

CHAPTER 1

PRE-HEARING ISSUES

1. The Parole Board Rules

The process for oral hearings is governed by the Parole Board Rules 2016 ("the Rules") (set out in full at Annex A).

2. Member Case Assessment (MCA)

For a complete guide to MCA, see the MCA Guidance. What follows here is a summary for panel chairs of the MCA process to give an idea of what they can expect to have been done before the dossier arrives for an oral hearing.

2.1 Decision of the MCA Member

The MCA member is a single member of the Board who is authorised to make decisions based solely on the papers in the dossier.

Broadly speaking, under the Rules, the MCA member may decide to:

- Conclude the review on the papers, either releasing the prisoner or refusing parole; or
- Send the case to an oral hearing

depending on the prisoner's sentence type and whether they are pre-tariff, post-tariff initial release, or recalled (please see the 'Table of Options Available at MCA' in the MCA Guidance).

2.1.1 Decision to proceed to an oral hearing

Parole Board policy states that a prisoner will not normally be recommended for a transfer to open conditions without an oral hearing.

The MCA member may also have identified other factors justifying examination of the case before a full oral panel. The Supreme Court case of *Osborn, Booth and Reilly* [2013] UKSC 61 established that there is now a far wider range of circumstances in which oral hearings should be directed. The overriding consideration is fairness to the prisoner. If the prisoner has relevant evidence to give about his/her risk, or there would be value in him/her being given an opportunity to participate in proceedings, an oral hearing should be directed, even if he/she has little or no prospect of succeeding in an application for progression to open conditions or release. For further information please see the Practice Guidance for Referring Cases to Oral Hearing (Annex E).

The MCA member will give brief reasons for the decision to progress the case to an oral hearing and make directions for case management.

2.1.2 Decision that the prisoner is unsuitable for release or open conditions

Where no oral hearing is directed or decision to release made, the MCA 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 accept the decision or apply for an oral hearing within 28 days of being notified of the decision.

If no application for an oral hearing is made within the 28 days following notification, the decision becomes final.

Any application for an oral hearing must be supported by reasons. These will be considered by a duty member, who must not be the same member who issued the original decision to refuse an oral hearing, and who will give reasons for directing an oral hearing or refusing the application.

If the prisoner's oral hearing request is refused the decision becomes final and the case is concluded. He/she may however challenge the decision by way of judicial review if he/she considers there are grounds to do so. If the Board concedes or loses any judicial review application, the Secretary of State will be invited to re-refer the case and the MCA member then requested to set directions for an oral hearing.

2.2 MCA directions

Where an MCA member sends a case to an oral hearing, directions will be given to help progress the case. The power to make directions is contained within Parole Board Rule 10¹. This provides for the MCA member or the panel chair 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.

MCA directions have the force of panel chair directions but do not bind the chair when he/she comes to make directions. However, early directions are useful as they can give the parties more time to fill gaps in the dossier and write any further reports that are required, and they give prospective witnesses more notice of the hearing and likely evidence required. This helps avoid unnecessary deferrals.

Directions should not be made in relation to the management of the prisoner's sentence, including but not limited to: security or transfer issues; re-categorisation; treatment needs and sentence planning. For example, directions that would be considered outside the Board's remit include requirements that the prisoner:

- a. Has home leave to his release address;
- b. Attends a particular course;
- c. Be transferred to another establishment for the purposes of completing particular offending behaviour work; or
- d. Be transferred to a psychiatric hospital for treatment, or assessed for such a transfer.

¹ Rule 10 is a general rule regarding directions. It does not apply to directions relating to the withholding of information, which is governed by Rule 8.

2.3 Reports

2.3.1 *Mandatory Reports*²

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 the MCA member should direct they be provided.

The core reports are as follows:

- a. PAROM1 (Offender Manager report)
- b. OASys assessment
- c. SPRL (Offender Supervisor report)

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

- a. Secretary of State's terms of referral
- b. Pro-forma case summary
- c. Details of offence(s)
- d. Trial Judge's sentencing remarks
- e. Trial Judge's report (only in MLP cases sentenced prior to December 2003)
- f. Pre and post sentence reports
- g. List of previous convictions
- h. List of previous locations
- i. Summary of reports of progress in prison
- j. Previous Parole Board decisions
- k. Reports from any offending behaviour work undertaken
- l. List of adjudications since last review

2.3.2 *Optional Reports*

The dossier may contain other reports to assist the panel in determining the issues. The MCA member may decide to direct addition of reports to the dossier.

2.3.3 *Prisoner's Reports*

Issues in respect of prisoner's reports will rarely arise at the MCA stage. However, if it is apparent that the prisoner or his representative has 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.

² Schedules 1 and 2 of the Parole Board Rules 2016 list the mandatory reports.

2.4 Disclosure/withholding information

The MCA member may occasionally receive an application from the Secretary of State to withhold a document from a prisoner under Parole Board Rule 8. Normally this will occur later in the review process and will fall to the panel chair to decide.

Where any non-disclosure direction has been made at MCA stage the panel chair should check carefully what has been directed. Further directions may be required to ensure compliance, or information may remain within the dossier which should have been removed.

2.5 Witnesses

In order to prevent hearings being ineffective through the unavailability of witnesses the MCA Member will identify essential witnesses for the oral hearing. Those witnesses will then be informed of the direction for attendance and asked to provide dates of availability. The usual witnesses required will be the Offender Manager, Offender Supervisor and, if applicable, author of the most recent psychological report where it is evident that this will have a bearing on risk assessment.

The MCA member will also provisionally determine applications by the parties for additional witnesses at this early stage in the proceedings. The following types of application are likely to be received from the parties:

- a. 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 – the MCA member should approve only if it appears that the witness can materially add to the report in the dossier.
- b. Witnesses who give contrary or unfavourable evidence to the prisoner on material facts or issues – it is expected that the MCA member will approve.
- c. Witnesses who are needed to make further contributions on risk assessment – these will always be approved.

The panel chair will need to review any directions for witnesses and make further directions as appropriate and necessary.

2.6 Other directions

In addition to issuing evidential directions, the MCA member will give a time estimate for the hearing.

The MCA member will also assess whether the case is suitable for a video-link hearing. The case is unlikely to be suitable where, for example, there are a large number of witnesses, particularly complex psychological issues or the prisoner has particular needs or vulnerabilities.

If the MCA member considers that the panel is likely to require psychological or psychiatric input a direction will be made for the panel to include a specialist member. If a specialist panel member is not directed, the panel chair should review upon receipt of the papers whether he/she considers one is required: this will avoid deferrals at a late stage.

If time is needed for directions to be fulfilled, the MCA member will state that no hearing date should be set until directed material has been received; or, where documents should be readily available, that a date can be set pending fulfilment of the directions.

3. The Role of the Panel Chair

3.1 Directions and case management

The power to make directions is contained within Parole Board Rule 10 (except for directions relating to the withholding of information or reports which are governed by Rule 8). This provides that the chair of the panel may at any time give, vary or revoke such directions as he/she 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. The detailed practice guide for setting directions is at Annex F.

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 (at Annex B), namely:

- a. Timetabling of proceedings
- b. Service of documents
- c. Witnesses
- d. Submission of evidence
- e. Disclosure

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, including but not limited to: security or transfer issues; re-categorisation; treatment needs and sentence planning. For example, directions that would be considered outside the Board's remit include requirements that the prisoner:

- a. Has home leave to his release address;
- b. Attends a particular course;
- c. Be transferred to another establishment for the purposes of completing particular offending behaviour work; or
- d. Be transferred to a psychiatric hospital for treatment, or assessed for such a transfer

The panel will ordinarily receive the dossier a few weeks prior to the oral hearing. The case will, however, have been subject to case management review prior to that date as the MCA 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 MCA 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 MCA 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 MCA 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.

3.2 Reports

3.2.1 *Mandatory Reports*

The core reports which must be available for the oral hearing are listed at 2.3.1 above. Ordinarily these will have been identified during the MCA process; however, if any of these reports are missing, a direction should be made for service before the oral hearing.

3.2.2 *Optional Reports*

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 completed by the date of hearing.

3.2.3 *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.

3.3 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.

Panel chairs should be alive to potential practical difficulties in obtaining specific documents. Old documents may have been destroyed under the Data Protection Act and it can sometimes take a long time to obtain documents from official sources. Chairs should consider setting directions in broad wording, such as:

"The Board directs that the Secretary of State supply any document(s) available that provide(s) details of"

3.4 Victim attendance

The full Practice Guidance on Duties towards Victims (April 2017) is at Annex H.

The Rules make no explicit provision 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. Victims will also usually be allowed to attend hearings to read their statement to the panel should they ask to do so. The victim will not be allowed to add anything at the oral hearing to the content of the written statement.

The prisoner has a right to be present while the victim reads their statement at the oral hearing; however, if the victim does not want the prisoner present, the panel chair must ensure that the victim's wishes are made known to the prisoner and where possible reach an agreement that the prisoner does not attend.

The panel chair should normally allow the prisoner to be excused if they do not want to be present while the victim reads their statement.

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 (Rules 20 and 23), but in the interests of consistency and good practice, chairs are advised to follow the Practice Guidance, and make appropriate directions where asked to do so.

3.5 Witnesses and observers

In order to prevent ineffective hearings through the unavailability of witnesses the MCA 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 determine applications from the parties. If an application for a witness is refused then the panel chair 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.

Applications for observers 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.

3.5.1 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 occasionally 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:

"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 (Civil Procedure Rule 34.4). This power should not be exercised lightly. Some general principles:

- a. 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.
- b. It is not appropriate to compel a minor to attend.
- c. Panels should be slow to pursue a witness summons unless one of the parties has applied for a direction to do so.
- d. 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.

3.6 Preliminary hearings

Each party has the opportunity to make written representations on directions made by the panel chair 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 panel chair directs otherwise he/she shall sit alone and the prisoner shall not attend unless unrepresented. The panel chair should consider whether a directions hearing could take place via the parties' telephone attendance.

3.7 Other directions

Any additional directions made by the panel chair should be submitted on the Directions pro-forma to the Case Manager.

4. Disclosure/withholding information

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

4.1 Withholding material

Rule 8(1) lays out the criteria that must be met for a panel chair to direct that material be withheld from a prisoner.

The panel chair must be satisfied that non-disclosure is a necessary and proportionate measure in the circumstances of the case, and that disclosure would adversely affect one or more of the following:

- a. National security (most likely to arise in cases where the prisoner is convicted of terrorism offences or other extremist offending)
- b. The prevention of disorder or crime (for example 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)
- c. 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)

The Secretary of State must give grounds for any application he makes for a direction to withhold material. The panel chair will need to consider the above criteria and issue a direction under Rule 8(4).

Rule 8(4) states that having considered the application the panel chair must direct that the material should be:

- a) served on the prisoner and their representative (if applicable) in full; or
- b) withheld from the prisoner, or from both the prisoner and their representative; or
- c) disclosed to the prisoner, or to both the prisoner and their representative, in the form of a summary or redacted version.

4.2 Disclosing material to representatives

Rule 8(6) requires that material withheld from the prisoner must be disclosed to his representative, provided that representative is:

- a. A barrister or solicitor; or
- b. A registered medical practitioner; or
- c. A person whom the chair directs is suitable by virtue of his/her experience or professional qualification
- d. A special advocate who has been appointed by the Attorney General to represent the prisoner's interests.

Rule 8(7) requires that the material must not be disclosed to the prisoner's representative unless they first give an undertaking to the Board that they will not, without the consent of the member concerned, disclose it to the prisoner or any other person.

4.3 Directions (Rule 8(4))

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

"An application has been made that certain material should be withheld from [X]. The Secretary of State submits that disclosure of the material to [X] would adversely affect [national security] [the prevention of disorder or crime] [the health or welfare of the prisoner][the health or welfare of [Y]] (*delete as necessary*). On the evidence available to it, the Panel finds that that is the case. The Secretary of State further submits that withholding the material would not affect the fairness of the proceedings and would be a necessary and proportionate measure in the circumstances of the case. On the evidence available to it, the panel finds that that is the case. The panel accordingly directs that the material should be withheld from [X]."

If the decision is that the material itself should be withheld from the prisoner but that it should be disclosed to their representative, the following wording can be added:

"The material should be served by the Secretary of State on the prisoner's representative, provided that the representative has first given an undertaking to the Board that they will not, without the

consent of the Panel Chair, disclose it to the prisoner or any other person (see Rule 8(7) of the Parole Board Rules 2016).”

Where the chair makes a direction that the material should be disclosed in the form of a gist or redacted version, the following wording may be appropriate:

“An application has been made that certain material should be withheld from [X]. The Secretary of State submits that disclosure of the material to [X] would adversely affect [national security] [the prevention of disorder or crime] [the health or welfare of the prisoner] [the health or welfare of [Y]] (*delete as necessary*). On the evidence available to it, the Panel finds that that is the case. The Secretary of State further submits that withholding the material itself but disclosing a gist of it in the form proposed by the Secretary of State would be a necessary and proportionate measure in the circumstances of the case and would not affect the fairness of the proceedings. On the evidence available to it, the panel finds that that is also the case. The panel accordingly directs that the material should be disclosed to [X] but only in the form of the proposed gist”.

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

An application has been made that certain material should be withheld from [X]. The Secretary of State submits that disclosure of the material to [X] would adversely affect [national security] [the prevention of disorder or crime] [the health or welfare of the prisoner][the health or welfare of] (*delete as necessary*). On the evidence available to it, the Panel does not find that that is the case. It therefore directs that the material should be disclosed in full to [X] [and his legal representative] (*delete if there is none*).”

4.4 Directions hearings

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. Rule 11 provides for a directions hearing to be held to determine any issue and describes the procedure. Parties must be notified at least 14 days before the day of the directions hearing of the date, time and place. The chair will need to make sure that enough time is allowed between any directions hearing and the substantive hearing itself.

4.5 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 must seek advice from the Legal Advisor.

4.6 Withdrawing material from the Board

The Secretary of State has the power under Rule 8(10) to withdraw information if the Board directs disclosure against his wishes. Where this occurs, anyone who has seen the material in question will be unable to sit as an MCA member on the case or on the oral hearing panel (Rule 8(11)).

5. Mental health cases

5.1 Mental Health Review Tribunals

Occasionally, an offender will have been initially sentenced to a term of imprisonment but then later sectioned under the Mental Health Act and transferred out of the prison estate for treatment. Once an offender has been sectioned, the Board has no jurisdiction until a Mental Health Review Tribunal (MHRT) discharges the offender back to prison.

However, there are two sets of circumstances where the Board may conduct a review in respect of someone still detained under the Mental Health Act:

- a. The MHRT decides that treatment is no longer necessary but a transfer back to prison would so adversely affect the patient's mental health such that it would be better for him to serve any remaining sentence time in hospital; or
- b. The MHRT decides that, had the patient been sentenced under the Mental Health Act, he would now be discharged under the same Act.

Panels should note that the MHRT criteria for discharge is based around the nature and degree of the mental disorder; they do not apply the same release test based on risk as the Parole Board. Similarly, the MHRT may consider what licence conditions would have been necessary the prisoner will not be subject to any such conditions unless they are included within the life licence.

5.2 Panels at secure units/hospitals

Panels will sometimes, therefore, visit secure units or special hospitals to conduct hearings. Every such panel will include a psychiatric member and consultation between the panel chair and the psychiatric member is recommended.

The principles for review and release apply as they do to prisoners but the dossier will be different. Typically, members can expect to receive:

- a. the dossier that went before the MHRT
- b. the MHRT decision letter that triggered the parole process

- c. any additional current psychiatric/psychological reports
- d. a report by the Responsible Medical Officer (RMO)
- e. a report from the Offender Manager
- f. a social circumstances report from a social worker
- g. documentation relating to the care plan

The panel chair will need to check that these documents, and any additional other documents required (such as a report from a substance misuse worker or occupational therapist, reports on home leaves taken, offending behaviour programme reports), are covered in the directions.

In respect of witnesses, it is likely to be essential for the panel to hear from the RMO, a social worker and a member of nursing staff.

Panels should be aware that such reviews are quite rare for the mental health community and so there may be a lack of familiarity among the professionals as to procedural requirements.

6. Deferrals

The following Guidance on Deferrals and Adjournments was issued June 2015 and is also at Annex 15 in the MCA Guidance v19.1.

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.