

Annex G

Guidance on drafting reasons – November 2014

Offenders are entitled to be given adequate reasons for decisions made about their liberty. The offender must be told in sufficient detail WHY the test for release was met, or not. The Board is also under a statutory duty to respond to the terms of the referral if release is not directed (i.e. apply the test for suitability for open conditions where relevant and identify continuing areas of risk that need to be addressed).

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

Reasons should be drafted using the following framework:

- a. Introduction
- b. Evidence considered by the panel
- c. Analysis of offending
- d. Risk factors
- e. Evidence of change and/or circumstances leading to recall (where applicable) and progress in custody
- f. Panel's assessment of current risk
- g. Evaluation of effectiveness of plans to manage risk
- h. Conclusion and Decision of the Panel
- i. Indication of possible next steps to assist future Panels

1. Introduction

This section should:

- a. identify the prisoner and the date and location of the hearing
- b. set out the purpose of the hearing relevant to the individual case and point of sentence as referenced in the referral from the Secretary of State (e.g. to determine suitability for early release on licence (DCR) or for release on licence or suitability for transfer to open conditions (most lifer/IPP))
- c. identify the sentence length and sentence/tariff expiry date, noting any periods the offender has spent unlawfully at large (UAL)
- d. briefly refer to the test to be applied so that the offender understands what must be taken into account, and on what basis the panel is coming to its decision (members are asked only to state the statutory test and not attempt to define it)
- e. identify the decision-maker (good practice for oral hearing is to specify whether the panel included a specialist member)

For example:

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

2. Evidence considered by the panel

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

- a. identify the number of dossier pages seen by the panel (it is not necessary to list all documents within the dossier; however, if any mandatory documents are missing these should be mentioned);
- b. where relevant, list all additional documents submitted up to and on the day of the hearing (it is particularly helpful for future panels to know exactly what documents were provided on the day at oral hearing);
- c. note any written submissions from the offender or his representative;
- d. for oral hearings: list the witnesses who gave oral evidence, identifying them by name and role (and note also whether evidence was given orally or by video-link/teleconference);
- e. for oral hearings: Note the name of the offender's representative and what the offender was asking the panel to consider;
- f. for oral hearing: Acknowledge the Secretary of State's view if presented (or note that the Secretary of State was not represented and did not submit any written comments);
- g. Note any victim statements/attendance; and,

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

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

3. Analysis of offending

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

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

The next panel may not have the older decision(s) so if a panel wishes to adopt a relatively large section of a previous decision (the summary of the index offence, or progress up to the point of the last hearing for example), it is best practice to copy and paste the relevant section to ensure that its decision is a stand alone decision. To do this, please contact the case manager to request a Word version of the previous decision. Best practice is to set out adopted sections of a previous decision in italics, so that it is clear which sections are adopted and which are new. In cases where there has been more than one previous decision, a footnote should be added that references by date which decision(s) the panel has adopted.

The current panel must still conduct its own analysis and independent assessment of risk.

This section should include:

- a. a summary of the index offence and conviction, including but not limited to;
 - i. the official account of the index offence
 - ii. any discrepancies in the offender's account, including partial or complete denial
 - iii. date of conviction
 - iv. any guilty plea(s)
 - v. the sentence imposed
 - vi. details of any appeal to the Court of Appeal
 - vii. tariff/sentence expiry date(s)
- b. a brief analysis (not narrative) identifying any themes or patterns of previous convictions, drawing out any relevant themes or patterns

with attention being given to any violent or sexual offences where applicable.

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

4. Risk factors

In this section the panel should draw out the specific static and dynamic factors associated with the offender's risk of re-offending (both generally and risk of serious harm) and;

- a. comment on the impact of each of the risk factors they have identified from its previous analyses of offending behaviours (at section 3 above) and not merely rely on those listed in the dossier,
- b. highlight any patterns and identify the characteristics of the individual, their attitudes and behaviour and the circumstances which appear to be related to their offending behaviour,
- c. note any patterns of previous non-compliance with court orders and community based penalties,
- d. note any risk factors which have developed or come to light since sentence, and
- e. highlight any psychological, psychiatric or medical considerations relevant to risk.

5. Evidence of change and/or circumstances leading to recall (where applicable) and progress in custody

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

Panels should take into account:

- a. changes in the underlying factors associated with offending - e.g. ability to maintain appropriate relationships, attitudes and beliefs

which support offending, backed up by evidence of attitudes and behaviour in custody (such as adjudications, drug tests etc);

- b. completion of relevant interventions to reduce risk (not limited to OBPs) with evidence of the effect these interventions have had on relevant risk factors;
- c. the offender's willingness to engage in work to change their behaviour;
- d. evidence from release on temporary licence (ROTL), periods in open conditions, any absconds or failure to return on time, and use this to assess the prisoner's ability to respond positively to increasing levels of self-responsibility and to apply new skills in more realistic, less secure settings;
- e. evidence of indicators of increasing as well as decreasing risk; and,
- f. factors which affect the offender's capacity to change, e.g. learning disabilities.

6. Panel's assessment of current risk

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

This section should:

- a. cite the available risk assessments (e.g. OGRS, OASys etc) in the form of risk levels (high/medium/low - it is not necessary to write out the actual scores provided) noting any significant changes, stating the current position;
- b. detail the panel's own assessment of the offender's risk of re-offending and harm reconciling any discrepancies with the professional assessments; and,
- c. identify the areas of risk that the panel considers to be outstanding.

7. Evaluation of effectiveness of plans to manage risk

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

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

- a. summarise the key elements of the risk management plan (or release plan for low risk of serious harm cases) including details of interventions proposed in custody or the community;
- b. analyse the effectiveness of the plan – consider whether the plan covers the identified risk and protective factors including risk issues raised by any recall and specific victim concerns;
- c. assess the likelihood of the offender complying with the plan, based on history of supervision, compliance and breach behaviour;
- d. identify protective factors (if any); and,
- e. if relevant identify any benefits of a move to open conditions.

8. Conclusion and Decision of the Panel

This is the key part of the reasons; it should explain clearly what decision the panel has made and why.

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

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

This section should:

- a. make a clear and lawful decision which links the assessment of risk to the relevant test and refers to the Secretary of State's Directions where considering suitability for open conditions;
- b. set out the panel's conclusions on any findings of fact which the panel was required to make; and,
- c. state whether the panel agreed or disagreed with the recommendations of professionals; where recommendations are not accepted the panel must justify their reasoning, and if presented with conflicting expert evidence the panel should explain why they chose to prefer certain witness evidence over others.

8.1 Open Conditions

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

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

8.2 Licence conditions

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

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

9. Indication of possible next steps to assist future panels

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

10. Additional Guidance

10.1 Panels

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

10.2 Standard wording

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

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

10.2.1 Test for release

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

10.2.2 Test for open conditions

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

- a. the extent to which the ISP has made sufficient progress during sentence addressing and reducing risk to a level consistent with protecting the public from harm in circumstances where the ISP in open conditions would be in the community, unsupervised, under licensed temporary release;*
- b. the extent to which the ISP is likely to comply with the conditions of any such form of temporary release;*
- c. the extent to which the ISP is considered trustworthy enough not to abscond; and,*
- d. the extent to which the ISP is likely to derive benefit from being to address areas of concern and to be tested in a more realistic environment."*

10.3 Plain English

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

These tools should be used to write clearly:

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

Justifying margins

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

Break up dense copy

If dense copy fills a page, it increases the chances that your reader will become discouraged. Give the reader a visual and mental break by using shorter paragraphs and headers.