

# Disclosure of Information about Victims

## Member Guidance

January 2021 (V1.1)

## Document History

<b>Document version</b>	<b>Date of Issue</b>	<b>Revision description</b>
0.1	09/11/2020	Version reviewed by Policy Hub, Dir of Legal, one independent member and one psychologist member
0.2	16/11/2020	Version for SLT
0.3	27/11/2020	Version for peer review
0.4	09/12/2020	Version for Management Committee and Standards Committee (accelerated process)
1.0	21/12/2020	Published version
1.1	22/01/2021	Para 2.3 amended to clarify duty applies to initial release cases only

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### Annexes:

Annex A – The Act

Annex B - Background to the Act

## **1. Introduction**

- 1.1 This guidance sets out information and advice regarding the Board's duty to consider the non-disclosure of information about victims by prisoners. Panels will need to be aware of the legal requirements to take such matters into account when considering parole for cases where one of the two criteria set out in the legislation applies.
- 1.2 Panels already follow existing guidance in relation to cases in which the whereabouts of a victim's remains have never been disclosed, and the requirement to do so is now set out in law. The new legal requirement also covers information about the identity of children in indecent images. The existing guidance published in 2017 has now been superseded by this current guidance.
- 1.3 Both requirements are now set out in Statute and panels are required to explicitly refer to them in decision letters at Member Case Assessment (MCA) and Oral Hearings, for relevant cases.

## **2. Legislation**

- 2.1 The Prisoners (Disclosure of Information About Victims) Act ("the Act") received Royal Assent on 4 November 2020 and came into force on 4 January 2021.
- 2.2 The Act places a statutory duty on the Parole Board to consider the non-disclosure of information about victims in its decision-making. The duty applies to cases involving the non-disclosure of information about the whereabouts of a victim's remains (often referred to as *Helen's Law*) and the non-disclosure of information about the identity of child victims in indecent images.
- 2.3 The Act applies to all prisoners who are releasable under the Crime (Sentences) Act 1997 serving a sentence for murder or manslaughter; or the Criminal Justice Act 2003 for manslaughter or the taking or making of indecent images. **It ONLY applies to initial release and not to re-release following a recall.**
- 2.4 The full Act can be found at Annex A.
- 2.5 A background note, setting out a brief chronology of the Act, can be found at Annex B.
- 2.6 There are two components to the Act, as set out below in Section three and four.

## **3. Murder or manslaughter: prisoner's non-disclosure of information**

- 3.1 This legal requirement applies where the prisoner is serving a life sentence for murder or manslaughter, or given a lesser sentence for manslaughter, and:

- the panel does not know where and how the victim's remains were disposed of; and
- the panel believes that the prisoner has information about where, or how, the victim's remains were disposed of (whether the information relates to the actions of the prisoner or any other individual) which the prisoner has not disclosed to the Parole Board ("the prisoner's non-disclosure").

3.2 When undertaking an assessment of such a case the panel will need to:

- Take into account the prisoner's non-disclosure;
- Take into account the reasons (in their view) for the prisoner's failure to disclose the information.

#### **4. Indecent images: prisoner's non-disclosure of information**

4.1 This legal requirement applies where the prisoner is serving a sentence for an offence of taking an indecent photograph of a child, or a relevant offence of making an indecent pseudo-photograph of a child, and:

- the panel does not know the identity of the child who is the subject of the relevant indecent image; and
- the panel believes that the prisoner has information about the identity of the child who is the subject of the relevant indecent image which the prisoner has not disclosed to the Board ("the prisoner's non-disclosure")

4.2 When undertaking an assessment of such a case the panel will need to:

- Take into account the prisoner's non-disclosure;
- Take into account the reasons (in their view) for the prisoner's failure to disclose the information.

#### **5. Policy**

5.1 In essence, the legislation requires the same considerations, irrespective of which component of the Act's provisions are applicable, namely:

- to take into account the prisoner's non-disclosure of the information; and
- to explore and take into account the reasons, in the panel's view, for the prisoner's non-disclosure.

5.2 It should be noted that the legislation specifically sets out in both components that:

*"the Parole Board **believes** that the prisoner has information..."*

Panels will need to explore and establish a view about this as part of their assessment.

- 5.3 The panel will need to clearly set out in their written decision the duty required of them under the legislation for relevant cases. A suggested form of words to be added at the most appropriate place in the decision is:

*"The Prisoners (Disclosure of Information About Victims) Act makes changes to both the Crime (Sentences) Act 1997 and the Criminal Justice Act 2003 that require the Parole Board to take into account any failure to disclose information about victims in its deliberations where [then add relevant wording]:*

*...a life sentence for murder or manslaughter is being served."*

*Or*

*...a determinate sentence for manslaughter is being served."*

*Or*

*...a relevant sentence for taking or making indecent images of children is being served."*

- 5.4 The panel is then required to clearly set out that they have duly taken account of the circumstances stated in sections three and four above, where relevant, and then explain *how* they have taken account of such circumstances and the level of weight assigned to their deliberations on these points.
- 5.5 The duty to take these matters into account does not prevent the panel from taking any other matter into account. Panels will take these matters into account as part of their consideration of the totality of the case.

## **6. Application of the Policy**

### **Non-disclosure of victim's remains**

- 6.1 Panels may come across cases where the prisoner is unwilling or unable to disclose the whereabouts of the victim's remains. This is likely to have a significant impact on the victim's family, exacerbated by the news that the prisoner is being considered for parole. The Board is committed to ensuring that victims are treated with respect and dignity.
- 6.2 Having a clear explanation for the reasons why the information is not being disclosed may enhance the panel's understanding of the offence and the prisoner. Wilful and deliberate withholding of information about the whereabouts of the victim's remains may indicate poor insight into their (the prisoner) own behaviour, a lack of remorse and the impact of their actions on victims.
- 6.3 Professionals working with the prisoner may be able to provide helpful information and insight into the prisoner's motivation for not disclosing the whereabouts of the victim's remains, and the concomitant impact on risk. In such cases, there may be a need for associated offence related or risk reduction work to be undertaken.

## Non-disclosure of information about indecent child images

6.4 The application of this requirement in the Act may be more complex than that related to murder and manslaughter offences and can present difficulties in terms of assessing whether a case fulfils the criteria of the legislation. However, the Act's provisions apply to prisoners who have already been convicted of these offences, and so their convictions will be a matter of record, and should be set out in the parole dossier.

6.5 The Act helpfully relies on the *Protection of Children Act 1978 (England and Wales offence)*<sup>1</sup> to establish the prisoners which it covers. Section 1 "Indecent Photographs of Children", sub-section 1a of the PCA states that it is an offence for a person:

*"To take, or permit to be taken (or to make), any indecent photograph (or pseudo-photograph) of a child"*

Sub-section 1b, 1c and 1d of the PCA refer to possession and distribution of images but these are not covered by the new Act.

6.6 Panels will need to clearly distinguish between these different offence types when considering whether the Act's provisions are relevant to the case they are reviewing. In summary the provisions cover the following cases:

- Prisoners that take an indecent image of a child;
- Prisoners that make an indecent image of a child;
- Prisoners that permit an indecent image of a child to be taken

6.7 The provisions do not cover the following:

- Prisoners that possess images that have been shared with them;
- Prisoners that distribute images to others.

6.8 For the purposes of the Act's provisions, a child is considered as any person who is under 18 (at the time the image was taken). In order for the legal requirement to apply, the panel must consider that any pseudo-photograph was made or may have been made using an image of a real child.

6.9 Taking or making (also referred to as production of) an indecent image (of any indecent category) includes<sup>2</sup>:

- traditional photographs (positive and negative versions);
- digital images (including any image alterations);
- video recordings (or film);

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<sup>1</sup> *Protection of Children Act 1978 (England and Wales offence)*  
<https://www.legislation.gov.uk/ukpga/1978/37>

<sup>2</sup> *As set out in the Protection of Children Act 1978*

- pseudo-photographs (an image, whether made by computer graphics or otherwise howsoever, which appears to be a photograph);
  - data stored on a removable storage device or by other electronic means which is also capable of conversion into a photograph.
- 6.10 The volume of images involved may impact on whether a prisoner is able to identify the victims.
- If the images are limited in number, involve one or two victims, or there are many but of only one victim, it may be more feasible to expect the prisoner to know who the victims are, and therefore to disclose this information;
  - Where there are a multitude of images involving a wide range of victims, or where a pseudo-photograph is made using the image of a real child who the prisoner does not know, it may be more difficult for the prisoner to identify them all.
- 6.11 Panels should bear in mind that some parents do not wish to know if their child was the subject of an indecent image and so care will need to be taken about information that may be discovered and potentially made public. Protecting the identity of the child and being mindful of the wishes of the parents must be taken into account.
- 6.12 Understanding the motivations behind taking or making such images may assist the panel in establishing the reasons for the victims not being identified. This could range from deviant sexual interest, financial gain through selling images, or being influenced or coerced by others to provide such images.

## **7. Undertaking Assessments**

- 7.1 The panel will need to examine the possible reasons why the information is not being disclosed in the particular case. Below are some potential reasons:
- The prisoner chooses to deliberately withhold the information, for example, to exert power and control, stay in the limelight, or retain a bargaining advantage;
  - The prisoner has lost trust in the authorities at a point in the process;
  - The prisoner is maintaining their innocence;
  - The prisoner cannot recall the information, for example where the crime is historical, but the conviction is recent;
  - The prisoner, in some cases, has a mental health problem or personality disorder that contributes to their inability or unwillingness to disclose the information;
  - The prisoner, again in some cases, has significant memory impairment, e.g. resulting from brain disease or injury; or a significant learning disability; or is, or has been deemed to lack capacity at a point in time that contributes to their inability or unwillingness to disclose the information.



- 7.2 The prisoner's co-operation, or not, in assisting in identifying victims in images, or the whereabouts of victim's remains, should be taken into account. This should be approached with care to ensure a clear understanding of the circumstances are known. This may involve directing the disclosure of information from third parties, such as the police, to establish the known facts.
- 7.3 As mentioned in section 5.2, it should be noted that the legislation sets out that the Parole Board must comply with the Act's provisions where:
- "the Parole Board **believes** that the prisoner has information about where, or how, the victim's remains were disposed of (whether the information relates to the actions of the prisoner or any other individual) which the prisoner has not disclosed to the Parole Board ("the prisoner's non-disclosure")."*
- and*
- "the Board **believes** that the prisoner has information about the identity of the child who is the subject of the relevant indecent image which the prisoner has not disclosed to the Board ("the prisoner's non-disclosure")."*
- 7.4 Panels will need to satisfy themselves on the question of whether they believe the prisoner does, or does not have, information that they are not sharing in relation to the location of a victim's remains or the identify of a child in an image. After reviewing all the information in the dossier panels will need to consider whether they can answer that question, or whether further information should be directed.
- 7.5 It will be for panels to determine how much information they feel they need, or, if at oral hearing, the level of questioning and exploration required. This could be a matter of seeking clarification of what has already been undertaken to establish the facts, or, where the panel is not satisfied that sufficient exploration has been carried out, then further enquiries could be directed.
- 7.6 Judge's Sentencing Remarks are likely to assist panels to make a finding as to whether the prisoner did or did not assist in disclosing information about victims in these cases. They may also set out, in the Judge's view, more detail about the failure to disclose, and whether any matters were considered as an aggravating factor. Panels may wish to direct additional information about any relevant comments made in the Remarks.
- 7.7 Panels will need to form a view as to what weight to assign to the non-disclosure of information, taking all of the points set out above into consideration. As with assessing the relevance of other information, this can include:
- The credibility and reliability of the explanation given;
  - Is there supporting information that corroborates the explanation;
  - What is the scope and range of information being withheld;
  - How relevant is the non-disclosure to the current assessment of risk;

- 7.8 Having analysed the relevance and weight of the non-disclosure, the panel should then reach a view about the impact this level of concern has on the parole review.
- 7.9 MCA panels will need to have a clear view on the disclosure of information about victims if they are minded to conclude the case on the papers. This may require the issuing of directions and a short adjournment, in order to meet the requirements of the Act.
- 7.10 Oral hearing panels may need to consider calling third party witnesses if the matter of disclosure of information about victims is unclear, in order to meet the requirements of the Act.
- 7.11 Where disclosure of new information arises from such explorations which may impact on other investigations, for example the police; or result in someone becoming eligible for support through the Victim Contact Scheme; then Probation professionals will need to take appropriate action.
- 7.12 When making decisions, the panel must bear in mind that the primary focus of the parole review is to consider the risk posed by the prisoner.**

## **8. Mental Capacity**

- 8.1 In some cases, the non-disclosure may be linked to the mental capacity of the prisoner, either at the time of the offence, or at another time, or during the parole review, which contribute to their unwillingness or inability to disclose the information. Panels will need to explore whether capacity has, at any time, been an influencing factor on the failure to disclose information about victims.
- 8.2 More information about mental capacity can be found in the *Member Guidance on Mental Capacity Assessments and Litigation Friends*.

## **9. Maintaining Innocence**

- 9.1 In some cases, maintaining innocence, or denial, may be the reason why the prisoner has not disclosed information about victims. This needs to be approached with caution.
- 9.2 There is no rule or policy which automatically prevents a prisoner who maintains their innocence from being released. But the Parole Board must take as its starting point the assumption that the prisoner was rightly convicted.
- 9.3 Further information can be found in the *Member Guidance on Prisoners Who Maintain their Innocence*.