

GUIDANCE ON REPORT WRITERS PROVIDING A PROFESSIONAL OPINION TO THE PAROLE BOARD ON WHETHER A PRISONER SHOULD BE RELEASED ON LICENCE OR MOVED TO OPEN CONDITIONS

Introduction

This guidance is issued further to the High Court's judgment in *Bailey and Morris v Secretary of State for Justice* and the changes to the Parole Board Rules 2019 which come into force on 3 April 2023.

All previous guidance documents issued (and any instructions given) on giving written and oral opinions to the Parole Board¹ have been found unlawful, revoked and must not be followed.

Written Reports

In accordance with Part A1 of the Schedule to the Parole Board Rules 2019, from 3 April 2023 when report writers create a report for the parole dossier, they are permitted (but not required) to provide the Parole Board with their professional opinion on whether the prisoner is safe to be managed in the community, or moved to open prison conditions, provided that they feel able to give a such an opinion. Any professional opinion which the report writer gives the Board should be made by reference to the report writer's area of competence, as well as to their interactions with the prisoner.

Report writers will not need to revise reports which they submitted prior to 3 April 2023, but they may be asked by the Board to provide an addendum which includes their professional opinion.

The Rules do not affect the Parole Board's powers to specifically direct that a report writer provides a report which contains an opinion on a prisoner's suitability for release or open conditions. In those circumstances, report writers must comply with the Parole Board's direction to the extent that they feel able to give an opinion.

Oral Hearings and Compliance with Directions from the Board

The Parole Board has a power to ask witnesses questions to satisfy itself of the level of risk of the prisoner.

The Secretary of State considers that views about the statutory release test (or whether a prisoner should progress to open conditions) would be more appropriately addressed to the Secretary of State as a party to the proceedings, who is recognised by the courts as having experience and expertise in considering the statutory release test, based on an analysis of all of the relevant evidence. However, it is a matter for the Parole Board to determine what questions it asks a witness, and witnesses must assist the Parole Board by providing answers to the Board's questions to the extent that each witness is able to answer the question.

¹ Including the general guidance documents dated 11 July 2022, 5 October 2022, 12 October 2022 and guidance issued in respect of psychologists dated 13 July 2022, 28 October 2022 and 22 February 2023. Any other notifications or guidance given on the topic of written or oral recommendations to the Parole Board (including any given in workshops or orally) should, for the reasons set out in this guidance, no longer be followed. If you are in any doubt as to whether or not a piece of guidance continues to apply, please contact ParoleRecallPolicy.pops@justice.gov.uk

Report writers and witnesses must co-operate with the Parole Board and must truthfully answer any directions and questions posed by the Board, to the extent that the report writer or witness feels capable of providing the Board with an answer.

If a report writer feel capable of providing an opinion on the question of whether a prisoner can be safely managed in the community or be transferred to open conditions, they should provide the Parole Board with their opinion. Where they feel unable to do so, they should explain why. Report writers who provide the Parole Board with their opinion should ensure that that opinion is expressed as their own, and not of the Secretary of State. The Secretary of State is a party to Parole Board proceedings and may wish to present his own view as to whether or not the statutory release test is met, or on whether a prisoner should be moved to open conditions.

Opinions

Any opinion:

(i) is the report writer's own professional opinion and not a formal overarching view on behalf of the Secretary of State,

(ii) is produced in accordance with the report writer's own remit and knowledge, and

(iii) is but one opinion when there may be several different opinions which HMPPS staff may provide.

Where a Single Secretary of State view is provided, that view will take account of all reports and evidence, including any professional opinions offered by report writers.

31 MARCH 2023