

**[2024] PBPH 11****Application for a Public Hearing in the case of  
Karl McCluney**

**Outcome:** The application for 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 hearing in private, 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-guidance-on-the-criteria-for-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. Mr McCluney is serving a sentence of Detention at His Majesty's Pleasure with a minimum term of 15 years following his conviction for murder in July 2009.
8. The circumstances of the offence were that Mr McCluney's father and his father's then partner left Mr McCluney alone at home with his partner's daughter when Mr McCluney was 15 years old. It appears that the child may have cried and that Mr McCluney then caused her fatal injuries.
9. Mr McCluney suffers from mental health issues and has spent some time in hospital under the Mental Health Act (1983). Mr McCluney has been diagnosed with a number of disorders.
10. Mr McCluney's tariff expired in April 2024.



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11. Mr McCluney's case was referred by the Secretary of State to the Parole Board on 8 August 2023. This referral was considered by a member of the Parole Board on 13 December 2023. The matter was directed to an oral hearing, to consider evidence before making a final decision.
12. The oral hearing has been listed for 16 July 2024. This will be Mr McCluney's second review by the Parole Board. His first review was a pre-tariff review held in March 2023 to consider whether Mr McCluney was suitable for open conditions. The panel at the pre-tariff review recommended that Mr McCluney be moved to open conditions, however, this recommendation was rejected by the Secretary of State.
13. Mr McCluney was aged 15 years at the time of the offence. He is now 30 years old.

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

14. On 17 April 2024, the Parole Board received an application for Mr McCluney's oral hearing to be held in public. In summary, the reasons given for the application for a public hearing were:
  - a. The applicant would like to hear for themselves all of the information in the case.
  - b. This would help the applicant understand the reasons for the decision.
  - c. A public hearing will lead to a fairer process and offer more public reassurance.
  - d. A public hearing would make the public aware of the dangers the offender presents so that no other child will be murdered by him.
15. On 19 April 2024 the Parole Board asked for representations from the parties to the case, namely the Secretary of State for Justice and Mr McCluney.
16. In summary, the representations made on behalf of the Secretary of State (dated 1 May 2024) were:
  - a. Increased transparency is vital to building public confidence in the parole system, particularly where the Parole Board is reviewing the case of an offender convicted of very serious offences.
  - b. The Secretary of State has studied the reasons for the application and supports the application.
  - c. The Secretary of State acknowledges the mental health issues suffered by Mr McCluney but observes that the Parole Board can take measures to address those issues.
  - d. The Secretary of State asks that if a public hearing is granted, witnesses are known by their job title rather than by their full name.

17. Representations made on behalf of Mr McCluney (dated 3 May 2024) have been received. These include a report jointly authored by a Consultant Forensic Psychiatrist and a Chartered Forensic & Consultant Neuropsychologist. In summary the representations were:
- a. Mr McCluney would not wish to prevent the victim from attending a private hearing as an observer. This is influenced by his deep level of shame and remorse. However, Mr McCluney does not wish the hearing to be in public.
  - b. A public hearing would impact on Mr McCluney's mental health, his ability to participate in the hearing and his longer-term rehabilitation. A public hearing is therefore not in the interest of justice.
  - c. Mr McCluney has a mental health condition.
  - d. Given his vulnerability and the nature of his conviction, Mr McCluney has been directly threatened in prison. Any increase in publicity could exacerbate the risk to him.
  - e. Mr McCluney has previously had a pre-tariff review. Given his health condition, Mr McCluney needed coping strategies for the hearing but despite these, still needed to leave the hearing for a time.
  - f. There are no special features of this case which set it aside from others.
  - g. The wishes of the victims could be met by the victim observing a private hearing.
  - h. Mr McCluney was sentenced as a child and remains vulnerable by nature of his mental disorders.
  - i. A medical report raises concerns about the impact the stress of a public hearing could have on Mr McCluney. The reasonable adjustments required to hold the hearing in public would place a disproportionate burden on the Parole Board.
  - j. So much of the hearing would need to be held in private that it could frustrate the purpose of a public hearing.
  - k. Even with reasonable adjustments, it would be difficult for Mr McCluney to participate in a public hearing. Mr McCluney could not be as open with the Panel.
  - l. A summary can be produced.
18. I have also consulted with the Panel Chair as the Panel Chair is most familiar with the details of the case and therefore is 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. The Panel Chair does not believe that the case is suitable for a public hearing.
  - b. The Panel will need to explore extensive information regarding Mr McCluney's health.

- c. A public hearing could jeopardise a proper exploration of the evidence and the risk management plan. It could also affect Mr McCluney's ability to give meaningful evidence.
- d. The concerns of the applicants can be met through other provisions.
- e. The overriding principle is one of fairness to all parties.

## Reasons for the Decision

- 20. I have the deepest sympathy for the victims of Mr McCluney's offending and I cannot imagine the devastating effects that Mr McCluney's offence has had on them. I have read all of the information that I have been provided either directly or indirectly by the victims. The test I must apply is whether it is in the interest of justice for the hearing to take place in public.
- 21. 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*.
- 22. 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.
- 23. 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.
- 24. 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.
- 25. I note that a high bar 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. Although Mr McCluney's conviction is very serious, there are no exceptional features of this case which could aid public understanding of the parole process and justify departing from the normal position that all parole hearings be held in private.

- b. Mr McCluney was convicted when he was a child. Mr McCluney remains vulnerable in that he has an ongoing mental health condition. There is medical evidence in the form of the report from Mr McCluney's Consultant Forensic Psychiatrist and his Chartered Forensic & Consultant Neuropsychologist to suggest that his condition could prevent Mr McCluney from having the opportunity to present best evidence if the hearing were held in public.
  - c. A public hearing could impact on Mr McCluney's safety and his mental health.
  - d. Evidence on Mr McCluney's current mental health, which is private in nature, will be considered at the oral hearing. It would not be appropriate for this evidence to be heard in public. In circumstances where evidence which is likely to be critical to the Panel's decision cannot be heard in public, it is difficult to see how a public hearing would aid transparency or public understanding of the parole system or the decision in this case.
  - e. The Panel Chair is not supportive of a public hearing and believes that it could affect Mr McCluney's ability to give meaningful evidence. This could prejudice the effectiveness of the hearing.
  - f. The reasons given for the application for a public hearing include that the applicant believes that their attendance at the hearing would be beneficial to them, by allowing them to observe the parole process. This benefit can be achieved in an alternate, more proportionate way by allowing the applicant to observe the private hearing, as covered in more detail below. Mr McCluney has indicated through his representative that he is supportive of this.
  - g. A summary would provide sufficient information to the public for the reasons for the decision made at Mr McCluney's oral hearing. This would satisfy the requirements of transparency without prejudicing the effectiveness of the hearing.
26. I therefore have not granted the application for the hearing to be held in public.
27. 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).
28. 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.
29. 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 observers. The Panel Chair has extensive case management powers to arrange for 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 McCluney's case should the Panel Chair grant permission.

30. 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.
31. 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**  
**29 May 2024**