

## **Deferrals and Adjournments - Guidance for Parole Board Members**

**June 2015**

***(Available at Annex 19 of the MCA Guidance v17 and Chapter 1 of the Oral Hearing Guide)***

### **1. Introduction**

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

### **2. Difference between a "deferral" and an "adjournment"**

2.1 Deferrals are where a case is adjourned, but the panel making that decision does not need to retain conduct of the case.

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

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

### **3. Guidance**

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

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

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

3.2 **In all cases, it is essential that a deferral, if granted, is granted as soon as possible in order to avoid wasted resources and**

**unnecessary delay and expense to all parties. On the day deferrals should be rare.** Work is ongoing with NOMS to ensure panels are not faced with issues on the day of the hearing where avoidable.

3.3 At either stage, panels should consider:

- i) Whether additional information is required in order to make the assessment of risk and provide a fair hearing and it will be available within a short specific timescale; and
- ii) Whether the information is materially likely to affect the decision as to whether either an oral hearing is required (at MCA stage), or the eventual outcome (at pre-listing or listed stage).

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

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

3.6 Examples of deferral requests that should not normally be granted

- a. Where the prisoner is about to commence a course or wishes to complete a course, and a report is unlikely to be available within 4 months. The panel should take into account that a successfully completed course may not be of use without a subsequent period of monitoring to see if lessons learned are being put into practice. The panel should also take into account where the outcome of the course is unlikely to be a material factor (see b. below).
- b. Where a prisoner is approaching the end of a course but where the outcome is unlikely to be a material factor, for example, where multiple risk factors are present and it is clear to the panel that the course report will have little effect on the overall assessment of risk or the potential outcome.
- c. To enable a transfer to another establishment to take place for courses or therapy to begin. Timescales here are very uncertain and are likely to delay the case for many months, or even years.
- d. Where a prisoner recently arrived in open conditions wishes to be assessed for, and complete home leaves and/or undertake booster work. Prisoners in open conditions will not be permitted to take unescorted leave until they have been assessed by the Prison Service. Unless evidence is available to say that reports will be written within a short period of time, the process is likely to take *at least* 6 months
- e. Where a prisoner wants to await the outcome of criminal proceedings. The member should consider the available reports and decide whether sufficient material is there about the alleged incident(s) to enable the panel to reach a decision, potentially with the benefit of oral evidence, as to whether the risk of further

offences is acceptable, regardless of whether a crime has actually been committed. Remember, the Parole Board is not required to adopt the criminal standard of proof. However, where the prisoner is pleading not guilty to an offence and court case is soon to be concluded it would be advantageous to defer for the outcome as this is likely to affect the proposed risk management plan and recommendation of the Probation Officer and may avoid the need to seek to enquire into the circumstances of the offence prior to the conclusion of the criminal proceedings.

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

- a. The prisoner is about to complete offence related work and the report will be available soon *and* the information is likely to affect the outcome of the review and/or the ability to fairly assess the risk.
- b. A material witness is unable to attend on the date of the panel. This type of request will require the panel to consider the reason given by the witness and decide whether it is reasonable or not. Members should consider alternative stand-ins, or whether attendance by telephone or video link may assist in securing attendance. Members are also reminded that they may direct one of the parties to apply for a Witness Summons, where appropriate.
- c. The prisoner needs more time to obtain legal representation. Indications are that the courts will afford the prisoner a lot of leeway in this area, but this should be balanced against fairness generally. A determinate prisoner whose SED or NPD is within a few months is unlikely to achieve a meaningful oral hearing or an oral hearing at all if the case is deferred. It may actually be fairer to provide an oral hearing without representation, than none at all. Members will need to consider the stage the case is at and relevant time periods in these circumstances.
- d. A prisoner in open conditions has completed most of what is required but is nearing the end of a crucial course or needs to complete a limited number of home leaves which have commenced or will do so imminently, or where the release plan is not yet in place but is likely to be soon. An alternative to deferral for such cases might be where this information is ascertained very shortly before an oral hearing date. In such cases, members can consider whether it is better to go ahead with the oral hearing and seek to adjourn on the papers for updated reports/detailed risk management plan and subsequent written submissions. There is a danger here that a panel will need to reconvene, but it is put forward as a possible alternative to consider rather than a deferral on the day or a few days before a listed hearing.

## **4. Concluding cases and recommending a shorter referral period**

- 4.1 Members may wish to consider the above alternative to a deferral.
- 4.2 While the current terms of reference to the Parole Board explicitly state that the Board is not to comment on the timing of the next review for

indeterminate sentenced prisoners, the Board has been informed by the Secretary of State that he may be willing to consider bringing forward the timing of the next review in some cases. However, there is no formal agreement and members considering this option should seek representations from the Secretary of State and the prisoner before deciding how to proceed.

- 4.3 For determinate recalls, the Parole Board has statutory power to recommend a further review (albeit not explicit power to recommend the timing). For early release of determinate (including extended sentence) prisoners, there is no explicit power, but neither does the Secretary of State set out terms of reference which explicitly prevent the Board from advising on a further review.
- 4.4 It is recognised that this is not always an appropriate option, however, members are asked to consider it, given the Secretary of State's shift in this area and his stated willingness to give such comments consideration.

## **5. Directions**

- 5.1 Where a deferral is granted, a formal deferral notice must be issued by the panel chair or MCA panel.
- 5.2 Where a deferral request is rejected, reasons must be given. Where it is granted, in line with the MCA case management model, reasons should also be provided, particularly to show where key issues are affected or changed.
- 5.3 When issuing a deferral notice further directions will also normally be required for case management. Any directions for provision of missing information should state who should provide the material and give a deadline for submission. The deferral notice should additionally state which witnesses should attend the next hearing and make any further directions regarding panel logistics.
- 5.4 Members should resist where possible issuing a direction for the hearing to take place on or before a specific date as the Parole Board may not be able to fit the date into existing listing commitments, particularly in light of the *Osborn* judgment. However, in cases of exceptional circumstances (subject to previous delays for example), members should bear in mind their power to consider directing an expedited or prioritised hearing. Members should be aware that on re-entering the listing process, cases will continue to be prioritised according to their original due date.
- 5.5 It is good practice to direct that the Secretary of State or the prisoner's representative (depending on who is to commission the report or has asked for a witness) must ensure that a copy of the deferral letter is sent to anyone required to submit a report or to attend as a witness.

## **6. MCA panels – adjourning for more information**

- 6.1 On rare occasions, it may not be possible to decide whether a case requires further consideration at an oral hearing, or whether it can be concluded on the papers without further reports. This is a situation where adjourning to oneself is appropriate.
- 6.2 Where you consider that an oral hearing is required, but certain information is needed before the case is deemed ready to list, refer to the "Cases progressing to oral hearing" section in the MCA guidance.
- 6.3 Please keep in mind that by adjourning, members are essentially delaying the review. Members may wish to exercise caution when adjourning for substantive reports, such as psychiatric assessments which have not yet been commissioned. If members adjourn, an explanation as to why they are doing this should be stated on the form. Please note that if adjourning, deadlines for reports must be given. When these reports are received, you will be required to complete the initial assessment (i.e. paper decision or send to oral hearing).
- 6.4 Examples of when an adjournment at MCA stage may be appropriate:
  - a. When a crucial report is in the process of being written and the recommendations of that report are likely to have a significant influence on whether members will set Directions or issue a Paper Decision.
  - b. When essential reports are out of date (and therefore further work may have been completed which could affect the recommendations for a progressive move) or a legal representative highlights the existence of a report that is not within the dossier which is material to the MCA decision.
  - c. When reports are in the process of being completed following certain offending behaviour programmes i.e. a SARN and will affect the MCA decision.
  - d. When the prisoner is due to complete a course soon and you need to know the outcome of that programme before deciding how to progress the case.
  - e. For a psychological / psychiatric assessment – but bear in mind the proportionality of this and whether it is possible to obtain the information from other sources.
  - f. Where the directed report may have a significant impact on the directions you make for an oral hearing in terms of witnesses / further reports etc.
- 6.5 Directions for non-disclosure applications can be made as an adjournment, if minded to conclude the review on the papers. Members should always make directions on any non-disclosure application before concluding the case.