

VICTIM OBSERVING A PRIVATE HEARING

INFORMATION SHEET FOR PANEL CHAIRS

Contents

1. Introduction	2
2. The Parole Board Rules	2
3. Eligibility	3
4. Timing of applications	3
5. The application process	3
Application information	4
Representations from the parties	5
6. Principles for panel chairs	6
7. Panel chair considerations	6
Victims signed up to the VCS	7
Victims not signed up to the VCS	7
8. The decision	8
9. Preparing for the hearing	9
Case management conferences	9
Naming attendees at the oral hearing	10
Naming the prisoner	10
Who should be on screen	10
Open and closed sessions	11
Closing submissions	11
Logistics for the oral hearing	12
Timetable	12
10. On the day of the hearing	12
Pre-hearing activity	12
Live-stream	13
Taking breaks or pausing the live-stream	13
Technical arrangements	14
The victim	15
Confidentiality agreements	16
11. After the hearing	17
12. Other circumstances	17
Objections on the day	17
Reading a VPS	17
Victim with mobility restrictions	18
Observing on behalf of a Victim	18
Official Representative	19
Prisoner engaging with the victim	19
Other prisoners as victims	20

1. Introduction

This information sheet provides advice for panel chairs on considering applications from a victim to observe a private oral hearing. Where it is agreed that the victim can observe the hearing there is additional advice and best practice on what will need to be considered ahead of the hearing, and on the day.

Permission for victims to observe private parole hearings is part of the drive to improve transparency of the Board's work and was a commitment made within the *Root & Branch Review of the Parole System*. It is therefore important that proceedings provide a true reflection of how parole hearings work, whilst maintaining the overarching objectives regarding the protection of the public and fairness to the prisoner.

Whilst the Parole Board Rules have always provided for observers, this has only recently been made more openly available for victims to apply. At the current time, victims observing is only being tested in the South-west probation region and Greater Manchester probation region (testing phase) in order to ensure that victims who observe can be properly supported and that the proceedings can effectively take place.

This bespoke guidance should be read in conjunction with the more general guidance on observers at private parole hearings.

There is separate guidance for panel chairs in cases where a victim is attending a public parole oral hearing.

2. The Parole Board Rules

Whilst the Parole Board Rules require parole oral hearings to be held in private, they also allow for individuals to apply to observe, subject to the agreement of the panel chair.

Victims can apply to observe a private parole hearing under Parole Board rule 14. Victims apply as "any person" under rule 14(4B):

14 (4B) Any person may request admittance to an oral hearing as an observer under paragraph (4A)(a) by making a written application to the Board, but such an application may not be made later than 3 weeks before the date allocated for the oral hearing under rule 22.

Where a victim observes a private parole oral hearing, information from the proceedings remains confidential and must not be disclosed, as set out in rule 15(3) as this may lead to committing a criminal offence. Victims will be required to sign a confidentiality agreement in order to observe.

Any victim who observes a private parole oral hearing will need to follow the *Points for Observers to Note* set out in Section Five of the Observer Guidance.

3. Eligibility

Statutory victims signed up to the Victim Contact Scheme (VCS) are entitled to request that the Secretary of State (SSJ) make an application to the Parole Board for them to observe an oral hearing.

Victims who are signed up to the VCS on a discretionary basis will need to discuss with their Victim Liaison Officer (VLO) the options available to them. In general, victims offered the VCS on a discretionary basis are not permitted to submit a Victim Personal Statement (VPS), but they should be able to request to apply to observe an oral hearing.

Statutory victims and those offered the VCS on a discretionary basis will need to ask their VLO to notify the HMPPS Victims Team (and PPCS), who in turn will make the request to the Parole Board using a Stakeholder Response Form (SHRF).

Victims who are not signed up to the VCS may apply to the Parole Board direct if they wish to observe the prisoner's oral hearing.

4. Timing of applications

The application will need to be made within the timeframes set out in the Rules. Rule 14(4B) sets out that an application from any other person, which includes victims, must be made no later than three weeks before the oral hearing¹.

The Board encourages VLOs to discuss the option to apply to observe as early as possible, ideally as soon as they become aware that an oral hearing has been directed. However, it is appreciated that this is an important decision for the victim to make and can take some time to consider.

Whilst applications should be made no later than three weeks before the oral hearing, panel chairs do have discretion to consider applications made nearer to the date of the oral hearing. Late applications must be accompanied by a request for it to be considered out of time with cogent reasons provided for its late submission. It is then for the panel chair to decide whether to accept the late application using the power contained in rule 9 to vary the timeframe.

Panel chairs will need to consider if there is sufficient time to prepare effectively ahead of the oral hearing (which most likely will require convening a case management conference), particularly where non-disclosure has been requested.

Feedback from testing indicates that anything less than three weeks before the oral hearing will make it extremely difficult to make suitable arrangements in time.

5. The application process

The Victim Representative within the HMPPS Victims Team will submit an SHRF making the application for the victim to observe.

¹ It is understood that this timeframe is to be reviewed and amended in 2024

Application information

The following information should be provided in the SHRF in order for a decision to be made:

- The application must clearly state if it is in time, if not, a late application must be submitted to consider the application under rule 9.
- The name/s of the victims* (or the family member) who wish to observe;
- Confirm that they are signed up to the Victim Contact Scheme (VCS) either as a statutory victim or on a discretionary basis;
- Whether they wish to have someone else (for example family member or friend) attend to provide personal support (including whether they would also observe or just be close by);
- Who will provide the official support, this will usually be an HMPPS Victim Representative;
- Whether the relevant Victim Liaison Officer (VLO) would also be in attendance or observe;
- The proposed location from where the victim will observe the hearing;
- Whether the victim would wish to see the prisoner on screen or not;
- If the hearing is part-heard, the application must clearly state if the applicant is aware of this when submitting their request;
- If there is a change in the prisoner's name, the application must clearly state if the applicant is aware of this when submitting their request.

** The SHRF may not name the victim if there are concerns about disclosing such information to the prisoner. However, there should be sufficient information to confirm the status of the victim. The request may be made with a non-disclosure application. In many cases it is likely the prisoner will know who the victim making the application is and so withholding such information has little merit.*

Where a victim asks for other individuals to accompany them for personal support (family member, friend etc) the panel chair should consider whether this would have any additional impact on the hearing. It may be that the individual can be close by but not in attendance during the live stream. The Parole Board has no authority to consider requests for other individuals to attend a Probation Service office or other agreed official location, and can only direct who should be in the room where the proceedings will be live streamed.

If the application is to request that an "official" observe on behalf of a victim, then the following information must be provided:

1. Name and role of the "official"
2. Are they be looking to disclose parts of the hearing?
3. Who are they looking to disclose parts of the hearing to?

More information about "official" observers can be found in section 12 Other Circumstances.

The SHRF may mention the reading of the VPS although this will most likely have already been considered separately. Requests to observe the hearing are separate to requests to read out a VPS. The two processes should be considered as separate events.

The reading of the VPS will usually take place via MS Teams (or within CVP if the prisoner is to be present). The victim will observe proceedings via a live stream of the CVP room.

The SHRF will be sent to the Board and processed by the Victims Team. The relevant case manager will be copied in and kept informed of how the application proceeds.

Representations from the parties

The Secretariat will contact the parties to seek representations. The representations should set out any concerns or reasons why a victim observing would not be appropriate.

The parties will be given seven calendar days to submit representations. Whilst the time frame is not set out in the Rules, seven days is felt to be sufficient. Rule 14(4C) states the following:

14 (4C) On receipt of an application under paragraph (4B) the Board must inform the parties that the application has been made, and must provide an opportunity for the parties to make representations to the Board on the application.

The prisoner must be given the opportunity to submit representations about the victim observing. These should already have been provided within the SHRF, but this should be checked. Where there are no objections, the matter should be fairly straightforward to decide. However, there may be concerns, objections or requests including setting out views on:

- the impact on the prisoner;
- being seen by the victim;
- disclosure of sensitive information that may put the prisoner at risk;
- disclosure of information about other offending and other victims;
- Potential delay to the hearing or making it more lengthy.

The prisoner or their representative can also set out in the SHRF if there are any concerns from any witness they may be calling to give evidence.

Objections should not automatically result in a refusal for the victim to observe but should be taken into consideration as part of making the decision.

This may present a particular challenge if the prisoner is unrepresented but should not be a reason to refuse a victim the chance to observe. The prison should be directed to explain the circumstances to the prisoner so that they can then make an informed decision about submitting representations.

All other attendees must also have been given sufficient time to submit any representations. HMPPS agencies must submit concerns or requests via PPCS. It is expected that professional witnesses will be able provide their evidence irrespective of a victim observing. If attending is going to cause heightened anxiety for a witness it may be that a supervisor or other delegate attends in their place, as long as this does not compromise the provision of evidence.

Alternatively, they could provide evidence by telephone. These options should be considered before refusing the request from the victim to observe. This approach may be particularly helpful where a non-professional witness may be giving evidence.

The SSJ may consider submitting representations against the victim observing if they believe the proceedings will be unduly compromised, or witnesses overly distressed, or there are security concerns.

Once representations have been received, or seven days has elapsed, the application will be submitted to the panel chair to consider.

6. Principles for panel chairs

The private parole oral hearing should run as normally as possible and uphold the following principles:

- The over-arching principle is that the hearing should allow for best evidence to be given;
- The decision should be made after taking into consideration representations from the parties;
- Facilitating the victim observing should not lead to unnecessary delay to the hearing;
- A victim observing should not be seen as exceptional or unusual;
- The aim is to have as much of the hearing held in the presence of the victim with only limited discussions taking place in closed session;
- The victim is required to sign a confidentiality form;
- A case conference is strongly recommended to discuss the management of the proceedings. It is best practice to ensure that all parties are aware of how the hearing will be run, the potential challenges, and practical implications. In particular, there should be a shared understanding of information and evidence that will need to be held in closed session.

A checklist for panel chairs has been produced which can be found at Appendix I.

7. Panel chair considerations

The panel chair should consider applications from victims to observe a private parole oral hearing sympathetically. Given the way in which victims are likely to have been harmed by the index offending, they have a legitimate interest in understanding how the Board makes its decisions.

The Parole Board Management Committee takes the position that victims observing should not be considered as exceptional and should be facilitated wherever possible.

In deciding whether to permit a victim observer, the panel chair will have due regard to fairness to the prisoner and the effectiveness of the hearing. This includes the need for the prisoner and witnesses to feel able to participate freely and effectively and to give best evidence.

Panel chairs are reminded that this is a judicial decision which must be informed by the facts of the case.

The panel chair will need to balance the entitlement of the victim to apply to observe alongside the right of the prisoner to have a fair and timely parole review.

The panel chair will need to consider representations from the parties and concerns from any of the attendees.

The panel chair will need to consider the application bearing in mind the principles outlined above and whether there is sufficient time to make necessary arrangements and hold a case management conference.

Whilst the principle of the victim observing as much of the hearing as possible is to be adopted, it may be necessary in some cases, that a significant amount will need to be held in closed session. It may still be possible for the victim to observe such hearings, but a balance will need to be struck to ensure a meaningful experience for the victim can be achieved.

In some cases, the panel chair may wish to direct a case management conference to discuss the victim observing application with the parties and witnesses *before* making a decision. This can only realistically take place where there is sufficient time ahead of the oral hearing.

The final decision rests with the panel chair. The attendance at a hearing remains at the discretion of the panel chair, who may revoke a previous decision to attend if they consider it appropriate to do so, should circumstances change.

Victims approved to observe will watch the proceedings via a live-stream link from a location identified by the HMPPS Victims Team.

Victims signed up to the VCS

Where the victim is signed up to the VCS, an HMPPS Victim Representative will be in attendance on the day to support them, and the victim can request for their VLO to also attend. They will normally all meet at a local Probation Service office or other MoJ building to link into the proceedings. However, this will be arranged on a case-by-case basis through the HMPPS Victim Representative and the VLO.

In circumstances where there are multiple victims in locations across the country, it may be necessary for them to attend a central location, such as the Parole Board offices in London or other agreed building to observe by remote means. The most convenient location will be identified by HMPPS staff, wherever possible.

Victims not signed up to the VCS

Applications from victims not signed up to the VCS will need to be considered in the context of their link to the specific case. The victim will need to explain the reasons for wishing to observe, setting out any links they have with the case.

The panel chair should consider carefully whether the reasons are of a nature that deem it appropriate for the victim to observe. It should be noted that in these instances, the victim will not be provided with support from HMPPS and may need to travel to an agreed secure location to observe the hearing. If the victim is eligible for the VCS they should be encouraged to consider signing up, which will then provide them with access to more advice and support.

On occasion a victim will make an application for a parole hearing to be made public. Where this is refused the Parole Board Chair may suggest that the victim applies to observe the private parole hearing instead. In such circumstances, an application will still need to be made as set out above and will need to be considered on its own merits in the usual way.

Possible reasons to refuse the application include:

- The prisoner is under 18;
- The prisoner is subject to an anonymity order or other reporting/information sharing restrictions;
- The victim is a member of a rival gang;
- The case is highly sensitive and a victim observer may compromise national security;
- Threats from the victim/their family or evidence of other safety and security concerns.

In all of the following potential reasons presented in representations, alternative arrangements might be possible, for example having the prisoner off screen, or referring to the prisoner with their previous name/identity.

- Vulnerable prisoner where an observer will exacerbate anxiety or distress;
- The prisoner has significant physical disabilities or health issues and does not wish the victim to know;
- The prisoner has changed gender and does not wish the victim to know (although this can be overcome in some cases);
- Multiple victims where disclosure of other individual victims may be a risk;
- Cases where allegations need to be explored in detail.

8 The decision

When completing their response, panel chairs are asked to write it in a way which the VLO can share in its entirety with the victim; or set out which parts can be shared, and which parts are for the parties only. Whilst it is for agents of the SSJ to determine which information can and should be shared with the victim, providing a steer within the response may be helpful.

The final decision rests with the panel chair. The attendance at a hearing remains at the discretion of the panel chair, who may revoke a previous decision to observe if they consider it appropriate to do so, should circumstances change. This applies whether the initial decision was made by the current panel chair, a previous panel chair, or a duty member.

It should be noted that there is no appeal process following a decision made by a panel chair about the attendance of an observer. Such decisions are judicial in nature and can only be challenged by way of judicial review through the administrative court.

Where the panel chair refuses the application or revokes a previous decision for the victim to observe, an explanation should be provided which the VLO can share with the victim. It may be helpful to suggest that the victim may wish to consider other options which might otherwise meet their needs:

- a) Request a summary of the Parole Board Decision Letter (PBDS);
- b) Request to attend to read out their VPS to the panel but not stay to observe the parole hearing; and/or
- c) Request that the oral hearing be held in public.

Panel chairs should seek further advice from the Practice Advisor if there are particular or unusual circumstances.

9. Preparing for the hearing

Where a panel chair approves the attendance of the victim to observe a private parole oral hearing, planning for the hearing will need to take place.

Case management conferences

Written submissions from the parties may be sufficient for the panel chair to determine how the hearing will be managed, however panel chairs are strongly advised to direct a case management conference where this may be their first hearing with a victim observer or there are particular challenging circumstances to navigate.

A case management conference is considered to be essential and should take place at least two weeks ahead of the oral hearing.

The following are recommended to be directed to attend a case management conference:

- Prisoner's representative (if there is one);
- Key witnesses i.e., COM, POM, Psychologist;
- HMPPS Victim Representative;
- The Streaming Administrator;
- Victims Team Leader (if it's a case managed by the Specialist Case Management team, then the case manager can attend);
- Panel chair support case manager (if there is one).

Optional attendees:

- Co-panellists (helpful and avoids extra pre panel meeting);
- SSJ Representative or delegate from PPCS;
- Someone from the Legal or Policy Hub (if required), perhaps on complex/noteworthy cases.

The arrangements agreed and a brief note of the discussion during the case management conference will usually be documented by way of panel chair directions.

If the arrangements are fairly straight-forward the panel chair may wish to delegate drawing the information together to the Secretariat, negating the need for a case management conference. This should be considered on a case-by-case basis.

The following points may assist the discussion at the case management conference.

Naming attendees at the oral hearing

It is important that all attendees (including co-panellists, witnesses, and the prisoner's representative) have an opportunity to express any concerns that they have about being named/identified during the hearing. Concerns from attendees should set out what the level and likelihood of risk is felt to be.

Attendees should be asked for their preferences which will allow the panel chair to consider and establish a naming protocol. It is helpful to agree this in advance of the oral hearing. If one attendee wishes to remain anonymous, then it may be appropriate to adopt a common approach for all attendees.

Naming the prisoner

If a prisoner is known under a different name to that known by the victim, it will be helpful to establish in advance how to overcome this. The prisoner may agree to be referred to under the previous name in order to protect their new identity or may be content for their new name to be disclosed at the hearing. Where a prisoner wishes to be referred to under their new name (as is their right) but does not wish the victim to be aware of the new name then the application to observe may need to be refused. This should be considered on a case-by-case basis. It is important for this to be clarified in submissions ahead of the hearing.

There may need to be a discussion where the prisoner is transgender to ensure that there is a clear naming and addressing protocol in place, and that the wishes of the prisoner are carefully considered. It will also need to be established whether the victim is aware of the new identity.

Who should be on screen

Some attendees, including the prisoner may not wish to be onscreen during the live stream of the proceedings. Requests to not be on screen should be made in advance so that the seating and camera arrangements can be set up accordingly.

The victim may have preferences in terms of seeing the prisoner and these should also be taken into account.

What can reasonably be accommodated will depend on the facilities at the prison and the range of preferences of the attendees. The panel chair will need to consider all preferences whilst taking a pragmatic approach.

Open and closed sessions

The best practice advice is that all of the open session of the hearing take place with the live stream first and then any closed session discussions take place after.

Any discussions that arise during the open session that need to be discussed in closed can be parked and returned to in closed session. Feedback from testing has indicated that going in and out of open and closed sessions as issues arise should be avoided.

Likely topics that *may* need to be held in closed session are:

- Details of release accommodation and family members;
- Details of the risk management plan;
- Information about the health or medical conditions of the prisoner;
- Therapies or treatment;
- Sensitive evidence related to third parties;
- Information about other victims.

Victims are required to sign a confidentiality agreement which forbids them from sharing information; this may provide some assurances and reduce the amount of detail to be discussed in closed session.

Closing submissions

Closing submissions are usually provided at the end of the proceedings. Whilst closing submissions may be helpful for the victim to observe as it may assist in their understanding of the key issues it can present a number of challenges.

Evidence from testing has indicated that it is advisable to say that closing submissions will be made in the closed session, rather than returning to an open session at the end of proceedings. This avoids the victim having to anticipate being called back into the hearing, which may involve some lengthy waiting time and add to an already anxious time. In many cases, the closing submissions may be very brief, or the hearing may end in adjournment, resulting in much wasted waiting time.

Closing submissions may also contain information that is not to be shared with the victim and so taking them in closed session will avoid any further complications.

Where a panel chair wishes for the victim to hear closing submissions careful attention to timing will be needed to ensure that everyone has clear expectations.

Logistics for the oral hearing

The panel chair will need to consider additional protocols and safeguards that will need to be put in place for the hearing. This will have implications for the time estimate which should be revised accordingly. The listings team and panel chair will need to be mindful of cut off times imposed by the prison or witness availability where there are other cases listed on the day.

Where a second case is taking place in the afternoon, adhering to the timescales will be important to avoid the risk of the second case having to be adjourned. In general, every effort should be made to conclude the case being observed by a victim to avoid everyone having to return and causing anxiety and distress to both the prisoner and victim.

Consideration may be given to listing the case in the afternoon which will remove potential impact on other cases being heard on the day; however, this may put the victim observer case at risk.

It may be necessary to consider having only the one case on the day if the arrangements are likely to be complex or lengthy. **It will be for the panel chair to determine the most suitable arrangement for the day.**

Timetable

The timetable will reflect that a victim will be observing and that they may have someone supporting them, in addition to the official HMPPS Victim Representative or VLO. The actual name of the victim and any personal supporter they have with them should not be added to the timetable.

The HMPPS Victim Representative and/or VLO should be named.

10. On the day of the hearing

Pre-hearing activity

It is suggested that everyone be directed to connect into the CVP room at least 15 minutes before the hearing is due to start so that connections can be checked and to go through the hearing protocols. Allocating sufficient time will allow for the protocols to be explained, and address any fresh concerns that may come up, particularly if a case management conference could not be scheduled prior to the hearing. This may need to take into account any time the representative needs to meet with their client ahead of the hearing.

Once the hearing protocols have been set out, formal identification of attendees, stating their names, will be required for the digital recording and to check that there are no difficulties with connections, either visual or audio.

Before the live-stream commences, all attendees should ensure the name label on their onscreen icon shows their role and not their actual name as this will safeguard against attendee names being noted down (unless other arrangements have been agreed).

Using the role descriptor on the name label icon will prevent names from being displayed continuously on screen. See appendix II for technical instructions.

It is recommended that before the live stream commences the following takes place:

- Panel chair to welcome everyone and go through the usual checks for remote hearings and then set out the hearing protocols related to the victim observing;
- Make sure all attendees are aware that a victim is observing the hearing via a live stream and ask if anyone has any further questions;
- Initiate the digital recording;
- Invite attendees to introduce themselves and confirm their role for the purposes of the recording;
- Remind attendees that the victim can see and hear the proceedings but that no one at the hearing will see or hear the victim, and that there is an HMPPS Victim Representative with the victim managing the technology;
- Advise that the hearing will run as usual, but any attendee can seek a break should they have a concern about a discussion or require to pause proceedings for any other reason;
- Advise that there is a Parole Board Streaming Administrator managing the technology for the proceedings and the live stream and that they have the option to stop the live stream at any point should it become necessary;
- Once everyone is comfortable, the panel chair can announce that the live stream will be initiated (this will be activated by the Streaming Administrator). Everyone will be able to see that the live stream is active on the side of the room. See Appendix II for instructions about this;
- The Streaming Administrator will confirm to the panel chair that the Victim Representative and victim can see and hear the live stream.

The Streaming Administrator will be in attendance and ready to activate the live stream on the instruction of the panel chair.

Live-stream

Once it is confirmed that the live stream has commenced, the panel chair should proceed with the formal introduction, the purpose of the review and tests which must be applied and usual references to breaks etc, and attendees will be invited to speak according to the naming protocol already agreed.

The Streaming Administrator will be on hand to resolve any technical issues that may arise.

Taking breaks or pausing the live-stream

The status of the live stream can always be seen on the screen at the side of the room. The live stream will remain active until such time as the panel chair directs a break in proceedings or the hearing ends.

Where the panel chair announces a break, the Streaming Administrator will end the live stream. The panel chair will need to notify the Streaming Administrator once the hearing is ready to recommence so that the live stream can be activated again. The panel chair will be provided with the contact details of the Streaming Administrator in order to do this.

The prisoner should be put at ease as much as possible during the hearing and supported to give best evidence. If at any time the prisoner is looking anxious, agitated, or behaving out of character then it may be helpful to pause the proceedings.

All attendees should be mindful of disclosing confidential information during the proceedings and an attendee can ask the chair to pause the hearing if they believe the conversation might be covering content that should be held in private.

Similarly, the panel chair may pause the hearing and either ask the observers to leave temporarily (with assurances that they will be invited to re-join) or clarify that the subject matter will be dealt with in closed session towards the end of the hearing.

If at any point the panel chair determines that the live stream must be ended urgently (bearing in mind the 30 second delay) they can do so directly by removing the link from the CVP room. To reactivate the live stream, the panel chair will need to contact the Streaming Administrator who will recommence the streaming.

There will inevitably be slips where an attendee mentions a name, location or other small piece of information. The panel chair should take a pragmatic approach to this. In most cases, it is best to continue rather than disrupt proceedings and drawing attention to the fact. However, if it develops and a discussion about sensitive information is likely then the live stream can be paused.

The HMPPS Victim Representative will alert the Streaming Administrator should any issue arise with the streaming, or should the victim become distressed and need to stop observing. The Streaming Administrator will aim to notify the panel chair of any such circumstances in the least disruptive way.

Technical arrangements

The Streaming Administrator will need to be notified of all the arrangements to ensure the set-up of the CVP room is correct.

It is suggested that the panel chair meets with the Streaming Administrator ahead of the hearing so that the technology can be explained properly and the plan for the hearing can be discussed. The Streaming Administrator could attend the case management conference, if there is one.

It should be noted that currently there is no facility to hide the prison location from the screen within the live stream². If disclosing the location of the prisoner is a security or safety concern, please contact the Streaming Administrator for advice.

Arrangements may need to be adapted if the victim is reading out the VPS. Reading of a VPS will usually be undertaken in MS Teams and so relevant attendees will need to move between MS Teams and CVP at the agreed times.

The victim

The Victim Representative will assist and support the victim on the day at the location that will have been previously agreed.

The Victim Representative will liaise with the Streaming Administrator to ensure everything is working properly.

The panel chair will not be able to make contact with the victim or HMPPS Victim Representative and will have to liaise via the Streaming Administrator for any communication that may be required.

The HMPPS Victim Representative will similarly liaise with the Streaming Administrator to ensure everything is working properly. The Streaming Administrator will confirm to the panel chair that the HMPPS Victim Representative and victim can see and hear the live stream.

All attendees will be notified in advance of the following:

- The victim will not attend the prison;
- An HMPPS Victim Representative will be with the victim and they will observe the hearing from a pre-agreed location, most likely a probation office or other MoJ official building;
- The victim will observe the hearing remotely via a live link that is on a 30 second delay (using MoJ equipment);
- The victim will be able to see and hear the proceedings;
- No one in the hearing will be able to see or hear the victim or those watching the live stream;
- There may be someone else in attendance to support the victim, such as a family member, friend, or other person (this must be approved by the panel chair in advance if the person will also observe the live stream);
- Should the victim wish to take a break for any reason the proceedings will not be paused and the HMPPS Victim representative will explain that they will miss some of the hearing.

The victim will be provided with an information sheet which can be found at Appendix III.

² The Panel Chair can hide the side panel, so that the prison location is not seen but this will hide all the attendees who are in the room. However, the onscreen icons will still be displayed.

Confidentiality agreements

Information about forbidding disclosure of anything heard at the hearing is provided to the victim.

Panel chairs are strongly advised to remind everyone present about the privacy of the proceedings at the start. Suggested wording is set out below:

"Under the Parole Board Rules, these proceedings are to remain private and the names of the people taking part must not be disclosed and information that you hear must not be shared. 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."

The Parole Board Rules 2019 (as amended) require that parole hearings are held in private and matters discussed are confidential. In addition, section 170 of the Data Protection Act 2018 ("DPA") ("section 170") is relevant. Victims may be committing a criminal offence and could be subject to prosecution if they share any "personal data".

If convicted of knowingly or recklessly disclosing personal data without the consent of the data controller, they are likely to incur a fine. Victims do not have the consent of the various data controllers to disclose any personal data they hear in the parole proceedings. "Personal data" has a very wide definition and means **any** personal information relating to an identified or identifiable living individual.

Both Parole Board rules 15 and 27, and section 170 of the DPA apply to the passing on of information that includes the circumstances of any crime, information about previous convictions, rehabilitation, the management of the prisoner and the name of any person concerned in the proceedings such as the name of any victim, the prisoner, any social worker, prison staff, the author of any report, any witness appearing at the tribunal, the prisoner's representative and the members of the Parole Panel and their staff.

VLOs will ask victims to provide confirmation that they agree and understand the restrictions about disclosure and the clauses set out in the confidentiality agreement. The VLO will provide a written confirmation to this effect to the Parole Board in advance of the oral hearing. The panel chair may wish to check this with the case manager if it has not already been confirmed ahead of the oral hearing.

On the day of the hearing itself, the VLO will arrange for the victim to physically sign the confidentiality agreement and then forward an electronic version to the Parole Board for audit purposes.

The confidentiality agreement can be found at Appendix IV.

11. After the hearing

As the Board is currently testing victims observing, feedback is welcomed from the panel on how the hearing went and any best practice identified, or issues encountered.

The HMPPS Victims Team is seeking feedback from victims and VLOs.

The Board is approaching prisoner representatives to provide feedback from their client's perspective.

The victim may request a PBDS which will help explain the decision made by the panel.

12. Other circumstances

Objections on the day

If one of the parties objects to the victim observing on the day the panel chair can consider the following options:

- a) Explain that the parties had sufficient opportunity to object to the request in advance and the decision has been made.
 - i) If the prisoner chooses not to participate in the hearing as a result, then the panel is well within its rights to continue with the hearing in the prisoner's absence;
 - ii) If the legal representative is similarly minded to withdraw, then they should be told it is a matter for their own professional judgement but the hearing will proceed.
- b) Where one of the parties objects on the day, the panel chair can invite representations and briefly adjourn to consider the request and make a decision.
 - i) The panel may decide to continue with the hearing; or
 - ii) The panel may decide to adjourn and re-list the case for a future date to allow further consideration to be given to arrangements which would allow the victim to observe.
- c) Panel chairs make the overall decision as to who can/cannot attend/observe the hearing so if the panel feels able to proceed, then they should do so.

Reading a VPS

If the victim will be reading out their VPS as well as observing then it is advised that the two processes are managed separately.

Reading of a VPS will usually be undertaken in MS Teams and so relevant attendees will need to move between MS Teams and CVP at the agreed times.

If it has been agreed that the prisoner will be in attendance for the reading then it can take place in CVP. However, the victim will need to leave the CVP after reading their statement and then re-join through the live-stream. The victim should not be allowed to remain in the CVP room to observe.

Victim with mobility restrictions

There may be situations where a victim is not able to attend the designated place agreed for the live stream of the oral hearing. In such exceptional circumstances alternative arrangements could be agreed. The HMPPS Victim representative or VLO could visit the victim at a location of their choice and connect to the hearing from an MoJ laptop.

HMPPS is under a duty not to disadvantage anyone from observing and would need to put in place reasonable adjustments or alternative arrangements. Suggesting someone attend in their place is unlikely to be the solution but see the next section – observing on behalf of a victim.

The victim would need an official to be present to guard against the proceedings being recorded or broadcast, and that no unauthorised person was present.

It is not possible to provide a digital recording of the proceedings or a typed transcript in lieu of observing.

Observing on behalf of a Victim

There will also be occasions where one family member will observe on behalf of the rest of the family and propose to report back to them. Whilst it is accepted that individuals will wish to share information they hear with family, the legal position is clear.

A private hearing remains a private hearing, whether or not people are allowed to observe. They are allowed to observe on the basis that they keep the information they hear private. That is why they sign a confidentiality agreement, and that is why there are potential legal consequences for them if they breach the requirement of privacy. This means that anyone not observing should not have access to the information from the private hearing.

It is natural that an observer would want to discuss the hearing with their family, however the Parole Board cannot approve such a position and will not agree to it. VLOs will need to draw the observer's attention to the confidentiality section of the form which the Board issues (and the Parole Board Rules) which sets out the potential consequences if information heard in the hearing falls into the public domain. What the observer discusses with their family is their own business, but they must bear in mind that they will be held personally responsible for any information they share that then gets disclosed. Whilst this may cause anxiety for some victim observers, the Board cannot provide false assurances or set the wrong expectations.

It is a statutory requirement for hearings to remain private and ensuring that VLOs warn the victims of the potential consequences for breaching it is very important.

Official Representative

Panel chairs may be asked to approve another individual nominated by the victim (or someone who has been officially appointed) to observe the oral hearing on behalf of the victim in an official capacity. The individual will observe the oral hearing and report back to the victim.

Some victims may have a lawyer or other legal representative appointed to act in their affairs. There may be an Appropriate Adult or other person appointed to act in the best interests of a vulnerable victim, for example a Social Worker or Carer, Court of Protection Appointee, or medical professional and they may apply to observe in place of the victim. However, any such person must be deemed as acting in an official capacity. This arrangement would not include a family member acting on behalf of the family.

Any individual observing on behalf of the victim in an official capacity must comply with all the requirements in the same way as any other observer. In particular, they must ensure they do not breach any of the conditions set out in the confidentiality agreement that they are required to sign. They are also responsible for any information given to the victim that may subsequently fall into the public domain. A customised confidentiality form may need to be drawn up in such circumstances.

These observers are unable to take notes and so the reliability of the information shared with the victim may not be accurate. In exceptional circumstances, the observer may be permitted to take a note of the proceedings but only with the agreement of the Parole Board Chair. Even then, the observer is not permitted to take notes away with them and they must be securely disposed of. As such, there is very limited practical use they may have.

Such circumstances should be approached with caution as there are a number of considerations to be worked through with potential legal ramifications.

Currently, there is no option for a victim to submit legal representations or to be legally represented at the oral hearing. Should you receive such a request please contact the Practice Advisor.

Prisoner engaging with the victim

Prisoners may consider that having the victim present during their hearing is an opportunity to read out a statement or make other gestures that may be seen to be helpful.

This should be avoided as much as possible. The victim is there to observe the parole proceedings and it should not become an opportunity for the prisoner to engage with the victim. Even a simple, short statement has the potential to cause harm, or the situation may spiral out of control.

The live stream is a one-way communication, and the victim will have no opportunity to respond.

It is important that any interaction between the prisoner and victim is managed in a controlled environment and where both have been involved in making the arrangements. The parole hearing is not the place for this.

If a prisoner is keen to engage with the victim, then they should discuss this with their POM and COM. There may be victim awareness programmes or workshops that the prisoner could sign up to within the prison which would be a more appropriate way to proceed. The prisoner could also consider seeking to engage in restorative justice with the victim.

Other prisoners as victims

In some instances, the victim may be another serving prisoner. An application from a victim who is a serving prisoner should be treated in exactly the same way as any other application. Additional considerations will be needed in terms of disclosure of the victim as a prisoner and their location. Panel chairs may wish to contact the Practice Advisor if they come across such a case.

March 2024