

Duty Member Activities

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Document History

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Purpose of this guidance

- 1.1 This guidance explains some practical options open to you as a duty member when dealing with requests. Its coverage cannot be exhaustive because a duty member must sometimes expect the unexpected: however, key principles underpinning the handling of common cases can be extended to new situations. Much of the work draws on your experience as an MCA Member and as a panel member at oral hearings.

Key requirements

- 2.1 Duty member powers are governed by the Parole Board Rules 2019 ('the 2019 Rules').
- 2.2 To complete duty member tasks, the MCA Member template suite must be installed on your Parole Board laptop. In Word, use "Create New" to navigate to "Duty Member form". Use "Duty Member quick fill" to drop down the following menu:
 - Duty member directions
 - Duty member licence condition variation request
 - Duty member directions variation request
 - Duty member oral hearing request
 - Duty member non-disclosure application.
- 2.3 Most tasks confronting the duty member can be completed using one of these Parole Board templates. Some of your decisions may be recorded using the response section of the Stakeholder Response Form (SHRF) in which the Public Protection Casework Section ('PPCS') or the prisoner (or their representative) raises queries about a case. Compared to the SHRF, the duty member templates allow greater detail and precision in recording directions and the reasons for your decision.
- 2.4 Additionally, you will need to use the MCA Directions template to set out requirements for an oral hearing where such arrangements have not previously been directed by a Parole Board panel. In Word, use "Create New" to navigate to "MCA Directions".
- 2.5 Updates to the MCA member templates, including those dedicated to duty member work, will be automatically uploaded to your Parole Board laptop.
- 2.6 Very occasionally, the outcome of a task may be a note to the case manager which does not require a formal template

Implications for practice

- 3.1 To be eligible to complete the duty member training workshop, you must have successfully undertaken at least fifty MCA panels and fifty oral hearings and completed at least one MCA bundle in the six months prior to the training date. To undertake duty member work, you must have completed the duty member

training workshop and remotely shadowed an experienced duty member upon completion of training.

- 3.2 You should signal days available for duty member work by completing the monthly availability system on WAM. Update WAM with your current availability, remembering to keep this up-to-date should it change. The Listings Team is responsible for allocating assignments by date in the rota. You may indicate preferences for working at HQ or remotely at home as duty member on particular days.
- 3.3 Fees for a full day's work for seven hours at HQ or eight hours working remotely at home can be found in the Parole Board members' fees summary¹. Working at HQ, you can claim travel costs and subsistence. If you work less than a full day, there is an hourly rate, however, the expectation is that the duty member will undertake the full day's work. If the allotted work is completed early, there may be urgent requests that need to be attended to or additional directions which can be allocated. This helps the Parole Board to utilise the time allocated by the duty member.
- 3.4 If you find you are unable to undertake a scheduled assignment as a duty member, notify the Listings Team at the earliest opportunity. Withdrawing at a late stage can have significant impact. If a replacement cannot be found, urgent work will be delayed and caseloads may increase for duty members on subsequent days.
- 3.5 The duty member is expected to respond to case managers raising issues on the day. There may be paper-based dossiers for the duty member to consider: for example, licence variation requests.
- 3.6 Whether working remotely or in HQ, the duty member is a resource to colleagues who want advice about the handling of parole cases. The names of the members assigned each day to duty member responsibilities are published weekly on the homepage of SharePoint. As a duty member, you must activate Skype on your laptop and keep it turned on all the time you are on duty. In the case of HQ working, a set of headphones to use during Skype calls is available on the duty member desk.
- 3.7 The duty member is assigned a caseload by OneDrive link. Cases should be downloaded to your Parole Board laptop where you will review materials and draft decisions. At the end of the working day (or as you go along), your decisions must be emailed as Word documents to the mcadutymember@paroleboard.gov.uk address.
- 3.8 You are expected to work through the caseload assigned to you on OneDrive. This will comprise cases of differing lengths and complexity. Your responsibility is to tackle each case in turn as efficiently and accurately as possible, keeping pragmatism in mind. If you do not complete the full caseload for your assignment, notify Listings Team of the cases you have been unable to complete when you submit work to the mcadutymember@paroleboard.gov.uk email address. If you complete the allocated duty work within normal working

¹ This can be found at pages 27 and 28 of the Member Administrative Policies and Processes (MAPP).

hours, it is expected that more is asked for: the Listings Team accepts that some allocations are heavier than others and will accept returned work.

Responsibilities & expectations

- 4.1 The role of the duty member is to deal with requests that fall outside routine MCA and oral hearing processes. The original MCA panellist must retain responsibility for cases for 28 days after the panel date in order to deal with queries or issues arising from it. Where an oral hearing has been staged, the panel chair should similarly retain responsibility for 28 days. Outside this period or if the oral hearing is eight or more weeks away, the duty member will be tasked to determine matters or direct actions.
- 4.2 Duty member cases can arise at any point in an offender's sentence:
- before the case has been reviewed
 - during the MCA process
 - after the MCA or oral hearing panel has issued its final decision
 - after an offender has been released on licence.
- 4.3 The most common types of request, and options open to the duty member, are summarised in the table at 6.1 below. Each of these tasks is explained in the following sections.
- 4.4 It is good practice to open duty member decisions with a sentence such as: **"The duty member has considered the request from [insert name] for [insert detail] in this case....."**. This helps to identify to readers that the decision was made by the duty member rather than at MCA stage or by an oral hearing panel chair. You should also indicate the number of pages in the dossier and the nature of additional information provided to you as duty member.
- 4.5 It is also good practice to avoid stating "as per the previous directions", but instead, when referring to earlier directions, to detail the directions being referred to. This prevents future readers from having to locate the previous directions and avoids potential confusion.
- 4.6 You may over-write the suggested opening sentence that appears in the duty member templates. There is suggested text in the body of the duty member oral hearing request template that can be modified and extended. However, the standard paragraphs for decisions in the duty member template for non-disclosure applications should be adopted.

Common tasks for the Duty Member

Request for an oral hearing under Rule 20 Parole Board Rules 2019

- 5.1.1 Under Rule 20 of the 2019 Rules, prisoners who have received an MCA decision refusing to direct release on the papers have 28 days in which to decide whether to accept the outcome or request an oral hearing.

- 5.1.2 Under Rule 20 (2), an application with reasons must be served on the Parole Board and Secretary of State within 28 days of receiving the MCA paper decision.
- 5.1.3 There is no ability to request an oral hearing in respect of a decision to release made on the papers.
- 5.1.4 If 28 days have elapsed since the prisoner received the MCA decision refusing to direct release and no representations requesting an oral hearing have been received:
- The MCA decision remains provisional if it is eligible for reconsideration² or becomes final if no application for reconsideration is received within the specified time³.
 - Becomes final if it is not eligible for reconsideration.
- 5.1.5 The decision about whether a case should be determined at oral hearing must be taken by a duty member. Do not review this application if you were the MCA member who issued the paper decision (Rule 20 (5)); if this happens please advise the Listing Team to re-allocate the case to another duty member.
- 5.1.6 An extension of time should not be given. Under Rule 20 (7) the decision as to whether, or not, the case should be determined at oral hearing must be provided to the parties within 35 days of the MCA paper decision. This is a strict time limit that cannot be extended (Rule 20 (8)).
- 5.1.7 An MCA paper decision refusing to direct release is provisional for the 28 day period (subject to 5.1.4 above), and will be based on the information available when the MCA panel convened. A request for an oral hearing is not an appeal against the merits of that decision. If you decide to grant an oral hearing, while you are setting aside the paper decision you are not saying that it was the wrong result. You are instead responding to a subsequent request which may include new information or provide the rationale for an oral hearing from the offender's perspective for the first time.
- 5.1.8 The duty member may be faced with a case where the prisoner could not or did not make representations at the MCA stage. Alternatively, even if representations were prepared, they might not have been available to the MCA panel because of administrative difficulties or because they did not arrive early enough before the decision was made at MCA stage. These submissions may argue for or otherwise provide grounds for an oral hearing. However, presentation of representations not available at the MCA stage is not a reason in itself to grant an oral hearing.
- 5.1.9 Submissions that were made before the MCA panel date but which, for any reason, were not considered by the original MCA member must not be sent back to the original MCA member for reconsideration. However, the

² The prisoner is serving an indeterminate sentence; an extended sentence; a determinate sentence subject to initial release by the Parole Board under Chapter 6, Part 12 of the Criminal Justice Act 2003 (Rule 28 (2) of the 2019 Rules).

³ Within 21 days of the MCA paper decision; decision on the paper after a direction for oral hearing or the decision following an oral hearing.

representations may be considered by the duty member if they are submitted by the prisoner/ their representative under Parole Board Rule 20.

- 5.1.10 The question is: do the representations make a material difference to the position, taking the MCA panel's paper decision into account? The duty member may:
- grant an oral hearing, using the MCA Directions template to provide a narrative, to direct additional evidence and to set panel logistics on the basis of information in the dossier (you also have the power to prioritise or expedite listing);
 - refuse an oral hearing, using the MCA Duty Member oral hearing request template with drop-down option "oral hearing not granted".
- 5.1.11 You must take account of the principles set out in the case of Osborn, Booth & Reilly [2013] UKSC 61 ('OBR principles') concerning staging an oral hearing. In the case of a determinate or extended sentence prisoner, you should not direct an oral hearing if there are less than twelve weeks until the sentence expires.
- 5.1.12 In each case, you must make clear the reasons for your decision. If an oral hearing is directed, do not make a judgment on the case itself: to do so may unfairly pre-judge a future oral hearing.
- 5.1.13 You do not have the power to undertake a new review of the case even if you do not agree with the MCA panel's assessment of risk. That is, you cannot act as an MCA panel and re-hear the application yourself.
- 5.1.14 The duty member cannot defer or adjourn any case for further information (Rule 20 (8)). You have the power to refuse or grant an oral hearing. You also have power to expedite or prioritise the listing of an oral hearing.
- 5.1.15 If the decision taken is that the case should not be determined at oral hearing the MCA decision:
- Remains provisional if it is eligible for reconsideration or becomes final if no application for reconsideration is received within the specified time.
 - Becomes final if it is not eligible for reconsideration.

Request to defer the review

- 5.2.1 The duty member may receive a request from PPCS or the prisoner (directly or through their solicitor) to defer the parole review. Sometimes the Secretary of State applies for the deferral. If the case has previously been directed to an oral hearing, check with the Listings Team whether a date has already been set and if the case has been listed on a date within the next eight weeks, query with the case manager if there is a reason the request has not been sent to the designated panel chair.
- 5.2.2 Requests to defer must be submitted to the Parole Board on a SHRF. As the duty member, you have a choice. You may use the SHRF response section to record your decision or use the duty member directions template.

- 5.2.3 Receipt of the SHRF will confirm to the Parole Board that all parties have been made aware of the application. However, if it appears a request has come straight to the Parole Board (for example, direct from the community offender manager or prison psychologist), you should alert the case manager by a note advising that the request should be routed through PPCS. This allows PPCS to inform the prisoner or representative and to consider remedying the situation: for example, by asking the psychological services to adhere to a given timescale for completion of assessment reports.
- 5.2.4 Defensible reasons should be given either by the prisoner, the representative or PPCS to support a deferral request. These might include changes in circumstances, such as the prisoner embarking on a programme, or starting overnight release on temporary licence whose successful outcome in the near future might appreciably affect risk assessments, or significant and unavoidable delays in getting expert assessments completed.
- 5.2.5 If agreeing to a deferral, the duty member should make appropriate directions and set realistic deadlines. (It would not be appropriate to adjourn the matter to yourself because the case could be considered by any future duty member). A parole review is deferred from the date you consider the case. Unless there is an exceptional and compelling reason to extend the period, it would be unusual to defer for more than four months. If deferring for more than four months, or where you grant a deferral for a period that is different from one requested, you must provide your reasons. The duty member should also consider whether there have been any previous deferrals so as to avoid the case being stuck in a loop of multiple deferrals. If you need any advice on cases which appear to be stuck, please contact the Policy and Practice Advisor.
- 5.2.6 If an oral hearing has already been directed and you grant a deferral, you should set further directions, if necessary, using the duty member directions template.
- 5.2.7 If you receive a case prior to the MCA stage and decide to defer the review, then you should:
- (a) make it clear that the case should be allocated to a routine MCA panel at the end of the deferral period; and
 - (b) emphasise that no decision has yet been made as to the necessity of an oral hearing. This helps manage the expectations of the prisoner and ensures that the case does not come back to duty members for further action.

Request to revoke or vary existing directions

- 5.3.1 You may receive requests to revoke or vary directions that have already been set for an oral hearing. For example, a request may seek to extend the deadline for submission of a key report, to add or remove the requirement for a particular witness, or to defer a scheduled hearing because the prisoner is about to embark on an intervention or resettlement procedure which might materially affect risk assessments in the near future.
- 5.3.2 Requests for revocation or variation of directions must be submitted to the Parole Board on the SHRF. As the duty member, you may use the response

section to record your decision or you can set out your reasons and any new directions in greater detail using the duty member directions variation request template.

Request to expedite or prioritise listing of an oral hearing

- 5.4.1 The starting point for cases (apart from cases where the prisoner is in a secure hospital setting or mental health unit; it is the prisoner's first review after discharge from a Mental Health Review Tribunal, or the prisoner is under 18 years old) is that they are listed in line with the routine listing framework (please refer to the Listings Prioritisation Framework). However, in exceptional circumstances, the duty member may expedite or prioritise a case outside the routine Listing Framework.
- 5.4.2 Prioritising a case is asking the Listings Team to give the case priority in the next listings exercise.
- 5.4.3 Expediting a case is asking the Listings Team to list the case as soon as possible perhaps with a freshly commissioned panel at short notice.
- 5.4.4 Both routes have significant consequences for other prisoners in that their reviews may be unfairly delayed, despite their applications having similar merits to the case you are considering. Another prisoner's application might be stood down from a month's listing to allow the review of an expedited or prioritised case. The processes of prioritisation, and especially expedition, also have considerable resource implications for the Parole Board and the parties.
- 5.4.5 The duty member must decide whether circumstances are sufficiently exceptional to warrant a case being given a higher priority in the listings process than a standard case. The duty member must first consider whether it would be appropriate to prioritise a case before considering an expedited listing. The duty member must be clear on whether they are asking for a case to be prioritised or expedited with clear reasons being given.
- 5.4.6 Examples of when prioritising would be appropriate:
- Case has been deferred several times and the prisoner's review has been unfairly delayed.
 - Prisoner is under 18 years old.
 - Any prisoner within a secure hospital setting or mental health unit.
 - First review by the Parole Board after discharge by a Mental Health Tribunal.
 - Serious concerns over the prisoner's mental health.
- 5.4.7 Examples of when prioritising would not be appropriate:
- A determinate recall prisoner has less than 12 weeks until their sentence is due to expire.
 - Requests for prioritisation solely on the grounds of positive report recommendations.
 - A case has been adjourned / deferred once before and the current situation is not the prisoner's fault.
 - A member or witness could not attend the oral hearing due to illness.

- 5.4.8 Examples of when expediting a case would be appropriate:
- Terminal illness / compassionate release.
 - The original decision is the subject of an order for reconsideration or has been quashed by the High Court.
 - Compassionate reasons of close family members.
- 5.4.9 In general terms, positive recommendations for release or a progressive move will not, by definition, by themselves constitute exceptional circumstances, as there will be many such prisoners in a similar position. They may be relevant to assigning priority (by the Listings Team) between two prisoners in similar circumstances, but who have different recommendations. Requests for prioritisation solely on the grounds of positive report recommendations will be refused, but remember that a decision to give priority in one case will mean delaying another review: there are always other prisoners who may be in a similar position.
- 5.4.10 The listings framework already recognises as automatic priorities those applicants facing a first parole review after discharge by a Mental Health Tribunal and all prisoners under 18 years old, but duty members must still put this within directions to avoid it being missed by case managers and the Listings Team.
- 5.4.11 Requests for expedition or prioritisation must be submitted to the Parole Board on the SHRF. As the duty member, you are not required to, but may use, its response section to record your decision. Alternatively, you may use the duty member directions template where you can set out your decision and your reasons in greater detail and precision.

Request to opt out of the parole review

- 5.5.1 Very occasionally, the duty member receives a request for a prisoner to opt out of the parole review. In responding, you must first explain that it is not possible for an opt out to stop or vacate a parole review although a decision may be made without further input from a prisoner who does not wish to engage, or an oral hearing may be staged without such a prisoner being present.
- 5.5.2 In deciding how to proceed, you must consider the OBR principles. You should first assess whether the review can be concluded fairly on the papers. If an oral hearing is warranted, you should set out requirements using the MCA directions template. An oral hearing can be held in the absence of a prisoner who declines to attend (Rule 23 (2)) of the 2019 Rules).
- 5.5.3 There are cases where a prisoner who requests not to take part in the parole process may be vulnerable through mental health difficulties or guided by other factors and concerns. Rather than accept the prisoner's request at face value when determining how to progress a review, the duty member should take into consideration the possibility that this request may not be in the best self-interests of the prisoner.

- 5.5.4 In such a case, as an adjunct to the oral hearing directions, the duty member may propose that the prison offender manager or another member of prison staff should advise the prisoner of the benefits of obtaining legal representation.

Request to consider varying or revoking licence conditions

- 5.6.1 Requests to comment on varying or revoking licence conditions can be made (a) relatively soon after an oral hearing panel has sat or (b) later, when an additional requirement or cancellation of supervision is requested for an offender who has been released on parole.
- 5.6.2 If the request is received within 28 days after a panel has determined the case, check whether the case manager has invited the original panel to consider the variation. That panel may have had reasons why a condition was or was not imposed. Varying a licence may make the overall risk management plan less viable in the judgement of the panel that assessed the full evidence and determined the case. However, if the case cannot in practice be returned to the panel for timely determination, the duty member may be asked to consider the application.
- 5.6.3 If you decide licence variation can be justified, use the duty member licence condition variation request template to set out your decision and reasons.
- 5.6.4 If you decide that varying a licence is not justified, your decision and reasons should be recorded (subject to legal representations or other submissions) on the duty member licence condition variation request template. The drop-down item to select will be "licence condition unchanged".
- 5.6.5 If you require additional information, you can use the duty member directions template.
- 5.6.6 Applications will usually be submitted on the SHRF. You can use the SHRF for responses or the duty member template (as above). In some cases, more substantial information will be submitted in the form of a referral dossier, particularly for indeterminate sentence cases and the duty member template will need to be used.
- 5.6.7 Please refer to guidance on licence conditions for more information.

Termination of IPP or DPP Licence

Background

- 5.7.1 An offender sentenced to Imprisonment for Public Protection (IPP) or Detention for Public Protection (DPP) has the right, under section 31A of the Crime (Sentences) Act 1997⁴ to apply for consideration to be given to terminating

⁴ Section 31A of the 1997 Act was inserted by the 2003 Act and has been amended by section 117(10)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10, and paragraph 141 of Schedule 16 to the Armed Forces Act 2006 c. 52.

their IPP⁵ licence 10 years after their initial release, regardless of whether they have subsequently been recalled and re-released. For the purposes of this guidance reference to the IPP sentence will also include the DPP sentence.

- 5.7.2 Any applications for termination of an IPP licence should be made by the licensee themselves, either to the Parole Board directly or via the National Probation Service (NPS)/ PPCS. However, where an application is received directly from the licensee to the Parole Board, the NPS will still need to be notified, via PPCS, so that the correct information pack can be prepared.
- 5.7.3 It is only the Parole Board that can terminate an IPP licence.
- 5.7.4 Once an IPP licence has been terminated, the licensee will not be subject to recall, and unlike the suspension of supervision, all of the licence conditions are terminated and may not be re-imposed.
- 5.7.5 Rule 31 of the Parole Board Rules 2019 deals explicitly with termination of licences:

“Applications to terminate IPP licences.

- 31.— (1) Where an offender qualifies to make an application to terminate their licence under section 31A of the 1997 Act, the offender may make a direct application to the Parole Board or apply through the Secretary of State.
- (2) Where an offender makes a direct application, the Board must serve the application on the Secretary of State and the Secretary of State must serve any reports or evidence as directed by the Parole Board.
- (3) Where an application is made through the Secretary of State, the Secretary of State must serve any reports or evidence at the same time as sending the application to the Parole Board.
- (4) Where the Parole Board receives an application, either from the offender directly or through the Secretary of State, a panel appointed under rule 5(5) must consider the application in accordance with section 31A(4) of the 1997 Act.
- (5) In considering the application under paragraphs (2) or (3), the panel may—
 - (a) make a decision on the papers, or
 - (b) direct that the application should be decided by a panel at a hearing.
- (6) Where a panel considers the application on the papers or at a hearing, it must decide to—
 - (a) terminate the offender’s licence;
 - (b) amend the offender’s licence in accordance with section 31(3) of the 1997 Act, or
 - (c) refuse the application.
- (7) Where a decision is made by a panel under paragraph (6), the Parole Board must record that decision in writing with reasons for that decision, and that record must be provided to the offender and Secretary of State within 14 days of the decision.”

⁵ IPP should be read to include DPP throughout this guidance

PPCS and NPS role

- 5.7.6 Instructions on terminating licences are set out in PI 08/2015 – Managing Indeterminate Sentenced Offenders on Licence.
- 5.7.7 The NPS responsible officer is not required to make applications on behalf of the licensee and so requests can be initiated by the licensee as the starting point. However, responsible officers can, where they feel it appropriate, make contact with the licensee and suggest making an application.
- 5.7.8 A licensee does not require the support of the responsible officer in order to make an application directly to the Parole Board. However, the responsible officer is required to produce a report where an application is made.
- 5.7.9 PPCS will make contact with the appointed responsible officer and ensure all the necessary paperwork, as set out in the Parole Board proforma (which has been agreed by HMPPS officials), is provided.
- 5.7.10 Once all the information has been collated a “Request for Termination of IPP licence” form is completed and attached to the information pack and sent to the Parole Board. A copy of this Termination Report can be found at Annex 1.
- 5.7.11 This form must be signed by the Line Manager of the Responsible Officer and endorsed by an ACO or equivalent.

Managing cases: stage one – receiving the application

- 5.7.12 Upon receipt of an application directly from the licensee, the Secretariat will prepare a proforma which confirms receipt and requests PPCS to provide an information pack containing the following:
 - 1. Notification of release
 - 2. Last release decision
 - 3. Release licence
 - 4. Any post-release licence variation requests and outcomes
 - 5. Licence cancellation application form
 - 6. Reports from probation/police on up to date position
 - 7. Previous parole dossier
- 5.7.13 Where the application has come via PPCS, the same proforma is used but with a variation of wording, acknowledging receipt of the information pack, which should contain all the documents set out in the above list.
- 5.7.14 The proforma will be submitted to the duty member who will sign and date the form, after which the Secretariat will submit to PPCS. A copy of the proforma can be found at Annex 2.

Managing cases: stage two – considering the application

- 5.7.15 Once the information pack has been received and checked to ensure it contains all the required information, it will be submitted to the duty member for consideration.

5.7.16 It is important to check if this is the first application or if there have been previous requests that were refused. There must be a minimum of 12 months between each application. If the request is within 12 months of any previous request, the case should be referred back to PPCS to investigate and advise.

5.7.17 Things to consider:

- The scale of progress across the ten-year period including work that has been carried out in the community to address the licensee's risk factors and to meet sentence planning objectives. The Termination Report should summarise the key events during the licence period since initial release, highlighting any areas of concern or progress
- Content of previous progress reports submitted to PPCS
- The licensee's current circumstances in terms of the stability of their lifestyle, current accommodation and history, current employment and history, and current relationships and history
- Whether the licensee has been recalled at any time over the ten-year period and if details of any recall are provided
- Whether applications to vary the licence conditions have been made at any point since release, and if so, the conditions under which any such variations were requested and granted (or refused)
- Whether the licensee is still under supervision, and when was the last contact
- What is or has been the frequency and nature of contact and how has this changed over the licence period
- If no longer under active supervision, when was it suspended
- Is there evidence that checks with other relevant agencies listed in the Termination Report have been carried out? If the licensee has come to the attention of one or more of these agencies, their application must still be referred to the Parole Board, but full details must be provided
- What is current or last known risk of serious harm category? All four categories of risk of serious harm (public, children, known adult, staff) should be considered and noted on the application if there is more than one category relevant to the licensee's risk
- What is the current or last known MAPPA level?
- Any bespoke licence conditions still in place
- Any previous applications to terminate the licence (with outcome)
- What is the recommendation of the responsible officer and is there sufficient information to support their view?

5.7.18 If victims are signed up to the Victim Contact Scheme, they have a right to be notified of the application and they are entitled to submit a Victim Personal Statement ('VPS'). The VPS should confine itself to the impact that termination of the licence may have on the victim and not express a view about the termination.

5.7.19 If the licence is terminated all licence conditions will cease, including those relating to victims (non-contact and/or exclusion zones).

Managing cases: stage three – the decision

- 5.7.20 The decision to be made is whether you are satisfied that it is no longer necessary for the protection of the public that the licence should remain in force; in which case the licence may be terminated.
- 5.7.21 The application will be dealt with as swiftly as possible, providing all required information is submitted with the information pack.
- 5.7.22 Once the decision has been made by the duty member, it must be issued within 14 days, in line with timeframes for parole decisions.
- 5.7.23 In making a decision you have the following options, as set out in the Rules:
- (a) make a decision on the papers, or
 - (b) to direct that the application should be decided by a panel at a hearing.
- 5.7.24 If you believe that an oral hearing is necessary to properly consider the application, then directions will need to be issued on an MCA Directions form. The Secretary of State should be directed to secure a suitable location for the oral hearing to take place.
- 5.7.25 If you have enough information in the papers, or after an oral hearing, to make a decision you can:
- (a) terminate the offender's licence
 - (b) amend the offender's licence
 - (c) refuse the application

Request for non-disclosure

- 5.8.1 The duty member may be asked to consider a non-disclosure application (please see 4.1 above).
- 5.8.2 In recording your decision, use the duty member non-disclosure application template and its standard passages of text.
- 5.8.3 Please refer to the guidance on non-disclosure for more information.

Request for early release on compassionate grounds ('ERCG')

- 5.9.1 Under section 30 of the Crime (Sentences) Act 1997 the Secretary of State may at any time release a prisoner on licence if they are satisfied that exceptional circumstances exist which justify release on compassionate grounds. Before exercising this power the Secretary of State is required to consult the Parole Board (in relation to indeterminate sentence prisoners) unless the circumstances make this impracticable.
- 5.9.2 ERCG is permanent release subject to normal supervision and recall. It is different to temporary release for compassionate reasons, which is at the discretion of Governors.

- 5.9.3 Requests for advice (the Parole Board provides a recommendation, not the final decision – compassionate release must be personally approved by a Minister) on ERCG are very rare, and the Parole Board only considers ERCG requests for indeterminate sentenced prisoners. The Parole Board will only recommend release where the circumstances satisfy it that the risk of serious harm is minimal. Safeguarding the public remains the Board’s primary responsibility.
- 5.9.4 The ERCG arrangements are intended to apply in only the most exceptional circumstances.
- 5.9.5 When considering ERCG cases, the Parole Board should balance the merits of early release on compassionate grounds against the risk to the safety of the public and of the likelihood of re-offending, although safeguarding the public remains the Board’s primary responsibility.
- 5.9.6 PSO 4700 sets out the following criteria for release on compassionate grounds:
- a) “the prisoner is suffering from a terminal illness and death is likely to occur very shortly (although there are no set time limits, 3 months may be considered to be an appropriate period for an application to be made to Public Protection Casework Section [PPCS]), or the ISP is bedridden or similarly incapacitated, for example, those paralysed or suffering from a severe stroke; and
 - b) The risk of re-offending (particularly of a sexual or violent nature) is minimal; and
 - c) further imprisonment would reduce the prisoner’s life expectancy; and
 - d) there are adequate arrangements for the prisoner’s care and treatment outside prison; and
 - e) early release will bring some significant benefit to the prisoner or his/her family.”⁶
- 5.9.7 PSO 4700 also notes the following, *“However, the resource and cost implications of maintaining staff on bed-watch duties at an outside hospital/hospice are not grounds to justify release on compassionate grounds if the criteria set out above are not met. Other examples of cases not meeting the criteria are where conditions are self-induced, for example: following a hunger strike or where a prisoner refuses treatment.”*
- 5.9.8 Record your decision and reasons in the duty member directions template.
- 5.9.9 If you direct an oral hearing to consider the case, bear in mind that such requests are commonly time critical and that instituting lengthy additional procedures may be unfair, insensitive or self-defeating. Any deadlines for necessary directions or the possibility of expediting an oral hearing should be considered.

Request to review a dossier and advise on case progression

- 5.10.1 The duty member can be asked to review matters and advise how a case may be progressed effectively. These are problematic or overdue cases where previously set directions may have reached an impasse. The aim of the duty

⁶ Paragraph 12.2.1 PSO 4700

member is to progress the case as speedily, fairly and pragmatically as possible.

- 5.10.2 You should review previous directions and identify the sticking point. If a particular report or historical document cannot be provided, decide whether it is essential for a hearing and revoke the direction if it is not. If a witness cannot be contacted or cannot attend, review the necessity of this direction and hence the viability of the hearing. Where issues relate to psychiatric or psychological input, the duty member may consult with a specialist Parole Board member for further advice.
- 5.10.3 In some cases, the duty member might clarify or reiterate the original MCA directions which must be complied with before the case can be listed. The duty member also has powers to set any new directions to replace or extend existing requirements. Use the duty member directions template.
- 5.10.4 Where particular points of practice or process arise, you may be asked to identify lessons to be learned or suggestions for how things might be done differently in future. You can also volunteer such advice to the case manager in a note or in discussion.
- 5.10.5 The duty member on the day must be available to any Parole Board member seeking advice about how to handle a parole case. The duty member is expected to discuss the issues with the member by Skype. It is usual to explore the member's understanding of the case and preliminary stance before offering any advice or signposting a possible solution because the enquirer commonly will be seeking reassurance rather than new ideas or formal guidance.

Request for a decision to be made on the papers after it has been directed to an oral hearing

- 5.11.1 Under Rule 21 of the 2019 Rules, a panel chair or duty member can direct that the case should be decided on the papers if an oral hearing is no longer necessary. If a case is concluded on the papers (and it is eligible for reconsideration), the decision will remain provisional
- 5.11.2 If the case has been listed and has been allocated to a panel chair, the decision should rest with the panel chair.
- 5.11.3 If the case has not been listed and does not have a panel chair assigned, the duty member should only consider making a decision on the papers if that is the request being made (from PPCS or the prisoner (or their representative)). If the request relates to other directions, it would not be appropriate for the duty member to consider making a decision on the papers.
- 5.11.4 If a review is concluded on the papers:

- the decision remains provisional if it is eligible for reconsideration⁷ or becomes final if no application for reconsideration is received within the specified time⁸.
- Is final at the point of issue if it is not eligible for reconsideration.

Reconsideration Applications – Extension Requests

5.12.1 The Reconsideration Mechanism was introduced by the Parole Board Rules 2019. It provides a route for either of the parties to make an application for a parole decision to be reconsidered before it becomes final, where one of the following situations may apply:

- Procedural unfairness - the correct process was not followed in the review of the prisoner for parole - for example, important evidence was served by one party but not made available to the other.
- Irrationality - the decision makes no sense based on the evidence of risk that was considered and that no other rational panel could come to the same conclusion.

5.12.2 An application must be received within 21 days of the parole decision being sent out. Any requests made after the three weeks will not normally be accepted by the Parole Board. However, it is acknowledged that there may be situations outside of the control of the parties that result in the parole decision (full or summary) not being received in good time, or other factors affecting the time in which a reconsideration application can be made. As such, it is accepted that the Parole Board will receive requests for an extension to the deadline for making a reconsideration application and this guidance is to be referred to when considering such requests.

5.12.3 Reconsideration of decisions is addressed in Rule 28. In relation to the timeliness of making an application, Rule 28 (3) states:

"28 (3): An application for a provisional decision to be reconsidered under paragraph (1) must be made and served on the other party no later than 21 days after the written decision recorded under rules 19(8), 21(12) or 25(6) is provided to the parties."

However, Rule 9 provides for varying time limits:

"A panel chair or duty member may alter any of the time limits prescribed by or under these Rules where it is necessary to do so for the effective management of the case, in the interests of justice or for such other purpose as the panel chair or duty member considers appropriate."

As such, requests to extend the deadline for submitting an application can be considered.

⁷ The prisoner is serving an indeterminate sentence; an extended sentence; a determinate sentence subject to initial release by the Parole Board under Chapter 6, Part 12 of the Criminal Justice Act 2003 (Rule 28 (2) of the 2019 Rules).

⁸ Within 21 days of the MCA paper decision; decision on the paper after a direction for oral hearing or the decision following an oral hearing.

- 5.12.4 All extension requests will be put before a duty member who will need to consider the request on the day that it is received or, failing that, resubmitted the following day to the next available duty member.
- 5.12.5 The duty member is only considering the extension request and not the application itself.
- 5.12.6 If an application has already been allocated for reconsideration then the duty member may wish to consult with the relevant reconsideration member before making a decision.
- 5.12.7 The duty member may also wish to bear in mind, in relation to requests from the Secretary of State, that the prisoner will continue to be detained for as long as it takes to determine the application for reconsideration, and so any extension of time will prolong their detention. This is why the time limits in Rule 28 are deliberately quite short.

Considering requests

- 5.12.8 The duty member will be sent an email with all the relevant detail included in a table format. This should include:
- Extension request type.
 - Prisoner name, number and location.
 - Sentence type.
 - Date of provisional parole decision (and when it was issued).
 - Date when the Parole Board decision summary was issued (if applicable).
 - Date the extension request was received and requestor details.
 - Reasoning for request.
 - The original 21-day deadline.
 - Proposed new extension deadline/details (if provided).
 - The original written application from the party.

The original decision is not required as this has no bearing on why further time is needed in order to submit an application.

- 5.12.9 The duty member will need to check that it is clear who is making the request and that there is enough information within the request to enable proper consideration.
- 5.12.10 The principle considerations are:
- Does the request evidence exceptional circumstances?
 - Would refusing the request be unfair or result in unreasonable disadvantage to the requesting party?
- 5.12.11 When considering these points, the following examples may assist, bearing in mind there should be a high threshold for granting an extension, and that the circumstances must be exceptional:

Prisoner Requests

- Did the prisoner receive the provisional parole decision in good time or was there a delay that reduced the timeframe within which to make an application?
- Did the legal representative (if appropriate) have timely access to their client to take instruction?
- If unrepresented, did the prisoner receive appropriate support and advice on the implications of the decision and options available?
- Did the prisoner need the decision to be translated into another language or alternative format which delayed making an application?

Secretary of State Requests

- Was the Parole Board decision summary ('PBDS') sent out with enough time for the victim to consider asking the Secretary of State to make an application? (note, it is accepted that the content of a PBDS would not necessarily provide sufficient information for a victim to consider making an application to the Secretary of State, however, some victims want to see the PBDS before making a decision)
- Was a victim away or out of the country when the PBDS was issued?
- Was the Secretary of State notified of the provisional parole decision in good time?
- Did the Secretary of State process a request from a victim in a timely manner?
- Was the Secretary of State waiting on information from a third party?
- Would an extension have an impact on the release management plan? (for example, no impact if a bed will not be available anyway until after any extension period granted)

Making your decision

- 5.12.12 All effort should be made for a decision to be issued on the day the duty member receives the request, wherever possible.
- 5.12.13 The decision should be set out on the Duty Member Directions Template, and all fields should be completed. Select "other" in the result field.
- 5.12.14 Within the reasons section, the duty member should state which party is seeking the request and a brief summary of why the extension is needed.
- 5.12.15 NOTE: A Reconsideration Application is not an appeal against the decision, but a challenge to the procedure that arrived at the decision. The word "appeal" should not be used.
- 5.12.16 The decision must be clearly stated – "extension request granted" or "extension request refused". Reasons for the decision should be provided.
- 5.12.17 If the extension request is granted, a new deadline for the submission of the application must be set. Currently, the practice is that extension requests which are granted are set for a period of up to seven days. However, the period of extension for which a member may grant a request is at their discretion. A period longer than the seven days may therefore, be granted if the circumstances warrant it.

- 5.12.18 All parties will be informed of the outcome of the request.
- 5.12.19 Please put "recon EXTENSION request" in the subject field of the email and send to the Secretariat: reconsideration@paroleboard.gov.uk
- 5.12.20 If there is not enough information to fairly consider the request, further information can be requested. Members should take into account that this will further extend the period that the parole decision remains provisional and so this should only be considered where absolutely necessary. A very short deadline to provide the additional information should be set, ideally no more than 48 hours. If the information is not received within 48 hours, a final decision on the application should be made, at the discretion of the member.

Points to note

- 5.12.21 Requests for an extension that raise any of the following points should be referred to the Secretariat - reconsideration@paroleboard.gov.uk in the first instance for advice how to proceed, if the request:
- is not for an eligible case (this will have been checked on receipt but be alert to any anomalies or errors – see criteria attached).
 - has been received within the 21-day period but the reconsideration application has already been considered and a decision issued. The Board is functus officio, and has no power to change or review that decision.
- 5.12.22 If the application was received after the 21-day period it cannot be considered as the parole decision will have become final and the Board is functus officio⁹ and has no power to change or review that decision. This will have been checked but if you receive such a case in error please simply return to the Secretariat stating that the application is out of time

Duty Member Activity Table

6.1 The duty member activity table below sets out the common types of cases determined by the duty member.

REQUEST	EXAMPLE	WHAT YOU CAN DO	USE TEMPLATE *	WHAT YOU SHOULD'NT DO
To review a case and advise on its progression	Case Manager has reached an impasse in obtaining	Identify the sticking point and reiterate, clarify or	Duty Member Directions template	Determine the case yourself.

⁹ Functus Officio Law and Legal Definition. Functus Officio is a Latin term meaning "having performed his or her office." With regard to an officer or official body, it means without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.

	directed information or deploying a named witness	revoke existing directions: if needed, issue additional directions.		
To set directions after a successful legal challenge	A parole decision is quashed as a result of Judicial Review or the Parole Board concedes procedural error	Set directions for the new oral hearing that has been ordered.	Duty Member Directions template	Enquire about the reasons for a legal challenge or its success. Refer to or imply such reasons or circumstances in your directions.
Extension request for a reconsideration application	The Secretary of State or prisoner requests an extension.	<ul style="list-style-type: none"> -Consider the application an extension. -Grant the application for an extension. -Refuse the application for an extension. 	Duty Member Directions template	<ul style="list-style-type: none"> -Consider the application for reconsideration. -Consider requests made by others than the prisoner (or their representative) or the Secretary of State). -Make a decision on an application received after the 21-day period for application. -Make a decision on an application where the application for reconsideration has been considered and decision issued.

REQUEST	EXAMPLE	WHAT YOU CAN DO	USE TEMPLATE *	WHAT YOU SHOULD'NT DO
For an oral hearing after the MCA	Representations (to be submitted within 28 days	Applying the OBR principles, (a) grant a hearing and set	(a) MCA Directions template; (b) Duty	-Review your own MCA decision.

decision has been issued	after the prisoner receives the MCA decision) offering new information or other grounds for directing an oral hearing	full directions or (b) refuse a hearing with reasons.	Member Oral Hearing Request template	<ul style="list-style-type: none"> -Undertake a fresh MCA review yourself. -Direct a hearing when there are less than 12 weeks to SED. -Defer or adjourn the case for further evidence (Rule 20 (8) Parole Board Rules 2019).
To defer the parole review	A party applies to defer a hearing: for example, to allow a programme to be completed and reports submitted	Check with Listings Team when a hearing is scheduled: (a) if reasons are valid, defer for specified period and adjust directions as necessary; or (b) refuse a deferral with reasons.	Duty Member Directions template or response section of the MCA Stakeholder Response Form (SHRF) **	<ul style="list-style-type: none"> -Determine the matter if PPCS or the legal representative has not been made aware of the request [e.g. the application has come direct to the Board from a community offender manager]. -Adjourn the matter to yourself at a later date.
To otherwise revoke or vary existing directions	Request to extend deadlines or change a witness nomination	If reasons are valid, vary deadlines for reports, defer a scheduled oral hearing, or amend participant details.	Duty Member Directions Variation Request template or the SHRF **	<ul style="list-style-type: none"> -Defer an oral hearing for more than four months unless compelling reasons can be shown to apply.
To expedite or prioritise listing of an oral hearing	A party applies for the listing of the case to be prioritised or expedited	Follow guidance on expedition and prioritisation to determine if exceptional circumstances	MCA Duty Member Directions template or the SHRF **	<ul style="list-style-type: none"> -18-year old prisoners and those facing first parole review after a MHT should automatically

		warrant a prioritised or expedited listing.		be prioritised in the listing process.
To opt out of the parole review	Prisoner submits a note declining to take part in the parole process	Applying OBR principles, (a) send the case to a MCA panel to consider; or (b) issue directions for an oral hearing, given that a hearing can be staged without the prisoner being present.	(a) Note to the case manager; (b) MCA Directions template	-Abandon a parole review (an indeterminate sentence prisoner would otherwise be detained unlawfully beyond tariff expiry). Refuse an oral hearing without considering the OBR principles.
To consider variation or revocation of an existing licence (general)	The Secretary of State formally asks the Parole Board for advice about additional licence requirements or cancellation of existing conditions	(a) If the evidence justifies change, set out your advice with reasons, subject to any representations; or (b) if insufficient evidence has been provided, direct further information. Non-standard conditions can be left on a life licence even if supervisory elements are revoked.	(a) Duty Member Licence Condition Variation Request template, different conditions being separated or the SHRF **; (b) MCA Duty Member Directions template	-You can reasonably suggest varying the wording of proposed changes but not add conditions which have not been requested. -You cannot re-open a decision that has already been made.
Request to terminate IPP or DPP Licence (Rule 31 Parole Board Rules 2019)	A request is received from the NPS or licensee to terminate an IPP licence.	-Direct that the application should be decided by a panel at a hearing -Terminate the offender's licence -Amend the offender's licence	-MCA Directions Form if directed to an oral hearing; or -Duty member Directions form if the decision is	- You cannot re-open a decision that has already been made. -Apply Rule 31 to any other sentence types.

		-Refuse the application	made on the papers.	
Not to disclose material	A party applies for non-disclosure of information to the prisoner	Parole Board rules apply. Please refer to the guidance on non-disclosure.	Duty Member Non-Disclosure Application template	Withholding information is the exception rather than the rule. You should not usually withhold information from the legal representative even if non-disclosure to the prisoner is justified.
For early release on compassionate grounds	The Secretary of State recommends early release on the grounds of terminal	To recommend / not recommend or (if reasonable) direct an oral hearing or additional evidence.	Duty Member Directions template	Institute lengthy procedures (such as an oral hearing) that could unduly extend matters in a time-critical situation.

* In all but a few circumstances indicated in the table, the Duty Member should use the **Member Template** suite. Use the **Duty Member Quick Fill** function to locate the appropriate MCA Duty Member template:

- ✓ Duty Member **Directions**
- ✓ Duty Member **Licence Condition Variation request**
- ✓ Duty Member **Directions Variation request**
- ✓ Duty Member **Oral Hearing request**
- ✓ Duty Member **Non-Disclosure application.**

** Alternatively, the **SHRF** issued by PPCS or the prisoner/legal representative may be used to record the duty member's decisions regarding requests to defer a hearing, to revoke or vary directions, to expedite or prioritise listing, and to vary licence conditions.