

The Parole Board for England and Wales

Oral Hearings Guide

March 2012

Oral Hearings Guide

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CHAPTER 1

PRE-HEARING ISSUES

1. The Role of the Intensive Case Management member

For a complete guide to ICM, see the ICM General Guidance book. What follows is a summary for panel chairs, of what they can expect to have been done before the dossier arrives for an oral hearing.

The ICM member is a single member of the Board who is authorised to make a decision based solely on the papers in the dossier. The Parole Board Rules 16-18 refer. Under the Rules, the ICM member must make one of two decisions:

- That the case should proceed to an oral hearing; or
- That the prisoner is unsuitable for release

Parole Board policy states that a prisoner will not normally recommend a transfer to open conditions without an oral hearing. The Rules *require* an oral hearing in any case where release is directed. ICM members will accordingly send to an oral hearing any case where there is a realistic chance of either outcome. In most other cases, a negative decision will be issued.

1.1 The Parole Board Rules

The Rules are a set of procedural rules to govern the process for lifer/IPP hearings at post tariff expiry and after recall. They do not apply to pre-tariff or determinate cases.

The rules have been amended several times. The current version is the Parole Board Rules 2011. At Annex A the Rules are laid out in full.

1.2 Proceed to an oral hearing

Aside from there being a likelihood of release or open conditions, the ICM member may have identified that factors are present that require examination before a full oral panel. An example may be where a progressive move is not a realistic outcome, but where live evidence is needed to determine the risk factors.

It is envisaged that this will be a rare step to take and would normally only be necessary where experts disagreed about a risk factor; for example, whether or not there was a sexual element to an offence that needed exploring. For whatever reason the case is progressing towards an oral hearing, the ICM member will give brief reasons and make directions for case management.

1.3 Unsuitable for release or open conditions

The ICM member will give full reasons for deciding that a prisoner is unsuitable for release or open conditions. The prisoner will be notified of the decision and shown the reasons. He/she may then accept the decision which becomes final, or apply for a full oral hearing.

An oral hearing is not an entitlement. The prisoner will have to make a case for an oral hearing, which will be considered by an ICM member who must not be the same member who issued the negative decision.

There are then two ways by which a case can arrive at an oral hearing. Whichever way, the dossier going before the oral panel will have the ICM decision and directions, and the prisoner's response where appropriate.

1.4 ICM Directions

Where an ICM member sends a case to an oral hearing; directions will be given to help progress the case. These have the force of a chair's direction, but do not bind the chair when he/she comes to make directions. The benefit of these early directions is to give the parties more time to fill gaps in the dossier, write any further reports that are required, and to give prospective witnesses more notice. This helps avoid unnecessary deferrals later.

The power to make directions is contained within paragraph 10 of the Parole Board Rules. This provides for the ICM member or the chair of the panel to give, vary or revoke such directions as they think proper to enable the parties to prepare for the consideration of the prisoner's case or to assist the panel to determine the issues.

Directions should not be made in relation to the management of the prisoner's sentence, security or transfer issues, re-categorisation, treatment needs or sentence planning. The following are examples of directions that would be considered outside of the remit of a direction:

- A requirement that the prisoner has home leave to his release address.
- A requirement that the prisoner attends a particular course.

- A requirement that the prisoner be transferred to another establishment for the purposes of completing particular offending behaviour work.
- A requirement that the prisoner be transferred to a psychiatric hospital for treatment, or assessed for a transfer.

1.5 Reports

Mandatory – these are the core reports which must be available for the oral hearing. If any of these are missing at the time of the receipt of the dossier then it should be included in the ICM directions. The core reports are as follows:

LIFERS IPPs

OASys Assessment
SPR L - Offender Supervisor
PAROM 1 – Offender Manager

In addition to these reports, the dossier will normally include the following where available

Secretary of State’s terms of referral
Pro-forma case summary
Details of offence(s)
Trial Judges sentencing remarks ¹
Trial Judges report ²
Pre and post sentence reports
List of previous convictions
List of previous locations
Summary of reports of progress in prison
Previous Parole Board decisions
Previous reports from any offending behaviour work undertaken
List of adjudications since last review

Optional – this includes any other reports which will assist the panel in determining the issues.

Prisoner’s reports – this will rarely arise at the ICM stage. However, if it is apparent that the prisoner or his representatives have requested a report; for example, where the prison psychiatric report raises contentious issues which the prisoner wishes to challenge, then it may be appropriate to make a direction regarding the timescale for the service of such evidence.

¹ Trial Judges Sentencing Remarks - may not be available.

² Trial Judges Report – only in MLP cases sentenced prior to December 2003.

1.6 Disclosure/withholding information

Occasionally the ICM member may receive an application from the Secretary of State to withhold a document from a prisoner. Normally this will occur later in the review process and will fall to the panel chair. Where such a direction has been made at ICM, the panel chair should check carefully what has been directed.

1.7 Witnesses

In order to prevent ineffective hearings, through the unavailability of witnesses, the ICM Member is required to identify those witnesses who are likely to be required to attend the oral hearing. Those witnesses will then be provisionally notified of the date of hearing and advised that they may be required to attend. It will then be for the chair of the panel to confirm attendance through the giving of directions.

The ICM Member will also provisionally determine applications by the parties for witnesses at this early stage in the proceedings. The following is guidance for the type of application likely to be received from the parties

- Report writers and any other witnesses identified by documents in the dossier who are favourable to the prisoner and not likely to be in dispute – approve if it appears that the witness can materially add to the statement in the dossier.
- Witnesses who give contrary or unfavourable evidence to the prisoner, on a material fact – expectation is to approve.
- Witnesses who are needed to make further contributions on risk assessment - always approve.
- Where the prisoner is in Open/Cat D conditions the Offender Manager would normally be required at the hearing.

In addition to issuing evidential directions, the ICM member will make a time estimate for the hearing. If time is needed for directions to be fulfilled, the ICM member will state that no hearing date should be set until everything has been received; or, where documents should be readily available, that a date can be set pending fulfilment of the directions.

2. The role of the panel chair

2.1 Directions and case management

The power to make directions is contained within the Parole Board Rules (see Annex A). This provides that the chair of the panel may at any time give, vary or revoke such directions as he thinks proper to enable the parties to prepare for the consideration of the prisoner's case or to assist the panel to determine the issues.

Although the Rules provide for directions to be made by the panel chair **it is regarded as good practice for this to be done in consultation with other members of the panel where appropriate.**

Directions will generally relate to those matters contained within the Directions pro-forma, namely:

- Timetabling of proceedings
- Service of documents
- Witnesses
- Submission of evidence
- Disclosure

The Directions pro forma is at annex B. The practice guide for setting directions, which for the sake of consistency is also available to ICM members, is at annex F.

In any event, the directions must be confined to the purposes of the Rule and must therefore relate to **the preparation of the case or assist in the determination of the issues.**

Directions should not be made in relation to the management of the prisoner's sentence, security or transfer issues, re-categorisation, treatment needs, or sentence planning. The following are examples of directions which would be considered outside of the remit of the Rules:

- A direction that the prisoner has home leave to his release address.
- A direction that the prisoner attends a particular course.
- A direction that the prisoner be transferred to another establishment for the purposes of completing particular offending behaviour work.
- A direction that the prisoner be transferred to a psychiatric hospital for treatment, or assessed for a transfer.

The panel will ordinarily receive the dossiers approximately 6-8 weeks prior to the oral hearing. The case will however have been subject to case

management review prior to that date as the ICM Member will have identified directions at an early stage in the proceedings. These directions will primarily relate to missing reports and the identification of witnesses who are likely to be required to give evidence at the hearing. The panel will be provided with a copy of the ICM directions in order to ensure that they have been complied with, to consider whether witnesses put on notice are indeed required to attend and to ascertain what further directions, if any, are required.

The purpose of the Directions pro-forma is to provide the panel chair with a checklist/prompt when considering what directions are required. In many cases, if the ICM directions have been complied with, none will be necessary beyond confirming the witnesses who are required to attend. In others, directions may be necessary where there is an obvious gap in the evidence; where the ICM directions have not been complied with; or on application from the parties. In all cases, it will rarely be necessary to make directions outside of those areas identified on the pro-forma. If in doubt please seek advice from the Head of Litigation or the Deputy Head of Litigation.

2.2 Reports

Mandatory – the core reports which must be available for the oral hearing are listed at 12 above Ordinarily these will have been identified during the ICM process; however, if any of these reports are missing, a direction should be made for service before the oral hearing.

Optional – this includes any other reports which will assist the panel in determining the issues. In general psychiatric/psychological reports should be required where there has been input from specialists but no report has been provided. Course reports should be current and relate to courses which have either been undertaken or will be complete by the date of hearing.

Prisoner reports – such a direction will usually only be made where the prisoner or his representatives have requested a report; for example, where the prison psychiatric report raises contentious issues which the prisoner wishes to challenge.

2.3 Other documentation

Directions for other documentation should only be necessary where there is a gap in the information contained within the dossier which is not adequately addressed by other reports/documents. For example; it may not be routinely necessary to obtain the judge's sentencing remarks if the offence details are fully covered in the probation reports and case summary. Where there are no or insufficient details of the index offence, chairs should be aware that sentencing remarks take several weeks to

obtain. Where time is short, chairs may consider making the direction in general terms only. For example:

“The Board directs that the Secretary of State provide any document(s) available that provide details of the index offence as proven in court.”

2.4 Victim attendance

For the Practice Guide in full, see Annex H

There is no provision in the Rules for a victim of an index offence to attend an oral hearing. However, it is the Board’s practice, in recognition of the victim’s role in the criminal justice system, to permit a victim to submit a written personal statement in advance of the hearing, and to read it to the panel at the hearing itself, without the panel chair’s agreement.

This practice does not detract from the panel chair’s right to run the hearing or allow such persons as he/she thinks fit to attend to take part in the hearing (Rule 25 (2) and (3)), but in the interests of consistency and good practice, chairs are advised to follow the Practice Guide, and make appropriate directions where asked to do so.

2.5 Witnesses and observers

In order to prevent ineffective hearings, through the unavailability of witnesses, the ICM member will have identified those witnesses who are likely to be required to attend the oral hearing. Those witnesses will have been provisionally notified of the date of hearing and advised that they may be required to attend.

The panel chair will need to confirm which witnesses are required at the hearing and to determine applications from the parties. If an application for a witness is refused then the panel chairman must give written reasons for that decision.

When considering the attendance of witnesses, the panel chair must have regard to the substance of the evidence, the requirements of fairness and the length of the hearing. Detailed guidance is included at Annex F.

Observers – these applications are usually granted subject to numbers. However, should a prisoner object to someone observing, the chair will need to consider the requirements of running a fair hearing and putting the prisoner at his/her ease. The final decision is for the chair.

2.6 Wording for witness directions and witness summonses

In general witnesses attend hearings voluntarily unless they have a good reason for not being able to. However, the Board does encounter difficulties with witnesses who are reluctant to attend or do not appreciate the importance of the hearing. To that end, **chairs are advised to consider using the following standard wording for requiring the attendance of witnesses, and to consult paragraph 13 at Annex F**

“The Board directs that shall attend the hearing to give evidence. The witness should note that the proceedings will be as informal as possible, but that the Board will nevertheless sit as a court.

“Non-attendance is only permitted in compelling circumstances and the Board does have the power to enforce attendance if necessary by way of a witness summons. Full reasons must be given by anyone unable to attend.”

In cases where primary evidence is required as opposed to hearsay, or where a crucial witness is reluctant to attend, the Board may make a direction to the Secretary of State to issue a witness summons. Such a summons is available in Parole Board proceedings under Civil Procedure Rule 34.4. Such a procedure should not be considered lightly however and panels should be reluctant to issue one unless one of the parties has requested it. Some general principles:

- No witness should be summoned in this way unless their oral evidence is fundamental to the outcome of the case. Where a witness is reluctant to attend, the panel chair should first consider the alternative of written evidence;
- It is not appropriate to compel a minor to attend;
- Panels should be slow to pursue a witness summons unless one of the parties has applied for a direction to do so;
- The panel should consider the effect on the outcome. A vulnerable witness can be compelled to attend, but cannot be compelled to give evidence. If it is unlikely that the witness will produce any worthwhile evidence, it will probably be pointless in directing the Secretary of State to compel attendance.

2.7 Preliminary issues

Preliminary Hearing – Each party has the opportunity to make written representations on directions made by the chair of the panel or sought by the other party. Where the panel chair considers it necessary, oral submissions may be made at a preliminary hearing. Such hearings tend to be exceptional and usually relate to complex issues which require input from the parties. The Rules require, that, unless the chair of the panel

directs otherwise, he/she shall sit alone and the prisoner shall not attend unless unrepresented.

2.8 Other directions

See Annex F

3. Disclosure/withholding information

The prisoner has the right to see all the material that the Board considers. However, the Parole Board Rules allow for evidence to be submitted by the Secretary of State to the Board, but not to the prisoner, under certain circumstances.

3.1 Rule 8(1)

This lays out the criteria for non-disclosure. It forms the basis for a panel chair's direction to withhold material from the prisoner and he/she must be satisfied that its disclosure to the prisoner is necessary and proportionate and will adversely affect one or more of the following:

- National security;
- The prevention of disorder or crime. This will cover ongoing police investigations that may be put at risk, information given in confidence by another prisoner whose safety could be threatened, information given by an acquaintance that contributed to the recall of a licensee etc;
- The health or welfare of the prisoner or a third party. For example medical information that could have implications for the prisoner's mental health or representations by a victim or potential victim.

Where the Secretary of State seeks a direction to withhold material, he must outline the grounds for doing so. The panel chair will need to consider the criteria and issue a direction under Rule 8(2) (d). **Before issuing such a direction, the chair must consider whether a 'gist' of the material or a redacted version might be acceptable for disclosure to the prisoner.**

3.2 Rule 8(3)

This Rule requires that material withheld from the prisoner to be disclosed to his representative, provided that representative is either:

- A barrister or solicitor; or
- A registered medical practitioner; or
- A person whom the chair directs is suitable by virtue of his/her experience or professional qualification.

It is required by this Rule that the representative shall not disclose the material to the prisoner either directly or indirectly.

3.3 Rule 10(2) (c)

Where the chair makes a direction to withhold material, the following wording may be appropriate:

"The chair directs under Rule 10(2)(c) that the material submitted by the Secretary of State will be withheld from the prisoner on the grounds that it is necessary and proportionate in the circumstances of this case and that its disclosure would adversely affect...

"...It shall be served by the Secretary of State on the prisoner's representative who is directed that it may not be disclosed either directly or indirectly to the prisoner or any other person without the express direction of the chair. Within 7 days of receiving this direction, the prisoner may appeal against it in writing to the Chairman of the Parole Board. The Secretary of State may make representations and the Chairman's decision will be final."

Where the chair concludes that there are insufficient grounds for withholding the material under 8(1) the following wording may be appropriate:

"The chair directs under Rule 10(2)(c) that the material submitted by the Secretary of State should not be withheld from the prisoner on the grounds that it is not necessary and proportionate in the circumstances of the case to do so and that its disclosure would not adversely affect ...

"...The Secretary of State should re-consider whether he wishes to rely on this evidence and if so, he must make full disclosure. Within 7 days of receiving this direction, the Secretary of State may appeal against it in writing to the Chairman of the Parole Board. The prisoner's representative may make representations and the Chairman's decision will be final."

If the chair feels that he needs to hear verbal arguments from the parties before deciding on the direction to make, a directions hearing can often assist in this respect. Rule 11 provide for a directions hearing to be held to determine any issue and describe the procedure. The chair will need to make sure that enough time is allowed between any directions hearing and the substantive hearing itself.

3.4 Withholding material from the prisoner and his representative

The Secretary of State may seek to withhold material both from the prisoner and his representative. This may be permitted where the representative does not fall under the categories described in Rule 8(1). In any other case, there may be scope for withholding material from an authorised representative, **but only in very exceptional circumstances.** Chairs presented with a submission from the Secretary of State to this effect are asked to consult the case manager who must seek advice from the Head of Litigation or Deputy Head of Litigation.

3.5 Withdrawing material from the Board

The Secretary of State has the power under Rule 8(5) to withdraw information if the Board directs disclosure against his wishes. Where this occurs, and it should happen only in exceptional cases, anyone who has seen the material in question will be unable to sit as ICM member or on the oral hearing panel.

4. Mental health cases

4.1 Mental Health Review Tribunal

Occasionally, a prisoner will have been initially sentenced to a term of imprisonment, and later transferred under the Mental Health Act for treatment. While subject to the section, the Board has no jurisdiction until a Mental Health Review Tribunal (MHRT) discharges the subject back to prison. There are two sets of circumstances where the Board may conduct a review in respect of someone still detained under the Mental Health Act:

1. Where the MHRT decides that treatment is no longer necessary but that a transfer back to prison would adversely affect the patient's mental health; or
2. Where the MHRT decides that, had the patient been sentenced under the Mental Health Act, he would now be discharged under the same Act.

4.2 Panels at secure units/hospitals

Panels will sometimes, therefore, visit secure units or special hospitals to conduct hearings. The principles for review and release apply as they do to prisoners but the dossier will be different. Typically, members can expect to receive:

- the dossier that went before the MHRT
- any other current psychiatric/psychological reports
- the Responsible Medical Officer's annual statutory reports
- reports on any home leaves
- a probation report

The panel chair will need to check that these documents, and any additional other documents, are covered in the directions. **Every such panel will include a psychiatric member and consultation between the panel chair and the psychiatric member is recommended.**

5. Deferrals

5.1 Pre-hearing applications for deferral

There are three stages at which a request to defer from one of the parties may be made pre-hearing:

- Before the review has begun;
- After the review has begun but before the case has been allocated to a panel; and
- After the case has been allocated to a panel

In all cases, it is essential that a deferral, if granted, is granted BEFORE the hearing rather than on the day of the hearing. Unnecessary expense to all parties should be avoided by pointless hearings.

5.2 Before the review has begun

These will be dealt with by the oral hearings team. The Secretary of State is only required to refer some cases to the Board if the prisoner wants him to (section 28 Crime (Sentences) Act 1997). The presumption will be then that if the prisoner does not want the review to go ahead at this stage, the Secretary of State will consider the deferral.

5.3 After the review has begun but before allocation to a panel

These will be dealt with by the ICM member. In considering whether to grant the request, the following will be considered:

- Whether additional information is required and will be available within a short specific timescale; **and**
- Whether the information is materially likely to affect the outcome.

In granting a deferral, the ICM member will make directions for further case management.

5.4 After the case has been allocated to a panel

These will be dealt with by the chair of the panel as part of the directions. The same considerations should be applied as those by the ICM member.

- **Where a deferral request is rejected, reasons must be given.**
- **Where a deferral is granted, it takes the form of a direction. Further directions will normally be required for case management. Chairs should resist issuing a direction for the hearing to take on or before a specific date. The Board may not be able to fit the date into existing listing commitments.**

5.5 Examples where a deferral request would not normally be granted

- Where the prisoner is about to commence a course, or wishes to complete a course, and a report is unlikely to be available within 3 months. The judge/chair will take into account that a successfully completed course may not be of use without a period of monitoring subsequently to see if lessons learned can be put into practice. This will depend on the subject of the course.
- 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 duty judge/chair that the course report will have little effect on the panel's decision.
- 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.
- 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.
- In some cases where a prisoner wants to await the outcome of criminal proceedings. This often occurs in recall cases. The duty judge/chair should consider the reports and decide whether sufficient material is there about the alleged incident(s) to enable the panel to reach a decision, with the benefit of oral evidence, whether the **risk** of further offences is acceptable, regardless of whether a crime has actually been committed. Remember, the Board is not required to adopt the criminal standard of proof.
- Where the Secretary of State does not wish to be represented, or has not put in a view.

5.6 *Examples where a deferral request is likely to be granted*

- Where the prisoner is about to complete offence related work and the report will be available soon and it is likely to affect the outcome.
- Where a material witness is unable to attend on the date of the panel. This type of request will require the chair to consider the excuse given by the witness and decide whether it is reasonable or not.
- In most cases where 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.
- Where 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; or where the release plan is not yet in place but is likely to be soon.

After deferring, it will be necessary for the chair to issue a short deferral letter for the case manager to circulate. This should direct that any missing information be provided, say who should provide it, and give a deadline for submission (see Annex F for guidance).

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.

CHAPTER 2

ROLES AND RELATIONSHIPS

1. Participants in the hearing

The participants in an oral hearing are generally as follows:

- "The panel" - the members of the Parole Board appointed to hear a case
- "The panel administrator" - a member of the Parole Board Secretariat, responsible for administrative duties during the hearing
- "The prisoner"
- "The prisoner's representative" - normally a solicitor or barrister
- "The S of S representative" - the representative of the Secretary of State, normally a senior prison staff member, or (often in recall cases) a Public Protection Advocate, a lay advocate presenting the Secretary of State's case
- "The witness" - someone called to give oral evidence at the hearing, eg a probation officer, prison officer, psychiatrist, hostel worker etc
- "The observer" - someone granted permission to attend the hearing and observe the proceedings while taking no active part
- "The victim" - the victim or family member of the victim of the index offence attending to read a personal statement
- "The Victim Liaison Officer" - someone appointed to assist a victim in presenting a personal statement, and who often accompanies them at a hearing to give support

1.1 The role of the Case Manager

When members receive the dossier, they will be told the name and contact details for the case manager. The case manager will be responsible for ensuring that all administrative requirements are handled so that the case reaches the hearing in accordance with the timetable. The case manager is also the panel's pre-hearing link to the Secretary of State and the prisoner/representative.

- All directions and requests for information before a hearing must be routed through the case manager or another member of the Secretariat in their absence. **A panel must not make direct enquiries to either party except at the hearing itself.**

Where the case manager offers advice on procedure, it should not lightly be discounted. **Note, however, that under NO circumstances may a**

case manager be asked or permitted to make any comment whatsoever on the outcome of the review.

All decisions following the hearing must be sent to the case manager for despatch to the parties.

Exceptionally, the panel may be assigned a panel administrator, who will attend the hearing and take a note of proceedings. Resources in this area are scarce, however, and normally the panel chair will take the note.

1.2 The Secretary of State's Representative and view

The Parole Board Rules do not require the Secretary of State either to:

- a) Be represented at the hearing; or
- b) Provide a view.

It would be very rare, if ever, that a panel could decide to defer the prisoner's right to a prompt hearing for either to be provided.

1.3 Secretary of State's policy and view

Lifers – For a regular review, the Secretary of State will normally be represented by the Lifer Manager or other senior prison grade. There may not be a representative at every hearing and while there is no power to direct that the Secretary of State be represented, a request can be made if considered necessary. At a recall hearing the representative may be a Public Protection Advocate (PPA).

Extended Sentences – For an annual review, there will normally be no Secretary of State's representative and no Secretary of State's view. At a recall hearing, a PPA may represent the Secretary of State unless he regards the case as low priority (for example where the prisoner has been convicted of further offences or where recall was due to missed appointments). Accordingly, representation will be provided only as a matter of priority at the Secretary of State's discretion.

Determinate recalls – the Secretary of State will not normally be represented. Representation may be provided in a case where the Secretary of State considers it necessary, but this will be rare.

Panels may have two cases in a day where a PPA represents the Secretary of State in one case, and a prison governor in the other. It is entirely a matter for the Secretary of State to decide who represents him at each hearing.

.4 *Qualification*

Where the nominated Secretary of State's representative has written a report for the dossier and his/her view does not agree with the Secretary of State's official view (as stated in the dossier), then he/she would not normally present the case at the hearing. The representative should check the Secretary of State's view on receipt and, if it differs from his/her own, consider another senior member of the prison staff to act as the representative.

Where the Secretary of State's representative is also a witness, he/she is not automatically barred from presenting the case, but the panel chair should consult the parties and decide whether the hearing is capable of going ahead. Where neither party objects, and the panel has no overriding reason to disagree, the presumption will be that the hearing can proceed. If it is decided that the Secretary of State's representative cannot play both roles, another senior member of the prison staff will normally be found to act as the Secretary of State's representative.

1.5 The prisoner's representative

In most cases the prisoner will have legal representation at the hearing although the Board may, with his/her agreement, appoint to act someone to act on his behalf. Alternatively the prisoner may choose to be unrepresented or to have a non-legal representative. The Rules provide that a party may be represented **by any person who he has authorised for that purpose** with the following exceptions

- any person detained or liable to be detained under the Mental Health Act 1983
- any person serving a sentence of imprisonment
- any person who is on licence having been released or
- any person with a previous conviction for an imprisonable offence which remains unspent under the Rehabilitation of Offenders Act 1974

1.6 Witnesses

A witness is not a party to the proceedings and may only answer questions put by a party or the panel. He/she may make additional statements if the panel believe it will help its deliberations. The normal procedure is to allow all witnesses to remain for the duration of the hearing but they may be given leave to depart once evidence has been given, provided the panel are content that no further input will be required.

1.7 Observers

Anyone wishing to observe an oral hearing needs to apply in writing for permission from the chair. This includes any family members or friends that the prisoner wishes to attend. Any such request should give the full

name and occupation of the prospective observer, and reasons for making the request. Applicants should be aware that the prisoner will be consulted and has the right to object. While the final word on observers lies with the panel chair, it is essential for an effective hearing that the prisoner is at his ease and chairs would normally refuse an observer where the prisoner objects to their presence.

CHAPTER 3

THE HEARING/PROCEDURAL ISSUES

1. Introduction

The hearing procedure is governed by the Parole Board Rules (25).

There has been much discussion about the degree to which the proceedings should be adversarial or inquisitorial. The Rules say that formality should be avoided and that the panel should make its own enquiries where possible to satisfy itself about the level of risk but that the proceedings may be conducted in such a way as the panel considers most suitable to deal with the issues (25(2)).

The European cases and the House of Lords, however, speak of the need for adversarial proceedings in order to satisfy the requirements of article 5(4) of the Convention on Human Rights. In reality, most reviews and hearings contain elements of both adversarial and inquisitorial practices and in truth, the Board has an important inquisitorial role. The following paragraphs should be noted, however.

On one hand the Board may call witnesses, make directions about evidence it requires, and ask questions at the hearing. On the other, there may be cases, particularly at recall hearings where there are disputes over fact that will justify parties taking a more adversarial stance leaving the panel more in the role of independent arbiter.

The Secretary of State is required to submit all written evidence to the Board that he considers relevant, while the prisoner may elect not to rely on a report he has commissioned and the Board has no power to force him/her to disclose it. This may be offset to some extent by the power of the Secretary of State to withhold material from the prisoner under Rule 8.

The panel will wish to take account of the need to have witnesses, particularly the prisoner, to be at their ease. The crucial consideration is that the panel wishes to hear all the material evidence and witnesses should feel comfortable enough to give it. The chair should not allow a representative of either party to badger a witness. Once a question has been answered clearly and satisfactorily, the chair should ensure that the representative moves on to the next question. Similarly, the panel should treat witnesses with respect.

2. The missing panellist

The Rules permit the Board to proceed with 1-3 members. Cases will normally be listed for three members but sometimes a member is unavoidably detained, or ill, and cannot attend. The remaining members should immediately discuss and satisfy for themselves whether the hearing can go ahead. It is a matter for the panel to decide but the following should be borne in mind:

- The chair must be judicial for a lifer case. If the missing member is the chair the panel cannot lawfully be constituted.
- In a non-lifer case, if the appointed chair is missing and one of the remaining members is a qualified IPP chair the case may go ahead provided the members are satisfied they can determine the issues.
- Where the missing member is a 'specialist', for example a psychiatrist or psychologist, and the crucial issues turn on that member's expertise, the presumption will be that the hearing will not go ahead.
- It would rarely, if ever, be appropriate to proceed with only one member (except of course in a determinate recall hearing).
- Where a hearing goes ahead with two members, and following the hearing they are unable to reach agreement on the decision, then the entire review must be adjourned and the Board will re-list the case for a fresh panel.

3. Privacy

The Rules provide that hearings shall be held in private (24(4)). However, in addition to witnesses and observers, the chair of the panel may admit to the hearing such other persons on such terms and conditions as he considers appropriate.

4. Order of evidence

It is important to remember that the chair has wide discretion over how the hearing is conducted. Although the following part of this guide can be taken as the norm, proceedings are nevertheless subject to directions the chair, in discussion with co-panellists, may make to the contrary. Unless one of the parties applies for the chair to direct otherwise, all participants can expect to be present during the entire hearing.

Although the panel has a judicial role, it will try to keep the proceedings informal. It is likely that the proceedings will be more formal if there is strongly contested evidence (for example regarding the circumstances of a recall). However, **witnesses** are not required to give evidence on oath. The proceedings are not recorded verbatim and participants who require a

full record should take notes. It is considered part of the panel chairs job to take as good a note as possible.

The panel may manage the hearing as it thinks best in order to apply itself to the job in hand. **A pre-hearing discussion with the members of the panel is essential to establish the way the hearing will be run, including the order of witnesses, who should question them, and in what order.** A suggested procedure is as follows:

- The chair will direct his/her opening remarks to **the prisoner**, introducing all the participants and outlining how the hearing will proceed. **The prisoner** may be asked whether he/she objects to the presence of any of the **observers** (and if so, why) and whether he/she intends to give evidence. Should **the prisoner** decline to give evidence, the chair should remind him/her that before directing release, the Board must be satisfied that the risk to the public is acceptable and that the prisoner's evidence will be likely to assist.
- The chair will invite **the Secretary of State's representative** to give the Secretary of State's view on what the outcome of the case should be. This will normally entail reading the official view contained in the dossier, expanding where necessary. Although **the Secretary of State's representative** will not normally give formal evidence about the prisoner, he/she may be asked general questions about sentence management issues.
- The chair will invite **the prisoner's representative**, or **the prisoner** if he is unrepresented, to state what decision and/or recommendation he/she will be asking the Panel to make. This should be a short statement of fact. Time will be given at the end of the hearing for a closing argument.
- The chair will invite one of the parties, normally **the Secretary of State's representative** if present, to call his/her witnesses. **The witnesses** will be asked questions, usually in the following order:
 - by **the Secretary of State's representative**;
 - by **the prisoner's representative**;
 - by each Panel member in turn;
 - by **the Secretary of State's representative** on re-examination.
- Once all the **Secretary of State's representative's witnesses** have been heard, **the prisoner's representative** will be invited to call his/her **witnesses**. Normally **the prisoner** will be invited to give evidence first. The procedure then follows as at 4, with **the**

Secretary of State's representative and **prisoner's representative** changing places in the order.

- Once all the evidence has been heard, the chair will invite **the Secretary of State's representative** to sum up in light of all the evidence presented.
- The chair will then invite **the prisoner's representative** to sum up in the same way. It is required to allow **the prisoner's representative** to have the final word.
- The chair will advise all present that a decision will be made and conveyed to **the prisoner**, his/her **representative**, the prison Governor and the Ministry of Justice within fourteen days.
- **All participants** will be asked to leave the room and wait nearby while the Panel discuss whether any further contributions are needed. Provided the Panel is satisfied that it has all the evidence it needs, the participants can be given leave to go.
- The Panel will then deliberate and make its decision. A decision may be taken by a majority but will be presented as a decision of the entire Panel. Parties will be notified in writing. The post-panel discussion is crucial and is the point at which the panel evaluates the evidence and agrees the main bullet points for the reasons. It is essential that a full discussion takes place, even where each panel member has the same view on the appropriate decision.

5. *The panels' remit*

The panel has two powers in respect of lifers/IPPs:

1. Under section 28 of the Crime (Sentences) Act 1997, it may direct release where it is satisfied that it is no longer necessary for the protection of the public for the prisoner to be detained; and
2. Under section 239(2) of the Criminal Justice Act 2003, the Secretary of State may ask the Board for advice. This is normally restricted to advice on suitability for open conditions and to state what outstanding risk factors exist.

In respect of determinate cases the panel will only be concerned with the question of release. It is not the Secretary of State's practice to invite the Board to consider a transfer to open conditions in respect of determinate sentence prisoners.

Prisoners will, from time to time, ask the Board to advise the Secretary of State on matters that he has not invited the Board to give advice on. Such applications must be resisted. Typically these matters include:

- taking specific courses (e.g. SOTP, ETS etc)
- specific forms of treatment (e.g. one-to-one psychology, therapeutic treatment at Grendon/Dovegate etc)
- suitability for transfer under the Mental Health Act
- re-categorisation within closed conditions (i.e. category A to B, or B to C)

It is not within the Board's power to give advice on any matters that the Secretary of State has not asked it to (Rule 26). Where a representative makes an application in these circumstances, the chair must turn it down and refuse to entertain evidence relating to it. The terms of the Secretary of State's referral will tell panels what they may and may not do. It is his practice to instruct the Board not to even comment on certain issues. This must be complied with. To do otherwise gives prisoners false hopes and put the Secretary of State in a difficult and unfair position. Since it would also contravene Rule 26, it is arguably unlawful.

6. *Helping the prisoner to progress*

15. This is also **not** the Parole Board's role. In the case of a life sentence prisoner, the sentence imposed implicitly acknowledges that the prisoner may remain in detention for the rest of his/her life where the release would not be commensurate with public protection.

16. Panels may be in the position of assessing a prisoner whose progress has ground to a halt or who is becoming so institutionalised that release may never be an option if action is not taken to help him/her move towards release. **Panels must remind themselves of the overriding statutory requirement to protect the public. While a prisoner's interests may be a factor, a panel must never put the public at risk by directing release or recommending open conditions where the risk is too high to do so. When assessing whether to direct release, the prisoner's interests are secondary to public protection.**

7. Admissibility of evidence

The Board is not bound by criminal rules of evidence. Rule 25(6) states:

"The panel may produce or receive in evidence any document or information whether or not it would be inadmissible in a court of law."

In short, the panel may allow either party to submit evidence that would be inadmissible in a court of law. This has particular application when considering the submission of hearsay evidence (see below).

The interpretation of this Rule will be for the panel chair. Where doubt exists, the panel should consult the case manager who will take advice where appropriate.

See also the section below on hearsay evidence.

7.1. Hearsay

The Board frequently receives evidence that would not be admissible in a court of law because it amounts to hearsay.

It is well established in the courts that the Board may receive such evidence even where there is a dispute over facts. However, weight given to such evidence will need to be considered carefully, and there may be cases where the evidence is so fundamental to the main issue before the panel, that fairness requires the attendance of the primary source of that evidence. Normally, second hand evidence would be the limit of acceptable hearsay but each case is different and panels will need to balance the need to assess the facts and risk, against the right of a prisoner to a fair hearing (*see also witness summonses Chapter 1*).

7.2. Disclosure at the hearing

Panels will frequently arrive at the hearing to find papers that have not previously been submitted. In almost all cases, it will be sufficient to ensure that copies are available for all parties, and that the hearing goes ahead as near to the start time as possible, after the panel has read the material. However, there are potential problems that could arise:

- The other party objects to the late disclosure – this will often happen when the Secretary of State submits an expert report that the prisoner would want to challenge, but could also happen the other way round. Where the prisoner submits an expert report to rebut one the Secretary of State has submitted earlier, there may no problem and the panel may feel it appropriate to reject any application by the Secretary of State to defer – the prisoner is entitled to have the last word. If, however, the late report is submitted by the Secretary of State, and the prisoner applies to defer in order to commission his own report, it will be for the panel to decide as a matter of fairness.

The panel will take into account the effect of the report on the case as a whole. For example, where the report is negative to the prisoner whereas the bulk of the other reports are positive, a deferral request will be hard to resist. If the panel decides to defer, it should ask the prisoner for a timescale, and make a direction for a date by which the report should be received.

- The Secretary of State seeks to withhold the material – the panel should clear the room of everyone except the two representatives. The Secretary of State should be asked why the application was not made ahead of the hearing and in line with the Rules and on what basis the information should be withheld. The panel should afford the prisoner’s representative the chance to read the material and make submissions on its disclosure. It **must** be explained to him/her that under no circumstances may it be disclosed to the prisoner until the panel chair has made a direction.

The panel should then ask both parties to leave the room while it makes a determination. The criteria under Rule 8 should be applied and the two representatives only called back for the direction under Rule 10(2)(c) to be conveyed.

Depending in whose favour the direction is made, the other party must be given the chance to apply to defer in order to make an appeal under Rule 10(3). If such an application is forthcoming, the chair has no option but to defer so that the appeal procedure can run its course.

7.3 Dealing with disruptive behaviour

The Rules provide that the chair of the panel may require any person present at the hearing who is, in his/her opinion, behaving in a disruptive manner to leave and may permit him to return, if at all, only on such conditions as the chair may specify. The panel has no power to hold any person present in contempt.

7.4 Children and young persons

Occasionally children and young persons may be present as ‘prisoners’ and particular care needs to be taken to ensure that their evidence can be adduced as effectively and fairly as possible.

When hearing evidence from a child, the panel should have regard to the key principles of the Practice Direction issued by The Lord Chief Justice in relation to trials of children and young persons in the Crown Court. The over-riding principle being that the hearing itself should not expose the child or young person to avoidable intimidation, humiliation or distress and that all possible steps should be taken to assist the young person in understanding and participating in the proceedings. So far as possible, the ordinary hearing process should be adapted to meet those ends. Modifications to the hearing process may include:

- Ensuring that the young person has had the opportunity to have legal representation.
- Enabling the young person to see the hearing room prior to giving evidence in order that he can familiarise himself with it.

- Permitting the young person, if he wishes, to sit with members of his family in a place which permits easy informal communication with his legal representative and others.
- The panel should explain the proceedings to the young person in terms he can understand.
- The hearing should be conducted according to a timetable which takes full account of a young person's inability to concentrate for long periods. Frequent and regular breaks may be appropriate.
- A more informal approach to the proceedings may be required including addressing the young person by his/her first name.
- Restricting observers to a minimum. Family members may be appropriate but others may not

CHAPTER 4

THE DECISION

1. Test for Release

1.1 *Extended sentences after recall*

The case of *Sim* set out the test for extended sentences. The Board shall direct release unless:

- It is satisfied that there exists a risk that the offender will commit offences of the type for which he/she was sentenced (i.e. violent or sexual offences). The risk need not be of serious offending or to life and limb; or
- The licence has broken down to a point where supervision has been rendered impossible. This scenario covers the situation where a licensee is ignoring his conditions to a point where effective supervision is no longer happening. Minor breaches of conditions may well not justify recall.

1.2 *Lifers / IPPs*

The test to be applied is laid down by statute in section 28 of the Crime (Sentences) Act 1997 which states that release may not be directed unless:-

“the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.”

Case law has tried to define exactly what the public must be protected from – in other words, what type of risk should panels be focussing on? Early case law referred to the life and limb test whereby a lifer can be further detained if the Board is not satisfied that there is not a risk of serious violent or sexual offending. The case of *Stafford* in the European Court of Human Rights, however, spoke also of the need for a causal link between the type of risk identified as justifying detention, and that for which the life sentence was originally imposed.

The case law is useful in helping panels interpret the statutory test. **However, they do not constitute the test itself. If a panel describes in its decision the test that has been applied, it must only state the statutory test.**

It is the Board’s policy that the majority of lifers/IPP’s will be released from open conditions. Before considering release from closed conditions, panels should read carefully the policy in full at Annex I.

1.3 The case of Green

The Board has successfully defended an application for judicial review where a discretionary lifer, sentenced to life for arson, was recalled from licence for sexual offences. Green argued that there is no link between the offences for which he was recalled and that for which he was sentenced. Hence the causal link was broken and he should have remained on life licence while being tried separately for the sexual offences. However he failed in this argument and permission was refused.

Prisoners' representatives may argue that certain issues that cause concern (for example drug taking or dishonesty) are not life and limb issues, have no bearing on the original sentence and should not prevent progress towards release. The Board has therefore obtained legal advice which is summarised in detail here, and should be applied by panels in all lifer cases.

1.4 Breach of licence conditions

While minor breaches may well not be sufficient to justify continued detention, and similarly minor breaches of prison discipline may not be enough to obstruct release, persistent or total non-compliance may be a factor in assessing risk. Public protection considerations can arise where risk cannot be managed or assessed by the inability of the offender to comply with supervision. The alternative test for extended sentences (see above) where a licence has broken down, will also apply to lifers.

There will be occasions where prisoners will argue at recall hearings that a period spent unlawfully at large during which they came to no adverse notice, actually counts in their favour. Such arguments should be treated with caution. The fact remains that while not under supervision, the prisoner will find it difficult to satisfy a panel that he/she was not presenting behaviour that gave rise to a risk of serious offending, and in any case the panel may refuse to direct release if the prisoner cannot comply with his/her licence.

1.5 Drugs/alcohol

Drug taking/dealing, even involving class A drugs, may not on its own satisfy the test. However, in certain cases, it could causally relate to a risk of serious offending even if it post dates the index offence and was not directly linked to it. For example, if alcohol was a disinhibiting risk factor, a switch to drug taking in prison or on licence could have a similar effect. It will be an issue for each panel to assess on the circumstances of the offence and offender and will differ from one prisoner to another.

Where the index offence arose wholly or partly through links to a criminal culture, then use of drugs may revive that link with serious offending.

1.6 Determinate sentences

The directions require the Board to consider the risk of any further offences being committed.

2. Burden and standard of proof

The first thing to bear in mind is that the Parole Board does not apply standards of proof as pertain in criminal trials. Hence it is perfectly lawful for the Board to decide for example, that a licensee probably did commit an offence despite charges not being brought, or even where he/she has been acquitted at a criminal trial.

More common, however, will be the scenario where the Board finds sufficient evidence that there exists the *risk* of offending even though the facts did not amount to a criminal offence.

In doing so the panel will look to the facts and behaviour that led to the charge or revocation of the licence. For example, a panel may find that a sex offender who was acquitted at trial of indecent assault had nevertheless displayed behaviour that raises the *risk* of an assault by grooming a potential victim or acting in breach of licence conditions. The weight to be applied to the absence of a criminal conviction will differ from case to case.

2.1 *The test when considering release – lifers/IPPs*

The statutory wording is clear – the Board will not direct release unless it is satisfied that it is no longer necessary for the protection of the public that the prisoner be detained. **In other words, release may not be directed unless the evidence demonstrates to the Board’s satisfaction that the level of risk is acceptable for release.**

It has been argued by some prisoners’ representatives that this creates an unfair burden on the prisoner to show that he/she is safe to release, whereas it should be for the state to show he/she is still dangerous. The Board’s position, however, is that both parties are free to submit whatever evidence they want within the constraints of the panel’s remit; the Board assesses that evidence and applies the statutory test. In many cases, the Secretary of State’s evidence is sufficiently positive to satisfy the test without the prisoner putting in any evidence at all.

2.2 *The test when considering re-release at recall – extended sentences*

Panels are required to reverse the test. Release must be directed unless the Board is satisfied that it is necessary for the protection of the public that the prisoner should be re-detained. **In other words, the presumption is that the prisoner will be released unless the evidence demonstrates to the Board’s satisfaction that the risk of offending is unacceptable.** This approach has been approved by the courts in respect of extended sentences.

2.3 The test when considering re-release at recall – lifers/IPPs

While the test is reversed in respect of recalled extended sentence prisoners, it is not in relation to lifers/IPPs. The Board is still required to be satisfied about risk before directing release.

This is correct under current case law but is nevertheless controversial in view of the test for extended sentences. **If possible, panels should make a positive finding of risk in lifer/IPP recall cases.** Where this is done, there can be no argument about whether the test in law is fair or not.

2.4 The test when considering re-release at recall – determinate sentences

There is no statutory wording comparable to that for lifers and extended sentences. Panels may apply a balance of probabilities but the risk to the public of further offences must be paramount.

3. The Resettlement Plan

When considering release, the Board is assessing the level of risk that the prisoner will present in the community. It is central to that assessment, therefore, that the Board satisfies itself that the plan in place for supervision, monitoring and management of any residual risk, is acceptable – it is not a separate issue.

3.1 Release “subject to”

Panels are sometimes invited to direct release subject to an appropriate release plan being prepared by the probation officer where that is the only issue outstanding. There are occasions where this could be a valid approach but it is fraught with danger and should not to be used lightly.

Once such a direction is given, the arrangements put in place for managing the prisoner in the community are effectively removed from the Board’s decision making power. Since in most cases this issue is central to assessing the level of risk, it is rarely appropriate for such a course to be adopted.

In the vast majority of such cases the right thing to do, once all the evidence has been heard, is to adjourn and issue a direction. An example might be;

“The panel adjourns the hearing and directs that a suitable resettlement plan be put in place, and a report submitted to the Board and the prisoner’s representative by...at the latest. On receipt of the report, the panel will decide whether a further oral hearing is required.”

If the plan satisfies the panel that release is now appropriate a further oral hearing may not be necessary, and a decision with reasons can be sent to the case manager.

In respect of a determinate recall case, the legislation does not allow the Board to recommend release at a future unknown date (see recall chapter in the Members’ Handbook). Panels may have to make no recommendation for release and state what information it needed but did not have; or adjourn and direct that the further information be obtained.

Panels should note the following:

- **A decision not to release once the report is received may require a further oral hearing to give the prisoner a chance to make a further case. This is a matter for the panel to decide;**
- **In any case, adjourning for a resettlement plan should not be contemplated unless the panel is satisfied that it meets the general policy on deferrals; in other words the release plan must be imminent. Where there is no prospect of a release plan in the near future, refusal may be appropriate;**
- **When adjourning, the panel should not make a risk assessment. This should never be done without all the material required, including the resettlement plan. The adjournment letter will simply say that the case is adjourned, and make directions.**

4. Licence Conditions

Article 8 of the Convention on Human Rights gives a qualified right to private and family life. Any condition on a licence has the potential to breach that right unless it is both necessary and proportionate to the risk it is intended to manage.

The Board sets conditions for release. The standard licence conditions for a life licence are at annex C. Frequently, however, a panel will want to add additional conditions and in every case must consider first whether they are necessary and proportionate. **The general rule of thumb is that the restriction that the condition imposes must be no greater than that necessary to manage the risk.**

4.1 Table of licence conditions

The following table contains a list of additional conditions. In almost every case, this will cover all eventualities. If a panel wishes to impose a condition not contained on the list, caution is advised. There is no blanket ban on any condition not listed here that a panel regards as necessary but it is likely to be exceptional for that to be the case, and the panel may think it advisable to seek advice first.

Additional Licence Condition Criteria and Table

Offender Managers should evidence that all conditions are reviewed on a regular basis. Conditions can be removed or altered (if necessary with approval of the Parole Board) if an offender is making progress and their risk of harm has sufficiently decreased.

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
<p>1. Contact Requirement</p>	<p>(a) <i>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.</i></p> <p>(b) Receive home visits from [insert name] Mental Health Worker</p>	<p>Where an offender manager 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.</p> <p>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 behavior and the possible consequence of this needs to be explained to the offender.</p> <p>Where consent is not forthcoming the expectation that the offender access psychiatrist/psychologist/ medical intervention and treatment should be written in the RMP and SP. If the objective is not complied with then inference can be drawn that the ROH is not being addressed and the purpose of supervision/rehabilitation undermined. It will then be possible to recall under the relevant standard condition. This should be explained to the offender and recorded as the discussion having taken place.</p> <p>The requirement that an offender attend a duly</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
		qualified medical practitioner also includes any reasonable request to undergo drug counselling.
2. Prohibited Activity Requirement	<p><i>(a) Not to undertake work or other organised activity which will involve a person under the age of ..., either on a paid or unpaid basis without the prior approval of your supervising officer;</i></p> <p><i>(b) Not to use directly or indirectly any computer, data storage device or other electronic device (including an internet enable mobile telephone) for the purpose of having access to the Internet or having access to email, instant messaging services or any other on line message board/forum or community without the prior approval of your supervising officer. You must allow a responsible officer reasonable access, including technical checks to establish usage.</i></p> <p><i>(c) Not to own or possess or permit in your address any computer without the prior approval of your supervising officer.</i></p> <p><i>(d) 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.</i></p> <p><i>(e) Not to own or possess a mobile phone with a photographic function without the approval of your supervising officer</i></p> <p><i>(f) Not to own or use a camera without the approval of your supervising officer</i></p>	<p>It is possible to include conditions, which require offenders not to access the internet or own a computer, although these are difficult conditions to monitor and can normally only be achieved by setting a blanket restriction on the offender's access to computers. Similarly an additional condition may prohibit offenders from owning or using a camera or mobile phone with camera functions.</p> <p>These conditions should only be used where it is necessary and proportionate to manage the risk (such as members of a child sex offender ring who are known to use the Internet to distribute indecent material). Consideration will have to be given to practical exceptions, such as the use of a computer in a work environment. Prohibited activity conditions should always be subject to the clause "... without the prior approval of your supervising officer".</p> <p>Conditions prohibiting the consumption of alcohol, either on or off the site of an Approved Premises are difficult to enforce and there may be difficulties in arguing that limited</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
		<p>consumption should always lead to recall. 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.</p> <p>There is no statutory provision to allow offenders who are released on licence to be required to comply with an alcohol test. Therefore, alcohol testing can only be conducted with the consent of the offender, though complying with alcohol testing can be made a condition of the Approved Premises rules which an offender is asked to sign on entry.</p>
<p>3. Residency Requirement</p>	<p><i>(a) To permanently reside at (name and address e.g. an approved premises) and must not leave to reside elsewhere, even for one night, without obtaining the prior approval of your supervising officer; thereafter must reside as directed by your supervising officer.</i></p>	<p>This condition is stronger than the standard condition to reside as approved. The standard condition requires the offender to notify the Probation Service of his address. This condition applies in cases where the supervising Probation Area decides it is necessary and proportionate to direct that the offender live at a particular address. Some offenders have in the past challenged the meaning of the term 'reside'. <i>Court judgments have confirmed that licence conditions formulated in terms of 'you must reside at' have the clear effect of requiring that the licensee</i></p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
		<p><i>spend every night at the place in question. It is therefore possible to insist that offenders stay each night in a particular address and must ask for permission to stay elsewhere. If the offender should spend just one night away from the specified address they are in breach of this particular licence condition.</i></p>
<p>4. Prohibited Residency Requirement</p>	<p><i>(a) Not to reside (not even to stay for one night) in the same household as any child under the age of ... without the prior approval of your supervising officer</i></p>	<p>Please see comments under Residency Requirement. Such a condition would normally be more effective if it is combined with a prohibited contact requirement.</p>
<p>5. Prohibited Contact Requirement</p>	<p><i>(a) Not seek to approach or communicate with [INSERT NAME OF VICTIM AND/OR FAMILY MEMBERS] without the prior approval of your supervising officer and/or the name of appropriate Social Services Department.</i></p> <p><i>(b) Not to have unsupervised contact with children under the age of without the prior approval of your supervising officer and [INSERT NAME OF APPROPRIATE SOCIAL SERVICES DEPARTMENT]</i></p>	<p>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 exceptional circumstances particular to a case where the naming of an individual is not appropriate.</p> <p>In principle there are no legal difficulties in also inserting licence conditions requiring offenders not to contact or associate with children. However, as with all licence conditions, it should only be used where it is considered to be both necessary and proportionate to the risk involved. Even in those</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
		<p>cases where it is considered appropriate, consideration may have to be given to practical exceptions, such as contact with family members under the age of eighteen, although even refusing in this type of contact may be justified in certain cases e.g. if the individual poses a risk to her/his own children.</p> <p>The use of such conditions is normally to supplement those conditions which prohibit living or working with young people. In terms of enforcement the wording of the condition does allow for travelling on public transport or going to the shops without breaching the condition relating to unsupervised contact.</p> <p>These conditions are usually considered in cases where other conditions are insufficient to protect children. When considering the upper age limit of the children to be protected, Offender Managers will have to consider the nature of the risk and there are no firm rules. For example, if the only available approved premises accommodation allows residents aged 17 and over, and if the supervising officer is satisfied the offender presents an acceptable risk, this might be the decisive factor.</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
<p>6. Programme Requirement</p>	<p><i>(a) To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your alcohol/drug/sexual/gambling/solvent abuse/anger/debt/prolific/offending behaviour problems at the [NAME OF COURSE/CENTRE].</i></p> <p><i>(b) Participate in a prolific or other priority offender project (PPO) [SPECIFY WHICH] and, in accordance with instructions given by or under the authority of your supervising officer attend all specified appointments with your supervising officer and any other agencies for the purpose of ensuring that you address your offending behaviour for the duration of the programme.</i></p>	<p>These conditions are routinely used to ensure offenders participate in offending behaviour programmes.</p>
<p>7. Curfew Requirement</p>	<p><i>(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.</i></p> <p><i>(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 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</i></p>	<p>To be lawful the total number of hours allowed as a curfew is a maximum of 16 hours per day. However, any curfew over 12 hours needs to be cleared with PPCS and any reporting requirements within the non curfew hours could be unlawful, so these should be cleared as well. These curfew hours should also 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 8pm would count as nine hours towards the maximum 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</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
	OR OTHERWISE].	<p>be considered on a case by case basis.</p> <p>EM is available for offenders who are MAPPA level 3 or for those offenders who are considered Critical Public Protection cases.</p> <p>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.</p>
8. Exclusion Requirement	<p>(a) Not to enter the area of [CLEARLY SPECIFIED AREA], as defined by the attached map without the prior approval of your supervising officer.</p> <p>(b) Not to enter [NAME OF PREMISES/ADDRESS/ROAD] without the prior approval of your supervising officer.</p> <p>(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.</p>	<p>Requests for exclusion zones must be carefully applied in order to be lawful. Once the exclusion is shown to be necessary, it is critical to establish that it is proportionate, taking into account factors such as whether the offender has close family who live in the exclusion area, or where the exclusion would restrict his ability to work or to visit the doctor or dentist. Although the fact that an exclusion condition may have this effect might be relevant, it is not determinative in deciding whether the proposed condition is reasonable. The condition could be imposed, but the offender manager could grant occasional access.</p> <p>The exclusion area must be defined precisely. A blanket ban on entering a large town, for example, will not always be</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
		<p>acceptable. 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. The offender must be in no doubt where the exclusion zone begins and ends.</p> <p>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.</p>
<p>9. Supervision Requirement</p>	<p><i>(a) On release to be escorted by police to Approved Premises</i></p> <p><i>(b) 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.</i></p> <p><i>(c) 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.</i></p> <p><i>(d) Notify your supervising officer of</i></p>	<p>Conditions requiring compliance with Approved Premises or other accommodation rules must be avoided if possible. Such rules are many and varied and it is difficult to argue that recall is always a proportionate response to any breach. If an offender's consistent 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. 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</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
	<p><i>any developing intimate relationships with women/men.</i></p>	<p>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.</p> <p>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.</p>
<p>10. Non-Association Requirement</p>	<p>(a) <i>Not to contact or associate with [NAMED OFFENDERS/NAMED INDIVIDUAL] without the prior approval of your supervising officer.</i></p> <p>(b) <i>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.</i></p> <p>(c) <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</i></p> <p>(d) <i>Not to associate with any person currently or formerly associated with [NAME OR DESCRIBE SPECIFIC GROUPS OR ORGANISATIONS] without the prior approval of your</i></p>	<p>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</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
	supervising officer.	<p>offending is not linked to a restricted number of individuals it is more difficult to justify a non-association condition.</p> <p>In respect of associating with sex offenders the Offender Manager 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 Offender Manager should evidence this at the point of enforcing this condition.</p> <p>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.</p> <p>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</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
		<p>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”.</p> <p>[The Offender Manager must determine if it is appropriate to grant such approval in all the circumstances of the case.]</p>
<p>Although this particular condition is <u>NOT</u> part of the list of ‘Requirements’, it <u>is</u> open to the Secretary of State to include it on a prisoner’s release licence. However, decisions to include the condition in a licence MUST accord with the guidance set out in this particular page of this Appendix.</p>	<p>(a) Attend [INSERT NAME AND ADDRESS], as reasonably required by the probation officer, to give a sample of oral fluid / urine in order to test whether you have any specified Class A drugs (heroin or crack/cocaine) in your body, for the purpose of ensuring that you are complying with the condition of your licence requiring you to be of good behaviour.</p>	<p>Any offender who is found to be in possession of Class A drugs has immediately put himself in breach of the standard condition to be well behaved.</p> <p>This provision is limited to offenders defined as ‘prolific and other priority’ (PPOs) by local Crime and Disorder Reduction Partnerships (CDRPs). It is limited by the Secretary of State to particular drugs (currently heroin and cocaine/crack cocaine). <i>The condition must be necessary and proportionate. Beside being PPOs, offenders must be over 18, have a substance misuse condition linked to their offending, and have served their sentence for a ‘trigger offence’ specified by the Criminal Justice and Court Services Act, s.64 and Schedule 6 (as amended).</i> These are (broadly)</p>

REQUIREMENTS	LICENCE CONDITIONS	ADVICE
		<p>acquisitive crimes and class A drugs offences. Details of the provision are laid out in PC34/05, 72/05, and 30/06.</p>

Additional Licence Conditions ONLY for Extremist Offenders which may be used in addition to those listed at Annex A, providing the test of proportionality is met.

Any additional condition must be necessary and proportionate and where the sentence is an indeterminate sentence or an extended sentence must have a causal link to the index offence

Extremist offenders may pose specific risks which cannot be sufficiently managed by the application of conditions designed for other offending groups. This list of conditions has been prepared to address the risks that have been identified to date and should significantly reduce the need for bespoke conditions.

A case must be made for the application of additional conditions on each individual offender and before applying any of the conditions offender managers must have clear evidence that they are necessary and proportionate. This should be recorded on the case record.

Offender Managers should evidence that all conditions are reviewed on a regular basis. Conditions can be removed or altered (if necessary with the approval of the Parole Board) if an offender is making progress and their risk of harm has sufficiently decreased.

5. Reasons

Panels are required to give written reasons for all decisions and recommendations, whether positive or negative. It is important that reasons adequately and accurately reflect the consideration that the panel has given to the case, and the basis of its decision or recommendation. Even a sound decision may be quashed on judicial review if the reasons given do not clearly show that the panel has considered the case properly.

Except for recall cases, the following framework must be used for Parole Board decisions. Use of the headings is required in the final decision which forms the basis for the monitoring and review process to which panel decisions are subject. Full guidance notes are at Annex G.

5.1 General principles

The Framework for Reasons v.2

For use in DCR Paper Panels, Lifer/IPP Oral Hearings and ICM Paper Decisions

1. Introduction

2. Evidence considered by the panel
3. Analysis of offending
4. Risk factors
5. Evidence of change during sentence
6. Panel's assessment of current risk of re-offending and serious harm
7. Plans to manage risk
8. Conclusion and Decision of the Panel

There are three requisites for every set of reasons. They should in every case:

- focus on risk (**see test for release and burden of proof**); and
- take full account of all the important issues in the case (**see directions and framework**); and
- identify in broad terms the matters pointing for and against release.

The courts have criticised the terseness of some reasons which leaves them open to misconstruction and misunderstanding. Reasons should cover all the issues and leave the prisoner in no doubt how the panel arrived at its decision.

It is open to a panel to make a decision or recommendation which differs from the conclusion of report writers. However, the panel's decision must be substantiated by evidence within the dossier and at the hearing and both the prisoner and the report writers must be able to understand why a different conclusion was reached. Where the panel's recommendation differs from those in the reports it will be necessary to go into more detail in explaining why the panel has taken the opposite view.

5.2 Preparing reasons (see also Timescale for promulgation to parties)

It will save time and help the Board meet its targets, if the undisputed parts of the decision letter are drafted ahead of the hearing – for example, the offence details; prisoner's background and factual items such as recorded adjudications, previous convictions etc that the prisoner does not dispute. Provided this part of the reasons remains open to amendment following any information received at the hearing, there is no legal problem in taking such an approach.

6. Secretary of State's directions and guidance

The Secretary of State may make Directions to the Board under his statutory powers; in law, however, the contents of such Directions are binding only in respect of cases where the Board is giving advice. When the Board is exercising its judicial power to decide on release, the Directions are guidance only. The Directions in full are at Annex D.

however, note that for extended sentences, the test of risk is that given in the *Sim* judgement. See test above at Chapter 4.1. The following is guidance against which all reasons should be measured:

In broad terms reasons should:

- focus on risk;
- address the test for release;
- address the Secretary of State's Directions; and
- identify in broad terms the factors for and against release.

Where there is a dispute as to material facts, the panel should make a positive finding wherever possible. Reasons in oral hearings must address submissions made and relevant evidence heard.

The Directions ask the Board to take into account, at the time of hearing the case:

- (a) Any current risk assessments prepared by prison and probation staff, including whether the offender is assessed as presenting a high or very risk of serious harm.
- (b) Whether the risk management plan, prepared by the Probation Service is adequate to manage effectively any potential risk of serious harm or of imminent re-offending.
- (c) Whether, in light of the offender's previous response to supervision, the offender is likely to comply in future with the requirements of probation supervision for the duration of the licence period.
- (d) The availability of suitable accommodation, as well as the availability and timing of any offending behaviour work either in or outside of custody or the date on which the outcome of any pending prosecution will be known.
- (e) Whether the interests of public protection and the prisoner's long term rehabilitation would be better served if the offender were re-released whilst subject to probation supervision.

- (f) Any representations on behalf of the victim in respect of licence conditions.

6.1 *Extended and determinate sentence prisoners - recall*

The exercise is a current risk assessment only. Panels are not tasked to decide whether the recall was appropriate or not, although making findings of fact about the recall incident(s) may be an integral part of the current risk assessment. There are only three possible options for the panel:

- recommend the offender's immediate release on licence; or
- fix a date for the offender's future release on licence, within a year of the Board's decision; or
- determine the reference by making no recommendation as to the offender's release.

6.2 *Life sentence prisoners*

Secretary of State's Directions

Directions have been made by the Secretary of State in respect of lifers and relate to release, transfers to open conditions, and recall. The Directions in full are at Annex D. **However, the reasons are not binding, except in regard to recommendations for open conditions. Nevertheless, the list below is a sensible guide to what the Board would expect to be covered in most cases**

- a) the lifer's background, including the nature, circumstances and pattern of any previous offending;
- b) the nature and circumstances of the index offence, including any information provided in relation to its impact on the victim or victim's family;
- c) the trial judge's sentencing comments or report to the Secretary of State, and any probation, medical, or other relevant reports or material prepared for the court;
- d) whether the lifer has made positive and successful efforts to address the attitudes and behavioural problems which led to the commission of the index offence;
- e) the nature of any offences against prison discipline committed by the lifer;

- f) the lifer's attitude and behaviour to other prisoners and staff,
- g) the category of security in which the lifer is held and any reasons or reports provided by the Prison Service for such categorisation, particularly in relation to those lifers held in Category A conditions of security;
- h) the lifer's awareness of the impact of the index offence, particularly in relation to the victim or victim's family, and the extent of any demonstrable insight into his /her attitudes and behavioural problems and whether he/she has taken steps to reduce risk through the achievement of life sentence plan targets;
- i) any medical, psychiatric or psychological considerations (particularly if there is a history of mental instability);
- j) the lifer's response when placed in positions of trust, including any absconds, escapes, past breaches of temporary release or life licence conditions and life licence revocations;
- k) any indication of predicted risk as determined by a validated actuarial risk predictor model, or any other structured assessments of the lifer's risk and treatment needs;
- l) whether the lifer is likely to comply with the conditions attached to his or her life licence and the requirements of supervision, including any additional non-standard conditions;
- m) any risk to other persons, including the victim, their family and friends.
- n) the lifer's relationship with probation staff (in particular the supervising probation officer), and other outside support such as family and friends;
- o) the content of the resettlement plan and the suitability of the release address;
- p) the attitude of the local community in cases where it may have a detrimental effect upon compliance;
- q) representations on behalf of the victim or victim's relatives in relation to licence conditions.

6.3 *Closed reasons*

Where material was withheld from the prisoner under Rule 8, and it is a relevant factor in the panel's decision, the panel should issue a separate set of reasons dealing solely with that issue. These will be referred to as "closed reasons" and should be addressed to the prisoner's representative where that representative has had disclosure. The opening wording may say:

"This letter forms part of the Board's decision letter addressed to Mr/Ms [the prisoner] and should be read in accordance with that letter. It must not under any circumstances be disclosed to the prisoner either directly or indirectly."

The closed reasons will be copied to the Secretary of State and, where appropriate, the prisoner's representative.

7.4 Timescale for promulgation to parties

Rule 26 requires that the Board's decision and reasons will be provided to the parties within 14 days.

In most cases it is not practicable to draft the final decision on the day of the hearing and the decision will be drafted subsequently by the chair, and e-mailed to the co-panellists.

All drafts must nevertheless have the approval of the **other panel members** and be received in the Secretariat no longer than **10 days** from the hearing. It will be expected that the chair will send such decisions to the case manager by e-mail. Faxes must be typed from scratch and cannot be guaranteed to be processed in time to meet the target.

CHAPTER 5

EQUAL TREATMENT/ DIVERSITY ISSUES ARISING AT THE HEARING

1. Facilities at the hearing

The following instructions are sent to every establishment conducting oral hearings. It is the least that panels are entitled to:

- When members/lawyers/witnesses arrive at the gate, they need to be processed as quickly as possible and escorted to that part of the establishment where the hearing is taking place. **Please do not wait for everyone to arrive before escorting participants to the hearing; there is work to be done before the hearing starts.**
- A private and quiet room will be needed for the hearing. Normally the board room is provided. There should be a table large enough for 9 or 10 people and space around it for witnesses and observers to sit.
- Parole Board members and employees should be escorted immediately to the hearing room.
- Prisoners' legal representatives should be escorted to a separate room nearby. They will usually want to talk to the prisoner before the hearing starts.
- The Secretary of State's representative (if from outside), witnesses and observers should be escorted to a separate waiting room nearby.
- Thus in total, **3 rooms** will be needed – the hearing room, a waiting room for lawyers and their clients, and a second waiting room for witnesses etc.
- Refreshments should be available for Parole Board personnel in the hearing room on arrival (coffee, tea) and lunch should be provided. Most Governors do not charge for lunch but the Board will pay if required.
- Male and female toilets should be available nearby.
- A member of staff should be on hand, although not in the hearing room, throughout.
- Photocopying facilities are often needed for copying late papers.
- If possible, access to a networked computer

Where facilities do not meet the standard, panel chairs are entitled to ask why not. If a satisfactory explanation is not given, an e-mail should be sent to the Chief Executive or Head of Operations who will take up the matter with the Governor to ensure better service next time.

STATUTORY INSTRUMENTS

2011 No. 2947

PRISONS, ENGLAND AND WALES

The Parole Board Rules 2011

Made - - - 8th December 2011

Laid before Parliament 12th December 2011

Coming into force - - 3rd January 2012

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SCHEDULE 2 — Information and reports for submission to the Board by the Secretary of State on a reference to the Board to determine the release of a recalled prisoner

PART A — Information relating to the prisoner

PART B — Reports relating to the prisoner

The Secretary of State, in exercise of the powers conferred by section 239(5) of the Criminal Justice Act 2003(a), makes the following Rules.

PART 1

Introduction

Title, commencement, revocation and transition

1.—(1) These Rules may be cited as the Parole Board Rules 2011 and shall come into force on 3rd January 2012.

(2) The Parole Board Rules 2004(b) are revoked.

(a) 2003 c.44.

(b) The Parole Board Rules 2004 were made under section 32(5) of the Criminal Justice Act 1991 (c.53) and were not made by

statutory instrument. Section 32(5) of the Criminal Justice Act 1991 was repealed by sections 303(a) and 332 and Part 7 of Schedule 37 of the Criminal Justice Act 2003 and its provisions were re-enacted in section 239(5) of that Act. The Parole Board Rules 2004 were amended by the Parole Board (Amendment) Rules 2009 (S.I. 2009/408).

(3) The revocation of the Parole Board Rules 2004 does not affect anything done under those rules before 3rd January 2012.

Interpretation

2. In these Rules:

“Board” means the Parole Board, continued by section 239(1) of the Criminal Justice Act 2003;

“Chairman” means the chairman of the Board appointed under paragraph 2 of Schedule 19 to the Criminal Justice Act 2003;

“Chair” means a chairman of a panel appointed under rule 5(3);

“Determinate sentence” means a sentence of imprisonment other than an indeterminate sentence;

“Indeterminate sentence” means a sentence of imprisonment listed under section 34(2) of the Crime (Sentences) Act 1997(a);

“Panel” means a panel appointed in accordance with rule 5(1) or (2);

“Oral panel” means a panel which determines a case or matter at a hearing;

“Party” means a prisoner or the Secretary of State;

“Prison” includes a young offender institution or any other institution where a prisoner is or has been detained; and

“Single member” means a member of the Board who has been appointed to constitute a panel in accordance with rule 5(1).

Application

3.—(1) These Rules apply where the Secretary of State refers a case to the Board relating to the release or recall of a prisoner.

(2) Rule 7(3) applies only where the Secretary of State refers a case to the Board relating to the initial release of a prisoner serving an indeterminate sentence.

(3) Part 3 of these Rules applies only where the Secretary of State refers a case to the Board relating to the release of a prisoner serving an indeterminate sentence.

(4) A reference to a period of time—

(a) in the case of the initial release of a prisoner serving an indeterminate sentence, applies as set out in the Rules; and

(b) in all other cases, applies as if it was a reference to such period of time as the chair shall in each case determine.

PART 2

General

Referral of cases

4. Where the Board is to consider the release of a prisoner serving a determinate sentence, the release following a recall of a prisoner serving an indeterminate sentence or is to advise the Secretary of State, the case is deemed to be referred to the Board on the date it receives the information and reports specified in rule 7.

(a) 1997 c. 43; section 34(2) was amended by section 165(1) and paragraph 183 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c.6), section 230 and paragraph 3 of Schedule 18 to the Criminal Justice Act 2003 (c. 44) and by section 378 and Schedules 16 and 17 to the Armed Forces Act 2006 (c.52).

Appointment of panels

5.—(1) The Chairman shall appoint a single member of the Board to constitute a panel to deal with a case where the Board is to consider the initial release of a prisoner serving an indeterminate sentence.

(2) The Chairman shall appoint one or more members of the Board to constitute a panel to deal with a case where—

- (a) the case is to be heard in accordance with Part 4 of these Rules;
- (b) the Board is to consider the release of a prisoner serving a determinate sentence; or
- (c) the Board is under a duty to give advice to the Secretary of State.

(3) The Chairman shall appoint one member of each panel to act as chair of that panel.

(4) In respect of a hearing in the case of a prisoner serving a life sentence or a sentence during Her Majesty's pleasure—

- (a) an oral panel shall consist of or include a sitting or retired judge; and
- (b) the sitting or retired judge shall act as chair of the oral panel.

(5) A person appointed under paragraph (1) may not in the same case sit on a panel appointed under paragraph (2)(a).

Representation

6.—(1) Subject to paragraph (2), a party may be represented by any person appointed by the party.

(2) The following may not act as a representative—

- (a) any person who is detained or is liable to be detained under the Mental Health Act 1983**(a)**;
- (b) any person serving a sentence of imprisonment;
- (c) any person who is on licence having been released from a sentence of imprisonment; or
- (d) any person with a conviction for an offence which remains unspent under the Rehabilitation of Offenders Act 1974**(b)**.

(3) Within 5 weeks of a case being referred to the Board, a party shall notify the Board and the other party of the name, address and occupation of any person appointed to act as their representative.

(4) Where a prisoner does not appoint a person to act as their representative, the Board may, with the prisoner's agreement, appoint a person to do so.

Service of information and reports

7.—(1) The Secretary of State shall serve on the Board and, subject to rule 8, the prisoner or their representative—

- (a) where a case relates to the initial release of a prisoner, the information specified in Part A of Schedule 1 to these Rules and the reports specified in Part B of that Schedule;
- (b) where a case relates to the recall following release of a prisoner, the information specified in Part A of Schedule 2 to these Rules and the reports specified in Part B of that Schedule; and
- (c) in either case, any other information which the Secretary of State considers relevant to the

case.

- (a) 1983 c.20.
- (b) 1974 c.53.

(2) Where the Board has a duty to advise the Secretary of State, the Secretary of State shall serve on the Board and, subject to rule 8, the prisoner or their representative, any information or reports which the Secretary of State considers relevant to the case.

(3) The Secretary of State shall serve the information and reports mentioned in paragraph (1) within 8 weeks of the case being referred to the Board.

Withholding information or reports

8.—(1) The Secretary of State may withhold any information or report from 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 any information or report is withheld, the Secretary of State shall—

- (a) record it in a separate document;
- (b) serve it only on the Board; and
- (c) explain to the Board in writing why it has been withheld.

(3) Where any information or report is withheld from the prisoner, the Secretary of State shall, unless the chair directs otherwise, serve it as soon as practicable on—

(a) the prisoner's representative if the representative is—

- (i) a barrister or solicitor;
- (ii) a registered medical practitioner; or
- (iii) a person whom the chair directs is suitable by virtue of their experience or professional qualification; or

(b) a special advocate who has been appointed by the Attorney General to represent the prisoner's interests.

(4) A prisoner's representative or a special advocate may not disclose any information or report disclosed in accordance with paragraph (3) without the consent of the chair.

(5) Where the chair decides that any information or report withheld by the Secretary of State under paragraph (1) should be disclosed to the prisoner or their representative, the Secretary of State may withdraw the information or report.

(6) If the Secretary of State withdraws any information or report in accordance with paragraph (5), nobody who has seen that information or report shall sit on a panel which determines the case.

Representations by and evidence of the prisoner

9.—(1) A prisoner who wishes to make representations to the Board shall serve them on the Board and the Secretary of State within 12 weeks of the case being referred to the Board.

(2) Any documentary evidence that a prisoner wishes to present at their hearing shall be served on the Board and the Secretary of State at least 14 days before the date of the hearing.

Directions

10.—(1) Directions may be given, varied or revoked—

- (a) before the appointment of a panel, by a member of the Board; or
- (b) after the appointment of a panel, by the chair.

(2) Such directions may relate to—

- (a) the timetable for the proceedings;
- (b) the service of information or a report;
- (c) whether any information or report should be withheld;
- (d) the submission of evidence;
- (e) the attendance of a witness or observer.

(3) Within 7 days of being notified of a direction under paragraph (2)(c), either party may appeal against that direction to the Chairman, who shall notify the other party of the appeal.

(4) Within 7 days of being notified that a party has appealed under paragraph (3), the other party may make representations on the appeal to the Chairman.

(5) A party may apply in writing for a direction to be given, varied or revoked.

(6) An application under paragraph (5) shall—

- (a) specify any direction sought; and
- (b) be served on the other party.

(7) Where a party has applied in writing for a direction to be given, varied or revoked, either party may—

- (a) make written representations about the application;
- (b) where the chair thinks it necessary, and subject to rule 11(4)(b), make oral submissions at a directions hearing.

(8) The power to give directions may be exercised in the absence of the parties.

(9) The Board shall serve notice on the parties of any directions given, varied or revoked as soon as practicable.

Directions hearing

11.—(1) A chair may hold a directions hearing.

(2) A chair shall give the parties at least 14 days' notice of the date, time and place fixed for any directions hearing.

(3) A directions hearing shall be held in private.

(4) At a directions hearing, unless the chair directs otherwise—

- (a) the chair shall sit alone; and
- (b) a prisoner who is represented may not attend.

Adjournment

12.—(1) A chair may adjourn proceedings to obtain further information or for such other purpose as the chair considers appropriate.

(2) Where the chair adjourns a hearing without a further hearing date being fixed, the chair shall give the parties—

- (a) at least 3 weeks' notice of the date, time and place of the resumed hearing; or
- (b) such shorter notice period as the parties agree.

Panel decisions

13.—(1) Where a panel has been appointed under rule 5(2), a decision of the majority of the members of the panel shall be the decision of the panel.

(2) A panel that is unable to reach a decision in accordance with paragraph (1) shall be dissolved by the Chairman, who shall then appoint a new panel.

Disclosure of information

14. Information about the proceedings and the names of persons concerned in the proceedings shall not be made public.

Release without a hearing

15.—(1) Where the Secretary of State refers a case to the Board relating to a prisoner serving a determinate sentence, the Board may make a decision without a hearing.

(2) Where the Board has a duty to advise the Secretary of State with respect to any matter referred to it by the Secretary of State which is to do with the early release or recall of a prisoner, the Board may advise the Secretary of State without a hearing.

PART 3

Proceedings without a hearing relating to the initial release of a prisoner serving an indeterminate sentence

Consideration by single member

16.—(1) Within 14 weeks of a case being referred to the Board, a single member shall consider the case without a hearing.

(2) The single member shall either—

- (a) decide that the case should be referred to an oral panel; or
- (b) make a provisional decision that the prisoner is unsuitable for release.

(3) The decision of the single member shall be—

- (a) recorded in writing with reasons for the decision; and
- (b) provided to the parties within a week of the date of the decision.

Provisional decision against release

17.—(1) Where a single member has made a provisional decision under rule 16(2)(b) that a prisoner is unsuitable for release, the prisoner may request that an oral panel hear the case.

(2) A prisoner who requests a hearing shall, within 19 weeks of the case being referred to the Board, serve notice giving full reasons for their request on the Board and the Secretary of State.

(3) If no notice has been served in accordance with paragraph (2) after the expiry of the period permitted by that paragraph, the provisional decision shall—

- (a) become final; and
- (b) be provided to the parties within 20 weeks of the case being referred to the Board.

(4) If notice is served in accordance with paragraph (2), a single member shall decide whether or not to hold a hearing.

(5) The single member who made the provisional decision under rule 16(2)(b) that a prisoner is unsuitable for release may not in the same case decide whether to grant a hearing requested by the prisoner under paragraph (1).

Consideration by an oral panel

18. Where a single member has referred a case to an oral panel for consideration under rule 16(2)(a) or where a hearing has been ordered pursuant to a request under rule 17(1), the case shall be considered by an oral panel within 26 weeks of the case being referred to the Board.

PART 4

Proceedings with a hearing

General provision

19.—(1) This Part of the Rules applies to hearings.

(2) Any reference in this Part of the Rules to a 'panel' is to an oral panel.

Notice of hearing

20.—(1) The hearing shall be held within 26 weeks of a case being referred to the Board.

(2) When fixing the date of the hearing the panel shall consult the parties.

(3) Within 5 working days of a case being listed, the Board shall notify the parties of the date on which the case is due to be heard.

(4) The panel shall give the parties—

(a) at least 3 weeks' notice of the date, time and place scheduled for the hearing; or

(b) such shorter notice as the parties agree.

(5) If applicable, the panel shall also give the parties notice that the hearing will be held via video link, telephone conference or other electronic means.

Notification of attendance by prisoner

21. A prisoner who wishes to attend their hearing shall notify the Board and the Secretary of State within 23 weeks of the case being referred to the Board.

Witness

22.—(1) A party who wishes to call a witness at a hearing shall make a written application to the Board, a copy of which shall be served on the other party, within 20 weeks of the case being referred to the Board.

(2) A written application to call a witness shall—

(a) include the witness's name, address and occupation; and

(b) explain why the witness is being called.

- (3) A chair may grant or refuse an application to call a witness and shall communicate this decision to the parties.
- (4) The chair shall give reasons in writing for any refusal to call a witness.
- (5) Where the panel intends to call a witness, the chair shall notify the parties in writing within 21 weeks of the case being referred to the Board.
- (6) Written notification from the panel that it intends to call a witness shall—
- (a) include the witnesses's name, address and occupation; and
 - (b) explain why the witness is being called.
- (7) Where a witness is called under paragraph (1) or (5), it shall be the duty of the person calling the witness to notify the witness at least 2 weeks before the hearing of the date of the hearing and the need to attend.

Observer

- 23.**—(1) A party who wishes to be accompanied by an observer shall make a written application to the panel, a copy of which shall be served on the other party, within 20 weeks of the case being referred to the Board.
- (2) A chair may grant or refuse an application for a party to be accompanied by an observer and shall communicate this decision to the parties.
- (3) Before granting an application under paragraph (2), the Board shall obtain the agreement—
- (a) where the hearing is being held in a prison, of the prison governor or prison director; or
 - (b) in any other case, of the person who has the authority to agree.

Location and privacy of proceedings

- 24.**—(1) Subject to paragraph (2), a hearing shall be held at the prison where the prisoner is detained or at such other place as the chair, with the agreement of the Secretary of State, directs.
- (2) Where a hearing is held in accordance with paragraph (3), paragraph (1) shall not apply.
- (3) A chair may direct that a hearing is to be held via video link, telephone conference or other electronic means.
- (4) A hearing shall be held in private.
- (5) In addition to any witness and observer whose attendance has been approved in accordance with rule 22 or 23, the chair may—
- (a) admit any other person to the hearing; and
 - (b) impose conditions on that person's admittance.
- (6) At the hearing the parties may not challenge the attendance of any witness or observer whose attendance has been approved pursuant to rule 22 or 23.

Hearing procedure

- 25.**—(1) At the beginning of the hearing the chair shall—
- (a) explain the order of proceeding which the panel proposes to adopt; and
 - (b) invite each party present to state their view as to the suitability of the prisoner for release.
- (2) The panel—
- (a) shall avoid formality in the proceedings;

(b) may ask any question to satisfy itself of the level of risk of the prisoner; and
(c) shall conduct the hearing in a manner it considers most suitable to the clarification of the issues before it and to the just handling of the proceedings.

(3) The parties shall be entitled to—

- (a) take such part in the proceedings as the panel thinks fit;
- (b) hear each other's evidence;
- (c) put questions to each other;
- (d) call a witness who has been granted permission to give evidence; and
- (e) question any witness or other person appearing before the panel.

(4) If, in the chair's opinion, any person at the hearing is behaving in a disruptive manner, the chair may require that person to leave.

(5) The chair may permit a person who was required to leave under paragraph (4) to return on such conditions as the chair may specify.

(6) A panel may produce or receive in evidence any document or information whether or not it would be admissible in a court of law.

(7) No person shall be compelled to give any evidence or produce any document which they could not be compelled to give or produce on the trial of an action.

(8) The chair may require any person present to leave the hearing where evidence which has been directed to be withheld from the prisoner or their representative is to be considered.

(9) After all the evidence has been given, the prisoner shall be given an opportunity to address the panel.

The decision

26.—(1) The panel's decision determining a case shall be—

- (a) recorded in writing with reasons;
- (b) signed by the chair; and
- (c) provided to the parties not more than 14 days after the end of the hearing.

(2) The recorded decision shall refer only to the matter which the Secretary of State referred to the Board.

PART 5 **Miscellaneous**

Time

27. Where the time prescribed by or under these Rules for doing any act expires on a Saturday, Sunday or public holiday, the act shall be in time if it is done on the next working day.

Transmission of documents etc.

28. Any document required or authorised by these Rules to be served or otherwise transmitted to any person may be transmitted by electronic means, sent by pre-paid post or delivered—

- (a) in the case of a document directed to the Board or the chair, to the office of the Board; or
- (b) in any other case, to the last known address of the person to whom the document is directed.

Error

- 29.** Where there has been an error of procedure such as a failure to comply with a rule—
(a) the error does not invalidate any steps taken in the proceedings unless the panel so directs; and
(b) the panel may remedy the error.

Signed by the authority of the Secretary of State

8th December 2011

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE 1 Rule 7

Information and reports for submission to the Board by the Secretary of State on a reference to the Board to determine the initial release of a prisoner

PART A

Information relating to the prisoner

1. The full name of the prisoner.
2. The date of birth of the prisoner.
3. The prison in which the prisoner is detained, details of any other prisons in which the prisoner has been detained and the date and the reason for any transfer.
4. The date on which the prisoner was given the current sentence, details of the offence and any previous convictions.
5. The comments, if available, of the trial judge when passing sentence.
6. If available, the conclusions of the Court of Appeal in respect of any appeal by the prisoner against conviction or sentence.
7. The parole history, if any, of the prisoner, including details of any periods spent on licence during the current sentence.

PART B

Reports relating to the prisoner

1. If available, the pre-trial and pre-sentence reports examined by the sentencing court on the circumstances of the offence.
2. Reports on a prisoner who was subject to a transfer direction under section 47 of the Mental Health Act 1983(a).
3. Current reports on the prisoner's risk factors, reduction in risk and performance and behaviour in prison, including views on suitability for release on licence as well as compliance with any sentence plan.
4. An up-to-date risk management report prepared for the Board by an officer of the supervising local probation trust, including information on the following where relevant:
 - (a) details of the home address, family circumstances and family attitudes towards the

prisoner;

- (b) alternative options if the offender cannot return home;
- (c) the opportunity for employment on release;
- (d) the local community's attitude towards the prisoner (if known);
- (e) the prisoner's attitude to the index offence;
- (f) the prisoner's response to previous periods of supervision;
- (g) the prisoner's behaviour during any temporary leave during the current sentence;

(a) 1983 c.20; section 47 was amended by sections 1 and 4 of the Mental Health Act 2007 (c. 12) and by sections 49(3) and 56(2) and Schedule 6 of the Crime (Sentences) Act 1997 (c.37).

(h) the prisoner's attitude to the prospect of release and the requirements and objectives of supervision;

(i) an assessment of the risk of reoffending;

(j) a programme of supervision;

(k) if available, an up-to-date victim personal statement setting out the impact the index offence has had on the victim and the victim's immediate family;

(l) a view on suitability for release; and

(m) recommendations regarding any non-standard licence conditions.

SCHEDULE 2 Rule 7

Information and reports for submission to the Board by the Secretary of State on a reference to the Board to determine the release of a recalled prisoner

PART A

Information relating to the prisoner

1. The full name of the prisoner.
2. The date of birth of the prisoner.
3. The prison in which the prisoner is detained, details of other prisons in which the prisoner has been detained and the date and reason for any transfer.
4. The date on which the prisoner was given the current sentence, details of the offence and any previous convictions.
5. The parole history, if any, of the prisoner, including details of any periods spent on licence during the current sentence.
6. If available, the details of any sentence plan prepared for the prisoner which has previously been disclosed to the prisoner.
7. The details of any previous recalls of the prisoner including the reasons for such recalls and subsequent re-release on licence.
8. The statement of reasons for the most recent recall which was given to the prisoner, including the outcome of any criminal charges laid against the prisoner prior to or subsequent to the point at which they were recalled.

PART B

Reports relating to the prisoner

1. Any reports considered by the Secretary of State in deciding to recall the prisoner.
2. If available, any pre-sentence report examined by the sentencing court on the circumstances of the offence.
3. Any details of convictions prior to the index offence.
4. A copy of the prisoner's licence at the point at which the Secretary of State decided to recall the prisoner.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the procedure to be adopted by the Parole Board when dealing with cases referred to it by the Secretary of State.

Part 1 revokes the Parole Board Rules 2004 and contains provisions for the application and interpretation of the Rules.

Part 2 covers procedures which are required in Parole Board proceedings, including the appointment of panels, information and reports to be prepared by the Secretary of State and the giving of directions.

Part 3 sets out the timetable and rules for proceedings without a hearing where the Parole Board determines the initial release of a prisoner serving an indeterminate sentence.

Part 4 sets out the timetable and rules for proceedings with a hearing.

Part 5 contains miscellaneous provisions about time limits, the transmission of documents and procedural errors.

Schedules 1 and 2 set out the information and reports to be sent to the Parole Board by the Secretary of State.

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Date:

Prisoner Name:

Prison Number:

Prison:

Target month of parole hearing:

Date of Panel:

The following Directions have been made by the Chair of the above panel and are considered necessary and appropriate in order for the parole review to proceed as scheduled. The Directions are in addition to any ICM Directions already issued.

Any request to vary or revoke any of the above Directions must be issued in writing. Requests from the Secretary of State must come via the Public Protection Casework Section (PPCS).

Reasons:

--

Reports required:

Report Name	What information is required?	Deadline

If it is not possible for a Direction to be met by the requested deadline, then the designated individual responsible must notify the Parole Board as soon as possible, explaining why and setting a revised date for submission.

Additional witnesses required:

First Name (if known)	Last Name	Witness role	Reason for attendance

Additional witnesses directed to attend should make every effort to prioritise this date and must inform the Parole Board urgently if there are any problems complying with this direction.

Panel Logistics:

For how long should the case be listed?	<input type="text"/> hours
Specialist Member required?	-None-
Specialist Member – Reasons	<input type="text"/>
Is this case suitable for video link? (provide reasons if not)	Suitable <input type="checkbox"/> Not Suitable <input type="checkbox"/> <input type="text"/>
Are any special arrangements required?	Yes <input type="checkbox"/> <input type="text"/>
Any other relevant requirements?	<input type="text"/>

Panel Chair:

Distribution: Ministry of Justice Public Protection Casework Section
Prisoner/Prisoner Representative
Prison
Probation Trust

ANNEX C

Licence

Criminal Justice Act 1991

Name:
Prison No:
Parole No:

Date of Birth:
CRO No:
PNCID No:

1. Under the provisions of Section xx (x) of the Criminal Justice Act 1991 you are being released on licence. You will be under the supervision of a probation officer or a social worker of a local authority social services department and must comply with the following conditions. The objectives of this supervision are to (a) protect the public, (b) prevent re-offending and (c) achieve your successful re-integration into the community.
2. Your supervision commences on xxxxxxxxxxxx and expires on xxxxxxxxxxxx unless this licence is previously revoked.
3. On release you must report without delay to:

PROBATION OFFICER
4. You must place yourself under the supervision of whichever probation officer or social worker is nominated for this purpose from time to time.
5. Whilst under supervision you must:
 - i. Keep in touch with your supervising officer in accordance with any instructions that you may be given;
 - ii. If required, receive visits from your supervising officer at your home;
 - iii. Permanently Reside at an address approved by your supervising officer and notify him or her in advance of any proposed change of address or any proposed stay (even for one night) away from that approved address;
 - iv. Undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed changes;

- v. Not travel outside the United Kingdom without the prior permission of your supervising officer (which will be given in exceptional circumstances only);
 - vi. To be well behaved, not to commit any offence and not to do anything which could undermine the purposes of your supervision, which are to protect the public, prevent you from reoffending and help you resettle successfully into the community;
6. The Secretary of State may vary or cancel any of the above conditions, in accordance with Section 37(5) of the Criminal Justice Act 1991.
7. If you fail to comply with any requirement of your probation supervision (set out in paragraphs 3, 4 and 5 above), or if you otherwise pose a risk to the public, you will be liable to have your licence revoked and be recalled to custody until the date, which your licence would otherwise have expired. If you are sent back to prison and released before the end of the licence period, you will still be subject to supervision.
8. Your sentence expires on ***** In accordance with the provisions of Section 40 of the Criminal Justice Act 1991, you are liable to be returned to custody if you are convicted of a further imprisonable offence committed before your sentence has fully expired. The court dealing with the new offence may add all or part of the outstanding period of your original sentence onto any new sentence it may impose.

for the Secretary of State

This Licence has been given to me and its requirements have been explained.

Signed.....

date

LICENCE

Crime (Sentences) Act 1997

The Secretary of State hereby authorises the release on licence within fifteen days of the date hereof of **FULL NAME IN BOLD CAPS** who shall on release and during the period of this licence comply with the following conditions or any other condition, which may be substituted or added from time to time.

1. He/she shall place himself/herself under the supervision of whichever supervising officer is nominated for this purpose from time to time.
2. He/She shall on release report to the supervising officer so nominated, and shall keep in touch with that officer in accordance with that officer's instructions.
3. He/She shall, if his/her supervising officer so requires, receive visits from that officer where the licence holder is living.
4. He/She shall reside only where approved by his/her supervising officer.
5. He/She shall undertake work, including voluntary work, only where approved by his/her supervising officer and shall inform that officer of any change in or loss of such employment.
6. He/She shall not travel outside the United Kingdom without the prior permission of his/her supervising officer.
7. He/She shall be well behaved and not do anything which could undermine the purposes of supervision on licence which are to protect the public, by ensuring that their safety would not be placed at risk, and to secure his/her successful reintegration into the community.

Unless revoked this licence remains in force indefinitely.

**(Name of Head of Section)
on behalf of the Secretary of State
month/year**

**PDP/
NOMS**
Name and address

Supervising Officer:- Full

Notes

Subject to the provisions of section 31 and 32 of the Crime (Sentences) Act 1997 -

- (1) the conditions of this licence may be varied or cancelled or further conditions may be added by the Secretary of State in accordance with the recommendations by the Parole Board;
- (2) the Secretary of State may revoke the licence at any time.

For the purposes of this licence "United Kingdom" includes the Channel Islands and the Isle of Man.

ANNEX D

DIRECTIONS TO THE PAROLE BOARD UNDER SECTION 239(6) OF THE CRIMINAL JUSTICE ACT 2003 (the 2003 Act)

RECALL OF DETERMINATE SENTENCE PRISONERS

These directions apply in respect of determinate sentence offenders recalled to prison under section 254 of the 2003 Act (as amended by the Criminal Justice and Immigration Act 2008).

Where an offender is subject to a custodial sentence, the licence period is an integral part of the sentence and compliance with licence conditions is required. In most cases the licences are combined with supervision by an offender manager, social worker or member of the Youth Offending Team (the exception to this is the use of Home Detention Curfew licences for adult prisoners serving a sentence of less than 12 months).

The objects of supervision are to:

- protect the public;
- prevent re-offending; and
- ensure the prisoner's successful reintegration into the community

Parole Board review of continued detention following a decision taken by the Secretary of State to recall an offender

Where an offender breaches the conditions of the licence, the Secretary of State can revoke the licence pursuant to section 254(1) of the 2003 Act. A recalled offender will be subject to one of the following sets of provisions of the 2003 Act (as amended by the Criminal Justice and Immigration Act 2008):

- the automatic release provisions (fixed term recall) of section 255B;
- the release provisions (standard recall) of section 255C; or
- the release provisions (extended sentence prisoners) of section 255D.

The 2003 Act requires the Parole Board to review the continued detention of an offender recalled by the Secretary of State in those cases where:

- the offender is subject to the fixed term recall provisions, has exercised the right to make representations for re-release and has been referred to the Board under in accordance with section 255B(4);

- the offender is subject to a standard recall and has been in custody for 28 days or has made representations for re-release and has been referred to the Board in accordance with section 255C(4);
- the offender is an extended sentence prisoner and has been referred to the Board in accordance with section 255D(1).

In reviewing the offender's continued detention, the Parole Board may:

- recommend the offender's immediate release on licence;
- fix a date for the offender's future release on licence, within a year of the Board's decision; or
- determine the reference by making no recommendation as to the offender's release.

The Board is required to take into account all the information available at the time the recall decision was taken, together with any subsequent information, including representations made by or on behalf of the offender.

In particular, the Parole Board should consider:

- (g) Current assessments of risk prepared by prison and probation staff.
- (h) Whether the risk management plan, prepared by the Probation Service is adequate to manage effectively any potential risk of serious harm or of imminent re-offending.
- (i) Whether, in light of the offender's previous response to supervision, the offender is likely to comply in future with the requirements of probation supervision for the duration of the licence period.
- (j) The availability of suitable accommodation, as well as the availability and timing of offending behaviour work or any other intervention, either in or out of custody.
- (k) The date on which the outcome of any pending prosecution will be known.
- (l) Whether the interests of public protection and the prisoner's long term rehabilitation would be better served if the offender were re-released whilst subject to probation supervision.
- (m) Any representations on behalf of the victim in respect of licence conditions.

Each individual case should be considered on its own merits, without discrimination on any grounds.

ANNEX E

DIRECTIONS TO THE PAROLE BOARD UNDER SECTION 32(6) OF THE CRIMINAL JUSTICE ACT 1991

RELEASE AND RECALL OF LIFE SENTENCE PRISONERS

RELEASE OF LIFE SENTENCE PRISONERS

INTRODUCTION

1. The Secretary of State may refer to, and seek advice from, the Parole Board on any matters relating to the early release and recall to custody of those prisoners sentenced to imprisonment for life, custody for life, detention during Her Majesty's pleasure, and detention for life.
2. The Parole Board is empowered to direct the release, or re-release following recall to custody, of those life sentence prisoners (lifers) who have served the period of imprisonment necessary to satisfy the requirements of retribution and deterrence
3. The Parole Board cannot direct the release of any lifer unless the following conditions are met: -
 - a) the Secretary of State has referred the case to the Parole Board for consideration of the prisoner's suitability for release;
 - b) the Parole Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
4. The test to be applied by the Parole Board in satisfying itself that it is no longer necessary for the protection of the public that the

prisoner should be confined, is whether the lifer's level of risk to the life and limb of others is considered to be more than minimal.

DIRECTIONS

5. Before directing a lifer's release under supervision on life licence, the Parole Board must consider:-
 - a) all information before it, including any written or oral evidence obtained by the Board;
 - b) each case on its merits, without discrimination on any grounds;
 - c) whether the release of the lifer is consistent with the general requirements and objectives of supervision in the community, namely;
 - protecting the public by ensuring that their safety would not be placed unacceptably at risk;
 - securing the lifer's successful re-integration into the community.

6. In assessing the level of risk to life and limb presented by a lifer, the Parole Board shall consider the following information, where relevant and where available, before directing the lifer's release, recognising that the weight and relevance attached to particular information may vary according to the circumstances of each case:
 - j) the lifer's background, including the nature, circumstances and pattern of any previous offending;
 - k) the nature and circumstances of the index offence, including any information provided in relation to its impact on the victim or victim's family;
 - l) the trial judge's sentencing comments or report to the Secretary of State, and any probation, medical, or other relevant reports or material prepared for the court;
 - m) whether the lifer has made positive and successful efforts to address the attitudes and behavioural problems which led to the commission of the index offence;
 - n) the nature of any offences against prison discipline committed by the lifer;

- o) the lifer's attitude and behaviour to other prisoners and staff,
- p) the category of security in which the lifer is held and any reasons or reports provided by the Prison Service for such categorisation, particularly in relation to those lifers held in Category A conditions of security;
- q) the lifer's awareness of the impact of the index offence, particularly in relation to the victim or victim's family, and the extent of any demonstrable insight into his /her attitudes and behavioural problems and whether he/she has taken steps to reduce risk through the achievement of life sentence plan targets;
- r) any medical, psychiatric or psychological considerations (particularly if there is a history of mental instability);
- j) the lifer's response when placed in positions of trust, including any absconds, escapes, past breaches of temporary release or life licence conditions and life licence revocations;
- k) any indication of predicted risk as determined by a validated actuarial risk predictor model, or any other structured assessments of the lifer's risk and treatment needs
- l) whether the lifer is likely to comply with the conditions attached to his or her life licence and the requirements of supervision, including any additional non-standard conditions;
- m) any risk to other persons, including the victim, their family and friends.

7. Before directing release on life licence, the Parole Board shall also consider:-

- a) the lifer's relationship with probation staff (in particular the supervising probation officer), and other outside support such as family and friends;
- b) the content of the resettlement plan and the suitability of the release address;
- c) the attitude of the local community in cases where it may have a detrimental effect upon compliance;
- d) representations on behalf of the victim or victim's relatives in relation to licence conditions.

RECALL OF LIFE LICENSEES

INTRODUCTION

8. When a lifer is released from custody, he/she becomes subject to a life licence for the rest of their lives and may be recalled to prison at any time if their behaviour gives cause for concern. The Secretary of State may revoke a life licence and recall the life licensee to prison on the recommendation of the Parole Board, or without such a recommendation where the Secretary of State considers this to be expedient in the public interest.

9. Supervision under life licence, including compliance with any conditions attached to the licence, is an integral part of the life sentence. It enables the level of risk to be assessed and managed in a way consistent with the objectives of supervision, in particular the protection of the public from harm.

DIRECTIONS

10. In deciding whether or not to recommend the recall of a life licensee, the Parole Board must consider:-
 - a) all information before it;
 - b) each case on its merits, without discrimination on any grounds;
 - c) whether the lifer's continued liberty would present an unacceptable risk of harm to other persons or be otherwise inconsistent with the general requirements and objectives of supervision in the community.

11. In assessing the level of risk presented by a life licensee as part of the above consideration, the Parole Board must address the following factors:-
 - (a) the extent to which the licensee's continued liberty presents a risk of harm to a specific individual or individuals, or members of the public generally;
 - (b) the immediacy and level of such risk which the life licensee presents and the extent to which this is manageable in the community;
 - (c) the extent to which the licensee has failed previously to comply with licence conditions or the objectives of supervision, or is likely to do so in the future, and the effect

of this on the immediacy and level of risk presented by the licensee;

- (d) any similarity between the prisoner's behaviour and that which preceded the index offence.

- 12. Following the revocation of a life licence and the licensee's return to custody, the lifer will be informed of the reasons for the recall, and of their right to make representations and have these considered at an oral hearing. When considering the possible re-release of a lifer whose licence has been revoked, the Parole Board shall consider the case under the Directions for release and shall apply the same test of risk set out in those Directions.

DIRECTIONS TO THE PAROLE BOARD UNDER SECTION 32(6) OF THE CRIMINAL JUSTICE ACT 1991

TRANSFER OF LIFE SENTENCE PRISONERS TO OPEN CONDITIONS

INTRODUCTION

1. A period in open conditions is essential for most life sentence prisoners ("lifers"). It allows the testing of areas of concern in conditions that more closely resemble those that the prisoner will encounter in the community often after having spent many years in closed prisons. Lifers have the opportunity to take resettlement leave from open prisons and, more generally, open conditions require them to take more responsibility for their actions.
2. The main facilities, interventions, and resources for addressing and reducing core risk factors exist principally in the closed lifer estate. In this context, the focus in open conditions is to test the efficacy of such core risk reduction work and to address, where possible, any residual aspects of risk.
3. 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 and, in particular, on the need for the lifer to have made significant

progress in changing his/her attitudes and tackling behavioural problems in closed conditions, without which a move to open conditions will not generally be considered.

DIRECTIONS

4. Before recommending the transfer of a lifer to open conditions, the Parole Board must consider:-
 - all information before it, including any written or oral evidence obtained by the Board;
 - each case on its individual merits without discrimination on any grounds.

5. The Parole Board must take the following main factors into account when evaluating the risks of transfer against the benefits :-
 - (a) the extent to which the lifer has made sufficient progress during sentence in addressing and reducing risk to a level consistent with protecting the public from harm, in circumstances where the lifer in open conditions would be in the community, unsupervised, under licensed temporary release ;
 - (b) the extent to which the lifer is likely to comply with the conditions of any such form of temporary release;
 - (c) the extent to which the lifer is considered trustworthy enough not to abscond;
 - (d) the extent to which the lifer is likely to derive benefit from being able to address areas of concern and to be tested in a more realistic environment, such as to suggest that a transfer to open conditions is worthwhile at that stage.

6. In assessing risk in such matters, the Parole Board shall consider the following information, where relevant and where available, before recommending the lifer's transfer to open conditions, recognising that the weight and relevance attached to particular information may vary according to the circumstances of each case:-
 - (a) the lifer's background, including the nature, circumstances and pattern of any previous offending;

- (b) the nature and circumstances of the index offence and the reasons for it, including any information provided in relation to its impact on the victim or victim's family;
 - (c) the trial judge's sentencing comments or report to the Secretary of State, and any probation, medical, or other relevant reports or material prepared for the court;
 - (d) whether the lifer has made positive and successful efforts to address the attitudes and behavioural problems which led to the commission of the index offence;
 - (e) the nature of any offences against prison discipline committed by the lifer;
 - (f) the lifer's attitude and behaviour to other prisoners and staff;
 - (g) the category of security in which the lifer is held and any reasons or reports provided by the Prison Service for such categorisation, particularly in relation to those lifers held in Category A conditions of security;
 - (h) the lifer's awareness of the impact of the index offence, particularly in relation to the victim or victim's family, and the extent of any demonstrable insight into his/her attitudes and behavioural problems and whether he/she has taken steps to reduce risk through the achievement of life sentence plan targets;
 - (i) any medical, psychiatric or psychological considerations (particularly if there is a history of mental instability);
 - (j) the lifer's response when placed in positions of trust, including any outside activities and any escorted absences from closed prisons;
 - (k) any indication of predicted risk as determined by a validated actuarial risk predictor model or any other structured assessment of the lifer's risk and treatment needs.
7. Before recommending transfer to open conditions, the Parole Board shall also consider the lifer's relationship with the Probation Service (in particular the supervising probation officer), and other outside support such as family and friends.

ANNEX F

SETTING DIRECTIONS FOR ORAL HEARINGS – RULE 10

Introduction

The objective of this document is to assist those who are ICM members or who chair oral hearings in setting directions. It is based on the experience of Parole Board staff and members in terms of what works well and what is liable to cause problems and it reflects the views of those stakeholders who have been consulted. It is not, however, a substitute for other standing instructions of the Parole Board, notably the Parole Board Rules. If you are chairing a panel and have any doubts about the appropriateness of a direction, it is recommended that you consult the Head of Casework.

All cases referred to Chairs will have been subject to Intensive Case Management (ICM) which should have identified any significant gaps in the dossier such as the absence of mandatory reports. The process should also have flagged up those cases which may require directions to be made and complied with in several stages before they are ready for an oral hearing.

Guiding

Principles

Purpose of an oral hearing

The role of a panel at an oral hearing is to determine whether the prisoner's risk is low enough for release or transfer to open conditions and/or to comment on the continuing areas of risk that need to be addressed, where these matters cannot be determined on paper. It is necessary only to determine WHETHER or not risk remains too high; if it does, there is no requirement to investigate WHY this is the case.

Remit of the Parole Board

Beyond making a direction for release or a recommendation for transfer to open conditions, the Parole Board has no role to play in how or, indeed, whether the prisoner progresses through his or her sentence. It is acknowledged that some prisoners will be unable to progress and will spend the rest of their lives in custody.

Scope of directions

Directions will usually be confined to four areas: the timetable for the hearing, the reports that are needed, the witnesses who are required to attend, and the disclosure of material submitted under Rule 8. The

number of directions made should be the minimum that is necessary to enable the panel to do its job properly and Chairs should consider carefully what witnesses and additional reports are essential. In this regard, they should review, at the earliest opportunity, the directions made by the ICM member to see if it is appropriate to stand down any witnesses warned that they may be required to attend the hearing. Applications for additional directions from legal representatives of prisoners should be considered in the light of this principle.

Best practice points

Time estimates

1. A potential difficulty with Parole Board hearings is estimating accurately how long it will take to complete a case. The start point, that is the minimum allowed (to include the panel discussion before and after the hearing) should be one hour where there are no witnesses. For each witness, it is prudent to allow between 10 and 40 minutes depending on the nature of their likely contribution. A Personal Officer's character reference will only take a few minutes whereas a Psychologist's or External Probation Officer's evidence will require much more time depending on the extent of questioning by panel members, the prisoner's representative, and the Public Protection Advocate (PPA), if one is present.
2. Recall cases will nearly always take far longer because of issues of disputed evidence and, where a PPA is attending a hearing, experience shows that this will add between half an hour and three-quarters of an hour to the time it will take to hear a case.
3. A Victim Personal Statement will add to the length of proceedings depending on the means by which it is delivered, principally whether or not the victim attends the hearing in person.
4. The need for an interpreter can also increase materially the length of a hearing although the additional time needed will depend on whether everything is to be translated for the benefit of the prisoner (because he or she speaks little or no English) or whether only the questions to the prisoner and his or her responses need to be translated. It is probably reasonable to double the time allowed for those parts of the hearing where the interpreter will be used. If it is clear from the dossier that an interpreter will be needed, one should be supplied automatically. There have, however, been instances where this has not happened and it might be prudent to make a direction to avoid the necessity of adjourning or deferring the case on the day.
5. Having calculated how long it will take to hear all the evidence and submissions, the ICM member or Chair should build in a further

time contingency to allow for delays - for instance the late arrival of witnesses or short adjournments for the prisoner to give instructions or for new reports to be photocopied and read. A number of variables will determine how much contingency should be allowed but a reasonable rule of thumb is 20% (i.e. about 12 minutes per hour of expected hearing length).

Reports

1. "Current" reports in the dossier should be no more than 12 months old. If, where reports are several months old, and/or further information has become available, you consider that it would be appropriate to have an addendum report produced, it is helpful to be precise about what you want to avoid unnecessary work for the report writer. Suitable wording might be:

"a brief addendum report from (name or job title) updating his report of (date) in the light of any developments since it was written and after consideration of the independent psychology report."

or, in the case a specialist report:

"Report from Medical Officer at HMP... addressing:

- *Mr A's Hepatitis C*
- *The fits/seizures from which he is said to suffer*

The report writer is asked to comment on whether these medical conditions are relevant in terms of Mr A's suitability for release or ability to cope in the community. Would any special licence conditions or arrangements need to be put in place?"

2. Before asking for any report, please consider whether it is needed and for what purpose. If you plan to call someone as a witness, is it necessary to ask for a written report as well?
3. Of more concern, is the habit of some ICM Members and panel Chairs of directing the production of lengthy psychologists' report, for cases where there is no apparent need for one in terms of assessing risk. This often happens because the prisoner's representative requests such a direction, usually for the purpose of galvanising the Prison Service into action when his or her client has become "stuck" in the system. You are reminded that it is not our role to help prisoners progress and that our only remit is to determine the level of risk not the causes thereof, however interesting that might be. Unless the content of such a report is likely to change the panel's mind about the feasibility of a progressive move, it is not appropriate to ask for it. It is, of course, entirely proper to mention, in the panel's reasons, that a future panel would be assisted by such a report and to direct that old reports that you know were produced for past

hearings should be added to the dossier.

4. If you do request a risk assessment from a psychologist, please state the areas of concern (instrumental violence, sexual offending etc.) that are to be investigated but not the assessment tool (e.g. HCR-20) that should be used. Similarly, if there are concerns about psychopathy, you should raise these but not ask specifically for a PCL-R assessment.
5. Please avoid phrases such as “full psychological assessment” or “conduct report” which may not be readily understood by the recipient of the directions and be precise about what information you want from the report.
6. Notwithstanding the need to be specific, the Parole Board has had rather conflicting requests and advice from different sources about the extent to which we should specify by whom the information is to be provided. Lifer/parole clerks at some prisons want precise instructions so that they know to whom to direct the request, others consider that this ties their hands and that, provided the information requested is supplied, it should not matter who writes the report.
7. Pragmatically, it is suggested that you word the directions in such a way as to cater for both situations e.g.

“...report on custodial behaviour since recall. This should address adjudications, the results of drug tests, security reports, offending behaviour work completed or scheduled and any other information deemed relevant. It should be written by a Seconded Probation Officer or another individual nominated by Mr X’s Offender Manager.”
8. “NOMS policy currently requires that if a prisoner is transferred within three months of the commencement of the parole process, the sending prison must assume responsibility for preparing reports. This avoids the deadlock that often occurred in the past in so many cases following transfer. Prisons cannot have local policies of refusing to write reports until the prisoner has been in the establishment for a longer minimum period. This would prevent parole reviews from proceeding in a timely way. It is acknowledged that if a review is delayed for any reason, it may be necessary to ask for updated reports from the receiving establishment”
9. Be mindful of how long it will take to get any report that you request. We have been advised that it can may up to three weeks to get an old report (for instance, the sentencing remarks) if it has been archived. The production of a new psychologist’s report can often take three months and with a post-course risk assessment such as a SARN, there can be delays of six months or more.

10. The Parole Board cannot force a prisoner's representative to disclose an independent psychiatric or psychologist's report, even where this has been publicly funded. It can only say that it would be helpful for the report to be disclosed. Moreover, the Board cannot directly commission any such report.

Witnesses

1. In general, where information is available in the form of documents, it may not be necessary to call a witness at all. 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 will usually obviate the need for the hostel manager to attend as a witness. As a panel Chair, if a potential witness has already produced a comprehensive report, you might consider that little further information is likely to result from oral evidence.
2. Conversely, there are circumstances where oral evidence is preferred because written information is not likely to be available at the time of the hearing, for example when the panel wishes to enquire about a prisoner's performance on an offending behaviour programme, and the post-course report is not yet available. In such circumstances, an oral report can prevent the need to defer a hearing.
3. When deciding on whether or not to call someone as a witness, you should balance the importance of the evidence that he or she is likely to give against the inconvenience to that witness of getting to the hearing especially as regards the distance that he or she will have to travel. The use of video-link should be considered, especially for external probation officers, and, in exceptional circumstances, it might be acceptable for evidence to be given over a conference telephone or other mechanism by which all parties can hear the witness.
4. It is good practice to avoid having too many witnesses not least because of the effect that it will have on the length of the hearing. In particular, where a group of witnesses would be called to give evidence on or around the same issue, the presence of all of them is unlikely to add anything material to the panel's understanding of the issues in the case.

For example, where several people witnessed an incident that led to a prisoner's recall, written statements from all of them would probably suffice. Similarly, it is usually unnecessary to call a number of prison officers to give evidence about someone's custodial behaviour.

5. Serving prisoners should not normally be called as witnesses, unless this is unavoidable; the logistical difficulties around securing their attendance are likely to be considerable and prison Governors

are generally very resistant to directions of this kind. Any necessary evidence from other prisoners should be in writing, wherever possible.

6. It is also good practice to avoid, if possible, calling as witnesses prison officers from a previous establishment. This, too, is for logistical reasons and you should bear in mind that the prisoner's file 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.
7. Children should not be called as witnesses and there would anyway be difficulties in their coming into a prison to give evidence. You will also wish to consider how useful might be the evidence of a victim of domestic violence who, according to the prisoner, has forgiven him and is now reconciled with him. The possibility of coercion and re-victimisation if the witness should say "the wrong thing" in evidence should be borne in mind and a written statement is often to be preferred in such cases.
8. Unless there is a realistic prospect of release, which is to say that all or most substantive report writers are recommending it, or the case is a recall, the External Probation Officer should not be directed to attend. This is usually the situation with Lifer hearings in Category A and B establishments and many Category C prisons. Should it become apparent during the course of the hearing that the risk is low enough for release to be considered, it should be adjourned to allow for the preparation of a risk management plan and the attendance, at the next hearing, of the External Probation Officer. A prisoner's representative who argues that an ICM member or Chair's failure to direct the attendance of the EPO indicates that the panel has pre-judged his or her client without hearing any evidence should be informed of this policy.
9. As is mentioned elsewhere in this document, with IPP prisoners the position is different since their Offender Managers are responsible for their progress in custody and on licence. They will more often attend hearings as the principal source of information on the prisoner.
10. Where there is a realistic prospect of release, and particularly with a Lifer in open conditions, the attendance of the External Probation Officer should always be directed. If the supervision of the Lifer is likely to change on release, for instance because he or she is to be relocated to another area, you will wish to consider directing the attendance of the future supervising officer or of a representative of the Probation Service in the release area so that the panel can be satisfied about the robustness of release arrangements.

These considerations would also apply in the case of an Extended Sentence Prisoner contesting the validity of his or her recall and/or applying for re-release.

11. Occasionally, a witness may refuse to attend a hearing. The reasons for this refusal need to be investigated but if you are not satisfied that they are legitimate (for instance a previous engagement), you may issue a witness summons. Please refer to Chapter 1 of the Practice Guide for further information about this. It is not a step that the Parole Board would normally take unless one of the parties has asked us to do so and, clearly, you should only issue a summons if the evidence that the witness would give is essential to the case AND that evidence cannot be given in written form or via video-link.
12. Many of the psychologists working in the Prison Service are "trainees" in terms of their chartered forensic psychology status, although they are qualified psychologists. 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 with their giving evidence but generally, a report writer who is still a trainee will want his or her supervisor to be present at the hearing and will seek to arrange this direct with that individual. However, to anticipate the potential problem of the supervisor not being consulted about his or her availability for the hearing, it is good practice to include something along the following lines: "...*Ms B, Senior Forensic Psychologist at HMP... is invited to attend the hearing in her capacity as Mr C's supervisor*".
13. In the context of issuing ICM directions, the Parole Board has been asked to be precise about the evidence that the witness will be required to give and to avoid the use of general phrases such as "to speak to his report". Therefore, where possible, the directions should give some detail, as in the following examples:
 - a. *"To answer any questions that the panel may have arising from his report of (date). It would be appreciated if he could provide further information about the reasons for Mr D's removal from open conditions at HMP North Sea Camp and advise the panel on the extent to which the concerns that led to the transfer have now been addressed."*
 - b. *"There is a report in the dossier from this witness in lieu of Lifer Manager's /Wing Manager's reports as the prisoner is located in the Health Care Centre. It is hoped that Mrs E would be able to assist the panel with information about his general behaviour, motivation to address substance abuse problems and mental health."*
 - c. *"To give evidence about any further developments since her report of (date) was written and to discuss on-going areas of risk and treatment need. The panel will find it helpful to explore further the issue of Mr K's psychopathy, his sexual and violent fantasies, and his stated interest in sexual murders."*

- d. *"To comment on the alternative treatment options available to manage Mr M's risk of re-offending, whether in custody or in the community, and give an opinion on the relative merits and likely effectiveness of them."*

Other points

1. **Specialist members on panels:** the ICM member will have considered whether or not the case requires the presence on the panel of a psychologist or psychiatrist. The Parole Board has recently revisited and updated its criteria for the use of specialist members; these criteria are attached as an appendix (number) to this document and should be borne in mind if a panel Chair wishes to reconsider the ICM direction.
2. **HMPS:** as stated in the Guiding Principles, in the light of the terms of the Secretary of State's referral to the Parole Board, the prisoner's progress through his or her sentence is not an issue into which we should enquire.

It is never appropriate to direct that a sentence planning review be carried out or that the Governor of a prison explain why a prisoner's security category has not been downgraded. Similarly, you should not direct that a prisoner be assessed for or attend a particular course or treatment programme before the hearing, be transferred to another closed establishment or, in the case of those in open conditions, undertake home leaves.

3. **Secretary of State:** there have been instances of directions to the Secretary of State that he should be represented at the hearing, even that he should be legally represented. Please refrain from doing this. The Parole Board has no power to order the Secretary of State to be represented; it is entirely a matter for him to decide.
4. **Prisoners with mental health concerns:** as part of the ICM process, guidelines have been written on the procedure for hearing cases in secure units. Some additional reports and witnesses, over and above what would be the norm in prisons, are usually required. The guidelines are attached as an appendix to this document.

In the case of those in prisons rather than secure units, the Parole Board should not direct that a prisoner be transferred to a psychiatric hospital for assessment and treatment, notwithstanding the views of report writers.

5. **Security Information:** security information may be considered in a hearing but usually only when it is in writing. In view of the sensitivity of some information and the need to protect those who provide it, you should not direct that the names of the informants be disclosed, other than under Rule 8.

6. **Next review:** it is not within the remit of the Parole Board to set a date for the next review of a case as the terms of the Secretary of State's referral makes clear. The fact that the procedure for considering paper recall cases under the CJA 2003 allowed panels to set a date for a further review has caused some confusion among those chairing ESP oral hearing cases. Save where a case is being adjourned, a Chair should not set a date for a further review.

7. **Logistics of the hearing:** given the wide circulation of directions, it is not appropriate to use them for outlining other administrative arrangements that you consider necessary and the practice of some Parole Board Chairs of stating how many rooms for witnesses will be required or that all parties to the proceedings are to be supplied with lunch has caused offence to some prison Governors. If you wish to stipulate such arrangements, this should be done in a separate communication to the Case Manager.

8. **Physical evidence:** should you think it appropriate to direct that physical evidence be produced, bear in mind the restrictions on items that can be brought into a prison. Special administrative arrangements will usually be needed and it may be effectively impossible for certain items, to be produced at a hearing if they would not normally be allowed into a prison.

9. **Observers:** there are no hard and fast rules about the attendance of observers but it is sensible to guard against having too many additional people at a hearing lest this should prove intimidating for the prisoner or for witnesses. Consideration should also be given to the fact that the presence of some observers – for instance a prisoner's parents - could prove problematic if it makes the prisoner less frank when giving evidence.

Order of cases: if more than one case is to be heard on a given day, and one is more complex than the other(s) in terms of the nature of the case, disputed evidence or the number of witnesses, it is sensible to list that case last on the day so that there will be no knock-on effect on other hearings if it overruns.

ANNEX G

Guidance to accompany the Framework for Reasons

1. Introduction

- This section should identify the prisoner and the date of the hearing
- It should 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 suitability for transfer to open conditions or release on licence (lifer/IPP)
- It should 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 in coming to its decision

Since the publication of V2 of the Reasons Framework, guidance on explaining the tests in reasons has altered. Members are now asked to state ONLY the statutory tests where applicable and not attempt to define them in their reasons. Members apply the relevant test when evaluating the evidence and explaining their decision. The statutory tests were set out in PBM 13/11.

- The panel's decision/recommendation should now be left to the final section of the reasons (Section 8)
- The panel should address the offender directly rather than in the third person, irrespective of whether it is a paper or oral hearing
- An ICM member is sitting as a panel when it makes a negative decision and writes reasons relevant to the stage in sentence at which the offender is referred (pre/on/post tariff)

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 identify the dossier received by the panel by confirming the prisoner's signature and date e.g. *'the panel considered the contents of the dossier signed by you on 00/00/00'* and to
- List all additional documents submitted up to and on the day of the hearing to ensure clarity regarding all the evidence considered
- Panels should also list the witnesses who gave oral evidence and identify them by name and role and
- Acknowledge the Secretary of State's view if presented and any victim statements/attendance
- The issue of non-disclosable material can be addressed in this section.

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 can use the information in the dossier which details the index offence and previous offending: judge's sentencing remarks, previous convictions, Pre-Sentence and Post Sentence Reports, witness statements, case summaries, findings of fact e.g. where the offender has admitted offences or where there is other evidence of offences for which they were not convicted
- Panels should identify the types of offending for which they have to determine the risk factors and levels of risk e.g. risk of sexual offending against children
- The impact of the offence on the victim and their family could be noted in this section.

4. Risk factors

In this section panels should draw out the specific static and dynamic factors associated with the offender's risk of re-offending *generally* and risk of *serious harm* and

- comment on the impact of each of the risk factors they have identified from their previous analyses of offending behaviours and not merely rely on those listed in the dossier
- 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
- noting any risk factors which have developed or come to light since sentence and
- highlighting any psychological, psychiatric or medical considerations relevant to risk

5. Evidence of change during sentence

This section should comment on the progress of the prisoner through the sentence and note changes to the prisoner's circumstances inside and outside the prison which are relevant to risk as a basis for their analysis of the degree of change. Panels should take into account:

- 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)
- completion of relevant interventions to reduce risk (not limited to OBPs) with evidence of the effect these interventions have had on relevant risk factors

- the offender's willingness to engage in work to change their behaviour
- 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
- evidence of indicators of increasing as well as decreasing risk should be highlighted here
- panels may need to identify factors which affect the offender's capacity to change e.g. learning disability

6. Panel's assessment of risk of re-offending and risk of serious harm

The panel should use *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. The panel's assessment should be evidence-based and:

- convey clearly the relative weight given to key facts or opinions in arriving at its decision (not merely list the assessments, or give the scores)
- address whether there has been sufficient change in significant risk factors such as attitudes supportive of sexual/violent offending, cessation of substance misuse, application of problem solving skills
- comment on whether all relevant risk and protective factors have been addressed in the evidence or whether there are outstanding risks
- give consideration to both the seriousness of potential re-offending and its imminence
- come to a judgement on the type and level of the risks presented by the offender

7. Plans to manage risk

It is important in this section to analyse the *effectiveness* of the actions designed to manage risk rather than merely describe or list the contents of the risk management plan. The panel should:

- Where the panel is not considering release, the panel but can omit this section whilst ensuring that they record their judgement about whether the risks can be adequately managed in open conditions
- confirm that all the risks identified in Section 4 are addressed or identify what is not included
- evaluate the potential impact of the specific actions and
- consider the need for and potential effectiveness of additional conditions in managing specific risks

- comment on the likely compliance of the offender with the risk management plan using evidence from the offender’s engagement with previous periods of supervision, ROTL history, and previous breaches
- comment on the strength of any protective factors
- consider the plan in the context of the length of the potential licence period
- where the case is referred for the consideration of both open condition and release, both must be explicitly considered in the reasons

8. Conclusion and decision of the panel

This section is the summation of the argument running throughout the reasons. The panel has the opportunity here to link the assessment of risk to the relevant test, with reference to the Secretary of State’s Directions. This section should:

- state the decision of the panel clearly
- summarise the balancing of evidence and arguments for and against release or a move to open conditions which are contained in the previous sections
- address the Secretary of State’s and Legal Representative’s views
- consider the manageability of the offender during the relevant parole period for which the risk is being assessed
- state whether or not the risk is manageable in open conditions or the community in relevant cases
- state explicitly any additional licence conditions over and above the standard conditions which the panel believe are proportionate and necessary to manage particular risks outlined above and address the concerns of victims and/or their families where appropriate

Additional Guidance

Adopting conclusions of previous panels

Panels can, where appropriate, adopt conclusions of previous panels on specific points where these are set out in earlier decision letters. Panels wishing to do this may want to check that the offender has access to a copy of the previous decision letter referred upon which they are relying.

Standard wording

Panels may wish to exercise some caution when adopting standard forms of wording to address commonly occurring issues. Where they do so, they should be clear that the wording is appropriate to the particular case.

The Parole Board
for
England and Wales

Practice Guidance on
Duties towards Victims

February 2014

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1 Overview

1.1 The Parole Board is fully committed to fulfilling its legal duties towards victims. These duties encompass the statutory Code of Practice for Victims of Crime which in turn observes the wider UK duties contained in Directive 2012/29/EU of the European Parliament and of the Council. In addition the Parole Board may from time to time adopt internal policies for what it regards as best practice for dealing with issues that affect victims. Aside from these legal requirements the Board is also committed to treating all victims with sensitivity and respect. The Board undertakes to work in the spirit of the code in order to give victims every opportunity to participate in our hearings, while maintaining our common law duty to provide fair hearings.

Under the Code of Practice the **Parole Board**³ must:

- consider all representations that victims have made about licence conditions;
- where a victim has requested a licence condition which has not been included, provide an explanation for the non-inclusion;
- read a Victim Personal Statement (VPS) if one is submitted;
- consider applications from the victim if they want to attend the oral hearing; and
- consent to a request from the victim to attend in person unless there are good reasons for not doing so.

To read the Code in full follow this link:

<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

To read the Directive of the European Parliament in full follow this link:

<http://db.eurocrim.org/db/en/doc/1828.pdf>

1.2 At section 2, below, the Parole Board sets out its practice guidance explaining the procedures and how it meets its duties under the Code of Practice.

2 Practice guidance

2.1 Definition of a “victim”

Under the Code of Practice, a victim is defined as “a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by criminal conduct” or as a “close relative [*This refers to the spouse, the partner, the relatives in direct line, the siblings and the dependants of the victim. Other family members, including guardians and carers, may be considered close relatives at the discretion of the service provider*] of a person whose death was directly caused by criminal conduct.”

³ Victims Code of Practice, Chapter 2, Part B, Section 6.vi), paragraph 6.21

The Parole Board, as a service provider, will generally interpret the meaning of “close relatives” widely and not usually restrict participation from a guardian or carer of a murder victim, for example. Please refer to the detailed practice guidance in section 2.7 for details on situations where the Board may have to restrict the number of victim personal statements in any one case.

2.2 Victim Personal Statements (VPS)

The Board allows victims to make a written statement for consideration by the panel. This may be the statement put forward at trial, or a current statement. This statement is known as a Victim Personal Statement (VPS). Parole Board panels will always read any VPS submitted to them.

Under the Code of Practice for Victims, the victim can choose to have the written statement placed before the panel for the panel members to read for themselves. Or, where the case is being heard at an oral hearing, the victim may:

- request to be present and have the statement read on his or her behalf;
- request to be present and read it in person; or
- request that someone else attends to read it on his or her behalf; or
- request to read the statement via Live-Link (if available); or
- request to record it on audio/video tape or DVD for it to be played to the panel (if facilities are available).

Normally, a request to attend in person will be granted. (See 2.8 below).

Victims should not feel that they have to seek to attend in person if the case is going to an oral hearing. Their written statements will still be read by the Parole Board panel in any event. The decision whether to seek to attend in person is a personal decision for the victim.

The Secretary of State for Justice has issued a Probation Instruction (PI 11/2013⁴) which sets out in detail the requirements and responsibilities of the Offender Manager and Victim Liaison Officer (VLO) under the Victim Contact Scheme. This includes instructions for helping victims complete their statements, how they should be submitted to the Parole Board, how to request to attend an oral hearing or seek to withhold all or part of a statement. VLOs are advised to refer to PI 11/2013 for these instructions as they are not repeated here. However, where relevant, appropriate sections of the PI will be referred to within this document.

2.3 Timing of provision of the Victim Personal Statement

⁴ 4 PB Members are advised to read PI 11/2013, section 24 in “Part VI: Release”, pages 124-141.

The VPS should be received at the same time as the dossier is served on the Parole Board and the prisoner⁵ (i.e. 4 months prior to the target end date of the review). However, it is recognised that it is not always possible for the VPS and any recording thereof to be ready at this point. Therefore the Parole Board has advised the Ministry of Justice that statements must be served on the Board **at least 28 days before the date fixed for the panel hearing**.

Where the authorities are unable to comply with this 28 day deadline, the Parole Board will do all it can to allow the statement to be submitted and, where relevant, allow the attendance of the victim to read the statement at the hearing. Victims and VLOs should be aware that the Board has a duty to provide a procedurally fair hearing for the offender, which includes ensuring evidence is served and can be considered by the offender and his legal representatives in good time before the hearing. There may also be a need to make Directions on the content of the statement and practical arrangements with the prison if the victim is seeking to attend the hearing. Therefore the sooner the VPS and any request to attend a hearing can be served on the Board and the offender, the better.

The statement will be considered by the Panel Chair as soon as is practicable after it is provided to the Parole Board. He/she may then give such Directions in relation to the statement as he/she thinks fit (see section 2.5 below).

2.4 Contents of the Victim Personal Statement

Those preparing a Victim Personal Statement (VPS) should bear in mind that the Parole Board's primary role is to protect the public by risk assessing prisoners to decide whether or not they can be safely released into the community.

The statement should be concise and normally not take more than about 10 minutes to read aloud.

For ease of reference, the relevant section of the Victim Contact Scheme Manual is copied below:

25.1 “Purpose of the VPS

25.1.1 The VPS provides the victim with an opportunity to explain in their own words how a crime has affected them. It can provide useful context and information about the impact of the offence on the victim for the Parole Board.

25.1.2 The Parole Board ultimately makes decisions based on the offender's current risk. In most cases, the victim is unlikely to have information this. However, the VPS can contribute to a better, more informed hearing, as it may enable more open and robust questioning of the offender about the offence, addressing their offending behaviour,

⁵ PI 11/2013 Part VI, section 24.4.35 PB Members are advised to read PI 11/2013, section 24 in “Part VI: Release”, pages 124-141.

⁵ PI 11/2013 Part VI, section 24.4.3

remorse and victim empathy, which are some of the many factors which will help the Parole Board to assess risk.

25.2 Content and format of the VPS

25.2.1 The VPS should as far as possible consist of pure impact. This may be physical, psychological, emotional, financial or any other kind of impact. The VPS should provide the victim's views about:

- the original impact of the offence when it was committed;
- the lasting impact of the offence since it was committed; and
- the impact that the offender's release would have, including on them, their family, their community, or those with close ties to them or their family.

25.2.2 The VPS should **not** include information which is not relevant to risk or which would not be acceptable in a court of law. This may include:

- the victim's views on whether the offender should be released or transferred to open conditions, as that will be based on risk and the victim is unlikely to have any up to date information about risk;
- long descriptions of the index offence; or
- threats or critical comments to or about the offender or the Parole Board.

25.2.3 If victims include inappropriate information or subjective opinions on whether the offender should be released, the Parole Board will usually simply disregard them. *The VLO must explain this to victims and encourage them not to put such material in their VPS.* Referring to sentencing comments made by the trial judge may provide victims with a means of expressing their concerns in a way that would be acceptable to the Parole Board. However, if the victim insists, the VLO should not remove any material from the VPS.

25.2.4 The VPS can be an update of the court VPS or it may be a completely new statement. A new VPS may be submitted for each Parole Board review.

25.2.5 The VPS is most likely to have an effect if it is concise and takes less than 10 minutes to read. *If the victim reads the VPS in person or via video link, or submits a recording of the VPS, this must be limited to the text of the written VPS. The victim must be told that they must not add anything to the contents of the written VPS when reading it.*

25.2.6 *The VPS must always be submitted in writing.* If a recording is submitted, a written copy of the VPS must accompany it. "

If the victim has additional information that helps the Board assess the current risk the offender presents, they are advised to inform their VLO who will liaise with the Offender Manager to seek to submit such information in evidence. Consideration will need to be made by the authorities as to how that information may be submitted without the need to directly involve the victim. Where it is decided by the victim or the authorities that information of this nature is to be included in the victim personal statement, victims and VLOs should be aware that the victim may subsequently be asked questions as a witness.⁶ If the Parole Board

⁶ PI 11/2013 Part VI, section 25.10 advises that such risk information is best submitted through the OM rather than via the VPS

considers that information in the VPS means that the victim may have to be asked questions as a witness, the Panel Chair will make Directions accordingly (see section 2.5 below).

2.5 Parole Board Directions in relation to the VPS, or the number of statements submitted

The Parole Board Panel Chair has power to issue Directions concerning any evidence put before the Board.

The National Offender Management Service has made it clear that it will remove from a VPS any material that contains threats either to the prisoner or a third party. In addition, a Direction may, for example, provide for the removal of offensive or potentially inflammatory material from the statement. The Board recognises that the Secretary of State has stated in PI 11/2013 that "If victims include inappropriate information or subjective opinions on whether the offender should be released, the Parole Board will usually simply disregard them."⁷ However, it may not always be appropriate for the Board to simply disregard such information.

The Parole Board Panel Chair will not ask a victim to change or alter their VPS, except in exceptional circumstances. This may be where there is a concern that the inclusion of such information at a hearing where the offender's family is also in attendance as observers could put the health and safety of parties at risk, or increase the risk of an untoward incident at the hearing.

If it appears to the Panel Chair that the statement contains new information potentially relevant to the prisoner's risk, the Panel Chair may direct the Secretary of State for Justice to submit evidence relating to the matter and/or may direct that the victim attends the panel hearing as a witness in order to give evidence (and potentially to be cross-examined) in relation to it.

Either party (i.e. the Secretary of State for Justice or the prisoner) may make written representations to the Panel Chair in relation to the statement or to any of his/her directions.

2.6 Disclosure

It should be clearly understood by victims that normally the statement and any recording thereof will be disclosed to the prisoner and his/her legal representative in its final form. If the victim wishes to object to such disclosure written notification to this effect (giving reasons) should be provided to the Secretary of State for Justice when the statement is sent and the Secretary of State for Justice may make the appropriate non-disclosure application to the Board (and thus to the Panel Chair). The

⁷ PI 11/2013 Part VI, section 25.3.3

application will be decided by the Panel Chair in accordance with Rules 8(1) and 10(3)-(4) of the Parole Board Rules 2011.

It should be noted that it is only in rare circumstances that the Parole Board will lawfully be able to direct that a VPS is withheld from an offender.

2.7 Multiple Victims

The Panel Chair has the power to limit the number of victim statements. Where a number of members of a murder victim's family, for example, wish to put forward separate personal statements, it may be appropriate for the Panel Chair to direct that one or two representative views are submitted. The Board will always aim to be sensitive to the needs and wishes of the victims in these cases.

2.8 Requests to attend the hearing

Where the case is being heard at an oral hearing, the victim may:

- request to be present and have the statement read on his or her behalf;
- request to be present and read it in person; or
- request to read the statement via Live-Link (if available); or
- request to record it on audio/video tape or DVD and played to the panel (only if facilities are available).

Normally, a request to attend in person will be granted.

The normal practice should be for the victim, if attending in person, to read his/her statement to the panel at the start of the hearing. Normally the prisoner will not be present but his/her legal representative will be.

The victim will not be allowed to add anything to the contents of the written statement. Where a Direction has been made to remove wording from a statement (as described at 2.5 above), the victim attending must only read out the redacted version of the statement. The Board recognises that victim participation in this way can be a difficult and emotionally distressing experience and panels will try not to interrupt victims while delivering their statements. However, if the victim does add content to the statement which is offensive, potentially inflammatory or prejudicial, the Panel Chair may have to intervene and ask the victim to return to their pre-prepared statement. The victim will not normally be questioned about the statement.

Once the victim has read the statement, the victim and his/her supporter will be asked to leave. The panel will then continue with the hearing.

If the victim is attending the hearing in person he/she may apply to be accompanied by a supporter. It is suggested that this should normally be the Victim Liaison Officer (VLO) or a family member or friend.

Arrangements to ensure that the victim is met, escorted, and kept apart from the prisoner whilst attending the penal establishment are the responsibility of the Secretary of State for Justice.

2.9 Live-Link attendance or recordings

The Ministry of Justice will be responsible for providing facilities for the playing of audio/video/DVD recordings and for the provision of Live Link. Any audio/video tape or DVD must be limited to a reading by the victim of the written statement. The written statement must accompany the audio/video tape or DVD.

2.10 Attendance of the prisoner

The attendance of the prisoner during the presentation of the Victim Personal Statement (VPS) is a matter for the panel chair to decide. The panel chair will take account of the wishes of both the victim and the prisoner, if a view has been put forward, before reaching a decision.

Where a prisoner indicates that s/he does not want to be present, the Parole Board will not force them to attend. While it is recognised that some victims want offenders to be present while they present their statement, forcing the attendance of the prisoner could be detrimental to the Parole Board's ability to make a full assessment of risk. For example, an offender who does not want to attend but feels forced into attendance may not then be open to providing honest answers to the panel's question about his attitude to the index offence or victim empathy.

Where the victim does not want the prisoner to be present, but the prisoner does want to be present, Panel Chairs will normally seek to agree that the prisoner should be excluded from that part of the hearing where that is possible. The prisoner has a right under the Parole Board Rules to be present throughout the entire hearing, but Panel Chairs will ensure that victims' wishes are made known to the prisoner and where possible reach an agreement that the prisoner does not attend to hear the presentation of the VPS. Where the prisoner is legally represented, however, their lawyer will usually be present.

In situations where there has been a successful application to withhold the VPS from the prisoner, and the victim is attending to deliver their VPS in person, the prisoner will not be present. Generally, the prisoner's legal representative will be present (and have seen the VPS).

2.11 Victims under 18 years old

A victim under 18 years of age will not normally be allowed to attend the hearing in person due to the security restrictions involved in entering a prison. A victim under 18 may choose to have the written statement placed before the panel for the panel members to read for themselves; or have the statement read on his or her behalf or; request to read the statement via Live-Link or record it on audio/video tape or DVD for it to

be played to the panel (if facilities are available). In accordance with the Code of Practice, the Parole Board will accept Victim Personal Statements from young victims and from their parents or guardians. Where the victim is under the age of 18 years, their parent or guardian may request to attend the hearing on their behalf in order to read out the victim's statement and any statement of their own.

3 The Parole Board's decision

Laws on data protection and confidentiality mean that the victim will not be entitled to see the dossier or a copy of the panel's written reasons. The National Offender Management Service, via the Victim Liaison Officer (VLO) will be responsible for informing the victim of the outcome of the Parole Board hearing⁸.

Where the victim has made representations about licence conditions in a VPS, s/he should be aware that the Parole Board will not always decide to make the precise conditions requested. The Parole Board has a duty to balance the rights of the victim and family against the rights of the offender and family. All licence conditions must be necessary proportionate and manageable in order to be lawful. Where a Parole Board panel has not made the licence conditions requested by a victim, it will explain why it has not done so in its decision. This information will be passed on to the victim by their VLO.

4 Complaints

If a victim believes that the Parole Board has breached any of its duties under the Code of Practice for Victims⁹; or has a grievance about any other issue involving their treatment by the Parole Board, that person may make a formal complaint. The Complaints Policy is available on the Justice website here: <http://www.justice.gov.uk/complaints/parole-board>.

⁸ PI 11/2013 Part VI, section 24.7.5

⁹ Victims Code of Practice, Chapter 2, Part B, Section 9

ANNEX I

PAROLE BOARD POLICY – OPEN CONDITIONS

Background

The Home Secretary's Directions (which apply regardless of *Girling*) state that most lifers should spend a period in open conditions prior to release.

The point of open conditions is not simply one of rehabilitation or curing possible institutionalism. It offers the only chance to observe a prisoner putting into practice that which he/she has learned in theory. In other words, a prisoner may well make all the right noises on an accredited programme, but the structured and sheltered nature of closed conditions, where all decisions and responsibilities are taken by others, means that prisoners cannot demonstrate that they can fend for themselves in conditions more akin to those they will face on the outside. Open conditions offers this opportunity as far as possible. It is the only true testing ground.

Policy

The overriding factor is risk to the public. The Parole Board confirms that those serving indeterminate sentences may potentially remain in prison for their natural life. It is not the role of the Parole Board to seek to help prisoners to progress towards release because of perceived shortcomings by other agencies. The Board's role is to advise the Secretary of State in line with the Directions he has imposed.

A. RELEASE FROM CLOSED CONDITIONS

The Board may not direct the release of any prisoner serving a sentence of life imprisonment or indeterminate sentence for public protection, unless it is satisfied that it is no longer necessary in the interests of public protection that they continue to be detained.

In the majority of cases, the Board cannot ultimately be satisfied about risk until and unless a successful period of testing has been completed. Regardless of the length of tariff, where offending behaviour has been addressed in closed conditions, the prisoner has had no opportunity to demonstrate by his *behaviour* in conditions similar to those existing in the community that he/she can apply lessons learned in closed conditions.

It will be unusual for an indeterminate prisoner to be released direct from closed conditions. Circumstances where that may be appropriate could include:

1. Where the Board is considering representations against recall;
2. Where the prisoner has already successfully completed a sufficient period of testing in open conditions; AND the Board considers that

- the reason for removing the prisoner from open conditions was unrelated to risk;
3. Where the case is considered on compassionate grounds.
 4. Where there are other grounds that dictate that any or further testing in open conditions is not required to satisfy the Board about the prisoner's level of risk.

In determining whether the prisoner may be released from closed conditions, the Board will take into account:

- Whether a previous period of testing in open conditions was cut short. If so, the expectation will be that the Board will recommend a return to open conditions for the prisoner to complete testing and monitoring;
- That testing should not take place in the community. Accordingly it is not appropriate to balance risk against benefits when release is considered. Panels must acknowledge that testing, where the Board is not satisfied that risk is acceptable, may only take place in a prison environment;
- Where a prisoner is in closed conditions and has successfully completed all the offending behaviour work thought necessary, it is nevertheless required in the majority of cases for a testing period in open conditions to be completed before the Board can ultimately be satisfied that risk is acceptable. Panels should not be swayed by a legal representative's argument that those who have completed offending behaviour work in closed conditions must be released, unless the case falls within the "exceptional" category.

Reasons

Where the Board directs release from closed conditions in 2 and 4 above, the reasons must state why release without a [further] period of testing in open conditions is appropriate.

Every case shall be considered on its merits and nothing above detracts from the principle that if the Board is satisfied in any case that the risk to the public is acceptable, then it must direct the prisoner's release.

B. RECOMMENDATIONS FOR TRANSFER TO OPEN CONDITIONS

The Board recognises that the Home Secretary's Directions require the Board to balance the risk to the public against any benefits to the prisoner and the public that might accrue from the prisoner's transfer to open conditions. Within that framework, the Board will take into account:

- That the normal expectation is that all offending behaviour fundamental to risk reduction must be successfully completed in closed conditions ;
- That only relapse prevention and booster offending behaviour work should normally be envisaged in open conditions.
- That where the risk against benefits is evenly balanced, the risk to the public shall be the deciding factor.
- That where the Board assesses the risk as unacceptable for a transfer to open conditions, it shall take no account of the fact that further offending work has not been identified as necessary by prison and probation staff, or that such work is not available, except to acknowledge that fact in the reasons."