

Adjournments & Deferrals

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Document History

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Summary of content

- 1.1 This document provides guidance when a case cannot be progressed at any stage in the parole review process and an adjournment or deferral is being considered. The meaning of these terms are:
- to adjourn is to postpone completion of the review to a specified future date with the same panel retaining responsibility; and
 - to defer is to postpone completion of the case to a fresh panel at a future date. The panel should not specify the future date but can indicate a prospective date, if it is in the interests of the case to do so, for example, "This case should not be listed before [insert month and year]".
- 1.2 The duty of the Parole Board under Article 5(4) of the European Convention on Human Rights is to provide a speedy review of the prisoner's detention. Reviews must be delayed as little as possible. If postponing a review is unavoidable, most cases should be progressed through adjournment rather than deferral. This is because an adjournment keeps the case with the panel who have knowledge of it, avoids duplication of work and is a more efficient way of working.
- 1.3 Decisions to adjourn or defer must be based on the individual circumstances of the case. This guidance gives examples of when it is appropriate to adjourn or defer.

Purpose of this guidance

- 2.1 To assist members to:
- understand the difference between adjourning and deferring a case; and
 - decide whether to adjourn or defer a case at any stage of the parole process.

Implications for practice

- 3.1 The legal framework governing adjournments and deferrals is set out at Part 2, Rule 6 of the Parole Board Rules 2019 ('the 2019 Rules').
- 3.2 When deciding whether an adjournment or deferral is necessary, panels should consider:
- whether additional information is required to make a balanced risk assessment and/or provide a fair hearing and whether this information will be available within a specified timescale; and
 - whether the information is likely to materially affect a decision about the necessity of an oral hearing or is otherwise liable at any stage to influence the eventual parole outcome.

If not, then a decision to adjourn or defer should generally be avoided, as this can cause unnecessary delay to a review.

- 3.3 Members should also consider whether a case has been adjourned or deferred previously. The genuine need for adjournment/deferral must be kept under review by the panel chair to avoid unnecessary delay.
- 3.4 The panel chair or duty member must take into account the date of the prisoners last parole review when making a decision to adjourn or defer (Rule 6 (14)).
- 3.5 Under Rule 6 (12) where the panel chair who is conducting an oral hearing adjourns, they must give the parties at least 3 weeks' notice of the date, time and place of the resumed hearing (unless the parties agree to shorter notice).
- 3.6 Under Rule 6 (13), formal notice of the decision to adjourn or defer must be recorded in writing with reasons and must be issued to the parties within fourteen days of the decision to adjourn or defer. Best practice is to submit directions with the panel's rationale as soon as possible. The formal notice should be with the Parole Board case manager within 10 days to allow the case manager time to issue the notice.
- 3.7 Adjournments and deferrals should not exceed four months from the date of the panel unless there are exceptional circumstances. Where a case is adjourned or deferred for more than four months, a reason must be given setting out the exceptional circumstances.
- 3.8 There are three stages at which an adjournment or deferral may be necessary:
 - **At MCA panel stage:** pre-listing, after the parole review has begun but before a decision has been made to conclude on the papers or direct to an oral hearing. It may not be possible on the basis of available evidence to decide immediately one of these outcomes. In such cases, MCA members can *adjourn* the case to themselves or if this not possible, *defer* the case to a fresh panel. Adjourned cases will be retained by the MCA member and a date must be set to reconsider the case. Deferred cases will be reviewed by a fresh MCA panel. Please see section 4 below for further information on adjourning / deferring at the MCA panel stage.
 - **At pre-hearing stage:** after listing, when the case has been allocated to an oral hearing panel. The panel chair will (a) set panel chair directions; (b) manage the case in the weeks prior to the hearing; and (c) oversee matters on the day of the hearing. At any of these stages, adjournment or deferral may be considered. If the chair has not yet been designated or it is eight or more weeks before the oral hearing, the matter may be referred to the duty member. Any decision to adjourn or defer should be made in good time to allow a replacement case to be listed on the hearing date. Please see section 5 below for further information on adjourning / deferring at the pre-hearing stage.

- **On the day of the hearing:** the aim is for the case to be concluded at the initial hearing. It is simpler and often fairer to complete the evidence-taking and reach a decision on the day. Where a review cannot be concluded on the day, the panel chair should seek to adjourn rather than defer the case. Adjourning facilitates continuity and ownership of the case and reduces delays in resuming the review. A date to recommence should be set during the adjourned hearing. Please see section 6 below for further information on adjourning / deferring on the day of the hearing.

3.9 Different sets of Parole Board templates are available:

- Use the MCA directions template for adjournments or deferrals at the MCA stage [drop-down menu allows "Deferred" or "Adjourned"].
- Use the Duty Member form for deferral requests considered prior to listing but after the MCA stage [drop-down menu only allows "Deferred"].
- Use the Panel Chair Directions template for adjournments or deferrals after listing, prior to the hearing and on the day of the hearing [drop-down menu allows "Deferred" or "Adjourned" and "before the hearing" or "on the day"].

3.10 At all stages, it is essential that any adjournment or deferral is granted as soon as possible to avoid unnecessary delay and expense to all parties.

3.11 Any decision to adjourn or defer should be clearly explained in the narrative section on the appropriate template. Realistic timescales should be set for directions and submission of additional evidence. The narrative should include a date for the case to be reconsidered if being heard by the same panel or the month the case would be ready to list from if being heard by a fresh panel.

At MCA panel stage

4.1 If more information is required before determining a case, the MCA member can adjourn or defer to ensure a fair review. Directions must be set in both adjournments and deferrals detailing reports or actions that are needed with specified deadlines. Parole Board systems prompt the caseworker to follow up with PPCS any directions that have not been met by the due date.

MCA adjournments

4.2 When more information is required to decide whether the case can be concluded on the papers or requires an oral hearing, most cases should be adjourned to be retained by the MCA member. Adjourning to obtain essential supplementary information may avoid the need for directing an oral hearing. Cases should only be adjourned if the required information is likely to materially affect the decision.

4.3 Where a case is adjourned, there is no need to enter an assessment of risk. The MCA panel should adjourn the case with reasons for doing so and set clear

directions (and deadlines) for the required information with, using the MCA Directions template. An adjournment beyond four months is unlikely to be appropriate.

MCA deferrals

- 4.4 Adjourning should always be considered before a deferral. This ensures the case is retained by the MCA member who will see the case through to conclusion or direction for an oral hearing. There may be exceptional circumstances where a case is not suitable for adjournment and a deferral is appropriate. For example, end of membership tenure, unavailability of member for a substantial period of time, conflicts of interest or another perceived procedural unfairness.
- 4.5 As with adjournments, a decision to defer should only be made when additional information relating to risk assessment is essential and is unlikely to be available soon: this material is likely to determine whether the case can be decided on the papers or directed to an oral hearing.

Template

- 4.6 The MCA Directions template should be used, and a clear explanation must be provided in the text of the narrative for the adjournment / deferral.

Examples of when an adjournment / deferral at MCA stage would normally be appropriate:

- When mandatory reports are not up-to-date, or the risk management plan has not been finalised to the point that setting a future-release date (where appropriate) is not feasible.
- When a legal representative or report author highlights the existence of evidence that is not in the dossier and which may materially affect the decision.
- When the prisoner is shortly due to complete a programme from which feedback is essential for assessing risk and can be delivered within a specified timescale (for example, self-report progress documents and the minutes of a review meeting).
- For submission of a psychological or psychiatric assessment where the information is not available from other sources.
- When setting directions for a non-disclosure application.
- Where the prisoner is awaiting transfer to a secure mental health facility, but the process has not been finalised: adjournment gives the Secretary of State time to withdraw the referral once transfer has been effected.

Examples of when an adjournment or deferral at MCA stage would **not** normally be appropriate:

- When the prisoner is subject to a police investigation / criminal proceeding and the outcome is still awaited and is unlikely to be received within four months.

Where the development appears relevant to risk it is more appropriate to conclude the case on the papers to avoid lengthy delays to the prisoner's review. PPCS will have the option to re-refer the case if there is a significant change in circumstances i.e. the conclusion of outstanding charges.

- Where the prisoner is about to commence an intervention, which is unlikely to be completed with post-intervention review documentation and submission of follow-up reports within four months.
- Where a prisoner is approaching the end of an intervention, but its outcome is unlikely to be a material factor: for example, multiple risk factors are present and updated reports will not affect overall assessment of risk or the potential outcome.
- To enable a transfer to another establishment to take place for an intervention to begin.
- Where a prisoner has recently arrived in open conditions and has yet to be assessed for or to undertake release on temporary licence ('ROTL').
- Where a prisoner in open conditions is nearing the end of a crucial intervention or needs to complete a limited number of ROTLs which have commenced or will do so imminently; or where the release plan is not yet fully formulated but is likely to be available soon (here, setting an oral hearing with delayed listing date would avoid adjournment).
- Where the prisoner is serving a further custodial sentence, which precludes eligibility for release in the next 12 months: here, a negative decision would be appropriate (though technical release on the index sentence is possible if the new sentence is considered not to affect assessed risk).
- Where there is insufficient time remaining on a determinate sentence for the missing information to be provided before the sentence end date (SED) and/or where, unless exceptional circumstances prevail, the Parole Board's operational policy requiring 12 weeks before SED will be activated.

At pre-hearing stage

- 5.1 A review can be adjourned or deferred once the hearing has been listed and allocated to an oral hearing panel. Such cases can be considered by a duty member (where the hearing is more than eight weeks away) but more usually by the panel chair when Panel Chair Directions are set or at any time up to the day before the oral hearing.
- 5.2 Administrative cancellations, if needed, will be processed by case managers. An administrative cancellation may be recommended to the case manager if further directions are not needed. For example, if it is shown the prisoner has been relocated to another establishment and the hearing cannot be re-arranged at the new prison or by video-link or the prisoner cannot be temporarily transferred back.

- 5.3 If necessary, the panel chair may decide to adjourn or defer formally before the day, subject to representations. Decisions should be purposeful and timely in order to maximise the chances of another case being listed in the vacant slot. Additional directions should invite legal representations.
- 5.4 The Panel Chair Directions template or Duty Member form should be used, and a clear explanation must be provided in the narrative section.
- 5.5 Examples of when adjourning or deferring would normally be appropriate, after listing but before the day:
- When a crucial report is in the process of being written and will not be ready in time for the hearing due to unforeseen circumstances: examples are essential post-programme review documentation or a specialist assessment report.
 - When a key witness is unavailable due to unforeseen circumstances and a stand-in would not be appropriate or a suitable stand-in cannot be sought.
 - When the risk management plan has not been finalised (for example, funding for accommodation is outstanding but will be realistically secured in a short time).
 - When the prisoner is due to complete an intervention from which feedback is essential for assessing risk and can be delivered within a specified timescale (for example, self-report progress documents and the minutes of a review meeting; or a post-programme psychological risk assessment is needed).
 - If submission of a psychological or psychiatric assessment is necessary and information is not available from other sources.
 - If the panel chair determines that a specialist Parole Board member is needed on the panel and this cannot be arranged for the listed date.
 - When a prisoner in open conditions has completed most of what is required but is nearing the end of a crucial intervention or needs to complete a limited number of ROTLs which have commenced or will do so imminently; or where the release plan is not yet in place but is likely to be available soon.
- 5.6 Examples of when adjourning or deferring after listing but before the day would **not** normally be appropriate
- Where the prisoner is about to commence an intervention, which is unlikely to be completed with post-intervention documentation and submission of follow-up reports within four months.
 - Where a prisoner is approaching the end of an intervention, but its outcome is unlikely to be a material factor: for example, multiple risk factors are present and updated reports will not affect overall assessment of risk or the potential outcome.

- To enable a transfer to another establishment to take place for a course or therapy to begin.
- Where a prisoner has recently arrived in open conditions and has yet to be assessed for or to undertake ROTLs.
- Where the prisoner is serving a further custodial sentence, which precludes eligibility for release in the next 12 months.

On the day of the hearing

- 6.1 As mentioned above, the aim is for the case to be concluded at the initial hearing. It is simpler, more economic and often fairer to complete the evidence-taking and reach a decision on the day. In addition, it can provide better case management and a more effective and timelier conclusion to the current review. Where a review cannot be concluded on the day of the oral hearing, but evidence has been taken, panels should seek to adjourn rather than defer the case.
- 6.2 Oral hearing panels can adjourn a case on the day to an agreed date without hearing any evidence. However, where possible, evidence should be taken at the initial hearing and either resumed at an agreed date or subsequently concluded on the papers once outstanding essential information has been directed and received (along with any representations). If panel members take evidence at the initial hearing, it could negate the need to reconvene an oral hearing once outstanding information is received as panel members may be able to conclude on the papers. It is also easier and fairer to try and hear all the evidence in one day, to reduce the likelihood of it being mis-remembered or of having to repeat at the next hearing to remind everyone. However, panel chairs should consider whether the expected new information might impact upon the evidence of other witnesses before taking their evidence on a separate day.
- 6.3 The date for the reconvened hearing should be set and agreed with the witnesses and the prisoner/ prisoner's representative at the adjourned hearing. The timetable issued by the Parole Board advises parties and witnesses to bring availability dates with them and it is expected that the date to review and/or reconvene the case will be set at the time of the adjournment. If you are adjourning for a specialist member to be added, it would assist listings if any date to reconvene is set beyond the current listing period due to the difficulty in identifying specialist members at short notice. If this is unavoidable then members should identify two or more potential dates to reconvene.
- 6.4 Deferrals on the day for panel logistical reasons should be rare and made only in exceptional circumstances on the basis of perceived procedural unfairness. These may include discovery of conflict of interests, adjournment precluded by a member's tenure ending, or unavailability of a member for a substantial period of time which would be likely to cause undue and unfair delay if the hearing was adjourned rather than deferred.
- 6.5 The Panel Chair Directions "on the day" drop down menu option should be used and a clear explanation must be provided in its narrative section.

6.6 Examples of when adjourning on the day of the hearing would normally be appropriate:

- When a crucial report is in the process of being written: examples might include post-programme review documentation or a specialist assessment report.
- When the risk management plan has not been finalised (for example, funding for accommodation is outstanding but can be realistically secured in a short time; or information is needed from the Victim Liaison Officer to inform necessary and proportionate licence conditions).
- When a legal representative or report author highlights the existence of evidence that is not in the dossier and which may materially affect the decision.
- When the prisoner is due to complete an intervention from which feedback is essential for assessing risk and can be delivered within a specified timescale (for example, self-report progress documentation and the minutes of a review meeting; or a post-programme psychological risk assessment is needed).
- For submission of a psychological or psychiatric assessment where necessary information is not available from other sources.
- If the panel chair determines in the light of developments that a specialist Parole Board member is needed on the panel.
- When the outcome of a prosecution or adjudication is awaited whose outcomes are relevant to risk assessment but there is insufficient material about the allegation to enable the panel to complete a risk assessment and reach a decision.
- When a prisoner in open conditions has completed most of what is required but is nearing the end of a crucial intervention or needs to complete a limited number of ROTLs which have commenced or will do so imminently; or where the release plan is not yet in place but is likely to be available soon.
- When a key witness or the legal representative fails to attend or arrives so late as to make the day's hearing unviable.
- When there is insufficient time to hear all the evidence and complete the hearing on one day.
- When there is an unforeseen and unavoidable application for non-disclosure.
- When the panel chair determines on the day that the unforeseen absence of a panel member undermines the viability and fairness of the hearing: that is, a three-member panel is essential but only two members have arrived (or only one panellist is present for a two-member panel).

If, on the day of the hearing, the panel chair is not able to arrive, the remaining panellists must determine how to proceed.

6.7 Adjourning on the day of the hearing would **not** normally be appropriate:

- Where the prisoner is about to commence an intervention, but post-course review documentation and submission of follow-up reports is likely to exceed four months.
- Where a prisoner is approaching the end of a programme or other intervention but where its outcome is unlikely to be a material factor: for example, where multiple risk factors are present and it is clear that updated reports will have little effect on the overall assessment of risk or the potential outcome.
- To enable a transfer to another establishment for an intervention to begin.
- Where a prisoner has recently arrived in open conditions and has yet to be assessed for temporary overnight licence and/or has not yet completed booster work identified by the Secretary of State.
- Where a conflict of interest or another perceived procedural unfairness demands deferral.
- When adjourning will necessitate undue delays (for example, because of leave of absence) and deferring would be fairer and speedier.