remain to arrange an oral hearing – currently 12 weeks. In which case, use the standard paragraph explaining this in your reasons. See Annex 8.

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2 Broadbent: ‘it has been held that the mere fact of a further charge and pending prosecution cannot on its own justify recall on the basis of a risk of reoffending, but it is likely to be the case that the Board will need to consider the evidence upon which the new charges are based in order to come to a proper assessment of risk’. From Arnott &Creighton Parole Board Hearings (London: Legal Action Group, 2014).
Adjourning or deferring for more information

Adjourn: the case will be referred back to you when additional information has been received.

Deferred: the case will be referred to a new MCA panel or, occasionally, MCA Duty Member.

For full guidance on adjournments and deferrals, refer to Annex 15. Use the MCA Directions template to defer or adjourn a case, not the Adjournment/Deferral form which is used by a panel chair if needed on the day of the hearing.

It may not be possible to decide immediately whether a case requires further consideration at an oral hearing or whether it can be concluded on the papers without further reports. This is a situation where adjourning to oneself is appropriate. It may also be appropriate to adjourn if you consider that an oral hearing is required but that certain information is needed before the case can be deemed ready to list and which may therefore have an impact on the directions. Alternatively, you may send the case to an oral hearing but direct that it is not listed until a particular report has been received (such as confirmation that a prisoner in the open estate has started to take resettlement leaves). Caution needs to be applied with this approach as circumstances can change significantly which may lead to the need for further directions.

Keep in mind that by adjourning, you are essentially delaying the parole review. You may wish to exercise caution when adjourning or deferring for substantive reports, such as psychiatric assessments which have not yet been commissioned. If you adjourn or defer, an explanation as to why you are doing so should be stated in your narrative in the template. Please note that if you are adjourning or deferring, specific and realistic deadlines for submission of reports must be given. When these reports are received, if you have adjourned to yourself, you will be required to complete the initial assessment (i.e. paper decision or send to oral hearing).

An adjournment may be appropriate:
• When a crucial report is in the process of being written and the recommendations of that report are likely to have a significant influence on whether you will set directions or issue a paper decision.
• When essential reports are significantly out of date (and therefore further work may have been completed which could affect the recommendations for a progressive move) or a legal representative highlights the existence of a report that is not within the dossier and is material to the MCA decision.
• When reports are in the process of being completed following certain offending behaviour programmes and their findings may affect the MCA decision.
• When the prisoner is due to complete a relevant course or intervention soon and you want to know the outcome of that programme before deciding how to progress the case.
• When a psychological or psychiatric assessment is needed – but bear in mind the proportionality of this and whether it is possible to obtain suitable the information cost-effectively and more quickly from other sources.
• When a directed report may have a significant impact on the directions you make for an oral hearing in terms of witnesses or further reports etc.
• When you would be inclined to direct release if suitable accommodation was confirmed as available.
• When the prisoner is facing new criminal charges and was due to have appeared in court prior to the date that the review is taking place but the outcome is not known.
• When the prisoner has just started to take overnight resettlement leaves from open prison and their number and success will crucially affect assessed risk.
• If the PAROM 1 states that a Victim Personal Statement will be submitted but has not yet been received, you should adjourn for that before making directions or issuing a paper decision. It is important that the VPS is received before any paper decision is made.

Directions needed in relation to non-disclosure applications can be made as an adjournment. If minded to conclude the review on the papers, you should always make directions on any non-disclosure application before concluding the case. Please see Annex 4 for guidance. The directions template guidance provides a choice of text that may be helpful when making non-disclosure directions but each case must be considered individually.

HINTS AND TIPS: adjourning and deferring

Remember that when you adjourn or defer, you delay the prisoner’s parole review.

Consider whether the information is available from PPCS sources now (e.g. the outcome of court cases may already be held).

Track your adjourned cases and chase them if you have not received the directed reports by the proposed target date.
MCA Decision Tree*

What type of case is it?

Indeterminate recall

Has the prisoner indicated that they accept their recall and wish it to conclude on the papers and there are not fairness issues?

Yes

Issue negative decision

No

Are you able to release on the papers (only IPP)?

Yes

Issue release decision

No

Oral hearing

Are there too many unknowns to make directions?

Yes

Adjourn / Defer / Directions hearing

No

Oral hearing**

Don’t know

Adjourn / Defer

Indeterminate periodic review

Are there grounds for an oral hearing?

Yes

Issue negative decision

No

Issue paper decision (release or negative)

Don’t know

Adjourn / Defer

Determinate recall

Do you have the necessary information to conclude on the papers?

Yes

If you intend to issue a negative decision, are there grounds for an oral hearing?

Yes

Oral hearing**

No

Oral hearing

No

Are there grounds for an oral hearing?

Yes

Oral hearing**

No

Adjourn / Defer

DCR

*Juveniles; prisoners in a secure hospital setting or mental health unit and indeterminate recalls automatically progress to an oral hearing unless you are able to release on the papers (not life sentenced prisoners)

**Except where there is less than 12 weeks to NDP/sentence expiry in which case you are sending to oral hearing. You will need to explain it cannot be listed but consider whether you are able to assess risk on the papers (see detailed guidance)
Issuing paper decisions

Where you conclude the case on the papers, use the relevant template for paper decisions. Annex 9 gives you the framework and guidance for writing reasons.

You can release determinate and on/post tariff IPP sentence prisoners and can recommend that IPP prisoners are progressed to open prison on the papers (where the referral permits this). You can also issue negative decisions on the papers for all prisoners except for those entitled to an oral hearing by Parole Board policy [see page 10].

Test for release

The same release test applies to all types of prisoner (this has not always been the case): Annex 2 has more details. It is best practice to simply repeat the statutory test in your written decision and to avoid any temptation to explain or expand upon it. To do so, may lead to legal challenge or dilution of the core criteria. Following the provisions in LASPO legislation and Counsel’s advice following the case of King, only the statutory test for release must be applied for determinate sentence recalls: it is no longer appropriate to balance risk against the benefits of release which was a previous test (some witnesses may still refer to it inappropriately). Breakdown in supervision and likelihood of future compliance with supervision in the community is also no longer a reason for continuing detention - although of course if a member concludes that non-compliance may lead to an unacceptably high risk and there is evidence of a poor record of breaches of trust then that may influence the decision. It is not however part of the formal test for release to be cited.

Release decisions

Determinate/extended sentence and IPP prisoners may be released on the papers. This applies to both initial release and recall reviews. Also, a recommendation for an IPP prisoner to progress to open conditions can be made on the papers. However, where you consider a life sentenced prisoner may be suitable for release or open conditions, their case must be sent to an oral hearing. In other cases, you will need to set licence conditions if you are directing release: more information can be found at Annex 10.

Negative decisions

Not all cases will warrant an oral hearing (unless this is required by Parole Board policy) and there will be times when you can conclude the review on the papers once the OBR principles have been applied. It is very important that your approach is well documented and fair. In the 12 months from February 2016 to January 2017, over 16,000 cases were considered by MCA members. The largest proportion of cases were determinate sentence recalls and the majority of these (60%) received a negative decision whilst only 18.5% of indeterminate (IPP and life sentenced prisoners) received a negative decision. You should bear in mind that if a prisoner believes that their case should have been considered at an oral hearing, they can apply for the decision to be reconsidered after the paper decision has been issued.

You will find the reasons template explains this on the first page of your document once finalised: but you should always use the following “standard OBR paragraph” in the body of your decision as well (e.g. in section 1 or section 8).
“In making this decision the panel has considered your case against the principles set out in the case of Osborn, Booth & Reilly [2013] UKSC 61 concerning oral hearings. The panel does not find that there are any reasons for an oral hearing and you have not submitted any reasons for an oral hearing. Therefore your case is being concluded on the papers. However, if you believe that your case should proceed to an oral hearing, you are invited to submit further representations to the Parole Board within 28 days of receipt of this decision.”

If a determinate recall prisoner has less than 12 weeks until their sentence is due to expire (SED), a cut-off applies as there is not sufficient time for the case to be listed for an oral hearing, unless there are exceptional circumstances. Instead you should conclude the review on the papers where possible. Where an oral hearing would be necessary and there are no exceptional circumstances, direct to oral hearing but add the following paragraph.

“The panel considers that an oral hearing is appropriate in this case. Unfortunately, as your Sentence Expiry Date (SED) is on xx/xx/xxxx, the Parole Board is unable to convene an oral hearing before you will be automatically released at your SED. This means that it will not be able to hold your oral hearing.”

**Hints and tips for paper decisions**

If you are issuing a negative decision, you must insert in the body of your reasons the OBR paragraph to explain why you are not sending the case to an oral hearing. You can expand the paragraph to reflect circumstances of the individual case i.e. what it is about that case which means that it does not warrant an oral hearing. For example, the prisoner’s last review was at an oral hearing and there has been no significant change since then.

Make sure you detail in section 2 of the template what evidence you have considered, including any representations and any late or undisclosed material. It is sufficient to state the number of paginated pages rather than list all or any reports in the dossier.

Include the statement of test of release as “standard text” appropriately in your reasons.

If you are releasing on licence, make sure you have added licence conditions which are proportionate and necessary for management of risk. These should be cut-and-pasted (making appropriate drop-down options) from the list of standard worded conditions.
Building an oral hearing

As outlined above, a case may progress to an oral hearing for a variety of reasons including:

- Entitled under Parole Board policy;
- Realistic prospect of progression;
- Factual dispute related to risk; or
- Procedural fairness.

It is critically important when you make directions that you do not tie the hands of the panel that hears the case at the oral hearing. You must not make an assessment of risk in the narrative of the directions nor must you place boundaries on the areas that the panel may wish to explore or rule out potential witnesses the chair might prefer.

Your role is to put the building blocks of an oral hearing in place so that the panel can concentrate on making an evidence-based assessment of risk rather than become bogged down with unnecessary procedural issues. This also allows all parties to be clear as to the focus of the hearing. At this stage, it is important to take full account of any views which the prisoner or legal representative may have expressed in their submissions to the Parole Board.

Completing the directions template

There is one directions template, no matter the type of case being considered. You are required to complete each of the sections in every case.

The first box of the template is intended to give anyone who reads it a clear overview of the case. The text should be written in the third person (‘Mr X’s case’, rather than ‘your case’). It should include:

- The evidence considered (number of pages in dossier, additional pages and date of any representations);
- A brief overview of the offender, his/her sentence type, current situation and brief history of offending;
- An explanation of why you cannot conclude the case on the papers;
- A broad outline of the likely focus of the oral hearing in terms of issues affecting risk assessment (but avoiding at all cost a definitive summary of risk factors or assessment of current risks – matters for the oral hearing panel);
- Any logistical issues which you need to explain.

Details of the offender

This should be brief but just enough to give the reader a sense of the case. You should mention the sentence type, index offence, risk period/tariff expiry and whether this is an initial release or recall.

An explanation as to why you cannot conclude the case on the papers and why an oral hearing is needed. This should lead to a broad outline of the anticipated focus of the oral hearing with an identification of what issues the panel may wish to explore; you should not provide the answers to the issues in the narrative.

They can be provided in bullet form and could include:
• Do any areas of risk appear to remain outstanding and if so what are they?
• Does the offender have a good insight into risks and how to manage them?
• Does the allegation that led to recall or return to closed conditions appear to go to the question of risk?
• What weight to put on security concerns, unconvicted offending or allegations (for example, of domestic violence)?
• Does the behaviour of a determinate sentence recall prisoner relate to the risk of harm or general likelihood offending?
• Do we have a good enough understanding of the offender’s behaviour in the index offence and triggers or motivation for behaving in such a way?
• Are there facts to establish or disputes to resolve (for example, unheard adjudications, challenged circumstances of recall)?
• What appears to have been the impact of offending behaviour work on risk?
• What could be the implications of reported learning disability or mental health issues (e.g. on behaviour, risk management, ability to benefit from interventions)?
• Does the robustness of the risk management plan and/or the motivation of offender to comply need testing? Are there apparent differences of between professional opinions to be resolved?

Hints and tips about “issues”

In the context of the MCA process, these are the questions and concerns for which you would like answers to before being able to make a determination on the case. The easiest way of identifying them is asking systematically what you would need to find out at an oral hearing.

**Generally speaking, identifying key issues will enable an effective hearing as both parties can prepare to provide relevant evidence on those matters in particular.**

Bear in mind that there are some issues that may be interesting but are not necessarily directly relevant to the panel’s risk assessment and decision. The key issues are those which directly relate to a panel making a firm decision about risk.

Use conditional language when listing the issues so that a future panel is not tied to what you have identified.

The amount of information you set out in the first box in the template will depend on the reason you are sending the case to an oral hearing and the complexities of the case. If, for example, you have an offender who has progressed well through the system and has recommendations from key report writers for release or a progressive move, it may be enough to state this and indicate areas to be tested with oral evidence (e.g. the detail of the release plan, any question marks you have or gaps in the paper evidence, particular risk factors or lack of protective factors that may be of concern etc.).

Where you have taken detailed legal representations into consideration (perhaps pertaining to disputed facts), then it is important to make that clear here so that
witnesses will know that part of the purpose of the oral hearing is likely to explore the disputed facts. Remember that witnesses may not have seen the legal submissions. If the content of the representations is pivotal, then it may be worth directing that all, or some, report writers are provided with a copy of them.

If a purpose of the hearing is to explore alleged and unconvicted offending (such as discontinued or dismissed criminal matters), it is important to note this. It can be helpful to note that the Parole Board considers both convicted and unconvicted offending when making an assessment of risk. A panel is entitled to explore any behaviour that may bear on risk assessment and hence the test for release.

Unusual panel logistics
This section should also comment on unusual panel logistics. If a prisoner is not represented, consider suggesting that prison staff suggest arrangements be offered to the prisoner to secure representation prior to the hearing, if he/she wants support. However, bear in mind that many prisoners are no longer eligible for legal aid. Broadly speaking, unless release is the decision at stake, legal aid will not be granted: hence pre-tariff indeterminate sentence prisoners are excluded. If you suspect that a prisoner will not be represented, you can flag up that there is a guide to oral hearings for unrepresented prisoners and that they should be provided with a copy in advance of the hearing. If you have a case where you consider that representation is essential, speak to the Parole Board’s Legal Advisor, as there may still be scope for some representation. This could include cases where significant learning disabilities are reported and juveniles.

Building the oral hearing

Having explained why you are sending the case to an oral hearing, you can then start to build its components.

The main components of the oral hearing are:
➢ The panel composition
➢ Reports not presented in the current dossier
➢ Witnesses and how they should present evidence
➢ The prisoner’s likely needs and requirements at the hearing
➢ Other panel logistics

Principles of setting directions

**Directions must always be proportionate, reasonable, necessary, lawful and deliverable.**

Those responsible for implementing directions need precise instructions, so it is essential that your directions are clear. All directions made should be necessary to set up a viable hearing and enable the panel to do its job properly: they should not be made for any other reason or agenda. Directions need to be focused on risk and be essential to the decision the panel has to make. Further guidance on direction setting can be found in Annex 11.
Reports
Consider what essential information is missing from the dossier and needs to be made available before or at the hearing. What is required will be dictated by the specific issues you have identified to be addressed. The template includes a section for direction material.

- Always set a deadline for directed written reports or documents. This can either be a specific date in the future or ‘x weeks before the oral hearing’.

- Avoid jargon and stock phrases; use plain language as the prisoner should also be able to understand exactly what the direction means.

- Avoid lengthy directions, which have the potential to confuse recipients. They can also indicate a lack of clarity in precisely what is required. Set out specific directions seeking reports/documents clearly and obviously. Any additional explanation or justification can be included in the narrative box.

- Avoid issuing too many directions. Ask yourself if you are seeking this information because it is truly necessary in order to make a full and fair assessment of the case. If you are making directions for a different reason, consider whether there is a more appropriate process to achieve the outcome.

- Use clear and precise language that focuses on the outcome required.

- When directing a healthcare or psychiatric update or report, directing ‘a clinical overview’ rather than ‘a report’ or ‘an assessment’ is likely to be more effective.

- Be mindful of how long it will take to get any report that is requested. It can take at least up to three weeks to get a historical report (for instance, the judge’s sentencing remarks) if it has been archived and can still be located. The commissioning of a psychologist’s or psychiatric assessment report can take at least three months and, with a post-course risk assessment (such as a SARN), these can take around six months to produce.

A guide giving the details of and typical timeframes for the more usual reports is available at Annex 12.

Report deadlines
You can direct that reports are to be provided to the Parole Board at a set date in the future or four to six weeks before the hearing. (A different number of weeks may be stipulated, where justified.) You may wish to set a specific deadline if you are directing a specialist report which will then need other report writers to consider in their addendums. You may also use a set date if you want the panel chair to have sight of the report before making Panel Chair Directions six weeks before the planned hearing. However, bear in mind that by using a set date you can be delaying the review. It may also be the directed report will throw up issues that should be addressed prior to an oral hearing, in which case, a deferral or adjournment may be more appropriate.

When setting dates for reports, remember that it takes at least 10-12 weeks to list a case. There are some delays in non-recall cases, currently up to an additional six months. Where you are directing reports to be provided four weeks in advance of the hearing, please add the direction under that section of the template but leave the
target date field blank. Once a hearing date is set, the Parole Board case manager will inform PPCS of the precise deadline of those reports.

**Addendum reports**
Be flexible. There is no set rule for updating reports over a certain age, although bear in mind that some psychological assessments such as the HCR-20 do have a ‘shelf life’. If it does not look as if things will have changed significantly, ask for updates only when the report writer considers there to have been an important development?

Try not to issue “standard” directions for updating reports. This can be a waste of resource for hard-pressed Offender Managers and Offender Supervisors (OM, OS) where they can just as easily provide an adequate verbal update at the oral hearing. However, where a specific report (say an end of programme report or a psychological assessment) is due to be served before the hearing, then directing an addendum from the OM and/or OS in advance is generally good practice.

**Dropped charges**
Where the panel may need to make a finding of fact – such as discontinued criminal charges, domestic violence allegations or prison adjudications dismissed on a technicality – think about directing witness statements or other formal paperwork from those involved.

**Prisoners transferred during the parole window**
Where a prisoner has been transferred between establishments, it is important to stipulate which prison should take responsibility for providing specific reports. If a prisoner is transferred during the parole window, then it is always the sending establishment who have responsibility for ensuring the dossier is disclosed. However, depending on the time that has elapsed since the transfer, the receiving establishment may need to provide update reports. The key issue here is to determine who and what is required to ensure that up to date information can be supplied, as well as the reason for the transfer, and only direct material if it has a direct bearing on risk.

**Reports commissioned by the prisoner’s representative**
The Parole Board can invite the disclosure of existing independently commissioned materials – such as a psychiatric or psychologist’s report – from the prisoner’s representative, but you should be aware that such a request cannot be enforced against the prisoner’s wishes.

**Conflicting specialist opinions**
A direction can be issued for the mutual exchange of these reports and the specialist authors can be directed to provide a report indicating the areas of agreement and dispute in their findings and conclusion. In doing so, the real issues can be more readily identified and the timetabling of the evidence more realistic. Specialists are well used to following this procedure in the criminal and civil courts. However, legal aid cannot always be granted in certain circumstances. You could go ahead if the direction is necessary and allow PPCS or the legal representative to argue the matter subsequently.
Hints and tips for directing reports

- For prisoners sentenced to life imprisonment before 2000, the judge’s remarks will be in a report to the Home Secretary, which must be requested if not already in the dossier.

- If a prisoner has appealed sentence, you may find it useful to request the appeal decision, particularly if the sentence has been increased. This is a mandatory document for the dossiers of indeterminate sentence prisoners. It can also be helpful to direct the decision from Newton Hearings.

- If a prisoner has spent time in a therapeutic community programme in custody, the formal “end of therapy report” is an essential document, likely to assist the panel in assessing risk and risk reduction.

- Prisoners in Scotland and Northern Ireland who have parole reviews overseen by PPCS are managed differently to those in England and Wales and therefore processes, roles and reports may differ. For example, decisions to move Scottish prisoners to open conditions is made by the prison and never referred to the Parole Board. See Section 2 of this guidance: What to do when...

Witnesses
Some principles for appropriately directing witnesses include:
- Why do you need the witness at the hearing?
- The direction should tell the witness explicitly why they need to be there (if the purpose of the oral hearing has been identified, it should be clear in outline)
- How can they give their testimony – do they need to be physically at the hearing?

Good practice in directing witnesses:
- You should specify precisely why the witness should attend and what they should be prepared to address (without constraining the hearing panel).
- In general, where information is available in the form of documents and it is not contested, it may not be necessary to call the author as a witness. For instance, at a recall hearing, where the reason for recall was a prisoner’s behaviour in a hostel, the evidence of the supervising officer supplemented by statements and copies of the relevant pages from the hostel log may obviate the need for the hostel manager to give oral evidence as a witness. Similarly, it is usually unnecessary to call a number of prison officers to give evidence about someone’s custodial behaviour, unless there is a material dispute. If a specialist report is not contentious, you may not need the report author to attend the oral hearing.
- Many of the psychologists working in the Prison Service are officially entitled “in training” in terms of their chartered forensic psychology status and ongoing registration. Questions have arisen over whether it is appropriate for them to give evidence or whether their supervisor should do so. There will usually be no problem a trainee psychologist giving evidence because they have reached a professional standard to be making an assessment and drafting the report. Any report writer who is of trainee psychologist status may choose his or her supervisor to be present at the hearing and can seek to arrange this directly themselves. Ultimately, it is for the psychologist to assess whether the
professional supervisor should attend. This decision will be greatly assisted by the precision with which the directions set out the issues on which the panel will need to question the psychologist.

- Serving prisoners (apart from the applicant) should not normally be called as witnesses, unless this is essential and unavoidable; the logistical difficulties around securing their attendance are likely to be considerable. Any necessary evidence from other prisoners should be directed in writing, wherever possible.

- It is also good practice to avoid calling as witnesses prison officers from a previous establishment unless there is a very specific incident they observed or risk issue on which no-one else can comment. You should bear in mind that the prisoner’s file (including security intelligence) will have been transferred to his or her new establishment, so staff who worked with him or her previously will not have had the opportunity to refresh their memories by reference to it. If you do direct an officer from a previous prison, suggest that they can attend by video-link or telephone. This will be cost-effective and usually proportionate to the extent of evidence they can provide and to the length of time they need to remain during a hearing.

- Children should not be called as witnesses. For one thing, there would be difficulties in their coming into a prison to give evidence. Consider how useful or essential might be the evidence of a victim of domestic violence who has retracted any previous allegations and balance this against the need to protect them.

- If there have been discontinued criminal charges, you may wish to direct the relevant police officer to attend the oral hearing. It is unlikely you will know who the details of the most appropriate officer, so it would be sensible to call ‘The Chief Constable of XXX Police or their designated alternative’ and to make it clear in the direction why you want that officer at the hearing (e.g. to explore the evidence that led to the charge of s18 wounding). In many cases, police witness statements / MG5 will prove sufficient for a panel to make a ‘finding of fact’.

- Where there is a realistic prospect of release, and particularly for a prisoner in open conditions or one who has been recalled from licence, the attendance of the current Offender Manager will always be necessary. There may be circumstances where the testimony of a previous supervising officer is relevant and essential if that person is in post and available: but these will be very rare cases.

- If a prisoner is managed by the CRC rather than NPS, an NPS representative will need to attend the oral hearing.

- If a report has been produced by an independent psychologist or psychiatrist at the behest of a prisoner through his/her legal representative and you consider that it needs further exploration at an oral hearing, you should direct the attendance of the report’s author. At the least, they can then be on stand-by and the panel chair can decide whether or not to stand them down. Formal Parole Board direction to attend is needed in order for application to the Legal Aid Agency to fund attendance as witness.

- If the service or officer for supervision of a prisoner is likely to change on release (for instance, because he/she is to be relocated to another area), you may wish to consider directing the attendance (by video-link or telephone) of the future Offender Manager so that the panel can be satisfied about arrangements and the robustness of the risk management plan and release arrangements.

- Where you consider that it may be appropriate for a witness to give evidence by telephone or video-link, please indicate that this may be the case, subject
to the final say by the panel chair. Probation Service personnel are under obligation to provide evidence by telephone or video-link on budgetary grounds, so consider carefully whether testimony really must be given in person at a hearing.

- When setting directions for witnesses to attend hearings, please stipulate a named individual (with their job title, where applicable) to attend, rather than just referring to their profession or broad job function.
- Where you have granted the hearing solely on the basis that the offender has provided tenable grounds as to why a face-to-face encounter with the panel is necessary, do not feel obliged to call any other witnesses.
- A prisoner or legal representative may request a particular witness attends the hearing but the final decision lies with the panel chair. However, it can be good practice to accept such applications on the basis of perceived fairness unless there are particularly strong grounds for refusing them.

Where you consider a witness to be necessary, you should direct their attendance, but always make it clear in your narrative that the panel chair will have the final say on witness attendance and any other additional directions. (Please do not declare that a witness is not necessary, as the Panel Chair may have a different view. It is easier to stand down a witness than to direct the attendance of one who has been told he is not required). Thus, you might use caveats such as “subject to the panel chair’s directions” or “subject to the panel chair’s approval”. You might add to your narrative: “the panel chair, once appointed, may issue additional directions”.

Panel logistics
The next stage is to build the hearing arrangements from a set of starting points which are then, if necessary, adapted to reflect the needs of the case, taking into account the view of the prisoner and/or legal representative.

The stating points are:

- **Number of panel members**: The panel will comprise of a single non-specialist chair. Co-panellists are added when they are considered necessary in terms of role or number to complete a proper risk assessment and determination.
- **Suitability for video-link**: The case is considered suitable for a video-link hearing unless specific conditions dictate otherwise from the point of view of fairness, effectiveness and needs of any witness. However, do not automatically send cases to the video link without carefully thinking through whether the hearing is likely to be effective.
- **Witness remote attendance**: Witnesses may give evidence by video-link or telephone, where the appropriate facilities are available.
- **Witness attendance**: Witnesses will only be required to give evidence where they can directly address the issues identified.
- **Legal representative attendance**: The legal representative will be in attendance at the prison where the hearing is centred.
- **Time allocation**: The case will be allocated 90 minutes unless additional time is required to make a viable hearing in terms of the number of witnesses, the likely complexity of the evidence, the level of dispute and possible cross-examination, and the physical and psychological needs of the prisoner and any other witness.

You will then build on each of the above starting points according to the needs of the case and their proportionality.
Some guidance follows concerning factors which you could consider. Where you significantly vary or add to the starting points – for example requiring a judicial chair – you should provide a short explanation in your narrative section of the directions linking your reasoning to the issues in the case. You do not need to provide an explanation for setting a 2 member panel. You should explain briefly why a specialist member is required or why a 3 member panel is required.

➢ Is a video-link hearing suitable for this case?
Careful consideration should be given to whether the hearing can be conducted via the video-link hub or via telephone and the video-link. The starting point is that a hearing, or participants in it, can be accommodated in this way, unless there is evidence to the contrary.

Not all prisons are able to link to the Parole Board video-link hub. However, all cases should be considered for suitability for a video-link hearing staged by a single member or multiple-member panel. Most cases should be suitable to be heard by video-link. When considering suitability, you should identify relevant issues within the dossier and also take into account any representations made by the offender or legal representative.

The following guidance is not intended to restrict you, or to suggest that where such factors are present in an individual case it will necessarily mean it is not suitable for a video-link hearing. Instead, it is a list of factors which may mean that the arrangement would be unsuitable. Each case must be considered on its own merits.

Factors which may mean a case is unsuitable for a video link hearing:

• Reported physical impairments/disabilities of the offender (e.g. sight or hearing problems, inability to sit or concentrate for long periods, possible limitations which the panel chair may not accurately “read” via video-link);
• Mental health concerns, or cognitive problems (e.g. learning difficulties);
• Complex risk assessments involving numerous witnesses and/or contested or disputed evidence;
• Language/communication issues.

Additionally, video-link is not suitable for young people under the age of 18.

Even if the case is not suitable to be heard by video-link from the prison, it may still be effective for some or all witness evidence to be heard by supplementary video- or telephone links. This method can facilitate the availability of witnesses, free professional witnesses to undertake other work including report writing for other cases, and make required budgetary savings rather than travelling for long periods.

➢ How much less/more time will be required?
Once the witnesses have been identified, hearing time can be allocated, taking into account the number of witnesses to give evidence and the complexity of the issues to be determined. The time needed for witnesses to give evidence may be affected by the particular circumstances. Consideration should be given to what type of review is being heard (e.g. is it an indeterminate sentence prisoner’s first review etc.?).

Time estimates set for an oral hearing should ideally be given in half hour slots (e.g. 90 minutes, 2 hours etc.), and should be more specific than ‘a half-day’ or ‘Full day’. The starting point should be 90 minutes, which may well be adequate for single
member oral hearings with few issues or limited areas of dispute, or where an oral hearing has been granted without live witnesses other than the prisoner. You should estimate the anticipated length of time each witness is likely to take to give evidence and be cross-examined.

In allocating time for the hearing, account should be taken of attendance of victims to read their statements. This may only become known at a late stage. Other factors which influence the length of a hearing include:

- Number of members on the panel
- Number of witnesses
- Whether the prisoner is represented, has a learning disability or mental health issue, or whose first language is not English (especially if an interpreter is being used).
- Whether a victim is attending to read a statement
- Whether the focus of the hearing has been clearly enough identified in advance
- Whether everyone arrives on time
- Whether digital recording is being used (it can shorten hearings for panel chairs over written note-taking)
- Whether the video-link works as intended and remote witnesses can be contacted as expected.

### Tips and hints of setting the hearing’s length

- For a single-member panel: allow 30-45 minutes for the prisoner to give evidence; allow 10-20 minutes for each witness; and allow 10-20 minutes for closing submissions and contingencies.
- For a two-member panel: estimate between the likely hearing time for a single-member panel and a three-member panel.
- For a three-member panel: allow 45 minutes to 1 hour for the prisoner to give evidence; allow 20-30 minutes for each witness; and allow 20-30 minutes for closing submissions and contingencies.
- If early identification can be made on cases that may need more than 3 hours, this will facilitate more efficient listing and avoid an adjournment on the day.

- **Panel composition**
  The initial questions you should ask:
  
  o Will the complexity of this case require an additional member/s on the panel?
  o Are there any requirements in terms of specialist Parole Board members and what their expertise can contribute to risk assessment and determination?
Are there any requirements in terms of specialist Parole Board chairs?³

You need to determine whether the hearing can be properly conducted by a single member or whether other members are required.

There is no restriction on the type of case that can be heard by a single member panel.

When considering whether or not it is appropriate to direct a single member, you might consider:

1. Is it likely to be a finely balanced decision, that might expose the Board to other risks (such as reputational or legal challenge from either the prisoner or the Secretary of State) if conducted by one member?
2. Is there going to be a large number of witnesses to question?
3. How complex are the risk assessment issues in the case?
4. Is it likely that the panel will need to make findings of fact (for instance, when charges have been dropped) for which more than one member may be helpfully deployed?
5. Is this a case so finely balanced on the evidence of the dossier and your experience that one panel member will find difficult to determine alone or (on contrary) where a two-member panel might conceivably be split in its decision making?

This is not an exhaustive list but highlights factors that you may wish to take into account when deciding if a case is suitable to be heard by a single member.

Your reasons for determining the panel size and composition should be clearly stated in the narrative section of the directions template, so that the chair of the panel can understand them in due course.

In general when considering panel composition, the greater the number of witnesses or issues to be addressed, or their complexity, the more likely it is that a second (or in compelling circumstances a third) panel member would assist in conducting a fair, effective and time-efficient hearing.

Specialist Parole Board members
You should also determine whether the case would benefit from a specialist member of the panel, either as a second or third co-panellist. Further guidance on identifying the need for specialist panel members is provided in Annex 13

Complex or high profile cases
You may consider that a case should be considered by a judicial chair if there are complex legal issues or other concerns - such as an offender who has committed several murders. For the highest profile cases, you should contact the Legal Advisor at HQ in the first instance to discuss the suitability of the panel to be appointed.

Terrorism Act offences

³ These are chairs with specific skills (such as familiarity with terrorism matters) and not necessarily specialist members of the Parole Board.
Where the case before you is a terrorism or terrorism-related offence, please ensure that you flag it up to the Parole Board case manager when submitting directions. The listing team must be made aware that a case is a Terrorism Act case so that the Board’s Chairman may be consulted as to the appropriate panel to appoint.

➢ The prisoner’s needs
Consideration should also be given to any specific needs of the prisoner and other witnesses. Any wheelchair access or bed-ridden prisoners should be noted as requirements in your directions. The need for an interpreter must be stipulated and can also increase materially the length of a hearing. It is probably reasonable to double the time normally allowed. If it is clear from the dossier that an interpreter will be needed, one should be supplied automatically by the prison. Members should make reference to this and could direct the Secretary of State to make arrangements to avoid the possibility of having to adjourn or defer the case on the day.

Members should consider whether the prisoner has any additional needs (such as religious or other special requirements) that might affect the logistics of the hearing (for example, whether a prisoner might require regular breaks or would be better suited to a morning hearing, or where it is known the prisoner is a practising Muslim that the hearing probably ought not to be listed during Ramadan and certainly not at Eid).

Where a request for the attendance of an observer has been made, information should be sought as to their identity and their interest in attending, before determining whether to grant the request. Ultimately, such a decision will lie with the panel chair once appointed and you should indicate this in your narrative or the witness section of the directions template.

The Secretary of State
Directions that the Secretary of State should be represented at the hearing, or even that he should be legally represented, are not permissible under any circumstances. The Parole Board has no power to order the Secretary of State to be represented. A direction may comment that it would assist the panel if the Secretary of State were to be represented and the reasons for this opinion; whereupon the Secretary of State can exercise discretion. You may wish to do this in particularly complex or high profile cases. Similarly, it is not for the Panel to direct that a victim attends to read a Victim Impact Statement even if there is one in existence and an application has not yet been received from PPCS.

Victim Personal Statements
It is unlikely that you will have a request for a victim or their family to attend the hearing during the initial MCA process: this is more likely to go to the panel chair who is the appropriate person to consider the application. **However, you should always check whether the Offender Manager has indicated that the victim wishes to provide a statement and ask for it to be added to the dossier if it is missing.** In that situation it is preferable that you adjourn or defer so that if the case is sent to an oral hearing, it is known whether the victims will be joining the hearing. If there is a current VPS and the victim has indicated that they wish to attend the hearing, this should be flagged up clearly in your narrative section of the template. Careful consideration should be given as to whether it would be appropriate for the hearing to be conducted by video-link if the victim is likely to attend. The presumption may be not to do so, unless requests or circumstances dictate otherwise.
Directions Hearings
A directions hearing may be helpful to direct where there are complex issues and it is essential to achieve clarity between the Board and the parties in order to ensure that appropriate directions can be issued for a viable oral hearing. They are relatively rare but can assist in resolving complex issues and ensuring that the substantive hearing can proceed smoothly. The prisoner does not need to attend the directions hearing which can take place at a mutually convenient location for the panel, representatives and any witnesses required.
Checklist: MCA paper decision

<table>
<thead>
<tr>
<th>Some elements to consider in MCA reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ <strong>Template</strong>: standard subheadings used; all relevant sections completed.</td>
</tr>
<tr>
<td>✓ <strong>Options</strong>: case is suitable for reasons, no oral hearing required – ie. not juvenile, MHU or lifer recall (unless OH declined and that appears fair); Osborn principles not ignored (excepting determinate sentence case with under 12 weeks to SED).</td>
</tr>
<tr>
<td>✓ <strong>Adjournment</strong>: no clear need to adjourn or defer for additional information.</td>
</tr>
<tr>
<td>✓ <strong>SoS referral</strong>: relevant options set out; conclusion reflects the Board’s remit and sentence details (eg. risk period for determinate); deportation issues recognised.</td>
</tr>
<tr>
<td>✓ <strong>Test for release</strong>: standard narrative; test used correctly; conclusion consistent.</td>
</tr>
<tr>
<td>✓ <strong>Evidence</strong>: dossier length, representations, non-disclosed material, any VPS and key omissions noted; correct SED or TED cited; offender’s age may be relevant.</td>
</tr>
<tr>
<td>✓ <strong>Representations</strong>: submissions noted with date; arguments/requests addressed.</td>
</tr>
<tr>
<td>✓ <strong>Non-disclosure</strong>: application addressed and determined appropriately.</td>
</tr>
<tr>
<td>✓ <strong>Offending</strong>: index offences/previous convictions summarised; patterns analysed; cautions/reprimands and allegations recorded where relevant to risk assessment.</td>
</tr>
<tr>
<td>✓ <strong>Risk factors</strong>: significant issues, showing patterns and impact; non-compliance and protective factors noted; explicit analysis (“so what?”) for risk assessment).</td>
</tr>
<tr>
<td>✓ <strong>Mental health</strong>: concerns highlighted; psychological/medical risk factors noted.</td>
</tr>
<tr>
<td>✓ <strong>Evidence of change</strong>: outcomes of interventions; underlying factors, motivation, and capacity; positives and negatives noted (eg. success in open or ROTLs as well as absconds, adjudications, test results): data analysed, not just listed.</td>
</tr>
<tr>
<td>✓ <strong>Recalls</strong>: circumstances and consequences of breach; claims or mitigation noted from reports and representations; implications drawn for risk or offence pattern; was recall appropriate [standard “Calder paragraphs”]?</td>
</tr>
<tr>
<td>✓ <strong>Risk assessment</strong>: OGRS, OASys, RM2000 etc recorded as H/M/L grades; any divergence reconciled; panel’s own assessment of ROSH &amp; ROR made explicit.</td>
</tr>
<tr>
<td>✓ <strong>Risk management</strong>: key elements of plan summarised; effectiveness assessed; report writers’ recommendations noted; lack of fully formulated plan critiqued.</td>
</tr>
<tr>
<td>✓ <strong>Decision</strong>: clear, lawful conclusion linked to risk assessment and correct test for release; proportionate, logical and justifiable reasons; threat of legal challenge is remote; conditional or future release directed only if legitimate.</td>
</tr>
<tr>
<td>✓ <strong>Osborn</strong>: standard “OBR paragraph” used; Osborn principles explicitly applied.</td>
</tr>
<tr>
<td>✓ <strong>Licence conditions</strong>: if release, standardized wording for justified, necessary and proportionate licence conditions; any variation to VLU proposals explained.</td>
</tr>
<tr>
<td>✓ <strong>Next steps</strong>: possible updates set out (clarifications, omissions, assessments); insufficient time for review noted; possible recommendation to the SooS: specific treatment, programme or courses not proposed – nor categorisation or location.</td>
</tr>
</tbody>
</table>
| ✓ **Style**: no major typos, spelling mistakes or intrusive presentational features; reasons focused on risk and outcomes; clear, easy to follow and in plain English.
Checklist: MCA directions

Some elements to consider in MCA directions

- **Template:** standard format employed; all relevant sections completed.
- **Options:** hearing justifiable or obligatory [juvenile/MHU case if not released on papers or lifer recall]; or fair for determinate cases with 12 weeks left before SED.
- **SoS referral:** open as the only option for pre-tariff ISP; recognition if open prison proscribed by SoFS; determinate case directed to hearing only if option is viable.
- **Adjournment:** no obvious need to adjourn for extra information; or preliminary directions written, specifying materials needed within realistic deadlines.
- **Deportation:** issues recognised; enforcement papers available or directed.
- **Purpose:** reason for proposed hearing is legitimate and made clear.
- **Osborn:** where relevant, OBR judgment cited and principles used correctly.
- **Non-disclosure:** any current issues addressed and determined appropriately.
- **Representations:** submission noted with date; arguments/requests addressed.
- **Narrative:** not so detailed or evaluative as to “try the case” or hamper a panel.
- **Issues:** key topics for the hearing adequately identified in the narrative and followed up in requirements, witness attendances and panel logistics.
- **Mental health:** concerns relating to risk noted and actioned.
- **Risk scores:** may be quoted but risks not assessed in ways that fetter a panel.
- **Requirements:** necessary reports and essential documents clearly directed if proportionate, reasonable, lawful and deliverable; specified deadlines feasible or four-week period reasonable; panel chair directions likely to be unnecessary.
- **Expected reports:** judge’s remarks, PSR, current OASys, OM & OS updates, early reports, programme reviews requested only if essential; all requests explained.
- **Specialist reports:** new or previous assessments essential; realistic deadlines.
- **Witnesses:** relevant; contribution precisely described (not formulaic wording).
- **Mental Health Unit** cases: reports, witnesses and panel follow MCA Guidance.
- **Panel chair:** chair’s final say is recognised concerning evidence, witness or observer attendance, video-link or telephone testimony; no possible witness ruled out.
- **Panel members:** roles and composition clear, proportionate and justifiable; deployment of specialist members follows MCA Guidance.
- **Logistics:** appear appropriate; diversity difficulties recognised and catered for.
- **Scotland & NI:** requirements and arrangements follow MCA Guidance.
- **Prioritisation or expedition:** requests addressed and/or justifiable case made.
- **Victim issues:** any VPS requests addressed and dealt with appropriately.
- **Style:** no major typos, spelling mistakes or intrusive presentational features; directions focus on outcomes; are succinct, easy to follow and in plain English.
Part 2: What do I do when faced with....

This section covers a range of issues that you may face when conducting an MCA panel, some more common, others less so. It offers you guidance as to how to approach them. All members, even those with many years of experience, encounter cases that they do not know immediately how to approach and will seek advice from colleagues and the Secretariat as well as the guidance. The important thing to remember is that the situations are covered in the guidance, rather than the detail of how to deal with them.

The guidance below has a number of links to the relevant section of the annexes. Click on them to take you there.

If you come across any challenging issues that are not covered here, please advise the MDP team to enable this guidance to be updated:

mdpteam@paroleboard.gsi.gov.uk.

Click on the topic below to move to it:

Juveniles

Less than 12 weeks to sentence expiry for a determinate sentence recall case

MCA response forms - dealing with follow-up queries

Mental health settings

No accommodation for a determinate recall prisoner when otherwise I might release them

Non-disclosure

Northern Ireland parole cases

Post-sentence supervision periods

Prioritising a case

Prisoner asks for oral hearing: no other grounds for one

Prisoners from abroad

Prisoners with learning difficulties
Prisoners with mental health issues

Recalled on suspicion of a new offence but no further action was taken

Recalled on suspicion of a new offence but the matter has not been concluded

Recalled prisoner serving a new sentence

Reports – what should I direct?

Scottish prison parole cases

Secretary of State Decisions to release or progress to open without a referral to the Parole Board

Security intelligence

Sentenced under earlier legislation

Specialist member on the panel

Stuck cases – bogged down in the system

Stuck on what to do – what are my options?

Terrorism offences

Unrepresented prisoners

Victim Personal Statements

Video-link suitable for this case?

Juveniles

Juveniles and young offender’s parole applications should automatically go to an oral hearing (unless they can be released on the papers) and their cases should be sifted out prior to your MCA panel. They are given top priority in the Listings Prioritisation Framework. However, a case sometimes slips through and you will need to be alert to these. A juvenile is anyone who is under 18 at the time that the review commences or at the point of recall. Consider also any offenders who were juveniles at the time that they were sentenced and have been in custody since that time.

More information about juveniles is at Annex 7 as well as at Chapter 14, sections 15 and 15a of Section B of the Members Handbook (available on the extranet)
Less than 12 weeks to Sentence End Date for a determinate recall case
The backlog of cases waiting for an oral hearing and the Listing Prioritisation Framework means that determinate recalls with less than 12 weeks until their sentence expires (when they will be automatically released anyway) are not usually sent to an oral hearing as it is likely that their case would not be listed before their SED/NPD. Parole Board policy is that cases with less than 12 weeks before their sentence expires will not be listed for an oral hearing, unless there are exceptional circumstances. Exceptional circumstances can include where the offender’s mental health is suffering because of their continued detention. If there are exceptional circumstances and time to SED is short, you might consider prioritising or expediting the listing of the case. For a case with less than 12 weeks to SED, members should make a decision on the papers where possible. Where it is not possible to conclude on the papers, members may direct to oral hearing but should state that while an oral hearing is ordered, it cannot be accommodated due to the forthcoming SED (unless there are exceptional circumstances). See Annex 8.

MCA response forms and other follow-up queries
You will occasionally receive late representations after you have submitted your decision, queries or requests for variation/revocation of directions. You should retain dossiers for four weeks to be able to deal with these queries. The current practice is that if these queries are received within four weeks, the MCA member who conducted the initial panel will consider developments. However, you can ask for the case to be referred to the MCA Duty Member if there is a significant amount of work needed or your panel was some time ago. You may also receive queries from witnesses, directed report writers or representatives. You can either deal with these yourself if they can be simply resolved on the basis of your original analysis or ask that they be referred to the MCA Duty Member.

Mental health settings
Parole applications for prisoners in a mental health setting will automatically progress to an oral hearing, unless you have decided to release them on the papers. Prisoners in that setting will have previously been recently discharged by a Mental Health Tribunal [MHT] but will have been kept in the mental health facility, because of concerns around the impact of a return to the prison estate or confirmation by the Parole Board about their release and licence conditions.

Full guidance is at Annex 6. You should bear in mind:

- The MHT does not apply the same test as the Parole Board in considering suitability for discharge as their criteria are based around the nature and degree of the mental disorder.
- The dossier will need to contain the reports prepared for the MHT and the MHT panel’s decision as well as updated reports from the same authors covering progress since the MHT sat.
Witnesses will usually include the Responsible Medical Officer and a Social Worker as well as a key member of the nursing staff.

It is likely that a specialist member, usually a psychiatrist, will be needed on the panel.

No accommodation for a determinate recall prisoner when otherwise I might release them
A common issue, particularly for offenders assessed as posing medium or low risk of harm. The starting point is that members should not direct release until all elements of the risk management plan are in place, including accommodation. Often efforts will not be made to secure accommodation until a release decision has been made by the Parole Board and a vicious circle can occur. The usual approach should be to adjourn for the Offender Manager to find accommodation but you also need to think about what you could do if the Offender Manager does not eventually find suitable release accommodation. It could be that you legitimately release at a date in the future in order to allow time for accommodation to be secured. (Note, release at a future date is only available in determinate recall cases.) However it is not good practice to direct release ‘subject to’ conditions such as accommodation: release decisions should not be conditional, so if after an adjournment the OM is still unable to secure accommodation you must base your assessment on whether the offender could be managed in the community if he or she was homeless. That is, the Parole Board cannot make a provisional decision – hoping that the right conditions will turn up.

Non-disclosure applications
You may receive an application for information to be withheld from the prisoner. You should consider the application at the MCA stage rather than leaving it to be dealt with at a later stage. To agree to withholding information requires serious consideration by the Parole Board as it goes against the fundamental principle that a prisoner should be given a fair opportunity to meet allegations against him or her so should receive all evidence a panel takes into consideration when making its decision. Withholding information is the exception rather than the rule and will only be directed where it is absolutely necessary for the protection of an individual, national security or to prevent disorder or crime. Efforts should always be made to seek alternative ways of presenting the information without jeopardising the security or safety of individuals: for example, submission of a gist or redacted text.

Full guidance is at Annex 4. When you consider non-disclosure applications, bear in mind the following points:

Ensure that the application has been made on behalf of the Secretary of State (by PPCS) and has not come direct to the Parole Board from an interested party such as an Offender Manager. Legally, all applications have to go through PPCS to be formalised.
➢ It is likely that you will have to adjourn any case with a non-disclosure application as both the prisoner and the Secretary of State have the right to appeal the decision to the Chairman of the Parole Board.
➢ The Secretary of State has the right to withdraw the information on receipt of your ruling or following an appeal.
➢ If a prisoner is likely to be unrepresented and there is information that is being withheld, you should seek advice from the Parole Board’s Legal Advisor as the prisoner will require legal representation.
➢ Non-disclosure is an issue that requires careful thought and often supporting advice. If you receive an application, ‘stop and think’. Refer to the formal guidance. Ask for advice if not sure.

Northern Ireland parole referral
Scottish parole referral

You may encounter a Restricted Transfer case where the prisoner is located in a prison in Scotland or Northern Ireland. Under a Restricted Transfer, the prisoner remains subject to the parole release and licence schemes of England & Wales. Security classifications are different and progression to open conditions is not referred to the Parole Board. Note there are no approved premises in Scotland.

Scottish parole cases will involve different reports and witnesses. It is recommended to direct a Lifer Liaison Officer Report, Prison Based Social Work Report, and Home Background Report by the community-based social worker who is the equivalent of the OM when the offender is on licence. When directing to oral hearing, it is helpful to set out the nature of the referral. Witnesses would usually be the Lifer Liaison Officer, prison-based social worker and community based social worker. It is helpful to have the involvement of an E&W Offender Manager from the relevant NPS area where one is identified, normally by teleconference or video-link. Work is underway to clarify whether E&W Offender Managers should have routine involvement in restricted transfer cases; in the meantime, the PPCS case manager can escalate OM witness requests to the PPCS team leader to assist in meeting the direction. Further guidance on Scottish cases is available; please see the members’ extranet or contact the MDP team.

Guidance is under development for cases referred when the prisoner is in a prison in Northern Ireland. If you receive such a case before the guidance is issued, contact mdpteam@paroleboard.gsi.gov.uk.

Post-sentence supervision periods
The Offender Rehabilitation Act 2014 introduced post-sentence supervision (PSS) for determinate prisoners serving sentences of more than one day but less than two years. Their licence period is now topped up to give them a supervision period of at least 12 months. You will see the proposed dates on the licence. The Parole Board only considers ‘risk’ over the period until original SLED and is not involved with the
PSS period as any breach of PSS conditions goes to the Magistrates’ Court. Your remit as MCA member is risk assessment and procedures for assessing risk at the so-called “at risk” period until a determinate custodial sentence would end or during the currency of any primary licence.

Prioritising or expediting a case
If the prisoner or legal representative has asked at the MCA panel stage for the listings procedure to be speeded up, refer to the Listings Prioritisation Framework at Annex 5. Prioritisation is different to expediting a case but legal representatives may not be aware of the distinction.

➢ A direction to prioritise a case due to exceptional circumstances is effectively an instruction to make every effort to schedule that case in the next routine listing exercise.
➢ A direction to expedite a case due to it being so exceptional and urgent is effectively an instruction to make every effort to list the case as soon as possible, outside the normal listing process. Expedition may involve displacing an already listed case. This should only be used extremely rarely.

You can of your own volition consider whether the circumstances warrant prioritising or expediting.

There is further guidance in Sections 5 and 6 of Chapter 14 of Section B of the Members’ Handbook (available on the extranet here).

Prisoner asks for oral hearing: no other grounds for one
You may receive representations making an application for an oral hearing when you are not minded to grant one. You do not have to direct an oral hearing in this situation but you must show that you considered the application and have valid reasons for refusing it beyond inserting the standard text [the OBR paragraph] of finding insufficient grounds. For example, a prisoner may have had an oral hearing at their last review where the panel concluded that there were core areas of risk outstanding or there is no evidence of significant change since then and no key report writers are recommending progression; or the prisoner asks for an oral hearing to dispute a psychological assessment that the previous panel considered. In such a situation, it would be valid to refuse the hearing as long as fairness principles have been carefully considered because that issue has been properly explored.

Prisoners from abroad (Foreign National Prisoners)
There is extensive guidance in Chapter 14, Section 9 of Section B of the Members’ Handbook, available on the extranet. The key points to remember are that:

➢ When assessing risk, we must have regard to the prisoner’s risk anywhere, not just if released in the UK. By the same standard, we cannot release to another country on the basis of lower criteria than would apply in the UK.
➢ Licence conditions set by the Parole Board cannot be legally enforced in any other country outside the UK.
➢ Serving prisoners may be removed from the UK under a variety of different schemes. It is helpful to obtain an update report from the UK Visa and Immigration and any official documentation as to the prisoner’s current deportation status.
➢ Although prisoners liable to be deported are likely to be detained in an Immigration Centre if the Parole Board directs release, the panel must consider risk in the wider community. Indeterminate prisoners with these circumstances can be considered for open conditions unless expressly prohibited by the conditions of the Secretary of State’s referral.
➢ Any deportation process may happen in parallel to the parole process and should not limit a panel’s review. An Offender Manager may not produce as full a risk management plan if it is anticipated that a prisoner will likely be deported. However, they should be directed to do so if the process has not been completed in the event that the prisoner is successful in an appeal.

Deportation Cases (ISP only)
In cases where the Secretary of State has not exercised a right to automatically remove an indeterminate sentence prisoner at the Tariff Expiry Date, under the “Tariff Expired Removal Scheme” (TERS) the case will be referred to the Board. Such prisoners are entitled to be considered for open conditions and panels must address themselves to the issues of risk; likelihood of absconding; and compliance with temporary leave, as outlined in the referral. In a case where, for example, a prisoner will not receive home leaves because he is to be deported, the Secretary of State may still benefit from the Board’s views on risk and absconding. Similarly, if the Board makes no recommendation for open conditions solely because there is an unacceptable risk of absconding, the Board’s assessment of risk will still be useful to those managing the sentence. In such cases, there should always be a report from Immigration Enforcement. If this is missing, contact the Parole Board case manager to make enquiries. Where a case is actively under consideration for removal under TERS, the Parole Board review should continue to progress.

Prisoners with (or suspected to have) learning disabilities
If you suspect from the dossier that a prisoner has a learning disability or it has been expressly identified and you send the case to an oral hearing, you should bear in mind:

➢ The hearing will probably need to be staged face-to-face between the panel and the prisoner.
➢ The prisoner may need to be represented before and at the hearing.
➢ Once a learning disability has been formally identified, there is scope for formalised social care and health support in the community. Offender Managers are not always aware of this and may need to be directed to investigate and report on alternative sources of community support.
➢ If you issue a paper decision (for or against release or recommending open conditions), consider an opening paragraph in your reasons template using very clear and plain language which suggests that the prisoner should ask their Offender Supervisor or personal officer to go through the letter with them.
➢ For further advice on specific concerns about prisoners with learning disabilities, contact the MDP team and see Annex 6.

Prisoners with mental health issues
Not all parole review prisoners with mental health issues will be in mental health units. A significant number are in the prison estate. Some additional reports and witnesses, over and above what would be the norm in prisons, may be required. You might consider requesting reports or historical records from any periods spent in a secure hospital, including discharge reports. You could direct a report from the prison Mental Health In-Reach team and /or the establishment’s consultant psychiatrist. You may also wish to consult Parole Board colleagues who are specialist members for advice in setting appropriate directions where on-going or recent mental health issues are relevant to risk.

Recalled on suspicion of a new offence but the matter has not been concluded
The nature of the new allegation will be important as it may not be relevant to the risk of harm. If it is not, then you are likely to be able to conclude the MCA process if you intend to issue a paper decision. If the new matter is relevant to risk or if it may lead to a lengthy custodial sentence, you may need to adjourn or defer for the outcome. You should consider the available reports and decide whether sufficient material is there about the alleged incident(s) to enable the panel to reach a decision as to whether the risk of further offences is acceptable, regardless of whether a crime has actually been committed. Remember, the Parole Board is not required to adopt the criminal standard of proof. However, where the prisoner is pleading not guilty to an offence and court case is soon to be concluded it would be advantageous to defer for the outcome as this is likely to affect the proposed risk management plan and recommendation of the Probation Officer and may avoid the need to seek to enquire into the circumstances of the offence prior to the conclusion of the criminal proceedings.

Recalled on suspicion of a new offence but no further action was taken
The Parole Board may need to explore these in order to make a finding and decide if there is any impact upon the risk assessment as it has regard to behaviour rather than convictions. As the Parole Board applies the civil test to evidence ('on the balance of probability') rather than the criminal test of beyond reasonable doubt, it is possible for a panel to, for example, find that a prisoner had behaved violently towards his partner yet he may not have been charged with any offence. You are likely to need to direct that witness statements are provided and may need a police witness to
attend. This is the type of situation which may warrant a two or three member panel, depending on the complexities of the allegations.

This situation often occurs when a prisoner has been recalled after a partner has made allegations that he had been violent towards her. The partner then decides that she does not wish to press charges and no further action is taken. It can be particularly important for a panel to make a finding if it is proposed that the prisoner will return to live with his partner.

As well as having regard to recent dropped charges and allegations, the panel may need to explore more historical concerns. Often the only clue that there have been allegations of domestic violence in the past will be in the Risk of Serious Harm Analysis with a reference to the ‘DVU’ or ‘MARAC’.

Recalled prisoner serving a new sentence
It is important to remember that in this situation you can release the prisoner from the sentence for the index offence although they will remain in custody to serve the remainder of the new sentence. Whether this is the appropriate approach will depend on whether the earliest release date for the new sentence comes before or after the sentence expiry date for the index offence. If it is before, then there is value in considering release. If it is after then it will not be possible for the prisoner to be released prior to SED. Further guidance on this scenario will be issued in the near future.

Reports – what should I direct
Annex 12 and The dossier sets out the type of documentation you should hope to see in a dossier and what reports can be produced by different interventions. It also gives an indication of the timescale for their production.

If you are unsure of technical details such as how to phrase the direction for a psychological assessment you can consult with a specialist member. You should contact MDPteam@paroleboard.gsi.gov.uk and the team will put you in touch with a suitable specialist member for advice. Alternatively, you can approach a specialist member yourself: the details of those who are happy to offer advice to MCA members is shown in PBM 47-16.

Secretary of State makes a decision on the case (Guittard, executive release, compassionate release or returning a prisoner to open conditions)
The Secretary of State (SoS) can progress an indeterminate prisoner to open conditions without reference to the Parole Board (Guittard procedures). This may happen during the parole window so if this occurs you will still need to decide whether release is an option and whether to send the case to an oral hearing. You do not need to consider the prisoner’s suitability for a transfer to open conditions if they have been moved although the referral will ask you to address their continued suitability. Bear
in mind that you may receive a case of an indeterminate prisoner who has been in open conditions for some time having been moved there under *Guittard*. It is quite likely that they will not have had a parole review before which may impact upon how you decide to progress the case including whether or not you send the case to an oral hearing or whether you consider it suitable for a video link. It is useful to have a copy of the Guittard decision letter in the dossier; including those cases where a Guittard application is declined.

An indeterminate prisoner who has been removed from open conditions can be returned from the closed estate by the SoS without reference to the Parole Board. You should set directions that seek to obtain a copy of the letter that was issued telling the prisoner that he/she was being returned to open conditions.

The SoS can release prisoners to the community on compassionate grounds without referral to the Parole Board. If this happens to a case that you have, treat the referral as withdrawn and take no further action. The SoS can also refer these cases to the Parole Board for advice: these are dealt with by the MCA Duty Member due to time sensitivity, or in rare cases by an MCA member. For more information about release on compassionate grounds see Section 19 of Chapter 1 of Section B of the *Members’ Handbook*.

Increasingly the SoS is making an ‘executive’ release decision for determinate recalled prisoners. Often this can happen during the parole window as the reports that we require are the same that the SoS needs to make a release decision. If this happens with one of your cases, you do not need to make a decision and can treat the referral as withdrawn.

**Security and police intelligence**

This may need to be treated in a similar way to dropped charges as the panel may need to make a finding as to whether to put any weight on it. The sensitivities of this type of information means that to obtain the depth of information to properly explore it, an application for non-disclosure will be made. Bear in mind the fundamental principle that a prisoner should be able to answer any allegation made against them. If you do not have the name of a relevant officer, you may wish to direct the attendance of the Security Governor or Chief Constable or their delegated alternate: this enables the prison and police to identify the most appropriate witness. Further advice on dealing with police intelligence is being prepared.

**Sentenced under an earlier Criminal Justice Act**

This will mostly apply to DCR cases, if it occurs on your panel. Chapter 1 of Section B of the *Members’ Handbook* details the different determinate sentences that you may encounter. It will be a very rare occurrence and you may wish to check with the Parole Board’s Legal Advisor if you do receive one of these cases. You will know because the referral on the front page of the dossier should detail which criminal justice Act the offender was sentenced under - but be alert to any determinate
sentence prisoners imprisoned for offences committed a significant period of time ago.

Specialist members
Specialist members of the Parole Board are in short supply and it is important that we use them wisely. You need to bear in mind that if you appoint a specialist member to the panel, you may be introducing an additional delay of several months before the case can be listed and heard. There is detailed guidance on what you need to take into account when directing deployment of a specialist member at Annex 13.

Stuck cases
It is not the role of the Parole Board member routinely to ‘unstick’ cases that have become compromised in the system but you may come across representations requesting an oral hearing for that reason. You will need to be mindful of the OBR principles about fairness in directing oral hearings: the utility of the hearing in terms of release decisions or recommendations for open prison alone is not the sole determinant as to whether or not to send a case to an oral hearing. Refer back to the guidance on reasons you might or might not send a case to an oral hearing and make your decision based on that.

Stuck on what to do
If the answer is not in this guidance, tell the MDP team about the gap! There are a range of sources of help from your peers, the MCA Duty Member (phone 0203 334 4666), the Member Practice Advisor (phone 0203 334 5329) and specialist members. Annex 20 details a number of sources of advice. PBM 47-16 provides the contact details of specialist MCA advisors.

Terrorism offences
These may well be a complex case which require a panel chair with specialist experience. There is a special operational procedure for designated cases (the designation is decided by PPCS, not the Parole Board). You should flag the case up with the Parole Board case manager so that an appropriately skilled panel can be appointed. It is likely that these cases may involve non-disclosable information. However, as with all cases, it is important that the prisoner has the opportunity of a full and fair hearing and that they are given the chance to challenge the official account if they wish.

Unrepresented prisoners (and particularly when there are non-disclosure issues or victims are likely to attend an oral hearing)
It is not always apparent until a case has been listed as to whether or not the prisoner will be represented. However, it is likely that any prisoner who cannot be released from custody, such as a pre-tariff indeterminate offender or a prisoner with a new determinate sentence with an earliest release date of over 12 months away, will not receive legal aid funding for representation. In those instances it is worth noting that
the prisoner is unlikely to be represented in the narrative box of the directions template. In some cases, representation may be necessary or useful. For example, if there is non-disclosable information or if the victim is likely to attend the hearing. In these cases, consult with the Parole Board’s Legal Advisor who may be able to suggest avenues for representation.

Where you know that a prisoner will not be represented and you are sending the case to an oral hearing, it is even more important to ensure that your directions are written in a clear, comprehensible fashion. It is worth noting in the narrative of the directions form that the prisoner should be provided with the Guide for Unrepresented Prisoners by the Offender Supervisor.

**Victim personal statements**
If the victim wishes to submit a victim personal statement, it is important that it is received before the case is concluded on the papers or is available for the oral hearing. It is unlikely that you will have a request for a victim or their family to attend the hearing during the initial MCA process: this is more likely to go to the panel chair who is the appropriate person to consider the application. However, you should always check whether the Offender Manager has indicated that the victim wishes to provide a statement and ask for it to be added to the dossier if it is missing: in that situation it is preferable that you adjourn or defer so that if the case is sent to an oral hearing, it is known whether the victims will be joining the hearing, or that the VPS is received before any paper decision is made. If there is a current VPS and the victim has indicated that they wish to attend the hearing, this should be flagged up clearly in your narrative section of the template. Careful consideration should be given as to whether it would be appropriate for the hearing to be conducted by video-link if the victim is likely to attend. The starting point may be not to do so, unless requests or circumstances dictate otherwise.

**Video link suitable for this case (or the prison can accommodate one)?**
There is advice in Part 1 (above) of this guidance detailing the types of situations where you may not consider a video-link to be appropriate. Whether or not the prison can accommodate a video link should not be taken into account as prisons are being brought on line incrementally with the technology. If you are still unsure, you can talk it through with a colleague or phone the MCA Duty Member to ask for advice.
Part 3: Annexes
Annex 1: Practice guidance for referring cases to oral hearings

1. Overview
2. Osborn & others – the judgment
3. Practice guidance for members

1 Overview

1.1 Following the Supreme Court’s judgment in the case of Osborn & others v Parole Board [2013] UKSC 61 (PDF), the Parole Board has revised its existing practice guidance on the consideration of the necessity of or suitability for oral hearings to assist both members in making their decisions, and offenders and their representatives in understanding the Board’s position following the judgment.

1.2 There remains no statutory entitlement by right to an oral hearing before the Parole Board for any case other than life or indeterminate sentenced prisoners who are assessed as ‘not unsuitable’ for release, or life or indeterminate sentenced prisoners at first review following recall. However, the UKSC judgment clearly indicated that the previous policy and practice of the Board could no longer stand. This means a fundamental change in the way the Parole Board regards the purpose of and necessity for an oral hearing in each case before it. While this does not mean that an oral hearing will be necessary in every case, the judgment has significantly broadened the circumstances in which such a hearing will now be required.

1.3 Detailed practice guidance follows at section 3 below, but members should note the main change in the position at law following the judgment. Fairness to the prisoner is now the overriding requirement; the perceived utility of an oral hearing is not the deciding factor. Prior to the Supreme Court decision, the domestic courts had agreed with the Board’s position that a relevant factor in deciding whether or not to hold an oral hearing was whether such a hearing would be likely to make a significant difference to the final outcome. In cases where it would not be likely to make a significant difference, the courts had considered that a hearing on the papers, with written representations, was procedurally fair. This is no longer the case.

1.4 It is therefore necessary for the Board to fundamentally change the way it thinks about oral hearings; where previously we might not have held an oral hearing in circumstances where resolving a dispute of fact or hearing mitigation would have no material effect on the outcome, this is no longer the case. It is purely a question of fairness to the prisoner.

2 Osborn & others – the Judgment

2.1 The court found that board had breached its common law duty of procedural fairness to the three appellants and article 5(4) ECHR, by failing to offer them
oral hearings. In judgment of the Court, Lord Reed clarified that human rights is not a distinct area of the law based on the case law of the European Court, but permeates our domestic legal system. Lord Reed reminded us that “paper” decisions at the ICM stage are provisional and the right to request an oral hearing is not an “appeal”. (Members will be aware that we had already amended our template wording to remove references to the word “appeal”, however, the approach taken by the Board often remained one of a challenge to the paper decision as opposed to a separate question of whether fairness required an oral hearing before a decision could be reached). Lord Reed also stated that a prisoner need only persuade the board that an oral hearing is appropriate. The common law duty to act fairly is influenced by the requirements of art 5(4); if we comply with the former then typically we’ll also comply with the latter.

2.2 Lord Reed sets out guidance on complying with common law standards in this context. The Board should hold an oral hearing whenever fairness to the prisoner requires one in the light of the facts of the case and the importance of what is at stake. By doing so, the Board will act compatibly with art 5(4).

2.3 In paragraph 2 of his judgment, Lord Reed summarised the conclusions he had reached. The full judgment may be accessed here, but for ease of reference, paragraph 2 is copied below. We have emboldened those paragraphs which are particularly significant:

“2 i) In order to comply with common law standards of procedural fairness, the board should hold an oral hearing before determining an application for release, or for a transfer to open conditions, whenever fairness to the prisoner requires such a hearing in the light of the facts of the case and the importance of what is at stake. By doing so the board will also fulfil its duty under section 6(1) of the Human Rights Act 1998 to act compatibly with article 5(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in circumstances where that article is engaged.

ii) It is impossible to define exhaustively the circumstances in which an oral hearing will be necessary, but such circumstances will often include the following:

a) Where facts which appear to the board to be important are in dispute, or where a significant explanation or mitigation is advanced which needs to be heard orally in order fairly to determine its credibility. The board should guard against any tendency to underestimate the importance of issues of fact which may be disputed or open to explanation or mitigation.

b) Where the board cannot otherwise properly or fairly make an independent assessment of risk, or of the means by which it should be managed and addressed. That is likely to be the position in cases where such an assessment may depend upon the view formed by the board (including its members with expertise in psychology or psychiatry) of characteristics of the prisoner which can best be judged by seeing or questioning him in person, or where a psychological assessment produced
by the Ministry of Justice is disputed on tenable grounds, or where the board may be materially assisted by hearing evidence, for example from a psychologist or psychiatrist. **Cases concerning prisoners who have spent many years in custody are likely to fall into the first of these categories.**

c) Where it is maintained on tenable grounds that a face to face encounter with the board, or the questioning of those who have dealt with the prisoner, is necessary in order to enable him or his representatives to put their case effectively or to test the views of those who have dealt with him.

d) Where, in the light of the representations made by or on behalf of the prisoner, it would be unfair for a “paper” decision made by a single member panel of the board to become final without allowing an oral hearing: for example, if the representations raise issues which place in serious question anything in the paper decision which may in practice have a significant impact on the prisoner’s future management in prison or on future reviews.

iii) In order to act fairly, the board should consider whether its independent assessment of risk, and of the means by which it should be managed and addressed, may benefit from the closer examination which an oral hearing can provide.

iv) The board should also bear in mind that 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.

v) The question whether fairness requires a prisoner to be given an oral hearing is different from the question whether he has a particular likelihood of being released or transferred to open conditions, and cannot be answered by assessing that likelihood.

vi) When dealing with cases concerning recalled prisoners, the board should bear in mind that the prisoner has been deprived of his freedom, albeit conditional. **When dealing with cases concerning post-tariff indeterminate sentence prisoners, it should scrutinise ever more anxiously whether the level of risk is unacceptable, the longer the time the prisoner has spent in prison following the expiry of his tariff.**

vii) The board must be, and appear to be, independent and impartial. **It should not be predisposed to favour the official account of events, or official assessments of risk, over the case advanced by the prisoner.**

viii) The board should guard against any temptation to refuse oral hearings as a means of saving time, trouble and expense.

ix) The board’s decision, for the purposes of this guidance, is not confined to its determination of whether or not to recommend the prisoner’s release or transfer to open conditions, but includes any other aspects of its decision (such as comments or advice in relation to the prisoner’s treatment needs or the offending behaviour work which is required) which will in practice have a significant impact on his management in prison or on future reviews.
x) “Paper” decisions made by single member panels of the board are provisional. The right of the prisoner to request an oral hearing is not correctly characterised as a right of appeal. **In order to justify the holding of an oral hearing, the prisoner does not have to demonstrate that the paper decision was wrong, or even that it may have been wrong: what he has to persuade the Board is that an oral hearing is appropriate.**

xi) **In applying this guidance, it will be prudent for the board to allow an oral hearing if it is in doubt whether to do so or not.**

xii) The common law duty to act fairly, as it applies in this context, is influenced by the requirements of article 5(4) as interpreted by the European Court of Human Rights. Compliance with the common law duty should result in compliance also with the requirements of article 5(4) in relation to procedural fairness.

xiii) A breach of the requirements of procedural fairness under article 5(4) will not normally result in an award of damages under section 8 of the Human Rights Act unless the prisoner has suffered a consequent deprivation of liberty.”

### 3 Practice guidance to members

- All members, when considering a case on the papers, must apply the principles set out by the Supreme Court in the case of Osborn;

- If in any doubt, we should hold an oral hearing;

- Fairness to the prisoner in the individual case before you is the over-riding factor;

- We can no longer decline an oral hearing merely because it’s unlikely to make any difference;

- We must not be tempted to refuse an oral hearing in order to save time, trouble or expense;

- While there are some phrases in the judgment which might be construed to say that the Board has a role in sentence planning, the Board considers that the judgment does not vary our statutory role, or widen the Secretary of State’s terms of reference to include assessing a prisoner’s sentence plan and offending-behaviour work. But Lord Reed observes that the Board may consider a variety of matters and recognises the Board’s role in determining how those with responsibility for providing the sentence plan may act when it assesses the existing risk factors and progress. We must therefore consider the need for an oral hearing having regard to any controversies or disputes in relation to any matter which we may properly mention in our decisions;

- The panel ought to consider whether or not fairness implies an oral hearing, even where the prisoner doesn’t ask for one. But the panel may consider the fact that the prisoner hasn’t asked for an oral hearing as a factor against an oral hearing;
• Save where there are exceptional reasons against a video-link, the video hub may be equated with a face-to-face hearing;

• From now on, it may be sensible for all decisions to cite the judgment. A paper decision might still refuse an oral hearing: for instance, if the prisoner offers no reasons for an oral hearing and there would not be anything to discuss at an oral hearing. In these circumstances, the panel might write: "We/I have considered the principles set out in the case of Osborn, Booth & Reilly [2013] UKSC 61 concerning oral hearings. We/I do not find that there are any reasons for an oral hearing. In addition, the prisoner has not submitted any reasons for an oral hearing. Therefore an oral hearing is declined."
Annex 2: Guidance to members on LASPO Act 2012 – test for release

LASPO (Legal Aid, Sentencing and Punishment of Offenders Act 2012)

NEW SENTENCES AND TESTS FOR RELEASE

This Act came into force on 3 December 2012. The significant changes that affect the Parole Board are:

1. Abolition of the IPP/EPP
2. Introduction of a new extended determinate sentence (EDS)
3. Change in the test for release for existing DCR, 1967 and ‘old style’ extended sentence cases
4. Power given to the Secretary of State to change the release test by statutory instrument
5. Arrangements for determinate recalls
6. New automatic life sentence

1 Abolition of the IPP/EPP

Anyone convicted (the date the offence was committed is immaterial) on or after 3 December 2012 will not be eligible for an IPP or EPP. Existing IPP prisoners’ status is unaffected.

2 EDS (extended determinate sentence)


An EDS will be imposed on an offender who, if over 18:

- where he is convicted of a Schedule 15 offence on or after 3 December 2012 (regardless of when the offence was committed); and
- is adjudged to present a significant risk to the public of serious harm; and
- is not suitable for a life sentence; and either
- he has a previous conviction for a Schedule 15B offence or
- if the court was minded to impose an extended sentence, the custodial would be at least 4 years.

An EDS will be imposed on an offender who is under 18:

- where he is convicted of a Schedule 15 offence on or after 3 December 2012 (regardless of when the offence was committed); and
- is adjudged to present a significant risk to the public of serious harm; and
- is not suitable for a life sentence; and
• if the court was minded to impose an extended sentence, the custodial would be at least 4 years.

The extension period imposed must not exceed 5 years in respect of a violent offence; and 8 years in respect of a sexual offence.

**Guidance for panels**

Depending on the date when the sentence was imposed, in some EDS cases where the custodial period is less than 10 years, and the offence is not one listed in Schedule 15B, the EDS prisoner will be released automatically once he has served two thirds of the custodial period.

Any case where the custodial period is 10 years or more; or the EDS was imposed for a Schedule 15B offence, or any EDS sentence imposed after 13 April 2015, will be referred to the Parole Board for consideration of early release.

In EDS cases referred to the Board, the relevant eligibility date will be the two-thirds stage of the custodial period. If the Board does not release at this stage, the prisoner will serve the whole of the custodial period subject to annual reviews, as for DCRs.

The sentence and eligibility calculations in respect of the release of all existing determinate prisoners (DCR, 1967, pre-LASPO extended sentences) remain unchanged.

The test for release for EDS prisoners is stated in section 125 of the LASPO (amending section 246 of the 2003 Act):

“The Parole Board must not give a direction [for release] ... unless the Board is satisfied that it is no longer necessary for the protection of the public that P should be confined.”

For advice on interpreting the test, see 3 below.

3 Test for release for all determinate prisoners

LASPO imposes the same statutory test for the release of all determinate prisoners:

“The Parole Board must not give a direction [for release] ... unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.”

This test came into force on 3 December 2012 and applies to all determinate prisoners at first release (EDS, DCR, 1967 and extended sentences).

Where there is a statutory test, it is for the Board to interpret it in light of any existing case law. Parliament has ruled that the test shall be one of public protection rather than a balancing act between the risk of any type of offending against the benefits of early release; in other words, it will be a ‘risk-only’ test.

In respect of lifers/IPPs, the Board is required to protect the public from the risk of serious harm (risk to life and limb). The Board’s view is that the same test must be applied to determinate sentenced prisoners.
Every Parole Board panel is a judicial body in its own right; this guidance cannot legally fetter a panel’s duty to interpret the statutory test as it sees fit. Guidance is published in order to assist rather than bind a panel.

**Guidance to panels**

Panels may interpret the test for all determinate sentenced prisoners as follows:

*In order to direct release, the Board should be satisfied that it is no longer necessary for the prisoner to be detained in order to protect the public from serious harm (to life and limb). It is not a requirement to balance the risk against the benefits to the public or the prisoner of release.*

Panels are invited to interpret the statutory test as they see fit with the above guidance in mind.

*Panels are reminded that when considering a case, public protection must be the over-riding consideration.*

The identification and management of risk remains the focal point for panels’ consideration.

4 **Secretary of State’s power to change the test**

Section 128 of LASPO gives the Secretary of State power, by order made by statutory instrument, to change the test for:

- An IPP prisoner
- An extended sentence prisoner or
- A determinate sentenced prisoner subject to the transitional arrangements in the Act

The Secretary of State has confirmed that he has no plans to exercise his power at present. Should that position change in the future, further advice will be given to members.

5 **Arrangements for determinate recalls**

There are three changes of interest to the Board. The third will mean a significant change to the way we approach the risk of re-offending in recall cases.

i. Previous statutory restrictions which prevented some categories of prisoner being given a Fixed Term Recall (FTR) have been removed by LASPO. This means that FTRs may now be considered (but only where appropriate in each case) for prisoners:

- serving a sentence for a violent or sexual offence (as listed in Schedule 15 CJA 2003);
- who have previously had a FTR during the current sentence;
- subject to the Home Detention Curfew (HDC) scheme.
As regards standard recalls, there are no changes procedurally.

ii. The Board now has the power to direct release of recalled determinate prisoners, rather than recommend it.

iii. Interpreting the test for release of recalled determinate prisoners - see following guidance.

**Guidance to panels**

The Parole Board will now apply the public protection test to all determinate cases at first release. LASPO is silent, however, on the test for release of recalled determinate prisoners. This could be interpreted in two ways: either Parliament did not want the Board to apply the public protection test; or it is content for the Board, as a judicial decision maker, to interpret it for itself in light of case law. There are two good reasons for saying that the public protection test must now be applied to recalls.

i. Since FTRs are now available in respect of Schedule 15 offences, and the Secretary of State must himself apply the public protection test when considering executive release of someone not suitable for FTR, it would be difficult to reconcile the Board’s position with this if the Board devised a completely different test for itself.

ii. LASPO presents a similar picture to that for lifers - there is a statutory public protection test for the first release of a lifer, but none in respect of a recalled lifer. In the 1996 case of *Watson*, the Court of Appeal said:

> ‘Section 39(4) [*1991 Act*] prescribes no statutory test [*for recall*] which the Board is to apply. But the Board’s function under section 39(5) [*first release*] is almost exactly the same as that under section 34(3), namely to direct (or not) the prisoner’s release. In the absence of express statutory provision, it is to be assumed that the same test is applicable’ (emphasis added).

That closely resembles the situation in LASPO in respect of determinate sentences; other amendments brought in by LASPO give the Board the power to direct release rather than recommend it as it did before. Accordingly, the public protection test may be interpreted to apply to determinate recall cases. Just as for lifers, someone charged with a minor offence can be dealt with through the criminal courts and will, if convicted, receive a sentence appropriate in all the circumstances.

Panels may interpret the test for determinate sentenced prisoners as follows:

**In order to direct release, the Board should be satisfied that it is no longer necessary for the prisoner to be detained in order to protect the public from serious harm (to life and limb). It is not a requirement to balance the risk against the benefits to the public or the prisoner of release.**
Panels are reminded that when considering a case, public protection must be the over-riding consideration.

The identification and management of risk remains the focal point for panels’ consideration.

6  Automatic life sentence

Although courts will no longer be able to impose an IPP, section 122 introduces a new life sentence. The life sentence will be imposed on someone over the age of 18 where:

• the offence is one of those in the new Schedule 15B; and
• it was committed after 3 December 2012; and
• the court would otherwise have imposed a 10-year sentence or more (disregarding the extension period if an extended sentence); and
• the offender had a previous conviction for a Schedule 15B offence for which he received a determinate sentence of 10 years or more, or a life sentence with a tariff of 5 years or more; and
• it would not be unjust in all the circumstances to impose a life sentence.
Annex 3: Types of case

A. Extended or determinate sentence recalls

In these cases, you have the power to direct release on the papers and in so doing may either:

1) Direct immediate release on licence
2) Fix a date for future release on licence

We do not have the power to consider or comment on suitability for open conditions. Although we do not have the power to set the date for the next review, it is possible for the reasons to indicate that the case should be referred back to the Parole Board when a missing piece of information has been provided. It is also possible for the Secretary of State to instigate a further review at any time, not just after a year.

In these cases, the Parole Board is considering risk from the date of review to the sentence expiry date. Issues that panel members frequently encounter with these cases are:

➢ Short periods of time to sentence expiry;
➢ New allegations which led to the recall which have either not been concluded or have been dropped;
➢ The absence of suitable accommodation.

B. Determinate conditional release cases including extended sentence initial release cases (EPP or EDS) (not recall review)

DCR cases are determinate sentenced prisoners sentenced under the 1991 Criminal Justice Act. The referral notice is usually to be found on the front sheet of the dossier.

Under that regime, prisoners were eligible for early release on parole at the halfway point (known as the Parole Eligibility Date) and, if not released early by the Parole Board, will be released automatically at the 2/3 point (known as the Non-Parole Date). Due to legislative amendments, we now generally only receive sex or violent offenders as DCRs. Offenders are sentenced according to the regime in force at the time they committed their offences, so you often see historical sex offenders in DCR panels.

On occasion you may have an “Existing Prisoner”, or “EP”. These are determinate sentenced prisoners who were sentenced under pre-1991 legislation, but are still serving their sentences. They are generally still serving due to long periods of time spent unlawfully at large (UAL) and are treated the same as DCRs.

You have the power to direct release on the papers, but no remit power to advise the SoS as to suitability for open conditions.

Extended sentence – initial/early release – you may see some old EPP (Extended sentence for public protection) cases that are eligible for early release consideration by the Parole Board or new EDS (Extended determinate sentence) cases; dependant
on the length of sentence we will start seeing offenders sentenced to this new sentence under LASPO. These are similar to DCRs in that there is an eligibility date for consideration of early release by the Parole Board, and a point at which automatic release will occur. These cases will obviously have a much longer licence period, but the relevant period for you to consider with regard to the necessity of continued detention is between now and the automatic release date. You have the power to release on the papers, but no remit to comment on suitability for open conditions.

C. Indeterminate sentence cases (reviews and recalls)

You are likely to receive two of these cases which may be a pre-tariff, on-tariff or post-tariff review or a recall, either a Life Sentence or IPP case. All of these cases were ordinarily considered by a single member via the ICM process.

You do not have the power to direct release on the papers in the case of life sentenced prisoners. Where either release or progression to open conditions is a possible outcome for life sentenced prisoners, you must send the case to an oral hearing. You do have the power for IPP cases to direct release or progress them to open conditions on the papers (see MCA Table of Options and Annex 16 for further details).
Annex 4: Non-disclosure applications

Last updated 3 March 2017

1. Introduction

1.1 This Annex has been prepared for the assistance of MCA members dealing with a non-disclosure application, i.e. an application by the Secretary of State for a direction that certain material to be considered by the MCA panel or (if an oral hearing is directed) by the oral hearing panel should be withheld from the offender.

1.2 Except where otherwise indicated the guidance is equally applicable to non-disclosure applications considered by duty members or panel chairs after the MCA stage. Paragraphs specifically relating to them are in square brackets.

1.3 The purpose of this Annex is to set out the applicable legal principles and procedural rules, and to offer some practical step by step guidance.

2. Principles

2.1 The general rule is that all material to be considered by a Parole Board panel must be disclosed to the offender. That rule is derived from the general principle that the offender has a legal right to a fair consideration of his case. That principle is in turn derived from Article 5(4) of the European Convention on Human Rights.4 Parole Board proceedings are open to challenge as being unfair if the panel has seen material which the offender has not seen.

2.2 It is recognised that there may be certain circumstances, by way of exception to the general rule, in which material to be considered by a panel may lawfully be withheld from the offender. They have been set out in successive versions of the Parole Board Rules. The current Rules are the Parole Board Rules 2016 ("the Rules"). The relevant rule for present purposes is Rule 8, which is set out in full in section 3 below.

2.3 Under Rule 8(1) non-disclosure is only permissible where:

(1) **Disclosure of the material would adversely affect (i) national security; (ii) the prevention of disorder or crime, or (iii) the health or welfare of the prisoner or any other person, and**

(2) **Withholding the information or report is a necessary and proportionate measure in the circumstances of the case.**

Only if both those conditions are met is non-disclosure lawful.

2.4 In practice the question whether withholding the material is “a necessary and proportionate measure” is likely to depend on its effect on the fairness of the proceedings in the offender's case. The offender’s right to a fair consideration of his case is absolute and inviolable and, even if the first of the above conditions is met, it is not lawful to withhold the material if the effect of doing

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4 Article 5(4) has been interpreted by the European Court of Human Rights and by the UK Courts as requiring the Parole Board, as “a court” for the purposes of the Article, to have in place an appropriate set of judicial procedures to ensure fairness.
so would render the proceedings unfair. It is essential that he should be made aware of, and able to respond to, anything which may be being said against him and which may affect the Board’s decision in his case.

2.5 That does not mean that a refusal of the non-disclosure application would necessarily result in one or more of the adverse effects specified in Rule 8(1). The Secretary of State has power under Rule 8(10) to withdraw the material if the Board refuses the non-disclosure direction, and is likely to do so if disclosure would be likely to have one of those effects. This power is discussed in more detail in paragraphs 12.2-5 below.

2.6 The decision whether to direct disclosure or non-disclosure of the material does not have to be an “all or nothing” one. Rule 8(4)(c) enables you to make a direction that, instead of disclosure of the material in full, it should be disclosed to the offender in the form of a summary (usually referred to as a “gist”) or redacted version. Such disclosure may provide the offender with sufficient information to enable him to respond effectively to what is being said about him, and may therefore preserve the fairness of the proceedings whilst avoiding any adverse effects which would be likely to follow from full disclosure.

2.7 Rule 8 provides that material may be withheld either from the prisoner only or both from the prisoner and from their legal representative. However it is extremely rare for material to be withheld from the legal representative (see paragraph 11.3 below for further details) and most applications do not seek this. If a decision is made that material is to be withheld from the prisoner, it will normally be provided to the representative but only after he or she has given an undertaking not to disclose the material to the prisoner or to anyone else without the permission of the MCA/Duty member or oral hearing panel chair.

3. Rule 8 of the Parole Board Rules 2016

3.1 The full wording of Rule 8 is as follows:

**Withholding information or reports**

8.—(1) The Secretary of State may apply to the Board for information to be withheld from the prisoner, or from both the prisoner and their representative, where the Secretary of State considers—

(a) that its disclosure would adversely affect—

(i) national security;

(ii) the prevention of disorder or crime, or

(iii) the health or welfare of the prisoner or any other person, and

(b) that withholding the information or report is a necessary and proportionate measure in the circumstances of the case.

(2) Where the Secretary of State makes an application for information or any report (“the material”) to be withheld under paragraph (1), the Secretary of State must serve on the Board—

(a) the material, or a separate document containing the material, and

(b) a written application for non-disclosure, explaining why it is proposed to be withheld.

(3) On receipt of an application under paragraph (2)(b), the member appointed by the Board chair for this purpose (being either a panel chair, single member or duty member), must
consider the application and may make directions as necessary to enable determination of the application.

(4) When the member appointed under paragraph (3) is satisfied that all relevant information has been served on the Board, that member must consider the application and direct that the material should be—

(a) served on the prisoner and their representative (if applicable) in full;
(b) withheld from the prisoner or from both the prisoner and their representative, or
(c) disclosed to the prisoner, or to both the prisoner and their representative in the form of a summary or redacted version.

(5) If—

(a) a direction is given under paragraph (4)(a) and the Secretary of State intends to appeal against it in accordance with paragraph (8), or
(b) a direction is given under paragraph (4)(b) or (c),

the Secretary of State must, as soon as practicable notify the prisoner and the prisoner’s representative (if applicable) that an application has been made under paragraph (2)(b) and the substance of that direction.

(6) If the member appointed under paragraph (3) gives a direction under paragraph (4)(b) or (c) that relates only to the prisoner, and that prisoner has a representative the Secretary of State must, subject to paragraphs (7) and (8), serve the material as soon as practicable (unless the member directs otherwise) on the prisoner’s representative, if the representative is—

(a) a barrister or solicitor;
(b) a registered medical practitioner;
(c) a person whom the member appointed under paragraph (3) directs is suitable by virtue of their experience or professional qualification, or
(d) a special advocate who has been appointed by the Attorney General to represent the prisoner’s interests.

(7) The material must not be disclosed to the prisoner’s representative under paragraph (6) unless they first give an undertaking to the Board that they will not, without the consent of the member appointed under paragraph (3), disclose it to the prisoner or to any other person.

(8) Within 7 days of notification by the Secretary of State in accordance with paragraph (5), either party may appeal against that direction to the Board chair, who must notify the other party of the appeal; and if the Secretary of State appeals against the direction, the Secretary of State need not serve the material under paragraph (4) or (6) until the appeal is determined.

(9) Within 7 days of being notified that a party has appealed under paragraph (8), the other party may make representations on the appeal to the Board chair.

(10) If—

(a) the member appointed under paragraph (3) to determine an application under paragraph (1), or
(b) the Board chair determining an appeal under paragraph (8),

decides that any material which is subject to the application by the Secretary of State under paragraph (1) should be disclosed to the prisoner (in full or in the form of a summary or redacted version), the Secretary of State may withdraw the material within 7 days of that decision.

(11) If the Secretary of State withdraws any material in accordance with paragraph (10), no one who has seen that material may sit on a panel which determines the case.

4. Procedures before the non-disclosure application is made

4.1 The procedures which should have been followed before the application is made are set out in PSI 15/2016 (“the PSI”), which has been issued by HMPPS to
provide guidance to prison and probation staff and PPCS as regards the handling of "sensitive" information which may need to be the subject of a non-disclosure application. You will sometimes find that some of the guidance in the PSI has not in fact been followed (see below).

4.2 Whilst the provisions of the PSI are not directly applicable to the Parole Board, some of them are helpful (a) in showing how the system should work and what should have happened before a non-disclosure application comes to the Board and (b) what directions it may be appropriate for you to give before you make your decision on a non-disclosure application.

4.3 The provisions of the PSI which may be particularly relevant for your purposes in considering a non-disclosure application are set out in section 12 below.

5. The non-disclosure application

5.1 Requests for non-disclosure directions must only be made by PPCS on behalf of the Secretary of State. They should be made on the standard form (Annex A to the PSI) a copy of which will be found at section 14 below.

5.2 If (as sometimes happens) you receive a request which appears to have come directly from a prison, Offender Manager or Victim Liaison Officer, you should ask the case manager to check with PPCS to see whether the application has been through the correct procedures and is endorsed by PPCS. Unless and until confirmation is received that that is the case, you should take no action on the request. At the MCA stage you may need to adjourn your review of the case until the position has been clarified.

6. Parole Board procedures on receipt of the non-disclosure application

6.1 If you receive a non-disclosure application as a MCA member you should make the decision on the application yourself, rather than leave it (if you direct an oral hearing) to the oral hearing panel chair. Similarly, if you receive the application as a Duty Member before the case has been allocated to an oral hearing panel, you should make the decision yourself.

6.2 On receiving the dossier and the non-disclosure application, you will want to check to make sure that you have all the necessary information, which should include:

- A properly completed Annex A non-disclosure application form. The application should set out the ground on which the application is being made, and sufficient information to explain why that ground is said to apply. It should also indicate whether a gist is being provided. It may set out details of information received by the Secretary of State from other sources (e.g. evidence from the Victim Liaison Officer).
- The full (i.e. unredacted) material sought to be withheld;
- The gist (if one has been supplied); and
- Supporting material, if any (e.g. a statement from a doctor outlining the effect which the index offence has had on a victim’s health or welfare)

6.3 You may also have representations from the offender’s legal representative (if he has one). Those will inevitably be limited as the legal representative will merely have been told that a non-disclosure application has been made: they
will not have been given the details at that stage (see the flow chart attached to the PSI). The representations are therefore likely to be in general terms only, reminding you of the relevant legal principles.

6.4 If the documents provided do not contain sufficient information to enable you to make a decision on the application, you should ask PPCS for further information: Rule 8(3) says that you must consider the application and make any directions necessary to enable determination of the application. If you are dealing with the application at the MCA stage, you are likely to need to adjourn your review of the case (using the MCA directions template) until the necessary information has been obtained.

6.5 Rule 11 of the Parole Board Rules would enable you to direct that there should be a directions hearing at which you could hear oral evidence and submissions before making your decision on a non-disclosure application. Directions hearings for these applications are expected to be very rare and you should generally make your decision on the papers. If you believe there are exceptional circumstances requiring a directions hearing, you should consult the case manager who must then seek advice from the Legal Advisor or the litigation team.

6.6 Once you have all the necessary information, you will be ready to make your decision.

7. Making the decision: the options

7.1 Rule 8(4) states that having considered the application you must make one or other of three types of direction:

a) a direction that the material in question should be served on the prisoner and their representative (if applicable) in full; OR

b) a direction that it should be withheld from the prisoner, or from both the prisoner and their representative, OR

c) a direction that it should be disclosed to the prisoner, or to both the prisoner and their representative, in the form of a summary or redacted version.

7.2 You may find it helpful to approach your decision on the non-disclosure application in three steps, using the following flow chart.

If yes, is withholding the material necessary and proportionate in the circumstances? (rule 8(1)(b))

If no, refuse application and direct material be disclosed in full. (rule 8(4)(a))

If yes, direct material be withheld from the prisoner in full. (rule 8(4)(b))

If no, consider directing disclosure in the form of a summary (gist) or redacted version. (rule 8(4)(c))

Has the Secretary of State established that one or more of the grounds in rule 8(1)(a) are met?
8. Step 1: Has the Secretary of State established the first condition in Rule 8(1)?

8.1 You may find it helpful to start by deciding whether the Secretary of State has established the first condition for non-disclosure (i.e. that disclosure of the material would have one of the adverse effects specified in Rule 8(1)).

8.2 If the answer to that first question is “No”, you will refuse the non-disclosure direction and direct disclosure of the material in full. You will not then need to consider the second condition (necessity and proportionality). If you refuse the non-disclosure application on this basis, you may like to use the following form of words in your ruling:

“An application has been made that certain material should be withheld from [X]. The Secretary of State submits that disclosure of the material to [X] would adversely affect [national security] [the prevention of disorder or crime] [the health or welfare of the prisoner] [the health or welfare of .........] (delete as necessary). On the evidence available to it, the Panel does not find that that is the case. It therefore directs that the material should be disclosed in full to [X] [and his legal representative] (delete if there is none).”

You may wish to add some further explanation of the reasons for your decision, but this is not obligatory.

8.3 In deciding whether the first condition is satisfied, you are entitled to draw reasonable inferences from the facts as they appear from (a) the dossier (b) the material sought to be withheld (c) the contents of the application and (d) any supporting evidence which may have been provided. For example, in the case of a Victim Personal Statement (VPS) it may be a reasonable inference from the whole of the evidence, even in the absence of medical evidence, that the victim has suffered and is continuing to suffer psychological harm as a result of the index offence, and that knowledge that the prisoner had seen personal and private details of the effect which his actions have had would be likely to cause further distress and psychological harm.

9. Step 2: Has The Secretary of State established the second condition in Rule 8(1)?

9.1 If you find that the first condition for non-disclosure has been established, you will need to go on to consider whether the second condition is also established, i.e. whether withholding the material is a necessary and proportionate measure in the circumstances of the case. Non-disclosure is likely to be a necessary and proportionate measure only if the material (or some of it) can be withheld without prejudicing the prisoner’s right to a fair determination of his case. You may therefore find it helpful to consider as your second step whether the whole of the material can be withheld without causing any unfairness to the prisoner in the proceedings.

9.2 If you have decided that the first condition for non-disclosure is satisfied, and also that withholding the whole of the material would not affect the fairness of the proceedings, you are likely to direct that the material should be withheld
from the prisoner. You might then like to use the following form of words or something similar:

“An application has been made that certain material should be withheld from [X]. The Secretary of State submits that disclosure of the material to [X] would adversely affect [national security] [the prevention of disorder or crime] [the health or welfare of the prisoner][the health or welfare of [Y]] (delete as necessary). On the evidence available to it, the Panel finds that that is the case. The Secretary of State further submits that withholding the material would not affect the fairness of the proceedings and would be a necessary and proportionate measure in the circumstances of the case. On the evidence available to it, the panel finds that that is the case. The panel accordingly directs that the material should be withheld from [X].”

As before, you can if you like add some further explanation of the reasons for your decision, but you do not have to. As regards disclosure of the material to the prisoner’s legal representative, please see section 11 below.

**Victim Personal Statements**

9.3 Non-disclosure applications are frequently made in respect of a Victim Personal Statement (“VPS”) or a Victim Contact Report (“VCR”). It is natural that the victim should wish the Board to be made fully aware of the impact which the index offence has had on them. The Victims’ Code permits that to happen, and the continuing impact may be relevant to the licence conditions required if release on licence is directed.

9.4 However, the actual impact of the offence (as it appeared at the time of sentencing, which will usually have been at least several months after the offence) will have been taken into account by the judge in assessing the seriousness of the crime and fixing the sentence. Where the impact has subsequently proved to have been greater and/or to have lasted longer than anticipated, that fact is not one which we can properly use as a reason for keeping the prisoner in custody beyond the minimum period required by the sentence: we are concerned only with the prisoner’s current risk to the public and its manageability on licence in the community (or, as the case may be, in open conditions).

9.5 It follows that you are entitled to approach a non-disclosure application in respect of a VPS or VCR on the basis that the prisoner does not normally need to know - or to deal with in his evidence - the details of the actual impact of his crime on the victim. Those details are normally irrelevant to the Board’s decision. Matters which are relevant to the decision and which the prisoner will therefore need to have the opportunity to address do, of course, include the circumstances of the index offence, what the prisoner knew or ought to have known at the time was likely to be its impact on the victim, and his current insight into and attitude towards those matters. If the VPS /VCR is withheld, he will normally be able to address those aspects of the case fully. The non-disclosure will not therefore affect the fairness of the proceedings.

**VPS and risk information**

9.6 The VPS should be confined to explaining the impact which the index offence has had on the victim. It should not include reference to any matters relevant
to the prisoner’s current risk to the public. If the victim has knowledge of such matters and wishes the Board to be made aware of them, the correct procedure is for the matters to be investigated by PPCS as provided for in the PSI (see paragraph 13.4 (7)-(9) below).

9.7 If the matters relevant to risk are evidenced in the dossier, there is no problem because the prisoner will be aware of them. The problem arises where they are not evidenced in the dossier. As stipulated in the PSI, PPCS should make efforts to see if they can be evidenced in some other way independent of the VPS. If those efforts are unsuccessful, and the Secretary of State wishes the Board to rely on the matters in question, they will have to be placed in a separate disclosable document and, if there is an oral hearing and the panel chair so directs, the victim will have to be called as a witness so that they can be questioned by the panel and the prisoner’s legal representative. It would clearly not be fair for the panel to consider material of which the prisoner is unaware and to which he has had no opportunity to respond.

9.8 Quite often a VPS in respect of which a non-disclosure application is being made contains some information which goes beyond impact and is relevant to current risk. Indeed, sometimes the same piece of information (for example a threat made by the prisoner during the course of the index offence that he will seek revenge if the victim reports the crime to the police) may be relevant both to impact and to current risk.

9.9 If (as will sometimes be the case) it is unclear whether the information is or can be evidenced independently of the VPS, you are entitled to adjourn with a direction for PPCS to indicate whether the procedures set out in the PSI have been carried out and if so with what result. It may turn out, for instance, in the example just given, that the relevant information was recorded during the original police investigation - in the victim’s witness statement or in some other way - and that record (or the relevant extract from it) can then be added to the dossier.

9.10 If PPCS cannot satisfy you that the evidence is or can be evidenced independently of the VPS, you are likely to have to decide that withholding the VPS would adversely affect the fairness of the proceedings and that the non-disclosure application must therefore be refused.

9.11 If that is your conclusion, it is open to you - whilst refusing the application - to indicate in your ruling that PPCS could submit a revised VPS which is confined to impact, which would be likely to be the subject of a successful non-disclosure application. VLOs and PPCS understandably do not like going back to the victim and asking for a revised version of the VPS, omitting material which the victim wished the Board to see; but if they follow the correct procedures in the first place they will not need to do so.

10. Step 3: Would disclosure of a gist or redacted version be sufficient to avoid any unfairness to the prisoner

10.1 If you have decided that the first non-disclosure condition is met but that withholding the whole of the material would render the proceedings unfair and would therefore not be a necessary and proportionate measure in the circumstances of the case, your third step will be to decide whether any

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unfairness can be avoided by disclosure of the material in the form of a summary (“gist”) or redacted version.

10.2 You may have been provided by the Secretary of State with a proposed gist or redacted version of the material. If you agree with the Secretary of State that disclosure of that document would be sufficient to avoid any unfairness to the prisoner, your decision will be to direct disclosure of the material in the form of the gist or redacted version.

10.3 If that is your decision, you may like to use the following form of words or something similar:

“An application has been made that certain material should be withheld from [X]. The Secretary of State submits that disclosure of the material to [X] would adversely affect [national security] [the prevention of disorder or crime] [the health or welfare of the prisoner] [the health or welfare of [Y]] (delete as necessary). On the evidence available to it, the Panel finds that that is the case. The Secretary of State further submits that withholding the material itself but disclosing a gist of it in the form proposed by the Secretary of State would be a necessary and proportionate measure in the circumstances of the case and would not affect the fairness of the proceedings. On the evidence available to it, the panel finds that that is also the case. The panel accordingly directs that the material should be disclosed to [X] but only in the form of the proposed gist”.

10.4 You are not bound by the Secretary of State’s proposal for the terms of the gist, and if you consider that the proposed gist would be insufficient to avoid any unfairness you are entitled to say so and to adjourn your consideration of the non-disclosure application for a fresh draft gist to be prepared and submitted. You are entitled to give a steer to the Secretary of State about the matters which will need to be included in the fresh gist if it is to be sufficient to avoid any unfairness to the prisoner. An adjournment of the application may also necessitate an adjournment of your MCA review of the case. [If you are considering the application as an oral hearing panel chair, endeavour to obtain the fresh gist sufficiently before the hearing date, to allow determination of the application (and any appeal, see further section 12 below) and avoid adjournment or deferral of the hearing].

10.5 In order to avoid any unfairness, the gist must contain sufficient information to enable the prisoner to understand what is being said against him and to respond effectively to it (by giving appropriate instructions to his legal representative and, if he wishes, giving evidence himself on the point in question).

11. Disclosure to the prisoner’s representative

11.1 If you direct that the material itself should be withheld from the prisoner (whether or not a gist or redacted version is to be provided) it will almost always be appropriate for the full material to be provided to the prisoner’s representative, subject to their having given an undertaking that it is not to be disclosed to the prisoner or anyone else without your consent or (if at the MCA stage you direct an oral hearing) that of the oral hearing panel chair. The undertaking is given under Rule 8(7). The same applies if you direct disclosure
of the material and the Secretary of State proposes to appeal against your direction (as to which see paragraph 12.6 below).

11.2 For this purpose the prisoner’s representative may be a legal one (a barrister or solicitor) or a non-legal one (a registered medical practitioner or a person whom you have found to be suitable by virtue of their experience or professional qualification) (see Rule 8(6)). There is also provision in the Rules for the appointment by the Attorney General of a “special advocate” to represent the prisoner’s interests (Rule 8(6)(d)) but that provision is rarely if ever used.

11.3 You have power under Rule 8(6) to direct, exceptionally, that there should be no disclosure to any representative of the prisoner’s, but the circumstances in which such a direction would be appropriate are extremely rare. If you are considering making such a direction you should consult the case manager, explaining your reasons, and the case manager must seek advice from the Legal Advisor or litigation team.

11.4 It is good practice, if you are directing that the material itself should be withheld from the prisoner but that it should be disclosed to their representative, to add the following to your ruling:

“The material should be served by the Secretary of State on the prisoner’s representative, provided that the representative has first given an undertaking to the Board that they will not, without the consent of the MCA member or oral panel chair, disclose it to the prisoner or any other person (see Rule 8(7) of the Parole Board Rules 2016).” [If you are considering the application as an oral hearing panel chair, the words “MCA member or” can be omitted.]

If the identity of the prisoner’s representative is known (as it usually is) it is good practice to add their name to the above wording.

12. Procedures and timeframes after you have made your decision

12.1 There are several procedures that apply after you have made your decision. These may require you to adjourn or defer the case for a short period. These procedures are set out below.

The possibility of the Secretary of State withdrawing the material

12.2 If you have refused the non-disclosure application, the Secretary of State may withdraw the material altogether, rather than let it be disclosed to the prisoner (Rule 8(10)). The material may be withdrawn following your initial decision or following an appeal (as to which see paragraph 12.6 below). Timescales: Under Rule 8(10) the Secretary of State has 7 days from the date of your decision (or the Board Chair’s decision on any appeal) to decide whether to withdraw material which has been directed to be disclosed.

12.3 If the Secretary of State withdraws any material in accordance with Rule 8(10), no-one who has seen that material may sit on a panel which determines the case (Rule 8(11)). If you have refused the application at the MCA stage and are considering making a decision yourself on the papers, you will have to adjourn the MCA review to allow time for the Secretary of State to decide
whether to withdraw the material. If she does, the case will have to be reallocated to another MCA panel. An adjournment will not be necessary if you have decided to send the case for an oral hearing in any event.

12.4 [Similarly if you have refused the application as an oral hearing panel chair, consider whether there is sufficient time left before the oral hearing for the Secretary of State to decide whether to withdraw the material. If not, you may need to adjourn or defer the hearing.]

The possibility of an appeal

12.5 Your decision will always be subject to a right of appeal. If the Secretary of State wishes to challenge it, she may appeal. If the prisoner’s representative (if there is one) or the special advocate (if there is one) wishes to challenge it, they may appeal on the prisoner’s behalf. The appeal is to the Board Chair, whose decision is final. The Board Chair may delegate such decisions to the Vice-Chair or another member of the Board.

12.6 Timescales: Under Rule 8(8) either party has 7 days from the date of your decision to appeal against it. The appeal process usually takes 2-3 weeks from that point. Representations may be submitted by both sides; the relevant documents (including the whole dossier) have to be provided to the Chairman; and he has to make his determination.

12.7 The possibility of an appeal means that, if you are considering making a decision yourself on the papers at MCA stage, you will need to adjourn the MCA review to allow time for the appeal process to be completed. If the Board Chair decides that material should be disclosed to the prisoner which you have directed should be withheld from him, the prisoner must have the opportunity to submit written representations about it. If (a) there is an appeal and (b) in the light of the Board Chair’s decision the Secretary of State decides to withdraw the material in question, the case will have to be re-allocated to another MCA member.

12.8 [Similarly if you have decided the application at the oral hearing panel chair stage, consider whether there is sufficient time left before the oral hearing for the appeal process to be completed. If the process is still ongoing, you may need to adjourn or defer the hearing.]

12.9 On the subject of appeals, the Board Chair will usually have the benefit of significantly more information and submissions than you had when reaching your own decision. If the Board Chair allows the appeal, therefore, that will not necessarily be any reflection on your judgment!

Deemed appeal by an unrepresented prisoner

12.10 If the prisoner is unrepresented and you decide that the material in question should be withheld from him (or disclosed only in the form of a gist or redacted version), the prisoner is deemed to have appealed against your decision. The Board Chair will then either confirm or reverse your direction. It follows that at the MCA stage, if you are considering making a decision yourself on the

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5 Referred to as the Chairman under previous Parole Board Rules. Under Rule 2 of the Parole Board Rules 2016, “Board Chair” is the Chairman of the Board appointed under paragraph 2 of Schedule 19, to the Criminal Justice Act 2003.
papers in the case of an unrepresented prisoner, you will have to adjourn to await the Board Chair’s determination of the appeal.

12.11 [Similarly if you have ruled on the application as an oral hearing panel chair, consider whether there is sufficient time left before the hearing date for the appeal process to be completed. If the process is still ongoing, you may need to adjourn or defer the hearing.]

12.12 **Timescales**: A deemed appeal (because the prisoner is unrepresented) is automatic and there is therefore no need for the initial period of 7 days for the parties to decide whether to appeal. The process may therefore be a little shorter.

**Time scales for adjournment**

12.13 Given the time scales above, in the circumstances you may wish to proceed as follows in deciding on the length of any adjournment:

(a) Where the prisoner is unrepresented and there is a deemed appeal, allow 21 days for the appeal process to be completed;
(b) In any other case where an adjournment is necessary, adjourn in the first instance for 9 or 10 days, review the matter at that stage and then direct any further adjournment which may be necessary.

13. **Relevant extracts from PSI 15/2016**

13.1 The PSI is entitled “Handling of sensitive information, including information provided by victims, for the purpose of parole board reviews”. Some of the paragraphs in it may be of particular interest for our purposes, and are set out below. The full PSI can be accessed on the Extranet.

13.2 Paragraph 2.9 of the PSI identifies various types of “sensitive” information which may need to be the subject of a non-disclosure application. The list is not exhaustive. It comprises prison security intelligence, references to alleged offences (such as unreported domestic violence), information from the police or security services about planned offences, the victim personal statement (VPS), the victim liaison officer’s victim contact report (VCR) and personal information about the victim (such as their address or medical issues).

[To these categories can be added (again non-exhaustively) information from the police about ongoing police investigations, information from the police about surveillance or monitoring of the offender, information which has led to the offender’s recall where the source of the information is concerned about the consequences of being identified, and other information relevant to the offender’s risk where the source of the information is concerned about the consequences of being identified.]

**General provisions**

13.3 The following provisions apply to all sensitive material:

(1) "Withholding information must be the exception rather than the rule. Where the Governor, OM or the VLO considers that material cannot be safely disclosed, they must contact PPCS to discuss whether or not the material is relevant to the Parole Board’s assessment of the level of risk presented by the prisoner. If the information
is relevant to risk, it must be shared with the Parole Board and consideration must be
given as to how that might be achieved. This is the case even if the information has
come from a victim.” [Paragraph 1.16]

(2) “Applications to withhold information must only be made where absolutely
necessary as in the interests of fairness: the presumption must always be in favour
of disclosing all available information to the prisoner concerned.” [Paragraph 3.4]

(3) “Rule 7 of the Parole Board Rules obliges the Secretary of State to provide
specified information to the Parole Board. It is essential that the Board is able to make
an accurate assessment of risk, thereby fulfilling its role in protecting the public. The
assumption is that any information which is relevant to a prisoner’s risk within the
community must be disclosed to the Parole Board, even if it is not suitable for
disclosure to the prisoner.” [Paragraph 1.2]

(4) “In every case where a Governor or manager of probation services wishes to apply
to the Parole Board to withhold information from a prisoner, they must contact PPCS
immediately for advice and for any application to be made ... under no circumstances
must establishments or providers of probation services directly contact the Parole
Board about withholding information.” [Paragraph 1.22]

(5) Paragraph 3.1 identifies some of the circumstances in which a non-disclosure
application may be appropriate. It states that withholding under the national security
heading is likely to arise in cases where an individual has been convicted of terrorism-
related or other extremist offences; withholding under the prevention of crime
heading is likely to arise where the individual is believed to be involved in organised
crime; and withholding under the health or welfare heading may apply to victims or
to sources of intelligence who may be known to the prisoner.

(6) “Consideration about whether to apply to withhold information must be made as
soon as the sensitivity of said information becomes apparent ... As soon as prison or
probation services staff identify information that may need to be withheld they must
contact the relevant PPCS case manager to alert them.” [Paragraph 3.2]

(7) “Where the Governor or OM considers that material cannot be safely disclosed ... they must give initial consideration as to whether the material is critical to the Parole
Board’s assessment of the level of risk presented by the prisoner. In other words, is
the sensitive material of relevance to the Board’s assessment? In cases where the
Governor or OM considers that information should be withheld, or where there is
doubt, PPCS must be consulted without delay.” [Paragraph 3.7]

(8) “If the information is not considered to be relevant, and/or is referred to elsewhere
in the dossier, it does not have to be submitted to the Parole Board. However, where
relevance is established, i.e. the information is likely to assist the Parole Board’s
assessment of the level of risk presented by the prisoner, then it must be shared with
the Board in order to enable the Board to fulfil its statutory obligations in protecting
the public. Concern that the Parole Board could decide to disclose the
information to the prisoner is not sufficient grounds on which to withhold
such information from the Board.” [Paragraph 3.9: the last sentence is
highlighted in bold]

(9) “Before an application to withhold the information from the prisoner is made, the
Governor or OM must consider whether that material could be re-written as a
sanitised version. This would be appropriate where it is possible to exclude the detail
without reducing its impact. This might involve re-writing a report to exclude the
names of third parties and/or references that might enable a third party to be
identified. If this can be achieved then it will not be necessary to make a non-disclosure application.” [Paragraph 3.10]

[This practice is commonly used with security intelligence reports ("SIRs") where "sanitised" versions are routinely added to the dossier without a non-disclosure application being made in respect of the material blanked out. Part 5 of PSI/PI explains changes which will take place with effect from 1 July 2017 in the system for dealing with SIRs but the “sanitisation” practice will continue.]

(10) “Where information is deemed unsuitable for presentation even in a sanitised version, an application must be made to withhold it from the prisoner. In the first instance, the Governor or OM must contact the PPCS case manager for advice, specifying the criteria under which the application is being made and giving reasons for doing so. The reasons must clearly and concisely express the concerns, including how the disclosure of information in any form might compromise one of the three interests in paragraph 3.1. **In all cases, if a formal application is submitted then PPCS must share the full and un-redacted source material with the Parole Board.**” [Paragraph 3.11: again, the last sentence is highlighted in bold]

(11) “PPCS must consider all applications (including requests for applications to withhold a VPS) and any accompanying gist within 2 working days of receipt. The case manager must escalate any non-disclosure applications to their team manager immediately. Further escalation to senior managers and consultation with lawyers may be appropriate.” [Paragraph 3.17]

(12) “Applications to withhold information are made in the name of the Secretary of State for Justice: PPCS will therefore liaise with, and advise the OM, Governor or VLO throughout the application process and agree the final wording with them prior to submission. PPCS will then complete the form ‘Application for the non-disclosure of sensitive information’ (Annex A of this Instruction) and submit it, together with the sanitised/gisted version of the material, if appropriate, and the un-redacted source material, to the Parole Board. The application must be uploaded to PPUD, with the appropriate protective markings and measures in place. The case manager must inform legal representatives that a non-disclosure application has been submitted but further detail must not be divulged at this point.” [Paragraph 3.17 again]

A copy of the Annex A application form will be found in section 14 below.

**Victims and VPSs/VCRs**

13.4 Part 4 of the PSI deals with specific categories of information, including those relating to victims. The following extracts may be of interest for our purposes.

(1) “All victim-related issues must be handled with the utmost sensitivity at all times. In discussing with victims the preparation of a Victim Personal Statement (VPS) or Victim Contact Report (VCR), VLOs must ensure that they explain to victims that except in the circumstances in paragraph 4.8 below, the VPS will be disclosed. Any application for non-disclosure cannot be guaranteed as the final decision rests with the Parole Board [Paragraph 4.7]

(2) “To withhold a VPS it will be necessary to demonstrate that the victim will be caused harm by the very fact of the disclosure, over and above any distress already caused by the offence and the forthcoming Parole Board, and that the prisoner will not be disadvantaged because the VPS contains information about the impact of the offence only. PPCS will take responsibility for drafting an application to the Board to withhold the VPS/VCR from the prisoner. The VLO must provide PPCS with the necessary information in support of such an application and to make sure that the
victim is kept informed of the progress of the application, through liaison with PPCS ...

(3) “When discussing whether to apply to withhold a VPS with the victim, the VLO must also ask the victim to consider giving consent for a gisted version of the statement to be prepared which can be disclosed. The Parole Board have indicated that it will strengthen the application to withhold a VPS if there is a gisted version that can be disclosed to the prisoner. On receipt of an application, PPCS will check with the VLO for confirmation on whether the victim has given their consent for a gist to be produced. If consent is given then PPCS will prepare a draft and send this to the VLO for comments. The victim must approve the gist before it will be submitted to the Parole Board.” [Paragraph 4.9]

**VPSs and risk information**

(4) “PI 48/2014 (The Victim Contact Scheme Manual) is clear that victims should be advised that the VPS should be purely about the impact of the offence, and the impact that release would have upon them. It should not contain information related to the risk presented by the offender. If the victim has information about risk – for example if they have had unwanted contact from the offender – this information must be passed from the VLO to the Offender Manager who, together with PPCS, must consider whether it is relevant to current risk and if it should be included in the dossier for the Parole Board.” [Paragraph 4.10]

(5) “If the OM or VLO believes that a VPS contains new information relating to risk, they must contact PPCS as a matter of urgency for advice. The VLO will also need to explain to the victim, particularly in those cases where the victim has indicated that they do not want the VPS/VCR disclosed to the prisoner, the implications of including material relating to the prisoner’s risk. **In short, if a VPS/VCR contains risk related information which is not covered elsewhere in the dossier of reports submitted to the Parole Board, then it cannot be withheld from the prisoner.**” [Paragraph 4.11: again the last sentence is highlighted]

(6) “Any information contained within a VPS/VCR that relates directly to the prisoner’s risk of harm, such as allegations of unauthorised contact from the prisoner, or a history of previously unreported domestic violence, is relevant to the Parole Board’s decision making. As such, the Board must have the opportunity to question the prisoner about risk-related issues and the prisoner has the right to instruct his legal representative on how to respond to such issues. **Where such evidence is included, the victim must be warned that the Parole Board may want the victim to give evidence and be asked questions about it.**” [Paragraph 4.12: again, the last sentence is highlighted]

(7) “Where victims present new and hitherto unknown information related to risk in their VPS, a reasonable attempt must be made to investigate the information. Examples of such information which could reasonably be investigated might include, for example, allegations that the offender had previously been arrested, or had been on police bail at the time of the index offence, or charged with previous offences.” [Paragraph 4.13]

(8) “PPCS will co-ordinate the investigation” (i.e. the investigation required by paragraph 4.13) “and will first seek to substantiate the information by cross-referencing it with other reports in the parole dossier. Where PPCS identifies new risk related material or where it is unable to corroborate it in the dossier, it will contact the VLO and/or OM for assistance, for example, to ask that enquiries are made with local courts or police. Prison staff may also be consulted as appropriate. It is important
that when investigating such allegations, accurate information, in particular about the possible dates of the alleged incidents, are provided to the agency of which enquiries are being made.” [Paragraph 4.14]

(9) “If risk-related information contained within the VPS cannot be corroborated, PPCS has a duty to make the Parole Board aware who in turn may decide to disregard it. This should be done by way of a covering letter to the Parole Board Chair. The letter must clearly set out exactly which parts of the VPS have been investigated and confirm the information is not available anywhere else in the dossier (a general reference to the VPS is not acceptable) and set out what has been done to try and verify the information.” [Paragraph 4.15]

(10) “Although it will require sensitive handling, the victim must be told of the letter. It gives them an extra opportunity to withdraw the information if they wish to do so, or to provide further evidence if they are able to.” [Paragraph 4.16]

(11) “If PPCS is of the view that it has a duty to disclose such information, contrary to the wishes of the victim, then the only option is for it to be presented in a different way. For example, the information could be ‘gisted’ in such a way that it becomes disclosable to the prisoner and included in a VCR, or in the OM’s report [the PAROM1, PAROM1+ or (in recall cases) their Part B Report].” [Paragraph 4.17]

Cases not involving victims

13.5 Paragraph 3.12 of the PSI states that:

“For all applications to withhold information, except those relating to Victim Personal Statements, the Governor or OM must either:

(i) Prepare a gist of the information being withheld. The gist must include the substance of the material in sufficient detail to enable the prisoner to instruct his legal representative. Careful consideration must be given to drafting the gist in such a way that it does not indirectly divulge the identity of any source or third party;

OR

(ii) Provide reasons why it is not possible to provide a gist. The reasons must explain why a gist could not be constructed without: jeopardising the safety of a third party: or undermining national security; or damaging a covert operation to maintain prison security or tackle criminal activity. Before drafting such reasons, the Governor must consult the PPCS case manager.”
14. Form – Application for non-disclosure (Annex A to PSI 15/2016)

Application for the non-disclosure of sensitive information

This application is made for your consideration under Parole Board Rule 8(1)

Please be aware that, should this application be refused, the Secretary of State may appeal the decision.

Please be aware that, should this appeal be refused, the Secretary of State may elect to withdraw the document/s in accordance with Rule 8(5) of the Parole Board Rules 2011.

THE ATTACHED DOCUMENTS SHOULD NOT BE DISCLOSED TO ANY OTHER PARTY UNTIL THE SECRETARY OF STATE HAS CONFIRMED THAT HE DOES NOT INTEND TAKING SUCH ACTION.

Prisoner’s Name:

Prison Number:

The Secretary of State is supplying the attached information in connection with the above prisoner’s: (tick one box only)

<table>
<thead>
<tr>
<th></th>
<th>Parole application:</th>
<th>Lifer/IPP Parole review:</th>
<th>Review of Re-Release after Recall:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DCR/EPP/EDS/SOPC</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

The Secretary of State submits the attached information in order to assist the Parole Board’s assessment of the prisoner’s potential release, suitability for open conditions, and/or licence conditions.

However, he submits that it is unsuitable for disclosure to the prisoner. He commits to sharing the full information with the legal representative, subject to receipt of a formal undertaking that it will not be disclosed further by them.
In accordance with Rule 8(1) of the Parole Board Rules 2011, the Secretary of State requests that the attached information is withheld from the prisoner on the grounds that disclosure would adversely affect:

<table>
<thead>
<tr>
<th>Tick relevant box</th>
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<tr>
<td>(i) national security;</td>
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<tr>
<td>(ii) the prevention of disorder or crime;</td>
</tr>
<tr>
<td>(iii) the health or welfare of the prisoner or any other person.</td>
</tr>
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</table>

In accordance with 8 (1)(b) of the Parole Board Rules, withholding this information from the prisoner is a necessary and proportionate measure in the circumstances of the case.

Information to be withheld:

Reasons why the attached information should not be disclosed:

I have attached a sanitised version /a gist which can safely be disclosed to the prisoner.

It has not been possible to submit a sanitised version or a gist because (if applicable):

Please confirm as soon as possible whether authorisation is given to withhold the attached information from the prisoner.
Name:
Role:
Address:
Telephone number:
Email address:
Date:
Annex 5: Listing prioritisation

Requests for prioritisation and expedition
As a consequence of the listings delays, the Board is also receiving an increased number of requests for prioritisation outside of the usual listing prioritisation framework. We are hopeful that we can maintain our consistency in dealing with such requests for prioritisation and expedition, therefore members are asked to please refer to the guidance at Section B of the Members’ Handbook (Chapter 14, section 6) and the guidance below when considering these requests.

The terminology is particularly important; a request to prioritise a case due to exceptional circumstances is effectively an instruction to make every effort to list that case in the next listing exercise. A direction to expedite a case due to it being so exceptional and urgent is effectively an instruction to make every effort to list the case as soon as possible.

Parole Board listing framework
Listing tool for prioritisation of oral hearings – revised version updated November 2010

The listing prioritisation framework was originally introduced in April 2009 and last revised in November 2009 and sets out how the Board prioritises cases for listing each month in the context of a listing backlog.

The only change to the framework under this 3rd version can be found at the end of the framework under “Exceptions”. This amendment is to provide clarity on the type of cases automatically assigned top priority and to include all under 18 year old offenders into this group of exceptional cases.

The Parole Board will initially prioritise cases according to the date the review was due. For a definition of this date for each type of case, please refer to the list below. Please note that the initial prioritisation by date is for all types of cases (for example a lifer pre-tariff advice case with a due date of December 2009 will take priority over a lifer post-tariff review due January 2010). It is only after the initial prioritisation by due date is completed and there is a choice between 2 cases and one available listing that the type of case will have a bearing on whether or not a case achieves a hearing date that month.

Definition of “due dates” by case type:
Recalls
The “due date” of a recall case is fixed as “ASAP”. Recall cases will not in reality be subject to a specific review date or a target date. By their nature, the target is for the earliest available hearing. Therefore, all recall cases ready for listing should receive an oral hearing date at the first listing exercise for which they are submitted unless witness availability or other logistical problems mean it is impossible.

Where it is impossible to list all recall case in a particular listing exercise and it becomes necessary to further prioritise within a group of recall cases (for example when there are more recall cases ready for listing at a particular prison/region of the country than the Board can accommodate for that particular month) the Board will take into account the date of the referral in the case of lifers and IPP; and in the case
of extended or determinate sentenced prisoners, the date of referral from a paper panel, or the date of receipt for a request for oral hearing.

**First review at tariff expiry (lifers/IPPps)**
The due date is the date of tariff expiry. (NB: It is recognised that the Generic Parole Process is designed so that such reviews take place around 2 months prior to the tariff expiry date. This framework does not change that intention.)

**Extended sentence annual reviews after recall**
The due date will be the date the paper panel referred the matter to an oral hearing, or the date the successful request for an oral hearing was made. (Note: Extended sentence annual reviews after recall are not the same as a first review after recall where continued detention has yet to be reviewed by the Board.)

**Further reviews after tariff expiry (lifers/IPPps)**
The due date will be the date set by the Secretary of State for Justice upon referral to the Board. (This category also includes lifer/IPP prisoners undergoing a second or subsequent review following recall.)

**Advice Cases (lifers/IPPps)**
The due date will be the date of the referral to the Board (i.e. date of receipt of dossier). This category covers both pre-tariff and post-tariff matters which the Secretary of State has referred to the Board for advice under Section 239 Criminal Justice Act 2003.

**Determinate or extended sentence prisoners applying for early release**
The due date will be the date the paper panel referred the matter to an oral hearing. (This category only relates to prisoners applying for early release at their Parole Eligibility Date. It does not include recall reviews.)

**Combined reviews**
Due to the listing backlog there are a number of lifer and IPP pre- and post-tariff advice cases (i.e. cases referred to the Board under S239) which have not yet been listed by the time the next S28 referral is made. These cases are being combined (rather than having a review for advice on move to open followed by a separate review with power to consider release). In order to recognise the delay in possible progression already experienced by these prisoners, any combined review will be prioritised according to the original due date of the advice case. Where listing decisions must be made between 2 cases with the same due date, priority will be accorded to combined reviews with reference to the stage the case is at (eg. a pre tariff review combined with a first review at tariff expiry will carry the due date of the pre tariff review and if necessary to prioritise beyond the due date as a priority 1 in the list below.)

**Prioritisation beyond due date**
Where there is more than one case with the same due date, but insufficient panels available at that prison/region to cover all cases with that same due date, such cases will be listed in the following priority

1. First review at tariff expiry (lifers/IPPps)
2. ESP annual reviews after recall
3. Further reviews after tariff expiry (lifers/IPPps)
4. Advice cases (lifers/IPPs)
5. Determinate or extended sentence prisoners applying for early release on parole (non recall cases)

Prioritisation can be further refined within each category, by the length of delay and number of occasions it has been deferred.

Once the initial list is produced (i.e. going by date order), where there is only one case listed a particular day at a particular prison, other newer cases will be slotted in accordingly using the same order of priority according to the type of case.

**Exceptional circumstances**

This framework is flexible. In particular, where exceptional circumstances are put forward by the prisoner for higher prioritisation (including but not limited to medical/mental health issues, compassionate reasons etc.) the case must be put before the duty MCA member for assessment. The member may direct that a case has a higher priority than would normally be indicated by the list above and/or its current due date and should accordingly receive precedence.

In general terms, positive recommendations for release or a progressive move will not, by definition constitute exceptional circumstances as there will be many such prisoners in a similar position. Requests for prioritisation solely on the grounds of positive report recommendations will be refused.

**Exceptions**

Exceptions to the framework are cases that are identified by their nature as having exceptional circumstances with no requirement for such an application to be made by the prisoner to assign them top priority.

Automatic exceptions that will be identified and assigned top priority are:

- **1st review after discharge from a Mental Health Review Tribunal**
- **All offenders under 18 years old**

These cases will carry an “ASAP” due date as a matter of course and take appropriate priority for listing.

It is possible for an MCA member on assessment to identify other types of cases as falling into the exceptional circumstances category and assign top priority accordingly. Any such identification will be recorded on the MCA directions.
Annex 6: Guidelines for MCA members on assessment of cases where the offender is held within a mental health unit (MHU) establishment

Section 47 of the Mental Health Act 1983 allows for the transfer of sentenced prisoners to hospital. The warrant for transfer is issued by the Ministry of Justice following the acceptance of two medical recommendations. These recommendations are made on proforma which outline the reasons and grounds for transfer. A blank form is enclosed (Annex A). The doctors may have also prepared a more detailed assessment report. There are a number of situations where a need for such a transfer may arise including the following:-

(1) Mental disorder not detected initially and now felt to be of a nature or a degree to warrant treatment in hospital.

(2) Mental disorder which, although detected at the time of sentencing, was not felt to be appropriate for detention in hospital. Now felt to be appropriate for hospital for a variety of possible reasons, for example, deterioration.

(3) The development of a mental disorder which was not present at the time of the original sentencing has developed whilst the prisoner has been serving his sentence.

Section 47 transfers are nearly always accompanied by a restriction order under Section 49 of the Mental Health Act 1983. This means that the Ministry’s consent is required before the patient can be transferred to another hospital, sent on leave or discharged.

Those patients that improve but still have time to serve may be returned to the prison system. In the case of indeterminate prisoners they would then be subject to the parole process as per normal. The enclosed letter from the Ministry of Justice (Annex B) has attempted to ensure that adequate information is available to the Parole Board about the patient’s time in hospital. An alternative pathway is for the case to be considered by a Mental Health Review Tribunal. The MHRT consider the case as if the patient were detained under a Hospital Order with restrictions (Sections 37/41 of the Mental Health Act 1983). If the Tribunal conclude that the grounds for a conditional discharge would have been met, if the patient were detained under a Section 37/41 Hospital Order, they then have two options as outlined in Section 74 of the Mental Health Act 1983. The first would be to have the patient returned to prison.

The second option is to state that even though the patient fulfils the criteria for discharge, that their detention should continue in hospital until such time as they would be liable to be released from prison. The main grounds for not returning a patient to prison would be that to do so would lead to a deterioration of his condition and therefore it would be better for him to serve any remaining time in hospital. It is important to realise that although risk is also a major consideration for the Mental Health Review Tribunal, the criteria for release are based around the nature and degree of the mental disorder. They are not considering the life or limb test that is used at the Parole Board.
The Mental Health Unit states that the cases of transferred prisoners are not accessible to the Parole Board until a Tribunal has concluded that they are suitable for a mental health discharge. It is therefore possible and indeed often the case that prisoners can serve substantially over their tariff period before any Parole Board review occurs. If a Mental Health Review Tribunal has recommended discharge, the Mental Health Unit will initiate the process for patients who are tariff expired or less than six months from tariff expiry. The Mental Health Unit notify the Public Protection Casework Section (PPCS) of the relevant cases with a view that they should refer appropriate cases to the Parole Board. It is important to note that when such a patient is released the restriction direction under Section 49 ceases to have effect. Therefore even though the Mental Health Review Tribunal may have considered what conditions would have been necessary at the time of discharge, the patient is not subject to such conditions unless they are included in the life licence. In essence all protection from risk must come from the life licence and supervision as the patient is no longer subject to any part of the Mental Health Act.

It should be noted that there may be a general lack of knowledge amongst the mental health community regarding Parole Board hearings. Section 47 patients form a relatively small part of most consultants workload. Therefore, such Parole Board reviews are relatively rare occurrence for an individual consultant. Attached is a document which mentions some of the key issues.

It should also be noted that there is no formal structure within the MHU for managing hearings. It is the responsibility of the PPCS to manage the hearing, however the Parole Board Secretariat will most likely liaise with the Mental Health Act Administrator and the responsible consultant in preparation for the hearing.

**Documents Required on the Dossier**

**Essential documents**:-
(1) All reports submitted to the Mental Health Review Tribunal (they should be listed in the Mental Health Review Tribunal decision). It should also be noted that the most up to date psychiatric and social work reports may refer to previously prepared reports which are available to the Tribunal. It is essential that these are also available.

(2) The Mental Health Review Tribunal decision letter that triggered the process by concluding that the criteria for conditional discharge were met.

(3) New reports addressing progress since the Mental Health Review Tribunal, risk and release plans. They should include:-

   a) report by Responsible Medical Officer (RMO);
   b) report by Social Worker;
   c) report by key nurse;
   d) documentation relating to the CPA Care Plan should be available (there is no set format for this document and the quality will vary tremendously);
   d) a report from the external Probation Officer.

**Other documents to consider**:-
Depending on the individual case, there will very often be a need for reports from a psychologist and/or occupational therapist. There may be reports available from
specific substance misuse workers. Whether or not any of these reports are definitely required can only really be determined from the essential documents. In some units there may be specific programmes run such as Sex Offender Treatment Programme or ETS. In such cases a member would have to consider whether information from the psychologist and Responsible Medical Officer (RMO) for example is satisfactory or if the panel wishes to examine first-hand the course reports.

In addition to risk assessment and management issues addressed by essential reports, the panel may well need to consider any actuarial assessments conducted and progress on any leave taken. It may be that the above are adequately dealt with in the reports but consideration needs to be given to the panel wishing to see the original documentation.

In your Directions you may instruct that the attached briefing note be issued to the parties, along with the Directions (Annex C)

**Witnesses**
Mental Health Review Tribunals will usually hear from the RMO, a Social Worker and a member of nursing staff. It is probably essential that the Board hears from at least these three individuals. Consideration would have to be given as to whether other members of the care team, for example, the psychologist, will also be required to give first hand oral evidence.

All the above relates to documentation specific for Mental Health Unit hearings. It is expected that all the normal core documentation pertaining to the index offence, previous convictions, progress in prison, etc. would also be available in the dossier.

**The Panel**
A specialist member should usually be requested to sit on a panel considering an MHU case.

Parole Board
September 2008
Annex 7: Juveniles and oral hearings

Our current policy is to have oral hearings for all juveniles serving extended sentences for public protection who apply for parole while under the age of 18.

Following a consultation exercise the Executive Team and Management Board have agreed the following agreed proposals, which will be put into immediate effect:

a) The policy where all EPP parole applications are progressed directly to an oral hearing is to continue.

b) The suitability for re-release of children serving determinate sentences who have been recalled will be considered on the papers within 2 days of referral; they will be entitled to an oral hearing if release is not directed on papers.

c) All children serving life sentences, including indeterminate sentences for public protection, will be progressed through MCA directly to an oral hearing.

d) The Listing Prioritisation Framework will be revised to assign all under 18 year old offenders top priority alongside adult recall cases.

The point at which the age of the offender is considered will be:

a) The age at the time the review commences (i.e. 6 months prior to Parole Eligibility Date or anniversary).
b) The age at the point of recall.
c) The age at the time the review commences (i.e. 6 months prior to tariff expiry or the date for subsequent review fixed by the Secretary of State).

One operational implication of this policy will be to increase juvenile oral hearings and the accompanying workload. However, the work done around the proposals identified that the numbers of relevant juvenile cases are relatively low. It is not estimated that there will be any significant or effect to our workload and backlog.

MCA members should note that any cases which are before them for assessment where the offender was under 18 at the time the review commenced cannot be subject to a negative decision at MCA stage and must progress to oral hearing. Case Managers will endeavour to identify such cases and they should only go before the duty MCA member, but members receiving MCA allocation cases are requested to double-check the date of birth of any HMP or DPP cases allocated to them to ensure the policy is being properly applied.

When setting directions for an oral hearing involving a young person, it is important to think about how to ensure that they are able to take a full part in the process. For example, it is helpful to suggest in the narrative box that they are assisted in finding legal representation. You should also allow slightly longer for the hearing in order that the Panel Chair can spend time putting the young person at ease and so that additional breaks can be added.
Annex 8: Determinate or extended sentence recall cases: specific issues

Imminent or close sentence expiry dates
Imminent Sentence Expiry Dates (SEDs) have always been an issue for the Board when cases require an oral hearing and where there are just a few weeks to SED. The Board has always made every attempt possible to list such cases. It is not always possible to do so and even when it is possible, such hearings are often impracticable, or bring no discernible benefit to the offender even where there is a decision to release as there can be little or no time to put it into effect before automatic release takes place.

As we are now sending more and more cases to oral hearing post-Osborn, the Board has considered the impact on listing and the available resources. We are currently listing to full capacity and using all panel chairs (judges and independent chairs) to the fullest extent. This means that it is less likely that we will be able to convene an expedited panel to deal with an urgent recall case and in making attempts to do so, it is likely other cases will be adversely affected, causing delays for some prisoners in order to provide other prisoners with an oral hearing where their release will take place automatically relatively quickly in any event.

In order to mitigate the effect of this, the Board has decided that, absent exceptional circumstances, it will formally impose a cut-off point at which it will declare that although an oral hearing is ordered, there is insufficient time available to list such a hearing. This point will be where there are fewer than 12 weeks to the SED from the point at which the case is sent to oral hearing. This is on the basis that we would only aim to list hearings with 4 weeks between the hearing and the SED (i.e. up to 8 weeks after decision to send to oral hearing).

Guidance to members where the SED is less than 12 weeks away at the point of consideration of oral hearing (i.e. paper recall panel, or later request for oral hearing)
Members are advised that they should still make the decision as to whether, applying the principles set out in the UKSC judgment in Osborn, an oral hearing is necessary.

Where an oral hearing is necessary, but cannot be accommodated due to the forthcoming SED, members should consider whether there are exceptional circumstances that mean that in the individual case before them, the cut-off point of 12 weeks should not be applied. Such circumstances can include, but are not limited to, medical/mental health issues (for example where the offender’s mental health is suffering due to his continued detention), and/or compassionate reasons (for example where the offender is the primary carer for a dependant whose health is suffering due to his continued detention). If such exceptional circumstances are identified, the member should send the case to oral hearing, directing that the listing be expedited and ensure that they inform the Parole Board secretariat immediately, so that steps may be taken to convene a panel.
Where an oral hearing is necessary, but cannot be accommodated due to the forthcoming SED, and there are no exceptional circumstances, members should reflect this in their decision. Suggested wording may include the following:

“The panel considers that an oral hearing is appropriate in this case. Unfortunately, as your Sentence Expiry Date (SED) is on xx/xx/xxxx, the Parole Board is unable to convene an oral hearing before you will be automatically released at your SED. This means that it will not be able to hold your oral hearing.”

Where possible, the panel should then go on to make a decision on the papers. It is recognised that it will not always be possible to make a decision on the papers, as the reason for holding an oral hearing may be that risk cannot be properly assessed without oral evidence. However, the panel should make what risk assessment it is able to on the written information and indicate whether further information on the papers can and should be provided to the Board between now and the SED. This will enable the Secretary of State to refer cases back to the Board on the papers prior to SED where there is some chance of early release even without an oral hearing (e.g. cases where with a shorter period to SED and further information, particularly a release address, a release on the papers decision may be a possibility).

In reaching a decision on the papers, it may be useful for the panel to narrow down the issues and explain why, had time allowed, you would have sent the case to an oral hearing. A short summary of the issues within the conclusion section would identify the specific issues relevant to the need to hear further oral evidence. An example of such a conclusion might be:

"The panel notes that there are issues in relation to events leading to recall, specifically .............. / your attitude towards your licence and use of drugs/alcohol. These issues are relevant to risk.

Your list of previous convictions is missing and an analysis of your offending behaviour is relevant to risk.

A mental health assessment is yet to be undertaken, issues in respect of your diagnosis of PTSD and your use of alcohol to suppress such stress and trauma are relevant to risk.”

Where the panel cannot properly make an assessment of risk without an oral hearing, wording such as this may be considered:

“The panel concluded that your case cannot finally be dealt with on the papers alone and had time allowed would have directed that your case be sent to an Oral Hearing. For now, with these issues of risk unresolved and for the purposes of public protection the panel makes no direction for your release.”

Re-referrals
Members sitting as Duty MCA Member or on oral hearing recall panels should be aware that there will be a number of cases that have reached the point of litigation (either at pre-action stage or a judicial review claim before the court). Following the Osborn judgment, the Board is conceding on many such cases where offenders are challenging a refusal made prior to the UKSC judgment. In such cases, the Board will need to seek a fresh referral of the case from the Secretary of State and will undertake to provide an oral hearing.
Members will be provided with a formal file note explaining the circumstances of the decision to concede and invite a re-referral of the case. The Litigation Team will aim to ensure that sufficient information is provided to the Duty MCA member and the oral hearing panel to explain why the case is being sent to an oral hearing (this may include the pre-action letter or the grounds of the JR claim). If you have such a case before you, but do not feel you have sufficient information to make appropriate directions etc., please do not hesitate to contact the Legal Adviser, Natalya O’Prey, in the first instance. Please note that this is not a case of administrative staff over-ruling a judicial decision to refuse an oral hearing; it is a decision taken on the basis of legal advice as to whether a particular decision is defensible or not. Once the Board has given an undertaking to provide an oral hearing during litigation, it is not open to the Duty MCA Member to overturn that decision and you are solely being asked to make appropriate Directions for the hearing.
Annex 9: Guidance on writing reasons

The Parole Board Rules 2016 require that the decision determining a case shall be recorded in writing with reasons (single member paper decisions under rule 14(7) and oral hearing panel decisions under rule 24(1)). Offenders are entitled to be given adequate reasons for decisions made about their liberty. The offender must be told in sufficient detail WHY the test for release was met, or not. The Board is also under a statutory duty to respond to the terms of the referral if release is not directed (i.e. apply the test for suitability for open conditions where relevant and identify continuing areas of risk that need to be addressed).

Reasons must be clear, focus on assessment of risk and should address the offender directly rather than in the third person, irrespective of whether it is a paper or oral hearing.

Reasons should be drafted using the following framework:

1. Introduction
2. Evidence considered by the panel
3. Analysis of offending
4. Risk factors
5. Evidence of change and/or circumstances leading to recall (where applicable) and progress in custody
6. Panel’s assessment of current risk
7. Evaluation of effectiveness of plans to manage risk
8. Conclusion and Decision of the Panel
9. Indication of possible next steps to assist future Panels
1 Introduction

This section should:

a. identify the prisoner and the date and location of the hearing

b. set out the purpose of the hearing relevant to the individual case and point of sentence as referenced in the referral from the Secretary of State (e.g. to determine suitability for early release on licence (DCR) or for release on licence or suitability for transfer to open conditions (most lifer/IPP))

c. identify the sentence length and sentence/tariff expiry date, noting any periods the offender has spent unlawfully at large (UAL)

d. briefly refer to the test to be applied so that the offender understands what must be taken into account, and on what basis the panel is coming to its decision (members are asked only to state the statutory test and not attempt to define it)

e. identify the decision-maker (good practice for oral hearing is to specify whether the panel included a specialist member)

Practice example:
"Your case has been referred to the Parole Board by the Secretary of State to consider whether or not it would be appropriate to direct your release. (Lifer/IPP only where requested: If it is not appropriate to direct your release, the Board is invited to advise the Secretary of State whether it would be appropriate for you to be transferred to open conditions and on any continuing areas of risk). The Board is empowered to direct your release if it is satisfied that it is no longer necessary for the protection of the public that you should be confined. A decision about whether to recommend transfer to open conditions is based on a balanced assessment of risk and benefits, with an emphasis on risk reduction and the need for you to have made significant progress in changing your attitudes and tackling your behaviour problems in closed conditions, without which a move to open conditions will not generally be considered. The Panel convened at HMP Whatton on 4 July 2014 and included a judicial member, an independent member and a psychologist member."
2 Evidence considered by the panel

The purpose of this section is to clarify and record the evidential basis on which the decision/recommendation of the panel is made. Best practice is to:

b. identify the number of dossier pages seen by the panel (it is not necessary to list all documents within the dossier; however, if any mandatory documents are missing these should be mentioned);

c. where relevant, list all additional documents submitted up to and on the day of the hearing (it is particularly helpful for future panels to know exactly what documents were provided on the day at oral hearing);

d. note any written submissions from the offender or his representative;

e. for oral hearings: list the witnesses who gave oral evidence, identifying them by name and role (and note also whether evidence was given orally or by video-link/teleconference);

e. for oral hearings: Note the name of the offender’s representative and what the offender was asking the panel to consider;

f. for oral hearing: Acknowledge the Secretary of State’s view if presented (or note that the Secretary of State was not represented and did not submit any written comments);

g. Note any victim statements/attendance; and,

h. Indicate whether there was any non-disclosure evidence.

Some panels prefer to set out the oral evidence considered in this section; others prefer to weave the oral evidence throughout the document under the later hearings as relevant. Either approach is acceptable providing it records the relevant oral evidence, correctly attributed. Where particular weight was given to a witness’s evidence, be clear how and why. Also be clear why the panel preferred one witness over another where it heard conflicting evidence from experts on assessment of risk.
3 Analysis of offending

This section provides the opportunity to outline the historical evidence of offending and to take an analytical approach to the index offence and pattern of previous offending.

The panel may wish to rely upon findings from previous parole decision letters where these are available. The new panel should not simply repeat everything in earlier decision(s), and in particular it must ensure that it undertakes its own assessment of risk, but it may clearly state which parts of those decisions it wishes to adopt.

The next panel may not have the older decision(s) so if a panel wishes to adopt a relatively large section of a previous decision (the summary of the index offence, or progress up to the point of the last hearing for example), it is best practice to copy and paste the relevant section to ensure that its decision is a standalone decision.

To do this, please contact the case manager to request a Word version of the previous decision. Best practice is to set out adopted sections of a previous decision in italics, so that it is clear which sections are adopted and which are new. In cases where there has been more than one previous decision, a footnote should be added that references by date which decision(s) the panel has adopted. The current panel must still conduct its own analysis and independent assessment of risk.

This section should include:

a. a summary of the index offence and conviction, including but not limited to:
   i. the official account of the index offence
   ii. any discrepancies in the offender’s account, including partial or complete denial
   iii. date of conviction
   iv. any guilty plea(s)
   v. the sentence imposed
   vi. details of any appeal to the Court of Appeal
   vii. tariff/sentence expiry date(s)

b. a brief analysis (not narrative) identifying any themes or patterns of previous convictions, drawing out any relevant themes or patterns with attention being given to any violent or sexual offences where applicable.

c. a brief analysis (not narrative) identifying any themes or patterns of any reported unconvicted offending behaviour, cautions, warnings or reprimands and allegations such as police call-outs for domestic violence (particularly where the panel may need to come to a view as to what weight to put on these)

d. adjudications and relevance of them to level of risk, risk factors and/or risk management
4 Risk factors

In this section the panel should draw out the specific static and dynamic factors associated with the offender’s risk of re-offending and the risk of serious harm. In addition:

a. comment on the impact of each of the risk factors they have identified from its previous analyses of offending behaviours (at section 3 above) and not merely rely on those listed in the dossier,

b. highlight any patterns and identify the characteristics of the individual, their attitudes and behaviour and the circumstances which appear to be related to their offending behaviour,

c. note any patterns of previous non-compliance with court orders and community based penalties,

d. note any risk factors which have developed or come to light since sentence, and

e. highlight any psychological, psychiatric or medical considerations relevant to risk.

f. highlight any protective factors that increase resilience and directly impact on the risk of reoffending and serious harm.
5 Evidence of change and/or circumstances leading to recall (where applicable) and progress in custody

This section should provide an account of the offending behaviour work the offender has carried out in custody and assess the progress they have made, if any, during their sentence and particularly since the last review. It should note changes to the prisoner’s circumstances inside and outside the prison which are relevant to risk. It is best practice to provide a précis of the entire period in custody but to focus in more detail on changes since the last review. In recall cases the panel should particularly look for change in behaviour since recall.

Panels should take into account:

a. changes in the underlying factors associated with offending - e.g. ability to maintain appropriate relationships, attitudes and beliefs which support offending, backed up by evidence of attitudes and behaviour in custody (such as adjudications, drug tests etc);

b. completion of relevant interventions to reduce risk (not limited to OBPs) with evidence of the effect these interventions have had on relevant risk factors (think about the positive effect of contact with family members, children, mentors etc);

c. the offender’s willingness to engage in work to change their behaviour;

d. evidence from release on temporary licence (ROTL), periods in open conditions, any absconds or failure to return on time, and use this to assess the prisoner’s ability to respond positively to increasing levels of self-responsibility and to apply new skills in more realistic, less secure settings;

e. evidence of indicators of increasing as well as decreasing risk; and,

f. factors which affect the offender’s capacity to change, e.g. learning disabilities.
6 Panel’s assessment of current risk

The panel should use, and refer to, all the actuarial/structured risk assessments in the dossier in coming to its own judgement, drawing together the risk factors identified in section 4 and the evidence in section 5 to make its own assessment of the type and level of risk presented by the offender.

This section should:

a. cite the available risk assessments (e.g. OGRS, OASys, RM2000 etc) in the form of risk levels (high/medium/low - it is not necessary to write out the actual scores provided) noting any significant changes, stating the current position;

b. detail the panel’s own assessment of the offender’s risk of re-offending and harm reconciling any discrepancies with the professional assessments; and,

c. identify the areas of risk that the panel considers to be outstanding.

7 Evaluation of effectiveness of plans to manage risk

It is important in this section to analyse the effectiveness of the actions designed to manage risk and not merely describe or list the contents of the risk management plan.

In order to evaluate whether the risk presented by the offender is manageable under the proposed plan if released or progressed to open conditions it is important to assess the plan. The panel should:

a. summarise the key elements of the risk management plan (or release plan for low risk of serious harm cases) including details of interventions proposed in custody or the community;

b. analyse the effectiveness of the plan – consider whether the plan covers the identified risk and protective factors including risk issues raised by any recall and specific victim concerns;

c. assess the likelihood of the offender complying with the plan, based on history of supervision, compliance and breach behaviour;

d. identify protective factors (if any); and,

e. if relevant, identify any benefits of a move to open conditions.
8 Conclusion and decision

The conclusion should be logical, defensible and risk-focused. It is the key part of the reasons and should explain clearly what decision the panel has made and why.

The length of this section will depend on the circumstances of the case. A complex or finely balanced case is likely to require more information than a clear-cut case with few areas of controversy. Bear in mind that this is likely to be the section that will be examined most closely by readers of the decision (whether they be the offender, the authorities, the courts or the Review Committee).

Bear in mind also that many prisoners do not possess good literacy skills and may have a vocabulary that is significantly narrower than the panel. It is imperative that the offender understands why the panel has taken the decision they have, so the panel should take particular care in this section to use simple, straightforward language. Please refer to the additional guidance at section 10 below on tips for writing reasons in Plain English.

This section should:

a. make a clear and lawful decision which links the assessment of risk to the relevant test and refers to the Secretary of State’s Directions where considering suitability for open conditions;

b. set out the panel’s conclusions on any findings of fact which the panel was required to make; and,

c. state whether the panel agreed or disagreed with the recommendations of professionals; where recommendations are not accepted the panel must justify their reasoning, and if presented with conflicting expert evidence the panel should explain why they chose to prefer certain witness evidence over others.

8.1 Open Conditions

Where the panel considers both release and in the alternative a recommendation for open conditions, it must be made clear in the decision letter that the panel applied the test for release and SEPARATELY conducted a balancing exercise in relation to suitability for open conditions.

There must be express reference to the balancing exercise in the decision. It is not enough for the panel to refer to the need to have regard to the directions of the Secretary of State or note the support the prisoner had from professionals for transfer (which if analysed is often likely to contain references to the benefits which could be directly derived from transfer). The panel must expressly state what factors which go towards benefit were taken into account.
8.2 Licence conditions

If the panel directs release, the panel must direct the conditions to be attached to an offender’s licence. LASPO seems to suggest that only the Board has the power to impose licence conditions, which includes the standard conditions. Panels must therefore direct the standard licence conditions and any other additional conditions as appropriate. Each additional licence condition must be justified with reference to necessity and proportionality. If, exceptionally, a panel does not consider any of the standard conditions to be necessary or proportionate they should seek advice from the Legal Advisor.

If the panel does not add any condition(s) specifically requested by the victim, the reasons must note the victim’s request and explain why the request was not acceded to.

9 Indication of possible next steps to assist future panels

If the panel considers that there is information missing from the dossier, or present but in need of clarification or updating, that may assist the next panel in their decision making, this should be identified. For example, this could include an updated risk management plan or a psychological assessment. Please do not name specific treatments or programmes or courses.

Additional Guidance

10.1 Panels
A MCA member sits as a panel when making a negative decision and when writing reasons. Oral hearing panels can be from a single member panel to a 3 member panel.

10.2 Standard wording
A panel may wish to exercise some caution when adopting standard forms of wording to address commonly occurring issues. Where it does so, it should be clear that the wording is appropriate to the particular case.

That said, it is beneficial for a panel to use the statutory wording in respect of the release test and test for open conditions to avoid later arguments that an incorrect test has been applied.

10.2.1 Test for release
"The Parole Board must not give a direction [for release] ... unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined."

10.2.2 Test for open conditions
"A move to open conditions should be based on a balanced assessment of risk and benefits. However, the Parole Board’s emphasis should be on the risk reduction aspect .... the Parole Board must take into account:

a. the extent to which the ISP has made sufficient progress during sentence addressing and reducing risk to a level consistent with protecting the public from harm in circumstances where the ISP in open conditions would be in the community, unsupervised, under licensed temporary release;

b. the extent to which the ISP is likely to comply with the conditions of any such form of temporary release;

c. the extent to which the ISP is considered trustworthy enough not to abscond; and,

d. the extent to which the ISP is likely to derive benefit from being to address areas of concern and to be tested in a more realistic environment."

10.3 Osborn wording

Where a paper decision is made refusing an oral hearing: for instance, if the prisoner offers no reasons for an oral hearing and there would not be anything to discuss at an oral hearing; the panel might write: "We/I have considered the principles set out in the case of Osborn, Booth & Reilly [2013] UKSC 61 concerning oral hearings. We/I do not find that there are any reasons for an oral hearing. In addition, the prisoner has not submitted any reasons for an oral hearing. Therefore an oral hearing is declined."

10.4 Plain English

Where a panel is dealing with an offender who has learning difficulties, it may find it appropriate to have a separate section set out in very simple language that the offender will be able to understand. It is often not appropriate to write the entire reasons in simple language as that may not make enough sense to or carry sufficient detail and clarity for the professionals dealing with the offender. The following guidance is about using Plain English, rather than simple language and applies to all cases.

These tools should be used to write clearly:

- Active voice with strong verbs
- Short sentences
- Personal pronouns
- Concrete, familiar words
- No surplus words
- No jargon
• Design and Layout
  o Justifying margins

  Justifying the right hand margin decreases readability because it causes the eye to stop at irregular spacing between words. Justifying means making the margins flush. This document has a justified left margin, and an unjustified, or ragged, right margin.

➢ Break up dense copy

  If dense copy fills a page, it increases the chances that your reader will become discouraged. Give the reader a visual and mental break by using shorter paragraphs and headers.
Annex 10: Additional licence condition criteria and table

The following table contains suggested wording from PSI 12/2015. Please see Chapter 6 of the Members’ Handbook for further guidance.

*Any additional condition must be necessary and proportionate*

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<tr>
<th>CATEGORIES</th>
<th>LICENCE CONDITIONS</th>
<th>ADVICE</th>
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<tr>
<td>1. Residence at a specific place</td>
<td>(a) Not to reside (not even to stay for one night) in the same household as [ANY / ANY FEMALE / ANY MALE] child under the age of [INSERT AGE] without the prior approval of your supervising officer</td>
<td>Such a condition would normally be more effective if it is combined with a condition concerning making or maintaining contact with a person (see 3 below).</td>
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<td>2. Restriction of residency.</td>
<td>(a) Attend all appointments arranged for you with [INSERT NAME], a psychiatrist/psychologist/medical practitioner and co-operate fully with any care or treatment they recommend.</td>
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<td>(b) Receive home visits from [INSERT NAME] Mental Health Worker</td>
<td>Where a supervising officer requires an offender to attend a session with a psychiatrist/psychologist/medical practitioner, he or she must be named and must be willing to treat the offender concerned. This condition should only be used if the offender consents to the treatment. Declining to co-operate with this condition means the offender is not addressing his/her offending behaviour and the possible consequence of this needs to be explained to the offender. Where consent is not forthcoming the expectation that the offender access psychiatrist/psychologist/medical intervention and treatment should be written in the Risk Management Plan and Sentence Plan. If the objective is not</td>
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<td>(c) Attend [INSERT APPOINTMENT TIME DATE AND ADDRESS], as directed, to address your dependency on, or propensity to misuse, a controlled drug</td>
<td>Please note that this condition may only be applied once the relevant provisions of the Offender Rehabilitation Act 2014 come into force. Once they are, please refer to the guidance on the use of drug testing in <a href="#">PSI 32/2014 – PI 30/2014 Drug Appointment and Drug Testing For Licence Conditions and Post Sentence Supervision Requirements</a>.</td>
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<td>(d) Should you return to the UK and Islands before the expiry date of your licence then your licence conditions will be in force and you must report within two working days to your supervising officer.</td>
<td>This condition should be imposed as a licence variation on a licence issued to an offender who is about to be deported from the United Kingdom or is resettling overseas under <a href="#">PSI 08/2015 – PI 07/2015 “Permanent Resettlement Outside of England and Wales of Offenders on Licence and Post Sentence Supervision”</a>. The objective of this condition is to ensure that the offender knows that if they return to the UK and Islands prior to the expiry of the licence period then the other conditions on the licence will resume and they will be expected to report back to their supervising officer. This condition is not on NOMIS and will need to be entered into the bespoke condition field. It is not otherwise to be considered under the policy for bespoke licence conditions.</td>
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<td>(e) Not to seek to approach or communicate with [INSERT NAME OF VICTIM AND / OR FAMILY MEMBERS] without the prior approval of your</td>
<td>Licence conditions requiring an offender not to contact the victim or members of the victim’s family should ordinarily include the names of the individuals to whom the ‘no contact’ condition applies. However, there may be circumstances particular to a case where the naming of an individual is not</td>
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<td>supervising officer and / or [INSERT NAME OF APPROPRIATE SOCIAL SERVICES DEPARTMENT].</td>
<td>appropriate where placing a victim and/or family member’s name on the licence could cause additional emotional distress.</td>
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<td>Consideration should be made on a case by case basis as to whether indirect contact by the offender through another party has breached this condition. Where it can be shown that an offender acted deliberately to cause the indirect contact to occur, they can be considered to have breached the condition.</td>
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<td>Both existing Prohibited Contact Requirements – 5(a) and 5(b) - are considered to include the internet as a method of communication and so do not need to be further modified in order to capture this type of contact. They are suitable for use to limit the use of the offender on social media; however, supervising officers may wish to make this clear to offenders when explaining those conditions.</td>
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<td>(f) Not to have unsupervised contact with [ANY / ANY FEMALE / ANY MALE] children under the age of [INSERT AGE] without the prior approval of your supervising officer and / or [INSERT NAME OF APPROPRIATE SOCIAL SERVICES DEPARTMENT] except where that contact is inadvertent and not reasonably avoidable in the course of lawful daily life.</td>
<td>A licence condition prohibiting unsupervised contact with children should only be used where there is an identified risk against children. The use of such a condition is normally to supplement those conditions which prohibit living or working with young people. The wording of the condition does allow for inadvertent contact, e.g. through travelling on public transport or going to the shops without breaching the condition.</td>
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<td>The upper age limit should normally be 16 for offenders who have committed sexual offences against children, since the majority of those types of offences relate to children under 16. The exceptions are offences committed under ss16-19 Sexual Offences Act 2003 where the offender was in a position of trust, and those committed against family members (under ss25 and 26). Similarly, where the offender is shown to be posing a risk of harm to children but has not committed sexual offences, the upper age limit should also normally be 16, except in situations where the offender was in a position of trust, or could be again in the future.</td>
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<td>Supervising officers should consider whether the offending behaviour indicates that the condition can be restricted to children of one gender. It is</td>
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unlikely to be proportionate to prohibit contact with all children if the offending behaviour has only been directed towards children of one gender.

Where the risk is not to family members, exceptions to the condition may be needed to allow contact with family members under the age of 16 or 18.

| (g) Not to contact or associate with [NAMED OFFENDER(S) / NAMED INDIVIDUAL(S)] without the prior approval of your supervising officer. | In most cases it will be difficult to justify a general condition preventing an offender from associating with “any ex-offender”. The name of the offender must be inserted. It is acceptable to require non-association with named individuals who are linked with previous offending (for example, convicted members of a child sex offender ring) or individuals with whom the supervising officer has good reason to believe that association could lead to future offending (for example, a child sex offender who has forged links with other child sex offender whilst in prison). In cases where a person’s offending is not linked to a restricted number of individuals it is more difficult to justify a non-association condition.

Where the intention is to prevent the offender from contacting a victim of a previous offence, condition 4(a) should be used instead. |
| (h) Not to contact or associate with a known sex offender other than when compelled by attendance at a Treatment Programme or when residing at Approved Premises without the prior approval of your supervising officer. | In respect of associating with sex offenders the supervising officer can consider this condition if it is reasonable that the offender could be expected to know certain individuals as they have served on the same wing, attended the same programme etc. The supervising officer should evidence this at the point of enforcing this condition.

Where an offender is being housed other than at an Approved Premises as required by the provider of probation services and may be associating with known sex offenders due to this, such as at Langley House Trust accommodation, the supervising officer will need to inform the offender that they are not subject to breach under this condition. |
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<td>(i) Not to contact directly or indirectly any person who is a serving or remand prisoner or detained in State custody, without the prior approval of your supervising officer</td>
<td>Where an offender is associating with other criminals and there is reason to believe that the association is likely to lead to reoffending, the offender could be recalled under the good behaviour condition.</td>
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<td>(j) Not to associate with any person currently or formerly associated with [NAME OR DESCRIBE SPECIFIC GROUPS OR ORGANISATIONS] without the prior approval of your supervising officer.</td>
<td>This groups and organisation condition may be appropriate for certain offenders, but only if there is a clear link between the offending behaviour and/or current risk factors and one or more identifiable groups or organisations such as extremist groups or gangs. As with other conditions that engage the offender’s rights, this condition can only be used where it is necessary and proportionate to manage the risk posed by the offender. You will need to take into account the nature of the offending to check that the condition is justified. Prohibited activity should always be subject to the clause “…..without the prior approval of your supervising officer”. The supervising officer must determine if it is appropriate to grant such approval in all the circumstances of the case.</td>
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<td>4. Participation in, or co-operation with, a programme or set of activities.</td>
<td>Where this has been applied to a licence, and the offender fails to meet the criteria for a particular offending behaviour programme (such a denier sex offender not qualifying for a particular sex offender treatment programme which requires an admission of guilt), then the offender cannot be considered to have breached the condition. The previous programme licence condition which related specifically to Prolific and other Priority Offenders is now considered to form part of 5(a) using the relevant sections within the condition.</td>
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<td>(a) To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your alcohol / drug / sexual / violent / gambling / solvent abuse / anger / debt / prolific / offending behaviour problems at the [NAME OF COURSE / CENTRE].</td>
<td>These conditions are routinely used to ensure offenders participate in offending behaviour programmes, and typically would involve the elimination of those options which do not apply in each case.</td>
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<td>(b) Not to undertake work or other organised activity which will involve a person under the age of [INSERT AGE],</td>
<td>The age limit is usually to be 16 unless the offender would be in a position of trust, in which case the age limit should be 18.</td>
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<td>5. Possession, ownership, control or inspection of specified items or documents.</td>
<td>either on a paid or unpaid basis without the prior approval of your supervising officer;</td>
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<td>(a) Not to own or possess more than one mobile phone or SIM card without the prior approval of your supervising officer and to provide your supervising officer with details of that mobile telephone, including the IMEI number and the SIM card that you possess.</td>
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<td>This condition is applicable where it is believed that the offender is using multiple phones or SIM cards in an effort to conceal offending behaviour or contact which is disallowed under other conditions.</td>
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<td>The International Mobile Equipment Identify (IMEI) number can be found by typing <strong>#06#</strong> into the keypad of most phones or within the battery compartment of a mobile phone. It is used to identify an individual mobile phone, and does not change when the SIM card/phone number is changed.</td>
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<td>(b) Not to own or possess a mobile phone with a photographic function without the prior approval of your supervising officer.</td>
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<td>This condition would be permissible where a camera phone has been used in previous offending or there is a risk that behaviour could escalate whereby a camera phone could be potentially used in future offending. Whilst it would be primarily used against sex offenders, there may be other types of offenders (such as extremist offenders) where individual cases can warrant the condition.</td>
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<td>(c) Not to own or use a camera without the prior approval of your supervising officer.</td>
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<td>For the purposes of this condition, a camera is taken to mean any camera which is not a camera-phone. The word camera is also taken to mean items such as camcorders. The condition is intended to mean both digital and non-digital cameras, including devices such as webcams.</td>
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<td>This condition would be permissible where a camera has been used in previous offending or there is a risk that behaviour could escalate whereby a camera could be potentially used in future offending.</td>
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<td>(d) To make any device capable of making or storing digital images (including a camera and a mobile phone with a camera function) available for inspection on request by your</td>
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<td>This condition should be considered to be a less invasive version of conditions 5(b) and 5(c) as it allows for an offender to use such items, but inspections can be required by both the supervising officers and police officers if required.</td>
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| Supervising officer and/or a police officer. | Refusal to allow a device to be removed for checks can be considered a breach of the condition, as can tampering with any monitoring software installed.  

Supervising officers can ask for any or all devices to be presented for inspection. If any others are then found, that would be a breach of the condition. This is not intended to include devices such as USB memory sticks, CDs or a computer itself within the remit of the licence condition, but is limited to camera or camera-like devices as well as any storage devices (such as memory cards associated with those devices). For the inspection licence condition related to computers, see 5(g).  

Supervising officers may want to liaise with their local police force regarding the implementation of checks on equipment, as they may already have equipment and the technical abilities to conduct these checks. |
|---|---|
| (e) To surrender your passport(s) to your supervising officer and to notify your supervising officer of any intention to apply for a new passport. | The requirement to hand over a passport should be used where there is a perceived flight risk, or where the offence history has a direct link to travel (such as the importation of drugs).  

It can also be used where an offender has been released on licence while pending deportation, and where it is necessary to retrieve the documents from the offender in order to correctly identify the offender’s nationality for Home Office Immigration Enforcement purposes.  

Consideration should also be given to safe storage, and liaison with local police on this aspect would be considered best practice. The offender should still be able to access the passport as required should it be needed for other identification purposes (for instance, where a drivers licence is not available), but the supervising officer should take account of this and the passport should be handed back in once that activity is completed. |
<p>| (f) Not to use or access any computer or device which is internet enabled without the prior approval of your supervising officer; and only for the | This condition should only be used where past offending is linked to use of the internet, or there is sufficient risk that the offender may in future use the internet to offend, such as a child sex offender. It is therefore suitable primarily for sex offenders, but may also be considered for offenders with |</p>
<table>
<thead>
<tr>
<th>Purpose, and only at a public location, as specified by that officer.</th>
<th>Various types of offences including (but not limited to): commerce related convictions, harassment, hacking, extremism, and any type of conviction where online communications may be linked to further offending.</th>
</tr>
</thead>
<tbody>
<tr>
<td>This condition is intentionally worded to cover all types of devices which grant access to the internet for the user, including computers, internet enabled mobile telephones, tablets (including eReaders such as Kindles, Kobos, Nooks and other devices of this type), gaming consoles (including handheld devices), and television sets with internet access. This is not intended to be an exhaustive list, and supervising officers should ensure that thought is given to the possibility of use of any device with internet access.</td>
<td></td>
</tr>
<tr>
<td>This condition is intended to prohibit the offender from accessing the internet, other than in designated public places. The supervising officer should restrict the location from which an offender can access the internet to a public place deemed suitable in each case. This may be one place, or more than one, depending on the case. Suitable locations are likely to include Jobcentres or libraries, but may also include other premises where appropriate, such as the offices of the provider of probation services, or the offender’s place of work. Access from internet cafés or another person’s home should not be allowed under any circumstances.</td>
<td></td>
</tr>
<tr>
<td>Should the condition be reviewed and amended during the licence period, and the supervising officer permits access from an offender’s own computer/device, then 7(a) should also be added to the licence in order to ensure that the offender’s internet usage can be checked.</td>
<td></td>
</tr>
<tr>
<td>As well as restricting the location, this condition is intended to restrict the purposes for accessing the internet. Suitable purposes should ordinarily only be limited to seeking employment, for study, or for work (i.e. as part of the offender’s job). However, there may be legitimate circumstances where an offender will seek access in addition to those reasons (e.g. research for legal</td>
<td></td>
</tr>
</tbody>
</table>
cases, applying for a driving licence or payment of bills online). In those cases, the offender may request permission from their supervising officer who will review their application against any potential risks.

Examples of restrictions which may apply under this condition include an offender required to use computers only at the college they attend for education, or a requirement using a combination of 5(b) and 7(a) to require an offender to only use a computer or internet-enabled device upon which monitoring software has been installed.

No conditions which allow the use of computers will overrule Approved Premises rule #14, “I must not bring in to the Premises any electrical, electronic or photographic item, unless the Approved Premises (AP) Managers allow it. If any such item can receive live TV broadcasts, I must have a valid licence. I must make sure that any electrical item I have has a valid portable appliance test (PAT) certificate where necessary.” This rule is in order to ensure that any licensing and electrical testing is up to date and in place, as well as preventing any devices which would be inappropriate for a communal setting.

(g) Not to delete the usage history on any internet enabled device or computer used and to allow such items to be inspected as required by the police or your supervising officer. Such inspection may include removal of the device for inspection and the installation of monitoring software.

This condition is intended to allow for inspection and/or monitoring of internet usage. This may be in addition to 5(b) as a means of checking compliance with that condition, or by itself.

The requirement for the offender to allow monitoring software to be installed onto their equipment will only apply in areas where such software is available to the provider of probation services or the police and agreement among these parties has been reached that it will be used, prior to adding it to the licence.

Refusal to allow a device to be removed for checks can be considered a breach of the condition, as can tampering with any monitoring software installed.
Supervising officers can ask for any or all devices to be presented for inspection. If any others are then found, that would be a breach of the condition.

Supervising officers may want to liaise with their local police force regarding the implementation of checks on equipment, as they may already have equipment and the technical abilities to conduct these checks. This is especially relevant for MAPPA cases, where the police may be keen to investigate the equipment themselves. However, any such checks by the police must be in line with the probation supervision. It must be made clear that prior to any checks being made, the supervising officer must be informed in order to ensure that the frequency of the checks are appropriate to the case.

<table>
<thead>
<tr>
<th>6. Disclosure of information</th>
<th>(a) Provide your supervising officer with details [SUCH AS MAKE, MODEL, COLOUR, REGISTRATION] of any vehicle you own, hire for more than a short journey or have regular use of, prior to any journey taking place.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The condition requiring notification of vehicle details should normally only be applied for when the offending relates specifically to the use of a car and/or there is a direct causal link between the offender’s identified risk factors and the use of a vehicle. As with all licence conditions, inclusion of this condition in a licence will have to be a necessary a proportionate way of achieving one or more of the aims of the licence to be lawful.</td>
</tr>
<tr>
<td></td>
<td>As this condition requires the offender to inform his supervising officer prior to travel, it can result in a more organised lifestyle. It is inherent that it is required for travel on more than a short journey, and so should not include typical bus and taxi journeys. Where the offender intends to hire a hire car, they should discuss this with their supervising officer prior to hiring the vehicle as it may not be able to provide details of the specific car prior to hiring it. In this case, the supervising officer should be informed of the intention, and then given the details of the vehicle at the earliest opportunity as discussed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>(b) Notify your supervising officer of any developing intimate relationships with [WOMEN / MEN / WOMEN OR MEN].</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Conditions relating to the notification of intimate relationships can be used if there is a specific risk of groups of people. Where specific risks are involved, a blanket ban may be difficult to justify and it would be preferable to say whether the condition relates to males or females and provide reasons.</td>
</tr>
</tbody>
</table>
(c) Notify your supervising officer of any developing personal relationships, whether intimate or not, with any person you know or believe to be resident in a household containing children under the age of 18. This includes persons known to you prior to your time in custody with whom you are renewing or developing a personal relationship with.

The definition of intimate relationships can be subject to interpretation. In all cases the risk and previous offending behaviour should be carefully considered. Where individuals are known to pose an immediate risk to women/men enforcement action may best be planned for through the good behaviour condition where concerns are expressed by potential victims or others.

(d) To notify your supervising officer of the details of any passport that you possess (including passport number), and of any intention to apply for a new passport.

Conditions 6(d) and 8(d) are two levels of essentially the same condition in order to allow for local discretion based on the risks posed by the offender. Condition 9(d) is the less intrusive version and may be used to reinforce the standard constriction which restricts travel abroad where necessary.

### 7. Curfew arrangement

(a) Confine yourself to an address approved by your supervising officer between the hours of [TIME] and [TIME] daily unless otherwise authorised by your supervising officer. This condition will be reviewed by your supervising officer on a [WEEKLY / MONTHLY / ETC] basis and may be amended or removed if it is felt that the level of risk that you present has reduced appropriately.

To be lawful the total number of hours allowed as a curfew is a maximum of 16 hours per day.

Any curfew over 12 hours needs to be cleared with PPCS and any additional reporting requirements within the non-curfew hours could be unlawful, so these should be cleared as well. Further guidance on reporting requirements is given in section 11 of this annex.

These curfew hours include any standard curfew added as part of residence at an Approved Premises (AP). For instance, where an AP has the standard curfew of 11pm to 6am would count as seven hours towards the maxima of 12 and 16 hours. Blanket extended curfews across resident groups beyond those in the AP Rules are not allowed, and any extension to curfews must be considered on a case by case basis.

(b) Confine yourself to remain at [CURFEW ADDRESS] initially from [START OF CURFEW HOURS] until [END OF CURFEW HOURS] each day, and, thereafter, for such a period as may be reasonably notified to you by

Electronic monitoring is only available for offenders on licence who are MAPPA level 3, including those who are considered Critical Public Protection Cases (CPPC). In those cases, 9(b) should be used. For all other curfew purposes, 9(a) should be used instead.
your supervising officer; and comply with such arrangements as may be reasonably put in place and notified to you by your supervising officer so as to allow for your whereabouts and your compliance with your curfew requirement be monitored [WHETHER BY ELECTRONIC MEANS INVOLVING YOUR WEARING AN ELECTRONIC TAG OR OTHERWISE].

Any requests in relation to **Intensive Supervision and Surveillance Programme (ISS)** being used as a condition of licence for Young Offenders, should be referred to the Youth Justice Board.

<table>
<thead>
<tr>
<th>8. Freedom of movement</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Not to enter the area of [CLEARLY SPECIFIED AREA], as defined by the attached map without the prior approval of your supervising officer.</td>
</tr>
<tr>
<td>The exclusion area must be defined precisely. A blanket ban on entering a large town, for example, will not always be acceptable unless the reasons for placing the zone can be supported by sufficient evidence. The zone should be no bigger than is reasonably necessary to achieve the objective sought. In order to define the exclusion area as clearly and precisely as possible, it is necessary to draw the boundaries on a map or diagram. <strong>The offender must be in no doubt where the exclusion zone begins and ends.</strong> More limited exclusion zones may be used in order to prevent re-offending, for example, preventing an offender from entering an area where there are nightclubs and where previous offending has occurred. Furthermore, exclusion zones can be used to prevent an offender from entering a specific type of premises, such as a pub or an internet café, where it can be shown that such an exclusion is required to manage the offender in the community and is proportionate to the risks posed by the offender. <strong>If it is felt that the required exclusion zone would interfere with the offender’s day to day life, then confirmation must be sought from PPCS, who in turn may seek legal advice.</strong> It may be suitable to relax certain restrictions such as these (when not related to victim contact) on a temporary basis in order to test the offender, before removing them completely through licence variation.</td>
</tr>
<tr>
<td>(b) Not to enter [NAME/TYPEx OF PREMISES / ADDRESS / ROAD] without the prior approval of your supervising officer.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c) Not to enter or remain in sight of any [CHILDREN’S PLAY AREA, SWIMMING BATHS, SCHOOL ETC] without the prior approval of your supervising officer.</td>
<td>This condition is primarily designed for child sex offenders where it is linked to past behaviours or offences. OMs should also keep in mind where certain locations may allow for similar behaviour – for instance where an offender is banned from beaches due to his previous behaviour, it may be advisable to also ban the offender from swimming pools due to the similar nature of the locations.</td>
</tr>
<tr>
<td>(d) On release to be escorted by police to Approved Premises</td>
<td>Conditions requiring compliance with Approved Premises or other accommodation rules must be avoided if possible. If an offender’s refusal to comply with rules presents a real risk to staff or other residents, it would be reasonable to seek to recall him under the condition to be of good behaviour.</td>
</tr>
</tbody>
</table>

| 9. Supervision in the community by the supervising officer, or other responsible officer, or organisation | (a) Report to staff at [NAME OF APPROVED PREMISES / POLICE STATION] at [TIME / DAILY], unless otherwise authorised by your supervising officer. This condition will be reviewed by your supervising officer on a [WEEKLY / MONTHLY / ETC] basis and may be amended or removed if it is felt that the level of risk you present has reduced appropriately. | There should be no blanket approach for reporting requirements based on the location where the offender is housed, so it needs to be evidenced that an offender needs to have this type of condition on their licence in order to manage them in the community, and not just because they are currently housed in an Approved Premises. Any requirement to report to staff more than once per 12 hours must be approved by the Post-Release Casework Team at PPCS. This includes short curfew periods being used to provide the same effect. |

| Alcohol - general advice | Conditions prohibiting the consumption of alcohol are hard to enforce and there may be difficulties in arguing that limited consumption should always lead to recall. There is no statutory provision to allow offenders who are released on licence to be required to comply with an alcohol test. However, the condition to be of good behaviour contains sufficient power to request recall in those cases where risk is unacceptable after alcohol consumption or where an offender is ejected from an Approved Premises for consuming alcohol. Intrusive alcohol testing can be conducted only with the offender’s consent, though complying with alcohol testing can be made a condition of the Approved Premises rules that an offender is asked to sign on entry. Should technology be available to test alcohol levels without requiring bodily fluids then it may be permissible to do so, but as with any requests for conditions related to alcohol |

Additional Licence Condition Criteria and Table – MCA v19.2 last updated 5 April 2017
consumption, they should be treated as bespoke and must be approved by the Post-Release Casework Team in PPCS so that legal advisors can be consulted.

Additional licence conditions for extremist offenders and polygraph testing

Additional licence conditions specifically for Extremist Offenders (including those convicted under Terrorist Act legislation) can be found in Annex B of PSI 12/2015.

Additional licence conditions in relation to polygraph testing can be found in PSI 36/2014.
Annex 11: Direction setting: good practice guidance

- When Directing reports please be as specific as possible and state:
  - what the reasons are why the report is needed
  - what the report should focus on
  - Which risk factors should be addressed

- MCA members should no longer routinely ask for addendum reports from the Offender Manager (OM) or Offender Supervisor (OS), where current reports are less than six months old. It is recommended that a Direction is made stating that updates/addenda should only be submitted if there has been a significant material change or development that the panel should be made aware of. If the OM and/or OS is being called as a witness then oral evidence may suffice, particularly if the substantive report (PAROM1 or Part B Recall Report [previously Annex H]) are less than six months old and comprehensive. As part of the End to End proposals HMPPS have been asked to ensure the Parole Board is updated automatically on any developments that are relevant to the review.

- When directing specialist reports it is recommended not to stipulate forensic or clinical specialist but simply state “psychologist” or “psychiatrist” – it will be up to HMPPS to decide the most appropriate report writer. Similarly, it is best not to state a particular named specialist report writer, unless there is a specific reason for doing so, in which case please set out the rationale. HMPPS are currently undertaking a project to establish a national commissioning agreement for psychiatric reports and the Parole Board is involved in this work.

- A number of prisons are now experiencing difficulties in retaining Offender Supervisors (OS) (particularly those from probation services) and increasingly are using agency staff to fill gaps. As such, many of these have little or no contact with the prisoner, and in some cases the prison do not even know the allocated OS at the time of dossier disclosure. Members are therefore asked to consider carefully whether Directing OSs to attend oral hearings will bring added benefit. Where possible, access to C-NOMIS notes may provide additional information, when an OS is not available or has little knowledge of the prisoner.

- In relation to directing specialist healthcare reports and Offender Supervisor reports and/or witnesses please consider whether they are essential as opposed to desirable, and whether they contribute to a fair hearing.

- It is expected that a number of prisoners will find it increasingly difficult to secure legal representation, in particular pre-tariff review cases, and therefore members are asked to consider this when setting Directions and a legal representative is not clearly identified. As we move into 2014, we anticipate more oral hearings will go ahead without a legal representative being present. We are preparing a guide for prisoners who are not legally represented.

- When estimating the time required for an oral hearing please define this in hours / part hours. It is anticipated that there will be an increase in the variety
of timeframes required for oral hearings and so estimating either a half day or full day will not always be appropriate.
Annex 12: Reports: titles and timeframes

Setting deadlines
This document offers guidance on setting deadlines for the delivery of various reports and documents commonly requested in Directions and ensuring a more consistent approach. The timeframes for preparation of reports have been provided by HMPPS. These are not binding on you but will give members a sense of the likely time normally required in order for HMPPS to prepare specific reports. These are average times and may vary in individual circumstances. Members may find it helpful to bear these timescales in mind when setting directions. However, members can depart from these timescales where they feel that the facts of the case and fairness merits it and where, as far as possible, they have established what is realistically achievable.

Publishing these standard timeframes gives all parties a reference point and should reduce the current wide variation in delivery. These timescales have been shared with PPCS caseworkers who are responsible for ensuring that directions are complied with.

Delivery and compliance with Directions may vary between establishments and report writers due to resources and other factors. The MCA Directions form does ask responsible parties to contact PPCS if any deadlines are not achievable. A mutually agreed revised deadline can then be considered with the MCA Assessor or Panel Chair.

SARN reports
Members should note that, in relation to SARN reports, the report itself does not take 6 months to complete but members will need to allow approximately 6 months from the date the SOTP course was completed for a report to be submitted. This allows time for psychometric testing to be completed and prisoners to demonstrate how they have applied their learning from the course and therefore enable risk assessors to evaluate the reduction in risk.

Historical documents
These documents should already exist for most cases. Where these were required at the time, these should ALL be on the disclosed dossier and so should only be requested in MCA Directions as exceptions. There will be instances where as a result of working practices either currently or at the time, certain information will not be available. See the table below for timeframes

Current documents
These are documents that should be on the dossier for ISPs. These should ALL be on the disclosed dossier and so should only be requested in MCA Directions as exceptions. Members are asked to set reasonable deadlines taking account of the volume and complexity of the information/assessment they are requesting.

Course documents
Deadlines are based on offending behaviour courses already completed so will need to be amended if course is still on-going at time of setting directions.
Specialist documents
The length of time required will depend to some extent on the amount of contact with the prisoner thus far, the complexity of the case and wider demands. HM Prison Service also seeks to prioritise demand for reports. This usually requires a private practitioner to be commissioned so a deadline may need to be negotiated with HMPS.

Further guidance
The table below is intended to provide members with the necessary guidelines to assist them in setting directions.
<table>
<thead>
<tr>
<th>Report Type</th>
<th>Responsible Author</th>
<th>Organisation responsible</th>
<th>Timescales required for provision/completion of the report</th>
<th>Timescale cut off for the availability of historic information (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offender Manager/Home Probation Officer Report</td>
<td>OM</td>
<td>NPS</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Offender Supervisor/Seconded Probation Officer Report</td>
<td>OS</td>
<td>Prison</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Addendum Offender Manager/Home Probation Officer Report</td>
<td>OM</td>
<td>NPS</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Addendum Offender Supervisor/Seconded Probation Officer Report</td>
<td>OS</td>
<td>Prison</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Release and Risk Management Plan</td>
<td>OM</td>
<td>NPS</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>LISP 4 report</td>
<td>Prison</td>
<td>PPCS</td>
<td>4 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>OASys report</td>
<td>OS / OM depending on sentence type</td>
<td>Prison / NPS</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Security report</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Adjudications Report</td>
<td>PPCS</td>
<td>PPCS</td>
<td>4 weeks</td>
<td>3 years approx. Recent can be produced easily from NOMIS by PPCS. Older records should be obtainable but will have to come from the prison and will take longer)</td>
</tr>
<tr>
<td>Becoming New Me</td>
<td>Prison</td>
<td>Prison</td>
<td>6 months after course completion</td>
<td>N/A</td>
</tr>
<tr>
<td>CARATS report</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>DARN report</td>
<td>Prison</td>
<td>Prison</td>
<td>6 months after course completion</td>
<td>N/A</td>
</tr>
<tr>
<td>DART report</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>HCR - 20 report</td>
<td>HMPPS Psychology</td>
<td>Prison</td>
<td>12 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>PIPE report</td>
<td>HMPPS Psychology</td>
<td>Prison</td>
<td>12 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>SOTP/SARN Report</td>
<td>Prison</td>
<td>Prison</td>
<td>6 months after course completion</td>
<td>N/A</td>
</tr>
<tr>
<td>Report Type</td>
<td>Department</td>
<td>Location</td>
<td>Timeframe</td>
<td>Notes</td>
</tr>
<tr>
<td>------------------------------------------------</td>
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</tr>
<tr>
<td>HRP report</td>
<td>Prison</td>
<td>Prison</td>
<td>6 months after course completion</td>
<td>N/A</td>
</tr>
<tr>
<td>In-reach report</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Psychological Assessment</td>
<td>HMPPS Psychology</td>
<td>Prison</td>
<td>12 weeks following referral from Psych lead</td>
<td>N/A</td>
</tr>
<tr>
<td>Psychiatric Report</td>
<td>Prison</td>
<td>Prison</td>
<td>16 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>WAIS assessment report</td>
<td>HMPPS Psychology</td>
<td>Prison</td>
<td>12 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>PNC Record</td>
<td>Prison</td>
<td>Prison</td>
<td>4 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Previous Parole decisions</td>
<td>PPCS</td>
<td>PPCS</td>
<td>4 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Previous OM/OS/Probation Officer reports</td>
<td>PPCS</td>
<td>PPCS</td>
<td>4 weeks</td>
<td></td>
</tr>
<tr>
<td>Previous Psychiatric/psychological reports</td>
<td>Prison</td>
<td>Prison</td>
<td>4 weeks</td>
<td></td>
</tr>
<tr>
<td>CALM - post course report - historic</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td></td>
</tr>
<tr>
<td>Cognitive Skills Booster - post course report - historic</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td></td>
</tr>
<tr>
<td>Enhanced Thinking Skills - post course report - historic</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td></td>
</tr>
<tr>
<td>R &amp; R - post course report - historic</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td></td>
</tr>
<tr>
<td>CSCP - post course report - historic</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td></td>
</tr>
<tr>
<td>P-ASTRO - post course report</td>
<td>Prison</td>
<td>Prison</td>
<td>6 weeks</td>
<td></td>
</tr>
<tr>
<td>Police witness statement</td>
<td>PPCS</td>
<td>PPCS</td>
<td>8 weeks</td>
<td></td>
</tr>
<tr>
<td>CPS documents</td>
<td>PPCS</td>
<td>PPCS</td>
<td>8 weeks</td>
<td>See above</td>
</tr>
<tr>
<td>Judges sentencing remarks</td>
<td>PPCS</td>
<td>PPCS</td>
<td>8 weeks</td>
<td></td>
</tr>
<tr>
<td>Pre- sentence report</td>
<td>OM</td>
<td>PPCS</td>
<td>6 weeks</td>
<td>5 years</td>
</tr>
<tr>
<td>Post sentence report</td>
<td>OM</td>
<td>PPCS</td>
<td>4 weeks</td>
<td>N/A</td>
</tr>
<tr>
<td>Legal Representations</td>
<td>Legal rep</td>
<td>Legal rep</td>
<td>4 weeks</td>
<td>N/A</td>
</tr>
</tbody>
</table>

The CPS retention policy is based on the length of the sentence i.e. indeterminate cases are retained for 25 years. Determinate sentences are kept for 3 years or the length of the sentence whichever is greater (see [http://www.cps.gov.uk/publications/docs/rmmversion2.pdf](http://www.cps.gov.uk/publications/docs/rmmversion2.pdf)).
Annex 13: Guidance on the role of Psychiatrist or Psychologist members of the Parole Board

This document provides guidance on the role and contribution of specialist members of the Parole Board. It aims to aid MCA decisions as to whether a specialist panel member is required to sit on a Parole Board oral hearing. It can also help the decision to request a specialist member for other types of hearings or specialist advice. Psychiatrist and psychologist members have specific knowledge and skills which are described below. There is also some overlap in the areas which they can contribute and in some cases either a psychiatrist or psychologist may be appropriate.

The decision to request a specialist member should be made when it is considered that a contribution from a psychiatrist or psychologist panel member is necessary in order to make a fair and rigorous risk-based decision.

A Psychologist member
Psychology is the study of human behaviour e.g. how people think, act, react and interact. Forensic psychology is the application of psychological knowledge to offenders and offending behaviour in order to make evidence based predictions about when re-offending may occur. Forensic psychologists are skilled in the use of risk assessment tools and other assessment techniques. They also have skills in the design and implementation of interventions to modify offending behaviour.

The criteria for a Psychologist
It is appropriate to request a psychologist for cases when:

- There is current psychological evidence e.g. a psychological assessment, psychometric tests or psychology report which needs specialist interpretation (standard psychometric tests completed prior to or following an offending behaviour programme are unlikely to routinely require interpretation)
- There are two or more differing psychological opinions e.g. a Prison Service psychological report and an external psychological report
- In cases where there are questions with regards to an offender’s response to interventions due to issues such as motivation to change, levels of psychopathy, personality disorder or learning difficulties

A Psychiatrist member
Psychiatry is concerned with the diagnosis, treatment and prevention of mental disorder including mental illness, mental impairment and psychopathic or other personality disorder. Psychiatrists (unlike other mental health professionals such as psychologists) are medically qualified doctors who following their general medical training have specialised in psychiatry. This means that they can prescribe medication as well as recommend other forms of treatment. Psychiatrists have knowledge of NHS services, how it functions in practice and the various NHS treatment options available e.g. for mentally disordered offenders and those with significant substance misuse.
The criteria for a Psychiatrist
It is appropriate to request a psychiatrist for cases when:

- There are issues relating to the offender’s major mental disorder such as schizophrenia (and in some cases physical illness)
- The offender has been or is currently detained in a mental health setting or secure psychiatric unit for on-going mental health problems
- Where there is current (usually not routine pre-sentence assessments) psychiatric evidence about the offender e.g. a psychiatric report or substantial evidence from a prison mental health in-reach team which requires interpretation
- If licence conditions are proposed which involve mental health services

The criteria for either a Psychiatrist or Psychologist
It is appropriate to request either a psychiatrist or a psychologist for cases when:

- There are less serious mental health concerns or evidence of psychological distress with an identified or suggested link to the offender’s risk of re-offending or harm e.g. substance misuse, anxiety, depression or self-esteem issues
- Personality disorder or psychopathy has been identified or suggested
- There is a learning disability, developmental disorder e.g. autism, Asperger’s Syndrome, attention deficit hyperactivity disorder (ADHD) or brain injury
- The case has complex or serious risks issues e.g. offender has exhibited a range of offending behaviour, offending involves multiple victim types or sadistic behaviour, motivation for the offence(s) is unclear and the offender denies some or all aspects of their offence
Annex 14: Good practice guide: expectations of those contributing to an oral hearing

November 2013

The purpose of this guide is to help us all work effectively together to achieve the best possible outcome at an Oral Hearing and was commissioned as a joint piece of work between London Probation Trust and the Parole Board. The guide is presented in bullet points and focuses on the basic service we can each expect from the other. Clearly all cases are different and some have intricacies that cannot be addressed by a generic guide, it is hoped that the information contained here will assist with a wide range of cases.

In order to draw up this bullet point guide colleagues from the Parole Board, HMPPS Public Protection Unit and Victims Unit, Prisoners Legal Representatives, Public Protection Representatives, Probation Officers, Senior Probation Officers have been approached for comment and contributions. It was helpful to hear from everyone and our sincere thanks to all those who contributed or commented. This document should be read in conjunction with the protocol agreement between the Parole Board and the Prison Estate, which provides all staff in prison establishments with clear guidance on the standards they are expected to meet in the provision and facilitation of oral hearings for Parole Board panel members.

Joint responsibilities and expectations

☐ All will treat each other with professional respect

☐ All will ensure they respond to e mails in a timely manner.

☐ Will ensure Hearings start promptly (prisoner movement etc permitting)

☐ The day is protected and adjournments/deferrals caused by any of the parties having to leave the Hearing early are avoided.

☐ All will undertake their respective tasks pre and post Hearing to ensure deadlines are met and all the necessary information is shared and available to all parties where appropriate.

☐ Where there are concerns or issues with the practice or conduct of any party at the Hearing, all will use the relevant procedures to make and ask for a complaint to be investigated and not overtly criticise or address the shortcomings in the Hearing or in any written material that may be generated.

Parole Board panel members

☐ The Chair can be expected to look at the case well in advance of the Hearing so that any further Directions can be set in advance to aid avoidance of a deferral on the day because something is missing.
☐ The Chair will check with legal reps that all have the same documentation before the Hearing starts.
☐ The Chair will intervene, when appropriate, if a witness is being unduly/unreasonably pressed by another party.
☐ The Chair will endeavour to facilitate attendance by a witness via video link or telephone conference call if it is evidenced there are genuine difficulties in the witness attending in person, and when there are obvious time and costs savings in providing evidence in this manner.
☐ Questions will be discussed amongst the panel members and they will be limited to the key issues for the Hearing and be relevant to the assessment of risk.
☐ Will ensure that reasonable breaks for comfort breaks or lunch are provided for the witnesses.
☐ Will be clear in their reasons why a licence condition has been included that was not requested, and why a condition was omitted that had been requested.
☐ Where there are particular cases where it may be helpful for a Public Protection Representative to attend the Parole Board can highlight this to the PPCS caseworker.
☐ The Public Protection Representative will always be included in all discussions and conversations relating to proceedings as the legal representative would expect to be.
☐ Consider any written submissions made by the Public Protection Review where applicable.
☐ Will give the Public Protection Representative the opportunity to ask pertinent questions of all witnesses during the hearing.
☐ Will ensure the Offender Manager is able to respond to information/opinions provided by other witnesses.
☐ If a panel wishes to speak with the Offender Manager before the Hearing, be clear as to what time the OM must be in the Hearing room and that the legal rep is similarly invited.
☐ Consider alternative release addresses where appropriate and avoid a blanket requirement approach for an Approved Premises placement.
☐ Will write decision letters that are succinct and easily understood by all parties including the prisoner.
☐ Undertake to issue Directions that are clear and specific to assist those who must interpret them and act on them, and they should be reasonable and proportionate.

Parole Board case managers
☐ Will contact witnesses to inform them of the Panel date at the earliest opportunity being clear as to the time the relevant panel will expect to sit.
☐ Will ensure any change to a panel date is communicated to witnesses as soon as possible.
☐ Will ensure Panels have information passed to them as far ahead of the hearing as is practicable.
☐ The Public Protection Representative, when deciding to attend a hearing, is copied into all relevant documentation and correspondence relating to the hearing.

Public Protection casework section
☐ Will ensure that Parole Board Directions are circulated in a timely fashion to all parties.
☐ Will ensure that any Non Disclosure requests are dealt with promptly and Probation Trusts made aware of outcome in a timely fashion.
☐ Ensure that the Public Protection Representative, when deciding to attend a hearing, is copied into all relevant documentation and correspondence relating to the hearing.
Public Protection Representative provided with a copy of decision of the Panel.
Will assist Probation Trusts in asking for a variation of a Direction where appropriate and in appealing a non disclosure decision
Provide clear and consistent advice to Probation Trusts regarding non disclosure matters.
Will follow up Directions and ensure all completed prior to the Hearing and to dates required.
Will provide advice and support to OM’s relating to legal issues.

Public Protection representative
Will ensure Submissions are forwarded to all parties a minimum of 3 working days prior to the hearing.
Provide Submissions that are based on the dossier, relating to risk of serious harm to assist the Board in making a decision (It is no longer the case that the Public Protection Representative will give a for or against release recommendation)
Will liaise with the OM prior to the hearing and any other Sec of State witnesses.
Can be expected to have a copy of the dossier and be fully apprised of the case prior to the hearing and ensured that they have added themselves to the timetable and given notice to the Parole Board of their attendance a week in advance of the hearing where possible.
During the Oral Hearing the Public Protection Representative can be expected to ask questions of all of the witnesses that assist the Parole Board in their decision on whether the various risks posed by an individual is manageable in the community
Will sum up the evidence he/she has heard at the end of the hearing succinctly.

Offender Manager (or Youth Offending Team Officer, where applicable)
Will ensure that there is a good level of communication with the offender supervisor with a check in the day or so before the Hearing to see if there is any new information that may influence the Hearing
Will have as much contact either face to face, letter, video link with the prisoner as is possible and certainly before the Oral Hearing when preparing the PAROM 1 or Addendum PAROM 1.
Will have discussed their recommendation, Risk Management Plan and Sentence Plan with the prisoner ahead of the Hearing and ascertained the prisoners view.
Ensure that Licence Conditions/Exclusion Zones requested are evidenced as to why they are being requested, how they will be enforced and so on.
Can be expected to ensure that the Oral Hearing date is given priority and to arrange for a replacement person to attend in the extreme circumstance they cannot attend, and that the replacement person is fully informed about the case and can assist the panel
Will use the relevant templates related to Oral Hearings i.e. PAROM 1 for a first review and, thereafter use the Addendum PAROM1 to provide updated information and address the issues identified from the previous Hearing.
Will provide a full risk management plan and sentence plan as required of them by HMPPS, even when not supporting release or progression to Open Conditions.
Will make an evidence based recommendation in each case.
Can be expected to ensure referrals to MAPPA or accommodation providers are made ahead of the Hearing and the panel provided with realistic timescales for interventions or accommodation to be available.
Will ensure that non disclosure material is dealt with appropriately and clearly marked as such for the consideration of the parole board.
☐ Can be expected to have communicated with the Victim Unit as applicable
☐ Will access the paginated electronic Dossier via PPUD.
☐ Will ensure the assessments and recommendations made are owned by them and not presented as the opinion/assessment of management or MAPPA/MARAC, and will secure a gist of MAPPA/MARAC* minutes if directed by the panel (*in consultation with the police).
☐ Make applications to give evidence by video link or case conference call early in the process and provide evidence as to why this is needed.
☐ Will ensure they allow time to arrive, book in and be taken to the Hearing room so as to be there 20 to 30 minutes before the Hearing starts.
☐ Will bring important or new information to the attention of the panel if it has not been explored or raised at the Hearing.
☐ Feel able to change their recommendation either way if oral evidence indicates this is necessary.
☐ Will seek any legal advice required from the Public Protection Casework Teams.

Offender Supervisor
☐ Will ensure there are good levels of communication with the Offender Manager and prisoner.
☐ Will provide detail of custodial conduct including the nature of any adjudications and their outcome to the Offender Manager and in their Offender Supervisor reports in a time scale that allows the Offender Manager to include this information in their risk assessments.
☐ Be mindful of any risk issues relating to prisoner/witnesses and ensure prison alert to them in order to ensure safety of witnesses.
☐ Will make an evidence based recommendation in each case.

Legal representative
☐ The Legal Representative will always be included in all discussions and conversations relating to proceedings as the Public Protection Representative would expect to be.
☐ The Legal Representative will sum up in a succinct manner at the appropriate juncture.
☐ Will arrive early enough to see their client before the Hearing is set to start.
☐ Guard against using a pre prepared submission that may not align with the evidence heard on the day.

Victim Liaison Officer
☐ Will ensure that victim impact statements are submitted where appropriate and liaison take place with the Offender Manager.
☐ Ensure that victims are clear as to the boundaries and rules relating to attendance and addressing the panel in writing or in person.
☐ Ensure that licence conditions and exclusion zones requested are supported with evidence as to why they are needed and to ensure they are proportionate and necessary.
Annex 15: Deferrals and adjournments: guidance for Parole Board members

June 2015

1 Introduction
1.1 It is recognised that decisions to defer must be based on the individual circumstances of the case before the panel and that the Parole Board has a duty to provide a fair hearing. This guidance aims to assist members by indicating where the threshold is likely to lie between deferring a case to ensure a fair hearing and deciding to proceed and conclude the case against a prisoner’s wishes, on the basis that the panel considers that a fair hearing can be provided by concluding without a deferral for more information.

2 Difference between a “deferral” and an “adjournment”
2.1 Deferrals are where a case is adjourned, but the panel making that decision does not need to retain conduct of the case.

2.2 An adjournment is where the panel retains the case and is either made at initial MCA stage, where the MCA panel requires more information before it is even able to decide whether or not an oral hearing is required, or at oral hearing stage where the case has been adjourned part-heard.

2.3 Oral hearing panels should only adjourn part-heard where a reasonable amount of evidence has been heard by them. There may be occasions where a deferral is more appropriate from oral hearing, but the panel (or just the panel chair) wishes to retain the case due to substantial involvement in complex, interlocutory directions such as non-disclosure. Such adjournments ought to be rare, as re-convening the panel may cause delays in listing given the additional dates to avoid that will need consideration.

3 Guidance
3.1 There are two stages at which a request to defer from one of the parties may be made or at which a panel may consider for itself whether a deferral is necessary:

   a. After the review has begun but before the case has been allocated to an oral hearing panel - this is at MCA and pre-listing stage and will be considered by the MCA panel or an MCA Duty Member.

   b. After the case has been allocated to an oral hearing panel – this is once a case is listed and can be before or on the hearing date. These will be considered by the oral hearing panel chair.

3.2 In all cases, it is essential that a deferral, if granted, is granted as soon as possible in order to avoid wasted resources and unnecessary delay and expense to all parties. On the day deferrals should be rare. Work is ongoing with HMPPS to ensure panels are not faced with issues on the day of the hearing where avoidable.
3.3 At either stage, panels should consider:

i) Whether additional information is required in order to make the assessment of risk and provide a fair hearing and it will be available within a short specific timescale; and

ii) Whether the information is materially likely to affect the decision as to whether either an oral hearing is required (at MCA stage), or the eventual outcome (at pre-listing or listed stage).

3.4 If the circumstances don’t meet these criteria, then a decision to defer should not generally be made.

3.5 Members should also consider whether a case has been deferred previously; there are some cases where one deferral after another is granted and the danger is becoming drawn in to sentence progression and failing to provide the speedy review of detention that is required. Members should guard against deferrals which seek to assist the offender, but run the risk of actually delaying his progress.

3.6 Examples of deferral requests that should not normally be granted

a. Where the prisoner is about to commence a course or wishes to complete a course, and a report is unlikely to be available within 4 months. The panel should take into account that a successfully completed course may not be of use without a subsequent period of monitoring to see if lessons learned are being put into practice. The panel should also take into account where the outcome of the course is unlikely to be a material factor (see b. below).

b. Where a prisoner is approaching the end of a course but where the outcome is unlikely to be a material factor, for example, where multiple risk factors are present and it is clear to the panel that the course report will have little effect on the overall assessment of risk or the potential outcome.

c. To enable a transfer to another establishment to take place for courses or therapy to begin. Timescales here are very uncertain and are likely to delay the case for many months, or even years.

d. Where a prisoner recently arrived in open conditions wishes to be assessed for, and complete home leaves and/or undertake booster work. Prisoners in open conditions will not be permitted to take unescorted leave until they have been assessed by the Prison Service. Unless evidence is available to say that reports will be written within a short period of time, the process is likely to take at least 6 months

e. Where a prisoner wants to await the outcome of criminal proceedings. The member should consider the available reports and decide whether sufficient material is there about the alleged incident(s) to enable the panel to reach a decision, potentially with the benefit of oral evidence, as to whether the risk of further offences is acceptable, regardless of whether a crime has actually been committed. Remember, the Parole Board is not required to adopt the criminal standard of proof. However, where the prisoner is pleading not guilty to an offence and court case is soon to be concluded it would be advantageous to defer for the
outcome as this is likely to affect the proposed risk management plan and recommendation of the Probation Officer and may avoid the need to seek to enquire into the circumstances of the offence prior to the conclusion of the criminal proceedings.

3.7 Examples of deferral requests more likely to be appropriate to grant

a. The prisoner is about to complete offence related work and the report will be available soon and the information is likely to affect the outcome of the review and/or the ability to fairly assess the risk.

b. A material witness is unable to attend on the date of the panel. This type of request will require the panel to consider the reason given by the witness and decide whether it is reasonable or not. Members should consider alternative stand-ins, or whether attendance by telephone or video link may assist in securing attendance. Members are also reminded that they may direct one of the parties to apply for a Witness Summons, where appropriate.

c. The prisoner needs more time to obtain legal representation. Indications are that the courts will afford the prisoner a lot of leeway in this area, but this should be balanced against fairness generally. A determinate prisoner whose SED or NPD is within a few months is unlikely to achieve a meaningful oral hearing or an oral hearing at all if the case is deferred. It may actually be fairer to provide an oral hearing without representation, than none at all. Members will need to consider the stage the case is at and relevant time periods in these circumstances.

d. A prisoner in open conditions has completed most of what is required but is nearing the end of a crucial course or needs to complete a limited number of home leaves which have commenced or will do so imminently, or where the release plan is not yet in place but is likely to be soon. An alternative to deferral for such cases might be where this information is ascertained very shortly before an oral hearing date. In such cases, members can consider whether it is better to go ahead with the oral hearing and seek to adjourn on the papers for updated reports/detailed risk management plan and subsequent written submissions. There is a danger here that a panel will need to reconvene, but it is put forward as a possible alternative to consider rather than a deferral on the day or a few days before a listed hearing.

4 Concluding cases and recommending a shorter referral period

4.1 Members may wish to consider the above alternative to a deferral.

4.2 While the current terms of reference to the Parole Board explicitly state that the Board is not to comment on the timing of the next review for indeterminate sentenced prisoners, the Board has been informed by the Secretary of State that he may be willing to consider bringing forward the timing of the next review in some cases. However, there is no formal agreement and members considering this option should seek representations from the Secretary of State and the prisoner before deciding how to proceed.

4.3 For determinate recalls, the Parole Board has statutory power to recommend a further review (albeit not explicit power to recommend the timing). For early
release of determinate (including extended sentence) prisoners, there is no explicit power, but neither does the Secretary of State set out terms of reference which explicitly prevent the Board from advising on a further review.

4.4 It is recognised that this is not always an appropriate option, however, members are asked to consider it, given the Secretary of State’s shift in this area and his stated willingness to give such comments consideration.

5 Directions

5.1 Where a deferral is granted, a formal deferral notice must be issued by the panel chair or MCA panel.

5.2 Where a deferral request is rejected, reasons must be given. Where it is granted, in line with the MCA case management model, reasons should also be provided, particularly to show where key issues are affected or changed.

5.3 When issuing a deferral notice further directions will also normally be required for case management. Any directions for provision of missing information should state who should provide the material and give a deadline for submission. The deferral notice should additionally state which witnesses should attend the next hearing and make any further directions regarding panel logistics.

5.4 Members should resist where possible issuing a direction for the hearing to take place on or before a specific date as the Parole Board may not be able to fit the date into existing listing commitments, particularly in light of the Osborn judgment. However, in cases of exceptional circumstances (subject to previous delays for example), members should bear in mind their power to consider directing an expedited or prioritised hearing. Members should be aware that on re-entering the listing process, cases will continue to be prioritised according to their original due date.

5.5 It is good practice to direct that the Secretary of State or the prisoner’s representative (depending on who is to commission the report or has asked for a witness) must ensure that a copy of the deferral letter is sent to anyone required to submit a report or to attend as a witness.

6 MCA panels – Adjourning for more information

6.1 On rare occasions, it may not be possible to decide whether a case requires further consideration at an oral hearing, or whether it can be concluded on the papers without further reports. This is a situation where adjourning to oneself is appropriate.

6.2 Where you consider that an oral hearing is required, but certain information is needed before the case is deemed ready to list, refer to the “Cases progressing to oral hearing” section in the MCA guidance.

6.3 Please keep in mind that by adjourning, members are essentially delaying the review. Members may wish to exercise caution when adjourning for substantive reports, such as psychiatric assessments which have not yet been commissioned. If members adjourn, an explanation as to why they are doing this should be stated on the form. Please note that if adjourning, deadlines for reports must be given. When these reports are received, you will be required to complete the initial assessment (i.e. paper decision or send to oral hearing).
6.4 Examples of when an adjournment at MCA stage may be appropriate:

a. When a crucial report is in the process of being written and the recommendations of that report are likely to have a significant influence on whether members will set Directions or issue a Paper Decision.

b. When essential reports are out of date (and therefore further work may have been completed which could affect the recommendations for a progressive move) or a legal representative highlights the existence of a report that is not within the dossier which is material to the MCA decision.

c. When reports are in the process of being completed following certain offending behaviour programmes i.e. a SARN and will affect the MCA decision.

d. When the prisoner is due to complete a course soon and you need to know the outcome of that programme before deciding how to progress the case.

e. For a psychological / psychiatric assessment – but bear in mind the proportionality of this and whether it is possible to obtain the information from other sources.

f. Where the directed report may have a significant impact on the directions you make for an oral hearing in terms of witnesses / further reports etc.

6.5 Directions for non-disclosure applications can be made as an adjournment, if minded to conclude the review on the papers. Members should always make directions on any non-disclosure application before concluding the case.
Annex 16: Guidance for releasing IPP prisoners on the papers

1 Purpose of guidance

A change to the Parole Board Rules will allow members to direct the release of IPP prisoners without an oral hearing, in both review and recall cases. In practice this means that members will be able to consider release at the MCA stage and subsequent stages before an oral hearing. Releasing IPP cases without an oral hearing will be a new option for MCA members who will be sitting as a single member panel when considering this option; and there is heightened public and political interest in such cases so they are likely to be subject to additional scrutiny.

The purpose of this guidance is to support members in deciding whether to direct the release of an IPP prisoner without an oral hearing, assist in identifying factors to consider, and provide members with relevant information about the process changes that flow from this new option.

2 Summary of rules change to allow release of IPP prisoners on the papers

a. Release on the papers in IPP cases from 22 November 2016

The Parole Board Rules will change to allow IPP prisoners to be released without an oral hearing, in both review and recall cases. The change will come into force on 22 November 2016. It will apply to all cases from 22 November including existing referrals. This means that cases with an MCA panel date from 22 November onwards will be subject to the new rules. For the purposes of the rules, IPP cases include sentences of detention for public protection (DPP) so this change affects DPP cases as well.

For avoidance of doubt, there has been no change to the test for release. The change only relates to procedure, namely the stage at which release can be directed and whether an oral hearing is required. The type of Parole Board direction to release is likewise unaffected by the rule changes. This is because the wording of the direction to release is not tied to the rules but to the primary legislation for each sentence type, which is not being amended. Accordingly, the direction to release will remain Direct Release for IPP on/post tariff cases and Immediate Release for IPP recall cases (see table at p8).

b. Recommending open conditions at MCA stage

Open conditions [updated March 2017]: Under a change to Parole Board policy with effect from 8 March 2017, members may make a recommendation to open conditions at the paper stage for any IPP case, where eligible under the referral. It is no longer necessary that the case be exceptional and the Parole Board Chair’s agreement is not required. For guidance on open conditions, please see PBM 26-2015 and accompanying Secretary of State Directions.

c. Other MCA options including sending to oral hearing and no release
[updated March 2017] Under the new Rules, the options for both review and recall IPP cases at the paper stage are technically the same: the member will be able to direct release, no release, or send the case to an oral hearing (or recommend open conditions, where eligible). While previously, IPP recalls have all been sent to oral hearing, the Management Committee has now approved an approach whereby members exercise broad discretion in deciding whether to send an IPP recall case to oral hearing or make a decision on the papers. This mirrors the approach in determinate cases. As under the previous rules, any ‘no release’ decision on the papers will be a provisional decision where the prisoner can subsequently request an oral hearing; this request will be determined by the Duty Member. In deciding whether an oral hearing is necessary, members should refer to the general guidance in Annex 1.

3 Significant related changes to dossiers

a. Recall dossiers to include Part B report/Risk Management Plan

To enable members to have the information necessary for release at the MCA stage in recall cases, Parole Board members will be provided with an up-to-date Risk Management Plan in the form of a Part B report from the offender manager and updated full OASys. These will be included in the MCA dossier. It is anticipated that even where release is not directed, the Part B report will assist Parole Board members in setting appropriate directions for an oral hearing and reduce the risk of delay. These changes will be reviewed in around 6 months and member feedback will be sought.

b. Secretary of State View

PPCS has indicated that in certain cases they will submit a Secretary of State View to the Parole Board supporting release on the papers. A View may be provided in IPP recall or review cases. A View will only be submitted in some cases, not all; it is up to the Secretary of State to determine when to submit a View and members should not request or direct that a View be submitted. Only Views supporting release on the papers will be submitted. A View will only be submitted where the reports in the dossier support release.

Members will receive a copy of the View where one is available in the MCA dossier. A covering note will be included to alert the member. The View will be submitted at the MCA stage wherever possible, but may arrive at any stage in the parole process. PPCS will monitor additional reports as they come in and may submit a View after the MCA stage based on further information. It is planned that where a View is submitted after the MCA stage, the case manager will send the View to the Panel Chair (once allocated) and it will be up to the Panel Chair whether to release on the papers instead of proceeding to an oral hearing.

While the Secretary of State is a party to the proceedings and as such is entitled to submit a View, the member is in no way obliged to accept the View of the Secretary of State and the member must still make their own independent assessment.

The Secretary of State View process will be reviewed around the 6 month point. Members’ are welcome to provide feedback to the MDP team on the format and content of View on an ongoing basis; this will be passed on to PPCS.
4  Adjourning for further information, including Victim Personal Statements

The current guidance on adjourning/deferring at MCA applies to these cases, except for cases where the Secretary of State has submitted a View.

Current MCA guidance provides that on some occasions, an MCA member may consider it is not possible to decide whether a case requires further consideration at an oral hearing, or whether it can be concluded on the papers, until further reports are received. In such a case adjourning the case to oneself for this further information is appropriate. Deadlines for submission of this information must be given; as a guideline the adjournment should be for as short a period as possible, and no longer than 4 weeks. When the information is received, the member will be required to complete the MCA decision (i.e. paper decision or send to oral hearing). Members should avoid deferring cases at the MCA stage. A request can be made for an early re-referral by the Secretary of State where appropriate.

For IPP cases where there is a Secretary of State View supporting release, deferral at MCA stage is not an option available to members. In these cases sufficient information should be available for the member to complete the MCA assessment, or, in rare cases, issue a short adjournment for further information. As above, deadlines should be given for submission of further information. These should be as short as possible, and no longer than 4 weeks.

Where the member considers the prisoner is suitable for release except for an important element of the Risk Management Plan that is missing, such as an Approved Premises bed, the member should adjourn to allow arrangements to be put in place to address the missing element. Timeframes and clear directions to the relevant professionals should be given. Members should not direct release until all elements of the Risk Management Plan are in place.

Before concluding on the papers, members should check if the PAROM1 indicates a Victim Personal Statement will be submitted but it is missing from the dossier. Victim Liaison Officers are being made aware that some IPP prisoners may be released without an oral hearing so this can be communicated to victims.

The current MCA guidelines on non-disclosure apply to these cases – i.e. directions for non-disclosure applications can be made as an adjournment. If minded to conclude the review on the papers, members should always make directions on any non-disclosure application before concluding the case.

5  Process changes - Single point of contact for members making a decision to release IPP prisoner on the papers

The Secretariat is recording and monitoring decisions to release on the papers, and all outcomes for IPP cases where the Secretary of State has submitted a View supporting release. The number of adjournments and deferrals will also continue to be monitored as it is presently.

There will be a single point of contact for sending in release decisions in IPP cases at the MCA stage and any other release decisions made on the papers before an oral hearing. All release decisions [or open conditions recommendations] in IPP cases, whether review or recall cases and including those after MCA stage, should be sent to Sarah Valentine, the MCA Supervisor in the Admin Team at
Sarah.Valentine@paroleboard.gsi.gov.uk. All other decisions relating to IPPs (adjournments, no release, or sending to oral hearing) should be sent to MCA@paroleboard.gsi.gov.uk as per usual.

As outlined above, if a Secretary of State View is submitted after the MCA stage, it will be up to the Panel Chair to consider whether it is appropriate to release on the papers in light of the View or to proceed with the oral hearing. Release decisions on the papers after the MCA stage should also be sent to Sarah Valentine, rather than the case manager.

The Operations directorate is considering further operational changes to improve the information available to members at the MCA stage and improve other processes.

6 MCA templates

Templates are being amended to allow the correct options to be available for IPP cases at the paper stage. Further information on the process for receiving the updated templates will follow.

Where members wish to make a decision to release an IPP prisoner from 22 November before they receive the updated template, they should complete the paper decision template indicating this decision clearly in the body text but leaving the decision drop-down box blank. They should send the decision to Sarah Valentine at Sarah.Valentine@paroleboard.gsi.gov.uk flagging that it is a release decision in the covering email. The decision will then be processed manually to provide for the directed decision.

7 Where members can go for additional advice and support

While MCA members will continue to sit as a single member panel at the paper stage, additional support and advice is available. The single member will continue to be responsible for the decision.

Where the following support is not sufficient to enable the member to release on the papers, the member should consider whether sending the case to oral hearing is more appropriate.

- Consult the Duty Member – members can contact the Duty Member who is in the Parole Board office on 0203 334 4666 or 6402.
- Consult a specialist member – members considering IPP cases on the papers at MCA stage will have access to a pool of specialist members (psychologists and psychiatrists) who can be phoned for brief consultation on an ad hoc basis. If a case requires more extensive input from a specialist member, it may be more appropriate to send it to oral hearing. The list of specialists will be sent separately but members can contact MDPTeam@paroleboard.gsi.gov.uk if they wish to pursue this option pending further information.
- Optional second opinion/peer review of draft release decision – Option for the dossier and the first MCA member’s draft release decision to be sent to a second MCA member for comment.
  o Members wishing to use this option before finalising their paper release decision should email Sarah Valentine, clearly flagging that the draft
decision should not yet be issued and they would like peer review of the decision first. The dossier and draft decision will be sent to a second MCA member.

- Under this process, the second MCA member does not form part of the decision-making panel but would provide comment to the first member about the decision. The second member should email the comment to Sarah Valentine who will pass it on to the first member. Alternatively, the two members could speak directly on the phone, if preferred. Following this consultation/comment, the first member should finalise the decision and send it to Sarah Valentine. As the comment from the second member is in the nature of peer review/feedback, it does not form part of the dossier and as such should not be referred to in the final decision letter. **Note: this comment/discussion would not constitute a further MCA review of the case and the second member would not assume joint responsibility for the decision. The first member remains solely responsible for the decision. It would be entirely up to the first member how to proceed with the case.**

- So as not to delay the outcome of the paper review, members should endeavour to send the draft decision in advance of the 7 day deadline where possible; likewise, members receiving an item for comment in their MCA bundle should endeavour to send the comment as early as possible.

- This option will be tested on a trial basis while the IPP changes are implemented and will be reviewed in 6 months to consider whether it is still required and whether the process can be improved.

- **Contact the Member Practice Advisor or Legal Advisor**
  - Contact the Member Practice Advisor, Sophie Klinger on 0203 334 5329 or Sophie.Klinger@paroleboard.gsi.gov.uk.
  - Contact the Legal Advisor, Balbir Matharu on 0203 334 4755 or Balbir.Matharu@paroleboard.gsi.gov.uk.

8 Factors for members to consider in deciding whether to release

a. **All IPP cases, either at review or recall, must be considered on their individual merits and particular circumstances.** This section provides guidance as to factors that members may consider relevant, but members may also take other factors into account.

b. When considering release on the papers, for review and recall cases, members may wish to consider:

- Are all required reports in the dossier – including SARN, HCR-20 or SARA where relevant?
- Is there sufficient information about the risk factors?
- Seriousness of the index offence and the length of the prisoner’s tariff
- Is there an analysis of offending that informs an assessment of risk?
• Is there sufficient information to evaluate the impact of offending behaviour work on risk?
• Do you have a good enough understanding of the offender’s behaviour, triggers and motivation in relation to their violent and/or sexual offending?6
• Do you have sufficient information on the facts relating to:
  ▪ behaviour or conduct in custody;
  ▪ any security concerns during the sentence;
  ▪ circumstances of recall; and
  ▪ general attitude to supervision on licence?
• Is there agreement between professionals as to whether a progressive move or release is recommended?
• If in open conditions, has there been sufficient testing on home ROTLs to support the Risk Management Plan?
• Consultation with a specialist psychiatric or psychological member where the offender has mental health or personality disorder issues
• Where the PAROM1 is incomplete/undeveloped or silent about victim issues

c. Imminence of risk of causing serious harm is likely to be a critical factor when considering release on the papers. Members may wish to consider:

• How quickly might the offender commit a harmful act if released?
• What is the overall likelihood that an offender will re-offend?
• Will the offender commit an offence as soon as an opportunity presents itself?
• Will the offender act as soon as the framework of custody and limits on their behaviour are removed?
• Does the offender have a history of grooming or targeting victims?
• Does the offender have a history of instrumental violence?
• Does the offender have good insight into their risks and how to manage them, together with an ability to control their own behaviour?
• If the offender is being prescribed medication (anti-psychotic medication, methadone, for example), what is the evidence that he or she will continue to take the medication on release?

d. When considering release on the papers, members will require a robust Risk Management Plan (RMP) which provides a clear plan for safe management of risk in the community. Members may wish to consider:

• Are all components of the Risk Management Plan comprehensively addressed, including support and controls in the community, and a clear contingency plan to respond to risk management breakdown, escalating risk and/or deteriorating behaviour?
• What self-management strategies has the offender developed while in custody?
• What protective factors have been identified and how will they be used to strengthen risk management?
• What licence conditions have been set or need to be set for the offender?

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6 These questions are similar in nature to those in the MCA guidance on Building an Oral Hearing.
• Are additional licence requirements proposed by the Offender Manager? Are they necessary and proportionate? Do they cover all relevant risk factors and victim issues or are further conditions required? Are they realistic and enforceable?

• What evidence is there that the offender will comply with the conditions and additional requirements set?

• Is there evidence (from professionals or representations) that the offender agrees to the licence conditions?

• Are there issues regarding the availability of a suitable release address or approved premises?

• Is the offender a MAPPA nominal and, if so, has the Offender Manager indicated the MAPPA level of risk management on release?


e. When considering release on the papers following recall, members may also wish to consider:

• Is there agreement on the part of the offender that the recall circumstances are accurately reported?

• Does the offender agree that the recall was necessary and proportionate?

• Is there evidence that the offender understands the purpose of licence supervision?

• Is there evidence that the offender is willing to comply with licence supervision in the future?

• If there is further offending (alleged or convicted), does this impact on the risk of serious harm assessment in place prior to recall?

• Are there further serious charges or convictions for violent and/or sexual offending?

• Are there allegations of further serious offending during the licence period, including domestic violence, which may not have proceeded to prosecution?

• Are there risk issues related to home circumstances and relationships which may affect re-release on licence?

• Has the offender indicated that they would wish the recall review to be undertaken on the papers?


f. Release on the papers for review and recall IPP cases may not be appropriate in the following circumstances (depending on the individual merits of the case):

• The panel considers the acceptability of the risk assessments put forward by the professionals is finely balanced and requires that the offender or witnesses are seen and questioned

• An important matter of fact or mitigation is in dispute, or a finding of fact needs to be made, requiring oral evidence

• A face to face meeting is needed for the offender to be able to put a case or question others’ views

• Experts (psychologists and psychiatrists) have different opinions about the offender’s risks and a panel needs to decide which opinion to prefer

• No professionals support release
• Legal representations or Secretary of State View / Victim impact statement raise questions that are not addressed in reports that may be relevant to risk factors, risk management or compliance with licence conditions
• The offender is serving a new sentence that will not reach a conditional release date or complete the minimum term until the next review is due
• There are outstanding police investigations of matters that, once concluded, are likely to be relevant to the assessment of risk of causing serious harm. This may include offences committed in custody or on licence. This is likely to be a recall case but may occur if an offender has committed an offence in custody
• Risk of causing serious harm to the public is assessed as very high
• Significant areas of work on risk factors remain outstanding in the sentence plan and are such that they should be completed in custody or open conditions
• The offender is currently undertaking specific interventions on their risk factors
• The victim (or victim’s family) is engaged with the Victim Contact Scheme and has indicated that they wish to attend an oral hearing to present their statement
• If in open conditions, there has not been sufficient testing on ROTLs to support the Risk Management Plan
• The Risk Management Plan provided is not robust or clear about the safe management of risk in the community (see Section (d) above)\(^7\)
• High profile cases where there is likely to be national press coverage, where an oral hearing may be needed to explore the management of media attention.

\(^7\) The factors above are in the main those set out in MCA guidance on Assessment and deciding how to progress a case.
Annex 17: MCA response forms

March 2015

MCA response forms
As part of the introduction of MCA, the Operations Team have been issuing MCA Response Forms with all cases which are directed to an oral hearing. An example of the form is at the end of this annex.

The form is issued to the Secretary of State’s Representative (PPCS) and the Prisoner or Legal Representative, as their first opportunity to make comments to help achieve a focused and effective hearing. The parties are invited to comment on the issues or points of focus for the oral hearing, together with the logistics for the day.

This process has been developed with the assistance of stakeholders, with the overall aim of reducing the volume of deferrals by identifying issues at the earliest opportunity, as well as providing a consistent manner in which the parties can submit requests to amend/revoke directions or request that additional directions be issued.

How are we expected to receive these forms?
We are anticipating that these forms will be returned to us by either the prisoner or their legal representative, or directly from PPCS within 14 days of the directions being issued by the Case Manager. The Case Manager will then forward these on to the MCA Member who completed the original assessment to review.

What is the MCA member expected to do upon receipt of a response form?
The MCA member will consider the issues raised and decide if any amendments to the original directions are necessary, or whether any new directions need to be added to those already issued. If amendments are required, these will be issued by the MCA member.

If the MCA member considers that no amendments to the original directions are needed, an email to the Case Manager confirming this is sufficient acknowledgment. The case manager will then ensure the message is issued to both parties.

How long are members expected to keep MCA dossiers?
In cases which are directed to an oral hearing, deferred or adjourned, then Members are asked to retain dossiers for a period of 4 weeks. This is to allow for the 7 days to issue the directions, then a 14 day period for the parties to respond using the MCA directions form and a further 7 days for the other party to decide if they wish to make any representations.

Cases where a paper decision has been issued can be securely destroyed immediately after the assessment has been sent.
What happens if a response form is received after 4 weeks of the panel?
The 4 week timeframe may prove a challenge for some, bearing in mind the need for legal representatives to consult with their client etc and therefore we do expect a number of MCA Response Forms to be received beyond the 4 week period.

The Response Forms will be considered by an MCA Duty Member if the case is not listed. If the case is listed, it will be sent to the Panel Chair to consider.

What is the fee for completing this work?
The fee for completing an MCA bundle is expected to cover the work that these forms will generate. If the work involved in responding to the issues raised in a Response Form takes longer than 15 minutes, then the MCA member can seek approval to claim an exceptional fee for the additional work. Work may be claimed in 15 minute intervals, up to a maximum of 2 hours, using the daily casework rate, pro rata at the hourly rate of £40.
Member Case Assessment Response Form (Vers 2)

Date:

Prisoner Name
Prisoner Number
Prison

This response form relates to the Directions issued by the Parole Board for the above case.

This form is issued to the Secretary of State Representative and the Prisoner or Legal Representative, if one has been appointed. The purpose of this form is to achieve a focused and effective hearing.

As a party to the proceedings the Board invites your comments on the issues or points of focus for the oral hearing, together with the logistics for the day. Please set out in the boxes below any comments you may have.

Please note that all responses on behalf of representatives of the Secretary of State must be sent via the Public Protection Casework Section, before they are sent to the Board. All responses must also be shared with both parties to the hearing.

Party:

Form completed by (name):________________________________________

Date:__________

Key issues:

Please inform the Board if you consider that there are additional issues that are key to this case:

Logistics:

If you disagree with any of the following, please say so below and explain why. Where you are seeking an additional direction, please see below.

Time Estimate:
Number of Panel Members:
Suitability for videolink:
Witnesses Directed:
Any other:

Requests for additional directions or to revoke or vary any direction:
If you wish to make a request for additional directions, or to revoke or vary any direction made, please do so below, giving reasons. You may wish to continue detailed submissions on a separate page.

This form should be returned within 14 days of receipt. You must send a copy of your completed form to the Parole Board and to the other party.

The Parole Board will consider all comments and requests; parties are reminded that the final decision will rest with the panel chair.

Parole Board
Annex 18: Suggested wording

For negative decisions

We/I have considered the principles set out in the case of Osborn, Booth & Reilly [2013] UKSC 61 concerning oral hearings. We/I do not find that there are any reasons for an oral hearing. In addition, the prisoner has not submitted any reasons for an oral hearing. Therefore an oral hearing is declined.

Test for release:

“The Parole Board must not give a direction [for release] ... unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.”

Test for open conditions:

“A move to open conditions should be based on a balanced assessment of risk and benefits. However, the Parole Board’s emphasis should be on the risk reduction aspect....the Parole Board must take into account:
- the extent to which the ISP has made sufficient progress during sentence addressing and reducing risk to a level consistent with protecting the public from harm in circumstances where the ISP in open conditions would be in the community, unsupervised, under licensed temporary release;
- the extent to which the ISP is likely to comply with the conditions of any such form of temporary release;
- the extent to which the ISP is considered trustworthy enough not to abscond;
- the extent to which the ISP is likely to derive benefit from being to address areas of concern and to be tested in a more realistic environment”

For determinate recalls with less than 12 weeks to SED

“The panel considers that an oral hearing is appropriate in this case. Unfortunately, as your Sentence Expiry Date (SED) is on xx/xx/xxxx, the Parole Board is unable to convene an oral hearing before you will be automatically released at your SED. This means that it will not be able to hold your oral hearing.”
Annex 19: Glossary

Abbreviations

Legislation
CJA 1967  Criminal Justice Act 1967
CJA 2003  Criminal Justice Act 2003
CJCSA 2000  Criminal Justice and Court Services Act 2000
CJIA 2008  Criminal Justice and Immigration Act 2008
C(S)A 1997  Crime (Sentences) Act 1997
DPA 1998  Data Protection Act 1998
DVCVA 2004  Domestic Violence, Crime and Victims Act 2004
LASPO 2012  Legal Aid, Sentencing and Punishment of Offenders Act 2012
MHA 1983  Mental Health Act 1983
OMA 2007  Offender Management Act 2007
PBR 2011  Parole Board Rules 2011
PBR 2016  Parole Board Rules 2016

Other
ACO  Assistant chief officer (probation service)
ACR  Automatic conditional release
AIs  Agency instructions (HMPPS)
ALB  Arm’s length body
ARD  Automatic release date
ATE  After the event (insurance)
CDS  Criminal Defence Service
CJSM  Criminal Justice Secure e-mail
CLS  Community Legal Service
CPPC  Critical public protection case
CRD  Conditional release date
CSAP  Correctional Services Accreditation Panel
DCR  Discretionary conditional release
DCR-ES  Discretionary conditional release - extended sentence
DDC  Deputy director of custody
DTO  Detention and training order
ECHCR  European Convention on Human Rights
EDS  Extended determinate sentence
EPP  Extended sentence for public protection
ERS  Early release scheme
ES  Extended sentence
FNP  Foreign national prisoners
FTR  Fixed term recall
GBH  Grievous bodily harm
GPP  Generic parole process
GPP-D  Generic parole process for determinate sentence prisoners
HDC  Home detention curfew

8 From Arnott and Creighton
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>HMCTS</td>
<td>HM Courts and Tribunals Service</td>
</tr>
<tr>
<td>HMP</td>
<td>Her Majesty’s Pleasure</td>
</tr>
<tr>
<td>HMP</td>
<td>Her Majesty’s Prison</td>
</tr>
<tr>
<td>HMPPS</td>
<td>Her Majesty’s Prison and Probation Service</td>
</tr>
<tr>
<td>ICA</td>
<td>Independent costs assessor</td>
</tr>
<tr>
<td>ICM</td>
<td>Intensive case management</td>
</tr>
<tr>
<td>IIS</td>
<td>Inmate Information System</td>
</tr>
<tr>
<td>IPP</td>
<td>Imprisonment for public protection</td>
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<td>ISP</td>
<td>Indeterminate sentenced prisoners</td>
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<td>LAA</td>
<td>Legal Aid Agency</td>
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<td>LED</td>
<td>Licence expiry date</td>
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<td>LRC</td>
<td>Local review committee</td>
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<td>LRRS</td>
<td>Lifer Review and Recall Section</td>
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<td>MALRAP</td>
<td>Multi-agency lifer risk assessment panel</td>
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<tr>
<td>MAPPA</td>
<td>Multi-agency public protection arrangements</td>
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<td>MCA</td>
<td>Member Casework Assessment</td>
</tr>
<tr>
<td>MHRT</td>
<td>Mental health review tribunal</td>
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<tr>
<td>MoJ</td>
<td>Ministry of Justice</td>
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<tr>
<td>NDPB</td>
<td>Non-departmental public body</td>
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<tr>
<td>NIS</td>
<td>National Identification Service</td>
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<tr>
<td>NPD</td>
<td>Non-parole release date</td>
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<td>NPS</td>
<td>National Probation Service</td>
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<td>OCPA</td>
<td>Office of the Commissioner for Public Appointments</td>
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<td>OM</td>
<td>Offender manager</td>
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<td>OMM</td>
<td>Offender Management Model</td>
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<td>OMU</td>
<td>Offender management unit</td>
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<td>OS</td>
<td>Offender supervisor</td>
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<td>PAROM 1</td>
<td>Parole Assessment Report Offender Manager</td>
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<td>PAROM 1+</td>
<td>Parole Assessment Report Offender Manager – Addendum</td>
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<td>Price competitive tendering</td>
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<td>PED</td>
<td>Parole eligibility date</td>
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<td>PI</td>
<td>Probation Instruction</td>
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<td>PIES</td>
<td>Prisoner’s income and expenditure statement</td>
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<td>PNCB</td>
<td>Police National Computer Bureau</td>
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<tr>
<td>PCS</td>
<td>Public Protection Casework Section</td>
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<tr>
<td>PPO</td>
<td>Prisons and Probation Ombudsman</td>
</tr>
<tr>
<td>PPO</td>
<td>Prolific and other priority offender</td>
</tr>
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<td>PPP</td>
<td>Public Protection Panel</td>
</tr>
<tr>
<td>PPUD</td>
<td>Public Protection Unit Database</td>
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<td>PSI</td>
<td>Prison Service Instruction</td>
</tr>
<tr>
<td>PSO</td>
<td>Prison Service Order</td>
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<tr>
<td>RA</td>
<td>Responsible authority</td>
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<tr>
<td>RMP</td>
<td>Risk management plan</td>
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<tr>
<td>ROTL</td>
<td>Release on temporary licence</td>
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<td>SCC</td>
<td>Standard Crime Contract</td>
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<td>SCU</td>
<td>Special Cases Unit</td>
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<td>Standard determinate sentence</td>
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<td>SED</td>
<td>Sentence expiry date</td>
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<td>SIAC</td>
<td>Special Immigration Appeals Commission</td>
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<td>SLED</td>
<td>Sentence and licence expiry date</td>
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<td>SPOC</td>
<td>Single Point of Contact</td>
</tr>
<tr>
<td>SPR</td>
<td>Sentence planning and review</td>
</tr>
<tr>
<td>TC</td>
<td>Therapeutic community</td>
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<td>Abbreviation</td>
<td>Description</td>
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<td>--------------</td>
<td>--------------------------------------------------</td>
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<tr>
<td>TERS</td>
<td>Tariff Expired Removal Scheme</td>
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<td>UKBA</td>
<td>UK Border Agency</td>
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<td>VISOR</td>
<td>Violent and Sexual Offenders Register</td>
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<td>VPS</td>
<td>Victim personal statement</td>
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<td>YJB</td>
<td>Youth Justice Board</td>
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<tr>
<td>YOI</td>
<td>Young Offender Institution</td>
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<td>YOT</td>
<td>Youth offending team</td>
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**Offending behaviour courses and risk assessment tools**

<table>
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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ART</td>
<td>Aggression Replacement Training</td>
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<tr>
<td>ARV</td>
<td>Alcohol Related Violence Programme</td>
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<tr>
<td>ASOTP-CV</td>
<td>Adapted Sex Offender Treatment Programme – Community Version</td>
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<tr>
<td>ASRO</td>
<td>Addressing Substance Related Offending</td>
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<tr>
<td>BSR</td>
<td>Building Skills for Recovery</td>
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<tr>
<td>CALM</td>
<td>Controlling Anger and Learning to Manage it</td>
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<tr>
<td>CAPP</td>
<td>Comprehensive assessment of psychopathic personality</td>
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<tr>
<td>CARE</td>
<td>Choices, Actions, Relationships and Emotions</td>
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<tr>
<td>CBT</td>
<td>Cognitive behavioural therapy</td>
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<tr>
<td>CDVP</td>
<td>Community Domestic Violence Programme</td>
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<tr>
<td>COVAID</td>
<td>Control of violence and anger in impulsive drinkers</td>
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<tr>
<td>CSB</td>
<td>Cognitive Skills Booster</td>
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<td>CSCP</td>
<td>Cognitive Self Change programme</td>
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<td>C-SOGP</td>
<td>Community Sex Offenders Group Programme</td>
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<td>DID</td>
<td>Drink Impaired Drivers Programme</td>
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<tr>
<td>DSM</td>
<td>Diagnostic and statistical manual of mental disorders</td>
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<td>DSPD</td>
<td>Dangerous and severe personality disorder unit</td>
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<td>ETS</td>
<td>Enhanced Thinking Skills Programme</td>
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<td>FOR</td>
<td>Focus on Resettlement</td>
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<td>GBP</td>
<td>Generic Booster Programme</td>
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<td>HCR-20</td>
<td>Historical, Clinical, Risk Management-20</td>
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<td>Healthy sexual functioning</td>
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<td>Integrated Domestic Abuse Programme</td>
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<td>International personality disorder examination</td>
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<td>I-SOTP</td>
<td>Internet Sex Offender Treatment Programme</td>
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<td>JETS</td>
<td>Juvenile Estate Thinking Skills</td>
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<td>Juvenile sex offender protocol for assessing risk</td>
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<td>Million clinical multiaxial inventory-III</td>
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<td>NSOGP</td>
<td>Northumbria Sex Offenders Group Programme</td>
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<td>OASys</td>
<td>Offender Assessment System</td>
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<td>OGP</td>
<td>OASys general re-offending predictor</td>
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<td>OGRS3</td>
<td>Offender group reconviction scale version 3</td>
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<td>OSAP</td>
<td>Substance Abuse Programme</td>
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<td>OASys violence predictor</td>
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<td>P-ASRO</td>
<td>Prison – Addressing Substance Related Offending</td>
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<td>PCL-R</td>
<td>Psychopathy checklist – revised</td>
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<td>Prison Partnership Therapeutic Community Programme</td>
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<td>Prison Partnership Twelve Step Programme</td>
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<td>Priestley OTO</td>
<td>Priestley One to One Programme</td>
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<td>RAPt</td>
<td>Rehabilitation of Addicted Prisoners Trust</td>
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<td>RSVP</td>
<td>Risk of sexual violence protocol</td>
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<td>SACJ</td>
<td>Structured anchored clinical judgment</td>
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<td>Acronym</td>
<td>Description</td>
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<tr>
<td>SARA</td>
<td>Spousal assault risk assessment</td>
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<tr>
<td>SARN</td>
<td>Structured assessment of risk and need</td>
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<tr>
<td>SAVRY</td>
<td>Structured assessment of violence risk in youth</td>
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<td>SCP</td>
<td>Self Change Programme</td>
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<td>SDP</td>
<td>Short Duration Programme</td>
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<tr>
<td>SOPO</td>
<td>Sex offences prevention order</td>
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<tr>
<td>SOTP</td>
<td>Sex Offenders Treatment Programme</td>
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<tr>
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<td>Sex Offenders Treatment Programme Adapted Better Lives Booster</td>
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<tr>
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<td>SOTP BNM</td>
<td>Sex Offenders Treatment Programme Becoming New Me</td>
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<td>Sex Offenders Treatment Programme Healthy Sexual Functioning</td>
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<td>Version of the HCR-20 used to assess the risk of sexual violence</td>
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<td>Thames Valley Sex Offenders Group Programme</td>
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<td>VPS</td>
<td>Violence prediction scheme</td>
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<tr>
<td>VRAG</td>
<td>Violent risk assessment guide</td>
</tr>
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</table>
Annex 20: Where to obtain further help

MCA Duty member
You may wish to phone the Duty Member for advice. This role will be available at the Parole Board Monday to Friday, for consultation on any case.

Duty Member Telephone Numbers: **0203 334 4666** or **0203 334 6402**.

Secretariat
If you have any operational or administrative questions, please contact the Admin Team on 0203 334 6621 or **MCA@paroleboard.gsi.gov.uk**

Contact the Member Practice Advisor, Sophie Klinger on 0203 334 5329 or **Sophie.Klinger@paroleboard.gsi.gov.uk**.

Contact the Legal Advisor, Balbir Matharu on 0203 334 4755 or **Balbir.Matharu@paroleboard.gsi.gov.uk**.

Advice of specialist member at the MCA stage
A new initiative to support MCA is the ability to contact a specialist member (psychologist or psychiatrist) for advice. This might include, for example, advice on diagnosed mental health conditions and their implications, the type of professional witness needed, the content of reports, expectations of treatment interventions and any case specific questions. Details of the specialist members who are willing to offer advice are in PBM 47-16.

Consulting a second member/referring to a second member
It may be possible in exceptional cases to have the case reviewed by a second member or to contact a second member for discussion. Contact the Admin Team for further information. Alternatively in such cases, it may be more appropriate to consider the case at an oral hearing.

Relevant PBMs
You may find relevant information in PBMs which can be found on the [extranet](#).
Annex 21: MCA panels: practicalities

How do I get listed for MCA panels?
An MCA panel is based on a one day work allocation of 8 hours. Each month the Listings Team will request availability for MCA paper panels, MCA Duty and remote MCA Duty by email to all members. The rota will then be published advising all members of their confirmed panel dates. The date of the MCA panel is the date by which you must have submitted your decisions.

What cases will I get on a MCA panel?
A MCA bundle is based on an 8 hour working day, with case types having the following nominal time allocations:

- Standard determinate sentence recall case = 1 hour
- Indeterminate Sentence Prisoners review/recall case = 2 hours
- DCR/EPP/EDS/ESP annual review case = 2 hours

A standard MCA bundle will ideally be comprised of the following six cases, reflecting the current ratio:

- 4 standard determinate sentence recall cases (previously assessed by SMR panels)
- 1.5 ISP review/recall cases (previously assessed by ICM panels)
- 0.5 DCR/EPP/EDS/ESP annual review cases (previously assessed by DCR panels)

However, in practice, a standard bundle will most likely contain 4 SDS cases, 1 ISP case and 1 DCR case or 4 SDS cases and 2 ISP cases.

If there are fewer than expected of any case type, these will be substituted on an equivalent time basis. For example, an ISP case could be substituted with 2 determinate recall cases. The MCA bundle would therefore be 7 cases (6 recalls and 1 ISP), but still an 8 hour allocation. Bundle variances will only occur when there is not enough of any particular case to compose a standard MCA bundle. Note that to ensure fair distribution of work members will not be able to request variations to their bundles.

What are the timelines for completing a MCA panel?
MCA panels will be issued to the courier 8 calendar days in advance of the MCA panel date or added onto PPUD 8 days before the panel date, for delivery on the following day. You will therefore have 7 calendar days to complete your MCA panel.

If you cannot receive a delivery 7 days before your MCA panel, you MUST alert the administration team at the Parole Board at least 10 calendar days before the panel date if they require any change to the standard delivery date, or to make any other alternative delivery arrangements.

You will receive an email with your bundle list 8 days before the MCA panel date.
What do I do when I get notification of a MCA panel?
Download the dossiers and assess the cases.

What do I do to download my MCA panel dossiers?
Log on to PPUD and go onto the relevant month. Click on the list of cases for your MCA panel. Click on <Download Dossiers> and save them to your laptop. Open File Explorer and open that you have saved the dossiers in. Click on <Extract All> and save them where you would like to.

What do I do if not all the dossiers download/I am debarred from opening a dossier?
Contact the Admin Team by email at mca@paroleboard.gsi.gov.uk.

Will I need to use different templates for MCA?
MCA has its own templates:

Paper decision template - to cover negative and positive paper decisions for all cases (where eligible).

Directions template (for all case types) – to cover MCA assessments, all adjournments and deferrals.

Both templates have drop down menus which determine what information you are required to enter. The majority of MCA Duty work can now be completed on the MCA templates. The MCA templates are available from the IT Team and will be saved onto the desktop of your laptop and used for all MCA panels.

How do I submit my MCA panel decisions?
Your decisions are saved to the folder ‘MCA Saved Documents’ on your C: Drive. You can leave them there or move them to a separate folder.

You will need to complete all the cases in your bundle (six cases in a standard MCA bundle) and then submit your decisions on one email to this dedicated email address: mca@paroleboard.gsi.gov.uk. Please indicate in the subject line of your email if there are any release decisions included. **Note: all paper decisions to release or recommend to open conditions in IPP cases must be sent to Sarah Valentine on Sarah.Valentine@paroleboard.gsi.gov.uk.** Only MCA cases must be sent to this email account; all other work should continue to be sent to the current addresses.

If the email is too large for it to be delivered in one email, please send part bundles, which are clearly labelled as such to the MCA email address.

All MCA decisions must be submitted to the administration team on or before the date of the panel.

All paper decisions for all cases will be issued by the Administration Team (negative and positive paper decisions). All Directions for oral hearing, deferrals or adjournments will be issued by the relevant case manager.
What do I do about saving copies of my work and for how long?
You should retain your decision letter and the dossier for 4 weeks after the panel.

How will I be paid?
The fee for completing one MCA panel will be £320.

Members will need to use the revised claim form (date 10th November 2014), which has an additional column 'Fee Type'. This field will need to be populated with the fee type claimed for, in this case with 'MCA'. All other fields will remain the same.

Submit your claim to Shared Services in the same way. Shared Services will verify their PPUD records with your submitted member claim form to ensure you are paid correctly. Members are reminded that claims must be submitted within a maximum 8 weeks from the date of the panel.

What should I do when additional information is needed?
There may be occasions when you need to request additional information before you can complete your paper review. When considering what is appropriate for the case the following guidance may be useful:

- If you require a simple clarification on a point or issue, for example confirmation of a place at an approved premises, or confirmation of sentence dates that is unclear from the dossier, these can be requested via an email to the Admin Team at MCA@paroleboard.gsi.gov.uk

- This information should be available within a day or two, and should be managed within the MCA timetable. These type of requests are more often associated with determinate cases and particularly recalls.

- If any of the information subsequently provided is different from that which is within the dossier then it is recommended that you record this in your decision so that the parties know where the correct information came from.

- If more substantial information is necessary which goes to your assessment of risk this must only be provided in an open and transparent manner. Do not request this via an email to the Admin Team. All parties must be aware of the additional information and it is therefore appropriate to issue directions to defer or adjourn the case, or issue a negative decision.

- To issue a negative decision – use the MCA Decision form. The negative decision should set out the position on the day of the assessment and record what additional information would be needed for the next panel. You can also suggest that the SoSF could refer the case back once the additional information has been secured. For determinate recall cases there is also the possibility that once the additional information has been received, the SoSF could make an executive decision without the need to refer the case back to the Board. If you opt for this route, your work on the case will be completed.

- To defer the case - issue an MCA Directions form setting out what information will be required before the assessment can be completed. This will mean your involvement in the case ceases. The case will go back into the listing queue and will be allocated to another member in due course. This is not necessarily
the fairest option for the prisoner and concluding the case on the papers, suggesting an earlier re-referral may be preferable.

- To adjourn the case - issue an MCA Directions form setting a deadline for provision of the information. The case is retained by you. You should consider carefully the length of time before the case is re-convened, balancing the time needed to provide the information with your capacity to hold the dossier and availability to attend the re-convening hearing, if there is to be one. Adjourned cases may be able to be completed on the papers and is a good reason for adjourning rather than deferring.

Will I be entitled to additional fees?
The fee for completing an MCA bundle is expected to cover the work required in order to reach a decision for issue to the parties. However, there may be circumstances when significant extra work by the MCA member is needed. These will be rare; if extensive additional information is required in order to conclude the case or send it to oral hearing, members may wish to consider issuing a negative decision instead and set out what would assist a future panel. This may be a more favourable outcome for the prisoner who will have his review concluded swiftly, and will know what will be needed for the next review. However, where a significant amount of work has been undertaken following the receipt of additional information, a request for an exceptional payment can be made. Work may be claimed in 15 minute intervals, up to a maximum of 2 hours, using the daily casework rate, pro rata at the hourly rate of £40.

Claims should be made to the case manager, who will escalate to the team manager for approval.

Could I get the opinion of a specialist member at the MCA stage?
A new initiative to support MCA is the ability to contact a specialist member (psychologist or psychiatrist) for advice. This might include, for example, advice on diagnosed mental health conditions and their implications, the type of professional witness needed, the content of reports, expectations of treatment interventions and any case specific questions.

Details of the specialist members who are willing to offer advice are in PBM 47-16.

Who else can I contact if I need advice on my MCA panel?
There will be a rota of MCA Duty member at the Parole Board from Monday to Friday. All MCA Duty members will be actively participating in MCA panels. They are available for consultation on any case.

Duty Member Telephone Numbers: 0203 334 4666 or 0203 334 6402.

Contact the Member Practice Advisor, Sophie Klinger on 0203 334 5329 or Sophie.Klinger@paroleboard.gsi.gov.uk.

Contact the Legal Advisor, Balbir Matharu on 0203 334 4755 or Balbir.Matharu@paroleboard.gsi.gov.uk.
If you have any operational or administrative questions, please contact the Admin Team on 0203 334 6621 or MCA@paroleboard.gsi.gov.uk

If you require legal advice please contact the legal advisor.

The MCA Guidance will continue to evolve as implementation becomes embedded. Members will be notified of substantial additions or changes by PBM. Minor updates will be noted in the Members’ Newsletter. The most up to date version will always be available on the extranet.

**Will I sit on the panel of my MCA cases that go to oral hearing?**
Continuity of member throughout the case remains an objective. However, the size of the backlog currently means that MCA cases will have to wait for listing in accordance with the Prioritisation Framework, significantly reducing the options for list the case more quickly. Consequently, during the initial MCA implementation phase, cases will not be specifically allocated at oral hearing for MCA members.
Annex 22: MCA Quality Assurance

Guidance for completing MCA quality assessment (QA)

1. Purposes of MCA quality assessment
The purposes of MCA quality assessment are:

- to ensure that public protection is not compromised
- to maintain the Parole Board’s reputation for high quality, robust decision making
- to ensure that members are applying MCA Guidance consistently and appropriately
- to ensure that these overarching standards are achieved:
  - directions are viable and progress the case
  - decisions are logical, fair, evidence based and reflect current law and guidance
  - practice safeguards the reputation of the Board and promotes fairness and respect
- to provide feedback accordingly to members on their MCA work
- to identify good practice which can be shared more widely and poor approaches which can be discouraged.

This procedure is called quality assessment rather than “quality assurance” because it represents only one aspect of a wider performance review (just as “practice observation” is one element of the Quality Assurance Framework (QAF))

2. How the MCA Quality Assessor undertakes the work
A MCA Quality Assessor receives two cases sampled from an MCA panel, ideally including:

- one dossier and its paper decision (positive or negative) with a reasons letter on the MCA Paper Decision template
- one dossier and its directions for an oral hearing on the MCA Directions template.

The Quality Assessor is notified in advance with the cases and deadline for assessment. Dossiers and anonymised decisions are sent electronically.

The fee for assessing these two cases is £150. Quality Assessors may opt to undertake two assessments in a day (four cases sampled from two MCA panels) for a fee of £300.

After reading the dossier thoroughly (as though completing the decision), the Assessor forms a view, then reads the member’s decision carefully and reflectively before critiquing it.

Annexes 1 & 2 show the assessment report forms for reasons and directions, respectively. One form is completed for each MCA case and decision.
Annexes 3 & 4 offer an outline of what Quality Assessors bring to the procedure and what characterises effective feedback to a MCA member. The hallmark of successful feedback is that it should be balanced, constructive and palatable to the recipient (“how would I feel if I was sent this?”) in order to be accepted and more likely to support improved practice in future.

Feedback should emphasise a few clear areas, good and bad (“the headlines”), and not swamp the recipient with so many elements of criticism that key learning is lost in the detail. Annex 4 includes a guide to quality assuring MCA quality assessments that can be used after a report form has been drafted.

3. Making an assessment

i) Identifying good and poorer practice

MCA Guidance provides the standards against which reasons and directions are critiqued.

Annexes 5 & 6 to this note reproduce the good practice checklists which are part of MCA Guidance and which identify essential points that effective reasons or directions should address. These are available for both MCA members and MCA Quality Assessors to help audit decisions.

It is important to identify whether the decision to send to oral hearing or write reasons is a reasonable one. The decision may not be the same as the Quality Assessor would make, but it is the role as assessor to decide whether the decision is justifiable and evidenced from the information available in the dossier.

Aspects of good practice should be commended in the QA report form and assessors are encouraged to let the MDP team know of any directions or decisions that could be used for training or coaching as exemplary examples. This can be noted in the Other Comments section at the end of the report.

Conversely, aspects of substandard performance need to be brought constructively to the MCA member’s notice, selected and graded so that learning can be derived for future practice. Any decision which is patently unsafe should be registered with the MDP team (outside the QA assessment process). This will be a rare occurrence where a decision exceptionally appears on the face of available evidence to completely undermine fair treatment or protection of the public.

ii) Using the tick boxes

Assessors should refer to the MCA Guidance for detail of what is expected in each section of the report form and record the key evidence in accordance with that, having marked the relevant box:

- **Y:** evidence clearly demonstrated
- **P:** partial evidence but missing element(s) would strengthen the MCA outcome
- **N:** little or no evidence demonstrated.

The form contains a tick symbol which can be copied and pasted in the appropriate box. The tick boxes provide a framework for assessment but they need to be elaborated with text to describe good practice and areas for improvement. If the
member has clearly failed to adhere to the MCA Guidance, the Quality Assessor should specify the relevant section of the guidance that applies.

The Other Comments section refers to additions or improvements that do not contribute to the overall assessment but which might support the member in future MCA work. It is not for the Quality Assessor to express personal preferences such as style of writing. If the document makes sense, there is little to be gained from saying that a different word or sentence structure would have worked better, unless it affects the quality of the outcome of the MCA case or its assessment.

The number of pages in the dossier should be noted at the top of the document. This helps assure the member that the Quality Assessor has seen the same dossier. It also alerts the Assessor when extra pages have been added since the MCA decision - pages which of course must be ignored in the quality assessment.

**iii) Reaching an overall assessment grade**

Whereas the Yes (Y), Partial (P) and No (N) tick boxes highlight specific areas of the MCA reasons or directions, the overall grade is a cumulative assessment. Looking across the reasons or directions as a whole, the Quality Assessor assigns a grade of Effective, Adequate or Ineffective. [In earlier quality assessments, these were designated Green, Amber and Red flags but had different descriptions.]

The definitions for the grades differ slightly for reasons and directions:

### Reasons:

- **Effective** reasons follow the Parole Board template and MCA Guidance and provide sufficient evidence in support of a clear decision against the Parole Board tests
- **Adequate** reasons are generally effective but demonstrate some shortcomings against the expected standard
- **Ineffective** reasons do not meet the expected standard in one or more significant areas

### Directions:

- **Effective** directions follow the Parole Board template and MCA Guidance and are likely to lead to a viable oral hearing without undue Panel Chair directions or deferral
- **Adequate** directions are generally effective but demonstrate some shortcomings against the expected standard. Panel chair may have to make further directions
- **Ineffective** directions do not meet the expected standard in one or more significant areas. Panel chair will have to undertake substantial further work.

The effect of these grades is that reasons or directions which are marked as Effective or Adequate broadly meet the standards of MCA Guidance and the overarching aims. Overall, reasons are logical, evidence-based and lawful; directions ensure a viable oral hearing and progress the case effectively. They may not be perfect but they do
the job well enough. Notable errors or omissions can be flagged against the Adequate grade for the attention of the MCA member to improve performance in future.

Both Effective and Adequate grades are acceptable to the Board in terms of quality.

An Ineffective grade means that the Quality Assessor finds reasons or directions do not properly meet overarching aims, probably because they contain one or more examples of poor practice to the point of being ineffective or open to challenge.

An Ineffective grade is not acceptable to the Board in terms of quality.

In the case of the Adequate and Ineffective grades, assessed weaknesses can be accumulative. They do not necessarily represent a single major imperfection (though they can if this is a sufficiently serious matter). A series of lesser weaknesses can tip the balance from Effective to Adequate or from Adequate to Ineffective.

4. After the assessment

Completed MCA quality assessment forms are returned to the MDP team’s inbox: MDPTeam@paroleboard.gsi.gov.uk clearly marking the email “Completed MCA Quality Assessment”.

The MDP team will collate your assessments and share their contents with the MCA member. If areas for improvement are identified, support and training can be offered. The member will be given the opportunity to provide feedback on the assessment (in the last section of the form).

Feedback from the member being assessed is welcome. It will be shared with the Quality Assessor by the MDP team. The Assessor should consider the feedback and whether it highlights any points that might impact on their quality assessment and needs a response.

If a member disagrees strongly with the quality assessment, the MDP team will refer the case and feedback to the next QA standardisation meeting in order for Quality Assessors to discuss the case and its assessment, including the feedback by assessor and MCA member.

5. How the Board uses MCA quality assessments

Decision-making is central to the Parole Board’s work and the contribution that it makes to public protection. The decisions of Parole Board members are subject to intense scrutiny.

The purpose of MCA QA is to ensure consistency of decision-making and confidence in practice and is underpinned by the Parole Board members’ core competencies. It gives members the opportunity to give and receive regular feedback and to identify good practice and areas for improvement.

MCA QA forms an integral part of the Quality Assurance Framework and contributes to continuous improvement of the Board’s work through strengthened consistency in decision-making. It also increases credibility and legitimacy with prisoners, victims, families and other stakeholders. MCA quality assessment outcomes will form part of each member’s performance review and gives the organisation a better understanding
of gaps in capability, skills and training, as well as contributing to organisational knowledge and learning.

6. Reassessment after receiving an Effective or Adequate grade

A member who receives an Effective or Adequate grade for their assessments has passed the quality assurance process and will continue to be assessed periodically, as will all members with MCA accreditation.

Members undertaking assessment in order to achieve accreditation will be notified that they have passed the MCA QA portion of the accreditation process. Depending on the type of accreditation, members will be re-assessed again, usually 4-6 months later, before joining the on-going periodic assessment.

7. Reassessment after receiving an Ineffective grade

A member who receives an Ineffective grade will be reassessed by a different Quality Assessor on different reasons or directions four to six weeks after they receive the results. This gives an opportunity to digest the initial feedback and apply any improvements necessary to future MCA panels that are undertaken.

So as not to unfairly skew the assessments, the new Quality Assessor will not know that they are marking a member who has already received an Ineffective grade. If the member does not complete an MCA panel within four to six weeks, reassessment will be undertaken when at least one further MCA panel has been completed.

If the member is assessed again and achieves a satisfactory standard (two Adequate grades or better), no further action will be taken and assessment will resume periodically, along with the rest of the membership.

A member receiving an Ineffective grade in the second set of assessed cases will be temporarily removed from the MCA panel rota and the MDP team will organise training or coaching for them.

8. Coaching and Training

Two methods of support and training are available for the members who have not achieved the required standard of MCA work:

i) Self-evaluation and ‘mock panels’

Receiving two Ineffective grades is often enough to prompt the member to revisit the relevant parts of the MCA Guidance mentioned in the assessments and review how MCA panels are approached.

Another method of improvement can be for the member to work on a mock panel. A mock panel completes MCA cases where decisions have already been made by a MCA member and issued. It is comprised of the same mixture of case-types as a live MCA panel and the member works on the cases within the same time constraints. The reasons or directions are sent to the MDP team and will be quality assessed. The Quality Assessor will not know that it was a mock panel.
ii) Coaching/mentoring on a two-member panel

Two members (a mentor and a mentee) receive a live identical MCA bundle to complete. They compare their decisions. The mentor’s directions or decisions are issued. This enables a dialogue between the two members which is carried on into a second MCA panel.

On this second panel, it is expected that feedback from the first encounter will instil a fuller understanding of the MCA process for the mentee. The mentee writes the directions or reasons. The mentor checks the decisions and works with the mentee to agree any amendments. The mentee’s final directions or reasons are issued.

If there are any continuing problems in terms of quality, this process can continue for an agreed number of panels. The process may also highlight a need for further training or development for the mentee.

Annex 1: Assessment report form for reasons
Annex 2: Assessment report form for directions
Annex 3: Some Assessor skills
Annex 4: What is Effective Feedback
Annex 5: Good practice checklist for reasons
Annex 6: Good practice checklist for directions
Annex 1 - MCA Quality Assessment for Paper Decision

Date of MCA panel assessed:

Quality Assessor number:

Date of Assessment:

PART 1: Assessment

<table>
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<th>Prisoner name and number:</th>
<th>Number of pages in the dossier:</th>
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Type of case and nature of the referral:

**Overarching aim: the decision is logical, fair and evidence-based and reflects current law and guidance**

✓ Effective Reasons provide sufficient evidence in support of a clear decision against the Parole Board tests, follow Parole Board templates and meet the requirements of MCA Guidance

✓ Effective practice safeguards the reputation of the Board and promotes fairness and respect

*Some performance indicators are set out in Part 2, rooting the standards for effective paper decisions in the members’ competency framework. QA assessors should reflect these requirements in their evaluation and comments.*

**Assessment summary:** the overall quality of the written decision
### Good points

| EFFECTIVE: reasons follow the Parole Board template and MCA Guidance and provide sufficient evidence in support of a clear decision against the Parole Board tests |
| ADEQUATE: reasons are generally effective but demonstrate some shortcomings against the expected standard |
| INEFFECTIVE: reasons do not meet the expected standard in one or more significant areas |

### Weaker points

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<th>The Decision</th>
<th>Evidenced?</th>
<th>Y</th>
<th>P</th>
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<td>Comments:</td>
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<td>Are the risk-related issues of the case being reviewed clearly identified and analysed?</td>
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<td>Comments:</td>
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<tr>
<th>The Reasons</th>
<th>Evidenced?</th>
<th>Y</th>
<th>P</th>
<th>N</th>
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<td>Does the narrative follow the MCA Guidance?</td>
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<td>Comments:</td>
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<tr>
<td><strong>Other comments:</strong> any borderline issues or additional suggestions that are offered</td>
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<tr>
<td>Parole Board member: your response to this feedback</td>
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<td>Date:</td>
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## PART 2: Competencies

*Standards for drafting paper decisions as related to the Parole Board members’ competency framework*

<table>
<thead>
<tr>
<th>Competency</th>
<th>Definition</th>
<th>Some performance indicators</th>
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</thead>
<tbody>
<tr>
<td><strong>Knowledge &amp; Values</strong></td>
<td><em>To ensure a suitable level of knowledge of the jurisdiction, law and remit of the Board and an understanding of the appropriate principles and standards</em></td>
<td>Applies the legal framework (<em>eg. the Secretary of State’s referral and tests for release or open conditions</em>). Keeps up-to-date with changes in the law. Follows the Board’s procedural rules (<em>eg. makes directions for a juvenile, MHU case or ISP recall unless releasing on the papers</em>). Is properly prepared and identifies the issues in the case.</td>
</tr>
<tr>
<td><strong>Communication</strong></td>
<td><em>To ensure effective communication between chairs, members, parties and members of staff and that written communication is clearly drafted</em></td>
<td>Uses correct forms of address and appropriate language that is readily understood by all. Drafts clearly, accurately and concisely (<em>eg. sets out clear arguments in structured, evidence-based reasons</em>). Uses systems, templates and electronic media as required.</td>
</tr>
<tr>
<td><strong>Conduct of cases</strong></td>
<td><em>To ensure fair and timely disposal of all cases</em></td>
<td>Completes the required caseload. Is objective, open-minded and inspires respect and confidence (<em>eg. by proficient presentation</em>). Does not need to obtain further advice or information (<em>eg. by adjourning or deferring</em>). Estimates time realistically and works within time limits (<em>eg. setting future dates</em>).</td>
</tr>
<tr>
<td><strong>Evidence</strong></td>
<td><em>To ensure that all relevant issues are addressed by eliciting and managing evidence</em></td>
<td>Demonstrates familiarity with the issues, identifies areas to clarify or investigate, and accurately analyses information (<em>eg. beyond simply recording evidence</em>). Ensures only relevant issues are addressed and considered. Focuses on risks. Calls for additional reports and other evidence where appropriate (<em>eg. possible next steps to assist future panels</em>).</td>
</tr>
<tr>
<td><strong>Decision making</strong></td>
<td><em>To ensure effective deliberation, structured decision making, and disposal of the case</em></td>
<td>Properly weighs the sufficiency and quality of evidence in relation to risks in order to make reasoned decisions (<em>eg. demonstrates sound judgement</em>). Provides reasons that indicate application of the relevant law, the Board’s guidance and the Secretary of State’s directions (<em>eg. MCA guidance, PBM and OBR principles</em>).</td>
</tr>
<tr>
<td><strong>Fair treatment</strong></td>
<td><em>To ensure and promote fair treatment for all</em></td>
<td>Makes comments in a manner that is sensitive to all. Ensures additional requirements are properly met. Recognises the needs of those without representation and takes account of all factors that may undermine fair treatment.</td>
</tr>
</tbody>
</table>
PART 1: Assessment

<table>
<thead>
<tr>
<th>Prisoner name and number</th>
<th>Number of pages in the dossier</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Type of case and nature of the referral:

Overarching aim: the hearing is viable and the Directions progress the case

✔ Effective Directions follow Parole Board templates and meet the requirements of MCA Guidance; they are likely to lead to viable oral hearings without undue Panel Chair directions or deferral

✔ Effective practice safeguards the reputation of the Board and promotes fairness and respect

_Some performance indicators are set out in Part 2, rooting the standards for effective Directions in the members’ competency framework. QA assessors should reflect these requirements in their evaluation and comments._

**Assessment summary:** the overall quality of the directions
### Good points

| EFFECTIVE: directions follow the Parole Board template and MCA Guidance and are likely to lead to a viable oral hearing without undue Panel Chair directions or deferral |
|ADEQUATE: directions are generally effective but demonstrate some shortcomings against the expected standard. Panel chair may have to make further directions. |
|INEFFECTIVE: directions do not meet the expected standard in one or more significant areas. Panel chair will have to undertake substantial further work. |

### Weaker points

<table>
<thead>
<tr>
<th>The Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is this a well evidenced, defensible decision, based on the evidence in the dossier?</td>
</tr>
<tr>
<td>Comments:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The issues section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is this section of the directions easy to follow and sufficient for the complexity of the case?</td>
</tr>
<tr>
<td>Are the nature of the case, the key issues for review, and the main risk factors or other concerns adequately analysed and explained?</td>
</tr>
<tr>
<td>Comments:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Building the Oral Hearing</th>
</tr>
</thead>
</table>

Cut and paste tick in following sections ✅

MCA Quality Assurance – MCA v19.2 last updated 12 June 2018
Are the directed reports relevant and necessary? Are the requirements for each clearly specified?

Is the MCA guidance followed, including timescales for submission of specialist reports?

Are the witnesses appropriate and necessary? Are their intended contributions appropriately specified?

If representations were available, is it clear they were considered and appropriate action taken?

Is the panel size and composition appropriate and justified, including allocation of a specialist panel member where this is necessary?

Are telephone or video-link arrangements considered? Are reasons given why these would or would not be appropriate?

Are other panel logistics reasonable, including time allocated?

Are any special needs of the prisoner mentioned and accommodated?

Comments:

Other comments: any borderline issues or additional suggestions that are offered

Parole Board member: your response to this feedback

Date:
## PART 2: Competencies

**Standards for setting oral hearing directions as related to the Parole Board members’ competency framework**

<table>
<thead>
<tr>
<th>Competency</th>
<th>Definition</th>
<th>Some performance indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Knowledge &amp; Values</strong></td>
<td>To ensure a suitable level of knowledge of the jurisdiction, law and remit of the Board and an understanding of the appropriate principles and standards</td>
<td>Applies the legal framework <em>(eg. the Secretary of State’s referral)</em>. Keeps up-to-date with changes in the law. Follows the Board’s procedural rules <em>(eg. for non-disclosure)</em>. Is properly prepared and identifies the issues in the case.</td>
</tr>
<tr>
<td><strong>Communication</strong></td>
<td>To ensure effective communication between chairs, members, parties and members of staff and that written communication is clearly drafted</td>
<td>Uses correct forms of address and appropriate language that is readily understood by all. Drafts clearly, accurately and concisely <em>(eg. sets out clear arguments in a structured, evidence-based and focused narrative)</em>. Uses systems, templates and electronic media as required.</td>
</tr>
<tr>
<td><strong>Conduct of cases</strong></td>
<td>To ensure fair and timely disposal of all cases</td>
<td>Completes the required caseload. Is objective, open-minded and inspires respect and confidence <em>(eg. by proficient presentation)</em>. Obtains further advice or information from appropriate sources when required <em>(eg. adjourned for further information)</em>. Minimises delays and estimates time realistically <em>(eg. in setting dates and deadlines)</em>.</td>
</tr>
<tr>
<td><strong>Evidence</strong></td>
<td>To ensure that all relevant issues are addressed by eliciting and managing evidence</td>
<td>Demonstrates familiarity with the issues, identifies areas to clarify or investigate, and accurately analyses information. Ensures only relevant issues are addressed and considered. Focuses on risks. Calls for additional reports and other evidence where necessary <em>(eg. directs relevant documents; foresees the need for specialist assessments or participants)</em>.</td>
</tr>
<tr>
<td><strong>Decision making</strong></td>
<td>To ensure effective deliberation, structured decision making, and disposal of the case</td>
<td>Properly weighs the sufficiency and quality of evidence in relation to risks in order to make reasoned decisions <em>(ie. demonstrates sound judgement)</em> that indicates application of the relevant law, the Board’s guidance and the Secretary of State’s directions <em>(eg. MCA guidance, PBM and OBR principles)</em>.</td>
</tr>
<tr>
<td><strong>Fair treatment</strong></td>
<td>To ensure and promote fair treatment for all</td>
<td>Makes comments in a manner that is sensitive to all. Ensures additional requirements are properly met <em>(eg. in setting panel logistics)</em>. Recognises the needs of those without representation and takes account of all factors that may undermine fair treatment.</td>
</tr>
</tbody>
</table>
Annex 3 – Some MCA QA Assessor Skills

As a QA assessor, you need to be able to:

• Prepare the case thoroughly before starting to assess a colleague’s reasons or directions

• Accurately and objectively assess those reasons or directions, making precise observations

• Assess overall competency against MCA Guidance and agreed standards

• Stand back for a moment and consider the purposes of QA work, including what may best help the member in developing good practice

• Decide and distil the key messages that support your rating and that will help the member understand the assessment

• Accurately complete the documentation, choosing appropriate language and focusing on essential points – not every possible detail

• Offer positive encouragement as well as critical feedback where that is needed

• Give helpful feedback - empathise with the member, challenge constructively but facilitate that member doing MCA work
Annex 4 – What is effective feedback?

Written feedback describes how well you think someone has performed. Its aim is to help the receiver learn more by reinforcing good performance and identifying better practice or any developmental needs.

It should be:

- Clear, specific and focus on things an individual can control and change
- Based on established criteria
- A balance of the negative and the positive
- Presented in a constructive manner, likely to be helpful to the receiver.

Too much feedback can be counterproductive, particularly if the majority is critical. The receiver may just reject the whole assessment. Therefore, you need to be sensitive to the recipient. A balance of positive and negative points may help.

Effective feedback should share ideas and information, but be wary about giving highhanded advice. For example, ‘One method of dealing with such a situation might be to….’ is preferable to ‘You should have…….’.

Quality assure your own QA assessment:

- Have you used constructive language, couched in developmental terms?
- Is the assessment evidence-based and does it follow MCA Guidance?
- Does it focus mainly on the essential points?
- Have you included both strengths and areas for development?
- Have you formatted the document usefully (e.g. pagination)?
- Have you used plain English, free of typos and spelling errors?
- Have you sent the assessment in on time?
Annex 5 – Good Practice Checklist

<table>
<thead>
<tr>
<th>Some elements to consider in MCA reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ <strong>Template</strong>: standard subheadings used; all relevant sections completed.</td>
</tr>
<tr>
<td>✓ <strong>Options</strong>: case is suitable for reasons, no oral hearing required – ie. <em>not</em> juvenile, MHU or lifer recall (unless OH declined and that appears fair); Osborn principles not ignored (excepting determinate sentence case with under 12 weeks to SED).</td>
</tr>
<tr>
<td>✓ <strong>Adjournment</strong>: no clear need to adjourn or defer for additional information.</td>
</tr>
<tr>
<td>✓ <strong>SoS referral</strong>: relevant options set out; conclusion reflects the Board’s remit and sentence details (eg. risk period for determinate); deportation issues recognised.</td>
</tr>
<tr>
<td>✓ <strong>Test for release</strong>: standard narrative; test used correctly; conclusion consistent.</td>
</tr>
<tr>
<td>✓ <strong>Evidence</strong>: dossier length, representations, non-disclosed material, any VPS and key omissions noted; correct SED or TED cited; offender’s age may be relevant.</td>
</tr>
<tr>
<td>✓ <strong>Representations</strong>: submissions noted with date; arguments/requests addressed.</td>
</tr>
<tr>
<td>✓ <strong>Non-disclosure</strong>: application addressed and determined appropriately.</td>
</tr>
<tr>
<td>✓ <strong>Offending</strong>: index offences/previous convictions summarised; <em>patterns</em> analysed; cautions/reprimands and allegations recorded where relevant to risk assessment.</td>
</tr>
<tr>
<td>✓ <strong>Risk factors</strong>: significant issues, showing patterns and impact; non-compliance and protective factors noted; explicit <em>analysis</em> (“<em>so what?</em>” for risk assessment).</td>
</tr>
<tr>
<td>✓ <strong>Mental health</strong>: concerns highlighted; psychological/medical risk factors noted.</td>
</tr>
<tr>
<td>✓ <strong>Evidence of change</strong>: outcomes of interventions; underlying factors, motivation, and capacity; positives <em>and</em> negatives noted (eg. success in open or ROTLs as well as absconds, adjudications, test results): data <em>analysed</em>, not just listed.</td>
</tr>
<tr>
<td>✓ <strong>Recalls</strong>: circumstances and consequences of breach; claims or mitigation noted from reports and representations; implications drawn for risk or offence pattern; was recall appropriate [standard “Calder paragraphs”]?</td>
</tr>
<tr>
<td>✓ <strong>Risk assessment</strong>: OGRS, OASys, RM2000 etc recorded as H/M/L grades; any divergence reconciled; panel’s own assessment of ROAR &amp; ROR made explicit.</td>
</tr>
<tr>
<td>✓ <strong>Risk management</strong>: key elements of plan summarised; effectiveness assessed; report writers’ recommendations noted; lack of fully formulated plan critiqued.</td>
</tr>
<tr>
<td>✓ <strong>Decision</strong>: clear, lawful conclusion linked to risk assessment and correct test for release; proportionate, logical and justifiable reasons; threat of legal challenge is remote; conditional or future release directed only if legitimate.</td>
</tr>
<tr>
<td>✓ <strong>Osborn</strong>: standard “OBR paragraph” used; Osborn principles explicitly applied.</td>
</tr>
<tr>
<td>✓ <strong>Licence conditions</strong>: if release, standardized wording for justified, necessary and proportionate licence conditions; any variation to VLU proposals explained.</td>
</tr>
<tr>
<td>✓ <strong>Next steps</strong>: possible updates set out (clarifications, omissions, assessments); insufficient time for review noted; possible recommendation to the SoFSS: specific treatment, programme or courses <em>not</em> proposed – nor categorisation or location.</td>
</tr>
<tr>
<td>✓ <strong>Style</strong>: no major typos, spelling mistakes or intrusive presentational features; reasons focused on risk and outcomes; clear, easy to follow and in plain English.</td>
</tr>
</tbody>
</table>
### Some elements to consider in MCA directions

- **Template**: standard format employed; all relevant sections completed.
- **Options**: hearing justifiable or obligatory [juvenile/MHU case if not released on papers or lifer recall]; or fair for determinate cases with 12 weeks left before SED.
- **SoS referral**: open as the only option for pre-tariff ISP; recognition if open prison proscribed by SoS; determinate case directed to hearing only if option is viable.
- **Adjournment**: no obvious need to adjourn for extra information; or preliminary directions written, specifying materials needed within realistic deadlines.
- **Deportation**: issues recognised; enforcement papers available or directed.
- **Purpose**: reason for proposed hearing is legitimate and made clear.
- **Osborn**: where relevant, OBR judgment cited and principles used correctly.
- **Non-disclosure**: any current issues addressed and determined appropriately.
- **Representations**: submission noted with date; arguments/requests addressed.
- **Narrative**: not so detailed or evaluative as to “try the case” or hamper a panel.
- **Issues**: key topics for the hearing adequately identified in the narrative and followed up in requirements, witness attendances and panel logistics.
- **Mental health**: concerns relating to risk noted and actioned.
- **Risk scores**: may be quoted but risks not assessed in ways that fetter a panel.
- **Requirements**: necessary reports and essential documents clearly directed if proportionate, reasonable, lawful and deliverable; specified deadlines feasible or four-week period reasonable; panel chair directions likely to be unnecessary.
- **Expected reports**: judge’s remarks, PSR, current OASys, OM & OS updates, early reports, programme reviews requested only if essential; all requests explained.
- **Specialist reports**: new or previous assessments essential; realistic deadlines.
- **Witnesses**: relevant; contribution precisely described (not formulaic wording).
- **Mental Health Unit** cases: reports, witnesses and panel follow MCA Guidance.
- **Panel chair**: chair’s final say is recognised concerning evidence, witness or observer attendance, video-link or telephone testimony; no possible witness ruled out.
- **Panel members**: roles and composition clear, proportionate and justifiable; deployment of specialist members follows MCA Guidance.
- **Logistics**: appear appropriate; diversity difficulties recognised and catered for.
- **Scotland & NI**: requirements and arrangements follow MCA Guidance.
- **Prioritisation or expedition**: requests addressed and/or justifiable case made.
- **Victim issues**: any VPS requests addressed and dealt with appropriately.
- **Style**: no major typos, spelling mistakes or intrusive presentational features; directions focus on outcomes; are succinct, easy to follow and in plain English.
Annex 23: Score bandings for OGRS3, OGP and OVP (two year %)

<table>
<thead>
<tr>
<th>Score Bandings for OGRS3, OGP and OVP (Two Year %)</th>
<th>Low</th>
<th>Medium</th>
<th>High</th>
<th>Very High</th>
</tr>
</thead>
<tbody>
<tr>
<td>OGRS3 (Offender Group Reconviction Scale)</td>
<td>0-49</td>
<td>50-74</td>
<td>75-89</td>
<td>90-99</td>
</tr>
<tr>
<td>OGP (OASys General Offending Predictor)</td>
<td>0-33</td>
<td>34-66</td>
<td>67-84</td>
<td>85-99</td>
</tr>
<tr>
<td>OVP (OASys Violence Predictor)</td>
<td>0-29</td>
<td>30-59</td>
<td>60-79</td>
<td>80-99</td>
</tr>
</tbody>
</table>