[2025] PBPH 2

the Parole Board
working with others to protect the public

Application for a Public Hearing in the case of

Anthony Smith

Outcome: The application for a public hearing has not 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 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 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 2025. 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. Anthony Smith is now aged 53. On 19 February 2018 he was sentenced to ten years' imprisonment for causing or allowing a child to suffer serious harm. A concurrent five year term was imposed for causing unnecessary suffering to a child.

11. The circumstances of the offence were that a six week old child in Mr Smith's care sustained several non-accidental injuries followed by serious infections, which had grave consequences. The child was only saved from death by skilled medical care. The child has been left permanently disabled, with serious sensory, cognitive and physical deficits. Treatment has been complex and is ongoing. The long-term prognosis is uncertain.

12. Mr Smith was due to be conditionally released on 4 September 2022. However, on 20 August 2022 the Secretary of State exercised the Power to Detain and Mr Smith remained confined. His sentence expires in September 2027. This is his second parole review.

13. On 3 December 2024 a MCA member of the Parole Board directed the case to an oral hearing, which is now listed on 19 June 2025.

Details of the Application and Representations

14. On 4 February 2025 the Parole Board received an application for the oral hearing to be held in public. It was supported by detailed grounds, only some of which I can cite in this published decision without identifying the Applicant. However, the Applicant is assured that all the matters raised have been considered with care both by the Panel Chair and by me. The Applicant submits that this case is unique given the circumstances of the offending, the extensive injuries suffered by the victim and the sentence that was imposed. It is said that this hearing should be in public due to the extensive public interest in it, the growing debate about the effectiveness of the Probation Service and their ability to manage offenders within the community These are all said to constitute 'special features' that set this case aside from others.

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 Smith's solicitors.

17. The Secretary of State made representations on 19 February 2025. She says that the Applicant has put forward good reasons for requesting a public hearing and would like due and proper weight to be given to them. HMPPS staff working with Mr Smith have raised concerns regarding his mental health and ability to process information and articulate himself.

18. Initial representations were received from Mr Smith's solicitor on 21 February 2025. The legal representative argues that it is contrary to the overall interests of justice to have a public hearing. It will not promote the welfare of the young victim. There are no special features that set this case apart from others. He is concerned for Mr Smith's welfare if more press intrusion was permitted.

19. The Panel Chair has been consulted. The 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 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 think that a public hearing would impede the panel's ability to fulfil its duty to assess risk. However, the Chair fears that a public hearing could have a detrimental effect on Mr Smith and may hamper his ability to present best evidence. A public hearing might inadvertently disclose details of release and accommodation plans which could lead to the prisoner's safety being compromised. He has already been reportedly subject to hostility in prison because of the notoriety of the case. A parole review is not the setting for a debate about the effectiveness of the Probation Service. The remit of the panel is to assess risk. Wider policy and operational issues concerning the performance of agencies in the criminal justice system must be pursued elsewhere.

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 not 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. Questions of policy and operational matters (such as the effectiveness of the Probation Service in supervising released prisoners) are outside the remit of the Parole Board. Such matters of legitimate public concern must be aired elsewhere.
    c. There are concerns from HMPPS staff, the legal representative and the Panel Chair that a public hearing would have a detrimental effect on Mr Smith's mental health and ability to express himself. 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. The discussion of the resettlement plan would in any event have to take place in private because of the specific places and related confidential personal information that would be mentioned in it.

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 in the relevant circumstances.

HH Judge Anthony Bate on behalf of

The Chair of the Parole Board for England and Wales

13 March 2025