

[2024] PBPH 4

## Application for a Public Hearing in the case of Mr Benjamin James Fish

**Outcome:** A public hearing has not been granted. However, if the victims wish, the Parole Board will explore whether it may be possible to support the victims observing the private hearing, subject to conditions, if appropriate arrangements can be made.

### Background Information

1. The Parole Board is an independent body which acts as a court when deciding whether prisoners in England and Wales are safe to be released, or not, and makes recommendations to the Secretary of State on a prisoner's suitability for open conditions if the release test has not been met. Prisoners are referred to the Parole Board only after they have served the minimum period for punishment set by the sentencing judge ('the tariff'). When considering a case, the Parole Board's role is to consider whether a prisoner's risk can be safely managed in the community. This is the test set out in the relevant legislation. The Parole Board will not direct release of a prisoner unless it is satisfied that their risk can be managed. Public protection is always the Parole Board's primary concern.
2. If the Parole Board decides that a prisoner's risk cannot be safely managed in the community, the Secretary of State will automatically refer the prisoner back to the Parole Board for another consideration of their risk in due course.
3. Parole Board hearings are usually held in private, however, where it is in the interests of justice, the Chair of the Parole Board can direct that a hearing be held in public. The Parole Board has Guidance on the Criteria for Public Hearings for the Chair to consider when making a decision ([Applying for a Parole review to be public - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/parole-board-public-hearings)).



4. The definition in the Victims' Code of a victim is '*a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; a close relative (or a nominated family spokesperson) of a person whose death was directly caused by a criminal offence*'. A victim may also be someone who has opted into the Victim Contact Service which is run by the Probation Service. A victim, as well as the parties and members of the public, may ask for a public hearing. Before deciding whether the application meets the interest of justice test, the Chair asks for representations from the parties to the case – namely the Secretary of State and the prisoner, usually through their legal representative. The Chair will also ask the Secretary of State to find out the views of any victims involved with the case. The Secretary of State will usually seek the views of victims who are signed up to the Victim Contact Service. In some circumstances the Secretary of State may choose to seek the views of victims who have not opted into Victim Contact Service or are not eligible for the service for technical reasons. This is a matter for the Secretary of State. The Parole Board does not generally have direct contact with victims.
5. A test in the South-West of England is currently being conducted by the Ministry of Justice on victims automatically having the right to attend private hearings. The expectation is that this will be rolled out across England and Wales during 2024. Victims attending a private hearing have to agree to maintain the privacy of that hearing. Different rules apply to public hearings.
6. Each year the Parole Board is asked by the Ministry of Justice to review the risk of approximately 900 prisoners with a conviction for murder and approximately 900 prisoners with a conviction for rape. Each prisoner referred to the Parole Board has caused immense pain to the victims or their family and loved ones. The Parole Board tries as best it can to take this into account, but it must decide any referral according to the test set out in law which is focussed on risk.

## Background to the case

7. On 6 October 2014, Mr Fish was sentenced to an extended sentence for 16 years comprising of a custodial term of 12 years and an extended licence period of four years. This sentence was imposed for four offences of oral rape of a female child under the age of 13 years, with concurrent sentences for sexual assaults of a female child under 13 years, causing or inciting a female child to engage in sexual activity and engaging in sexual activity in the presence of a child. Mr Fish committed the offences between 2005 and 2006 against two victims.
8. Mr Fish became eligible for consideration for parole in June 2022. His conditional release date is in June 2026 and his sentence expiry date is in June 2030.



9. Mr Fish has been in open prison conditions since September 2021.
10. This referral was considered by a member of the Parole Board on 7 November 2023 and the matter was directed to an oral hearing, to consider evidence before making a final decision. This is Mr Fish's second review by the Parole Board. His last oral hearing took place in November 2022 and that panel did not direct release.
11. The oral hearing is listed for 30 April 2024.
12. Mr Fish was aged 29 to 30 years old at the time of the index offences. Mr Fish is now 47 years old.

### **Details of the Application and Representations**

13. The Parole Board received an application for Mr Fish's oral hearing to be held in public on 18 December 2023. In summary, the reasons given for the application for a public hearing were:
  - a. The applicant is interested in the parole process and how the offender has progressed through his sentence including any admissions and any work done to address his offending.
  - b. An application for a public hearing was submitted ahead of the last parole hearing but it was received too late to be considered. This application is in time for consideration by the Chair.
14. On 20 December 2023 the Parole Board asked for representations from the parties to the case, namely the Secretary of State for Justice and Mr Fish. Mr Fish is not legally represented and no representations have been received from him.
15. An extension request made on behalf of the Secretary of State was granted until 22 January 2024.
16. In summary, the representations made on behalf of the Secretary of State (dated 17 January 2024) were:
  - a. Increased transparency is vital to building public confidence in the parole system, particularly for the most serious offenders.
  - b. The Secretary of State supports the application and asks that proper weight be given to the reasons for the application.
  - c. Should a public hearing be granted, appropriate arrangements will be made to support the victims.
  - d. Should a public hearing be granted, the Secretary of State requests that witnesses be identified by their job title rather than their name.

e. The Secretary of State has been informed that Mr Fish will be self-representing at the hearing.

17. I have also consulted with the Panel Chair as the Panel Chair is most familiar with the details of the case and is therefore best placed to assess: (i) if a public hearing would cause a victim or prisoner undue distress or prevent best evidence being given by witnesses; (ii) if it could adversely affect a prisoner's ability to safely resettle in the community; or (iii) if it could compromise the panel's ability to assess risk.

18. The Panel Chair made some observations including:

- a. There are no special features of this case.
- b. Mr Fish's communication style can be aggressive and jarring which may cause distress to the victims.
- c. Mr Fish has communication challenges and the additional stress of observers may impact on his ability to communicate.
- d. The Panel will hear personal medical evidence and therefore some parts of the hearing will need to be in private.
- e. There may be some inhibition on Mr Fish openly discussing his sexual attraction to children which could impact on the Panel's risk assessment.
- f. A summary could be produced.

## Reasons for the Decision

19. I have considered all the information in the application and the representations. I have also taken account of the Parole Board's *Guidance on the Criteria for Public Hearings*.

20. The normal position is that parole hearings will remain in private. This is because it is of paramount importance that witnesses are able to give their best evidence. Furthermore, evidence can relate to highly personal matters including health and evidence that may be distressing to victims. There must therefore be good reasons to depart from the general rule. However, where there are good reasons to depart from the general rule, adjustment can be made to ensure that a public hearing is fair.

21. It should be clear that I would not grant an application to have a hearing in public in circumstances where I thought that a public hearing would impact on the fairness of the hearing.

22. I note that, should a hearing be held in public, it is always open to the Panel Chair to use their case management powers to manage the hearing and to suspend a hearing if they feel that the proceedings are becoming unfair.

23. I note the high bar that has been set for a public hearing to be in the interests of justice and I have decided that this high bar is not met in this case. My reasons are as follows:
- a. I have the deepest sympathy for the victims and I cannot imagine the devastating effects that these offences have had on them.
  - b. Although this case of sexual offending against children is distressing, there are no special features of this particular case which set it apart from other cases and which may therefore add to the proper public understanding of the parole system.
  - c. The reasons given for the application for a public hearing are that the applicant believes that their attendance at the hearing would be beneficial to them, by observing the parole process and understanding any progress made by Mr Fish. This benefit can be achieved in an alternate, more proportionate way by allowing the applicant or any other person who wishes to do so to observe the private hearing, as covered in more detail below.
  - d. A summary would, as in all other cases heard by the Parole Board, provide sufficient information to the public for the reasons for the decision made at Mr Fish's oral hearing. This would satisfy the requirements of transparency without prejudicing the effectiveness of the hearing.
24. I therefore have not granted the application for the hearing to be held in public.
25. The Parole Board is willing to explore the feasibility of supporting the victims to observe the private parole hearing subject to conditions and proper support being in place. The victims are invited to contact the Parole Board to discuss the potential arrangements and support that may be needed by emailing [CEO@paroleboard.gov.uk](mailto:CEO@paroleboard.gov.uk).
26. It is ultimately for the Panel Chair to make the final decision on attendance at a private hearing and being satisfied that appropriate arrangements can be made.
27. If permission is granted by the Panel Chair for any person to observe the private hearing, I note that some parts of the hearing may need to take place without the presence of the observers. The Panel Chair has extensive case management powers to enable the relevant parts of the evidence to be taken without the presence of the observers and is best placed to make the decisions on how these powers should be used in Mr Fish's case should the Panel Chair grant permission.
28. If permission is granted, the Panel Chair may also need to hold a preliminary hearing to deal with any practical matters associated with this hearing.

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

**Caroline Corby**  
**The Chair of the Parole Board for England and Wales**  
**6 February 2024**