

Member Case Assessment (MCA)

Member Guidance

December 2023 (v2.1)

Document History

Document version	Date of Issue	Revision description
1.0	03.06.2021	This guidance was created as part of the Parole Board's project to launch fully revised and updated member guidance.
1.1	10.03.2022	Revision to revert to pre-Covid practices for determinate sentence recall cases. RADAR decision template and guidance amendments. Multi member panel update.
2.0	27.10.2022	The guidance was updated to reflect the changes following: <ul style="list-style-type: none">• The Police, Crime, Sentencing and Courts Act 2022.• The amended Secretary of State 2022 Directions on suitability for open conditions for ISP cases.• The Parole Board Rules 2019 (as amended).• Johnson R v Secretary of State for Justice [2022] EWHC 1282 (Admin). The review of the Parole Board's paused policies.
2.1	20.12.2023	The guidance was updated to reflect the changes following: <ul style="list-style-type: none">• Cancellation of the policy relating to no deferrals in IPP cases where a Secretary of State view has been submitted• Risk Assessed Recall Review• <i>Pearce</i> [2023] UKSC 13 on appeal from [2022] EWCA Civ 4• <i>Dich and Murphy</i> [2023] EWHC 945 (Admin)• Secretary of State's Directions for open conditions 2023

- Operations Hub policies:
 - Determinate sentence cases with less than 26 weeks (previously 20) until SED should not be sent to Oral Hearing
 - MCA representations can only be submitted before the case is panelled.
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1. Introduction – what is MCA?

- 1.1 This guidance is for Parole Board members carrying out **Member Case Assessment (MCA)** work. It provides an overview of the MCA process, the options open to members undertaking this work, and detailed guidance on best practice.
- 1.2 Every case referred to the Parole Board is required to go through the MCA process. MCA has been described as a form of ‘triage’ because each case, at the earliest opportunity (the point of referral), is considered by an accredited MCA member¹ who determines whether the case can be concluded on the papers or sets out additional steps that are needed for the matter to be determined fairly and swiftly.
- 1.3 This approach enables cases to be dealt with consistently, appropriately, proportionately, effectively and in a timely manner by:
 - Ensuring fair, rigorous, and timely reviews: the Parole Board has a duty under Article 5(4) of the European Convention on Human Rights to provide a speedy review;
 - Identifying the key issues in each case at the earliest opportunity and enabling good quality analysis, defensible decisions, and viable directions leading to better compliance and understanding by agencies of what is required;
 - Evidencing that a consistent approach has been taken for all cases; and
 - If an oral hearing is required, assisting a panel to make evidence-based assessments of risk by ensuring it has all the written information it needs, that relevant preparatory work is identified and directed (for example the need for interpreters, arrangements in relation to victims, etc), and by ensuring that relevant witnesses are identified.

2. MCA Process

- 2.1 Parole Board members, who are accredited to do so, normally undertake MCA panels sitting as a single member; however, there is an option to create a multi-member MCA panel (please refer to [section eight](#) below).
- 2.2 MCA panels are usually allocated a “bundle” of up to six cases, with the member having the option of requesting a further one to three cases². Members also have the ability to request half bundles where they will be sent three cases instead of six. Bundles are allocated in advance, with members providing availability via the Web Access Module (WAM system)³.
- 2.3 Please refer to paragraphs [21.27](#) and [21.28](#) for terrorism-related, and high-profile cases, which are allocated to a specialist cohort of members and should not be found in regular MCA bundles. Please refer to

¹ The MAPP guidance provides an overview of member accreditation

² Requests should be sent to MCA team leaders.

³ The Parole Board member portal which gives access to cases

paragraphs [21.29](#) for power to detain cases, which are managed by the Specialist Case Management team and should not be found in regular MCA bundles⁴.

- 2.4 Dossiers are listed in a cover note emailed by the case manager and issued electronically on WAM and made available for download seven days in advance of the panel date. The MCA panel reads and analyses each dossier, deciding how it should be determined or otherwise progressed, and records reasons or directions on the relevant MCA template.
- 2.5 The MCA decisions and directions are saved to "PB Saved Documents" on the member's C:Drive and on OneDrive. Documents may be saved in draft and, when completed and proofread, converted to finalised templates which are automatically given a filename based on the prisoner's name, panel decision and prisoner's number. More information on MCA templates can be found at section 3.8 below.
- 2.6 On or shortly before the panel date, members submit completed MCA decisions to the case manager; this must be done before midnight on the assigned date.
- 2.7 Members are required to retain their decisions and the dossiers for four weeks after the panel date in case any follow-up action is required.
- 2.8 Remuneration for completing an MCA panel is set out in the fee section of the Member Administrative Policies and Processes Guidance (MAPP).⁵ Members do not need to claim for MCA work as this is automated. Details of MCAs completed will be extracted from PPUD on the first day of the month and sent to each member to check that it correctly reflects the MCA cases they completed. Please refer to MAPP for further information.

3. What is needed to be able to complete an effective MCA case?

- 3.1 The information likely to be needed for an effective MCA assessment is set out in later sections; however, on a practical basis, members will need a complete dossier for each case and up-to-date MCA templates.

The dossier

- 3.2 The dossier is the vital starting point. The quality and completeness of the evidence it contains will have a significant impact on the effectiveness of the assessment to be undertaken.
- 3.3 As a starting point, members should use the referral from the Secretary of State to determine the case type and what the Parole Board panel is being invited to do⁶. In determinate sentence recall cases the Secretary of

⁴ Mental health cases are currently channelled through the mental health streamlining project pilot and therefore not found in regular MCA bundles. If a panel receives such a case in their regular bundle, please contact the Specialist Case Management Team.

⁵ Until March 2024 there are interim fee arrangements in place and a separate fee schedule has been produced which supersedes the section in MAPP

⁶ Please refer to the Types of Cases Guidance for more information.

State's referral is not always in the same format as for other cases, but its nature will be clear from the Dossier Cover Sheet. Panels should ensure they are clear on the terms of the referral and to seek clarification where it may not be clear. Core documents should be included in dossiers for all types of cases; however, the nature and extent of documentation will vary according to the type of case being considered.

- 3.4 A dossier must include all documents that are mandated by the Schedule to the Parole Board Rules 2019 (as amended) ("the Rules"). (Part A (information relating to the prisoner) and Part B (reports relating to the prisoner)) for a referral to be considered as having been made. The dossier includes core documents and additional mandatory documents. Although the dossier will have been screened by the Secretariat before it is allocated (and rejected if mandatory reports are missing without an explanation), the MCA panel must also check that mandatory reports have been received.
- 3.5 If a mandated document is not available, PPCS are required to add a note to the dossier at the time of referral and provide an explanation. The MCA panel should check that an acceptable explanation has been provided for any report that is not available. The MCA panel should seek clarification from PPCS if there are any questions or concerns as to why the report is not available. If a mandated document is missing, (for example a missing pre-sentence report), the MCA panel must decide whether the explanation as to its omission is acceptable. If the explanation is not acceptable, the mandated report should be directed. Where the MCA panel considers that the explanation provided is acceptable and decides that the dossier contains sufficient information to make a decision, despite missing mandatory documents, this should be explicitly noted in the decision with an explanation as to how the panel were able to make a decision without the mandatory reports.
- 3.6 Where a member requires additional information, the focus must be on what is *essential* to determine or progress the case. A formulaic approach to requesting additional information must be avoided. Every case referred to the Parole Board is different and should be treated as such. This means avoiding generalised responses such as always calling for post-programme review reports, or the previous dossier seen by an earlier panel. Requests for information should be proportionate, reflecting their relevance to the decision to be made and the need to follow a fair process. The baseline should be whether the existing dossier is adequate to allow a fair, effective, and timely decision to be made.
- 3.7 As a first step, where required material is missing, the MCA panel should adjourn or defer (an adjournment should always be considered before a deferral)⁷. Directions should be issued using the MCA template stipulating

⁷ *Adjourning should always be considered before a deferral. This ensures the case is retained by the MCA panel who will see the case through to conclusion or direction for an oral hearing. There may be exceptional circumstances where a case is not suitable for adjournment and a deferral is appropriate. For example, end of membership tenure, unavailability of member for a substantial period of time, conflicts of interest or another perceived procedural unfairness.*

the required information and setting associated deadlines. Once the material has been provided, it should allow the MCA panel to complete the case by making a determination or progress the matter to an oral hearing.

- 3.8 For more detail on the options available at MCA stage please refer to [paragraph 9](#).

MCA templates

- 3.9 There are two templates for MCA work, one for paper decisions (the substantive decision) and the other for directions (adjournments, deferrals, directing a case management conference or directions hearing, or directions to an oral hearing). Member laptops will have the MCA templates stored on them and any technological queries should be raised with the Parole Board's IT team. Detailed instructions for operating, saving and submitting the templates can be found on the IT SharePoint page. SharePoint also contains technical guidance on using the decision template.

4 What information is necessary to effectively complete an MCA case?

- 4.1 Whether the case is concluded on the papers, or it is sent to an oral hearing, the MCA panel will need to understand, analyse, and reflect on the following:
- Context: the terms of referral, the statutory test for release, sentence type, stage in the sentence and the powers and options of the MCA panel;
 - Offending behaviour (the past): the prisoner's history, life circumstances, age and any unique or protected characteristics (such as mental health) will usually provide context to the type and details of the offence, previous convictions and patterns of behaviour, their impact, and allegations of harmful and risky behaviour in custody or in the community. Evidence can be taken, for example, from the pre-sentence report, the judge's sentencing remarks, police computer printouts, OASys assessments, any psychological and psychiatric reports, any witness statements, and the Community Offender Manager (COM) reports. The reports may contain the prisoner's version of events as told to the report writer. Any reports of previous offending should not be relied upon exclusively unless verified elsewhere. Victim Personal Statements (VPS) may be part of the dossier, although these should not provide evidence relating to risk (should the VPS provide evidence that may relate to risk, please refer to the guidance on handling the VPS to see how this should be dealt with⁸);
 - Evidence of change (the present): behaviour in custody, adjudications, security reports and drug tests, engagement with interventions, educational and vocational achievements, application of new skills, responses to challenges and opportunities, recommendations for further treatment and training, behaviour on licence, circumstances of recalls, current risk factors and protective factors, motivation, and

⁸ Please refer to the Victims guidance.

attitudes to offending, insight and maturity, risk assessments, and the opinions of key report writers. Also, time spent in open conditions and conduct during periods of temporary release. Evidence can be found, for example, in the documentation already outlined and especially post-programme review reports, OASys assessments, security summaries, and the Prison and Community Offender Manager reports; and

- Manageability of risk (the future): changes in risk factors and risk assessment scores, risk management or release plans, licence conditions and other controls, individual plans and characteristics, openness and honesty, likelihood of compliance, supportive relationships, outlook, and self-identity. The MCA panel may consider on this basis what further offences might be committed, with what impact (i.e. the likely level of harm) and against whom. It may also form a view about probability and imminence of reoffending before setting the evidence against the Parole Board test for release⁹. Indications of evidence of manageability can be found, for example, in the COM report, specialist assessments, representations and other submissions.
- Secretary of State's view: In some cases, the Secretary of State will present a view on the prisoner's suitability for release. The MCA panel may wish to consider the basis of the recommendation, the evidence upon which it is based, and the weight attributed to that evidence.

- 4.2 MCA decision-making about risk must follow the Decision-Making Framework which provides a structured approach to independent professional judgement and stresses the need for analysis, consideration, reasoning, and reflection. See paragraph 18 and annex 3 for more information on writing decisions.
- 4.3 An MCA panel considering all this information, or deciding what additional evidence is needed and how to progress a case, should bear in mind that directions must always be relevant, proportionate, reasonable, necessary, lawful, and deliverable. **There is no need to know absolutely everything about a prisoner in order to be able to make a decision about progressing the case.** A panel needs enough information to make a defensible and fair decision.

5 Types of sentence

- 5.1 In the first instance, the MCA panel should check the terms of the referral, which will set out the type of case it is and what the Secretary of State is asking the Parole Board to do. The referral note should be at the front of the dossier for indeterminate sentence and determinate sentence (non-recall) cases although the panel may have to look elsewhere in the dossier to find out the exact sentence (indeterminate public protection, life sentence, discretionary conditional release, extended determinate sentence etc). In determinate sentence recall cases, the Secretary of State's referral is not always included in the dossier in the same format as

⁹ Please refer to the *Types of Cases guidance*.

GPP cases, but it will be clear from the Dossier Cover Sheet that it is a recall case.

- 5.2 Panels should always double-check the sentence information (such as relevant dates) provided on the Dossier Cover Sheet against reports in the dossier. Sometimes the Cover Sheet is inaccurate, particularly in determinate sentence recall cases, or where there are concurrent or consecutive sentences. Discrepancies must be resolved before the review is concluded or highlighted if the case is being directed to an oral hearing. Should there be any discrepancies or should the member have any questions about the sentence information, clarification should be sought from PPCS. Advice can also be sought from the Parole Board's Practice Advisor.
- 5.3 Panels should note that the period over which panels are considering risk is indefinite for both indeterminate and determinate sentence cases.

Please refer to the Types of Cases Guidance for more information on sentence types.

6 The Osborn, Booth & Reilly (OBR) judgment 2013¹⁰

An overview

- 6.1 In the Supreme Court judgment in this case, the court found that the Parole Board had breached its common law duty of procedural fairness to the three appellants and had contravened article 5(4) of the European Convention on Human Rights, by failing to offer them oral hearings in circumstances where fairness required one. This ruling required the Parole Board to adopt a different way of thinking about the need for oral evidence and to revise its practice guidance concerning the purpose of and necessity for an oral hearing in every case referred to it. The judgment did not oblige an oral hearing to be directed in every case, only when fairness requires one.
- 6.2 The main change following the judgment was that fairness to the prisoner became the overriding requirement in the decision whether, or not, to grant an oral hearing. The perceived utility of an oral hearing (whether it was likely to make any difference to the outcome of the review) is not a deciding factor. The Parole Board must hold an oral hearing whenever fairness to the prisoner requires one, in light of the facts of the case and the importance of what is at stake. By applying this principle, the Parole Board is compliant with Article 5(4) European Convention of Human Rights (ECHR).
- 6.3 The judgment does not specify the form an oral hearing should take. When the Supreme Court considered this case in 2013, oral hearings were thought to be synonymous with face-to-face hearings. That is no longer so, as oral hearings can be conducted remotely by telephone or video. If

¹⁰ *Osborn & others v Parole Board* [2013] UKSC 61

fairness requires an oral hearing, members must consider what form of oral hearing might deliver a fair outcome (please refer to paragraphs [20.23-20.29](#)).

The Supreme Court's summary of the OBR principles

- 6.4 In order to comply with common law standards of procedural fairness, the Parole Board should hold an oral hearing before determining an application for release, or for a transfer to open conditions, whenever fairness to the prisoner requires such a hearing in the light of the facts of the case and the importance of what is at stake. By doing so, the Parole Board fulfils its duty under section 6(1) of the Human Rights Act 1998 and is compatible with article 5(4) of the European Convention for the Protection of Human Rights, in circumstances where that article is engaged.
- 6.5 Fairness will not require an oral hearing in every case. It may be possible to fairly determine the matter on the papers without an oral hearing taking place. The Court in the OBR case said that it would be impossible to define exhaustively the circumstances in which an oral hearing will be necessary. When considering the question of fairness, members may be assisted by the following circumstances identified by the Court which indicate an oral hearing may be required:
- a) Where facts which appear to the Parole Board to be important are in dispute, or where a significant explanation or mitigation is advanced which needs to be heard orally in order to fairly determine its credibility. The Parole Board should guard against any tendency to underestimate the importance of issues of fact which may be disputed or open to explanation or mitigation.
 - b) Where the Parole Board cannot otherwise properly or fairly make an independent assessment of risk, or of the means by which it should be managed and addressed. That is likely to be the position in cases where such an assessment may depend upon the view formed by the Parole Board (including members with expertise in psychology or psychiatry) of characteristics of the prisoner which can best be judged by seeing or questioning them, or where a psychological assessment produced by the Ministry of Justice is disputed on tenable grounds, or where the Parole Board may be materially assisted by hearing evidence - for example, from a psychologist or psychiatrist. Cases concerning prisoners who have spent many years in custody are likely to fall into the first of these categories.
 - c) Where it is maintained on tenable grounds that live interaction between the prisoner and the Parole Board, or with those who have dealt with the prisoner, is necessary in order to enable them or their representatives to put their case effectively or to test the assessments of those who have dealt with them.
 - d) Where, in the light of the representations made by or on behalf of the prisoner, it would be unfair for a "paper" decision made by a MCA panel of the Parole Board to become final without allowing an oral hearing: for example, if the representations raise issues which place in serious question anything in the papers which may in practice have a

significant impact on the prisoner's future management in prison or at future reviews.

6.6 Other principles laid down in the OBR case may be useful to consider when approaching the question of fairness:

- a) Members will need to consider whether their independent assessment of risk, and of the means by which it should be managed and addressed, might benefit from the closer examination which an oral hearing can provide.
- b) Members should also bear in mind that the purpose of holding an oral hearing is not only to assist in the panel's decision-making, but also to reflect the prisoner's legitimate interest in being able to participate in a decision with important implications for them, where they have something useful to contribute.
- c) The question of whether fairness requires prisoners to be given an oral hearing is different from the question of whether they have a particular likelihood of being released or transferred to open conditions and cannot be answered by assessing that likelihood.
- d) When dealing with cases concerning recalled prisoners, members should bear in mind that the prisoner has been deprived of their freedom, albeit conditionally.
- e) When dealing with cases concerning post-tariff indeterminate sentence prisoners, members should scrutinise ever more anxiously whether the level of risk is unmanageable, the longer the period the prisoner has spent in prison following the expiry of their tariff.
- f) The Parole Board must be, and must also appear to be, independent and impartial. That means the panel should not be predisposed to favour the official account of events, or official assessments of risk, over the case advanced by the prisoner.
- g) Members should guard against any temptation to refuse oral hearings as a means of saving time, trouble, or expense.
- h) Members will need to bear in mind that the decision, for the purposes of this guidance, is not confined to its determination of whether or not to direct the prisoner's release or recommend their transfer to open conditions, but includes any other aspects of its decision (such as comments or advice in relation to the prisoner's treatment needs or the offending behaviour work which is required) which will in practice have a significant impact on management in prison or on future reviews.
- i) In applying this guidance, it will be prudent to allow an oral hearing if members remain in doubt whether to do so or not.

6.7 Where a panel makes a no release decision on the papers under Rule 19(1)(b), the prisoner has 28 days from the receipt of the decision to request for their case to be considered at an oral hearing. The entitlement of the prisoner to request an oral hearing is not correctly characterised as a right of appeal. In order to justify the holding of an oral hearing, the prisoner does not have to demonstrate that the paper decision was wrong or even that it may have been wrong: they have to persuade the Parole Board that fairness requires an oral hearing.

Practice Guidance for applying the OBR principles

6.8 Looking at the OBR principles, there are practical points which members may wish to note:

- At MCA stage, members must apply the OBR principles, as summarised above, to every case.
- Fairness to the prisoner must be the overriding factor.
- If a decision can be made fairly at the MCA stage, the panel must record that in the decision together with its reasons for doing so.
- MCA panels must not decline to direct an oral hearing because it is unlikely to make a significant difference to the outcome or because the prospects for release or transfer to open conditions look remote.
- MCA panels must not decline an oral hearing to save time or money.
- Just because a prisoner has not asked for an oral hearing is no reason not to direct one.
- An oral hearing may be helpful to identify further steps needed to progress the prisoner to eventual release or transfer to open, even where these outcomes are currently unlikely.
- If following detailed assessment there is still doubt as to how to conclude a case on the papers, then an oral hearing should be directed.
- If an oral hearing is granted, MCA panels will also need to consider and record in the directions what type of oral hearing is required, i.e., by telephone, video, hybrid arrangement, or whether the review requires a face-to-face hearing.
- All decisions should cite the *Osborn* judgment, using the standard text shown below.

Standard wording for referring to the judgment

6.9 It is strongly recommended that the standard form of words is used to refer to the judgment in each case. This is because the text is comprehensive and is based on legal advice and is, therefore, less open to challenge. It is easy to insert this prepared standard wording in the paper decision template, saving the member time in paraphrasing.

*"The panel has considered the principles set out in the case of Osborn, Booth and Reilly (2013) UKSC 61 concerning oral hearings. It has not found that there are any reasons to hold an oral hearing. **[but note whether any representations have been submitted]**. Therefore, this case is not being directed to an oral hearing."*

6.10 This wording should be expanded to suit particular circumstances. For example, when there is insufficient time to hold an oral hearing before the Sentence Expiry Date (SED):

"The panel has considered the principles set out in the case of Osborn, Booth and Reilly (2013) UKSC 61 concerning oral hearings. It has not found that there are any reasons to hold an oral hearing and, in any case, there is now insufficient time to arrange an oral hearing before your

*Sentence Expiry Date. **[but note whether any representations have been submitted]**. Therefore, this case is not being directed to an oral hearing."*

6.11 Or, if otherwise, an oral hearing might have been appropriate:

*"The panel has considered the principles set out in the case of Osborn, Booth and Reilly (2013) UKSC 61 concerning oral hearings. It considers that an oral hearing is appropriate in this case. Unfortunately, however, as your Sentence Expiry Date is on **[insert date]**, the Parole Board is unable to convene an oral hearing before you will be automatically released on that date. As it is practically impossible to arrange an oral hearing in your case, and there is no significant further information outstanding which requires a further delay to obtain, the panel has gone on to consider [the test for release/criteria for open conditions] on the papers before it."*

6.12 The text may be extended as follows to provide more explanation:

"The Parole Board has an operational policy that at least 26 weeks must remain until Sentence Expiry Date to allow the practical steps to be taken for a hearing to be arranged. There is insufficient time remaining until your SED and, unless there are very exceptional circumstances, any application for an oral hearing is unlikely to be granted."

7 Consultation with a specialist member or a duty member¹¹

7.1 In certain circumstances a brief consultation with a duty member or a specialist member might be required. This consultation is likely to be appropriate in the following scenarios:

- A brief consultation of up to 30 minutes is required to assist the MCA member in their deliberations.
- The MCA member can summarise the case and issues to the duty/specialist member; full consideration of the dossier by the duty/specialist member is not required.
- To discuss a point that needs to be unpicked.
- To consider options to progress the case.
- To consider when either a psychologist or psychiatrist is needed when deciding the panel composition for a case, or if a specific specialism is required.
- For advice from a specialist member on matters such as, medical conditions, directions (fairness/wording/reports), case progression, or licence conditions.

8 Multi-member MCA panels

8.1 Multi-member MCA panels are intended for cases where a brief consultation with a duty member or specialist member is insufficient, for example it would require the specialist or duty member to read and consider the full dossier.

¹¹ A list of specialist members can be found just above the duty member rota on SharePoint.

- 8.2 Members should initially consider whether any additional information is required to conclude the case on the papers. Following directing and obtaining this, members can then determine whether the case requires a multi-member panel. Members should use the initial review to direct further information before considering whether a multi-member panel is required, as the additional information may have an impact on that decision.
- 8.3 A multi-member MCA panel involves joint decision-making where a further member(s), such as a specialist member, joins the panel. Therefore, it is for cases where the MCA member requires more than a brief consultation (set out at paragraphs 7.1 above). Instances where a multi-member panel might be used include, but are not restricted to¹²:
- Cases requiring case-specific specialist advice, where a short discussion with the specialist member would not be sufficient;
 - Finely balanced cases, for example where a decision on the papers is being considered and a second opinion would be beneficial to resolve issues of fact or resolve a point of view, or to ensure fairness;
 - Complex cases, including ones involving rare or unusual facts, cases which raise technical or specific knowledge issues, complex non-disclosure issues, and cases where the MCA member may benefit from a specialist, expert, or second opinion, to either conclude the case or issue complex directions.
- 8.4 If a member has a case in their MCA bundle that, after consideration, requires a multi-member panel, they should notify the case manager within four days from point of allocation. Arrangements can then be made for the additional member/members to be allocated to the panel. Necessary information to include is:
- Prisoner name and prison number
 - Bundle number
 - Number of additional members required and the reason(s) why
 - Whether a specialist member is required (only specify psychiatrist member or psychologist member if the nature of the case means their specific knowledge and skills are required to make a fair and rigorous risk-based decision).
- 8.5 Under delegated authority (rule 4), the additional member(s) will be allocated to the case by the secretariat according to member type (specialism) and availability. Additional members cannot be personally selected by the MCA member.
- 8.6 The MCA member will then become the MCA panel chair and retain overall responsibility for the case and the decision-writing. It is the responsibility of the MCA panel chair to contact the additional member(s) to agree a time to discuss the case.

¹² Please refer to [annex 4](#) for a table aiding members decision-making on whether a multi-member panel is required.

- 8.7 Following a multi-member panel, the due date for the decision is 10 days from the date the bundle was issued to enable sufficient time for the panel discussion. The remaining cases in the bundle will continue to be due on the original date.
- 8.8 If a two-member MCA panel is finding it hard to reach an agreement, they should carefully consider whether further written evidence may assist them, or whether the case would be better determined at oral hearing. If an agreement cannot be reached after a thorough review of the evidence and test, under rule 26(2), the MCA panel chair will need to formally defer the case so that a new panel can be convened to hear the case. The MCA panel chair will need to issue a deferral notice explaining that the panel has not been able to reach a conclusion and that the case will be re-listed for a new panel. The MCA panel chair may issue directions for further information which they believe will assist the next panel. In doing so, they should be careful not to give an indication of their own assessment such that it might impede the decision of a future panel.
- 8.9 If a three-member panel is having difficulties in coming to a unanimous decision, the panel should thoroughly and fairly debate the evidence, statutory test, and alternatives again. One of the panel members could facilitate a discussion about a specific point on which agreement cannot be reached or on which opinion differs. If full agreement is still not possible, the case may be concluded with a majority decision under rule 26. No explicit reference to a majority decision must be made in the decision but the decision can be described as finely balanced. The decision should reflect even-handedly the panel's assessment of the evidence for and against the decision.
- 8.10 Adjournments following a multi-member panel should be rare. In circumstances where a multi-member panel has convened and further information has been directed and received, the MCA panel chair will need to decide whether they can make the decision alone, through consultation with a duty/specialist member or if a multi member panel continues to be required. If the MCA panel chair is making a decision alone, they will need to stand down their co-panellists and record the reasons why. If the MCA panel chair requires the multi-member panel to reconvene, the MCA panel chair should arrange a suitable time to discuss the case.
- 8.11 Once the additional information is received following an adjournment, the decision is due within eight days¹³ of receipt of the new information.
- 8.12 There may be exceptional circumstances where a case is not suitable for adjournment and a deferral is appropriate. Reasons for deferring the case (as opposed to adjourning) must be clearly outlined.
- 8.13 Directions to an oral hearing following a multi-member paper panel being convened should be rare. Multi-member paper panels are intended to resolve cases at MCA stage that a single member would not be able to

¹³ As the panel have already had the opportunity to meet and review the bundle a smaller time allocation is provided.

resolve by themselves. Nevertheless, there may be instances where the case is so finely balanced that a multi-member paper panel decide that an oral hearing is required.

- 8.14 The decision is that of the panel. The draft decision should be shared with the co-panellist(s) for comments before the final decision is sent to the case manager.
- 8.15 Please refer to [annex 4](#) for a chart referencing the required steps of a multi-member panel.

9 Options available to an MCA panel

- 9.1 The Types of Cases Guidance sets out in tabular format the options available to an MCA panel for each type of case. MCA panels should familiarise themselves with this table.
- 9.2 In summary, options which can apply to particular types of case include:
1. Adjourn or defer for further information.
 2. Issue a paper decision: a positive decision for release or recommendation for progression to open conditions, or a negative decision which refuses release or re-release and/or does not recommend progression to open conditions.
 3. Direct an oral hearing or send the review to an oral hearing after a case management conference or directions hearing.
 4. Direct an oral hearing after a defined period of deferral for specified developments or assessments to take place.
- 9.3 These options are explained in greater detail in the following paragraphs. An adjournment should always be considered before a deferral. This ensures the case is retained by the MCA panel who will see the case through to conclusion or direction for an oral hearing. There may be exceptional circumstances where a case is not suitable for adjournment, and a deferral is appropriate. For example, end of membership tenure, unavailability of member for a substantial period of time, conflicts of interest¹⁴, or another perceived procedural unfairness.
- 9.4 Under rule 19 of the Parole Board Rules 2019, the decision and advice of the MCA panel must be recorded in writing with reasons for that decision. The written record must be provided to the parties within 14 days of the date of the decision, in accordance with Parole Board Policy¹⁵.

Adjourn for further information

- 9.5 To adjourn is to postpone completion of the review to a specified future date with the same panel retaining responsibility. Members have this

¹⁴ For more information on what may constitute a conflict of interest please refer to the Oral Hearing Guidance

¹⁵ This policy has been agreed by the Parole Board's Management Committee and is in response to the Parole Board Rules (as amended) 2019 having removed the time limit.

option in *any type of case* if they consider that further initial evidence is needed to enable a decision on how to determine or progress the case. When deciding whether an adjournment is necessary, panels should consider:

- whether additional information is required to make a balanced risk assessment and/or provide a fair hearing and whether this information will be available within a specified timescale; and
- whether the information is likely to materially affect a decision about the necessity of an oral hearing or is otherwise liable at any stage to influence the eventual parole outcome.

If not, then a decision to adjourn should generally be avoided, as this can cause unnecessary delay to a review.

- 9.6 An adjournment may be suitable for obtaining an existing or historical report, a specific update (such as a release address), or a post-programme review or treatment report for an already completed intervention. It may not be suitable for a substantive or new assessment which will take longer to complete and obtain. Nor may it be suitable when an ongoing investigation into criminal matters will take time to resolve.
- 9.7 The MCA directions template should be used to set out the reasons for the adjournment, the information that is required, who should provide it and the deadlines for compliance with the directions.
- 9.8 Following adjournment, the case will be referred back to the same MCA panel when the additional information has been received. The member should track adjourned cases and check with the case manager if deadlines pass and the directed information has not been received. Although case managers monitor developments, members should also make checks to ensure cases are kept on track. This supports fairness to the prisoner as well as procedural efficiency.
- 9.9 When the additional information directed has been received, the assessment should be concluded on a new template as a decision or as further directions.
- 9.10 When considering an adjournment, the member should take into account whether the case has been adjourned or deferred previously. The ongoing need for adjournment/deferral must be kept under review by the member to avoid unnecessary delay. The Parole Board is under a legal obligation¹⁶ to complete a timely review of cases referred to it. Cases should not be adjourned indefinitely or be subject to long delays which are unjustified and disproportionate. If a case appears to be 'stuck' with no progress occurring, then the MCA panel may wish to make a decision on risk and conclude the case on the basis of available evidence, or to progress it to a

¹⁶ Article 5(4) of the European Convention on Human Rights.

case management conference, directions hearing or an oral hearing, rather than again adjourn it¹⁷.

- 9.11 Adjournments and deferrals should not exceed four months from the date of the panel unless there are exceptional circumstances. Where a case is adjourned or deferred for more than four months, a reason must be given setting out the exceptional circumstances. When considering an adjournment under rule 6 (14), members must take into account the date of the prisoner's last parole review.
- 9.12 Please refer to the Guidance on Adjournments and Deferrals for more information, including examples of when an adjournment at MCA stage may/may not be appropriate.

Defer for further information

- 9.13 A deferral is different from an adjournment in outcome - to defer is to postpone completion of the case to a fresh MCA panel at a future date. A deferral can be imposed on any type of case.¹⁸
- 9.14 Members should avoid a deferral where possible, but there are some circumstances where it is more appropriate than an adjournment, as noted above. Such as: the imminent end to the member's tenure, the member expecting to be unavailable for a long time, conflicts of interest, or another perceived procedural unfairness. Adjournments and deferrals should not exceed four months from the date of the panel unless there are exceptional circumstances. Where they do, a reason should be given clearly setting out these circumstances.
- 9.15 The MCA directions template should be used to set out the reasons for the deferral, the information that is required, who should provide it, and the deadlines for compliance with the directions.
- 9.16 If considering a deferral, members should take into account whether the case has been adjourned or deferred before, the length of a proposed deferral, and the overall time impact on the case. Cases must not be deferred indefinitely or be subject to long delays which are unjustified and disproportionate. Members should also take into account the date of the prisoner's last parole review when making a decision to adjourn or defer under Rule 6 (14).
- 9.17 Please refer to the Guidance on Adjournments and Deferrals for more information, including examples of when a deferral at MCA may/may not be appropriate.

¹⁷ The MCA panel can seek advice from the Parole Board's Practice Advisor if required.

¹⁸ The policy on no deferrals in IPP cases where there is a Secretary of State view was cancelled by Management Committee following review in April 2023.

Issue a paper decision

- 9.18 If an MCA panel is satisfied that there is enough information to conclude a case on the dossier documentation alone, and that it is fair to the prisoner to do so, a paper decision can be written which will take the form of a full set of reasons on the paper decision template. Depending on the type of case and the Secretary of State referral, reasons can direct release or recommend transfer to open conditions, or not direct release and/or not recommend transfer to open conditions¹⁹. In coming to its decision, the MCA panel should follow the principles of the Decision-Making Framework. Where the referral from the Secretary of State includes consideration of release and of suitability for open conditions, the MCA panel must first consider whether the test for release is met and, if release is not directed, to then consider suitability for open conditions.
- 9.19 Prior to concluding a case, any ongoing non-disclosure applications must be completed. The review should not be progressed without the full non-disclosure process having been completed. The MCA panel may need to adjourn²⁰.
- 9.20 The Rules give the Parole Board power to release any prisoner on the papers. This includes initial release of those serving an indeterminate sentence as well as indeterminate recall cases if the case merits such a decision. Previously, Parole Board policy required that initial release of a life sentence prisoner should only take place following an oral hearing. This is no longer the case. However, while there is no longer a requirement for an oral hearing to take place, Parole Board policy is that there is a presumption that a first-time release of a life sentence prisoner should only take place following an oral hearing.
- 9.21 Previously, a recommendation on the papers for a life sentence prisoner to progress to open conditions could only be made in exceptional circumstances. This is no longer the case. A recommendation for open conditions for such a prisoner can be made by an MCA panel on the papers; however, Parole Board policy is that there is presumption that recommendations for a life sentence prisoner to progress to open conditions should only take place following an oral hearing.
- 9.22 Paper decisions declining release can be issued in all types of cases except:
- Prisoners who are under the age of 18 at the point of referral (child cases): if not released on the papers, Parole Board policy is to automatically grant an oral hearing with the case prioritised in the next listing schedule.

¹⁹ Members should note the policies relating to specific types of cases if release cannot be directed on the papers – set out in the table of options in the Types of Cases guidance.

²⁰ The stage of the non-disclosure application will determine whether an adjournment notice should not make reference to the Parole Board receiving an application for non-disclosure. If the Parole Board has not yet made a decision on the non-disclosure application, then the adjournment notice should not make reference. If a decision has been made under rule 17 (5) then the adjournment notice can make reference.

- Prisoners in a secure hospital or mental health setting: if not released on the papers, Parole Board policy is to automatically grant an oral hearing with the case prioritised in the next listing schedule²¹
- Prisoners facing their first review after having been in a mental health unit or secure mental health setting: if not released on the papers, Parole Board policy is to automatically grant an oral hearing with the case prioritised in the next listing schedule²².

9.23 Parole Board policy is also that there is a presumption of an oral hearing, for prisoners aged inclusively 18–21 at the point of referral (young adult cases) if they cannot be released on the papers.

Issuing a decision for release

9.24 In order to issue a paper decision for release, there must be sufficient evidence to demonstrate that the prisoner meets the statutory test for release. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO 2012') the test for release for all cases is:

*"The Board must not give a direction [for release] unless the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined [in prison]."*²³

9.25 The test applies to both initial release and recall cases and to determinate sentence and indeterminate sentence prisoners. However, a recalled extended sentence prisoner who is in the "extension period" part of the sentence, must be given a presumption in favour of release. In such cases, the panel should direct release unless positively satisfied that continued detention is necessary for the protection of the public²⁴. This presumption does not apply in any other type of case. Please refer to the Types of Cases Guidance, for more information.

9.26 For an MCA panel to complete an adequate analysis which follows the principles of the Decision-Making Framework, the evidence needed for a release decision should include:

- accurate information about the referral from the Secretary of State, the sentence and all relevant dates;
- all the mandatory reports as per the Schedule to the Rules;²⁵

²¹ This policy remains paused for the time being until the mental health streamlining pilot becomes business as usual in 2024.

²² This policy remains paused for the time being until the mental health streamlining pilot becomes business as usual in 2024.

²³ The following wording is automatically inserted in decisions where release is being considered: "the Parole Board will direct release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined." This reflects what panels are required to do by law when applying the test. The test itself is as laid down in LASPO.

²⁴ R (Sim) v Parole Board [2004] QB 1288

²⁵ Please refer to [paragraph 3.3](#) for cases where mandatory reports are missing/ unavailable.

- a clear and independent account of the index offence and other patterns of offending;
- any material that has been subject to a non-disclosure application. If this has been evidenced by, say, a gist in the dossier, panels must have sight of the full material. If they have not had sight of the full material and are unable to access it, they should raise the matter with the Parole Board case manager. If there was no non-disclosure information, confirm this;
- clearly identified risk factors as well as the prisoner's triggers and motivation for offending;
- the full details and circumstances of any recall;
- evidence of change and risk reduction (for example, successful completion of interventions, assessed motivation and compliance, security information, protective factors);
- full risk assessments and information which enables assessment of the levels and imminence of risk;
- a complete risk management plan (or release plan for prisoners presenting a low risk of harm);
- a full set of proposed licence conditions; and
- a VPS if it is indicated one will be available.

9.27 If the member does not have this evidence/information available, an adjournment or deferral for further information may be appropriate or consideration given to whether an oral hearing is more appropriate.

9.28 A VPS should be taken into account and referenced in a decision if one is present. If a VPS is indicated, but not available in the dossier, members are advised to seek clarification as to the availability of a VPS. This will help to ensure that, if a VPS has been submitted for consideration, the Parole Board is fully aware of it and can fulfil its duties towards victims. Please refer to the Guidance on Victims.

10 The Prisoners (Disclosure of Information About Victims) Act ("Helen's Law")

10.1 The Prisoners (Disclosure of Information About Victims) Act ("the Act") received Royal Assent on 4 November 2020 and came into force on 4 January 2021. The Act applies to all prisoners who are releasable under the Crime (Sentences) Act 1997 serving a sentence for murder or manslaughter; or the Criminal Justice Act 2003 for manslaughter or the taking or making of indecent images.

10.2 The Act places a statutory duty on the Parole Board to consider the non-disclosure of information about victims in its decision-making. The duty applies to cases involving the non-disclosure of information about the whereabouts of a victim's remains (often referred to as Helen's Law) and non-disclosure of information about the identity of child victims in indecent images.

10.3 There are practical implications for the MCA panel; where the criteria are met, the panel will need to consider:

- the prisoner's non-disclosure; and
- the reasons (in their view) for the prisoner's failure to disclose the information.

The Act only applies to initial release and *does not cover recall cases*. When considering re-release of a recall case this legislation does not compel the MCA panel to take these matters into account; however, the panel may form a view that these matters remain relevant in such cases and will still wish to give due regard to the circumstances.

10.4 Please refer to the Guidance on The Prisoners (Disclosure of Information About Victims) Act for more information.

11 Releasing IPP or life sentence prisoners on the papers

11.1 While initial release and re-release of IPP and life sentence prisoners may take place on the papers, it may not be appropriate in the following circumstances:

- if risk assessments are finely balanced, oral evidence is likely to be helpful;
- if there is any dispute of fact or a finding of fact needs to be made;
- if key report writers have made conflicting risk assessments;
- if there are any key issues which are not addressed in reports: sometimes these may be identified by representations;
- if a case is complex or unusually serious and the member has concerns about directing release that require further exploration;
- in any case, when applying the OBR principles (see paragraphs [6.4-6.8](#)), a prisoner reasonably wishes to put a case or to question the views of others at an oral hearing;
- initial release of a life sentence prisoner needs to take account of the policy of the presumption of an oral hearing.

11.2 If the case presents high-profile matters which may attract public scrutiny, or material that may attract particular local or national interest, the MCA panel need not be inhibited from releasing on the papers but should check with the case manager that the Parole Board has a communications plan in place before the decision is issued.

12 Recommending Open conditions for indeterminate sentence prisoners

12.1 Parole Board panels make a 'recommendation' in respect of a prisoner who is eligible to go to open conditions. This is advice to the Secretary of State, which is not binding, rather than a direction which is binding. There is not a formal or legal 'test' for recommending transfer to open conditions, but rather a set of criteria laid down by the Secretary of State. Please refer to the Types of Cases Guidance for more information.

12.2 A recommendation for transfer to open conditions for life sentence prisoners may be made on the papers; however, Parole Board policy is that there is a presumption that this should only happen following an oral

hearing (please refer to paragraph [9.21 - 9.23](#) for more information) . This policy does not apply to prisoners with IPP sentences.

- 12.3 In all cases where it is part of the referral, the criteria for recommending transfer to open conditions will be automatically inserted into the decision template. The criteria must be addressed separately and explicitly in the reasons for a decision.
- 12.4 Please refer to the Types of Cases Guidance for more detailed guidance about open conditions and the criteria for recommending transfer to open conditions.

13 Issuing a negative paper decision

- 13.1 If the MCA panel is satisfied that a prisoner is not suitable for release or re-release following recall (on the basis of applying the statutory test) and that the case does not require an oral hearing, they can issue a negative paper decision²⁶. This must follow careful consideration of the OBR principles, which must be referenced in the decision. Standard wording (see paragraphs [6.9 - 6.12](#)), set out above, must always be used for this.
- 13.2 Negative paper decisions may be appropriate in the following circumstances:
 - There are well supported/reasonable representations from a prisoner/their representative asking for a paper decision rather than an oral hearing.
 - The previous review took place at an oral hearing and very little of significance has changed since (though the potential benefits of an oral hearing as a means of re-engaging a prisoner 'stuck' in the parole process should not be disregarded and the OBR principles always apply). It is worth considering also the potential impact on risk of the further passage of time: much can change for a prisoner in a year, even if no further interventions have been completed.
 - The prisoner is confirmed to be about to start an important intervention and a period of consolidation afterwards is needed.
 - A prisoner has only recently arrived in open conditions and needs time to work through the regime and resettlement scheme in order to demonstrate change or to reduce risks sufficiently for a safe release.
 - The prisoner faces outstanding charges and (a) it is confirmed it will be more than eight weeks or so before the matter is concluded; and (b) the allegations are similar to the index offence and/or are serious or are otherwise relevant to a proper assessment of risk. When considering allegations, members should consult the Guidance on Allegations, and follow the principles set out in the judgment in Pearce. In the event that the decision is not to release, PPCS may refer the case back to the Parole Board (where there are 13 months or more

²⁶ Panels should note the policies where there is a presumption or automatic granting of an oral hearing if release cannot take place on the papers – please see the table of options in the Types of Cases Guidance.

until SED) if the outcome of the court proceedings or police investigations would result in there being a significant change in circumstances, and PPCS determine the prisoner is not eligible for release following a Risk-Assessed Recall Review (RARR). In addition to this, the MCA panel could indicate in the decision that the case could usefully be referred to the Parole Board when outstanding criminal matters have been concluded and there is 13 months or more until SED.

- The automatic point of release (such as the conditional release date (CRD) or SED) is imminent and could fall within the Parole Board's policy for a minimum period of time to remain in order to arrange an oral hearing (see paragraphs [21.2-21.3](#)). As with all cases, the test for release must be the primary consideration and the MCA panel will need to consider whether it has been met. If it is not possible for any reason to conclude that the test has been met, then the member must say so and explain why in the decision.
- The case has been adjourned and deferred a number of times and there is no realistic prospect that the issue holding the case up will be resolved swiftly. In such a case, and only after having considered OBR principles, it may be better to conclude the review on the information that is available and thus allow the prisoner an opportunity to concentrate on progression work pending a further review. Members should bear in mind that PPCS can shorten the review period, if necessary, once the issue that is holding the case up has been resolved.

13.3 Under rule 20, prisoners who have received an MCA decision refusing release on the papers have 28 days in which to decide whether to accept the outcome or request an oral hearing. These requests go to the Duty Member to determine (please refer to the Duty Member Activities Guidance for more information). This channel available to the prisoner should not be used as justification for issuing a negative decision if there are any doubts.

13.4 There are other circumstances where a negative paper decision may not be the most appropriate route, over and above the criteria already mentioned in paragraph [9.22](#) above²⁷:

- When the prisoner has not had an oral hearing for some time or if it is their first review during a long sentence, even if it appears likely that the outcome of an oral hearing may be negative.
- Oral hearings can be an invaluable way of reviewing a prisoner's progress and/or keeping them engaged with the parole process and motivated in relation to their sentence plan: an approach which is consistent with the OBR principles (see paragraphs [6.4 - 6.8](#))
- Even if there are no representations asking for an oral hearing, or even if the prisoner/representative has asked for a review on the papers,

²⁷ Panels should note the policies where there is a presumption or automatic granting of an oral hearing if release cannot take place on the papers. Please see the table of options in the Types of Cases Guidance.

there may be merit in exploring the reasons for this request and considering whether an oral hearing would still have value and be fairer.

- 13.5 For a reasoned and fair negative decision, an MCA panel is required to produce a full set of reasons on the paper decision template which provide detailed evidence, similar to the content (set out above) for a release decision. The Parole Board must be able to show that it has considered all the necessary evidence and demonstrate with structured reasons that the prisoner does not meet the test for release or re-release.

14 Options following a paper decision

- 14.1 Where the panel makes a no release decision on the papers, the decision is provisional, and the prisoner has 28 days to request (under rule 20) for their case to be considered at an oral hearing. Time starts to run following the receipt of the decision²⁸. Determination of an application under rule 20 will be taken by a duty member.
- 14.2 If no rule 20 application for an oral hearing has been made within the 28-day window, the decision remains provisional for a further 21 days if the decision is eligible for reconsideration, and a reconsideration application can be made at this point. If the decision is not eligible for reconsideration, the decision becomes final at the end of the 28-day window. If no application for reconsideration is made within the 21-daytime frame, the decision becomes final.
- 14.3 Please refer to the Guidance on the Reconsideration Mechanism for more details on eligibility and the grounds on which a decision can be challenged.
- 14.4 Once the decision becomes final, the Board has the power to set aside a decision where the criteria and tests have been met.
- 14.5 For eligible cases, it allows either party to the proceedings to make an application for a parole decision to be set aside if:
- it is considered that there has been an error of law or fact; or
 - for release decisions only, where new information has come to light that was available at the time but not shared with the panel, or there has been a change in circumstances after the decision was made.
- 14.6 The decision under challenge must be a final decision and relate to whether the prisoner should be released or not released. A decision regarding a recommendation for open conditions or any other advice is not eligible for the set aside process.

²⁸ This is to be calculated from the date the prisoner has been served the decision, either via representations or OMU department. If there is a dispute about dates, members should seek bespoke advice from the Practice Advisor. The Parole Board will not accept responsibility for delay caused by the Prison or Probation Service.

- 14.7 The Parole Board can also set aside a decision on its own initiative if one of the circumstances (set out above) is met.
- 14.8 Please refer to the Setting Aside a Decision Guidance for more details on eligibility, the timeframes, and the grounds on which a decision can be set aside.

15 Direct the case to an oral hearing

- 15.1 Among reasons for directing a case to an oral hearing, fairness to the prisoner is the overriding requirement. As above, the likely outcome of an oral hearing should not be the deciding factor.
- 15.2 Some types of cases should be referred automatically to an oral hearing. Please refer to paragraphs [9.22 – 9.23](#) for more information.
- 15.3 To ensure that reviews are completed as speedily as possible, members should send cases to oral hearings only when oral evidence is necessary to reach a decision and conclude the review. For example, the OBR principles ([see paragraphs 6.4-6.12](#)) do not guarantee a hearing:
- just because the parties have asked for one;
 - where evidence can be considered effectively without the need to be tested orally or in person; and/or
 - where the prisoner’s legitimate interest in taking part can be discharged by issuing written submissions.
- 15.4 In summary, the OBR principles do not require an oral hearing to take place in all cases, but the key test is whether fairness to the prisoner requires oral evidence to be heard, bearing in mind (a) the facts of the case and (b) the importance of the issue at stake.
- 15.5 Members should also bear in mind that the principle set out in the OBR judgment is not the likelihood of release, or the need to save time, expense, or trouble. This differs from the Parole Board’s duty to provide a speedy review under ECHR Article 5(4). Accordingly, unless oral evidence is needed to meet the principle of fairness, a swift conclusion on the papers (potentially following the receipt of further directed reports) may fulfil the obligation for a speedy review.
- 15.6 When members are considering whether an oral hearing is needed (and what form that hearing should take) they should ask themselves the following questions, always bearing in mind the OBR principles:
- Is the prisoner’s suitability for progression clear and obvious from the evidence? For example, a prisoner may have recently arrived in open conditions (or have just started risk-related interventions) and requires time to complete the work or to adjust - then it may be appropriate to decide the case on the papers.
 - Does the prisoner want an oral hearing? If they do not, then it may be appropriate to decide the case on the papers: but care should be taken

here to consider the wider questions of fairness, particularly if the prisoner is unrepresented.

- Has a further sentence been imposed which makes it unlikely that a decision to release the prisoner from the index sentence will be made²⁹? It may be appropriate to decide this case on the papers but there may be wider circumstances – such as inappropriate recall in the light of all the evidence, the need for a proper and complete review, and a different form of offending which bears on risk assessment.
- Is the prisoner approaching the SED?³⁰ If a prisoner is 26 weeks or less from their sentence expiry date, then it may be appropriate to decide the case on the papers, as it is unlikely that an oral hearing can be organised in that time. In such a case, a paper review meets the legal requirement for a proper and speedy review of continued detention. There may be exceptional circumstances where this approach is not appropriate, and these should be outlined by the MCA panel.
- Are there ongoing criminal investigations or proceedings unlikely to be resolved in the next eight weeks? If so, then it may be appropriate to decide the case on the papers, as the criminal investigations or proceedings may not be concluded in that time. Awaiting repeated or extensive adjournments or deferrals will not give the prisoner a speedy review of detention, so the review might be concluded more speedily on the basis of available information. In the event that the decision is not to release, PPCS will likely refer the case back to the Parole Board if the outcome of those court proceedings or police investigations would result in there being a significant change in circumstances, and PPCS determine the prisoner is not suitable for release following RARR³¹. There may be exceptional cases where this approach is not appropriate, and these should be outlined by the MCA panel.
- Is there sufficient information to make a fair, evidence-based decision? If not, directions should be made for further evidence or for a case management conference, directions hearing, or an oral hearing, before a substantive decision is made about the case.
- Are the central facts of the case in dispute? It may be more appropriate to direct an oral hearing for the airing and resolution of these matters, consistent with the OBR principles. A face-to-face or video hearing may allow a panel to better observe the reactions of the prisoner or witnesses when testing facts: but a telephone hearing can be equally viable for the panel to hear relevant evidence and may be swifter. Alternatively, when facts of the case are in dispute and need to be tested, this can be done by way of inviting written submissions. When received, these may allow determination of the case on the papers.
- Is there a psychological risk assessment or other specialist report which needs to be taken into account? If there is, are there assessments in dispute in the psychological risk assessment? If so, can

²⁹Section 136 of the PCSC act provides that in determinate recall cases, no referral will be made if the prisoner is serving a new sentence with a later release date than the next Parole Board review

³⁰Section 136 of the PCSC act provides that in determinate recall cases, no further review referrals will be made to the Board where there are less than 13 months until SED.

³¹ Please note that consideration for release following a RARR only applies to determinate sentence prisoners who have been recalled.

this be explored through written submissions? Once received, these may allow the case to be decided on the papers³².

- Has the prisoner offered a significant explanation or mitigation of key facts or other matters? Is this explanation or mitigation in dispute? Rather than immediately decide the case on the papers, the MCA panel might invite written submissions from both parties unless an oral hearing is needed for a panel to see or hear the reaction of the prisoner or witnesses. Whilst the primary purpose of any such exploration is to enable a proper assessment of risk for the current review, the explanations could significantly impact the prisoner's management in prison or prospects in future reviews.

15.7 These questions should be considered together rather than in isolation. It may be that one factor or several in combination tip the balance of fairness in favour of directing an oral hearing. Nor need the questions set out above be comprehensive: the MCA panel must decide each case on its merits and record the reasons for that decision.

15.8 Panels should also bear in mind that:

- In all cases (particularly recall cases), liberty has been deprived.
- Cases which are significantly post-tariff, may need a higher level of 'anxious scrutiny' of relevant facts and issues.
- Panels must ensure they have adequate information to properly address the issues.

15.9 None of these points of themselves demands an oral hearing be directed, but they bear on the MCA panel's wider considerations.

15.10 The Parole Board's review is not confined exclusively to questions of release and suitability for open conditions but may extend to matters having a significant impact on management in prison or on future reviews. Whilst panels do not have the power to give advice on any matters outside the remit of the Secretary of States referral, they may wish to identify and consider outstanding areas of risk that need further treatment. The Parole Board has no responsibility for sentence planning.

15.11 Panels can indicate in a decision that the case might, in fairness, be further referred to the Parole Board when outstanding matters (such as a current intervention or an ongoing criminal investigation) have concluded³³.

15.12 If, having considered all of these questions, a panel is still in doubt whether an oral hearing is required, then the OBR principles indicate that it would be prudent to direct an oral hearing.

³² Please see paragraph [11.20](#) on directions for joint reports.

³³ Cases that have less than 13 months until their sentence expiry will not be further referred to the Parole Board.

16 Directing a case management conference or directions hearing

Case management conferences

- 16.1 A case management conference is convened under rule 7. Case management conferences are short, light touch approach discussions usually staged by teleconference or video-link via MS Teams, to try to resolve small, identified issues. These can include shortfalls in information, non-compliance with directions, or developments in the case since the MCA review (if the case has been adjourned/deferred). Relevant individuals are brought together to find a way forward swiftly and effectively to avoid delays in concluding the MCA review.
- 16.2 A case management conference can prove useful at the MCA stage³⁴, where the case is considered for the first time. At this stage, a case management conference might be used to discuss what further information might allow a review to be completed on the papers, or to set directions for an effective oral hearing. The purpose of the case management conference is to enable the MCA panel to make a decision on the progression of the case, and, therefore, this should be chaired by the MCA panel.
- 16.3 Either party to the proceedings (PPCS or the prisoner/prisoner's representative) may request a case management conference by submitting a Stakeholder Response Form (SHRF) to the Parole Board case manager. Each party will be given the opportunity to submit representations to be considered by the MCA panel. All representations must be submitted within 7 days of being informed of the request to avoid delay. The final decision whether a case management conference is required rests with MCA panel. Where the MCA panel accepts the request for a case management conference, or directs that one is held, they will be the panel responsible for chairing it. If the MCA panel direct the case to an oral hearing and assess that the case may benefit from a case management conference, they can suggest this when making the direction to an oral hearing but should not direct it. It will be for the panel chair allocated to the oral hearing to decide whether one is needed.
- 16.4 The Parole Board case manager will liaise with the case management conference participants to find a mutually convenient date, time and medium. They must provide at least 14 calendar days' notice of the date of the case management conference (although this timescale can be varied under rule 9 if appropriate). Conferences are expected generally to take 30 minutes. Attendees are asked to provide as much flexibility as possible, when asked to give their availability. They can take part in the case management conference from any appropriate private location where background noise or distractions are minimised, using a line which is secure and has a stable and reliable connection. No-one beyond those directed should be in attendance unless agreement has been given in advance by the MCA panel.

³⁴ When directing a case management conference, the MCA directions template should be used.

- 16.5 This quick, focused tool can involve the MCA panel, the prisoner's representative and a Secretary of State's representative (who must both be offered the opportunity to attend), although additional participants including other MCA panel members (if it is a multi-member MCA panel) might need to attend. For example, a specialist Parole Board member may help in considering the nature of an expert report and its implications. The focus may be a single problem that just needs the relevant participants to come together to find a solution, such as who is going to take responsibility for making a particular arrangement or enquiry; or it could be part of a more complex set of circumstances where logistics need to be agreed for a range of people to carry out tasks in a certain order, each being dependent upon the other.
- 16.6 A case management conference cannot formally take evidence. Case management conference proceedings should be recorded digitally. The MCA panel should ensure all participants are aware that the recording is taking place and should follow the procedures as outlined in the Oral hearing Guidance which apply equally at the MCA stage. The actions agreed at a case management conference will usually be noted by way of directions and issued to the parties no later than 14 days following the conference. These directions will outline who attended and provide a brief note of the discussion, as well as key outcomes and actions with deadlines. In some cases, where the issue was simple, formal directions may not be needed as long as actions were verbally agreed and there is no need to notify any other party.

Direction hearings

- 16.7 A directions hearing can be directed for the purpose of unpicking a complex matter, seek clarification from a range of witnesses, or establish other facts as part of the MCA process. A directions hearing may be required in order for the MCA panel to determine how to proceed with a case prior to making the MCA decision/directions. They can enable a panel to identify and direct material that is needed to progress a case and discuss and direct specific reports that can help to conclude the case on the papers.
- 16.8 Directions hearings can be particularly helpful in cases where there is multi-agency involvement, such as cases involving mental health issues or where there is a prospect of release needing specialised funded accommodation or a wider care package. The parties in attendance may include the prisoner and representative, officials including the COM and Prison Offender Managers (POM), and potentially a PPCS Secretary of State Representative. Other participants may be directed to attend as necessary to discuss directions.
- 16.9 A directions hearing is provided for under rule 7. The hearing requires 14 days' notice to the parties (although this timescale may be varied under rule 9 if appropriate). If panels wish to vary timescales, they should give notice to the parties so that they can submit representations before the directions hearing.

- 16.10 If an MCA panel decides that a directions hearing is necessary, the MCA directions template should indicate the reasons for the directions hearing and the issues to be considered. It is good practice to involve the parties at the earliest opportunity. The directions will confirm which participants should take part in the directions hearing. The prisoner need not attend but should be offered the opportunity. The representative must be involved (unless they have made it clear that they do not wish to attend) and the Secretary of State (via PPCS) must be offered the opportunity to attend. Where the MCA panel requires a directions hearing to be held in order to make a decision on the progression of the case, they will be the panel responsible for chairing it. If the MCA panel direct the case to an oral hearing and assess that the case may benefit from a directions hearing, they can suggest this but should not direct it. It will be for the panel chair allocated to the oral hearing to decide whether one is required.
- 16.11 A directions hearing can take place at a prison or be held remotely. Directions hearings held remotely can be particularly effective and easier to arrange and conduct.
- 16.12 A directions hearing does not allow the MCA panel to take evidence. The nature of future evidence can be discussed but evidence should not be formally taken. Directions hearings should be digitally recorded. The MCA panel should ensure all participants are aware that the recording is taking place and should follow the procedures as outlined in the Oral Hearing Guidance, which apply equally at the MCA stage. A set of directions will be the outcome of a directions hearing.

17 Send the case to oral hearing to be listed after a specified date

- 17.1 A case can be sent to oral hearing with a direction that it is listed after a certain date, for a specific purpose which is relevant for the completion of an effective risk assessment. Valid reasons for this might include:
- enabling the prisoner to complete temporary releases (especially overnight release on temporary licence (ROTLs)) before a hearing and there is a clear indication as to when these might be achieved;
 - enabling the prisoner to complete a course/intervention already started for which indication of good progress is needed, and the outcomes will bear on risk assessment;
 - allowing time for the completion of post-programme review reports;
 - allowing time for the preparation of a psychological assessment or other substantive or expert report where this will be necessary and fair in determining the case.
- 17.2 The panel will need to balance the requirement for a 'speedy' review of detention with fairness to the prisoner. If a short delay will enable a much better-informed decision to be made, then it can be justified. But panels must be careful to ensure that cases are not delayed indefinitely or for

lengthy periods against a constantly fluctuating backdrop, or that repeat adjournments take place³⁵.

- 17.3 If this course of action is being considered, it is good practice to seek representations from the parties first.

18 Guidance on writing decisions

- 18.1 Once the MCA panel has determined that the case can be appropriately concluded on the papers³⁶, they should refer to the Decision-Making Framework . This sets out the principles to be followed in determining cases and provides insight into the processes to be followed before a decision is drafted.
- 18.2 The paper decision template should be used, and panels should follow the Reasons Writing Guidance. Additional guidance on writing decisions is set out in [Annex 3](#) in the form of a checklist. This is not intended to replace the reasons writing guidance but instead to provide prompts to help ensure reasons are of a consistently high standard, effectively conveying the key information, analysis, and reasons for a decision in a clear, understandable manner.
- 18.3 Under rule 19(8), the decision and advice of the MCA panel must be recorded in writing with reasons for that decision. The written record must be provided to the parties within 14 days of the date of the decision, in accordance with Parole Board Policy³⁷.
- 18.4 Reasons must adequately and accurately reflect the evidence and the consideration given by the panel as the basis of its decision or recommendation. Reasons should be focused and concise. Reasons do not have to cover all of the detail but should make clear that all evidence has been considered by the panel. They should cover key issues, highlight the relevant evidence then focus on analysing this and how it relates to the panel's risk assessment. The decision must set out why an oral hearing was not required and the reasons for this decision. It is important to insert the standard OBR paragraphs of text in the decision (see paragraphs [6.9-6.12](#)).
- 18.5 Reasons must apply the test for release³⁸ where this is part of the referral. The test is automatically included on the paper decision template and must not be summarised or truncated in the body of the decision. The test for release is as follows:

³⁵ Panels should be mindful not to schedule a hearing date too far in advance and should refer to the Adjournments and Deferrals guidance to determine if an adjournment or deferral would be more appropriate.

³⁶ At the time of writing, the policy relating to automatic granting of an oral hearing for mental health cases remains paused as part of the Board's response to the Covid-19 pandemic. A review will be undertaken at the end of the mental health streamlining project pilot.

³⁷ This policy has been agreed by the Parole Board's Management Committee and is in response to the Parole Board Rules (as amended) 2019 having removed the time limit.

³⁸The wording of the test for release and the criteria for open conditions within the decision writing template reflects what panels are required to do by law when applying the test.

The Board must not give a direction [for release] unless the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined [in prison].

If relevant, the criteria for suitability for open conditions is also automatically included on the template. In the narrative section of the decision, panels must consider the risk of harm when making a recommendation for open conditions. The Secretary of State's Directions³⁹ for open are as follows:

Before recommending the transfer, the Parole Board must consider:

- i. all information before it, including any written or oral evidence obtained by the Board;*
- ii. whether the following criteria are met:*
 - o 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*
 - o the prisoner is assessed as low risk of abscond;*

*The Parole Board must only recommend a move to open conditions where it is satisfied that the two criteria as described at (ii) are met. For prisoners serving specified terror or terror connected offences, panels must be satisfied that **exceptional circumstances** have been evidenced and that the two criteria as described at (ii) are met. For Foreign National Prisoner cases, the Parole Board must be satisfied that the prisoner represents a **very low risk of abscond** and that the first criterion at (ii) is met.*

- 18.6 Where the referral is for release or open conditions, the panel must first consider whether the test for release is met. If the test for release is met, there is no need for the panel to consider whether the criteria for open conditions are met. However, if the test for release is not met, then the panel should go on to consider the criteria for open conditions.
- 18.7 The MCA panel may wish to state in the decision that as the test for release was met, it was not required to consider open conditions. However, some panels may find it useful to comment on the consideration the panel may have had about open conditions if the test for release was not met. This may be of use, for example, in cases where the prisoner has had little or no experience living in the community as an adult.
- 18.8 In terms of good presentation, the paper decision template must be used, and the decision must be clear and logical with factual details set out correctly without typographical or other errors. The decision must be capable of being read as a stand-alone document.

³⁹ Issued on 17th July 2023 and came into effect on 1st August 2023

- 18.9 For reasons of presentational quality and clarity, care is needed when adopting sections of previous decisions by copying and pasting text. All inserted text should be checked to ensure it accurately reflects the facts of the present review. It may be acceptable to insert an earlier outline of the index offence and relevant offending patterns, but the panel must indicate the origins and show, on proper consideration, their own analysis, assessment of risk, and conclusions. The views of previous panels may be adopted but should not detract from or replace the panel's own current independent analysis and assessment of risk, which should be set out clearly in the decision. If a panel wishes to adopt a section of a previous decision, it is best practice to copy and paste the relevant section to ensure that the decision is a stand-alone document. Best practice is to set out adopted sections of a previous decision in italics, so that it is clear which sections are adopted and which are new. Extensive copying and pasting should, however, be avoided. Each panel must conduct its own analysis based on all the evidence in the dossier.
- 18.10 Where the panel's assessment of risk differs from assessments in key reports or evidence from witnesses, the decision should clearly set out why the panel took a different view.
- 18.11 Where there is a dispute as to material facts, the panel should make a positive finding of fact wherever possible and record submissions that were made and relevant evidence that was heard. If a positive finding of fact cannot be made, it is appropriate to record that a difference of opinion was evident which the panel was unable to reconcile.
- 18.12 The decision is a standalone judgment written in the third person and must clearly convey the rationale for the panel decision in straightforward language. If adjustments are needed for the prisoner, this should be directed to the POM/COM who would be responsible for ensuring the prisoner understands the decision. This can be flagged in the 'Any other information' section of the template.
- 18.13 Decisions should be marked with the date they are emailed to the case manager, usually the specified MCA panel date, and not the date the decision template was opened or completed, where this differs.

19 Guidance on building an oral hearing and drafting directions

- 19.1 If an MCA panel sends a case to an oral hearing, all the building blocks must be put in place so that the next panel can proceed with its task of carrying out an effective, evidence-based assessment of risk without becoming caught up with unnecessary uncertainties or procedural issues. This includes consideration of what evidence and witnesses the oral hearing panel will require by directing the production of documents which were not provided at the time of referral but will be necessary for a full hearing.
- 19.2 It is also the MCA panel's role to provide the oral hearing panel chair with an overview of the case, to identify key issues which the panel might wish to explore at the hearing, and to provide a set of directions to obtain the

information the panel is likely to need. **It is, however, critically important that in doing this, the MCA panel does not impede any future panel that hears the case at the oral hearing, or provide, or appear to provide, an opinion on risk.** At MCA stage therefore, the MCA panel must not offer views about the evidence in the dossier or undertake an assessment of risk. Even objective reference to risk assessments and scores found in the dossier should be avoided. Nor must the MCA panel place boundaries on the areas that the oral hearing panel may wish to explore or rule out witnesses which the panel chair may wish to call.

- 19.3 Throughout this process, it is vitally important that MCA panels take full account of any views which have been expressed by the prisoner, their representative and/or the Secretary of State, and/or requests for directions/evidence. At this early stage, they should also deal with any non-disclosure issues and ascertain any victim involvement.

Completing the directions template

- 19.4 There is one MCA directions template, no matter the type of case being considered.

The 'key issues and reasons' box

- 19.5 The main box on the MCA directions template is headed 'key issues and reasons'. Its purpose is to give the reader a clear overview of the case. The content should be written in the third person and not the first because the directions are procedural instructions.
- 19.6 The narrative in the key issues box need not be overlong. The amount of information provided will depend on the reasons for the oral hearing and the complexities of the case, but MCA panels should be as succinct as possible whilst including the necessary information. It should, however, include the following in roughly the order indicated:
- Confirmation of the terms of the referral from the Secretary of State, the nature of the case, sentence type and length and relevant dates including the tariff expiry (indeterminate). Reference to the number of the review if known (i.e., the prisoner's third, the first since recall etc), and whether previous reviews were concluded on the papers or at oral hearing. Any significant features should be highlighted, such as the Secretary of State indicating that the prisoner is excluded from open conditions.
 - Confirmation of the number of pages in the dossier, whether any additional evidence was received (in such cases the MCA panel must direct that the additional evidence be included in the dossier), whether or not there are non-disclosure issues, whether prisoner representations were submitted and their dates.
 - An outline of what representations are asking for and any suggestions made, with the MCA panel's response to them.
 - A brief summary of the index offence and overview of previous, relevant patterns of offending (avoid listing previous convictions but

offer analysis of patterns and themes). However, the MCA panel should not provide, or appear to provide, an opinion on risk.

- A brief overview of the prisoner's current situation: not the history of the sentence but reference to outcomes of any previous reviews and a brief summary of the main developments since the last review.
- An explanation of why the case is being sent to an oral hearing and why it cannot be concluded on the papers: this should go beyond saying there is not enough information in the dossier and instead reference fairness, disputed facts, complexities in the case, and specific information needed for an effective review.
- A broad outline of the main areas of risk and the likely focus of the oral hearing. This means thinking about what the main issues are likely to be but leaving it open for the oral hearing panel to explore other matters as necessary.
- If there are particular, unusual logistical issues which need more explanation than is permitted elsewhere on the template, explanations should be inserted at the end of the key issues box. Explanation is needed why a new substantive assessment or other report is directed.
- Any particular arrangements or reasonable adjustments required for the prisoner must be highlighted so the oral hearing panel can take account of them and/or PPCS can ensure these are actioned. Some may impact on the amount of time needed for the hearing.
- Confirmation of whether the Secretary of State provided the Parole Board with a view and, if so, what the view was.

Identifying the 'issues' for the oral hearing

19.7 This critical part of the 'key issues' section starts to identify what the panel might want to explore at the oral hearing. The issues should always be risk-related and thus relevant to the decision-making process. They will be different in every case but could include:

- issues of concern identified at the previous review (where there was one) - a good starting place, although the next panel may not be limited to these issues;
- any issues specifically raised in representations - not all witnesses will have seen these, so it will be helpful to set them out;
- any less obvious outstanding areas of risk;
- completion of interventions including accredited programmes and treatment regimes - what impact they had, what level of insight the prisoner is reported to have;
- how an allegation leading to recall or return to closed conditions may impact upon risk⁴⁰;
- what weight to give allegations⁴⁰ of unconvicted offending, security intelligence or unproven adjudications - the next panel may explore these in its risk assessment;
- prison behaviour and whether custodial conduct may be relevant to risk assessment;

⁴⁰ Panels must follow the principles set out in the judgment in *Pearce* when considering allegations. Please see the *Guidance on Allegations* for more information.

- whether there is an understanding of the prisoner's offending behaviour in relation to triggers and motivation;
- facts to establish, disputes to resolve, and discrepancies to explore;
- the possible implications of learning difficulties/challenges, mental health problems and other characteristics on learning, risk and ability to benefit from interventions;
- in broad terms, the risk management plan and elements which may need to be tested;
- different opinions and assessments that are evident from key report writers.

19.8 Issues identified for the hearing should be cast in conditional language ("the panel may wish to explore...") so that the oral hearing panel's hands are not tied by issues and limits initially identified by the MCA panel.

Representation

19.9 It is not always apparent until a case has been listed whether or not a prisoner has a representative. At MCA stage, if there is no confirmation of representation and the case is being sent to an oral hearing, checks need to be made whether the prisoner wants or needs to have representation. This should be addressed in the "key issues" box.

19.10 A prisoner does not have to be represented by a qualified legal representative. Where prisoners are unable or disinclined to be legally represented, they may represent themselves or ask a family member or another individual not legally qualified to represent them, as long as the person does not fall within the exclusions under rule 10(2). In these instances, it may be helpful to direct that the prisoner be provided with copies of the Parole Board's "Getting ready for a parole review without a lawyer" guide and the booklet "Information for families and friends of prisoners having a parole review". These set out in more detail what is involved at all stages of a parole review.

19.11 Guidance about the parole process is available to prisoners in "easy read" format and is included in all disclosed GPP dossiers. PPCS add "easy read" guides to recall dossiers. There is also an "easy read" guide to oral hearings which should be made available by the prison to any prisoner whose case is directed to such a hearing. If this appears not to have happened, MCA panels might consider it appropriate to direct prison staff to provide a copy to the prisoner.

19.12 Where it is unclear whether the prisoner is unrepresented, by choice or otherwise, the MCA panel or panel chair may make a direction for the position to be clarified. The Parole Board case manager should only approach PPCS once a direction has been made. Wording of such a direction might take the form:

"This case is progressing to [a decision on the papers/an oral hearing] and the Board strongly advises that [x] seeks representation. Given the prison's responsibility to support the prisoner in the parole process, the Secretary of State is urged to ascertain whether [x] is represented or is

currently seeking to instruct a legally qualified representative or other suitable person”.

19.13 If a case is directed to oral hearing and there is likely to be no qualified legal representation, it is even more important to ensure that the directions are written clearly and in plain English.

19.14 Please refer to the Guidance on Representations for more information about prisoners who are unrepresented or where there are grounds for concerns around the prisoner’s ability to conduct their own parole review.

The logistics of an oral hearing

19.15 Once it has been set out why a case is going to oral hearing and issues have been identified, the next stage is to identify the procedural components:

- What evidence might the oral hearing panel need which is not already in the dossier?
- Do any key reports need to be updated?
- Who should be called as witness and why? However, please note paragraph [19.44](#) on children and paragraph [19.45](#) on victims.
- What are the prisoner’s likely needs and requirements at the hearing?
- How many members are needed for the panel and is a specialist Parole Board member required for the case?⁴¹
- How long might the oral hearing take?
- How and where should the oral hearing take place (telephone, video, face-to-face, or hybrid)?
- Are there other logistical issues which might stem from the prisoner’s needs, witness’ requirements, or the prison or secure hospital’s restrictions?
- Are there logistical considerations about a victim attending to read their VPS?

Identifying missing evidence and directing new documentation

19.16 The quality, completeness, and relevance of the evidence available to a panel will be crucial in determining whether an oral hearing will be effective. The panel chair has opportunity to issue additional directions ahead of the oral hearing (Panel Chair Directions - PCDs) but the aim of MCA procedures directing a hearing is to minimise such involvement and to lay out requirements for a viable hearing, reducing the chances of delay. In particular, a panel chair will not have time to direct reports on psychiatric or psychological issues before the hearing and failure to direct such reports at the MCA stage may necessitate the adjournment or deferral of a listed hearing.

⁴¹ The “Panel composition and specialist members” subsection of this document provides guidance on the role of psychiatrist and psychologist members of the Parole Board.

19.17 The Secretary of State undertakes to provide a core dossier with mandatory documents as set out in the Schedule to the Rules. Contents will differ depending on the type of case. In relevant cases, the dossier will contain notes indicating that specified documents were not available at point of referral: these may need to be directed at MCA stage if they can be located. It is, however, more important to focus on what is essential in any particular case rather than relying on standard reports and taking a formulaic approach. Every case referred to the Parole Board will be different and should be treated as such. The MCA panel must direct information that is relevant, proportionate, reasonable, necessary, lawful and deliverable – this must be a judgement call in the individual case.

19.18 The following list indicates some types of reports likely to be relevant, necessary and proportionate depending on the type of case. This is in addition to the mandatory reports set out in the Schedule to the Rules.

- Start Custody OASys Assessment. (Post-sentence reports are no longer completed for any prisoner sentenced after 1 December 2020).
- Court of Appeal transcript summary report.
- Previous Parole Board decisions.
- Existing psychiatric and/or psychological, or other expert assessments.
- Domestic Abuse Risk and Needs Assessment and other risk assessments, including Structured Assessment of Risk and Need.
- Accredited post-programme review reports.
- Recall reports.
- Witness statements and police evidence, perhaps Crown Prosecution Service (CPS) summaries in the event of new offences/allegations.
- Relevant police intelligence including details of domestic abuse police call-outs.
- LISP4 report outlining removal from open conditions.
- Progress or end-of-therapy report from a therapeutic community or another specialised regime.
- Mental health reports from the prison psychiatrist or in-reach team. If a prisoner has been detained under the Mental Health Act in a mental health facility, the dossier should include documentation prepared for the Mental Health Tribunal along with the tribunal's decision and updated reports covering progress/developments since then (please refer to the Guidance on Restricted Patients and the Mental Health Act for more information).
- Mental Capacity Assessments where the prisoner's capacity is in doubt (please refer to the Mental Capacity assessments and Litigation Friends Guidance for more information).
- Social Care Assessments.
- Any reports specific to vulnerable prisoners⁴².
- Any reports specific to children, care leavers and/or young adults.

⁴² Please see the Oral Hearing Guidance for more information on vulnerable prisoners.

- Drug and/or alcohol misuse team reports and treatment summaries.
- Prison security information.
- OASys assessments which remain valid if less than 12 months' old.
- Addendum reports to existing substantive reports.

Setting directions for submission of additional reports

19.19 All directions must be proportionate, reasonable, necessary, lawful, and deliverable. Those responsible for managing compliance with directions need instructions, so directions must be clear, precise, and focused on risk. The MCA panel should set out why an item is needed and its focus if commissioning a new or updated report.

19.20 Here are the main points to consider when setting directions:

- Avoid jargon, unexplained abbreviations, and the blanket use of stock phrases and standardised content which is non-specific: use specific and precise terms relevant to the case and write in plain English.
- Avoid overlong directions that could cause confusion - be clear about what is needed: any additional explanation or justification can be included in the narrative box as necessary.
- Direct only what is essential for an oral hearing to be effective – consider if the oral hearing panel will need the information to make a full and fair assessment of the case (for example, a 10-year-old post-programme review report may no longer be crucial or relevant).
- Make directions for reports from a POM and a COM as required (and in line with the Offender Management in Custody (OMiC) model).
- When directing a healthcare or psychiatric report or update, asking for a 'clinical overview' is likely to be more effective than asking generally for a report or an assessment.
- If asking for a historical report referenced by another report writer in the dossier, mention the relevant page number in the dossier to help PPCS or the prison case manager find it.
- If directing a new, substantive report, such as a psychological assessment, refer to the current Guidance on Specialist Reports, including recommended lead times: be precise about what is required without referring to specific assessment tools (such as HCR-20 or PCL-R⁴³) and avoid standardised content – the report author needs to know what issues the panel is concerned with as well as the options available (i.e. progression to open prison and/or release). Make reference to 'psychologist' or 'psychiatrist' as appropriate. If an assessment is needed from another type of expert (e.g. Autistic Spectrum Disorder (ASD) or Post Traumatic Stress Disorder (PTSD), mental capacity, or communication specialist etc.), explain why.
- Be realistic about how long it might take to obtain information directed. Please refer to [Annex 2](#) (Table of Reports) for more information.

⁴³ The HCR-20 provides a framework for the assessment of risk of violence. The PCL-R is an assessment of psychopathy.

- When directing addendum reports from COM/POMs, avoid generalised or formulaic directions and be specific about what needs to be addressed. There is no set timeframe in which reports need to be updated but more than six months between the report date and the oral hearing might indicate an update is necessary. But, if there appear to have been few changes in a case, this may be unnecessary, but a POM may still have further developments to report which can alert the next panel to areas for investigation. If substantive new evidence is to be directed (for example, a psychological assessment), it is good practice to direct written updates from COM/POMs to reflect that new information and to leave time for them to consider the findings.
- The Parole Board can *invite* the disclosure of reports commissioned by the prisoner⁴⁴ (for example, a psychologist report) but it cannot direct their submission because the prisoner is entitled to commission a report then choose not to use or disclose it. Equally, the Parole Board cannot direct that the prisoner commissions reports.
- Where there are conflicting specialist opinions, if a panel assess that a mutual exchange of reports is essential in understanding the two reports, a direction can be issued for the authors to provide a separate 'joint statement' indicating the areas of agreement and areas of dispute in their findings. This enables key issues to be more readily identified and the timetabling of evidence to be more realistic. Such a direction should not be made in advance of receiving the specialist reports other than in exceptional circumstances because, until the specialist reports are received, it is not known whether there is a conflict of opinion. The MCA panel can confer with a specialist member of the Parole Board if the panel is unsure whether such a direction is required in the case (please refer to paragraph [7.1](#) for more information).
- Do not issue a direction for a VPS. If it is unclear if a VPS is to be submitted, a direction can be issued to ask for confirmation of this.
- Do not issue a direction for representations. Representations can be 'invited not directed'. If there are issues to be resolved, the MCA panel may wish to invite representation from both parties by a specified date.
- Although Parole Board decisions may inform sentence planning, panels should not explicitly involve themselves in the sentence planning of prisoners. For example, panels should not make directions for a prisoner to undertake a specified intervention.

Setting directions where there are allegations of wider offending

19.21 There is separate advice on this subject (see Parole Board Guidance on Allegations). In summary, when referring a case to an oral hearing, an MCA panel may make directions which will enable the oral hearing panel to give due consideration to charges against the prisoner which have been dropped or have been left to lie on the file, allegations which have not been proven, or to circumstances around cases where a court has found

⁴⁴ Whilst these are sometimes referred to as 'independent reports' panels should always refer to them as prisoner commissioned reports.

the prisoner not guilty of a criminal offence. If these appear relevant to the assessment of current risk, the panel will need pertinent information in order to be able to make a finding of fact⁴⁵ (such as who was present, where they were, what happened⁴⁶). The panel must apply the principles set out in the *Pearce* judgment when considering allegations.

19.22 Useful information and evidence to examine to find facts could include:

- Witness statements.
- CPS documentation and the police MG5 summary of charges.
- Police statements or notebook entries.
- Social media posts.
- Text messages or transcripts of phone calls.
- Domestic abuse call-out logs
- Adjudication paperwork.

19.23 Directions for additional information relating to allegations might lead to an application for non-disclosure, which should be acknowledged and must be dealt with at the earliest opportunity.

Setting deadlines for reports

19.24 There are two sets of boxes on the MCA directions template for submission of additional information – one for directions with a deadline to be specified and one for directions to be met eight weeks before the date of the oral hearing⁴⁷.

19.25 The first of these is most likely to be used to obtain historical reports which already exist and should be readily available, new substantive reports such as psychological assessments which require longer lead-times, or updates about outstanding charges, court cases or other expected developments. In the case of historical documents and criminal matters, the MCA panel should choose a realistic date which still ensures the evidence can be swiftly obtained. In the case of specialist assessment reports, the lead-times are set out by the Parole Board. These judgements affect the listing date.

19.26 The second box stipulates a deadline of eight weeks prior to the oral hearing and has been used for more standard reports and updates from the POM and COM, the security department or other specialist teams in the establishment. If these need to take account of new substantive reports (such as a psychological assessment), the MCA panel should allow additional time for compliance.

⁴⁵ Please see the *Guidance on Allegations* for more information on making a finding of fact regarding an allegation

⁴⁶ *Pearce* [2022] EWCA Civ 4

⁴⁷ From 2nd September 2022 MCA directions for reports from Prison Offender Managers and Community Offender Managers should contain a deadline of 8 weeks before the date of the oral hearing. This was a Parole Board pilot and is now business as usual. It has been put in place to ensure up to date information is made available to the panel ahead of the oral hearing and avoid further addenda to be directed.

Prisoners who are transferred during the parole window

- 19.27 Sometimes a prisoner will have been transferred to a new establishment after the referral to the Parole Board has been made. It is important when making directions, to stipulate which prison should be responsible for providing particular reports. If a prisoner has been transferred during the "parole window", the sending establishment retains the responsibility for ensuring the dossier is compiled and disclosed. The sending establishment will also have provided the POM report for review cases.
- 19.28 However, depending on the amount of time which has elapsed since the transfer, it is highly likely that updated information will be needed from the receiving establishment and the new POM. The key issue is to determine who and what is required to ensure that up-to-date information can be supplied, including the reasons for the transfer. Only information that has a clear bearing on risk should be directed. If security information or adjudication records are needed, the MCA panel must stipulate what is required so that the establishment(s) can identify the best source of information. Transfer during the "parole window" may also have implications for the witnesses who will need to be called as staff from both prisons may need to provide oral evidence⁴⁸.

Directing witnesses to an oral hearing

- 19.29 When determining which witnesses are required at an oral hearing, the MCA panel should consider these basic issues:
- a) Why is a particular witness needed?
 - b) What will the panel want from them?
 - c) What would be the best way for them to give evidence?

Why is a particular witness needed at the hearing?

- 19.30 If a witness is necessary for an oral hearing, attendance should be directed; however, the directions template narrative should always make clear that the panel chair will have the final say on witness attendance and any other additional directions. An MCA panel must avoid stating that a witness is not necessary because the panel chair may take a different view. It is easier to stand down a witness than to direct the attendance of someone at short notice. Wording can be used like 'subject to the panel chair's approval' or 'the panel chair when appointed, may issue additional directions'.
- 19.31 Where written information is available and has not been contested, it may be unnecessary to call its author as a witness. For example, at a recall hearing, where the reason for recall was the prisoner's conduct at an Approved Premises, the evidence of the COM supplemented by statements or copies of relevant pages from the Approved Premises log may obviate the need for the Approved Premises manager or another staff member to

⁴⁸ HMPPS guidance on this is set out in the Generic Parole Process Policy Framework. Should there be any disagreements between prisons, this Framework can be referred to.

give evidence at the hearing. It is also unlikely a panel would need to hear from a prison officer if their evidence can be collated by a POM or it appears in P-NOMIS logs.

- 19.32 However, if evidence has been disputed, it is good practice to direct the presence of the author of the disputed report because the panel and the prisoner are likely to have questions for that person.
- 19.33 If a new psychological or psychiatric assessment has been directed, it is good practice to direct the author of that report to give evidence. It is open to the oral hearing panel chair, to stand down the witness, if upon receipt of the written report it is felt that oral evidence is no longer required. If there is a report commissioned by the prisoner, the prisoner is entitled to have the author of that report as a witness at the hearing and will often ask that they be directed. Even if a request is not received, it can be good practice to direct their attendance, especially if the report's findings are incompatible with those of an HMPPS psychologist or HMPPS commissioned psychiatrist assessment.
- 19.34 Many of the psychologists working in the prison service are officially 'in training' in terms of their registered forensic psychology status. Despite this, they are able to give evidence independently of their supervisor who will have signed off their report. Any such report writer can choose to have their supervisor present at the hearing and may apply to the panel chair with this request.
- 19.35 There are very few circumstances in which an MCA panel would not direct the POM and COM to attend as witnesses (e.g. pre-tariff cases that are unlikely to have an allocated COM).
- 19.36 There may be circumstances in which the testimony of a previous POM/COM is relevant – for example, if they have longstanding knowledge of the prisoner, or there has been a transfer during the "parole window". Similarly, if the Probation Service area or COM is likely to change at point of release, the MCA panel should consider directing the attendance of the future nominated COM so that the next panel can be satisfied about transfer arrangements and the robustness of risk management planning as well as the prisoner's relationship with the new COM.
- 19.37 If there have been discontinued criminal charges, the MCA panel may consider directing the relevant police officer to attend the hearing. This may be the Officer in Charge (OIC). It may not be clear at the MCA stage who the relevant officer is, so direct either '*The Chief Constable of xxx Police or their designated alternative*' or the '*lead officer in the case of xxx*'. It is advisable to make it very clear why this person is needed as in many cases, police witness statements, MG5 or CRIS reports will be sufficient.
- 19.38 If a prisoner is a care leaver, or may be subject to future care plan arrangements, it is a good idea to direct the attendance of their Leaving Care Personal Advisor, a social worker and/or other relevant support worker.

19.39 For restricted patients in secure mental health settings, there are very specific requirements concerning witnesses. Please refer to the Guidance on Restricted Patients and the Mental Health Act for information relating to these cases.

19.40 In some cases, other individuals who are not witnesses may be required to attend the hearing. This may include interpreters or communication specialists etc. Their attendance may be necessary to ensure a fair hearing and that the prisoner is assisted to understand the proceedings and is not disadvantaged. Please see the guidance on Translations and Interpreters for more information.

Types of witness not usually called

19.41 Serving prisoners (other than the prisoner whose review it is) should not be called as witness at an oral hearing unless it is absolutely necessary and unavoidable. It is more likely that an MCA panel would direct written evidence from another prisoner if it were deemed necessary.

19.42 MCA panels should carefully consider the need to call prison officers or other staff from a prisoner's previous establishment unless there is a specific incident they observed or a risk issue of which they are aware about which no-one else can comment: for example, the circumstances of a prisoner's removal from open prison. Prisoners' security files are transferred with them, so former staff will no longer have access to the records. If an officer from a previous prison is needed, direct that they can attend by telephone or video as this will usually be proportionate to the extent of the evidence they can provide.

19.43 Caution may be needed when directions to attend are considered for the author of a report commissioned by the prisoner. The prisoner can choose whether to rely on such an assessment and whether to make the report available to the Parole Board. If the report is not produced, the MCA panel cannot direct the author's attendance.

19.44 Children should not be called as witnesses. It would be difficult for them to gain access to a prison (where a face-to-face oral hearing is taking place) and they may be unable to comprehend the significance of the parole process. Arguably, it would be inappropriate in any circumstances, considering their well-being, reliability and the possible impact of the proceedings.

19.45 MCA panels should think very carefully before directing the attendance of a victim or alleged victim. This will almost always be inappropriate as any information the panel needs can be obtained from other sources and the merit of the proposed direction must be balanced against the need to protect the victim and their well-being. A direction for a victim to attend a hearing must only be considered in very exceptional circumstances and must be discussed with the Parole Board's Practice Advisor in the first instance.

19.46 If a prisoner or their representative has requested a family member or another person to attend as a witness (rather than observer), the MCA panel must direct that checks be conducted on who they are, the reason for attendance, and the nature of the evidence they wish to give. Such applications may then be decided by the panel chair. If declining the request, give a clear explanation in the directions template as to why. Such checks are normally conducted by the prison but with increasing use of telephone and video hearings, it is also necessary to direct that details be provided of: how the identity of a person who will be giving evidence remotely from an uncontrolled location will be confirmed by the panel on the day of the hearing; how it will be confirmed that they are not accompanied by someone who should not be present; and that they are not recording the hearing.

Practicalities for witnesses

19.47 When setting directions for witnesses to attend, the MCA panel should stipulate a named person (if known) with their job title so they can be readily identified. They should make sure the correct person has been nominated and not assume it will be the author of a report in the dossier because sometimes this will have been prepared by a sessional member of staff or a stand-in. If a name has not been given in the dossier, the MCA panel should specify the role or job title clearly and make clear what sort of evidence is needed.

19.48 When deciding what type of oral hearing to direct, the MCA panel will need to consider whether witnesses must attend in person or if they can give evidence by telephone or video. The latter is often as effective as attendance in person and provides leeway for witnesses' individual needs (such as caring responsibilities, disabilities, or travel limitations) which may be unknown at the MCA stage.

19.49 A prisoner or their representative can request the attendance of a particular witness, but the final decision will rest with the panel chair. At MCA stage, it is good practice to grant the application on the grounds of perceived fairness unless there are particularly strong grounds for refusing the request.

20 Oral Hearing logistics

20.1 The final stage in building the oral hearing and completing the MCA directions template is planning operational arrangements, beyond witness and information requirements. It is critical that the logistics are responsive to the individual circumstances of each case: there is no standard approach but there are starting points.

The MCA panel will need to consider the following:

The number of panel members

20.2 A panel is usually comprised of between one and three members, though very occasionally a fourth member is added. The *starting point* for all

panel logistics is a single non-specialist chair. Co-panellists should be added only when they are considered necessary in terms of role, or the number needed in a particular case to complete a proper risk assessment and determination. However, the MCA panel has discretion to judge whether the case can be heard by a single member or necessitates two or three panel members. A standard determinate sentence recall case would normally be expected to be assigned a single member panel (to facilitate a timely review of the case) but there may be some such cases where in exceptional circumstances the MCA panel's view is that the complexity and the needs of the case require additional members.

20.3 There is no restriction on the type of case which can be heard by a single member panel, but the following are examples of cases which might potentially be unsuitable for a single member hearing:

- Is the case so finely balanced that one member might find it hard to make a decision alone or a two-member panel might be split in its decision-making?
- Are there several witnesses to question? In general, the more witnesses, the more likely additional panel members may be required.
- Are the risk-related issues particularly complex?
- Is the expertise of a specialist member required to accompany the panel chair in order to help consider the issues?

20.4 This list is not exhaustive but highlights the type of factors to be taken into account when deciding if a case is unsuitable for a single member.

Panel composition and specialist members

20.5 MCA panels should consider how the expertise of a specialist member (a psychologist, a psychiatrist or either) could enhance the panel's approach and what it could contribute to risk assessment and determination. Careful consideration should be given as to whether deployment of specialist members is warranted and whether a specialist member is needed to provide relevant help to interpret the information put before the panel in order to make a safe and fair assessment of risk.

20.6 The earlier the need for a specialist panel member is identified, the more likely one can be available and the chances of delay in listing the case can be reduced. Specialist members are in short supply and should, therefore, be deployed wisely.

20.7 **Psychology** is the scientific study of human behaviour e.g., how people think, act, react and interact. Psychologists attempt to understand the role of mental functions in individual and social behaviour. Forensic psychology is the application of psychological knowledge to prisoners and offending behaviour in order to make evidence-based predictions about when re-offending may occur. Forensic psychologists are skilled in the use of risk assessment tools and use their knowledge to make evidence-based assessments about when reoffending may occur. They also have skills in the design and implementation of interventions to change offending behaviour.

20.8 **Psychiatry** is concerned with the diagnosis, treatment and prevention of mental disorder including mental illness, mental impairment and psychopathic or other personality disorder. Psychiatrists are medically qualified doctors who following their general medical training have specialised in psychiatry. This means that they can prescribe medication as well as recommend other forms of treatment. Forensic psychiatry is a branch of psychiatry which deals with individuals with mental health difficulties involved in the criminal justice system, including prisoners in prison and prisoners transferred to hospital under s47/49 or 45A of the Mental Health Act. Because the overall clinical responsibility for patients detained in hospital under the Mental Health Act, including their discharge arrangements, is almost always carried by their Consultant Psychiatrist, psychiatric members of the Parole Board have particular knowledge of NHS services, how they function in practice and the various NHS treatment options available e.g., for mentally disordered prisoners and those with significant substance misuse.

20.9 While psychiatrist and psychologist members have specific knowledge and skills, there is more overlap than distinction in the areas which they can contribute to. Therefore, in many cases, a psychiatrist or psychologist may be equally appropriate for the specific needs of a case, and simply specifying a 'specialist member' would be sufficient. This direction will help the Listings Team to allocate an available member.

20.10 If a Panel determines that a specialist member is required, they should first consider whether a direction can be made that either a psychologist or psychiatrist member can sit on the panel. This then gives the Listings Team the flexibility to allocate either a psychologist or psychiatrist member on the panel, as the request will simply be for a specialist member. This is an option in the template's drop-down menu.

20.11 It may be appropriate to request a '**specialist member**' without specifying the discipline further, for cases when:

- There are mental health concerns or evidence of psychological distress with an identified or suggested link to the prisoner's risk of reoffending or harm, e.g., substance misuse, anxiety, depression or self-esteem issues, but these have not been such as to require transfer to hospital for treatment during the sentence nor does follow up mental health care need to be arranged ahead of release.
- Personality disorder or psychopathy has been identified or suggested and the Offender Personality Disorder Pathway will contribute to future management.
- There is a learning disability, developmental disorder/neurodiversity e.g., autism, Asperger's Syndrome, attention deficit hyperactivity disorder (ADHD) or brain injury.
- The case has complex or serious risks issues, e.g., the prisoner has exhibited a range of offending behaviour, offending involves multiple victim types or sadistic behaviour, motivation for the offence(s) is unclear and the prisoner denies some or all aspects of their offence.

20.12 If the panel determines that the case requires a specific specialism, they should make a direction for a psychologist or for a psychiatrist member, as appropriate, to be allocated to the panel. This goes beyond simply requesting a specialist member as the direction will state the required specialism (psychologist or psychiatrist).

20.13 It may be appropriate to request a '**psychologist member**' for cases when:

- There is current psychological evidence e.g., a psychological assessment, psychometric tests or psychology report which needs specialist interpretation (standard psychometric tests completed prior to or following an offending behaviour programme are unlikely to routinely require interpretation).
- There are two or more differing psychological opinions e.g., a Prison Service psychological report and an external psychological report.
- In cases where there are questions with regards to an offender's response to interventions due to issues such as motivation to change, levels of psychopathy, personality disorder or learning difficulties.
- MCA panels should not routinely direct a psychologist member on the panel just because there is a psychological assessment in the dossier⁴⁹.

20.14 It may be appropriate to request a '**psychiatrist member**' for cases when:

- There are issues relating to the prisoner's major mental disorder such as schizophrenia, and increasingly in the ageing prison population of dementia, and in some cases physical illness, which may have a bearing on risk.
- During this sentence, the prisoner has been, or is currently, detained in hospital under the Mental Health Act⁵⁰.
- Licence conditions are proposed which require involvement of specialist mental health services, for example in relation to continued specialist prescribing of depot medication or clozapine monitoring, or provision of section 117 aftercare.
- Where there is current psychiatric evidence about the prisoner e.g., a psychiatric report or substantial evidence from a prison mental health in-reach team which requires interpretation, or the Judge's Sentencing Remarks emphasise the importance of the pre-sentence psychiatric reports in determining sentence.

20.15 In rare circumstances a direction could be made for both a psychiatrist member and a psychologist member to be on the panel, but this is a rare exception.

⁴⁹ At the time of writing this guidance, HMPPS is piloting a model for the provision of HMPPS psychology risk assessment reports at the MCA stage within the Generic Parole Process. Please refer to PBM 05-20 for more information.

⁵⁰ Prisoners within hospital are managed within the Mental Health Streamlining Project pilot and should not be included in MCA bundles. Please contact the MCA team if one of these cases is within an MCA bundle and seek clarification.

- 20.16 In some cases, neither a psychiatrist nor a psychologist member is required. Although research studies have highlighted the prevalence of mental health difficulties in the prison population, in most cases, where there is no history of specialist mental health treatment – as opposed to offending behaviour programmes – and the specialist assessments are limited to a psychological risk assessment (PRA) then a panel may not need to include a specialist member.
- 20.17 Panel members should be confident in asking the author of a PRA to explain their assessment, to describe the inference regarding risk from the factors set out in the assessment schedule, to be able to comment on the level of confidence on the assessment and to make a professional recommendation.
- 20.18 Panel members should be confident in asking representatives of a Mental Health In-reach Team to comment on their contact with a prisoner, compliance with medication, and any links made with primary care (GP) services to continue the aftercare of a prisoner on common drugs for anxiety and depression which are usually managed in general practice.
- 20.19 Similarly, panel members should be confident in asking authors of reports on substance misuse about the engagement of a prisoner with substance misuse services in prison, to comment on their commitment to addressing substance misuse difficulties and to advise on handover to community substance misuse services if appropriate.
- 20.20 When MCA panel members are directing that a case goes to an oral hearing, and the case includes significant psychological, mental health or substance misuse evidence, it would be good practice to make explicit that the need for a specialist member has been considered by the MCA member and EITHER a specialist member has been requested for the panel, as per the current template, OR that a specialist member is not considered to be necessary and similarly to provide reasons why not. This may assist the chair in subsequent review of the dossier. More detailed information can be found in the Specialist Reports Guidance.
- 20.21 If after considering the above information and checking the Specialist Reports guidance, the MCA panel is not sure whether or not specialist expertise is needed or the type of specialism required, advice can be sought from a specialist member. A list of contacts can be provided by the case manager and can also be found on SharePoint. Issues to consult over include whether or not a specific type of report is needed, how to word a direction for additional information, whether to direct a specialist member, whether a psychologist, psychiatrist, or either specialism is required, or (in a case where release on the papers is being contemplated and there are active mental health or welfare issues) the requirements of a risk management plan.

Judicial Chair

20.22 In very rare circumstances, a judicial chair may be required, for example where there are unusually complex legal arguments or untested case law. Noteworthy, high-profile and terror-related cases might at times be allocated to a judicial chair, but not on all occasions; these cases are managed by a specialist team within operations (please refer to paragraphs [21.27](#) and [21.28](#) for more information).

Deciding the format of the oral hearing

20.23 A hearing can take place remotely via telephone or video, or face-to-face at the prison (or a combination of these as a hybrid hearing). MCA panels should consider whether a hearing can be conducted by telephone and/or video as the majority of cases will be suitable for this option, or a form of hybrid arrangement. When considering suitability, the MCA panel should identify relevant issues from the dossier and take account of any representations which have been made by the prisoner or their representative. If a case is not suitable for a telephone or video hearing, clear reasons should be given in the MCA directions template.

20.24 Panels should always consider whether a case is suitable for a remote hearing first. If this is not appropriate for a particular case, a face-to-face hearing can be directed. When panels are considering what form the oral hearing should take, they should ask themselves the following questions:

- If facts of the case are in dispute and need to be tested, does the panel need to see the visual reaction of the prisoner or witness to test those facts? If so, it may be appropriate to consider a video hearing. If not, it might be appropriate to direct a telephone hearing.
- If the opinions in the psychological risk assessment are in dispute and need to be tested, does the panel need to see the visual reaction of the prisoner or witness to test those opinions? If so, it may be appropriate to consider a video hearing. If not, it might be appropriate to direct a telephone hearing.
- If the significant explanation or mitigation is in dispute and needs to be tested, does the panel need to see the visual reaction of the prisoner or witness to test those facts? If so, it may be appropriate to consider a video hearing. If not, it might be appropriate to direct a telephone hearing.
- If the panel considers that it does need to hear oral evidence, does the panel need to see the visual reaction of the prisoner or witness to properly hear that evidence? If so, it may be appropriate to consider a video hearing. If not, it might be appropriate to direct a telephone hearing.

20.25 When directing a face-to-face hearing, panels need to give their reasons why a face-to-face oral hearing is necessary when making that direction. Panels should avoid directions that state if a face-to-face oral hearing is not available, a video hearing can be arranged instead.

20.26 In some cases it might be appropriate to conduct a hybrid hearing. This can take place with some attendees being in person at the prison and others joining remotely.

20.27 The following is a list of factors that may mean that a remote or hybrid hearing is not suitable. This list is not comprehensive or prescriptive and each case must be considered on its merit:

- The prisoner (or a key witness) has a physical impairment or disability which might prevent full engagement with video or telephone connections (for example, sight or hearing limitations, inability to sit or concentrate for long periods of time, or other factors which the panel may not be able to accurately interpret other than face-to-face)
- Serious mental health illness
- Cognitive problems, such as learning disabilities.
- The Panel wishes to see the interplay between the prisoner and the witnesses or between all witnesses in the room, or particularly between the prisoner and the COM who will be supervising the prisoner in the community.
- Disorders such as attention deficit hyperactivity disorder (ADHD) or autism spectrum disorder (ASD).
- Complex risk assessments and/or contested, disputed evidence.
- Language or communication issues, including use of communication specialists, such as an intermediary, interpreter, or signer.
- The offender is under the age of 18 years.
- Consideration of individual needs of attendees at the hearing.

Witness and prisoner representative attendance – remote or in person?

20.28 In the majority of cases, witnesses will give their evidence remotely via video or telephone, unless they are based at the prison. This arrangement facilitates the availability of some witnesses for whom travel, or attendance, can be difficult, and allows them to undertake other responsibilities instead of spending hours travelling. There are budgetary implications too. The presumption is that COMs will be permitted to participate remotely unless there is a good reason for their attendance in person. Where a remote hearing is considered unsuitable and a face-to-face hearing is directed, witness requests to give evidence remotely for any reason will need to be considered on their individual merit. The panel chair has the final say in witness attendance and the means of participating.

20.29 Although the prisoner's representative can attend remotely, it is often beneficial for them to attend in person, even if all other witnesses and the panel are attending remotely. During the hearing the prisoner may wish to speak with their representative in private, and these conversations can take place more easily if they are together at the prison.

Time allocation⁵¹

20.30 Time estimates should be reckoned in 30-minute increments. The length of a hearing will vary according to the individual case but, as a rule of thumb, more time will need to be allocated when:

- the case and its evidence are complex;
- the panel will need to hear information not previously considered by the Parole Board (for example, the first hearing for an indeterminate sentence prisoner);
- there are several panel members;
- there will be several witnesses;
- the prisoner is unrepresented or is represented by someone other than a legal representative;
- a Secretary of State Representative is attending the hearing;
- the prisoner is a child/juvenile or elderly, or has a disability or mental health issue and may need breaks or other reasonable adjustments;
- there are communication considerations (an intermediary, interpreter, signer, or other communication specialist is deployed);
- there are disputed issues;
- extensive questioning and cross-examination are anticipated;
- the issues for the hearing remain too fluid to be identified precisely;
- travel time and distance may affect timings;
- a victim attending to read a VPS, the reading will usually take place outside of the oral hearing, usually before the hearing commences.

20.31 MCA panels need to be mindful, when directing cases to an oral hearing, that remote hearings can take longer to conduct, and more breaks may be required than face-to-face hearings in person at the prison. This needs to be borne in mind when estimating the time allocation for a case.

20.32 The overall time allocated should include time for pre- and post-hearing panel discussions which are essential: generally, each requires a 30-minute allocation. However, as above, more time is likely to be needed for remote hearings. Time estimates should be clearly broken down and recorded on MCA directions (in the reasons box under panel logistics), for example: "30 minutes pre-hearing discussion, 2-hour hearing, 30 minutes post-hearing discussion". This will better alert the panel chair to how the time is intended to be used.

20.33 A single-member hearing with no additional witnesses beyond the prisoner and the COM and POM, and with few issues or areas of dispute, is likely to take around 90 minutes however, (as per paragraph 20.31 above), more time is likely to be needed for remote hearings. Additional panel members, witnesses and broader issues will add to this time. Realistic time estimates are needed, especially for more complex cases, as this will reduce the risk of hearings overrunning or being adjourned.

⁵¹ It is likely that a different approach to time allocation will be piloted in early 2024. At that time, this section of the guidance may be suspended.

- 20.34 For a three-member panel, allow as a starting point 45-60 minutes for the prisoner to give evidence; 30 minutes for each witness; and another 30 minutes for introductions, closing submissions, breaks and any other contingencies. Time estimates for a two-member panel may fall between those for single-member and three-member panels. The particular case and its complexity will govern estimations. However, (as per paragraph 20.31 above), more time is likely to be needed for remote hearings.
- 20.35 If there are a large number of witnesses or the case is particularly complex, more than three hours may be needed. Exceptionally, a whole day or more may need to be set aside. In such cases, the MCA panel must highlight the assessment and set out the reasons in the template box.

The prisoner's needs and support

- 20.36 Consideration must be given at the MCA stage to the specific needs of the prisoner (or other witnesses) as notified or implied in the dossier. Prisoners who use a wheelchair (or other mobility aids) or who are bed-ridden should be clearly identified. The need for an interpreter or signer, or other intermediary must be confirmed and highlighted: it is the responsibility of the Secretary of State through the prison or secure hospital to make arrangements but, if they are flagged well in advance of the hearing, this can avoid the possibility of adjourning or deferring the case on the day.
- 20.37 Please refer to the Guidance on Translators and Interpreters and the Guidance on Welsh Speaking Prisoners and Duties Regarding the Welsh Language for more information.
- 20.38 Other issues to consider include:
- the prisoner's physical health and well-being (for example, a person with diabetes may need food at regular intervals or someone on medication may need breaks to take medicine and to help maintain concentration);
 - the prisoner's mental health and capacity to take part in the hearing;
 - reasonable adjustments to enable a prisoner to participate properly;
 - religious requirements (for example, a practising Muslim would not expect an oral hearing during Ramadan or Eid or if it interferes with Friday prayers);
 - learning disabilities or challenges and time implications if, for example, questions need to be broken down into smaller sections to aid the prisoner's understanding;
 - requests for personal support from an observer or member of prison staff;
 - any reason the prisoner or other participants may need to take breaks.
- 20.39 This list is not exhaustive, so it is essential that the dossier evidence is carefully reviewed for any relevant factors which could affect the prisoner's ability to participate in the oral hearing fully and consistently.

The Secretary of State

- 20.40 The Secretary of State is a party to the hearing. Secretary of State officials (for example the COM and POM, etc) will attend an oral hearing as witnesses to give evidence. They do not attend as a representative of the Secretary of State but are there to present evidence to the panel. In some cases, the Secretary of State may choose to send along a Secretary of State Representative (an "advocate" and in some cases counsel) to provide formal representation as opposed to witness evidence. The Secretary of State Representative's role is to assist the panel and support the Secretary of State's witnesses. They may ask questions of the witnesses and the prisoner and express a view to the panel. In most hearings, no Secretary of State Representative participates unless it is a high-profile, terrorist/terrorist-connected case or some other noteworthy aspect.
- 20.41 In some cases, the Secretary of State will present a view on the prisoner's suitability for release. The cases will be selected by the Secretary of State, taking account of advice from officials, applying the following criteria:
- a) The nature and characteristics of the offending are particularly severe and risks damaging public confidence if the prisoner were to be released (e.g., where the victim(s) was a child or vulnerable; or cases with a sadistic or predatory motivation);
 - b) Cases involving multiple victims or where there was a history of serious offending, indicating a pattern or escalation of such offences;
 - c) Where the gravity of the offending behaviour indicates that, if further such offences were to be committed again, the level of harm to the public would be particularly grave.
 - d) Where a case raises issues in relation to victims' confidence more broadly in the parole system.
- 20.42 Once the Secretary of State has decided to submit a view on the prisoner's suitability for release, which either a Secretary of State Representative or counsel will articulate in a formal submission, it will then be added to the prisoner's parole dossier. The formal submission will set out in detail the basis of the recommendation, clarifying the evidence upon which it is based, and the weight attributed to that evidence.
- 20.43 In such cases, a Secretary of State Representative or counsel will attend the oral hearing. If a case appears to fit into the above criteria and it is unclear from the dossier whether the Secretary of State will be submitting a view or sending a representative to the hearing, confirmation can be sought.
- 20.44 At the MCA stage, it may not be clear whether a Secretary of State view will be submitted. Under no circumstances should the MCA panel issue an explicit direction that such a view be provided. However, a direction can be made to confirm whether the Secretary of State wishes to present a view. The Secretary of State can then decide how to proceed.

Victims

- 20.45 If a victim wishes to submit a VPS, although there is not a specific timeframe mentioned in “the Rules” for the submission of the VPS, the VPS will need to be provided in time for the MCA assessment and failing that within eight weeks of the scheduled oral hearing (if the case is sent to an oral hearing). However, please see paragraph 20.48 below for cases where a VPS has been indicated but is not available in the dossier.
- 20.46 The MCA panel should check the COM report to ascertain if the COM has made contact with the Victim Liaison Officer to explore a victim’s intentions of submitting a VPS. If the victim does not intend to submit a VPS, the MCA panel should never direct that one be submitted.
- 20.47 If a VPS is submitted and available, the MCA panel should consider:
- Requests for non-disclosure
 - Whether the VPS contains information that relates to risk⁵²
 - Whether the VPS contains information that is inappropriate and needs to be removed from the statement.
- 20.48 **If a VPS is indicated but not available in the dossier, the MCA panel should set directions seeking clarification. A case should not be concluded on the papers without sight of the VPS.** A victim must have the opportunity to have the statement considered by the panel. The VPS may also indicate licence conditions requested by the victim: these need to be considered if release is directed on the papers. If requested licence conditions are not adopted, the decision should say why. A short adjournment in the MCA process may be needed to obtain a VPS or to check the arrangements in the event of directing an oral hearing.⁵³
- 20.49 There are standard directions in the MCA directions template to assist arrangements for victim engagement.
- 20.50 The MCA panel should check whether a victim has requested to read a VPS themselves or have it read out on their behalf at an oral hearing. The Parole Board adopts a policy whereby there is a presumption that any requests from a victim to read their statement to the oral hearing panel will be agreed. If so, this request needs to be noted in the narrative section of the directions template, even though standard text is part of the document. Specific dates to avoid for the victim should also be included if provided (such as, birthdays or the anniversary of the index offence). In the majority of cases, the victim will attend remotely and read out their VPS via MS Teams. In some instances, the victim may wish to attend the prison in person, and this can be considered, but should not dictate how the parole proceedings should be managed.

⁵² Please refer to the *Guidance on Victims* for more information.

⁵³ If the case is to be concluded at the MCA stage then a formal adjournment with directions will be required. If the case is going to an oral hearing, relevant directions when sending the case to an oral hearing.

20.51 When a victim chooses to read a VPS to the panel in person or by telephone or video, a Secretary of State's Victim Representative will assist them. Alternatively, the Victim may ask someone to read their statement out on their behalf. This will normally be the Victim Representative, or another nominated person (usually from the prison). Neither the Victim Representative, or nominated person, nor the victim will be present during the substantive parole proceedings⁵⁴. The MCA panel and panel chair should never direct that a victim attends the hearing or have a VPS read out to the panel members.

20.52 Please refer to the Guidance on Victims for further information.

Expediting or prioritising an oral hearing

20.53 The starting point for most cases is that they are listed routinely following the Parole Board's listing framework (please refer to the Listings Prioritisation Framework). The exceptions to routine listing are cases where the prisoner is in a secure hospital setting or mental health unit; it is the prisoner's first review after discharge from a Mental Health Tribunal and they are back in prison; or the prisoner is under 18 years old. These cases should already have been prioritised for listing by the MCA member. There are formal Parole Board policies setting out these requirements. The relevant policies can be found on the Table of Options document within the Types of Cases guidance.

20.54 Prioritising a case is asking the Listings Team to make every effort to schedule the case in the *next* listings exercise.

20.55 Expediting a case is asking the Listings Team to make every effort to list the case *as soon as possible* and perhaps with a freshly commissioned panel at short notice. Expediting a case may not always be possible due to witness, member, or prison availability and a priority direction may be more advantageous to a timely listing. Furthermore, a decision to expedite an oral hearing for one case may require an existing listed case to be removed to make way for the expedited case.

20.56 Both routes have significant consequences for other prisoners when their reviews might be unfairly delayed, to allow for the prioritised or expedited case, despite their cases having similar merits. Another prisoner's hearing may have to be stood down from a month's listing to allow the review of an expedited or prioritised case. The processes of prioritisation, and especially expedition, also have considerable resource implications for the Parole Board and the parties.

20.57 The MCA panel must decide whether circumstances are sufficiently exceptional to warrant a case being given a higher priority in the listings process. The MCA panel should, therefore, first consider whether it would

⁵⁴ Testing for victims to observe parole hearings is underway and separate guidance has been annexed to the observer guidance. MCA panels should highlight to the case manager any case where a victim has requested to observe.

be more appropriate to prioritise a case before considering if an expedited listing is warranted. They must be specific on whether they are asking for a case to be prioritised or expedited with clear reasons being given.

20.58 Examples of when prioritising would be appropriate include:

- case deferred several times and the prisoner's review unfairly delayed;
- prisoner is under 18 years old;
- prisoner is held in a secure hospital setting or mental health unit;
- first review by the Parole Board after discharge by a Mental Health Tribunal
- serious concerns over the prisoner's mental health.

20.59 Examples of when prioritising would not be appropriate include:

- a determinate recall prisoner has less than 26 weeks until their sentence is due to expire;
- requests for prioritisation solely on the grounds of positive report assessments;
- a case has been adjourned/deferred once before and the current situation is not the prisoner's fault;
- a member or witness could not attend the oral hearing due to illness.

20.60 Examples of when expedition could be appropriate:

- terminal illness / compassionate release;
- the original decision is the subject of an order for reconsideration or has been quashed by the High Court;
- compassionate reasons of close family members;
- one of the automatic prioritisation category cases has exceptional circumstances for which an urgent decision is critical.

20.61 Please refer to the Duty Member Activities Guidance for further guidance on expedition/prioritisation and for guidance on recommending early release on compassionate grounds.

The 'Ready to List' box

20.62 At the end of the directions template, the MCA panel must confirm whether or not the case is 'ready to list'. This requires a yes/no response. The rule is that any case that will be ready to hear within the next three months is ready to be listed (because the Listings Team usually operates three months ahead). Any case which is likely to take longer than three months to be ready to hear for any reason is "not ready" to be listed⁵⁵.

21 What do I do when faced with

⁵⁵ The MCA panel will deem whether the case is ready to list.

21.1 This section deals with specific issues that the MCA panel may face, whether they are common or less so. Even very experienced members encounter features of cases not met before and will seek advice from colleagues, the Parole Board's Practice Advisor, and the MCA Guidance. This section does not provide all the answers but points members in the right direction.

Less than 26 weeks⁵⁶ to SED in a determinate sentence recall case⁵⁷

21.2 Determinate sentence prisoners with less than 26 weeks until SED or other automatic release date are not usually sent to an oral hearing because the case cannot usually be listed and delivered in the remaining time. In such a case, the only alternative to a decision on the papers will be no decision at all. There may be exceptional circumstances that merit an expedited hearing. These might include the prisoner's mental health deteriorating because of continued detention or other compelling compassionate reasons. If there are exceptional circumstances, the MCA panel can consider expediting the listing of the case. Panels should flag this up with the case manager so that steps can be taken quickly to convene a panel (see section on Expediting or prioritising an oral hearing). Panels should, however, be aware that it will be very difficult to find a slot within the next 26 weeks and there is a real risk that the prisoner's sentence will expire before a date can be set.

21.3 It is more likely that with less than 26 weeks to go, it will not be practically possible to obtain further information or list an oral hearing and the case must be concluded on the available papers. However, the MCA panel can still adjourn for further information if that can be supplied within the timeframe. Regardless of the SED, the OBR principles apply to any MCA assessment (see paragraphs [6.4 - 6.8](#)) but note paragraph 21.4 and 21.5 below about concluding on the papers.

21.4 Where the MCA panel concludes that an assessment of risk would require further information to be provided if time allowed, wording such as the following might be helpful to add in the conclusion of the decision:

"The panel determined that your case cannot be concluded on the papers alone without directing further information. If time allowed, the panel would have required further information on (for example):

- *issues in relation to events leading to recall, specifically which are relevant to risk.*
- *your list of previous convictions and an analysis of your offending behaviour.*
- *a mental health assessment is yet to be undertaken and there are issues such aswhich are relevant to risk."*

⁵⁶ The change from 20 weeks to 26 weeks was introduced in September 2023 as part of the Board's response to the current listings queue.

⁵⁷ Section 136 of the Police, Crime, Sentencing and Courts Act 2022 provides that in recall cases, no further referrals will be made if the prisoner has less than 13 months until their sentence expiry date.

- 21.5 Where the MCA panel concludes that an assessment of risk would require an oral hearing if time allowed, wording such as this might be considered:

"The panel concluded that your case cannot finally be dealt with on the papers alone and, had time allowed, would have directed that your case be sent to an oral hearing. For now, with these issues of risk unresolved, and for the purposes of public protection, the panel makes no direction for your release."

No accommodation for a prisoner who could otherwise be released

- 21.6 Under section 139 of the Police, Crime, Sentencing and Courts Act 2022, panels can now only direct "release" without specifying a date or timescale and cannot direct a release "subject to". Following a release decision:

"The Secretary of State must give effect to the direction of the Parole Board as soon as is reasonably practicable in all the circumstances including, in particular, the need to make arrangements in connection with any conditions that are to be included in the person's licence."

The starting point is that release should not take place until all elements of a risk management or release plan are in place. This may include a confirmed release address. If the MCA panel assess that the test for release cannot be met without confirmation of a suitable address, one option is to adjourn the case for the COM to confirm a suitable address. Panels may wish to ask the COM to confirm whether the homeless prevention team is engaged. If a suitable address cannot be confirmed, the panel will need to consider the possibility that if they direct release, the SSJ could release the prisoner with no address.

- 21.7 A lack of confirmed release address may impact on the panels assessment of whether the test for release is met. The MCA panel must not direct release 'subject to' the availability of accommodation (or any other element of the plan). Release decisions cannot be conditional: if, after an adjournment, no accommodation has been confirmed, an assessment must be made whether the statutory test for release is met.
- 21.8 In some cases, the structured environment, support, and supervision of an AP may be considered necessary to manage risk but residence at a specific AP due to its location or the services/regime it provides (for example, PIPE), is not considered necessary. In such cases, the MCA panel may consider directing release to a suitable AP as this provides the Probation Service with flexibility to find a suitable bed at the earliest opportunity.
- 21.9 Although the panel may record within the decision the date they have been informed an AP bed will be available, this should not be done in such a way to indicate or imply that release is being directed on that date as it is no longer within the power of the Board to direct release on a specific date.

Post-sentence supervision

21.10 The Offender Rehabilitation Act 2014 introduced a mandatory period of post-sentence supervision (PSS) for determinate sentence prisoners serving custodial sentences of up to two years. The licence period is topped up so that they have a period of supervision of at least 12 months. Relevant licence provisions and supervision dates are shown in the prisoner's licence. The Parole Board has no jurisdiction over any post sentence supervision period; however, in light of the judgments in *Johnson, Dich and Murphy*⁵⁸, the period over which a panel is considering risk in all determinate sentence cases may go beyond conditional release dates (CRD) and sentence expiry dates (SED)⁵⁹. Therefore, the panel's assessment of risk may include the period the individual has on post sentence supervision, but they cannot set licence conditions for this period.

The prisoner asks for an oral hearing but there are insufficient grounds for one

21.11 Prisoners or their representatives may apply for an oral hearing when the MCA panel is not minded to direct one. In these circumstances, a hearing does not have to be granted but, if refused, it must be demonstrated that the application was considered, and reasons must be given for refusing it. For example, a prisoner may have had an oral hearing at their last review where the panel concluded that there were core areas of risk outstanding but there is no current evidence of any significant change since; or there is an area of dispute which has already been addressed in a previous review.

21.12 However, the MCA panel should always bear in mind that at least a year will have passed since the prisoner's last review and this in itself may impact upon risk. If in any doubt about whether or not to grant an oral hearing, OBR principles (see paragraphs [6.4-6.8](#)) indicate that the Parole Board should grant a hearing. In such a case, the type of oral hearing will have to be determined (see paragraphs [20.23-20.29](#)).

Using security intelligence

21.13 This may need to be treated in a similar way to discontinued criminal charges and allegations in that the panel needs to make a finding of fact. Due to the sensitivities of such information, there may be a non-disclosure application to be decided, if so a short adjournment must take place to allow for the non-disclosure application to be concluded. If the case is directed to an oral hearing and there is significant security intelligence, the MCA panel may wish to direct attendance of the prison's Security Governor or similarly, in the case of police intelligence, the Chief Constable or their designated alternative. Such a direction will enable the prison or the police to identify the most appropriate witness if an individual has not been named in the dossier.

⁵⁸ [Secretary of State for Justice v Mr Alan Johnson 2022 EAT 1.pdf \(publishing.service.gov.uk\)](#)

⁵⁹ Please see the *Types of Cases Guidance* for more information.

21.14 When directing submission of security intelligence, the instructions should specify that reliability ratings (high, medium, low) are required.

Prisoner sentenced under earlier legislation

21.15 Very rarely will an MCA panel come across one of these cases. The terms of the referral say under which legislation the prisoner was sentenced and will make clear what the panel is being asked to do by the Secretary of State. The MCA panel can contact the Board's Practice Advisor for guidance but the same test for release, as set by Parliament, applies and the approach at MCA stage is essentially the same as in other cases.

"Stuck" cases

21.16 It is not the role of the Parole Board to routinely 'unstick' cases which appear to have stalled in the system, but such cases arise. Representations may request an oral hearing to help progress the case. The MCA panel should take account of the OBR principles in relation to fairness (see paragraphs [6.4 - 6.8](#)) and recognise that the Parole Board procedures do have some legitimate part to play in identifying live risk issues that a prisoner might need to address. The likelihood of release or transfer to open conditions are not the sole determinants of sending a case to an oral hearing, but fairness is the significant factor. A case management conference or directions hearing may also be a useful way to try and "unstick" a case without requiring an oral hearing.

Late Representations

21.17 An MCA panel may be faced with a case where the prisoner could not or did not make representations at the MCA stage. Alternatively, even if representations were prepared, they might not have been available to the MCA panel because of administrative difficulties or because they did not arrive in time before the decision was made at the MCA stage. Representations that were not put before the MCA panel prior to the case being panelled cannot be considered by that MCA panel. The only way for these to be considered, is via a rule 20 application⁶⁰ (that would be dealt with by a Duty Member) or via other routes once the decision becomes final (reconsideration, setting aside, judicial review).

Combining reviews

21.18 In some circumstances MCA panels may need to consider combining reviews where there are two active referrals for a case. The decision about combining reviews is wholly a matter for the Board but either party can make a request.

⁶⁰ Following a decision at MCA that a prisoner is unsuitable for release, the prisoner can apply in writing for a panel at an oral hearing to determine the case.

- 21.19 Combining reviews can be a way to efficiently deal with circumstances where the Secretary of State has made two referrals at different times, but the reviews overlap.
- 21.20 It may not be immediately apparent that two referrals have been made until a detailed review of the dossier is undertaken. MCA panels may need to adjourn to seek clarification about this. Where it is confirmed that there are two referrals, the MCA panel will need to determine which review is the furthest advanced and if combining them is appropriate. For example, it may be that the matter needs to be deferred to an existing oral hearing panel chair.
- 21.21 There may also be occasions where an MCA panel is undertaking a GPP review or review of recall of an IPP case and a Duty Member will ask that a new referral to consider terminating the IPP licence is combined with the current review. These will be rare but, in such circumstances, combining the reviews may be the most suitable way forward.
- 21.22 More information about combining reviews can be found in the Duty Member Activities Guidance.

Stakeholder Response Forms (SHRF)

- 21.23 During the MCA review, either party may submit new or additional information or requests via a SHRF. All requests should come on an SHRF which has a section for the Parole Board's response. Before the Parole Board receives the SHRF, the parties (Secretary of State (via PPCS) and the prisoner/ their representative) will have been provided with the opportunity to provide their views. Any views/ representations will be included in the SHRF. If it is unclear if either party has been given the opportunity to submit representations the panel may wish to seek clarification⁶¹.
- 21.24 The MCA panel will occasionally receive an SHRF with requests or enquiries after the MCA directions have been issued. These may be requests for variation or a revocation of specific directions. Other queries might include questions from witnesses, report writers or the prisoner's representative. The MCA panel is required to retain downloaded dossiers for four weeks after the MCA panel date and will be responsible for responding to the SHRF. SHRF arriving after this time will be dealt with by a Duty Member.

Further information submitted after a decision has been issued

- 21.25 In some circumstances, information may come to light following the MCA decision being issued. Once the decision has been issued to all parties, the decision cannot be re-opened as the Board is functus officio. The only

⁶¹ Panels are to note that on initial non-disclosure applications and where the panel are asked to give an "in principle" decision ahead of receiving representations, these may be purposefully not included.

routes for this information to be considered by the board are via the following:

- the prisoner can apply for an oral hearing (under rule 20)⁶²
- reconsideration (if eligible);⁶³
- apply to set aside the decision;⁶⁴ or
- judicial review.

21.26 Please note that none of these functions are undertaken by the MCA panel. Should such a request be received, please pass this onto the case manager who can send to an appropriate duty member.

Terrorism/ Terrorism-connected prisoners

21.27 Terrorism and terrorism-connected cases are considered by members of a specialist cohort and are managed by the Specialist Case Management Team within the Operations Hub at the Parole Board. If a panel receives such a case and they are not a member of the specialist cohort, they should contact the Specialist Case Management Team immediately.

High profile Cases

21.28 High profile cases should have already been identified as such by the Secretariat and will be managed by the Specialist Case Management Team within the Operations Hub. If an MCA panel is considering a case which they believe may be of particular interest to the public or otherwise noteworthy (nationally or regionally) and which has not been flagged as such, the MCA panel should contact the Specialist Case Management Team.

Power to Detain (PTD) Standard Determinate Sentence Cases

21.29 Power to Detain Standard Determinate Sentence cases are managed by the Specialist Case Management Team within the Operations Hub at the Parole Board. If a panel receives such a case in their regular bundle, they should contact the Specialist Case Management Team immediately.

[END]

⁶² Please refer to the Duty Member Activities Guidance for further information.

⁶³ Please refer to the Reconsideration guidance for further information.

⁶⁴ Please refer to the Setting Aside a Decision Guidance for further information.

ANNEX 1 - Checklist for MCA Panels Directing an Oral Hearing

Use the MCA directions template, complete all sections and check:

- An oral hearing is always required when fairness demands it but is obligatory for a child (prisoner under 18) or a prisoner in a mental health setting⁶⁵; and is a presumption for a young adult prisoner (aged 18-21 inclusive) and a life sentence prisoner on initial release review and when considering a pre-tariff progression to open conditions
- More than 26 weeks remain to SED
- Clear details of sentence and relevant dates are correctly recorded (for example, tariff expiry or PED, SED and CRD)
- Exact wording and terminology is used when referring to the index offence(s)
- Terms of the Secretary of State's referral and the options before the panel should be outlined (release, re-release or transfer to open conditions)
- Dossier length in number of pages, prisoner representations and proposals, non-disclosure, and any VPS should be noted
- A clear, concise, and brief narrative summarises the index offence, relevant patterns⁶⁶ of offending, overview of progress and current circumstances, and the risk assessments made by key report writers (but not so detailed or evaluative that it impedes the decisions of the next panel)
- Why the case cannot be concluded on the papers and why an oral hearing is necessary
- Key topics for the hearing are identified whilst indicating the next panel may also explore other issues
- Specific issues relevant to the case are highlighted (for example, mental health, deportation, learning issues, language issues etc)
- No risk assessment – that is the responsibility of the oral hearing panel
- What type of oral hearing is directed and why
- Clear directions for necessary reports and essential documents with reasons explained, taking account of practicalities and proportionality because directions must be reasonable, lawful and deliverable, with clear timescales
- Realistic deadlines for new reports and time for other participants to have sight of these before the hearing and reflect findings in their evidence
- Witnesses are relevant and their roles and contributions are precisely described for the particular case, avoiding formulaic wording
- The panel is appropriately composed, specialist members if directed are essential and their deployment follows MCA Guidance, and the number of members is proportionate and justified
- Diversity considerations or special needs are identified and planned for (if evident in the dossier)
- Victim involvement is highlighted and relevant directions made (any arrangements for the hearing)

⁶⁵ Please note that the policy relating to automatic granting of an oral hearing for mental health cases was paused while the mental health streamlining pilot is underway. At the time of writing, this policy remains paused and will be reviewed once the mental health streamlining project pilot is completed.

⁶⁶ The MCA panel should not provide, or appear to provide, an opinion on risk.

- Why the hearing cannot be conducted remotely by telephone or video with the prisoner and/or witnesses, if a face to face hearing has been directed
- Sufficient time is allowed for the oral hearing, including pre- and post-hearings panel discussions
- Whether expedition or prioritisation is essential
- The 'ready to list' box is completed
- The narrative is spellchecked, proofread for typos, intrusive presentational features are corrected, plain English is used, names are spelt correctly

ANNEX 2 – Table of Reports

Report Types	Responsible Author	Organisation Responsible	Timescales for provision/ completion of report	Timescale cut off for the availability of historical information (years)	Comments
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<i>Core/Standard</i>					
Pre-Tariff PAROM1	Prison Offender Manager (POM)	Prison Offender Management Unit (OMU)			
Pre-Tariff Addendum	POM	Prison Offender Management Unit (OMU)	8 weeks prior to the oral hearing		
On/Post tariff PAROM 1 or Part A, B or C [recall reports]	Community Offender Manager (COM)	Probation Service	6 weeks	N/A	
On/Post Tariff Parole Custody Report	POM	Prison Offender Management Unit (OMU)	6 weeks	N/A	
On/Post Tariff PAROM1 Addendum	COM	Probation Service	8 weeks prior to the oral hearing	N/A	
On/Post Tariff Parole Custody Report Addendum	POM	OMU	8 weeks prior to the oral hearing	N/A	
Risk Management Plan	COM	Probation Service	6 weeks	N/A	
OASys Report	POM or COM depending on	Currently either Probation Service or OMU	6 weeks	N/A	<i>OASys reports are valid for 12 months: date of completion is the date 'signed off' at page 2 of</i>

	sentence type				<i>report [not the date in top right-hand corner which is date printed]</i>
SPR-H Security [also referred to as Mercury report]	Prison Service Security Department	Prison Service	6 weeks	N/A	<i>Reliability ratings should be supplied but 5x5x5 gradings are no longer shared with the Parole Board (because they may lead to identification of the source of the information)</i>
Adjudication Record	Prison Service	PPCS	4 weeks	N/A	<i>Can also ask for paperwork relating to a specific "adjudication hearing": usually only relevant when a prisoner disputes circumstances of adjudication</i>
P-NOMIS printout	Prison/POM	Prison Service/OMU	These should be updated daily so printouts can be readily to hand [if needed]	As above	<i>These are wing/custodial notes where staff record +ve & -ve behaviours POM usually comments on these within their report BUT can be useful to direct P-NOMIS notes say for 'specific incident or period' if POM has little knowledge of case OR facts disputed</i>
Previous Convictions – Police national computer (PNC)	Prison	Prison	4 weeks	N/A	
Previous Parole Board Decision(s)	Parole Board	Parole Board	4 weeks	All should be available	<i>The MCA panel should contact the Parole Board case manager if such documentation is required.</i>
Executive Release [Secretary of State] Decision Letter(s)	PPCS	PPCS	4 weeks	All should be available	
Previous POM or COM	PPCS	PPCS	4 weeks	All should be available if	

reports				required	
Secretary of State's referral document	PPCS	PPCS	2-4 weeks	N/A	
LISP 4 (transfer back to closed conditions from open)	Prison Service	PPCS	4 weeks	N/A	

<i>Sentence/Court/Police/ CPS</i>					
Judge's Sentencing Remarks (JSR)	PPCS	PPCS	6 weeks	All should be available if they were recorded.	
Trial Judge's Report to the Home Secretary	PPCS	PPCS	6 weeks	All should be available	<i>Completed for all life sentences pre-2003</i>
Court of Appeal Transcript	PPCS	PPCS	6 weeks	All should be available	<i>Reports from any appeal against sentence/conviction. Direct the <u>full</u> transcript report rather than just the Cover Sheet</i>
Bad Character/Basis of Plea/Family Court reports	PPCS	PPCS	6 weeks	All should be available	<i>Reports relevant to sentencing/conviction</i>
Pre-Sentence Report	COM	PPCS	4 weeks	N/A	
Post-Sentence Report	COM	PPCS	4 weeks	N/A	<i>Post sentence reports are no longer completed for any prisoner sentenced after 1 December 2020</i>
Crown Prosecution Service,	Crown Prosecution Service	Parole Board or PPCS for mandatory	8 weeks	CPS Retention policy is	<i>Useful to direct these if dropped charges [most usually with domestic</i>

witness statements, prosecution summary (if there is one) and exhibits.		documents under the Schedule to the Parole Board Rules 2019		based on the length of the sentence, e.g. Indeterminate are retained for 25 years and determinate for 3 years or the length of the sentence whichever is greater.	<i>violence allegations]</i> <i>OR no JSR/Pre-Sentence Report reports available and no clear offence account elsewhere</i> <i>Non-disclosure applications to be made through PPCS</i>
Police witness statements, MG4 (charge sheet), MG5 (case and interview summary), or other reports	Police	Parole Board or PPCS for mandatory documents under the Schedule to the Parole Board Rules 2019	8 weeks	As above	Non-Disclosure applications to be made through PPCS
Representations	Representative	Representative	4 weeks	Historical representations can be directed, new representations can only be 'invited'.	

<i>Health/Psychology/ Psychiatry</i>					
End of Treatment /Responsible Clinician/Mental Health Tribunal reports	PPCS	PPCS	6 weeks	All should be available	<i>If transferred back to prison from secure Mental Health unit, there must be a Responsible Clinician and/or End of Treatment report</i>

Mental Health In-Reach Report	Prison Mental Health Team	Prison	6 weeks	N/A	<i>Useful where mental health issues identified as provides an overview of any psychiatric input/ treatment/engagement</i>
Historical psychological /psychiatric reports	Prison	Prison	4 weeks	N/A	<i>Useful to ask for any reports done for sentencing [often referred to in JSR or Pre-sentence Report]</i>
Psychological Risk Assessment	HMPPS Psychology Department	Prison	12 weeks from referral date	N/A	
Joint Psychology Report	Psychologist/ psychiatrist and prisoner commissioned representative	Prison and Representative	6 weeks	N/A	<i>Such directions should not be made prior to the receipt of the psychology reports from both HMPPS Psychology and the prisoner's representative. A direction for a joint report should only be made if it is necessary (for example, clear areas of disagreement) and should not be directed as a matter of routine.</i>
Psychiatric Risk Assessment	Prison	Prison	12-16 weeks (seek guidance locally as practice varies)	N/A	<i>Not to be confused with a Mental Health In-Reach report. This is a specific risk assessment rather than overview of mental health issues/ treatment</i>
WAIS Summary Report	HMPPS Psychology	Prison	12 weeks	N/A	<i>IQ assessment to determine cognitive function/learning needs</i>
Medical Report	Prison Healthcare	Prison	8 weeks	N/A	<i>May need to get prisoner's written permission for this. Where the prisoner does not consent, the reports can be obtained without it. The POM will be able to obtain signed consent if the prisoner agrees to</i>

					<i>provide this.</i>
PIPE Report	HMPPS Psychology	Prison	12 Weeks	N/A	
Therapeutic Community (TC) progress report	HMPPS TC	Prison	8-10 weeks for new 4 weeks for historical report	As long as the sentence	<i>When prisoner is still in treatment</i>
TC End of Therapy Report	HMPPS TC	Prison	12-16 weeks (But an extension might be requested as therapists are given up to 6 months to complete this following the end of treatment)	As above	<i>Provided on completion OR if withdraws from treatment. This is not a psychological risk assessment so 'may' be appropriate to also direct an updated PRA on completion</i>

<i>Programmes/ Offending Behaviour work</i>					
Programme Suitability Summary	Prison Programmes or Psychology	Prison	6 weeks.	N/A	<i>If the Parole Board need to understand the individual's possible intervention trajectory, they could request a 'Programme Suitability Summary'. For those individuals who are high or very high risk, this will be the Selection Decision section of the Programme Needs Assessment. For those of medium risk or below who have not had a PNA, it may take several forms but it will summarise the individual's programme suitability.</i>

New Me Strengths (NMS), Becoming New Me (BNM), Living as New Me (LNM)	HMPPS Programme s Staff	Prison	4 weeks after course completion	N/A	<i>No post-programme reports produced. Prisoners complete a My Journey Record which can be useful</i>
Structured Assessment of Risk and Need (SARN) <i>[following completion of Core, Extended, Rolling & Adapted sex offender treatment programme SOTP]</i>	Prison	Prison	4 weeks	N/A	<i>Historical risk assessment completed following completion of all SOTP courses.</i>
Healthy Sex Programme [HSP] Post-programme report	Prison	Prison	12 weeks	N/A	
Substance support services [known as SMS, DARTs, DARS, CARATs]	Prison Substance misuse team	Prison	6 weeks	N/A	SMS will often provide an overview of work completed/ongoing
P-ASRO (drugs and alcohol programme) Post-programme	Prison	Prison	6 weeks	N/A	Historical report
Building Skills for Recovery (BSR) Post-programme	Prison	Prison	6 weeks	N/A	
Victim Awareness (Sycamore Tree)	Prison	Prison	6 weeks	N/A	

Domestic Abuse Risk and Needs Assessment (DARNA) report [on completion of Healthy Relationships Programme HRP]	Prison	Prison	4 weeks	N/A	<i>Historical programme. Both DARNA & post-programme reports could be provided</i>
BBR [Building Better Relationships] Post-programme	Prison	Prison	8 weeks after course completion	N/A	
ETS [Enhanced Thinking Skills] Post-programme	Prison	Prison	4 weeks	N/A	Historical course report
TSP [Thinking Skills Programme Post-programme]	Prison	Prison	6 weeks	N/A	
CSB [Cognitive Skills Booster]Post-programme	Prison	Prison	4 weeks	N/A	<i>Historical course report</i>
SCP [Self-Change Programme] Post-programme	Prison	Prison	6 weeks	N/A	<i>Historical high-intensity instrumental violence course</i>
R&R [Reasoning & Rehabilitation] Post-programme	Prison	Prison	4 weeks	N/A	<i>Historical Course report</i>
CALM [Controlling Anger and Learning to	Prison	Prison	4 weeks	N/A	<i>Historical anger management course</i>

Manage it] Post-programme					
RESOLVE⁶⁷ Post-programme	Prison	Prison	8 weeks after course completion	N/A	<i>Medium-intensity violence [planned & reactive] reduction course</i>
HORIZON programme (sexual offending)	Prison	Prison	6 weeks	N/A	<i>In replacement of a post programme report, prisoners will complete a My Journey Record and New Me Life Plan. There is likely to also be programme Progress Review meeting minutes.</i>
KAIZEN programme – 3 strands: - Sexual IPV [interpersonal violence] - Violence	Prison	Prison	6 weeks	N/A	<i>Can get Post-programme Review minutes & typically prisoners complete a My Journey Record which can be useful. You will need to direct a psychological risk assessment if you consider it appropriate on completion</i>

<i>Scotland</i>					
Lifer Liaison Officer Report	Prison	Prison	8 weeks	N/A	
Community Based Social Worker Report	Social Worker	PPCS	8 weeks	N/A	
Prison Based Social Worker	Prison	PPCS	8 weeks	N/A	

⁶⁷ The Resolve programme is currently being phased out. For more information please refer to PBM 048-2022.

ANNEX 3 GUIDANCE FOR WRITING DECISIONS

For decisions at MCA, the paper decision template should be used. When writing decisions, panel chairs should follow the reasons writing guidance and the principles of the Decision-Making Framework. The following checklist is not intended to replace that guidance but instead to provide prompts to help ensure decisions are of a consistently high standard, effectively conveying the key information, analysis and reasons for a decision in a clear, understandable manner. Issues relating to diversity and inclusion, mental health, learning issues (and any other protected characteristics), and deportation must be fairly and appropriately addressed.

As a minimum, a decision should include:

Context – Completing the front sheet (quick fill) of the paper template fully and accurately will ensure the following is recorded:

- the date of paper review
- paper review type (for decisions at MCA select Member Case Assessment (MCA))
- prisoner's full name and prison number
- prisoner's date of birth and age at the time of the current review
- the number of parole reviews undertaken during the current sentence
- panel composition including number of members and any specialists on the panel
- type of case
- the Secretary of State's referral
- the outcome of the parole review sought by the prisoner/their representative
- details of the Secretary of State's view (if submitted)
- the test for release and/or the criteria for recommending suitability for open conditions
- the index offence and sentence. Avoid paraphrasing or unexplained abbreviations. Distinguish between types of indeterminate sentences e.g. automatic life sentence, mandatory life sentence, Imprisonment for Public Protection, etc.
- eligibility for reconsideration
- date of sentencing and the prisoner's age at time of sentencing
- tariff expiry date and any other date relevant to the sentence e.g. conditional release date, sentence expiry date (*the risk period under consideration in all cases is indefinite*)
- recall dates
- Victim Personal Statement (VPS) and/or whether enrolled in the Victim Contact Scheme
- the dossier length recorded in terms of pages (as paginated). Significant or unusual documents and omissions of key material can be noted.
- any non-disclosure issues
- whether there are representations
- the 'any other information' box can be used to record anything that is not covered in other sections but adds context to the review.

Analysis of offending behaviour (the past)

- the nature of the index offence(s) - if text is adopted from earlier documents, it must be owned and analysed by the current panel and preferably italicised in the body of the decision
- the verified circumstances and nature of the index offence(s). The panel must be alert to any mistakes in the dossier where the incorrect facts are recorded and must have regard to findings made by the Sentencing Judge and any accepted basis of plea
- relevant previous convictions and offending patterns (if text is adopted from earlier documents, it is owned and analysed by the current panel)
- allegations of previous harmful or risky behaviour
- signs of stopping offending, such as gaps in offending pattern

Analysis of evidence of change (the present)

- current risk factors/issues, considered and properly analysed (if text is adopted from earlier documents, it is owned and analysed by the current panel)
- relevant protective factors, considered and properly analysed (if text is adopted from earlier documents, it is owned and analysed by the current Panel)
- considering circumstances and known details of any release and recall dates, including who was responsible for the release (e.g. automatic, Parole Board, executive release, early release on home detention curfew)
- if recalled, the prisoner's progress and conduct on licence
- if this was the first review after recall, the appropriateness of the recall decision (in line with *Calder* caselaw⁶⁸)
- the prisoner's progress, engagement and conduct in custody, linked to risk and risk reduction
- relevant interventions and outcomes, including progress in open prison or a progressive regime and recommendations of witnesses
- most recent OGRS and OASys assessments using the bands (e.g. high, medium, low, etc), not percentages or bald scores, with the outcomes of any specialised assessments noted
- professional opinion regarding progress
- the panel's own assessment of current risk, the rationale for preferring one assessment over another, and any outstanding risks
- an analysis of what the offences and harm might be, who the victim(s) might be, the likelihood of a risk scenario and the imminence of risk.
- any finding of fact made in relation to allegations relevant to risk

Analysis of manageability of risk (the future)

- release and risk management plans, adequately outlined and evaluated against the risk and protective factors identified
- the manageability of the prisoner in the community, likelihood of compliance, warning signs of increased risk, and contingency plans
- any protective factors
- licence conditions, explained and justified as necessary and proportionate (including a rationale for any divergence from the proposed risk management plan)

⁶⁸ *R(Calder) v Secretary of State for Justice [2015] EWCA Civ 1050*

- any licence conditions proposed by a victim with reasons provided for not imposing or for varying any conditions recommended in the risk management plan

Conclusion

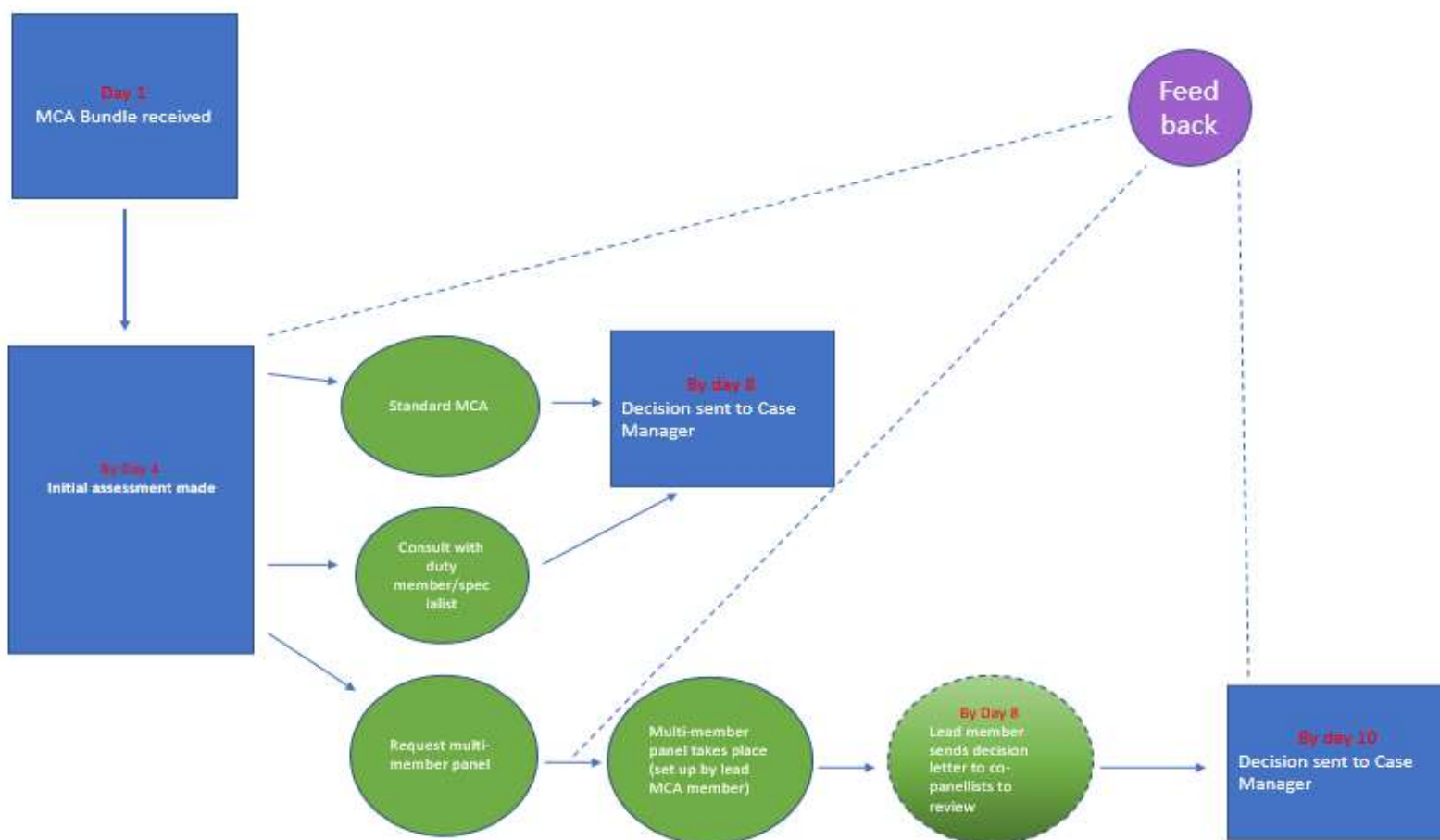
- it must be made clear in the decision that the panel applied the test for release FIRST and then, if not directed, it SEPARATELY applied all the relevant criteria in relation to suitability for open conditions (where this is part of the referral). All the criteria applicable to the case must be explicitly considered
- relevant factors for and against release/transfer to open conditions, articulating full reasons for the decision or recommendation
- clear and lawful conclusion logically linking evidence for risk assessment and the test for release and/or criteria for recommendation for open conditions
- advice regarding possible next steps, including information likely to assist a future panel (where another review is likely)
- any conditions additional to the standard licence requirements, these are to be selected from the template.

ANNEX 4 – Multi-Member Panel Table and flowchart

Members undertaking MCA might use a brief consultation with the duty member or a specialist member where it is deemed that this would be beneficial. The below table aids members decision making on whether a multi-member panel or consultation with a duty or specialist member might be required:

ADVICE Consult with duty member/specialist member	JOINT DECISION-MAKING Multi-member panel
<ul style="list-style-type: none"> - Brief consultation of up to 30 minutes to assist the member in their deliberations - Case is summarised by the MCA member; duty/specialist member does not have access to dossier - To discuss a point/options to progress the case - For advice from specialist member on directions (fairness/wording/reports), case progression, panel composition, decision, or licence conditions - Helpful if sending case to an oral hearing - The duty member/specialist member does not become part of the panel and should not be referenced in the decision 	<ul style="list-style-type: none"> - Probable that a lengthier discussion will be required with one or more additional members with a view to coming to a significant decision - The dossier is made available to the additional member(s) on WAM - MCA bundle owner (MCA Panel Chair) convenes a time to fully discuss the case - Case-specific specialist input required, likely to be around the decision itself and licence conditions - Having considered the dossier, an issue of fact or point of view is undecided and could be resolved through expanding the panel - The additional member(s) join the panel and this will be clearly set out in the decision. Decisions are made by a majority

Multi-member MCA panels are intended for cases where a brief consultation with a duty member or specialist member of the Parole Board is insufficient. The below flowchart references the journey such a panel can take.



[END]