

Setting Aside a Decision Guidance

April 2026 (v1.2)

Document History

Document version	Date of Issue	Revision description
1.0	11.08.2022	New guidance following publication of the Parole Board Rules 2019 (as amended)
1.1	19.12.2022	Amendments to provide further detail on the process map for when the Parole Board initiates the process.
1.2	April 2026	Amendments following the changes to the Parole Board Rules 2019 (as amended)

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1 Introduction

- 1.1 Following the commencement of section 133 of the Police, Crime, Sentencing and Courts Act 2022 on 28 June 2022, the Parole Board ('the Board') now has the power to set aside a decision (where the criteria and tests have been met). This power is set out in more detail in rule 28A of the Parole Board Rules 2019¹ implemented on 21 July 2022 (see Annex A).
- 1.2 For eligible cases² a final decision³ that a prisoner is suitable for release may be set aside by the Board if it is in the interests of justice to do so and one or more of the following conditions is satisfied:
- The direction for the release of the prisoner would not have been given if information that was not available to the Board when the direction was given had been so available; or
 - The direction for the release of the prisoner would not have been given if a change in circumstances relating to the prisoner that occurred after the direction was given, had occurred before it was given.
- 1.3 The decision under challenge must be a final decision directing release. A decision regarding a no release, a recommendation for open conditions or any other advice is **not eligible for the set aside process**.
- 1.4 The parties to the proceedings (Secretary of State and the prisoner) can make an application to set aside a final decision. If a witness, such as a COM has a concern, they need to raise this with PPCS. If a victim has a concern this needs to be raised with the Victim Liaison Officer. The responding party (the Respondent) will have an opportunity to make representations where the other party (the Applicant) makes a set aside application.
- 1.5 The Parole Board can also consider whether to set aside a decision on its own initiative (see section 7 below) if one or more of the circumstances set out at 1.2 above are met. Both parties will have the opportunity to make representations where the Board initiates the set aside process. The decision-making process will follow the same process as outlined in the process map (Annex B).
- 1.6 References to a 'decision maker' in this guidance refer to an accredited set aside member.

¹ As amended by the Parole Board (Amendment) Rules 2022

² Please see section 2 below for more details on eligible cases

³ Not a provisional decision subject to a request for an oral hearing or an application for reconsideration (please see section 4 below, for more details)

2 Eligibility

2.1 For a decision to be eligible for the set aside process, the decision must meet the eligibility criteria (detailed below). Unless the relevant eligibility criteria are met, the application will be ineligible.

Decisions

2.2 The following decisions **are eligible** for an application to set aside:

- Rule 19(1)(a) – the prisoner is suitable for release;
- Rule 21(7) – where a direction is made that the case should be decided on the papers and the decision is to release;
- Rule 25(1) – where the case has been heard at an oral hearing and the decision is to release.

2.3 For a decision to be eligible for the setting aside process it must be a final decision. A final decision can be set aside by a decision maker if it is in the interests of justice to do so (set out in section 4 below).

2.4 An accredited set aside panel will be a panel appointed under Rule 5(4A) of the Rules. If following the receipt of the application the set aside panel assess that the application can be dealt with by the panel chair, they can delegate the duty to them under Rule 28A(11)(b) but only if the grounds relate to those set out in Rule 28A(4)(b) (change in circumstances or new information that was not available at the time the decision was made is now available).

2.5 Recommendations about **transfer to open conditions cannot be set aside**. Only a decision relating to release is eligible for the set aside process. If the Secretary of State referral relates to both release and open conditions, only the decision relating to release would be eligible.

2.6 Other **ineligible decisions** include:

- Decisions declining to direct an oral hearing;
- Advice cases;
- Decisions about the termination of an IPP licence; and
- Any other decisions that are not about the release of the prisoner (e.g. about setting directions for the conduct of the review or about setting licence conditions).

3 Final decisions

Decisions at MCA stage

- 3.1 Where the panel makes a release decision on the papers under rule 19(1)(a), the decision:
- Remains provisional for a period of 21 days if it is eligible for reconsideration;
 - Becomes final if it is not eligible for reconsideration; or
 - Becomes final if an in-time application for reconsideration is made and then dismissed.

Decisions on the papers under rule 21

- 3.2 If a decision is made following a direction that the case be considered on the papers (under rule 21), the decision is provisional only if it is eligible for reconsideration (namely, a decision about release). If it is not eligible or there is no application for reconsideration received within the 21-day window, the decision is final. The decision also becomes final if an in-time application for reconsideration is made and then rejected or dismissed.

Decisions at oral hearing stage

- 3.3 Where the panel has considered a case at an oral hearing, their decision about release under rule 25 remains provisional for a period of 21 days, if the decision is eligible for reconsideration. If it is not eligible, the decision is final. The decision also becomes final if no application for reconsideration is received within the 21-day window.
- 3.4 If an application for reconsideration is made in an eligible case, the decision remains provisional until the application is determined. If reconsideration is directed, the case goes back to the stage it was at when the decision being reconsidered was made. If the application is rejected, the decision then becomes final and a set aside application can be made.
- 3.5 A decision table is set out at Annex C.

4 Grounds for setting aside

- 4.1 Only a direction for release can be challenged by the set aside process.
- 4.2 There are two grounds upon which a set aside application can be made to challenge a release decision. These are:

- a) **New information:** That the direction for release would not have been made if information that was not available to the panel when the direction was made had been available; and/or
- b) **Change in circumstances:** That the direction for release would not have been made if the change in circumstances relating to the prisoner had occurred before the direction was given.

5 Time limits

- 5.1 The time limit for challenging a release decision on the basis of there being new information, or where there has been a change in circumstances, is any time up until the point of release. An application for a decision to be set aside cannot be made where the prisoner has already been released.

6 Process

- 6.1 Once an application for set aside is received and deemed eligible, the other party will have 7 days to submit representations in response to that application. The 7-day period commences from the date the other party is served with the set aside application. If the Board makes an application on its own initiative, both parties will have 7 days to submit representations.
- 6.2 The application will be assigned to a set aside member who will review the application, representations and other relevant information. They will make decision on whether the set aside application should be granted or refused.
- 6.3 If the application is granted the case will then be directed to conclude on papers or directed to oral hearing and it will be referred to either the original panel or a fresh pane. If the original panel is unavailable, the panel composition of the new panel should only be amended from the original if it is essential for the case and if new co-panellists hold necessary accreditation, it should not be amended for the sake of expediency. Only if it is necessary should the case be listed to a new panel, in such circumstances the decision should indicate why (especially if the original panel included a specialist member).

7 Set aside process initiated by the Parole Board Chair

- 7.1 The Parole Board can initiate the set aside process for final decisions⁴ following approval from the Board Chair.

New information received or there has been a change in circumstances

⁴ Should the panel receive information within the provisional period of 21 days where the case is eligible for reconsideration, the information should be sent to the set aside inbox so that this can be processed once the set aside timeframe has begun.

- 7.2 Should the Board receive new information, or note a change in circumstances, the Parole Board Case Manager should firstly clarify with the party whether they are intending to make a set aside application (if this is not explicitly clear) based on the material provided. The [HMPPS GPP Policy Framework](#)⁵ details the considerations and steps HMPPS staff are to follow.
- 7.3 If the set aside process is not initiated by either party, the Panel Chair/MCA panel⁶ can consider initiating the process. If the Panel Chair/MCA panel assess this is necessary, they should provide representations via email to the set aside inbox. Representations should contain brief information as to what the decision was, what the new information or change in circumstances is, and why the Panel Chair/MCA panel would not have made the decision if it was not for this.
- 7.4 These representations should be sent to the setting aside mailbox (settingaside@paroleboard.gov.uk) alongside the new material and any supporting evidence for the attention of the Board Chair.
- 7.5 If the Board Chair assesses that the case meets the eligibility criteria for the set aside process, they will confirm this via email and the set aside team will then commence the process. This will include inviting representations from both parties, and then referring the case to a decision-maker to consider the application.

8 Setting aside decisions

- 8.1 If an application to set aside a decision has been refused, the decision under challenge remains final. The only way in which to further challenge that decision would be via judicial review.
- 8.2 If an application to set aside a decision has been granted, the decision-maker can direct:
- a) a further oral hearing or that a decision is to be made on the papers;
 - b) a decision is to be made by a new panel or the original panel; and
 - c) updated or new reports.
- 8.3 Where an application to set aside a decision to release has been granted by the decision-maker on the ground that there is new information or a change in circumstances, the same decision-maker can refer the matter back to the original panel or a new panel. The set aside panel can direct that the original or new panel consider the new information and make a new decision in relation to that information.

⁵ Her Majesty Prison and Probation Service Generic Parole Process Policy Framework.

⁶ Should the panel chair/MCA panel be unavailable for a prolonged period of time, the material is to be passed to a co-panellist to consider. If not, the material should be sent to a Duty Member.

- 8.4 If a set aside application has been concluded and refused, the Rules are silent on the ability for the relevant parties to submit a further set aside application. We expect this to be a rare occurrence.
- 8.5 In such circumstances where a further application for set aside is made, the application will be automatically rejected if the new application has been brought under the same ground/s and the same circumstances/material. This is in order to prevent multiple attempts to challenge a judicial decision where a decision has already been made. Furthermore, if the prisoner is due to be released, the set aside application will inevitably delay the release until the application has been decided upon. Any further applications on different grounds will be remitted back to the same decision maker if available given their experience with the case.

9 Publication

- 9.1 In line with the Board's transparency agenda, all set aside decisions (the decision to approve or refuse the application for set aside) will be published onto BAILII⁷.

Details and redaction

- 9.2 Before decisions are published onto BAILII, they will be redacted so that there is as little identifiable information contained within the decision as possible (e.g. redacting prison numbers, first names etc).
- 9.3 It will not be necessary to completely redact names or gender references as:
- (1) These are not sensitive personal data;
 - (2) They are matters of public record; and
 - (3) They may be used as cross-references in other decisions.

Therefore, the prisoner's surname will be published in the heading of the published decision.

- 9.4 Decisions will be published under the name that the prisoner was convicted under. We will not publish any subsequent change of name unless specifically requested to do so.
- 9.5 We may redact names in the case of a vulnerable prisoner, such as a child, or a prisoner who is transgender.

⁷ [BAILII - The Parole Board for England and Wales](#)

- 9.6 There will be no changes made to the text of the decision unless there is a clear risk to the prisoner or any other person. In the event it is decided redactions to the text are required, the setting aside team will liaise with the author of the decision to find suitable alternative wording/phrases. The decision will then only be published once the author has approved the changes.
- 9.7 Please note, the author of the decision will have their name published at the end of the decision.

Decisions to set aside

- 9.8 Granted application decisions will only be made public once the substantive case has been concluded (i.e., following the new hearing/new decision). This is so that members selected to form the new panel in granted applications (where directed) will not have sight of the set aside decision as per the possible directions of the case.

Annex A - RULE 28A OF THE PAROLE BOARD RULES 2019 (as amended)Rule 28A Setting aside final decisions

(1) *The Board may set aside a final decision that a prisoner is suitable for release made under rule 19(1)..., 21(7) or 25(1) –*

- (a) *on application by a party; or*
- (b) *on initiation by the Board Chair.*

(2) *An application or initiation under paragraph (1)(a) or (b) must be considered on the papers by a decision maker.*

(3) *A final decision may be set aside under paragraph (1) by a decision maker if–*

- (a) *it is in the interests of justice to do so; and*
- (b) *one or more of the conditions in paragraph (4) are satisfied.*

(4) *The conditions are–*

...

the decision maker is satisfied that a direction given by the Board for the release of a prisoner would not have been given if–

- (i) *information that was not available to the Board when the direction was given had been so available, or*
- (ii) *a change in circumstances relating to the prisoner that occurred after the direction was given, had occurred before it was given.*

(5) *An application or initiation to set aside a decision under paragraph (1) must be made before the prisoner is released.*

(6) *Where an application is made under paragraph (1)(a)–*

- (a) *the party who made the application must serve the application and any representations in support upon the Board and the other party;*
- (b) *the Secretary of State must serve all relevant information and reports upon the Board and the other party; and*
- (c) *the other party may make any representations in reply, and those representations must be provided to the Board and the party who made the application within 7 days of service of the application.*

(7) *Where an initiation is made under paragraph (1)(b)–*

- (a) *the Board must notify both parties of the initiation by the Board chair and serve any reasons in support of the initiation upon the parties;*
- (b) *the Secretary of State must serve all relevant information and reports upon the Board and the other party; and*
- (c) *the parties may make any representations in reply, and those representations must be provided to the Board and the other party within 7 days of service of the initiation.*

(8) *Where the decision maker directs that a final decision should be set aside, they must also direct that the case should be–*

- (a) *decided again on the papers by the previous panel or a new panel appointed under rule 5(1), or*

(b) decided again at an oral hearing by the previous panel or a new panel appointed under rule 5(2).

(9) The decision of the decision maker under paragraph (3) must include the reasons for that decision.

(10) Any requirement on the Secretary of State to give effect to a Parole Board direction to release a prisoner under Chapter 2 of Part 2 of the 1997 Act or Chapter 6 of Part 12 of the 2003 Act, is suspended when an application is made under paragraph (1)(a) or (b), pending the decision under paragraph (3).

(11) In this rule, “decision maker” means–

(a) a panel appointed under rule 5(4A) to consider the application; unless
(b) one or more grounds of the application related to paragraph (4)(b) of this rule apply and the panel appointed under rule 5(4A) delegates the role of decision maker to the chair of the panel who made the decision which is sought to be set aside.

Annex B - PROCESS MAP

Overview of Process

Release decision becomes final

If it appears that the decision contains any of the grounds found in section 4.2, a set aside application can be made. Parties can apply for the decision to be set aside (up to any time before release).
The set aside applications will need to be submitted by the party making the application. All set aside applications must be submitted to the setting aside inbox. The set aside process is initiated at the time the email is received.

PPCS applies for Set Aside

The Board Chair initiates Set Aside

The prisoner applies for Set Aside

To note – All applications must be submitted to settingaside@paroleboard.gov.uk

The application will be sifted by the Parole Board Set Aside team and, if confirmed to be eligible and made in time, submissions from both parties (SofS or prisoner) will be sought. Following this, the application will be assigned to an accredited set aside decision maker (unless that member uses their powers to delegate the application to another Parole Board member).

The member makes a decision within 21 days of allocation.

Granted – the original decision is set aside and a new decision will be made.

Refused

Case to be referred to either the original or fresh MCA or OH panel (Please see more details in section 4.5, 4.6 and 7.4).

If the original panel is unavailable, the panel composition of the new panel should only be amended from the original if it is essential for the case and if co-panellists hold necessary accreditation, it should not be amended for the sake of expediency. Only if it is necessary should the case be listed to a new panel, in such circumstances the decision should indicate why (specifically if the original panel included a specialist member).

Directions for reports may be made.

Following considerations on the papers, directions may be made to hear the case at an oral hearing.

The new or original panel will be made aware of the set aside decision if the application was made on the following grounds:

- Change in circumstances
- New information

We do not disclose the set aside decision to the original/new panel if the application was based on error of law to avoid attempts to overcorrect.

The original decision is upheld, and release must take place. The only way to challenge this would be via an application for judicial review.

Annex C – DECISION TABLE

Rule	Decision	Time frame	Eligibility
19(1)(a)	MCA directions for release (only)	Provisional subject to 21-day reconsideration window if it is eligible (Rule 19(4)) Decision is final if it is not eligible (Rule 19(5))	Application to set aside can be made once this decision is final.
19(1)(b)	MCA no direction for release	Provisional subject to: 28 days to request an oral hearing (Rule 20(2)). Possible scenarios: a. If no application for an oral hearing is received and is not eligible for reconsideration, the decision becomes final (rule 20(6)(b)) b. If no application for an oral hearing received and is eligible for reconsideration, the decision remains provisional subject to the 21-day reconsideration window (rule 20(6)(a)) c. If an application for an oral hearing is made and refused and is not eligible for reconsideration, the decision becomes final (Rule 20(6)(b)) d. If an application for an oral hearing is made and refused and is eligible for reconsideration, the decision remains provisional subject to the 21-day reconsideration window (Rule 20(6)(a) and 28)	Not eligible for set aside

Rule	Decision	Time frame	Eligibility
19(1)(c)	MCA direct to an OH	Move to next stage decision	Not eligible for set aside
19(2)(a)	MCA recommendation to transfer to open conditions	Final: no provision	Not eligible for set aside
19(2)(b)	MCA decision – no recommendation to transfer to open conditions	Final: no provision	Not eligible for set aside
19(7)	MCA decision: give advice	Final: no provision	Not eligible for set aside
20(5)	Grant of an application for an oral hearing	Move to next stage decision	Not eligible for set aside
20(5)	Refusal of an application for an oral hearing	Decision under rule 19(1)(b) provisional subject to 21-day reconsideration window if eligible (rule 20(3)(a)) Decision is final if not eligible (rule 20(3)(b))	Not eligible for set aside
21(7)(a)	No direction for release on papers post MCA	Provisional subject to 21-day reconsideration window if eligible (rule 21(8)) Decision is final if not eligible (rule 21(9))	Not eligible for set aside
21(7)(b)	Release directed on papers post MCA	Provisional subject to 21-day reconsideration window if eligible (rule 21(8)) Decision is final if not (rule 21(9))	Application to set aside can be made once this decision is final.
21(10)(a)	Open conditions recommended on papers post MCA	Final: Rule 21(11)	Not eligible for set aside
21(10)(b)	Open condition not recommended on papers post MCA	Final: Rule 21(11)	Not eligible for set aside
21(11)	Decision on papers post MCA: advice	Final: Rule 21(11)	Not eligible for set aside

Rule	Decision	Time frame	Eligibility
25(1)(b)	Oral Hearing – No direction for release (only)	Provisional subject to 21-day reconsideration window if eligible (Rule 25(2)) Decision final if not (Rule 25(3))	Not eligible for set aside
25(1)(a)	Oral Hearing – Direction for release (only)	Provisional subject to 21-day reconsideration window if eligible (Rule 25(2)) Decision final if not (Rule 25(3))	Application to set aside can be made once this decision is final.
25(4)(a)	Oral Hearing – open conditions recommended	Final: Rule 25(5)	Not eligible for set aside.
25(4)(b)	Oral Hearing – Open conditions not recommended	Final: Rule 25(5)	Not eligible for set aside
25(5)	Oral hearing - advice	Final: Rule 25(5)	Not eligible for set aside
28(8)	Reconsideration application refused	Provisional decision becomes final: Rule 28(8)	Application to set aside can be made once this decision is final.
31(6)(a)	IPP licence – licence terminated	Final	Not eligible for set aside
31(6)(b)	IPP licence – licence amended	Final	Not eligible for set aside
31(6)(c)	IPP licence – application refused	Final	Not eligible for set aside
31(6A)	IPP licence – unconditional release directed	Final	Not eligible for set aside

Note – whilst recommendations about open conditions are not eligible to be set aside, where panels first make a decision about release as required by the terms of the referral, that component of the decision is eligible to be set aside.