

## **Guidance during the coronavirus pandemic**

Despite the coronavirus pandemic the following principles do not change:

- Protection of the public
- Fairness
- The test for release

It must be borne in mind, at all times, that the overriding principle in respect of the appropriateness of any variation made to the nature of the hearing or the constitution of the panel is to consider whether it will undermine the fairness of the proceedings.

### Guidance issued on 20<sup>th</sup> March 2020

This should be read in conjunction with the guidance issued on 11th March 2020.

#### **1. Decision on the papers after a direction for an oral hearing**

After a case has been directed to an oral hearing by an MCA panel (under Parole Board rule 19) there are usually two main ways in which a review can be concluded on the papers before an oral hearing:

- Parole Board rule 21 – where further evidence has been received. Both parties need to be given 14 days to provide representations on whether to have an oral hearing and on the contents of the further evidence; and a direction for a case to be decided on the papers cannot be made where there is less than 3 weeks until the oral hearing. \*\*
- Parole Board rule 23 – where (a) the prisoner does not want a panel at an oral hearing to consider the case, or (b) the prisoner does not want to attend an oral hearing which has been listed. A hearing can take place in the absence of the prisoner if the panel feel that it is appropriate and necessary to do so.

\*\* Given the current circumstances, the Parole Board appreciates that there will be cases where, in exceptional circumstances, the review can be concluded on the papers less than three weeks before the hearing.

Some prisoners, as a matter of Parole Board policy, would ordinarily expect to be dealt with by way of an oral hearing, for example:

- Prisoners under the age of 18 where they cannot be released on the papers.<sup>1</sup>
- Any prisoner within a secure hospital setting or mental health or it is their first review having been in a mental health unit or secure mental health setting where they cannot be released on the papers.<sup>2</sup>
- Initial release of a life sentenced prisoner.<sup>3</sup>
- Life sentence prisoners: recommendation to open.<sup>4</sup>
- Where there are significant issues over the mental capacity of the prisoner.

This is important and must be given due weight. However, the final decision rests with the panel. For example, where a release decision is virtually inevitable in the case of a mercy killer.

## **2. Administratively cancelling of oral hearings**

An administrative cancellation is by the case manager and usually only happens when a prisoner has been transferred to a different prison during their parole window and the oral hearing is logistically no longer possible. However, this is being extended to cases where a member of the panel is unable to attend the hearing due to the coronavirus (for example, self-isolation) and the remainder of the panel feel that they cannot proceed in those circumstances. This does not apply to cases which have been adjourned. If an adjourned case needs to be deferred for a speedier review, the panel chair should issue a deferral notice to the case manager, however, please bear in mind the impact of moving from an adjournment to a deferral, particularly if evidence has already been taken.

Please note that once the listing of a case has been administratively cancelled, the panel will be de-assigned and will no longer have control of the case.

If a panel chair or co-panellist cannot attend the hearing due to the coronavirus, in the first place the following should be considered:

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<sup>1</sup> Please note that the Parole Board policy on the automatic progression to an oral hearing, for these case types, where the prisoner cannot be released on the papers has been paused during the coronavirus pandemic.

<sup>2</sup> Please note that the Parole Board policy on the automatic progression to an oral hearing, for these case types, where the prisoner cannot be released on the papers has been paused during the coronavirus pandemic.

<sup>3</sup> Please note that the Parole Board policy that the initial release of a life sentence prisoner cannot take place on the papers without an oral hearing has been paused during the coronavirus pandemic.

<sup>4</sup> The Parole Board policy that the recommendation for life sentence prisoners to open on the papers is permissible in exceptional cases has been paused during the coronavirus pandemic.

- Panel chair is unable to attend: In the case of a three-member panel, the case should only proceed with two panellists if it is suitable; the prisoner or representative voice no tenable objections to continue and one of the co-panellists is an accredited panel chair.
- Similarly, a single member panel could go ahead as long as the panel member holds the accreditation to sit as a single panel member: but the chances of this being suitable are slimmer, given the rationale of the MCA member or duty member when making directions and setting panel logistics. It is also worth speaking to the listings team to establish whether they can find a panel chair for the hearing. It may be that they are unable to do so but it is worth a try. The Parole Board is looking to provide a fast-track process to increase the number of single member chairs as a matter of urgency.
- Co-panellist is unable to attend: If a co-panellist cannot attend on the day of the hearing, the panel chair must decide whether it would be appropriate for the hearing to go ahead in their absence. The overriding principle is fairness. The proposal to proceed without any co-panellist must be canvassed with the prisoner or representative.

Panel members must notify the panel chair and Parole Board case manager as soon as possible if they are unable to attend the hearing.

Members should be particularly alert to cases where a specialist Parole Board member has become unavailable where the resolution of that case may hinge to a significant extent on that specialist's expertise.

The views of the prisoner or representative must always be sought before a decision is made as to whether the hearing can proceed, but the final decision lies with the panel chair.

It is also worth speaking to the listings team to establish whether they can find a co-panellist for the hearing. It may be that they are not able to do so but it is worth a try.

The panel can ask for an administrative cancellation rather than deferring the case (where there has not been an adjournment). However, please note that directions cannot be made with an administrative cancellation so deferrals should be made in cases where further directions are necessary.

The Operations Directorate have created a process map for the case managers on this which we have attached should members wish to see it.

If a member is thinking of deferring a hearing, the member will need to seek representations from both parties. Although the panel chair has the final decision, the opportunity to make representations allows the prisoner to respond to the change in circumstances and must be given due weight. The representations may, in any event, help with any further information or steps required.

### **3. Decision letter**

A note should be made at the start of the decision letter that the case was considered during the coronavirus pandemic.

We are urgently revisiting the guidance on directing cases to oral hearing in light of the current exceptional circumstances, and will be in touch in due course with guidance on this.

If a case is being deferred or adjourned because of the coronavirus then this needs to be noted in the adjournment or deferral notice. Caution should be taken so that personal information on individuals is not shared. The adjournment notice could say something along the lines of, "Due to the coronavirus and official government advice that has been given, this case is being adjourned because [input reason]. For example:

- X is unable to attend the hearing and there is no appropriate alternative stand-in.
- The Panel Chair/ co-panellist is unable to attend and the panel feel that they cannot convene without (the panel chair/ x number of panel members/ a specialist member)
- The prisoner's representative is unable to attend and the prisoner has requested that the hearing is adjourned for their representative to be present."

#### **4. Members linking in from other locations (i.e. other than the hub at 10 South Colonnade)**

The Board are trying to be as flexible as possible with facilitating oral hearings, where appropriate and possible. This includes panel members undertaking video/ telephone links from home to try and avoid delay to hearings.

Parole Board hearings must take place in private (Parole Board rule 15).

The possibility of video / telephone hearings, will also depend on a number of factors, such as:

- Is it appropriate? For example, does the prisoner have a disability which means that they would not be able to participate fully in the oral hearing if carried out by video link or telephone? Is the prisoner under 18 years old or otherwise vulnerable? Does the prisoner require an interpreter (to sign or where English is not their first language)?
- Whether the hearing can take place effectively with the panel members in different locations;
- Whether the prison can facilitate such a hearing; and
- Whether the witnesses can dial in remotely. Those who cannot dial in remotely may still be content to go to the prison.
- Can the panel (please see point 5 below for witnesses) conduct a hearing in private without distractions and background noise? Is there a risk of someone overhearing the conversations or overlooking notes or laptop? Is the member in a setting where no sensitive or personal information is

displayed on camera, such as family pictures or anything which indicates where a member lives?

- Is the internet connection stable and reliable?
- There should be good visibility
- Where possible, there should be a plain background

Representations will need to be sought from both parties. Although the prisoner does not have the final say, it is important that any changes during the parole review are communicated to both parties and that they are given the opportunity to submit representations.

Please also note the following:

- Pre and post panel discussions are still important and will need to take place via Skype. Members will need to remember to end the call with the other witnesses before the post-panel discussion begins.
- Check that the link is working throughout the hearing. This can be done by a quick check-in with all of the attendees to ensure that they are still dialled in (and have not lost connection) and that that they can hear what is being discussed.
- The panel chair must take written notes as the digital recording is unlikely to pick up all of the witnesses/ may only pick up the person who is controlling the recording. Where proceedings are not digitally recorded there will be no verbatim record. In such a case, McIntyre (2013), it was held that it is the Board's responsibility to ensure that a proper record is made of each hearing, and that the panel chair's notes constitute the Board's official note of record. When the panel chair is asking their questions they will be reliant upon the other panel member(s) to take full notes of the answers received, so that they can compile the official note. In such a case, notes made by other panel members do not form the official record and cannot be disclosed thereafter.
- Members must dial in from their work laptops/ tablets.

Having considered the above, if a panel chair feels that this remote working would benefit one of their hearings, they should contact – [listingtaskforce@paroleboard.gov.uk](mailto:listingtaskforce@paroleboard.gov.uk)

## **5. Witnesses linking in from other locations.**

The hearing needs to take place in private.

The below should be considered in conjunction with point 4 above.

There will be an increase in the number of requests for remote attendance. Given the exceptionally difficult circumstances wherever possible, we need to be

as flexible as we can be; unless it would be inappropriate for any of the witnesses to attend remotely.

Witnesses may be attending remotely from locations which do not include their office.

Witnesses (who will be attending remotely) should be asked to confirm the following in writing (via the case manager):

- That they will be dialling in from a private location where their conversations cannot be over-heard, and any notes/ laptops cannot be overseen.
- That their internet connection is stable and reliable.
- They will not be in a location with an unreasonable risk of distractions, sensitive or personal information on display, or background noise.

An email along the following lines could go to the witnesses:

“Dear [insert prisoner’s name]

[insert prisoner’s name] oral hearing is due to take place on the [insert date/ time] at HMP [insert prison name]. In light of the coronavirus outbreak, you have requested to attend the oral hearing remotely.

In order for the Parole Board to consider your request, the Parole Board will need you to confirm the following:

- If dialling in using an internet connection, that you will be linked in using a secure connection (a password enabled connection is classed as secure)
- That you will be dialling in from a private location where your conversations cannot be overheard
- That no sensitive or personal information will be on display or could be overseen (laptops / notes)
- That your connection will be stable and reliable, for example, the risk of intermittent signal, a backdrop, or the signal dropping altogether is low
- That you will not be in a location with an unreasonable risk of distractions or background noise.

Please carefully consider the above and reply in writing to confirm that you are satisfied that each of the following points will be met.

Please note that your response may be shared with the other parties.”

We will need accept the answers to the above questions from legal representatives and professional witnesses unless there is any strong evidence to suggest that the arrangements are not suitable.

Representations should be sought from both parties.

## **6. Risk Management Plans**

It is important to have robust risk assessment which reflects the current climate. If the risk management plan was made prior to the pandemic and there are concerns over it, the panel chair may on occasions need to seek confirmation that the risk management plan remains workable.

Panels are reminded that they must not indicate their decision in advance of the decision letter being issued.

## **7. Legal representatives**

If a legal representative cannot attend the hearing or has decided that they will not be attending prisons in person (and video/ telephone link is not a viable option) then they should be sending in formal representations which reflect the view of the prisoner and the position of their firm. If the correspondence reflects the view of the solicitor only then further urgent clarification should be sought and the position of the prisoner checked. Some prisoners may wish to proceed without a representative. Equally, some law firms may arrange a suitable alternative if the usual legal representative cannot attend. The panel chair will need to decide whether it is fair to the prisoner to proceed in the absence of their legal representative, and if so, may need to carefully examine and challenge the evidence as if the prisoner was unrepresented.

## **8. Observers**

The final view on the attendance of an observer is with the panel chair (however, where the attendance is going to be agreed the consent of the prison governor or prison director is required, where the hearing is being held in a prison). However, observers should be asked whether they wish to still attend the prison given the current climate or whether they wish to stand down. Some observers may wish to stand down.

Observers who are not professionals in parole settings (such as trainee psychologists) should not be observing the hearing remotely unless it is a victim/ victim's family whose remote attendance is from an NPS or HMPPS office. This is because we cannot guarantee privacy.

## **9. Victims**

Victims may wish to take an alternative view on their method of attendance, for example, remote attendance, or agree that the panel can rely on the written statement only.

Guidance issued on 11<sup>th</sup> March 2020

### **The witness is unable to attend**

The panel chair should establish (through the case manager) whether there is an appropriate stand-in who can attend in the witness' absence. If there is not an appropriate stand-in, then the panel chair will need to decide whether it would be appropriate for the hearing to go ahead in the person's absence. The overriding principle is fairness. The proposal to proceed without a directed witness must be canvassed with the prisoner or their representative.

Members should be particularly alert to specialist witnesses being unable to join the hearing. It is unlikely a review can proceed fairly if the representative is unexpectedly absent. Another situation which might raise questions about fairness is the absence of one witness when report writers have made contradictory recommendations about release or progression.

If the hearing cannot proceed without the witness or an appropriate stand-in, then the hearing will need to be adjourned or deferred.

### **The legal representative is unable to attend**

Unless a suitable stand-in is available who is familiar with the case and has had the time to meet the prisoner and prepare for the hearing, it is likely that the case should be adjourned or deferred.

If the panel is faced with this issue on the day of the hearing and the prisoner does not have their legal representative present, the prisoner should be asked what their preference is but caution should be taken if the prisoner is wanting to push on without their legal representative. For example, not all prisoners will be confident in asking for an adjournment. It is the prisoner's decision as to whether or not they are represented (as long as there are no questions over mental capacity), but the panel should remind the prisoner of the benefits of legal representation. If the hearing does proceed without a representative, panels should test the evidence carefully to ensure they have covered the points the representative may have examined, even if the prisoner does not take those points.

### **Remote attendance**

The starting point is consideration of the appropriateness of the remote attendance. For example, if the video/ telephone link facilities are unreliable; the prisoner has a disability or a mental health illness or is under 18 years old which means for an effective hearing/ for fairness the hearing needs to take place in person, then it may in many cases be appropriate to adjourn/ defer the hearing to ensure fairness.

Whilst members should be realistic about the present circumstances, and the potential delay if cases need to be deferred or adjourned, they should carefully

consider the reasons why remote attendance was previously deemed inappropriate.

### **Parole hearings must take place in secure and private settings.**

Panel members ordinarily conduct the hearing in the same room – either at the prison or from the Parole Board’s hub hearing rooms at 10 South Colonnade, London E14 4PU. Given present circumstances a flexible approach is encouraged but remote attendance to hearings by panel members cannot take place in other locations without prior approval of the Parole Board.

Decisions may need to be made quickly, but wherever possible parties should be asked if they have objections.

### **Observer is unable to attend**

It is highly unlikely that it would ever be appropriate to adjourn or defer a hearing because an observer is unable to attend. If the observer is there to support the victim or the prisoner, PPCS or the prisoner’s representative needs to be approached to see if there is someone else who can attend in the observer’s place.

### **Victim cannot attend and asks for the hearing to be deferred or adjourned**

If there is a VPS and the victim’s attendance is to read out the VPS, the panel chair should make enquiries as to whether there is an appropriate person (for example, could be a family member, friend, member of prison staff or the VLO) who can read out the VPS on the victim’s behalf.

It may not be tenable to move the hearing date (especially because of the delay it will cause to the review), especially if all of the other attendees are able to attend.

If there is not a VPS, please contact the Policy and Practice Advisor.

### **Prisoner is unable to attend**

The panel chair must seek the view of the prisoner/ their representative.

If the prisoner is represented and is happy for the hearing to take place in their absence and the panel feel that they can have a fully effective and fair hearing without the prisoner then it may be possible to proceed without the prisoner.

If the prisoner is not in agreement or the panel deem that it would not be an effective hearing or it may not be an effective hearing then it is likely that the hearing will need to be adjourned or deferred.

If the prisoner is not represented and cannot attend the hearing then the hearing would need to be adjourned or deferred.

### **Panel Chair is unable to attend**

In the case of a three-member panel, the case should only proceed with two panellists if it is suitable; the prisoner or representative agrees to continue and one of the co-panellists is an accredited panel chair. Similarly, a two-member panel could go ahead as long as the panel member holds the accreditation to sit as a single panel member: but the chances of this appearing suitable are slimmer, given the rationale of the MCA member or duty member when making directions and setting panel logistics.

### **Co-panellist is unable to attend**

If a co-panellist cannot attend on the day of the hearing, the panel chair must decide whether it would be appropriate for the hearing to go ahead in the person's absence. The overriding principle is fairness. The proposal to proceed without any co-panellist must be canvassed with the prisoner or representative.

Panel members must notify the panel chair and Parole Board case manager. In the case of a three-member panel, the case should only proceed with two panellists if it is suitable and the prisoner or representative agrees to continue. Similarly, a two-member panel could go ahead with just the panel chair (if the panel chair hold the accreditation to sit as a single panel member): but the chances of this appearing suitable are slimmer, given the rationale of the MCA member or duty member when making directions and setting panel logistics.

Members should be particularly alert to specialist Parole Board members not being present as the case may hinge on the specialist's expertise.

The views of the prisoner or representative must be sought before a decision is made as to whether the hearing can proceed.

### **Consideration as to whether to adjourn or defer**

This would count as an exceptional reason to defer rather than adjourn, contrary to the COMPASS framework if the decision to defer is made before the hearing and evidence has not been taken. However, adjournments should be the first consideration and if the hearing is part-heard then it should be adjourned rather than deferred.

When sending your adjournment or deferral notice to the case manager (and the case is adjourned/ deferred because of the coronavirus), please copy Gary Hopper, Head of Governance ([Gary.Hopper@paroleboard.gov.uk](mailto:Gary.Hopper@paroleboard.gov.uk)) into your email so that the Board can monitor the impact of the virus."

