

Guidance for Panel Chairs appointed to Chair a Public Hearing

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1. Introduction

- 1.1 The Parole Board (the "Board") is regarded as a court when exercising the Judicial powers of the state. It is likely that Public Hearings will become more common as time moves on.
- 1.2 Rule 15 of the Parole Board Rules¹ provides that any decision on an application for a Public Hearing should be made by the Chair of the Board. This power has been delegated to senior judicial members of the Board who will consider and decide upon these applications. Guidance has been issued by the Board which sets out the matters which must be considered in granting a [request for a Public Hearing](#). This guidance should be read in conjunction with that document.
- 1.3 This document is intended to provide guidance to Panel Chairs when an application for a Public Hearing has been granted on a case they are chairing.
- 1.4 Following the grant of an application for a hearing to be held in public, there is a presumption that the Panel and those attending a public hearing in a professional capacity, such as witnesses and experts, will be identified, unless there are exceptional circumstances to grant an application for anonymity.
- 1.5 Additionally, Guidance was issued entitled [Victim's Observing a Private Hearing](#). The Panel Chair should have careful regard to this guidance in ensuring that the Victim's rights are respected throughout the hearing. The Panel Chair should be mindful of any victim who has already applied to observe the private hearing. They will need to be notified that circumstances have changed and the hearing will now be heard in public. This may influence their decision about attending. Details on how much of the hearing the victim is permitted to hear can be found below (**Victim Observing a Private Hearing: Information Sheet for Panel Chairs**).

2. What happens after a Public Hearing has been granted?

- 2.1 After a Public Hearing has been granted, the decision will be sent to the applicant, all parties, and the Panel Chair (who may have been consulted prior to the decision being made). The decision will be published on the Parole Board website and provided to anybody who has requested it through the correct process.

¹ [Parole Board Rules 2019 \(as amended\)](#)

- 2.2 The Panel will receive an email from the Public Hearings Team once an application for a Public Hearing has been granted and the decision has been issued. The relevant information and guidance (such as this piece of guidance, the decision granting the application for a Public Hearing, the Case Management Conference checklist and the Public Hearing cover sheet) will be sent to the Panel Chair and co-Panellists at this point.
- 2.3 The case will then be transferred to the Operational Team where a designated case manager will be assigned and will liaise with the Panel Chair (and co-Panellists, if necessary) about the next steps. The names of the Panel members will be published on the Parole Board website.
- 2.4 The Case Manager will liaise with the Panel Chair and the usual preparations for the management of the case will begin. Panel Chair Directions will be issued in preparation for a Public Hearing with appropriate directions relating to reports and witnesses.

3. Case Management Conference

- 3.1 A Case Management Conference should be held in **all** cases where there is to be a Public Hearing as soon as is reasonably practicable having regard to:
 - a) whether the identity of all participants is known; and
 - b) whether the evidence required for the hearing has, by and large, been gathered or, if not, whether further directions for service of evidence might be needed.
- 3.2 The Case Management Conference should be held in private and must include the attendance of the Panel, representatives of the parties, the witnesses (including professional witnesses instructed by either party), and key contacts from the Secretariat (such as the Parole Board case manager, senior members from the Operational Team and Legal Team).
- 3.3 If a Victim has been granted permission to observe the oral hearing, the HMPPS Public Protection Casework Section must attend. The HMPPS Victim Representative should be advised of the hearing and may also attend.
- 3.4 A Case Management Conference should plan the hearing, make practical arrangements (for example, who is to be "on camera" etc), and gather information about the evidence to be heard in order to decide whether it should or can be heard as a part of the Public Hearing process.

- 3.5 Consideration should be given to whether the evidence (in whole or in part) involves material which can be discussed in public or should be confined to a part of the hearing which is held in private. This may result in a need for the hearing to be in two parts. One part will be open, the other will be private. This can be undertaken in which ever order best suits the case and the decision to be open/private should be kept under review. It is important to remember that each case must be looked at on its own facts and with regard to the evidence.
- 3.6 Panel Chairs should be alive to cases where there is evidence which might adversely impact the Panel's ability to hold a fair hearing in public, and which might have adverse consequences if the Panel decides to direct the release the prisoner. The fairness of the hearing is always of fundamental importance.
- 3.7 The Case Management Conference can be held remotely and should take place in good time before the hearing takes place.

Agenda for the Case Management Conference

- 3.8 The Panel Chair might invite the parties to lodge Position Statements prior to the Case Management Conference which will assist the Panel Chair to create a focussed agenda.
- 3.9 It is good practice for the Panel Chair to issue an agenda for the Case Management Conference.
- 3.10 The purpose of the agenda is to have an overview of the issues in the case, identify preliminary topics of discussion and, as far as possible, ensure that all parties who will attend the full hearing, are aware of areas of evidence which can or cannot be discussed in the open part of the Public Hearing. The agenda will seek to establish what will happen when the case is heard. All decisions will, however, be kept under review as the case progresses.
- 3.11 The agenda might address the following matters:
 - i. Whether or not the Secretary of State will be submitting a written view and, if so, set the date by which it must be submitted.
 - ii. An indication, if known, as to what the prisoner will be making an application for.
 - iii. Whether or not the prisoner and/or their representative will be making written submissions before the hearing and, if so, set the date by which they must be submitted. Set a date by which any counter submissions should be made by the Secretary of State.

- iv. Identification of the key issues for the Panel to consider at the substantive hearing.
 - v. Clarification of any outstanding disclosure issues. Remind the parties of the ongoing duty to keep disclosure under review.
 - vi. Identify any expert witness likely to be called on behalf of the prisoner, direct service of any expert report, direct service of any report in reply to be relied on by the Secretary of State.
 - vii. Identify any expert witness likely to be called on behalf of the Secretary of State, direct service of any expert report, direct service of any report in reply to be relied on by the prisoner.
 - viii. Identify witnesses likely to be needed.
 - ix. Consideration around any victim attendance and logistical arrangements for this.
 - x. Practicalities of the Public Hearing such as where it will be held and how it will be observed.
- 3.12 Attendees at a Case Management Conference may discuss the nature of the likely evidence and its implications for a future oral hearing, but not the detailed content of that evidence. Evidence cannot be taken.

4. General Guidance for the management of a Public Hearing

Open part of the Public Hearing

- 4.1 Clarify which witnesses and/or participants are required to attend the hearing in person or via remote means.
- 4.2 The Panel Chair will decide whether a witness will be referred to by job title rather than their name. This will be subject to application to the Panel Chair. The presumption is that the Panel names and all witness names and job titles **will** be disclosed and may only be withheld under exceptional circumstances (reasons for which will require evidence to justify the request).
- 4.3 The Panel Chair will decide which witnesses and participants will be named and whether they should be on, or off, camera. **The presumption is that all witnesses and participants will be named and on camera unless there are exceptional reasons as to why they should not be.**
- 4.4 The prisoner may also wish not to be seen but only heard. This may happen even if a prisoner has made an application for the case to be heard in public.

The Panel Chair should consider the reason for the request. Factors such as safety or the fairness of the hearing may be relevant. If the Panel Chair is satisfied that the reason for the request are appropriate and grants the application, the Panel Chair can make the necessary arrangements with the technical staff and, if necessary, with the help of the prisoner's representative.

- 4.5 Practicalities will be kept under review. Seating arrangements will have to give effect to what has been agreed with the witness(s). This will be undertaken in discussion with the technical staff and will depend on the size of the room set aside for the hearing in the prison.
- 4.6 The Panel Chair is advised to discuss these practical points with the technical support team who will have attended and/or seen the prison hearing room.

Closed section of the Public Hearing

- 4.7 This section will deal with the type of information to be covered in the closed section of the hearing, for example:
- If the material places the prisoner at risk of harm, either inside or outside of prison;
 - If the material, for some reason, could inhibit the prisoner's rehabilitation;
 - If the material is exceptionally sensitive in nature, such as details of sensitive medical conditions;
 - If the prisoner would otherwise feel (for good reason) unable to give answers to certain questions regarding the material;
 - If the material relates to third parties such as members of the prisoner's family;
 - If the material poses risks to any other person, such as a third party or a witness;
 - If the publication of details of the release plan could affect its safety or effectiveness.
- 4.8 The Panel Chair cannot make blanket decisions about the types of evidence that should be held in private. They must consider the issue on its merits and only direct that particular evidence be held in private if it is necessary citing full reasons for doing so.
- 4.9 If, in the open part of the hearing, a witness starts to refer to material to be discussed in the private session, then the witness will be directed to desist and speak to it once in closed session.

5. Further case management

- 5.1 The Panel Chair might seek the views of the parties and other participants as to whether any further directions are required for an effective substantive hearing and, if so, set the deadlines for any further reports.
- 5.2 The Panel Chair might remind the parties that no further evidence is to be added to the dossier after a date determined by the Panel Chair, without their permission. This will usually be no less than 14 days before the hearing as set out in Parole Board rules 18(2) and (3), however an alternative time period may be set by the Panel Chair depending on the facts of the case.
- 5.3 The Panel Chair should seek confirmation from all parties that they are ready for the hearing 21 days ahead of the listed date.
- 5.4 The Panel Chair should indicate that there may be an adjournment after either part of the hearing to allow the parties to lodge submissions on the material so far admitted in evidence. For example, it may be necessary for the Panel to make formal written rulings as to fact. Time will have to be reserved for written submissions and a ruling on the facts in issue and thereafter for the professional witnesses to consider the findings of the panel.

6. The public hearing

- 6.1 The following procedures should be adopted at the Public Hearing:
 - i) The hearing will/may be streamed to a specific location where observers can attend to watch, but they must register their interest in advance. There may be victims observing at a further location as agreed on a case-by-case basis.
 - ii) The hearing may last for more than one day.
 - iii) It may be necessary to regulate what is openly discussed. The Panel Chair will have to be flexible about how this is managed but always having regard to what has been agreed prior to the case being heard.
 - iv) The Panel Chair should be alive to the possibility that a prisoner may choose not to attend a public hearing. The Panel Chair, in those circumstances, should make every effort to ensure that any sensitive information which is influencing the prisoner's refusal to attend is not discussed in public. If the Panel is satisfied that the prisoner has been given a fair opportunity to give their best evidence, they can proceed in the prisoner's absence as set out in Parole Board rule 24(1A), if it is

in the interests of justice to do so. If the prisoner declines to attend the hearing, a simple statement to that effect will suffice.

- v) The observers will, in all probability, be in a different location to the Panel and the prisoner.
- vi) The parties should be made aware that in the event of an unexpected revelation of confidential information in the open part of the hearing, the streaming of the hearing will have a delay of a period of time (to be decided with the technical support team) and, if the information emerges by accident, the hearing can be paused to allow the information to be stopped prior to broadcast. If that occurs and the broadcast is temporarily paused, then the hearing can continue once the parties are ready to come back online. However, pause or termination will take place only if absolutely necessary and after discussion with the parties, in private at the hearing.
- vii) The interruption is usually controlled by the support staff who will receive instructions from the Panel Chair, and the hearing will then be interrupted and/or suspended.

6.2 Finally, Panel Chairs in the Public Hearings held to date have (prior to the hearing) prepared for distribution (to nominated participants) an extended written introduction to the proceedings, a history of the case and what is going to happen at the hearing. In particular the introduction will deal with:

- the detail of the history of the case;
- the parole process and the background to the public hearing;²
- the detail of the index offence(s);
- why there may be two parts to the Public Hearing and the process of suspending the hearing if there is a difficulty which causes the Panel Chair concern. Otherwise, the hearing will run as a normal Parole Board Hearing.

7. Other matters

Public Hearing Held in a Secure Prison

7.1 The Panel Chair may wish to recommend that prior to the Public Hearing the hearing room is visited and its suitability assessed by the technical staff; that the seating plan for the hearing room is agreed; that the movement of the prisoner and other participants within the prison are properly supervised. The Panel, if they have not visited the hearing room will wish to have an early

² For further assistance the Panel Chair openings in the cases of Causley and Razzell are available to the Panel Chairs. The prisoner's representative should be asked to agree the contents of the introduction drawn up by the Panel Chair.

view of the room, and the technical matters, well in advance of the start time of the hearing.

- 7.2 It may be necessary (as has sometimes occurred) in certain cases that consideration is given to obtaining a risk assessment for the safety of all participants.

Private and Sensitive Material

- 7.3 It is possible that closed or sensitive material might be referred to during the course of a hearing. This usually happens by accident. For example, a witness may indicate that there is sensitive material of which he/she is aware, and the Panel is unaware or a name may be referred to accidentally or inadvertently. The case will probably be paused for the Panel Chair to hear submissions and make a judgement as to whether to continue the hearing. The Panel Chair may conclude that the information was accidentally disclosed; that the information was not transmitted by reason of the time delay and/or any other reason and may properly conclude that the material was not deliberately and/or obviously revealed to the observers. The Panel Chair may therefore wish to conclude that it would be preferable to continue the hearing in order to conclude the review. If the Panel Chair concludes that the disclosure was deliberate, or for any other reason concludes that the hearing cannot proceed, the Panel Chair should carefully consider the next steps. At this stage, it may be appropriate for the Panel Chair to seek legal advice.

- 7.4 The closed/sensitive material may be information of which the Panel is aware but not the prisoner's representative. This may be material which has been considered in a separate private hearing, but it may be information which emerges during the hearing. Subject to the agreement of the prisoner's representative about whether they are content to be bound by the duty of non-disclosure to the prisoner the hearing can be moved into an private status to discuss how the material might be dealt with. The Panel is sometimes assisted in these cases by the attendance of a Special Advocate. This situation is fact specific, and the outcome will depend upon the submissions of the parties as to whether the case can proceed. The Panel Chair may take legal advice should this situation arise.

Closing submissions

- 7.5 Following the Public Hearing, the Panel Chair may invite closing submissions. A time period will be set by the Panel Chair by way of Panel Chair directions. Once these are received, they may be considered to assist with the Panel's decision making.

Issuing the Decision

- 7.6 Once the Panel has reached a decision, that decision will be communicated to the Parole Board case manager in the usual manner.
- 7.7 The Parole Board case manager will contact the Public Hearings Team to notify them that the decision will need to be issued and commence the communications plan. This is to ensure that the parties to the parole review are notified ahead of publishing the decision onto the Parole Board website. Details of how the redacted decision will be communicated to all will vary on a case by case basis.