

[2023] PBPB 11

## Application for a Public Hearing in the case of Mr Stephen Alan Wynne

**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)).
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.

- 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

- Mr Wynne was aged 28 when, in 2006, upon his guilty pleas, he received a mandatory life sentence of imprisonment for murder and a sentence of imprisonment for public protection for an offence of arson being reckless as to whether life is endangered. The minimum term in relation to the murder was set at 21 years, reduced to 18 years on appeal, less time spent on remand in custody. The minimum term in relation to the arson was set at three years less time spent on remand. Mr Wynne's tariff expiry date is 27 July 2023.
- This is Mr Wynne's second review by the Parole Board. Mr Wynne's first review was a pre-tariff review held on 8 February 2022. That panel recommended a progressive move for Mr Wynne to open conditions, however, this recommendation was rejected by the Secretary of State on 5 April 2022. The Secretary of State's decision was challenged by Mr Wynne in the High Court and the decision to reject that panel's recommendation was held by the High Court to be outside of the range of reasonable decisions open to the decision-maker. The Secretary of State will therefore need to reconsider the matter.
- The current referral was first considered by a member of the Parole Board on 24 February 2023 and the matter was directed to an oral hearing, to consider the evidence before making a final decision. The matter has been listed for an oral hearing on 8 August 2023.
- Mr Wynne is now 46 years old.

## Details of the Application and Representations


- The Parole Board received an application for Mr Wynne's oral hearing to be held in public on 16 May 2023. In summary, the reasons given for the application for a public hearing were:

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- a. A public hearing would be in the public interest as the case remains high profile.
  - b. A public hearing would allow the applicant and others insight into how the Parole Board operates.
14. On 18 May 2023, the Parole Board asked for representations from the parties to the case, namely the Secretary of State for Justice and Mr Wynne. An extension request made on behalf of the Secretary of State was granted until 9 June 2023.
15. In summary, the representations made on behalf of the Secretary of State (dated 6 June 2023) were:
  - a. The Secretary of State supports 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. Should a public hearing be granted, the applicant would be provided with appropriate support.
  - d. Mr Wynne’s Prison Offender Manager, Community Offender Manager and Psychologist have concerns that a public hearing may compromise Mr Wynne’s risk management plan and place him at risk of harm from others. 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 including appropriate parts of the hearing being held in private.
16. In summary, the representations made on behalf of Mr Wynne (dated 8 June 2023) were:
  - a. Mr Wynne does not support the application for a public hearing.
  - b. Mr Wynne has completed core risk reduction work and is of good behaviour in custody. A public hearing will be a setback.
  - c. A public hearing will affect the quality of the evidence. Mr Wynne would not be able to be as open and honest with the panel.
  - d. Given the nature of Mr Wynne’s offences, a public hearing could put him at risk of harm, either within the prison estate or in the community, and affect his ability to progress.
  - e. Threats have already been made to Mr Wynne and his family and further threats may be made. A public hearing would increase the risk.
  - f. The victims will receive a summary of the reasons for the decision and can read a Victim Statement. This should satisfy the requirement for transparency without prejudicing the effectiveness and fairness of the oral hearing.
  - g. A public hearing would cause undue distress and affect Mr Wynne’s ability to resettle in the community. It would also prevent best evidence being given which will impact on the panel’s ability to assess risk.
  - h. The evidence in this case will relate to highly personal matters including Mr Wynne’s health, his past and the circumstances of the offence which could be



distressing for the victims and others. No good reasons have been given to depart from the general rule that Parole hearings are held in private.

17. I have also consulted with the Panel Chair as the Panel Chair is most familiar with the details of the case and therefore is best placed to assess: (i) if a public hearing would cause a victim or the prisoner undue distress or prevent best evidence being given by witnesses; (ii) if it could adversely affect a prisoner's ability to safely resettle in the community; or (iii) if it could compromise the panel's ability to assess risk.

18. The Panel Chair made some observations including:

- a. There could be some benefits to a public hearing but on balance the Panel Chair does not support a public hearing.
- b. If the hearing were in public, it may impact on Mr Wynne's ability to fully participate in the hearing. It could also impact on the flow of the hearing as parts of the hearing would need to be in private.
- c. Given the history of media coverage and the previous rejection of a recommendation for open conditions, Mr Wynne may be already more concerned than usual about the oral hearing.
- d. If the hearing were in public, any release and risk management plan would need to be discussed in private with each witness, including Mr Wynne.
- e. A summary of the panel's decision can be provided to the victims and the media.

## 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 hearing. 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 arson 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. If the hearing were to be in public, Mr Wynne may not be able to give his best evidence. This could impact on the effectiveness of the hearing.
  - c. Significant portions of the evidence would need to be heard 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.
  - d. Mr Wynne's Prisoner Offender Manager, Community Offender Manager and Psychologist all have concerns that a public hearing could compromise any release and risk management plan and may place Mr Wynne at risk of harm.
  - e. If any of the victims believe that their attendance at the hearing would be beneficial to them, by observing the parole 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.
  - f. 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 Wynne'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. 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 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 Wynne'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**

**6 July 2023**