

[2020] PBRA 133

## Application for Reconsideration by Kearsley

### Application

1. This is an application by Kearsley (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 18 August 2020 not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These are the dossier of 740 pages (which included the written closing submissions and the decision letter) and the Applicant's submissions.

### Background

4. On the 1 February 2008, for offences of sexual assault on a child, offences of engaging in sexual activity in a child's presence and offences of causing a child to look at sexual images, the Applicant was sentenced to an indeterminate sentence of imprisonment for public protection with a maximum period of four years less time spent on remand before he was eligible for parole.
5. The minimum period expired on the 23 October 2011.
6. At the time of the offending, the Applicant was aged 68. The Applicant's current age is 81.

### Current parole review

7. The Secretary of State referred the Applicant's case to the Board in November 2018.
8. The panel met on the 11 June 2020 and the 17 August 2020 and heard evidence from the Applicant (who was legally represented), his Offender Supervisor and his Offender Manager.

### Request for Reconsideration

9. The application for reconsideration was received on the 26 August 2020.
10. The Applicant applies for reconsideration on the ground that the decision of the panel was procedurally irregular. However, the grounds probably come under the



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ground of irrationality. In support of his application, the Applicant relies on the following matters:

- (a) The panel gave inadequate reasons for its decision not to direct release;
- (b) The panel placed undue weight on the Applicant's failure to provide pertinent information to his Offender Manager. It is suggested the panel was referring to the Applicant not telling his Offender Manager about the existence of his great-grandchildren;
- (c) The panel erred when it found the Applicant's strategies were rather superficial and he did not always recognise risky situations; and
- (d) The panel failed to apply the correct legal test for release.

## The Relevant Law

### *Irrationality*

11. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para. 116,

*"the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."*

### *Procedural unfairness*

12. An Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me of one or more of the following:

- (a) express procedures laid down by law were not followed in the making of the relevant decision;
- (b) he was not given a fair hearing;
- (c) he was not properly informed of the case against him;
- (d) he was prevented from putting his case properly; and/or
- (e) the panel was not impartial.

The overriding objective is to ensure that the Applicant's case was dealt with justly.

13. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: *"It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."*



## The reply on behalf of the Secretary of State

14. The Secretary of State did not make any representations in response to the application for reconsideration.

### Discussion

15. The dictum of Lord Bingham in **Oyston** has been stated in a slightly different way and specifically addressed to the work of the Parole Board by Sir John Saunders in **Benson [2019] PBRA 46**. I cite and adopt the passage in its entirety:

*"There are two matters which apply generally to all these applications. First, it is for the panel to assess the weight to be given to any piece of evidence, including the opinion as to risk given by the professional witnesses. It is for the panel to test the assessment and look at the reasons for it. So, even in a case where every witness is supporting release, it is for the panel to make their assessment taking into account all the evidence. The reverse is also true. If the panel disagrees with the evidence given by the professionals, it must give adequate reasons for doing so. Secondly, a decision letter is directed at the prisoner. While it has to descend to sufficient detail so that everyone, but particularly the prisoner, can understand the reasons for the decision, it is not necessary for every point which has been raised in the hearing to be discussed. What is necessary is that everyone is able to understand the reasons for the decision."*

16. The decision letter is clear and comprehensive. It is significant that the panel included a Psychiatrist. A number of salient findings emerge from the letter:

- (a) The index offences were serious matters which were likely to have had a long term impact on the victim.
- (b) The offences formed part of an established pattern of sexual offending against children and the panel needed to be mindful of the impact on future victims were the Applicant to reoffend.
- (c) The panel did not accept a recent psychological opinion that the Applicant did not actively seek opportunities to offend against children. The panel considered he may well have created opportunities where he would have had easy access to girls and the panel said that an earlier panel (which included a psychologist) had expressed a similar view.
- (d) The Applicant had completed a training course addressing sex offending but had then continued to commit offences against children.
- (e) The Applicant could still fail to anticipate risky situations and so avoid them altogether. This was demonstrated by choosing to eat at a popular restaurant frequented by children. The Offender Supervisor agreed that the restaurant (from the point of view of the Applicant's risk) was not the most ideal place to go to eat and it was important that the Applicant made appropriate decisions.



- (f) Although the Applicant told the Offender Supervisor about the visit to the restaurant, it was a concern for the panel that he had not told his Offender Manager.
- (g) The Applicant's wife is not considered a protective factor.
- (h) The Applicant was unforthcoming and/or vague about whether he had sexual thoughts, their frequency and their subject matter.
- (i) The Applicant had not engaged sufficiently with his Offender Manager by failing to disclose significant information. The proximity in the decision letter of that finding along with the finding that the Applicant failed to anticipate risky situations, strongly suggests the information referred to was the visit to the restaurant and not his great-grandchildren. The passage in the letter about the great-grandchildren is exclusively about their safeguarding and contains nothing about the Applicant's relationship with his Offender Manager.
17. The panel was entitled to make the findings it did on the evidence before it and it was entitled to rely on those findings to conclude that the Applicant was not yet quite ready for release.
18. It was very much within the permissible and quite wide discretion to place significant weight on the Applicant's ill-considered visit to the restaurant and then not to discuss this with his Offender Manager and examine why his strategies had permitted him to make the visit.
19. The panel did give reasons for its decision and the decision did not fail to reflect the evidence before it or to explain in sufficient detail why the evidence was being rejected in the way envisaged by Raini J in **R(Wells) v Parole Board [2019] EWHC 2710 (Admin)**, a decision referred to in the Applicant's written submissions.
20. The allegation that the panel failed to apply correctly the test for release perhaps does not take the application further given my findings. Certainly, the panel set out the correct test for release and for recommending open conditions in the introductory section of the decision letter.

## Decision

21. For the reasons I have given, I do not consider that the decision was irrational or procedurally unfair and accordingly the application for reconsideration is refused.

**James Orrell**  
**21 September 2020**



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