

Duty Member Activities

August 2022 (v2.0)

Document History

Document version	Date of Issue	Revision description
1.0	07.07.2020	This guidance was created as part of the Parole Board's project to launch fully revised and updated member guidance.
1.1	11.02.2021	<p>Paragraph 5.8.1 to 5.8.13 has been amended to include guidance on requests for additional licence conditions in EDS/SOPC cases.</p> <p>Paragraph 5.13.1 to 5.13.24 has been amended to include guidance on applications to reduce the reconsideration application time limit.</p> <p>The duty member activity table has been expanded to reflect the above revisions.</p>
2.0	11.08.2022	<p>The guidance was updated to reflect the changes following:</p> <ul style="list-style-type: none">- The Police, Crime, Sentencing and Courts Act 2022- The amended Secretary of State 2022 Directions on transfer of indeterminate sentence prisoners to open conditions- The Parole Board Rules 2019 (as amended)- The review of the Parole Board's paused policies.

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1. Purpose of this guidance

- 1.1 This guidance explains some practical options open to 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 requests can be extended to new situations. Much of the work draws on a duty member's experience as an MCA Member and as a panel member at oral hearings.

2. Key requirements

- 2.1 Duty member powers are governed by the *Parole Board Rules 2019 (as amended)* ("the Rules").
- 2.2 To complete duty member tasks, the MCA Member template suite must be installed on the Parole Board laptop. In Word, the duty member needs to use "Create New" to navigate to "Duty Member form." "Duty Member quick fill" can then be used 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 to be undertaken by the duty member can be completed using one of the above duty member templates. Alternatively, some 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) submit queries about a case. However, compared to the SHRF, the duty member templates allow greater detail and precision in recording directions and the reasons for the decision.
- 2.4 Additionally, the MCA Directions template may need to be used to set out requirements for an oral hearing where such arrangements have not previously been directed by a Parole Board panel. In Word, "Create New" to navigate to "MCA Directions".
- 2.5 There may be occasions where a duty member will need to write a decision to conclude a review. In these instances, the paper decision template should be used. In Word, "Create New" to navigate to "Paper Decision".
- 2.6 Updates to the MCA member templates, including those dedicated to duty member work, will be automatically uploaded to a Parole Board laptop.
- 2.7 Very occasionally, the outcome of a task may require that an email message is provided to the case manager which does not require a formal template.

3. Eligibility and practicalities

- 3.1 To be eligible to complete the duty member training, a member must have successfully undertaken at least fifty MCA panels¹, fifty oral hearings and completed at least one MCA bundle in the six months prior to the training date.
- 3.2 To undertake duty member work, a member must hold MCA accreditation and meet the relevant workload eligibility criteria in order to commence *Duty Member accreditation*. After core training on duty member work, members will co-work a minimum of two duty member days alongside an experienced duty member. Upon conclusion of the second session, or any subsequent shadowing sessions as required, the duty member and duty member-in-training complete a Joint Feedback Form with the experienced member indicating if the duty member-in-training is ready to proceed to undertake duty member work without assistance and attain accreditation.
- 3.3 Upon completing the shadowing requirement, the member should indicate days available for duty member work by completing the monthly availability system on WAM. WAM needs to be updated with current availability, and further updated should it change. The Listings Team is responsible for allocating duty member days by date in the rota. A duty member may indicate preferences for working at the Parole Board's office in London or remotely at home on particular days.
- 3.4 Duty Members will be paid a day rate (based on a seven-hour day) or an hourly rate for ad hoc work, irrespective of whether they work remotely from home or in person at the Parole Board office. Fee rates can be found in the Parole Board members' fees summary². A duty member can claim travel costs and subsistence when working from the office. If they 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 fully utilise the time allocated by the duty member.
- 3.5 If a member finds they are unable to undertake a scheduled assignment as a duty member, they must 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.
- 3.6 The duty member is expected to respond to case managers raising issues on the day.
- 3.7 Whether working remotely or from the office, the duty member is a resource to colleagues who may require advice about the handling of

¹ An MCA panel will be either a) a bundle of 6 new cases (MCA bundle) or 1 or more adjourned MCA cases.

² This can be found in Section 3.1.5 on page 38 of the Parole Board Member Administrative Policies and Processes (MAPP).

parole cases. The names of the members assigned each day to duty member responsibilities are published weekly on the homepage of SharePoint.

- 3.8 A duty member must activate MS Teams on their laptop and keep it turned on all the time they are on duty. In the case of office working, a set of headphones to use during MS Teams calls is available to use.
- 3.9 The duty member is assigned a caseload by OneDrive link. Cases should be downloaded to their Parole Board laptop where they will review materials and draft decisions. At the end of the working day (or as they go along), their decisions must be emailed as Word documents.
- 3.10 A duty member is expected to work through the caseload assigned to them on OneDrive. This will comprise cases of differing lengths and complexity. The duty member should tackle each case in turn, unless asked to work in a specified order of priority, as efficiently and accurately as possible, keeping pragmatism in mind. If they do not complete the full caseload for their assignment, they must notify the Listings Team of the cases they have been unable to complete when submitting work.
- 3.11 If the duty member completes the allocated duty work within normal working hours and has some capacity, it is expected that they will request further work. Equally, the Listings Team acknowledges that some allocations are heavier than others and will accept returned work that could not be completed.

4. Responsibilities and 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 panel must retain responsibility for cases for 28 days after the panel date, in order to deal with queries or issues arising from it. Duty members will only pick up tasks after the 28 days, or, where the original MCA panel is not available, during the 28 days.
- 4.2 Where an oral hearing has taken place, 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.
- 4.3 Duty member cases can arise at any point in a prisoner's sentence:
 - before the case has been reviewed (but after referral)
 - during the MCA process
 - during the lead up to an oral hearing
 - after the MCA or oral hearing panel has issued its decision
 - after a prisoner has been released on licence
- 4.4 It should be noted that the Board has no power to act until a referral or request has been made by the Secretary of State. The Board cannot act

on its own initiative. The duty member should check that there is an active referral or request from the Secretary of State³.

4.5 The most common types of requests, and options open to the duty member, are summarised in the table at section 6 below. Each of these tasks is explained in section 5.

4.6 It is good practice for a duty member decision to open with a sentence such as:

"The duty member has considered the request from [insert name] for [insert detail] in this case....."

4.7 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. The duty member should also indicate the number of pages in the dossier (where provided) and the nature of any additional information provided to them.

4.8 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 removes the need for future readers from having to locate the previous directions and avoids any potential confusion.

4.9 The duty member 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 must not be amended.

5. Common tasks for the duty member

5.1 Request to opt out of the parole review

5.1.1 The duty member may receive a request from a prisoner to opt out of the parole review under rule 23⁴. In responding, the duty member must first explain that it is not possible for an opt out to stop or vacate a parole review, which legislation requires to be completed. 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.

5.1.2 In deciding how to proceed, the duty member must take account of the principles set out in the case of Osborn, Booth & Reilly [2013] UKSC 61 (*OBR principles*).

5.1.3 This involves two stages of decision making; they should first assess whether the review can be concluded fairly on the papers (stage 1),

³ For some tasks, such as licence variation, an active referral is not required, however a request from the Secretary of State is still needed (usually on an SHRF).

⁴ For advice for concluding on the papers under rule 21 see [paragraph 5.10](#).

before the substantive questions of release and/or transfer to open conditions (stage 2). If an oral hearing is required, they 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.

- 5.1.4 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 interests of the prisoner.
- 5.1.5 In such a case, as an adjunct to the oral hearing directions, the duty member may propose that the prison offender manager (POM) or another member of prison staff should advise the prisoner of the benefits of obtaining representation. In some cases, there may already be a representative instructed, in which case they could be asked to explain to the prisoner the merits of engaging in the parole review.

5.2 Request to defer the review

- 5.2.1 The duty member may receive a request from PPCS (on behalf of the Secretary of State) or the prisoner (directly or through their representative) to defer the parole review. If the case has previously been directed to an oral hearing, the duty member should check with the Listings Team whether a date has already been set. If the case has been listed on a date within the next eight weeks, the case manager should be asked 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 an SHRF. A duty member may use the SHRF response section to record their decision or use the duty member directions template (note the advice in [paragraph 2.3](#) above).
- 5.2.3 Receipt of the SHRF will confirm to the Board that all parties have been made aware of the application. However, if it appears a request has come straight to the Board (for example, direct from the community offender manager (COM) or prison psychologist), the duty member should alert the case manager by email advising that the request should be routed through PPCS. This allows PPCS to consider whether the request is appropriate and, if not, seek to remedy the situation. For example, they may ask HMPPS Psychology Services Group to adhere to a given timescale for completion of assessment reports rather than defer. Where PPCS decide the deferral request is appropriate, they will notify the prisoner and their representative via the SHRF to allow for submissions to be made.
- 5.2.4 Defensible reasons should be given either by the prisoner, their representative, or PPCS to support a deferral request. These might include changes in circumstances, such as the prisoner commencing a programme, or starting overnight release on temporary licence where

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 themselves because the case could be considered by any future duty member.
- 5.2.6 A parole review is deferred from the date the case is considered. Unless there is an exceptional and compelling reason to extend the period, it would be unusual to defer a case for more than four months.
- 5.2.7 If a duty member is minded to defer for more than four months, or where granting a deferral for a period that is different from the one requested, they must provide their 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 the duty member requires any advice on cases which appear to be stuck, please contact the Practice Advisor.
- 5.2.8 If an oral hearing has already been directed, and the duty member grants a deferral, they should set further directions, if necessary, using the duty member directions template.
- 5.2.9 If a duty member decides to defer a case that has not yet gone to the MCA stage, they 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 how the case will proceed. This helps manage the expectations of the prisoner and ensures that the case does not come back to duty members for further action. It also avoids impeding decisions of future panels.

5.3 Abscond/unlawfully at large (UAL)

- 5.3.1 If a prisoner absconds during a parole review, PPCS will suspend the review until such time as the prisoner is returned to custody. Once back in custody, PPCS will restart the review. As soon as the Board is notified that a prisoner is unlawfully at large (UAL), all work on a review should cease and a deferral should be issued. Duty members may be asked to issue a deferral in such circumstances.
- 5.3.2 Occasionally, one of the parties may ask that the case be concluded on the papers. The duty member should query this as the review should have been suspended by PPCS.
- 5.3.3 Sometimes, the appointed representative may request that the review be concluded on the papers, but it must be assumed that they have not been able to take instruction by a prisoner who is UAL and so this should be rejected. If the Secretary of State is seeking a conclusion on the

papers, the duty member should query this and seek further advice from the Practice Advisor.

5.4 Request for non-disclosure

- 5.4.1 The duty member may be asked to consider a non-disclosure application (please see section four above for responsibilities).
- 5.4.2 In recording their decision, duty members should use the non-disclosure application in the duty member template suite and adopt standard passages of text. In Word, "Create New" to navigate to "non-disclosure application".
- 5.4.3 Please refer to the *Parole Board Guidance on Non-Disclosure* for more information.

5.5 Request to revoke or vary an existing direction

- 5.5.1 A duty member 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 commence an intervention or resettlement procedure which might materially affect risk assessments in the near future⁵. Requests to defer a scheduled oral hearing should usually be considered by the appointed panel chair, so the duty member should check why they have been sent such a request.
- 5.5.2 Requests for revocation or variation of directions must be submitted to the Board on an SHRF. A duty member may use the response section to record their decision, or they can set out their reasons and any new directions in greater detail using the duty member directions variation request template (note advice in [paragraph 2.3 above](#)).

5.6 Request to review a case and advise on progression

- 5.6.1 The duty member can be asked to review matters and advise how a case may be progressed effectively. These are usually problematic or overdue cases where previously set directions may have reached an impasse. The aim of the duty member is to progress the case as speedily, fairly and pragmatically as possible.
- 5.6.2 The duty member should review previous directions and identify the sticking point. If a particular report or historical document cannot be provided, they should decide whether it is essential for the review and revoke the direction if it is not. If a witness cannot be contacted or cannot attend, the duty member should 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

⁵ Please see the *Parole Board Adjournment and Deferrals Guidance* for more information on when it would be suitable to adjourn/defer.

specialist Parole Board member for further advice. A list of members who are available to be contacted can be found on Members SharePoint.

- 5.6.3 In some cases, the duty member might clarify or reiterate the original directions (MCA, deferral etc), which must be complied with before the case can be progressed or listed for an oral hearing. The duty member also has powers to set any new directions to replace or extend existing requirements. They should use the duty member directions template for this.
- 5.6.4 Where particular points of practice or process arise, a duty member may be asked to identify lessons to be learned or suggestions for how things might be done differently in future. They can also volunteer such advice to the case manager in an email or discussion, or alert the Practice Advisor, as appropriate.
- 5.6.5 On the day, the duty member 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 via MS Teams. 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.

5.7 Request for an oral hearing under rule 20

- 5.7.1 Under rule 20 of the Rules, prisoners who have received an MCA provisional decision refusing to direct release on the papers have 28 days following receipt of the decision in which to decide whether to accept the outcome or request an oral hearing.
- 5.7.2 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 provisional paper decision.
- 5.7.3 There is no mechanism to request an oral hearing in respect of a decision to direct release made on the papers.
- 5.7.4 If 28 days have elapsed since the prisoner received the MCA provisional decision refusing to direct release and no representations requesting an oral hearing have been received, the MCA decision:
 - a) remains provisional if it is eligible for reconsideration⁶ or becomes final if no application for reconsideration is received within the specified time⁷; or
 - b) becomes final if it is not eligible for reconsideration.

⁶ *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; a serious terrorism sentence - rule 28(2) of the 2019 Rules (as amended).*

⁷ *Within 21 days of the MCA paper decision being provided to the parties - rule 28(3) of the 2019 Rules (as amended).*

- 5.7.5 The decision about whether a case should be determined at oral hearing must be taken by a duty member. A duty member must not review a rule 20 application if they were the MCA member who issued the paper decision under rule 19(1)(b). Rule 20(5)(b) explicitly forbids this; if a duty member has such a case in their bundle, they should notify the case manager to re-allocate the case to another duty member.
- 5.7.6 An extension of time should not be given. Under rule 20(7), the decision as to whether the case should be determined at oral hearing must be provided to the parties within 14 days of the application being served by the prisoner. This is a strict time limit that cannot be extended, as set out in rule 20(8).
- 5.7.7 An MCA paper decision refusing to direct release is provisional for the 28-day period (subject to [paragraph 5.6.4](#)) 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 a duty member decides to grant an oral hearing, they are only setting aside the provisional paper decision, in response to a subsequent request which may include new information or provide the rationale for an oral hearing from the prisoner's perspective for the first time. The duty member is neutral as to the merits of the provisional paper decision.
- 5.7.8 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 in time before the decision was made at the 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.
- 5.7.9 Submissions that were made before the MCA panel date but which, for any reason, were not considered by the original MCA member, will not be sent back to the original MCA member for consideration. However, the representations may be considered by the duty member if they are submitted by the prisoner/their representative under rule 20.
- 5.7.10 The question to consider is whether the representations make a material difference to the position, taking the MCA panel's paper decision into account. The duty member may:
- a) grant an oral hearing, using the MCA Directions template to provide a narrative, to direct additional evidence (as needed), to identify witnesses and to set panel logistics on the basis of information in the dossier (they also have the power to prioritise or expedite listing); or
 - b) refuse an oral hearing, using the MCA Duty Member oral hearing request template with drop-down option "oral hearing not granted".

- 5.7.11 The duty member must take account of the *OBR principles* concerning staging an oral hearing. In the case of a determinate or extended sentence prisoner, the duty member should not direct an oral hearing if there are less than 12 weeks⁸ until the sentence expiry date.
- 5.7.12 In each case, the duty member must make clear the reasons for their decision. If an oral hearing is directed, they must not make a judgment on the case itself: to do so may unfairly pre-judge a future oral hearing outcome and/or impede decisions of a future panel.
- 5.7.13 A duty member does not have the power to undertake a new review of the case, whatever their view of the MCA panel's assessment of risk. That is, the duty member cannot act as an MCA panel and re-consider the review themselves.
- 5.7.14 The duty member cannot defer or adjourn any case for further information. Rule 20(8) sets this out. They have the power to either refuse or grant an oral hearing. They also have the power to expedite or prioritise the listing of an oral hearing, where one is directed.
- 5.7.15 If the decision taken is that the case should not be determined at oral hearing, the MCA decision:
- a) remains provisional if it is eligible for reconsideration⁹ or becomes final if no application for reconsideration is received within the specified time¹⁰; or
 - b) becomes final if it is not eligible for reconsideration.

5.8 Request to expedite or prioritise listing of an oral hearing

- 5.8.1 The starting point for cases is that they are listed in line with the routine listing framework, as set out in the *Listings Prioritisation Framework* (LPF). However, in exceptional circumstances, the duty member may expedite or prioritise a case outside the routine LPF.
- 5.8.2 The exceptions to routine listing are 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 Tribunal and they are back in prison; or the prisoner is under 18 years old. These cases should already have been prioritised for listing by the MCA member. There are formal Parole Board policies setting out these requirements. The relevant policies can be found on the Table of Options document within the *Parole Board Types of Cases* guidance.
- 5.8.3 Prioritising a case is asking the Listings Team to give the case priority in the next listings exercise.

⁸ This is currently 16 weeks for TORERA cases.

⁹ 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; a serious terrorism sentence - rule 28(2) of the 2019 Rules (as amended).

¹⁰ Within 21 days of the MCA paper decision being provided to the parties - rule 28(3) of the 2019 Rules (as amended).

- 5.8.4 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. The duty member should discuss with the Listings Team if they are minded to give a direction to expedite a case. It may not always be possible due to witness, member, or prison availability and a priority direction may be more advantageous to a timely listing. Furthermore, a decision to expedite an oral hearing for one case may require an existing listed case to be removed to make way for the expedited case.
- 5.8.5 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 being considering. Another prisoner's application might be stood down from a month's listing to allow the review of an expedited or prioritised case, or a panel removed from another case to accommodate. The processes of prioritisation, and especially expedition, also have considerable resource implications for the Parole Board and the parties.
- 5.8.6 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. They must first consider whether it would be more appropriate to prioritise a case before considering if an expedited listing is warranted. They must be specific on whether they are asking for a case to be prioritised or expedited with clear reasons being given.
- 5.8.7 Examples of when prioritising would be appropriate:
- Case has been deferred several times and the prisoner's review has been unfairly delayed (through no fault of their own)
 - Serious concerns over the prisoner's mental health
 - A complex release plan is time critical and arrangements are likely to fall apart if the case is unduly delayed
- 5.8.8 Duty members may also be asked to prioritise the following cases where the MCA member may not have stated this in their assessment:
- Prisoner is under 18 years old (at point of referral)
 - Any prisoner within a secure hospital setting or mental health unit
 - First review by the Parole Board after discharge by a Mental Health Tribunal.
- 5.8.9 The LPF already recognises as automatic priority those prisoners facing a first parole review after discharge by a Mental Health Tribunal and all prisoners under 18 years old (at point of referral), but duty members must still put this within directions to avoid it being missed by case managers and the Listings Team.
- 5.8.10 Examples of when prioritising would not be appropriate:

- A determinate recall prisoner has less than 12 weeks until to their sentence expire date¹¹
- Requests for prioritisation solely on the grounds of positive reports
- A case has been adjourned/deferred once before (even if the current situation is not the prisoner's fault)
- A member or witness could not attend the oral hearing due to illness

5.8.11 Examples of when expediting a case might 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
- One of the automatic prioritisation category cases has exceptional circumstances for which an urgent decision is critical

5.8.12 Requests for prioritisation solely on the grounds of a positive report should be refused. Duty members are reminded 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.

5.8.13 Requests for expedition or prioritisation must be submitted to the Board on a SHRF. A duty member is not required to, but may use, the response section to record their decision. Alternatively, they may use the duty member directions template where they can set out the decision and reasons in greater detail and precision (note advice in paragraph 2.3 above).

5.9 Request to combine reviews

5.9.1 Duty members may be asked to consider combining reviews where there are two active referrals for a case. The decision about combining reviews is wholly a matter for the Board but either party can make a request.

5.9.2 Combining reviews can be a way to efficiently deal with circumstances where the Secretary of State has made two referrals at different times, but the reviews overlap. Below are some examples:

- Some indeterminate sentence prisoners are referred for a pre-tariff review. This is where the prisoner has not yet reached their tariff expiry date, but the Secretary of State is seeking advice about a possible move to open conditions. It can happen from anywhere between 3 years and 12 months before tariff expiry. In some instances, the point at which the Generic Parole Process (GPP) on-tariff referral to consider release is due has been reached before the pre-tariff review concludes. In such cases the pre-tariff review seeking advice about a move to open conditions will run in parallel with the new referral to consider release.
- Where a GPP on or post tariff review is under way for a prisoner in open conditions and an adverse development in open results in the

¹¹ This is currently 16 weeks for TORERA cases.

prisoner being returned to closed conditions. The Secretary of State may submit a further referral seeking advice about suitability for open conditions which will run in parallel with the GPP review. This does not happen in all adverse development cases where there is an ongoing review as sometimes the circumstances mean the prisoner is no longer eligible to be considered for open conditions.

- On rare occasions, the Secretary of State may send through a referral for advice about compassionate release (i.e. if the prisoner has a terminal illness or other life changing event – see [paragraph 5.11](#)). If the Board is already considering the case for a GPP review or recall, then there will be two active referrals running in parallel.
- Where the prisoner is serving two or more concurrent sentences and the point of referral for one overlaps with another. This is most likely where the prisoner is serving two determinate sentences, and likely on a recall for one of them. Where multiple sentences come to a point where more than one review is due there will then be parallel referrals.

5.9.3 When considering combining reviews, the duty member will need to explore the impact on each referral. It will be important to check the status of each referral:

- Have they both been through MCA already?
- Has a provisional decision been issued for either of them?
- Has an oral hearing been directed for either of them?

5.9.4 If there is already an oral hearing scheduled, the matter should be determined by the appointed oral hearing panel chair.

5.9.5 Combining reviews may inadvertently delay determining a referral and disadvantage the prisoner. For example, it may be fairer to progress a referral for advice about suitability for open conditions in the usual way through MCA; a positive determination may be possible on the papers. This may lead to the prisoner being moved to open conditions ahead of the oral hearing, which may provide a more positive case for release.

5.9.6 Where two referrals are combined, they will be considered in one review but both referrals will still need to be addressed separately on their own merits and will most likely impact on the separate risk assessments.

5.9.7 The duty member is only determining if the reviews can be combined and not making decisions about the referrals.

5.9.8 Care will need to be taken when issuing directions about combining reviews and the following may need to be covered:

- Directing the Secretary of State to confirm the relevant dates of the sentences that need to be considered;
- Setting out the target hearing dates of each referral, particularly if the case is likely to go to oral hearing as these will be needed for listing;
- Directing the merging of the two dossiers;

- Highlighting the need for everyone to be clear which review on PPUD will be used for the combined review.

5.10 Request to conclude a case on the papers under rule 21

5.10.1 Rule 21 allows for a case to be concluded on the papers where it has previously been directed to an oral hearing at the MCA stage under rule 19(1)(c) or 20(5). It does not set aside the MCA direction but does enable a panel chair or duty member to conclude a case on the papers following a rule 19(1)(c) or 20(5) direction, if an oral hearing is no longer necessary:

- a) in the interests of justice;
- b) to effectively manage the case; or
- c) for such other reason as the panel chair or duty member considers appropriate, including where further evidence is received by the Board.

5.10.2 Concluding a case on the papers under rule 21 follows two stages:

- First, the decision is made whether a case can be concluded on the papers or not: this falls to the panel chair or duty member under Rule 21(4); then
- The second stage is to move to substantive decisions about release and/or recommendations about transfer to open conditions.

5.10.3 Under the Rules, the substantive decision at the second stage may be made by the panel who made the first stage decision or a newly appointed panel. It is possible, therefore, for the member who makes the first stage decision to move straight to make the substantive decision.

5.10.4 If the case has been listed and has been allocated to a panel chair, the decision should rest with the panel chair.

5.10.5 If the case has not been listed and does not have a panel chair assigned, the application will be sent to a duty member to consider.

5.10.6 The duty member should only consider making a decision on the papers if that is the request being made (by the Secretary of State or the prisoner/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.

5.10.7 Under the Rules, there is no longer a time limit on when an application can be made, so a conclusion on the papers under rule 21 can now take place at any suitable point in time prior to the hearing¹².

¹² Previously, a decision to conclude on the papers could not be made where there was less than three weeks to an oral hearing.

5.10.8 Duty members are asked to consider these requests as a priority task within their allocated work for the day.

Request process

5.10.9 Requests can be submitted by the Secretary of State or the prisoner (or their representative) and these should be made on an SHRF.

5.10.10 Additionally, the Board, of its own volition, can determine that the case may meet the criteria to now be concluded on the papers.

5.10.11 Rule 21(2) requires that the Board must notify the parties where it is considering concluding the case on the papers and give reasons for doing so as soon as practicable.

5.10.12 Rule 21(3) sets out that the parties have 14 days in which to respond where they can comment on the reasons for concluding on the papers and whether they consider the matter is capable of being decided fairly on the papers and without oral evidence. In some cases (usually determinate recall cases¹³), representations from the parties will already have been sought prior to the case being put to the duty member. Where this has not happened, a short adjournment of 14 days should be set to allow for this.

5.10.13 Where one of the parties has submitted the request on an SHRF, representations from the other party should already be available and an adjournment should not be required. However, if it is not clear whether the other party has submitted representations, the duty member should contact the relevant case manager to confirm the position before making a decision. If the representations from either party have not been sought, then a short adjournment may be needed, and directions issued setting out the proposed plan to conclude on the papers and seeking representations.

Stage One

5.10.14 Once a 14-day period has been provided for parties to submit representations, stage one of the process can commence: that a decision is now made as to whether the case is to:

- a) be decided by a panel on the papers; or
- b) continue to be determined by a panel at an oral hearing under rule 25.

5.10.15 If the duty member decides that an oral hearing is still required, then the case will continue as it was.

5.10.16 If the duty member determines that the case can be concluded on the papers, the next step is to determine the constitution of the panel to make the decision. The panel may consist of:

¹³ Please see *Determinate Recall Review Guidance* for more information.

- the duty member who made the stage one decision, if they have capacity to do so (*the duty member is not expected to extend their day because they are required to write a paper decision under rule 21*); or
- another duty member, who will make and write the substantive decision. The duty member may be MCA accredited but they will be considering the case in their capacity as a duty member and not as an MCA member. The case will be allocated by the Secretariat, taking into account the time required to write a full decision.

NOTE: Once a case has been considered on the papers under rule 19, it cannot be returned to the MCA stage. Where the decision under stage one of rule 21 is that the case should be concluded on the papers, the substantive decision under stage two can only be taken by the duty member who made that decision or by a new panel appointed under rule 5(3). It cannot, therefore, go back to the MCA member who issued the original direction for an oral hearing under rule 19 or any other MCA member who is not accredited to sit as a duty member or panel.

Stage Two

- 5.10.17 Where a direction is made that the case should be decided on the papers, the duty member must decide whether:
- a) the prisoner is suitable for release; or
 - b) the prisoner is not suitable for release.
- 5.10.18 Where a duty member receives a request for advice from the Secretary of State concerning whether a prisoner should move to open conditions, the duty member must recommend whether:
- a) the prisoner is suitable for a move to open conditions; or
 - b) the prisoner is not suitable for a move to open conditions.
- 5.10.19 The duty member assigned the case should make the substantive decision. If the case is assigned to a different duty member from the one who determined stage one, that member cannot undo the direction made at stage one and so must write a paper decision and conclude the case.
- 5.10.20 The decision should be written on the paper decision template/oral hearing decision template. In Word, "Create New" to navigate to "Paper Decision" or "Oral Hearing Decision".
- 5.10.21 If a review is concluded on the papers:

- the decision remains provisional if it is eligible for reconsideration¹⁴ or becomes final if no application for reconsideration is received within the specified time¹⁵; or
- the decision becomes final at the point of issue if it is not eligible for reconsideration.

5.10.22 Where the Board receive a request for advice with respect to any matter referred to it by the Secretary of State, any recommendation made in respect of that request is final. The Secretary of state can choose whether to accept any advice or recommendation.

5.11 Request for early release on compassionate grounds (ERCG)

5.11.1 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.

5.11.2 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. The Parole Board only considers ERCG requests for indeterminate sentenced prisoners. It provides a recommendation to the Secretary of State, not the final decision, as compassionate release must be personally approved by a Minister.

5.11.3 The ERCG arrangements are intended to apply in only the most exceptional circumstances. Requests for advice on ERCG are, therefore, very rare.

5.11.4 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.

5.11.5 The Board must only recommend release where the circumstances satisfy it that the risk of serious harm is minimal. Public protection remains the Board's primary responsibility.

5.11.6 The HMPPS Policy Framework on ERCG sets out the following principles:

- the early release of the prisoner will not put the safety of the public at risk. In all applications for ERCG, the Secretary of State must be satisfied that the prisoner can be safely managed in the community;
- there is a specific purpose to be served by early release. There must be a clear reason to consider the early release of the prisoner before

¹⁴ 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 (as amended)).

¹⁵ Within 21 days of the decision on the paper after a direction for oral hearing being provided to the parties.

they have served the sentence imposed on them by the sentencing court; and

- a decision to approve ERCG will not be based on the same facts that existed at the point of sentencing and of which the sentencing or appeal court was aware.

5.11.7 The Policy Framework sets out the broad range of circumstances when advice about ERCG may be sought:

Prisoner's health and/or social care needs

- Applications may be made where the prisoner is incapacitated or has health conditions, such that the experience of imprisonment causes suffering greater than the deprivation of liberty intended by the punishment. This could include paralysis, those who have experienced severe strokes, or advanced dementia.
- ERCG may also be considered for prisoners suffering from a terminal illness who are in the last few months of life and medical advice provides that the prisoner would be better accommodated at a hospice/hospital or, in some cases, a domestic setting where the necessary care can be provided.
- Conditions which are self-induced, for example, a prisoner refusing food or medical treatment, will not in themselves qualify the prisoner for ERCG. However, should such conditions result in the prisoner meeting the criteria set out above an application may be made.

Tragic family circumstances

- Applications being made due to tragic family circumstances would need to demonstrate that the circumstances of the prisoner or their family have changed to the extent that if the prisoner were to serve the sentence imposed, the family's hardship would be of exceptional severity, greater than the court could have foreseen.
- In cases where a partner or parent is terminally ill, early release would depend on what other help or support is available to them and/or any risk posed to the welfare of children or vulnerable adult(s) in their care.
- Family circumstances should also be read as circumstances involving non-family members, but where the connection between the prisoner and the individual(s) is equivalent to that of a family relationship.

Other exceptional circumstances

- Other unprecedented circumstances may arise which are exceptional and would fall to be considered in line with ERCG.
- Applications for exceptional circumstances based on Article 3 of the European Convention on Human Rights where circumstances have arisen since the imposition of the sentence which render the punishment originally imposed no longer justifiable on penological grounds.
- Any application would need to establish that there is a genuine and vital reason for the prisoner's permanent early release and the

circumstances cannot be dealt with by either temporary release arrangements or any other person or agency.

5.11.8 Duty members should note the following points:

- Resource and cost implications of maintaining staff on bed-watch duties at an outside hospital/hospice are not grounds to justify ERCG.
- In cases where a prisoner would fall under the criteria to be considered for ERCG but has expressed their wish to stay in prison, an application may still be made if the Prison Governor is satisfied, on advice provided by those caring for the prisoner, that ERCG is in the best interests of the prisoner.
- Where a prisoner has been assessed as not having mental capacity, then the principles of Best Interest should be used.

5.11.9 The HMPPS ERCG Policy Framework can be read here:

[HMPPS ERCG Policy Framework](#)

5.11.10 The decision and reasons should be recorded in the duty member directions template.

5.11.11 If considering directing the case to an oral hearing, the duty member needs to 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.

5.12 Request to amend the 21-day time limit for a reconsideration application

5.12.1 The Reconsideration Mechanism provides a route for either of the parties to make an application for a provisional decision to be reconsidered before it becomes final, where one of the following situations may apply:

- Contains an error of law;
- Is irrational - 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; or
- Is procedurally unfair - 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.

5.12.2 An application must be received within 21 days of the provisional decision being issued to the parties. Any requests made after the 21-day time limit cannot be accepted by the Parole Board as we have become *functus officio*¹⁶.

¹⁶ *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.*

5.12.3 However, it is acknowledged that there may be exceptional situations outside of the control of the parties that result in the 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 time limit for making a reconsideration application within the 21-day period. There may also be exceptional situations where a party will wish to seek a reduction to the 21-day time limit, for example in the case of sudden onset illness or the need for release by a near future date to an address with specialist facilities. This guidance is to be referred to when considering such requests.

5.12.4 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 decision under rules 19(8), 21(5) or 25(6) is provided to the parties."¹⁷

5.12.5 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."

5.12.6 As such, requests to reduce or extend the time limit for submitting an application can be considered. **However, all such requests must be received within the 21-day time limit.**

5.12.7 Requests to vary the time limit may be made at the time of the oral hearing, after the hearing but before the provisional decision has been issued, or after the provisional decision has been issued to both parties (but within the 21-day time limit). Requests that are made either at the time of the oral hearing or before the provisional decision has been issued will be considered by the panel chair. Requests that are received after the provisional decision has been issued will be put to a duty member who will need to consider the request on the day that it is received or, failing that, resubmitted the following day by the secretariat to the next available duty member.

5.12.8 The duty member is only considering the request to extend or reduce the time limit and not the reconsideration application itself.

5.12.9 The duty member may wish to bear in mind, in relation to requests to extend the time limit 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. Therefore, any extension of the time

¹⁷ Rule 28(3) also applies for rule 31(7) from 1 September 2022.

limit will prolong their detention. This is why the time limits in rule 28 are deliberately quite short.

5.12.10 Upon receipt of an extension/reduction request, the other party should be provided with the opportunity to submit representations in response. A tight timeframe should be provided (usually one working day) to ensure that the request is dealt with efficiently. In the case of requests made after the decision has been issued, representations from the other party will be sought by the secretariat before the request is put to the duty member.

Considering requests

5.12.11 The duty member will be sent an email with all the relevant detail included in a table format. This should include:

- Request type (extension or reduction)
- Prisoner name, number and location
- Sentence type
- Date of provisional parole decision (and when it was issued)
- Date when the Parole Board decision summary (PBDS) was issued (if applicable)
- Date the extension or reduction request was received and requestor details
- Reasoning for the request
- The original 21-day deadline
- Proposed new deadline/details (if provided)
- The original written application from the party
- Any representations from the other party.

5.12.12 The secretariat will already have contacted the other party and will specify whether representations have been received and, if so, will attach the representations to the email. The provisional decision will be attached to the email to provide context, but it has no bearing on consideration of the request to alter the time limit for submitting an application.

5.12.13 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.

5.12.14 The principal considerations are:

- Does the request evidence exceptional circumstances?
- Would refusing the request be unfair or result in unreasonable disadvantage to the requesting party?
- Would granting the request be unfair or result in unreasonable disadvantage to the other party?
- Would granting the request be unfair or result in unreasonable disadvantage to the victim?

Requests to extend the time limit

5.12.15 The duty member should bear in mind that the 21-day time limit is the time set out in statute and should be followed unless there is a very good reason not to.

5.12.16 When considering a request to extend the time limit, 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 decision in good time or was there a delay that reduced the timeframe within which to make an application?
- Did the prisoner's 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 PBDS sent out with enough time for any victim to consider asking the Secretary of State to make an application?
- Was a victim away or out of the country when the PBDS was issued?
- Was the Secretary of State notified of the provisional 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)

Requests to reduce the time limit

5.12.17 The duty member should bear in mind that the 21-day time limit is the time set out in statute and should be followed unless there is a very good reason not to.

5.12.18 When considering a request to reduce the time limit, the following examples may assist, bearing in mind there should be a high threshold for granting a reduction, and that the circumstances must be exceptional:

- How long is the remaining provisional period? (a small reduction is more likely to be fair and reasonable than a large one)

- Would a bed space in Approved Premises be lost if the decision were to remain provisional for 21 days?
- Would the prisoner not be able to attend, for example, a hospital appointment or receive medical treatment in the community if the decision were to remain provisional for 21 days?
- Have there been delays in the parole process that are not the fault of the prisoner, but which have put them at a disadvantage?
- Is the prisoner suffering from a terminal illness or are there other strong compassionate reasons for reducing the time limit?

5.12.19 When considering a request from the prisoner to reduce the time limit, the position of the victim must always be taken into account. The 21 days is set out by the Rules with the intention of giving the victim enough time to obtain a PBDS, consider it, identify any potential error of law or grounds of irrationality or procedural unfairness, and ask the Secretary of State to make an application for reconsideration. The Secretary of State will also need time to consider whether to make an application. Reducing the time limit may have the effect of disenfranchising the victim. This will always act as a factor against reducing the time limit except in cases where there are no victims who might want to consider reconsideration, or victims have indicated that they do not want to (or otherwise have no objection).

Making a decision

5.12.20 The starting point should be that the time frame set out in statute should be followed unless there is a very good reason not to. In the majority of cases, this will not cause a substantive delay to release. Rule 9 should only be used to amend this time limit in exceptional, not normal, circumstances.

5.12.21 The duty member will need to take all factors and representations into account and then use their judgement to carry out a balancing exercise to assess whether the use of rule 9 would be fair to both parties and appropriate in the circumstances.

5.12.22 All effort should be made for a decision to be issued on the day the duty member receives the request, wherever possible.

5.12.23 The decision should be set out on the duty member directions template, and all fields should be completed. Select "other" in the result field.

5.12.24 Within the reasons section, the duty member should state which party is seeking the request and give a brief summary of why the extension or reduction is needed.

5.12.25 The decision must be clearly stated ("*extension request granted*" or "*extension request refused*"; "*reduction request granted*" or "*reduction request refused*", as appropriate). Full reasons for the decision to grant or refuse the request must be provided.

NOTE: A Reconsideration Application is not an appeal against the decision. The word "appeal" should not be used.

- 5.12.26 If the extension or reduction 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. This deadline may need to be shorter if the application is to reduce the time limit and the duty member will need to use discretion in such instances.
- 5.12.27 All parties will be informed of the outcome of the request.
- 5.12.28 The duty member should put "*recon EXTENSION request*" or "*recon REDUCTION request*" as appropriate in the subject field of the email and send to the Secretariat: reconsideration@paroleboard.gov.uk
- 5.12.29 If there is not enough information to fairly consider the request, further information can be requested. In the case of extension requests, members should take into account that this will further extend the period that the decision remains provisional and so this should only be considered where absolutely necessary. In all cases, 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 duty member. When doing so, bear in mind that once the 21-day period expires, we will be unable to grant any extension.
- 5.12.30 Requests to reduce or extend the time limit that raise any of the following points should be referred to the reconsideration team in the first instance for advice how to proceed using: reconsideration@paroleboard.gov.uk:
- is not for an eligible case (this will have been checked on receipt but be alert to any anomalies or errors); or
 - has been received within the 21-day time limit but the reconsideration application has already been considered and a decision issued. The decision is therefore final and the Board is *functus officio*. Once the decision is final, the only way it can be revisited is by either the set aside process or judicial review.
- 5.12.31 If the application was received after the 21-day time limit, it cannot be considered as the decision will have become final; the Board is *functus officio* and the decision is final. This will have been checked but, if such a case is received in error, the duty member should simply return it to the Secretariat stating that the application is out of time. Once the decision is final, the only way it can be revisited is by either the set aside process or judicial review.
- 5.13 Request to amend the 21-day time limit for an application to set aside a decision

- 5.13.1 The Rules provide the Board with the power to set aside a decision (where the criteria and tests have been met). This power is set out in more detail in rule 28A.
- 5.13.2 The decision under challenge must be a final decision¹⁸ and relate to whether the prisoner should be released or not released. A decision regarding a recommendation for open conditions or any other advice is not eligible for the set aside process¹⁹.
- 5.13.3 In cases where the application to set aside a release/no release decision relates to there having been an error of law or fact, the time limit for filing an application is 21 days after the decision under challenge becomes final.
- 5.13.4 The time limit for challenging a release decision on the basis of there being new information, or where there has been a change in circumstances, is any time up until the point of release. An application for a decision to be set aside cannot be made where the prisoner has already been released.
- 5.13.5 A duty member may receive a request to vary the 21-day time limit for filing an application to set aside the decision.
- 5.13.6 **Requests to extend or reduce the time limit can only be made where the 21-day period applies - namely on a challenge concerning an error of law/fact.**
- 5.13.7 Any extension/reduction request must be received within the 21-day period. Any such request received after the 21-day period will not be considered and must be refused.
- 5.13.8 Requests that are received within the 21-day window will be sent to a duty member, who will need to consider the request on the day that it is received. Failing this, it will be reallocated by the secretariat the following day to the next available duty member.
- 5.13.9 The duty member is only considering the request to extend or reduce the time limit and not the application to set aside the decision itself.
- 5.13.10 The duty member may wish to check whether the matter is already being dealt with by the setting aside team before considering the request. In such circumstances, it will be more appropriate to pass the matter onto the setting aside team to deal with.
- 5.13.11 The principal considerations for the duty member are:

¹⁸ Not a provisional decision subject to a request for an oral hearing or an application for reconsideration.

¹⁹ Whilst a recommendation about open conditions is not eligible to be set aside, where panels first make a decision about release as required by the terms of the referral, that component of the decision is eligible to be set aside.

- Does the request evidence exceptional circumstances?
- Would refusing the request be unfair or result in unreasonable disadvantage to the requesting party?
- Would granting the request be unfair or result in unreasonable disadvantage to the other party?
- Would granting the request be unfair or result in unreasonable disadvantage to the victim?

5.13.12 In relation to requests to extend the time limit from the Secretary of State, the prisoner will continue to be detained for as long as it takes to determine the application to set aside the decision under challenge. Any extension of the time limit will prolong their detention. Currently, the practice is that extension requests which are granted are set for a period of up to 7 days.

5.13.13 However, the period of extension to which the duty member may grant an application is purely at their discretion. Therefore, a period longer than the 7 days may be granted. Please note, for those prisoners serving a determinate sentence, they cannot be held beyond their Sentence Expiry Date.

5.13.14 When considering a request from the prisoner to reduce the time limit, the position of the victim must always be taken into account. The 21 days is set out by the Rules with the intention of giving the victim enough time to obtain a Parole Board Decision Summary, consider it, and identify any potential grounds to request that the Secretary of State make an application to set aside the decision. The Secretary of State will also need time to consider whether to make an application. Reducing the time limit may have the effect of disenfranchising the victim. This will always act as a factor against reducing the time limit, except in cases where there are no victims who might want to consider setting aside, or victims have indicated that they do not want to (or otherwise have no objection).

5.13.15 Upon receipt of an extension/reduction request, the other party will be provided with the opportunity to submit representations in response to the application. A tight timeframe will be provided (usually one day) to ensure that the application is dealt with efficiently, and any representations received will be provided to the duty member to consider.

5.13.16 All parties are to be informed of the extension/reduction decision where applicable.

5.13.17 The duty member decision relating to an extension or reduction request should be returned to the MCA team and copied to the Setting Aside inbox settingaside@paroleboard.gov.uk.

5.14 Request to consider varying or revoking a licence condition

- 5.14.1 All prisoners released by the Board, other than those serving standard determinate sentences whose release is directed following recall²⁰, must have any changes to licence conditions considered by the Board for a licence variation.
- 5.14.2 The Board can also be asked to add conditions, where the risk may have changed, and the existing conditions are no longer sufficient to manage the risk.
- 5.14.3 Requests to consider varying or revoking licence conditions can be:
- relatively soon after an MCA release decision has been issued or an oral hearing panel has sat; or
 - later, when a requirement is to be added, varied, or removed, or cancellation of supervision is requested for an individual who has been released on parole.
- 5.14.4 If the request is received within 28 days after a panel (MCA or oral hearing) has determined the case, it should be sent back to the original panel. That panel will have detailed knowledge of the case and may have had reasons why a condition was or was not imposed. Varying a licence condition may make the overall risk management plan less viable in the judgement of the panel that assessed the full evidence and determined the case. If a duty member has such a request, they should first check whether the case manager has invited the original panel to consider it. This may already be explained in the papers. However, if the case cannot in practice be returned to the panel for timely determination, the duty member will be asked to consider the application.
- 5.14.5 Requests received after 28 days from when the decision was issued will be sent to the duty member to consider.
- 5.14.6 COMs must complete the "*Licence Variation Report*" including full details of the proposed licence condition(s) variation being requested (including the proposed wording). The report must set out full reasons for why the licence condition(s) variation is considered to be necessary and proportionate to manage the individual's risk. For exclusion zone conditions, a map must be provided. The COM must inform the individual on licence of the application and ask them to complete the representations form attached to the '*Licence Variation Report*'.
- 5.14.7 If the variation being requested involves a victim-related condition, and the victim is signed up to the Victim Contact Scheme, there should be confirmation that the victim has been informed and been given the opportunity to comment.
- 5.14.8 **These applications must come via PPCS.**

²⁰ The exception to this is power to detain (PTD) cases who have been recalled, where the Board remains responsible for the licence conditions and considering any requests for variation of those conditions.

5.14.9 When considering an application to vary a licence, duty members will need to bear in mind that additional licence conditions are intended to:

- a) assist the individual's successful integration into the community;
- b) prevent further re-offending; and
- c) ensure the protection of the public;

where standard conditions are not sufficient for this purpose.

5.14.10 The duty member will need to take all factors and representations into account and then use their judgement to determine whether the requested variation can be justified. Any additional licence conditions should be preventative as opposed to punitive and must be necessary and proportionate, as well as enforceable.

5.14.11 If there is more than one variation being requested, the duty member must clearly set out the decision for each. It is possible to agree to some of the requests but not others and the decision must make clear which conditions have been approved and which have not. Full reasons for the decisions to grant or refuse requests must be provided.

5.14.12 Duty members should be mindful that the Board is being asked to consider specific licence conditions, not review the whole licence. As a result, a duty member can only determine the application in front of them and cannot determine that an additional condition not detailed within the request should be included on the licence. That is not within the scope of the application. It is the Secretary of State's responsibility to manage a prisoner's risk while they are on licence.

5.14.13 Applications should be submitted by PPCS on an SHRF with the "*Licence Variation Report*" attached. The SHRF can be used for responses or the duty member template (as below). In some cases, more substantial information will be submitted as additional papers, particularly for indeterminate sentence cases and for those cases the duty member template will need to be used and not the SHRF. The dossier from the most recent review where release was directed will often be made available to the duty member.

5.14.14 If the duty member decides a licence variation can be justified and is appropriate, the duty member licence condition variation request template should be used to set out the decision and reasons unless an SHRF is being used (for more simple requests). In Word, "Create New" to navigate to "licence condition variation request".

5.14.15 If the duty member decides that varying a licence is not justified, the decision and reasons should be recorded (subject to representations or other submissions) on the duty member licence condition variation request template unless an SHRF is being completed (for more simple requests). The drop-down item to select will be "licence condition unchanged".

- 5.14.16 If the duty member requires additional information in order to make their decision, they can use the duty member directions template.
- 5.14.17 If the "*Licence Variation Report*" does not provide the detailed information, as set out above, the duty member may decide to refuse the application.
- 5.14.18 The Board will not be asked to consider licence variation requests for any case where it did not direct release or re-release.
- 5.14.19 Duty member should refer to the *Parole Board Guidance on Licence Conditions* for more information about specific conditions.

5.15 Request to suspend supervision of an indeterminate sentence licence

- 5.15.1 One particular licence variation that duty members may see will be applications to suspend supervisory conditions on an indeterminate sentence licence. Only the Board has the power to suspend this element of an indeterminate sentence licence.
- 5.15.2 HMPPS will hold an internal Lifer Panel or IPP Progression Panel to review the supervisory element and will only refer the matter to the Board where there is support for the suspension of supervision. A Lifer Panel will only consider applications from COMs to suspend the supervisory conditions of a life licence only after 10 continuous years have been spent in the community.
- 5.15.3 An IPP Progression Panel will only consider applications from COMs to suspend the supervisory conditions of an IPP licence only after 5 continuous years have been spent in the community.
- 5.15.4 Where an individual on licence is recalled to custody, the continuous years timeframe starts again i.e. 10 years for a life sentence licence and 5 years for an IPP licence will commence from the point of re-release.
- 5.15.5 A Lifer Panel or IPP Progression Panel may consider cases for suspension of supervision ahead of the 10-year point (5 years for IPP licences) only where exceptional circumstances have been evidenced.
- 5.15.6 HMPPS has published guidance and there is a "*Request for Suspension of Supervision of ISP Licence*" form that COMs will need to complete.
- 5.15.7 PPCS is responsible for compiling and formally referring the case to the Board. Unless there are exceptional circumstances, PPCS must not submit the referral until the individual's representations have been received, or, if none have been received, until the 7-day deadline for representations has expired. Duty members should therefore check that these are available.
- 5.15.8 This should not be confused with the frequency of supervision which is at the discretion of the Probation Service and the relevant Lifer Panel or

IPP Progression Panel. The Board should not receive variation requests relating to frequency of supervision.

- 5.15.9 The Board has no involvement in varying the supervisory element of determinate sentence licences.

Reimposition of supervision

- 5.15.10 Duty members may receive requests to reimpose supervision, for example where risk has escalated or there has been another change in circumstances.

- 5.15.11 Where it is deemed appropriate to reinstate active supervision of an individual serving a life sentence, a timely Lifer Panel will be convened to consider the evidence and to take a decision on whether a formal application should be submitted to the Board for a decision.

- 5.15.12 Where it is deemed appropriate to reinstate active supervision of an individual serving an IPP sentence, a timely IPP Progression Panel will be convened by HMPPS to consider the evidence and will make a recommendation to the responsible Head of Service/LDU or equivalent to take a decision on whether a formal application should be submitted to the Board for a decision.

- 5.15.13 PPCS is responsible for compiling and formally referring the case to the Board. Unless there are exceptional circumstances, PPCS must not submit the referral until the individual's representations have been received, or, if none have been received, until the 7 day deadline for representations has expired. Duty members should therefore check that these are available.

5.16 Request to terminate an IPP or DPP licence

- 5.16.1 An individual sentenced to Imprisonment for Public Protection (IPP) or Detention for Public Protection (DPP) has the right, under section 31A of the Crime (Sentences) Act 1997,²¹ for consideration to be given to terminating their IPP licence from 10 years after their initial release. This is regardless of whether they have subsequently been recalled to prison at any point during the ten years.

- 5.16.2 For the purposes of this guidance, reference to the IPP sentence will also include the DPP sentence. A DPP sentence was given to an individual who was under 18 at the time the offence was committed.

- 5.16.3 Following the commencement of the relevant section of the Police, Crime, Sentencing and Courts (PCSC) Act 2022 on 28 June 2022, referrals to the Parole Board for termination of licence are now made automatically by the Secretary of State.

²¹ 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.

- 5.16.4 This provision puts on a statutory footing the Secretary of State's current policy of referring every *eligible* IPP individual to the Parole Board for consideration of having their licence terminated.
- 5.16.5 An automatic referral for termination can only be made after the qualifying period of ten years following the individual's first release from custody, irrespective of any subsequent recalls.
- 5.16.6 The individual no longer has the right to apply themselves directly to the Parole Board. This brings it in line with all other statutory referrals.

Rule 31

- 5.16.7 It is only the Parole Board that can terminate an IPP licence. Rule 31 deals explicitly with termination of these licences.

PART 4 Termination of licence

References to terminate IPP licences

31.—(1) Where the Secretary of State makes a reference for an offender's licence to be terminated under section 31A of the 1997 Act, the Secretary of State must serve any reports or evidence at the same time as making the reference to the Board.

(2) ...

(3) ...

(4) Where the Board receives a reference, 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 reference, the panel may—

(a) make a decision on the papers, or

(b) direct that the reference should be decided by a panel at a hearing.

(6) Where a panel considers the reference 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) dismiss the reference.

(6A) Where the reference has been made for an offender who is in prison having been recalled under section 32 of the 1997 Act, the panel must consider the reference in accordance with section 31A(4B) of that Act.

(7) The decision under paragraph (6) or (6A) must—

(a) include the reasons for that decision; and

(b) if a hearing was directed under rule 31(5)(b), be provided to the offender and the Secretary of State within 14 days of that hearing.

(7A) Any decision made by the panel under paragraphs (5), (6) or (6A) is provisional, and becomes final if no application for reconsideration under rule 28 is received within the period specified by that rule.

Duty members should note the following points:

- Rules 31(2) and 31(3) were removed from the Rules
- Rule 31(6), in respect of IPP prisoners who are in the community, enables a panel to direct termination if it is satisfied that the licence is no longer necessary to protect the public from risk.

- Rule 31(6A) requires the panel to consider whether the recalled IPP prisoner is suitable for unconditional release – that is to say, that if they are released it is not necessary for the IPP licence to be in place to protect the public.²²

Roles of PPCS and Probation Service

- 5.16.8 As mentioned above, the Secretary of State is required by law to make the referral to the Parole Board once the individual becomes eligible.
- 5.16.9 This referral must be made even if the individual has been recalled to custody and their licence has been revoked, or if the individual is serving another sentence at the time the referral is made.
- 5.16.10 PPCS is responsible for commissioning and compiling reports from the Probation Service and formally referring an information pack to the Parole Board to consider.
- 5.16.11 The COM will normally make contact with the individual on licence to discuss the referral and then will write a report for the Board. They must write a report even if they are not supporting the termination.
- 5.16.12 COMs will provide a recommendation about the termination of an IPP licence. The Rules only specify that a view or recommendation on suitability for release or progression to open conditions must not be given in HMPPS reports. There is no similar prohibition on report writers providing a recommendation on termination of an IPP licence and a recommendation should, therefore, be included in the reports.
- 5.16.13 The individual on licence can also write their own views and submit them as written representations. They may seek legal advice about writing their representations.
- 5.16.14 If victims are signed up to the Victim Contact Scheme, they have a right to be notified of the referral and 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. If the victim chooses to make a VPS, it will be added to the dossier of information provided to the Board.
- 5.16.15 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.
- 5.16.16 Instructions for HMPPS practitioners on terminating IPP licences are set out in the HMPPS Policy Framework on *managing parole eligible offenders on licence*.

Managing cases: stage one – receiving the application

²² If the question of releasing the recalled IPP prisoner has also been referred to the Board, it can consider the test for release in parallel.

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

5.16.18 A referral for termination of licence can only come from the Secretary of State. If the Board receives an application directly from an individual on licence, it cannot undertake the review but will instead issue the following note to the individual:

Thank you for your request about terminating your IPP licence. On 28 June 2022, the Police, Crime, Sentencing and Courts Act 2022 changed the law about how requests to terminate an IPP licence are managed. The Parole Board can no longer accept an application directly from you, or anyone acting on your behalf.

It is only the Secretary of State who can request that the Parole Board consider terminating an IPP licence. The Secretary of State must, by law, ask the Parole Board to do this once you become eligible.

We would strongly recommend that you contact your Community Offender Manager (or your nearest Probation Office if you are unsure who this is) and ask them whether you are now eligible and if an application is being prepared.

More information about this can be found on the Board's web pages here: [IPP Licence Termination information](#).

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

5.16.20 A "Request for Termination of IPP licence" form, together with any information, should contain the following information:

1. Notification of initial release (date)
2. Previous release decisions (if recalled)
3. Release licence
4. Any post-release licence variation requests and outcomes
5. Licence termination application form
6. Reports from probation/police on up-to-date position
7. Current location (if back in custody) and any other sentences being served
8. Additionally, the previous parole dossier may be required for cases where the individual is back in custody; however, section 3 of the termination report should contain relevant information. The previous dossier should only be directed where absolutely necessary.

Managing cases: stage two – considering the request

5.16.21 Duty members will need to check they have all the required information to make a fair and swift determination.

5.16.22 ***In most cases, it is expected that the individual will be in the community on licence when the referral is made.*** 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 individual'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 individual'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 they have been recalled at any time over the ten-year period and if details of any recall(s) 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 individual is still under supervision, and when was the last contact with the Probation Service;
- What is or has been the frequency and nature of contact, and how this changed over the licence period;
- How well the prisoner has engaged with supervision;
- How the individual has engaged with their sentence plan: have they completed all their objectives;
- What agencies and support networks the individual has in the community and what can continue post licence;
- How the individual has engaged with external agencies;
- If no longer under active supervision, when it was suspended;
- Evidence that checks with other relevant agencies listed in the Termination Report have been carried out. If the individual on licence has come to the attention of one or more of these agencies, the referral must still be made to the Parole Board, but full details must be provided;
- The 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 individual's risk;
- The current or last known MAPPA level;
- Any bespoke licence conditions still in place;
- Any previous requests to terminate the licence (with outcome); and
- The recommendation of the responsible officer and whether there is sufficient information to support their view.

5.16.23 If the individual has been returned to custody and/or serving another sentence for which they cannot yet be released from prison, please see the information below.

If the individual is back in prison and/or serving another sentence

5.16.24 The Secretary of State must make a referral even if the individual concerned has been recalled to prison and their licence has been revoked, or if they are serving another sentence at the time the referral is made.

5.16.25 Whilst this ensures all eligible individuals serving an IPP sentence are treated fairly and receive their entitlement to have the review of their licence considered at the time set out in legislation, duty members will need to carefully consider the implications of terminating the IPP licence for these cases.

5.16.26 Duty members *may* be required to consider terminating a licence in advance of the individual being re-released on the IPP sentence; or reaching the point of the new sentence where they will be either automatically released or referred to the Board for consideration of release.

a) *Referrals being made when the individual has been recalled on their IPP licence.*

5.16.27 Rule 31(6A) requires the Board to determine if the individual, if released, can be released unconditionally – that is to say they that they can be released without an IPP licence in place.

5.16.28 In cases where the question of an individual's re-release has also been referred to the Board, the panel determining their suitability for release can consider in parallel whether or not to terminate the IPP licence. In such cases, the duty member may direct that the IPP licence termination referral be combined with the recall referral and dealt with as part of the recall process.

5.16.29 In cases where only the question of IPP licence termination has been referred to the Board, the duty member must ask themselves whether the prisoner, if/when eventually released, should be released without any licence in place. In other words, whether it is necessary for the protection of the public for them to still be subject to licence conditions if/when they are eventually released.

5.16.30 The duty member will need to carefully consider the circumstances of recall and consider whether they give rise to any concerns about public safety if/when the prisoner is eventually released that would require licence conditions to be in place to manage risk. If the duty member does have such concerns, it will normally be appropriate to direct that it is necessary for the protection of the public for the individual, when released, to be released on licence and to dismiss the referral.

5.16.31 Where an individual is back in custody, it may be necessary to direct an oral hearing to fairly determine the case.

5.16.32 Duty members should seek bespoke advice on these cases, as and when they arise, from the Practice Advisor.

Duty members should note the following points:

5.16.33 Where a recall happens fairly close to the requirement to consider terminating the IPP licence, it is likely that there may be a separate referral for the review of the recall. Duty members may wish to seek clarification on this if it is not clear within the information pack. As mentioned above, the duty member should consider directing that the referrals be combined and dealt with via MCA in the usual way. The MCA panel can then consider the termination of the licence, along with the review of recall.

5.16.34 The duty member should also check the date of the last review of the recall as the next periodic review may be due in the near future. If it is within six months of the current IPP licence termination referral, it may be more effective to defer consideration of termination of the licence and direct that it be combined with the next periodic review.

5.16.35 Where the recall has already been reviewed by the Board and re-release has been refused, or the next review is more than 12 months away, the duty member will need to deal with the licence termination referral.

b) Referrals being made when the individual is back in custody, either following a recall on a different licence or given a new sentence.

5.16.36 In these situations, duty members should check carefully whether the individual has also been recalled on their IPP licence or whether the recall and/or new sentence had no bearing on the IPP licence. Whilst unusual, it is possible for an individual to be recalled or given a new sentence that has no impact on the IPP sentence. However, it is difficult to envisage how the standard licence conditions "*be of good behaviour and not behave in a way which undermines the purpose of the licence period*" and "*not commit any offence*" will not have been breached in such circumstances.

5.16.37 Where the individual has been recalled on a different sentence, duty members will need to check the following:

- If the recall is related to another indeterminate or parole eligible determinate sentence, then there may be another referral from the Secretary of State for the review of recall in existence. In these circumstances, the duty member may wish to consider directing that the referrals be combined.
- If the recall is related to a non-parole eligible determinate sentence, the automatic release date will need to be checked. If it has not yet been reached, the individual cannot be released at this time, but the duty member will be considering whether the individual can be released on the IPP sentence unconditionally, that is to say without a licence in place, at a future date.

5.16.38 Duty members will also need to check the release criteria on the new sentence if there is one. It may not be possible for the individual to be released on the new sentence if:

- It is an indeterminate sentence – a separate referral will be required to determine release on such a sentence once the tariff expiry date has been reached.
- It is a parole eligible determinate sentence - a separate referral will be required to determine release on such a sentence once the parole eligibility date has been reached.
- It is a non-parole eligible determinate sentence subject to automatic release and that date has not yet been reached. The Board has no power to consider the release of such an individual.

5.16.39 Duty members will need to consider the above factors when determining the termination of a licence whilst the individual is in custody, either following recall on the IPP licence, recall on another sentence, or serving a new sentence.

5.16.40 ***The critical point to remember is that the duty member needs to be satisfied that there are no residual concerns about public safety that would require licence conditions relevant to the IPP sentence to be in place to manage risk upon eventual release at some point in the future, before directing that the individual is suitable for unconditional release.***

5.16.41 In theory it is possible to determine that the individual, if released, will not pose any risk to the public that needs to be managed by licence conditions relevant to the IPP sentence. This would mean that unconditional release could take place at some point in the future. However, where another sentence is being served, duty members would need to be clear on all of the above points before directing that unconditional release on the IPP sentence can take place at some point in the future.

5.16.42 Where a decision is made that the individual does not pose any further risk to the public upon release, and that the individual can be released without any licence conditions relevant to the IPP sentence, duty members should be mindful that they will be doing so on the understanding that release will not take place now. Rather, it will take place in the future, once all other release criteria on any other sentences being served have been met. These cases may be better considered at an oral hearing.

Managing cases: stage three – the decision

5.16.43 The decision to be made is whether the duty member is satisfied that it is no longer necessary for the protection of the public that the licence should remain/be in force; in which case the licence may be terminated.

5.16.44 In cases where an individual has been recalled, or is back in prison serving another sentence, the duty member must be satisfied that there

are no longer any risks to the public that will need to be managed by licence conditions relevant to the IPP sentence upon any future release. This must be established before determining whether the prisoner is fit to be unconditionally released.

5.16.45 The referral should be dealt with as swiftly as possible, providing all required information is submitted with the information pack. The Board has given a broad indication that referrals will be dealt with on the papers within 14 days of receipt of the referral.

5.16.46 In making a decision, the duty member has the following options, as set out in the Rules:

- a) make a decision on the papers; or
- b) direct that the referral should be decided by a panel at a hearing.

5.16.47 If an oral hearing is considered necessary to properly consider the referral, 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.

5.16.48 If there is enough information to make a decision on the papers, the duty member can:

- a) terminate the licence (or, where the individual is back in prison, direct that future release be on an unconditional basis);
- b) amend the licence in accordance with section 31(3) of the 1997 Act;
or
- c) dismiss the referral.

5.16.49 A decision must be supported by a sufficient explanation as to why it has been reached.

5.16.50 Once an IPP licence has been terminated, or future unconditional release is directed, all of the licence conditions related to that licence are discarded. There will no longer be any victim related conditions, such as a no-contact condition or an exclusion zone, and none of these may be re-imposed. The individual cannot be recalled on that licence as recall proceedings will no longer be an option. If the individual commits another offence, it will be dealt with separately.

5.16.51 Where an IPP licence is not terminated (or for an individual back in prison unconditional release is not directed) and either remains as originally submitted, or in an amended form, a further referral from the Secretary of State must take place every 12 months thereafter. Further referrals must not be made within a 12-month period.

5.16.52 A victim can request a summary of the Parole Board's decision about the termination of an IPP licence. Requests are made in the same way as for a summary of a full parole decision.

Reconsideration Mechanism (rule 28) for IPP licence termination decisions

5.16.53 Rule 31(7A) provides that the decision on whether the licence should be terminated remains provisional during the reconsideration mechanism timeframe. This provision commenced on 21 July 2022.

5.16.54 However, the commensurate amendment to rule 28 does not take effect until 1 September 2022. As a result, any IPP licence decisions made in the period 21 July 2022 to 1 September 2022 will be provisional for 21 days before becoming final. No application for reconsideration can be made because those changes have not come into force yet. To make such an application would frustrate the will of Parliament, which wanted them to be made from 1 September 2022 onwards.

6. Duty member activities table

The duty member activities table below sets out the common types of requests considered by the duty member.

REQUEST	EXAMPLE	WHAT DUTY MEMBERS CAN DO	USE TEMPLATE *	WHAT DUTY MEMBERS SHOULD NOT DO
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 an MCA panel to consider (if it is pre-MCA); (b) issue directions for an oral hearing, given that a hearing can be staged without the prisoner being present (rule 23); (c) conclude on the papers using rule 21.	(a) Email to the case manager (b) MCA directions template (c) paper decision template	<ul style="list-style-type: none"> - Abandon a parole review (an indeterminate sentence prisoner would otherwise be detained unlawfully beyond tariff expiry). - Conclude on the papers without considering the OBR principles.
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.
Not to disclose material	A party applies for non-disclosure of information to the prisoner.	Parole Board Rules apply. Check the proposed oral hearing date, if this is within 8 weeks, the request is to be sent to the Panel Chair. Please refer to the guidance on non-disclosure.	Duty member non-disclosure application template	<ul style="list-style-type: none"> - Withholding information is the exception rather than the rule. - information should not usually be withheld from the representative even if non-disclosure to the prisoner is justified.

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 **	- Defer an oral hearing for more than four months unless compelling reasons can be shown to apply.
To review a case and advise on its progression	Case Manager has reached an impasse in obtaining directed information or deploying a named witness.	Identify the sticking point and reiterate, clarify or revoke existing directions: if needed, issue additional directions.	Duty member directions template	- Determine the case themselves.
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 directions.
For an oral hearing after the MCA decision has been issued	Representations (to be submitted within 28 days after the prisoner receives the MCA decision) offering new information or other grounds for directing an oral hearing.	Parole Board Rules apply. Applying the OBR principles, (a) grant a hearing and set full directions or (b) refuse a hearing with reasons.	(a) MCA Directions template; (b) Duty member oral hearing request template	-Review their own MCA decision. -Undertake a fresh MCA review themselves. -Direct a hearing when there are less than 12 weeks to SED for a determinate sentence case. -Defer or adjourn the case for further evidence - rule 20(8) does not permit this.

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 warrant a prioritised or expedited listing.	MCA Duty member directions template or the SHRF **	-18-year-old prisoners and those facing first parole review after a MHT should automatically be prioritised in the listing process.
Combining reviews	A party requests that two active reviews be combined.	Approve the request to combine the review or refuse the request and the reviews continue separately	Duty member directions template	<ul style="list-style-type: none"> - Determine the decision in either review - Indicate likely outcome in either review
Conclude on the papers following a direction for an oral hearing at MCA	A party requests that an oral hearing is no longer required and asks for the case to be concluded on the papers.	Parole Board Rules apply. Conclude on the papers (after considering all representations) Or direct the hearing to progress to oral hearing.	Duty member directions template decision template	<ul style="list-style-type: none"> - Conclude on the papers without seeking representations. - Send the case back to the original MCA panel – if the duty member does not have capacity to write a paper decision it must go to another panel (usually a duty member) appointed under rule 5(3).
For early release on compassionate grounds	The Secretary of State seeks advice on release on compassionate grounds.	To recommend / not recommend or (if reasonable) direct an oral hearing or additional evidence.	Duty member directions template	<ul style="list-style-type: none"> - Institute lengthy procedures (such as an oral hearing) that could unduly extend matters in a time-critical situation.
Extension / reduction request for a reconsideration application	The Secretary of State or prisoner requests an extension / reduction.	<ul style="list-style-type: none"> (a) Consider the application for an extension/ reduction. (b) Grant the application for an extension/ reduction. (c) Refuse the application for an extension/ reduction. 	Duty member directions template	<ul style="list-style-type: none"> - Consider the application for reconsideration. - Consider requests made by anyone other 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.

Extension / reduction request for a setting aside application	The Secretary of State or prisoner requests an extension / reduction.	(a) Consider the application for an extension/ reduction. (b) Grant the application for an extension/ reduction. (c) Refuse the application for an extension/ reduction.	Duty member directions template	<ul style="list-style-type: none"> - Consider the application to set aside the decision. - Consider requests made by anyone other 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 to set aside is being considered, or has been considered and decision issued.
To consider variation or revocation of an existing licence (general)	The Secretary of State formally asks for advice about additional licence requirements or cancellation of existing conditions.	(a) If the evidence justifies change, set out the 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	<ul style="list-style-type: none"> - A duty member can reasonably suggest varying the wording of proposed changes but not add conditions which have not been requested. - They 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 Secretary of State to terminate an IPP licence.	<ul style="list-style-type: none"> -Direct that the application should be decided by a panel at a hearing -Terminate the offender's licence -Amend the offender's licence -Refuse the application. 	<ul style="list-style-type: none"> -MCA directions form if directed to an oral hearing; or -Duty member directions form if the decision is made on the papers. 	<ul style="list-style-type: none"> - A duty member cannot re-open a decision that has already been made. - They cannot consider an application submitted by the offender - Apply rule 31 to any other sentence types.

- * 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** submitted by PPCS or the prisoner/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.