

## **Chair observation guidance for tribunals**

### **Overview**

1. Following changes to the [Parole Board \(Scotland\) Rules 2001](#) (the Rules) in March 2021, registered victims in cases of life, OLR, and extended sentence (where prisoners are recalled and in their extended part) have the right to request to observe the relevant parole tribunal. This will normally be via livelink. Requests are subject to approval by the chair of the relevant tribunal.
2. Livelink is defined in the Parole Board Rules as “ any arrangement as the Board may direct 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 heard”.
3. Where a request is approved, the victim will be advised in advance 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 tribunal 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 registered victims. 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 chair of the tribunal and the other 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) 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, including any representations about whether the camera should be turned on at the victim’s end. A period of seven days will be allowed for such representations to be made. Prisoners will be informed that the decision to grant authorisation to observe will be for the chair of the tribunal to decide. 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 tribunal chair 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 chair 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 chairs should note that the Rules only specify that details of such individuals be provided at least five days before the tribunal. It may be therefore that the chair 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 chair whether or not the attendance of multiple victims can be facilitated.

### **Matters to be considered by the tribunal in approving requests**

10. The decision as to whether to approve or not is for the tribunal chair. It is good practice for the chair to consult other members of the tribunal before reaching such a decision. Whilst the Rules do not provide any criteria for making a decision, it is recommended that chairs 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 tribunal? This includes victims, witnesses, the prisoner and their representative, and the tribunal 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 victims observing who may also be in custody - or could such information pose a risk to the prisoner's safety if 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 tribunal and not solely by the chair

- 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 tribunal will not be kept confidential, in accordance with Rule 9 of the Parole Board (Scotland) Rule 2001?

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 tribunal chair will have three options:

- (a) Approve the request that the victim observes the proceedings by livelink;
- (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 tribunal rather than the chair alone); or,
- (c) Decline the request.

14. Once a decision has been made, the chair should inform the Victims Team. The Victims Team will then inform the victim and prisoner of the tribunal chair'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 chair 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 tribunal and will be made aware of additional support available from victim support organisations, including support available after the tribunal. 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 bodies) and 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 tribunal chair 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 tribunal 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 tribunal 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 tribunal, 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 tribunal, 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 chair including the mechanism for excluding observers from part of the hearing.

### **Managing a livelink 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 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 chair of the tribunal and/or tribunal 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 chair (where the decision is made as part of the decision to approve the observation) or the tribunal itself (after the decision to approve the observation has been made by the chair) 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 tribunal 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 chair to have a conversation with a member of the victims team the day of the tribunal to finalise the tribunals arrangements.

22. It is recommended that tribunals start by considering preliminary matters without any observer present. This will allow the chair 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 chair should introduce any observers, referring to them in the manner that they prefer as advised by the Victims Team. The chair should also remind all those attending of the confidential nature of the proceedings. The chair 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 tribunal 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 chair in preparation for the hearing. Matters which the chair 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 chair 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. We anticipate that on occasion the prisoner may request to address the victim(s). It is for the chair to decide whether to permit this, and regard should be had to the views of the victims. Victim(s) will have been alerted to this possibility in preparatory discussions with the Victims Team, and their views should be provided to the tribunal members in advance.
26. When deciding whether to approve such a request the chair should carefully consider the potential impact on victims. The tribunal will have no control over the content of any statement which the prisoner may make and there is considerable potential for such a statement to result in re-traumatisation.
27. 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 chair by an agreed method as soon as is practicably possible.
28. In the event of an adjournment or postponement of the case, wherever possible, the chair 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**

29. We anticipate that there will be very few face-to-face observations. The decision to approve a face to face observation is for the tribunal. Where such an observation is approved, the Victims Team will discuss the practicalities with the chair 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**

30. 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.
31. 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 tribunal. In some cases this may mean the tribunal may wish to revisit the approval decision. In these circumstances the chair should discuss this with the Victims Team.

## **Confidentiality of proceedings**

32. 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 tribunal, and the potential consequences if they breach these legal obligations. The relevant document is attached as annex C.
33. To address concerns about the proceedings being recorded, during the tribunal 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**

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

## **Monitoring and review**

35. Observation of tribunals 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**).

Recent changes to The Parole Board (Scotland) Rules 2001 mean that you now have the right to request to attend the Board's tribunal 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 Chair of the Tribunal. 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 Board direct the offender's release, you will automatically receive a summary of the reasons for that decision unless you have indicated otherwise. If the Tribunal 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 Chair of the Tribunal.

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**.

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](mailto: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](http://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) Amendment Rules 2021 came into effect on 1 March 2021, and changed the rights of those who are registered with the Victim Notification Scheme (VNS) in relation to offenders whose case will be considered under Part IV of the Rules, by way of a tribunal hearing.

These changes mean that you:

- are now entitled to request to attend the hearing as an observer; and
- will automatically receive an anonymised summary of the Board's decision if the offender's release is directed at the hearing (unless you notify the Board that you would prefer not to receive this).

### I am registered under Part 1 of the VNS - I thought this meant I would only be contacted when the offender is released?

This was previously the case; however, The Parole Board (Scotland) Amendment Rules 2021 now require the Board to contact all of those registered with the VNS when the case is referred, including those registered under Part 1.

### What is a tribunal hearing?

A tribunal (three Members 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 tribunal 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 tribunal 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 tribunal will make its decision in private.

If the tribunal 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 law 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 tribunal 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 tribunal.

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 tribunal.

If 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 Chair of the tribunal. 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?**

If you are registered under Part 1 of the VNS, you will receive a summary of the reasons for the decision only if the tribunal directs the offender's release.

If 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 tribunal directs release.

If you are registered under Part 1 and wish to change to Part 2, please contact the Scottish Prison Service VNS team on 0131 330 3664.

### **Is attending the tribunal 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 a tribunal 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 tribunal.
- Given the nature of the information discussed, tribunal 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 tribunal 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 Tribunal 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?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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If so, would you like your support worker to be present with you at the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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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.

<b>Name:</b>	
<b>Signed:</b> (print name if submitting electronically)	
<b>Date:</b>	

## 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 a tribunal of the Parole Board for Scotland and the consequences for you if you breach these legal obligations.

In terms of Rule 9 of the Parole Board (Scotland) Rules 2001 (“Rule 9”) the proceedings before a tribunal of the Parole Board for Scotland are confidential. The terms of Rule 9 mean that **any** information -

- in connection with the proceedings before a tribunal in dealing with a case; or
- about any application, document or written or oral information given to the tribunal; 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 9, 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 tribunal proceedings. “*Personal data*” has a very wide definition and means **any** personal information relating to an identified or identifiable living individual.

Both Rule 9 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 tribunal, the offender’s representative and the members of the tribunal and their staff. This means that you must not pass on any such information you receive in the tribunal 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 a Tribunal 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](mailto:victimsteam@paroleboard.scot).