

# **The Parole Board Decision-Making Framework**

Framework Guidance

November 2023 (v1.3)

## Document History

Document version	Date	Revision description
<b>1.0</b>	February 2019	The Decision-Making Framework and guidance was developed by RADAR (a member-led strategic group responsible for reviewing the Board's approach to decision-making about risk) and issued to Parole Board members in April 2019
<b>1.1</b>	July 2021	The following sections have been updated: <ul style="list-style-type: none"> <li>- The Legal test for release - the reference to the Oral Hearing Guide has been replaced with a reference to the Types of Cases Guidance.</li> <li>- Open conditions – updated to reflect that it is a balanced assessment of risks and benefits. A reference to the Types of Cases Guidance has also been added.</li> <li>- A reference to the Types of Cases Guidance has been added to the section on types of sentences and period of risk.</li> <li>- The table displaying the options available at MCA and at oral hearings.</li> </ul>
<b>1.2</b>	October 2022	The guidance was updated to reflect the changes following: <ul style="list-style-type: none"> <li>- The Police, Crime, Sentencing and Courts Act 2022</li> <li>- The amended Secretary of State 2022 Directions on transfer of indeterminate sentence prisoners to open conditions</li> <li>- The Parole Board Rules 2019 (as amended)</li> <li>- Johnson R v Secretary of State for Justice [2022] EWHC 1282 (Admin)</li> <li>- The review of the Parole Board's paused policies.</li> </ul>
<b>1.3</b>	November 2023	The guidance was updated to reflect the revised Secretary of State Directions on transfer of indeterminate sentence prisoners to open conditions dated 1 August 2023



## Contents

<b>1. Introduction</b>	<b>4</b>
<b>1.1 Frequently Asked Questions</b>	<b>5</b>
<b>2. Assessing Risk</b>	<b>6</b>
<b>3. Using the Decision-Making Framework</b>	<b>7</b>
<b>3.1 MCA</b>	<b>7</b>
<b>3.2 Oral Hearing</b>	<b>8</b>
<b>4. The Parole Board Decision-Making Framework</b>	<b>10</b>
<b>4.1 Context</b>	<b>11</b>
<b>4.2 Analysis</b>	<b>16</b>
<b>4.3 Framework for Analysis</b>	<b>18</b>
<b>4.4 Key Themes, Sub-Themes and Elements</b>	<b>19</b>
4.4.1 Analysis of Offending Behaviour (The Past)	<b>19</b>
4.4.2 Analysis of the Evidence of Change (The Present)	<b>21</b>
4.4.3 Analysis of the Manageability of Risk (The Future)	<b>23</b>
<b>4.5 Outcome</b>	<b>25</b>
<b>4.6 Reflection</b>	<b>26</b>

# 1. Introduction

## **What is the Decision-Making Framework?**

A structured approach used by Parole Board members in making parole decisions. In using the Framework, members will exercise independent professional judgement. The Framework is a consistent, shared expression of the decision-making process used by members.

## **Why have a Decision-Making Framework?**

The quality and consistency of decision-making is improved by using a structured approach. A framework promotes the use of a rational, ordered approach, and helps to reduce the impact of bias.

## **What decisions will it be used for?**

The Decision-Making Framework will be used for all parole decisions made by members including decisions about release and recommendations regarding open conditions.

## **When will it be used?**

The Decision-Making Framework applies at all stages where decisions on release and/or progression to open conditions are made, for example, MCA, oral hearing, decisions on the papers under rule 21 or 23 of the Parole Board Rules 2019 (as amended) and decisions on the papers following an oral hearing adjournment.

## **Why use it?**

The development of the Framework involved detailed consultation with large groups of members. It reflects and formalises a process that was already widely used.

Now, as a tool to aid decision-making, members' practice must explicitly, rather than implicitly, utilise the Framework.

## 1.1 Frequently Asked Questions

**Q: Does the Framework impact on judicial independence?**

A: Not at all. The Framework is a structured, rather than standardised, approach. Members remain completely free to exercise independent professional judgement in each case.

**Q: Is this Framework just a tick box exercise?**

A: No. Whilst the Framework may be useful as a checklist for members, it is a basis for thinking about and discussing cases. For oral hearings, the Framework will be used as a structure for pre and post hearing discussions, and for developing questioning.

**Q: Does the Framework allow for flexibility?**

A: Absolutely. The framework is not designed to be rigid. Members are free to consider the relevance and weight of any issue when making a decision. All issues which have influenced the decision should be recorded.

## 2. Assessing Risk

Parole panels have no role or involvement in the punitive element of a sentence. Panels are primarily interested in the risk of reoffending which may cause serious harm. This requires an identification of the relevant factors which may lead to serious harm and assessment of their relevance to the prisoner.

The parole panel must do more than assess risk, it is required to make a **decision** about a prisoner's progression. It does this not only on the information it has about the risks which may be presented, but also on how these could be managed. Risk assessment for the purposes of risk management should be seen as a process rather than a single measure and may cover many factors and their interaction.

**Risk Factors** are aspects of the prisoner's life that have inclined them towards harmful behaviour.

**Protective Factors** are aspects of the prisoner's life that have inclined them away from harmful behaviour.

Risk and protective factors *underlay* the framework. Panels may identify risk and protective factors in the past, the present and the future. Each individual element within the Framework for Analysis may encompass a number of risk and/or protective factors.

In assessing risk and making a decision, panels will consider:

- What further offence(s) might the prisoner commit?
- Will they cause serious harm?
- Who might the victim(s) be?
- What features might contribute to serious harm (the risk factors)?
- What might protect against serious harm (the protective factors)?
- How and when could the above factors combine, either to increase or decrease risk (scenario planning)?
- How probable is a high-risk scenario (likelihood)?
- How soon could a further serious offence take place (imminence)?
- What measures can be put in place to reduce the likelihood and/or degree of harm occurring (risk management plan)?

### 3. Using the Decision-Making Framework

The Decision-Making Framework is a sequential process which members work through individually or as a panel.

#### 3.1 Using the Decision-Making Framework for an MCA decision

- Follow the sequence of the Decision-Making Framework as follows:
  - **CONTEXT:** Using the prompts in 'Context' box, identify the context in which you are making the decision.
  - **ANALYSIS:**
    - Ask yourself if you have all the information you require to make a proper decision. If not, what essential information will need to be obtained? You should consider the relevance of and necessity for further information, as well as the proportionality of making additional directions.
    - Once the information has been gathered, evaluate the information using the 'Framework for Analysis' as a guide. Decide upon the relevance of the elements and then weigh relevant elements.
  - **OUTCOME:** Consider the test. Come to a decision based on the evidence you have analysed. Ensure you have considered counter evidence and all options. Record this decision fully based on all of the elements which have influenced your decision.
  - **REFLECTION:** Consider your involvement in the case to identify any issues relating to quality, learning and development or well-being.



## 3.2 Using the Decision-Making Framework for an Oral Hearing decision

### PRIOR TO THE ORAL HEARING:

Commence (but do not complete) the sequence of the Decision-Making Framework as follows:

- **CONTEXT:** Using the prompts in 'Context' box, identify the context in which you are making the decision.
- **ANALYSIS:**
  - Review the written evidence and ask yourself what information you require to come to a decision. You may require further written evidence or you may be able to fill in any gaps using oral evidence.
  - Using the Framework for Analysis as a guide, identify relevant elements and question topics in preparation for the hearing.

### AT THE ORAL HEARING:

#### **Pre-Hearing Discussion**

- **CONTEXT:** Set out the context for the decision and ensure that there is an agreed understanding between the panel.
- **ANALYSIS:** Using the Framework for Analysis as a guide, work through the 'Past, Present and Future' themes discussing the elements of relevance, gaps in understanding and important question topics.

#### **The Hearing**

- **ANALYSIS:** Ensure that you have asked all of the questions that you need to gather the information you require to make a decision. Use the Framework for Analysis to check off any highlighted issues.

#### **Post Hearing Discussion**

- **ANALYSIS:** Discuss the evidence. Decide upon the relevance of the elements and then weigh relevant elements.
- **OUTCOME:** Consider the test. Come to a decision based on the evidence you have analysed. Ensure you have considered counter evidence and all options.
- **REFLECTION:** Reflect on the case and the decision as a panel to identify any issues around quality, learning and development and/or wellbeing.

### AFTER THE ORAL HEARING:

- **OUTCOME:** Record the decision fully based on all of the elements which

have influenced your decision.

- REFLECTION: Reflect individually to identify any issues relating to quality, learning and development and/or wellbeing.

## 4. The Parole Board Decision-Making Framework

This is the Decision-Making Framework. Members will use the framework when making parole decisions.

<b>Context</b>	<b>What is the context of the decision?</b>  The terms of the referral The legal test The type of sentence The stage and powers
<b>Analysis</b>	<b>What information do we need to make the decision?</b>  Dossier Additional Information Oral Evidence
	<b>What is our evaluation of the information?</b>  Assessing relevance and weight
<b>Outcome</b>	<b>What is the decision and why?</b>  Reasons
<b>Reflection</b>	<b>What can we learn?</b>

## **4.1 Context**

### **What is the context of the decision?**

This is the first stage of the decision-making process. Parole Board members will consider the context within which the parole decision is made. This stage determines the options open for consideration, the test to be applied to the decision and the powers held by the Board. The elements of the context of the decision are inter-related.

**Context****The Terms of the Referral**

**The terms of the referral: A decision about release and/or a recommendation about open conditions.**

The Secretary of State's referral provides members with decision-making options. Members will ensure that they know what the terms of the referral are for each case.

The terms of the referral are based on the sentence type, the stage of the case, and if applicable, the prisoner's eligibility for open conditions.

Members will usually, but not always, be asked to consider the release of the prisoner. The decision to release is binding on the Secretary of State. Members will often, but not always, be asked to make a recommendation on the prisoner's suitability for open conditions. This is provided as advice to the Secretary of State who will decide whether or not to accept that advice.

## Context

## The Legal Test

### The legal test for release:

The test for release is a legal test whether it is no longer necessary for the protection of the public that the prisoner be kept in custody. Guidance on the test for release can be found in the *Types of Cases Guidance* (paragraphs 3.1 – 3.8).

### Open conditions

The Board can **recommend** that an indeterminate sentence prisoner is transferred to open conditions (as long as it is part of the Secretary of State's terms of referral). In making such a recommendation, the Board **must** consider the criteria set out in the Secretary of State's Directions of 1<sup>st</sup> August 2023, which are:

- i. a panel must consider all information before it, including any written or oral evidence obtained by the Board; and
- ii. whether the following criteria are met:
  - the prisoner has made sufficient progress during the sentence in addressing and reducing risk to a level consistent with protecting the public from harm (in circumstances where the prisoner in open conditions may be in the community, unsupervised under licensed temporary release); and
  - the prisoner is assessed as presenting a low risk of abscond.

The Parole Board must recommend a move to open conditions only where it is satisfied that the two criteria (as described at (ii)) are met.

### TACT Prisoners

- There is a presumption that a prisoner serving an indeterminate sentence for a specified terror or terrorism connected offence will be unsuitable for open conditions unless exceptional circumstances can be evidenced. Where the Secretary of State considers that exceptional circumstances may apply, the Parole Board will be invited to consider whether the ISP is suitable for a transfer to open conditions.
- Before recommending that an ISP (as described above) be transferred to open conditions, the Parole Board must be satisfied that the exceptional circumstances have been evidenced, that the two criteria, as described at (ii) above are met.

### Foreign National Prisoners

- Pursuant to Prison Rules, an ISP who has been served with a deportation order and who has exhausted all their in country appeal rights is not eligible to be considered for open conditions. An ISP who is liable for deportation, but has not exhausted appeal rights may still be considered for transfer to open conditions.
- Before recommending that a foreign national ISP (as described at 6) be transferred to open conditions, the Parole Board must be satisfied that the ISP presents as a very low risk of abscond, that the first criterion, as described at (ii) above is met.

Further guidance can be found in the *Types of Cases Guidance* (paragraphs 11.1 – 11.11 and annex 1).

**Context****The Type of Sentence**

The type of sentence affects the powers that the panel has in making its decision or recommendation. It is therefore critical that this is correctly identified. Please refer to the *Types of Cases Guidance* (paragraph 6.1) for detailed guidance on the type of sentence.

**Context****The Stage and Powers**

The powers of a panel will depend on the type of sentence involved and the stage the prisoner has reached in that sentence, and whether the review is conducted on the papers alone or at an oral hearing. Please refer to the table of options available at MCA and oral hearings in the *Types of Case Guidance*.



## 4.2 Analysis

### What information do we need to make the decision?

Dossier  
Additional Information  
Oral Evidence

The information used by members to make a decision comes from:

- The dossier supplied by the Secretary of State.
- Any additional information supplied by the parties or directed by the Board, which is submitted to all parties after the dossier has been prepared or provided in line with non-disclosure rules.
- Oral evidence gathered at a Parole Board hearing.

Members will also take into account submissions received from the parties. Members will not use information from any other source in coming to a decision.

Members will make directions to obtain further information if it is concluded that this is essential to come to a decision.

Members will consider the relevance of and necessity for further information, as well as the proportionality of making additional directions.

Members must decide whether any information which is directed but not provided is required for the panel to make a proper decision.

## Analysis

### What is our evaluation of the information?

Assessing relevance and weight

In analysing information to come to a decision, members will use the **Framework for Analysis** shown on the next page. The Framework for Analysis provides the key elements which are analysed when making a parole decision.

It contains three *key themes*: analysis of offending behaviour (the past); analysis of the evidence of change (the present); and analysis of the manageability of risk (the future).

Under each key theme there are a number of *sub-themes*. Each sub-theme contains a number of *elements*.

For example:

<b>Key Theme</b>	Analysis of Offending Behaviour (The Past)
<b>Sub-Theme</b>	Offender History
<b>Elements</b>	<ul style="list-style-type: none"> <li>- Life history</li> <li>- Life circumstances</li> <li>- Individual characteristics</li> </ul>

Members will work through the Framework for Analysis and will evaluate the elements according to a **TWO STAGE PROCESS**:

<b>Stage 1: Relevance</b>	Members will analyse information to assess its relevance to the decision.
<b>Stage 2: Weight</b>	Members will evaluate <i>only</i> relevant information to assess the weight it should be given as part of the decision.

## 4.3 Framework for Analysis

Analysis of Offending Behaviour (The Past)	Analysis of the Evidence of Change (The Present)	Analysis of the Manageability of Risk (The Future)
<p><b>Offender History</b></p> <ul style="list-style-type: none"> <li>Life history</li> <li>Life circumstances</li> <li>Individual characteristics (including mental health)</li> </ul> <p><b>Offending History</b></p> <ul style="list-style-type: none"> <li>Offence type</li> <li>Factual details of the offence</li> <li>Previous convictions</li> <li>Patterns of behaviour linked to harm</li> <li>Signs of stopping offending (gaps in offending pattern)</li> <li>Agency intelligence</li> <li>Impact of the offending</li> <li>Allegations of harmful or risky behaviour</li> </ul> <ul style="list-style-type: none"> <li>Other relevant issue</li> </ul>	<p><b>Behaviour</b></p> <ul style="list-style-type: none"> <li>Behaviour in prison / Behaviour on licence</li> <li>Evidence of risk factors and/or behaviour linked to serious harm</li> <li>Engagement with programmes/therapy and other opportunities</li> <li>Educational and vocational achievements</li> <li>Use of new skills</li> <li>Response to challenges and opportunities</li> </ul> <p><b>Attitudes</b></p> <ul style="list-style-type: none"> <li>Attitudes towards offending</li> <li>Developing understanding of behaviour and its impact</li> <li>Taking responsibility for actions</li> <li>Motivation</li> <li>Developing maturity</li> </ul> <p><b>Assessments</b></p> <ul style="list-style-type: none"> <li>Risk Assessments</li> <li>Professional Opinions</li> </ul> <p><b>Other</b></p> <ul style="list-style-type: none"> <li>Age</li> <li>Health</li> <li>Other relevant issue</li> </ul>	<p><b>Internal Controls</b></p> <ul style="list-style-type: none"> <li>Openness and honesty</li> <li>Likelihood of compliance</li> <li>Relationships with professionals</li> <li>Individual plans</li> <li>Individual characteristics</li> </ul> <p><b>External Controls</b></p> <ul style="list-style-type: none"> <li>Risk Management Plans</li> <li>Licence conditions and other controls (including those to protect the victim(s))</li> <li>Imminence of risk, warning signs and contingency plans</li> </ul> <p><b>Reintegration</b></p> <ul style="list-style-type: none"> <li>Structure and Opportunities</li> <li>Supportive relationships</li> <li>Developing a non-offending identity</li> <li>Outlook</li> </ul> <ul style="list-style-type: none"> <li>Other relevant issue</li> </ul>

## 4.4 Key Themes, Sub-Themes and Elements

### 4.4.1 Key Theme:

### Analysis of Offending Behaviour (The Past)

Understanding the prisoner, their offending history and their circumstances will assist in identifying patterns of behaviour and establishing both risk factors related to future offending and protective factors which reduce the risk of future offending.

Risk Factors: aspects of the prisoner's life that have inclined them towards harmful behaviour.

Protective Factors: aspects of the prisoner's life that have inclined them away from harmful behaviour.

### Sub-theme:

### Prisoner History

The life of the prisoner up to the point of their index offence.

### Elements:

- **Life history** – the prisoner's background and early life experiences.
- **Life circumstances** – the prisoner's way of life, their circumstances and the context in which they were operating at the time of offending.
- **Individual characteristics** – for example, a mental health problem, personality disorder, developmental disorder (for example, autistic spectrum condition), learning disability, identity issues or other characteristic that affect their lifestyle choices and impact on their offending.

### Sub-theme:

### Offending History

The prisoner's involvement in criminality.

### Elements:

- **Offence type** – the type of index offence committed. For example, violent, sexual.

- **Factual details of the offence** – the verified circumstances of the index offence.
- **Previous convictions** – the type and factual details of previous offending.
- **Patterns of behaviour linked to harm** – other behaviour which indicates actual harm or a risk of harm, including behaviour during previous sentences served in prison and/or the community.
- **Signs of stopping offending** – indications of a reduction in offending, actual harm or risk of harm including gaps in the pattern of offending.
- **Agency intelligence** – reliable information from agencies (for example, police, social services) which indicates actual harm or a risk of harm.
- **Impact of the offending** – the impact of offending behaviour on the victim(s) and others.
- **Allegations of harmful or risky behaviour** - See *'Allegations' Guidance*.

#### 4.4.2 Key Theme:

### Analysis of Evidence of Change (The Present)

Understanding whether and how a prisoner has changed their behaviour; and the prisoner's thoughts, feelings, motivation and understanding are important considerations in evaluating changes to the type and level of risk posed and for identifying current risk and protective factors.

#### Sub-theme:

#### Behaviour

The prisoner's behaviour and the evidence of behaviour change during the current sentence.

#### Elements:

- **Behaviour in prison / Behaviour on licence (if applicable)** - the prisoner's conduct within the prison and conduct and compliance during any periods of licence.
- **Evidence of risk factors and/or behaviour linked to serious harm** – any behaviour to indicate actual harm or a risk of harm including behaviour which is similar to past offending in actions or motivation.
- **Engagement with programmes/therapy and other opportunities** – the prisoner's involvement in opportunities to build skills to reduce risk.
- **Educational and vocational achievements** – the offender's involvement in opportunities to build knowledge and skills for life.
- **Use of new skills** – evidence of the prisoner's application of skills developed during the sentence in either custody or in the community during any period of licence.
- **Response to challenges and opportunities** – the prisoner's reaction to both positive and negative situations including triggers to risky behaviour.

#### Sub-theme:

#### Attitudes

The prisoner's attitude and the evidence of attitude change during the current sentence.

<b>Elements:</b>	<ul style="list-style-type: none"> <li>- <b>Attitudes towards offending</b> – the prisoner’s thoughts and feelings about their offending.</li> <li>- <b>Developing understanding of behaviour and its impact</b> – the prisoner’s development of understanding of self, behaviour and impact on others, including immediate and wider victims.</li> <li>- <b>Taking responsibility</b> – the prisoner’s ability and motivation to take responsibility for behaviour and harm caused.</li> <li>- <b>Motivation</b> – the prisoner’s motivation to change and progress.</li> <li>- <b>Developing maturity</b> – the prisoner’s current level of maturity and any development of maturity over the sentence.</li> </ul>
------------------	--

<b>Sub-theme:</b>	<b>Assessments</b>  Reports and evidence containing assessments and opinions of the prisoner’s current risk of re-offending, risk of harm and suitability for progression.
<b>Elements:</b>	<ul style="list-style-type: none"> <li>- <b>Risk Assessments</b> - tools and approaches used to assess the prisoner’s current risk of re-offending and risk of harm. These assessments will ordinarily include the level and nature of risk and identification of risk and protective factors.</li> <li>- <b>Professional Assessments</b> – the assessments of report writers and witnesses regarding the level of risk, the nature of risk and protective factors, the extent of risk reduction, risk management and any other matters relevant to progression.</li> </ul>

<b>Sub-theme:</b>	<b>Other</b>  Other elements linked to the evidence of change, including:
<b>Elements:</b>	<ul style="list-style-type: none"> <li>- <b>Age</b> – the impact of the prisoner’s age.</li> <li>- <b>Health</b> – the impact of the prisoner’s physical and mental health.</li> </ul>





### 4.4.3 Key Theme:

## Analysis of the Manageability of Risk (The Future)

Understanding the extent and likely effectiveness of internal and external controls on the prisoner and plans and opportunities for successful reintegration into society will assist in analysing risk and protective factors and manageability in the community.

### Sub-theme:

### Internal controls

The extent to which the prisoner takes personal responsibility for and has the skills and abilities to manage their own risk.

### Elements:

- **Openness and honesty** – the extent to which the prisoner demonstrates open and honest communication with others.
- **Likelihood of compliance** – evidence of past compliance with rules and the likelihood that the prisoner will comply with restrictions imposed in future.
- **Relationships with professionals** – the prisoner's ability and motivation to build and maintain good working relationships with professionals.
- **Individual plans** – the prisoner's plans for a positive, purposeful and law-abiding future.
- **Individual characteristics** - for example, a mental health problem, personality disorder, developmental disorder (for example, autistic spectrum condition), learning disability, identity issues or other characteristic that affects risk management.

### Sub-theme:

### External controls

The extent to which risk can be managed by other people, exerting external restrictions on the prisoner's behaviour.

### Elements:

- **Risk management plans** – plans to support and restrict the prisoner in the community to manage the risks identified.

- **Licence conditions and other controls (including those to protect the victim(s))** – direct external restrictions on the prisoner to protect the public, including the victim(s).
- **Imminence of risk, warning signs and contingency plans** – the potential for future harmful behaviour, how quickly it might emerge, what warning signs might exist to indicate that risk is increasing and plans to manage risk in those circumstances.

<b>Sub-theme:</b>	<b>Reintegration</b>
	The actions and processes being put into place by the prisoner and by professionals to make the transition back into society as smooth and successful as possible.
<b>Elements:</b>	<ul style="list-style-type: none"> <li>- <b>Structure and opportunities</b> – the prisoner’s current and future access to supportive structures, resources and opportunities in the community.</li> <li>- <b>Supportive relationships</b> – the strength of the prisoner’s interpersonal relationships and plans to develop personal support networks.</li> <li>- <b>Developing a non-offending identity</b> – the extent to which the prisoner has developed or is developing a new, pro social identity that does not support offending.</li> <li>- <b>Outlook</b> – the extent to which the prisoner demonstrates a hopeful and optimistic attitude towards the future.</li> </ul>

## 4.5 Outcome

### What is the decision and why?

#### Reasons

A parole decision requires the exercise of judgement based on the evidence. Members will reach decisions based upon the context in which the decision is made and their independent analysis of relevant elements.

When making a decision, members will ensure that they have fully considered evidence for and against and have considered all options.

The decision reached will be clearly explained in writing using either the paper or oral hearing decision template to enable others to understand all of the key elements which influenced the decision.

The decision will detail:

- The context of the decision
- The information taken into account
- The panel's analysis of the relevant elements
- The outcome of the decision.

## 4.6 Reflection

### What can we learn?

Members will reflect on their decision-making. This is an active process to enhance the quality and robustness of decisions; enable learning and development and promote the wellbeing of decision-makers.

#### Quality

Reflection is an opportunity to evaluate the individual or panel approach taken with the intention of identifying any aspects which have impacted on the quality and robustness of the decision, either positively or negatively.

#### Learning and development

Reflection is a mechanism for learning and development through experience and self-examination which is intended to:

- Promote greater awareness of issues that influence decisions.
- Highlight any gaps in knowledge or understanding that may be relevant.

#### Well-being

Reflection is observed to have a role in professions that are judgement-based; complex; high-risk; stressful; and/or emotionally impacting.