



Equalities Statement

Policy Summary

This consultation seeks views on the question of whether parole hearings in England and Wales should be open to victims and/or members of the wider public and media.

The consultation considers:

- a) The potential benefits and challenges of opening hearings to victims and/or the wider public and media
- b) The practical considerations of holding public hearings

This document assesses the potential equalities impacts of the measures which are discussed in the consultation.

We will update our equality considerations in light of the responses to the consultation.

Equality Duties

Under the [Equality Act 2010](#)¹, when exercising its functions, the MoJ has an ongoing legal duty (PSED) to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- advance equality of opportunity between different groups of persons who share a protected characteristic and those who do not; and
- foster good relations between different groups.

We also recognise that the MoJ, as a service provider, has a duty to make reasonable adjustments for disabled people.

Having due regard to the PSED needs to be considered in light of the nine protected characteristics:

- Race
- Sexual Orientation
- Marriage/Civil Partnership
- Gender (sex)
- Religion or Belief
- Gender Reassignment
- Disability
- Age
- Pregnancy/Maternity

Eliminating unlawful discrimination, harassment and victimisation

Direct discrimination

We believe our proposals on public attendance at parole hearings are not directly discriminatory within the meaning of the EA Act as they apply equally to all offenders and victims irrespective of whether or not they have a protected characteristic; we do not consider that the proposals would result in people being treated less favourably because of the protected characteristic.

¹ http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

Indirect discrimination

Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.

Our initial assessment is that the proposals on public attendance at parole hearings are not indirectly discriminatory as we believe they do not put people with protected characteristics at a particular disadvantage when compared to others who do not share those characteristics.

However, we recognise that prisoners with certain protected characteristics are overrepresented when compared to the general population. Prisoners in England and Wales tend to be:

- Male (95% of prisoners² vs 49% of the population³)
- Aged 30-39 (31%² vs 13%⁴)
- Black, Asian or Minority Ethnic background (27%² vs 14%⁵)
- More likely to be Muslim (16%² vs 5%⁶)

If the Government is minded to pursue the policy proposals on public attendance at parole hearings it would be done in such a way as to avoid as far as possible any disadvantage or adverse impact on any particular group or persons participating. That is partly the purpose of this consultation – to help identify the circumstances in which a public hearing may be appropriate and beneficial without placing any of the participants at a disadvantage; and to seek views on how public hearings could be conducted to avoid the risk of adverse impacts on those involved. If it could be shown to place certain groups or individuals at a disadvantage, that would need to be weighed against the legitimate and proportionate aim of achieving greater transparency, open justice and public confidence in the parole system.

Policy considerations

We recognise that there are a number of equalities considerations that must be factored into any decision to introduce victim or wider public attendance at parole hearings.

As we have explained in the consultation document, the Parole Board must hear evidence about sensitive personal matters which could impact upon the prisoner, the victim of the crime and their respective families, friends and associates. There are also potential impacts on the Parole Board panel members and the witnesses who give evidence at the hearing. In respect of prisoners, the primary concerns we have identified are:

- **Protecting young offenders who are aged under 18:** A public hearing for a child aged under 18 has the potential for greater harmful impacts in terms of their ability to resettle back into the community and avoid re-offending. Publication of details

² <https://www.gov.uk/government/statistics/hm-prison-and-probation-service-offender-equalities-annual-report-2018-to-2019>

³ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/male-and-female-populations/latest>

⁴ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/age-groups/latest>

⁵ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest>

⁶

<https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/exploringreligioninenglandandwales/february2020#size-of-the-religious-populations>

about the young offender may also generate adverse consequences for their personal lives, employment prospects and those of their parents or guardians. We therefore propose that it would be inappropriate to hold a public hearing for children aged under 18 in any circumstances.

- **Mental health vulnerabilities:** We need to be mindful of prisoners who may find the existing oral hearing process very difficult due to the mental health conditions. The prospect of a public hearing would have a far greater impact on them and it may be unfair to expose them to the added scrutiny that it would bring. It may affect their behaviour during the hearing or the quality of their evidence and therefore could unfairly reduce the prospects of them being released. We would not propose a blanket-ban on public hearings for prisoners with mental health issues but if public hearings are introduced then we believe that it should be a factor which the Parole Board takes into account in making a decision on whether a hearing should be heard in public or whether a victim should be allowed to attend.
- **Protected Characteristics:** Decisions about whether to hold a public hearing must ensure that prisoners are not discriminated against for any reason. There are two parts to this. Firstly, reasonable adjustments would need to be made to ensure prisoners with disabilities, such as blindness or deafness, can fully participate in the hearing. Face-to-face hearings will need to be suitable for prisoners with a mobility issue, such as wheelchair access. Secondly, any decision to hold a public hearing would need to be mindful about the impact of disclosing particularly sensitive personal information about prisoners, such as if they have undergone gender reassignment during their sentence. As with mental health vulnerabilities, we would not propose any automatic exemption from public hearings in such cases but clearly these are factors that the Parole Board will need to take into account in deciding whether to hold a public hearing if such an option is introduced in response to this consultation.
- **High profile prisoners** – It is important to ensure that prisoners are not treated differently based on the notoriety of their crimes or media interest in their cases. This will be a difficult issue to balance because public interest will be an important factor in favour of holding a public hearing and it will be the most high-profile and notorious cases that are likely to generate public interest. The key factor will be putting measures in place to ensure that having a public hearing does not introduce any biases into the Parole Board's decision making. Parole Board panels for high profile or complex cases are typically chaired by judicial members, most of whom will have experience of dealing with high profile criminal trials or legal cases and so there is no reason to suggest that they would be vulnerable to bias or public pressure but it is an issue that would require monitoring. A related factor is the prospect that greater public scrutiny may affect the evidence that witnesses provide. For example, it is possible that they may be less willing to recommend a prisoner's release in a public hearing due to fear of criticism by the public or media.

In respect of victims, we have identified the following concerns:

- **Protected characteristics:** If public hearings or improved victim access to hearings is introduced then reasonable adjustments will need to be made to accommodate attendees who have physical or other disabilities. Decisions about

disclosing victim-related information during hearings will also need to be mindful of the presence of other sensitive personal information that may be contained in the evidence or the Victim Personal Statement.

- **Wellbeing:** We have noted in the consultation document that we believe many victims would welcome the opportunity to attend the parole hearing in full. However, the nature of the evidence that must be discussed could prove traumatic for victims to hear. In the event that the rules are changed to allow victims to observe the full hearing, the Government and the Parole Board will have a duty to make sure victims are fully informed about how the hearing will be conducted and what it will entail so they can make an informed decision. We would want to make sure that victims are properly supported before, during and after the hearing to minimise any harmful impact on them.
- **Privacy / Protection from intrusion or harassment:** The Parole Board's panel must to be free to explore any aspects of the case they consider to be relevant to the assessment of risk. On occasions this will, by necessity, involve discussing sensitive personal information about victims including the nature of the index offence, the injuries or other indignities inflicted upon them and the offender's motivation for their actions. It may have been many years since the offence and victims may have chosen not to reveal details about it to their families, friends or associates. Disclosure in this way has the potential to be very harmful to victims and so any decision to introduce public hearings or to allow victims to attend hearings needs to give consideration to how victims can be protected as much as possible without compromising the integrity of the hearing or the Board's ability to make a fully informed decision.

In respect of panel members and witnesses, the concerns are:

- **Privacy / protection from harassment:** Depending on how it is implemented, introducing public hearings or victim attendance may mean that the identities of the panel members and witnesses are revealed to those who attend. This creates a risk that they will be more vulnerable to intrusion or harassment than they are at present which will need to be managed carefully, such as trying to prevent images or recording of the hearing be captured and shared on social media. We will also need to consider the wellbeing of those asked to give evidence at public hearings and consider options for additional training and support as necessary.
- **Protected characteristics:** The Parole Board have taken steps to improve the diversity of their membership and their latest Annual Review and Accounts⁷ shows that of the 205 Parole Board members who made declarations, 121 (59%) were female, 24 (12%) were from a BAME background and 34 (17%) had a disability.

Harassment and victimisation

We have outlined above where a risk of harassment and victimisation could occur and this will be taken into account in deciding whether to allow victim or wider public attendance at parole hearings.

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902631/Parole_Board_Annual_Report____Accounts_-_19-20.pdf

Advancing equality of opportunity

Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of offenders and victims who share a particular characteristic, where those needs are different from the need of those who do not share that particular characteristic.

It is expected that these proposals will benefit victims by improving their access to justice and giving them extra assurance by attending Parole Board hearings.

Discrimination arising from disability and duty to make reasonable adjustments

Other than the comments listed above and in the consultation document, we do not consider that any adjustments are required for disabled people over and above the ones already in place in the statutory duties of the Parole Board and prisons. When disseminating information, prisons and the Parole Board should take into account disability, numeracy and literacy issues, and communication and learning difficulties.

Fostering good relations

We do not consider that there is any significant impact on the achievement of this objective.