

[2023] PBPH 6

## Application for a Public Hearing in the case of Mr Kieran Carter-Marsh

**Preliminary matters:** Mr Kieran Carter-Marsh was sentenced as Colin Marsh. His given name was legally changed to Kieran during the course of this sentence and he has also legally adopted the family name of Carter-Marsh. Throughout this determination, I shall use the prisoner's legal name, Mr Kieran Carter-Marsh.

**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 private 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://publishing.service.gov.uk)).
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)).
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 August 2007, following a guilty plea, Mr Carter-Marsh received an indeterminate sentence of imprisonment for public protection following his conviction for sexual offences against male and female children. The sentence imposed had a tariff of 4 years less time served. This tariff expired in 2011.
10. Mr Carter-Marsh was transferred to open conditions in 2017 but was returned to closed conditions later that year. He returned to open conditions in November 2019.
11. The most recent referral was considered by a member of the Parole Board on 13 May 2021 and the matter was referred to an oral hearing. The oral hearing took place on 11 February 2022 but was adjourned to 8 July 2022 for the panel to receive further information. That panel did not receive the directed information in time for the deferred hearing. The oral hearing has now been listed for 16 May 2023. This will be Mr Carter-Marsh's 8<sup>th</sup> review by the Parole Board.
12. During the time that the offences were committed, Mr Carter-Marsh was between 16 and 25 years old. Mr Carter-Marsh is now 41 years old.

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

13. On 21 February 2023, the Parole Board received an application for Mr Carter-Marsh's oral hearing to be held in public. In summary, the reasons given for the application for a public hearing were:
  - a. To explain the impact of Mr Carter-Marsh's crimes and why he should not be released.

- b. To hear what Mr Carter-Marsh has to say and for the panel to understand the emotional impact.
  - c. Attending the hearing would be personally beneficial to the applicant.
14. On 10 March 2023 the Parole Board asked for representations from the parties to the case, namely Mr Carter-Marsh and the Secretary of State for Justice. An extension request made on behalf of the Secretary of State was granted until 31 March 2023.
15. Despite contact being made with Mr Carter-Marsh's representatives on several occasions, to date a response has not been received.
16. In summary, the representations made on behalf of the Secretary of State (dated 31 March 2023) were:
  - a. The Secretary of State supports the application for a public hearing, provided that no victims object.
  - b. Increased transparency is vital to building public confidence in the parole system, particularly for the most serious offenders.
  - c. Although some victims support a public hearing, it has not been possible to contact all victims and efforts remain ongoing in this regard.
  - d. The Secretary of State notes the benefits that a public hearing might bring, as set out in the application.
  - e. There are private matters with respect to Mr Carter-Marsh which may confer legal obligations on the Parole Board in this case that will need to be considered.
  - f. A public hearing could inhibit Mr Carter-Marsh in giving some elements of his evidence given the nature of this evidence.
  - g. If a public hearing is granted, officials will organise the necessary support for Mr Carter-Marsh. Support will also be put in place for the victims.
17. I have also consulted with the Panel Chair as the Panel Chair is most familiar with the details of the case and therefore 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.
18. The Panel Chair has made some observations including:
  - a. It is imperative that all victims are contacted if the case were to be in public.
  - b. A public hearing has the potential for further retraumatising victims.
  - c. The Panel will need to deal with Mr Carter-Marsh's sexual interests in children and a public hearing may impede him giving best evidence.
  - d. A public hearing could increase the risk to Mr Carter-Marsh.
  - e. With respect to Mr Carter-Marsh, there are private matters which it would be difficult to deal with in a public hearing.
  - f. There do not appear to be any exceptional features in this case.



g. A public hearing should not be granted without the knowledge of all victims.

## Reasons for the Decision

19. 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*.
20. 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.
21. 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.
22. 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.
23. 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.
24. 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.
25. The victims in this case have my deepest sympathies.
26. 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 sexual offending 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. Although efforts have been made, not all victims have been contacted and therefore their views on a public hearing are unknown. There could be a risk that a public hearing would lead to further re-traumatisation and the identification of victims.
- c. The quality of Mr Carter-Marsh's evidence may be impaired if the hearing were to be in public.
- d. There are private matters in this case pertaining to Mr Carter-Marsh. It is difficult to discuss them in further detail without inadvertently breaching that privacy. It would be also difficult to maintain this privacy were the hearing to be in public.
- e. Any benefits to the victims from attending the hearing can be achieved in alternate ways, as covered below.
- f. A summary should provide sufficient information to both the victims and the public about the reasons for the decision made at Mr Carter-Marsh's oral hearing. This would satisfy the requirements of transparency.

27. I therefore do not grant the application for the hearing to be held in public.
28. The Parole Board is willing to explore the feasibility of supporting the victims to observe the private parole hearing subject to conditions and proper support being in place. The victims are invited to contact the Parole Board to discuss the potential arrangements and support that may be needed by emailing [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 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 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 victims and is best placed to make the decisions on how these powers should be used in Mr Carter-Marsh'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**  
**3 May 2023**

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