

Guidance on Allegations

September 2023 (v2.0)

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1.0	March 2019	Guidance and support for members on consideration of allegations made against a prisoner.
1.1	July 2021	Paragraphs 15, 18, 20 and 24 amended to reflect judgments in the cases of Morris ([2020] EWHC 711 (Admin)) and Pearce ([2020] EWHC 3437 (Admin))
2.0	September 2023	The guidance has been redrafted, particularly to reflect the judgment in the case of <i>Pearce [2023] UKSC 13</i> on appeal from <i>[2022] EWCA Civ 4</i>

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Introduction

1.1 This guidance sets out:

- The key principles Parole Board panels¹ ('the panel') must follow when considering an allegation that has been made against a prisoner and the allegation (in whole or in part) is disputed;
- The forms allegations may take and their sources;
- How to determine whether an allegation is potentially relevant and what to do when:
 - the allegation does not appear to be relevant to the parole review; or
 - when a potentially relevant allegation may be disregarded;
- Making and assessing a finding of fact in relation to an allegation ([section 6](#));
- What the panel should consider and what is in their remit when the panel cannot make a finding of fact about an allegation ([section 7](#));
- Specific advice on criminal charges and court proceedings ([section 8](#)); and
- What needs to be covered in the panel's reasons ([section 9](#)).

1.2 For the purposes of this guidance, the term 'allegation' refers to conduct alleged to have occurred which has not been determined or proven following a legal process, such as a civil or criminal court hearing or a prison adjudication, which is relevant to the assessment of risk. This guidance refers to both the central aspect of an allegation and the constituent aspects (see paragraph [1.3 below](#)) of an allegation. Examples of forms of allegations can be found at paragraph [3.1](#).

1.3 An allegation may have a number of constituent parts, each of which may be considered as a separate discrete allegation by panels. For example, an allegation that a prisoner hit another person may include an allegation the prisoner was at a specific location, an allegation the prisoner was there at a certain time, an allegation that they were intoxicated, an allegation that another person was also present at the same time and place, an allegation that they were involved in an altercation, as well as the allegation that they hit another person (whether in self-defence or otherwise).

1.4 Accordingly, panels should consider not only the allegation as a whole (e.g. whether the prisoner hit another person) but also the constituent aspects of an allegation (e.g. whether the prisoner was at a specific location, at a specific time, with other people, was intoxicated, and was involved in an altercation).

1.5 This guidance applies whenever a panel is considering allegations as part of their assessment of risk. Allegations may arise at various stages of the review, including post-release, for example, as part of a request to vary a licence condition or when considering whether an Imprisonment for Public

¹ Parole Board panels include one or more members at MCA, oral hearing and when constituting a panel for the purposes of making a decision on the papers in accordance with rule 21 Board Rules 2019 (as amended). Please refer to [rule 2 and rule 5 of the Parole Board Rules 2019 \(as amended\)](#) for more information.

Protection (IPP) licence should be terminated. Accordingly, for the purposes of this guidance, the term 'parole review' encompasses the various stages at which a Parole Board panel may need to consider an allegation.

Key Principles

- 2.1 In the case of *Pearce*² the Supreme Court set out principles that must be followed by the Board when considering allegations. These principles have been embedded in this guidance. The summary of the Supreme Court's conclusions (as set out at paragraph 87 of the judgment) can be found at [Annex 1](#).
- 2.2 Panels must make objective decisions that are based on:
- All of the information³ provided to them⁴;
 - Information obtained as a result of the panel's inquiries (recognising that panels have a responsibility to make reasonable inquiries);
 - Such facts that are undisputed by the parties;
 - Relevant allegations which are disputed but, in respect of which, the panel has made a finding of fact ([see section 6](#)); and
 - Relevant allegations where the panel has not been able to make a finding of fact, but consider that there is a serious possibility that the allegation may be true and, as such, decide to give it enough weight as they think is appropriate ([see section 7](#)).
- 2.3 Assessments of risk must be evidence-based. Parole decisions are based on making an assessment of risk of what might happen in the future; if someone might have acted in a certain way in the past then there may be a risk that they might do so again in the future. This lies at the heart of why the Parole Board can take allegations into account.
- 2.4 A panel's consideration of allegations is subject to the overriding requirement that the panel acts fairly. What is fair or unfair will depend on the facts of each case, but the consideration of allegations is not intrinsically unfair as long as the prisoner has had a reasonable opportunity to understand the allegations against them and challenge them. Panels will need to ensure that the procedures which they adopt in every case comply with the requirements of procedural fairness (please see paragraphs [2.5](#) and [2.6](#) below).
- 2.5 The prisoner must have a fair opportunity to contest the allegation. This may be achieved through oral evidence, written submissions, or in interview with a Community Offender Manager (COM), depending on what is fair in the case.
- 2.6 The more serious or aged an allegation, the more caution is necessary when approaching it. For example, where the allegation arises from an event that happened a long time ago, records/witnesses may no longer be available and memories may have faded.

² [2023] UKSC 13 on appeal from [2022] EWCA Civ 4.

³ This may come in the form of material, reports, oral or written evidence.

⁴ [Rule 16 of the Parole Board Rules 2019 \(as amended\)](#) imposes a duty on the Secretary of State to serve on the Board and prisoner all information that is relevant to risk.

- 2.7 Allegations should only be considered when relevant to the panel's assessment of risk. If the allegation is not relevant, it should be disregarded by the panel.
- 2.8 However, there may be circumstances where panels choose to disregard a relevant allegation. Please refer to [section 5](#) for more information.
- 2.9 Panels must always investigate allegation(s) that are relevant, and make findings of fact in relation to that allegation where they are able to do so (see [section 6](#)).
- 2.10 There may be circumstances where the panel is unable to make a finding of fact and, when this happens, the panel must proceed with considerable caution in the interests of fairness. However, this does not mean that there must be a finding of fact for the panel to place any weight on an allegation. Guidance can be found at [section 7](#).
- 2.11 The panel is not a criminal court. What panels cannot do in relation to an allegation is make a finding that the prisoner is guilty of a criminal offence, as that is the prerogative of the criminal courts applying the higher standard of proof⁵. The panel must also be cautious to confine itself to matters of fact and not make any determination as to guilt. Matters of fact are not the same as criminal behaviour. For example, a finding that a prisoner hit a victim does not equate to a finding that they committed assault. The prisoner may not have satisfied other elements of the alleged criminal offence or may have a defence available to them.
- 2.12 Accordingly, while findings of guilt are not within the remit of the Parole Board, it may be that a panel finds as fact (on a balance of probabilities) that constituent elements of an offence have occurred. For example, a panel may find that it is more likely than not that the prisoner hit a person, but it is not within the panel's remit to find the prisoner guilty of assault.
- 2.13 The standard of proof that must be met before a panel finds a fact proved is to the civil standard, namely the balance of probabilities. For a fact to be proved, a panel must be satisfied on the information available that it is more likely than not that the fact occurred. This is a lower standard of proof than that applied in the criminal courts which requires proof beyond reasonable doubt before something is proved as a fact.
- 2.14 If the panel is unable to make a finding of fact (for example, because the evidence does not go far enough to establish a fact), the panel should go on to consider whether there is a serious possibility that the allegation(s) may be true (please see [section 7](#)).
- 2.15 Panels should record in their reasons what, if any, findings of fact have been made⁶. Further guidance on giving reasons can be found at paragraph [9.1](#).

⁵ Beyond all reasonable doubt.

⁶ A panel must be satisfied on the information and evidence available that it is more likely than not that the fact occurred.

Forms of Allegations

3.1 Allegations may take many forms and can come from different sources, such as:

- (a) A prison officer's evidence that the prisoner appeared to be under the influence of a substance;
- (b) Prison intelligence that the prisoner is suspected of hitting another prisoner;
- (c) A COM's evidence that the prisoner was abusive during a telephone call;
- (d) Police intelligence that a prisoner has breached an exclusion zone;
- (e) Police domestic abuse call out logs;
- (f) An allegation that the prisoner has further offended but no charge is brought; or
- (g) A charge of criminal offending that is awaiting trial or has resulted in an acquittal. Specific guidance on criminal charges and court proceedings can be found at [section 8](#).

Determining whether an allegation is potentially relevant

- 4.1 Panels should first decide whether an allegation is relevant to the issues it must determine. An allegation is relevant when, if found to be true, it could affect the panel's risk assessment.
- 4.2 If an allegation is relevant to a panel's consideration of risk, then the panel must always investigate the allegation(s) and make a finding of fact where they are able to do so ([see section 6](#)), unless they choose to disregard a potentially relevant allegation ([see section 5](#)). There may be circumstances where the panel cannot make a finding of fact ([section 7](#)).
- 4.3 An allegation that is not relevant to a parole review should be disregarded and should not be taken into account as part of a panel's decision-making process.

Disregarding potentially relevant allegations

- 5.1 A panel may choose to disregard a potentially relevant allegation if there is a good reason for doing so.
- 5.2 This might arise when other information before the panel clearly leads to a conclusion that the legal tests⁷ are not met; in such a case the consideration of the allegation may become unnecessary because the prisoner's parole review can be determined without the need to consider the allegation(s).
- 5.3 For example, a prisoner who has been convicted of recently assaulting several other prisoners additionally faces an allegation that they assaulted yet another prisoner. If the recent convictions lead the panel to the conclusion that the statutory test for release is not met, there would be little purpose in the panel inquiring into the allegation of another assault since it will not make a material difference to the overall outcome of the review.

⁷ The statutory test for release and/or the Secretary of State's Directions for open conditions

- 5.4 It is worth noting that there is no bar to a future panel examining an allegation that a previous panel chose not to examine, if they feel it is necessary for their decision-making, and they are able to do so fairly.
- 5.5 A panel **must** not give weight in its reasons to an allegation that it chooses to disregard. Please refer to paragraph [9.1](#) for further guidance on giving reasons.

Making a finding of fact regarding an allegation

Overview

- 6.1 Panels must always investigate a potentially relevant allegation(s) and make a finding of fact(s) where they are able to do so, unless they choose to disregard the allegation ([see section 5](#)).
- 6.2 As per paragraphs [2.4-2.6](#), a panel's consideration of allegations is subject to the overriding requirement that it acts fairly.
- 6.3 A panel will only be in a position to make a finding of fact when:
- It has a reasonably sufficient body of information on which it can properly make a finding of fact on the balance of probabilities; and
 - The prisoner has had the opportunity to test and/or make submissions about the information.
- 6.4 As set out at paragraph [2.13](#), findings of fact must be made on the balance of probabilities. This requires the panel to be satisfied that it is more likely than not that the alleged event, or constituent parts of it, occurred for it to be found proved as a fact that it did occur.
- 6.5 Panels have a wide latitude in relation to the information and evidence that it may request and consider. There are no formal rules of evidence in Parole Board proceedings and so all relevant information can be considered. Panels do not necessarily require primary evidence on which to make a finding of fact (it is very rare for witnesses of fact to be called to give evidence at a parole hearing⁸). It is not necessarily unfair for panels to rely on hearsay evidence even when a prisoner's liberty is at stake. For example, it is commonplace for panels to rely on written police reports that summarise the evidence gathered during a police investigation, and commonplace for COMs to relate the reports of Approved Premises staff who witnessed an incident.
- 6.6 Panels should be clear on exactly what they are making findings of fact about.
- 6.7 If a panel makes a finding of fact that it is more likely than not that an alleged event (or constituent parts of it) did occur, the panel should then exercise its judgement to determine how the finding is:
- (a) relevant to the decision regarding parole; and
 - (b) what weight should be given to the finding

⁸ Please refer to paragraph 11.41 of the [MCA Guidance](#) regarding child witnesses and paragraph 11.42 of the [MCA Guidance](#) regarding victims.

as part of its assessment of risk.

- 6.8 It may be that panels cannot make a finding of fact regarding the central allegation but can make findings of fact regarding any collateral allegations or in relation to part of the allegation (see [paragraphs 1.3 and 1.4](#)). Such findings may then enable the panel to make an adequate and balanced assessment of risk to conclude the parole review.
- 6.9 For example, a prisoner has been recalled for breaching a licence condition of good behaviour. The prisoner was arrested after being a passenger in a vehicle that was stopped and searched, and an illegal substance was found. The prisoner refutes that the illegal substance was theirs or that they were aware this was in the vehicle, the prisoner was not charged; however, the driver of the vehicle was charged. The circumstances of the arrest can be considered (for example, lifestyle and associates and the licence conditions that were breached at the time), but the panel may not be able to make a finding of fact that the illegal substance belonged to the prisoner.
- 6.10 Another example, the prisoner has been accused of assaulting someone in a public house. The panel may not have sufficient information to make a finding of fact about whether it is more likely than not that the prisoner punched someone, but may be able to make a finding that the prisoner was intoxicated at the time, had been aggressive and was present at the time of the incident.
- 6.11 If a panel makes a finding of fact that it is more likely than not that the alleged event did **not** occur, it should disregard the allegation and the allegation should not be taken into account in the panel's decision-making. This will need to be made clear in the panel's reasons (see [section 9](#)).

Making a finding of fact

- 6.12 Making a finding of fact requires the panel to make a determination of whether the allegation, or the facts surrounding an allegation, is true applying the balance of probabilities. To do so, the panel will need to consider the information and evidence it has, the nature and circumstances of the allegation, and its context within the overall case.
- 6.13 The following considerations may assist in the making of a finding of fact that an allegation is true. They may also assist when determining what weight to give to a relevant finding (see [paragraphs 6.19-6.22](#) below).

Source

Can the credibility and reliability of the source be assessed and, if so, what is their credibility as a source? Were the actions of the source consistent with the allegation? Does the source have a motive to act against the prisoner? Does the source act under a professional and/or public duty to accurately report matters? How contemporaneously was the making of the allegation with the events concerned? Has the source's account been consistent? Has the source direct knowledge of what is alleged? Allegations from a reliable source are more likely to support a finding being made and may be given greater weight than allegations from a less reliable or credible source.

Supporting information

Is there other evidence that supports the specific allegation whether from other sources and/or documentary evidence that record the allegation? Allegations that are supported by other information may be more likely to support a finding and will normally have more weight than allegations that come from a single source.

Context

Does the allegation fit with other information known about the prisoner (which could include convictions or known behaviour including patterns of behaviour or other known allegations) in which case it may be more likely than not to be true and have more weight than an allegation that does not fit.

The actions of others

The behaviours of others may indicate whether the allegation is true or not. The fact that an individual reports the allegation to the police may or may not be consistent with the allegation being true, depending on the circumstances, who the individual is and why they may have acted as they did.

The prisoner's evidence

Panels should take account of any denial or limited admissions/minimisation of the allegation by the prisoner, and, in doing so, make an assessment of the prisoner's credibility and reliability as a witness and consider this when making a finding of fact regarding the allegation.

Assessing the relevance of a finding of fact

- 6.14 If a panel makes a finding of fact that it is more likely than not that the alleged event took place, it must go on to assess whether and how the finding of fact is relevant to the panel's decision-making. This requires the panel to exercise judgement, drawing on its skills, expertise and experience, to consider the finding of fact within the context of the case.
- 6.15 A finding of fact may be relevant in one or more ways, including the following:
- (a) ***A finding of harmful behaviour*** - in other words past behaviour that caused harm or risked causing harm. For example, findings relating to records of police 'DV call outs' involving the prisoner as an alleged perpetrator of domestic abuse but which did not lead to a prosecution.
 - (b) ***A finding of 'risky' behaviour*** - in other words, behaviour associated with risk factors, particularly risk factors already associated with the prisoner. For example, findings relating to allegations that the prisoner relapsed into drug misuse or mixed with peers who are believed to have a negative impact on the prisoner whilst on licence.
 - (c) ***Findings relating to the prisoner's reliability to comply with licence conditions and/or to be open and honest in supervision*** – for example, findings relating to an allegation that the

prisoner has breached an exclusion zone or allegedly given false explanations for not complying with licence conditions or an allegation the prisoner has not disclosed information that they should have disclosed.

- (d) ***Findings that undermine the credibility of the prisoner as a witness*** - for example, the credibility of a prisoner who insists the full extent of their criminality is admitted may be undermined by findings in relation to alleged additional criminality. Also, as an example, the credibility of a prisoner who insists lessons have been learnt from offending behaviour programmes may be undermined by allegations of subsequent behaviour inconsistent with lessons having been learnt.
- (e) ***Findings that impact on the weight a panel gives to the evidence of a professional witness*** who has not taken account of the relevant findings or allegations or who has given less relevance/weight to the relevant findings or allegations than the panel considers appropriate.

- 6.16 A finding of fact regarding an allegation that is relevant to a critical aspect of the panel's assessment of risk is likely to be regarded as highly relevant.
- 6.17 A finding of fact regarding an allegation that is relevant to the issues before the panel, but only in an oblique or peripheral way is likely to be regarded as only marginally relevant.

Assessing weight to be given to a finding of fact

- 6.18 If a panel makes a finding of fact that it is more likely than not that the alleged event took place and assesses it to be relevant to its decision-making, the panel should assess what weight should be given to the finding. This assessment requires the panel to exercise its judgement and consider the relevant finding within the context of the wider risk assessment.
- 6.19 The weight to be given to the finding of fact may depend on a number of factors including the nature and circumstances of the finding. The factors listed above may assist in making a finding of fact (see [paragraph 6.13](#)) and may also assist when assessing what weight should be given to the finding of fact.
- 6.20 In addition, the following factors can be considered when assessing what weight to give a finding of fact:
 - (a) Nature of the allegation: an allegation which concerns serious misconduct that has caused, or could have caused, serious harm, or demonstrates significant non-compliance with a Risk Management Plan, may carry greater weight than one which does not involve harm or significant non-compliance; and
 - (b) Contemporaneity: allegations which relate to more recent times are likely to carry more weight than proven allegations relating to events in the distant past.

- 6.21 A finding of fact that is relevant and carries significant weight is likely to impact substantially on a panel's decision-making.
- 6.22 A finding of fact which is only marginally relevant and/or carries little weight, is likely to have little or no impact on the panel's decision-making.

When no finding of fact is possible

- 7.1 Having investigated or attempted to investigate an allegation, a panel may find that they cannot make a finding of fact regarding the central allegation and there are either no findings of fact regarding constituent allegations or no significant collateral allegations at all to consider. This may arise when the panel has insufficient reliable information and evidence, even after making reasonable inquiries, or because it would be procedurally unfair to do so if the risk of prejudicing criminal proceedings prevents a prisoner from answering a panel's questions.
- 7.2 As per paragraphs [2.4-2.6](#), there is an overriding requirement that the panel acts fairly. Representations should be invited from both parties on how the Board ought to treat the allegation, in terms of veracity and weight.
- 7.3 The panel should make an assessment as to whether there is a serious possibility that the allegation(s) may be true. This likelihood does not meet the standard of proof (see paragraph [2.13](#)), but that does not mean the allegation need be discounted. The likelihood that the alleged behaviour occurred together with the seriousness of the allegation will be relevant to the amount of weight that a panel can place on the allegation (please see paragraphs [7.6 to 7.9](#) below).
- 7.4 Alternatively, due to the inadequacy of the information available or the likelihood of the allegation, the panel may decide that they should not place weight on or take account of the allegation at all.
- 7.5 The panel will need to approach this assessment with extreme caution, having both regard for public safety and regard for the consequences of their decision for the prisoner.

Making an assessment of weight

- 7.6 The allegation and the surrounding circumstances can form a basis for testing the reliability of the prisoner's evidence. It can be material on which an expert's evidence can be tested.
- 7.7 If an allegation is relevant to the parole review, the panel will need to form a judgement as to what weight to give the allegation. This will require consideration of any representations made by the parties; an examination of the allegation and any underlying facts that the panel can find on the balance of probabilities; and an overall assessment of how likely the allegation is to be true together with the seriousness of the allegation. The factors set out at paragraphs [6.20-6.22](#) can be considered when judging what weight to give the allegation.
- 7.8 An allegation that is relevant to the parole review and which is of significant weight could have a substantial impact on the parole decision.

- 7.9 An allegation that is only marginally relevant, or is relevant but which carries little weight, is likely to have little to no impact on the parole decision.
- 7.10 The panel's risk assessment should always be based on found fact, even if they are unable to make a finding of fact about all the matters raised.
- 7.11 There may also be situations where although the information is patchy or less than might be desirable, there is a serious possibility that the allegation is true and this causes sufficient concerns as to the risk posed by the prisoner. In those circumstances, the panel may treat the allegation as relevant and attach some weight to it.
- 7.12 For example, a prisoner has been recalled having been arrested on suspicion of murdering their partner. The police investigation is on-going and a charge decision is unlikely to be made soon. The police do not want to disclose their evidence as it pertains to an on-going police investigation. The prisoner has been advised by their representative not to answer any questions by the panel relating to the allegation. In such a case, the panel will lack a great deal of information but may consider that the allegation is of such severity, of clear relevance and at least some of the underlying facts are proven allowing it to be taken into account.

When it may not be appropriate to give an allegation weight

- 7.13 It is unlikely to be appropriate to give an allegation weight where:
- There is a simple report of an allegation without more detail (no source or circumstances detailed). For example, an allegation found written on a piece of paper from an anonymous source.
 - A vague allegation from an anonymous and/or potentially unreliable source.
 - An allegation where there is little or no factual basis. For example:
 - A person is interviewed by police on suspicion of an offence solely on the basis that they have a previous conviction for a similar offence but there is no other evidence to suggest that they have committed the alleged offence.
 - A number of calls were made to the victim via a number that cannot be traced. When the call is answered there is background noise but nothing distinguishable. The victim says that it must be the prisoner trying to intimidate them but there is no other evidence/information which links it to the prisoner. The prisoner says it was not them.

Criminal charges and court proceedings

- 8.1 This section provides guidance on:
- On-going police investigations or court proceedings (see paragraphs [8.2 – 8.3](#)).
 - Allegations that have been proven at court (see paragraphs [8.4-8.6](#)).
 - Allegations that have been charged but dismissed/resulted in an acquittal at court or have been left to lie on the file (see paragraphs [8.7-8.12](#)).

On-going police investigations or court proceedings

- 8.2 Allegations in the form of police/Crown Prosecution Service ('CPS') charges when the investigation/prosecution is still on-going remain allegations.
- 8.3 Although panels should exercise caution when the allegation in question is subject to an on-going police investigation or court proceedings, panels can make a finding of fact (where the key principles and criteria in this guidance are satisfied) on the allegation in question. This is particularly important because the Parole Board has a duty under Article 5(4) of the European Convention on Human Rights to provide a speedy review.

Allegations that have been proven at court or at a prison adjudication

- 8.4 Allegations that have been proven at court (for example, resulted in a guilty verdict following a trial or where the prisoner entered a guilty plea) are no longer allegations. What was an allegation is then a matter of fact that the prisoner has done what was alleged. Parole Board panels **must** not go behind a court's guilty verdict or prisoner's guilty plea. The factual basis of a conviction will often be set out in the judge's sentencing remarks.
- 8.5 Where a guilty verdict was entered and the prisoner disputes some of the facts which were part of the prosecution's case, the panel may wish to check whether:
- there was a Newton hearing⁹ to resolve the dispute and what the outcome was; and
 - whether there was an **agreed** basis of plea¹⁰.

The panel should not go behind either of the above. If neither of the above took place, the panel can proceed on the basis that the prisoner agreed to the particulars of the offence as set out in the indictment and was sentenced on that basis (unless there is any contrary indication in the Judge's Sentencing Remarks).

- 8.6 Allegations which have been proven in a prison adjudication are also no longer an allegation. The guidance set out at paragraph [8.5](#) also applies here.

Allegations that have been dismissed/resulted in an acquittal/or have been left to lie on the file

- 8.7 Panels are entitled to inquire into Police/CPS charges that:
- Resulted in an acquittal at court; or
 - Were dismissed/no further action was taken.
- 8.8 The mere fact of an acquittal or no further action taken in relation to a charge does not preclude a panel from making a finding of fact that the allegation (or parts of it) underlying that charge was/were true, applying the balance of

⁹ The purpose of a Newton hearing is to resolve a dispute (which would make material difference to the sentence imposed) and to ascertain the correct basis for sentence.

¹⁰ A basis of plea sets out the facts - the defendant's factual version of events which they accept they are guilty of.

probabilities. However, panels should be cautious before doing so given that the safeguards ensuring fairness in court proceedings are not necessarily available during parole reviews.

- 8.9 The panel must also be cautious not to suggest that any criminal charge is true (please see paragraph [2.12](#)). Accordingly, the panel cannot go behind any finding of not guilty to suggest that a prisoner has committed the crime they have been found not guilty of.
- 8.10 Panels may make findings of fact regarding the constituent aspects of an allegation that has resulted in an acquittal (please see paragraphs [1.3 – 1.4](#)).
- 8.11 A finding of fact against the prisoner about an allegation of conduct underlying a charge will not equate to a finding of guilt or a criminal conviction – such a finding is the prerogative of the criminal courts applying a higher standard of proof¹¹. Nonetheless, such a finding may be taken into account by the panel when assessing risk.
- 8.12 The guidance provided at paragraphs [8.7-8.11](#) also applies to charges that have been left to lie on the file¹². Charges that have been left to lie on the file will not be detailed in the Judge’s Sentencing Remarks. If the panel requires further information about allegations that have been left to lie on the file, a direction will need to be made to the CPS¹³ setting out the information which is required.

Giving Reasons

- 9.1 A panel’s reasons must include the following:
- Reference to any allegation arising in the parole review and the nature/substance and the source of the allegation ([see section 3](#)).
 - Reference as to whether or not the allegation is considered relevant ([see section 4](#));
 - An explanation as to whether the allegation has been disregarded and the reason why ([see section 5](#));
 - An explanation as to whether the allegation has been taken into account. If an allegation has been taken into account, it is best practice for the reasons to provide an outline of:
 - What finding of facts have been made;
 - The standard of proof¹⁴;
 - If no finding of fact has been made, details of what steps the panel has taken to investigate the allegation and the likelihood that the alleged behaviour occurred and the seriousness of the allegation ([see section 7](#)); and

¹¹ Beyond reasonable doubt.

¹² In this situation, no admission has been made by the defendant nor has a verdict been recorded. A judge in the Crown Court can order that particular counts (charges) on the indictment or the entire indictment can be left to lie on the file. In practice this is similar to an indefinite adjournment where only with leave from the Crown Court or Court of Appeal can the proceedings be resurrected.

¹³ Via the Board’s Third Party Directions Team

¹⁴ As per paragraph [2.13](#), The standard of proof that must be met before a panel finds a fact is proved to the civil standard, namely the balance of probabilities. Therefore, for a fact to be proved a panel must be satisfied on the information available that it is more likely than not that the fact occurred.

- The relevance and weight attached to the finding (or if no finding has been made, the allegation) and how this has impacted on the panel's assessment of risk and decision-making.

Annex 1

Extract from the Supreme Court judgment in *Pearce*¹⁵

Paragraph 87: “We summarise our conclusions as follows:

(i) There is no general legal rule that in making a risk assessment the Board must adopt a two-stage process of making findings of fact on the balance of probabilities and then treating only those matters on which it has made findings of fact as relevant to the assessment of risk.

(ii) The Board’s task is to address whether the safety of members of the public requires that the prisoner should remain confined. In so doing, the Board must have regard to the consequences of its decision on the interests of the prisoner, and the hardship he may suffer if he no longer needs to be confined in order to protect the public.

(iii) There is no rule of substantive fairness, akin to a legitimate expectation, which requires the Board to have regard only to found facts in its assessment of risk.

(iv) What procedural fairness requires of the Board in its impartial performance of its statutory remit is determined by the statutory terms of that remit and the wider legal context of the common law.

(v) If weight is to be given to an allegation of criminal or other misbehaviour in the risk assessment, the Board should first attempt to investigate the facts to enable it to make findings on the truthfulness of the allegation. If, as may often be the case despite its efforts to obtain the needed information, the Board is not able to make such a finding, it should investigate the facts to make findings as to the surrounding circumstances of the allegation which may or may not point to behaviour by the prisoner which is relevant to the assessment of risk.

(vi) In some circumstances, however, the Board may not be able to make findings of fact as to the truth of an allegation either because of an inability to obtain sufficiently reliable evidence or because it would be unfair to expect the prisoner to give an answer to the allegation when he is facing criminal or prison disciplinary proceedings in relation to that allegation.

(vii) In such circumstances the Board, having regard to public safety, may take into account the allegation or allegations and give it or them such weight as it considers appropriate in a holistic assessment of all the information before it, where it is concerned that there is a serious possibility that those allegations may be true. But the Board must proceed with considerable caution in this exercise because of the consequences of its decision on the prisoner. Procedural fairness requires the Board to give the prisoner the opportunity to make submissions about how the Board ought to proceed. There may be circumstances where, because of the inadequacy of the information available to the Board, it concludes that it should not take account of an allegation at all. There may also be circumstances where the information is less than would be desired but the allegation causes sufficient concern as to risk that the Board treats it as relevant. Its assessment of the weight to be attached to an allegation is subject to the constraints of public law rationality.

¹⁵ [2023] UKSC 13

(viii) Thus, a failure to make findings of fact where it was reasonably practicable to do so or an irrational reliance on insubstantial allegations could be a ground of a successful public law challenge.”