

[2023] PBPH 9

## Application for a Public Hearing in the case of Mr Nicholas Dean Bidar

**Outcome:** The application for a public hearing has been granted.

### 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://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/government/consultations/root-and-branch-review-of-the-parole-system)).
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*



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*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-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. Mr Bidar has been held in custody since December 2008. When aged 21, Mr Bidar was sentenced on 3 July 2009 to imprisonment for public protection for two counts of robbery and making use of a firearm to resist arrest. For further robbery offences Mr Bidar was given concurrent sentences. Mr Bidar was given a minimum tariff of 8 years which expired on 3 July 2017.
10. On 8 August 2012, Mr Bidar was sentenced to a total of 44 months for assaults on prison officers and other offences which post date the index offences. Mr Bidar was tried at Cambridge Crown Court but escaped custody. Whilst at large he committed further offences.
11. Mr Bidar was returned to custody and he remains in closed conditions. He is currently a high escape risk Category A prisoner.
12. The current referral is Mr Bidar's third referral to the Parole Board. The referral was considered by a member of the Parole Board on 21 November 2022 and the matter was referred to an oral hearing. A date for the oral hearing has not yet been set.
13. Mr Bidar is 35 years old.

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

14. On 17 March 2023, the Parole Board received an application from Mr Bidar's representatives for Mr Bidar's oral hearing to be held in public. In summary, the reasons given for the application for a public hearing were:
  - a. There are a number of special features which properly set this case apart from other IPP and parole cases.
  - b. In 2019, a two panel hearing of the Parole Board could not reach a unanimous conclusion and so directed that the matter should be heard by a three member panel to include a judicial and a specialist member. A further oral hearing took place in 2020 which did not direct release or recommend open conditions, however, this panel did not include a judicial and specialist member and the decision was also flawed in other ways. A successful reconsideration application was submitted by Mr Bidar. A new panel considered the matter in June 2021. This panel, which included a judicial and

a specialist member, recommended a move to open conditions. In October 2021, the Secretary of State rejected this recommendation.

- c. Mr Bidar is in a cohort of prisoners who can only be progressed by the Secretary of State given that the Board cannot advise on prison category. Mr Bidar's Category A status impacts on his ability to be released – an impasse created by the Secretary of State.
- d. Mr Bidar is a political prisoner given the lack of political will to progress him. This makes Mr Bidar feel hopeless.
- e. Mr Bidar is concerned that the Secretary of State is interfering with the independence of the Parole Board. Examples cited include *Wakenshaw v SSJ*, *Bailey v SSJ*, comments made by the previous Secretary of State and a proposal to have law enforcement officers on panels.
- f. It is unique that a prisoner who is assessed as having completed all core risk reduction work has not been able to progress.
- g. Mr Bidar has proceedings against the Secretary of State regarding his Category A status and his risk of escape. Mr Bidar disputes whether he was trying to escape from prison in February 2019.
- h. Mr Bidar feels trapped. He is losing hope. He believes the history of his plight needs to be made public to ensure a fair review. Mr Bidar's risk of serious harm to himself has increased.
- i. Mr Bidar does not foresee any undue stress from a public hearing.
- j. The risk in Mr Bidar's case arises from hopelessness as a result of his custodial status. Mr Bidar has no meaningful sentence plan as all core risk reduction work is complete. There is a evidence that suggests maintaining Mr Bidar as a Category A prisoner negatively impacts on his future risk.
- k. A public hearing would allow a better understanding of the parole system for Category A prisoners.
- l. The Secretary of State rejected recommendations by the Justice Select Committee that all IPPs be resentenced and instead will produce an IPP action plan. A public hearing would examine the effectiveness of that action plan in Mr Bidar's case.
- m. The data has not yet been released, however, serious further offending and abscond rates for open conditions are anticipated to be low. Mr Bidar's risk of serious recidivism assessment suggests just a 4.15% chance.
- n. Confidence in the parole system could be increased and this has been impacted by the unlawful actions of the Secretary of State.
- o. Mr Bidar would welcome appropriate parts of the hearing being in closed as has been done in previous public hearings.

15. On 17 March 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 28 April 2023.

16. In summary, the representations made on behalf of the Secretary of State (dated 25 April 2023) were:
  - a. The Secretary of State is neutral in regard to the application for a public hearing.
  - b. Increased transparency is vital to building public confidence in the parole system, particularly for the most serious offenders.
  - c. The Secretary of State notes that no objections to a public hearing have been raised by the victims engaged in the Victim Contact Scheme.
  - d. No concerns have been raised by either probation or prison service professionals regarding the application.
  
17. I have not consulted with the Panel Chair as the case has not yet been listed and therefore a Panel Chair has not yet been appointed.

### **Reasons for the Decision**

18. 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*.
  
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. However, where there are good reasons to depart from the general rule, adjustment can be made to ensure that a public hearing is fair.
  
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. The victims in this case have my deepest sympathies.
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 this high bar is met in this case. My reasons are as follows:
  - a. There are special features of this case which, taken together, set it apart from many referrals to the Parole Board. These features include: Mr Bidar's relative youth when sentenced to an IPP; the length of time served since Mr Bidar's tariff expiry date; Mr Bidar still remains a high risk of escape Category A prisoner; that Mr Bidar remains in the closed estate following a recommendation in June 2021 by the Parole Board that he be moved to open conditions; and Mr Bidar's purported hopelessness at how to progress given that he believes that he has completed all core risk reduction work.
  - b. There is a current public and political discourse regarding the IPP sentence including a recent report by the Justice Select Committee entitled IPP Sentences (published on 28 September 2022) and the Government's Response to that report (published on 1 February 2023). There is therefore a legitimate interest in the public being able to see how the Parole Board determines IPP cases.
  - c. No objections to a public hearing have been raised by the victims engaged in the Victims Contact Scheme.
  - d. No concerns about a public hearing have been raised by any of the professionals involved in the management of Mr Bidar.
  - e. Where appropriate, parts of the hearing can be held in private. This will be a matter for the Panel Chair to determine.
  - f. Mr Bidar believes that a public hearing would be beneficial to him.
26. I therefore grant the application for the hearing to be held in public.
27. 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 May 2023**

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