

[2022] PBPH 2

Application for a Public Hearing in the case of Mr Darren Mackrell

Outcome: A public hearing has not been granted, however, if the applicant wishes, the Parole Board will explore whether it may be possible to support the victim observing the hearing, subject to conditions, if appropriate arrangements can be made.

Background on the Parole Board and Public Hearings

1. The Parole Board is an independent body which acts as a court when deciding whether prisoners in England and Wales are safe to be released, or not, and makes recommendations to the Secretary of State on a prisoner's suitability for open conditions if the release test has not been met. Prisoners are referred to the Parole Board only after they have served the minimum period for punishment set by the sentencing judge ('the tariff'). When considering a case, the Parole Board's role is to consider whether a prisoner's risk can be safely managed in the community. The Parole Board will not direct release unless it is satisfied that it can. Public protection is always the Parole Board's primary concern.
2. The Parole Board was established in 1967. Under its rules, hearings were required to be held in private. From 20 October 2020 to 1 December 2020 the Government held a public consultation on whether parole hearings should be heard in public in some limited circumstances (public consultation: [Root and branch review of the parole system - Public consultation on making some parole hearings open to victims of crime and the wider public \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/root-and-branch-review-of-the-parole-system-public-consultation-on-making-some-parole-hearings-open-to-victims-of-crime-and-the-wider-public)).
3. In February 2021, the Government decided that the blanket ban on public hearings was unnecessary, and that public hearings in appropriate circumstances would improve transparency and could help build confidence in the parole system (outcome of the consultation: [Root and branch review of the parole system \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/root-and-branch-review-of-the-parole-system)).
4. At the time of publication, the Minister of State for Justice, Lucy Frazer QC MP said: *'We are mindful of the fact that parole hearings involve discussion of sensitive personal matters about prisoners and victims. It is important that the privacy, safety and wellbeing of hearing participants is protected, as well as ensuring that the Board can continue to properly assess prisoners' risk without the evidence on that being*



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compromised. For these reasons we expect truly public hearings to be rare but it is right that we are removing the barrier that requires them to always be held in private. Where it can be done safely and securely, a public hearing will provide a valuable opportunity to show how the Parole Board goes about its valuable work and how decisions are made.'

5. On 30 June 2022, a statutory instrument was laid before Parliament, containing a new rule allowing for anyone to be able to apply for a public hearing. The new rule took effect from 21 July 2022. Under the new rule, it is for the Chair of the Parole Board (the Chair) to decide whether to hold a hearing in public or not, applying an 'interests of justice' test. The Parole Board has developed Guidance on the Criteria for Public Hearings for the Chair to consider when making a decision (Applying for a Parole review to be in public: <https://www.gov.uk/government/publications/applying-for-a-parole-review-to-be-public>).
6. A test in the South West of England is currently being conducted by the Ministry of Justice on victims automatically having the right to attend private hearings. The expectation is that this will be rolled out across England and Wales during 2023. Victims attending a private hearing will have to agree to maintain the privacy of the hearing. Different rules apply to public hearings.

Background to the case

7. In September 2012, Mr Mackrell was sentenced to a sentence of Imprisonment for Public Protection (IPP) for numerous sexual offences against children including three counts of rape of a child under 13, six counts of causing or inciting a child to engage in sexual activity, three counts of sexual assault on a child and three counts of administering a substance with intent.
8. Under the IPP sentence, Mr Mackrell was sentenced by the judge to a minimum tariff of 9 years and 215 days. This tariff expired on 24 April 2022, however, Mr Mackrell will only be released if the Parole Board is satisfied that he can be safely managed in the community. If a panel of the Parole Board does not find Mr Mackrell suitable for release, it will then go on to consider whether to make a recommendation to the Secretary of State about his suitability, or not, for open (Category D) prison conditions.
9. An oral hearing has been scheduled for 13 October 2022. This is Mr Mackrell's first parole hearing.
10. Mr Mackrell is now 55 years old.

Details of the Application and Representations

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11. On 8 August 2022, the Parole Board received an application from a member of a victim's family for Mr Mackrell's parole hearing to be held in public. On 17 August 2022 a second application for a public hearing was made by one of the victims. On 19 August 2022, the Parole Board was sent an email by the Victim Contact Officer indicating support from another relative of the victims for a public hearing.

12. The new rule requires applications for a hearing to be held in public should be made at least 12 weeks ahead of the oral hearing. Given that the Parole Board's rules only came into effect on 21 July 2022, I used a relevant power to waive the 12 weeks requirement in this case.

13. In summary, the reasons given for the applications for a public hearing were:

- It is in the public interest that Mr Mackrell be named in public.
- If they can attend the parole hearing, it will help them support the direct victims of the offence.
- It would be personally beneficial to them to be able to observe and understand each step of the parole process.
- It is in the public interest for the hearing to be in public so that people can better understand the parole process.
- That Mr Mackrell poses a risk to the public (in particular to children and the vulnerable).
- It would allow the victims in this case to feel as though they have had some involvement in the process.

14. On 19 August 2022, the Parole Board asked for representations from the parties to the case – the Secretary of State for Justice and Mr Mackrell, through his legal representative.

15. I have also consulted with the Panel Chair as the Panel Chair is best placed to assess: (i) if a public hearing would cause a victim or prisoner undue distress or prevent best evidence being given by witnesses; (ii) if it could adversely affect a prisoner's ability to safely resettle in the community; or (iii) if it could compromise the panel's ability to assess risk.

16. In summary, the representations made of behalf of the Secretary of State (dated 2 September 2022) were:

- The Secretary of State finds no reason not to support the application for a public hearing in this case. However, the Secretary of State reminds the Chair of the nature

of the offences, the age of the victims who were children at the time of the offences and the requirement for support should the application be granted.

- Increased transparency is vital to building confidence in the parole system.
- Public hearings are particularly beneficial for cases of offenders convicted of very serious offences; Mr Mackrell is serving a sentence of IPP for numerous sexual offences against children.
- The reason for changing the Parole Board rules was to enable victims, the media and the wider public to gain insight into how the Parole Board reaches its decisions.
- The Secretary of State notes the support given by the victims for a public hearing.

17. In summary, the representations made of behalf of Mr Mackrell (dated 28 August 2022) were:

- Mr Mackrell does not wish the hearing to be in public.
- A public hearing could be detrimental to Mr Mackrell's rehabilitation.
- If the hearing were in public, Mr Mackrell may not feel able to be as open in his evidence.
- Given the nature of Mr Mackrell's offending, a public hearing may result in increased risk to him.
- The stress of a public hearing may negatively impact on Mr Mackrell's mental health.
- A summary of the decision should provide sufficient information for any victim to understand the reasons for the decision.
- The victims have an opportunity to read victim statements at the oral hearing.

Reasons for the Decision

18. I have considered all of the information in the applications and the representations and I have also taken account of the Parole Board's Guidance on the Criteria for Public Hearings.

19. The normal position is that parole hearings will remain in private. This is because it is of paramount importance that witnesses are able to give their best evidence. Furthermore, evidence can relate to highly personal matters including health and evidence that may be distressing to victims. There must therefore be good reasons to depart from the general rule.

20. It should be clear that I would not grant an application to have a hearing in public in circumstances where I thought that a public hearing would impact on the fairness of the hearing.

21. I am aware that there are a number of measures which can be taken to protect the fairness of the hearings. These would include the ability to take evidence in private, the ability to use code phrases to conceal sensitive information such as actual addresses, the ability to put in place conditions of attendance, and the ability to suspend the hearing or remove any person from the hearing if they are disruptive.

22.I am also aware that recent developments in technology and Parole Board operating models have better enabled the public to attend a hearing by remote viewing. This will make it more convenient for members of the public to attend and will also minimise the potential for disruption to the hearing itself.

23.I note that, should a hearing be held in public, it is always open to the Panel Chair to use their case management powers to manage the hearing and to suspend a hearing if they feel that the proceedings are becoming unfair.

24.In cases where a victim makes an application for a hearing to be held in public, primarily because they wish to attend the hearing themselves, but they currently live outside the South-West of England victim attendance pilot, it is open to me as Chair to seek to make arrangements for victims to attend a hearing in private in appropriate cases.

25.I note the high bar that has been set for a public hearing to be in the interests of justice and I have decided that this high bar is not met in this case. My reasons are as follows:

- I have the deepest sympathy for the victims. However, although this case of sexual offending is very distressing, there are no special features of this particular case which set it apart from other cases and which may therefore add to the proper public understanding of the parole system.
- The youth of the victims, who were children at the time of the offences, and the grave nature of the offences.
- The victims clearly believe that their attendance at the hearing would be beneficial to them. This benefit can be achieved in alternative ways, as covered below.
- A summary would provide sufficient information to the public for the reasons for the decision made at Mr Mackrell's oral hearing. This would satisfy the requirements of transparency without prejudicing the effectiveness of the hearing.

26.I therefore have not granted the application for the hearing to be held in public.

Victim attendance at a private hearing

27.A key reason for the applications for this hearing to be held in public is that the victims and their relatives believe that observing the hearing would be beneficial to them. This is because they believe that it would allow them to better understand the reasons for any decision and also allow them to offer more effective support to each other.

28.The Ministry of Justice is currently piloting victims attending hearings, however, the victims in these applications live outside the relevant area, the South- West of England. I understand that the Ministry of Justice cannot accommodate this request within the pilot area. However, taking account of the applicants' request, the Parole Board is

willing to explore the feasibility of supporting the victims to observe the private parole hearing subject to conditions and proper support being in place. The victims are invited to contact the Parole Board to discuss the potential arrangements and support that may be needed: CEO@paroleboard.gov.uk.

29. It is ultimately for the Panel Chair to make the final decision on attendance at a private hearing and being satisfied that appropriate arrangements can be made.

30. If permission is granted by the Panel Chair for victims to attend the private hearing, I note that some parts of the hearings may need to take place without the presence of the victims. However, I am satisfied that if permission is granted by the Panel Chair a sufficient part of the hearing could be heard in the presence of the victims to allow them a deeper understanding of the parole process. The Panel Chair has extensive case management powers to enable the relevant parts of the evidence to be taken without the presence of the victims and is best placed to make the decision on how these powers should be used in Mr Mackrell's case should the Panel Chair grant permission.

31. If permission is granted, the Panel Chair may also need to hold a preliminary hearing to deal with any practical matters associated with this hearing.

32. This matter will only revert back to me if there is any fresh information which represents a significant change in the relevant circumstances.

Caroline Corby
The Chair of the Parole Board
20 September 2022