

[2022] PBPH 7

**Application for a Public Hearing in the case of  
Mr Stephen Allen Gale**

**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/applying-for-a-parole-review-to-be-public)).
6. A test in the South-West of England is currently being conducted by the Ministry of Justice on victims automatically having the right to attend private hearings. The expectation is that this will be rolled out across England and Wales during 2023. Victims attending a private hearing will have to agree to maintain the privacy of that hearing. Different rules apply to public hearings.

## Background to the case

7. On 21 May 2007, Mr Gale was sentenced to an indeterminate sentence for the protection of the public (IPP) for the offence of rape. The tariff was set at six years (minus 104 days served on remand). Mr Gale's parole eligibility date was 6 February 2013.
8. Mr Gale was previously sentenced to a three-year Community Rehabilitation Order in December 2004 for offences of indecent exposure and showing indecent photographs to an adult female. Mr Gale breached the Community Rehabilitation Order and was sentenced to 18 months in custody on 1 August 2005. Mr Gale was later released. He was recalled back to custody on 31 May 2006 for breaching his licence. The remainder of Mr Gale's sentence was served in custody and he was released on 31 January 2007.
9. The case was directed to an oral hearing on 11 October 2022 and is currently awaiting listing. This will be Mr Gale's sixth review by the Parole Board.

10. Mr Gale is now 49 years old.

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

11. On 27 October 2022, the Parole Board received an application for Mr Gale's parole hearing to be held in public.

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

- a) The IPP sentence was designed to address public concerns. Given the recent report by the Justice Select Committee (published in September 2022), a public hearing of an IPP offender would be timely, particularly given the high number of IPP offenders being recalled to prison.
- b) A public hearing would improve understanding of the parole process, particularly for the most serious IPP offenders.
- c) The Parole Board must be accountable for its decisions, as in the Worboys case, particularly in sexual offences.
- d) Sexual offences are known to be under-reported with low conviction rates for those cases that are reported. Public confidence in the parole process for those offenders who have been convicted needs restoring.
- e) A public hearing could illustrate the impact of the strains in the prisons and the probation service on IPP offenders.
- f) A public hearing would bring to the forefront the debate about IPP offenders and the nature of their crimes.
- g) Holding a public hearing in this case would benefit all victims of rape and sexual assault.
- h) The victim has previously waived her right to anonymity and has had appropriate support.
- i) Mr Gale has gone through the restorative justice programme.

13. The Parole Board asked for representations from the parties to the case – the Secretary of State for Justice and Mr Gale, through his legal representative.

14. In summary, the representations made on behalf of the Secretary of State (dated 29 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) The Secretary of State notes that some of the reasons given for a public hearing in this case are relevant to current discussions about releasing IPP prisoners. This is particularly topical given the recent Justice Select Committee report.
- c) The Secretary of State considers that there is a strong case for supporting the application but requests that some sensitive parts of the

hearing be held in private including details of the risk management plan. There may also be a need to protect the victim's details.

15. In summary, the representations made on behalf of Mr Gale (dated 21 November 2022) were:
- a) Mr Gale is remorseful and wishes to accommodate any involvement of the victim. However, a public hearing would adversely impact him, his mental health and his review.
  - b) Mr Gale is post tariff and he should not be prejudiced from requesting progression.
  - c) The normal position is that parole hearings are in private so that witnesses can give their best evidence. There must be a good reason to depart from this rule. Although this case is distressing, it is not a case that has special features that set it apart from other cases.
  - d) The Applicant is not requesting this hearing to allow them to attend the full hearing. They have not indicated that this is their intention.
  - e) Article 2 of the European Convention on Human Rights (ECHR) is engaged in that Mr Gale may become subject to vigilante action if details of his release become known. Article 5 of the ECHR may be breached if a fair process cannot be followed. Article 8 of the ECHR may be breached by Mr Gale giving evidence about himself in public.
  - f) The issues pertaining to IPP prisoners are not, and should not be, within the scope of a parole hearing. Mr Gale does not wish his case to be part of the political debate on the IPP sentence.
  - g) Due to the nature of the offence, a public hearing could prejudice Mr Gale's resettlement plan. It could also place him at risk within the prison estate if he were not released.
  - h) In a public hearing Mr Gale would not be able to give his best evidence and he may decline to give evidence entirely. In previous private hearings, Mr Gale has struggled to express himself. A public hearing would impact on the fairness of the hearing.
  - i) At the hearing, health matters of a private nature will need to be considered.
  - j) A summary should be sufficient to satisfy the public interest.
  - k) The victim has spoken to the press in the past and could do so again given that the parole process does not have the same reporting restrictions as a court.
  - l) A departure from open justice is justified where open justice would lead to unjust outcomes.
16. I have not consulted the Panel Chair in this case as the case has not yet been listed and therefore a Panel Chair has not yet been appointed.

## Reasons for the Decision

17. I have considered all of the information in the application and the representations and I have also taken account of the Parole Board's Guidance on the Criteria for Public Hearings.
18. 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.
19. 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.
20. 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.
21. I am also aware that recent developments in technology and the Parole Board operating model 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.
22. 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.
23. 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 attendance pilot, it is open to me as Chair to seek to make arrangements for victims to attend a hearing in private in appropriate cases.
24. 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 and I cannot imagine the devastating effects that this offence has had on them. However, although this case of rape is very distressing, I cannot see that there are any particularly special features which set it apart from other sexual offending cases which would aid the public's understanding of the parole



system and justify departing from the normal position that all parole hearings be held in private

- b) The benefits to the victim of attending the hearing can be achieved in alternate ways, as covered below.
  - c) Mr Gale has a history of sexual offending involving a number of victims who may be at risk of being identified in a public parole hearing. In addition, the extent of other private matters central to this case would limit the benefits of a public hearing.
  - d) A summary would provide sufficient information to the public for the reasons for the decision made at Mr Gale's oral hearing. This would satisfy the requirements of transparency without prejudicing the effectiveness of the hearing.
25. I therefore have not granted the application for the hearing to be held in public.
26. The Applicant makes a number of points about the IPP sentence, including the parole process for IPP offenders, the release rate for IPP prisoners and the impact of prisons and probation on IPP offenders. These matters are all outside the scope of a parole hearing, however, the Parole Board has given evidence to the Justice Select Committee as part of its recent review of the IPP sentence. This evidence is available at <https://committees.parliament.uk/work/1509/imprisonment-for-public-protection-ipp-sentences/publications/>

### **Victim attendance at a private hearing**

27. One reason for the application for this hearing to be held in public is that the victim may wish to attend Mr Gale's oral hearing.
28. The Ministry of Justice is currently piloting victims attending 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 attend the private hearing, I note that some parts of the hearing 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 Gale'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**  
**16 December 2022**