



Ministry  
of Justice

# Root and branch review of the parole system

**Government response to the public  
consultation on making some parole  
hearings open to victims of crime  
and the wider public**





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**Response to consultation carried out by the Ministry of Justice.**

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# **Contents**

<b>Introduction</b>	<b>2</b>
<b>Government response</b>	<b>4</b>
Overview	4
Consideration	5
<b>Next Steps</b>	<b>9</b>
<b>Summary of responses</b>	<b>10</b>

# Introduction

1. The consultation ran from 20 October to 1 December 2020. We received a total of 40 responses from a range of people and organisations. These included members of the public, victims of crime, professionals involved in parole work, academics, and charities. We are grateful to all those who took the time to respond to the consultation.
2. The Government chose to run the consultation because we are determined to address concerns that have arisen in recent years about the lack of transparency and confidence in the parole system; and because we wished to answer the fundamental question of whether there was support for wider public access to parole hearings. We believe that opening up some parole hearings has the potential to improve public confidence in and understanding of the parole system, by showing the diligence with which the Parole Board performs its functions and revealing more information about how and why decisions are made. However, we recognise the complexity of the issue, the risks to both victims and offenders, and the need to ensure that the integrity of parole decision making and the protection of all those involved in the process are maintained. We wanted, therefore, to provide an opportunity for people to share their views and opinions to inform our decision at this early stage of the Root and Branch Review of the parole system, which will run until summer 2021.
3. In the consultation document we explained that we envisaged a range of benefits to opening up parole hearings but we also identified many potential risks and adverse consequences that could result if it was not implemented carefully. The consultation responses have underlined that this is not a straightforward issue. Whilst the respondents broadly supported the concept of more open hearings at a ratio of approximately 2:1, we also received many persuasive and well-reasoned arguments about the importance of caution and the potential for harmful consequences to victims and to the Parole Board's ability to carry out its function fairly and rigorously.
4. We have carefully weighed these arguments and we are absolutely clear that improved openness and transparency should not come at the cost of re-traumatising victims or a compromised parole process that could undermine public safety. Nothing must stand in the way of the Parole Board being able to protect the public by making fully informed assessments of risk and continuing to detain prisoners who are assessed as still posing a risk of causing serious harm to the public. However, it is also important that its processes and decisions can be understood and subject to scrutiny. We believe it is possible to provide for parole hearings to be opened up in a limited way without introducing compromises into the system.

### **Root and branch review of the parole system**

Government response to the public consultation on making some parole hearings open to victims of crime and the wider public

5. This document therefore sets out our initial response to the public consultation, dealing most substantively with the question of whether ending the current position that parole hearings must be heard in private is the right course of action. We will take further steps over the coming months as part of the Root and Branch Review, to ensure that by summer 2021 we have fundamentally answered the concerns around transparency of the parole system, including ensuring that there are clear and safe routes for victims to attend hearings if they wish.

# Government response

## Overview

6. Currently, all parole hearings are held in private – this is set out in legislation in the Parole Board Rules 2019. Our starting position for the consultation was that parole hearings should likely remain private in the majority of cases and that is still the case after considering the responses. The government is not persuaded by the arguments put forward by a minority of consultation respondents which urged that all parole hearings should be open to the public, or that public hearings should be the default position. It remains our view that it would not be feasible or safe to have a system like that due to the nature of the information discussed at hearings, nor do we believe it is necessary.
7. However, we are persuaded that the current blanket ban in legislation on public hearings is unnecessary, and that victims, offenders, the media or the wider public should have the right to make a request for a public hearing, and to have that request considered. We think it is right for the Parole Board to receive and consider such applications, and to ultimately decide on the outcome. We believe there is merit in mirroring the approach taken at the First-tier Tribunal (Mental Health), so that the Parole Board consider the “interests of justice” when making such a decision. Accordingly, we will be amending the Parole Board Rules 2019 so that parole hearings will no longer always be required to be held in private, and therefore “public hearings” will be possible in the future. We expect to be able to make the change to the Rules in the spring of this year.
8. Anyone who attends a hearing under these new provisions will be an observer to the proceedings in a similar way to attendance at court. They will not be entitled to intervene, ask questions of the witnesses or address the panel in any way – other than where a victim is presenting their Victim Personal Statement to the Board. We will also consider any changes needed to those Rules concerned with the circumstances when information from a proceeding can be disclosed to the public, which is currently determined largely at the Parole Board’s discretion.
9. Whilst our intention is to move to hearings that are more open and transparent, it is important to stress that we consider it would only be in a small minority of cases where an application for a public hearing is likely to be made, and where the Parole Board would consider the case for a truly public hearing to have been met. Victims should not be concerned that cases will be routinely held in public – we appreciate the additional trauma this would cause – and victims will always be thoroughly consulted prior to any decision being taken on a specific case.

## Root and branch review of the parole system

Government response to the public consultation on making some parole hearings open to victims of crime and the wider public

10. We have also considered in particular the position of victim attendance at parole hearings. Whilst, following the change indicated above, it would be possible for victims to apply for a public hearing, we are mindful of the fact that in most cases victims may prefer to attend a hearing without it being heard fully in public. The government is keen to ensure that victims should be able to observe oral hearings in a way that makes them feel most comfortable. The responses we have received on transparency and attendance for victims have been useful in considering these issues further, which we will address substantively in the Root and Branch Review to be completed by summer 2021.
11. Whilst we do not consider that, in most cases, applying for a public hearing would be the favoured route for victims who wished to attend a hearing themselves, the legislative change will be important in removing barriers for victims, the media and others who wish to attend hearings under the existing powers the Parole Board has to permit observers at oral hearings. Removing the requirement to always have hearings in private is a first step, but we recognise that it is insufficient in delivering the transparency and openness we wish to see in the parole system overall. As part of the Root and Branch Review, and once the legislative requirement for privacy has been removed, we will consider with the Board how this can be delivered. This will, for example, involve consideration of: a clear process for applying to observe a hearing or for a public hearing to be held; greater flexibility on media reporting on specific hearings; the requirements around non-disclosure of particularly sensitive information and the power of the Parole Board to enforce that; and support available to victims experiencing the parole process.

## Consideration

12. As the independent body responsible for the hearing, it will be for the Parole Board to decide whether it would be in the interests of justice to hold a public/open hearing in each case, and the form that should take. We will work with the Parole Board, and other stakeholders, to produce publicly available guidance on this ahead of the Rules change. The Board will be able to consider an application for a public hearing submitted by anyone, but we would most frequently expect it to be victims, offenders, or the media. The Parole Board will also be able to initiate the consideration process of its own volition if they see a need – for example, if there is significant public interest in a particular case. Regardless of who has made the application, both the victim and the offender will be invited to submit their views before a decision is reached and the Board would take the final decision having taken account of the representations received. But ultimately the decision will depend on whether the Board is satisfied that it would be in the interests of justice to open up the hearing, having taken everything relating to the particular case into consideration.

## Root and branch review of the parole system

Government response to the public consultation on making some parole hearings open to victims of crime and the wider public

13. We considered whether we should set any other parameters around this in the rules. For example, whether victims or prisoners should hold a right of veto, or should their concerns be afforded more weight. Many consultation respondents expressed views on that point with some feeling that open hearings should only take place if requested by the victims or with their consent. Others held the opposite point of view and argued that the wishes of the prisoner should take precedence and open hearings should only take place with their agreement.
14. On balance we do not think it is appropriate to restrict the Parole Board's decision-making power by giving anyone the power to veto an open hearing in this way and the Parole Board should take each decision on the specific facts of the case. This corresponds with the most common view among the consultation respondents who felt that representations from different parties should be treated with roughly equal weight. It is important to stress that a parole hearing involves discussion of sensitive personal information pertaining to both the prisoner and the victim. In their consultation response, the Parole Board have said that they would be unlikely to agree to a public hearing where it will cause significant distress to victims and we would expect a similar level of concern for the wellbeing of the prisoner if they made a compelling case.
15. It is likely that the Parole Board will consider some types of cases unsuitable for public hearings, regardless of the representations made. For example, where the victim or prisoner are children, where the prisoner has been given a new identity for their own protection or where a considerable amount of information sensitive to national security must be heard in evidence. However, in such cases it is not our intent that victims should necessarily be unable to attend.
16. As the independent decision-making body, it will be for the Parole Board to decide the criteria for the interests of justice test it will use to determine applications for public hearings. These will in due course be reflected in guidance the Board will produce on how it intends to approach applications. The types of factors the Board may wish to consider may include but not be limited to:
  - If it would assist public understanding of how the decision is reached in a case of particular public interest;
  - The participants in the hearings – in particular the prisoner and the victim (where there is one) – do not object to the hearing being heard in public;
  - To hold a public hearing would not create an unacceptable risk (of mental or physical harm) to any of the participants;
  - Whether the Board consider that the integrity of the evidence may be compromised and prevent a true and accurate assessment of the prisoner's risk being provided by the witnesses;
  - The presence of strong and valid objections from participants which could jeopardise their co-operation if the hearing were to be in public.

### Root and branch review of the parole system

Government response to the public consultation on making some parole hearings open to victims of crime and the wider public

17. The Parole Board will need to treat all applications for public hearings with fairness and apply the interests of justice test with consistency. In each case they will have to carefully balance the arguments made in favour of the public hearing by the applicant against the need to protect the privacy and wellbeing of the victim, the prisoner and the other participants. The Board will need to provide reasons for its decisions and while it will be a matter for the Board to determine how widely the reasons are shared, any decision to allow or refuse a public hearing will be liable to judicial review.
18. The Parole Board will also likely need to consider the form and location of the public hearing based on the facts of the case. For example, prior to the Covid-19 pandemic most parole hearings were held inside the prison estate. We agree with the many consultation respondents who felt that holding an open hearing in a prison would be undesirable and impractical for a number of reasons. Respondents were more supportive of face-to-face hearings being held in premises away from prisons, such as a court building. While that would avoid the problems that would exist in the prison setting, it may not be possible in every case and is likely to be difficult to organise which may cause otherwise avoidable delays.
19. In practice we anticipate all available options being considered by the Board but “virtual” attendance, primarily through video link, is likely to be the preferred option in most cases where an open hearing is agreed. This has the advantage of minimising the risk of disruption, increasing capacity and allowing victims to easily step away if they become distressed or would rather not hear certain details of the case discussed.
20. In relation to allowing easier routes for victims to attend parole hearings, we will set out our proposed changes as part of the Root and Branch review, considering the experience of victims throughout the parole process, and not just limited to hearings. We will ensure that alongside this we consider support for victims. We have heard from respondents and others who work with victims in the criminal justice system about the importance of making sure that victims are fully advised and supported throughout the parole process.
21. The legislation already permits the Parole Board to admit observers and does not actively exclude anyone from applying, but the current requirement that hearings must be heard in private is a potential barrier to consideration of any applications that may be submitted. Members of the media and others have been allowed to observe hearings in limited numbers but in practice observers have been restricted to those needing to observe for professional reasons, such as for training or policy development. Our proposed amendments to the Rules will be an important legislative change that removes a potential barrier to the Board when considering whether observers, including victims, should attend a hearing. It will signal that – whilst safeguards must be in place to protect all parties – parole hearings are no longer required to always be private and can now be opened up. However, this is only one

### **Root and branch review of the parole system**

Government response to the public consultation on making some parole hearings open to victims of crime and the wider public

step. Through the Root and Branch Review we will be going further – for example considering issues such as making it easier for victims to attend if they wish, and the flexibilities and restrictions on media reporting – to ensure the parole process is better able to deliver increased transparency and openness for all.

## **Root and branch review of the parole system**

Government response to the public consultation on making some parole hearings open to victims of crime and the wider public

# **Next Steps**

22. The Government will now work with stakeholders to further develop the provision for public/open hearings with a view to implementing the change in the spring. This will require an amendment to the Parole Board Rules 2019 to remove the current requirement that hearings must always be held in private.
23. At the same time, with this legislative barrier removed, the wider Root and Branch review of the parole system will continue to examine wider reforms to improve openness and transparency of the parole system.

# Summary of responses

24. We received a total of 40 responses to the public consultation. The responses to the substantive questions can be summarised as follows:

**Q1. Do you agree that parole hearings should generally continue to be held in private but with the possibility of a public hearing in certain limited circumstances?**

25. The majority (23 out of 32 who provided a clear view) were in favour of open hearings to some degree – eight agreed with the question that hearings should remain private but be open to the public in some limited circumstances. A further eight of the 23 in favour wanted hearings only open to victims, or for victims’ views to be prioritised. Seven respondents favoured hearings being open to everyone.

26. A range of reasons were put forward in support of open hearings with the most common being that it would improve transparency and allow people to see how the Parole Board reaches decisions. Media representatives and members of the public were most strongly in favour of open hearings but it is notable that responses from victims, including the Victims’ Commissioner Dame Vera Baird QC, were more cautious and recognised the need to protect victims from being re-traumatised.

27. The minority (nine out of 32) felt hearings should continue to be heard in private, or that the current provisions in the rules for admitting observers were sufficient.

28. Those against a move towards open hearings were predominantly members of the legal profession with experience of parole, or other groups representing prisoners’ interests.

29. Their main concerns were that public hearings could negatively affect the quality of the evidence that the Parole Board receives and therefore impede their ability to properly carry out their function to assess risk. They also felt that it would not necessarily achieve the goal of improved transparency due to the need to protect sensitive information.

30. There was also some concern that that public hearings would expose hearing witnesses to increased risk of being targeted by prisoners, victims and the media.

**Q2. Which of these groups should be able to attend the hearing:**

- a. **Should victims be able to attend the hearing?**
- b. **Should hearings be open to the general public?**
- c. **Should hearings be open to the media?**
- d. **Who else, in your opinion, should hearings be open to (if anyone)?**

31. Of those who expressed a clear view, 10 respondents favoured hearings being fully open to the public, 13 respondents felt that hearings should only be open to victims (or that victims' views should be prioritised) and 10 respondents felt hearings should be completely private or only open in very limited circumstances if the prisoner wishes.
32. Those against felt that allowing the public to physically attend a hearing would pose too great a risk of disruption, and risk to the safety of those who given evidence. Others did not believe that it would add value to the process and that the risks of negative consequences outweighed any potential benefits in openness or transparency.
33. Many of those in favour of public hearings also expressed caution. Comments included that any decision to have an open hearing would need to be mindful of the risks around confidentiality and the impact on victims of sharing intimate details of the offence in a public forum.
34. The Parole Board did not favour one group but strongly recommended that a pilot is run to work through the challenges.
35. Prisoner representatives tended to recommend that hearings should remain private and only be opened to the public if the prisoner agreed.

**Q3. In what circumstances would a public hearing be appropriate or add value to the parole process?**

**Q4. In what circumstances would a public hearing not be appropriate?**

**Q5. What criteria should be used to decide whether a hearing should be heard in public?**

36. A broad range of views were offered in response to these three questions but there were some significant differences of opinion evident.
37. A small number of respondents felt our proposition was back-to-front and that hearings should always be held in public unless there were major safety or security concerns that could not be mitigated. Several respondents felt that public hearings should only take place if the victim requests it, or only with their agreement. In

## Root and branch review of the parole system

Government response to the public consultation on making some parole hearings open to victims of crime and the wider public

contrast, some expressed the view that the prisoners' views were most important and that public hearings should not take place without their consent. This was a view shared by the majority of legal professionals and bodies that represent prisoner interests. Several of them suggested that the Upper Tribunal rules in deciding whether to hold a public hearing should be applied when making the decision in parole cases, namely:

- Is it consistent with the subjective and informed wishes of the applicant?
- Will it have an adverse effect on their mental health?
- Are there any other special factors for or against a public hearing?
- Can practical arrangements be made which are not disproportionate?

38. A range of circumstances were suggested in response to question 4. Suggestions for when a hearing should remain private included: where the offender or victim were children, very serious sexual assaults (in order to protect the privacy of the victim), national security concerns and denial/lack of remorse by the prisoner (on the basis that it may be harmful for the victims to hear a prisoner speak about the crime in those terms).
39. Two respondents cautioned against allowing a public hearing just because a crime is notorious or is otherwise subject to media attention.

### **Q6. How should victims' view be taken into account in deciding whether to hold a public hearing?**

40. The vast majority of respondents who gave a view agreed that victims should be entitled to offer a view on whether to hold a public hearing but opinions varied on the weight their views should carry.
41. Five respondents felt that victims' views should take precedence and three believed they should have the power to veto a public hearing if they do not give their consent.
42. Nine respondents adopted the opposing view and felt that the prisoner's wishes or other factors were the main concern. For example, the News Media Association believed the victim's refusal or lack of engagement should not mean that journalists should not be allowed to observe hearings.
43. Members of the legal profession who represent prisoners at parole hearings tended to believe that the prisoner should have the power to veto a public hearing rather than the victim. Several acknowledged that the victims' views should also carry significant weight but they did not think they should automatically prevent a public hearing if the prisoner wanted it.

44. The most common view (13 respondents out of 27 who gave a clear answer) was that victims' views should be invited and treated with roughly equal weight to other factors in making the decision.
45. A number of respondents urged us to be mindful of the potential harm that could be caused to victims by hearing all of the evidence given at a parole hearing. They felt that it would be vital to make sure victims are able to make fully informed decisions about observing a hearing and professional support is made available.
46. The Parole Board stated that they would be unlikely to agree to a public hearing where it will cause significant distress to victims.

**Q7. Do you think that conducting a hearing in public would make the examination of evidence and decision-making process better or worse – and why?**

47. We asked for respondents' views on whether public hearings would make the parole process better or worse, and what the impact would be on the effectiveness and efficiency of the hearing.
48. Those in favour of public hearings all felt it would improve the process for similar reasons, namely that it would give greater transparency, public confidence and understanding of the parole process and of individual decisions. Media coverage would provide independent oversight and allow full, fair and accurate reporting.
49. A range of potential negative impacts were identified. Eight respondents felt that it would affect the quality of evidence the Parole Board receive due to a lack of candour. A further four felt it would result in more risk-averse decisions, or that the Board would inevitably end up focussing more on factors like remorse and empathy rather than properly applying the release test.

**Q8a. What measures or approaches would be needed to avoid or mitigate any adverse consequences of conducting a hearing in public?**

50. We received a range of responses to our question about possible mitigations to the challenges that public hearings present. There were three main themes, each of which attracted roughly equal support.
51. The first concerned new powers for the Parole Board. Respondents felt these would be necessary in order to prevent unauthorised recording of the proceedings or impose reporting restrictions or anonymity orders.

52. The second main theme was around the protection of sensitive information with respondents suggesting that this could be achieved through broader non-disclosure powers, or holding parts of the hearing in private, including the reading of the Victim Personal Statement.
53. The final common response was about wellbeing. Most of these were concerned with victims with several respondents suggesting that victims would require appropriate support from their Victim Liaison Officers (VLOs), from Secretary of State Representatives or from professionals. Others pointed out that victims must be fully informed about what the hearing entails and have the opportunity to prepare. One respondent said that the Board must be mindful of the impact on prisoners' wellbeing and their prospects of being able to successfully resettle into the community if a hearing was held in public.
54. Three respondents were so strongly against public hearings that they did not feel any mitigation would be effective.

**Q8b. What impact will such measures have on the effectiveness or efficiency of the parole process?**

55. Responses to this question were limited but two main areas of risk were identified by several respondents. Hearings can already be emotional experiences and that could be exacerbated by the presence of victims or members of the public leading to a risk of disruption. It was felt that the Board would need new powers in order to control open proceedings, such as a power to exclude disruptive attendees.
56. Three respondents also considered the practical implications and felt that public hearings would increase the complexity and the duration of the parole hearing by virtue of panels having to carefully consider which parts of the hearing could be heard in the open and which would need to be in private.

**Q9a. Which of the options for the location/methods for public hearings (i.e. face-to-face in prison or in a court building, broadcast to a separate location or streamed online) do you think would be the most suitable and why?**

**Q9b. Can you suggest any other alternative options to facilitate public hearings?**

57. In the consultation document we proposed four suggestions for where a public hearing could be held. These were: face-to-face hearing in either a prison or court building, a closed-circuit broadcast to separate location or streamed online.

## Root and branch review of the parole system

Government response to the public consultation on making some parole hearings open to victims of crime and the wider public

58. Closed-circuit broadcasts and face-to-face hearings in court buildings were the most popular options, receiving support from 13 and 15 of the consultation respondents respectively. Hearings held in prisons was supported by five respondents and six respondents recommended online streaming.
59. A range of comments were received in support which can be summarised as follows:
- Face-to-face hearings are more desirable but practical concerns may require some form of online element as well, especially for high profile cases with lots of interest.
  - Holding them inside prisons would be very difficult and it can be traumatic for a victim to have to enter a secure prison setting.
  - Court buildings are a neutral venue which supports the independence of the decision-making.
  - General online streaming would be a step too far. Broadcasting to a separate location would make it easier to prevent unauthorised recordings.
  - Broadcasting or streaming would prevent disruption of the hearing.
  - In practice, all options should be available and considered according to the needs of the case.

### **Q10. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please give reasons.**

60. A range of comments were received that considered impacts from the perspectives of both prisoners and victims.
61. Several respondents made the point that prisoners were often highly vulnerable and any new process should pay close attention to issues like mental health conditions, learning difficulties and the increasing number of elderly offenders in custody. They will need additional support in the event that their hearings are held in the open. Similarly, care should be paid to the fact that many female prisoners have been victims of violence and abuse in their lives. It was recommended that such information should remain private and not be discussed in an open forum.
62. Other respondents felt that ensuring victim safety and wellbeing should be paramount. They would need support to understand the proceedings and participate where appropriate. The method and location of the hearing would also need to accommodate such as mobility issues, or hearing / visual impairments as well as facilities like disabled toilets. A flexible approach to victim attendance was recommend in order to accommodate people's needs as best we can.



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