

Guidance on Representation

March 2021 (v1.0)

Document History

Document version	Date of Issue	Revision description
1.0	23.03.2021	This guidance was created as part of the Parole Board's project to launch fully revised and updated member guidance.

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Introduction

- 1.1 This guidance sets out information and advice concerning representation in the parole process. It focuses mainly on prisoners undergoing a parole review who do not have legal representatives.
- 1.2 The potential for delay, deferral or adjournment in the parole reviews of unrepresented prisoners is greater than for those where the prisoner has legal representation. Difficulties may arise for the prisoner in obtaining legal aid, accessing the dossier, understanding the procedures and participating meaningfully in any oral hearing. These difficulties may not only have resource implications but could disadvantage some prisoners in the parole process.
- 1.3 The guidance therefore addresses procedural and practical issues which can help ensure Parole Board decision-making is fair and is seen to be fair.

Key Requirements

Legal Aid

- 2.1 Since February 2018, all prisoners referred to the Parole Board are in scope for legal aid. All cases automatically pass the "merits" test but will be subject to the "means" test and need to meet other criteria (sufficient benefits).
- 2.2 Legal aid is potentially available for cases referred to the Parole Board at the MCA stage and for any oral hearing. This includes pre-tariff indeterminate sentence prisoners, and "advice cases" where the Secretary of State (SofS) requests a recommendation from the Parole Board about a prisoner's suitability for a move to open conditions or their continuing suitability for open conditions.

Parole Board Rules

- 2.3 Rule 10 of the Parole Board Rules 2019 ("the Rules") provides for prisoners to have access to representation. A representative instructed by the prisoner is usually legally qualified but need not be. Guidance is available concerning qualifications, special advocates, McKenzie Friends (please see paragraph 3.9) and other forms of representation and support. Some people cannot act as representatives (please see paragraph 3.7).
- 2.4 There are powers in the Rules which also permit the Board to appoint a representative on the prisoner's behalf. The power in rule 10(6)(a) can be used to appoint a representative, if the prisoner is not represented but agrees to be (please see paragraphs 3.13 to 3.18).
- 2.5 When a prisoner is assessed as lacking the mental capacity to make decisions, the Board has another power in rule 10(6)(b) to appoint a

representative, which can include a litigation friend, to make those decisions for the prisoner (please see paragraph 3.19).

Roles and Responsibilities

The prison

- 3.1 For Generic Parole Process (GPP) cases, the Public Protection Casework Section (PPCS) compiles a core dossier and the prison then adds further mandatory and additional reports. The dossier must be signed off by a governor (or a delegated authority) to confirm that all reports have been completed to the required standard. A prisoner's case will formally be referred to the Parole Board via an electronic dossier on PPUD, once all the required documents have been compiled and the full dossier is disclosed. The prison will also receive a PPUD automatic notification, at which point, they must ensure that a copy of the full dossier¹ is disclosed to the prisoner immediately upon completion.
- 3.2 With recall cases, PPCS is responsible for providing the prison with a copy of the recall dossier within one working day of the notification of the return to custody. The prison must provide the recalled prisoner with a copy of their dossier within one working day of receipt from PPCS.
- 3.3 Prison staff must provide assistance to a prisoner to help secure legal representation before the parole review commences. This extends to offering lists of legal and accredited representatives, providing appropriate paperwork, and assisting where language or literacy issues arise.² Where a prisoner is ineligible for legal aid, they may privately fund a legal representative or instruct someone else as a representative (please see paragraphs 3.6 and 3.7). The prison must consider how best to facilitate contact between the prisoner and an appointed representative, including use of video-links where possible and necessary.
- 3.4 Since the change to the Rules, there is no longer a requirement for the Parole Board to send an initial notification to the prisoner to confirm their review has commenced (however, PPCS do issue a commencement notification, which advises the prisoner to find a legal representative and their right to submit representations). As a result of this change, the prisoner is no longer provided with an acknowledgement form to confirm the details of their legal representative. The current process is that after receiving a request from the instructed legal representative, PPCS will ensure that the details of the legal representative are shown on the PPUD record and that the solicitor is granted access to the electronic dossier.

¹ Except any material subject to non-disclosure.

² Paragraph 3.4.4 Parole Board Oral Hearing Administration & Attendance Policy Framework (November 2019)

The representative

- 3.5 In most cases, prisoners will instruct a legal representative. A legal representative may be a barrister or solicitor or an unqualified representative, such as a paralegal, trainee solicitor or second-six pupil barrister from a law firm or barristers chambers. All qualified personnel are bound by codes of conduct. For example, solicitors are bound by the Solicitors Regulatory Authority's Standards and Regulations. Unqualified legal representatives may not be bound by the same code unless they have equivalent qualifications such as Chartered Legal Executive status. A law firm must meet set standards of service provision for a legal aid contract to be awarded.
- 3.6 Although strongly encouraged by the Board, a prisoner does not have to be represented by a legal representative. Where a prisoner is unable to find or disinclined to be represented by a legal representative, they may represent themselves, or ask a family member or another non-qualified individual to represent them, as long as the person does not fall within the exclusions, as noted in paragraph 3.7. In these instances, it may be helpful to direct that the prisoner be provided with copies of the Board's "Getting ready for a parole review without a lawyer" guide and the booklet "Information for families and friends of prisoners having a parole review".
- 3.7 Rule 10(2) precludes the following from acting as a prisoner's representative:
- any person who is detained or is liable to be detained under the Mental Health Act 1983
 - any person serving a sentence of imprisonment or who is on licence having been released from a sentence of imprisonment
 - any person with a conviction for an offence which remains unspent under the Rehabilitation of Offenders Act.
- 3.8 A non-legal representative may lack understanding of formal protocols about information sharing (beyond the general data processing regulations). Therefore, care must be taken by the Parole Board when issuing information and messages. In order to act fairly without compromising individuals involved in the case, emails to non-legal representatives must be sent separately from other recipients to avoid disclosure of addresses or other information. In so doing, the case manager must ensure that a representative is not excluded from crucial information. Disclosure to both parties at the same time is still required.

Other support

- 3.9 A prisoner may call on others who are not permitted to formally advise on parole matters but who can help in reading material or in identifying

suitable options in the parole process. Such people may not represent the prisoner at proceedings but can offer personal support:

- a McKenzie Friend is a person who is not a representative but is present at a hearing to support a prisoner: he or she cannot address the panel, examine witnesses or speak on behalf of the prisoner but may offer support such as note-taking and giving quiet explanations or acting as a sounding board for the prisoner
- a Prison Visitor is a volunteer who attends the prison to befriend and monitor the welfare of prisoners
- a Prison Peer Social Care Advocate is an external representative appointed to address a prisoner's social care or health difficulties in the establishment; this could include an Independent Mental Health Advocate (IMHA) or an Independent Mental Capacity Advocate (IMCA)
- a member of prison staff not formally involved in parole matters, such as a spiritual or religious guide or a key worker
- a communications specialist, such as an intermediary, who can independently assist the prisoner to understand what is happening.

3.10 Prisoners can also request the attendance of observers who do not participate in the proceedings but whose presence brings personal support to the prisoner during an oral hearing. Applications for an observer to attend a hearing are usually determined by the panel chair, once appointed. Please refer to the Parole Board's guidance on observers for more information.

The Parole Board

3.11 Guidance about the parole process is available to prisoners in "easy-read" format and is included in all disclosed GPP dossiers. There is also a guide to oral hearings which should be made available by the prison to any prisoner whose case is directed to such a hearing. If this appears not to have happened, MCA panels might consider it appropriate to direct prison staff to provide a copy to the prisoner. The Board has also produced an information guide "Getting ready for a parole review without a lawyer" which sets out in more detail what is involved in all stages of a parole review. Panels can direct that this be provided by the prison to an unrepresented prisoner.

3.12 Where it is unclear whether the prisoner is unrepresented, by choice or otherwise, the MCA member or panel chair may make a direction for the position to be clarified. The Parole Board case manager should only approach PPCS once a direction has been made. Wording of such a direction might take the form:

This case is progressing to [a decision on the papers/an oral hearing] and the Board strongly advises that [x] seeks legal representation. Given the prison's responsibility to support the prisoner in the parole process, the Secretary of State is urged to ascertain whether [x] is represented or is currently seeking to instruct a legally qualified representative or other suitable person.

- 3.13 If a prisoner does not have a legal representative and is in agreement for the Board to appoint one, rule 10(6)(a) of the Rules enables the Board to appoint one on their behalf, ordinarily, through the Association of Prison Lawyers (APL).
- 3.14 Panels should seek confirmation from the prisoner of their agreement to the appointment of a representative under rule 10(6)(a) of the Rules either in writing or at the hearing (if this stage has already been reached).
- 3.15 Once the prisoner has agreed to the appointment of a representative, panels should inform the Parole Board Case Manager. A senior operations manager in the secretariat will then access an approved database of legal representatives and make contact with one of the firms, via random selection from a list that is generated from a report with criteria. Once in the database, there are criteria to select from - specialisms (including client type), geographical area covered and areas of legal work. Once selected a search can be done and all firms meeting the criteria will be shown. A law firm will then be selected using a random approach to ensure fairness.
- 3.16 A Senior Operations Manager in the secretariat will contact the law firm and provide basic details of the circumstances of the case but not the prisoner name or number. Once the law firm responds, and if they agree to contact the prisoner, a Senior Operations Manager in the secretariat will provide the law firm with specific details about the case.
- 3.17 The panel chair should be informed of the activity. The Offender Manager Unit (OMU) and the PPCS case manager are also informed and should be asked to facilitate communication between the prisoner and the legal representative. If the law firm is unable to provide representation, then the process (as noted in paragraphs 3.15 and 3.16) will be repeated to find a new law firm.
- 3.18 Once the Board has passed the prisoner details to the law firm, there is no further involvement; however, it is helpful for the panel chair to check PPUD to see if a legal representative has been assigned or follow up with the case manager.
- 3.19 Rule 10(6)(b) provides the panel with the power to appoint a litigation friend for a prisoner who lacks the mental capacity to participate in the proceedings or make decisions about instructing a legal representative. This power can be used when a prisoner does not have capacity to agree to a representative being appointed. If members have a case where lack

of mental capacity appears to be an issue, they should contact the Parole Board's Legal Adviser³.

Why prisoners may not be represented

- 4.1 Lack of legal representation may be a genuine personal choice or the result of other circumstances. A prisoner not represented in the parole process may be:
- unaware of the right and/or benefits of obtaining and instructing a representative
 - unaware that legal aid funding may be available
 - not entitled to legal aid (most likely because of financial ineligibility) but unaware of, or unable/unwilling to pay for, private representation
 - facing language difficulties, needing support to navigate the system or unsure how to instruct a representative
 - disadvantaged by learning difficulties/challenges or lacking capacity to make decisions following the assessment of a suitably qualified professional
 - lacking time to instruct a representative (e.g. when first recalled to prison)
 - choosing to represent themselves.
- 4.2 There may be other barriers to obtaining representation, such as lack of availability of personnel qualified to act in parole matters for some geographic areas. Occasionally, a prisoner who is considered to be challenging or overly demanding may have trouble in securing further representation.

MCA stage

- 5.1 A prisoner facing a parole review should:
- be provided by the prison with an up-to-date copy of their dossier, at the point of disclosure, and given any further documents added following the initial disclosure

³ Specific Guidance on mental capacity is being developed by the Parole Board and should be available in summer 2021.

- have access to “easy read” and other guides (please see paragraph 3.11)
 - be supported by prison staff going through the dossier with the prisoner and provided with additional local assistance where needed.
 - Informed of their right to seek legal representation and that they can submit representations.
- 5.2 The timetable of referral for GPP review cases allows adequate time to instruct a legal representative and make representations ahead of MCA assessment. Recall dossiers are less likely to be accompanied by representations as the timeframe between return to prison and referral to the Parole Board is only 28 days (although PPCS do try to secure representations to submit with the referral). If issuing a provisional negative paper decision, the MCA member should consider whether the prisoner has had sufficient opportunity to submit representations. The balance here is between the requirement for fairness and a need for a speedy review of detention. All prisoners have a further 28 days from receipt of the decision letter (where the decision is to remain in prison) in which to consider whether to apply for an oral hearing.
- 5.3 The principle of fairness is imperative in every case. MCA panels will wish to consider whether the prisoner appears to have obtained representation and whether written representations are part of the dossier. If it is unclear but the dossier indicates representations are likely to be submitted, the MCA member may email the Parole Board case manager to make enquiries to clarify the position and the timing of any submission.
- 5.4 In particular, if the case appears particularly complex or the prisoner appears to need assistance (for example, when reports refer to learning difficulties/challenges or communication barriers), a short adjournment may be directed for enquires to be made by PPCS concerning any need for assistance. If the dossier suggests that the prisoner may not be competent to act for themselves, the MCA member should make directions for local assistance to be provided (please see paragraph 3.12). Failing this, the possibility or necessity of the Board appointing support or representation for the prisoner should be raised with the Board’s Policy and Practice Advisor.
- 5.5 The panel chair may be faced with specific situations concerning representation or lack of representation. These include dealing with apparent conflict between a prisoner and a representative and non-disclosure applications.

[a] Conflict: where there appears to be disagreement in substantive areas between a prisoner’s current submissions and previously tendered representations, the MCA member should adjourn the review and set directions to seek clarification or should add suitable directions in a case being sent to oral hearing.

[b] Non-disclosure: when a prisoner is unrepresented, processes must be handled with great sensitivity to ensure fairness. Directions for provision of a gist, or a redacted version which glosses or removes sensitive material, can be particularly helpful if the prisoner is not represented. There is an automatic appeal process for unrepresented prisoners where the decision is that the material should be withheld from the prisoner (partially or in full). If an appeal against non-disclosure is pending at the MCA stage and the case is directed to an oral hearing, the MCA member should factor in time for resolution before the proposed hearing date. Alternatively, the MCA member might adjourn the review until the appeal is determined. Please refer to the Parole Board Guidance on Non-Disclosure for more information.

If a non-disclosure application has been made in a case where the prisoner is represented by someone other than a legally qualified representative (please see paragraphs 3.5 and 3.8), the non-disclosure application cannot be shared with a representative unable to give the formal undertaking required by Parole Board Rules not to disclose information to the prisoner⁴. Please contact the Policy and Practice Advisor in such cases, where it has been granted that the material must be withheld from the prisoner (partially or in full).

5.6 In addition, when an unrepresented prisoner's case is to be directed to oral hearing, the MCA member should consider:

- whether a video-link hearing is an appropriate means for the unrepresented prisoner to interact meaningfully with the panel⁵
- whether participants might need to attend in person (rather than by telephone or video-link) to reduce potential difficulties for the prisoner interacting with witnesses or following proceedings⁶

⁴ This also applies to cases where the qualified legal representative refuses to provide such an undertaking.

⁵ Bearing in mind that face to face hearings can take longer to list and the need to balance the principle of fairness of the proceedings with the duty to speedily review a prisoner's detention. Please also note the following in relation to the Covid-19 pandemic - members can still direct a face to face oral hearing if they consider it to be absolutely necessary during the Covid-19 pandemic. However, when doing so, they should bear in mind the likelihood that it may be some considerable time before such a hearing can be arranged, and the consequent delay to the prisoner's case.

⁶ Bearing in mind any potential delays in ensuring attendance in person and the need to balance the principle of fairness of the proceedings with the duty to speedily review a prisoner's detention.

- whether the panel should comprise of two or more members in order to provide support to the panel chair managing the case and hearing. Please note, however, the starting point is always a single member panel and additional members should only be added if required by the complexity and needs of the case
 - whether the hearing will require a longer time allocation
 - whether prison staff might be invited again to support the prisoner in obtaining representation ahead of a hearing (this might be included in the narrative rather than set as a direction) (please see paragraph 3.12).
- 5.7 If the outcome at MCA stage is no direction for release or progression, the style and accessibility of the decision letter needs special care when the recipient is not represented (please see section 9).

Panel Chair directions

- 6.1 Fairness in the parole process is paramount. On receipt of the dossier, the panel chair should check for confirmation that the prisoner is or will be represented. Where there is no such reassurance, and the MCA member has not initiated enquiries, the panel chair may set directions to explore the issue.
- 6.2 Where it is clear or has been confirmed that a prisoner is unrepresented, panel chair directions might direct prison staff to:
- support the prisoner in seeking or obtaining representation
 - provide a copy of the “easy read” and other guides, if these appear not to have already been provided (please see paragraph 3.11).
- 6.3 If it appears a prisoner will not be represented, the panel chair directions should set out the reasons section of the template in language that is as accessible as possible.
- 6.4 The reasons section of the panel chair directions template should highlight that the unrepresented prisoner should read the dossier and prepare for the hearing; to think about any questions they have about what they read; and bring the dossier and a note of anything they want to say to the hearing (this is set out in more detail in the “Getting ready for a parole review without a lawyer” guide). It is helpful to set out for the unrepresented prisoner the decisions that the panel has the power to make. The panel chair should consider whether additional witnesses or reports might be proposed, and whether to request via PPCS that a support person might attend the hearing. The identity of a support person needs to be confirmed ahead of the hearing day and panel chair approval given or refused (please see paragraphs 3.9 and 3.10).

Opening an oral hearing with an unrepresented prisoner

- 7.1 If a prisoner's request for a support person to be present at the hearing has been approved, the panel chair will need to stress to them and the prisoner that consultation may be possible along with other forms of support such as note-taking during the hearing: but an observer or support person cannot act as a representative, answer on behalf of the prisoner, nor have powers to question witnesses or otherwise take a formal part in the proceedings (please see paragraph 3.9).
- 7.2 At the start of an oral hearing, the style and content of introductions must be clear, especially when the prisoner is unrepresented. The panel chair should ensure the prisoner understands the process and is sufficiently equipped to take a full part in proceedings without a representative and / or support person. If it appears that the prisoner is not able to represent themselves (and/or witnesses confirm such reservations), the panel should consider adjourning in the interests of the prisoner and of fairness, setting against this the need for completion of a timely review.
- 7.3 Any adjournment directions should explain the benefits of obtaining representation on a future occasion. Suitable timescales should be canvassed before the hearing is adjourned and should be reflected in directions.

- 7.4 Specific points of good practice for the panel chair include:

At the start of the hearing:

- ascertaining the prisoner's readiness, the availability of their paperwork and their capacity to proceed
- helping prepare the prisoner by explaining the rudiments of the oral hearing process
- confirming and taking a note that the prisoner wishes the hearing to proceed without representation and is not seeking an adjournment
- outlining the oral hearing process in sufficient detail to enable the prisoner to take a full part in proceedings
- ensuring the same timetable and dossier contents have been seen by the prisoner (and, if not, allowing the prisoner adequate time to read essential copied materials)
- suggesting that the prisoner has pen and paper to write notes during the hearing
- Reminding those present of the private/ confidential nature of the proceedings and that recordings must not be made (if anyone is

attending remotely). The private/ confidential nature includes any notes taken. The following wording may be used:

"Under the Parole Board Rules 2019, these proceedings are to remain private, and the names of the people taking part in it must not be disclosed. What this means is that you must not talk about anything you hear today with other people, and you must not pass on any names that you learn during this hearing. You should be aware that this is forbidden by law, and action may be taken against anyone who does not comply with this, so please make sure that you do not pass on any information or names outside of these proceedings."

- reiterating the limitations on any observer or support person who has been allowed to accompany the unrepresented prisoner (please see paragraph 7.1)
- considering whether the hearing room can allow seating arrangements that lessen the prisoner's anxieties (by all attendees sitting at the hearing table or a member of prison staff being seated alongside the unrepresented prisoner, perhaps helping to navigate the dossier) where appropriate to do so⁷
- explaining the terms of the referral and the options before the panel and invite the prisoner to state what they are seeking as an outcome of the hearing
- spelling out roles of witnesses and outlining the areas the panel will explore once introductions have been completed
- advising the prisoner that they will have an opportunity to ask witnesses questions after they have given evidence.

During the hearing:

- being prepared to challenge witnesses over unnecessary use of jargon and technical terms in testimony
- being ready to probe the evidence of witnesses if they appear reluctant to answer a question from the prisoner
- accepting greater flexibility in relation to the hearing process (e.g. accepting that the prisoner might interrupt at times)
- checking periodically that the prisoner is following proceedings and whether a short break is needed

⁷ Please refer to the Oral Hearing Guidance for more information on ensuring safety at oral hearings.

- while not suggesting what the prisoner might ask, helping to formulate questions to meet specific points of exploration which focus on risk assessment and risk management (please see paragraph 7.5)
- intervening if the prisoner directs inappropriate, abusive, aggressive or repetitious questions or remarks to witnesses
- towards the end of the hearing, asking the prisoner if the relevant issues they wanted to raise have been covered.

7.5 Many unrepresented prisoners struggle to ask witnesses questions. Where this is the case, panel members need “an advocate’s eye” to ensure relevant evidence is obtained. Without compromising independence, an unrepresented prisoner might be encouraged to rephrase or repeat a question if this would be helpful. Alternatively, a panellist might note the point and pursue it in the panel’s own questions to the witness. Panels should test the evidence carefully to ensure they have covered the points a qualified legal representative may have examined, even if the prisoner does not make those points. Panel members must confine themselves to fact-finding and avoid appearing to take sides. This should be explained to the unrepresented prisoner.

Handling closing submissions from unrepresented prisoners

- 8.1 Good practice for the panel chair, depending on the abilities of the prisoner to adequately represent themselves, may include:
- proposing a short break to allow the prisoner a few minutes away from the hearing room
 - asking whether the prisoner wishes to make closing comments: to do so is not compulsory and any comments should be kept simple, reminding the panel of one or two things that might help them make their decision
 - if appropriate, offering an opportunity for the prisoner to provide closing comments in writing if this is preferred (with a reminder to prison staff about the need to facilitate prompt submission to the Parole Board)
 - in all cases, setting out what will happen next and when the panel decision is due to be issued
 - describing briefly the nature of the decision letter, including the formal contents of the reasons template
 - if applicable to their case, notifying the prisoner about the reconsideration mechanism

- informing the prisoner that the Parole Board must provide a summary of their decision if one is requested by a victim or any other person, unless the Chair of the Parole Board considers that there are exceptional circumstances why one should not be produced.

Writing a decision⁸

- 9.1 All Parole Board decisions must clearly articulate the outcome and why the decision was made; but accessibility is particularly important in the case of an unrepresented prisoner. The decision must be written in plain language, reflecting the known ability of the prisoner, or as evidenced at an oral hearing. The same is true for any directions which follow an adjourned hearing.
- 9.2 The panel may consider setting out the decision in the opening paragraph rather than at the end but write the conclusion in a way that it can be read on its own to give an understanding of the decision and the key factors underlying it.
- 9.3 For an unrepresented prisoner, the decision may include advice that prison staff should go through the contents with the recipient to ensure they are fully understood. This might be flagged at the start of the decision to highlight the advantages of support. In the case of an unrepresented prisoner who has learning difficulties, an “easy read” summary can be drafted by the panel in addition to the formal decision. However, to avoid any confusion, it must be noted that it is an “easy read” summary for the prisoner and not the formal decision.

Conflict between prisoner and representative

- 10.1 A prisoner may withdraw authority from their representative or may find it difficult to instruct another person if this has happened repeatedly. The MCA member or panel chair should highlight in the decision or directions that legal advice has not been obtained or retained. Very occasionally, a prisoner may withdraw authority for a representative to act just ahead of an oral hearing – perhaps in a bid to secure a deferral. The panel will always need to balance the need for fairness against the requirement for speedy review and to assess the possibility of a recurrence in the particular case.
- 10.2 When a prisoner has previously withdrawn authority for a representative to act, there remains an exceptional possibility that a dossier contains the prisoner’s comments and earlier submissions from a representative. In most cases, there will be no conflict between the two sets which may cover different ground but still be compatible. In those circumstances,

⁸ At the time of issuing this guidance, a Parole Board project is underway to look at decision writing.

both sets of representations should be acknowledged in directions and/or the decision.

- 10.3 If there is a conflict on matters of substance (e.g. a request for release and an application for transfer to open prison), the prisoner must confirm the correct position. If not already addressed in MCA panel directions, this can be achieved through panel chair directions ahead of an oral hearing.

Non-disclosure application

- 11.1 Guidance is available on handling non-disclosure applications. When a prisoner is unrepresented, processes must be handled with greatest sensitivity to ensure fairness. Directions for provision of a gist, or a redacted version of the document that provides a summary of the content and/or removes the sensitive material, can be particularly helpful if the prisoner is not represented.
- 11.2 If it is decided that material should be withheld from an unrepresented prisoner (or disclosed only in the form of a gist or redacted version), then the prisoner is automatically deemed to have appealed against the decision and the Board will implement an appeal (and notify PPCS and the prisoner). As for any appeal, Parole Board procedures are in place to determine the case. At MCA stage, the MCA member may have to adjourn the case for this process to be completed. An oral hearing panel chair may need to adjourn the case if it becomes difficult to conclude the process before the oral hearing date.
- 11.3 If non-disclosure is upheld in the case of a Victim Personal Statement (VPS) and the material is to be read aloud at a hearing, the panel chair may direct arrangements for a member of prison staff not otherwise involved formally in the parole process to sit in during the reading of the statement. The member of prison staff must not divulge material but can provide assurances to an unrepresented prisoner about the process and about the independence of the panel in dealing with a victim or a VPS.
- 11.4 If a non-disclosure application has been made in a case where the prisoner is represented by someone other than a legally qualified representative, (please see paragraphs 3.5 and 3.8) the non-disclosure application cannot be shared with a representative unable to give the formal undertaking required by Rules not to disclose information to the prisoner. Please contact the Policy and Practice Advisor in cases where it has been granted that the material will be withheld from the prisoner (partially or in full).

Victim attending a hearing

- 12.1 Guidance is available concerning victims and the reading of a VPS at oral hearings. A victim attending the hearing is not party to the proceedings and is entitled only to read out a statement (which the prison has shown to the prisoner in gist or full copy depending on any non-disclosure

ruling). The victim is not permitted to add anything else to the statement or engage in the process of the hearing. Victims attending oral hearings or participating by video-link will be supported and may be represented by officials appointed by the Secretary of State. In prison settings, the victim will leave after reading the statement and be escorted from the establishment.

- 12.2 The prisoner will have been notified by prison staff about the availability of a VPS and/or the possibility of a victim attending the hearing to read this. On the day, the panel chair must fully explain the process to the unrepresented prisoner to ensure fairness is maintained and reassurance is provided. If the victim does not wish the prisoner to be present while the statement is read out, the panel chair must explain that the victim's wishes will usually override those of a prisoner who wants to attend. Although not allowed to divulge the statement's contents, a third party can be present and can offer reassurance to the unrepresented prisoner that proper processes were followed and the prisoner was not disadvantaged in any way.
- 12.3 Where the hearing is being held via remote means it is considered best practice to set up a separate meeting for the reading of the VPS, especially if it is subject to non-disclosure.