the Parole Board
working with others to protect the public

THE ROOK TOPOLSKI TRANSPARENCY REVIEW

HH Peter Rook KC & HH Michael Topolski KC

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CHAPTER ONE - INTRODUCTION

1.1. The Parole Board "the Board" is an important and integral part of the criminal justice system. The Board has already taken certain steps towards greater transparency and is committed to achieving more provided that its core functions are not compromised and its proceedings remain fair.

1.2 Greater transparency results in greater public education about the Parole Board. A greater understanding of its work helps eliminate public misconceptions which can found unjustified criticism. It also provides the Board with an opportunity to reveal the diligence with which the Board performs its functions.

1.3 In contrast, a closed system can be readily misinterpreted as designed to conceal bad practice and can lead to accusations of 'secret justice.'

1.4 Furthermore, greater openness can lead to more effective public scrutiny. Only allowing token transparency will inhibit effective public scrutiny which can raise the quality of hearings, achieve greater consistency, and improve the clarity of the reasoning underpinning decisions. It is openness that can hold members to account for their decisions so that that the public can have confidence that they are discharging their important roles properly.

1.5 There is no doubt that there is great public interest in all the work of the Board, particularly in relation to how it reaches its decisions on whether or not to release high profile prisoners. This is an important and legitimate public interest. A society that better understands the work of the Board is likely to have greater confidence in its work.

1.6 Notwithstanding that interest, it is clear that the Board continues to be widely misunderstood by members of the public. There is also a certain level of misunderstanding to be found in some of the witnesses and professionals who participate in hearings. Not only is it not generally understood that the Board is an independent court in law making evidence based judicial decisions, its function is often misunderstood. For instance, the public has a tendency to assume incorrectly that automatic releases have been directed by the Board and/or that the Board is involved in all releases from prison. Public understanding of these matters is critically important in order to

secure public confidence in, and appropriate respect for, a rigorous parole system in a democratic society.

1.7 Parole hearings are not an avenue for early release. They do **not** involve a re-sentencing exercise and they are not a re-trial. The Board only considers release after the prisoner has served the minimum term (the punishment term) set by the sentencing judge. Furthermore, many do not understand that the parole process in England and Wales is solely focussed upon risk and public protection.

1.8 The Board acknowledges that there are certain areas where it is important that confidentiality is maintained. It is essential that the need for public confidence is balanced with confidentiality. Greater openness must not be at the expense of the need to protect a prisoner's health and security. Frequently, evidence needs to be considered about deeply personal matters and highly sensitive medical information. There may be difficulties in hearing this in public. Similarly, there are cases where the re-settlement plan cannot be discussed in public because it would expose the prisoner, and anyone else living or working at the same premises to the risk of harassment, and/or physical harm.

1.9 However, that does not mean that greater transparency cannot be achieved in respect of other areas. It is not a binary concept.

1.10 A vital facet of transparency relates to victims. The need for victim involvement in the criminal justice system does not stop at sentencing. It continues during the parole process. The Parole Board is acutely conscious of the need to facilitate a sensitive and appropriate victim experience of the whole process. The involvement should be as full as possible with properly managed expectations.

Timing of this review

1.11 We have been asked by the Parole Board Management Committee to conduct an internal review into the current transparency of the Board in the exercise of its functions.

1.12 The review is timely in that

(i) Whilst the broad principle of open justice is unquestionable, it has been recognised by the courts that its practical applications need reconsideration from time to time to take account of changes in society and the way the courts work.

(ii) the Board has now conducted six public hearings since their introduction in 2022. Since public hearings represent a substantial new departure for the Board, this is an opportunity to consider whether these proceedings are achieving greater transparency, any difficulties encountered when holding these proceedings and whether the procedures can be improved, and whether there are better alternative methods for holding public hearings that should be explored and piloted.

(iii) it provides the Board with the opportunity to engage fully with the work of the Transparency and Open Justice Board (TOJB) which the Lady Chief Justice set up in April 2024 that is seeking to examine and modernise the judiciary's approach to open justice in courts and tribunals. Whilst the Parole Board is not at present part of the HM Courts & Tribunal Service (HMCTS), there is well-established authority that it is a court in law. It is clear that the Board should engage with the TOJB and wishes to do so.

(iv) it provides an opportunity to consider where the Board has reached and what can be achieved in respect of securing appropriate transparency and support for victims at a time when national implementation of victim observed private hearings was recently implemented on April 1st 2025. We accept that victim access to proceedings is an important part of the move to greater transparency.

(v) after several years of the provision of summaries, it enables us to consider whether over time the current system should be replaced with the publication of appropriately redacted decisions.

1.12. Our focus on these issues has led us to consider other matters that frequently arise when considering how best to achieve greater transparency without compromising necessary confidentiality.

(i) whether the Board should be seeking the power to restrict publication of confidential matters and whether it needs greater contempt powers to enforce such a restriction.

(ii) whether the Board should have further bespoke guidance as to which matters should properly be heard in private.

(iii) the anonymity of Board members who sit on Panels at public hearings.

Relevance of the Status of the Parole Board

1.13. It is important to bear in mind that in the light of the Board's status as a court in law, the open justice principles applies to its proceedings.

1.14. The Board is an integral part of the criminal justice system. Although funded by the Ministry of Justice ("MOJ"), it is an arms-length body with important judicial functions.

1.15. The Board was established in 1967. In its first manifestation, between 1968 and 1997 its function was to advise the Secretary of State rather than making binding determinations.

1.16. Under the influence of the European Court of Human Rights, statutory amendments have given the Board the judicial function of making decisions about whether to release prisoners. These include deciding whether prisoners with indeterminate sentences who have completed their minimum (punishment) term, or some prisoners who have been released and recalled to prison, should be released into the community.

1.17. The law requires this function to be discharged by a body which has the essential attributes of a court. That is to say the Board must be, and be seen to be, impartial and independent of the executive. It follows that the Board is an independent court as a matter of law, making evidence based judicial decisions. It adjudicates upon matters of individual liberty and in so doing exercises the judicial power of the state.

1.18. In *DSD & NBV v Parole Board and others* [2018] EWHC 694 (Admin) the Administrative Court presided over by the then President of the Queen's Bench Division, confirmed that the open justice principle applies to the proceedings of the Board in the context of providing information.

1.19. We have approached our task on the basis that the fundamental reasons for the open justice principle apply generally to the Board given its status as an independent judicial body.

1.20. We recognise that 'open justice' is a fundamental constitutional imperative. The starting point is that open justice must be accorded very substantial weight. It may only be displaced where there is a sufficiently compelling countervailing justification. Clearly, any significant compromise of the fairness of proceedings would amount to a countervailing justification.

1.21. We acknowledge that the Board's ability to deliver greater transparency, to some extent, depends upon it being provided (i) with adequate resources to achieve that end and (ii) the powers to make restriction orders to prevent publication of confidential matters.

Scope of this review

1.22. The practical operation of the open justice principle is multifaceted. It is recognised that its operation will vary according to the nature of the particular facet of the judicial body's work. Accordingly, we intend to examine the different facets of the Board's work. We will approach our review in this order

(i) public hearings
(ii) victim observation of private hearings and
(iii) publication of decisions.

1.23. The TOJ Board has now published a consultation document in respect of its key objectives which represent the high-level outcomes with a view to identifying areas where changes can, and should be, made and will be used to measure the outcomes of any change programme.

1.24. In so doing we will bear in mind the four key components of open justice as identified by the TOJB: open courts, open reporting, open decisions, and open documents. No component is absolute where sufficiently weighty countervailing factors are compellingly established, Courts and Tribunals may be required to derogate from open justice. There is no doubt that delivering justice must always come first.

1.25. We accept the invitation from the TOJ Board to carry out evaluations of the extent to which the current Parole Board practice and procedures meet the proposed key objectives, whether there are countervailing features, and to the extent there are not, what changes can be made within the limits of the Board's budget.

Consultation

1.26. Although this is an internal review, we have consulted widely both inside and outside the Board. In particular, we have had instructive meetings within the Board with:

(i) Board panel members who are currently making public hearing decisions
(ii) Board members who have panel chaired or been a co-panellist at a public hearing
(iii) members of the Members Representative Group (MRG)
(iv) Board senior management and senior leadership and
(v) the secretariat staff who have the responsibility for making all the preparations for public hearings and ensuring they run smoothly.

1.27. We have also been greatly assisted in interviews with people outside the Board, including:

(i) prisoners lawyers, including those who have been involved in public hearings
(ii) academics including Professor Nicky Padfield and Professor Stephen Shute
(iii) members of the media including representatives of PA media (formerly the Press Association)
(iv) senior leadership of HM Prison & Probation Service (HMPPS)
(v) the Victims Commissioner and the London Victims Commissioner
(vi) victims who have attended both public hearings and victim observed private hearings
(vii) Mr Justice Nicklin, chair of the Transparency and Open Justice Board and Judge Sarah Johnston, Vice Chair of the Mental Health Tribunal
(viii) Sir Andrew MacFarlane, President of the Family Division and Head of Family Justice, and Mrs Justice Lieven
(ix) a senior member of the Canadian Parole Board.

For a full list of consultees see Annex B.

EXECUTIVE SUMMARY – THE LIST OF RECOMMENDATIONS

General transparency

1. The Board should closely monitor its progression on achieving greater transparency and continue its engagement with the Transparency and Justice Board.
2. The most senior Judicial member (currently the Judicial Vice Chair) of the Board should have oversight of transparency issues.
3. Transparency should be on the agenda at the annual OPEN Parole Board Management Committee meeting. The Judicial Vice Chair should report on transparency progress.
4. The Board should conduct an internal transparency review every 3 years.

Public hearings – general approach

5. The Board should continue to hold public hearings. They represent an important facet of the different ways the Board is seeking to achieve greater transparency.
6. The general approach that there must be a good reason or reasons to justify a departure from the general rule that all parole hearings should remain in private should remain for the time being.
7. Whilst the Board only has the resources to hold a limited number of public hearings a year, the Board must aspire to achieve more public hearings during the next 3 to 5 years with at the very least, a modest increase each year.
8. The Board should take steps to improve the observer experience of public hearings.
9. The Board should pilot different forms of holding a public hearing including alternative observer locations and unsupervised streaming to accredited members of the media and legal bloggers.
10. A new bespoke Guidance should be drafted providing clear guidelines for Panels as to when evidence should be heard in private.

Information

11. The existing Board Website should be reviewed with a view to making it as easy as possible to navigate for those seeking information about public hearings. Full step by step information about the whole process should be readily accessible.
12. Details of any public hearing applications should be posted on the Website as soon as possible after the application has been received so as to enable other parties to join the application if they wish.

Applications for public hearings

13. As a matter of principle, an applicant for a public hearing should not enjoy the right to anonymity unless there is a compelling reason for not doing so.
14. There should be cross-service of parties' representations to the Public Hearing decision maker.
15. HMPSS should be under a duty to disclose to the Public Hearing decision maker all matters that may be relevant to the decision such as matters relating to the prisoner's welfare and security.
16. The Board judicial members who decide public hearing applications should meet at least twice a year to consider whether there are any cases pending where the Board should, of its own motion, consider directing that there should be a public hearing.
17. The current non-exhaustive list of factors as set out in the Guidance for Applications for Public Hearings (October 2022) does not require revision.
18. The Public Hearing decision maker should continue to make the public hearing decision on the papers. However, if necessary they should consider holding a hearing and hearing oral submissions from the parties and any applicant (including the media) to assist in resolving the issue.

The public hearing

19. Over and above the early case management hearing following the public hearing decision to address public hearing issues, there should be a further hearing shortly before the substantive hearing so as to avoid last minute issues.
20. There should be consultation with interested parties as to whether the prison can be named in public unless there is a good reason for not doing so.
21. If it is practicable, a Panel should allow representations from the media on matters of substance.
22. The Panel Chair should provide a written opening for distribution to observers at the outset of the proceedings.
23. Chairing public hearings should, for the time being, be confined to judicial and panel members experienced in chairing high profile and noteworthy cases.

Alternative forms of public hearing

24. The Board should consider piloting unsupervised streaming to (a) accredited journalists and legal bloggers combined, if appropriate, with streaming to (b) supported victims at probation offices or their homes (c) registered observers. If successfully piloted, consideration should be given towards this becoming the default model.

25. When directing a Public Hearing, consideration can be given as to which form of public hearing is appropriate. A supervised observer location would be reserved for cases where a high level of attendance of the members of the public is likely even though the public will have access to press reporting.

Victim observed private hearings

26. A victim application to attend a private hearing should be granted unless there is good reason not to do so. The Parole Board Rules should be amended to reflect this.
27. Members should be careful to provide principled reasons for not granting an application.

Summaries and decisions

28. The current process for the creation of summaries by non-panel members be phased out and following a pilot scheme the Board adopts the ultimate aspiration that in due course there will be redacted fully reasoned panel decisions in all cases.
29. From now on redacted public hearing decisions should be published. Published redacted decisions should be piloted in respect of victim observed private hearings.

Contempt powers and reporting restrictions

30. As a matter of urgency, the Board should seek powers to restrict the publication and/or dissemination of confidential matters that have arisen during a public hearing.
31. The Board should be given its own powers to deal with a contempt in the face of the court that may arise in its proceedings. This could be achieved by giving the panel chair the power to deal with contempt as and when it arises and/or refer the matter to the chair of the Parole Board who could allocate possible contempt proceedings to a senior judicial member of the Board.

Documents

32. The Board should principally in the course of public hearings commit itself to amending its Rules to permit the provision of selected core documents (such as a transcript of the judge's sentencing remarks/ the parties' position statements/ skeleton arguments) to the public and the media relating to a parole review.

Anonymity – public hearings

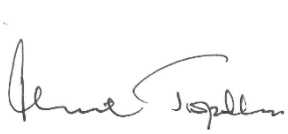
33. Panellists in public hearings should not enjoy anonymity unless evidence of exceptional circumstances is provided and established.

Anonymity – Victim Observed Private hearings

34. Where a redacted decision is to be published in respect of a victim observed hearing, the anonymity of the panel members should be maintained only until such time as the publication of the decision and not thereafter unless exceptional circumstances have been established.

HH Peter Rook KC

21 March 2025



HH Michael Topolski KC

21 March 2025

CHAPTER TWO – THE HISTORY OF THE PAROLE BOARD'S TRANSPARENCY

2.1. For many years, the system for making parole decisions was entirely 'closed.' Under the Parole Board rules, all hearings were required to be held in private. The Board was prevented by law from revealing any information about the cases it was considering or its decisions.

2.2. Since changes to legislation in 2018 the Board has taken substantial steps to increase its transparency in respect of providing summaries and providing for access to hearings by victims and observers. These changes have been brought about after various alterations to the Parole Board rules.

(i) *Summaries* - Upon application by anyone (97% are by victims) the Board will provide a summary of a decision. These have proved useful to victims, the media and the wider public.

(ii) *Victims* - Over the last few years victims have progressively been given greater access to the Parole process. They may attend Board oral hearings and read out their Victim Personal Statement to the Panel. This provides an important opportunity for the victim to explain the ongoing impact of the crime. They may ask the Secretary of State to apply for reconsideration of decisions on their behalf and reconsideration decisions are published online by the Board. They can apply to attend hearings as observers. Now , after an extended pilot in the South West Probation Region and Manchester, testing whether these hearings are operating safely and effectively, victim observed private hearings were implemented nationally on 1st April 2025.

(iii) *Observers* - They can apply to attend private hearings – typically these have been academics, trainee probation officers, and individuals providing support for the prisoner. On very rare occasions, the media and members of local and national government have observed private hearings.

2.3 This has coincided with other important developments which demonstrate a commitment to greater transparency.

(i) the Annual Report for the Parole Board of England & Wales is published and laid before Parliament each year and is readily accessible on the internet. It provides an overview of the Board's work, a review of the Board's performance during the course of the year and lists all its members by name and membership type. It also includes such matters as release decision data by sex and ethnicity, rates of serious re-offending of prisoners following release, and how the Board handles terrorist cases.

(ii) for the last 8 years the Board Management Committee has held an OPEN meeting each year to which the public are invited.

(iii) The Board CEO, senior management and experienced members (from the member spokesperson group) have given interviews on programmes such as the BBC's *Today* programme and *Law in Action.*

(iv) The two series of the BBC 2 documentary Parole (2023/2024) showed parts of parole hearings and featured interviews with prisoners, members and some victim engagement. It attracted substantial viewing figures. (Series 1 between 5 and 6M viewers across the series; series 2, 4.2M viewers across the series.)

Public hearings

2.4 From July 2022 the Board had started to hold public hearings, although the vast majority of its oral hearings (in the region of 8,500 a year) are held in private.

2.5 From 20 October 2020 to 1 December 2020 the Government held a public consultation on whether parole hearings should be heard in public in some limited circumstances (public consultation). It recognised that there is a balance to be struck between the desire for openness and the rights to privacy and security for all those taking part in hearings. It stated that it thought it was right to take a gradual and cautious approach to opening up parole proceedings more widely : Root and branch review of the parole system - Public consultation on making some parole hearings open to victims of crime and the wider public

2.6 In February 2021, the Government decided that the blanket ban on public hearings was unnecessary, and that public hearings, in appropriate circumstances, would improve transparency and could help build confidence in the parole system (outcome of the consultation: Root and branch review of the parole system).

2.7 The Government made it clear that improved openness and transparency should not come at the cost of re-traumatising victims or a compromised parole process. It acknowledged that nothing must stand in the way of the Board being able to protect the public by making fully informed assessments. It believed that it is possible to provide for parole hearings to be opened up in a limited way without introducing compromises into the system.

2.8 In its overview, the Government response stated that it was important to stress that it considered that it would only be in a minority of cases where an application for a public hearing is likely to be made, and where the Board would consider the case for a truly public hearing to have been met.

2.9 At the time of publication, the then Minister of State for Justice, Lucy Frazer KC MP, said: *'We are mindful of the fact that parole hearings involve discussion of sensitive personal matters about prisoners and victims. It is important that the privacy, safety and wellbeing of hearing participants is protected, as well as ensuring that the Board can continue to properly assess prisoners' risk without the evidence on that being compromised. For these reasons we expect truly public hearings to be rare but it is right that we are removing the barrier that requires them to always be held in private. Where it can be done safely and securely, a public hearing will provide a valuable opportunity to show how the Parole Board goes about its valuable work and how decisions are made'.*

2.10 On 30 June 2022 a statutory instrument was laid before Parliament, containing a new rule allowing for anyone to be able to apply for a public hearing. The new rule took effect from 21 July 2022 providing for the Chair of the Board to determine applications.

2.11 Rule 15(3) now provides that "*an oral hearing (including a case management conference) MUST be held in private unless the Board chair considers, on their own initiative or on an application to the Board, that it is in the interests of justice for the hearing to be held in public*."

2.12 The terms of Rule 15(3) suggest that a public hearing represents a departure from the usual position which remains a private hearing.

2.13 The Board developed 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).

2.14 For the first two years, the Chair of the Board determined all these applications, save in one case when she was away which she delegated it to the Judicial Vice Chair. From the summer of 2024, she delegated the decision making to seven senior judicial members of the Board.

CHAPTER THREE – PUBLIC HEARINGS

Information

3.1. Proper provision of appropriate information about the whole process from application for a public hearing to the Panel's decision whether to release or not is vital if transparency is to be achieved.

3.2. Use of the Board's website would appear to be the best way of achieving this. It should be in a format that is easy to access. Alternatively, other digital products should be considered which may be able to host this type of information.

Information about pending cases

3.3. We have considered how potential public hearing applicants can learn about pending Parole Reviews so they can decide whether to make an application.

Victims

3.4. This is the responsibility of the Victim Contact Scheme (VCS), managed by the Probation Service. A Victim Liaison Officer (VLO) will provide the appropriate guidance and assistance. It is important that those responsible for victims explain that an easier route for a victim to attend a hearing is by way of application to observe a private hearing. The early days of public hearing applications saw many victim applications where the victim's main objective was to attend and observe a hearing themselves rather than for the hearing to be held in public.

3.5. We recognise that there is a qualitative difference for a victim between attending a public hearing and attending a private hearing as an observer. However, we understand many victims prefer to attend private hearings and they should be made aware that following national implementation on 1st April 2025 a victim application to attend a private hearing is likely to be granted whereas for the time being the Parole Board is only in a position to grant a limited number of public hearings.

3.6. We appreciate that there will be victims who wish to share the experience of a public hearing with the media. An example will be a victim who wishes to run a campaign to prevent further similar crimes.

3.7. Victims who have not signed up to the VCS will not have had a VLO assigned and do not receive information about the parole process. The Board and HMPPS need to develop a bespoke policy to ensure that those who may now wish to engage in the process are not left in the dark.

Media

3.8. The Board's Communication and Engagement Hub have regular monthly meetings with representatives of the media. The Board provide the names of pending noteworthy cases of interest and updates on their progress. A focus on these cases carries a risk that the public will not be aware of the breadth of the Board's work.

3.9. However, the provision of information over and above these cases is, to some extent, dependent upon the knowledge of the journalist. The media have the opportunity to ask about the likely timing of a particular prisoner's case given that they may know the length of the sentence and there is an obligation to hold a Review every two years.

3.10. The problem lies in the sheer volume of cases heard by the Board every year. Currently the Board holds on average around 8,500 oral hearings a year.

3.11. It is wholly impractical for the Board to provide full details of listings sufficiently in advance for a timely public hearing application to be made. However, the Board can supply details about pending noteworthy cases (including recalls) at monthly reviews. The Board should also explore what further proactive information can be supplied via the website.

Information about applications for public hearings

3.12. At present, only details of all final public hearing application decisions are posted on the Board's website. From our discussions with the present and immediate past Head of Communications, it was established that it would be possible to post when an application for a public hearing has been made, and if appropriate, who by, before a decision is reached. If this is done in a timely fashion, it would enable others to make their own application if they wish. For instance, the media could make an application enabling them to make representations in time to be considered by the decision maker. Time frames will be necessary to prevent these applications becoming

open-ended. They could be tailored to take into account circumstances such as an impending hearing date.

Information about the conduct of public hearings

3.13. Representatives of the media asked if more information could be provided on the Board website about the process for making an application including the timetable and deadlines. At the moment much of this information is in Guidance for Applications for Public Hearings October 2022. However, we see the good sense in providing access to a full step by step information about the whole process.

CHAPTER FOUR – THE APPLICATION FOR PUBLIC HEARINGS

4.1. We propose to consider the current procedures governing applications for public hearings. We have asked ourselves whether they are working well and whether there are any aspects which are inconsistent with an open fair judicial process.

4.2. An application for a public hearing can be made by anyone (including a victim, a prisoner or a member of the public.) All applications for a public hearing should be made on the application form (which can currently be found on the Board website titled 'Application for a Public Parole Review' and must be sent to the designated inbox at public.hearings@paroleboard.gov.uk).

Anonymity of applicants

4.3. At the moment the identity of public hearing applicants is not disclosed to the other party or referred to in the decisions. We believe this is wrong in principle. Given that the whole procedure is designed to achieve greater transparency, it is difficult to justify the withholding of the identity of an applicant's name unless there is a compelling reason for not doing so. Where a reason is raised, it can be considered on a case to case basis. It is likely to be helpful to anyone reading the decision to know the identity of the parties. We do not believe that the media would seek to protect their identity should they wish to make an application.

4.4. So far the overwhelming majority of applications have been by victims: (Victims 55, Media 8, General Public 1, Prisoner 5, MP or councillor 4.) From our consultation with the victims' family in a public hearing case, we discovered that they did not favour anonymity for victims making applications as they felt it represented double standards. We believe this is the correct position. The position would be different in respect of an application made by a victim of sexual offending who would ordinarily enjoy lifelong anonymity unless they chose to waive it.

The decision-maker

4.5. Under Rule 15 it is for the Chair of the Parole Board to decide whether to hold a hearing in public or not, applying an 'interests of justice' test. Until July 2024 the Chair made all these decisions. She then decided to delegate her powers under Rule 15 to seven senior judicial panel members.

4.6. A future Chair may well wish to stay with this policy because of the volume of this work and the possible need for an oral hearing to determine well-balanced cases. Clearly senior judicial panel members are well-suited to conduct this task.

4.7. We recommend that the judicial members meet once every 6 months to discuss issues arising in these applications. This should be organised by the Judicial Vice Chair. This will also be an opportunity to consider whether there are any cases pending with features that set it apart from others and where the Board should, of its own motion, direct that consideration be given to whether there should be a public hearing. This would have the additional advantage that a public hearing decision might be made earlier giving greater time for preparation.

Time-frame

4.8. Under Rule 15 (3A) any application for an oral hearing to be held in public may not be made later than 12 weeks before the date allocated for the oral hearing. There is good reason for this Rule as preparations for a public hearing can take substantial time.

4.9. The time frame may be altered where it is necessary to do so for the effective management of the case, in the interests of justice or for such other purpose as considered appropriate. This is a judicial decision and should not be undertaken by members of the secretariat. To encourage applications to be timely, late applications should only be granted where there are exceptional reasons.

The process - the current system

4.10. Once received, the application will be sifted by the Board legal team to ensure that it relates to an active review and that is within time or that time has been extended. A request for representations from all interested parties in response to the application will be sought. For these purposes, the interested parties are (i) the Secretary of State for Justice (ii) the prisoner's legal representative, or the prisoner themselves if they are unrepresented (iii) the Victims (via the VLO) and (iv) the Panel Chair of the hearing (if one has been allocated).

4.11. Once representations are received from the interested parties, the application will be put before the Chair of the Board (or to one of those to whom he or she has delegated the decision making – currently seven senior judicial members.) Both candour and expedition is to be expected from the parties so that the decision

maker has all the relevant information before them. So far all the decisions have been made on the papers. Occasionally, the Chair has required further information from the parties where the parties have not addressed important matters in their submissions.

4.12. The Guidance for Applications for Public Hearings (October 2022) (See Annex C) describes the decision making process. It states that when making their decision, the Chair of the Board will consider all of the information submitted in respect of the application for a public hearing as well as the following factors (which are non-exhaustive). The first factor sets out the test: whether it will be in the interests of justice for the hearing to be held in public. Most of the factors are self-explanatory although some need further explanation.

4.13. There is a clear overlap between the current factors. We propose to deal with them in categories.

Factors that affect general approach

4.14. *Whether there is good reason or reasons to justify a departure from the general rule which is that all parole hearings should remain in private;*

4.15. We considered whether reference to the general rule should be removed given the importance of open justice. PA Media (formerly the Press Association) consider the bar is unreasonably high and that a public hearing should represent the default position. However, we do not think it appropriate at this early stage. The Root and Branch Reviews and Ministerial statements that accompanied them envisaged that the power to direct public hearings would be used sparingly. The wording of Rule 15 reflects this. Furthermore, it would be wholly unrealistic and risk raising expectations on a false premise. Whilst the Board holds approximately 8,500 oral hearings a year, we are told that it only has the resources to hold approximately four public hearings a year. If there were six hearings a year, current resources would be severely stretched unless a less costly alternative is found. No additional budget has been made available for this.

4.16. We do recommend that this general rule should be reviewed in time as the Board achieves greater transparency. We believe that the Board should aspire to hold more public hearings. Elsewhere in this Review we deal with avenues which should be explored to enable the Board to achieve greater transparency without significant additional expense. Inevitably, this will take time as new methods will need to be piloted.

4.17. *Whether there are any particular special features in the cases (which set it apart from other cases) which may add to proper public understanding of the Parole system and public debate about it and which particularly warrant a public hearing* .

4.18. We have discussed with many of the consultees what would constitute a good reason/ special feature to depart from the general rule. The clearest and most compelling example can be found in cases where there is a strong public interest in the reasoning that the Board will apply to a particular case. The Prisoners (Disclosure of Information About Victims) Act 2020, known as Helen's Law (named after Helen McCourt) applied to two of the public hearings that have been held (Russell Causley and Glyn Razzell). The Act requires the Board to take into account the prisoner's non-disclosure and the reasons, in the Board's view, for the non-disclosure.

4.19. Notoriety is often raised as a good reason. A case may well have attracted great public interest particularly where a prisoner, if sentenced today, would have received a much longer minimum period (the punishment period) or the crime committed was particularly heinous.

4.20. The public interest in the case may have originated from facts such as pioneer use of DNA in detection, which will not be relevant to the Parole Board's assessment of risk. The public interest may have been intensified by documentaries made about the case and/ or public campaigns. For example, where there have been significant failings in the criminal justice system during earlier stages of the process, the public will have a strong legitimate interest in seeing that the parole process is carried out properly in a judicial manner. It follows that even if the reason for notoriety is not relevant to the hearing, there will still be a public interest in seeing how the Board approaches its sole task in assessing risk with rigour making fair and impartial decisions based on all the evidence relevant to risk. Public hearings have an important educative function.

4.21. *Whether a public hearing might compromise the Parole Board's ability to carry out its core function, which is to assess risk on all the evidence.*

4.22. *Any significant risks of inhibiting open and honest discussion during the hearing;*

4.23. A number of consultees were concerned that witnesses (including the prisoner) and lawyers would be influenced by the presence of cameras. They suggested that prisoners may be guarded in their answers even to the extent of adopting a false narrative (giving

accounts not previously heard) because their evidence will be in public. It was contended that panels may be less likely to reach inner thoughts which will be particularly important when assessing risk.

4.24. We understand these concerns. However experience of public hearings thus far does not support these suggestions. We believe that as these hearings become more routine, there will be less risk of this happening. Just as many defendants in the Crown Court have to deal with intimate and difficult matters in their evidence every working day of the week, prisoners will become accustomed to giving evidence in public and are likely to reach a stage when they are, in the main, not conscious of cameras (particularly where there is no inward transmission). In any event, highly sensitive matters such as serious health issues are likely to be heard in private with prisoners able to give their evidence in private.

Victims

4.25. *The wishes of the victims.*

4.26. *Any risks of undue emotional stress and/or re-traumatisation of the victims including an adverse effect upon the mental health of the victim or the victim's family in the short or long term.*

4.27. *The victim's right to attend part of the hearing in any event. (This refers to victim observed private hearings).*

4.28. Victims' wishes differ. They must be properly consulted and their views ascertained. If the victim does not want a public hearing, that may be a powerful factor against granting one, but it is not determinative. Some victims have applied for public hearings when it appears that their main concern is to be present at the hearing themselves. If the public hearing has not been granted, they have been referred to the scheme for victims to apply to observe private hearings which was being piloted at the time. Now that the national implementation of victim observation of private hearings has commenced, there should be a very good chance that an application to attend and observe a private hearing will be granted. This alternative may carry some weight. It may mean that there will be fewer victim applications for public hearings in the future. However, as we have pointed out there is, of course, a qualitative difference between a public hearing and a private hearing observed by a victim where they will have to sign a non-disclosure agreement agreeing to treat all that they hear at the hearing as confidential. At a public

hearing, the victim will be able to refer to whatever they hear during the hearing and discuss these matters with the media.

4.29. It is critical that victims' expectations are well managed. It is important to know that, at present, the Board has limited capability. That should be made clear on the Board website.

Prisoner issues

4.30. *The (informed) wishes of the prisoner; any risks of undue emotional stress to the prisoner;*

4.31. Two of the public hearings so far held have been applications by the prisoner. (Charles Salvador and Nicholas Bidar.) It has been suggested to us by experienced prison lawyers that these are the only applications that should be granted. We recognise that a prisoner's wishes will always be an important factor. However we do not accept that a prisoner's wishes should be determinative either way.

4.32. Reference has been made to the Mental Health Tribunal where there have been very few public hearings and where the Brady case remains the main example of such a hearing where the application was by a patient. If it were a prisoner's wish to use a public hearing to grandstand ,for example, without more, it would not necessarily follow that there should be a public hearing.

4.33. Nor do we accept that we should be guided by the Mental Health Tribunal whose primary focus is normally on a patient's illness rather than their risk. The Mental Health Tribunal will have concerns about whether a public hearing is in the best interests of the patient's health and may decide, notwithstanding the patient's wishes, that a public hearing could be injurious to the patient. Whilst this issue could arise in parole proceedings, it will be relatively rare and will need to be supported by expert evidence.

4.34 Similarly, the public decision maker needs to carefully assess any evidence that suggests that heightened public interest in the case may lead to undue stress to the prisoner over and above the stress that might be expected during a private parole hearing.

Best evidence

4.35 *Whether witnesses (including the prisoner) will be able to give their best evidence if the hearing were to be held in public;*

4.36 "Best evidence" is a term commonly used in the criminal law with reference to vulnerable witnesses. Essentially, it means that a witness should have a fair opportunity to give their best evidence and to do justice to themselves when giving evidence. If a prisoner has a fair opportunity to give their best evidence but chooses not to use it, that does not mean that a public hearing should not proceed (if necessary without them giving evidence). Some felt that the Board has been giving too much weight to this factor in its decision making. We accept that this factor should be scrutinised closely when an application is opposed on the basis that the prisoner will not be able to give their best evidence. Whilst a prisoner's views are important, they must not be treated as a veto. However, we have no doubt that where there is compelling evidence that a prisoner will not be able to give their best evidence at a public hearing as opposed to a private hearing, then a public hearing should not be directed as a fair hearing cannot be guaranteed. To make such a finding, the decision maker will need to see evidence in support of that contention.

4.37 Most prisoners will be able to give evidence at a public hearing just as they were able to do so at trial in the Crown Court. The Panel Chair can make adaptations to assist the prisoner to give their best evidence. Adaptations include giving audio only evidence off screen and hearing particularly sensitive evidence in a private part of the hearing.

4.38 Prison lawyers have raised concerns about the possible "chilling effect" a decision to hold a public hearing might have upon certain prisoners leading to decisions to not fully engage with the hearing. Clearly, it is to a prisoner's advantage to participate fully in the proceedings. If there are real mental health concerns, we expect those to be brought to the attention of the public hearing decision maker in advance of the determination. We accept that there may be difficulties in obtaining expert evidence from professionals in respect of prisoners within the time frame and we would expect decision makers to take this into account in appropriate cases.

4.39 Any risks to the safety of the prisoner

4.40 The decision maker should take into account any evidence suggesting that risks to the safety of the prisoner would be heightened if the hearing were to be held in public. If there is such evidence, it will be necessary to consider whether the prison is able to discharge its duty to take all reasonably practicable measures to ensure the safety of the prisoner so as to protect him from avoidable harm. If there is a heightened risk, the prison should have in place a risk management plan so as to address that risk.

4.41 Since public hearings involve the use of a hearing room at the prison, any additional risk should be manageable by the prison. However, a public hearing might increase the risk of the identification of a prisoner who then becomes at risk from some other prisoners. Such situations need to be monitored by the relevant authorities who , if necessary, need to keep the public hearing decision maker and the panel chair informed if any heightened risk is thought no longer to be manageable by reasonably practicable measures.

Case management issues

4.42 We accept that matters that might have a tendency to disrupt a public hearing may be addressed by the Panel Chair using their case management powers such as hearing matters in closed session.

4.43 The Board's power to exclude witnesses from the hearing and/or hold part of the proceedings in private where evidence is especially personal, confidential or sensitive; any difficulties in confining personal, confidential or sensitive evidence to a private part of the hearing.

4.44 The fact that some matters will need to be heard in private should not preclude a public hearing. Time can be set aside for matters that need to be heard in private. A primary example would be where there needs to be a preliminary determination on the facts in respect of a sexual allegation. TACT (terrorism act) cases sometimes involve highly confidential matters which must be heard in private. Exceptionally, there may need to be a closed session (in the absence of the prisoner) with a special advocate present to protect a prisoner's interests. It does not follow, however, that there will never be a TACT case suitable for a public hearing.

4.45 However, we can envisage situations where confidential matters are all-pervasive and even the most diligent case management cannot separate the private from the public or where matters that can be held in public are so limited in their compass there will not be a meaningful hearing to observe and any observer will not learn a significant amount about the case and/or the workings of the Board.

Professional witnesses

4.46 There have been concerns that the public nature of the hearing would put undue pressure upon professional witnesses who would have difficulty recommending release in a high profile case. We

have found no evidence to support this. Professionals are professionals and should give evidence reflecting their professional views as they would if speaking to a pre-sentence report in public at the Crown Court. Normally, they would be expected to give their names as they would in the Crown Court. Case management decisions can be taken to reduce the pressure. At the Board's public hearings heard so far, professionals have invariably been allowed to give evidence with only their job title being revealed. Similarly, requests to give evidence off camera can be granted.

4.47 The availability of summaries to the public in any event;

4.48 This is not a strong factor as attending a public hearing is a very different experience from receiving a summary of the ultimate decision at a later stage. Nevertheless the provision of information is an important facet of transparency and is a factor to be taken into account.

4.49 This factor will carry more weight if our recommendation to provide redacted decisions is adopted.

4.50 The ability to make practical arrangements for a public hearing without a disproportionate burden upon the Board.

4.51 Holding a public hearing is a high cost activity both in terms of expense and the use of time of critical Board personnel. No additional budget for public hearings has been provided. We are informed that it would be very difficult ,with the Board's present resources, to hold more than six public hearings a year without compromising activity elsewhere in order to resource them. With current resources four a year would be manageable.

4.52 The financial impact of public hearings has been assessed. It is estimated that the cost of 6 public hearings a year is equivalent to that of 50 standard oral hearings. It should be borne in mind that , unlike HMCTS, the Board does not have any secure estate to facilitate public hearings. The vast majority of its standard hearings are conducted remotely online. Less than 10% of hearings are conducted in prison.

4.53 It is important that this is appreciated by those making applications. Otherwise there is a real danger that applicants will feel aggrieved.

4.54 It may be possible to increase the number of public hearings over time by (i) allowing unsupervised streaming to accredited journalists and legal bloggers and (ii) supervised victim access. However, this cannot be achieved until there is an enforceable restriction power to prevent publication of highly confidential matters. See Chapter 9.

Whether the guidance needs revision

4.55 It follows that we do not feel that the Guidance needs revision at this stage. None of our consultees has suggested the non-exhaustive list of factors needs to be amended. Representations were confined to how much weight should be given to these factors.

Cross-service of the parties' representations.

4.56 We understand that at present there is no cross-service of the representations of the Secretary of State and the legal representative. We believe that in order to achieve a fair procedure, there should be cross-service in the future. This would ensure that a party has an opportunity to put right any factual inaccuracy. It is wrong in principle that the two parties at the hearing should be able to make private submissions.

4.57 Every effort should be made to ensure that a Panel Chair has been appointed. This can be achieved by early identification of cases likely to be considered for a public hearing decision. The Panel Chair should provide assistance in writing by reference to the non-exhaustive list of factors set out in the Guidance. In the event of judicial review, this is likely to be a disclosable document. The Board legal team can provide legal advice but are not involved in the decision-making.

Duty of Disclosure

4.58 Candour from the parties is critical. It is important that all relevant matters are brought to the attention of the Chair of the Board (or the decision maker). If the decision-maker wishes to see the dossier, they can do so. Any issues that might affect the manageability of a public hearing should be addressed. Where there have been threats of violence to the professionals, lawyers, or the prisoner in the context of their parole review, this must be disclosed. The Secretary of State has a duty to take all reasonably practicable measures to protect a prisoner from avoidable harm. In Russell Causley, the case had to be adjourned because threats were

only revealed at a late stage. We suggest that there should be a duty upon the Secretary of State to disclose at the application stage any matters relevant to the manageability of a public hearing and the welfare and well-being of the prisoner. This should include any evidence of threats and any likely heightened risks to the prisoner. Whilst the Panel Chair may be able to deal with these matters by good case management they are likely to be relevant to the decision whether to hold a public hearing. Similarly, the public hearing decision maker will need to know if the prison cannot safely manage the risk to the prisoner in prison if the hearing is held in public.

The decision

4.59 Usually the public hearing decision will be made on the papers. However, we feel that there may be difficult cases where the arguments are finely balanced, where it would be helpful to have a hearing to hear full argument in order to resolve the issue. All applicants would be entitled to address the decision maker at the hearing. This would mean that the media would have the opportunity to address the decision maker if they had made an application. This would meet the point made by the media that they have felt the decision makers have not addressed open justice points they would like to have had the opportunity to make.

An internal appeals system?

4.60 We have been invited by the PA media and other members of the media to consider recommending an internal appeal system for a public hearing decision. It has been suggested that a model such as the CPS review system in respect of decisions not to prosecute could be adopted with an internal appeal to a senior judicial member. We have decided against recommending such a procedure for the following reasons; (i) it would prolong the process until finality was reached in respect of whether there was to be a public hearing. The timelines are already tight. Time is needed to make preparations. It might put strain on the Board's obligations to hold a Review as expeditiously as possible. (ii) if our recommendation is accepted, a party can invite the decision maker to have a hearing to determine the public hearing issue which will ensure that important arguments from the media and others are not missed if the media have made their own application. (iii) judicial review is available and can be expedited in exceptional circumstances.

CHAPTER FIVE – THE HEARING

Preparation for the hearing

5.1 Once a decision has been made in favour of holding a public hearing, it is clear that there has to be a substantial amount of preparation to ensure that the hearing will run smoothly. Ideally, a Panel Chair should already have been appointed and will be familiar with the case so that they will be in a position to react swiftly and appropriately to the public hearing decision.

5.2 Whilst adjournments are to be avoided if at all possible given the Board's duty to hear Reviews on a timely basis, some have occurred and the reasons have been connected to the public hearing decision.

5.3 We have analysed the reasons that public hearing decisions led to adjournments. In our view timely and rigorous case management coupled with appropriate compliance with directions are critical. There should be a working relationship between the parties and the Panel so as to ensure the case is ready for the public hearing on the fixed date.

(i) In both cases where the prisoner applied for a public hearing, there was no adjournment. (Charles Salvador and Nicholas Bidar.)

(ii) If an application is accepted out of time, it can cause considerable delay. In Glyn Razzell, a late application led to as much as 6 months delay. Time limits were extended in respect of some applications soon after the law changed as it appeared that parties were not aware of their rights. In future, such an explanation is unlikely to carry significant weight.

(iii) All Parole Hearings are vulnerable due to either party making late applications or providing late information such as a last minute non-disclosure application. Panels will always endeavour to proceed if at all possible, but they cannot compromise fairness or their duty of inquiry if critical information is not produced in the event of non-compliance with a direction. The impact of an adjournment is that much greater in respect of public hearings. Not only is it unfair to the prisoner, victims and the media, it is a massive drain on precious resources. In William Dunlop a late non-disclosure application on the first day of the hearing led to a 6 month delay.

(iv) Although case management conferences have been arranged in good time to resolve issues well in advance of hearings, this can only be achieved with timely provision of information relevant to prisoner security. This led to a 2 month delay in Russell Causley

whilst case management issues led to an 8 month adjournment in Steven Ling.

Hiring and preparation of observer locations

5.4 Unlike the criminal courts, the Board does not have its own estate with appropriate court like buildings designed for a hearing with a prisoner in custody and multiple observers. Face-to-face hearings take place in rooms at prisons which are wholly unsuitable for public hearings. Quite apart from the capacity issues, it would be difficult to achieve the appropriate level of security in one of these rooms.

5.5 There is a consensus that the most practical way to deliver public hearings is by streaming from the room where the hearing is taking place. Typically, the panel, the prisoner, and the lawyers will be in the prison room together with some of the professional witnesses.

5.6 Streaming has to take place from the hearing room to an observer location. Typically that will be a court. For the last few hearings the Board has hired two of the smaller courts at the Royal Courts of Justice in London so as to provide a separate location for victims who can then choose if they want to be with the media, academics and other observing members of the public who will be in another court.

Preparing the technology

5.7 On occasions prisons are not able to offer the necessary quality of technological infrastructure. Prison Wi-Fi capability has to be checked as a stable internet connection is essential. The prison hearing room has to have adequate capacity, enabling camera angles so that the Panel, lawyers, witnesses and the prisoner appear on screen in a way that the observer can have adequate views of each of them. The panel chair has to have a control button whereby they can stop the proceedings should there be an inadvertent blurt out. The panel need to ensure that the proceedings are properly recorded so that such matters can be checked swiftly.

5.8 Members of the Board secretariat staff need to visit the prison hearing room and observer locations. When it comes to the hearing itself, they then need to be present at the observer locations with a separate communication to the hearing room.

5.9 Even with flawless preparation by the Board's staff, regrettable technology failings can occur. During the William Dunlop observer location (a court at the Royal Courts of Justice RCJ) there were 18

periods when the sound failed or was of inadequate quality or the panel chair had to intervene to stop transmission. It was unclear whether they were due to failures in the Wi-Fi at the prison or the RCJ.

5.10 The facilities provided at the RCJ were far from perfect. The room provided for victims was wholly inadequate. It will be worth considering alternatives such as transmission to the International Dispute Resolution Centre in London (IDRC), the Central Criminal Court, another Crown Court or a Magistrates' Court. Similarly, alternative streaming solutions should be explored including the use of a specialist AV (audio visual) provider.

5.11 As far as the hearing room at the prison is concerned, that will depend upon the room the prison can provide and that prison's technological infrastructure is sufficient. In the William Dunlop hearing, the camera angles were far from ideal and did not make for easy observing with a split screen with one half showing the panel and other the lawyers. Nevertheless, in our interview with the victims, it is clear that they accepted the difficulties posed by streaming from a relatively small room including a relatively poor quality picture. They were much more concerned with being able to follow the proceedings and being given proper explanations if there were delays.

Case Management hearings

5.12 Once the Panel Chair receives notification that there is to be a public hearing, at least one case management hearing needs to be fixed to deal with public hearing issues so as to avoid satellite disputes on the day of the hearing. The main issue to be resolved tends to be which parts of the hearing need to be heard in private. The Panel Chair needs to make a reasoned principled decision in respect of any evidence to be given in private notwithstanding the public hearing decision.

5.13 At the moment there is limited guidance for panel members on this issue. It is generally accepted that any evidence that might compromise the re-settlement plan should not be heard in public. Confidential health details may need to be covered in private. Some aspects of offending may not be known to the victims or wider public, and so will need to be dealt with carefully. The Panel may need to make findings of fact in respect of allegations of criminal offences where there has been no prosecution and there may be good reason why those need to be heard in private.

5.14 An academic, who has observed all the public hearings heard so far and read all the public hearing decisions, told us that members are not always consistent in their approach to these issues. He suggested that

some members are overly restrictive as to what can properly be heard in public.

5.15 The issue is touched upon in various Guidance's. The advent of public hearings and victim observed hearings have inevitably increased focus on the need to resolve these issues before proceeding with the hearing. It is important that members are consistent in their approach to these issues. Furthermore, only where necessary should matters be held in private.

5.16 With this in mind we have recommended that a bespoke guidance be drafted for members to assist them to make principled decisions in this area. This will also assist similar decisions in respect of victim observed private hearings, and the publication of redacted decision letters.

Other case management issues

5.17 These include (i) whether witnesses will be named or described by job title. (ii) whether witnesses including the prisoner should be on camera (iii) which witnesses /evidence will be heard in private and time estimates of evidence to be heard in private (iv) an understanding of how the OFF button and transmission delay will be used in the event of an inadvertent reference to confidential material. We recommend that, if there is fault in the sound, the transmission should be stopped immediately. Without sound, a facial expression can so easily be misinterpreted by a sensitive observer.

5.18 To the extent that it is possible this information should be shared with members of the public (including victims) and the media to ensure valuable time is not taken up on the hearing day dealing with housekeeping issues.

5.19 In a complex case or a case where last minute issues are likely to arise, it may be worth holding a remote case management hearing so as to eliminate or to reduce the risk of last minute issues holding up the hearing.

5.20 *Opportunity for the media to be heard on case management issues affecting the public nature of the hearing*

5.21 PA Media (formerly known as the Press Association) invited us to consider recommending providing the media with an opportunity to address the panel should an issue of substance arise that will affect reporting and/or the nature of the public hearing. Reference was made to the decision in one of the public hearings to deny the media the

opportunity to address them on the issue of whether the prisoner should be allowed to give evidence in private.

5.22 If it is practicable, we believe a Public Hearing panel should give such an opportunity to representatives of the media. However, firstly the Panel may need to proceed expeditiously and will not be able to delay proceedings to hear the media. Secondly, the Panel may have confidential medical evidence that they will need to take into account which cannot be disclosed to the media.

The hearing – general approach

5.23 Whilst the Board's priority must remain to hold a fair hearing with reasonable expedition, various adaptations need to be made to ensure that it has embraced the necessary openness and transparency consistent with a public hearing. Whilst the hearing must not be unnecessarily prolonged so as to become a tutorial, where possible steps should be taken to explain the legal framework, procedures and history of the case.

5.24 Clarity is critical. Accurate reasons should be given for any interruptions. The hearing should not be presented as a pilot or some form of dummy run for public hearings. The Board's public hearings are not pilots. It should be presented as one of the normal ways in which the Board conducts its hearings with the panel chair using every reasonable opportunity to provide clarity so as to enable any observer the opportunity to properly follow and understand the procedure.

5.25 One academic who observed the William Dunlop hearing stated that his overriding impression was one of excessive caution and its default culture was to keep things hidden rather than to place them in the public domain. Our observations of the hearing do not support this view as we can see how dealing with issues in evidence which have some components which must be treated as confidential can be very difficult to navigate. A panel chair cannot be fairly criticised for seeking to prevent matters going into the public domain which are subject to statutory anonymity restrictions or which could have harmful consequences if publicised.

Opening by the Panel Chair

5.26 Experience shows that it is important for the panel chair to give full opening remarks as was done by the panel chairs in the public hearings that have been held so far.

(i) making introductions where appropriate
(ii) explaining the Parole Board's legal status and its function
(iii) explanation in general terms about any previous hearings and the reasons for adjournments
(iv) a brief history of the case including the index offence, the conviction, sentence, and reviews
(v) a brief history of the prisoner's previous convictions
(vi) how the case will be decided on ALL the evidence. Evidence in the dossier will not necessarily feature in the live evidence
(vii) how some evidence may be or may have been in private and the reasons why
(viii) the procedure as to how and why the transmission may need to be stopped temporarily
(ix) an acknowledgement of the presence of any victim observers
(x) any other significant matters which will assist observers to follow the hearing.

5.27 It may be helpful if this opening can also be provided in writing to the media and victims. This will help prevent any inaccuracies in reporting. It will also assist in situations such as occurred in William Dunlop when the link to the victims' location failed at the outset of the hearing. The panel chair should indicate at the case management hearing that a written opening will be provided. If possible, it should be sent to the parties at least a week before the public hearing in case there are any objections.

The name/location of the prison

5.28 Normally, for security reasons, the Board does not publish the name and whereabouts of the prison. The media and academics have invited us to recommend that this principle should no longer apply. There is no such reticence about naming the prison in judicial review proceedings relating to parole cases. In the past, victims have attended prisons to read their personal statements. In any event, in the William Dunlop hearing the identity of the prison had a particular relevance to one of the reasons the Chair of the Parole Board directed a public hearing namely the Board's role in making recommendations for open conditions. In fact the POM did refer to the prison by name and the prison is one of a small number of prisons which runs a Progression Regime which may have been highly relevant to whether William Dunlop be transferred to open conditions. We propose that the issue in respect of the disclosure of the prison name should be pursued further and that the prison service should be consulted.

Breaks in transmission

5.29 It is inevitable that there may be occasional delays or breaks in the transmission and victims have told us that they understand this. In William Dunlop there were 18 occasions during the two days when it appears that the transmission was halted by a Board member presumably because it was felt that some piece of information had been revealed (or was about to be revealed) which ought to be kept in private. However, it is important that the panel chair explains the reason (as far as it is possible) for any significant delay or break. Victims accept the inevitability of interruptions but tend to react adversely if the true reason is not given. An academic consultee made the helpful suggestion that the simple device of an electronic message appearing on the screen when the Panel has deliberately halted transmission which would enable the public to be kept better informed.

5.30 Even with the most careful case management, there is a significant risk that there will be inadvertent reference to a matter that should only be heard in private. If there is a short time delay in transmission, this provides the panel chair with an opportunity to stop the hearing before the information reached the public domain.

Evidence

5.31 The evidence should proceed in the normal way as appears to have happened in the cases that have so far taken place in public. From our consideration of these cases that have already taken place, whilst considerably more case management was necessary as compared to a private hearing, there is no evidence to suggest the Panel were in any way hampered in carrying out their primary task, assessing risk. Nor is there evidence that a prisoner was NOT able to give their best evidence (apart from Steven Ling who gave evidence in private.) We have not been aware of any evidence to suggest witnesses (professionals) were not able to give evidence they would have wished because of the nature of the hearing. There was no evidence of counsel grandstanding. In any event, we would expect the Panel Chair to intervene should such conduct occur.

Chairing Public Hearings

5.32 We believe that all Panel Chair accredited members should, in principle, be capable of chairing public hearings. However, for the time being, given that these are still relatively unchartered waters, we recommend that only judicial and/or very experienced panel members (who have conducted reviews in cases where there is high victim and or media

interest) should chair these hearings. The role requires considerable case management/ soft skills. As learning grows in respect of managing and chairing these hearings, a bespoke training module should be developed.

Anonymity of the Panel

5.33 Many consultees (such as PA Media and academics) felt that the Panel members conducting public hearings should be named. It has only happened once when a judicial member, HH Nicholas Coleman, alongside the co-panellists, agreed to be named in Russell Causley. Others raised security concerns. The issue is not straightforward. Accordingly we have decided to devote a separate chapter to the issue of anonymity. Our conclusion is that Public Hearing panel members should identify themselves. See Chapter 11.

Transcripts

5.34 All hearings are recorded which means that, if required, a transcript can be made of all or part of the proceedings. We can envisage circumstances where it might be appropriate to post such a transcript on the Board's website. For instance, a case may have attracted substantial public interest and the Panel wished to ensure accurate and proper reporting in respect of an issue in the case. Alternatively, the media or one of the parties might apply for a transcript. This can be granted by the Panel Chair subject to the applicant bearing the costs of transcription.

CHAPTER SIX – ALTERNATIVE OPTIONS FOR A PUBLIC HEARING

Transparency is not a binary concept.

6.1 Judicial bodies will have different ways of being more open and providing more information. This will depend upon the mechanisms necessary whereby confidentiality can be ensured and, inevitably, resources. High cost proceedings will have substantial impact on how many oral hearings the Board can hold in a year.

6.2 The Board has been seeking to achieve high quality public hearings without having the estate to achieve it. Staging public hearings has involved a major use of resources in terms of hiring courts and the hours of key personnel. In those circumstances, we have looked at alternatives to the present model (streaming to a court or alternative location where all observers are present) which may be easier and less costly to deliver and yet still achieve a high measure of transparency.

6.3 Thus far relatively few members of the public (i.e people unconnected to the case) have attended the public hearing observer location. (Glyn Razzell 5, Nicholas Bidar approximately 5, Steven Ling 3, William Dunlop 4). There is no record in respect of Russell Causley or Charles Salvador although it is clear that Salvador was well attended. Some of those who attended hearings did not stay very long. This has led us to explore the option of two tiers of public hearing.

The observer location

6.4 The Board has been hiring a court at the RCJ as the observer location, with streaming from the prison hearing room. There was a strong consensus amongst those who attended the William Dunlop hearing that the Board should explore alternatives such as Crown Courts (including the Old Bailey) or Magistrates' Courts or bespoke hearing centres which may have better facilities. At the RCJ the Wi-Fi connection was less than stable, and the facilities were inadequate. We recommend that alternative venues are explored. Currently, at many court centres, there are court rooms that are not sitting.

Prisoner produced at a court

6.5 If the prisoner could be produced at a Court (in a case where there is no issue over public identification compromising a risk management plan), a public hearing could proceed in open court as in criminal proceedings. There have been examples where judicial members have held parole proceedings in the Crown Court (Norwich Crown Court). The only difference would be that the proceedings would now be in public. We anticipate that this option would only provide a solution in a very limited number of cases.

Streaming from the prison hearing room

6.6 Over time it is to be expected that technology will improve. The most suitable option is likely to remain streaming from the prison hearing room. A stable Wi-Fi connection is essential with a minimum quality requirements for picture and sound. It may become necessary to consider alternatives to CVP (Cloud Video Platform) such as private AV (audio/video) companies to improve the quality of the AV stream.

Unsupervised streaming to any registered applicant (the Canadian system)

6.7 This is the simplest and cheapest option. People can attend the prison or attend virtually. We have been told by a senior member of the Canadian Parole Board that streaming has operated in Canada for some time without difficulty. The media are trusted to follow the guidelines. A victim can observe from their own home or from a neutral location. A virtual room is created. The comparison needs to be approached with care as there are major differences between hearings in England and Wales and Canada. Canadian hearings tend to be shorter with a much narrower evidential compass without the prisoner being legally represented (although they may be supported by an assistant.) Only Canadian Board members can ask questions. Furthermore, there is no reference to confidential reports in the dossier. Nevertheless, the Canadian system is a powerful example of how adaptations might be made to accommodate appropriate streaming to the wider public. For instance, a victim who does not attend the hearing, can listen to an audio recording.

6.8 It would, however, mean unsupervised access to all and could be open to abuse such as filming and screenshots even with the observer signing an NDA (non-disclosure agreement). The potential for harm from such abuse could be restricted by having a default position of the prisoner always being off camera.

6.9 Whilst NDA's will provide some protection against abuse of such a system, experience has shown they are not the perfect answer. Significant risks will remain. For example, it would mean the Board having little or no control of publication in social media of inadvertent references to confidential information where publication should be restricted for good reason. Once information is in the public domain, however that occurred, it is a very difficult process to contain further publication. As one consultee put it, the genie is out of the bottle. A restriction order backed up with contempt powers would reduce this risk.

6.10 After our discussion with senior judiciary, we feel that unsupervised streaming to all members of the public would represent a major step. Its full implications would need to be assessed with great caution.

Streaming to accredited journalists and legal bloggers (the Family Division)

6.11 This system has recently been introduced in the Family Division after being piloted for two years and has worked well without any transgressions. The hearing is streamed to accredited journalists and legal bloggers to be able, not only to attend and observe, but also to report publicly on what they see or hear. Reporting is subject to clear rules to protect confidentiality. A transparency order prohibits publication of certain specified matters. Any publication of these matters may be both a criminal offence and a contempt of court under s.12 of the Administration of Justice Act 1960.

6.12 Both accredited members of the media and legal bloggers are subject to their own codes of conduct which affords additional protection as consequences that would flow from non-compliance. Each would need to register their applications which we would expect to be granted.

6.13 This system does not allow for access to the proceedings for members of the public. However, they will, of course, have access to any media reporting. Thus far relatively few members of the public have attended public hearings.

6.14 If this was introduced as a form of Parole Board public hearing, we would expect that a direction would be given that anybody within the definition of victim, would be able to attend at a probation office or other appropriate venue so that the hearing could be streamed to them. As a public hearing, they would not be subject to an NDA and could speak openly about what they heard.

6.15 Exceptionally, observers such as academics and other interested parties would be allowed unsupervised access to streaming. They would need to make an observer application. We note that thus far the majority of attendees at public hearings have been Board staff, other professionals (MoJ and police) and students. Many of these would be likely to succeed in any observer application.

6.16 In the event of concerns about the prisoner's future safety, the prisoner would be kept off camera. However, this would achieve little if recent images of the prisoner are publicly available.

Recommendation

6.17 We believe that there is a strong case for piloting streaming to accredited journalists and legal bloggers which can be combined with supervised victim observation from locations such as local probation offices or their own homes.

6.18 This system has the advantage that the Board would not have to hire a court or to supervise the streaming. The disadvantage is that members of the public would not have access to the public hearing unless they qualified as victims. However, they would, of course, have access to any media reporting. Furthermore, there would be likely to be far wider media reporting as the media would not have to attend an observer location. It should also be borne in mind that with the exception of the Salvador case, relatively few members of the public have attended public hearings.

6.19 We believe that consideration should be given to this becoming the default public hearing model. In time, this could enable the Board to hold more public hearings.

6.20 This would not prevent the public hearing decision maker from directing that a supervised observer location be provided because of the extent of anticipated public interest in a particular case.

6.21 It is imperative, in respect of public hearings, that victims have access to precisely the same streaming as the media. The positions must be aligned. They would not be observing from the same location but they would be able to discuss freely anything they had seen or heard unless it was made the subject of a restriction order.

6.22 At present the Board, unlike public inquiries under the Inquiries Act or other courts under S.11 of the contempt of courts Act 1981, does not have a power to restrict publication.

6.23 Given the inevitability of inadvertent" blurt outs", we recommend that this alternative should only be pursued if legislation is passed. Otherwise, there is significant risk that serious harm may occur or a resettlement plan be compromised because the media will be able to publish without restriction. We recommend that, as a matter of urgency, the Board should be given powers to restrict publication. See Chapter 9 Restricting publication/ Contempt powers.

CHAPTER SEVEN – VICTIM OBSERVATION OF PRIVATE HEARINGS

7.1. For many victims, involvement in the parole process is of great importance. It can be a critical cathartic experience. Victim access to parole proceedings together with the provision of appropriate information is one of the main ways that the Board can achieve greater transparency. Treating observing victims with appropriate courtesy and sensitivity is essential. It should not raise inappropriate victim expectations of participation in the decision-making process. It is not inconsistent with a fair, impartial and independent parole system.

7.2. The Board has recognised this and made significant preparations for the national implementation of victim observed private hearings which took place on 1st April 2025. This covers all new referrals from that date.

7.3. The Board is committed to allowing ALL victims to apply to observe parole hearings, working collaboratively with VLO's and HMPPS Victim Representatives (who directly support victims) so as to increase transparency of the parole process. This was a manifesto commitment and a recommendation of the Root & Branch Review.

7.4. Victims across the country will be able to make an application to observe private proceedings at any time from the point of referral to the Board without the need for an invitation. Applications will be managed by the Public Protection Casework Section (PPCS) for victims in the victims contact scheme. Victims will not have to wait to be selected by HMPPS, like in the pilot, which should reduce delays.

7.5. We propose to provide some recommendations in this area. However, clearly it is important to monitor the progress of the national implementation as further refinements may become necessary.

7.6. These hearings have a qualitative difference from the experience of victims attending a public hearing. A victim attending a private hearing to observe is still bound by the rules of privacy. They are asked to sign a Victim Confidentiality Agreement (see Annex D) as information obtained from that hearing is confidential, and so they will not be entitled to discuss anything heard at the hearing with others including the media.

The Test Phase

7.7. This has been piloted since late 2022 in the South-West region. This was expanded to Greater Manchester in July 2023. During the first 18 months of the pilot, 31 hearings were observed by victims.

7.8. From the period 1st January 2024 to date, 133 applications to observe an oral hearing were made. Of these, 82 (61.6%) were granted. Overall, since the beginning of the pilot (October 2022) to 14th March 2025, 223 victim applications had been made. 130 applications were granted (58.2%). 59 of these have now observed. 28 have been withdrawn by victims, 7 have been revoked, and 21 of the hearings are still pending at the time of writing.

7.9. The majority of these hearings were streamed from a prison hearing room to a probation office. (Technically they are streamed from the video platform CVP to a secure website.) A link can be sent to the HMPPS Victims' representative which can be accessed at the probation office or other approved location. A limited number were face-to-face or hybrid. Most prisons now have the minimum technical requirements for streaming (i) a stable video link and (ii) a room that has the capacity to hold all the participants at the hearing. Only a relatively small number of prisons struggle to facilitate a video link. This is an issue for HMPPS to resolve. However, since the vast majority of oral hearings are conducted remotely, no additional arrangements are necessary when a victim application is allowed. However when a face-to-face hearing is ordered, preparations will be made to ensure an appropriate video link.

7.10. As from November 2024, victims are observing hearings via CVP (observer mode). Live streaming remains an option, but is used only in exceptional cases such a complex or high profile cases.

7.11. Since the beginning of the pilot to date 78 applications have been refused (35%). The most common reason for refusal of the application being that it would hamper the prisoner's ability to give his "best" evidence (46 i.e. 59%). Clearly such an assertion should be given careful scrutiny. However, there is evidence that when this reason is raised, members seek to test it.

7.12. Difficulties were encountered because of late applications. Six were refused on that basis. Listing occurs at least three months before the hearing. Following each listing exercise, victims selected by HMPPS in the test areas were approached by their Victim Liaison Officers and offered the opportunity to observe. Delays in this process

led to applications being received only a few weeks before the hearing leaving limited time for panel chairs to review the application and arrange a case conference.

7.13. It is to be hoped that there will be less late applications following national implementation. The Board's Victims Team have encouraged PPCS to submit applications as soon as practically possible following the referral of a case by the Secretary of State. It is planned that Victim Liaison officers will be initiating conversations around observations at the same time as holding discussions about Victims Personal Statements (VPS) so that observer applications and VPS' are received in a timely manner.

7.14. Victims will no longer need to wait for selection by the HMPPS. Furthermore, Rule 14 now provides that an application may not be made later than 8 weeks before the date allocated to the oral hearing. Whereas an application can be considered out of time, the later the application, the harder it will be to prepare for a victim observed hearing.

7.15. We have consulted panel chairs who have held these hearings and victims who have attended. For the most part, there has been positive feedback. One experienced panel chair told us that she now recognised positive benefits for the victims having chaired hearings with victims present.

Information that a referral is pending

7.16. Victims need to receive information that a Parole Board Review is to take place. This is not the responsibility of the Board . Where a victim has engaged with the VCS (Victim Contact Scheme), it is the responsibility of the VLO to notify the victim that a fresh parole review has opened. We have been told that problems may arise because (i) the offences may pre-date the setting up of the VCS or the victim (s) may have originally opted out of the VCS (ii) the victim response may not be timely (iii) the VLO contact may not be timely.

7.17. The recent national roll-out will enable those responsible for notifying victims to consider whether the system can be improved. Whilst it is beyond the scope of this review, some consultees felt that there may be a case for re-visiting the issue as to whether the default position for victims should be to opt in to the VCS rather than opt out as views change over time. A victim's initial reaction to steer clear of the VCS may be different after mature reflection. On any view, ways need to be found to work with non-VCS victims.

Applications

7.18. We consider that it is likely that a higher percentage of these applications will be granted after the recent national implementation.

7.19. On the basis of modelling by the Victims Team and the MoJ there could be as many as 1,740 applications a year calculated on the basis of 20% of oral hearings. This will involve significant additional costs (i) dealing with the application (ii) additional Case Management conferencing fees (iii) additional Panel Chair directions (PCD) (iv) Exceptional Fees – Complex case fees, and (v) Victim's expenses to attend an oral hearing observation. Some fees will decrease over time as members become more experienced in managing victim's observations. However, there will be a continuing additional cost which will impact upon the number of oral hearings the Board can hold. This could be as high as 420 a year. The MoJ has provided no additional funding to support the roll out and the Board will need to meet the costs from its existing budget. Additional costs is NOT a factor to be taken into account by a Panel when deciding whether to grant an application.

7.20. It is Parole Board policy that the correct approach is to grant a victim application unless there is a good reason not to do so. Applications should become more timely and members will become more used to adapting their procedures so that these hearing become the norm.

7.21. At the moment an application for a victim to attend as an observer is made under Rule 14 (4B) (a) by making a written application to the Board. Such an application may not be made later than 8 weeks before the date allocated to the oral hearing. Under Rule 9, a panel chair or duty member may alter the time limits.

7.22. It follows that Parole Board Rules have not yet been changed to reflect current Board policy that these applications should be granted unless there is a good reason not to do so.

7.23. Upon careful analysis, we consider that there are a limited number of reasons why an application should not be granted. Of course, the Panel must always ensure that a hearing is fair; in our view, it will be a relatively rare case where the presence of a victim observing will make a hearing unfair.

7.24. The main reason for not granting such an application is where there is significant evidence that a prisoner will not be able to give their best evidence i.e. have a fair opportunity to do justice to their case with the victim present. When assessing the potential impact of the

victim's presence upon a prisoner, it should be noted that normally a victim is neither seen nor heard at a hearing. Another reason might be where so much of the case will have to be heard in private, there will be insufficient evidence heard in public to provide a meaningful experience for the victim.

7.25. Technical requirements will rarely be a reason for a refusal. Where the hearing is remote (the vast majority of hearings nowadays), a stream to the probation office can be added. Even if the case is to be a face to face hearing, streaming should be possible provided the prison can meet the minimum technical requirements. Telephone hearings are now vanishingly rare.

7.26. Consultees have raised the issue of whether the Board should on occasions refuse an application to protect a victim. Clearly Board panel members will wish to be astute to ensure victims are not re-traumatised by their attendance at the hearing. The panel chair always has an overriding duty to take measures to reduce the risk of acute distress and/or re-traumatisation. For instance, if it really becomes necessary to hear evidence on a matter that is likely to be highly sensitive to a victim present, the victim can be warned so that they can leave for that part if they wish.

7.27. Nevertheless, we have been assured by the senior policy advisors in the HMPPS Victims Team that they will have already ensured that applications are only being made by those who have considered whether it is in their best interests although they do not vet applications or try to discourage the more vulnerable from making an application. The Board's role is not to be overly protective. The assumption can be made that a victim who is applying, will have carefully considered whether it is in their best interests. Ultimately, it is the victims' choice. VLO's are required to consider whether a referral to community services for additional support after the observation might be required.

7.28. There may also be a small minority of victims who will not respect the rules and necessary boundaries in relation to their attendance at/or participation in the proceedings. Whilst we expect panel chairs to be sensitive and understanding, we accept that if, after proper explanation, a victim refuses to co-operate, they will need to be denied access by the panel chair. Even with one way transmission, a frustrated observer has the potential to disrupt, for instance, by not abiding by the confidentiality agreement and revealing matters heard at the private hearing to the media. A psychiatrist member pointed out that this type of conduct can be symptomatic of a victim's vulnerability and inability to cope. Whilst it should be treated with

sympathy, it cannot be allowed to disrupt hearings and boundaries need to be clear.

7.29. The Board is under duty to proceed with a review as expeditiously as possible.

7.30. During the pilot difficulties were encountered because of late applications. Following each listing exercise, victims selected by HMPPS in the test areas were approached by their Victim Liaison Officers and offered the opportunity to observe. Delays in this process led to applications being received only a few weeks before the hearing leaving limited time for chairs to review the application and arrange a case conference. There should be less late applications following national implementation as (i) applications have to be made no later than 8 weeks before the hearing date (ii) victims will not have to wait to be selected by the HMPPS.

7.31. A very late application might compromise the timetabling of cases as a case management hearing might become necessary to determine issues such as which matters need to be held in private in any event. As members become more used to managing these hearings, it may be possible to proceed without a case management hearing.

7.32. It follows that there are limited circumstances where it would be appropriate to refuse an application. As we have already observed, these applications should be granted unless there is a good reason not to do so. It is clear that this not only represents Parole Board policy, but is also the correct approach. The current member Victim Guidance (January 2025) paragraphs 8.75 ff states that, "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…..sufficient reasons must be given for the refusal."

7.33. The presumption in favour of granting these applications does not, at present, appear in the Parole Board Rules. We believe that the Rules should be amended as soon as possible to reflect the presumption. This will help clarify the position for panel members in an area where a culture change is necessary so these hearings become the norm. The Rules should state that it will only not be granted if there is a good reason not to do so. The Panel must always ensure that a hearing is fair; in our view, it will only be in a limited number of cases that the presence of a victim observing will make a hearing unfair.

7.34. It is imperative that reasons are given when a decision is made. To simply state that *"careful consideration has been given "* is not enough. Furthermore, if possible, a panel chair should give reasons

so the VLO can share it with a victim in its entirety. Transparency helps with consistency and public confidence. Requiring panel members to provide written reasons for denying or allowing an application will ensure that reasoned decisions are made and articulated, help improve scrutiny of decision making, and increase transparency. We have been told that victims find it particularly hard to cope with a refusal without reasons.

7.35. Once an application has been granted, there is no reason in principle why that decision should not stand in respect of any further hearings in connection with a particular review. This would apply to adjourned hearings and hearings after a successful reconsideration application (provided the decision did not turn on the issue of victim observation).

Preparations for the video observed hearings

7.36. Some members felt that a case management hearing would be necessary after granting an application. Others disagreed feeling that it would depend on the complexity of the case and the issues that were likely to arise. They felt that once panel members become more accustomed to these hearings, they would not feel the need for a case management hearing in most cases.

7.37. We accept that in many cases it will be appropriate to have a case management hearing although in time, the need may recede as members become more familiar with the requirements for a victim observed hearing. A case conference is often necessary to explore with witnesses and the legal representative what, if any, evidence might need to be held in a closed session, to address any concerns participants may have about being identified by the victim. During the test phase most members have been able to go through a skeleton plan in open to give the victim confidence that particular licence conditions have been considered without mentioning names and locations.

7.38. The Board has produced very helpful guidance including a checklist for Panel Chairs for Victim observed hearings. Inevitably there will be people present who will not be familiar with this type of hearing who will benefit from a case management hearing.

Guidance on which evidence should remain in private

7.39. The issue most likely to require case management following the granting of an application, relates to identifying which parts of a hearing should be conducted in private without any observers/victim present.

7.40. As we pointed out in Chapter 6, at present there is no bespoke guidance on the issue, although the 'Victims observing a private hearing: Information sheet for Panel Chairs' does provide some assistance.

7.41. It states that discussions about the details of the risk management plans should take place in closed session IF there is a significant risk that disclosure will compromise the arrangements. It gives examples of areas which may need to be in closed session:

(i) Details of release accommodation and family members
(ii) Information about the health or mental condition of the prisoner
(iii) Therapies or treatment
(iv) Sensitive evidence relating to 3rd parties
(v) Information about other victims.

7.42. We have been informed by an academic who has observed all the public hearings so far held that members are sometimes inconsistent in their approach to these issues. Some of these issues are easier to resolve than others. We accept that it is well-established that it may not be appropriate to hear evidence about parts of the resettlement plan other than in closed session. Similarly, sometimes prisoner's health issues may be highly confidential. In other areas a Panel's decision may be more nuanced as no more should be in private session than necessary.

7.43. Having consulted the Director of Legal and many members, we formed the view that there is a strong case for a new Guidance to assist members to make consistent and principled decisions on these issues. These matters are far from straightforward. There are substantial and important principles engaged including Articles 2, 8 and 10 of the European Convention of Human Rights ['ECHR'] . Accordingly, we raised the issue with the Management Committee before finalising our report and a new Guidance has been commissioned from a very experienced judicial member of the Board.

7.44. This guidance will assist members resolve (i) what guiding principles to apply when these issues arise (ii) which matters should be heard in closed session even if a public hearing has been ordered or victim observance has been allowed at a private hearing (iii) how best to express reasoned rulings on these matters (iv) what redactions to make if a decision is to be published. It will draw upon good custom and practice, and provide consistency in decision making.

The location of the victim observers

7.45. We understand that Probation Offices are often unsatisfactory locations. Some victims may not wish to observe from their own homes. We gather there may be important learning from Scotland where there is a drive to provide safe places in neutral government buildings with no attachment to criminal justice.

Support for victims attending private hearings

7.46. Great care needs to be taken so as to ensure that victims are properly prepared and supported throughout the process. Clearly resources are likely to be stretched now that national implementation has begun. The London Victims Commissioner, Claire Waxman, raised concerns with us about (i) whether there will be enough victims' representatives to provide support (ii) whether the victims' representatives are in a position to provide appropriate support and (iii) whether victims' expectations are being appropriately managed. HMPPS support does not extend beyond the hearing. Any emotional support beyond the hearing will come from the voluntary sector.

7.47. At the moment there exists a short but helpful document Appendix III "Victim Observers (March 24) – Observing a Private Parole Oral Hearing : What you need to know." An experienced panel member, who has conducted several of these hearings during the pilot, felt that a bespoke video should be made for victims to watch to prepare them for observing these hearings and that this could save significant time at the hearing. We understand that preparations have already begun so that this video can be made and have seen a draft script. We strongly support this initiative.

7.48. The London Victims Commissioner stressed the importance of the Chair acknowledging the presence of the victim(s) at the hearing and providing reasons if evidence is going to be heard in private. We agree.

7.49. At the moment the Board has no direct contact with victims. Our knowledge depends on what is observed at hearings and VLO's and HMPPS representatives sharing their experiences. Whilst that is valuable, it is important for the Board to understand victims' experiences at these hearings and to provide opportunities to engage with victims who have been through the process so that procedures can be improved if necessary. This can then inform our guidance.

7.50. Recently, Claire Waxman, the London Victims Commissioner organised a workshop with members of the Board victims' team and victims, which provided valuable insight into victims' experience of the process. Clearly events like this are to be encouraged as otherwise the Board has no direct contact with victims which might inform the Board as how procedures can be improved from the victims' point of view.

Restrictions imposed upon victim observers

7.51. Under the current system victims sign a victim confidentiality agreement and are prohibited from taking notes. A number of consultees have suggested that this system is overly restrictive and can be found to be intrusive and that victims should be trusted. The rules are in place for a good purpose to protect the confidentiality of a private hearing. However, we believe the panel chair should have the discretion to waive the rule about note taking.

The decision

7.52. We are recommending that the Board should embark on a transition towards publishing redacted decisions. See chapter 8. We consider that decisions following these hearings would be a strong candidate for early piloting. The panel chair will be well-placed to make redactions having resolved any public/private issue before the hearing. There is a powerful case for a victim who has attended the hearing to be provided with fuller information in a redacted decision rather than a summary.

CHAPTER EIGHT – PUBLICATION OF SUMMARIES AND DECISIONS

Background

8.1 The starting point for the introduction of summaries into the work of the Board began with the decision to release John Worboys in December 2017 which was subsequently quashed by the High Court in March 2018 (DSD & NBV v The Parole Board). It was this critically important judgment that confirmed the open justice principle applied to proceedings of the Board in the context of the provision of information to the parties, victims and to the public more generally.

8.2 Responding to the decision of the High Court the government launched the Root and Branch Review of the Parole System. The view that was taken by the Board, and other bodies including the Mental Health Review Tribunal, was that greater transparency was desirable and by implication achievable.

8.3 Since 2018 a variety of steps have been taken, including the introduction of decision summaries within four months of the DSD judgment, aimed at providing victims, the media and the wider public with an explanation of the reasons behind individual parole decisions. Action that was taken swiftly by the Board was via an immediate rule change to permit the introduction of summaries. The Root and Branch Review when launching its public consultation on opening some parole hearings to victims and the wider public in late 2020 noted that summaries had proved "popular and useful" with over 3,500 being issued up to that point, primarily to victims. Between 2018 and 2022 we are advised that 4,000 summaries were issued. Between January 1 2024 and 31 December 2024, 2,115 summaries were issued to requestors. It is clear to us that during the last six years summaries have been a major component of the Parole Board's plans to achieve greater transparency. It is noteworthy that as evidence of the Board's commitment to greater transparency we are informed that the formatting of the Board's documentation used to provide summaries had to be significantly altered to conform with international best practice.

The content of summaries

8.4 It is necessary and important to refer to the guidance given currently to summary writers. It begins by noting that there is no stipulation as to how a summary must be structured but there are a number of factors that must be taken into account when summarising a decision that could find itself being shared amongst the general public. These factors include the following:

(i) The summary must sufficiently describe the reasons (the word being highlighted in the guidance) for the panel's decision.
(ii) It must include details of the evidence that was received including evidence and recommendations of individual witnesses.
(iii) It must explain the panel's assessment of that evidence.
(iv) Ideally, it must make as clear as possible to the lay reader the reasons why the panel has decided that the prisoner does or does not still represent a risk to the public if released.

8.5 As mentioned in our introduction to this review the Board has recently engaged fully with the key objectives of the TOJB to guide its work and identify areas where changes can and should be made. We have therefore applied in this review the principles of transparency and open justice in carrying out our analysis and in making our recommendations.

8.6 The option that we face in relation to summaries is whether they should be retained and if necessary improved or whether the time has come for them to be gradually phased out and replaced with redacted decisions in every case. We fully understand that if we were to recommend that the Board dispenses with summaries altogether that would be a major step for the Board to take. We recognise that such a step would have to be evidence based and fully reasoned both in respect of the principles engaged in such a fundamental change of direction and the attendant practical considerations including how such a course might impact upon colleagues and staff.

8.7 Much of the evidence we gathered over a period of some four months was gathered from the meetings we had with well over 50 consultees and from a large body of material with which we were provided. A list of the consultees will be found annexed to this review. As can be seen we have consulted widely. We have seen a

significant number of summaries and their corresponding panel decisions.

8.8 With all of these matters by way of background in mind, we turn to consider the results of our consultations.

The consultees

8.9 We must first thank all those who gave up valuable time to meet with us in some cases more than once. Each meeting was recorded by a member of the secretariat and a copy of minutes sent for checking and comment to every consultee.

Comments made by Consultees

8.10 Generally speaking we found that summaries were no longer well received and were described by more than one consultee as anodyne and patronising. What follows is a representative sample of other observations made to us. We paraphrase:

(i) "Victims, public, the media want to know why we have made a decision when someone who committed a terrible crime is apparently now safe to be released. Some summaries don't explain this adequately or elucidate what has changed since the last review. They could go into more detail - about evidence received and why the panel have agreed with one professional witness more than another about the elements victims are concerned about and how the prisoner has demonstrated that they have changed and whether they are remorseful". (senior secretariat member).

(ii) " I share concerns about the formulaic style and would like to be producing better more meaningful summaries. Recently I have been troubled that victims are receiving a second or third summary following a further review and not being able to identify any progress or change from the earlier summary." (a panel chair)

(iii) "Summaries are short and do not give the final recommendation of experts or whether there has been a change of opinion". I am in favour of redacted decisions in all cases." (a leading academic)

(iv) "In favour of redacted decisions in all cases – the victim would feel better served. Can be somewhat patronising and some tell you very little" (experienced senior member and a summary quality assurer.)

(v) " In favour of redacted decisions in high profile cases. They are too formulaic" (a leading academic).

(vi) "I am in favour of redacted decisions – begin with a pilot – could achieve more transparency" (a legal team member).

(vii) "Not in favour of redacted decisions because it feels less transparent. For us summaries are helpful because it distils decision into something shorter" (a media representative).

(viii) "Summaries are not fit for purpose because victims feel they are too brief and beg more questions than they answer. On introduction they were a bold step but the time has come for a step change in what is shared with victims. A redacted decision is a good idea provided it re-assures victims that a full risk assessment has been done and the test for release is met" (a senior figure in HMPPS.)

(ix) "Summaries generally are not useful " (a senior retired Judge.)

(x) "I would prefer to see redacted decisions rather than summaries". When considering Judicial Review Judgments of Parole Board cases, where the hearing takes place in open court, this consultee (the Victim Commissioner) had noted that these judgments generally contained far more detail than the Board's decisions under appeal.

(xi) "Template is far too standardised particularly where the case is on its second or third review. Victims appreciate being told like it is. Would prefer to see a rape called a rape and not a 'serious sexual offence'. I support change to a redacted decision for every case". (Team Leader Summaries Team).

(xii) "Panel Chairs should not summarise their own decisions simply because they are overly familiar with the case. The summariser does not see the dossier because they need to be prevented from adding things to a summary that are not in the Decision." (a leading member in the creation of summaries).

Discussion

8.11 We suggest that a possible reason for the less than complimentary comments and observations from the majority of the consultees regarding summaries may well be attributable to the fact that they

have not been written by a panel member who participated in the review and sat on the oral hearing panel.

Redacted Decisions

8.12 Any consideration of following the suggestion made by many consultees that the time has come to dispense with summaries altogether and replace them with fully reasoned panel decisions, leads to a consideration of the process of redaction and who should be responsible for doing it. The process of redaction is not always entirely straightforward and may well have to be the subject of submissions by the parties and possibly further discussion with the panel. Redacted decisions will require the preparation of guidance to assist in carrying out the process of deciding that which must remain private and that which can be placed into the public domain. In Chapter 7 on Victim Observation of Private Hearings, we have addressed steps that have been taken to secure for members expert advice and guidance on dealing with decisions on which evidence should remain private and which can be made public.

8.13 Prison lawyers from whom we have heard were unanimously supportive of redacted decisions provided that they are afforded a proper opportunity to make representations upon the proposed redactions. This may well involve consideration of a short extension of the appropriate timelines following the conclusion of the oral hearing and the publishing of the final redacted decision, which may well require a rule change.

8.14 Finally, there is the issue of who should carry out the redacting process. In some other domestic jurisdictions we understand this task is carried out by administrative staff. It seems to us that in the context of parole decisions it should only be carried out by the Panel Chair or by a panellist, in other words those who have the most detailed knowledge of all of the evidence and the parole review as a whole.

A pilot scheme

8.15 We recognise and have already noted that the taking of steps that leads to the Board no longer providing summaries to anyone who requests them would be a major change in the way we conduct our work. There is no doubt that this cannot be done in haste and that

careful planning will be required to create and administer a pilot scheme.

8.16 Decisions regarding the type of case to be piloted will be necessary. We think it should involve different types of cases of varying gravity, thereby providing a cross-section of the Board's caseload. Victim observed hearings were rolled out nationally from 1 April when all victims signed up to the VCS, either on a statutory or a discretionary basis are now able to apply to observe a parole hearing. We recommend that redacted decisions should be piloted in respect of victim observed hearings.

8.17 Furthermore, we are of the view that from now on all public hearing decisions should be published. In respect of both public hearings and victim observed hearings, the panel chair would already have made decisions in respect of what should be heard in private, which should facilitate the making in due course of any redactions to the published decision. We believe that throughout this process the victim will experience greater transparency.

Conclusions

8.18 In relation to the provision of summaries, we are sure that we must change course, not because the Board took a wrong turn but because circumstances have changed and a different approach is now required. Following the introduction of summaries and for some time thereafter they were undoubtedly of value. However, things have moved on. The challenge we face now is how to conduct the Board's role as a court in a manner that is demonstrably promoting transparency and open justice, the principles of which are clear and which are designed to ensure that more information is placed before the public than has previously been the case.

8.19 We have therefore concluded that a requested summary is no longer the most transparent and open method of providing information for victims of the outcome of a prisoner's review and that the current system should be replaced with the publication of appropriately redacted fully reasoned decisions, eventually in all cases.

8.20 We have considered some excellent examples of summaries written either by the Panel Chair or by a fellow panellist who by the time of writing the summary was clearly in command of the detail and

nuances of all of the evidence that had been presented. We believe that this placed those panel chairs and co- panellists at a very considerable advantage over other panel members who had no connection whatsoever to the prisoner's case.

8.21 Having reached that conclusion we then considered whether this presented us with an opportunity to consider a fundamental change in our approach given that the Board had recently taken the opportunity to engage fully with the work of the TOJB established by the Lady Chief Justice just twelve months ago.

8.22 We stress that we are in no doubt that summaries have served a very useful purpose in providing information for victims and the media. However, for the reasons we have set out we have reached the clear conclusion that, for want of a more elegant phrase, summaries are no longer fit for purpose and we should take steps to provide fully reasoned appropriately redacted reasons (eventually) in every case.

8.23 The experience of the justice system as a whole is that public scrutiny, that is to say awareness on the part of decision makers that the public will be hearing or reading their decisions improves the process at every stage and in particular improves the quality and the clarity of the decision maker's reasoning.

8.24 It is convenient to add that as explained in our chapter on Anonymity (Chapter 11) it is clear that any redacted decision must identify the names of the panel.

Impact

8.25 We understand that there are some 25 panel members currently engaged in dealing with summaries. In an average week members complete between five to nine. For the year of 2024 we are advised that on average it took between 5 to 11 days to produce a summary. Between 1 January 2024 and 31 December 2024, 2,115 summaries were issued to requestors. Multiplying the fee per summary by the number of summaries issued the cost to the Board was just under £88,000. We are advised that it is hoped and anticipated that a slow phasing out of summaries and a gradual introduction of redacted Decisions in every case may well necessitate some member re-deployment to other casework with

roles of members and staff being adapted to support redacted decisions.

Recommendation

8.26 We recommend that the current process for the creation of summaries by non - panel members be phased out and following a pilot scheme the Board adopts the ultimate aspiration that in due course there will be redacted fully reasoned panel decisions in all cases. To provide further assistance to the media in order to better inform the public we suggest that in cases of high interest, redacted decisions should be accompanied by a short press summary or press statement.

Postscript

8.27 While not directly related to either this chapter or the purpose of our review there is a matter we wish to take this opportunity to raise. It concerns the description of our decisions as *"Decision Letters".* First, we do not think that this any longer represents an appropriate title for a document conveying to a prisoner the outcome of a parole review which will determine whether they are to remain in prison or be released back into the community. Secondly, because it represents a legally binding decision taken by a body acting as a court it is wholly inappropriate to describe it as a *"letter".* It may well be a legacy of an earlier time when the Board acted only in an advisory capacity and prisoners did indeed receive letters. Those days are long gone. We strongly recommend that the panel's decision be re-named *"The Decision of the Parole Board in the case of X".*

CHAPTER NINE – CONTEMPT POWERS/REPORTING RESTRICTIONS

Background

9.1. In this chapter we consider whether the Board should be granted powers to deal with conduct that would amount to a contempt of its proceedings. The present position is that the Board has no such power - it is able only to refer a case of alleged contempt to the High Court or invite one of the parties to the parole review or a law officer (the Attorney General or the Solicitor General) to bring an action in the High Court – a cumbersome, time consuming and expensive procedure.

What is Contempt of Court?

9.2. Contempt of Court refers to a wide variety of conduct that may impede or interfere with the administration of justice. It may be something that happens in court, such as the taking of photographs, making a recording of proceedings, assaulting a member of court staff or a witness or refusing to answer a court's question. This conduct is described as *'contempt in the face of the court'.* Contempt may also be committed by conduct that takes place elsewhere and not in court. For example, publishing material in contravention of reporting restrictions will be a contempt as will any deliberate failure to comply with a court order. For the purposes of this Review we are concerned only with contempt that is committed in the face of the court.

Discussion: Does the law of contempt apply to proceedings before the Parole Board

9.3. One of the questions that the High Court was required to answer in the case of R (Bailey and Morris) v Secretary of State for Justice was whether the law of contempt applied to proceedings before the Board. It was argued on behalf of the Secretary of State that it did not. That argument was rejected by the court which decided that the Board exercises the judicial power of the state and in so doing acts judicially as a body independent of the executive and is to be treated as a court in that it is independent, impartial and has fair procedures. Therefore, we proceed on the basis that the position in law is clear, namely that the Board, in exercising the judicial power of the state, should be treated as a court for the purposes of the law of contempt.

Discussion: The issues

9.4. One of this Review's primary areas of focus is public hearings which the Board have been conducting since 2022 where members of the public attend to observe the proceedings. Public hearings are open to victims, the media, academics and interested members of the public. As from 1 April 2025 victims are be able to attend private hearings and be required to sign a Non-Disclosure Agreement. Victim attendance is and will remain a matter for the Board. However, the Board's policy is that there is a presumption in favour of granting applications made by victims unless there is a good reason for not doing so.

9.5. Were a victim to breach the terms of a Non–Disclosure Agreement we think it highly unlikely that the Board would seek to take action to enforce any power to take contempt proceedings. However, with regard to the media, in the event of a contempt being committed in the face of the court, where for example something had been reported during the course of the hearing which should not have been, it is in our view highly likely that no such similar concession would be granted.

9.6. The Board has taken various protective measures regarding information being inadvertently disclosed when members of the public are present. It is appreciated that while protective measures reduce the risk of inadvertent disclosure it cannot be eliminated. Experience has shown that even with diligence and protective measures, matters of real concern can find their way into the public domain during a public hearing without detection. In parole hearings reference to such matters are frequently highly controversial and sensitive, may well have security implications or place at risk a prisoner's re-settlement plan.

9.7. This problem is not confined to deliberate or accidental disclosures sometimes referred to as *"blurt outs".* We have been considering options for increasing transparency to include unsupervised streaming to accredited journalists, a process which has been undertaken in some family court proceedings. We understand however that unsupervised streaming from the location of a hearing could lead to unlawful recording and/or screen shots being taken which could jeopardise the safety of witnesses and/or the prisoner. Appropriate provisions should be in put in place to warn observers of the fact they should not record proceedings. There is already a visual warning featured as standard on our existing observer

platform. The danger of individuals capturing and misusing images from the hearing was noted by the Root and Branch Review. Victim consultees brought to our notice the risk of the media reporting comments made by a victim to the media. While we readily accept that the majority of attendees at hearings will comply willingly and fully with what is asked of them, there is in a world of uncontrolled social media and press campaigns, a real risk that an aggrieved victim would break the rules. We have been advised by senior judges that to rely upon non-disclosure agreements as the only means of seeking protection of confidential information is unwise.

9.8. Other jurisdictions, such as the criminal courts and public inquiries have been able to put in place measures such as Restriction Orders to supplement the statutory powers they already have under the Contempt of Court Act 1981 to take immediate action in the event of an inadvertent disclosure. Currently there is no such power for the Board to make a Restriction Order preventing publication of any matter raised in a public hearing. The Board has only those powers given to it by Parliament. What is more, neither its governing statute nor its Rules give it any power to punish a contempt. As matters stand the one and only measure that is available to a panel is a time delay in transmission so that any inadvertent disclosure during a hearing can be quickly avoided by stopping transmission. This in our view is plainly inadequate and falls very far short of what Mr Justice Nicklin (Chair of the Transparency and Open Justice Board) described to us as a part of the essential toolkit that is required for open justice.

9.9. Thus far, it is our understanding that it is only because of the goodwill of the media that confidential matters have not been published. We have concluded that it is unsafe to rely on the goodwill of the press not to publish matters which they consider to be in the public interest unless there is an order preventing it. The Review has discussed this with senior members of the media who have told us that they cannot continue to be expected to refrain from publishing something said in public when there is no legal authority to prevent its publication.

Discussion : Time for a change?

9.10. We propose that legislation is required as a matter of urgency. The lack of the power to make a Restriction Order (or tailor made equivalent) is currently running the risk of compromising public hearings because panels have no power to prevent the publication of inadvertent *"blurt outs".* Furthermore, it is significantly inhibiting

the Board in its efforts to achieve greater transparency. One example will suffice. The Family Division is now holding hearings which are being streamed to accredited journalists and legal bloggers. An order is made (called a Transparency Order) which restricts what can be published. A breach of this order would be a contempt and indeed a criminal offence. We are advised that until now, following a two year pilot, this system has proved effective. We are informed that so far there have been no transgressions.

9.11. Turning to contrast that development in the Family Division with the position of the Board, the stark reality is as follows. If the Board wished to embark upon unsupervised streaming to journalists, not only does it not have the power to make an order equivalent to a Restriction Order but also the Board's contempt powers by comparison with other courts are, as we have suggested, wholly inadequate.

9.12. We recognise that the contempt power is one to be used sparingly and carefully. Our joint experience as judges in the criminal jurisdiction has demonstrated that it is the very existence of the power that is important. The ability to be able to warn a potential contemnor that they are on the edge of being found in contempt often has a calming effect. The work of the Board frequently involves high profile even notorious cases that can attract massive public interest. Frequently, such cases have a determined media campaign associated with them.

9.13. In our view the public needs to know and understand that not only does the Board act as a court, it must also be respected as a court with the power to act swiftly to prevent or stop conduct which amounts to a contempt of court not because the panel are concerned in some way for their personal dignity but rather because the authority, impartiality and independence of the Board acting as a court must be upheld.

9.14. We have found that the current position only provides a tortuous route to a remedy when what is required when a contempt in the face of the court occurs is the threat of immediate action designed to prevent or to stop disruptive activity or further damage as a result of further publication. The principles of transparency and openness require that reporting restrictions should be used when the need arises to protect sensitive information from disclosure simply because that will instil greater public understanding and confidence in the processes of the Board which, while a court,

appears to suffer from a lingering public misconception that its hearings are just administrative. It needs to be known that it has contempt powers and that they can and will be invoked speedily. It is critical that those who attend public hearings or attend private hearings as observers are fully aware that such powers exist.

Conclusions

9.15. In order to prevent abuse of the Board's hearings both public and private, we are sure that contempt powers are needed. We go further and say that without its own contempt powers to deal with contempt in the face of the court, the Board's efforts to achieve and maintain greater transparency will be severely hampered.

9.16. For all these reasons, we have reached the clear conclusion that the Board urgently needs contempt powers in respect of any contempt committed in the face of the court. This new power would be over and above the existing procedure which requires the Board to refer a contempt to the High Court or a Law Officer.

Recommendation

9.17. We recommend that the Board be given its own powers to deal with a contempt in the face of the court that may arise in its proceedings. This could be achieved by giving the Panel Chair the power to deal with a contempt as and when it arises and/or refer the matter to the Chair of the Board who could delegate possible contempt proceedings to a senior judicial member of the Board.

CHAPTER TEN – DOCUMENTS

Background

10.1 The principles of transparency and open justice require that provided the process of a prisoner's review is procedurally fair the proceedings of the Board must be open and accessible to the public and the media.

10.2 One of the key objectives of the TOJB includes providing the public and the media with effective access to what are described as "core documents" in order to assist the public and the media to make sense of the proceedings and the final decision that a panel has taken. In general terms, the documents might include:

(i) Any document that identifies the subject matter of the case (in a criminal trial, the Indictment)
(ii) Some of the evidence to be considered at a hearing to be held in public (in a criminal trial, police interviews plans, photographs, agreed facts and skeleton arguments)
(iii) Written submissions from the parties that have been considered at a hearing held in public.

10.3 In this chapter we consider the viability of this objective in relation to the work of the Board.

Discussion

10.4 Open documents are one of the four key components to which the principles of open justice apply. The principles of open justice establish that none of its four key components is absolute. There will in almost all of the Board's work be factors in play that will not permit disclosure to take place. There is no doubt that doing justice must always come first. Many documents would only become available to the public and the media, if at all, once they have been considered in parole proceedings that have been conducted largely in public.

10.5 In the context of a parole review, the description 'core documents' would in all probability include the judge's sentencing remarks, written documents setting out the respective positions of the parties to the review and perhaps other written submissions which might include the written submissions made by the parties. We have no doubt that disclosure of such material would greatly enhance the ability of the observer to follow and better understand the public hearing process. Reports of professional witnesses and other

experts that might include medical, psychological and psychiatric reports as well as a probation officer's pre-sentence court report will frequently contain highly sensitive and confidential material that would not, in all probability, pass a disclosure test that enables them to be handed to the public and the media following delivery of a panel's decision.

10.6 The availability of transcripts of proceedings is regarded as an important dimension of open justice. The aim for a modern Court and Tribunal system should be for all proceedings to be recorded so that, if required, transcripts can be obtained. Ultimately, this is a development that is essentially dependent on resources being made available. That being said, we see no good reason why, provided that a reasoned application is made, the provision of transcripts of parole hearings held in public should not be a serious ambition, the cost of which would be met by the applicant(s).

10.7 Hearings that take place, where the press cannot report what has happened and where the public information that is provided is very limited, risks leading to a loss of public confidence in the system. We have been told as much by families of victims and others that, for some, that point has been reached and there is a perception that too much is happening behind closed doors.

10.8 There will be cases where a panel will only be able to do justice by departing from the principle of open justice. Any departure from open justice must be necessary, proportionate and justified. To that we would add that any departure must be explained, insofar as it can be. If that explanation can be in addition to allowing a request for documents by a non-party in order to better understand the case, we suggest that a panel should have the power based on the principle of open justice to allow such a request, subject of course to any justification for non-disclosure. It is of interest to note that the criminal courts have recognised for some time that they have this power. See: The Queen on the application of Guardian News and Media Ltd and Westminster Magistrates Court [2012] EWCA Civ. 420 para 36 and R v Howell [2003] EWCA Crim 486.

10.9 The Guardian News decision broke new ground in the application of the principle of open justice. The question in that case was whether a Judge, who made orders on the application of the US Government, had power to allow Guardian Newspapers to examine and take copies of documents which had been supplied to the judge for the purpose of extradition proceedings. The documents were not

read out in open court but were referred to during the course of the hearing. The judge refused the newspaper's application ruling that she had no power to allow it. That decision was upheld by a superior court but overturned by the Court of Appeal ruling that the requirements of open justice applied to all tribunals exercising the power of the state (which, as we have already made clear, includes the Parole Board).

10.10 It is, we suggest, of value to the subject matter of this Review to pause to consider some of the reasons that the Court of Appeal gave in upholding the newspaper's case and granting access to the requested documents which included affidavits, witness statements and written arguments. In these reasons can be found very similar arguments put forward by the media, by victims' families and others to us during this review with regard to their desire for more information and thereby greater transparency in cases conducted by the Board. The court found that the newspaper concerned had a serious purpose in seeking access to documents. It wanted to stimulate informed debate about the way the justice system dealt with cases of a similar kind because the way in which the system addresses such cases is a matter of public interest about which the public should be informed.

10.11 Because of the relevance and importance of this case we think that it would be helpful to set out an extract of the test for disclosure of documents taken from the leading judgment of the court:

Para.85 *"In a case where documents have been placed before a judge and referred to in the course of proceedings… the default position should be that access should be permitted on the open justice principle…where access is sought for a proper journalistic purpose, the case for allowing it will be particularly strong….there may be countervailing reasons…. I do not think that it is sensible or practical to look for a standard formula for determining how strong the grounds of opposition need to be…the court has to carry out a proportionality exercise which will be fact specific. Central to the court's evaluation will be the purpose of the open justice principle…the potential value of the material in advancing that purpose and …any risk of harm which access to the documents may cause to the legitimate interests of others."*

10.12 In the context of the provision of documents to the public and the media, we suggest that the Board's approach should mirror the way in which a Crown Court conducts itself. We have earlier mentioned

the basic documents frequently disclosed by the criminal courts. As for documents that simply cannot be made public (we earlier mentioned court ordered pre-sentence reports) we suggest that the Board's approach should take a steer from the way in which such sensitive material is handled by other jurisdictions where sensitive material is with appropriate care referenced in what will be public facing redacted decisions.

10.13 There are documents in a typical parole review that are central to an understanding of the context of the work of the Board. They include, for example, the original indictment, a police/prosecution summary of the facts (the more detailed the better) and crucially the judge's sentencing remarks.

Recommendation

10.14 The Board should principally in the course of public hearings commit itself to amending the Rules to permit the provision of documents to the public and the media relating to a parole review.

10.15 We suggest that a commitment to greater transparency and openness in relation to the provision of documents to the public and the media following delivery of a panel's decision should be informed by the principle that the Board should aim to make public what it can make public, provided that no harm nor damage would be caused that would jeopardise the process or make it procedurally unfair. We are confident that this approach would over time instil greater confidence in and trust of the process as a whole

CHAPTER ELEVEN – ANONYMITY OF PAROLE BOARD PANEL MEMBERS

Background

11.1 This chapter will deal with what we recognise to be a sensitive subject for some Board panel members, namely the issue of panellists wishing not to identify themselves by name. The strength of feeling of some colleagues was reflected in the Board's response in May 2022 to the Root and Branch Review of the parole system public consultation on making parole hearings open to the victims of crime and the wider public. One of the questions raised in the consultation was whether there were considered to be any risks or implications that would need to be considered if hearings were to be held in public. The Board's response acknowledged that there were risks involved in publicly identifying members which could potentially impact on recruitment and retention of members. It was suggested that where possible arrangements should be put in place to manage any risk. As we shall see this matter is now the subject of fresh Guidance issued in January 2025.

11.2 Since the Root and Branch Review the introduction of public hearings and victim attended private hearings are now in place and to that extent the context has altered along with the Board's full engagement with work of the TOJB.

Recent Developments

11.3 There have been two recent developments which are relevant to the issue of anonymity. The first is a decision of the Court of Appeal in the case of Louise Tickle and Hannah Summers v The BBC and others [2005] EWCA Civ.42 which was issued on 24 January 2025. The case concerned the family court's jurisdiction to prohibit publication of the names of judges who had decided particular cases. The case arose in the context of proceedings relating to Sara Sharif who was brutally murdered by her father and step–mother in 2023. The judges whose names were anonymised had decided cases concerning Sara. It is necessary to consider this judgment which is of course binding on the Board and therefore directly impacts on the subject matter of this part of our Review.

11.4 Members of the press appealed against the anonymisation of the judges names. The appeal, presided over by the most senior judge in the civil Court of Appeal allowed the appeal. At the beginning of the judgment it was noted that the conclusions the appeal court had reached "may have wider significance".

11.5 We hope that it will assist in understanding the relevance of this judgment to the work of a parole panel of the Board if we highlight the following points of principle that were established in the Judgment of the court:

(i) *"The principle of open justice is applicable in any proceedings.*
(ii) *A bone fide inquirer is entitled to know the name of the judge who is sitting or who has recently heard a case.*
(iii) *It is the duty and the role of judges to sit in public and, even if sitting in private, to be identified.*
(iv) *Judges are in a special position as regards open justice. The integrity of the justice system depends on the judge sitting in public and being named, even if they sit in private. The justice system cannot otherwise be fully transparent and open to appropriate scrutiny. To order otherwise would require specific compelling evidence as to the risk to the judge in question."*

11.6 The second development was that on the 31 January 2025 the Board issued updated Guidance on Oral Hearings, Decision Writing and Member Case Assessment. We cannot improve upon paragraph 5.10 of the guidance. It reads as follows:

11.7 *"The Parole Board acts as a court and conducts proceedings in accordance with the principle of open justice (which applies even in private proceedings). Like any court, the representatives appear before it under their own names and so do the witnesses. Any derogation from the principle of open justice will need to be properly justified and requires something more substantial than uneasiness or speculation. In most hearings, this information will be shared with those attending and observing but will not be shared any further. In order to depart from this standard practice, there must be evidence of a specific risk posed to the panel member(s) or witnesses by the prisoner to justify not displaying their full names. In exceptional circumstances, such as where members have significant safety concerns about recording their name on directions or decisions, they should contact (details provided) outlining the reasons why they feel they cannot add their name. This will be considered on a case - by - case basis".*

11.8 On the same day the Board issued updated Decision Writing Guidance which at paragraph 2.9 says in bold print:

11.9 *"Each panel member must be named on the written decision. Only in exceptional circumstances can members go unnamed"*

11.10 The clear message sent by the Judgment of the Court of Appeal and echoed in the Board's guidance is that only in exceptional, evidence - based circumstances, would it be appropriate not to identify by name a panel chair or panel member at an oral hearing held in public or private and on the face of written directions and decisions. This was confirmed by the comments made by a number of our consultees including members of the senior judiciary, prison lawyers and academics. It was noted by one High Court Judge that the Board should and no doubt does recognise the levels of available support and advice provided to say a serving judge. Unsurprisingly, as we shall see, the Board's senior management certainly does recognise the importance of these issues and how similar concerns are dealt with by the serving judiciary.

Context

11.11 In the light of a good deal of research that we have been able to carry out on this issue there are a number of points to be made in order that as complete picture as possible can be presented:

(i) As we understand it, the wishes of some members not to be identified by name when engaged in certain cases does not seem to be grounded in any written term of member engagement or guidance. Instead it appears to have become part of the Board's custom and practice that a member can be anonymised. The position reached is that some members have an expectation that they will not be identified by name upon request, without more.

(ii) As a result of the Board's Review of TACT cases, HMCTS provided members with access to advice and if necessary protection in the event of any concern arising regarding personal safety, similar to that offered to the judiciary.

(iii) Support and guidance is also available to any member with a concern about personal safety on how, for example, to remove personal addresses from public registers.

(iv) As part of the Board's journey towards transparency, the decision was taken that reconsideration decisions would be published and included in the published version would be the name of the member who wrote the decision. Recruitment to the reconsideration pool of members was done on that basis. The same was done on the introduction of the set aside process and decisions. We are advised that there have been no adverse developments as a result.

(v) The names of all members are in fact in the public domain and are included in the Board's published annual report.

(vi) For the making of the popular TV series on the work of the Parole Board we are advised that 29 members waived their anonymity.

(vii) We note that Rule 27 of the current Board Rules is currently worded in such a way as to give the Board Chair the authority to direct that panel members can be named.

Conclusions

11.12 The direction of travel of the Board and many other judicial bodies is now clear as it moves towards greater transparency and openness. It is clear that as matters stand where the hearing takes place in public this will require the panel to provide their names. The request of a member to remain anonymous in their conduct of a public parole review cannot by itself any longer be accepted. What in all likelihood will be required in order to remain anonymous will be the provision of evidence based 'exceptional circumstances' justifying such a course together with, in all probability, a full risk assessment carried out by the appropriate authorities.

11.13 For example, we suggest that an 'exceptional circumstance' leading to a request for anonymity may well be the fact that a member who is engaged in other roles, such as a practicing psychiatrist or psychologist who goes into prisons to consult with and report upon prisoners, would in our view have a strong claim to seek anonymity regarding their role on a Parole Board panel.

11.14 As for private hearings, attendees will have signed a binding non - disclosure agreement (which it must be assumed would be complied with in full). We anticipate that if a member did not wish to be identified by name, that position could be maintained only until the time came for the panel decision to be placed into the public domain whereupon there would be a clear obligation upon the member to waive anonymity and be named unless they were able to demonstrate evidence based exceptional circumstances why they should not.

11.15 We well understand that the concerns of some members for their personal welfare and safety is entirely genuine. We accept that it is certainly arguable that some victims may feel a greater and heightened sense of grievance against a panel member who directs release than was levelled at the Judge who passed the original sentence. This sense of grievance may have been enhanced by a

media campaign and the use of social media in the build up to the hearing of the prisoner's review.

11.16 Given the use and misuse of social media, and the possibility that grievances become threats towards a panel member or members, this is a real concern that must be addressed. We note that as things stand such grievances are directed to the Board's CEO and Chair who act as a spokesperson for the member and the Board whenever there is a criticism of a Board decision.

11.17 To meet the genuine concerns of members and to provide re-assurance we assume that the measures currently in place will be reviewed on an ongoing basis and if necessary strengthened. In our view there is no distinction to be drawn in this respect between the position of our membership and members of the serving judiciary.

Recommendations

11.18 PUBLIC HEARINGS. Panellists in public hearings should not enjoy anonymity unless evidence of exceptional circumstances is provided and established.

11.19 PRIVATE HEARINGS. Provided non-disclosure agreements and victim confidentiality agreements (specimen copies of which are annexed to this review) have been signed by attendees, the anonymity of a panel member in a private hearing should be maintained only until the panel's decision is published and not thereafter unless evidence of exceptional circumstances has been provided and established.

11.20 NAMING OF PANELLISTS. That consideration be given to giving effect to Rule 27(6) of the Parole Board Rules 2019 (as amended) which provides a mechanism that enables the Board Chair to direct that panellists be identified by name unless there are exceptional circumstances not to do so.

CHAPTER TWELVE - THE TRANSPARENCY OF THE PAROLE BOARD - THE FUTURE

12.1 Whilst the Board has made significant progress towards achieving greater transparency, the journey needs to continue. Momentum needs to be sustained in areas where confidentiality will not be compromised. To reflect these sentiments, we recommend that this report be published.

12.2 As a judicial body, the Board will continue to engage with the TOJB. This report should be disclosed to the TOJB to explain the position of the Board. A continuing dialogue should follow in respect of the progress that has been made in respect of the four components - open hearings, open reporting, open documents and open decisions with any necessary reference to countervailing factors.

12.3 The Board will need to monitor its progress in respect of each transparency facet. This should include what has been achieved in respect of providing victims with greater transparency.

12.4 An ideal opportunity for this would be the annual OPEN Parole Board Management Committee meeting. Transparency should be a major agenda item. We suggest that the most senior judicial member (currently the Judicial Vice-Chair) should be given oversight of transparency issues and should produce a short report for that meeting. It follows that if the senior judicial member were to be the Chair of the Parole Board, they should have oversight of this issue.

12.5 Given the pace of change in this area, we suggest that every three years, the Vice Chair conducts an internal review on transparency.

12.6 We propose to set out a timetable for the implementation of our principal recommendations. Where we have suggested that alternative options should be explored such as other types of public hearing, we do not feel it appropriate to suggest time limits.

12.7 The bespoke Guidance for members on which matters need to be heard in private should be prepared as soon as reasonably possible. This Guidance will be relevant to public hearings, victim observed hearings, and redacted decisions.

12.8 Appropriate legislation providing the Board with the power to make orders restricting publication of confidential matters should be

sought as a matter of urgency so as to facilitate the Board's efforts to achieve greater transparency.

Public hearings

12.9 Our recommendations to streamline the application process so as to ensure it is fair and judicial can be adopted relatively swiftly after discussions with the parties. We have recommended no anonymity for applicants, cross-service of the parties' representations and a duty of disclosure on HMPPS.

12.10 From now on those sitting on public hearing panels should no longer be afforded anonymity unless there are evidence based exceptional circumstances.

12.11 With immediate effect, all future public hearing decisions should be published (redacted where necessary.) The Chair of the Board has the power to achieve this under Rule 27(5).

12.12 When and if a redacted decision is published, the names of the panel members should be on the decision. This is within the Chair of the Board's current powers.

Victims observed private hearings

12.13 The proposed rule change in respect of the victim observed private hearings should be introduced as soon as possible. It reflects current Parole Board policy which is set out in the relevant guidance.

12.14 Once the bespoke Guidance on public/private is available to panel members, selected redacted decisions in respect of victim observed private hearings should be published as part of a pilot. The pilot could be on a geographical or on an offence/sentence type basis. Whilst the chair could direct this under Rule 27(6), such a significant change should be marked with Rules relating to the publication of redacted decisions equivalent to Rule 27 (1–5) which currently related to applications for summaries. In time, current rules 27 (1–5) would be phased out and become redundant.

Summaries

12.15 Those in charge of summaries should devise a plan and a timetable for the gradual phasing out of summaries in favour of redacted decisions.

Core documents

12.16 The Parole Board rule should be added to cater for applications to disclose key documents. We propose that this is confined to public hearings for the time being.

Annex A – public hearing applications

Public hearing applications granted:

Prisoner name	Source of application	Number of applicants	Date of applications	Outcome	Public hearing decision	Date of public oral hearing	Summary of oral hearing decision
Causley	Victim and media	3	22/07/2022-26/07/2022	Granted	Link here	12 December 2022	Link here
Salvador	Prisoner	1	21/07/2022	Granted	Link here	6 & 8 March 2023	Link here
Razzell	Victim	3	27/01/2023	Granted	Link here	24 & 25 August 2023	Link here
Ling	VLO on behalf of victim	1	23/01/2023	Granted	Link here	16th & 17th July 2024	Summary Redacted decision
Bidar	Prisoner	1	17/03/2023	Granted	Link here	18 & 19 March 2024	Link here
Park	Relative	1	06/07/2023	Granted	Link here	Concluded on papers before OH	Public hearing did not go ahead – no published summary
Dunlop	Victim	3	09/10/2023	Granted	Link here	25 June 2024 16 & 17 December 2024	Decision pending
Leat (Russell)	Victim	1	22/12/2023	Granted	Link here	Concluded on papers before OH	Public hearing did not go ahead – no published summary
Ling - *application to*	Prisoner	1	04/01/2024	PH to remain	Link here	16th & 17th	Summary

reverse decision						July 2024	Redacted decision
Pitchfork *Revisiting a change of circumstance*	PB Chair revisits decision	1	16/05/2024	Granted	Link here	Private hearing	Decision pending
Park - *application to reverse PH decision*	Prisoner	1	19/03/2024	PH to remain	Link here	Concluded on papers before OH	Public hearing did not go ahead – no published summary

A full list of all rejected applications can be found here:

Applications for public parole hearings - GOV.UK

Annex B – list of consultees

International colleagues:

Sylvie Blanchet - Executive Vice-Chairperson of the Parole Board of Canada

Academics

Professor Stephen Shute

Professor Nicola Padfield KC (hon)

Judiciary

Mr Justice Nicklin – Chair of the Transparency and Open Justice Board

Judge Sarah Johnston - Deputy Chamber President, First Tier Tribunal (Mental Health)

Mrs Justice Lieven

Lord Justice McFarlane

Victims and victim charities:

Joanne Early – CEO of Support After Murder and Manslaughter (SAMM)

Ann Ming MBE

Kevin Hogg

Andrew Tabb

Claire Waxman OBE - Victims' Commissioner for London

Baroness Newlove – Victims' Commissioner for England and Wales

Sara Dowling – CEO of Why me?

HMPPS and other stakeholders:

Gordon Davison - Public Protection Group Director HMPPS

Donna Sugarman - Senior Operational Policy Advisor HMPPS Victims Team

Sara Robinson - Probation Director

Katharine Rogers - Probation

Martin Jones CBE - HM Chief Inspector of Probation

Press:

Dominic Casciani - Home and Legal correspondent BBC

Joshua Rozenberg KC (hon) – Legal Affairs correspondent

Flora Thompson – Home Affairs correspondent PA

Margaret Davis – Crime correspondent PA

Parole Board members:

Duncan Harding – psychiatrist member

Sally Allbeury – independent member

Taljinder Basra – psychologist member

Dr Andrew Dale – independent member

Robert McKeon - independent member

Rick Evans – former active member

Ifty Ahmed - independent member

Daniel Bunting - independent member

HH Patrick Thomas – judicial member

Noreen Shami – psychologist member

Victoria Farmer - independent member

Chris Fry - independent member

Sir John Saunders KC – judicial member – former Vice Chair of the Parole Board

Internal Parole Board staff:

Shafia Khatun – Head of Operational Development

Jenna Dalton - Senior Operations Manager

Mike Atkins – Director of Legal

Kalvinder Puar – Head of Legal

Glenn Gathercole - Lead for new Policy and Research

Nikki Peters – Head of Communications and Engagement

Kerry King – Head of Communications and Engagement (interim)

Faith Geary – Chief Operating Officer

Sharmine Musabbir – Head of Parole Board Victims and Summaries Team

Christopher Drinkwater – External Communications Manager

Prisoner lawyers, barristers and representatives from prisoner charities:

Dean Kingham

Matthew Bellusci

Michael Bimmler

Lubia Begum-Rob

Saimah Sharif

Dr Laura Janes KC

Garry Crowther

Elizabeth Wreakes

Andrew Sperling

Rikki Garg

Mirren Gidda

Jude Bunting KC

Annex C – Guidance on public hearings

Guidance for Applications for Public Hearings - October 2022 (v0.1)

Introduction

The Parole Board Rules 2019 (as amended) ("the Rules") came into effect on 21 July 2022[1]. For the first time, the Rules made provision for Parole Board hearings to take place in public. Under the Rules, an application for a public hearing can be made by anyone (including a prisoner, a victim, and a member of the public) and it is for the Chair of the Parole Board to decide whether to hold a hearing in public or not, applying an 'interests of justice' test.

All applications for a public hearing should be made on the application form (which can be found on the Parole Board website titled 'Application for a Public Parole Review') and must be sent to the designated inbox at public.hearings@paroleboard.gov.uk. Once all of the relevant information has been received and all views have been sought, the application will either be granted or refused by the Chair of the Parole Board.
All decisions on public hearing applications will be published on the Board's website.

Application for a Public Hearing

Once received, the application will be sifted by the Parole Board legal team to ensure that it meets the relevant criteria (set out below) and will be:

- Accepted as it is and progressed; or
- Rejected (for reasons such as being too late and outside the 12 week window); and/or
- Followed up with a request further information.

The relevant criteria are as follows:

- The application must relate to a case which has an active review; and
  The application must be received at least 12 weeks before the hearing (if one has been listed).

Given that this is a new process, some applications have been allowed outside of the 12-week window. However, any application received on or

[1] The exception to this is the change to Rule 28(1) to enable reconsideration applications to be made for IPP termination decision, which came into force on 1st September 2022

after 1st December 2022 where there is less than 12 weeks before the date of the hearing will be rejected as being out of time. Exceptionally, a panel chair or duty member can use the power set in rule 9 to alter the 12-week time frame. However, this should only be done in very exceptional cases. The starting point will be that the time frame set out in the Rules should be followed unless there is a very good reason not to. A request to accept a late application must be made at the same time as the application (unless an application to extend the time period is received before an application for a public hearing is submitted).

Where an application meets the relevant criteria (see above), a request for representations from all interested parties in response to the application will be sought.

A copy of the redacted application submitted will be sent to interested parties and a period of 14 days will be provided for representations to be received depending on the hearing date. This timeframe may be amended if there is less than 12-weeks before the date of the hearing.

The interested parties who will be contacted to provide representations are:

- The Secretary of State for Justice.
- The representative for the prisoner, or the prisoner themselves if they are unrepresented.
- Victims (via the VLO).
- The Panel Chair of the hearing (if one has been allocated).

Once representations have been received from the interested parties, the application will be put before the Chair of the Parole Board to make their decision. The timeframe for making a decision is between 6 to 8 weeks following the receipt of the application. Should the Chair of the Board require further details/information after considering the representations, directions may be set allowing for a period of up to 7 days for this information to be provided.

Decision making process

When making their decision, the Chair of the Board will consider all of the information submitted in respect of the application for a public hearing as well as the following factors (which are non-exhaustive):

- Whether it will be in the interests of justice for the hearing to be held in public;

- Whether witnesses (including the prisoner) will be able to give their best evidence if the hearing were to be held in public;
- Whether a public hearing might compromise the Parole Board's ability to carry out its core function, which is to assess risk on all the evidence;
- Whether there is a good reason or reasons to justify a departure from the general rule which is that all parole hearings should remain in private;
- whether there are any particular special features in the case (which set it apart from other cases) which may add to proper public understanding of the Parole system and public debate about it and which particularly warrant a public hearing;
- the wishes of the victim(s);
- any risks of undue emotional stress and/or re-traumatisation of the victims including an adverse effect upon the mental health of the victim or the victim's family in the short or long term;
- the victim's right to attend parts of the hearing in any event;
- the (informed) wishes of the prisoner;
- any particular vulnerability of the prisoner by reason of age and/or mental disorder;
- any risks to the safety of the prisoner;
- any risks of undue emotional stress to the prisoner;
- the Parole Board's power to exclude witnesses from the hearing and/or hold part of the proceedings in private where evidence is especially personal, confidential or sensitive;
- any difficulties in confining personal, confidential or sensitive to a private part of the hearing;
- any significant risks of inhibiting open and honest discussion during the hearing;
- the availability of summaries to the public in any event; and
- the ability to make practical arrangements for a public hearing without a disproportionate burden upon the Parole Board.

Decision

Once the Chair of the Board has made their decision on whether the application for a public hearing is granted or refused, the decision will be issued to the applicant and all other interested parties. In line with our transparency agenda, the decision will be published on the Parole Board website on the same day.

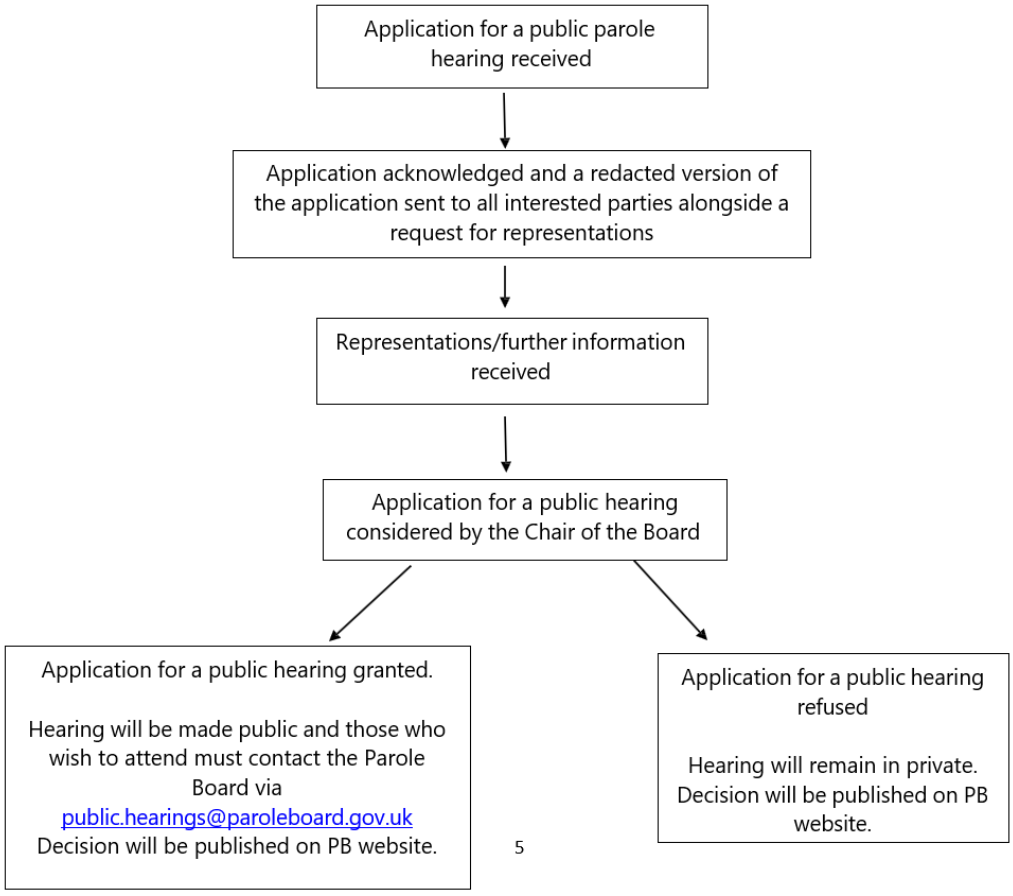
Once a hearing is made public, all those wishing to attend must complete the relevant registration form. Attendance will be on a first come first served bases, so to acquire a form, prospective attendees must email public.hearings@paroleboard.gov.uk.

Please note, all those wishing to attend the public hearing must register, regardless of whether they made the application for the hearing to be made public. Only the parties to the proceedings are able to attend the hearing without needing to register their attendance.
It should be noted that where an application for a public hearing has been granted, it is highly likely that parts of the hearing will still remain private. This is to allow discussions around personal matters such as medical information, possible resettlement plans and licence conditions.

If an application has been refused, the hearing will remain private. It may still be possible for the applicant to attend as an observer. A separate request to the panel chair (or duty member if a panel chair is not allocated) will need to be made to do so.

The only way to challenge a decision on an application for a public hearing is by way of judicial review.

Below is a flow chart of how the application process works:



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Annex D - Victim confidentiality agreement

VICTIM OBSERVER CONFIDENTIALITY AND

NON-DISCLOSURE FORM

YOUR NAME: _____

DATE OF HEARING: _____

The Parole Board Rules 2019 (as amended) ('the Rules') permits a person upon application to the panel chair or duty member of the Parole Board to observe a parole hearing and the Parole Board can impose conditions on that person's admittance.

Accordingly, the Parole Board hereby imposes the following conditions which you must agree to before attending the parole hearing on the above date:

- Refusal to sign this document means you may not be permitted to observe this hearing.
- Parole hearings are private proceedings. In accordance with Rule 27(5) of the Rules, you cannot communicate any information you see or hear whilst observing the proceedings, outside of this hearing without the permission of the Chair of the Parole Board.
- Rule 27(7) of the Rules also says that if there is a breach of privacy, any person who suffers loss or damages (including a prisoner) can take legal action against the person who breaches privacy.
- You are only allowed to discuss the information you hear during the proceedings in the context of any treatment/therapy/support you receive from appropriate professionals, or in conversation with an HMPPS Victim Representative or Victim Liaison Officer.
- You must not record this hearing or capture images in any format, even if it is not your intention to share the recording or images.
- You agree that if you record or share any information heard in this hearing in any format, without the prior permission of the Parole Board Chair, this will constitute a breach of confidentiality, may give rise to legal action under Rule 27(7), and may also constitute breach of the privacy rights of other people under the United Kingdom General Data Protection Regulation (UK-GDPR).
- 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 you are held to be in contempt of court, there may be serious consequences.
- You understand that observing a parole hearing may often involve hearing information that may be distressing. You therefore agree to exonerate the Parole

Board from any legal action that may arise from any distress you suffer from attending the parole hearing.

By signing this document, you understand the sensitive nature of the information discussed at a parole hearing and are agreeing to the conditions set out above and understand that breach of this agreement might give rise to legal proceedings.

Signed: _____ Date: _____

Annex E – General observer confidentiality agreement

OBSERVER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (Version: March 2024)

YOUR NAME: _____

DATE OF HEARING: _____

The Parole Board Rules 2019 (as amended) ('the Rules') permits a person upon application to the panel chair or duty member of the Parole Board to observe a parole hearing and the Parole Board can impose conditions on that person's admittance.

Accordingly, the Parole Board hereby imposes the following conditions which you must agree to before attending the parole hearing on the above date:

Privacy of Hearings

- Parole hearings are private proceedings. In accordance with Rule 27(5) of the Rules, you cannot communicate any information you see or hear whilst observing the proceedings, outside of this hearing without the permission of the Chair of the Parole Board (but see exceptions below).
- You understand that, under rule 27(7), should a breach of privacy occur, any person suffering loss or damages as a result (including a prisoner) of the breach, can take legal action against the person responsible for the breach of privacy.
- You must not record this hearing or capture images in any format, even if it is not your intention to share the recording or images.
- You agree that if you record or share any information heard in this hearing in any format, without the prior permission of the Chair of the Parole Board, this will constitute a breach of confidentiality, which may give rise to legal action under Rule 27(7) and may constitute a breach of the privacy rights of other people under the United Kingdom General Data Protection Regulation (UK-GDPR).
- Refusal to sign this document means you may not be permitted to observe this hearing.

Exceptions

Whilst it is not permitted to communicate any information you see or hear whilst observing these proceedings, the following exceptions are allowed:

- Observers attending as part of their professional training may discuss these proceedings with their supervisor, in the context of professional learning and development and subject to professional confidentiality protocols.
- Observers attending as part of an approved research study may discuss these proceedings within the context of their research study and in line with any Data Sharing Agreement that is in place.

It should be noted that a different agreement is to be signed for observing a public parole hearing.

Provision of Documents

If, as an observer you receive communications or documents from or relevant to the work and practice of the Parole Board, they must be kept strictly confidential.

In particular, you agree to ensure never to divulge the name, personal circumstances, or any information contained in any dossiers or other documents that are provided to you by the Parole Board to anyone other than Parole Board staff or members.

You further agree to securely dispose of all relevant documents given to you in relation to the case once the hearing has been completed. Whilst any such documents or communications are in your possession, you will ensure that they are kept safe in an appropriately locked place, or digitally secure at all times.

Should at any time any of the documents or information be lost, mislaid, or divulged to anyone who is not a member of staff at the Parole Board or the prison establishment, you undertake to inform a senior manager at the Parole Board immediately of such loss, and agree to co-operate fully with any Parole Board, Police, Information Commissioner, or other investigation about the loss.

These undertakings apply similarly to any oral information which you may hear in the course of observing these parole proceedings.

Safeguarding

It is important that you understand that observing parole proceedings may often involve hearing information that may be distressing and of a

very detailed and graphic nature, including descriptions of violent or sexual offending. You therefore agree to exonerate the Parole Board and/or Secretary of State from any legal action that may arise from any distress you may suffer as a result of attending the parole hearing. As an observer of a parole hearing, you have responsibility to ensure appropriate support structures are in place should you need them.

By signing this agreement, you understand the sensitive nature of the information discussed at a parole hearing and are agreeing to the conditions set out above and understand that a breach of this agreement might give rise to legal proceedings.

Refusal to sign this document means you may not be permitted to observe this hearing.

Signed: _____

Date: _____

Representing/Organisation (if applicable)_____

Annex F – Transparency and Open Justice Board

Transparency & Open Justice Board

Key Objectives: Proposals

1 The principles of transparency and open justice require the proceedings and decisions of Courts and Tribunals to be open and accessible to the public and the media. On a practical level this should include:

1) timely and effective access to information about cases that are pending before a Court or Tribunal including:
    a. identification of the principal subject matter of the case and, if available, the date of the next hearing;
    b. for each hearing that has been scheduled:
        - the identity of the case (including the names of the parties);
        - the Court or Tribunal before which the hearing is to take place;
        - where the hearing is to take place;
        - the date and time of the hearing;
        - the general nature of the hearing, e.g. application, case management hearing, or trial; whether the hearing is to be held in public; and, when known,
        - the name(s) of the judge(s)/magistrate(s)/tribunal member(s) hearing the case; and

    c. details of any reporting restrictions that apply to a case and the terms of any restrictions;
2) timely and effective access to the core documents relating to the proceedings held by the Court or Tribunal, including:
    a. the document that identifies the principal subject matter of the case e.g. a Claim Form or Appeal Notice in a civil or tribunal case, or the Summons or Indictment in a criminal case;
    b. the evidence (including any expert and/or audio/visual evidence) that is, or has been, considered by the Court or Tribunal at a hearing in public;
    c. any written submissions (including skeleton arguments) that are, or have been, considered by the Court or Tribunal at a hearing in public; and
    d. any public judgments or Orders of the Court or Tribunal.

3) effective access to hearings of Courts and Tribunals held in public, including:
    a. enabling members of the public and media representatives to attend the hearing in person (including maintaining designated spaces for media representatives) or remotely by video link where appropriate;
    b. permitting, where appropriate, broadcasting of the whole or part of the hearing; and
    c. enabling transcripts to be obtained of proceedings in public (subject to any applicable fees).

2 Open justice is the default position but there are recognised limitations to the principle. Some of the limitations are imposed by statute or statutory rules, which are set by Parliament not the Judiciary; any changes are a matter for Parliament, not the Judiciary. Sometimes, a Court or Tribunal will only be able to do justice in a particular case by departing from the principle of open justice. Any such departure from open justice must be necessary, proportionate, and justified.

3 In some areas, the ability of the Courts and Tribunals to deliver open justice is dependent upon the availability of resources and support from the Ministry of Justice and HMCTS.