

Guidance During the Coronavirus: Panel Composition When Concluding Cases on the Papers

This guidance must be read in conjunction with the following pieces of Parole Board Guidance:

- Guidance during the Coronavirus pandemic issued to the membership on the 20th March 2020; and
- Guidance during the Coronavirus: progressing cases at MCA issued to the membership on 30th March 2020.

Both of the above pieces contain guidance around concluding a case on the papers after a direction for an oral hearing has been made, and the process that must be followed. This document is to complement the guidance that has been provided.

The panel chair: case management and directions

Under Rule 6 of the Parole Board Rules 2019 a panel chair can:

1. Carry out case management functions and may, at any time, make, vary or revoke directions. This includes directions made at the MCA stage and includes panel logistics.
2. Make any direction necessary in the interests of justice, to effectively manage the case or for such other purpose as the panel chair considers appropriate. Such directions may relate to, for example, the service of information or a report or the attendance of a witness.
3. Adjourn or defer the proceedings for further information or for such other purposes as they deem appropriate.

Decisions on the papers following a direction for an oral hearing

This guidance applies to cases where an oral hearing panel has been assigned and the panel chair is *now* considering making a decision on the papers under Rule 21 or Rule 23 (1) or (2) (a) of the Parole Board Rule 2019.

This guidance does not apply to cases where oral evidence has been taken. In these cases, the decision must be a panel decision (or majority if the decision cannot be agreed by all) as it is a decision following an oral hearing under Rule 25.



Rule 21

- Concluding a case on the papers under rule 21 is done in two stages. First, the decision is made whether to conclude on the papers or not. Second, if it is decided to conclude on the papers, the substantive decisions about release and transfers to open conditions are made.
- The first stage decision as to whether the case can be decided on the papers is that of the panel chair (Rule 21 (4)).
- If the decision is that the case can now be determined on the papers, and in order to prepare for the second stage, the panel chair will need to decide on the constitution of the panel to make that decision on the papers, namely:
 - a) Whether the panel should consist of the panel chair (on their own);
 - b) Whether it should be the panel who are already assigned to the case; or
 - c) Whether there should be a newly appointed panel to decide the case on the papers. This option should only be used in limited circumstances and reasons will need to be given as to why the current panel chair/ panel cannot decide the case on the papers. Such a decision would be a deferral with a direction for the case to be concluded on the papers and the panel chair/ panel would no longer be assigned to the case.

When making a decision about the constitution of the panel, the panel chair should bear the following in mind:

- What were the reasons for the panel logistics set out at the time of the MCA and do those reasons still apply now?
- Does the panel contain a specialist member/ is specialist knowledge required?
- Does/ do the co-panellist(s) hold an area of speciality which would be beneficial to the decision-making?
- Would the co-panellist(s) gain relevant professional development, particularly if they are in the early part of their career with the Board, which would be beneficial to the Board?
- Whether the case is particularly complex.
- Whether there is considerable divergence of recommendations from professionals.

If any of the above apply, it may be more appropriate to have a decision by the full panel assigned to the case, but this is at the discretion of the panel chair.

The panel chair may wish to consult with co-panellists before making a final decision on how the case will proceed.

The decision of the panel chair on how the case will proceed needs to be confirmed to the co-panellists and the case manager by the panel chair.

Once the constitution of the panel has been determined, the panel can then make the second stage decision on the substantive questions of release and transfer to open conditions.

Rule 23 (1) and (2) (a)

A decision can be made on the papers following notification under Rule 23(1) and (2)(a) that a prisoner does not want an oral hearing/does not want to attend an oral hearing. This also involves two stages of decisions, a first stage decision to conclude on the papers and a second stage decision on the substantive questions of release and transfer to open conditions.

The first stage decision as to whether the case can be decided on the papers is that of the panel chair.

If the decision is that the case can be determined on the papers, in order to prepare for the second stage, the panel chair will need to decide on the constitution of the panel to make that decision on the papers, namely:

- a) Whether the panel should consist of the panel chair (on their own); or
- b) Whether it should be the panel who are already assigned to the case.

When making a decision about the constitution of the panel, the panel chair should bear the following in mind:

- What were the reasons for the panel logistics set out at the time of the MCA and do those reasons still apply now?
- Does the panel contain a specialist member/ is specialist knowledge required?
- Does/ do the co-panellist(s) hold an area of speciality which would be beneficial to the decision making?
- Would the co-panellist(s) gain relevant professional development, particularly if they are in the early part of their career with the Board, which would be beneficial to the Board?
- Whether the case is particularly complex.
- Whether there is considerable divergence of recommendations from professionals.

If any of the above do apply, it may be more appropriate to have a decision by the full panel assigned to the case, but this is at the discretion of the panel chair.

The panel chair may wish to consult with co-panellists before making a final decision on how the case will proceed.

The decision of the panel chair on how the case will proceed needs to be confirmed to the co-panellists and the case manager by the panel chair.

Once the constitution of the panel has been determined, the panel can then make the second stage decision on the substantive questions of release and transfer to open conditions.

Other points to note

- The panel chair does not need to hold a single member chair accreditation because an oral hearing will not be taking place.
- If the decision is that of a panel, the decision needs to be a majority decision.
- Decision letters must be issued to both parties within 14 days of the date of the decision to conclude the case on the papers.
- The decision letter should note whether the panel chair concluded the case on their own or whether it was a multiple member panel decision (and the number of panel members).

The above points should not affect the decision as to whether the decision should be that of a panel chair or a panel.

If the panel chair decides that an oral hearing is required, the panel chair should consult with their co-panellists to check that they are able to participate in a remote hearing, as this may influence how the case is progressed.