

[2023] PBPH 5

Application for a Public Hearing in the case of Mr Robert Anthony Moore

Outcome: The application for a public hearing has not been granted. However, if the victims wish, the Parole Board will explore whether it may be possible to support the victims 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. This is the test set out in the relevant legislation. The Parole Board will not direct release unless it is satisfied that it can be managed. Public protection is always the Parole Board's primary concern.
2. The Parole Board was established in 1967. Under its rules, hearings were required to be held in private. From 20 October 2020 to 1 December 2020 the Government held a public consultation on whether parole hearings should be heard in public in some limited circumstances (public consultation: [Root and branch review of the parole system - Public consultation on making some parole hearings open to victims of crime and the wider public \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/root-and-branch-review-of-the-parole-system-public-consultation-on-making-some-parole-hearings-open-to-victims-of-crime-and-the-wider-public)).
3. In February 2021 the Government decided that the blanket ban on public hearings was unnecessary, and that public hearings in appropriate circumstances would improve transparency and could help build confidence in the parole system (outcome of the consultation: [Root and branch review of the parole system \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/consultations/root-and-branch-review-of-the-parole-system)).



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4. At the time of publication, the then Minister of State for Justice, Lucy Frazer KC 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/government/guidance/parole-board-public-hearings)).
6. The definition in the Victims' Code of a victim is *'a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; a close relative (or a nominated family spokesperson) of a person whose death was directly caused by a criminal offence'*. A victim may also be someone who has opted into the Victim Contact Service which is run by the Probation Service. A victim, as well as the parties and members of the public, may ask for a public hearing. Before deciding whether the application meets the interest of justice test, the Chair asks for representations from the parties to the case – namely the Secretary of State and the prisoner, usually through their legal representative. The Chair will also ask the Secretary of State to find out the views of any victims involved with the case. The Secretary of State will usually seek the views of victims who are signed up to the Victim Contact Service. In some circumstances the Secretary of State may choose to seek the views of victims who have not opted into Victim Contact Service or are not eligible for the service for technical reasons. This is a matter for the Secretary of State. The Parole Board does not generally have direct contact with victims.
7. 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.

8. Each year the Parole Board is asked by the Ministry of Justice to review the risk of approximately 900 prisoners with a conviction for murder and approximately 900 prisoners with a conviction for rape. Each prisoner referred to the Parole Board has caused immense pain to the victims or their family and loved ones. The Parole Board tries as best it can to take this into account, but it must decide any referral according to the test set out in law.

Background to the case

9. In January 2004, Mr Moore received a life sentence for the murder of his younger brother. The life sentence had a minimum term of 11 years, 4 months and 22 days. Mr Moore's Tariff Expiry Date was 15 June 2015. Mr Moore has previous convictions including burglary and theft, possessing and supplying drugs, battery and harassment.
10. The most recent referral was considered by a Parole Board member on 17 March 2022 and the matter was referred to an oral hearing in October 2022 which was subsequently deferred. The new date of the deferred oral hearing has not yet been set. This will be Mr Moore's fourth review by the Parole Board.
11. At the time of the offence Mr Moore was 25 years old. Mr Moore is now 45 years old.

Details of the Application and Representations

12. On 16 February 2023, the Parole Board received an application from Mr Moore, via his representatives, for Mr Moore's oral hearing to be held in public. In summary, the reasons given for the application for a public hearing were:
 - a. Mr Moore is substantially post-tariff, given his sentence expiry date in 2015.
 - b. An oral hearing was arranged for 21 October 2022, but this was deferred to allow Mr Moore to complete ROTLs (release on temporary licence) given his transfer to an open prison. Mr Moore has since been returned to closed prison conditions. Mr Moore disputes the circumstances of this prison move and considers that he has been discriminated against.
 - c. Mr Moore is trying to secure release and considers a public hearing would be fairer.
 - d. Mr Moore believes he is no longer a risk to the public and there are no vulnerability issues.
 - e. Mr Moore's family are supportive and wish for him to be released.

- f. A public hearing is in the public interest having regard to the circumstances of the index offence, the support received from Mr Moore’s family and the difficulties he has had in progressing his sentence.
 - g. A public hearing would allow Mr Moore’s family to understand the reasons why Mr Moore has not yet been released and to be fully aware of all issues relevant to his suitability for release.
13. On 24 February 2023 the Parole Board asked for representations from the other party to the case, the Secretary of State for Justice. An extension request made on behalf of the Secretary of State was granted until 17 March 2023.
14. In summary, the representations made on behalf of the Secretary of State (dated 17 March 2023) were:
- a. The Secretary of State remains neutral with regard to this application.
 - b. Increased transparency is vital to building public confidence in the parole system, particularly for the most serious offenders.
 - c. No objections have been raised in respect of a public hearing by the victims engaged in the Victim Contact Scheme.
 - d. None of the Prison and Probation staff involved in the management of Mr Moore have raised any concerns regarding the application. However, it is noted that Mr Moore has indicated that he has made the application as he wants his previous Prison Offender Manager to be held accountable for the reasons that Mr Moore has been returned to close conditions. The Secretary of State questions whether this is sufficient justification for the hearing to be held in public.
15. A date for the deferred oral hearing has not yet been set and therefore a Panel Chair has not yet been appointed.

Reasons for the Decision

16. I have considered all the information in the application and the representations. I have also taken account of the Parole Board’s *Guidance on the Criteria for Public Hearings*.
17. 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. However, where there are good reasons to depart from the general rule, adjustment can be made to ensure that a public hearing is fair.

18. 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.
19. 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.
20. 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.
21. 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.
22. The victims in this case have my deepest sympathies.
23. I note the high bar that has been set for a public hearing to be in the interests of justice and I have decided that this high bar is not met in this case. My reasons are as follows:
 - a. Although this case of murder is 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. A reason for Mr Moore's application for a public hearing appears to be that he believes that a public hearing would enable greater fairness to him. Whether a hearing is in public or not should make no difference to the outcome of that hearing.
 - c. The interests of justice are not necessarily met simply because any given party wishes to ventilate issues in public. This needs to be balanced with the other public interest factors in favour of privacy and the fact that the bar is set at a high level.
 - d. A summary should provide sufficient information to both the victims and the public about the reasons for the decision made at Mr Moore's oral hearing. This would satisfy the requirements of transparency. If there are issues which Mr Moore considers should be covered in more detail in a summary he can identify those and make that request.

24. I therefore do not grant the application for the hearing to be held in public.
25. Mr Moore's representations indicates that his family, who are also the victims in this case, may wish to observe the hearing. Should this be of interest to the victims, the Parole Board is willing to explore the feasibility of supporting the victims to observe the private hearing subject to conditions and proper support being in place. The victims are invited to contact the Parole Board to discuss the potential arrangements and support that may be needed by emailing CEO@paroleboard.gov.uk
26. 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.
27. If the victims do wish to attend and permission is granted by the Panel Chair for any of the victims to observe the private hearing, I note that some parts of the hearing may need to take place without the presence of the victim or victims. 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 or victims and is best placed to make the decisions on how these powers should be used in Mr Moore's case should the Panel Chair grant permission.
28. If permission is sought and granted, the Panel Chair may also need to hold a preliminary hearing to deal with any practical matters associated with this hearing.
29. 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

25 April 2023