

[2024] PBPH 3

Application for a further decision about whether Mr Stephen Ling's case should be heard in public

Outcome: Mr Stephen Ling's oral hearing will take place in public.

Background on the Parole Board and Public Hearings

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. The Parole Board was established in 1967. Under its rules, hearings were required to be held in private. From 20 October 2020 to 1 December 2020 the Government held a public consultation on whether parole hearings should be heard in public in some limited circumstances (public consultation: [Root and branch review of the parole system - Public consultation on making some parole hearings open to victims of crime and the wider public \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/root-and-branch-review-of-the-parole-system-public-consultation-on-making-some-parole-hearings-open-to-victims-of-crime-and-the-wider-public)).
3. In February 2021 the Government decided that the blanket ban on public hearings was unnecessary, and that public hearings in appropriate circumstances would improve transparency and could help build confidence in the parole system (outcome of the consultation: [Root and branch review of the parole system \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/root-and-branch-review-of-the-parole-system)).
4. On 30 June 2022 a statutory instrument was laid before Parliament, containing a new rule allowing for anyone to be able to apply for a public hearing. The new rule took effect from 21 July 2022. Under the new rule, it is for the Chair of the Parole Board (the Chair) to decide whether to hold a hearing in public or not, applying an



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'interests of justice' test. The Parole Board has developed 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-review-to-be-public)). The new rule has been drafted in such a way that it allows the Chair to revisit her decision. The Chair will normally only do so when new evidence emerges or there is a change of circumstances.

5. 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.
6. 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 will have to agree to maintain the privacy of that hearing. Different rules apply to public hearings.
7. 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.

Background to the case

8. On 2 December 1998, Mr Ling pleaded guilty to murder (the index offence). An offence of rape was ordered to lie on the file. The Sentencing Judge said in his sentencing remarks, "*I am satisfied, on the evidence, that you [Mr Ling] inflicted appalling injuries on her [the victim] whilst you were having sexual relations with her. I*



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am also satisfied, and this seems to be a particularly serious aspect of the case, that there was in your motivation an aspect of sadism". The minimum prison term was set by the Home Secretary at 18 years less time spent on remand. Mr Ling's Tariff Expiry Date was 26 December 2015.

9. Following reviews in 2020 and 2022, the Parole Board recommended that Mr Ling be moved to open conditions. The Secretary of State did not accept these recommendations and Mr Ling remains in the closed prison estate.
10. The most recent referral was considered by a Parole Board member on 30 January 2023 and the matter was referred to an oral hearing. This is Mr Ling's fifth oral hearing.
11. On 20 February 2023 an application was made to the Parole Board for Mr Ling's hearing to be held in public. On 20 April 2023, and for the reasons set out in the decision of that date, I granted this application.
12. The date of the oral hearing was set for 14 and 15 November 2023, however, on 8 November 2023 the hearing was adjourned due to representations being made about a recent decline in Mr Ling's mental health, which was said to include his subsequent refusal to attend the oral hearing if it were held in public.
13. Mr Ling's representative was instructed by the Panel to provide evidence of Mr Ling's inability to participate in a public hearing and also to make an application to me, as Chair of the Parole Board, if they wished for the public hearing decision to be reconsidered.
14. At the time of the index offence Mr Ling was 24 years old. Mr Ling is now 49 years old.

Details of the Application and Representations

15. On 4 January 2024, the Parole Board received an application from Mr Ling's representative for me to reconsider my earlier decision that Mr Ling's oral hearing should be held in public. Attached to the representations were a number of documents including a note from Mr Ling. In summary, the reasons given for the application were:
 - a. There has been a significant change in circumstances, namely a decline in Mr Ling's mental health and the potential for a public hearing to impact further upon his mental health. There is now medical evidence which supports this application.
 - b. In an email dated 9 October 2023, a consultant clinical and forensic psychologist, Dr A, engaged by the representative, has written of concerns



about the impact of a public hearing on Mr Ling in that he may struggle to give his best evidence in that his answers may be short and given to least upset observers and he may therefore fail to demonstrate insight or a grasp of risk factors.

- c. In a report dated 18 October 2023, the prison psychologist, Ms B, said that giving evidence in public is triggering experiences of internalised shame which may impact on the openness and depth of Mr Ling's responses.
 - d. Given his distress at the thought of a public hearing, Mr Ling says that he will not take part.
 - e. In an expert report dated 15 November 2023, Dr A concludes that Mr Ling has suffered an episode of mental ill-health that is secondary to the public hearing and that Mr Ling is not exaggerating his symptoms. The report concludes: *"[Mr Ling's] health is now alleviated by a reprieve in the situation, and I am confident that Mr Ling will revert to his usual level of functioning. However, should he have to face a public hearing at some point in the future, I think it likely that his mental health will again deteriorate. At such times, there is a risk that he will act impulsively in a moment of despair and take his life; the risk is short lived but cannot be discounted."*
 - f. This is a high-profile case and further press reporting will make it difficult to confine sensitive information.
 - g. The normal position is that parole hearings will remain in private. Reasons which have been given by the Chair in the past in other cases not to allow a public hearing also apply to this case.
 - h. The medical evidence now clearly shows that a public hearing is not in the interests of justice because Mr Ling will be inhibited from giving his best evidence.
 - i. Dr A's report engages Article 2 (the right to life) as the risk to Mr Ling's life due to the stress of a public hearing is a relevant factor when considering open justice.
 - j. A detailed summary would provide sufficient information to satisfy the requirements of transparency without prejudicing the effectiveness of the hearing.
 - k. A public hearing would be hard to manage to allow scrutiny by the public but also ensuring fairness to Mr Ling.
16. In summary, the representations made on behalf of the Secretary of State (dated 18 January 2024) were:
- a. The Secretary of State does not support the application for the hearing to held in private.
 - b. Increased transparency is vital to building public confidence in the parole system, particularly for the most serious offenders.
 - c. The Secretary of State supported the original application for Mr Ling's oral hearing to be held in public.
 - d. The Secretary of State has had sight of the report by Dr A dated 15 November



2023. Having read the report with care, the Secretary of State finds nothing in it to change his view; he continues to support a public hearing and contends that a public hearing is in the interests of justice.

- e. The report reflects a number of concerns about the impact of a public hearing on Mr Ling, but it does not acknowledge how measures to protect sensitive parts of the evidence being heard in public and non-disclosure agreements with attendees may mitigate these concerns.
 - f. The Panel Chair has the power to direct which parts of the evidence can be held in private. In October 2023, the Secretary of State submitted representations on this including how to manage the most personal information. Mr Ling's concerns about personal experiences can be managed in this way, should the Panel Chair consider it necessary.
 - g. HMPPS staff have reiterated their concerns, however, the Chair has already taken those into account in the original decision.
 - h. As set out in the Chair's decision, this case is of public interest. This has not changed. This case cannot be compared directly to other cases.
 - i. Some offenders choose not to engage with their parole hearing and there are processes to manage this. Mr Ling's potential refusal to attend is not a reason not to hold the hearing in public. If this refusal did form an element of any reasons to change the conduct of the hearing, it would have implications on the future conduct of parole hearings.
 - j. The impacts of adjournments are very hard for the victims.
17. The Secretary of State has provided me with three documents from the victims in this case. Two are dated 14 January 2024 and one is undated. The victims' observations are as follows:
- a. The murder and rape of the victim was a horrific, sadistic attack.
 - b. Despite the sexual nature of the crimes, Mr Ling will not be included on the Sex Offenders' Register due to the common practice at the time of his sentencing of leaving the lesser charge of rape to lie on file. In these circumstances a public hearing is in the interests of public safety so that the true nature of Mr Ling's crimes can be understood.
 - c. Mr Ling has requested a private hearing in order that he can give his best evidence. The victims are happy to wait until Mr Ling is well enough to participate and cannot think of an illness that could justify a change from a public hearing to a private hearing. Mr Ling's illness may be an excuse to avoid facing up to what he has done at a public hearing.
 - d. At the time of the trial, a police report shows that Mr Ling considered claiming that he was mentally unwell. Three separate psychiatric reports all concluded that Mr Ling was fit to plead and did not show signs of mental illness.
 - e. Given the severity of Mr Ling's offending, a public hearing is necessary and warranted.
 - f. This is a high-profile case which is likely to be of interest to the public and will



therefore help the public understand the work of the Parole Board.

- g. In light of recent reports on the Parole Board, it is important to rebuild trust in the Parole Board.
 - h. Mr Ling's concerns regarding fairness can be mitigated by taking measures. While some parts of the hearing will need to be heard in private, a sufficient part can be heard in public to allow a deeper understanding of the parole process. The Panel Chair has powers to suspend the proceedings if they feel that they are becoming unfair.
 - i. Mr Ling is said to be anxious and may feel inhibited at the hearing. This is an insufficient reason to now agree to a private reason.
 - j. A public hearing is an opportunity for Mr Ling to demonstrate his capacity to deal with the inevitable stressors of public life.
 - k. If the further application is accepted, it will make a mockery of the Parole Board and the Government's commitment to be more transparent and that more care and protection be given to the victims of violent crimes.
 - l. If the Chair agrees to this application, it will set a precedent for more applications to follow and public hearings will become obsolete.
 - m. The length of this parole process has been very difficult for the victims. This application has caused another delay and is impacting on some of the victims' health. It is important that a date for the oral hearing is fixed. The process has gone on for long enough.
18. I have also consulted with the Panel Chair as the Panel Chair is most familiar with the details of the case and 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.
19. The Panel Chair made some observations including:
- a. Mr Ling has engaged fully with previous parole proceedings including psychological assessments.
 - b. There is no reason other than Mr Ling's obvious distress and concern about a public hearing for him to no longer participate in his oral hearing. Mr Ling understands that if he does not participate he is unlikely to progress.
 - c. A primary role of a Panel Chair is to ensure fairness. The Panel has discussed which parts of the hearing to hear in public and which in private. However, to conduct too much in private would frustrate the purpose of a public hearing and could cause further distress to the victims.
 - d. Evidence has been provided from Dr A and Ms B that Mr Ling's distress at the prospect of a public hearing may not allow him to take part in his review. Concerns have been raised about Mr Ling's safety in prison given the increased scrutiny of his case. His Prisoner Offender Manager has expressed significant concern for his welfare.



- e. At his case management hearing held on 8 November 2023, Mr Ling was clearly distressed. He had exhibited suicidal ideation and had been placed on ACCT (Assessment, Care in Custody and Teamwork – the process for planning care and measures to be taken to mitigate risk in the case of prisoners identified as being at risk of self-harm). From the dossier, this was in stark contrast to his presentation before previous panels.
- f. The Panel Chair is conscious that a change in decision could have far-reaching consequences for future public hearings, however, the Panel Chair does not consider that Mr Ling has exaggerated the distress he feels or manipulated the decision-making process.
- g. It may be that if the hearing is instead held in private that the victims could attend this hearing.

Reasons for the Decision

- 20. 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*.
- 21. 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.
- 22. In this case, I have already decided (for the reasons set out in my decision of 20 April 2023 and further detailed below), that there were good reasons to depart from the general rule. I did so bearing in mind that adjustments can be made to ensure that a public hearing is fair, and 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. I now turn to consider whether the new information put before me would change that decision.
- 23. In doing so, I remind myself that there are a number of measures which can be taken to protect the fairness of the hearings. These would include the ability to take evidence in private, the ability to use code phrases to conceal sensitive information such as actual addresses, the ability to put in place conditions of attendance, and the ability to suspend the hearing or remove any person from the hearing if they are disruptive.
- 24. I also remind myself that recent developments in technology and Parole Board operating models have better enabled the public to attend a hearing by remote



viewing. This will make it more convenient for members of the public to attend and will also minimise the potential for disruption to the hearing itself.

25. 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.
26. The victims in this case continue to have my deepest sympathies.
27. When the application for a public hearing was made, I decided that there were special features, which set it apart from other cases, which may add to the proper public understanding of the parole system. I have reminded myself of the reasons for my initial decision dated 20 April 2023, which were:
 - a. Mr Ling has been convicted of a serious offence, namely a brutal murder. The seriousness of the crime raises the potential for the interests of justice to require a public hearing.
 - b. Although there were sexual elements to the index offence, because the rape charge was left to lie on file, if released, Mr Ling would not appear on the Sex Offenders Register. It is in the interests of justice for this situation to be better understood by the public.
 - c. The Parole Board's work is often misunderstood by the public. Mr Ling's case is a high profile one and it is likely to be of interest to the public and the media. Mr Ling has twice been recommended by the Parole Board for open conditions and these recommendations have not been accepted by the Secretary of State. The Parole Board's role in recommendations for open conditions is not well understood. There is therefore a public interest in increasing understanding which can properly be taken into account when considering the interests of justice.
 - d. The Secretary of State has confirmed that the victims do not object to a public hearing. Although the victims may in due course have been granted permission to attend a private hearing, they support a public hearing and their support is relevant and can also be taken into account.
28. I then went on to note that some parts of the hearing would need to be in private, however, that a sufficient part of the hearing could be heard in public to allow for a deeper understanding of the parole process.
29. I have carefully considered the application from Mr Ling's representative for me to reconsider whether Mr Ling's oral hearing should be held in public. This is a finely balanced decision, however, I have decided that a public hearing remains in the interests of justice. My reasons are as follows:
 - a. As set out in paragraphs 8 and 27a, Mr Ling has been convicted of a very



serious offence.

- b. As set out at paragraph 4, Parliament has determined that in the interests of transparency and public confidence, parole proceedings should be held in public when it is in the interests of justice. As I have previously decided, and as set out paragraphs 27a, the seriousness of the crime raises the potential for the interests of justice to require a public hearing.
- c. It follows that in order for me to revisit my decision, there must be strong or compelling evidence of something that has not already been considered which would mean that the high bar of the public interest test is no longer met. This could potentially include new evidence of the impact of a public hearing on a prisoner. To do otherwise once a public hearing has been directed, meaning it has been found to be in the public interest, would undermine the will of Parliament.
- d. As set out at paragraphs 27b and 27c, there are particular features of this case which set it apart from others and which could aid public understanding of the parole process, and so a public hearing is in the interests of justice. I turn to see if the new information and evidence before me changes that position.
- e. The expert report of Dr A sets out how Mr Ling's evidence might be impacted by the hearing being held in public. It should be clear that observers will not be in the same room as Mr Ling. Observers will be in a separate room, some distance from the prison and will be observing proceedings via a one-way link. Mr Ling will therefore not be able to see or hear any observers. However, additional measures can be taken to mitigate the impact of the proceedings on Mr Ling. These include: ensuring that Mr Ling cannot be seen by observers; taking particularly sensitive and/or personal evidence in private; providing some questions in advance to Mr Ling where appropriate; allowing Mr Ling to provide written responses to questions in certain circumstances. None of these measures have been taken into consideration in the expert report.
- f. Parole Board panelists are experienced in assessing evidence, including not drawing inappropriate conclusions from brief responses from prisoners. A panel can give such answers appropriate weight when considering the conditions in which they are given.
- g. It is not unusual for prisoners to feel stressed ahead of or during parole proceedings. Sufficient adjustments can be made to ensure that proceedings are fair.
- h. The details of Mr Ling's offences were aired in public at the Crown Court at the time of his conviction. Although it may be distressing to Mr Ling, his discomfort flows from his own offending and it cannot be separated from the Parole Board processes.
- i. Dr A's expert report weighs heavily with me, particularly the concluding paragraph set out at paragraph 15e. Mr Ling has previously been under ACCT three times during his prison sentence, most recently in 2012. The Prison Service has a duty of care to Mr Ling. It is clear that the Prison Service is



aware of the current pressures on Mr Ling and is taking the appropriate steps to safeguard him. There is no reason to believe that the Prison Service would not continue to take the appropriate steps, if required to do so to safeguard him against future risk of self harm.

- j. Mr Ling has said that if the hearing is in public, then he will not participate. Mr Ling's evidence is a matter for him. On occasion, prisoners decide not to participate in oral hearings. Procedures are in place for this eventuality; either the hearing proceeds or in some circumstances the matter is determined on the papers. The decision of whether a hearing is in the public interest or not does not turn on a prisoner's participation.
- k. The victims continue to wish for the hearing to be held in public. Their support is relevant and can be taken into account.

30. I note that some parts of the hearing will need to be in private, however, I consider that a sufficient part of the hearing can be heard in public to allow for a deeper understanding of the parole process. The Panel Chair has extensive case management powers to enable the relevant parts of the evidence to be taken in private and is best placed to make the decision about how these powers should be used in Mr Ling's case. There are sufficient measures that can be put in place to mitigate the discomfort felt by Mr Ling. I consider that, taken all together, they are sufficient to enable him to give evidence if he chooses, and for that evidence to be accorded the correct weight.
31. I have carefully considered Mr Ling's representations and for these reasons have concluded that the interests of justice outweigh the points made on Mr Ling's behalf.
32. In Mr Ling's representations, it is also said that the decision impacts upon Mr Ling's rights under Article 2 (the right to life) of the European Convention of Human Rights. Section 6 of the Human Rights Act 1998 accordingly applies to this decision, and so I must be confident that any risk to life can be properly addressed.
33. With respect to Mr Ling's Article 2 rights, although I do not have a direct duty of care to Mr Ling, I must take into account any threat to Mr Ling's life, even if potentially self-inflicted. My duties include considering the seriousness of any threat and any possible mitigations. Dr A's report describes the possibility of Mr Ling acting impulsively. The risk is described by Dr A as being '*short lived but cannot be discounted.*' As set out in paragraph 29g, the Prison Service are aware of the risk and appropriate steps can be taken to safeguard Mr Ling. Given this mitigation, I do not consider that the risk to Mr Ling's right to life is sufficient to preclude the hearing from being in public.



34. The next step is that the Panel Chair will hold a preliminary hearing to deal with the practical issues associated with the hearing.
35. This matter will only revert back to me again 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
1 February 2024