

# Oral Hearing Guidance

December 2023 (v2.1)

<b>Document version</b>	<b>Date of Issue</b>	<b>Revision description</b>
Version 1.0	31.12.2021	This guidance was created as part of the Parole Board's project to launch fully revised and updated member guidance.
Version 2.0	27.10.2022	<p>The guidance was updated to reflect the changes following:</p> <ul style="list-style-type: none"> <li>• The Police, Crime, Sentencing and Courts Act 2022.</li> <li>• The amended Secretary of State 2022 Directions on suitability for open conditions for ISP cases.</li> <li>• The Parole Board Rules 2019 (as amended).</li> <li>• Johnson R v Secretary of State for Justice [2022] EWHC 1282 (Admin).</li> <li>• The review of the Parole Board's paused policies.</li> </ul>
Version 2.1	20.12.2023	<p>The guidance was updated to reflect the following changes:</p> <ul style="list-style-type: none"> <li>• Secretary of State's single view becomes Secretary of State's view.</li> <li>• Witnesses can give professional opinions on the prisoner's suitability for release or move to open.</li> <li>• Section added on witnesses joining oral hearings from abroad.</li> <li>• Victims can read VPS where an application for it to be read at oral hearing has been accepted and the case has been concluded under rule 21.</li> <li>• <i>Pearce</i> [2023] UKSC 13 on appeal from [2022] EWCA Civ 4</li> <li>• <i>Dich and Murphy</i> [2023] EWHC 945 (Admin)</li> <li>• Secretary of State's Directions for open conditions 2023</li> </ul>

- 
- Footnote added on short adjournment and recording of the hearing.
  - Changes in practice when conducting oral hearings due to prison staff work pattern (paragraph 5.40).
- 
- 
- 
- 
-

## Contents

<b>1.Introduction .....</b>	<b>6</b>
<b>2.Roles and responsibilities.....</b>	<b>7</b>
<i>The parties .....</i>	<i>7</i>
<i>The prisoner .....</i>	<i>7</i>
<i>Representative.....</i>	<i>8</i>
<i>The Secretary of State.....</i>	<i>9</i>
<i>The Panel Chair .....</i>	<i>10</i>
<i>Co-panellists.....</i>	<i>11</i>
<i>Conflict of Interest.....</i>	<i>13</i>
<i>The Parole Board case manager .....</i>	<i>13</i>
<i>Witnesses.....</i>	<i>14</i>
<i>Observers.....</i>	<i>17</i>
<i>Translators, interpreters, and communication specialists.....</i>	<i>20</i>
<b>3.Pre-Hearing Practice .....</b>	<b>22</b>
<i>The referral and the dossier .....</i>	<i>22</i>
<i>Combining Reviews.....</i>	<i>23</i>
<i>The legal test.....</i>	<i>23</i>
<i>Panel Chair Directions .....</i>	<i>25</i>
<i>Panel composition.....</i>	<i>26</i>
<i>Format of the oral hearing .....</i>	<i>27</i>
<i>Amending panel chair directions.....</i>	<i>28</i>
<i>Public hearings.....</i>	<i>29</i>
<i>Concluding a case on the papers post-MCA .....</i>	<i>29</i>
<i>Concluding a case on the papers under rule 21.....</i>	<i>31</i>
<i>Concluding a case on the papers under rule 23.....</i>	<i>33</i>
<i>Administrative cancellation of oral hearings already listed .....</i>	<i>34</i>
<i>Case management conferences and directions hearings .....</i>	<i>35</i>
<b>4.Practicalities on the Day of an Oral Hearing .....</b>	<b>38</b>
<i>Hearings held remotely and participation by telephone and video .....</i>	<i>38</i>
<i>Face-to-Face hearings in person.....</i>	<i>39</i>
<i>Access to prisons.....</i>	<i>39</i>
<i>The hearing room and safety .....</i>	<i>40</i>
<i>Contact with prison staff.....</i>	<i>42</i>
<i>Contact with parties and witnesses in advance of the hearing .....</i>	<i>42</i>
<i>Pre-hearing consultation with a representative .....</i>	<i>43</i>
<i>Missing participants .....</i>	<i>43</i>
<i>Pre-hearing panel discussion .....</i>	<i>44</i>

<i>"On the day" receipt of late papers</i> .....	46
<i>"On the day" applications to adjourn or defer</i> .....	46
<i>Prisoners who are not represented</i> .....	49
<b>5.The Hearing</b> .....	<b>49</b>
<i>The roles of panel chair and co-panellists</i> .....	49
<i>Opening the hearing</i> .....	50
<i>Prisoners with vulnerabilities</i> .....	52
<i>Prisoner expectations of the parole review</i> .....	53
<i>Effective questioning</i> .....	53
<i>Rules of evidence (hearsay evidence)</i> .....	56
<i>Temporary adjournments (breaks) and time limits</i> .....	56
<i>Conduct, interruptions, and interjections</i> .....	58
<i>Indications that the prisoner is acting uncharacteristically</i> .....	58
<i>Keeping an official record of the hearing</i> .....	59
<i>Time management</i> .....	60
<i>Closing submissions</i> .....	61
<i>Concluding the hearing</i> .....	61
<b>6.After the Hearing</b> .....	<b>62</b>
<i>Post-hearing panel discussion</i> .....	63
<i>Licence Conditions</i> .....	64
<i>Panel decision-making</i> .....	65
<i>Post-hearing adjournment</i> .....	66
<i>Agreeing, preparing, and issuing the written decision</i> .....	66
<i>Agreeing the written decision</i> .....	68
<i>Absence of the panel chair</i> .....	69
<i>Further information received following the oral hearing</i> .....	69
<i>When the panel decision is made</i> .....	70
<i>Reconsideration Mechanism</i> .....	71
<i>Requests to Amend the 21 Day Time Limit</i> .....	71
<i>Consideration</i> .....	72
<i>Extending the time limit</i> .....	72
<i>Reducing the time limit</i> .....	73
<i>Making the decision</i> .....	73
<i>Setting Aside a Parole Board decision</i> .....	74
<i>Amending time limits</i> .....	75
<b>ANNEX 1 Guidance for Writing Decisions</b> .....	<b>76</b>

## **1. Introduction**

- 1.1 An oral hearing can be directed at the Member Case Assessment (MCA) stage to add oral evidence to material in the dossier and/or when the *Osborn, Booth & Reilly*<sup>1</sup> (OBR) principles of fairness require it<sup>2</sup>. An oral hearing provides the opportunity to take oral testimony and test evidence in support of an independent assessment of risk of serious harm and its manageability in the community. It can also be an opportunity for a prisoner to talk directly to parole decision-makers.
- 1.2 The Parole Board has been recognised by the courts as being a court-like body making judicial decisions. Accordingly, its hearings have a court-like status stemming from legislation and the duty to independently review the necessity for continuing detention. Panels will recognise the gravity of the parole process for those involved, including the prisoner and victims, as well as society at large.
- 1.3 Central to the process are the principles of independence, fairness, and protection of the public. Therefore, panels have a duty to demonstrate independence and to ensure that oral hearings are fair – and are seen to be fair – for both parties.
- 1.4 This is the case even when significant operational constraints (such as organisational responses to the Covid-19 pandemic) apply. Although members need to act more flexibly under such conditions, the Parole Board's principles of protecting the public, ensuring fairness, and applying its statutory test do not change. In addition, the duty in Article 5(4) of the European Convention on Human Rights remains: to speedily review the detention of prisoners whose cases are referred to the Parole Board and to ensure procedural fairness.
- 1.5 The oral hearing process is inquisitorial. Its purpose is elicitation, examination and probing of oral evidence. It should not be characterised by opposition, or the adversarial approach found in criminal courts. However, that does not mean a panel cannot take a more robust approach when applications requiring a decision are made and challenged.
- 1.6 Oral hearings may take place remotely (by telephone or video) or face-to-face (in person) within a prison or secure mental health unit. On occasion, a hybrid hearing may take place where some participants attend the hearing in person while other participants join the hearing by telephone or video. Taking oral evidence remotely is a legitimate and effective practice for a panel.
- 1.7 Guidance about the parole process is available to prisoners in an "easy read" format. All GPP review dossiers should include the guide to parole at the front. If not present in the dossier, the MCA member or panel chair might consider it appropriate to direct prison staff to provide a copy to the prisoner. There is also an "easy read" guide to oral hearings which prisoners should be provided with when their case is directed to an oral hearing. Again, the panel chair may wish to direct that a copy is made available to the prisoner. The

---

<sup>1</sup> *Osborn, Booth & Reilly [2013] UKSC 61 concerning the requirement for staging oral hearings and the court's guidance when a case should progress to oral hearing*

<sup>2</sup> Please refer to the Member Case Assessment Guidance for guidance on the OBR principles.

Public Protection Casework Section (PPCS) of HM Prison and Probation Service (HMPPS) has produced a range of "easy read" guides for the various types of recall which they will provide to a prisoner, along with the recall pack.

- 1.8 In addition to oral hearings, directions hearings and case management conferences can be directed at MCA stage or by a duty member or panel chair. These are hearings designed to progress cases, from preparation to a final decision being made. Information about directions hearings and case management conferences can be found at [3.66-3.73](#) of this document.
- 1.9 References to rules in this guidance are to the *Parole Board Rules 2019 (as amended)* ("the Rules").
- 1.10 Panels may find it useful to refer to the HMPPS *Parole Board Oral Hearing Administration & Policy Framework*<sup>3</sup> ('*the 2019 Framework*') which sets out the expected standards and requirements for the provision and facilitation of all Parole Board oral hearings.
- 1.11 The *Decision-Making Framework* is a structured approach used by Parole Board panels in making parole decisions. In using the Framework, panels will exercise independent professional judgement. The Framework is a consistent, shared expression of the decision-making process used by panels. It should be followed at all stages of the oral hearing process (prior to the hearing, at the oral hearing and after the oral hearing).

## **2. Roles and responsibilities**

### ***The parties***

- 2.1 There are two parties to the parole process: the prisoner and the Secretary of State, as defined in rule 2. As equal parties to the oral hearing process, they must be dealt with fairly and equitably by the Parole Board. The parties are entitled to ask questions of witnesses. They may address the panel by way of submissions before, during or after the hearing. The prisoner should be given the final word, either through a representative or in person.

### ***The prisoner***

- 2.2 In most cases, the prisoner attends the oral hearing either in person or by telephone or video if it is a remote hearing. However, rule 23 recognises that attendance is not a requirement. A prisoner may notify the Parole Board and the Secretary of State that they do not want an oral hearing to consider the case or do not want to attend the hearing.
- 2.3 Under rule 23(2), a hearing may take place in the absence of the prisoner where a notification in accordance with rule 23(1) has been received. It may also proceed where the prisoner has not notified the Parole Board in accordance with rule 23(1) but either the prisoner is not present, or both the prisoner and the prisoner's representative are not present.

---

<sup>3</sup> Issued and implemented by HMPPS on 4<sup>th</sup> November 2019, this Framework replaces PSI 35/2013 and PI 21/2014

- 2.4 A prisoner attending a hearing can be invited but not required to answer any questions. A prisoner choosing not to be represented may speak on their own behalf. Whether or not the prisoner is represented, the panel chair must ensure that they are given the opportunity to understand and engage in the hearing process. In doing so, panels should take into account any vulnerabilities or other factors that may inhibit a prisoner's effective engagement in the parole process. Please see [paragraph 5.14](#) for more detailed information on vulnerable prisoners.

### **Representative**

- 2.5 A prisoner may be represented at an oral hearing, but this is not a requirement. A prisoner does not have to be represented by a legal representative; however, the Parole Board always strongly recommends that prisoners should seek a professional legal representative to advise and represent them in their parole hearing. Where prisoners are unable or disinclined to appoint a legal representative, they may represent themselves or ask a non-legally qualified person to represent them, as long as the person does not fall within the exclusions under rule 10 (2), namely:
- any person who is detained or is liable to be detained under the Mental Health Act 1983;
  - any person serving a sentence of imprisonment/detention or who is on licence having been released from a sentence of imprisonment/detention;
  - any person with a conviction for an offence that remains unspent under the Rehabilitation of Offenders Act 1974.
- 2.6 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](#)". Where a non-legally qualified person is acting as the representative, care will need to be taken in terms of disclosure of contact details and other information that might compromise an individual or the process.
- 2.7 Prisoners may represent themselves. Panels will need to proceed carefully in such a case, paying particular attention to fairness and engagement. The panel chair should be satisfied that the unrepresented prisoner is content to proceed and is competent<sup>4</sup>; has possession of the dossier and has had proper opportunity to study its contents; and is assisted appropriately where necessary in examining witnesses and making closing submissions. The panel chair may wish to consider advising the prisoner that it may be in their best interests to be represented by someone who fully understands the process, and ideally who is legally qualified, even though ultimately it is their choice.
- 2.8 Please see the *Guidance on Representations* for more information and for guidance on procedural and practical issues that can help ensure Parole Board decision-making is fair and is seen to be fair. It focuses mainly on cases where the prisoner does not have a legal representative and provides advice on the setting of panel chair directions, opening an oral hearing with an

---

<sup>4</sup> If lack of mental capacity is assessed or suspected, the panel chair should contact the Parole Board's Practice Advisor.



unrepresented prisoner, specific points of good practice for during the hearing, and handling closing submissions from an unrepresented prisoner.

### ***The Secretary of State***

- 2.9 The Secretary of State is a party to the proceedings. The PPCS is responsible for the General Parole Process (GPP), managing the recall process and handling cases on behalf of the Secretary of State under *the Carltona Doctrine*<sup>5</sup>. The PPCS case manager is responsible for on-going management of cases on behalf of the Secretary of State. Their responsibilities include referring cases to the Parole Board, monitoring compliance with Parole Board directions, uploading reports to the dossier, and submitting requests on Stakeholder Response Forms (SHRF) to the Parole Board on behalf of Secretary of State witnesses.
- 2.10 Secretary of State officials, for example, the Community Offender Manager (COM), Prison Offender Manager (POM) and Psychologist, will attend an oral hearing as witnesses to give evidence. They do not attend as an advocate or representative but are there to present evidence to the panel. Under Part B of the schedule to the Rules, HMPPS report writers may give their professional opinion about a prisoner's suitability for release or move to open conditions within their reports, only where they feel able to do so. Any professional opinion which the report writer gives to the Board is made by reference to their area of competence, as well as to their interactions with the prisoner.
- 2.11 In some cases, the Secretary of State may choose to send along a Representative (a Secretary of State Representative) to provide formal representation<sup>6</sup> or present a view on the prisoner's suitability for release. Whilst attending the hearing, the Representative may also ask questions of the witnesses.
- 2.12 The Code of Practice for Victims of Crime entitles victims to request to read their Victim Personal Statement (VPS) out to the panel, or have it read out on their behalf. The current Parole Board policy is that there is a presumption that such requests will be agreed to<sup>7</sup>. Where a victim chooses to read their VPS to the panel in person or by telephone or video, the Secretary of State ensures a Victim Representative will assist them. Alternatively, the Victim Representative may participate, if asked by the victim, to read the VPS to the panel on their behalf. Victims who opt to attend the hearing to read their VPS do not stay for the full proceedings, unless they have made an application under rule 14 to observe the hearing.
- 2.13 To summarise, the Secretary of State delegates powers to the PPCS, who case manage the GPP process and recall process. The Secretary of State relies on professional witnesses (such as COMs, POMs, and psychologists) to produce reports for the Parole Board, and to present evidence at oral hearings. They may also deploy a Secretary of State Representative to an

---

<sup>5</sup> A principle that permits civil servants to act as the Secretary of State. The principle was recognised by the courts in *Carltona v Commissioner of Works* [1943] 2 All ER 560.

<sup>6</sup> As per the GPP framework, in some cases, PPCS, on behalf of the Secretary of State, will consider sending a Secretary of State Representative to attend an oral hearing but only where representation is required in order to facilitate the progress of the review

<sup>7</sup> See *Guidance on Victims* for more information

oral hearing where the case meets certain criteria (for example, complex, high-profile case or other noteworthy aspect), or where the Secretary of State is providing a view. A Victim Representative will also be deployed to an oral hearing where a victim is reading out their statement or asked for it to be read out on their behalf (although the Victim Representative plays no part in the oral hearing other than to support the victim).

### ***The Panel Chair***

- 2.14 A panel chair must be a Parole Board member who has undertaken the required training and is either fully accredited to undertake the role or holds preliminary accreditation while working towards full accreditation. The panel chair may be a judicial member, an independent member, or a specialist member.
- 2.15 The panel chair is responsible<sup>8</sup> for:
- reviewing case progression in collaboration with the Parole Board case manager from point of case allocation;
  - reviewing the format that the oral hearing should take;
  - reviewing the time allocated for the hearing (to include time for pre and post hearing discussions as well as the hearing itself) as determined at MCA;
  - setting and keeping directions under review, and deciding on necessary changes to attendance of participants and other practical arrangements;
  - responding to representations and applications that commonly arise in Stakeholder Response Forms (SHRFs) - including making decisions on applications for non-disclosure and other issues arising that fall within the chair's remit;
  - reviewing the composition of the panel, including whether a specialist contribution or an additional Parole Board member is needed;
  - identifying from the documentation put before them any potential security or safety concerns that might impact the oral hearing, and which should be raised with the Parole Board case manager for resolution with the prison prior to the hearing;
  - ensuring a fair hearing with reasonable adjustments and any communication considerations as required;
  - ensuring the case manager checks with PPCS whether a prisoner wishes to be represented (if it is not clear from the papers);
  - considering observer applications;
  - within their remit, ensuring a listed oral hearing is effective;
  - keeping co-panellists informed of developments by consulting as necessary;
  - chairing the oral hearing;
  - ensuring that the oral hearing is fair to both parties, as well as effective;
  - making sure appropriate procedures are followed;
  - keeping an official record of the oral hearing and any required case management conferences or direction hearings (see [3.66 – 3.73](#) of this guidance);
  - asking questions of witnesses, as necessary;

---

<sup>8</sup> If any party submits a request when the oral hearing is eight or more weeks away, a duty member may be tasked to determine matters or direct actions rather than await allocation of a panel chair.

- facilitating pre and post-panel discussions;
  - drafting any adjournment or deferral notices, additional directions, and the panel's decision after seeking co-panellists' views on the draft<sup>9</sup>;
  - ensuring the Rules and Parole Board policies are followed;
  - ensuring the decision is submitted on time, according to rule 25(6)<sup>10</sup>; and
  - considering any required follow up action within a 28-day window following the decision being issued.
- 2.16 Where the panel is comprised of more than one member, the panel chair may act on behalf of the panel ahead of the hearing. The panel chair may issue and respond to directions, deal with non-disclosure matters, consider requests for adjournment or deferral, and, where appropriate, seek the advice of a specialist Parole Board member<sup>11</sup> (whether or not that specialist member is assigned to the hearing panel).
- 2.17 Rather than take unilateral action, it is good practice for the panel chair to consult, canvass views and copy co-panellists into email correspondence (unless it is concerning a non-disclosure application<sup>12</sup>). It is essential to inform them about significant developments, including changes to practical arrangements for the day of the hearing.
- 2.18 The panel chair has a specific role and defined powers to direct and manage the hearing process. However, when it comes to deciding a case after a hearing, all members of a panel participate in decisions equally. The panel chair does not have a casting vote. As outlined at paragraph [6.15](#), a majority decision can be accepted, but this must be reflected in the written decision as the decision of the entire panel in accordance with rule 26(1).
- 2.19 Every effort will be made by a panel to agree the outcome, including reviewing and weighing the evidence and objectively focusing on points of contention, with the aim of resolving differences. If the panel cannot reach a unanimous or majority decision, the panel will need to be dissolved under rule 26(2), and the case will need to be deferred for a new panel to hear it.

### **Co-panellists**

- 2.20 A panel chair may sit alone or be accompanied by one or more Parole Board members. The panel is assigned by the Parole Board listings team (using powers of the Parole Board Chair delegated under rule 4(3)(a)) on the basis of member availability recorded in the WAM system and following directions issued by an MCA member or duty member.
- 2.21 The co-panellists are responsible for:
- preparing thoroughly for the hearing;

---

<sup>9</sup> A panel chair may delegate the drafting of the decision to a co-panellist.

<sup>10</sup> The record of the decision and reasons must be supplied to both parties within 14 days. However, to ensure that the decision can be issued on time, the panel chair should send it to the Parole Board case manager within 10 days of an oral hearing.

<sup>11</sup> A list of specialist advisors can be found on SharePoint above the Duty Member rota.

<sup>12</sup> Please refer to the Guidance on Non-Disclosure for more information.

- alerting the panel chair to any issues, such as need for further reports, or particular considerations for the oral hearing;
  - being prepared to ask focussed questions of all witnesses, probing the veracity of evidence presented at the hearing or in the dossier and on filling any gaps in evidence;
  - contributing to the content and wording of decisions;
  - responding to panel chair requests for comments on draft decisions with feedback in a timely manner; and
  - in exceptional circumstances making a decision in the absence of the panel chair, where suitably accredited (see paragraph [6.43](#)).
- 2.22 Once the case has been allocated, the composition of the panel may be amended on the direction of the panel chair or occasionally by a duty member acting in the absence of a panel chair. The decision and rationale for amending panel composition must be recorded in duty member or panel chair directions, including standing down co-panellists (see [paragraphs 3.17 - 3.19](#) below).
- 2.23 Panel members are assigned to a scheduled hearing, coming together for the day (usually to review two cases) and do not sit together in the same combination as a matter of course. Co-panellists sit with the panel chair at oral hearings as equals in eliciting relevant evidence and jointly making the decision at the end of the hearing. Depending on the needs of the case, the panel is made up of any combination of judicial, specialist and independent members. 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 their role, or the number needed in a particular case to complete a proper risk assessment and determination.
- 2.24 The *Member Case Assessment (MCA) Guidance* and the Specialist Reports Guidance provides additional advice about the expertise a psychologist and psychiatrist member can contribute to a panel.). It also defines when a judicial member may be regarded as essential in chairing a hearing (see paragraph 11.65 of the guidance). An independent member allocated to a case as panel chair which, on review of the documentation, appears to require a specialist or judicial panel chair should urgently contact the Parole Board case manager with the prospect of relisting the proceedings. When panel allocation is amended in this way, the decision and its rationale should be recorded in panel chair directions.
- 2.25 All panel members must study the dossier and prepare in advance so that they are able to take full part in the hearing and correspondence about the case. They should, if possible, check for late papers listed in the WAM system the day before a hearing<sup>13</sup>

---

<sup>13</sup> Under rule 18(2), any additional evidence that a party wishes to present at an oral hearing must be served on the Board and the other party at least 14 days before the date of the oral hearing. Under rule 18(3), any party that wishes to present at an oral hearing documentary evidence which has not been served at least 14 days before the date of the hearing, must serve the material on the Board and the other party, together with an application to the panel chair for permission to do so, as soon as reasonably practicable, and must, as part of that application, give reasons for late service.

**Conflict of Interest**

- 2.26 Panel members may find that they are listed for cases where they have had previous direct or indirect personal involvement. Whilst members are not precluded from participating in such cases, they should carefully consider and decide whether they feel there could be a legitimate conflict. If so, they should recuse themselves from the panel. If they do not feel conflicted, they should consider whether the average person could reasonably perceive a conflict. If they believe it could be seen as a conflict of interest, they should recuse themselves.
- 2.27 If a co-panellist considers that despite the previous involvement there is no likelihood of perceived or actual conflict of interest, they should inform the panel chair. The panel chair should explain the situation to both parties and request representations. If the panel chair considers they themselves have a conflict of interest, they should discuss with co-panellists and seek representations in the same way.
- 2.28 The panel should then decide how to proceed in the light of the representations. There is a high bar for the test for bias. This is set as whether the well-informed observer<sup>14</sup> would think there is a real risk that the decision-maker may be biased, it is not whether or not the prisoner thinks so and is only passed in rare cases.
- 2.29 Please refer to the *Member Administrative Policies and Processes (MAPP) guidance for* further information on conflict of interests. Further advice can also be sought from the Parole Board's Practice Advisor.

**The Parole Board case manager**

- 2.30 The Parole Board case manager is responsible for on-going management of cases on behalf of the Board. The case manager is the conduit for all communication with the parties and witnesses. They work closely with case managers in PPCS and prisoner representatives. The panel chair must keep in contact with the case manager by email and/or telephone/MS Teams once a case allocation has been published. Case managers have delegated authority from the panel chair or duty member to extend any deadlines for directions to be complied with if it does not impede or delay the review.
- 2.31 Parole Board case managers do not attend oral hearings but should be available by email, MS Teams chat and telephone during the proceedings to deal with any issues arising, such as chasing any witnesses who have failed to attend. Where an oral hearing is taking place with all or some of the participants attending by telephone or video, a member of staff from the hearing support team will work with participants to resolve any technical/connectivity issues.

---

<sup>14</sup> The measure to apply is what a reasonable and relatively well-informed member of the public would think (the "man on the Clapham omnibus" test)

**Witnesses**

- 2.32 A party who wishes to call a witness must make an application for that person to attend the hearing a minimum of 12 weeks before the hearing date, under rule 13<sup>15</sup>. Witnesses can also be directed to attend by the panel chair or a duty member using the power in rule 6(2).
- 2.33 A party making an application under rule 13 must, at the same time, also serve a copy of the application on the other party under rule 13(3).
- 2.34 Where a direction is made for a witness to attend an oral hearing, the Parole Board must notify both parties in writing within 14 days under rule 13(6). If refusing to call a witness, the panel chair or duty member must give written reasons under rule 13(5).
- 2.35 The written notification of the intention to call a witness must include the witness's name, address, and occupation, and must provide an explanation as to why the witness is being called. Rule 13(7) details the process for calling a witness.
- 2.36 Panel chairs have the discretion to change the timelines set out in rule 13 using the power in rule 9, but they should only do so when they consider this would be fair and not result in unreasonable disadvantage to either party. A panel chair will want to avoid a last-minute adjournment of a hearing wherever possible but will need to balance this against a number of considerations. For example, they will need to make sure there will be sufficient time before the scheduled date to allow changes to be made fairly for all parties, with opportunity for challenge, and in all practicality (such as giving time for participants to change personal plans).
- 2.37 In general, witnesses attend hearings voluntarily unless they have a good reason for not being able to. The Parole Board does occasionally encounter difficulties with witnesses who are reluctant to attend or do not understand the court like nature of parole hearings. To that end, panel chairs are advised to consider using the following standard wording for requiring the attendance of witnesses:
- "The Parole Board directs that ..... shall attend the hearing to give evidence. The witness should note that the proceedings will be as informal as possible, but that the Parole Board will nevertheless sit as a court. Non-attendance is only permitted in compelling circumstances and only with the prior approval of the panel chair. The Parole Board does have the power to enforce attendance, if necessary, by way of a witness summons."*
- 2.38 In cases where primary evidence is required as opposed to hearsay, or where a crucial witness is reluctant to attend, the Parole Board may seek the issue of a witness summons from the High Court (Civil Procedure rule 34.4). This power should not be exercised lightly. Some general principles:

---

<sup>15</sup> If an application for a witness is made less than 12 weeks before the hearing, the party must submit at the same time an application to the panel chair for permission to do so with reasons for the late submission.



- No witness should be summoned in this way unless their oral evidence is fundamental to the outcome of the case. Where a witness is reluctant to attend, the panel chair should first consider the alternative of written evidence.
- It is not appropriate to compel a child to attend (see [2.43](#) below).
- Panels should be slow to pursue a witness summons. It may be appropriate where one of the parties has applied for a direction to compel attendance of the witness, or when the panel consider the oral evidence to be vital.
- The panel should consider the effect on the outcome. A reluctant witness can be compelled to attend but cannot be compelled to give evidence. If it is unlikely that the witness will produce any worthwhile evidence, it will probably be pointless in seeking a witness summons to compel attendance.

- 2.39 For more information on witness summons, please see the guidance on Contempt of Court and Witness Summons. Please contact the Parole Board's Practice Advisor for further advice if consideration is being given to obtaining a witness summons.
- 2.40 In the majority of cases, witness now give their evidence remotely. However, where a case is to be heard in person or by a hybrid arrangement, witnesses will need to make their wishes about presenting evidence known to the panel chair in advance. The presumption is that community offender managers will be permitted to participate remotely unless there is a good reason for their attendance in person. The panel chair will need to consider the reasons and whether the particular request will compromise the fairness of the proceedings in any way. For example, it may be essential for the witness to be in the room with the prisoner, or other reasons why their attendance in person is required. Panel chairs should consider requests sympathetically where there may be other considerations such as working patterns or caring responsibilities. Where possible, panel chairs should agree to such requests where it bears little material impact on the oral hearing.
- 2.41 Under delegated authority, once the MCA panel has determined the hearing type, the case manager can approve up to two witness requests to attend remotely without reference to the panel chair. However, final discretion in approving remote attendance lies with the panel chair, who has the final say in witness attendance and the means of participating. While financial constraints and other factors may be considerations in directing witness attendance, they cannot limit or override panel chair directions intended to ensure appropriate quality of evidence and a fair hearing. Where a panel chair agrees to witness attendance remotely, they should be mindful of the arrangements put in place to protect the confidential nature of the proceedings.
- 2.42 It will almost always be inappropriate to direct the attendance of a victim or alleged victim. 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. 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.

- 2.43 Children should not be called as witnesses. It would be difficult for them to gain access to a prison (if a face-to-face oral hearing is taking place) and they may not be able to sufficiently comprehend the significance of the parole process. Arguably, it would be inappropriate in any circumstances, considering the duty to safeguard and promote the welfare of children and the possible impact of the proceedings.
- 2.44 The normal procedure is to allow all witnesses to remain for the duration of the hearing, as quite often hearing evidence submitted by others can impact on the assessment of another witness and can be of use to the panel. At times, it might be appropriate to give permission for a witness to leave once their evidence or others' key testimony has been given, provided the panel are content that no further input will be required. The panel chair should seek the views of the prisoner/prisoner's representative and the Secretary of State Representative (where one is in attendance) in weighing the implications for fairness from such a decision.

### ***Attendance from outside of the United Kingdom***

- 2.45 *Witnesses may join proceedings remotely from outside of the UK. However, they will need to make sure that the relevant authorities of the state/country they are currently in would permit them to give oral evidence from outside the UK.*
- 2.46 *If a witness or prisoner's representative wishes to join proceedings from outside of the UK, they should seek confirmation from the Foreign, Commonwealth, and Development Office (FCDO) as to whether permission is needed, and if so, seek that permission.*
- 2.47 *The FCDO maintain:*
- *A list of countries who are willing to let people in that country give evidence without asking prior permission.*
  - *A list where case by case permission from the national authority is required before a panel can take any oral evidence from a witness in that country.*
  - *A red list of countries that have refused permission so oral evidence cannot be taken from a witness in that country.*
- 2.48 *Should permission be given or not necessary, panels are advised to ensure that the hearing can still remain private by asking the witness or prisoner's representative to confirm the following in writing:*
- *That they will be dialling in from a private location where their conversations cannot be over-heard, and any notes/laptops cannot be overseen;*
  - *That their internet connection is stable and reliable; and*
  - *That they will not be in a location with an unreasonable risk of distractions, sensitive or personal information on display, or background noise.*
- 2.49 *Consideration will also need to be given to whether the country they are seeking to join from is one that could potentially be regarded as "hostile".*



2.50 *Written evidence is permissible even if the witness is currently outside the UK and is not affected by the above requirements.*

2.51 *If the request is refused for the witness to give evidence from outside of the UK, please contact the Practice Advisor for further advice.*

### **Observers**

2.52 Requests can be made for observers to attend a Parole Board oral hearing. Observers do not take part in the hearing and do not give evidence to the panel or act as a representative for the prisoner. Rule 14(4A(b)) enables the panel chair to impose conditions on an observer's attendance. The way in which an observer attends the hearing will depend on the format of the proceedings. They may attend in person where the hearing is face to face; or they may link in remotely from another location.

2.53 Rule 14 sets out the provisions relating to observers<sup>16</sup> at oral hearings. Observer requested can be submitted by parties and, under the rules, a panel chair can admit any other person to the oral hearing as an observer, for example researchers, press/media or Parliamentarians. This includes victims<sup>17</sup>. If a victim requests to observe an oral hearing, please contact the Victims team.

2.54 The prisoner or their representative may request that one or more persons observe a hearing to provide personal support to the prisoner, such as family members, friends, or pastoral advisors. The Secretary of State may also request that someone attends as an observer.

2.55 Requests for observers to attend should be received through the Parole Board case manager using an SHRF. They may also come in directly from the requestor if not connected to a particular case.

2.56 The duty member<sup>18</sup> has initial discretion to agree or refuse attendance of any observer at a hearing, where a panel chair has not taken ownership of the case. The final decision, however, remains at the discretion of the panel chair who can revoke any previous decision if they consider it is appropriate to do so.

2.57 Rule 14(1) states that requests from the parties for the attendance of an observer must be made in writing at least 12 weeks before the date of the oral hearing. Under rule 14(2), the party who makes the application must at the same time serve a copy of the application on the other party. Under rule 14(3), the other party may submit representations within 14 days of the receipt of the application.

2.58 After the 14-day period for receiving representations, the panel chair (or duty member if panel chair not yet allocated) must communicate the decision and

---

<sup>16</sup> For more information, please refer to the Observer Policy guidance

<sup>17</sup> At time of publication victims oral hearings is limited to a testing phase – additional information has been provided in the observer guidance.

<sup>18</sup> This decision is also able to be undertaken at MCA stage when a case is directed to an oral hearing.

its rationale concerning the attendance of an observer. This will be by panel chair (or duty member directions) or through responding on the SHRF.

- 2.59 Even though approval for attendance may have been given by the panel chair, a prison governor may prohibit an observer from entering the establishment where the hearing is to be face-to-face. The same is true of the authorities in a secure mental health setting. The governor or hospital authorities should inform the case manager who must notify the panel chair in case there are practical considerations (including safety and security concerns) or ramifications for the fairness of the hearing. Where access is a concern, consideration could be given to permitting remote attendance, with the points set out above being taken into consideration.
- 2.60 Rule 14(4B) states that any person may request admittance to an oral hearing as an observer by making a written application to the Parole Board, but such an application may not be made later than three weeks before the date allocated for the oral hearing. In these instances, rule 14(4C) requires the Parole Board to notify the parties of the application and provide an opportunity to submit representations, but there is no set timeframe for this.
- 2.61 Panel chairs or duty members have the discretion to change the timelines set out in rule 14, using the power in rule 9, but a request made closer to the date of the oral hearing should only be agreed where there is an exceptional reason for its lateness<sup>19</sup>. In practice, many applications are received late and a reasonable and measured approach to the application of rule 9 should be taken in the interest of fairness.
- 2.62 Both parties should be aware of applications and decisions concerning attendance of observers. The panel chair or duty member will consider the appropriateness of the request, the possible vulnerability of the prisoner or observer at the hearing, and practical implications.
- 2.63 In some cases, especially where a face-to-face hearing is taking place, the number of proposed observers may need to be limited if there is a risk of overwhelming the prisoner or should the room be too small.
- 2.64 A request for the attendance of a partner, ex-partner or family member may be refused if it is judged this may inhibit the frankness of evidence or change adversely the dynamics of the hearing. For example, the panel may need to probe without unnecessary restraint convictions or allegations about, for example, domestic abuse or sexual behaviour, in order to conduct a thorough risk assessment.
- 2.65 For remote (and especially telephone) hearings, it is questionable how much support an observer can provide if they are attending in a supporting capacity.
- 2.66 Any observer should be introduced at the start of the hearing. The panel chair should describe this person as an "observer to the hearing who plays no part in the panel's decision-making".

---

<sup>19</sup> In such circumstances, an application to apply out of time must be submitted in addition to the application for observer attendance, where the request is from one of the parties.

- 2.67 Rule 15 requires hearings must be held in private, unless the Parole Board Chair considers that it is in the interest of justice that the hearing be held in public. Please see [paragraph 3.34-3.36](#) for more information on public hearings. For hearings taking place remotely (by telephone or video) where an observer will be attending remotely, it may be difficult to ensure privacy of proceedings. The panel chair might state at the start of the hearing:

*"Under the Parole Board Rules 2019 (as amended), these proceedings are to remain private and the names of the people taking part in it must not be disclosed. What this means is that you must not talk about anything you hear today with other people, and you must not pass on any names that you learn during this hearing. You should be aware that this is forbidden by law and action may be taken against anyone who does not comply with this, so please make sure that you do not pass on any information or names outside of these proceedings."*

- 2.68 Whether an observer attending remotely should have their video camera on or off is to be decided by the panel chair depending on the nature of the case and the need to maintain the fairness of the proceedings.
- 2.69 Some Parole Board observers (staff or members) may be party to private pre-hearing and post-hearing panel discussions. This may be for the purpose of training or to conduct a practice observation. If observers have been present during the pre-hearing discussion, their role and non-participation should be explained to parties for the sake of perceived fairness once the formal hearing gets under way.
- 2.70 Please refer to the *Guidance on the Observer Policy*<sup>20</sup> for further information.

### **Victims**

- 2.71 The Parole Board takes the view that the victim(s) of the index offence or of a further offence resulting in a recall should, where possible, be included in, and should be encouraged to engage in, the parole process. This includes submission and, where requested, the reading of a Victim Personal Statement (VPS) or contributions to reports and recommendations forwarded by a Victim Liaison Officer (VLO) concerning possible licence conditions.
- 2.72 In circumstances where a VPS has been submitted, the panel must read it. This is a requirement of the Code of Practice for Victims of Crime.
- 2.73 A victim may opt to attend the start of the hearing to read a VPS to the panel and will always be accompanied by a Victim Representative, and quite often another person there as support (a family member or friend). The victim and the Victim Representative will leave after the statement has been read out and before any evidence is heard. The role of the Victim Representative is outlined above at [paragraphs 2.12-2.13](#). The prisoner may or may not choose to be present during the reading of the VPS. The final decision lies with the Panel Chair.

---

<sup>20</sup> At the time of writing, the Parole Board Guidance on Observers is under review.

- 2.74 Where a case is concluded on the papers, following a direction for an oral hearing, and the reading of the VPS had been previously agreed, the victim should be given the opportunity to read the VPS to the panel. This can be done remotely before the decision is made.
- 2.75 A victim may apply to observe an oral hearing under rule 14(4B). Victims observing oral hearings is currently being piloted. **Should any requests be received requesting a victim to observe an oral hearing, please contact the victims team.**
- 2.76 Please see the *Guidance on Victims* for further advice on victim attendance and the sensitive handling of any VPS.

### ***Translators, interpreters, and communication specialists***

- 2.77 In some cases, a translator, interpreter, or other communication expert (such as a speech and language therapist (SALT) or an intermediary) may be directed to participate in a hearing by the panel chair, the MCA member, or a duty member. This would be for the purpose of facilitating the hearing and its preparation. Apart from specific provisions concerning the Welsh language (see 2.90 - 2.92 below), the relevant legislation is the Equalities Act 2010, which prohibits direct and indirect discrimination on the basis of a protected characteristic, such as race or religion<sup>21</sup>. Its public sector equality duty requires the Parole Board to eliminate discrimination, to advance equality of opportunity, and to foster good relations between those persons with a protected characteristic and those without.
- 2.78 Prisoners will generally express their views and needs better in their first language. Where a prisoner's first language is not English, and they express a need or preference to have documents or conduct the hearing in a different language, the Parole Board must enable them to use their preferred language, where reasonably practicable. Welsh is the only language enshrined in law where the Parole Board has a legal duty to provide services in Welsh, where requested and appropriate (see paragraph 2.90 - 2.92 below). For all other languages, an assessment will need to be made on:
- whether the prisoner will be unduly disadvantaged by not having communications in a language/format that is accessible to them
  - whether the cost to benefit ratio of the provision of translation or interpreter services is proportionate.
- 2.79 If the cost is disproportionate to the benefit, then the Parole Board can defensibly decline to provide such services. However, if the costs are minimal compared to the benefit, then the Public Sector Equality Duty would indicate that the Parole Board should provide such services. This will need to be assessed on a case-by-case basis.
- 2.80 There may also be other language and communication needs. For example, sign language interpreters may be required by prisoners with hearing impairments, and Braille or other reading systems and adjustments can be requested for those who are visually impaired. Communication specialists,

---

<sup>21</sup> For more information, please refer to the *Guidance on Protected Characteristics*.

such as a SALT, intermediary, or interpreter, may be able to advise the panel on how information could be adapted so that it becomes more accessible to the prisoner.

- 2.81 Such needs should be identified from reports in the dossier, an application by PPCS, or representations. In the dossier, indications of “preferred language” appear in the OASys assessment and in “oral hearing considerations” in the PAROM report. For recall cases, the Part A report should indicate the prisoner’s preferred language. In addition, the COM or POM may identify elsewhere in the dossier (for example, in written specialist assessments) any factors that suggest the use of interpreters or translators would be beneficial.
- 2.82 Panel chairs will want to be vigilant that such needs have been identified and acted on by the MCA panel or duty member at an early stage. Additional directions made late in the day might lead to delays in putting practical arrangements into place, jeopardising the viability and timing of the hearing, and possibly disadvantaging the prisoner.
- 2.83 The prison, on behalf of PPCS, is responsible for appointing and paying for appropriate interpreters.

The HMPPS *Parole Board Oral Hearing Administration & Policy Framework*<sup>22</sup> states:

*“Where Parole Board directions confirm an interpreter is needed for a particular case, prison staff must ensure a qualified interpreter is provided on a face-to-face basis for the duration of the hearing, and that the arrangements comply with regulations and/or best practice. An interpreter will also be required for any interviews as part of preparing reports...”*

- 2.84 Any difficulty with securing an interpreter or other communication specialist should be escalated via the case manager’s team leader, who will contact the prison and escalate the matter to PPCS, if necessary.
- 2.85 Panel chairs should consider additional time needed for interpreting, translating, and signing. Time estimates for the hearing may need to be adjusted accordingly. As a rule of thumb, assisted evidence may take at least twice as long to elicit and probe. For a remote hearing, the panel may want to see whether a second remote room can be made available for the prisoner to meet with the interpreter or communication specialist in private.
- 2.86 In the case of sign-language procedures, two people may be needed because of the intense nature of the work or because a second signer may be required to interpret vocally for the panel and the parties. Recent legislation<sup>23</sup> provides legal recognition for British Sign Language (BSL) as a language of England and Wales. Certain standards are to be met with the provision of British Sign Language translators.<sup>24</sup>

<sup>22</sup> Issued and implemented by HMPPS on 4<sup>th</sup> November 2019, this Framework replaces PSI 35/2013 and PI 21/2014

<sup>23</sup> [British Sign Language Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>24</sup> At the time of publication, British Sign Language Guidance is being developed.

- 2.87 The panel chair should consider the best seating arrangements in the hearing room when interpreting or signing is needed. Where a translator, interpreter or communication specialist is required, the panel chair will need to carefully consider whether a remote hearing is feasible. A face to face or hybrid arrangement might be more suitable.
- 2.88 The attendance of a translator, interpreter or other communication specialist at a hearing should be noted in the decision.
- 2.89 Please refer to *Guidance on Translators and Interpreters* for further advice.
- 2.90 The Parole Board has a legal duty to provide services in Welsh, where requested and appropriate. The Welsh Language Act 1993 contains the legal requirement that English and Welsh be treated on an equal basis when conducting public business (including the administration of justice) in Wales.
- 2.91 There are a range of options available where a prisoner asks for the proceedings, or parts of the proceedings to be held in Welsh. Panel chairs should seek to accommodate the wishes of the prisoner wherever feasible.
- 2.92 Please refer to *Guidance on Welsh Speaking Prisoners and Duties regarding the Welsh Language* for more information about this and the practical implications.

### **3. Pre-Hearing Practice**

#### ***The referral and the dossier***

- 3.1 Rule 16(1) provides that a referral is made when a referral letter and a dossier containing all the information and reports relating to the prisoner required by the Schedule to the Rules is sent to the Parole Board by the Secretary of State. An incomplete dossier that lacks this mandatory information will mean that there is no lawful referral. A dossier that is missing mandatory documents without an acceptable explanation will be rejected by the Parole Board.
- 3.2 The dossier, including the Secretary of State's referral and evidence concerning a case, is compiled and made available by PPCS (apart from materials relating to third party directions, which can be added to the dossier by the Parole Board).
- 3.3 Once the Secretary of State's referral and dossier of evidence is submitted to the Parole Board, casework decisions are made by an assigned MCA panel. The MCA panel will determine whether the case can be concluded on the papers or set out additional steps that are needed for the matter to be determined fairly and swiftly. If an oral hearing is required, the MCA process assists 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. Please refer to the *Member Case Assessment (MCA) Guidance* for further information on the MCA process.



- 3.4 Parole Board members allocated to a case will access dossiers for oral hearings via the Web Access Module (WAM system<sup>25</sup>) ahead of the scheduled hearing. Oral hearing timetables can also be downloaded from the WAM system. When downloading materials, members will be aware that the dossier should contain all the reports indexed on the contents page. Dossiers can be of considerable size, may be compiled non-chronologically and may sometimes import earlier dossiers within current contents. It is worth comparing the uploaded dossier against the contents page in the WAM system and raise any queries with the case manager if statutory or other significant materials are not available. Panel members should also ensure that, if there has been a non-disclosure application (as evidenced by, say, a gist in the dossier) they 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.
- 3.5 As the oral hearing approaches, additional reports may be available on the WAM system but not immediately uploaded to the formal dossier. Panel members should, therefore, continue to check for updates: the hearing tab in WAM lists individual reports prepared and received for the case. Comparing the dates for the last entries against the day of issue for the latest dossier indicates any reports not yet collated and consolidated within the dossier. Members are expected to check for new material prior to the hearing and on the day before an oral hearing, if possible.
- 3.6 Concerns or queries about the dossier should be directed to the Parole Board case manager, whose name is registered with the case in the WAM system.

### ***Combining Reviews***

- 3.7 In some circumstances, panel chairs 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 Parole Board but either party can make a request.
- 3.8 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.
- 3.9 It may not be immediately apparent that two referrals have been made until a detailed review of the dossier is undertaken. Panels may need to adjourn to seek clarification about this. Where it is confirmed that there are two referrals, the panel will need to determine which review is the furthest advanced and if combining them is appropriate.
- 3.10 More information about combining reviews can be found in the *Duty Member Activities Guidance*.

### ***The legal test***

- 3.11 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO 2012') set a standard statutory test for release, which is:

---

<sup>25</sup> The Parole Board member portal which gives access to cases

*The Parole Board must not give a direction [for release] unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined [in prison]<sup>26</sup>.*

- 3.12 The test applies to determinate sentence and indeterminate sentence prisoners, both on initial release and re-release after recall.
- 3.13 Panels should note, when applying the test, the period over which panels are considering risk is indefinite for both indeterminate and determinate sentence cases<sup>27</sup>.
- 3.14 When reviewing a recalled extended sentence prisoner in the “extension period” part of their sentence, panels are required to reverse the test, applying 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 public<sup>28</sup>. This requirement does not just apply to those prisoners *recalled* in the “extension period” part of their sentence. Irrespective of when the recall took place, if the prisoner is serving the “extension period” part of their sentence at the point the decision about re-release is made, the presumption will need to be applied. Panels will need to apply the presumption of release as a starting point. Following this, the statutory test will need to be applied. In doing so, the presumption could be disproved by the risk posed to the public up to and now beyond SED. **This presumption does not apply in any other type of case.**
- 3.15 There is no statutory test for a recommendation for a transfer to open conditions for indeterminate sentence prisoners. However, if it is part of the referral, a panel **must** consider the criteria set out in the Secretary of State’s amended Directions of 1<sup>st</sup> August 2023, which are:
- i. a panel must consider all information before it, including any written or oral evidence obtained by the Parole Board; and
  - 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 presenting a low risk of abscond.
 The Parole Board must recommend a move to open conditions only where it is satisfied that the two criteria (as described at ii) are met.
- 3.16 If reviewing a case at oral hearing for the first time since recall, the panel has a duty to consider available facts and to make a decision on whether the recall decision was appropriate (in line with the decision in the case of *Calder*<sup>29</sup>). This is required for determinate and indeterminate sentence

---

<sup>26</sup> The wording of the test for release within the decision writing template reflects what panels are required to do by law when applying the test. The test itself is as laid down in LASPO.

<sup>27</sup> Following the judgment of Johnson EWHC 1282 (Admin) and Dich and Murphy [2023] EWHC 945 (Admin)

<sup>28</sup> R (Sim) v Parole Board [2004] QB 1288

<sup>29</sup> R(Calder) v Secretary of State for Justice [2015] EWCA Civ 1050



prisoners on first review after recall. Further information is available in *Guidance on Types of Cases*.

- 3.17 Please refer to *Guidance on Types of Cases* for more information on the test for release and the criteria for recommending open conditions.

### **Panel Chair Directions**

- 3.18 Between six and three weeks<sup>30</sup> prior to the oral hearing, the panel chair must review the dossier and referral, consider directions, panel composition and time allocation set at the MCA stage (and any supplementary changes made by a duty member), and review progress. As necessary, further directions must be set, using the panel chair directions template. The aim is to progress the case and ensure that any issues are resolved as early as possible to avoid delay.
- 3.19 Panel chair directions are required in every case, even when the hearing appears viable and no new directions or significant amendments to MCA directions appear to be needed. If no further directions are needed, the panel chair must use the template to indicate that the case should progress to oral hearing as scheduled.
- 3.20 The general responsibilities of the panel chair are outlined throughout this guidance. Ahead of the hearing, under rule 6 the panel chair has powers to:
- decide whether to proceed with the oral hearing, or set and explain new directions if an adjournment or deferral is essential – for example, if key participants are unavailable, if the prisoner faces serious new allegations or disciplinary matters, or if a key assessment cannot be completed in time<sup>31</sup>
  - determine an application for non-disclosure of sensitive evidence. Please refer to *Guidance on Non-Disclosure* for further information on the legal principles, framework and processes to be followed for determining an application for non-disclosure of evidence
  - vary or revoke existing directions by, for example, amending the timetable, requiring new or previously directed information or reports, extending deadlines, directing the attendance of witnesses, agreeing attendance of observers or other participants, confirming a participant's remote attendance at the hearing, or standing down previously nominated witnesses.
- 3.21 Directions hearings and case management conferences can also be directed at MCA stage or by a duty member or panel chair. These are hearings designed to progress cases, preparatory to final decisions being made. Guidance on directions hearings and case management conferences can be found at paragraph [3.66 - 3.73](#) below.
- 3.22 Directions must be confined to the purposes of rule 6 and must, therefore, relate to the preparation of the case or assist in the determination of the

---

<sup>30</sup> For terrorism-risk cases, panel chairs are asked to review cases at least 8 weeks before the oral hearing date.

<sup>31</sup> Applications to adjourn or defer may also be raised on the day of the hearing: see *Guidance on Adjournments & Deferrals* for more information.

issues. Directions should not be made in relation to the management of the prisoner's sentence, including but not limited to security or transfer issues, re-categorisation, treatment needs, and sentence planning. For example, directions that would be considered outside the Parole Board's remit include requirements that the prisoner:

- has home leave to a release address;
- attends a particular offending behaviour course, programme, or undertakes one-to-one work;
- undergoes specific forms of treatment (for example, one-to-one psychology, therapeutic treatment, etc);
- be transferred to another establishment for the purposes of completing particular offending behaviour work; or
- be transferred to a secure mental health setting for treatment, or assessed for such a transfer.

### ***Panel composition***

3.23 The MCA panel will have considered panel composition when directing a case to an oral hearing. The final decision on panel logistics lies with the oral hearing panel chair, including the need to stand down or co-opt co-panellists. Any amendments to hearing logistics must be recorded and explained in panel chair directions. When making a decision about the constitution of the panel, the panel chair should bear the following in mind:

- The reasons for the panel logistics set out by the MCA panel or duty member and whether those reasons still apply
- Whether the case is particularly complex
- Whether there is considerable divergence of assessments from professionals.
- Where there are MCA or duty member directions for a specialist member whether the specialist expertise is still required on the panel
- Whether any co-panellist holds an area of speciality that would be beneficial to the decision-making in this case
- Whether any co-panellist would gain relevant professional development, particularly if they are in the early part of their Parole Board career, that would be beneficial to the Parole Board in the long term.

3.24 If any of the above apply, it may be more appropriate to proceed to an oral hearing with the full panel assigned to the case at the MCA stage rather than amending panel logistics. This is at the discretion of the panel chair, but it is good practice for the panel chair to consult with co-panellists and take full account of their views of the value of them remaining on the panel before making a final decision about the panel logistics. It is also helpful to consult with any existing co-panellists if the panel chair is considering requesting an additional panel member if, for example, the case has developed in complexity since the MCA stage. Once a decision has been made, the panel chair must confirm the panel logistics to the co-panellists and the case manager. Any changes to panel logistics need to be set out by the panel chair with reasons in panel chair directions.

3.25 Co-panellists must not be stood down in cases where oral evidence has already been taken by that panel unless there is an exceptional reason to do so, such as a co-panellist has come to the end of their tenure, or a conflict of interest has emerged. Similarly, co-panellists cannot be replaced, or an additional member added to the panel once oral evidence has been taken. If a co-panellist has to stand down, it is usually more appropriate to determine if the review can continue with the remaining panel members; however, advice should be sought from the Parole Board's Practice Advisor in such circumstances. If the case cannot continue with the remaining panel members, the panel chair will need to defer the case so that it can be repanelled.

***Format of the oral hearing***

3.26 The MCA panel will have considered on the facts of the case which format of oral hearing is most suitable. Whilst considering this, the MCA panel will have identified relevant issues from the dossier and taken account of any representations that had been made by the prisoner (or their representative), or indeed the Secretary of State. If a case is not suitable for a telephone or video hearing, clear reasons should be given in the MCA directions template.

3.27 Panel chairs should always consider whether a case is suitable for a telephone or video hearing first. If a remote hearing is not appropriate for a particular case, a hybrid arrangement may be suitable, otherwise a face-to-face hearing can be directed. When reviewing the type of hearing required for the case, panel chairs may wish to take the following factors into consideration:

- 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 assessments in psychological reports 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 a 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.

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

- the prisoner (or a key witness) has a physical impairment or disability that 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 that the panel may not be able to accurately interpret other than face-to-face)

- the panel wishes to see the reaction of the prisoner to the evidence as it is presented, 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, and this cannot be effectively achieved via a video hearing
- cognitive problems, such as learning disabilities
- serious mental health disorders
- other disorders such as Attention Deficit Hyperactivity Disorder (ADHD) or Autism Spectrum Disorder (ASD)
- complex risk assessments and/or contested, disputed evidence
- a large number of witnesses
- language or communication issues, including use of communication specialists, such as an intermediary, interpreter, or signer
- the prisoner is under the age of 21 years.

3.29 Panel chairs may wish to consult with their co-panellists on the most suitable format of hearing, particularly if there are vulnerabilities or medical considerations to be taken into account, before making their decision.

3.30 In order to direct an appropriate format of oral hearing, it will be important to consider whether the prisoner is able to properly participate in a remote hearing (either by telephone or video) and, if not, whether a face-to-face hearing is required (bearing in mind the delay this may cause). The panel may need to carefully consider whether a prisoner can properly participate by telephone without the additional video facility. The panel will also wish to consider issuing directions for an assessment to be carried out, which may be needed, for the panel to understand how to facilitate participation in the hearing. This could include directing a needs assessment on, for example, speech and language. In a few rare cases there might be the need for a mental capacity assessment, for more information on this please see *Guidance on Mental Capacity Assessments and Litigation Friends*.

3.31 Before there are any changes to the format of the hearing (e.g., video to telephone) both parties must have the opportunity to submit representations. Although neither party has the final say, it is important that any changes during the parole review are communicated to both parties and that they are given the opportunity to submit representations. The parties should ordinarily be given up to 14 days to respond but a shorter notice period might be appropriate in some circumstances (for example, if a listed hearing slot can be saved by giving a shorter notice period of a telephone or video hearing). On rare occasions, it might prove necessary to change the format of the hearing on the day, for example due to technical difficulties or concerns for the prisoner. In such instances, the panel chair should ask for representations from both parties before proceeding.

***Amending panel chair directions***

3.32 Under rule 6, a panel chair can:

- review how a case is progressing and may at any time make, vary, or revoke directions: including directions and panel logistics that were determined at the MCA stage;
- make any new direction that serves the interests of justice and procedural fairness, effectively progresses the case, or meets other purposes as the panel chair considers appropriate: including the submission of information or reports, and the attendance of witnesses; and
- adjourn or defer the proceedings for further information, or for other appropriate purposes.

### **Public hearings**

- 3.33 From 21<sup>st</sup> July 2022, rule 15 provides the power to enable oral hearings to be held in public (full or part) in certain circumstances. The expectation is that oral hearings are to be held in private; however, the rules now provide for the Chair of the Parole Board to consider whether, in the interest of justice, an oral hearing should be held (in full or in part) in public.
- 3.34 The prisoner, victim, the media, or the wider public may make an application requesting that a case be heard in public. There must be a good reason or reasons to justify a departure from the general rule of hearings being held in private. Applicants will need to set out their reasons in writing as to why it is in the interests of justice that the case should be heard in public as opposed to remaining in private. The decision will be taken by the Chair of the Parole Board after inviting and considering any written submissions from the applicant and the parties. In taking the decision, the Chair will balance the weight to be given to the competing factors and then decide whether the departure from the general rule is justified on the grounds of the interests of justice. The Chair will also be able to take into account the potential for parts of a public hearing to be held in private if that would better enable frank and honest evidence to be given.
- 3.35 Observing public hearings will take place via live streaming, viewed in a secure environment (likely to be at 10SC). All observers will be given information in advance and will have to view the live stream together from the same location. A member of staff from the Secretariat will be present and introduce and explain what will happen. Should any requests be received of this nature, please contact the Public Hearings inbox. Only the Parole Board Chair can decide whether a case be held in public. More information about public hearings can be read here: [Applying for a Parole review to be public - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

### **Concluding a case on the papers post-MCA**

- 3.36 Where a case has been directed to an oral hearing at the MCA stage and a panel has been assigned, the panel chair may consider making a decision on the papers under rule 21, rule 23(1) or rule 23(2)(a). This does not set aside the MCA direction but enables a panel chair or duty member to consider whether an oral hearing is still required. This might be the case where there have been significant developments since the MCA stage: such as new or unresolved criminal matters, adverse events in custody, representations offering new information, or submission of further evidence.

3.37 When considering whether a hearing is still required, the panel chair may find it helpful to ask themselves the following questions (this list is not exhaustive):

- Is the decision clear and obvious from the papers?
- Is the prisoner serving a concurrent or consecutive sentence that would preclude release in any event?
- Is the prisoner approaching the sentence expiry date (SED), non-parole date (NPD) or conditional release date (CRD)?
- If so, is it likely that an oral hearing can be arranged before the SED, NPD or CRD?
- Is there an outstanding criminal charge and investigation? If so, will it be concluded soon (for example, within eight weeks), or is it likely to cause a significant delay to the Parole proceedings?
- Is there an issue that is in dispute, or evidence that needs to be tested and probed by questions or argument? For example, a psychological risk assessment may need to be tested.
- Is the prisoner vulnerable? For example, they may have physical or mental health issues, lack mental capacity, be under 21 years of age at the point of referral.
- Is the prisoner unrepresented?
- Is it a complex, high profile, power to detain (PTD), or a terrorism/terrorism-connected case?
- Has a previous concern or outstanding issue been satisfactorily resolved indicating that a decision can now be made without the need for oral evidence?

3.38 When deciding whether to conclude a case on the papers, the panel chair will need to bear in mind what is fair to the prisoner, including the OBR Principles. Even in cases where the decision may seem clear, fairness to the prisoner may still require an oral hearing. Panel chairs may wish to consider the following points:

- The prisoner has a legitimate interest in participating in the parole process, and an oral hearing assists them in doing so.
- The prisoner will be on parole hold during the process, so if there are likely to be extensive delays (such as, for example, waiting for a trial date for an outstanding charge<sup>32</sup>), it may be better to give them a decision.
- If the prisoner is not likely to have time for an oral hearing before release, when their referral will lapse, a paper decision is better than no decision at all.
- The question of whether fairness requires an oral hearing is not the same as the question of whether they are likely to be released.
- In recall cases, the prisoner's liberty has been further deprived.
- In cases where a prisoner is significantly post-tariff, the panel will need to apply a higher level of 'anxious scrutiny' to the facts and issues of their case.
- In cases where release is a realistic prospect, chairs will need to make sure they have enough information to properly address the issues.

---

<sup>32</sup> If the prisoner faces outstanding charges that are unable to be concluded within 8 weeks, it may be necessary to conclude as opposed to adjourn or defer.



3.39 None of the above points may require an oral hearing but they are relevant considerations.

***Concluding a case on the papers under rule 21***

3.40 Rule 21 sets out what should happen in cases where, after an oral hearing has been directed, a panel chair or duty member direct that the case should now be concluded on the papers if an oral hearing is no longer deemed necessary. If a panel chair has been appointed to the case, the panel chair will make the decision on whether the case can be concluded on the papers; if a panel chair has not yet been appointed, the decision will be made by a duty member.

3.41 Rule 21 procedures cannot apply to cases where oral evidence has been taken: in these cases, the decision must be a *panel* decision (including a majority decision if necessary) as it is a decision following an oral hearing under rule 25.

3.42 Under rule 21, an oral hearing may no longer be necessary:

- a) in the interests of justice;
- b) to effectively manage the case; or
- c) for other reasons as deemed appropriate by the panel chair/duty member including further evidence submitted.

3.43 Either party can apply for the case to be concluded on the papers. The Board can also initiate the process.

3.44 Concluding a case on the papers under rule 21 follows two stages:

- First stage: the decision is made whether a case can be concluded on the papers or not: this falls to the panel chair or duty member under rule 21(4).
- Second stage: the substantive decision about release and/or recommendation about transfer to open conditions under rule 21(7) and 21(10) is made.

3.45 There are a number of procedural requirements that have to be fulfilled for a case to be concluded on the papers under rule 21. In brief, these are:

- the panel chair or duty member will need to notify the parties of their intention to direct a decision on the papers under rule 21;
- the parties will need 14 days to make representations about<sup>33 34</sup>:
  - (i) the reasons provided by the Parole Board for the proposed direction;
  - (ii) the contents of any further evidence; and
  - (iii) whether they agree to the case being decided by a panel on the papers;
- once those representations are made, the panel chair or duty member will need to make a decision on whether to conclude on the papers under rule 21. If the decision is that the case should not be concluded

---

<sup>33</sup> This time frame can be altered using rule 9.

<sup>34</sup> Where the panel is reviewing an application where representations have already been received by both parties about concluding on the papers, the panel must state their intention to conclude on the papers and then should allow sufficient time for further representations to be submitted regarding the subsequent decision.

on the papers, the panel chair will direct that it continues to an oral hearing; and

- if the decision is that the case should be concluded on the papers, a panel will then make the substantive decision on the papers. The panel making the decision on the papers can be composed of the panel chair or duty member who directed the case be concluded on the papers; the panel originally allocated to the case; or a newly appointed panel, appointed as such by the secretariat under rule 5.
- 3.46 If new evidence has been received, the panel chair or duty member should assess the new information and any representations to decide whether or not the case is now capable of being determined on the papers. All parties should be notified and given the opportunity to make representations within 14 days about the case and whether they consider the matter is capable of being decided fairly on the papers without oral evidence being taken.
- 3.47 In reaching a conclusion, the panel chair or duty member should consider the necessity for and complexity of any direction, given the amount of time remaining until the hearing.
- 3.48 If a paper-based decision appears fair and feasible, in order to prepare for the second stage, the panel chair or duty member will need to decide the constitution of the panel to make the substantive decision about release and/or recommendation about transfer to open conditions. The options are:
- a panel comprising the panel chair or duty member alone (where the panel chair or duty member does not need to hold a single-member chair accreditation because an oral hearing will not be taking place); or
  - the panel members already assigned to the case; or
  - a newly appointed panel to decide the case on the papers.
- 3.49 The last option should only be used in limited circumstances and reasons will need to be given as to why the current panel chair, a duty member, or the assigned panel cannot decide the case on the papers. Such a decision would lead to a deferral with a direction for the case to be concluded on the papers. The panel chair and previously assigned co-panellists, or the duty member, would no longer be assigned to the case.
- 3.50 When making a decision about the constitution of the panel, the panel chair or duty member should bear the following in mind, whether:
- the reasons for the panel logistics set out at the time of the MCA or by a duty member still apply
  - the case is particularly complex
  - there is considerable divergence of assessments from professionals
  - the panel includes a specialist member
  - the co-panellist(s) hold an area of speciality that would be beneficial to the decision-making
  - a co-panellist could gain relevant professional development, particularly if they are in the early part of their career with the Parole Board, that would be beneficial to the Board.



- 3.51 Where a panel has already been appointed, it is good practice for the panel chair to consult with co-panellists, where possible, about the panel composition. Co-panellists, in preparing for the case, may have advice to offer the panel chair. As a minimum, it is good practice for a panel chair to inform co-panellists by email about all key developments at each stage. In addition, the panel chair may wish to consult with a specialist member if there is an issue or question relating to their area of expertise (if the panel does not include a specialist member, there is a list of specialist members on SharePoint who can be approached for a brief consultation – the list can be found [here](#), just above the duty member rota).
- 3.52 Where a panel has already been appointed and once a decision has been made by the panel chair to conclude on the papers and on the panel composition, the panel chair must inform the co-panellists and the case manager who will update all parties. Any changes to panel logistics need to be set out by the panel chair with reasons in panel chair directions.
- 3.53 Once a decision has been made to conclude the case on the papers, the substantive decisions about release and/or recommendations about transfers to open conditions are made. If the panel making the substantive decision is made up of two or more members, the decision needs to be unanimous, or at least a majority decision. The substantive decision should be recorded on the paper decision template. It must be issued to both parties within 14 days of the date of the substantive decision<sup>35</sup>. To ensure that it is issued on time, the panel chair should send the decision to the Parole Board case manager within 10 days of the decision-making. The decision should note whether the panel chair concluded the case alone and, if not, should note the number of panel members who participated in the decision-making.
- 3.54 Any substantive decision made following a direction that the case be concluded on the papers under rule 21 is provisional only if it is eligible for reconsideration. If it is not eligible, the decision is final. The decision also becomes final if no application for reconsideration is received within the 21-day window.

***Concluding a case on the papers under rule 23***

- 3.55 A decision can be made on the papers following notification under rule 23(1) and (2)(a) that a prisoner does not want an oral hearing or does not want to attend an oral hearing. A panel can make a decision on the papers following a rule 23(2)(b) compliant hearing at which the representative is present, but the prisoner is not.
- 3.56 As for rule 21 (see section above), the application of rule 23 involves two stages of decision-making: whether to conclude on the papers; and a decision about the substantive questions of release and/or transfer to open conditions.
- 3.57 The first stage decision as to whether the case can be decided on the papers is that of the panel chair. In order to prepare for the second stage, the panel chair will need to decide on the constitution of the panel to make that

---

<sup>35</sup> 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.

decision on the papers. The options are:

- a) Whether the panel should consist of the panel chair (on their own); or
- b) Whether it should be the panel that is already assigned to the case.

3.58 All considerations, timescales and interactions that apply under application of rule 21 (see section above) should be applied to concluding a case on the papers under rule 23.

***Administrative cancellation of oral hearings already listed***

3.59 This is an administrative decision carried out by the Parole Board case manager on behalf of the Secretariat. As it does not have a judicial function, there are only very limited circumstances in which the Secretariat can cancel a scheduled hearing.

3.60 The most common reason for making an administrative cancellation is where a prisoner has been transferred to a different prison during their parole window, preventing a face-to-face oral hearing taking place or the receiving prison not having facilities available on the listed date. This is because the prisoner cannot be transferred back to the sending establishment for a listed face-to-face hearing in time or because the hearing cannot take place at the receiving prison.

3.61 Where a prisoner has been transferred to a new prison, consideration could be given to whether a face-to-face oral hearing could instead proceed as a remote hearing. This would depend on the nature of the case and the reasons why it was directed to a face-to-face hearing. It may be possible, if necessary, for the panel to convene in one prison but link remotely to the prisoner in another establishment. It may also be possible for the new prison to support a hybrid hearing with the panel at the prison and witnesses joining remotely. This can avoid an adjournment or deferral, or an administrative cancellation.

3.62 Once the listing of a case has been administratively cancelled, the panel will be unassigned and will no longer have control of the case, including the ability to set directions. This could lead to unnecessary delays.

3.63 Administrative cancellations should, therefore, be made as a last resort. The preference should be for cases to remain under the control of the panel as, due to its judicial standing, this provides oversight and direction for cases. This also supports clearer communication and is more transparent to the parties, helping to keep cases on track through formal adjournment or deferral procedures and directions.

3.64 For cases facing administrative cancellation, the Parole Board case manager will check with the panel chair to consider whether they wish to issue adjournment or deferral directions, rather than an administrative cancellation being applied. For situations where the panel chair is unavailable, advice should be sought from the Parole Board's Practice Advisor.

***Case management conferences and directions hearings***

- 3.65 Case management conferences and directions hearings are both convened under rule 7 and the principles underpinning these are the same.
- 3.66 Either party to the proceedings (PPCS or the prisoner/prisoner's representative) may request a case management conference or directions hearing by submitting a Stakeholder Response Form (SHRF) to the Parole Board case manager. If the panel chair is the one to initiate, they should state in their directions to parties the reasoning behind their decision. It is good practice to involve the parties at the earliest opportunity. Each party will be given the opportunity to submit representations to be considered by the 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 or directions hearing is required rests with panel.
- 3.67 Notification of attendance at a case management conference or directions hearing is via email or panel chair directions, setting out requirements and reasons. No-one beyond those directed should be in attendance unless agreement has been given in advance by the panel chair.
- 3.68 The Parole Board case manager will liaise with the participants to find a mutually convenient date, time and medium and attendees are asked to provide as much flexibility as possible, when asked to give their availability. The Parole Board must provide at least 14 calendar days' notice of the date of the case management conference or direction hearing (although this timescale can be varied under rule 9 if appropriate).
- 3.69 These meetings are expected generally to take around 30 minutes. If the panel chair wishes to vary timescales, they should give notice to the parties so that they can submit representations before the meeting.
- 3.70 Attendees can take part remotely 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.
- 3.71 Once a date has been agreed, a timetable will be issued by the case manager, including the conference dial-in number and access code.
- 3.72 The following table deciphers the differences between a case management conference and directions hearing and when either may be considered necessary.

	<b>Case Management Conference</b>	<b>Directions Hearing</b>
<u>Purpose</u>	<ul style="list-style-type: none"> <li>• To avoid delays to the oral hearing and conclusion of the review.</li> <li>• Short, light touch approach discussions to resolve issues that stand in the way of conducting or completing a parole review.</li> <li>• Discuss shortfalls in information, non-compliance with directions, resolve direction issue, developments in the case, any concern with a report writer (short of taking evidence).</li> <li>• To discuss complexity in the logistics for an oral hearing such as multiple witnesses or the need for an interpreter or other communication specialist.</li> <li>• Resolve queries that cannot otherwise be resolved about witness appearance or delegated attendance.</li> <li>• Establish involvement of agency representatives such as subject experts or social care services.</li> <li>• Exploration of a request to defer or adjourn where reasons for an application have not been clear.</li> <li>• Confirming developments concerning outstanding court proceedings or additional charges<sup>36</sup>.</li> <li>• Following an oral hearing where a specific point needs</li> </ul>	<ul style="list-style-type: none"> <li>• Unpick complex problems to ensure that the subsequent oral hearing can proceed effectively.</li> <li>• Enable the panel chair to review the progress of a case, check compliance with directions, identify and direct material that is needed to progress a case, and discuss and direct additional reports and the attendance of witnesses at an oral hearing.</li> <li>• Invite and consult with a specialist Parole Board member in considering the nature of an expert report and its implications.</li> <li>• Focus on a single problem that needs 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.</li> <li>• Discuss cases where there is multi-agency involvement. Cases involving mental health issues or where there is a prospect of release to specialised funded accommodation, or release involving a wider care package.</li> </ul>

<sup>36</sup> If the prisoner faces outstanding charges that are unable to be concluded within 8 weeks, it may be necessary to conclude as opposed to adjourn or defer.

	clarification without requiring a formal adjournment.	
<u>Approach to evidence</u>	Does not discuss the nature or content of likely evidence. The conference cannot take evidence.	May discuss the nature of the likely evidence and its implications for a future oral hearing, but not the detailed content of that evidence. Evidence cannot be taken.
<u>Attendees</u>	<ul style="list-style-type: none"> <li>Panel chair, the prisoner’s representative and a SofS representative<sup>37</sup> (who must both be offered the opportunity to attend).</li> <li>Additional participants including other panel-members, report-writers and other witnesses might need to attend (a specialist Parole Board member<sup>38</sup> may help in considering the nature of an expert report and its implications).</li> <li>In some circumstances, one of the parties may not be present by agreement in advance.</li> <li>The final decision as to who can attend rests with the panel chair; they will confirm to the attendees who is required.</li> </ul>	<ul style="list-style-type: none"> <li>The panel chair can sit alone or with co-panellists, if required. Parties in attendance may include the prisoner and representative, officials including the COM and POM, and SofS Representative.</li> <li>Participants may be directed to attend as necessary to discuss directions, not all witnesses will necessarily be required.</li> <li>The prisoner should be offered the opportunity to attend but it is not essential, even if they are not represented.</li> <li>The final decision as to who can attend rests with the panel chair; they will confirm to the attendees who is required.</li> </ul>
<u>Recording of proceedings</u>	<ul style="list-style-type: none"> <li>Must be recorded digitally. The panel chair should ensure all participants are aware that the recording is taking place and should follow the procedures as outlined in <a href="#">paras 5.9-5.13.</a></li> <li>The only exception to this is if it is being held in closed conditions.</li> </ul>	<ul style="list-style-type: none"> <li>Must be recorded digitally. The panel chair should ensure all participants are aware that the recording is taking place and should follow the procedures as outlined in <a href="#">paras 5.9-5.13.</a></li> <li>The only exception to this is if it is being held in closed conditions.</li> </ul>

<sup>37</sup> This may not necessarily be a Secretary of State advocate, but someone from PPCS who attends on behalf of the SofS.

<sup>38</sup> The specialist member does not need to be part of the panel, a specialist member can be consulted in an advisory capacity if required.

<p><u>Directions</u></p>	<ul style="list-style-type: none"> <li>• The actions agreed at a case management conference will usually be noted by way of directions and ordinarily issued to the parties no later than 14 days following the conference.</li> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• After a directions hearing, panel chair directions must be issued that provide background to the hearing, record who was present and their roles, and direct next steps with reasons.</li> </ul>
--------------------------	---	---

**4. Practicalities on the Day of an Oral Hearing**

***Hearings held remotely and participation by telephone and video***

- 4.1 When directing to an oral hearing, the MCA member or duty member should decide the logistics of the hearing, including considering the suitability of remote attendance by telephone or video for the panel, prisoner, and witnesses. The panel chair or duty member may amend directions regarding previously directed logistics. Please refer to the *Member Case Assessment (MCA) Guidance* for more information on deciding the format and logistics of the hearing.
- 4.2 The Parole Board has a number of Video Meeting Rooms (VMRs) in the Cloud Video Platform (CVP), a package developed by Kinly and approved for use by the Ministry of Justice’s digital team. Most oral hearings are held remotely via telephone or video.
- 4.3 Should the panel wish to convene in the same room without travelling to the prison, a hub hearing can be arranged using the video-link equipment at the Parole Board’s head office in London. This may be suitable when the panel don’t assess it necessary to be face to face with the prisoner but they need to be face to face with panel members. Should this be required, please contact the Operational Support team.
- 4.4 Panels should try to select a neutral background for video appearances in order to limit distractions. Nothing should be on view that could identify a location or third party (such as photographs or memorabilia). Panels should ensure that they are alone in the room when undertaking the hearing and that the proceedings cannot be overheard. Appropriate dress is professional attire.
- 4.5 Remote hearings have similar characteristics and the same procedural rules as hearings in person. However, panels should be alert to potential problems

in using telephone or video, such as security issues, time-delays or talking over each other. For the sake of clarity, courtesy and fairness in proceedings, the panel chair should intervene if such difficulties arise.

- 4.6 Occasionally, connection can be lost during a hearing. The panel chair should alert the hearing support team at the Parole Board to attempt to re-establish the connections. If connecting from another remote location, the panel chair should alert the hearing support officer in the hearing support team (the hearing support officer will have made themselves known to the panel chair on the morning of the hearing).
- 4.7 If connection is lost by one participant, or telephone or video becomes degraded, the panel chair should advise all participants of the problem and should recommend that the participant tries to re-establish connections. This may necessitate the room being unlocked so that the participant can re-enter the virtual room. Potential technical problems underline why the panel chair should continually monitor the active participation by all contributors to the hearing and should regularly check whether participants can hear everyone else.
- 4.8 Please contact the IT support team should you require assistance with connecting to and functioning within remote hearings.
- 4.9 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.
- 4.10 It may also be possible, if necessary, for the panel to convene in one prison but link remotely to the prisoner in another prison. This may prevent an adjournment or deferral in cases where a prisoner has been transferred during the planning of the hearing.

### ***Face-to-Face hearings in person***

#### ***Access to prisons***

- 4.11 A security pass and Parole Board laptop should be taken to a hearing in a prison. The laptop should hold downloaded dossiers, electronic versions of member guidance, the member's sitting dates and availability, and contact lists. Panel members might also take to the hearing a personal diary, case notes, prompt sheets and other relevant materials in electronic or paper format.
- 4.12 A member may take an authorised laptop and recording equipment into a prison, provided it is accompanied by the relevant access document titled *Parole Board Members Access to Establishments*.<sup>39</sup> Failure to produce this document may result in considerable delay in clearing gate security.
- 4.13 Panel members should arrive at the prison no later than one hour before the hearing is due to start. This allows sufficient time to access the prison and

---

<sup>39</sup> Under this so-called Memorandum of Understanding, Parole Board members are provided with an access document, which details their name and relevant serial numbers for their recording devices. Members are required to present their prison access document upon request from security.



clear security, be escorted to the hearing room and engage in pre-hearing discussions.

- 4.14 On entering the prison, panel members will be subject to prison security checks, which may include body and bag scanning and pat-down searches, depending on the security category and local procedures of the prison. Parole Board members are not exempt from security searches. They are subject to Prison Rules and the criminal law regarding unauthorised articles<sup>40</sup>.
- 4.15 If a member faces any issues with regard to the entry into the prison, concerns should be escalated to the Head of Operations at the Parole Board, through the Parole Board case manager.

### ***The hearing room and safety***

- 4.16 Panel members can expect to be escorted to the hearing room within a reasonable time on arrival at the prison.
- 4.17 The hearing room must be safe and suitable for a private hearing under rule 15(3). The prisoner should be provided with a separate room to hold confidential consultations with their representative.
- 4.18 The prison governor has overall responsibility to ensure the health and safety of everyone in the establishment. The HMPPS [Parole Board Oral Hearing Administration & Policy Framework](#) sets out the requirements prisons must comply with for staging oral hearings. The governor should undertake a formal risk assessment concerning the safety of participants in the hearing where concerns have been raised. Where necessary, appropriate practical measures should be put in place. The 2023 framework document states:
- "It is the legal and statutory responsibility of the Governing Governor to take all reasonable steps to ensure the safety of all staff, visitors and prisoners. However, the presence of a prison officer is not considered necessary in Parole Board oral hearings unless there are particular concerns about a prisoner. Where a Governor's risk assessment indicates there is a need for additional security measures during the hearing, the Governor (or an appropriate delegate) must advise PPCS in advance of the hearing in a timely manner. PPCS can then raise any issues with the Parole Board ahead of the actual hearing."*
- 4.19 The panel chair should be alert to the safety of those present during the hearing. Before the hearing, any security concerns identified or implied in the dossier, SHRFs or representations should be raised with the Parole Board case manager by the panel chair. The case manager will, in turn, contact the prison to confirm that a risk assessment has been or will be undertaken. If it is unclear whether a formal risk assessment has been conducted by the prison in response to concerns identified, the panel chair may check with the Parole Board case manager or make directions for one to be conducted.

---

<sup>40</sup> Please refer to the MAPP Guidance for more information on Access to Prisons (paragraph 2.8 onwards). A full list of prohibited items can be found in <https://assets.publishing.service.gov.uk/media/657040fb1104cf0013fa7597/managing-conveyance-unauthorised-illicit-items-closed.pdf>



4.20 Whilst violence by prisoners in oral hearings is rare, members should be alert to their own safety and that of others during the hearing, even if no security concerns have been raised before or indicated in the dossier.

4.21 On the day, concerns about a prisoner's possible negative behaviour should be raised with prison staff. A suitable member of staff might be assigned as an observer in the hearing room or stay within distance outside. When there are concerns about safety, the panel chair should escalate matters through the Parole Board case manager if not resolved locally. Exceptionally, where considered necessary, a panel chair may request that a prisoner is searched before entering the hearing room. Where it is not possible to resolve outstanding concerns, the panel chair may adjourn the hearing to a future date using remote arrangements such as a telephone or video hearing.

4.22 The 2023 [HMPPS Parole Board Oral Hearing Administration & Policy Framework](#) set out essential criteria that rooms provided for oral hearings must meet, including that the room:

*"...must be equipped with an easily accessible alarm so staff can be alerted in the event of an emergency and Parole Board members must not be locked into any area of the prison without physical access to a member of staff".*

4.23 Some of the practical steps that can be taken to ensure the safety of those attending a hearing are:

- directing the prison to provide a risk assessment and any necessary additional security measures (including supervision of the prisoner), once recent or incipient negative behaviour has been identified
- directing continued updates about the prisoner's behaviour and situation in the lead up to the hearing
- asking the case manager to find out the logistics, such as the location of the hearing room; the location of the emergency button; and whether there will be prison officers inside or outside the room
- on the day, ensuring that there is an emergency button (or other appropriate means of raising the alarm) in the room and that panels are seated appropriately nearby
- making sure that the prisoner is not seated between the panel members and the room's exit during the hearing
- considering other safety issues (for example, whether a particular prisoner should have access to glass tumblers or water jugs)
- finding out how the prisoner is feeling on the day of the hearing – this is good practice at every oral hearing but especially important when the panel chair is aware of possible negative behaviour
- when left in the hearing room, panellists should ensure that they are aware of the location of prison staff or ensure they have working telephone links should contact be needed.

4.24 The *Member Administrative Policies and Processes (MAPP)* guidance contains additional information relevant to member safety.

- 4.25 It is important that the hearing room is appropriate and is configured with safety in mind. This includes considerations of social distancing and other health and safety considerations.
- 4.26 The layout of the hearing room should allow the prisoner to feel central to the proceedings and to play a full and active part in the hearing. It is common practice for the prisoner to be seated directly opposite the panel and beside their representative. As a party to the hearing, a Secretary of State Representative, if in attendance, should also be prominently positioned but separate from the prisoner and their representative.
- 4.27 Interpreters, signers or other communication specialists should be seated near to the prisoner so that they can interact easily. The most effective position may not be directly beside the prisoner, especially for signers. The panel's questions and body language should be directed towards the prisoner even when an intermediary is facilitating interactions.
- 4.28 Witnesses should be seated in the hearing room but, depending on circumstances and available space, may be set back slightly from proceedings until called forward to give evidence. Any observer should be seated to be as unobtrusive to proceedings as possible. The panel chair should review the number and positioning of chairs before the hearing commences. It is common practice to have water and beakers available and located conveniently for all participants.
- 4.29 The arrangements for a victim reading a Victim Personal Statement (VPS) in person to the panel (accompanied by the Secretary of State's victim representative) will need sensitive consideration. Guidance is available for handling these arrangements in the *Guidance on Victims*.

**Contact with prison staff**

- 4.30 Parole Board members should remember the need for actual and perceived independence and fairness when interacting with prison staff. Panel members are the public face of the Parole Board. They must avoid discussing case details or information about prisoners inappropriately with prison staff and must avoid oral evidence being provided outside the hearing. An exception may be asking staff discreetly, before the hearing, about the prisoner's current welfare and demeanour. A prisoner's representative may also request a pre-hearing meeting with the panel where similar enquiries could be raised with discretion.
- 4.31 Panel chairs should be particularly alert to establishment staff or any participants commenting about the forthcoming hearing. Should interaction stray from practical matters to comments about the prisoner or to apparent evidence being discussed, the panel chair should halt the conversation with an explanation. Information that may have a bearing on the formal process of evidence-taking should only be conducted in the hearing itself.

**Contact with parties and witnesses in advance of the hearing**

- 4.32 To ensure that the parties to the oral hearing process are dealt with (and are seen to be dealt with) fairly and effectively, all panel members must act in a manner that demonstrates independence and impartiality. On the day, this means that panel members should ensure that they do not intentionally or inadvertently take evidence from, or inappropriately talk privately with, the parties in advance of the formal hearing. It is also important to avoid any perception that this may have occurred.
- 4.33 The Parole Board case manager plays a vital role in ensuring information has been passed appropriately to relevant participants. Please see para 4.50 below on occasions when information is presented to a panel on the day of a hearing. Aside from information subject to non-disclosure, all parties must have access to the same information.
- 4.34 Evidence from a witness on behalf of the Secretary of State will need to be received through PPCS (on behalf of the Secretary of State) to ensure that it will not be the subject of non-disclosure. The prisoner and their representative will need time to consider the evidence and may make representations.

#### ***Pre-hearing consultation with a representative***

- 4.35 The panel may invite the prisoner's representative to meet with them before the formal hearing on the day. They may seek to clarify matters that will be essential to panel planning or the handling of the proceedings. For example, finding out the likely expectations of the prisoner concerning the outcomes of the hearing, checking availability of significant material or the extent of the dossier length, and hearing any preliminary representations. The panel chair must ensure that no actual evidence is taken from the representative outside the formal proceedings and may intervene should the representative broach matters that must be heard in front of the prisoner and other participants.
- 4.36 If it is necessary to consult with one party about pre-hearing matters or applications, the other party should be informed in advance and given an opportunity to attend a pre-hearing consultation. If a representative attends a pre-hearing consultation without the prisoner, the panel should seek confirmation that the prisoner has been offered and has declined the opportunity to attend but has had the opportunity to be properly consulted by the representative. If a Secretary of State Representative is not in attendance, the Secretary of State can be represented by one of their witnesses, for example a POM or COM.

#### ***Missing participants***

- 4.37 If a co-panellist or any participant cannot attend on the day of the hearing, or they face significant delay in joining the hearing, the panel chair must decide (in consultation with any co-panellist present) whether it would be appropriate for the hearing to go ahead in that person's absence. The overriding principle must be fairness. The proposal to proceed without a co-panellist or witness must be canvassed with both parties. If necessary, the panel chair can contact the Parole Board's Practice Advisor for advice.

- 4.38 Co-panellists who are unable to attend the hearing must notify the panel chair and Parole Board case manager as a matter of urgency. The case manager can inform the prison. In the case of a three-member panel, the hearing should only proceed with two panellists if this is appropriate for the case and the parties agree with this arrangement. Similarly, a two-member panel could go ahead with just the panel chair if appropriate (but only if the panel chair holds the accreditation to sit as a single panel member).
- 4.39 Similar principles and cautions apply if connection is lost during a telephone or video hearing. If attempts to reconnect have failed, or it is not possible for a witness to transfer from video to telephone contact, the panel chair should consult with both parties and determine whether to proceed without that participant. Care should be taken to consider the completeness of the evidence already taken and any lack of opportunity that the parties may encounter in testing evidence that has already been heard.
- 4.40 Members should be particularly alert to specialist Parole Board members or expert witnesses being unable to join the hearing. In either of these circumstances, the case may hinge on the applicability of the specialist's expertise.
- 4.41 It is unlikely that a hearing can proceed fairly if the prisoner's representative is unexpectedly absent. Another situation that might raise questions about fairness is the absence of one witness when report writers have made contradictory assessments about risk or risk management plans. In addition, the COM might be regarded as an essential witness when there is a realistic prospect of release.
- 4.42 If the panel chair is absent or significantly delayed on the day, the hearing will not proceed unless one of the co-panellists has suitable accreditation and it is appropriate for them to assume the role of panel chair. Advice can be sought from the Parole Board's Practice Advisor.
- 4.43 If the hearing cannot proceed, an explanation should be given to all participants (some of whom may have travelled to the establishment). The formality of adjourning or deferring the hearing should be set out later in panel chair directions using the appropriate template. Efforts should be made to ascertain a re-convene date with those participants present to prevent delays in re-listing.

***Pre-hearing panel discussion***

- 4.44 Panellists must prepare for pre-hearing discussions in advance of the day. They should come equipped with an outline of the case, notes, and prompt-sheets as necessary, with a clear view of the issues and areas likely to require evidence-gathering and examination. They should also have their Parole Board laptops with them if attending the prison in person in order to access any necessary key information during discussions.
- 4.45 The pre-hearing discussion is held privately, without the parties, witnesses or most observers present, and should not be digitally recorded. Only Parole Board members undertaking training, practice observers and Parole Board-sponsored officers or researchers may attend as observers. This is only with

the agreement of the panel chair, irrespective of whether the panel convenes in person or remotely.

- 4.46 It may be helpful for the panel chair to open discussions by briefly summarising the context in which the panel decision is to be made. Without offering personal views at this stage, a summary might include the terms of the Secretary of State's referral; the sentence type and key important dates, as well as a reminder that the test for release has no temporal element<sup>41</sup>. A concise reminder of the legal test for directing release and/or the criteria for recommending transfer to open conditions may also be given.
- 4.47 The panel should discuss relevant aspects of risk, including areas where further information is needed or probing by way of questioning. It is important that all members of the panel participate and are given the opportunity to be heard. It is best practice for the panel chair to invite contributions from co-panellists before providing their personal views. Careful consideration must be given to how the panel will handle hearsay or third-party evidence and allegations<sup>42</sup> of behaviour related to risk or wider offending.
- 4.48 The panel should also consider and decide together the order in which evidence will be taken from witnesses and identify the panel member responsible for leading particular aspects of questioning. The aim is to obtain the best possible evidence as fairly and effectively as possible. For example, a psychologist witness who has not met with the prisoner for some time may benefit from hearing the prisoner's evidence first; or there may be merit in a co-panellist with specific concerns or expertise leading the questioning of a particular witness. All panel members should have the opportunity to question a witness, either in a leading or follow-up role.
- 4.49 An effective pre-hearing discussion will:
- examine directions, issues and concerns that need resolution ahead of the hearing and identify risk-related matters that need exploration via oral evidence
  - consider sources of bias, disputed facts, and the possibility of having to make a finding of fact
  - confirm the legal test for release<sup>43</sup> and/or the criteria to recommend transfer to open conditions, the options available to the panel and what information is required to consider risk indefinitely
  - determine which witness might provide necessary risk-related information and who should lead on questioning
  - consider any special needs of the prisoner and other participants, and the benefits of scheduling short breaks (and perhaps planning a lunchbreak) during the hearing

---

<sup>41</sup> *The Courts have determined that the statutory test for release has no temporal element - Johnson EWHC 1282 (Admin) and Dich and Murphy [2023] EWHC 945 (Admin)*

<sup>42</sup> *Panels must follow the principles set out in the judgment in Pearce when considering allegations. Please see the Guidance on Allegations for more information.*

<sup>43</sup> *In the case of an extended sentence prisoner who is in the "extension period" part of their sentence, panels are required to reverse the test, applying a presumption in favour of release as confirmed in R (Sim) v Parole Board [2003] EWCA Civ 1845 [2004] QB 1288. In such cases, the Board should direct release unless positively satisfied that continued detention is necessary for the protection of the public: this presumption does not apply in any other case.*

- agree logistical aspects as necessary, for example the arrangement for a victim to read their statement, or the presence of an observer.

**"On the day" receipt of late papers**

- 4.50 Any evidence that a party wishes to rely on at an oral hearing must be served on the Parole Board and other party at least 14 days before the date of the hearing (under rule 18(2)). If a party wishes to present documentary evidence which has not been served at least 14 days before the date of the hearing, the party must serve the material on the Parole Board and the other party together with an application to the panel chair for permission to present the evidence and give reasons for the late service (under rule 18(3)).
- 4.51 If documentary evidence is served less than 14 days before the hearing, and possibly on the day of the hearing, an application has to be made in line with rule 18(3) by the party who wishes to present the evidence. If the panel chair allows the evidence to be presented, the panel chair will need to ensure that the panel and the other party have sufficient time to consider the evidence.
- 4.52 Exceptionally, a panel chair may accept documentary evidence presented on the day. If the newly presented material appears to be essential to the assessment of risk, or if refusal could jeopardise the integrity of decision-making or otherwise trigger an adjournment on the day, a panel chair may accept new documentary evidence presented at the hearing. This should be regarded as exceptional. The panel chair has discretion to accept material where fairness has been duly considered. In exercising this discretion, the panel chair must bear in mind that information should first come through PPCS to check that information can be disclosed to all parties (see [paragraph 4.34](#)).
- 4.53 Where the evidence is served on the day by the prisoner or their representative on behalf of the prisoner, a copy will need to be provided to PPCS. It is the responsibility of other witnesses to provide the same material to PPCS who will upload it to the dossier. If the information relates to a third-party direction, it is the responsibility of the Third-Party Directions Team at the Parole Board, and they will ensure that this is uploaded to the dossier. Witnesses and panellists will need time to consider the new evidence which may require a short adjournment of the proceedings.
- 4.54 For advice on situations where non-disclosure material or applications are served on the day of the hearing, please see *Guidance on Non-Disclosure*.

**"On the day" applications to adjourn or defer**

- 4.55 Applications made on the day of the hearing for adjournment or deferral are subject to the same considerations as those made in advance. Panels must ensure that principles of fairness are respected.
- 4.56 On-the-day adjournments and deferrals have a significant impact on the individuals involved in the process and on the parole and wider criminal justice system in terms of costs, wasted resources and lost hearing time.



4.57 Panels are encouraged, where at all possible, to proceed with and finalise the oral hearing on the day. However, adjournments can also be a positive way to proceed, for example where:

- there is a strong case for release and all key evidence is available except a crucial aspect of the risk management plan (such as final confirmation of a release address or hostel placement or treatment funding)
- the panel's confidence about likely compliance or suitability of release plans could be enhanced by evidence of a period of stable custodial conduct or success in additional overnight ROTLs when such arrangements are planned or within a reasonable time period
- the outcomes of an adjudication, police investigations or court proceedings materially affect risk assessment and conclusions can be reported to the panel in a feasibly short interval<sup>44</sup>.

4.58 Panels can adjourn a case on the day to an agreed date without hearing any evidence. However, where possible, evidence should be taken at the initial hearing and either resumed at an agreed date or subsequently concluded on the papers once outstanding essential information has been directed and received (along with any representations). If a panel takes evidence at the initial hearing, it could negate the need to reconvene an oral hearing once outstanding information is received as the panel may be able to conclude on the papers. It is also easier and fairer to try and hear all the evidence in one day, to reduce the likelihood of it being mis-remembered or of having to repeat at the next hearing to remind everyone. However, panel chairs should consider whether the expected new information might impact upon the evidence of other witnesses before taking their evidence on a separate day.

4.59 Best practice is for a panel to adjourn a case to itself rather than defer on the day of an oral hearing, as this allows the same panel to see the case through to conclusion. Accordingly, in cases where the review cannot be concluded on the day of the oral hearing, panels should adjourn rather than defer.

4.60 The benefits in favour of adjourning rather than deferring the case include:

- more coherent and economic case management
- more effective and timely conclusion to the current review
- panellists already having full knowledge of the case and its potential issues
- the panel chair continuing to work actively with case managers to ensure an effective conclusion.

4.61 There may be exceptional reasons that mean the panel may need to defer rather than adjourn a case to itself: for example, a member coming to the end of tenure or other non-availability that would seriously disadvantage the prisoner. Deferral of a case is preferred before the day of the hearing because it can be made purposefully and effected in good time to allow another case to be listed in its place. Panel chairs can also, if a case merits it, adjourn an oral hearing before the day.

---

<sup>44</sup> If the prisoner faces outstanding charges that are unable to be concluded within 8 weeks, it may be necessary to conclude as opposed to adjourn or defer.



- 4.62 Pre-hearing applications for adjournment or deferral made on the day by either of the parties may be discussed by the panel in private if necessary and a panel decision reached. Before a decision can be made, further enquiries may need to be made. In such a case, clarification may be sought from the interested party, but such discussions must be transparent and must appear fair to and conducted in the presence of the other party.
- 4.63 Witnesses to the hearing are not entitled to make formal applications for adjournment or deferral, although their reports or testimony may make reference to the benefits of delaying a parole decision. The *Carltona* principle applies<sup>45</sup>: officials speaking for PPCS as one of the parties must be suitably senior and experienced to act on behalf of the Ministry of Justice. It follows that a COM or POM cannot authorise withdrawal of information or propose adjournment unless formally empowered to do so prior to the hearing. The panel chair should take a short break in the proceedings and invite the official to contact PPCS to confirm suitable authorities.
- 4.64 In some circumstances, the panel may not need to reconvene the adjourned hearing (either in person or remote) to examine additional evidence but can reach a decision on the basis of new information or representations on the papers. Care should be taken to keep the prisoner or representative informed and to direct additional reports if witnesses' assessments might be expected to vary as a result of new developments. Where further reports have been directed or received, the prisoner or representative should be given the opportunity to submit views.
- 4.65 If the panel takes the decision to adjourn the case as the result of developments or any fresh application, it should check the availability of a hearing room and of witnesses in order to set a possible date for reconvening the oral hearing. The oral hearing timetable advises parties and witnesses to bring availability dates with them and it is expected that the date to review and/or reconvene the case will be set at the time of the adjournment. Setting the adjourned hearing date before participants leave the prison has administrative advantages and can avoid delays. Additionally, it signals to the prisoner that efforts are being made to proceed fairly and to reduce as far as possible adverse effects of continuing uncertainty about parole outcomes.
- 4.66 More advice about adjournments and deferrals (and differences between the two) is available in *Guidance on Adjournments and Deferrals*.
- 4.67 When a case is adjourned or deferred on the day, there may be opportunity and benefit in the panel conducting a directions hearing or case management conference with the agreement of the parties present. While participants are available, the panel chair may take advantage of any views and advice they have about the forthcoming oral hearing. For example, what expected developments might affect the hearing, its timing, and its direction; what additional reports or information might be commissioned; and whether further witnesses might be directed to attend.
- 4.68 A directions hearing or case management conference aims to progress a case but not reach decisions as to release or suitability for open conditions. It is,

---

<sup>45</sup> This principle permits civil servants to act as the Secretary of State under suitable circumstances, as recognised by the courts in *Carltona v Commissioner of Works* [1943] 2 All ER 560.

therefore, essential that the panel does not take evidence relating to risk assessment and decision-making that can only properly be taken at an oral hearing. The panel chair must intervene if participants appear to be straying into evidence-giving and away from general advice about future logistics.

- 4.69 Advice about directions hearings and case management conferences is available at paragraphs [3.66 - 3.73](#) above.

### ***Prisoners who are not represented***

- 4.70 Panels must pay particular regard to the principle of fairness when faced with a prisoner who is unrepresented on the day, by choice or circumstance. The panel chair must be satisfied as to the prisoner's abilities and competence to consider and examine the evidence, to properly question witnesses and to adequately test evidence by doing so, and to make final submissions. In short, panels must be satisfied that the prisoner has the competence to conduct the proceedings. The panel chair must also consider whether the prisoner has had adequate access to the dossier and time to review it, has the dossier with them and can refer to specified reports as necessary. They should also consider whether any assistance is likely to be required to enable the prisoner to properly represent themselves during the hearing. Please refer to *Guidance on Representation* for further information.

## **5. The Hearing**

### ***The roles of panel chair and co-panellists***

- 5.1 Rule 24 determines the conduct of oral hearing procedures. Separate advice about staging directions hearings and case management conferences is available above.
- 5.2 The panel chair has responsibility for ensuring arrangements are in place for a safe and fair hearing. This starts at the panel chair directions stage and continues on the day of the oral hearing by:
- deciding with co-panellists how the business of the hearing should be organised to ensure fairness and effectiveness;
  - opening and closing the hearing;
  - maintaining progress during the hearing;
  - ensuring relevant questions are asked of the parties and witnesses
  - contributing to panel decision-making;
  - ensuring that the recording equipment is working, so that an official record of the hearing can be made;
  - agreeing attendance of observers and victims and method of attendance (remote, in person);
  - checking the prison has taken all necessary precautions for the safety and wellbeing of all attendees.
- 5.3 The panel chair and co-panellists must be well prepared to discuss the case and examine its issues on the day. Co-panellists are responsible for asking appropriate questions of the parties and witnesses; assisting the panel chair in maintaining progress during the hearing; contributing to panel decision-making; and keeping additional notes of the hearing.

**Opening the hearing**

- 5.4 When the panel are ready to start a face-to-face hearing, the parties and witnesses should be invited into the room. They should enter at the same time to mitigate any risk of perceived unfairness. However, as mentioned in above, in some situations the panel chair may wish to speak to one of the parties ahead of the hearing, or greet a victim or observer, and put an attendee at ease. If minded to take such action, it is important that both parties are informed to ensure transparency.
- 5.5 Once participants have been directed to their appropriate places in the case of face-to-face hearings, the panel chair should open the proceedings. The opening is likely to be the first opportunity for participants to hear from the panel. The introductory stage should, therefore, aim to settle the prisoner and set an appropriate tone for the hearing. The prisoner must be the primary focus and must have explanations and clarifications directed towards them. The same principles apply in the case of remote oral hearings, which will likely include checking everyone can hear and/or see the attendees (unless a live stream is being facilitated where all attendees will not be able to be seen).
- 5.6 Rule 24(2)(a) directs the panel to avoid over-formality during the hearing. One competency expected of a panel chair is maintaining effective control through a proper balance of formality and informality.
- 5.7 Rule 24(1)(a) says the panel chair must explain at the beginning of the hearing the order of proceedings planned by the panel. The opening of the hearing should include the following introductions and explanations by the panel chair:
- welcome to those present
  - statement that the proceedings are being held in private; or that the hearing is being live streamed as a public hearing
  - confirmation that the proceedings are being digitally recorded unless this may create unnecessary anxiety for the prisoner (see [paragraph 5.46](#))
  - introduction of the panel members, including the role of any specialist member
  - introduction of the parties and witnesses involved in the hearing
  - confirmation that the prisoner knew about any observers and that these people have no role in the hearing or the panel decision-making
  - introduce observers attending remotely reminding those that the hearing must be held in private
  - summary of the options open to the panel in the Secretary of State's referral
  - restatement of the legal test for release<sup>46</sup> and/ or the criteria to recommend transfer to open conditions, as appropriate

---

<sup>46</sup> In the case of an extended sentence prisoner who is in the "extension period" part of their sentence, panels are required to reverse the test, applying a presumption in favour of release as confirmed in *R (Sim) v Parole Board* [2003] EWCA Civ 1845 [2004] QB 1288. In such cases, the Board should direct release unless positively satisfied that continued detention is necessary for the protection of the public: this presumption does not apply in any other case.

- confirmation of the dossier length and any additional material in order to ensure parties and other participants have the same written evidence
- the proposed order in which oral evidence is expected to be taken
- outline of the prisoner's choice whether or not to answer questions
- confirmation of opportunities to request a break during the hearing.

5.8 In addition, the panel chair may comment on:

- Parole Board independence from the Ministry of Justice, HMPPS, the courts and any other agency
- the need to avoid over-formality in proceedings but at the same time a requirement for an orderly process by having only one person speaking at a time
- that it has been agreed the case is suitable to be heard remotely, where relevant
- the necessity of the panel having working laptops to access the dossier (which will be identical to the prisoner's printout)
- the fact that panel members may look away from the camera at points during a video hearing in order to consult the dossier or make notes
- the prisoner's opportunity to have the last word in person or through their representative
- any participation by the victim, for example, setting out for the record that a reading of a victim personal statement took place before the hearing
- availability of water for the prisoner and other participants, particularly at a face-to-face hearing
- advisability of the prisoner having pen and paper to jot down notes during evidence-giving (though this may require sensitivity should the prisoner prove to have limited literacy, if English is not their first language or they have a disability that restricts ability to take notes).

5.9 As proceedings should be digitally audio-recorded, it is good practice to invite all participants to introduce themselves so that their voices can be identified later in the digital record. This should include the prisoner who is also a participant to the hearing.

5.10 When a hearing is conducted remotely, the panel chair should invite participants (including the prisoner) to introduce themselves, so that all participants can later identify who is speaking. In such hearings, the panel chair should also remind participants of the limitations and necessary disciplines of using telephone or video as visual cues will be partial or absent.

5.11 At the onset of a remote hearing, checks should be made that everyone can hear everyone else clearly. Similar checks should be made intermittently by the panel chair throughout the hearing. The panel chair may choose to advise participants of arrangements to be made if any technical problems occur later; connections may need to be re-dialled, or video replaced by a telephone hearing with the agreement of both parties at the time.

5.12 Rule 15 requires hearings to be held in private unless the Chair of the Board has determined that it is in the interests of justice for the oral hearing to be held in public. With regards to hearings taking place remotely (via telephone

or video), it may be difficult to maintain privacy of proceedings. Although the case manager will have written agreement from each observer before the day of the hearing, the panel chair should inform all participants at the start of the hearing:

*"Under the Parole Board Rules 2019 (as amended), these proceedings are to remain private and the names of the people taking part in it must not be disclosed. What this means is that you must not talk about anything you hear today with other people, and you must not pass on any names that you learn during this hearing. You should be aware that this is forbidden by law and action may be taken against anyone who does not comply with this, so please make sure that you do not pass on any information or names outside of these proceedings."*

- 5.13 During and following the opening of the hearing, it is good practice to check that the prisoner has understood what has been said and whether there are any procedural questions at the outset.

### ***Prisoners with vulnerabilities***

- 5.14 When preparing for and conducting an oral hearing for a prisoner with vulnerabilities (for example a child, young adult, or where there are mental health/mental capacity concerns), panels should consider:

- taking account of specific needs and circumstances, ensuring that the prisoner can take as full a part as possible in the hearing
- checking with staff and/or the representative that efforts have been made in advance to prepare the prisoner by explaining the purpose and procedures of the hearing and explaining the roles of the panel and all participants.
- suggesting that officials show the prisoner and representative (if attending the prison) the room in advance of the hearing and that they explain who will be attending and their roles, and who will be there in person or joining via remote means. This should also include if the victim will be attending in some way to read a Victim Personal Statement while the prisoner is present.
- describing during the hearing introduction how things will happen, explaining that the prisoner may not like or agree with views which are given but that the representative can challenge evidence and that the panel makes its own mind up based on all the evidence, including the prisoner's.
- considering whether any reasonable adjustments to support the prisoner's participation are required. These could include extra breaks, simplified documents, and the use of clear and simple or plain language.
- asking straight forward questions in a logical manner, using plain language, and avoiding jargon and legal terminology
- allowing plenty of time for responses, repeating if necessary and explaining further if the prisoner is confused or distressed.
- using first names when addressing the prisoner if that has been checked as a preferred option.

- 5.15 Please refer to *Guidance on Young Adults*<sup>47</sup>, *Guidance on Mental Health and Restricted Patients* and *Guidance on Mental Capacity and Litigation Friends* for more detailed information. Assistance on composing questions for vulnerable prisoners can be found on the [Advocate's Gateway website](#).

***Prisoner expectations of the parole review***

- 5.16 At the outset of the hearing, the panel chair may ask whether the representative has any preliminary formal applications to be determined. At this stage, the prisoner's expectations about gaining release or progression might be canvassed. This is commonly mistaken to be an "application" to the panel for release or transfer to open prison. In fact, only the terms of the Secretary of State's referral define the panel's task.
- 5.17 The panel will need to be aware of the extent of the formal referral and its options and restrictions. Each of its elements must be determined on the basis of evidence and risk assessment, whatever the prisoner's preferences. The panel must always first assess suitability for release where this is an option, before considering suitability for open conditions, where this is part of the referral, if the test for release is not met.

***Effective questioning***

- 5.18 Rule 24(2)(b) outlines that the panel may ask questions to satisfy itself about the level of the prisoner's risk and its manageability. A pre-hearing panel discussion is essential to establish the way the hearing will run, including the order of questioning each witness and who should question them. The order of questioning witnesses should be outlined during the opening of the hearing.
- 5.19 The panel chair should ensure that all questioning is fair, inquisitorial, and related to risk. The panel's questions should be focussed on probing the veracity of evidence presented at the hearing or in the dossier and on filling any gaps. Departure from these principles should be curtailed by the panel chair.
- 5.20 So long as there is no bias or undue influence, there is no reason why the panel's questioning should not be firm and penetrating, if this is necessary to properly assess risk. Too challenging an approach, however, can lead to defensive answers. Hostile cross-examination does not necessarily, or even usually, lead to reliable evidence. Because the process must be inquisitorial, and not confrontational, the panel should avoid, without good cause:
- rehearsing previously clarified information unnecessarily;
  - confirming facts that have already been established, ignoring barriers to communication, or repeating a colleague's question;
  - putting words into the witness's mouth or posing questions that are speculative or based unfairly on an underlying premise or presumption;
  - putting a statement or presumption to a witness and asking them to rebut it (as this indicates the panel members have a perceived presumption and may lead to perceived unfairness);

---

<sup>47</sup> At the time of writing, *Parole Board Guidance on Children* is being developed.



- unfairly or persistently challenging the basis for a witness's risk assessment or findings when the purpose of evidence-gathering is to neutrally generate oral information that can be evaluated by the panel later; and
  - posing overly hypothetical questions which are fruitless and may risk generating the reply that the witness (especially the prisoner) supposes the panellist wants to hear.
- 5.21 Open, neutral questions are generally most effective in introducing a topic, followed by probing or funnelling down to establish reliable information and views that can then be checked to ensure correct interpretation has been made. A conversational flow in the dialogue between panel member and witness is the most effective way of generating and probing replies. That is, the panel member should follow the witness's leads and adjust the agenda of questions accordingly. It is beneficial to give people time to think before answering. Peremptory questioning can increase defensiveness and/or can force expected or socially acceptable answers and should only be used with care, weighing the worth of the resulting evidence accordingly.
- 5.22 Consideration may be given to the potential benefits of the prisoner's representative opening the questioning of the prisoner and/or any witnesses instructed by that party. While it is more common for the panel to open the questioning with any witness, this is not a requirement. One panel member will normally begin asking questions, to be followed as necessary by co-panellists before the prisoner or representative cross-examines. Nevertheless, it may sometimes be appropriate for panel members to take turns in questioning and/or to return briefly to questioning the prisoner or a witness after another person's questions.
- 5.23 A suggested procedure for the order of questioning in hearings where a Secretary of State Representative is present is set out below. This is not intended to be prescriptive, as it is for the panel to determine the approach:
- 1) by the Secretary of State Representative;
  - 2) by the prisoner's representative;
  - 3) by each panel member in turn;
  - 4) by the Secretary of State Representative.
- 5.24 Once all the Secretary of State's witnesses have been heard, the prisoner's representative may be invited to call their witnesses. Normally the prisoner will be invited to give evidence first. The order of questioning then follows as above, with the PPCS Secretary of State Representative and the prisoner's representative changing places in the order. However, prisoner evidence can be dependent on the general order of witnesses. For example, it may be beneficial for a specialist witness to hear the prisoner's evidence before giving their own, or there may be benefit in a prisoner hearing and understanding the views of professionals before giving their own evidence.
- 5.25 It may also, on occasion, be necessary to recall a witness to give further evidence, and this possibility should be considered before releasing witnesses after they have given their own evidence. Where the panel question a witness after the prisoner or their representative has done so, the prisoner or their



representative should be offered the last opportunity to re-question the witness. This includes the representative following up any add-on questions.

- 5.26 It is acceptable for a panel member to say that they do not have any additional questions to ask a particular witness. The panel chair, coming last in a panel of two or three members, should only ask relevant, risk-related questions and clarify any apparent gaps or anomalies in the emerging evidence, if this is necessary. These queries will likely have been noticed earlier by the panel chair while making written notes during others' questioning.
- 5.27 It is essential that the panel and both parties to the proceedings are given the opportunity to play a full part, in line with rule 24(3). This states parties are entitled to take part in the proceedings, hear each other's witnesses and representations, call a witness in accordance with rule 13, and put questions to each other and to any witness appearing before the panel.
- 5.28 For prisoners with vulnerabilities (for example children, young adults, or with mental health/mental capacity concerns), the panel should consider:
- where appropriate, starting with the prisoner's evidence to assist in settling them; in extreme cases allowing written evidence to be submitted as a starting point;
  - asking straightforward questions, in short quantities and in a logical manner;
  - preparing the prisoner for each stage of the examination before breaking down questions into smaller sections;
  - adjusting vocabulary and the manner in which information is conveyed by using plain language, avoiding jargon and legal terminology, and adopting the prisoner's own phraseology where appropriate;
  - invite the representative to advise if there are any further matters the panel should take into account when ensuring the restricted patient can give their "best" evidence, or if unrepresented the POM;
  - checking that the panel has understood what the prisoner is saying correctly by explaining what they understand the prisoner to have said clearly;
  - give the representative or other person supporting the prisoner time to intervene if they are becoming distressed or agitated;
  - in some cases it may be helpful to hear from the prisoner then allow them to leave the hearing (if they wish to do so);
  - regularly checking that the prisoner is following proceedings, by asking questions that invite understanding rather than simply asking if the point has been understood;
  - scheduling in regular breaks in the remote hearing and check in with a support worker if present (bearing in mind concentration levels are likely to be shorter in remote hearings);
  - slowing the pace if necessary, in the light of feedback, allowing the prisoner to digest the question or request and have time to think about a response;
  - allowing the prisoner to present evidence in creative ways if understanding or communication presents difficulties. Use diagrams and drawings, presenting pre-recorded material, acting out an incident, or describing parallel situations that can be interrogated by extension.

There might be other creative options that enable the panel to illicit best evidence whilst ensuring fairness of the proceedings;

- ask at the end of the hearing if everyone is clear on what has taken place;
- invite the representative to submit a written closing statement, if appropriate.

5.29 Bespoke training has been developed on questioning vulnerable prisoners which adopts the [20 good practice principles of questioning](#). All members are required to attend the training. In the meantime, advice about composing questions for prisoners who may need support and additional consideration can be found on the Advocate's Gateway website: <https://www.theadvocatesgateway.org/>

### **Rules of evidence (hearsay evidence)**

5.30 Under rule 18(2), written evidence should be submitted at least 14 days before the date of the oral hearing. An application should be presented to the panel for submission of new material served less than 14 days before the hearing, with an explanation concerning its late service.

5.31 The Parole Board is not bound by rules of evidence that apply in criminal proceedings. Rule 24(6) states that a panel may produce or receive in evidence any document or information, whether or not it would be admissible in a court of law. This has particular application when considering hearsay evidence. The interpretation of this rule will be for the panel chair, but the guiding principle must be fairness in obtaining relevant evidence in support of risk assessment. However, it should be noted that under rule 24(7), a person cannot be compelled to give evidence or produce any document where they could not be compelled to do so on the trial of an action.

5.32 The courts have confirmed that the Parole Board may entertain hearsay evidence<sup>48</sup>. However, the weight given to such evidence must be proportionate to its reliability. It is important to consider the provenance of such information, particularly where issues of non-disclosure are also involved. Please refer to *Guidance on Allegations*<sup>49</sup> for further information.

### **Temporary adjournments (breaks) and time limits**

5.33 During the hearing, a panel chair, co-panellist, party, witness, or observer may wish to take a brief adjournment in proceedings. Temporary adjournments can help refocus the participants and/or the panel; allow a comfort break; let a distressed individual resettle; allow a prisoner to take advice or give instruction to their representative; or enable the panel to reflect on the evidence given so far and the need for and nature of further questions.

5.34 In remote hearings it might be difficult for representatives to consult in private with the prisoner during the hearing. Panel chairs might want to acknowledge this at the beginning of the remote hearing. Consideration could

<sup>48</sup> *R (Brooks) v Parole Board [2004] EWCA Civ 80*

<sup>49</sup> The Allegations guidance has been updated to reflect the judgment in *Pearce*. Please access the allegations SharePoint page for up to date information: [Allegations \(sharepoint.com\)](#)

be given to a short adjournment of, say, 30 minutes if something did arise, but only where the matter of issue is significant and would have serious consequences if the representative did not take private instruction. The panel may also wish to consider offering the representative the opportunity to speak to the prisoner in private before they make their final submissions.

- 5.35 The Parole Board has a duty under the Equality Act 2010 to make reasonable adjustments, including when making arrangements for oral hearings. There may be participants for whom reasonable adjustments, including frequent breaks, are essential from the viewpoint of fairness and courtesy, and to ensure that participants can provide their best evidence. Prisoners with a disability will be at a substantial disadvantage (as well as any attendee with a disability) if reasonable adjustments are not in place. Proceedings should not unfairly disadvantage any attendee. Please see the *Guidance on Protected Characteristics* for further information.
- 5.36 The panel chair should resume the hearing with a reminder where the interruption occurred. The digital recording must be paused or stopped as the temporary adjournment takes effect and resumed or restarted immediately after participants re-enter the hearing room or remote hearing<sup>50</sup>. The panel chair should record the start and end times of any temporary adjournments, either verbally as part of the digital recording or by noting down the details.
- 5.37 Panels should explicitly consider the possible effects of running on through the lunchbreak. It may be more efficient to call a short adjournment to make sure the prisoner does not miss a meal or medication and to allow all participants to refresh themselves. There may be people at the hearing who have health conditions that necessitate regular meals, snacks, or drinks. Some may have travelled a considerable distance to the hearing. At the least, the panel chair should take soundings rather than proceed through lunchtime without comment.
- 5.38 Continuing the first of two cases on the day, by shortening or ignoring a lunchbreak, may enable both hearings to be completed, but this may prove a false economy if participants begin to perform below par or should complications affect the hearing later in the day. The panel chair has a duty to monitor progress and determine whether to cut short and adjourn the first hearing in order to start the second as scheduled, or risk deferring or otherwise not completing the second case on that day. Co-panellists have a role in raising these issues and helping the panel chair reach decisions.
- 5.39 While prisons may be able to support remote hearings between 09:00 and 17:00 hours, panels need to be vigilant about the need for the attendees to have comfort breaks during lengthy hearings and/or where any participant has personal circumstances that need to be considered. Breaks should be scheduled for lunchtime, and temporary adjournments allowed as necessary. Face-to-face hearings will not start before 10.30am to allow time for the panel and witnesses to travel to the prison and gain entry to the prison and hearing room.

---

<sup>50</sup> Panels are advised to pause and resume the recording if it is a short adjournment (for example up to 10 minutes) or stop and re-start the recording for longer adjournments (over 10 minutes).

- 5.40 If the hearing is going to take longer than expected, all participants should be consulted. For example, some attendees may have caring responsibilities or prisoners may miss set mealtimes or medication slots. If a proposed late finish is likely to cause any difficulties, it may be appropriate to adjourn the hearing and make the prison aware of this. For any hearings proposed to go beyond 17:00, the panel should first make sure that the prison is able to support a late finish and that participants are able to remain until the end of the hearing.

***Conduct, interruptions, and interjections***

- 5.41 The panel chair is responsible for maintaining the progress of the hearing. Rule 24(4) gives the panel chair power to ask anyone behaving disruptively to leave the hearing. The panel chair can invite that person to return to the hearing if they are able to moderate their behaviour.
- 5.42 Prisoner and witnesses should be discouraged at the outset from interrupting others' evidence. The prisoner may have questions or points of clarification to put to witnesses or the panel, but this can be allowed when it is their turn to put questions to the witness or make final submissions. The prisoner may be encouraged to make notes about issues arising during others' evidence. Observers are not permitted to contribute to the proceedings and can be removed from the hearing should they become disruptive or a distraction.
- 5.43 In some situations, the panel chair might interject to challenge the nature or style of questioning by a participant (including a co-panellist if necessary). Examples include questioning becoming adversarial or accusatory, unnecessarily distressing a witness, having no evident relevance to risk assessment, or turning into evidence-giving or opinion rather than genuine enquiry. However, care should be taken as interjections might be seen as affecting perceptions of fairness.
- 5.44 The panel chair should generally refrain from interjecting to ask questions when a co-panellist is leading the questioning of a witness unless a simple point of clarification is needed for the record. Frequent or intrusive interjection may affect rapport with witness and the flow of the hearing.
- 5.45 Witnesses should be asked to direct all their comments to the panel. Side-conversations with other participants (including checking a fact with the prisoner or answering an interruption) should be strongly discouraged by the panel chair.

***Indications that the prisoner is acting uncharacteristically***

- 5.46 Occasionally, during the course of a remote hearing, a witness may notice that the prisoner is not presenting themselves as they normally would. Under such circumstances, a psychologist or the COM/POM who knows the prisoner well may request a temporary adjournment. If the panel chair allows a break, the concerned witness can air their observations, but the other party (including the representative) must always be present during the conversation. Equally, concerns about the prisoner's ability to engage fully with the proceedings can be raised in this way. This would be particularly

valuable during a remote hearing where the panel may not have the full range of behavioural cues to guide them.

- 5.47 It is at the panel chair's discretion how the matter is resolved when the hearing resumes; the panel chair may wish to take advice from co-panellists in private. What is essential is that the representative should have been party to the conversation and that developments should be aired subsequently in the resumed hearing to ensure transparency. Advice on allowing temporary adjournments in the hearing is set out above.

### ***Keeping an official record of the hearing***

- 5.48 It is important that oral hearings are digitally recorded to ensure that the Parole Board is compliant with its legal obligations in the case of *McIntyre*<sup>51</sup>, which ruled that:
- it is the responsibility of the Parole Board to ensure that a proper record is made of each hearing and in particular the oral evidence given
  - the record of proceedings and evidence before the panel may be required to assist the court in any judicial review proceedings.
- 5.49 A proper record can also be essential if the evidence given is relied on at a further hearing and in any reconsideration application.
- 5.50 A digital audio-recording constitutes the official record of the oral hearing. The recording should commence at the outset of the oral hearing and conclude when the oral hearing ends. Recording must be paused as soon as an adjournment break takes effect and must be resumed immediately after participants re-enter the hearing room, or when the remote hearing resumes. There should be no recording of pre- and post-hearing discussions between the panel, nor during the reading of a Victim Personal Statement.
- 5.51 The panel chair has responsibility for making and preserving the recording in digital format. Audio-recordings must be stored safely and kept indefinitely. Either party may apply to the Parole Board for transcripts, but not the digital recording itself. Applications must be made to the Parole Board's Litigation Team within three months of the decision being issued. For more information, please refer to the Guidance on *Digital Recording of Parole Hearings*.
- 5.52 All oral hearing timetables will clearly state that proceedings will be recorded. Whilst it is considered best practice to announce at the beginning of the proceedings that they will be recorded, there is no need to draw more than minimal notice to this.
- 5.53 However, there will be occasions where circumstances or restrictions relating to a case at oral hearing dictate that a digital recording would not be made. This may be due to unavailability of equipment, the location of the proceedings (where electrical equipment is not permitted), the nature of the case, or the security level assigned to it, for example where a Special Advocate has been instructed and high security information is being

---

<sup>51</sup> *R (McIntyre) v Parole Board [2013] EWHC 1969 (Admin)*

discussed. Panel chairs will need to act carefully if recording cases with national security interests or where the prisoner is a protected person as necessary protocols may need to be put in place. Please contact the Practice Advisor in the first instance/

- 5.54 More information on digital recording of Parole proceedings can be found here: *Guidance on Digital Recording of Parole Proceedings*.
- 5.55 Technical advice on making a digital recording (EaseUs user guide) and instructions on storing the files (audio recordings repository set up guide) can be found on the IT SharePoint page.
- 5.56 The Parole Board hearings support team may be approached for help. Where technical problems occur with the digital recording system, the panel chair may direct queries to the Parole Board IT support team.
- 5.57 In exceptional circumstances, where a digital recording cannot be made, the panel chair should revert to taking substantive handwritten notes which will stand as the official record of the proceedings. If taking such a recording has been proscribed, all parties will need to be informed in advance of the hearing that this will be the case.
- 5.58 Whether or not a digital recording of the hearing is made, panel chairs are encouraged to take contemporaneous notes of the evidence. These can help identify gaps or queries concerning testimony and prompt follow-up questions. They may also become the official record of proceedings should the digital recording device malfunction. Co-panellists are also encouraged to make handwritten notes during the proceedings to support questions and evidence-taking, however, these will not form part of the official record of the hearing.
- 5.59 Panel chairs should record the start and end times of the hearing and the lengths of any breaks or adjournments, either verbally as part of the digital audio-recording or by noting down the details.
- 5.60 Digital recordings are also to be made during case management conferences or directions hearings.
- 5.61 Further information is available on SharePoint and in the *Guidance on Digital Recording of Parole Proceedings*.

### ***Time management***

- 5.62 The panel chair must ensure that the hearing progresses and keeps to expected time. Co-panellists also have a responsibility to maintain timings as previously agreed. Delays in commencing the hearing or over-running the expected hearing length can impact on participants and on any subsequent hearings during the day. Against the possibility of over-running, the panel chair should consider whether there is a risk that the second case cannot be heard and whether to foreshorten the first hearing by adjourning. Where a review has already been deferred or adjourned, it may be unfair to delay the process even further. Other circumstances must also be considered, including witnesses travelling a considerable distance to the hearing, having constraints



such as caring duties, experiencing health problems, release plans being time critical or otherwise waiting unprofitably for a hearing.

- 5.63 The panel chair should ensure that any delays to hearings and the causes of these are fully communicated to the waiting parties and witnesses as soon as practicable. They should be advised about revised timings.
- 5.64 The panel chair should keep a note of the timings of each hearing as part of the official record of the proceedings. This may be done verbally as part of the digital audio-recording or by noting down the start and end times of any temporary adjournments.

### ***Closing submissions***

- 5.65 If present at the hearing, the Secretary of State Representative must be given the opportunity to make closing submissions. Written submissions may also be available to the panel.
- 5.66 After all the evidence has been taken, the prisoner and their representative must also be afforded the opportunity to address the panel with a summary of evidence and closing submissions in accordance with rule 24(9). It is required to allow the prisoner and/or their representative to have the final word. Sufficient time at the end of the hearing must be allowed for this.
- 5.67 The panel may be asked by the representative to consider accepting written submissions following the hearing. This may only be necessary where the case is complex, the representative wishes to address a range of issues, or time is limited. If such a request is made, it is for the panel chair to decide the suitability and determine whether oral submissions are preferred. Should the panel chair agree, a deadline is to be set for submission so that the panel decision is not unduly delayed.
- 5.68 Directing substantive additional information or written representations will require an adjournment and the issue of a formal adjournment notice. The panel should confer privately as to the requirements but may canvass the representative or witnesses concerning possible contributions. Under these circumstances, the panel should agree a date and time for reconvening (known as the adjournment review date) to consider the case after the directed information/closing submissions have been received.
- 5.69 The statutory requirement that a panel decision is issued to the parties within 14 days<sup>52</sup> of the hearing will restart from the panel's adjournment review date.
- 5.70 However, should the information/closing submissions be submitted early, due to the Board's requirement to conduct a speedy review, the panel should endeavour to issue the decision as soon as possible, as the adjournment will cease at this point.

### ***Concluding the hearing***

---

<sup>52</sup> To ensure that the decision can be issued on time, the panel chair should send it to the Parole Board case manager within 10 days of the oral hearing (or the submission of new material).



- 5.71 At the end of the evidence-taking, the panel chair should conclude proceedings by:
- thanking parties and witnesses for their attendance and evidence;
  - advising next steps, including panel decision-making and the 14-day timescale for issuing the decision to the parties;
  - where relevant, reminding parties of the reconsideration and setting aside procedures and timescales<sup>5354</sup>. Please see the Guidance on *Reconsideration* and *Setting Aside* for more information.
- 5.72 Where it is possible and safe to do so, the panel chair may ask participants to wait briefly (outside the hearing room or by withdrawing from the remote hearing for a set time) while the panel checks it has all the material needed to reach its decision. Alternatively, in the case of an adjournment, future requirements and practical arrangements can be confirmed. Thereafter, participants can be stood down from the hearing.
- 5.73 Panel chairs should ensure that the decision is not announced at the hearing except in exceptional circumstances (see section 5.74). A decision is not made until it is issued to the parties, at which point the Parole Board becomes *functus officio*. It could change, therefore, up to the point of issue. Before that, it would be premature to raise expectations about release or progression which could result in disappointment. Announcing or implying the decision at the hearing can cause a reputational risk for the Parole Board if the panel were to change its mind. The decision could be very susceptible to being dismissed following reconsideration or judicial review. Indicating outcomes in this way may result more generally in prisoners expecting to receive decisions at their hearings and may create assumptions about the decision if a panel does not disclose it on the day. Additionally, when release is directed, release plans cannot be put into place and activated until the decision becomes final and the formal notification is received.
- 5.74 On occasion, further information may be received after the hearing but before the decision is issued (such as information about adverse developments). This gives further weight to the importance of not announcing or implying the hearing's outcome on the day. Advice about further information and the panel's decision is given at [paragraphs 6.46 - 6.50](#) below<sup>55</sup>.
- 5.75 However, there may be very exceptional cases where the panel consider that the immediate welfare of the prisoner is so precarious that awaiting the decision could be detrimental in terms of health and safety, and that the decision can be implied, albeit with suitable caveats. Such circumstances will be extremely rare.

## **6. After the Hearing**

---

<sup>53</sup> Decisions are eligible for reconsideration only where the prisoner is serving an indeterminate sentence; an extended sentence; or a determinate sentence subject to initial release by the Board under Chapter 6, Part 12 of the Criminal Justice Act 2003 (Rule 28(2) of the 2019 Rules (as amended)). The time limit for filing an application for reconsideration is 21 days after the decision under challenge has been issued to the parties. All release or no release decisions that meet the criteria can also be set aside. Please see setting aside guidance for timeframes on this.

<sup>55</sup> As informed by *Dickens v Parole Board & Secretary of State for Justice* [2021] EWHC 1166 (Admin)

***Post-hearing panel discussion***

- 6.1 The panel must engage in full post-hearing discussions following evidence-taking, final submissions and conclusion of the hearing. The discussions are held privately, without the parties, witnesses, or any other people present. An exception may be the presence of Parole Board sponsored observers, if the panel chair consents.
- 6.2 Following the *Decision-Making Framework*, the panel should discuss relevant aspects of the evidence and come to a decision based on the options made available to them in the Secretary of State's referral letter. Discussions should result in agreed reasons for a decision and any licence conditions that are required. Consideration of release must precede consideration of a recommendation for open conditions when both are options in the referral letter. For recall cases, if it is the first review since the prisoner's return to custody, the panel should discuss and record in the decision the appropriateness of the recall, on the basis of the material available at the time of the panel's hearing (in line with the caselaw of *Calder*<sup>56</sup>). Please see *Types of Cases Guidance* for more information on the test for release, criteria for open conditions and the caselaw of *Calder*.
- 6.3 A thorough post-hearing discussion will ensure relevant issues have been explored, evidence has been properly weighed, all panel members have expressed a view, and the resulting panel decision will be robust. It is best practice for the panel chair to invite contributions from co-panellists before expressing a personal view. It is important that all members of the panel are given the opportunity to participate and be heard.
- 6.4 An effective post-hearing discussion might include:
- weighing oral evidence from the prisoner and other witnesses to determine which evidence is preferred and why;
  - making findings of fact on sufficient evidence;
  - examining whether adjournment is - after all - needed for submission of additional evidence or representations and framing the contents of an adjournment notice;
  - considering sources of bias;
  - analysing critical risk factors and the panel's own assessment of serious risk of harm;
  - analysing relevant protective factors;
  - considering manageability of risk, possible signs of increased risk and levels of likely compliance or the impact of possible non-compliance;
  - assessing the robustness of the risk management plan;
  - agreeing additional licence conditions, and where these may be refused or agreed with variations, or sources of support and monitoring;
  - reaching firm decisions that balance risk, the test and risk management within the period of risk;
  - establishing key points for the decision and wording of particular issues or necessary signposting.

---

<sup>56</sup> *R(Calder) v Secretary of State for Justice [2015] EWCA Civ 1050*

- 6.5 It is good practice for the panel chair to keep a note of the post-hearing discussion to ensure that the issues raised by co-panellists, and the full reasons, are properly reflected in the decision. This is an aide-memoire to help the panel chair recollect significant points of evidence and arguments when drafting and is not disclosable as part of the formal record as the formal proceedings have come to a close. There is no scope for a panel chair or co-panellist to insist that a "minority view" is registered in the panel's decision. This document provides the final determination and must not imply whether the decision was unanimous or otherwise. Further advice about panel decision-making is provided below.

### ***Licence Conditions***

- 6.6 When setting licence conditions, panels must remember that they should be preventative as opposed to punitive and must be necessary and proportionate. In order to be lawful (in accordance with Article 8 and the ECHR generally), when setting licence conditions, the panel must strike a balance between the rights of the prisoner under this Article, and what is necessary and proportionate in the interests of prevention of crime and protection of the public. The following should be noted:
- Necessary: Any licence condition requested must have been identified to manage a specific risk or issue posed by the individual, without limitation to the current index offence; and
  - Proportionate: Any licence condition must be the least intrusive means of enabling that management.
- 6.7 There are a set of standard licence conditions which will apply in every case, although these must still be subject to a formal direction by a releasing Parole Board panel. These are set by the Secretary of State using a power in section 250 of the Criminal Justice Act 2003 and are contained in an Order made under that section.
- 6.8 If the panel considers that the standard licence conditions are not sufficient to assist the prisoner's successful integration into the community, to prevent further re-offending or to ensure the protection of the public, then they may consider the range of additional conditions.
- 6.9 There is standard wording for additional licence conditions. Should a panel wish to make changes to the wording of additional licence conditions due to the unique nature of a specific case, or an entirely new condition is needed, then this is considered a bespoke condition. Panels should make sure that any additional or bespoke licence conditions are not only necessary and proportionate but also practicable.
- 6.10 There are provisions for compulsory licence conditions for electronic monitoring for certain prisoners sentenced to 12 months or more for specific offences of acquisitive crime, and who reside in certain police force areas. If this applies, then the COM should bring it to the panel's attention in their report. Such conditions must be included on the licence.
- 6.11 Please refer to the Guidance on *Licence Conditions* for more detailed information about additional, bespoke, and compulsory licence conditions.

The table and criteria of additional licence conditions can be found on SharePoint.

### ***Panel decision-making***

- 6.12 In coming to its decision, a panel should follow the principles of the *Decision-Making Framework*. Where the referral from the Secretary of States includes consideration of release and of suitability for open conditions, the panel must first consider whether the test for release is met and, if release is not directed, to then consider suitability for open conditions.
- 6.13 The statutory test for directing release and the criteria to recommend the transfer to an open prison is referenced above at [paragraphs 3.11 - 3.18](#). Please refer to the *Types of Cases Guidance* for more detailed information.
- 6.14 As outlined above, the panel should discuss the case and weigh crucial evidence in detail after the hearing with the aim of coming to an agreement. In making decisions, all members have equal status, and no panel member has a casting vote. Panel members should take an active part in deliberations, demonstrate sound judgement in a structured decision-making process and utilise specialist advice as necessary to deliver a prompt decision. All panel members must have been present at the hearing and privy to deliberations to be part of the decision-making process.
- 6.15 If there are 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. 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.
- 6.16 A case cannot be concluded with a split decision by a two-member panel. For this reason, the need for a three-member panel might be foreseen and directed at the MCA stage. That is, when the MCA member considers that the decision may be so finely balanced that a split decision from a two-member panel is highly possible.
- 6.17 If a two-member panel is finding it hard to reach an agreement, they should carefully consider whether further written or oral evidence may assist them, and if so, whether to adjourn to enable this to be obtained. If an agreement cannot be reached after a thorough review of the evidence and test, the panel will need to be dissolved and the panel chair will need to formally defer the case so that a new panel can be convened to hear the case. The 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 panel chair may issue directions for further information and witnesses 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 fetter the assessment of a future panel. No record of the evidence heard, or any assessment or analysis of risks, can be included in such a deferral notice. It is

good practice to include a third member in the logistics for the new panel to avoid risk of another split decision.

- 6.18 Wherever possible on the day, panels should reflect on the hearing and its procedures, and on the processes of panel debate and decision-making. As part of reflective learning, panels should consider the success of constituent elements of the day and what they might do differently in future. This review may be initiated by the panel chair but can be introduced by any panel member. Where feedback is offered or sought concerning individual performance, colleagues should act and respond sensitively and constructively. They should offer factual instances of behaviour and critique its success by means of positive dialogue and discussion.

### ***Post-hearing adjournment***

- 6.19 Panels may decide, in the light of post-hearing discussions, that it is necessary to adjourn a review if further evidence or additional submissions are needed to reach a full and fair decision. In these circumstances, an adjournment notice must be issued on the panel chair directions template with directions for the material to be submitted.
- 6.20 The panel should make every effort to consult with witnesses to set a likely date for compliance with directions as needed or agree a date to reconvene an adjourned hearing if this seems likely. Alternatively, the case may be subsequently decided on the papers. The panel chair will retain responsibility for the case and should work closely with the Parole Board case manager and co-panellists to ensure the case progresses towards the reconvened hearing or a final decision.
- 6.21 Under rule 25(6), the Parole Board must issue the decision within 14 days of the oral hearing. Where despite all efforts, a decision cannot be provided to the parties within 14 days of the hearing (allowing that four of these days will be needed for the case manager to process and issue the decision), the panel chair must formally adjourn the case. An adjournment notice must be issued as soon as possible, using the appropriate template, to inform parties of a delay and to indicate when the decision will be made available.
- 6.22 Please refer to *Guidance on Adjournments and Deferrals* for more information.

### ***Agreeing, preparing, and issuing the written decision***

- 6.23 Under rule 25(6), the decision of the panel must be recorded in writing with reasons, and that record must be provided to the parties not more than 14 days after the end of the hearing. As this is a statutory requirement, the 14-day time period must be complied with.
- 6.24 When writing decisions, panel chairs 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.

- 6.25 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.
- 6.26 Reasons must apply the test for release<sup>57</sup>. The test is automatically included on the decision template and must not be summarised or truncated in the body of the decision.
- 6.27 If relevant, the criteria for suitability for open conditions is also automatically included on the template. In the narrative section of the decision, members must consider the risk of harm when making a recommendation for open conditions and the reasons should cover each of the criteria.
- 6.28 Please refer to section [3.11](#) for more information on the test for release, and [3.16](#) for more information on the criteria for open conditions.
- 6.29 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.
- 6.30 The 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 had the test for release not been 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.
- 6.31 However, if the test for release is not met, then the panel should go on to consider the criteria for open conditions.
- 6.32 In terms of good presentation, 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.
- 6.33 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 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

---

<sup>57</sup> The 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.



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 and at oral hearing.

- 6.34 Where the panel's decision/recommendation differs from evidence in key reports or from witnesses, the reasons should clearly set out why the panel took a different view.
- 6.35 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.
- 6.36 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.
- 6.37 For any decision made following MCA assessment, the appropriate decision template must be used, as follows:
- Paper decision template** – for decisions made on the papers (under rule 21 or 23) up to the oral hearing date, on the template, the review type selected must be 'Post Member Case Assessment'
- Oral hearing decision template** – for decisions made from the hearing date onwards (this template can be used even if the hearing convened and was then adjourned on the day)
- 6.38 Members should follow the *Reasons Writing Guidance*. Additional guidance on writing decisions is set out in Annex 1 in the form of a checklist. This is not intended to replace the Reasons Writing 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.

### ***Agreeing the written decision***

- 6.39 The written decision must have the approval of all panel members. The panel chair must prepare a draft of the written decision that reflects the agreed views of the panel, and the outline settled before members dispersed on the day of the hearing (or subsequently agreed by email in the case of additional information being submitted and the hearing not being reconvened). The draft of the decision must be emailed to co-panellists for their comments. Drafting suggestions should be considered open-mindedly by the panel chair and amendments made as necessary before the decision is submitted to the Parole Board case manager.
- 6.40 All panel members have a duty to read, check, and, if necessary, propose edits and return the draft to the panel chair. Co-panellists have an essential



role to play in checking the accuracy, coverage, and presentation of the draft. They are equally responsible with the panel chair for the quality of the decision and must respond fully and promptly to the chair's invitation for comments. Any holidays or commitments that may impact on the timing of the decision need to be communicated between the panel members as early as possible to ensure that sufficient time is available for the drafting and checking of a decision.

- 6.41 Given the statutory timescale, the panel chair must complete a draft to schedule, as soon after the hearing as possible, while facts and deliberations remain fresh in mind. This schedule has to allow time for:
- the draft to be emailed to co-panellists who consider the content and suggest amendments by return
  - the panel chair to make changes and submit the final decision to the Parole Board case manager
  - the Parole Board case manager to issue the decision by the 14-day deadline.
- 6.42 If, for any reason, the written decision will not be issued in line with the 14-day timeframe set down in rule 25(6), the panel chair must issue an adjournment notice on the appropriate template to account for delay. This notice should explain its causes and give an expected date for issue of the written decision.

### ***Absence of the panel chair***

- 6.43 If a panel chair is expected to be absent for a prolonged period, co-panellists should seek the advice of the Parole Board's Practice Advisor. The following options can then be explored:
- 1) A co-panellist who holds panel chair accreditation is asked to take on responsibility for writing the decision.
  - 2) If none of the co-panellists hold chair accreditation, a co-panellist who has undertaken chair training and is on the pathway to accreditation is asked to write the decision.
  - 3) If the co-panellists have not undertaken chair training, a co-panellist who is MCA accredited is asked to write the decision.
  - 4) If none of the above apply, a co-panellist is asked to write the decision with support from an experienced panel chair. The experienced panel chair would act as a mentor providing advice on the drafting of the decision; they must play no role in contributing to or influencing the decision-making of the panel.
- 6.44 The panel member drafting the decision must have access to the recording of the hearing and should (where possible) have access to any notes made by the panel chair. The decision is that of the panel so the draft decision must have the approval of the other co-panellists.
- 6.45 If the co-panellists are not able/willing to take on responsibility for drafting the decision, the case will need to be deferred and a new panel appointed.

### ***Further information received following the oral hearing***

- 6.46 Occasionally, information is sent to the Parole Board after an oral hearing has concluded which indicates a change in circumstances, such as so-called "adverse developments". Examples may be evidence of failed drug tests or other significant negative custodial conduct, unforeseen criminal allegations or charges, or breakdown in critical release arrangements. These developments may have a bearing on the risk posed by the prisoner and therefore on continued suitability for release or transfer to open conditions.
- 6.47 In the event that further information is submitted before the decision has been issued to the parties, the case manager should pass this information on to the panel for consideration.
- 6.48 At this time, the panel has a duty to consider any additional information that is submitted. The panel chair should lead the panel in determining the weight of the new information, its impact on the decision, and subsequent action that may be needed. The panel should look collectively at the information and assess whether it is relevant to risk and, if so, whether it changes their view. Representations from both parties must be sought formally during this process.
- 6.49 The panel may decide to direct the submission of further evidence and may determine that a further oral hearing is required. Under these circumstances, the panel chair must issue new directions with an explanation of developments that prompted the review. In deciding how to proceed, the panel should keep in mind the overriding principles of protection of the public and fairness to the prisoner.
- 6.50 After due consideration, whether or not a further oral hearing is required, the panel will agree the decision. This should reflect the further information, its assessment by the panel, and its relevance to risk.
- 6.51 In the event that further information is submitted after the decision has been issued, it may be possible for the decision to be set aside and for the panel to consider the new information. For more information on the set aside process and eligibility, please refer to paragraph [6.78](#) onwards.

***When the panel decision is made***

- 6.52 Under the Rules, a decision is "made" at the point it is issued to the parties.
- 6.53 The Parole Board has discharged its statutory responsibility once the decision is made and no longer has the jurisdiction to consider the prisoner's case. The Parole Board is "*functus officio*".
- 6.54 The only change that can be made to a written decision once it has been made (i.e., issued to the parties), is to correct any accidental slip or omission under rule 30(1) or where there has been an error of procedure under rule 29. If such a request is received, the panel must consult the Practice Advisor.
- 6.55 At this stage, the decision remains provisional if it is subject to reconsideration, otherwise it becomes final.

**Reconsideration Mechanism**

- 6.56 The Reconsideration Mechanism is provided for by rule 28. It provides a route for either of the parties to make an application for a provisional parole decision to be reconsidered before it becomes final, where one of the following situations may apply:
- Procedural unfairness - the correct process was not followed in the review of the prisoner for parole - for example, important evidence was served by one party but not made available to the other.
  - Irrationality - the decision makes no sense based on the evidence of risk that was considered and that no other rational panel could come to the same conclusion.
  - Error of law – the decision maker may have acted without/outside their jurisdiction, tried to use a power they did not have, or acted in a way which is inconsistent with wider case law.
- 6.57 If an application for reconsideration is made, the decision remains provisional until the application is determined. If reconsideration is directed, the case goes back to the stage it was at when the decision being reconsidered was made, unless directed otherwise. If the application is rejected, the decision then becomes final.
- 6.58 Please refer to the *Guidance on the Reconsideration Mechanism* for more details on eligibility and the grounds on which a decision can be challenged.

**Requests to Amend the 21 Day Time Limit**

- 6.59 An application must be received within 21 days of the provisional parole decision being issued to the parties. Any requests made after the 21-day period will not be accepted by the Parole Board. However, there may be exceptional situations outside of the control of the parties that result in the provisional parole decision (full or summary) not being received in good time, or other factors affecting the time in which a reconsideration application can be made. As such, it is possible that the Parole Board will receive requests for an extension to the time limit for making a reconsideration application. There may also be exceptional situations where a party will wish to seek a reduction to the 21-day time, for example in the case of sudden onset illness or the need for release by a near future date to an address with specialist facilities. Rule 9 provides power for varying time limits. As such, requests to reduce or extend the time limit for submitting an application can be considered. All such requests must be received within the 21-day period.
- 6.60 Requests to vary the time limit may be made at the time of the oral hearing, after the hearing but before the provisional decision has been issued, or after the provisional decision has been issued to both parties. Requests that are made either at the time of the oral hearing or before the provisional decision has been issued should be considered by the panel chair. Requests that are received after the provisional decision has been issued will be put to a duty member to consider. The panel chair may also identify the need to vary the time limit when they feel it is necessary for effective case management.
- 6.61 The panel chair is only considering the need to extend or reduce the time limit and not the reconsideration application itself.

- 6.62 The panel chair may wish to bear in mind, in relation to requests to extend the time limit from the Secretary of State, that the prisoner will continue to be detained for as long as it takes to determine the application for reconsideration, and so any extension of the time limit will prolong their detention. This is why the time limits in rule 28 are deliberately quite short.
- 6.63 Upon receipt of an extension/reduction request, the other party should be provided with the opportunity to submit representations in response. A tight timeframe, usually one working day, should be provided to ensure that the request is dealt with efficiently. Where the panel chair has identified the potential need to vary the time limit, they must seek representations from both parties before making a decision.
- 6.64 When considering whether to extend or reduce the time limit, the panel chair should bear in mind that the 21-day time limit is the time set out in statute and should be followed unless there is a very good reason not to.

### ***Consideration***

- 6.65 The panel chair will need to check that it is clear who is making the request and that there is enough information within the request to enable proper consideration. They will also need to check whether representations from the other party have been obtained. If not, these should be sought as a matter of urgency.
- 6.66 The principal considerations are:
- Is there evidence of exceptional circumstances?
  - Would not extending/reducing the time limit be unfair or result in unreasonable disadvantage to the requesting party?
  - Would extending/reducing the time limit be unfair or result in unreasonable disadvantage to the other party?
  - Would extending/reducing the time limit be unfair or result in unreasonable disadvantage to the victim?

### ***Extending the time limit***

- 6.67 When considering whether to extend the time limit, the following examples may assist, bearing in mind there should be a high threshold for granting an extension, and that the circumstances must be exceptional:

#### Prisoner Requests

- Are there circumstances that will delay the prisoner receiving the provisional decision and which will reduce the timeframe within which to make an application?
- Are there circumstances that will prevent the prisoner's representative from being able to have timely access to their client to take instruction?
- If unrepresented, will the prisoner receive appropriate support and advice on the implications of the provisional decision and options available?

- Will the prisoner need the provisional decision to be translated into another language or alternative format which will delay making an application?

#### Secretary of State Requests

- Are there circumstances that will prevent the Parole Board decision summary ('PBDS') being sent out with enough time for any victim to consider asking the Secretary of State to make an application?
- Will a victim be away or out of the country when the PBDS is expected to be issued?
- Are there circumstances that will prevent the Secretary of State from being notified of the provisional parole decision in good time?
- Are there circumstances that will prevent the Secretary of State from being able to process a request from a victim in a timely manner?
- Will the Secretary of State need to obtain information from a third party in order to make an application and are there circumstances that might delay its receipt?
- Would an extension have an impact on the release management plan (for example, no impact if a bed will not be available anyway until after any extension period granted)?

### ***Reducing the time limit***

6.68 When considering whether to reduce the time limit, the following examples may assist, bearing in mind there should be a high threshold for granting a reduction, and that the circumstances must be exceptional:

- How long will the remaining provisional period be (a small reduction is more likely to be fair and reasonable than a large one)?
- Would a bed space in Approved Premises be lost if the decision were to remain provisional for 21 days?
- Would the prisoner not be able to attend, for example, a hospital appointment or receive medical treatment in the community if the decision were to remain provisional for 21 days?
- Have there been delays in the parole process that are not the fault of the prisoner, but which have put them at a disadvantage?
- Is the prisoner suffering from a terminal illness or are there other strong compassionate reasons for reducing the time limit?

6.69 When considering whether to reduce the time limit, the position of the victim must always be taken into account. The 21 days is set out by the Rules with the intention of giving the victim enough time to obtain a PBDS, consider it, identify any potential grounds of irrationality or procedural unfairness, and ask the Secretary of State to make an application for reconsideration. The Secretary of State will also need time to consider whether to make an application. Reducing the time limit may have the effect of disenfranchising the victim. This will always act as a factor against reducing the time limit except in cases where there are no victims who might want to consider reconsideration, or victims have indicated that they do not want to (or otherwise have no objection).

### ***Making the decision***

- 6.70 The starting point should be that the time frame set out in statute should be followed unless there is a very good reason not to. In the majority of cases, this will not cause a substantive delay to release. Rule 9 should only be used to amend this time limit in exceptional, not normal, circumstances.
- 6.71 The panel chair will need to take all factors and representations into account and then use their judgement to carry out a balancing exercise to assess whether the use of rule 9 would be fair to both parties and appropriate in the circumstances.
- 6.72 The decision must be clearly state ("extension request granted" or "extension request refused"; "reduction request granted" or "reduction request refused", as appropriate). If the request has been received by one of the parties the panel chair should state which party is seeking the request. In all cases, a brief summary of why the extension or reduction is needed should be given. Full reasons for the decision to grant or refuse the request must be provided.
- 6.73 A reconsideration application is not an appeal against the decision, but a challenge to the procedure that arrived at the decision. The word "appeal" should not be used.
- 6.74 If an extension or reduction of the time limit is directed, a new deadline for the submission of an application must be set. Currently, the practice is that extensions are set for a period of up to seven days. However, the period of extension which a member may direct is at their discretion. A period longer than the seven days may, therefore, be directed if the circumstances warrant it.
- 6.75 Both parties must be informed of the outcome of a request from one of the parties or if the panel chair decides to extend/reduce the time limit in the absence of a request.
- 6.76 If there is not enough information to fairly consider the need to extend/reduce the time limit, further information can be requested. A very short deadline to provide the additional information should be set, ideally no more than 48 hours. If the information is not received within 48 hours, a final decision on the request should be made, at the discretion of the panel chair.
- 6.77 Not all cases are eligible for the reconsideration mechanism. Any queries on whether the extension/reduction request is in respect of an eligible case should be referred to the Secretariat in the first instance for advice how to proceed.

### ***Setting Aside a Parole Board decision***

- 6.78 Following the commencement of section 133 of the Police, Crime, Sentencing and Courts Act 2022 on 28th June 2022, the Board has the power to set aside a decision (where the criteria and tests have been met). This power is set in rule 28A of the Parole Board Rules 2019 (as amended) implemented on 21st July 2022 and it applies to final decisions in eligible cases made on or after that date.

- 6.79 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, where:
    - new information has come to light that was available but not shared with the panel, or
    - there has been a change in circumstances after the decision was made.
- And the new information or changing circumstances could have changed the panel's mind about release.
- 6.80 The decision under challenge must be a final decision made 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. Parties to the proceedings can apply for decisions to be set aside in addition to the Parole Board initiating this on their own accord.
- 6.81 The set aside process only becomes effective when an application has been sent into the set aside inbox.

***Amending time limits***

- 6.82 Rule 9 allows the 21-day time limit when submitting a request to set aside a decision, following an error of law or fact, to be extended or reduced.
- 6.83 This should only be done in very exceptional cases. The starting point will be that the time frame set out in statute should be followed unless there is a very good reason not to and both parties should be allowed to comment on any proposal to extend or reduce the time frame.
- 6.84 Any requests to vary the 21-day time limit should be sent to the setting aside inbox where they will be considered by the set aside team.
- 6.85 For more information on the power to set aside, please refer to the Guidance on *Setting Aside a Decision*.

[END]



## **ANNEX 1 Guidance for Writing Decisions**

For decisions at post MCA, the appropriate template should be used (see paragraph [6.37](#)). 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 and oral hearing template fully and accurately will ensure the following is recorded:*

- the date of paper review and paper review type – select 'Post Member Case Assessment (MCA)' (*applicable to paper template only*)
- date of hearing (*applicable to oral hearing template only*)
- 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 parties (prisoner and Secretary of State (where a view has been expressed))
- 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, SED (*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.

Where applicable, an information sheet will automatically be added as an annex to the decision. This sets out any potential applications available to the parties under the Parole Board Rules 2019 (as amended) if they wish to challenge the decision.

*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* caselaw<sup>58</sup>)
- 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
- 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/assessment 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

---

<sup>58</sup> *R(Calder) v Secretary of State for Justice [2015] EWCA Civ 1050*

- licence conditions, explained and justified as necessary and proportionate (including a rationale for any divergence from the proposed risk management plan)
- 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*

- where the referral is for consideration of release and of suitability for open conditions, address the test for release and the Directions for recommending transfer to open conditions separately and in that order (reasons should cover all the criteria)
- 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, clearly listed at the end of the decision, using standardised wording (where relevant)

[END]