

**Application for a Public Hearing in the case of  
Mr Paul Ross Asbury**

**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://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/government/publications/parole-board-guidance-on-the-criteria-for-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 Asbury was aged 20 when he was convicted of murder and attempted murder. Mr Asbury received a life sentence on 10 November 2004 with a tariff of 20 years less time spent on remand. Mr Asbury's tariff expires on 10 June 2023.
10. The circumstances of Mr Asbury's crimes were that shots were fired at two victims in the street. Both victims were hit. The female victim died of her injuries. The male victim survived. The sentencing judge recorded that Mr Asbury was not convicted on the basis that he pulled the trigger himself but on the basis that he had orchestrated the event.
11. Mr Asbury's case was previously referred to the Parole Board as a pre-tariff case to determine his suitability for transfer to open conditions. The Parole Board could not consider any question of release at that time as he had not served his full tariff. The question about open conditions was considered at an oral hearing held on 4 June 2020. Following that hearing, the panel recommended to the Secretary of State that he be transferred to open conditions. That recommendation was later accepted by the Secretary of State.
12. The current referral was first considered by a member of the Parole Board on 26 January 2023 and the matter was directed to an oral hearing, to consider the evidence before making a final decision. The matter has not yet been listed for an oral hearing.
13. Mr Asbury is now 39 years old.

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

14. The Parole Board received an application for Mr Asbury's oral hearing to be held in public on 24 March 2023, however, the application is dated 26 February 2023. In summary, the reasons given for the application for a public hearing were:
- a. A Public Inquest is ongoing and matter has not yet been resolved. The Applicant notes that the Inquest engages Article 2 of the European Convention of Human Rights.
  - b. The investigation into the murder has not been concluded as some associates of Mr Asbury who may also bear responsibility are still in the community, and this is preventing justice.
  - c. Mr Asbury has shown no remorse and is not assisting the Public Inquest.
  - d. There has been no restorative justice programme which would allow the victims to confront Mr Asbury and to explain the impact of his crimes on them.
  - e. Mr Asbury was the main instigator of the crime.
  - f. Mr Asbury has shown no remorse for his crimes. He has contributed to preventing justice and not allowing closure for the victims.
15. On 24 March 2023 the Parole Board asked for representations from the parties to the case, namely the Secretary of State for Justice and Mr Asbury. 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 supports the application for a public hearing, provided that no other victims object.
  - b. Increased transparency is vital to building public confidence in the parole system, particularly for the most serious offenders.
  - c. The relevant Victim Liaison Officers have been consulted. Not all victims have been able to be contacted and efforts to do so are ongoing.
  - d. Should a public hearing be granted, the victims will be provided with appropriate support.
  - e. Mr Asbury's Prison Offender Manager and Community Offender Manager have concerns that increased media attention may compromise Mr Asbury's resettlement plan and place him at risk when completing work and Releases on Temporary Licence (ROTLs) outside of the prison establishment given his former lifestyle. The Secretary of State does not submit that this provides sufficient reason to oppose the application; the Parole Board has means to meet these concerns.
17. In summary, the representations made on behalf of Mr Asbury (dated 27 April 2023) were:
- a. Mr Asbury does not support the application for a public hearing.
  - b. The high bar for a public hearing to be in the interests of justice is not met in this case.



- c. The fact that a Public Inquest has resumed does not mean that the hearing should be in public. These are separate legal proceedings with a different focus, purpose and procedural rules.
- d. Mr Asbury has provided a full account of the offence and has accepted responsibility for his actions. It is accepted that other perpetrators involved in the offence remain unconvicted but it does not follow that Mr Asbury's hearing should be in public. The purpose of a hearing is to assess Mr Asbury's risk, not to identify others involved in the offence. A public parole hearing would not provide the conclusions sought by the applicant.
- e. The appropriate public forum is currently being utilised, the Public Inquest process. It is not within the remit of the Parole Board to conduct a wider investigation into this offence.
- f. Mr Asbury does not wish to be involved in the Public Inquest but he may be summoned to attend. Mr Asbury has a real fear of reprisals. His wishes are not due to a lack of remorse. Mr Asbury does not wish to cause further distress. He regrets his actions.
- g. A public hearing will not assist the process of risk assessment in that it could inhibit free discussion of important issues. There is a real risk that witnesses, including Mr Asbury, will not be able to give their best evidence. This could compromise the Parole Board's ability to fulfil its core function.
- h. The applicant has received a redacted copy of the previous panel's decision letter from Mr Asbury's pre-tariff expiry review. The applicant is therefore aware of the evidence considered in the previous review. The applicant has rights to seek information relating to the current review which are not dependent upon the hearing being held in public.
- i. Failures to pursue restorative interventions are not a reason to hold a public hearing. In any event Mr Asbury has not refused to meet the victims nor engage with restorative programmes. A public parole hearing is not the right forum for the applicant to confront Mr Asbury.
- j. The normal position is that parole hearings are in private so that witnesses can give their best evidence.
- k. Mr Asbury is remorseful and wishes to accommodate the victims in the parole process. However, a public hearing would adversely impact on his safety, privacy and the conduct of the review.
- l. A public hearing could impact on the fairness of the hearing.
- m. There are no special features of this case that set aside from others.
- n. The interests of the public must be proportionate to any risks to the prisoner and the interests of justice.
- o. Mr Asbury has significant and legitimate concerns about his safety.
- p. Mr Asbury has concerns regarding the privacy of his family.
- q. A public hearing would increase media attention which could cause his family distress and undermine his rehabilitation.

- r. Such a significant portion of evidence would need to be heard in private that there would be little benefit in a public hearing as it would not aid understanding of the decision in this case.
- s. A decision to hold the hearing in public could engage Mr Asbury's rights under the European Convention of Human Rights including Article 2 (right to life) and Article 8 (respect for privacy).
- t. A detailed summary would provide sufficient information. The victim is updated by the Victim Liaison scheme.
- u. The benefits to the victim of attending the hearing could be achieved by alternate ways such as observing a private hearing. Mr Asbury would have no outright objection to this but would wish to make representations in relation to the management of the hearing as significant parts of the hearing would need to be heard in private.

18. 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**

- 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 murder and attempted 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. Given Mr Asbury's former lifestyle and that the Panel may hear evidence relating to the roles of others who have not been convicted, much of the hearing may be taken up with evidence which would not be appropriate to be heard in public. As set out in paragraph 20 above and in the Parole Board's *Guidance for Applications for Public Hearings*, there should be good reasons to justify a departure from the general rule that parole hearings should remain in private. In circumstances where evidence which is likely to be key to the Panel's decision cannot be heard in public, it is difficult to see how a public hearing would aid transparency or public understanding of the parole system or the decision in this case.
  - c. Given the issues in this case, if the hearing were to be in public, there is a risk that witnesses, including Mr Asbury, would not be able to give their best evidence. This could impact on the effectiveness of the hearing.
  - d. I note the ongoing Public Inquest, however, it does not follow that because the Inquest is being held in public that Mr Asbury's parole hearing should also be in public. These are separate legal proceedings with different purposes and procedural rules. For example, the Parole Board will not be considering whether any part of the state has discharged any duty owed under Article 2.
  - e. It appears that it is accepted that others were involved in the offences and remain unconvicted. I do understand that this causes immense distress to the victims, however, the purpose of a parole hearing is to assess Mr Asbury's risk and not to identify others who might have been involved. It is also not the appropriate forum for confronting Mr Asbury, notwithstanding the very





real pain caused by his offences. A public hearing would therefore be unlikely to provide the applicant with the remedy being sought.

- f. The Victim Liaison Officers have not been able to contact all victims. The views of all victims weigh very heavily with me. I bear in mind the possibility that there are victims who have not been contacted who may not wish for the hearing to be in public, or who may be hurt and distressed if the hearing is held in public.
- g. Both the Prisoner Offender Manager and the Community Offender Manager have concerns that increased media attention may compromise Mr Asbury's resettlement plan and place him at risk when completing work and Releases on Temporary Licence (ROTLs) outside of the prison establishment given his former lifestyle.
- h. If any of the victims believe that their attendance at the hearing would be beneficial to them, by observing the arole process and understanding how it applies to this case, this benefit can be achieved in alternate ways by allowing these victims to observe the private hearing, as covered below in more detail.
- i. A detailed summary would, as in all other cases heard by the Board, provide sufficient information to the public for the reason for the decision made at Mr Asbury's oral hearing. This would satisfy the requirements of transparency without prejudicing the effectiveness of the hearing.

27. I therefore do not grant the application for the hearing to be held in public.

28. In Mr Asbury's representations, it is said that the decision to hold a hearing in public could impact upon Mr Asbury's rights under a number of Articles of the European Convention of Human Rights – namely Article 2 (the right to life) and Article 8 (the right to privacy). The Human Rights Act 1998 accordingly applies to this decision.

29. With respect to Mr Asbury's Article 2 rights, I have been given no evidence to support the proposition of a potential threat to Mr Asbury's life. It is therefore not accepted that Mr Asbury's Article 2 rights are engaged.

30. With respect to Article 8, it is accepted that this Article is engaged in that the prisoner has a private life. However, Article 8 does not guarantee an absolute right to privacy and a person's privacy can be interfered with if this is lawful and proportionate. The statute confers an explicit power on me to decide that a Parole Board hearing can be held in public, and so to do so would undoubtedly be lawful. In this case I have found that it is not proportionate, but in others it could be, having regard to the principles of open justice and other factors in the round.

31. 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)

32. 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.
33. 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 observers. The Panel Chair has extensive case management powers to enable the relevant parts of the evidence to be taken without the presence of the observers and is best placed to make the decisions on how these powers should be used in Mr Asbury's case should the Panel Chair grant permission.
34. 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.
35. 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**

**26 May 2023**