

## Top Ten Decision Writing Tips

### CONSIDERED

We encourage panels to adopt these Top Ten Tips to assist them with writing and reviewing decisions. They should be used in conjunction with relevant guidance and the Decision-Making Framework. We hope that doing so will enable panels to focus on the essential parts of their decision making and so save time.

We hope that following these tips will reduce legal risk. This is because the following ten points have been identified as areas where their absence from, or lack of detail within, the decision leads more frequently to a successful challenge. Remember: **CONSIDERED**.

<b>C</b>	<b>CHECK WORDING:</b> If the codified public protection test and/or the Secretary of State's Directions for a move to open conditions have been referenced in the body of the decision, is the wording correct? It must not be altered or changed. If this is a first review following recall, have you referenced <i>Calder</i> ?
<b>O</b>	<b>OSBORN:</b> For MCA Decisions, and in considering potential rule 20 applications ( <i>Rule 20 Procedure after a provisional decision on the papers – application for an oral hearing</i> ) have you set out clearly, including the factors supporting your conclusion, that you have taken account of the reasons laid down by the Supreme Court in <i>Osborn v Parole Board [2014] 1 AC 1115</i> for having an oral hearing?
<b>N</b>	<b>NEW ALLEGATIONS:</b> Have you applied the correct approach to allegations recently laid down by the Supreme Court in <i>R (Pearce) v Parole Board [2023] UKSC 13</i> and explained how you did this?
<b>S</b>	<b>SUMMARISE:</b> Have you summarised succinctly all the relevant risk related evidence and submissions by the parties, and briefly included the arguments and evidence both for and against any particular contention? Have you avoided using qualifiers such as "probably", "potentially", etc?
<b>I</b>	<b>IMPORTANT EVIDENCE:</b> Have you given clear and sufficiently detailed reasons for (1) accepting or not accepting all evidence from professional witnesses and the prisoner, and (2) your factual findings on the relevant issues? Think of using the word "because".
<b>D</b>	<b>DISCUSSION:</b> Does the decision reflect and demonstrate clearly that the parties had ample opportunity to comment on all areas of evidence and submissions, either on the papers, or properly discussed at oral hearing (where one was held)?
<b>E</b>	<b>EXTRA CONDITIONS:</b> Have you considered whether each suggested additional licence condition would or would not mitigate the risk of the prisoner committing serious harm in the community and have you explained why (or why not) in the decision?
<b>R</b>	<b>RIGOROUS CONCLUSION:</b> Have you set out clearly in your conclusion precisely how the codified public protection test for release (or the test for open conditions) has or has not been met on the information considered? (Again, think of using "because" and add reasons for each of your conclusions).
<b>E</b>	<b>EXPLAIN SUPPLEMENTARY INFORMATION:</b> Have you set out in sufficient detail any supplementary evidence submitted <i>after an oral hearing</i> , as well as stating; (a) when it was submitted; (b) in summary, what it stated; (c) how the parties had the opportunity to consider and comment on it, and (d) the panel's conclusions on the relevance and significance of this evidence and the parties' comments.
<b>D</b>	<b>DOUBLE-CHECK DECISION:</b> Have you reviewed your decision and checked that each and every fact referred to in it is accurate; descriptions of previous offences or details of medical, psychiatric, or psychological issues referenced in the dossier; and that all the information about panel logistics on the front page are fully and correctly completed?



**FINAL POINT OF NOTE: Decisions should be sufficiently detailed to withstand scrutiny and challenge whilst keeping to the pertinent facts. Panels are reminded that the written decision is a product of the whole panel, who must take joint responsibility.**

<sup>i</sup> In **Osborn v Parole Board [2013] UKSC 61**, the Supreme Court comprehensively reviewed the basis on which the Parole Board should consider applications for an oral hearing. Their conclusions are set out at paragraph 2 of the judgment. The Supreme Court did not decide that there should always be an oral hearing but said there should be if fairness to the prisoner requires one. The Supreme Court indicated that an oral hearing is likely to be necessary where the Board is in any doubt whether to direct one; they should be ordered where there is a dispute on the facts; where the panel needs to see and hear from the prisoner in order to properly assess risk and where it is necessary in order to allow the prisoner to properly put his case. When deciding whether to direct an oral hearing the Board should take into account the prisoner's legitimate interest in being able to participate in a decision with important implications for him. It is not necessary that there should be a realistic prospect of progression for an oral hearing to be directed.

<sup>ii</sup> In **R(Pearce) v Parole Board [2023] UKSC 13**, the Supreme Court explained that "Where the Board is not in a position to make findings of fact, either because there is insufficient material available, or it would not be fair to do so (because, for example, the prisoner may properly decline to respond to an allegation which is the subject of a pending criminal investigation or prosecution), but is concerned that there is a serious possibility that an allegation may be true, the Board may still take that allegation into account and give it such weight as it considers appropriate in a holistic assessment of all the information before it [76]-[77]; [87]; [90]. In those circumstances, procedural fairness would require the Board to give the prisoner the opportunity to state their position in relation to the allegation and to argue that no or very little account should be taken of it [66]-[67]; [70]; [87]; [90]. An oral hearing may also be required if the allegation is likely to be material to the risk assessment or if issues of explanation or mitigation are likely to arise [75]. The Board's assessment of the weight to be attached to an allegation is subject to the constraints of public law rationality [87]; [93].

The Board may also be persuaded that it is not safe to release the prisoner based on the surrounding facts: in some cases, the number and nature of allegations from independent sources might justify the Board in concluding that the prisoner has engaged in a course of conduct giving rise to a risk to the public even if no single one of the allegations is found proven. In other cases, a holistic assessment of all the circumstances may persuade the Board that there is a significant chance, short of the balance of probability, that an allegation is true [79]; [83]. Further, where the Board cannot make a finding as to the truth of an allegation, the allegation can also be used to test the credibility of the prisoner's account of their behaviour [78].

The Supreme Court notes that there may be circumstances where, because of the inadequacy of the information, the Board concludes that it should not take account of an allegation at all.

