

[2023] PBPH 12

Application for a Public Hearing in the case of Mr Gareth Matthews

Outcome: The application for a public hearing has not been granted. However, if the victim's mother wishes, the Parole Board will explore whether it may be possible to support her 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.

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. Gareth Matthews is now aged 42. He was convicted of 26 sexual offences which included: Rape of a Male Child Under 13; Assault of a Male Child Under 13 by Digital Penetration; Making and Taking Indecent Photographs of Children; Possession of an Extreme Pornographic Image and Possession of Indecent Images. As a result, he is currently serving a sentence of imprisonment for public protection (IPP) that was imposed on 13 August 2010 in respect of the 2 counts of rape of a child/assault by penetration, and indecent image offences. The minimum term of imprisonment was set at 7 years with a tariff expiry date of 4 May 2017.
10. Gareth Matthews was released on 1 March 2019, recalled on 19 August 2022 and returned to custody on 24 August 2022. This followed concerns in respect of allegations that he had communicated with strangers on online forums leading to concerns about the risks he poses when in the community.
11. The Secretary of State referred Mr Matthews' case to the Parole Board on 16 September 2022. This is the first review since his recall.
12. A Parole Board member considered the case on the papers and directed this matter to oral hearing on 29 December 2022. That hearing has now been fixed for 24 August 2023.

Details of the Application and Representations

13. The Parole Board has received an application dated 28 June 2023 for Mr Matthews' oral hearing to be held in public. It follows that the application was made 8 weeks before the scheduled hearing on the 24 August 2023. I grant an extension of time.
14. In summary, the reasons given for the application for a public hearing were:

- a. So that the Applicant can be part of the process and have a deeper understanding of the process and have a deeper understanding of the action that will have an immediate effect on the future of the victims;
 - b. A public hearing would allow the Applicant and others insight into how the Parole Board operates;
 - c. Mr Matthews was previously released a few years ago and was recalled for breaking license conditions and restrictions that were imposed upon him;
 - d. The impacts of Mr Matthews offending has had a long lasting effect; and
 - e. Victims would benefit from having this case held in public to mitigate against the delays and stress caused in the current system whereby third hand information is sent out days or weeks after the oral hearing.
15. In a response dated 21 July 2023 the Secretary of State acknowledged that a public hearing may result in the identification of the victim who remains under the age of 16 at this time.
16. The Secretary of State indicated that he was sympathetic to the arguments put forward by the Applicant.
17. However, it is noted that it is essential that the victim's interests and wishes are given proper weight. It is suggested that the Parole Board seeks advice from an appropriate body in the determination of whether having a public hearing is in the best interests of the victim, a child. It is indicated that in the absence of evidence that the victim's best interests have at this stage been given sufficient weight in this application, it would be premature for the Secretary of State to provide representations.
18. In summary, the representations made on behalf of Mr Matthews were:
- a. The application was out of time as it was made less than 12 weeks before the date of the hearing. There are no exceptional circumstances here to justify a departure from the guidelines.
 - b. There is no wider public interest in the hearing being held in public. Such understanding can be achieved by the disclosure of a summary.
 - c. To the extent that a public hearing would provide a deeper understanding of the parole process and decision making, this is outweighed by the detrimental impact of a hearing held in public.
 - d. Mr Matthews is unable to provide his best evidence in a public setting. He will suffer stress and anxiety beyond that which he will experience in a private setting.
 - e. Sensitive issues pertaining to the risk of sexual harm will be discussed in detail with Mr Matthews and he will be less able to engage in open discussion of such sensitive matters in a public hearing.
 - f. Victims can be involved in the process in submitting personal impact statements which can be included in the dossier.

- g. Examination of the evidence at the oral hearing will involve an in depth exploration of risk and its manageability. The sensitive nature of the risk factors may lead to emotional stress for the victim.
 - h. A strict timetable applies to the issue of decisions.
19. 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:
- a. If it would be possible to conduct a public hearing without the identity of the victim becoming easy to identify;
 - b. If a public hearing would cause a victim undue distress; or
 - c. If a public hearing might prevent best evidence being given by Mr Matthews and, as a result, it might compromise the Panel's ability to evaluate risk.
20. The Panel Chair has made some observations including:
- a. The direct victim is a child and would be easily identifiable from a public hearing. It would not be realistically possible to mitigate the risks of exposing his identity by keeping some parts of the hearing private.
 - b. There is a real risk of a public hearing impeding the prisoner's ability to give frank evidence which is essential in this case particularly because the panel needs to consider whether recall is appropriate.
 - c. There is nothing in particular about this case which will increase public understanding of the parole process so as to justify a public hearing.

Reasons for the Decision

21. 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*.
22. 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 and may be distressing to victims. There must therefore be good reasons to depart from the general rule.
23. 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.
24. 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.

25. 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.
26. 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.
27. Even though this application was well out of time, I have considered it on its merits.
28. 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. The victim in this case is entitled to lifelong protection of the provisions of the Sexual Offences (Amendment) Act 1992. Accordingly during the victim's lifetime no matter may be included in any publication if it is likely to lead members of the public to identify the victim. This must not be compromised. Whilst there is no evidence as to whether a public hearing would or would not be in the best interests of the child, the protection of a victim's anonymity MUST not be jeopardised by a Parole Board hearing.
 - b. I accept the Panel Chair's view that it is wholly unrealistic for part of the hearing to be in private and part in public where the focus will be on core risk of further sexual offending. 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.
 - c. Furthermore, in any event, If the hearing were to be in public, Mr Matthews may not be able to give his best evidence on highly sensitive issues. This could impact on the effectiveness of the hearing.

d. Although the rape of a child is both a very grave offence and extremely distressing, there are no special features of this particular case which otherwise set it apart from other cases and which may therefore add to the proper public understanding of the parole system. I must weigh the gravity of the offending against all of the other factors.

e. If the Applicant, or any person coming within the definition of victim in the Victim's Code, 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 alternative ways by allowing these victims to observe the private hearing, as covered below in more detail.

f. A detailed summary will, as in all other cases heard by the Board, provide sufficient information to the public for the reason for the decision made at Mr Matthews' oral hearing. This will satisfy the requirements of transparency without prejudicing the effectiveness of the hearing.

29. It follows that whereas I have deep sympathy for the victim and the victim's family, I do not grant the application for the hearing to be held in public.
30. 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 as soon as possible to discuss the potential arrangements and support that may be needed by emailing CEO@paroleboard.gov.uk
31. 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.
32. 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 Matthews's case should the Panel Chair grant permission.
33. 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.

34. This matter will only revert back to me if there is any fresh information which represents a significant change in the relevant circumstances.

HH Peter Rook KC
Vice Chair of the Parole Board for England and Wales
7th August 2023