

# Digital Recording of Proceedings

## Member Guidance

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## Document History

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## **1. Introduction**

- 1.1 Parole Board panels are required to take a proper record of proceedings, whether it be an oral hearing, a directions hearing, or a case management conference.
- 1.2 Panel chairs have been provided with digital technology installed onto their devices that will audio record proceedings without interfering with those proceedings.
- 1.3 It is now standard practice across the Criminal Justice System that proceedings are recorded.
- 1.4 This guidance provides:
  - Information about the importance of keeping a proper record of proceedings;
  - Information about the digital audio recording technology;
  - Managing the arrangements on the day;
  - Considering objections; and
  - Information about what happens if a party requests a transcript.

## **2. Legal requirement**

- 2.1 There is no provision set out in the Parole Board Rules 2019 (as amended), which requires a proper record of formal proceedings.
- 2.2 However, in the case of *McIntyre*<sup>1</sup>, the High Court confirmed that the Board is required to ensure that a proper record is made of formal proceedings.
- 2.3 The judgment said that:
  - It is the responsibility of the Board to ensure that a proper record is made of each hearing and in particular the evidence given at it.
  - The record of the proceedings and evidence before the panel may be required to assist the Court in any judicial review proceedings. But it can also be essential if the evidence given is relied on at a further hearing.
- 2.4 Since the judgment in *McIntyre* was handed down, the Board now treats directions hearings and case management conferences under rule 7 of the Parole Board Rules 2019 (as amended), as formal proceedings.
- 2.5 Digital audio recording of proceedings provides a way for the Board to be fully compliant with its legal obligations. It enables the Board to have an official record of proceedings, in a way that is easier than asking panel chairs to keep a full handwritten record of the proceedings.

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<sup>1</sup> *R (McIntyre) v Parole Board [2013] EWHC 1969 (Admin)*

- 2.6 All oral hearings, directions hearings and case management conferences (“proceedings”), must be digitally audio recorded unless there is an exceptional reason not to (see sections 7 and 8 below).
- 2.7 The panel chair has responsibility for making and preserving the recording in digital audio format. Panel chairs should bring any issues with the recording technology to the attention of the Parole Board IT support Team so that they can be resolved swiftly.
- 2.8 Audio digital recordings must be stored safely and kept in line with formal record retention policies as set out in the Parole Board Information Assurance Policies (currently seven years, in line with Parole Board decisions).

### **3. Digital recording technology**

- 3.1 The EaseUS digital recording application is installed on all Parole Board member devices, and panel chairs have been provided with a licence key which activates the full package.
- 3.2 All panel chairs have been provided with a microphone that should be attached to their device via the USB port when undertaking a face-to-face or hybrid proceeding (where the panel chair is attending in person). The microphone does not need to be attached for video or telephone proceedings.
- 3.3 Please note that digital recordings ***should be audio only*** and should not include video content. Panel chairs should ensure that they select ‘audio’ before starting each recording (see ‘Preparing to Record’ section of the guidance, which can be found in IT Guidance Documents. Panel chairs must also instruct EaseUS to record the sound from their own microphone each time they make a recording.
- 3.4 Panel chairs should also be aware that not all Bluetooth headphones are compatible with EaseUS and this could lead to the panel chair’s sound not being detected for the recording.
- 3.5 Panel chairs must not employ their own methods to record proceedings unless they have secured prior agreement from a manager within the IT Support Team. If a panel chair is unable to use the provided recording technology and has identified an alternative solution, they must contact the IT Support Team to ensure it is compliant with the General Data Protection Regulations (GDPR), and compatible with the Parole Board’s digital storage system.
- 3.6 The IT Support Team can offer advice on all of the above; and more information about EaseUS can be found in IT Guidance Documents.

#### **4 Access to prisons and other establishments**

- 4.1 An agreed Member Access Certificate (MAC) has been drawn up with HM Prison and Probation Service (HMPPS). The MAC outlines the prison access protocol agreement for Parole Board members.
- 4.2 All Parole Board members are provided with their own MAC, which details their name and relevant serial numbers for their devices. Parole Board members are required to present their MAC to prison security upon request.

#### **5 On the day arrangements**

- 5.1 It is good practice for panel chairs to ensure that the correct set-up, as outlined in section three above, is in place ahead of the attendees joining the proceedings.
- 5.2 All timetables (including notifications of a directions hearing or case management conference) will clearly state that the proceedings will be digitally recorded by the Parole Board. There will also be a message to alert attendees that the proceedings are being recorded on the joining screen in the Cloud Video Platform (CVP) (for video hearings and hybrid hearings only) or in MS Teams, as appropriate.
- 5.3 Whilst it is considered best practice to announce at the beginning of the proceedings that they will be digitally recorded, there is no need to draw more than minimal notice to this.
- 5.4 When recording face-to-face or hybrid proceedings (where the panel chair is attending in person), panel chairs are encouraged to try and position the microphone in the middle of those within the room.
- 5.5 The plug-in microphone is not required for video and telephone proceedings, but EaseUS needs to be directed to pick up the sound from the internal microphone or headset (as per 3.3). Instructions on set up can be found in IT Guidance Documents.
- 5.6 The digital recording should commence at the outset of the proceedings and conclude when the proceedings end.
- 5.7 Recording must be paused as soon as a short adjournment or other break commences and must be resumed immediately after participants re-enter the hearing room, or when the proceedings resume.
- 5.8 Panel chairs should make a note of the start and end times of the proceedings and the lengths of any breaks or adjournments, either verbally as part of the digital recording or by writing down the details.
- 5.9 Best practice is for the panel chair to identify all attendees, including observers (in person or remote), and any other individuals who may be in the room (security, interpreters etc) at the start of the proceedings. This

is important in case the recording of the proceedings need to be transcribed in the future; it will allow the transcribers to easily identify speakers for the transcript and note who else was in attendance.

- 5.10 Where possible, the panel chair will try and name each witness (or ask them to name themselves) at the start of any evidence they give. It would also assist in the transcribing of a recording to make sure that the panel chair identifies who is asking questions of the witness, for example whether it is the panel, the prisoner's representative, or a Secretary of State Representative. However, a measured approach to this should be taken to limit any onerous disruption to the proceedings.
- 5.11 As a matter of good practice, the panel chair should draw particular attention to any specific arrangements in place to support the proceedings, such as a translator or signer, or perhaps where pictures or other resources are being used by the prisoner to express themselves more easily etc.
- 5.12 It is important to ensure only one person is talking at a time unless the situation warrants intervention by the panel chair.
- 5.13 Only formal proceedings should be recorded. This includes any hearing that has previously been adjourned or deferred. This also includes directions hearings and case management conferences. Recording will be paused as soon as a short adjournment, or other break commences, and will be resumed immediately after participants re-enter the hearing room, or when the remote hearing resumes.
- 5.14 Panel deliberations, whether pre and post the proceedings or during any breaks, should not be recorded and are not required as part of the official record of the proceedings.
- 5.15 The reading of a Victim Personal Statement (VPS) should not be recorded.

## **6 Streamed hearings**

- 6.1 The following hearings are usually live streamed to an audience located in a secure environment:
  - Public hearings
  - Hearings observed by a victim
- 6.2 In both instances, a digital recording should be made. Introductions will need to be recorded, along with the announcement that the hearing is being live-streamed. As such, both the introductions made in private ahead of commencing the live-stream, and the official introductions upon live-streaming will need to be recorded, particular where names are not being used during the live-stream.

- 6.3 Panel chairs will need to record both the formal open proceedings and any proceedings held in closed session. Particular care should be taken to ensure these are clearly announced on the recording.
- 6.4 Directions hearings and case management conferences should not be live-streamed at any time and so this should not require consideration for those proceedings.

## **7 Technology failure or loss of recording**

- 7.1 Where there is a digital recording it will stand as the official note of record. Handwritten notes do not need to be taken in addition to recording, however it is advisable for panel chairs to make at least some very brief notes of the evidence as a contingency to technology failing, or the recording not being reactivated following a pause. In such circumstances, these notes will stand as the official record of the proceedings or the relevant part of it.
- 7.2 If there is an equipment failure from the outset, then traditional handwritten notetaking by the panel chair will be required as their notes will be the official record of the proceedings. If there is an issue with a digital recording during the formal proceeding, the panel chair should make a note so that this is readily identifiable for future reference. Should the digital recording cease part way through the proceedings, the panel chair will need to take substantive handwritten notes. In either situation, the panel chair should notify the IT Support Team so that it can be logged for any future enquiries that may arise.
- 7.3 Any handwritten notes should be kept in line with the Retention Policy as set out in the Member Administrative Policies and Processes Guidance – Chapter 6 and the Parole Board Information Assurance Policies.
- 7.4 The Hearing Support Team may be approached for help if panel chairs have difficulty on the day.
- 7.5 Where other technical problems occur, there are problems with saving and storing recordings, or faulty equipment the panel chair should direct queries to the IT Support Team as soon as possible or call the helpline.
- 7.6 Panel chairs are responsible for notifying the Parole Board IT Support Team of issues with recording prior to their next hearing so that a solution can be sought.

## **8 Managing objections**

- 8.1 Any attendee at the proceedings can object to them being recorded.
- 8.2 In the majority of cases, the panel chair will note the concerns but establish that recording will not disadvantage any individual or lead to the proceedings being unfair or unlawful. To avoid any potential delays to



proceedings, the parties will have been advised that any objections must be submitted prior to the date of the proceedings.

- 8.3 There will be very few circumstances where an objection to the recording of the proceedings is likely to be agreed. For example:
- The prisoner is a young person who is extremely distressed by the proceedings;
  - The prisoner is evidently extremely agitated, or becomes fearful by the fact that proceedings are being recorded, and it is likely to affect candid responses to questioning;
  - The prisoner has considerable learning difficulties or mental health issues that will be considerably exacerbated by the proceedings being recorded.
- 8.4 However, in every case the prisoner should be reassured that the process is standard practice and will not be detrimental to their case, and that there will always need to be an official record of the proceedings regardless of their objections. If there are still concerns, then reverting to taking handwritten notes can be considered.
- 8.5 The final decision as to digital recording of the proceedings, or for the panel chair to revert to a handwritten note of record, is a matter for the panel chair who will consider the merits of any objections being made.
- 8.6 Where a panel chair has no alternative other than to revert to a handwritten note of record, they should notify the IT Support Team so that the case can be logged for any future enquiries that may arise.
- 8.7 Attendees should be reminded that they must take their own notes of the proceedings (in line with any requirements given by the panel chair), and that transcripts of digital recordings will not be provided in lieu of their own notes.

## **9 Exceptions**

- 9.1 There will be occasions where circumstances or restrictions relating to a case dictate that a digital recording cannot be undertaken. This may be due to the nature of the case, or the security level assigned to the case.
- 9.2 Examples of this could include:
- The prisoner is a protected person;
  - A high-profile terrorism related offence case (where it has been agreed by the secretariat that a recording should not be taken);
  - The location is of such high security that no electrical devices are permitted;
  - A Special Advocate has been instructed and high security information is being discussed (panel chairs will need to act carefully if recording cases with national security interests or where the prisoner is a protected person).

- 9.3 However, in most situations a solution can be put in place to ensure an accurate record of proceedings is taken. For example, the Royal Courts of Justice does have secure recording equipment and storing facilities for closed hearings.
- 9.4 All attendees will need to be informed in advance of the proceedings should one of the above circumstances apply.
- 9.5 Whether or not a digital recording of the proceedings is made, panel chairs are encouraged to take at least some very brief notes of the evidence. These can help identify gaps or queries concerning testimony, and prompt follow-up questions. These handwritten notes may become the official record of proceedings should the digital recording application malfunction.
- 9.6 Co-panellists are also encouraged to make handwritten notes during the proceedings to support questions and evidence-taking, however, these will not form part of the official record of the proceedings under any circumstances.
- 9.7 If the panel chair is unsure whether a case meets the exceptions to not be digitally recorded, this should be discussed with the Parole Board Head of Legal or the Practice Advisor.

## **10 Victims**

- 10.1 Victims who attend the oral hearing in person or via video to read out their VPS are not part of the formal proceedings and so should not be digitally recorded. This applies equally if someone else is reading out the VPS on behalf of the victim.
- 10.2 In the majority of hearings, a separate meeting will be set up to take the reading of the VPS prior to the start of the formal proceedings.
- If the victim is attending in person, the reading should usually take place in the parole room ahead of the formal proceedings with only those agreed to attend present.
  - If the victim is reading their VPS via remote means, this will usually be via MS Teams with only those agreed to attend present.
  - If the victim is not present and someone else is reading the statement out on behalf of the victim at a remote hearing, it is likely to take place in the CVP environment with only those agreed to attend on the link.
- 10.3 Panel chairs will need to remember not to commence digital recording until the victim has finished reading their VPS and left the room or ended the remote connection.
- 10.4 In cases where the VPS has been pre-recorded and is to be played to the panel, this should also not be digitally recorded as part of the proceedings.

- 10.5 If the victim is observing the proceedings via a live-stream then panel chairs will need to consider the points mentioned in section 6.

## **11 Saving and storing the recording**

- 11.1 All panel chairs have a folder in the SharePoint repository UKPB Recordings.
- 11.2 Links need to be created between your device and the folder, and between EaseUS and the folder. Please see the EaseUS Information. Once established, the link will remain active, but must be created again should the device be re-built.
- 11.3 All digital recording files that you generate must be saved to the dedicated folder located in the Digital Audio Repository SharePoint site. This site is accessible by clicking on the following link: [Digital Audio Repository](#).
- 11.4 To do this quickly and conveniently, we recommend that panel chairs first synchronise the library in the site that contains their folder (the library is called '*Recordings*') to their local desktop, and then proceed to copy the newly generated recording files into their locally synchronised library and then allow it to sync to the online folder in the site. A step-by-step process on how to do this can be found here: [Audio Recording Repository](#).
- 11.5 It is recommended to start the file exporting as soon as the formal proceedings are over whilst the panel has post panel discussions as it can take a few minutes for the program to finish exporting (saving) the file. The file should be named including the prisoner's name, prison number and the date of the formal proceeding.
- 11.6 Parole Board member devices have the necessary security software to ensure the digital recordings are stored securely and can only be accessed by authorised Parole Board officials.
- 11.7 As part of the panel chair device set up process, historical recordings have been moved into a virtual cloud (OneDrive), which serves as a secure 'offline' storage and backup. Panel chairs are required to complete the set-up in order to ensure all new recordings are also stored in the virtual cloud. This is because the Parole Board is required to keep records of formal proceedings in line with the Board's Information Assurance Policies and the requirements of the GDPR, as incorporated in the Data Protection Act 2018.
- 11.8 For more information on synchronising and saving your recordings to the Digital Audio Repository, please access the following IT Guidance Documents.

## **12 Requests for transcripts from the parties**

- 12.1 **The full digital recording will not be made available in its digital format, but a transcript may be provided if necessary and where a request meets the criteria.**
- 12.2 Where all or part of a proceeding has not been recorded, the chair's notes may need to be produced in place of a transcript.
- 12.3 Transcripts can be requested for all formal proceedings, including directions hearings and case management conferences. A fee is charged for this.
- 12.4 A request for a transcript must be made within three months of the decision being issued, or within three months of the directions being issued following a directions hearing or case management conference. This is in line with the current timeframe for submitting a judicial review.
- 12.5 Only the parties can make a request for a transcript of the digital recording:
- The request from any representative or witness of the Secretary of State for Justice (SSJ) must come from the Public Protection Casework Section (PPCS). Any other agent of the SSJ should not make a request directly to the Parole Board;
  - It will usually be the prisoner's representative who makes a request on behalf of the prisoner. Any prisoner making a direct request to a panel or case manager should be encouraged to go through their instructed representative, where they have one.
- 12.6 The only exception is where the prisoner is unrepresented. In such cases, the Parole Board will consider any direct request from the prisoner, or from a third party, with the prisoner's written authority.
- 12.7 If anyone at the formal proceedings on the day requests a transcript, they should be sign-posted to the guidance on the Parole Board website, and informed that any request must be sent to the Board's Litigation Team in the first instance.
- 12.8 Panel chairs are advised not to accept any transcript requests at the formal proceedings on the day. Some flexibility may be exercised where the prisoner is unrepresented as they are unlikely to have access to the Board's website. The prisoner should be encouraged to ask a friend or family member to make the request if possible but will need to provide a notice of authority to this effect.
- 12.9 Information for the parties about how to request a transcript is set out in Annex A.

### **13 Criteria for accepting a request for a transcript**

- 13.1 Requests from one of the parties must be sent to the Litigation Team ([Litigation@paroleboard.gov.uk](mailto:Litigation@paroleboard.gov.uk)) where they will be processed.

#### If an audio recording exists

- 13.2 The Litigation Team will ascertain if a digital recording exists, and then consider the following two points:
- What is the specific point/area of dispute or query?
  - Is the reason for requiring a transcript sufficiently clear and precise?
- 13.3 If the reasons are weak or unclear, then it is likely that an application for a transcript of the formal proceedings will be refused. As pointed out in *McIntyre*: “*It would plainly be a wholly disproportionate burden for the notes by way of record to be transcribed and/or made available after each hearing*”.
- 13.4 If the reasons are unclear, the Litigation Team can request further information before making a decision.
- 13.5 A transcript may be provided if proceedings for judicial review are intended, or if the evidence is to be relied on at further proceedings. A transcript may also be provided if there is a matter of dispute, or a point requiring clarification from the proceedings, that cannot be resolved by comparison with the note of record (e.g. adjournment or deferral directions or the decision). A transcript may only be provided if the requesting party is prepared to cover the costs of transcription. In these cases the Litigation Team will usually secure an undertaking from a representative before commissioning a transcript.
- 13.6 If a digital audio recording exists, any handwritten notes made by the panel chair or the other panel members are not part of the record of proceedings and *must not* be disclosed.

#### If an audio recording does not exist

- 13.7 The panel chair’s handwritten note of record may be provided if proceedings for judicial review are brought, or if the evidence is to be relied on at further proceedings. A note of record may also be provided if there is a matter of dispute or a point requiring clarification from the proceedings.
- 13.8 Any other handwritten notes made by the panel chair, or by the co-panellist members if made to assist their decision making, are not part of the record of proceedings, and *must not* be disclosed.

## **Point of note:**

13.9 The courts have suggested that, where there is an issue as to what was actually said, the panel chair should review the note of record with the reasons for the request in mind, and ascertain whether the issue can be reconciled with the note.

- If it can, then the panel chair can confirm as such and there may not be a need to produce the handwritten notes or a transcript;
- If it cannot, and the panel chair is confident that the note is an accurate record, then the transcript (or panel chair notes if appropriate) will stand as the official record of the proceedings.

## **14 Process for Providing Transcripts**

### Approval process

14.1 Transcripts are provided by a third-party supplier: Ubiquis Ltd.

14.2 If the Litigation Team approve the request, the following process is followed.

- The Litigation Team approve the request;
- The Litigation Team will send the request to the panel chair, copying in the Digital Support Officer (DSO) who will be asked to review the recording with particular attention to:
  1. any missed sections of the formal proceedings. If this is the case, the panel chair will need to provide any handwritten notes to cover the missing content; and
  2. any recording of panel deliberations or other informal conversations, such as during a break, or the reading of a VPS. If this is the case, the panel chair will need to provide a note with the details.
- The panel chair confirms that the recording can be released, submits the file to the Litigation Team and the DSO, providing handwritten notes if relevant, and highlighting if any informal conversations were recorded;
- The Litigation Team will complete a proforma which will include all relevant details of the request, including payee details and submit to the DSO;
- The DSO will then upload the file and the original timetable with attendees listed to the secure portal that Ubiquis Ltd has set up;
- Ubiquis Ltd will review the recording and provide an estimate of the cost and timeframe for the transcript to the DSO who will then pass it on to the requestor (SSJ or prisoner);
- If the fee is acceptable, the requestor will commission the service and will need to pay the full amount in advance directly to Ubiquis Ltd;

- Ubiquis Ltd will prepare the transcript and submit to the Parole Board DSO;
- The DSO will provide the transcript to the panel chair and Litigation Team to check and approve;
- If panel deliberations, informal conversations etc were inadvertently recorded and subsequently transcribed, the relevant section should be removed by the Litigation Team/panel chair as part of the approval process. No other information should be changed, deleted, or doctored;
- If the panel chair approves the transcript, confirmation will be sent by the DSO to Ubiquis Ltd who will release the transcript to the requestor; or
- If the panel chair amends the transcript, the amended transcript will be sent by the DSO to Ubiquis Ltd to effect the changes after which it will then be released to the requestor.

### Panel Chair Fees

- 14.3 Panel chairs are eligible to claim fees for this work.
- 14.4 The DSO will notify the panel chair of the timeframe in which to review both the recording and the draft typed transcript and provide the deadlines for completing this work.
- 14.5 Panel chairs can claim a fee based on the standard non-casework rate. Should the panel chair believe the time required to complete the work will be excessive then they should notify the DSO who will escalate the matter to a manager.

### Timelines for processing transcript requests

- 14.6 From the point of the requestor commissioning the service, the Parole Board has eight working days to review the recording before it must be submitted to Ubiquis Ltd to commence transcribing.
- 14.7 Ubiquis Ltd has up to five working days to transcribe the recording and provide it to the Parole Board from the point of commission.
- 14.8 The Parole Board then has up to seven working days to confirm accuracy, make any changes required, and return to Ubiquis Ltd.
- 14.9 The DSO will send the final approved transcript to Ubiquis Ltd who will issue it to the requestor within two working days of receiving it. The DSO will also provide a copy of the transcript to the Litigation Team as part of the official record.
- 14.10 The total timeframe should not exceed four weeks. However, the above timeframes are internal guidelines only and there may be occasions where these will vary. The Board should notify the requestor if delivery will fall outside of the timeframes.

## Welsh Language<sup>2</sup>

14.11 The Parole Board's Welsh Language Scheme requires the Board to treat English and Welsh equally. Prisoner whose first or preferred language is Welsh can request a transcript to be provided in Welsh.

14.12 If a Welsh language transcript is required, the Board will need to arrange for the transcript provide by Ubiquis Ltd to be translated into Welsh (via the third-party service provide, The Big Word, who hold the appropriate security clearance). This may take additional time, which should be taken into consideration.

## **15 Disclosure of Information**

15.1 Transcripts should only be used for the purpose as set out in the formal request from the requestor. Transcripts should not be disclosed to third parties or published, and anyone doing so is in contravention of the Parole Board Rules:

*Rule 27(5) Subject to paragraph (1) and rule 17, the Board chair may prohibit or permit the disclosure, recording or publication of proceedings or information about proceedings under these Rules.*

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<sup>2</sup> [Welsh Speaking Prisoners and Duties Regarding the Welsh Language \(sharepoint.com\)](#)