the Parole Board
working with others to protect the public

[2024] PBPH 15

Application for a Public Hearing in the case of Malcolm Ratkiewicz

Outcome: The application for a public hearing has not been been granted.

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 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'). 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 ('the Chair') can direct that a hearing be held in public. The Parole Board has published 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)*).*

4. 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. In order to receive informed representations, the Chair may send a summary of the reasons for the application, in a way that does not disclose the identity of the applicant or any sensitive information that they have provided. 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 the 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. 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.

6. A test in Greater Manchester and in 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.

7. Finally the Chair will consult the chair of the panel who are dealing with the case ('the Panel Chair'), as they will be familiar with the detail of the case and can assist the Chair with their view about the application on the facts of the case and the practicalities of a public hearing.

8. 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.

9. The application for a public hearing is made to the Board Chair under Rule 15(3). The Chair has delegated the determination of this application to me as a senior judicial member of the Board.

Background to the case

10. Malcolm Ratkiewicz is now aged 67. On 26 October 1977 he was sentenced to life imprisonment for the offence of murder. His 12 year tariff expired in June 1989.

11. The circumstances of the offence were that on the evening of 4 June 1977 Mr Ratkiewicz had concealed himself with a knife in a cupboard of the hostel where the victim, Jane C., his ex-girlfriend and their daughter had been living after leaving him in March 1977. Before hiding, he cut the telephone line to delay police attendance. He emerged and killed the victim, stabbing her eight times.

12. By 1989 Mr Ratkiewicz had been found to be suffering from a severe and enduring mental illness and was transferred to a hospital Medium Secure Unit. The precise diagnosis was stated in the papers that I have studied. He remained in this therapeutic clinical setting until the Parole Board directed his release in 1998. Over the next five years Mr Ratkiewicz was admitted several times to hospital, both under the Mental Health Act and informally. He was recalled to prison in 2003 and in 2004 he was again transferred to the same Medium Secure Unit for treatment. He remained there until 2012 after which he has been a patient in a series of low secure and rehabilitation units. The Mental Health Tribunal considered Mr Ratkiewicz's case in 2023 and determined that had he been detained under a restricted Hospital Order he would have been entitled to a conditional discharge. It was recommended that Mr Ratkiewicz remain in hospital until the Parole Board could consider his release; he was duly referred to the Board by the Secretary of State on 5 October 2023. He is 35 years post-tariff.

13. On 8 December 2023 a MCA member of the Parole Board directed the case to an oral hearing, which is now fixed to take place on 12 September 2024.

Details of the Application and Representations

14. On 7 June 2024 the Parole Board received an application for the oral hearing to be held in public. The Applicant submits that the public should be made aware of the dangers Mr Ratkiewicz presents and how dangerous he can be if he is rejected. The Applicant highlights that Mr Ratkiewicz's mental health has declined, says that Mr Ratkiewicz has no concept of authority and will do what he wants, and asserts Mr Ratkiewicz will 'do it again'.

15. There is a separate process for members of a victim's family and others to apply to the panel chair to observe an oral hearing being held in private. I will confine this decision to the question of whether the hearing should be open to the general public.

16. The Parole Board asked for representations from the parties to the case and received them from the Secretary of State and from Mr Ratkiewicz's solicitors.

17. The Secretary of State supports the application in representations dated 27 August 2024. She acknowledges that Mr Ratkiewicz may experience heightened emotional stress at the prospect of a public hearing, but observes that measures can be taken to alleviate such stress. 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. 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, so that they are able to set out their professional opinions and answer questions openly and fully.

18. Representations made on behalf of Mr Ratkiewicz (dated 20 August 2024) have been received from his solicitor. The legal representative argues that it is not in the public interest to have a public hearing; the public will trust the Parole Board accurately to assess how dangerous Mr Ratkiewicz is now. It is said that a public hearing would be detrimental to Mr Ratkiewicz, whose mental health has fluctuated throughout his incarceration. It is pertinent to risk and any instability exhibited during the hearing could have a prejudicial impact on the outcome of his case. If the hearing was in public Mr Ratkiewicz may not feel able to be as open in his evidence which would have an adverse effect on the outcome. The legal representative notes that there are no special features or exceptional circumstances that would warrant a public hearing and that a summary of the decision would provide sufficient transparency for the public.

19. The Panel Chair has been consulted. He 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 witnesses from having an opportunity to give their best evidence; (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 does not feel a public hearing is appropriate in this case. It will not add to the proper public understanding of the Parole Board's work or any other public debate at a time of heightened public interest in the process for dealing with homicides by mentally disordered offenders, after a particularly tragic and high-profile recent case. Mr Ratkiewicz was not mentally ill at the time of the index offence and hence received a mandatory life sentence rather than a hospital order. The Panel Chair notes that Mr Ratkiewicz has a severe and enduring mental illness, and a public hearing would impact upon this and impede his ability to properly participate within the proceedings. Much of the evidence will relate to personal medical matters and have to be given in private to preserve patient confidentiality. The Panel Chair also raises concerns that a public hearing may adversely affect and potentially re-traumatise the family of the victim.

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. Where there are such good reasons, adjustments 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. Should a hearing be held in public, it is always open to the Panel Chair to use his case management powers to manage the hearing and to suspend a hearing if they feel that the proceedings are becoming unfair.

24. 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 <u>not</u> met in this case. My reasons are as follows:
    a. There are no special issues of law or fact which give rise to a wider public interest in seeing how the hearing is conducted. A summary of the reasons for the panel's decision will be available to the public in any event.
    b. The points made by the Applicant as to the danger Mr Ratkiewicz is still said to pose go to risk assessment rather than the question of whether to have a public hearing.
    c. Mr Ratkiewicz has a severe and enduring mental illness, and a public hearing would impact upon this and impede his fragile ability to participate in the proceedings. There is a real danger that this would render the hearing unfair, as the panel would not then receive the most open and honest account the prisoner is capable of giving, in order to make a fully-informed objective assessment of his risk.
    d. Much of the evidence will relate to his personal medical matters and must be given in private to preserve patient confidentiality.
    e. The hospital setting makes it more difficult to facilitate a public hearing. The logistical challenges involved in making special practical arrangements at such an untested location are likely to impose a disproportionate burden upon the Board's resources.

25. I therefore have not granted the application for the hearing to be held in public.

26. This matter will only revert back to me if there is any fresh information which represents a significant change of circumstances.

HH Judge Anthony Bate on behalf of
The Chair of the Parole Board for England and Wales
4 September 2024