

Chairperson: observation guidance for oral hearings

Overview

1. Under the Parole Board (Scotland) Rules 2022 (the Rules), Rule 30, registered victims in the cases of life, OLR, and extended sentence prisoners (where extended sentence prisoners have been recalled and are in the extended part of their sentence) have the right to request to observe the relevant parole oral hearing. This will normally be via live link. Requests are subject to approval by the chairperson of the relevant oral hearing.
2. Live link is defined in the Rules as “any arrangements by which a person authorised under this rule is able to see and hear, or hear, the proceedings while not present at the place where the case is being held”.
3. Where a request is approved, the victim will be advised in advance that they will be in attendance as a silent observer only and can play no part in the proceedings.
4. This guidance sets out the process for considering and approving requests to observe, and the management of the oral hearing on the day. It also covers the role of the Parole Scotland Victims Team in supporting the process.

The request and approval process

5. At the point of dossier referral, the Victims Team will issue an observation request form and covering letter (including a section covering frequently asked questions) to any Part 2 registered victim. Copies of the letter template and request form can be found at Annexes A and B.
6. When a request is received, the following process will be followed
 - (a) The chairperson of the oral hearing and the other panel members will be informed by the Victims Team that a request to observe has been received. This will be for information only at this stage while the prisoner’s representations are sought.
 - (b) Under rule 30(5), the Board is required to inform the prisoner (and their representative) and Scottish Ministers (in practice SPS) about any observation request, and to provide them with an opportunity to make any representations about it. Although not covered by the Rules, this can include any representations about whether the camera should be turned on at the victim’s end. The Victims Team’s processes allow a period of seven days for such representations to be made. Prisoners will be informed that the decision to grant authorisation to observe will be for the chairperson of the oral hearing. The prisoner will be notified of the victim’s name only and will not be provided with a copy of the request.

(c) Where a victim interview has taken place in connection with the current consideration of the case, the Victims Team will also invite any comments on the request from the member who has conducted the interview

(d) The Victims Team will consider whether they have any concerns or other relevant information arising from any interactions with the victim.

7. Once any representations have been received the Victims Team will provide the oral hearing chairperson and members with a pre-decision information pack containing the representations, the observer request form, any comments from the member who conducted the victim interview (where relevant) and any additional comments or information from the Victims Team.
8. The chairperson is also responsible for approving requests for individuals to attend the hearing in the capacity of providing support for the victim. We anticipate that this will normally form part of the original observation request but chairpersons should note that the Rules only specify that details of such individuals be provided at least five days before the oral hearing. It may be therefore that the chairperson will need to consider such requests separately to the original request.
9. On occasion there may be more than one victim who submits a request to observe. Each request should be considered on its own merits. However, the Victims Team will advise the chairperson whether or not the attendance of multiple victims can be facilitated.

Matters to be considered by the oral hearing chairperson in approving requests

10. The decision as to whether to approve or not is for the oral hearing chairperson. It is good practice for the chairperson to consult other members of the panel before reaching such a decision. Whilst the Rules do not provide any criteria for making a decision, it is recommended that the chairperson should approve attendance unless there are clear reasons not to do so.
11. In reaching a decision, the following factors should be considered: -

Fairness

- Is there any evidence that observation would affect the fairness of the proceedings?
- Is there any evidence that observation might impact on the willingness of witnesses or the prisoner to be candid and open in their response to questioning?

Security

- Are there any risks known relating to the safety of anyone observing the oral hearing? This includes victims, witnesses, the prisoner and their representative, and the panel members.

- Is there any evidence that information disclosed during the hearing would pose a risk to the safety of the prisoner - for example, from associates of the victim who may also be in custody - or could such information pose a risk to the prisoner's safety when released?
- In the exceptional case of face-to-face observation, will the establishment have sufficient time to undertake a risk assessment? The Victims Team will advise of any specific issue beforehand. The decision to permit face to face attendance must be taken by the whole panel and not solely by the chairperson.
- Is there any confidential information likely to be raised during the proceedings that would be inappropriate for the victim to hear (for example, in relation to the health of the prisoner)? If so, can this be managed within the hearing by excluding victim observers from that section of the hearing?

Well-being

- Participating in the observation may be distressing for the victim. Has the victim been made aware of support available before, during and after the process?

Publicity

- Is there any concern that the proceedings of the oral hearing will not be kept confidential, in accordance with rule 13?

12. Each case will differ and every request will need to be considered on its own merits, with regard to the factors outlined above. If it would be helpful to discuss a specific case further, the Victims Team can provide further advice.

13. When considering the request, the oral hearing chairperson will have three options:

- (a) Approve the request that the victim observes the proceedings by live link;
- (b) (Exceptionally) approve the request on the condition that the victim observes the proceedings face-to-face if this is required and in the interests of justice (in this case the Rules require that such approval is for the panel rather than the chairperson alone); or,
- (c) Decline the request.

14. Once a decision has been made, the chairperson should inform the Victims Team and provide reasons for the decision. The Victims Team will then inform the victim and prisoner of the oral hearing chairperson's decision. If approved, the Victims Team will make the necessary arrangements to facilitate the victim's attendance (see below).

15. If the request is not approved the chairperson should provide reasons for not approving the request as there is a requirement that these be provided to the

victim. In these circumstances the Victims Team will write to the victim informing them of the decision and the reasons. There is no appeal process where a request is not approved, although decisions may be subject to judicial review.

Approved requests – preparatory process

16. Victims will be provided with support by the Victims Team before and during the oral hearing and will be made aware of additional support available from victim support organisations, including support available after the oral hearing. Where a request is approved the Victims Team will undertake the following tasks:
 - (a) Secure a suitable venue, convenient for the victim, from which the observation will take place. Agreement has been reached with most local authorities (and some other organisations, through the 'safe space' project initiated by the Victims Team, for observations to take place from suitable accommodation in local authority offices or other suitable locations.
 - (b) Write to the victim to confirm the date and venue and other practical arrangements for the observation. (This is contained within an approval letter issued by the Victims Team).
 - (c) Meet with the victim(s) (and if appropriate anyone who the chairperson of the oral hearing has also approved to attend as a support) to ensure they understand the process, answer any questions or concerns, make them aware of external organisations able to provide support, and confirm that they understand the need for confidentiality. A checklist for Victims Team staff has been prepared for use in the discussions and will include:
 - (i) Confirmation that a member of Parole Scotland staff will be present in the room with the victim(s) to monitor the observation, provide support to the victim, address any technical issues and ensure confidentiality requirements are observed.
 - (ii) Confirmation that the victim(s) understand the requirement for confidentiality.
 - (iii) Establishing how the victim(s) wish to be addressed during the introductions made at the start of the proceedings. They may wish to be referred to as the "family of" the name of the deceased or they may wish for their own name to be used. The Victims Team will inform the panel of this.

(iv) Advising that, whilst every attempt will be made to ensure the proceedings can be observed without disturbance, if a technical issue were to occur which affected observation, the panel will not adjourn the hearing for that reason and will continue with the proceedings. The member of the Victims Team present in the room will make every effort to resolve any issue which arises.

(v) Advising the victim(s) of the reasons why a case may be adjourned, or postponed in advance of the oral hearing, and providing them with a glossary of common words and acronyms which may be used during the proceedings.

(vi) Making the victim aware that they may hear some distressing content as part of the observation, but the attending member of the Victims Team will ensure they have frequent communication with the victim during the oral hearing, establishing their ability to continue.

(vii) Establishing the victim's views as to whether the camera should be turned on/off at the victim's end during the observation.

(vii) Any other issues relevant to the observation.

(d) Answer any procedural or practical concerns raised by the chairperson including the mechanism for excluding observers from part of the hearing.

Managing a live link observation

17. Observation will normally take place remotely using MS Teams with the use of a telephone link as a backup. Where MS Teams is used the microphone at the observer's end will be muted.

18. Victims and prisoners will have been asked for their views on whether the camera should be turned on at the victims end. The default position should be for the camera to be turned off, but the chairperson of the oral hearing and/or the panel itself may decide in the interests of fairness that the camera should be turned on. If there is a difference of opinion between the prisoner and the victim(s) on this point it is for the chairperson (where the decision is made as part of the decision to approve the observation) or the panel itself (after the decision to approve the observation has been made by the chairperson) to make the decision.

19. A member of the Victims Team will be present with the victim(s) at all times during the observation.

20. Whilst a panel may regulate its own procedure for dealing with a case it is recommended that the following guidance is observed.

21. It is helpful for the chairperson to have a conversation with a member of the victims team the day of the oral hearing to finalise the arrangements for the oral hearing.
22. It is recommended that oral hearings start by considering preliminary matters without any observer present. This will allow the chairperson to ensure that those attending are aware of the sensitivities involved in the observer's attendance and to agree an approach to addressing these.
23. Following the consideration of preliminary matters, at the outset of the hearing, when making introductions the chairperson should introduce any observers, referring to them in the manner that they prefer as advised by the Victims Team. The chairperson should also remind all those attending of the confidential nature of the proceedings. The chairperson should remind all parties that care should be taken in discussing certain details. For example, any reference to a release address should be to 'the address specified in the dossier' rather than the actual address.
24. Where there are matters discussed in the oral hearing which it would not be appropriate for victim(s) to hear, the victim(s) may be excluded for that part of the hearing. The Victims Team will discuss the most appropriate mechanism for managing this with the chairperson in preparation for the hearing. Matters which the chairperson may consider inappropriate for victim(s) to have knowledge of include:
 - (a) The prisoner's potential release address
 - (b) Prisoner's home address
 - (c) Prisoner's placement address
 - (c) The prisoner's family situation including details relating to any children
 - (e) Any other information the chairperson regards as unsuitable for disclosure, for example medical reports or any information that would be potentially harmful to the prisoner's welfare upon release.
25. The potential for a prisoner to ask to address the victim(s) directly is not covered in the Rules. Victim(s) are routinely advised that this may be requested, and their views are sought and passed on to the panel members in advance. In most situations, such a request from the prisoner should be refused. Where there appear to be grounds to approve such a request, panel members should consider the potential impact on the victim(s). The fact that there will be no way to control the content of what the prisoner might say should weigh heavily in coming to a decision.
26. If the victim becomes too distressed to continue the observation or there is some other reason why it has become unsafe or unadvisable for the observation to continue, the Victims Team member will stop the call from their end. If this happens they will communicate this to the chairperson by an agreed method as soon as is practicably possible.

27. In the event of an adjournment or postponement of the case, wherever possible, the chairperson should remain the same for the case being rescheduled. It is preferred that the same general members also remain, however, for practical reasons this may not be possible. In which case the two general members can differ.

Managing a face-to-face observation

28. We anticipate that there will be very few face-to-face observations. The decision to approve a face-to-face observation is for the panel. Where such an observation is approved, the Victims Team will discuss the practicalities with the chairperson on a case-by-case basis. This is likely to be dependent on where the hearing is taking place and is not covered in this guidance. It is acknowledged that there are likely to be additional issues affecting the practicality of victims attending by this means.

Witnesses

29. Witnesses will be informed in advance of the attendance of victim observers. In particular, Social Work Scotland have been made aware of the amendments to the Rules and reference to the amendments will be made in the regular training the Board provides to Social Work Teams.

30. Although there is no formal process for doing so, it is possible that witnesses may raise concerns about the observation. Where this happens these concerns will be passed to the panel. In some cases this may mean the panel may wish to revisit the approval decision. In these circumstances the chairperson should discuss this with the Victims Team.

Confidentiality of proceedings

31. The victim(s) will be advised of the confidentiality requirements in the preparatory discussions with the Victims Team and asked to sign a document confirming that they have been made aware of and understand the legal obligations that apply to them when observing the oral hearing, and the potential consequences if they breach these legal obligations. The relevant document is attached as annex C.

32. To address concerns about the proceedings being recorded, during the oral hearing the victim and any supporter attending will be asked by the Victims Team member attending to place their mobile phone in view and to switch the phone off.

Decision Summaries

33. Decision summaries must be published where release is directed. If the victim requests a summary, this must be provided to them prior to publication. There is no requirement to publish summaries where release is not directed but the panel

may decide to do so. Again, if the victim requests a summary, this must be provided to them prior to publication.

Monitoring and review

34. Observation of oral hearings is new to the Board and we are keen to develop and improve our approach through feedback from members. This guidance will be reviewed and refreshed as required in line with that objective.

PRIVATE & CONFIDENTIAL

Insert Date

Dear X,

VNS REFERENCE: XXXX

I am writing to you as you are currently registered with the Victim Notification Scheme (VNS) in relation to (**prisoner name**).

Under rule 30 of the Parole Board (Scotland) Rules 2022 you now have the right to request to attend the Board's oral hearing as a silent observer.

While I cannot confirm the date of the hearing at this time, it is expected to take place on or around (**insert date**).

If you wish to request to attend the hearing, you should complete **Part 1** of the enclosed form.

Please be aware that the Board is required by law to inform an offender of such requests. They will therefore be advised that you have requested to attend the hearing, but will receive no other information than that. Your completed application will not be provided to the offender.

Should you request to attend, the decision will rest with the Chairperson of the oral hearing. If your request is declined, you will receive written notice of the reasons for that decision.

In addition to the above, the changes to the Rules also mean that, should the oral hearing panel direct the offender's release, you will automatically receive a summary of the reasons for that decision unless you have indicated otherwise. If the oral hearing panel does not direct release you may still request a summary of the reasons, in which case the decision on whether to provide the summary lies with the Chairperson of the oral hearing.

If you would prefer not to receive a summary in the event of a release decision, you should complete **Part 2** of the enclosed form.

Please note: to ensure sufficient time for processing, and (if approved) to make the necessary arrangements for attendance, completed applications must be submitted to either the post or email address below **within seven days of the date of this letter**.

Annex A

I enclose some frequently asked questions (FAQs) which you may find helpful. Should you have any queries or require any further information, please do not hesitate to contact me.

I appreciate that this may be a difficult time for you. If you have not already, you may find it helpful to talk to Victim Support Scotland (VSS), a national charity that helps victims of crime. Details of your local office can be found online. VSS can also be contacted by telephone on 0800 160 1985.

Yours sincerely

Victim Liaison Officer | Parole Scotland | X5 Spur, Saughton House, Edinburgh,
EH11 3XD Direct Dial: 0131 244 3972 | Email: victimsteam@paroleboard.scot

FREQUENTLY ASKED QUESTIONS (FAQs)

What is parole?

Parole is a system that enables offenders to serve the remainder of their sentence on licence in the community, under the supervision of a community based social worker. If an offender is released on parole, they are subject to be recalled to prison at any time if they breach the terms of their licence. Parole is only granted where the Parole Board for Scotland is satisfied that the risk presented by the offender can be managed in the community.

More information on parole can be found on the Parole Board for Scotland website: www.scottishparoleboard.scot.

Why am I being contacted?

We are contacting you because the offender's case has been referred to the Board for consideration of release on licence.

The Parole Board (Scotland) Rules 2022 came into effect on 1st April 2023. These Rules provide certain rights to those who are registered with the Victim Notification Scheme (VNS). These rights apply to victims where the offender's case is considered to be an indeterminate case under Part 4 of the Rules. These cases are normally considered by way of an oral hearing.

The Rules mean that you:

- can request to attend the hearing as an observer if you are Part 2 registered;
- Part 2 registered victims on the VNS scheme will automatically receive a decision summary regarding an offender's release, and
- You can ask for a decision summary where release has not been directed.

What is an indeterminate case

An indeterminate case is defined in the Rules as:

- the case of a person sentenced by a court in Scotland to life imprisonment, detention without limit of time, or detention for life,
- the case of a person in respect of whom an order for lifelong restriction has been made,
- the case of a life sentence prisoner transferred to Scotland,
- the case of a person subject to an extended sentence who has been recalled to custody and is serving the extension period of that sentence.

What is an oral hearing?

At an oral hearing a panel of the Board, headed by a legally qualified Chair, will consider the case in the presence of a number of parties - usually the offender, a

representative of the Scottish Prison Service (SPS) and the offender's legal representative. Other witnesses, such as social work or health professionals, may also be in attendance.

The panel will consider the evidence provided to them by Scottish Ministers in the parole dossier. This includes the offender's background and offending history, including the offence(s) for which they are currently serving their sentence; their behaviour and progress while in custody; details of any offence-based work which they have undertaken; and their plans should they be released. The panel will also hear oral submissions from the parties in attendance. Once all parties have been heard from, the Chair will end the hearing and the panel will make its decision in private.

If the panel concludes that additional information is required, it may defer their decision to a further hearing.

Will the offender know that I have made a request to attend the hearing?

Yes. The Board is required by the Rules to inform the offender of a request to attend their hearing. They will be advised that a request has been received, and from whom; however, that is all they will be told - the offender will **not** receive any other details of your application.

Will I need to travel to a prison to attend the hearing?

No. If approved, attendance will be from a remote location, via live video or audio link. You will not be required to travel to or enter a prison. Wherever possible, we will attempt to arrange attendance from a location which is convenient to you; however, some travel may be required.

Can I bring someone with me to the hearing?

Yes. You may have one other person (or such greater number as the Chair of the oral hearing may agree) with you for support. You must provide the name and contact details of the support person(s) as part of your application.

A member of staff from Parole Scotland will also be present at your location, to provide technical support to the panel.

Wherever possible support will be available to you before, during and after the hearing.

Can I ask the offender any questions?

No. If approved, you will attend the hearing as a silent observer only. There will be no opportunity for you to address the offender or the panel.

As you are registered under Part 2 of the VNS, you will already have been given the opportunity to submit written representations to the Board. If you have submitted representations, there may be discussion of these at the hearing.

Will I be in attendance for the whole hearing?

Possibly. Should the Chair consider that any part of the hearing needs to be held in private, for example if evidence is to be heard on a particular matter, they may ask for the live link to be paused. The member of Parole Scotland staff in attendance will be there to assist with this.

What happens if the hearing is postponed?

If the hearing is postponed, you will be advised of the rescheduled date and given the opportunity to attend.

What happens if my request to attend the hearing is declined?

The decision on whether to approve attendance requests lies with the Chairperson of the panel. If your request is declined, you will receive written confirmation of this alongside the reasons for that decision.

Will I be informed of the outcome of the hearing?

As you are registered under Part 2 of the VNS, you will be advised of the decision via your preferred method of contact (telephone, e-mail or letter). You will also receive a summary of the reasons for the decision if the panel directs release. You can ask for a decision summary where release has not been directed.

Is attending the oral hearing right for me?

Only you can decide whether attendance is right for you.

There are a number of things you should consider carefully before submitting a request to attend:

- The nature of the information disclosed at an oral hearing means that the original offence, as well as any previous offending will be discussed in detail. You may find this distressing. Other matters will also be discussed which have the potential to cause distress.
- Your attendance at the hearing will be as a silent observer only - as previously advised, there will be no opportunity for you to address the offender or the panel.
- Given the nature of the information discussed, oral hearings are confidential proceedings - both you, and anyone attending with you as support will be required to sign a confidentiality agreement prior to the hearing, and anything disclosed during the hearing should not be disclosed to any outside party afterwards.

Part 1: Request to observe Parole Board oral hearing

The information provided on this form will not be disclosed to the offender. It will be used internally by Parole Scotland, for administrative purposes only.

Please ensure you have read the covering letter before deciding whether to complete and submit this form.

Section A - Your details

Title:	First Name:	Surname:
Victim Notification Scheme reference number (if known):		
If you are the parent or carer of a victim who is under the age of 12, or are an entitled relative of an incapacitated victim, please provide their name below:		

Address details

House number and street:
Town / City:
Postcode:

Contact details

Email address:
Telephone number(s) - please indicate whether home / mobile / work for each number:

Preferred method(s) of contact:

- Email Telephone By post

Should any of the above information change, please advise us as soon as possible.

Reasons for requesting attendance

Please provide a short summary of the reasons you would like to attend the Board's oral hearing:

Additional requirements

Please advise of any additional requirements you may have (e.g. accessibility, hearing impairment etc.):

Section B - Your support

Are you currently in receipt of support from a victims' organisation?

- Yes
 No

If so, would you like your support worker to be present with you at the hearing?

- Yes
 No

If applicable, please provide details of your support worker below.

Support worker details

First Name:	Surname:
Organisation:	
Address:	
Telephone number(s):	

If you would prefer to have someone other than, or in addition to, a support worker accompany you at the hearing, please provide their details below.

First Name:	Surname:
Address:	
Telephone number(s):	
Their relationship to you:	

Part 2: Summary of release decision - opt out

Changes to The Parole Board (Scotland) Rules mean that should the Board decide to release the individual, you will now automatically receive a summary of the decision unless you advise otherwise.

If you would prefer **not** to receive a summary in the event of a release decision, please indicate this below.

I confirm that I do **not** wish to receive a summary of the Board's decision.

Declaration

I confirm that the details provided in this form are correct, to the best of my knowledge.

I understand that if I have requested to attend the hearing, this will be as a silent observer only and I will not participate in the proceedings.

Name:	
Signed: (print name if submitting electronically)	
Date:	

Text of confidentiality document

Legal obligations about confidentiality and disclosing information

It is really important that you are aware of and understand the legal obligations that apply to you when you attend an oral hearing of the Parole Board for Scotland and the consequences for you if you breach these legal obligations.

In terms of rule 13 of the Parole Board (Scotland) Rules 2022 (the Rules) the proceedings before an oral hearing of the Parole Board for Scotland are confidential. The terms of rule 13 mean that **any** information -

- related to a case referred to a panel in considering a case; or
- about any application, document, or any other information provided to a panel; or
- about the name of any person concerned in the proceedings,

shall not be disclosed by you, either directly or indirectly, to any person not involved in those proceedings or to the public.

A person who suffers loss, injury or damage by reason of a breach by you of this legal obligation of confidentiality will be entitled to seek compensation from you for that loss, injury or damage.

In addition, and separately from rule 13, in terms of section 170 of the Data Protection Act 2018 ("section 170") you may be committing a criminal offence and could be subject to prosecution and, if convicted, a fine, if you, knowingly or recklessly, disclose personal data without the consent of the data controller. You do not have the consent of the various data controllers to disclose any personal data you receive in the oral hearing proceedings. "*Personal data*" has a very wide definition and means **any** personal information relating to an identified or identifiable living individual.

Both rule 13 and section 170 apply to the passing on of information that includes the circumstances of any crime, information about previous convictions, rehabilitation, the management of the offender and the name of any person concerned in the proceedings such as the name of any victim, the offender, any social worker, prison staff, the author of any report, any witness appearing at the oral hearing, the offender's representative and the members of the panel and their staff. This means that you must not pass on any such information you receive in the oral hearing proceedings to any person not involved in those proceedings or to the public, including friends, relatives and the press and media.

The above paragraphs will be read over to you and any questions you have will be answered. You will then be asked to sign this document to confirm that you have been made aware of and understand the legal obligations that apply to you when you attend an oral hearing of the Parole Board for Scotland and the potential consequences for you if you breach these legal obligations. By signing you are also

agreeing not to breach these legal obligations. If any accompanying supporter wishes to attend, they must also sign this document.

Signed.....

Date.....

*** Visitor's accompanying supporter (if applicable)**

Signed.....

Date.....

Signed acknowledgments should be sent to the following email address:

victimsteam@paroleboard.scot.