

# **CHAPTER 5**

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## **EQUAL TREATMENT/DIVERSITY ISSUES**

## **1 Introduction**

The Board is committed to protecting and promoting equality and diversity. There is a positive duty on the Board to make reasonable adjustments in oral hearing arrangements for persons with protected characteristics under the Equality Act 2010. A reasonable adjustment is an adaptation to change a provision, criterion or practice, or to change a physical feature, or to provide auxiliary aids or services in order to avoid placing a protected person at a substantial disadvantage. There is no universal criterion of 'reasonableness.' When deciding whether an adaptation request is reasonable, it may be considered how disruptive, expensive, practicable and effective taking such a step would be.

The following guidance is not exhaustive; panels must consider the needs of individual prisoners.

## **2. Prisoners with physical disabilities**

Persons with physical disabilities may find it harder to concentrate, or may need to eat or drink more frequently, take medication or go to the lavatory at frequent intervals.

## **3. Prisoners with learning disabilities**

It is particularly important to communicate well and appropriately with prisoners with learning difficulties. Clear and simple language is vital. Panel members should break down questions into smaller sections, preparing the prisoner for each stage of the communication. Prisoners with learning disabilities may also need longer to process the questions and think about their answers; be careful not to rush them.

It may not always be clear that the prisoner does not understand what a panel member has asked them. Some prisoners with learning difficulties will agree with a statement or question simply to please the questioner or because they are embarrassed or frightened.

## **4. Children and Young People**

It is relatively rare for the Board to have to assess risks posed by children and young persons (in this context, those under the age of 21). However, they are likely to require a different approach to adults. Young persons who have been sentenced for such serious crimes frequently have disturbed backgrounds and have experienced extreme developmental disadvantage. Consequently, they pose a unique challenge to both professionals working with them and panels who must assess the risk they pose to the public.

In cases concerning children and young persons, the key consideration at all times must be what is in their best interests.

Fuller guidance on all matters relevant to parole that concern children and young people is at Handbook B, Chapter 14, Section 15.

#### 4.1 Treating children and young persons differently to adults

Both domestic and international law recognise the rights of children (aged under 18) to be treated distinctly by the courts and criminal justice system. In all decisions concerning children the child's best interests are a primary (but not the sole) consideration (Article 3(1) of the UN Convention on the Rights of the Child; s11 Children Act 2004).

Although young adults (aged 18-21) do not enjoy the same level of legal protection as children, it is well recognised that they may be especially vulnerable and there is a growing consensus that they also require a different approach. At the time they come before the Parole Board, young adults may be at a point of a number of transitions; such as to the adult prison estate, from Youth Offending Team supervision to management by the National Probation Service, from care into independent living. These changes may give rise to a need for a different and individualised approach.

However, the statutory test is overriding: no child or young adult must be released unless the panel is satisfied that it is no longer necessary for the protection of the public for them to be detained.

#### 4.2 Entitlement to Oral Hearing

All children sentenced to an extended or indeterminate sentence are automatically entitled to an oral hearing to consider release (if their release cannot be directed on the papers) and are given the highest priority for listing.

#### 4.3 Directions

Many, if not all, appropriate Directions which address the specialised needs of a child or young adult will have been made at ICM stage. However, it is important that chairs review the Directions made and consider whether anything further is required for a fair and effective hearing to take place.

##### 4.3.1 *Witnesses*

It is likely that additional witnesses will be required, particularly to give evidence about the release plan. Chairs may particularly wish to direct attendance of the Youth Offending Team (YOT) worker (if this has not already been done), who will be able to give evidence as to the hand-over arrangements to an adult Offender Manager, confirm the care status of the young person with the local authority and answer questions concerning the local authority's pathway assessment and plan.

#### *4.3.2 Hearing length*

In estimating hearing times, bear in mind that hearings of young offenders invariably take longer than adult cases as adaptations will need to be made to accommodate their particular needs and additional witnesses may be required.

#### *4.3.3 Representation and support*

Young persons are entitled to legal representation. If a young person is not represented it may be necessary for a panel to make directions to encourage them to take advantage of this right and assist them in obtaining suitable representation. Case law has established that there is a positive duty on panels to be proactive in ensuring the young person is legally represented.

Similarly, if a young person has not indicated that they want someone present at the hearing as an observer to support them, chairs may wish to consider directing that the YOT or OS equivalent discuss this possibility with the young person.

If a young person cogently and persistently refuses representation and requests that the hearing proceed, the offer of an adjournment/deferral to enable the young person to be represented should be recorded in the decision letter.

#### *4.3.4 Adjournments and deferrals*

Particular consideration must be given to the timing of any adjournment or deferral. Panels must take into account practical matters that may be affected by the timing of any length of deferral, such as timing of offending behaviour work, pending transfers to the adult prison estate or reductions in support from social services.

#### *4.3.5 Specialist panel members*

When considering whether a specialist member is required on a panel, it should be noted that adolescent forensic psychiatrists may become involved with children in the criminal justice system where it would not be appropriate were they an adult. It should also be noted that there are very few members with specialist expertise in adolescent issues, and there may be logistical difficulties with their sitting on a panel that is geographically distant.

### 4.4 The hearing

Oral hearings can be particularly difficult and intimidating for children. For hearings to be fair children must be able to “effectively participate” (*Venables*). Children should be treated with respect for their age, special needs, maturity and level of understanding and any communication difficulties. This may mean making hearings less formal, explaining in extra detail about what the hearing will entail, using simple language and

taking frequent breaks. It may be more appropriate for an observer such as a parent to attend as an emotional support.

Chairs will often be constrained in the adaptations they can make by the facilities available at the secure establishment. However, there are some examples of good practice that can be transferred to any environment:

- a. Introduce yourself to the child before the hearing by going to see the child in the room he or she is waiting in
- b. Offer to show the child the room and who will sit where on their own before the hearing begins
- c. Make sure that the child can see all the witnesses as they introduce themselves at the beginning (especially where the layout of the room means that the witnesses are sitting behind the child)
- d. Offer the child the chance to give evidence in private (although do note that the panel will also need to consider whether other witnesses need to hear the offender's evidence)
- e. Make sure that questions to be put to a child are discussed among the panel in advance to avoid duplication and ensure that the questions are structured in a logical fashion
- f. Use simple language (but avoid pejorative terms which tend to embarrass and distract a child)

#### 4.5 Risk Assessment

Panels should be mindful that there are no standard risk assessment tools for children. It can therefore be very difficult to distinguish between young persons whose offending will most likely decrease into adulthood, and those whose offending will most likely continue and potentially escalate in frequency and severity. Most young offenders mature out of adolescent offending behaviour but panels are likely to encounter individuals who have deep-rooted issues.

It is not appropriate to apply adult risk assessment tools to young persons since these do not account for developmental factors, and as young persons can change relatively quickly compared to adults their risk needs to be assessed more frequently. Research suggests that any risk assessment of young people should try to understand why the offending behaviour took place by looking at the environment in which it took place and what advantages that behaviour may confer on the young person – ie, what is maintaining or strengthening the behaviour? In respect of preventing re-offending, risk assessment should focus on the young person's strengths and protective factors.

Only suitably qualified professionals should carry out risk assessments with young people. Professionals need to have specific training in both child and adolescent development and youth offending, relevant practical

experience of working with young offenders and specific training in any risk assessment tools they use. If panels have any concerns about the suitability of the professional presenting risk evidence to them they should not be afraid to ask for confirmation of the above.

#### 4.6 The decision

There are currently no open establishments for children and seven where young adults (aged 18-25) can be placed. However, legally young offenders can be placed anywhere the Secretary of State considers suitable, so if the terms of the referral require panels to consider recommending open conditions they must apply the test and respond.

In drafting reasons, panels should again be mindful of the need for their decision and reasoning to be understood by the young person.

### **5. Female prisoners**

Panels will need to make adjustments for female prisoners who are pregnant or breastfeeding, particularly in provision of additional breaks.

### **6. Transgender prisoners**

Transgender persons are those who live or propose to live in the gender opposite to that assigned to them at birth. Panels may encounter prisoners at various stages of the transgender process.

Any prisoner with the intent of undergoing physical surgery to reassign their gender has the protected characteristic of gender reassignment for the purpose of the Equality Act 2010 and must not be discriminated against because of this. Panels should note that establishments must permit prisoners who wish to do so to live permanently in their acquired gender role, including allowing them to adopt gender-appropriate names and modes of address, and dress in gender-appropriate clothing. Establishments must also permit transgender persons items to assist them in presenting in their acquired gender.

In most cases prisoners will be located within the male or female prison estate according to their legally recognised gender. However, there may be rare circumstances where a person legally recognised as male may be located within the female estate and vice versa.

Panels may exceptionally have to address a prisoner's transgender status if they consider this has a direct bearing on risk (for example, where the evidence indicates that the transgender status is more transient than permanent and offending only takes place [or risk of offending significantly increases] when the prisoner presents in the adopted gender). However, in all other circumstances, panels should treat transgender persons equally to any other prisoner of their chosen gender, including addressing the prisoner with their chosen name and gender-appropriate form of address.

## **7. Foreign language speakers**

People generally express their views and needs better in their native language. Where a prisoner's native language is not English, and they express a need or preference to conduct the hearing in a foreign language, the Board must enable them to use their preferred language where reasonably practicable.

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; it may be necessary to defer if a fair hearing cannot take place without an interpreter present.

### **7.1 Welsh Language Scheme**

The Parole Board has adopted the principle that in the conduct of public business and the administration of justice in Wales, it will treat the English and Welsh languages on a basis of equality, so far as is both appropriate in the circumstances and reasonably practicable.

This means that where a prisoner requests it, a hearing must be translated into Welsh and where the prisoner has corresponded in writing with the Board in Welsh decision letters must be translated into Welsh.