

[2024] PBPH 14**Application for a Public Hearing in the case of
Dominic McKilligan**

Preliminary Matters: Since his conviction in 1999, Mr Dominic McKilligan has changed his name. It can be beneficial to the agencies tasked with managing a prisoner for knowledge of their current name not to become widespread. In this decision I will therefore use the name, Mr McKilligan. This is the name that will also be used at Mr McKilligan's oral hearing.

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, 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



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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/organisations/parole-board)).

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 Greater Manchester and the South-West of England is currently being conducted by the Ministry of Justice on victims having the right to apply to observe 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 McKilligan is serving a life sentence imposed on 23 July 1999 for the offences of murder and rape. The period for punishment was set at 20 years and 1 day (including time spent on remand). The period for punishment expired on 6 July 2018.

8. The circumstances of the offences were that Mr McKilligan groomed the victim, who was an 11 year old boy, over a period of weeks to gain his trust. In May 1998, Mr McKilligan sexually assaulted and murdered the victim before leaving his body by the side of a road in a remote area.
9. Mr McKilligan has one previous conviction in 1994 for indecent assault of a male under 14 x 11 and gross indecency with a child. Mr McKilligan was 14 years old at the time of these offences. Mr McKilligan was sentenced to three years in a secure unit. Mr McKilligan was not put onto the Sex Offenders' Register because the Sex Offenders Act 1997 came into force one day after he was released.
10. Mr McKilligan's conviction for rape was quashed at the High Court in March 2000. Given that the offence of rape has been quashed, if Mr McKilligan were to be released, his name would not appear on the Sex Offenders' Register.
11. Mr McKilligan remains a Category A prisoner.
12. Mr McKilligan's case was referred by the Secretary of State to the Parole Board on 23 August 2022. Mr McKilligan's case was considered by a member of the Parole Board on 9 March 2023 and that member determined on the papers that Mr McKilligan did not meet the statutory release test. Mr McKilligan subsequently applied for an oral hearing. On 18 April 2023, a member of the Parole Board turned down this request. This decision resulted in Mr McKilligan bringing a judicial review and on 20 February 2024 the High Court quashed the decision not to direct the matter to an oral hearing and directed that an oral hearing be granted, for the Parole Board to consider evidence before making a final decision.
13. The oral hearing has been listed for 16 September 2024. This will be Mr McKilligan's fourth review by the Parole Board.
14. Mr McKilligan was 19 at the time he was sentenced. He is now 44 years old.

Details of the Application and Representations

15. On 21 June 2024, the Parole Board received an application for Mr McKilligan's oral hearing to be held in public. In summary, the reasons given for the application for a public hearing were:
 - a. Mr McKilligan's rape conviction was quashed at the High Court in 2000. As a result he will not be subject to the Sex Offenders' Register on eventual release. If he were to be subject to this Register, this would enhance monitoring of a risky individual. A public hearing would show how the Parole

Board deals with the risks of such an offender and would demonstrate transparency.

- b. This is a high profile case. A public hearing would help highlight the risk of Mr McKilligan.
 - c. When the Parole Board's last decision was re-opened, the victims were made aware by the media first, rather than their Victim Liaison Officer. This suggests that Mr McKilligan's legal team approached the media. This enhances the argument for a public hearing.
 - d. If not for previous failings in the management of Mr McKilligan, the victim might not have been killed. This should not happen again.
16. On 28 June 2024 the Parole Board asked for representations from the parties to the case, namely the Secretary of State for Justice and Mr McKilligan.
17. In summary, the representations made on behalf of the Secretary of State (dated 5 July 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 given for the application and has consulted with those HMPPS staff who will appear at the oral hearing and are responsible for managing Mr McKilligan's risk.
 - c. The Secretary of State supports the application and asks that full weight be given to the reasons for the application. While Mr McKilligan may experience stress at the prospect of a public hearing, the Secretary of State 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, and that consideration be given for Mr McKilligan to be referred to by his name at the time of sentencing.
18. Representations made on behalf of Mr McKilligan have been received (dated 12 July 2024). In summary the representations were:
- a. Mr McKilligan does not support the application for a public hearing. If the hearing is to be in public, Mr McKilligan will potentially withdraw from the hearing.
 - b. Mr McKilligan's legal team did not approach the media. There were other routes available for the media to find the information. Mr McKilligan has no desire for the media to cover his case.
 - c. Mr McKilligan's hearing is listed for 16 September 2024. This hearing has already been subject to delays. If the hearing were to be held in public, there would likely be further delays.

- d. It is accepted that this is a case dealing with the most serious offence. However, there are no special features of this case which set it apart from others which would add to the public understanding of the parole system.
- e. A public hearing would have an adverse effect on the fairness of the proceedings. It will affect Mr McKilligan's ability to give evidence openly and honestly. Mr McKilligan believes that the media will give inaccurate accounts of the evidence.
- f. Mr McKilligan's safety and wellbeing will be at risk. It will be detrimental to his mental health and future progression. Mr McKilligan has changed his name and there is a risk his new name could be disclosed.
- g. The fact that Mr McKilligan's previous convictions are given as one of the reasons for a public hearing is disputed. Mr McKilligan was a child at the time of these offences. The offences involved others. Mr McKilligan will need to give evidence about these matters which is sensitive in nature to both himself as a victim and a perpetrator. If these matters are thoroughly explored the victims, who are now adults, may be identified and could be caused psychological harm.
- h. The main concern seems to be Mr McKilligan's progress into the community. Mr McKilligan is a Category A prisoner without any support for progression. The hearing is likely to focus predominantly on the risk assessment and future treatment plans. This will be the first review post the completion of psychological work by Mr McKilligan. Mr McKilligan should be given the opportunity to give his evidence openly.
- i. The dossier includes extensive psychological reports. These are confidential in nature. If the hearing were in public, this could have an impact on Mr McKilligan's ability to instruct independent professional witnesses as they may be unwilling to give evidence in public. This could impact on the fairness of the hearing.
- j. This is a case where previous inaccurate assessments have been used as part of the risk assessment and then cited by the media.
- k. A reason for the application is that the victim was let down by the authorities not managing Mr McKilligan's risk appropriately. This is not a matter for the Parole Board. Any risk management plan will need to be looked at in private.
- l. The fact that Mr McKilligan's conviction for rape was overturned is not a reason to hold the hearing in public. The Court of Appeal proceedings were held in public. Mr McKilligan's case is different from cases whereby allegations were not proceeded with by the police, given that the offence of rape in this case was thoroughly considered upon appeal.
- m. A summary can be provided.
- n. The starting position is that hearings should be held in private. There is no reason to deviate from that position. It is not in the interests of justice for this case to be held in public.

19. 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.
20. The Panel Chair made some observations including:
- There is a risk of observers experiencing emotional stress and/or re-traumatisation.
 - If the hearing were to be in public, parts of the hearing would still need to be held in private. These could include medical evidence, anything that could identify third parties, unproven allegations and the risk management plan.
 - The case is of interest to the public given the media coverage at the time of the offence and at the quashing of the rape conviction.
 - A public hearing would provide transparency and show how thoroughly the Parole Board deals with the issues in the case.

Reasons for the Decision

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. The victims in this case have my deepest sympathies.

26. 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 this case of murder is very 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.
 - b. A reason for the application is that if released, Mr McKilligan would not be subject to the Sex Offenders' Register. This is an issue which was recently explored in another public hearing and it is unlikely that holding Mr McKilligan's hearing in public would add to the public's understanding of this issue.
 - c. Although Mr McKilligan's rape conviction has been quashed by the Court of Appeal, the Panel will still be entitled to explore any sexual behaviour associated with the index offence, in line with Pearce. Given that there is no conviction, it is likely that this evidence will need to be heard in private.
 - d. The Panel may wish to explore the circumstances of the indecent assaults and the gross indecency offences committed against children by Mr McKilligan. Mr McKilligan was a child when he committed these offences. The victims were also children. There is a risk that if the hearing were to be held in public, these victims could be identified or retraumatised.
 - e. This review has already been considerably delayed. If the hearing were to be in public, it is likely that there would be further delays which would not be in the interests of justice.
 - f. There is a significant amount of evidence in this case which will need to be heard in private including: discussions of the psychological reports which are private in nature; any discussions which could identify third parties; an exploration of the circumstances of the index offence as set out above at paragraph 26c; the circumstances of the convictions as set out above in paragraph 26d; and the details of the Risk Management Plan. It is difficult to see how public understanding of the decision in this case can be achieved in circumstances where many matters which are likely to be fundamental to the Panel's decision cannot be held in public.
 - g. Any benefit to the applicants of attending the hearing can be achieved in alternate ways, as covered below.
 - h. A summary should provide sufficient information to both the victims and the public about the reasons for the decision made at Mr McKilligan's oral hearing.
27. I therefore have not granted the application for the hearing to be held in public.
28. I note that in his representations, Mr McKilligan has said that if the hearing were to be held in public, then he would withdraw. Mr McKilligan's evidence is a matter for him and this representation has played no part in my decision not to hold the hearing in public.

29. It may be that the victims in this case may wish to observe the private oral hearing. Should this be of interest to the victims, the Parole Board is willing to explore the feasibility of supporting the victims to observe the private 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.
30. It is ultimately for the Panel Chair to make the final decision on attendance at a private hearing and being satisfied that appropriate arrangement can be made.
31. If the victims do wish to attend and permission is granted by the Panel Chair for any of the victims to observe the private hearing, I note that some parts of the hearing may need to take place without the presence of the victim or victims. The Panel Chair has extensive case management powers to enable the relevant parts of the evidence to be taken without the presence of the victim or victims and is best placed to make the decision on how these powers should be used in Mr McKilligan's case, should the Panel Chair grant permission.
32. If permission is sought and granted, the Panel Chair may also need to hold a preliminary hearing to deal with any practical matters associated with this hearing.
33. 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

8 August 2024