

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	4
Application information	4
Representations from the parties	5
6. Principles	6
7. Panel Chair Considerations	7
Victims signed up to the VCS	9
Victims not signed up to the VCS	9
8. The decision	10
9. Preparing for the hearing	11
Case Management Conferences	11
Naming attendees at the oral hearing	12
Naming the prisoner	12
Who should be on screen	13
Open and closed sessions	13
Closing submissions	14
Logistics for the oral hearing	14
Timetable	15
10. On the day of the hearing	15
Pre-hearing activity	15
CVP Observation	16
Taking breaks	17
The victim	18
Confidentiality Agreements	18
11. After the hearing	20
12. Other circumstances	20
Objections on the day	20
Reading a VPS	20
Victim with mobility restrictions	21
Observing on behalf of a Victim	21
Official Representative	22
Prisoner engaging with the victim	23
Multiple victims	23
Other prisoners as victims	23

1. Introduction

This annex provides advice for panel chairs on considering applications from a victim to observe a private oral hearing. Where a victim is observing the hearing there is additional advice and best practice on what may 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, it is only since autumn 2022 that it has been made more openly available for victims to apply. Following robust and extensive testing, the Secretary of State has confirmed that **victim observers will be rolled out nationally from 1 April 2025**. Following this date, all victims signed up to the VCS, either on a statutory or discretionary basis, can apply to observe a parole hearing.

Whilst every application must be dealt with on its individual merits, **there is a presumption that applications from victims should be accepted unless there are exceptional reasons not to**.

This bespoke guidance should be read in conjunction with the more general *Guidance on Victims* and the *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: *Guidance on Public Hearings*.

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 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 8 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 disclosure may constitute 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

Victims engaged with the VCS on a statutory basis are entitled to request that the Secretary of State make an application to the Board on their behalf to observe a hearing. They should ask their Victim Liaison Officer (VLO) to notify the HMPPS Victims Team and PPCS, who will make the request to the Board.

Victims who are engaged with the VCS on a discretionary basis will need to discuss with their VLO the options available to them. In general, under the VCS they are not permitted to submit a VPS, however, they are able to consider applying to observe a hearing.

Victims who are not signed up to the VCS should apply to the Board direct if they wish to observe the prisoner's hearing. Requests should be made to the Victim Enquiries mailbox.

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 eight weeks before the oral hearing.

The Board encourages VLOs to discuss with the victim the option to apply to observe as early as possible, ideally as soon as the case is referred to the Board and at the latest once 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 eight 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 include a request for the application to be considered out of time with ***sufficient 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.

Feedback from panel chairs in the testing regions indicates that where the deadline is missed it can be difficult to make suitable arrangements in time. Panel chairs will need to consider if there is enough time to prepare effectively ahead of the oral hearing (which may require convening a case management conference), particularly where non-disclosure has been requested.

In some cases, a victim may apply for the hearing to be made public. In most cases, it is likely that the application will be refused as the threshold for a public hearing is very high. Where an application from a victim is refused they will usually be advised to consider applying to observe the private hearing. Due to the processes involved this may result in late applications and panel chairs are asked to take this into account.

5. The application process

The HMPPS Victim Representative within the HMPPS Victims Team will prepare an SHRF making the application for the victim to observe. The HMPPS Victim Representative will pass it on to PPCS to submit to the Board.

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 and their relationship to the family) who wish to observe
- Confirmation that the victim is signed up to the 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); the relationship to the victim of the personal support should be set out in the SHRF
- Who will provide the official support, this will usually be an HMPPS Victim Representative
- Whether the relevant VLO would also be in attendance to observe
- The proposed location from where the victim will observe the hearing (for example a probation office or Ministry of Justice building)
- Whether the victim would wish to see the prisoner on screen or not (the default position is that the prisoner will be on screen)
- 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 or identity, 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 other than limiting any psychological harm the victim may experience.*

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 observation. The Board has no authority to consider requests for other individuals to attend a probation office or other agreed official location and can only direct who should be in the room where the proceedings will be observed.

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 looking to disclose parts of the hearing
3. If so, 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 the Cloud Video Platform (CVP) if the prisoner is to be present, or any other attendee for the reading is located at the prison). In these instances, the HMPPS Victim Representative and victim will observe proceedings by joining the CVP room at the agreed time.

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

Once an application to observe a hearing is received under rule 14(4B), the Board will notify the parties and provide an opportunity for them to submit representations setting out any concerns or reasons why a victim observing would not be appropriate. There is no set timeframe for submitting representations, but rule 14 (4C) states:

"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."

Depending on when the hearing is listed, an appropriate timeframe will be set in order for the application to be considered fully, ahead of the hearing. It is recommended that an appropriate timeframe, in line with rule 14(3) should be adopted i.e. 14 days. This provides the prisoner and/or their representative with seven days to submit any representations and then the panel chair has a further seven days to consider 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
- Viability of putting in place arrangements and receiving representations in late applications

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. For example, a prisoner commissioned psychologist or psychiatrist may have concerns about discussing the case with a victim observer present.

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. **In most cases, work around options should be considered.**

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 and what a victim observing means 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 to present 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 with their camera switched off (but this is not recommended). These options should be considered before refusing the request from the victim to observe.

The Secretary of State 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. Probation should notify PPCS if they are aware of anything that may suggest a victim observing is not appropriate, for example there may be merging issues in the community that could compromise either the prisoner or victim.

Representations need to be careful not to be seen to determine what information may distress the victim. Each victim is different, and it must be their own decision on whether they wish to hear content discussed at parole hearings. The panel chair will focus on representations related to matters of security, safety and/or confidentiality.

Once representations have been received, or the deadline set has been reached, the application will be submitted to the panel chair to consider.

6. Principles

The following principles apply whether the application is being determined by an MCA panel, duty member or oral hearing panel chair.

MCA panels and duty members should apply the presumption that the application should be accepted unless there are obvious and exceptional circumstances. This will be provisional and it will be for the panel chair to determine the arrangements as part of the planning for the oral hearing.

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

- A victim observing should not be seen as exceptional or unusual and should be agreed to wherever possible
- The victim is required to sign a Victim Confidentiality Agreement
- The decision should be made after taking into consideration representations from the parties and the presumption of agreement
- Facilitating the victim observing should not lead to unnecessary delay to the hearing, especially avoid adjourning
- 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 over-arching principle is that the hearing should provide the *opportunity* for best evidence to be given
- A case management conference may be helpful to discuss the management of the proceedings where there are complexities or other challenges

7. Panel Chair Considerations

The following considerations apply whether the application has been provisionally approved by an MCA panel or duty member or it is a new application to be considered by the panel chair.

Whilst every application must be dealt with on its individual merits, **there is a presumption that applications from victims should be accepted unless there are exceptional reasons not to.**

Victims observing should not be considered as exceptional and should be facilitated in the majority of cases.

Applications from victims should be treated sympathetically and sensitively since they are likely to have been significantly impacted by the prisoner's offending and have a legitimate interest in understanding how the Board makes its decisions. **It would only be in exceptional circumstances that an application may be refused and sufficient reasons must be given for the refusal.**

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. **This does not mean that they need**

to be given every opportunity to ensure that they give the best evidence that they can.

It means that they have a *reasonable opportunity*, once adjustments have been made (for example, to restrict references to the Risk Management Plan or to discuss sensitive information in a closed hearing), to give their best evidence to the panel. Panel chairs will be mindful that a victim observing will not be seen and will not participate in the process, so any impact will be caused by the knowledge that they are observing.

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, taking into account the position held by Management Committee, 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 whether, in certain cases, a case management conference is required.

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. **Panel chairs will need to evidence that all attempts have been made to support the victim to observe before refusing the request.**

In some cases, the panel chair may wish to direct a case management conference to discuss the victim observer 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.

Possible reasons to refuse an application include:

- The prisoner is under 18
- The prisoner is subject to an anonymity order or other reporting/information sharing restrictions
- The victim/their family is publicly hostile to the prisoner, has threatened the prisoner, or is a member of a rival gang
- The case is highly sensitive and a victim observer may compromise national security
- There is 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; this is particularly relevant for recall cases and care will be needed to ensure unlawful disclosure of information about victims does not take place or that disclosing information does not put others at risk
- Cases where allegations need to be explored in detail (could these be discussed in closed?)

It should be noted that representations stating that a victim observer will inhibit the prisoner from giving their best evidence is not a sufficient reason on its own to refuse an application from the victim to observe. In most situations, as long as the panel chair is of the view that the prisoner has a reasonable opportunity, once adjustments have been made (for example, to restrict references to the Risk Management Plan or to discuss sensitive information in a closed hearing), to give their best evidence then a victim observer could be agreed. The prisoner does not have a right of veto. They are free to choose not to give evidence if they wish, as long as they have a reasonable opportunity to give their best evidence. In such a case the hearing can proceed without their evidence.

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 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, although the victim can also request for their VLO to attend. They will normally all meet at a local probation 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 Board's office in London or other agreed building to observe by remote means. The most suitable location will be identified by HMPPS staff, wherever possible.

The HMPPS Victim Representative and victim will join the CVP room at the agreed time.

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 but not signed up they should be encouraged to consider signing up, which will then provide them with access to more advice and support. Panel chairs may wish to bring the matter to the attention of the Board's Victim Team who can, in turn engage with the victim and the HMPPS Victims Team. The victim cannot be compelled to sign up to the VCS if they do not wish to. However, they will be offered the services available within the VCS for the duration of the observation period and then to opt out of further support, should they so wish.

On occasion a victim will make an application for a parole hearing to be made public. Where this is refused the Chair of the Parole Board (or senior member with delegated authority) 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. This may be submitted late and will need to be considered under rule 9.

8. The decision

When completing their response, the MCA panel, duty member or panel chair is 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 Secretary of State to determine which information can and should be shared with the victim, providing a steer within the response may be helpful. VLOs will follow the advice from the panel and so being as clear as possible will avoid receiving requests for clarification.

The final decision about a victim observer rests with the oral hearing 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 have changed. 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.

However, if the victim believes further information might assist or provide more context, then this can be submitted with a request that the panel chair further considers the application.

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

- b) Request to attend to read out their VPS to the panel but not stay for the rest of the parole hearing
- c) Request that the hearing be held in public

Panel chairs should seek further advice from the Board's Practice Advisor¹ 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.

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.

The panel chair may wish to set aside some time at the start of the hearing to discuss this or if there are complexities direct a case management conference.

In most cases, the HMPPS Victim Representative and the victim will observe by joining the CVP room at the agreed time. The Board's Victim Team will work with the Hearing Support Team to put in place the technical requirements which should be fairly straight-forward and in line with general CVP room arrangements.

Where a case is complex, high profile or other circumstances mean that the victim cannot join the CVP room then a "live-stream" will need to be arranged and a Streaming Administrator appointed. Panel chairs should seek advice from the Board's Victim Team if they believe a "live-stream" is needed.

Case Management Conferences

Written submissions from the parties may be sufficient for the panel chair to determine how the hearing will be managed, with the Board's Victim Team assisting with the planning. However, panel chairs may wish to direct a case management conference where, for example, this may be their first hearing with a victim observer, there are particular challenging circumstances to navigate, or the case is complex.

The following are recommended to be directed to attend a case management conference where one is required:

- Panel Chair
- Prisoner's representative (if there is one)
- Key witnesses i.e., community offender manager (COM), prison offender manager (POM), Psychologist
- HMPPS Victim Representative (and in some cases the VLO)

¹ *Legal & Practice Queries mailbox*

Optional attendees:

- Co-panellists or panel chair support officer (where there may be complex arrangements)
- Secretary of State Representative or PPCS staff member (if the case is high profile/noteworthy)
- Hearing Support Officer or member of Victim Team (if the case is complex)
- Streaming Administrator (if the proceedings are to be "live-streamed")

It may be helpful if the arrangements agreed and the discussion during the case management conference is documented by way of Panel Chair Directions. This would only be required if there are complexities or detailed technical arrangements needed.

If there is insufficient time to arrange a case management conference before the hearing, the panel chair might consider setting aside some time at the start of the hearing to discuss these matters.

If the arrangements are fairly straight-forward the panel chair may wish to delegate drawing the information together to the Board's Victim Team, 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

The default position is that all attendees (including co-panellists, witnesses, and the prisoner's representative) should be named. This is important for the purposes of transparency.

Where an attendee believes that disclosing their identity will put them at risk or seriously compromise them in some way they should make submissions to the panel chair. The panel chair will consider this but will require a clear explanation of the level and likelihood of risk and whether this can be mitigated in any way.

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. In general, the default position is to refer to the prisoner in the name they were sentenced under. The prisoner may agree to be referred to under the previous name 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 and a solution found wherever possible. 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. More detailed guidance on this can be found in the *Guidance on Transgender Prisoners*.
Referencing the victim and the HMPPS Victim Representative

The HMPPS Victim Representative should be asked to ascertain whether the victim is content to be mentioned by name at the beginning of the hearing. If the victim does not wish to be named, the panel chair can refer to them as the "victim observer". The HMPPS Victim Representative should be named, unless there are exceptional circumstances, agreed by the panel chair, that they should not be named.

Who should be on screen

The default position is that all attendees (including co-panellists, witnesses, and the prisoner's representative) and the prisoner should be onscreen during the proceedings. This is important for the purposes of transparency.

Where an attendee believes that appearing onscreen will put them at risk or seriously compromise them in some way they should make submissions to the panel chair. The panel chair will consider this but will require a clear explanation of the level and likelihood of risk and whether this can be mitigated in any way.

The victim may have preferences in terms of seeing the prisoner and the HMPPS Victim Representative will need to take these preferences into account. When joining the CVP room there is not a function to switch the screen off. If the victim is anxious not to view the prisoner, then the positioning of the laptop screen will need to be physically moved out of their view. The audio should still be clear even if the screen is turned away from the victim.

Open and closed sessions

The default position should be that as much as possible should be in the open hearing, so that the victim has a meaningful experience of the parole process.

Best practice advice is that all of the open session of the hearing take place first and then any closed session discussions take place afterwards.

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.

Discussions about the details of the risk management plan should take place in closed session IF there is a significant risk that disclosure will compromise the arrangements.

Other likely topics that may need to be held in closed session are:

- Details of release accommodation and family members

- 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 to the prisoner and attendees and reduce the amount of detail needed to be discussed in closed session.

Closing submissions

Closing submissions are usually provided at the end of the proceedings. Closing submissions summarise the prisoner's position and do not introduce material the victim will not already have heard (aside from material which is not disclosable to the victim).

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 experience. 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 may need to be put in place for the hearing. This may have implications for the listing tier allocated to the case which may need to be revised. 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.

Feedback from panels suggests that listing the victim observed case in the morning and securing extra time, and only have a second, short case for the afternoon is more likely to lead to both cases concluding.

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 should be named, unless there are exceptional circumstances, agreed by the panel chair, that they should not be named.

The panel chair may wish to set out the order of the proceedings so that everyone is clear. This is particularly helpful where the victim will be reading their VPS as well as observing. A time should be set for the reading of the VPS, then some pre-hearing time set for ensuring attendees are aware of the agreed arrangements, and then an agreed time for the HMPPS Victim Representative and victim to join the CVP room.

10. On the day of the hearing

Pre-hearing activity

All those attending the proceedings should be directed to connect into the CVP room promptly at the time set out on the timetable. Pre-hearing activity including technical checks and hearing protocols can take place ahead of the victim joining (which is suggested as 15 minutes later). 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 did not take place prior to the hearing. This may need to take account of 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 victim joins the CVP room, all attendees should ensure the name label on their onscreen icon is clearly visible and that it is not obscuring their face (subject to any previously agreement about anonymity).

If it has been agreed that the name of the prison establishment should not be disclosed (for security or safety reasons) each attendee should check that there is no identifying signage in view on their screen.

It is recommended that before the victim joins the CVP room the following takes place:

- Initiate the digital recording

- 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 and will be joining the CVP room and ask if anyone has any further questions
- Invite attendees to introduce themselves and confirm their role for the purposes of the digital 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; there is an HMPPS Victim Representative (or VLO) with the victim managing the technology at all times
- Advise that the hearing will run as usual, and remind attendees that:
 - They should act in the same way they would usually at a parole hearing
 - They should answer the panel's questions as fully as they can
 - If they wish to say something that they are uncertain whether it should be in closed session, or they are concerned about this with another witness, they should let the chair know immediately
- Once everyone is comfortable, the chair will admit the HMPPS Victim Representative and victim into the CVP room to observe the hearing

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

CVP Observation

All attendees will be able to see that the victim has joined the CVP room as there will be a tile on screen with the label 'Victim Observer' which will also be reflected on the left-hand side panel list of participants.

It is good practice for the panel chair to clearly state that the victim, any support they have with them, and the HMPPS Victim Representative play no part in the proceedings but will observe up to the point where the open hearing comes to an end.

The victim joins the CVP room in '*Observer Mode*' which takes away the use of their camera and microphone. They are not able to contribute to the hearing or interrupt in any way. Equally, they cannot respond to any attempts by panels to communicate directly with them.

If the panel is not ready to start proceedings it is best practice for the panel chair to initially admit the HMPPS Victim Representative into the CVP room and ask them to rejoin in five/ten minutes.

If it is not possible to admit the HMPPS Victim Representative into to the CVP room, the panel chair should notify the Hearing Support Team of any short delays. For more significant delays, the panel chair should notify the Board's Victim Team. Both can keep the HMPPS Victims Representative updated.

See Appendix II for more information on technical support.

The Hearing Support Officer will be on hand to resolve any technical issues that may arise.

Taking breaks

Panel chairs should take the same approach to breaks as with any other hearing. Sufficient breaks should be planned to allow comfort breaks, lunch etc.

During breaks it is likely that the HMPPS Victim Representative and victim will remain in the room and so anyone else who remains on screen will be visible and audible.

There may be a range of situations where unscheduled breaks may be needed:

- The prisoner should be put at ease as much as possible during the hearing and given the opportunity to give their best evidence. If at any time the prisoner is looking anxious, agitated, or behaving out of character then it may be helpful to take a break
- All attendees should be mindful of disclosing confidential information during the proceedings and an attendee can ask the chair to take a break if they believe the conversation might be covering content that should be held in closed
- There will inevitably be slips where an attendee mentions a 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 draw attention to the fact. However, if it develops and a discussion about sensitive information is likely then a break can take place or the panel chair can move the conversation on
- Similarly, the panel chair may set a break to clarify a point, for example that the current discussion will be paused and dealt with in closed session towards the end of the hearing
- If at any point the panel chair determines that the proceedings must be ended urgently, they can instruct the HMPPS Victim Representative to leave the CVP room and indicate a time when it would be appropriate for them to re-join the hearing. The panel chair must keep the CVP room locked as this will avoid any inadvertent rejoining until the panel chair is ready to admit them

The HMPPS Victim Representative will alert the Hearing Support Officer if for any reason the victim needs to stop observing. The Hearing Support Officer will aim to notify the panel chair of any such circumstances in the least disruptive way. Proceedings should not be paused if this happens, and panel chairs should continue with the hearing. The victim may rejoin at a later point if the open hearing is still progressing and at the discretion of the panel chair.

In some instances, the prisoner's representative may wish to take a break to consult with their client. In cases where they are attending remotely, the prison

should provide the representative with a telephone number that can be called to undertake a confidential discussion with their client.

Alternatively, if a telephone is not available, they may need to use the CVP room for their consultation and so all other attendees should be asked to leave for a set period of time. The Hearing Support Officer should be asked to monitor the room to ensure only the representative and their client are present. Panel chairs will need to pause the digital recording for the duration of the break. **The latter option should be approached with caution** as there is potential for other attendees to inadvertently join a private discussion between the representative and their client.

The victim

The HMPPS Victim Representative (and sometimes the VLO) will assist and support the victim on the day at the location that will have been previously agreed.

The HMPPS Victim Representative will notify the Hearing Support Team or the Board's Victim Team if they are experiencing difficulties joining the CVP room. Both will assist resolving any technical issues. Panel chairs should avoid any delays and commence proceedings; they will be notified once any technical issues are resolved or if there are continuing difficulties.

If the victim is running late, again the panel chair should commence proceedings, and the victim will join once they arrive.

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 at all times 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 by joining the CVP room at the agreed time (unless exceptionally it is to be "live-streamed")
- 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 anyone else who is with them
- 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)
- 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.

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") 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.

It should be noted that the Board sits as a court, and interference with its proceedings can be contempt of court, which includes disruptive behaviour in the hearing, unauthorised recording of the proceedings, and failure to comply with the directions it makes. If victims are held to be in contempt of court they may be imprisoned or fined, or their assets may be seized.²

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 victim will be asked to physically sign the confidentiality agreement which will be sent as an electronic version to the

² Any breach may be referred to the Attorney-General for action.

Parole Board for audit purposes. The confidentiality agreement can be found at Appendix IV.

11. After the hearing

As victims observing is will be available nationally from 1 April 2025, the Secretariat welcomes feedback from the panel on how the hearing went and any best practice identified, or issues encountered. All feedback should be sent to the Victim Enquiries mailbox.

A summary of the decision will be provided in all cases where a victim observer was present. This will help explain how the panel arrived at its decision.

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 within its rights to continue with the hearing in the prisoner's absence as provided for in rule 24(1A)
 - ii) If the prisoner's representative is similarly minded to withdraw then they should be told it is a matter for their own professional judgement but the hearing may 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
 - 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 final 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 only relevant attendees will need to move between MS Teams and the CVP room at the agreed times. Using MS Teams will avoid other attendees, including the prisoner, inadvertently joining midway through the reading.

If it has been agreed that the prisoner will be in attendance for the reading of the VPS it can take place in the CVP room. It is recommended that a short break take place before everyone rejoining the CVP room for the proceedings.

Care will need to be taken if there are multiple victims, either reading out their VPS or observing, to ensure arrangements are followed properly.

This will be arranged by the Parole Board case manager with an overview from the Board's Victim Team.

Whether the victim reads out their VPS or opts to observe, it is good practice at an appropriate juncture to reference the VPS and confirm with the prisoner that they have read it (unless it is subject to non-disclosure). **This may reinforce the point that victims are being heard.**

Victim with mobility restrictions

There may be situations where a victim is not able to attend the designated place agreed for the observing 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.

An HMPPS official would need to accompany the victim to guard against the proceedings being recorded or broadcast, and to ensure 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 may 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 parole 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 Board cannot approve such a position and will not agree to

it. VLOs will need to draw the observer's attention to the Parole Board Rules and confidentiality section of the information sheet which the Board issues 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 a matter for them to determine, but they must bear in mind that they will be held personally responsible for any information they share that is then 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 agreement may need to be drawn up in such rare 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 Chair of the Parole Board. 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 extreme 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 a panel chair receive such a request they should contact the Board's 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 CVP observation 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.

Multiple victims

Where a prisoner is convicted of multiple offending against different victims and one or more of the victims wish to observe, the panel chair will need to consider how this will be managed in terms of disclosure of victim information. The panel will by necessity need to discuss the range of offending against the different victims and it may be extremely difficult to avoid disclosing personal information about those victims. This is particularly relevant where the case involves a recall and there is a new or alleged new victim without a conviction. There may be ways around this to protect personal information about victims by anonymising them but even so it may disclose offending that the victim observing was not aware of. A case management conference may assist with determining if a victim can attend, and if so, how this will be managed.

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 Board's Practice Advisor if they come across such a case.

January 2025