

[2021] PBRA 2

Application for Reconsideration by Brennan

Application

1. This is an application by Brennan (the Applicant) for reconsideration of a decision of the Parole Board dated 13 November 2020 following an oral hearing conducted over two days on 7 October 2020 and 13 November 2020 which did not direct 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 566 pages, the decision letter and the application dated 13 November 2020.

Background

4. The Applicant was convicted in 2010 when aged 52 of offences of sexual assault on a child, meeting a child following grooming and 2 breaches of his Sexual Offences Prevention Order. He received an Indeterminate Sentence for Public Protection, with a minimum tariff of 4 years less time served on remand. He is now aged 63.
5. On 28 November 2017 the Applicant was released on licence. He was recalled to custody on 18 July 2019.

Request for Reconsideration

6. The application for reconsideration is dated 21 December 2020.
7. The grounds for seeking a reconsideration are as follows:
 - a) That the panel has failed to follow the Parole Board's Guidance on Allegations and that this has amounted to procedural unfairness.



Current parole review

8. The case was referred to the Parole Board on 1 April 2019. The referral was for the Parole Board to consider whether or not it would be appropriate to direct the prisoner's release. The referral was considered by a Member Case Assessment (MCA) panel on 9 September 2019 which deferred the referral pending further information as to the outcome of a decision about charging the Applicant with new alleged offending which had led to his recall. The allegation was that the Applicant had raped a vulnerable woman. An MCA panel on 14 July 2020 referred the case to oral hearing.
9. The oral hearing was heard remotely by a video link on 7 October 2020 and 13 November 2020 by a 3 member panel. It was not possible to hold the scheduled oral hearing face to face at the prison due to restrictions imposed by the COVID-19 pandemic. The dossier provided to the panel contained 554 pages and there was an additional report from the Prison Offender Manager of 2 pages. Oral evidence was heard from the Prison Offender Manager, Community Offender Manager, a Consultant Psychiatrist and the Applicant. The Applicant was legally represented throughout and representations were made on his behalf. Written submissions were made by the Applicant's legal representative following the oral hearing dated 27 November 2020.

The Relevant Law

10. The panel correctly sets out in its decision letter dated 1 December 2020 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019

11. Under Rule 28(1) of the Parole Board Rules 2019 the only kind 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)).

Procedural unfairness

12. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on



how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

13. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:

- (a) express procedures laid down by law were not followed in the making of the relevant decision;
- (b) they were not given a fair hearing;
- (c) they were not properly informed of the case against them;
- (d) they were prevented from putting their 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.

The Reply on behalf of the Secretary of State

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

Discussion

15. The panel had the advantage of an extensive dossier of reports and other material. They had the advantage too of hearing the Applicant as well as the Prison Offender Manager, Community Offender Manager, a Consultant Psychiatrist and the Applicant. The Applicant was also legally represented throughout.

16. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, they have the expertise to do it.

17. However, if a panel were to make a decision contrary to the opinions and recommendations of all the professional witnesses, it is important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, per **R (Wells) v Parole Board 2019 EWHC 2710 (Admin)**.



18. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact that they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the panel.
19. The panel considered an allegation that the Applicant had raped a vulnerable woman in its decision letter. The allegation of rape had led to the Applicant's arrest whilst on licence and, as his Community Offender Manager considered his risks had escalated, to his recall.
20. When presented with an allegation the panel has to assess the relevance and weight of the allegation and either (a) choose to disregard it; or (b) make a finding of fact; or (c) make an assessment of the allegation to decide whether and how to take it into account as part of the parole review. The panel here considered the fact that the rape allegation had been withdrawn and that there were no outstanding charges against the Applicant.
21. The panel assessed the allegation in detail, recording in their decision letter the evidence provided to the police which led to the Applicant's arrest and the statement made by the complainant when she withdrew her complaint. They also recorded the evidence given by the Applicant in relation to the allegation where he accepted contacting the vulnerable woman, driving 90 miles to meet with her and then taking her in his car to interview her in a layby.
22. The panel set out their serious doubts about the account given by the Applicant that he had been simply trying to find an assistant for an online business. They went on to assess the allegation and the Applicant's account in order to decide whether and how to take it into account as part of the parole review.
23. The panel considered the views of the professional witnesses. They recorded that the Consultant Psychiatrist's view that if the Applicant's account were true, it had been '*incredibly foolhardy*' and that he had been entering into a high risk scenario. The Community Offender Manager was recorded as having considered that the alleged behaviour, alongside other behaviours on licence, demonstrated a lack of self-control and self-management. The Prison Offender Manager's view was that with the Applicant's offending history he was placing himself at risk by picking up a woman in a car.
24. Having considered the allegation, its withdrawal, the account of the Applicant and the views of the expert witnesses, the panel set out clearly the relevance and weight that it attributed to it. They concluded that even if the Applicant's account was



accepted, the allegation showed a significant lack of ability to identify high risk situations and that the Applicant had actively put himself in a high risk situation.

25. In the decision letter the panel carefully analysed the allegation alongside other behaviour on licence where the Applicant had contacted women online who were selling sex, and made contact with someone he believed to be a child on a site usually frequented by teenagers. The concern that was identified was a lack of insight into risk, despite the completion of sex offender treatment work.

26. The panel properly and comprehensively assessed the relevance and weight of the allegation of rape and the wider circumstances of this allegation and set out this assessment in detail in the decision letter. The impact of the allegation on the decision made were well set out and the panel provided clear and justifiable reasons based on their analysis of all the evidence before them. I do not consider there is any merit in this application for reconsideration.

Decision

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

Angharad Davies
27 January 2021

