

[2021] PBRA 154

Decision on Application for Reconsideration by Towers

Application

1. This is an Application by Towers (the Applicant) for reconsideration of a decision by a Panel of the Parole Board dated 7 October 2021 not to direct his release following the attainment of his Parole Eligibility Date (PED).
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases on the basis that the decision is (a) irrational or (b) procedurally unfair.
3. I have considered the Application on the papers. These comprise: the Application for Reconsideration with representations; the Decision Letter; and the Case Dossier.

Background

4. On 25 August 2017, having been convicted of causing or inciting child prostitution or pornography, three offences of making indecent images of a child, two of engaging in sexual activity in the presence of a child, two of causing or inciting sexual exploitation of a child, two of taking indecent photographs of a child and one of distributing or showing indecent photographs or pseudo photographs of a child, the Applicant was subjected to an extended determinate sentence. This comprised a custodial term of six years and an extended licence period of four years. The Applicant's Parole Eligibility Date (PED) was 23 August 2021. The Conditional Release Date (CRD), when otherwise he must by law be released on licence, is August 2023. The Sentence Expiry Date (SED) is August 2027.
5. The Applicant was 23 at the time of the index offences which were committed between December 2016 and February 2017. They began 11 days after the Applicant had been released on licence under sentences of imprisonment totalling 4 years 4 months imposed on 10 March 2015 for: possession of an indecent photograph or pseudo-photograph of a child; causing or inciting prostitution or pornography involving a child between 13 and 17; causing or inciting a female child under 16 to engage in sexual activity not involving penetration; engaging in sexual activity in the presence of a child under 18; and causing a female to engage in sexual activity without consent involving penetration. The Applicant had no other criminal convictions, although on 7 January 2013 he was formally cautioned for harassing his girlfriend after their relationship ended by posting naked images of her on the internet.



6. The index and previous offences were similar to each other. In essence, the Applicant befriended young girls online, persuaded them to send sexual pictures to him and, if at any point they demurred, he threatened to post pictures of them online and tell their parents.
7. There was a history of failure on the Applicant's part to comply with bail conditions and court orders.
8. This was the first review following the PED.

Request for Reconsideration

9. The Application for Reconsideration is dated 27 October 2021 and contains detailed representations by the Applicant's Solicitors.
10. The grounds for seeking reconsideration are that the decision not to grant release was irrational.
11. It is submitted that the decision was irrational because:
 - a) The Applicant's good custodial behaviour is not in issue;
 - b) There is no evidence to suggest the Applicant's risk has risen over recent years;
 - c) The Panel failed to provide adequate reasons for rejecting the prison psychologist's evidence;
 - d) The Panel failed to take into account the risk management skills which the Applicant uses on a daily basis;
 - e) A training course addressing the use of violence and sex offending post programme report was not in the dossier;
 - f) Having referred to the fact that completion of the Sex Offender Treatment Programme during the previous sentence did not prevent the Applicant's further offending, the Panel failed to take into account evidence that the SOTP has since been decommissioned as a result of questions about its efficacy;
 - g) Although the Applicant has completed all core risk reduction work, the Panel failed to explore with witnesses whether any additional work would be available in custody;
 - h) The Panel failed to evaluate the benefits of a training course addressing the use of violence and sex offending in the context of the Applicant's risk management in the community; and



- i) The Panel failed adequately to take into account the evidence of the Applicant and of the Prison Psychologist when assessing the Applicant's external and internal protective factors.

12. The Secretary of State made no representations in response to the application.

Current parole review

13. The Secretary of State referred the Applicant's case to the Board on 11 December 2020 to decide whether to direct his release. The terms of reference did not ask for a recommendation about whether or not he should be transferred to open prison conditions.

14. The Panel considered a dossier running to 210 pages ending with Panel Chair Directions dated 16 September 2021. The latest Prison Offender Manager (POM) and Community Offender Manager (COM) Reports were dated respectively 22 and 28 June 2021. Under Offender Management in Custody (OMiC) Guidelines, the POM was unable to make a recommendation about release, but he did state that the Applicant was deserving of a progressive move and was eligible within the system to be considered for open conditions. The COM expressed the opinion that his very high risk of harm could not be reduced other than by further testing and gradual re-introduction to the community via open conditions and temporary release.

15. Closing submissions in writing on the Applicant's behalf dated 1 October 2021 were made by his Solicitors.

The Relevant Law

16. The Decision Letter correctly sets out the test for release and the period for which the Panel was to consider the management of his risk.

Parole Board Rules 2019

17. Under Rule 28(1) of the Parole Board Rules 2019, the only type of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b) or by an oral hearing panel after an oral hearing (Rule 25(1) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).

Irrationality



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



@Parole_Board



INVESTORS
IN PEOPLE | Bronze

18. 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.”

19. This test had been earlier set out by Lord Diplock in **CCSU-v-Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing “irrationality”. The fact that Rule 28 uses the same word as is used in judicial review proceedings demonstrates that the same test is to be applied.

20. The application of this test has been confirmed in decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.

21. The importance of giving adequate reasons in Parole Board decisions has been made clear in two High Court cases. In **Wells [2019] EWHC 2710 (Admin)** it was suggested that rather than ask was the decision being considered irrational the better approach is to test the decision makers ultimate conclusions against all the evidence received and ask whether the conclusions reached can be safely justified on the basis of that evidence while giving due deference to the panels experience and expertise.

22. Panels of the Board are wholly independent and are not obliged to adopt the opinions or recommendations of professional witnesses. A panel’s duty is to make its own risk assessment and to evaluate the likely effectiveness of any proposed risk management plan. That will require a panel to test and assess the evidence and decide what evidence it accepts and what evidence it rejects. Once that stage has been reached, following the guidance provided by cases such as **Wells** and also **Stokes [2020] EWHC 1885 (Admin)**, a panel should explain in its reasons whether or not it is going to follow or depart from the recommendations of professional witnesses.

23. It follows that, in reaching a decision on this application, I am required to decide first, whether I am satisfied that the conclusions reached by the panel were justified by the evidence and second, whether I am satisfied that the conclusions are adequately and sufficiently explained.

24. In considering the amount of detail needed to be included in a decision letter, there has been guidance from the High Court, 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 require elaborate or impeccable standards of draftsmanship"*

Procedural unfairness

25. The issue to be considered under this ground would be whether there is evidence that the correct legal process was not followed either in the application of the Parole Board Rules or in the fair conduct of the hearing. The Applicant does not challenge the decision on this ground.

Discussion

26. The Decision Letter provides an analysis of the Applicant's offending behaviour, a review of his risk factors and an assessment of current risk after consideration of the material available to the Panel by way of reports and in oral evidence at the Hearing.

27. The dossier contained directed reports by a Prison Psychologist, by the Applicant's Prison Offender Manager (POM), and by his Community Offender Manager (COM).

28. The Applicant had completed a training course addressing the use of violence and sex offending and, although no post programme report was in the dossier, evidence of its successful completion was provided by the Prison Psychologist both in her own report and in her oral evidence.

29. It was not in dispute that the Applicant held Enhanced Status under the Incentives and Earned Privileges Scheme (IEP) and that there were no adjudications recorded against him. The Panel noted the positive use by the Applicant of his time, the fact that he had worked with the prison mental health team and that he was stable on his medication.

30. The Decision Letter records the Prison Psychologist's evidence that the Applicant had engaged meaningfully with a training course addressing the use of violence and sex offending and in drug and alcohol work. Furthermore, she considered that he had gained a deeper understanding of his sexual offending, unhelpful thinking patterns, coping with challenging emotional experiences, and healthy relationships and that he was managing better his depression and anxiety.

31. The Decision Letter refers to her recommendation for release on the basis that the Risk Management Plan was robust enough to manage his risks in the community.



32. All three professional witnesses expressed the view that there was no further core risk work required to be undertaken in the closed prison estate. The Panel acknowledged this and took it into account. The Decision letter further noted that the Applicant's recently appointed POM, who gave evidence at the Hearing, not only recommended a progressive move (as had his predecessor), but also expressed the view at the Hearing that the Applicant's risks could be managed in the community (a view not expressed by his predecessor).
33. The Panel expressly took into account the reservations of the COM who maintained her original view that further testing would be required. It noted the Applicant's history of non-compliance in the community and issues about honesty with those supervising him. The COM disagreed with the Prison Psychologist's opinion that warning signs of increasing risk would be identified in the community. She was not prepared to recommend release and confirmed her view that the Applicant should be tested in open conditions.

Decision

34. The Panel clearly took into account the written representations by the Applicant's Solicitors. It was not obliged in its decision reasons to spell out each one, but to demonstrate that it had considered and taken them into account when reaching a balanced decision. In my judgment it did so. The Panel expressly acknowledged the progress made by the Applicant and the evidence of positive change. It further acknowledged that the risk management plan was robust. However, it was entitled, taking into account the circumstances of the index offence, committed on licence, to reach its own conclusion that he does not yet have sufficient internal controls for safe management in less secure conditions.
35. Applying the test as set out in case law, and on the basis of the evidence before it, I do not find that the Panel's decision was irrational. A panel is not bound to follow the recommendation of professional witnesses and in this case those recommendations varied. It is not obliged to accept the majority witness view. It adopted a careful approach to the issue of risk and reached its own decision. It is clear from the Decision Letter that it made an objective assessment of risk and applied the correct legal test in a rational manner.
36. The Application for Reconsideration is accordingly refused.

HH Judge Graham White
12 November 2021



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



@Parole_Board



INVESTORS
IN PEOPLE | Bronze