

[2022] PBPH 6

## Application for a Public Hearing in the case of Mr Jason Darren Smith

### Decision

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

### Background on the Parole Board and Public Hearings

1. The Parole Board is an independent body which acts as a court when deciding whether prisoners in England and Wales are safe to be released, or not, and makes recommendations to the Secretary of State on a prisoner's suitability for open conditions if the release test has not been met. Prisoners are referred to the Parole Board only after they have served the minimum period for punishment set by the sentencing judge ('the tariff'). When considering a case, the Parole Board's role is to consider whether a prisoner's risk can be safely managed in the community. The Parole Board will not direct release unless it is satisfied that it can. Public protection is always the Parole Board's primary concern.
2. The Parole Board was established in 1967. Under its rules hearings were required to be held in private. From 20 October 2020 to 1 December 2020 the Government held a public consultation on whether parole hearings should be heard in public in some limited circumstances (public consultation: [Root and branch review of the parole system - Public consultation on making some parole hearings open to victims of crime and the wider public \(publishing.service.gov.uk\)](#)).
3. In February 2021 the Government decided that the blanket ban on public hearings was unnecessary, and that public hearings in appropriate circumstances would improve transparency and could help build confidence in the parole system (outcome of the consultation: [Root and branch review of the parole system \(publishing.service.gov.uk\)](#))
4. At the time of publication, the then Minister of State for Justice, Lucy Frazer QC MP, said: *'We are mindful of the fact that parole hearings involve discussion of sensitive*



*personal matters about prisoners and victims. It is important that the privacy, safety and wellbeing of hearing participants is protected, as well as ensuring that the Board can continue to properly assess prisoners' risk without the evidence on that being compromised. For these reasons we expect truly public hearings to be rare but it is right that we are removing the barrier that requires them to always be held in private. Where it can be done safely and securely, a public hearing will provide a valuable opportunity to show how the Parole Board goes about its valuable work and how decisions are made.'*

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

### **Background to the case**

7. On 31 March 2015, Mr Smith was sentenced to an extended determinate sentence of ten years plus four years on licence for the offence of Grievous Bodily Harm to his then partner. The offence included the use of a knife, following the consumption of drugs and alcohol. A week before the offence, Mr Smith had admitted to causing criminal damage to the property.
8. Mr Smith's parole eligibility date was 4 January 2021, his conditional release date is 5 May 2024 and his sentence end date is 5 August 2028.
9. The case was directed to an oral hearing on 11 April 2022. The case is listed to be heard on 12 January 2023. This will be Mr Smith's second review by the Parole Board.
10. Mr Smith is now 38 years old.

### **Details of the Application and Representations**

11. On 24 October 2022, the Parole Board received an application from a victim for Mr Smith's parole hearing to be held in public.

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

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

- a) Mr Smith is a serial offender using violence and abuse against women.
- b) His offending has spanned a decade with many victims.
- c) His parole hearing should be in public so that all victims, including the applicant, are aware of the outcome and how the decision is made.
- d) Mr Smith may have future relationships and therefore a public hearing is in the public interest to avoid other women suffering in the future.
- e) Mr Smith's offence was very serious. He is unlikely to be rehabilitated or genuinely remorseful.
- f) Transparency is important to the public understanding how the Parole Board deals with serial offenders who are the highest risk of re-offending.

14. On 1 November 2022, the Parole Board asked for representations from the parties to the case – the Secretary of State for Justice and Mr Smith, through his legal representative.

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

16. In summary, the representations made on behalf of the Secretary of State, dated 22 November 2022, were:

- a) Increased transparency is vital to building public confidence in the parole system, particularly where the Parole Board is reviewing an offender convicted of a very serious offence.
- b) Officials have consulted the Probation Service and other relevant parties and no concerns have been identified.
- c) The Secretary of State endorses the Applicant's application for a public hearing.
- d) Mr Smith's past offending history and other risk related behaviour may be relevant to this decision.

17. In summary, the representations made on behalf of Mr Smith (dated 22 November 2022) were:

- a) The Applicant's description of Mr Smith's offending history is not accurate.

- b) There is sufficient public guidance available on the parole process and Mr Smith's hearing should not be used to illustrate the process.
- c) A summary should provide sufficient information and the victim is updated by the Victim Liaison scheme as per the HM Prison and Probation Service policy.
- d) This is not a case that has special features that set it apart from other cases.
- e) Mr Smith does not wish for the hearing to be in public.
- f) A public hearing will cause Mr Smith emotional stress.
- g) If the hearing were to be in public, this may impact on Mr Smith's ability to give open and honest evidence. This could interfere with the Panel's decision-making ability.

### **Reasons for the Decision**

18. I have considered all of the information in the applications and the representations and I have also taken account of the Parole Board's Guidance on the Criteria for Public Hearings.
19. The normal position is that parole hearings will remain in private. This is because it is of paramount importance that witnesses are able to give their best evidence. Furthermore, evidence can relate to highly personal matters including health and evidence that may be distressing to victims. There must therefore be good reasons to depart from the general rule.
20. It should be clear that I would not grant an application to have a hearing in public in circumstances where I thought that a public hearing would impact on the fairness of the hearing.
21. I am aware that there are a number of measures which can be taken to protect the fairness of the hearings. These would include the ability to take evidence in private, the ability to use code phrases to conceal sensitive information such as actual addresses, the ability to put in place conditions of attendance, and the ability to suspend the hearing or remove any person from the hearing if they are disruptive.
22. I am also aware that recent developments in technology and Parole Board operating models have better enabled the public to attend a hearing by remote viewing. This will make it more convenient for members of the public to attend and will also minimise the potential for disruption to the hearing itself.
23. I note that, should a hearing be held in public, it is always open to the Panel Chair to use their case management powers to manage the hearing and to suspend a hearing if they feel that the proceedings are becoming unfair.

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

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

- a) I have the deepest sympathy for the victim. However, although this case of violent offending is very distressing, there are no special features of this particular case which set it apart from other cases and which may therefore add to the proper public understanding of the parole system.
- b) There are a number of historic risk related allegations that will require exploration at the hearing. This will involve potentially identifying other victims who may not wish for their details to be known any wider than the private parole process.
- c) The benefits to the victim attending the hearing can be achieved in alternate ways, as covered below.
- d) A summary would provide sufficient information to the public for the reasons for the decision made at Mr Smith's oral hearing. This would satisfy the requirements of transparency without prejudicing the effectiveness of the hearing.

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

### **Victim observing a private hearing**

27. One reason for the application for this hearing to be held in public is that the victim believes that attending the hearing would be beneficial to them in that they would better understand the reasons for any decision.

28. The Ministry of Justice is currently piloting victims observing hearings, however, the victim in this application lives outside the relevant area, the South West of England. I understand that the Ministry of Justice cannot accommodate this request within the pilot area. However, taking account of the Applicant's request, the Parole Board is willing to explore the feasibility of supporting the victim to observe the private parole hearing subject to conditions and proper support being in place. The victim is invited to contact the Parole Board to discuss the potential arrangements and support that may be needed: [CEO@paroleboard.gov.uk](mailto:CEO@paroleboard.gov.uk).

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

- 30.If permission is granted by the Panel Chair for the victim to observe the private hearing, I note that some parts of the hearings may need to take place without the presence of the victim. However, I am satisfied that if permission is granted by the Panel Chair a sufficient part of the hearing could be heard in the presence of the victim to allow them a deeper understanding of the parole process. The Panel Chair has extensive case management powers to enable the relevant parts of the evidence to be taken without the presence of the victim and is best placed to make the decision on how these powers should be used in Mr Smith’s case should the Panel Chair grant permission.
- 31.If permission is granted, the Panel Chair may also need to hold a preliminary hearing to deal with any practical matters associated with this hearing.
- 32.This matter will only revert back to me if there is any fresh information which represents a significant change in the relevant circumstances.

**Caroline Corby**  
**The Chair of the Parole Board for England and Wales**  
**2 December 2022**