

Bail, Sentencing & Release Policy (parole consultation)

Ministry of Justice

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Dear Parole Consultation Team,

Thank you for providing the opportunity to feed into the 'root and branch' review of the parole system, and for the thorough consideration given to victims of crime in these proceedings. I would like to start by addressing the specifics around the attendance of victims at Parole Board hearings, and will come on to the topic of public hearings and the media after this.

I can understand the positive and negative implications of the current system for hearings being held in private, given the sensitivity of the matters discussed and the will to avoid public interference in a system that is not well understood. Conversely, the opening up of these hearings would provide a better understanding of the parole process, and the information that is considered as part of this decision making.

Overall, I welcome the intention to strive for a more transparent Parole Board, provided the appropriate considerations have been made, and that the decisions to allow or disallow attendance of outside parties is informed by the victim, and they feel empowered by the process.

In my role as London's Victims' Commissioner, I strive to ensure that my work is informed by victims and survivors, and so as well as consulting with them in the development of this response, I have also attached as an annex the specific response from Marie McCourt, who you will know campaigned for many years on Helen's Law. Marie's calls for a more open, transparent, and fair parole system are ones which I echo, and I hope we can work towards.

Victims' Attendance

The crimes which victims have experienced will be deeply personal, and so while some would no doubt benefit from greater involvement in the criminal justice system's processes, others may find that this aggravates the trauma they have experienced. For this

reason, I appreciate and accept that hearing attendance should not be an automatic passage for victims of crime, but should be a flexible one which is victim-led. I am of the strong belief that a victim should have the Parole Board process carefully explained to them and, once they are in possession of enough information, are given the right to attend as they see fit. It may be appropriate for the victim to attend some of the hearing, but not the entire session, and so the logistics of this should also be considered in this review.

Where a victim would like to attend any part of a Parole Board hearing, it is crucial they be supported in doing so, and that no unnecessary barriers be placed in their way beyond a reasonable concern for their welfare. I am concerned with the review's proposal that "victims would be able to apply via the Secretary of State in the first instance to observe the hearing". Whilst I agree the decision of a victim to attend a hearing should not be taken lightly, I am also afraid that victims may feel intimidated at the prospect of 'applying to the Secretary of State', and will have very little idea how to approach this. I therefore think further clarity needs to be provided around this application process and who is responsible for both informing the victim that they are able to apply and supporting them in this process.

I welcome the acknowledgement in the review that victims who attend a Parole Board hearing would need to be provided with the necessary advice and support from their Victim Liaison Officer. I would also stress the value of specialist support provided to the victim via the London Victim and Witness Service, as well as other support providers. If the Parole Board were to move forward with proposals to allow victims into hearings, I would like to see good communication, guidance, and training given to support organisations, so they can adequately equip a victim for attending the hearing.

Allowing victims to attend Parole Board hearings, if done correctly, could provide an opportunity to empower them and help facilitate their healing and recovery process by recognising their role in the criminal justice process. Paradoxically however, the proposal also poses a high risk of disempowering the victim; this comes down to the role that the victim would play in a hearing, and it is crucial that the Parole Board consider this as part of developing its guidance. If a victim can attend a hearing but is given no opportunity to speak, this could re-traumatise them and can act as a mechanism for the offender to exert control over the victim, and may leave them feeling even more disenfranchised from the decision made by the Board.

The victim may hear the offender making statements which they know to be false, and so there must be a mechanism through which the victim can make representations. I therefore believe the victim should have the right to bring legal representation or an advocate who may be permitted to speak on the victim's behalf where appropriate. I understand the difficulties that may arise by introducing this dynamic into hearings, but a victim cannot feel like a bystander in this process as that would be hugely damaging, and so I ask the Board to consider these issues as part of the review.

If victims were to attend hearings, there would also need to be appropriate consideration of their vulnerability, and the availability of certain special measures similar to those which

would be available at court, such as the provision of a screen or appearance via video link. In addition, and as stressed by the review, some parts of the parole hearing will contain distressing information, and the victim should be given the opportunity to step out of the room prior to these points if they so wish.

A further question lies in how a 'victim' is defined, and so the Board must consider whether so-called 'secondary' or 'discretionary' victims are to be offered the same right of attendance. For example, where a serial offender has committed multiple offences against different victims, the prosecution may only take certain offences forward in its case, despite being aware of further victims. Although not listed as a victim in the case for which the offender is in prison, the Board will need to consider whether these secondary victims are also be given the opportunity to attend.

In my role, victims have approached me with issues around unclear communication relating to Parole Board proceedings or decisions, including in relation to Victim Personal Statements and a victim's request for non-disclosure. Issues like these will only be amplified if victims attend hearings more regularly, and are more involved in the process. Crucially, the Parole Board must ensure that it is ready for these changes, and that any communication with victims is clear, timely, and delivered in a trauma-informed way.

Public Hearings

If the above considerations are taken into account, I see no reason why the parole system cannot become more transparent through providing opportunities for victims to play a role. The consideration for certain hearings to be held in public takes a large step beyond this, and there are a number of significant risks which this review has identified, and I would echo these concerns and urge a great deal of caution in this consideration.

This consultation has asked how victims' views should be taken into account in deciding whether a hearing can be public, and I would advocate for the victim to not only have the opportunity to appeal this, but to have a full veto right in such a decision. I am very concerned that an offender might use a public hearing as an opportunity to exert further control over a victim, subjecting them to having personal details and accounts of the crime open to public scrutiny. As the review also finds, there is a risk the offender will use a public hearing to attract public sympathy and pressure the Board in its decision.

In the scenario where public hearings are permitted, there will no doubt be circumstances in which both the victim and offender agree for the hearing to be held in public. In these cases, a large number of practical considerations come into play, many of which have been set out in the review.

I believe allowing member of the public to physically join a hearing creates too great a risk of disruption, even before considering the practical implications of finding a suitably sized space. With regards to the broadcasting of a public hearing, I would be concerned if these were freely available online, as in this age of misinformation on social media I have

concerns over the editing and use of hearing footage, and the reputational damage this may cause the victim, the offender, or the Parole Board.

In my view, 'attendance' of a hearing must be subject to some controls which prevent the recording or disrupting of the hearing. I understand the limitations of the prison estate, both in terms of physical space and the practicalities of allowing members of the public inside, hence I would advocate for a video link which is broadcast in a controlled environment (i.e. some kind of a remote viewing room) in which members of the public be allowed. Such a solution would allow more than just one or two people to observe a hearing, while also providing a controlled and distant environment, preventing those watching from disrupting proceedings or using the footage in an inappropriate manner.

Were a parole hearing to be public, the Board must also consider the role of the media and the associated risks to the victim and the offender. Through my role as Victims' Commissioner I see media intrusion in cases across many different parts of the justice system, and am concerned that Parole Board hearings may become yet another point at which a victim's personal information is at risk. Appropriate guidance and safeguards must be in place to protect the victim's right to privacy.

Conclusion

In conclusion, I welcome and encourage the move towards a more transparent parole process, particularly through the inclusion and empowerment of victims where appropriate. I remain concerned about the implications of public hearings, though certain mitigations might allow this to become a feasible option in certain cases, and it is important to strive towards a model which is more transparent.

As I have set out in the response, and the review itself acknowledges, there are a huge range of considerations needed in taking this work forward, and I hope that you plan to engage directly with victims who have been through this process to ensure that any changes to guidance are informed by those with lived experience.

Yours sincerely,



Claire Waxman

Independent Victims' Commissioner for London

Annex – Consultation Response from Marie McCourt

Q1. Do you agree that parole hearings should normally continue to be held in private but with the possibility of a public hearing in certain limited circumstances?

I do not agree that parole hearings should continue to be held in private. I am of the opinion that the majority of hearings should be heard in public and that this should be introduced on a gradual basis both to check the level of appropriate crime as well as the detail of the evidence to be heard. While there are the obvious problems to be overcome of location, attendance, observers etc. for this process to be broadly accessible would give it greater recognition to what can appear to be a rather secretive looking one.

Q2. Which of these groups should be able to attend the hearing:

a. Should victims be able to attend the hearing?

Victims should be able to attend the hearings. They are the ones who have suffered at the hands of the offender. Only they can describe the affect that the crime has had on them and how their lives have changed since. It is important that those who are described as 'secondary victims' in murder and manslaughter cases attend as this is possibly their last opportunity to speak about those they have lost. The victim lived and was loved and is not just a piece of evidence. I have never been a great supporter of technology for these hearings as I believe that, just as in an ordinary court, to have the victim there speaking, and possibly 'cross-examined' is much more affective for everyone. They may have information regarding the offender that is not in the prison files as this only start when they are arrested.

b. Should the hearing be open to the general public?

These hearings should be in an open court so that the process is as transparent as possible and available to the general public. The difficulty with this would finding the correct location to have them heard. As you mention in the notes having access to facilities that would allow public/media attendance will probably be a problem. This is particularly a problem in prisons. Also having facilities to allow a greater number of attendees to a public hearing would be difficult. And the bottom line costs of arranging these hearings would quite possibly not receive the financial increase that they would require to have happen.

c. Should hearings be open to the media?

Media should have access to the hearings but these can be transmitted using technology so that they do not have to attend the court. As in open court if there are confidential evidence to be heard this can easily be controlled. Allowing the media access will only add to the transparency of the process.

d. Who else, in your opinion, should hearings be open to (if anyone)?

In my case it was having legal representation. It was described as 'a novel application' and the Barrister had to sign a non-disclosure agreement even though they were representing me. If the victims have a legal representative they should have easy access to attend.

Q3. In what circumstances would a public hearing be appropriate or add value to the parole process?

A public hearing would add value and be appropriate as it would give more individuals on all sides the opportunity to attend and hear the evidence, questioning and anything else on what the final decision is based. It would also give the victim, or secondary victim, the opportunity to have some support at the hearing. Having attended several of my own oral hearings and supporting other victims this support seems to be at the behest of the lead judge on the board and not an overall guide.

Q4. In what circumstances would a public hearing not be appropriate?

I would have a starting point that all cases are appropriate to be heard. It would be on the parole board to apply that certain cases are heard in private which could be put to the victim and also their legal team.

Q5. What criteria should be used to decide whether a hearing should be heard in public?

As I have mentioned I believe that as a start point all cases should be heard in public. As mentioned extreme cases can be applied for a private hearing. Cases should be handled as any legal hearing. The worries of having professionals concerned about their evidence or actions should not have the effect that is mentioned. As professionals they would be presenting the evidence as they have attained it and made their decisions based on this.

Q6. How should victim's views be taken into account in deciding whether to hold a public hearing?

Refer to earlier answers.

Q7. Do you think that conducting a hearing in public would make the examination of evidence and decision-making better or worse – and why?

A public hearing would I believe make the examination and decision-making better. It would show how the evidence is examined and assessed by the board and how the professionals and the offenders are questioned. From my personal experiences I am concerned re the killer of my daughter. He had not been rehabilitated as he has never revealed where my daughter's body is. Evidence at the parole hearing illustrated him not taking part in programmes and courses. This at least gave me an insight into how he had been behaving in prison.

I believe when questioned by the board these questions were rather kid gloved and did not put any pressure or delve into why he had not attended courses and mainly why he has continued to say where my daughter's body is. There were no definite answers.

I have often tried to consider how probing is the questioning not only of the professional evidence but also of the offender.

By having public hearings these sessions could be observed properly and victims could see how the board viewed the evidence and the offender instead of it being a closed court situation as it is now.

Q8a. What measures or approaches would be needed to avoid or mitigate any adverse consequences of conducting a hearing in public?

Yes I appreciate in some cases the evidence could be particularly distressing to the victims. This can also occur in an ordinary court case. It would be difficult to mitigate against these. There could perhaps be a warning that certain evidence is about to be heard and give the victims the opportunity to leave the room.

Q8b. What impact will such measures have on the effectiveness or efficiency of the parole process?

Emotive evidence could disturb the flow of a hearing but the same does occur in general court when distressed victims/relatives have rushed out of a court. The one positive in this is that the evidence is being heard probably many years after the offence and the victims have adjusted to some degree with what has happened and therefore it does not have the emotional affect that they had originally.

To have victims attending is an important element I believe of these hearings. They are an important part of the process. Yes the hearings are aimed at if the offender is safe to be released back into the community but the victim has an input as to the case history, how the offender was at the time and the affect that the crime has had on them.

Q9a. Which of the options for the location/methods for public hearings (i.e. face-to-face in prison or in court building, broadcast to a separate location or streamed online) do you think would be the most suitable and why?

The public face-to-face as it is the most transparent and inclusive of having a hearing and what occurs at it. Having the hearings this way would stop what I have had described as a 'Star Chamber' when evidence and decisions are being heard and made.

I know that prison rooms particularly aren't meeting friendly from size alone and to have a streamed online hearing can be very artificial and unreal. Physical attendance at a hearing gives everyone the best appreciation of what is occurring as well as how the hearing progresses and how the board make their final decision on the evidence and information they have received.

Q9b. Can you suggest any other alternative options to facilitate public hearings?

Possibly set up central hearings similar to Crown Courts that could facilitate the numbers to physically attend a hearing in a comfortable distanced way for all participants.

Q10. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform?

None

Q11. Are there any key reasons or benefits of having parole hearings in public not already identified in this consultation that we should seek to achieve?

I hope that I have illustrated my reasons and benefits in previous answers.

Q12. If a hearing were to be held in public, is there any risk or implications not already highlighted in this consultation that would need to be considered?

No. Your summary is very clear and concise on many aspects. Reading it I felt which way the end decision will go and I also have great consideration re financing any huge change in having these hearings which will probably direct the final decisions.

The way that hearings are heard must change to make everything clear and open to victims and the public and I hope that this is so.

Marie McCourt

Mother of a murder victim

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